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JOINT COMMITTEE ON THE AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION

Monday, 17 July 2000

Members: Mr Jull (*Presiding Member*), Senators Calvert, Sandy Macdonald and Robert Ray and Mr Forrest, Mr McArthur and Mr McLeay

Senators and members in attendance: Senators Calvert and Robert Ray and Mr Jull, Mr McArthur and Mr McLeay

Terms of reference for the inquiry:

ASIO's public reporting activities.

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Committee met at 10.04 a.m.**RICHARDSON, Mr Dennis, Director-General, Australian Security Intelligence Organisation**

PRESIDING MEMBER—Welcome to today's hearing of the Joint Parliamentary Committee on the Australian Security Intelligence Organisation. The hearing is a part of the committee's inquiry into ASIO's public reporting activities. When we were looking at the [Australian Security Intelligence Organisation Legislation Amendment Bill 1999](#) last year, the issues of the Australian public's knowledge of what ASIO does and how ASIO reports its activities to the public were raised by several groups who contributed to the committee's bill review. Following the bill review, we asked the Attorney-General if we could look further into ASIO's public reporting activities and he referred the inquiry to the committee this year. We have received submissions from ASIO, other government departments, privacy groups, academics and individuals. At the hearing today, we will be taking evidence from ASIO, the Attorney-General's Department, the Inspector General of Intelligence and Security, the Australian Privacy Charter Council, the National Archives of Australia, Mr Mark Weeding and Dr Frank Cain. I would like to advise the people giving evidence today that these hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament.

Resolved (on motion by **Senator Calvert**):

That submissions from ASIO and from the National Archives of Australia be received as evidence and authorised for publication and that the submissions Nos 8 and 9 be considered as confidential submissions.

PRESIDING MEMBER—To begin the first session, I call the witness representing ASIO, Mr Dennis Richardson. Would you like to make a brief opening statement?

Mr Richardson—I do not have a lot to add to what is in the submission, which outlines in detail how we report publicly on our activities and what we do not report and gives a comparison between how we report our activities and how other Australian and overseas agencies report. I think it is important that the public reporting of our activities be looked at as a whole and not piecemeal. When our annual report is put with our publications, our newly released web site, our approach to public speaking engagements, our interaction with the media and our public advertising of all ASIO positions, I do not think it is exaggerating to say that we are probably one of the most open security services in the world, if not the most open. It is certainly possible to look at different component parts of the way we publicly report our activities and to compare particular component parts with other agencies. For instance, it would be possible to point to some publications by the UK Security Service and compare them with our own. However, the UK Security Service has no public annual report and it has no media conferences. Indeed, the head of the UK Security Service was not publicly known until six or seven years ago. Also, the UK service advertised its positions publicly for the first time last year.

It would be possible to compare our own web site with the web site of the Canadian Security Intelligence Service. Equally, the Canadian Security Intelligence Service has a brief annual report of 16- to 20-odd pages. It has few media conferences and the Canadian Security Intelligence Service still does not publicly advertise vacant positions. I think we measure up

well in absolute terms but particularly in comparative terms. There are, however, limits to the public reporting of our activities and they are essentially the same limits which apply across government. Just as Foreign Affairs and Defence do not report publicly every aspect of their negotiations or every aspect of their capabilities, so too there is a confidentiality point beyond which ASIO cannot report its activities. That ring, in respect of ASIO, is tighter than that of other government agencies and that reflects the nature of our work, but the principle which applies to us is the same principle which applies in other areas of government.

We seek to interact as much as we sensibly can with the media. However, I am not paid to be a media junkie. I am paid to exercise judgment and discretion in the same way that other heads of government departments and agencies are. We have an open policy in respect of public presentations about ASIO. There are few, if any, invitations for public speaking which I have not accepted over the last 3½ years. Indeed, on two occasions I have spoken at universities, something which I suspect even 10 years ago, and certainly 20 or 30 years ago, might have met with a different response to the one that I got. There is always room for improvement. I have no doubt that suggestions could be made about the improvement of our web site. I have no doubt that suggestions could be made about the improvement of our publications. Certainly, we stand ready to take on board whatever suggestions come forward which would help us to report more effectively to the public on what we do. Finally—and I have been thinking about how I would make this observation without getting offside with the committee—I think there is a certain irony that, although it automatically follows in one sense, one of the most public security agencies in the world should be the first to be subject to an inquiry of this kind. But it is certainly one we welcome.

PRESIDING MEMBER—Within your submission you gave us a table which actually set out comparisons between most of the major security organisations around the world. Really, only the Germans provided more public information than perhaps Australia did. Despite that, what is the standard? How much knowledge does the public really have about the operations of ASIO and what it is all about?

Mr Richardson—I think it is very mixed, and my own personal sense of it is that there would be many people in the community who would have a wrong-headed view about what we do. For instance, when I was appointed to this job, my sister went to work and pointed to a photograph of me in the paper. One of the people she worked with said, ‘How could you possibly be proud of someone working in that job? They go around killing people.’ Quite clearly, there is a degree of misunderstanding in certain parts of the community. Equally, however, I think there are many people in the community who have, if not a detailed understanding of ASIO’s activities, a fairly level-headed and balanced view of the role we do play.

PRESIDING MEMBER—For example, would the general public have any idea of the availability of the annual report?

Mr Richardson—Probably as many people in the community would be aware of the availability of our annual report as would be aware of other government annual reports. Our annual reports are made available to the public in the same way as other annual reports are made available. It may be that our annual report each year gets a little bit more coverage in the media than what most government annual reports do.

PRESIDING MEMBER—Has there been much of a change in the nature of the annual report over the last 20 years?

Mr Richardson—Yes. The first annual report was in 1982-83. If you compare that annual report with, say, the last six or seven, you will see there has been a significant increase in the amount of information made available about the organisation.

PRESIDING MEMBER—Do you see much criticism that the annual report does not contain enough?

Mr Richardson—I can respond to that in only a personal sense. I have no doubt that some people would hold that view but, equally, there has been little criticism come to the organisation on that score.

Mr McARTHUR—Would members of the public really understand what ASIO does by reading the annual report?

Mr Richardson—I think members of the public reading the annual report, accessing other publications that we make available, would have a good sense of what ASIO does.

PRESIDING MEMBER—May I finalise my section. What sort of reaction have you had to the launch of the web site? Would you have any idea how many hits you have had in the month that it has been operating?

Mr Richardson—Between 22 June when the web site was launched and the end of June there were about 7,500 visitors to the site and about 250,000 hits. Apparently, there is a technical difference between a visitor to a site and a hit. Each time you access different parts of the site, that is a hit. A visitor is probably a more accurate measure—which is about 1,500 a day, about 20 per cent of which have been from overseas.

Senator ROBERT RAY—You mentioned the annual report is available like any other. How many are sold through the Australian government bookshops?

Mr Richardson—I do not know the answer to that question. I think very few are sold. As from 22 June our annual report has been available through the web site.

Senator ROBERT RAY—How many complaints have you had in the last year about the inadequacy of the annual report? Have you had any?

Mr Richardson—I do not think we have had any.

Mr LEO McLEAY—If no-one has read it, they would not get many complaints.

Senator ROBERT RAY—Most of the complaints about ASIO—ASIO's make-up, behaviour, even critique of it now, et cetera—the level would be 10 per cent of what occurred in the 1960s?

Mr Richardson—I would think so, yes.

Senator ROBERT RAY—People do not have the view, as a lot of people did in the 1960s, that ASIO is a refuge for right-wing social isolates. Certainly, the recruiting policy at university was that. If you had a right-wing nerd doing the course, you knew ASIO would approach him. But that has all changed, hasn't it?

Mr Richardson—It certainly has. ASIO first advertised publicly for intelligence officers in 1977 and now virtually all positions in the organisation are publicly advertised.

Senator ROBERT RAY—Would you like to put on the public record, so we can take it as evidence, how FOI applies to ASIO?

Mr Richardson—ASIO is not subject to the FOI Act, nor is it subject to the Privacy Act nor the Ombudsman Act. It still, however, has accountability arrangements around it, which I think the committee is familiar with, particularly involving the Office of the Inspector-General of Intelligence and Security.

Senator ROBERT RAY—You made mention of the UK not having an annual report but, if you like, counterbalancing that by other degrees of supervision and accessibility. Would I also be right in saying that the D notice system is still extant in the UK and it is basically in disrepair in Australia?

Mr Richardson—That would be right, Senator. I think by any comparison the Australian public are more able to ascertain information about ASIO activities than they are about our British counterparts.

Senator ROBERT RAY—Would you like to describe to the committee for the record at least the process of examination of the classified report?

Mr Richardson—ASIO produces a classified annual report. After the internal processes within the organisation it goes to the Attorney-General. It also goes to the Secretaries Committee on National Security, after which is considered by the National Security Committee of Cabinet. So our classified annual report, along with the annual reports of other members of the intelligence community, are subject to quite a deal of scrutiny.

Senator ROBERT RAY—One of the questions raised generally is whether there should be, if you like, a table of the amount of warrants issued. Your submission goes to arguments that, if that number were low, it might encourage people to indulge in espionage in Australia and, if it were very high, it might encourage people to look for other methods. Would you like to give us an explanation so we can get it on the record?

Mr Richardson—Essentially, we believe that providing details of the number of warrant operations would allow individuals or groups the subject of interest to make decisions in terms of the risk environment in which they are working and to make judgments accordingly about the way they go about their work. That is detail that is certainly not provided elsewhere in the world.

Senator ROBERT RAY—Is there any need in an annual report to restrict knowledge of what sort of liaison or otherwise links you have with other agencies overseas?

Mr Richardson—From our own perspective, we are relaxed about disclosing the liaison arrangements we have with other services overseas; however, those services overseas with but a few exceptions have a very firm policy that they will not agree to public revelation of the existence of a formal liaison relationship.

Senator ROBERT RAY—There is an implication that the ASIO report could be more fulsome in comparison to others. Have you ever had a look at some of the other departments' annual reports like the Attorney-General's? There is a lot missing in those too, isn't there? We know you are restricted, but it is not as though every other department is massively fulsome in disclosure either, is it?

Mr Richardson—I think that is right, Senator. Indeed, the point I was seeking to make in my opening presentation is that the principles we apply in producing our annual report are no different to the principles that are applied in every agency and every department throughout the government in producing theirs. I am not aware of any government department or agency producing an annual report which puts on the public record classified information. We apply precisely the same principle in producing our annual report.

PRESIDING MEMBER—Who actually determines what goes in and what is left out of both editions of the annual report?

Mr Richardson—After the process within the organisation, which is where I personally go through and tick off on, as does the legal adviser, it then goes to the Attorney-General. The Attorney-General provides approval for what is left out of the publicly available annual report.

PRESIDING MEMBER—So the Inspector-General does not get a look in?

Mr Richardson—No.

Mr LEO McLEAY—Does the copy of the annual report that is given to the Leader of the Opposition contain the same information as the copy given to the Attorney-General?

Mr Richardson—It is precisely the same annual report as that considered by the National Security Committee of Cabinet, which is the same report that goes to the Attorney-General. It is simply a copy. It is precisely the same.

Mr LEO McLEAY—So there are only two; there are not three.

Mr Richardson—No, there are two.

Senator CALVERT—Mr Richardson, in your submission you give us a list of significant dates in ASIO's public reporting history. In recent times we have this *ASIO now* booklet. Is that regularly updated? What sort of information does it contain?

Mr Richardson—It was updated this year. Our submission mentions the fact that the revised version was put out in the first three months of this year. It is designed to provide, in plain English and in an easily accessible form, what ASIO does and does not do. A copy of *ASIO now* has been made available to the committee as part of our submission. It is a booklet of about 16 or 20 pages.

Senator CALVERT—And the web site which was launched on 22 June, does that contain similar information?

Mr Richardson—Yes, it does. It does not contain *ASIO now*. That could be added. The reason why we did not put *ASIO now* into the web site is that everything in *ASIO now* is on the web site, plus a lot more. We thought to add the publication *ASIO now* would in fact introduce duplication into the web site and it might look as though we are trying to pad it out a bit.

Senator CALVERT—You said earlier that ASIO is probably one of the most open intelligence organisations in the world. Do comparative organisations make available types of documents, web pages and the sorts of things that you are doing?

Mr Richardson—We were very slow in going onto the web. We were the very last member of the intelligence community in Australia to go on the Web. However, we were one of the first to have a publicly available annual report dating back to 1982. As I mentioned in my presentation, if you put the totality of our approach to the public, I think it is well ahead of most.

Senator CALVERT—Do you see a problem if ASIO were to raise its profile significantly? Is it better to keep it as it is now with the parliamentary overview and limited information being available?

Mr Richardson—I am relatively relaxed about the profile ASIO may or may not have. I think it would be difficult to argue that where we are at now is precisely right and there can be no variation to it. I think there are genuine issues of policy about how forward we ought to be. As I mentioned before, I do not believe I am paid to be a media junkie; I do not believe I am paid to be hanging out around, and putting myself on, TV at every opportunity. I believe that I ought to be prepared to be and should be publicly accountable when there are real issues of public debate. For instance, when consideration was being given last year to the amendments to the ASIO Act—they were significant amendments—I appeared on *Lateline*. I was also interviewed for half an hour on ABC Radio National's national interest program. When the web site was launched on 22 June, I subsequently gave two radio interviews about the web site. On the occasion of ASIO's 50th anniversary last year I gave a series of interviews in connection with that. I think I have to exercise the same judgment that other heads of agencies and other heads of departments do. I do not want to get involved in comparisons, but I think you will find that I have been publicly available as much as quite a number of my colleagues who could be said to occupy different positions.

Senator CALVERT—Repeating the question I asked you about being the most open in the world, do other similar organisations have a similar attitude to releasing files of over 30 years of age?

Mr Richardson—Yes, they do.

Senator CALVERT—From time to time we hear secrets being trotted out after 30 years from the UK, but I presume they were defence matters.

Mr Richardson—For instance in respect of our own counterpart service in the UK, I think you will find—and I stand to be corrected—it was over only the last 12 months that they publicly released their first batch of archival material, and I think that was 50 or 60 years.

Senator CALVERT—Do you think that ban on files you have hinders researchers? Do you think that works against what could be perceived to be the public interest?

Mr Richardson—I suppose the first point is that the 30-year rule does not apply to ASIO; that applies to government classified material. It is not as though there is a 30-year rule put around ASIO and a 10-year or 20-year rule put around everyone else. Precisely the same rule that applies to the release of classified information from other areas of government applies to ASIO. I do know that it can frustrate researchers. I think on two or three occasions there has been special provision made for a couple of researchers who were writing books or whatever. They were given access inside that envelope.

Senator CALVERT—Are the people requesting information mainly researchers or are they people looking for information about themselves?

Mr Richardson—You do get some of the latter. We give priority to those people making requests which relate to themselves, but the majority of requests we get are from researchers. Despite the fact that we are a relatively small organisation, I suppose inevitably reflecting past controversies and the like, the number of requests made to the archives for ASIO material is the second or third highest across the Commonwealth. We employ eight or nine people in archives. A bigger percentage of ASIO staff work on archival work than in any other agency in government. If you look at the comparisons, you will find that we have almost as many people working in our archive as does the Department of Foreign Affairs and Trade and the Department of Defence. The Department of Foreign Affairs and Trade is an organisation five or six times our size and we have the same number of staff working on archives, which reflects the interest and the amount of effort we have put into making judgments about what is made available.

Mr McARTHUR—You are suggesting that you are one of the open agencies around the world. In your submission, you report that ASIO does not report on ASIO targets, warrant operations, including operational methods, and details of liaison with overseas agencies. Could you add the background of the reasons why, because that is always the public debate as I would read it and it is the interesting information that some people who are concerned about the operation might want to know.

Mr Richardson—Were we to publicly reveal our formal liaison arrangements overseas without the agreement of those services, we simply would not get their cooperation. If we did not get their cooperation, we could not do our job. It is that simple. In respect of targets and warrant operations, it goes to the same issue that I mentioned when asked the question by Senator Ray. We are a small service. An important ingredient for us is uncertainty in the minds of individuals,

groups and foreign intelligence services in which we might take an interest. Revealing our targets and our warrant operations would, I think, make it very difficult for us to do our job effectively. It would enable targets to make their own risk assessments about where we are focusing and where we are not. It would enable them to make judgments about our methodology and the things that we can do under the Telecommunications (Interception) Act. It would give them an idea of what we rely on and what we do not rely on and personally I do not think it would be a wise thing to do.

Mr LEO McLEAY—I have a couple of questions going back to the annual report. Could you describe in a little more detail how the original annual report which you tick off on is compiled and whether the Attorney-General is brought into it at that stage? Does the Attorney-General know what has been left out of the document he receives?

Mr Richardson—Yes, he does.

Mr LEO McLEAY—Yes he does what?

Mr Richardson—We send to the Attorney obviously the classified annual report.

Mr LEO McLEAY—And I am talking about the classified annual report.

Mr Richardson—Yes, and that classified annual report has marked in it the component parts which we would propose be left out in the public version. So the Attorney is aware of what is being left out and therefore he is aware of what is in both.

Mr LEO McLEAY—So the document that goes to the secretaries committee, to the security committee of the cabinet and to the Leader of the Opposition has those parts noted as well?

Mr Richardson—No. That is simply the classified version of the report. The reason is that the approval process for what is in the unclassified annual report belongs to the attorney; it does not belong to the secretaries committee, et cetera. Clearly, the secretaries committee and anyone else who has access to the classified version could compare the two if they wanted. If they asked us to go through it, we would. We would be unfussed.

Mr LEO McLEAY—So the Attorney-General, in reality, determines what is left out?

Mr Richardson—That is right.

Mr LEO McLEAY—Does he do that only on the recommendation of the Director-General, or can he decide to leave things out additional to what the Director-General has suggested? Is that his prerogative or does he have to act upon a recommendation?

Mr Richardson—No. It is a ministerial prerogative based on advice that we would provide.

Mr LEO McLEAY—And you are the one who provides that advice.

Mr Richardson—That is right.

Mr LEO McLEAY—Could we go back a step. You are preparing this original classified document. Could you explain to the committee the process for drawing the elements of that together? How do you decide what to put into that document and what to leave out?

Mr Richardson—Essentially, the first cut of that is made by the relevant work areas within the organisation. For instance, people working on their own particular areas would make the first decision as to what they believe should be left out in the unclassified version. That then gets fed in to the government liaison area of the organisation, which coordinates and puts together the totality of the annual report. There is consultation with a legal adviser and then that comes to me.

Mr LEO McLEAY—And that is the material for the classified report? I guess I am asking you: what exercises your mind about what goes in and what stays out of the classified report?

Mr Richardson—It is the classified report that is done first. We produce a classified annual report in the same way as any organisation would produce an annual report. After we put together the classified annual report, we then make a judgment about what should be left out of the classified annual report to produce the unclassified one.

Mr LEO McLEAY—Does the Inspector-General get a copy of the classified report?

Mr Richardson—I would need to take that on notice. I think so.

PRESIDING MEMBER—The Inspector-General nods yes.

Mr Richardson—Good. The answer is yes.

Mr LEO McLEAY—The Inspector-General gets a copy of the report. Does he have any input into the production of the classified report?

Mr Richardson—No.

Mr LEO McLEAY—Do you think he should?

Mr Richardson—No.

Mr LEO McLEAY—What about the view that one of the elements of the public confidence in this system is that the Inspector-General is, in a sense, part of that public confidence measure, and therefore if he was aware of what was left out of the classified report there might be a higher level of public confidence in what finally trickles out to them?

Mr Richardson—He is certainly aware of what is left out of the classified annual report, simply by virtue of receiving a copy of the classified annual report and a copy of the unclassified annual report. So the Inspector-General is aware of that. But the decision—

Mr LEO McLEAY—I think, Mr Richardson, we are getting mixed up with reports and reports. I asked you: did he have any input into the compilation of the classified report—which

is your first version? You said 'no.' I then asked you if you thought he should have some input into that as a confidence measure. I think you are now confusing that question with whether or not he would know what is in the unclassified report.

Mr Richardson—I am not confusing anything at all.

Mr LEO McLEAY—In that case you have managed to confuse me, and that is probably not too difficult anyway.

Mr Richardson—I am sorry. I do not understand where you are confused. I have tried to answer your questions directly.

Senator ROBERT RAY—Basically what you have said, Director-General, is that you do not think another outside agency—and I think you are right in this—should construct your annual report. It is your report and you have got to stand by it and cop any blame for it, I would have thought.

Mr Richardson—That is right.

Mr LEO McLEAY—But are you saying to the committee that the Inspector-General knows what he has left out of the classified report?

Mr Richardson—Yes. He knows what is left out, but I do not believe he has a role in determining what is left out.

Mr LEO McLEAY—Right. So how does he know what is left out?

Mr Richardson—Because he receives a copy of the classified annual report and a copy of the unclassified annual report.

Senator ROBERT RAY—So in actual fact he has the potential to know, if he actually bothers to do it.

Mr Richardson—Absolutely.

Senator ROBERT RAY—And there is no requirement for him to do it.

Mr Richardson—Absolutely. And if he were to ask us to take him through the reasoning, then we would do it. And, indeed, if he were to ask for a copy of what went to the Attorney in terms of our recommendations of what should be left out and not left out, he would get that too, because the Inspector-General is in a position where he can access, as of right, any material and any information that the organisation holds.

Mr LEO McLEAY—Thank you.

Mr McARTHUR—What is the number of people who view the classified version and how do we know that a number of people have not looked at it? If it is going to be produced for the

Prime Minister, the Leader of the Opposition and the Attorney-General, how many other individuals might have viewed that copy?

Mr Richardson—The classified annual report is numbered and it is an accountable document, so people receiving it sign a receipt. In the case of the Prime Minister and the Leader of the Opposition, it would be a member of staff on their behalf. A copy of the classified annual report goes to each member of the Secretaries Committee on National Security, to each of the heads of agencies of the other members of the intelligence community, and to each member of the National Security Committee of Cabinet. That is somewhere between 20 and 30 all up, I think.

Mr McARTHUR—And you are happy with the security arrangements of the classified copy?

Mr Richardson—Yes.

Mr McARTHUR—Have you got any way of evaluating those arrangements, if it is such a sensitive document?

Mr Richardson—We take great care in the way we do that. They are all delivered by hand and are all signed off in our presence. I have confidence that everyone who receives a copy of our classified annual report would in turn treat it with great care.

Senator ROBERT RAY—It has not appeared in the *Canberra Times* in the last few years, has it?

Mr Richardson—No.

Senator ROBERT RAY—We are ahead of a few others.

Mr Richardson—I was going to say that but then I thought that, if I said it, it might tomorrow.

PRESIDING MEMBER—In your submission you make some reference to future reporting plans. Do you intend to keep up the publications or do you intend to rely more and more on the web site?

Mr Richardson—For the moment I think we should do both because, given that less than 50 per cent of Australian households currently access the web, I believe that not only should we make it available on the web but also our own publications need to be kept up.

PRESIDING MEMBER—There has been some criticism that the information is not necessarily multilingual. Are there any plans to change that?

Mr Richardson—We have not had any plans to do that. I see that as a practical issue. I do not believe one can have an in-principle objection to that; indeed, quite the reverse. I would note that annual reports of other government departments and agencies are not made available in

multiple languages. Those areas of government that do produce material in a number of languages are normally into service delivery and have a need to provide information across the community in a way in which people can readily access it for their own services, et cetera. For instance, I think you would find that the Department of Immigration and Multicultural Affairs, Centrelink and service providers of that kind would, but, outside of that, I do not believe it is common.

There would be an interesting issue for us if we were to produce material in a range of languages. Leaving aside the resource issue, if we were to do that, in what languages would we do it? On what basis would we make that judgment? For instance, I think you will find that the Department of Immigration and Multicultural Affairs and Centrelink put out material in a range of different languages but that they still have limits to that. They do not put it out in all languages. It depends very much upon the size of the community. Do we follow the same principle? Are we implying, therefore, that we have an interest in a community simply because we put out something in another language? Of course, we do not take an interest in any community as such. We take an interest in individuals and sometimes in groups, but we have no interest in any community. What statement are we making to that community if we put out ASIO publications in that language as opposed to another language? How do we answer those questions? If we put it out in one language, is that reassurance for that community or is it a point of concern for that community? And for another community that does not have the ASIO publications in its language, what does one read into that? I am not saying we should or should not do it; I just think there are real issues there to be worked through.

PRESIDING MEMBER—You also flag the possibility of the introduction of discussion papers on security issues. I was wondering if you could just expand on that. What sorts of issues would you see being suitable for public discussion?

Mr Richardson—Probably the best example of the sorts of discussion papers you could put out if you wanted to move down that track would be the ones that are put out by the Canadian Security Intelligence Service. If you access their web site, which is really very good, you will find that they actually engage academics and other people to write pieces on different terrorist groups around the world, different security issues and the like. That is the sort of thing we could do if we were resourced for it.

PRESIDING MEMBER—You would not be quite as blatant as perhaps the Germans are, where they almost physically nail groups and individuals for discussion.

Mr Richardson—No, and neither are the Canadians, in that sense.

PRESIDING MEMBER—Thank you very much for your time and the manner in which you answered our questions today.

Mr Richardson—Thank you.

[10.56 a.m.]

FORD, Mr Peter Malcolm, First Assistant Secretary, Information and Security Law Division, Attorney-General's Department

HOLLAND, Mr Keith Colin, Assistant Secretary, Security Law and Justice Department, Attorney-General's Department

PRESIDING MEMBER—Welcome. Would you like to make a brief opening statement?

Mr Ford—Thank you. I would like very briefly to set our remarks in context. The way in which ASIO reports to the Australian people on its activities is grounded in the reforms that were developed following the second Hope royal commission, which reported in 1984. The implementation of those reforms by successive Attorneys-General, Directors-General of Security and Inspectors-General of Intelligence and Security has been carefully calibrated so as not to impair ASIO's performance of those of its statutory obligations which require a high degree of secrecy. The result has not always encouraged accurate reporting in the media or pleased individual researchers. Nevertheless, there has been over that time a steady growth in the amount of information that has been publicly released and the extent to which reports about ASIO have become more informative. In terms of accountability, ASIO now compares favourably with any of the corresponding agencies of countries with similar democratic traditions.

PRESIDING MEMBER—On the point you just made, could I ask you to expand a little bit on the nature of the changes as you see them in the ASIO reports over recent years?

Mr Ford—I think they have become more fulsome, released more information, and they have taken on more of a strategic focus. I think it is possible for the reader to get from an annual report an idea of the strategic directions, the priorities and so on that ASIO is concentrating on in performing its roles in relation to security.

PRESIDING MEMBER—But you really think more can be done?

Mr Ford—I am not sure whether more can be done. It is always dangerous to say that the position we have reached is the best of all possible worlds, but I think there are real tensions between releasing more information and adequately protecting information on security grounds.

PRESIDING MEMBER—Perhaps you could expand by telling us: what role do you see A-G's having in publicising ASIO?

Mr Ford—The A-G's department's role is really one of supporting the Attorney-General. It is a role that you have to define by reference to what the Attorney-General's role is. The Attorney-General, in discharging his ministerial accountability to the parliament and so on, may look to us for assistance in terms of preparing documentation, reports, speeches and that kind of thing, in terms of briefing on ASIO reports and in terms of reviewing legislation such as the ASIO Act or the Telecommunications (Interception) Act.

PRESIDING MEMBER—How successful have we been? I would like to hear your assessment on how informed you believe the Australian public is in terms of its knowledge of ASIO and its functions.

Mr Ford—I do not believe it is terribly well informed, but I take comfort from the fact that Mr Justice Hope, in the second royal commission I think it was, said that it really is not the business of government to take as the issue the extent to which people's perceptions of ASIO are accurate. He said that, really, what government needs to do is to ensure that the accountability procedures are appropriate and that the legislation is adequate to enable ASIO to discharge properly the functions that have been entrusted to it. So our efforts, and I believe the efforts of successive Attorneys-General, have been directed towards that end rather than simply towards improving the public image of ASIO.

PRESIDING MEMBER—From what we have heard, the annual report of ASIO does not walk out the door of government bookshops. We have seen the establishment of the web site, and obviously that has created some interest, is that enough? How much further do you think we could go in terms of providing that public access?

Mr Ford—I suppose the starting point would be that I do not think our annual report walks out the doorway either in terms of public presentations. I guess annual reports have a fairly specialist kind of readership, and beyond that you rely on the information imparted in them to permeate through the media. I think things can always be done on the web site to improve what information is available, to create appropriate links with other bodies—for example, the reports of this committee and so on—and to improve the way the web sites are designed to make them more easily accessible and that sort of thing. I think it is really a matter of making those incremental improvements, which are nevertheless important, which start from that base that the function is really one of assisting the public to understand what is available and making that readily available through online techniques and through the paper based techniques.

PRESIDING MEMBER—Were you surprised at the number of hits on the ASIO web site in the first couple of weeks?

Mr Ford—No, I guess I was not surprised, but I really did not know what to expect. I think that the very name ASIO has a certain sort of attraction for the media. I guess there will be quite a lot who will just be curious in that sense and I followed the publicity when it was announced. No, I would not be surprised at a heavy interest.

Senator CALVERT—One of the issues that keeps coming up from different groups is the disclosure of the number and type of warrants, et cetera. We heard from Mr Richardson this morning. Could you tell us what takes place when you are considering a request from ASIO for a warrant? What does A-Gs normally do?

Mr Ford—An officer from ASIO brings over the warrant application and documentation and either I or my colleague here will go through it to analyse the legal basis for it and whether we believe there are any considerations which, from that legal perspective, need to be brought out. After having satisfied ourselves, we will then certify to the Attorney-General that we have done that and it goes forward to him for his consideration on the merits.

Senator CALVERT—Do you believe the public has enough knowledge about the warrant process, or do you think it is because it is not made known that it creates suspicion? Do you think more publicity should be given as to why?

Mr Ford—That particular process has been made known on a number of occasions, either by us or, more usually, by the Director-General, so it is on the public record. The discussion I have seen in the media has not been that detailed in terms of what ASIO does, the way it issues warrants and that sort of thing; it really comes from a much more general point. I am not too sure how you address that beyond what I have just said in terms of making information available. I think the information is there if people wish to look for it.

Senator CALVERT—But ASIO have said both this morning and in their submission that publishing information about the number and types of warrants would prejudice their operations. Do you agree with that?

Mr Ford—Yes, I do agree with that. It is quite different from the law enforcement area where the number of warrants is published in relation to particular law enforcement agencies and also in relation to particular kinds of offences, and that is part of the accountability process. The big difference between law enforcement and ASIO warrants is that the first ones are intended to end up in court if they lead to a successful investigation and prosecution, whereas ASIO warrants have to remain covert to enable ASIO to do its job of building up intelligence.

Senator CALVERT—You may have heard evidence this morning—Mr Richardson put it quite well—that, if ASIO were to present their information in different languages, it may be perceived that they were targeting a particular group when in fact that would not be the case, but in your submission you make the point that it would be useful for public information if pamphlets were available in a number of languages. Do you see a problem with that?

Mr Ford—I had not considered the points that Mr Richardson raised when we wrote that submission. I can see the force of the argument. I suppose one way around it would be to have some kind of government statement by the Attorney-General, if ASIO were to go down this path, where it could be made clear that the selection of languages was on the same basis as, say, Centrelink or something like that, simply for the purpose of making information available and that nothing should be read into that selection in terms of ASIO's interests in particular areas. That would be one way it could be addressed. One point that we may not have made in our submission is that—I think we did—there is a resource issue involved as to whether you have the people to do this sort of thing.

Mr McARTHUR—You say in your submission that ASIO's primary accountability is through the Attorney-General and ultimately to the parliament. Do you think members of the public would agree with that in a day-to-day assessment of ASIO's activities? If they really wanted to find out, would they go to the Attorney-General's Department to raise a few issues?

Mr Ford—The Attorney-General certainly gets ministerial correspondence about ASIO. So there certainly is a number of people who associate ASIO with the Attorney-General. There may be a lot of others who do not and who do not understand the ministerial responsibility arrangements.

Mr Holland—Certainly at the branch level we get a number of inquiries from the public about their concerns and fears of what ASIO is doing. By and large, they are calling up to say that ASIO is bugging them or has implanted something in their brain. Most of the inquiries that we get are not inquiries where you would be satisfied they are actually looking for information because they do have a genuine concern that needs to be dealt with. That does not stop us devoting a great deal of resources to talking to these people when they call.

Mr McARTHUR—What do you say to those inquiries? Do you send them a bureaucratic letter back?

Mr Holland—Most of them tend to be on the phone, so you are very quickly able to pick up the line of response that you should use in the circumstances. We try to assuage any fears that they might have and reassure them to the best extent that we can.

Mr Ford—In some cases, a letter might be addressed to the Attorney-General and come to us for drafting an appropriate response. If it is the kind of letter that Mr Holland just referred to where a person has unreasonable beliefs that ASIO is interfering with their thoughts or bugging their every conversation and so on, we would try to assure them in the letter that goes back, whether it is from the Attorney or from someone on his staff, that ASIO is an organisation which has specific statutory obligations that are related to Australia's security, and so on, without going into the details of the case, which, obviously, we cannot do.

Mr Holland—We do take the opportunity, where we think there might be some genuine concern, to refer those people to the Office of the Inspector-General of Intelligence and Security, mindful of the fact that we do not want to create unnecessary work for them.

Mr McARTHUR—Is Mr Richardson aware of these inquiries?

Mr Ford—We do not bring all of them to his attention, simply because on a workload basis there does not seem to be the need. But he would certainly be made aware of any that we thought were serious, or certainly if we decided they were serious enough to be referred to the Inspector-General then yes, clearly, we would make him aware.

Mr McARTHUR—How would you compare the role of accountability from the Attorney-General's Department and that of this parliamentary committee? How would you compare the roles?

Mr Ford—I think they are quite different. The department is not in an oversight role in the way this committee is or in the way the Inspector-General is. As I said before, our role is determined by the Attorney-General's role. ASIO is accountable to the Attorney and we are there to work for the Attorney in ensuring that any organisation that is accountable to him discharges its functions in a way that is appropriate.

Mr McARTHUR—Do you think the availability of more publications in recent years has helped in the accountability role to the public at large?

Mr Ford—I do not really have a good feeling for that. I do not discount it; I think there is always an audience for these publications. As I said before, I know there is an audience for

annual reports, limited though it is, and that may be an influential audience which then goes on to use the information it gains in preparing its own commentaries or something like that, whether it is journalists or whatever. In relation to use of the Internet, there are all kinds of people who like to access their information in this way these days, and that area is growing. To the extent that information can be made more available on the web site, that will be a good thing in terms of general accountability to the public. Beyond that, it is difficult to get a measure of what impact these applications have.

PRESIDING MEMBER—Do you have any theories or thoughts on what has brought about a more open attitude by ASIO after the last 10 years? Is it just the end of the Cold War? Has it been a natural evolution, or have there been concerted efforts to make the organisation a little more open?

Mr Ford—I think it is all of the above. If you compare the change in ASIO's accountability arrangements to general perceptions, for example, between the first Hope royal commission and the second, in the first one Mr Justice Hope recommended against annual reports and I think in the second one he recommended in favour. It kind of mirrors that general direction in the community. But also acknowledgment has to be given to the efforts of successive attorneys-general and directors-general in making people more aware.

Senator ROBERT RAY—It is probably a wise policy, anyway, to make as much of the information as possible available in order to protect the rest. There is less demand for information when you make what information you can readily available.

Mr Ford—Yes, I think that is right. It is not that the more information that is made available the more people want, but when you look at the increasing amounts of information that have become available, there are still calls for yet more information to be made available, such as details of numbers of warrants and so on. You wonder whether you could ever get to a point where all those expectations could be realised. That is really the point I am trying to make. Certainly, if you make as much available as possible within the constraints of security and so on, that does help answer the basic concern. I would agree with that.

Senator ROBERT RAY—Comparing the ASIO annual report with others, I would argue that, for the amount of protection governments of whatever persuasion get these days for not providing information via the costings of FOIs—and that certainly has been a difficulty of late; you can get a bill of \$10,000 or \$15,000 by the indiscriminate use of commercial in confidence, and cabinet confidentiality has been extended to cover a much broader range—ASIO in fact does not polish up that badly in terms of restriction of information compared with a lot of other departments. What is your response to that?

Mr Ford—I think I would agree with that. I suppose I would put it more the other way around by saying that, when it comes to what ASIO can release and what it cannot release, there is a very clear definition in the ASIO Act as to what security involves. In a way, this is more hard edged than some of the other criteria that you might have just been referring to.

PRESIDING MEMBER—There being no further questions, may I thank you both very much indeed for appearing before the committee this morning.

[11.16 a.m.]

BLICK, Mr William James, Inspector-General of Intelligence and Security, Office of the Inspector-General of Intelligence and Security

PRESIDING MEMBER—Mr Blick, would you like to make a brief opening statement?

Mr Blick—I do not have anything complicated to say. My sense is that the process of ASIO providing information to the public is very much an evolutionary one. If you go back 20 years, you will see that ASIO was not nearly as informative as it is now. My sense is that, as it is now, it is pretty consonant with the sorts of demands the public might make. However, in 20 years time the caravan will have moved on. There will be different demands for public accountability across government, and I would expect ASIO to respond to those.

PRESIDING MEMBER—We have made great play this morning of the knowledge of the public of ASIO's role. Would you like to comment on the knowledge of the public of your role?

Mr Blick—The knowledge of the public of my role would probably be less than it is of ASIO's. I am part of a small organisation. I do not have a media unit in my organisation. We do our best within limited resources but there is only so much you can do. However, I would have to say that people who need to find out about us, who have concern about the activities of the intelligence and security agencies, have a way of finding out.

PRESIDING MEMBER—Would it be possible for you to spell out your role in terms of your relationship with ASIO?

Mr Blick—In terms of the relationship with ASIO, the broad role is described in the legislation as providing reassurance to the government and the public about the activities of the intelligence and security agencies to ensure that they conduct their activities legally and with propriety. In terms of what I do in relation to ASIO, that means: firstly, that I inquire into complaints about ASIO from members of the public; secondly, that I inquire, if I am asked by government, into particular matters in relation to ASIO; and, thirdly, that I conduct regular inspection activities of all of ASIO's operations. I am not an auditor; I do not look at their financial affairs. I am not a second-guesser of their operational activities, but I look at their operations from the point of view of whether they are conducted legally and with propriety. What that means on the ground is that, at fairly frequent intervals, I examine the warrant applications that they have made to the Attorney-General to ensure that they have made proper applications and that all the approval processes have been gone through.

Secondly, I examine their other investigative activities on a regular basis to ensure they are not doing things that I would regard as improper or perhaps illegal. I also periodically examine things like their archives responses and so on to make sure they are being properly handled and that they are devoting the adequate resources and proper amount of attention to them that I believe is consonant with the needs of the people who make the applications.

PRESIDING MEMBER—Bearing that in mind—and I ask this question quite seriously—do you think there is a need, really, to publicise your role more?

Mr Blick—That is a difficult question. Obviously any organisation that is in the business of ensuring accountability needs an adequate level of publicity, otherwise the people who need to get to the organisation cannot do so. However, as I said before, my sense is that people who really do need the resources of my organisation devoted to their concerns do in fact find out about them. You can never know, of course, who is missing out. But if I compare the complaints that we get with the knowledge I have of the way in which ASIO does its business, I do not get the sense that there is a constituency out there that is missing out because it does not know about my office.

Mr LEO McLEAY—Have you got a web site?

Mr Richardson—Yes. And as Mr Richardson mentioned, it is linked with ASIO's and ASIO's is linked with ours.

Senator ROBERT RAY—But, in the end, the argument for more information and annual reports is to do with accountability. In this case, because of the security aspects, that is limited; therefore, to have fundamental confidence in the system, people have to have confidence in your office, your powers, your resources and a lack of interference in your activities. That would be right, really, wouldn't it?

Mr Blick—That is correct.

Senator ROBERT RAY—I think we have been through Mr Blick's resources at estimates committee hearings. There was not a problem there so I might as well ask the question for the record: can you state that you have not been directed by political authority in regard to ASIO?

Mr Blick—Absolutely. Yes.

Senator ROBERT RAY—Thank you.

Mr LEO McLEAY—Mr Blick, I would like to ask a question that goes back to one that I asked the Director-General. You might recall that I asked him whether he felt you should be involved in the compilation of his classified report. He said, 'No.' I then asked him whether he thought you would be aware of anything that was left out. He said that he was sure you would be. What would your comments on that be? Would you be able to confidently say that, when you see that report, you would be aware of anything of any significance that had been left out?

Mr Blick—I would not have any doubt about that. As I have said, I have a significant amount of surveillance of ASIO's ongoing activities. I am aware of the priorities it has and the particular investigations it engages in. If I read, as I do, the classified annual report, I would be able to identify anything of significance that was left out. All annual reports, obviously, are a process of choice about what you put in and what you leave out. But I would be confident that, if there were anything of particular significance left out, I would be able to identify it.

Mr LEO McLEAY—Fine. Part of the reason for the establishment of your office was to put a bit more confidence into the running of the security services. If you feel that something has been left out, what mechanism exists to bring that to the attention of the Attorney-General?

Mr Blick—It would be very simple. First of all, obviously, as a matter of course, I would discuss it with the Director-General. If at the end of that I was not satisfied, I would simply inform the Attorney-General, probably by way of writing him a letter.

Mr LEO McLEAY—Has a circumstance such as this ever arisen since your appointment to this position?

Mr Blick—No, and as far as I know it has not arisen with my predecessors.

PRESIDING MEMBER—Do you think you should have a role in determining what goes into ASIO's report?

Mr Blick—No, I do not. I think it is reasonable for the current situation to apply, which is that ASIO provides me with a copy of the annual report when it is completed. Clearly, if the Director-General were to seek my views on something, I would be very happy to provide them. But I do not believe he has a duty to do so, and at the moment I am very satisfied with the way ASIO does report in the classified version to the Attorney-General.

Senator ROBERT RAY—You would not be too happy if someone tried to interfere with your reporting, would you?

Mr Blick—You are quite right, Senator.

Mr McARTHUR—Could I raise the issue on the accountability debate. From your perspective, do you think the role of ASIO has been somewhat reduced because of the accountability processes in which you are involved? It is such a complicated process that warrants have to be issued with your general agreement and the targeting of security risks is subject to accountability by you and the Attorney-General. Do you think the role of ASIO has been diminished in the last few years because of that?

Mr Blick—I think it needs to be clear that I do not interfere in operations on the way through. My role is entirely retrospective. There is no interference by me in the conduct of operations by ASIO. I look at operations after the event but not necessarily when they are totally finished. In the case of my ongoing inspections, the operation may be still going on, but I am looking at what has happened in the past, not what is planned for the future. I do not believe that that has had what one might call a direct impact. It is very hard to speculate with any confidence about whether the knowledge that I am going to be looking at something has made a major difference, but if it has then that is the objective that the government and the parliament were seeking when they set up an office such as mine.

Mr McARTHUR—But surely ASIO would have a big brother approach that any action they undertook would be supervised or at least come to your attention. They would be more than aware, even if in a retrospective manner, as to what activities they undertook. You do not think this has diminished the ability of ASIO to undertake their primary role?

Mr Blick—Not in the sense of conducting their primary role with propriety and in a way that the government and the public would want. Hypothetically, had ASIO been doing things they should not have been doing and stopped doing them because they knew that my office was going to be monitoring what they did, then that would be a good thing in my view.

Mr McARTHUR—Do you think they have been an effective operation compared with other international agencies?

Mr Blick—It is very hard for me to say. I do not have any knowledge, other than anecdotal, of what overseas agencies do. However, my view is that ASIO is a very accountable organisation. My sense is that it will continue to be that way and that accountability will probably be even more at the forefront of its way of doing business.

Mr McARTHUR—The accountability argument might be overdone. In the desire of the parliament and the public at large to have accountability, it might in turn reduce the ability of the ASIO operation to be effective.

Mr Blick—That is a balancing operation that I think has to be continually watched for.

Mr McARTHUR—And your judgment is that, from where you sit, they are still effective.

Mr Blick—Absolutely, yes.

Senator CALVERT—I note that in your submission you discuss the Archives Act compliance part and you indicate that both you and your staff have visited ASIO to discuss their obligations under the Archives Act. Are you surprised by the number of applications they get for access to material? I think Mr Richardson said earlier that there is something like eight staff working on archival material.

Mr Blick—I do not think it is surprising, given the 30-year rule, because the period of time that is now coming into the open period was a period of intense political activity in Australia in which ASIO—

Mr LEO McLEAY—In 30 years time, Mr Blick, will there be the same amount of interest in ASIO's archives as there is at present, comparing the political activity in Australia today with the political activity in the 1960s and 1970s?

Mr Blick—It is a personal opinion, but I suspect it would be very unlikely, frankly.

Senator ROBERT RAY—I suppose we are going off at a tangent here, but is one of the problems of opening up the ASIO archives of the 1960s that there is a lot of gossip contained within the files that is often inaccurate, that it opens them up to people almost in a voyeuristic way? They did not have an evidentiary rule then.

Mr Blick—There is certainly a lot of material on the files that one could challenge if there were an evidentiary rule. In a sense that is inevitable because of the way in which an organisation like this has to rely on sources that are not professional in the way that other

organisations might use them. So, yes, that is a possibility. One gets the impression—and I think the director-general has alluded to this—that many of the people who apply for access under the Archives Act have a personal interest in the material rather than simply a research interest in the material. To the extent possible, I believe ASIO are forthcoming in responding to those requests. It is, however, very difficult for them, because one of the undertakings that they give and have always given to sources who provide information to them is that their identities will not be divulged. Some of those sources are still around after 30 years, and as soon as they provide a piece of information that leads to the identification of an individual source then the promise that they have originally made and are continuing to make to sources is compromised and their ability to engage sources is potentially compromised.

PRESIDING MEMBER—Would you have some sympathy for historians who argue that now that the Cold War is well and truly over and that we are a decade on, there is really no need to have 30-year rules and the like protecting some of this information and that we should open it now? Do you think that is valid?

Mr Blick—Some of it is valid, but the fundamentals, as I have just described, are the same. Regardless of the Cold War, you still have to rely on sources other than people permanently employed by ASIO, and in order to obtain cooperation from those sources you have to promise them continued anonymity. That applied during the Cold War and it applies today. As soon as you start engaging in revelatory activity which could identify sources, even though the activity is 30 years old you are threatening your capacity to obtain cooperation from sources today which you obviously need to conduct your activities properly and efficiently.

Mr LEO McLEAY—What if, in the light of hindsight, the information that was given is shown to be malicious or wrong or deliberately given to damage the person that the information was given against? You have seen the awful things that happened in Germany when the Stasi files were opened and people found out that their own families were spying on them. In a sense, don't people have the right to know that so that it can serve to heal them?

Mr Blick—Yes. Again I think it is a balance between the needs of security and the needs of the individual for the information, and ASIO has to tread a line on that balance from day to day in response to these requests. By and large, my sense is that it endeavours to provide the maximum amount of information consistent with not revealing the identity of sources, which is the primary concern that it has. It does that, by and large, by expunging the identities of sources. Where it runs into difficulties is where you might, for example, have a report of a meeting of a Communist Party branch, let us say, back in the 1960s, and there were very few people at that meeting. If you provided the person requesting the information with a record of the meeting, it might not be too hard for them to work out who had provided that record to ASIO. So there are occasions where information that they would otherwise be quite prepared to release to a requestor cannot be released, simply because it would lead directly or indirectly to the identification of the source. There is no easy answer to that dilemma.

I entirely take your point about the injustice on occasions of false information having been provided, but, on the other hand, ASIO has a present-day need to protect its continuing activities. You have to remember, too, in relation to archives, that there is an appeal mechanism where people can go to the Administrative Appeals Tribunal and challenge those decisions.

Senator CALVERT—How often does that happen?

Mr Blick—ASIO has probably provided numbers on that in their submission, but my impression is there is not a large number of appeals, and the number of times that they are overturned is quite small.

Mr LEO McLEAY—Going back to my earlier example, if some of the information which was provided was wrong or malicious, if you did not have an iron rule about revealing a source, might it not make sources be a little bit more honest if they knew that they might be exposed later on if they had spread a malicious story?

Mr Blick—I think the argument that ASIO would use is that we would not have the source at all if they knew that their name was going to be revealed to people who at the time would have trusted them and thought they were colleagues and friends—

Mr LEO McLEAY—Does that suggest that all their sources tell lies?

Mr Blick—They do not necessarily reveal to their colleagues and friends that they are telling ASIO about their activities, but it does not necessarily mean that their reporting to ASIO is false. ASIO obviously has to evaluate the information it gets from sources against other sources of information. It does not necessarily rely on a single individual.

Mr LEO McLEAY—I guess my point is: 30 years later, isn't the truth more important than the anonymity of the liar?

Mr Blick—As I say, I think that ASIO has to tread a fairly fine line there. If you took the view that it is, then you would also be accepting that ASIO might never be able to get significant information from sources in the future. So it is a question of which is the more important imperative at this stage. But you have to qualify that by saying that, by and large, ASIO provides to people the substantive information that they are seeking, and by and large it tries to exclude only information which would directly or indirectly lead to the identification of sources. So if you, for example, were to seek information about activities in which you or someone else had been involved back in the 1960s, there is every chance you would get the records that ASIO had of that activity, but—

Mr LEO McLEAY—It might be totally depressing. I might find they do not have a file on me. That is probably more depressing for a political activist than finding they had one on you.

Mr Blick—I believe some people have been very depressed when they have found that out.

Senator ROBERT RAY—I take the cynical view. I think historians write better history without access to massive research material.

Mr LEO McLEAY—Are you writing a book, Robert?

Senator ROBERT RAY—I am just wondering how much value the ASIO files are to historians. As we know, a lot of the information there is extremely solid—you could almost use the word ‘empirical’—and a lot of other material is just the gossip of paid pimps. It is that varied.

Mr Blick—Yes.

Senator ROBERT RAY—Any historian going into it would want to have a sense of balance. In fact, I would like to see the 30-year rule if they do not, because you get all sorts of rubbish out there.

Mr Blick—From the files that I have seen, you could not do much as a historian with the raw information on any individual activity. Historians tend to be looking for patterns of activity.

PRESIDING MEMBER—Are there any further questions? Mr Blick, thank you very much indeed for appearing before the committee this morning. We have some time available, and the Australian Privacy Charter Council have indicated that they are prepared to come forward, so I call the witness representing the Australian Privacy Charter Council.

[11.41 a.m.]

WATERS, Mr Nigel, Convenor, Australian Privacy Charter Council

PRESIDING MEMBER—Would you like to make a brief opening statement?

Mr Waters—Thank you for the opportunity to address the committee. I would just make the point that although no other organisations have formally endorsed our submission, our membership does include quite a number of people in other organisations—privacy, civil liberties and consumer organisations. A draft of our submission was circulated to them and I received broad support for the thrust of the submission, so, to some extent, I am representing some other organisations as well.

Firstly, I would like to acknowledge that a lot of the material that you have been hearing about this morning—the annual report in particular and now the web site—is very useful, and we welcome the availability of that material. Having said that, I think there are some significant omissions and areas in which it could be improved. Currently there are some statistics in the annual report on the actual level of activity, but they are pretty limited. They are basically confined to the number of threat assessments and the number of visa security assessments. We would submit that the annual report currently gives very little idea of the overall scale of the intrusion into individuals' privacy inherent in ASIO's activities or of the types of grounds, if you like, for those intrusions.

We think there needs to be significantly more detail provided on a number of areas of activity—firstly on the number of warrants. You have already had some discussion on that this morning. I have just had a look at the ASIO submission and I am a little bit disturbed because I think it misleads by omission in the sense that it gives the impression that nowhere else in the world is the number of warrants and the type of warrants publicly reported. That is not the case. The New Zealand Security Intelligence Service until recently published only a one-page report, and the contents of that one-page report were confined to the number of warrants issued. More recently, the New Zealand parliament has amended their oversight act, and I draw the committee's attention to sections 4K and 4L of the New Zealand Security Intelligence Service Act, as recently amended, which provides for a very detailed reporting of the number and type of warrants in future reports.

I have not been able to do extensive research, but I know that whilst the Canadian Security Intelligence Service may not, in its own report, mention the number of warrants, there is an oversight body called the Canadian Security Intelligence Review Committee. In their annual report, and I have a copy of the relevant page here, there is a table giving information about the number of warrants issued. So I think it is a little disingenuous to suggest that this would be some world-breaking precedent. The fact that those two sister or equivalent organisations seem to be able to live with the publication of at least some level of detail about warrants leads us to suggest that that should be possible here too.

The other statistics we would be looking for—and this is something we mentioned in our submission on the amendments last year—are the number of accesses to both AUSTRAC and

tax office information under the new powers granted to ASIO last year and also access to personal information from other organisations taking advantage of the extension in the Privacy Act. Currently government agencies are able to give information to ASIO on request and under the private sector extension bill currently before the parliament that exemption would be extended to ASIO collection from the private sector. Whilst we accept the need for those exemptions, there is no reason why the overall scale and number of accesses taking advantage of those exemptions should not be publicly reported.

The other thing we would ask for is: if there were to be some change in the reporting of those sorts of activities, in the first annual report after those changes are made there should be a sort of catch-up report which provides retrospectively the publicly reported figures for the previous years so that we would not be starting from scratch and having to wait a few years before we built up the pattern of trends, there would be a retrospective analysis that would allow people to see how the trends had moved over the previous period.

Whilst the web site appears to be very good, provides a lot of useful information and was very easy for me to use, the one thing we noticed was missing is a privacy policy or any reference to privacy policy. I accept that ASIO as an organisation is exempt from the Privacy Act, but there seems to be no reason why it should not on a voluntary basis make some reference, in accordance with the Privacy Commissioner's guidelines, to its policy on the collection of personal information, for instance, by providing a reference to the voluntary guidelines that the Attorney-General has provided for the organisation to comply with the equivalent of the privacy principles in the Privacy Act.

One final comment I would make is I guess a bit tangentially related to public reporting and is something we commented on in our submission on the amendments last year—the timeliness of the publication of the legislative amendments. I notice that, despite the fact that the amendments went through in I believe November last year, they were still not available as of yesterday on the AustLII web site, which I understand is fed by the Attorney-General's Department. I then had a look at SCALEplus, which is the direct database on legislation of the Attorney-General's Department, and the amendments were there. I am not sure how long they have been available there. It is a matter of concern that it is taking upwards of six months for the legislation to be brought up to date in its publicly accessible form. Thank you, Mr Chairman, for the opportunity to make those points.

PRESIDING MEMBER—What is the net benefit to the community as a whole if we go to the extent that you have promoted today? How does that stack up against the ASIO argument that too much of this information being available might in fact impede some of their investigations?

Mr Waters—I note the argument, but my response to that is that does not appear to have been a problem for the Canadian or New Zealand services which provide those figures. I imagine that, had those arguments being well founded, we would have seen amendments in the opposite direction in those two countries rather than an increase in the amount of information being provided. The reason the information is important—your first question—is that a general indication about the scale and volume of privacy intrusive activity is important for an informed public debate about the accountability and the level of public confidence, if you like, in the security services.

PRESIDING MEMBER—Does the public really care?

Mr Waters—As has already been mentioned this morning, this is one of those areas where the public is, in a sense, represented by a number of public interest groups which take a particular interest and some particular journalists who take a particular interest. It is not the sort of area that you are ever going to expect to involve the participation of the public at large, but that does not necessarily mean that they are not reassured by having a few specialist organisations actually keeping an eye on things.

PRESIDING MEMBER—Are you prepared to hazard a guess at what percentage of the public would know anything about ASIO and its operations? Do you think it is a tiny percentage?

Mr Waters—Yes, a tiny percentage, and of that tiny percentage I would have thought there was a significant level of misunderstanding. I think the sort of public information that we are now seeing made available, and increasingly so over the years, will help to correct some of those misunderstandings, increase the overall level of awareness and, in doing so, contribute to the general level of confidence by the Australian community in its security services.

PRESIDING MEMBER—In an ideal world, how far do we go in trying to promote ASIO?

Mr Waters—Somewhat further than we have gone already, particularly in relation to the sorts of figures we have been asking for on the volume of activity—as far as, if you like, international best practice allows. As different jurisdictions push the boundaries of public reporting in different ways, we would see if it were running up against the acceptable limits, because we would get a reaction from the security services saying, ‘This level of reporting is now prejudicing our capability and changes need to be made to reverse the trend.’ So far we have seen no evidence of that, and from the general perspective we would like to see the boundaries pushed a little further until or unless we come up against those limits.

Senator ROBERT RAY—Can I take you to the question of the recording of the warrants. Did you see the argument that ASIO put forward that there could be two consequences of putting in the level of the warrants? They said that if it were very low people would think they could risk it or if it were very high they would seek other means of communications, et cetera; that it is an indication to target groups as to what ASIO is up to. What is your reaction to that?

Mr Waters—Again, I can see the argument. However, that argument could be applied in all sorts of other areas where we do not allow it to prevail. I am not sure that the nature of the intelligence community’s work is sufficiently different from, say, law enforcement areas, where you could make the same argument for not publishing statistics on warrants. In a democratic society it simply is accepted that, to some extent, the good guys—that is, the forces of law enforcement and intelligence—have to expose themselves to a level of public accountability which may in some small way hinder their effectiveness. But that is the balance that we insist on in a democratic society.

Senator ROBERT RAY—I think you sat through the evidence of the Inspector-General. I think the proposition I was putting either to ASIO or to the Inspector-General was that it is that

office that actually makes up the deficit for the lack of public information available on the more sensitive activities. Would you agree with that?

Mr Waters—No. We do not believe it makes up the deficit. We think the Inspector-General's role is very important and we accept the need for there to be an arms-length relationship between some of the accountability mechanisms and the public, but I do not think it makes up for it entirely with respect to the Inspector-General. The entire framework of accountability, if you like, through the Attorney-General's Department—the Attorney-General himself, the Inspector-General and the organisation itself—to some extent are all part of the same club. They are all part of executive government, so it is important that there are some accountability mechanisms that extend outside that. Your committee is one of those, but public reporting is another important one.

Senator ROBERT RAY—In that context, as you mentioned, they are all part of the same club. I would agree with that, with one exception. It is a club that at least to my knowledge—it is limited but it is not that limited—is not really subject to direction at a political level. I do not mean it is not supervised, but, for instance, the Prime Minister does not pick up the phone and ring the Inspector-General and say, 'I want you to do X, Y and Z.' There is a degree of statutory independence even within the club.

Mr Waters—There is but, having worked in an equivalent organisation as Deputy Privacy Commissioner, I am all too aware—as no doubt you are—of, in a sense, the cultural pressures that inform the exercise of those positions and their functions. That is why, in a democratic society, we try to keep a balance between those statutory officers' roles, parliamentary committees' roles and the role for the media and the public to scrutinise and comment.

Senator ROBERT RAY—Certainly it is not an adversarial relationship, I agree that far in terms of the culture of it. But I think that, to sustain the thesis that it is a sort of club and a sort of cultural relationship, we need just a little bit more evidence to say that it is not actually working from a protective point of view. Even if assuming it is those two things, the Inspector-General also has his own legislation and his own brief to sustain, which I would think would overcome some of those boys clubs or culture clubs of the security area.

Mr Waters—I think it does to some extent. But at the same time that whole accountability framework could be characterised as a trust us—or trust me—approach, which I think only takes you so far and therefore it is important that we do have those other parts of the accountability jigsaw.

Senator ROBERT RAY—You mentioned New Zealand and Canada. I suppose if you asked me just a blind question of which two countries in the world would put out the most information, I would have probably grabbed those two off the top because of the nature of the countries and the type of role that they play. Do we always have to be at the leading edge of information?

Mr Waters—In an area as important as this, it is incumbent on society generally to try to ensure that we adopt best practice wherever it can be found.

Senator ROBERT RAY—We are going to have to argue then about what best practice is. The most information may not be the best practice—that is a point that I am trying to make. It may be and it may not be, depending on the degree of trust there. I have indicated—or at least I have done so inferentially—that I had very little trust in ASIO in the 1960s because of the way it recruited, the lack of control et cetera. I think that has improved immensely over the years in terms of balance.

Mr Waters—We hope so but to some extent we are reliant on assurances. Because of the lack of public information about the scale of activity, we are making those judgments rather blindly.

Senator ROBERT RAY—I think that is a fair enough point of view from your point of view. But, really, if anything you are advocating in terms of more information here, because you are only being a limited advocate. Would that actually reassure you? That is the point.

Mr Waters—More than we are currently.

Senator ROBERT RAY—So you are just saying it is an incremental thing.

Mr Waters—Yes, we accept the need for balance in this area.

Senator ROBERT RAY—You mentioned before that the ASIO legislation was not up on one of the legislation sites. Is that just a systemic thing that a whole range of legislation is not up there or was that ASIO specific or don't you know?

Mr Waters—I cannot be certain. Certainly, given the experience last year and again this year of looking for some of the previous amendments and comparing that with other legislation which has been passed more recently, there does seem to be a longer lag in getting that legislation up in public.

Senator ROBERT RAY—I share your frustration because I have had it in other cases—that is all; I am just trying to track it through. We might get a response at some stage on that.

Mr McARTHUR—You suggest in your submission:

We submit that the introduction of new forms of warrant, covering new intelligence gathering and surveillance techniques, provides an opportunity to improve the accountability mechanisms.

We have had evidence before us today that the process of issuing warrants is adequate and allows ASIO to execute its tasks. What do think the Australian public would think about the government and ASIO if certain international people were allowed to come into Australia, because of a lack of surveillance and a lack of warrants, and upset the operation of the Olympic Games? It could be suggested that if your recommendation were implemented that could bring about people that had not been properly under surveillance coming into the country.

Mr Waters—I do not think there is any evidence or suggestions that the sorts of additional accounting and reporting measures that we are talking about would have that effect. If there were that suggestion or evidence, clearly we would take that into account. It has not been sug-

gested to us and by reference to the situation in other countries I really cannot see that the arguments that this modest additional level of reporting that we are calling for would, in any sense, allow people to slip through the net or compromise ASIO's functions in any way.

Mr McARTHUR—I would have thought the Australian public would be very serious in asking that individuals coming into Australia in the next few months and over the previous few months, especially those of whom we have any suspicion, would be under surveillance at the request of the Australian public, I am sure.

Mr Waters—You are probably right, Mr McArthur. It was for that reason that in our submission on last year's amendments we did not raise any particular objection to the additional resources and the additional powers relating to the Olympic period on the clear understanding that they were going to be time limited. We accept that there is that level of public concern.

Mr McARTHUR—We certainly would have had a focus, I would have thought, during the Olympic Games, one way or the other. If difficult people did gain entry into Australia because of a lack of security, that would not reflect well on the government, the parliament or ASIO.

Mr Waters—That is right, but we are talking there about the organisation's role in relation to security vetting or security assessments, which is the one area where there is already some public reporting. It is not really that area that we are most concerned about; it is the area where there are no figures, like the interception warrants, the new computer access warrants which are a matter of considerable concern and unease to us and I know to a lot of people in the computer industry, given the ability now, in theory, of ASIO to be able to get in and amend data. It is those other areas, rather than threat assessments, that we are most concerned about.

Mr McARTHUR—It is all part of ASIO's ability to undertake their tasks though, surely, in a modern age.

Mr Waters—Yes, it is, and we are not challenging any of those particular functions. We are just talking about the correct balance between the functions and the accountability mechanisms.

Senator ROBERT RAY—But ASIO's ability to amend data is only to protect their access, is it not, and for no other reason?

Mr Waters—Yes.

Senator ROBERT RAY—I thought we should put that on the record because some people may be coming to the debate fresh and may not have understood that point.

Mr Waters—That is true. I do not claim to be a technical expert, but I know that some of my colleagues in Electronic Frontiers Australia and other organisations like the Computer Society are concerned about the breadth of the language used in those amendments and the potential for data to be amended, perhaps not quite in accordance with those strict safeguards and then there being no effective accountability mechanism for tracing that abuse. That is one of the reasons why one of the things we would be looking for is some public reporting about the number of computer access warrants and the grounds in broad terms under which they were obtained.

Senator ROBERT RAY—We would share in any concern you have if they were to go beyond their powers because they were very specifically stated for that purpose and for that purpose alone.

Senator CALVERT—What practical effect would there be in the Australian Privacy Charter Council knowing the numbers of warrant intercepts?

Mr Waters—It would provide a much better basis for both our own organisation and for a range of other public interest groups and interested journalists to assist the public debate about the appropriate—a lot of what you have been talking about this morning is about increasing awareness and understanding in the community. It would assist in that process and in doing so it would lead to an increase in confidence, which I think is what we are all looking for in the fact that the organisation is under sufficient accountability regimes.

Senator ROBERT RAY—Do you think it is necessary to go back to the ASIO Act and look even in terms of parliamentary scrutiny because those provisions were in a different era almost?

Mr Waters—Yes, I believe that would be useful. We have confined our submission to the particular reporting requirements that you are looking at at the moment, but in our submission last year we cast our net a little bit wider and made some suggestions for other accountability improvements. Sorry, I have lost my train of thought.

Senator ROBERT RAY—You are looking for alternative accountability, I think.

Mr Waters—That is right. I was possibly going to go down the route of the warrant issuing authority, which is one of the areas where we made submissions last year. We are concerned about the move away from judicial warrants through the AAT members now being able to issue warrants and the extent to which that is moving away from independent accountability towards executive government being judge and jury in its own court case.

Senator CALVERT—But I will go back to my original question. You would not expect surely to be able to find out what each individual warrant was for. You would want only the numbers. So, if you had 150, 200 or 300 this year and 400 next year, what possible use would that be to privacy groups? Would it be just to know that there is an increase?

Mr Waters—I think the trends are very important. It would allow both the committee and the public in general to then ask the question: what is it that has changed? What are the new threats? Is it new threats or an increased capability? It is better intelligence in general terms to gain a view about the direction that the organisation is going in. With respect, your question, ‘What use is this information?’ could equally be directed towards the level of public reporting in the annual report. You could say, ‘Why bother with an annual report?’ I think all of us would agree that having a comprehensive annual report as we do now is a useful aid to the accountability process. All we are saying is that it would be of greater assistance if there were some broad brush figures on the scale of some of ASIO’s activities, particularly those involving warrants, which are in a sense the ultimate intrusion into individuals’ privacy.

Senator CALVERT—So you would like to see perhaps on the Net every month or every couple of months the number of intercepts for that particular period or something like that?

Mr Waters—I do not think it is necessary to go to that degree of real-time reporting. It is probably sufficient to leave it at an annual reporting interval.

Senator CALVERT—The other concern you had in your submission is about people such as private investigators or police forces purporting to be from an intelligence agency. I guess those same individuals could say they were from the FBI or whatever, couldn't they?

Mr Waters—They could. The particular context in which we raised that point was the exemption from the normal Privacy Act requirement that organisations that give information to ASIO—and I will take the parallel situation with law enforcement—are required to keep a record of those disclosures, which would then be available for audit by the Privacy Commissioner. In relation to disclosures to ASIO, not only is there expressly no reporting requirement but there is an express prohibition of the recording of those disclosures. There is no audit trail available for anyone—in this case, the Inspector General would probably be the appropriate authority or official to audit perhaps on a sample basis those sorts of records, but they simply do not exist.

PRESIDING MEMBER—So there is no safeguard against impersonation at all?

Mr Waters—That is our concern. If BHP or Coles Myer have somebody turn up with an official looking piece of paper, saying they are from ASIO and requiring the disclosure of some personal information, the person presenting it may point out to them the Privacy Act exemption. What is there to stop that being used fraudulently?

Senator ROBERT RAY—Have you got instances of this occurring, or is this a potentiality?

Mr Waters—No, it is not a suggestion that it is currently happening.

PRESIDING MEMBER—Mr Waters, thank you very much indeed for obliging the committee this morning and thank you for the evidence you have given.

Proceedings suspended from 12.10 p.m. to 1.34 p.m.

WEEDING, Mr Mark James (Private capacity)

PRESIDING MEMBER—I reopen the hearing and welcome Mr Mark Weeding. Mr Weeding, would you like to make an opening statement?

Mr Weeding—By way of background, I am a postgraduate research student in the School of Government at the University of Tasmania. Last year I wrote my honours thesis on the development of ASIO's accountability structure. I come here today as a user of ASIO's publicly available information, and it is from that perspective that I can share with you my experiences with respect to my research last year. I will not repeat what is in my submission because I think most of it is fairly self-explanatory. If I may, I would like to make some comments on some of the evidence that has been given in this morning's session.

The annual reports and corporate plan are available in government bookshops. I walked into the shop in Hobart about three or four months ago and picked up copies of both—so at least one has been sold. The issue that has been raised by just about all of the witnesses was whether the number of warrants, intercepts and the use of special powers should actually be made public or not. One of the advantages of making that information public is that over time it gives this committee, ASIO, the public and researchers the opportunity to question why there may be increases or decreases in activity—that is, does it reflect a higher or lower level of security threat, or is there some other reason behind it? I think the argument against it put forward by the Director-General of ASIO is quite strong, in that I cannot really see the point in providing potential security threats with information that they could use to their advantage. If you give a potential security threat the opportunity to undertake a risk analysis as to whether ASIO is going to catch up with what they are trying to do or not, then you have given them an advantage. If you were in business, you would not be giving your competitors the sort of data that might give them a strategic advantage. So, on balance, I would fall in favour of not releasing that information. That is a conservative position, but I think the nature of the beast is that the conservative decisions will be the ones that will be taken. ASIO is not in the position where it should be at the forefront of pushing new boundaries of public accountability within government. I feel it should be sitting back quietly assessing which strategies work, which strategies are valuable, which strategies the community wants and then riding on the back of those once they have actually been implemented. Both the Director-General and the representatives from the Attorney-General's Department said that they felt it would be inappropriate to view the current amount of information as ideal. They warned against ASIO sitting on its hands at this point and saying, 'We've got the web site up and running; we don't need to do anything more.' That raises two possibilities: that, in future, there will be less or more information, which is necessarily going to involve a process of ongoing review, or periodic review, of the sort and type of information that ASIO makes available.

I would now like to talk about the web site. I warned in my submission—which, of course, was submitted in advance of the web site being up and running—against ASIO rushing the web site to fulfil the promise that was made in a prior annual report; that is, that it would be up and running in the past financial year. I was pleasantly surprised when I saw the amount of detail and information that was provided in the web site. I wish it had been there 12 months ago when I was starting my research, because I would have had one source where I could go to get a lot of

the information that I was looking for about the organisation. In my capacity in the School of Government at the University of Tasmania I also do some tutoring, and the web site is already on the course list as one of the sources that I will be recommending to students for one of the subjects. Having said that it is good, I still think there is scope for improvement. Given that only 50 per cent of Australian households have access to the Internet at the moment—as a rough figure—I think the information that is there should be made available in hard copy as well, at least in the short to medium term. It then becomes a paper resource that can be distributed to libraries around the country, universities, schools—whoever wants it—and it will assist the organisation in getting over that hurdle of not everybody having access to the Internet at present.

Similarly, in terms of updating the web site, there needs to be some mechanism of archiving the old site before it is updated. I am aware that the National Library has a system for archiving electronic materials. As of Thursday last week, the ASIO web page was not listed there. It may be listed today. It may take them some time to actually get around to it. In terms of the research I was doing last year, which was looking at the development of accountability over time, if ASIO is going to be relying on the web site as its major source of providing information to the public, in 10 years time I, or somebody else in my position, may wish to say, 'How has the information they are providing developed over the last 10 years?' If those electronic resources are not stored properly, it removes the capacity for researchers to undertake that sort of analysis. Electronic storage is something that needs to be looked at. It may already be being looked at by the organisation.

Having used the British and Canadian security services web sites during my research last year, I came to the ASIO web site with a picture in mind as to what sorts of things I thought they should have if they wanted to achieve some sort of best practice. I think that in general terms they have provided more information than either the Canadians or the British have done, although I would echo the Director-General's comments regarding the capacity and scope for discussion papers to be linked to the site on issues of relevance to the community. It is a way of informing the public as to what ASIO does and the importance of it. An example that I was just looking at yesterday on the Canadian web site was an academic paper on the Liberation Tigers of Tamil Eelam, and it was assessing their global potential as a terrorist threat. Nothing was classified in it—it was an academic paper—but it does demonstrate the sorts of issues that such organisations are involved in.

PRESIDING MEMBER—Do I gather from that that, as far as you are concerned, the advent of the ASIO web site has made up for some deficiencies that may have been in the *ASIO now* document?

Mr Weeding—Yes. I came across the *ASIO now* document in the National Library last year and at the time it was already three years out of date. I understand that it has been revamped in the first three months of this year. It was a starting point, but I still had to go and get ministerial guidelines from a different source and compare them with the legislation. I did a lot of toing-and-froing between a number of documents to try to put together a clear picture of what the accountability structure for ASIO was. Not all of the information I used was on the web site, but that web site is now an excellent first port of call for people that are interested in those sorts of issues because the links are there to give them the basics. I would add that the level of research I was doing, an honours thesis, is very useful. It will be useful for undergraduate research as well.

For postgraduate research they will probably be looking elsewhere. It is far better. In one fell swoop they have improved it tenfold.

PRESIDING MEMBER—Today we have been talking mainly about the accountability and the publicity, but one of the things that really has not been mentioned to any great extent is whether or not we have a capacity to publicise the things that ASIO does not do.

Mr Weeding—The British web site, in its frequently asked questions section, specifically has a section on what MI5 does not do. The intention is to try to break down some of the mythology that surrounds these organisations to give people a clear picture as to what their limits are. I think there is room for something similar within the ASIO web site, probably in the frequently asked questions section which they have, to try to explode some of those myths.

PRESIDING MEMBER—It is not all *X Files* and James Bond.

Mr Weeding—No.

PRESIDING MEMBER—What is the best way do you think of promoting ASIO?

Mr Weeding—To whom?

PRESIDING MEMBER—To the public at large.

Mr Weeding—I am not entirely certain that I understand what you mean by ‘promote’.

PRESIDING MEMBER—Publicise.

Mr Weeding—To make people aware that it is there. It is difficult because you can provide information to people and they can choose whether they are going to read it or not—or whether they are going to understand it. I think there will always be a degree of scepticism about any information that ASIO makes public, purely because of the fact that it is ASIO.

PRESIDING MEMBER—But should you go as far as buying press advertisements?

Mr Weeding—No. I cannot see any advantage to be gained for the organisation in buying space in the *Australian* to say, ‘Hi, this is ASIO; this is what we don’t do.’

Senator ROBERT RAY—The arguments for making ASIO’s activities well known are probably threefold: firstly, so we can judge its effectiveness; secondly, so we can judge it is not abusing the fairly special powers given to it and, thirdly, research. How many undergraduates would in fact look at ASIO? It would not be more than five a year; would it?

Mr Weeding—It depends on the courses that are being taught in the university. We had a course at the University of Tasmania in terrorism, espionage and global disorder which was focusing on post Cold War global traumas—the rise of international organised crime and so on. A normal second or third year class might have 30 or 40 enrolments; this one had 130

enrolments for the course, but it did have a sexy title and a lot of people enrolled purely on the basis of the title. It sounded like it was something interesting.

Senator ROBERT RAY—But in the range of our concerns I would put research at a long last before the other two.

Mr Weeding—It is not a core function of the organisation.

Senator ROBERT RAY—But where the organisation can assist it, it can.

Mr Weeding—And where benefit can come back to the organisation from encouraging research, I think it should do all it can to support that.

Mr McARTHUR—You talk at some length about the suggestion that you might follow MI5 in putting on a web site what ASIO does not do. Surely that might be avoiding the question as to what it does do, and that is part of the focus of our discussion today as to what accountability ASIO has and what activities it undertakes. Could you expand on that argument?

Mr Weeding—Yes, certainly. I see two sides to that problem. The first is in talking about what ASIO does do. There are very clear limits as to how much information can be given. I believe, though, that a large proportion of the public has misconceptions about the role of ASIO. They do not understand the legislative structure that it works under, they do not understand the limits of its powers nor do they understand its accountability. So, in saying what they do not do, no, they do not carry weapons, for example. That is information that is available on the web site, but you have to search hard to find it because it is in the section of frequently asked questions about employment with ASIO.

The difficulty is to find out what the specific misconceptions are so that you can you can rebut them. To that end, part of the difficulty with this whole process is firstly ascertaining what it specifically is that the public wants to know about ASIO and then deciding whether or not they can actually be told. I think that is a longer process than this committee has been able to do thus far. It involves wide public consultation but, given the number of submissions to this inquiry, maybe the interest is not there.

PRESIDING MEMBER—That is the question I keep coming back to: does the public really care?

Mr Weeding—I think a large proportion of them do not. There are those with specific interests and those who represent specific groups—specifically those from the civil libertarian side of the coin—who have very genuine concerns about the secrecy involved in ASIO. I think it is a good thing that they exist because it maintains a continual source of pressure from outside the formal accountability structures that are in place to ensure that ASIO does its job legally and with a sense of probity and some sort of ethical basis.

Mr McARTHUR—How do you legislate for ethics and probity?

Mr Weeding—You cannot. There is a large degree of trust within the accountability mechanisms that are currently in place with ASIO. The parliament must trust the security

committee of cabinet. They must trust the members of this committee. There must be trust between the Inspector-General of Intelligence and Security and the Director-General. The hardest aspect is the trust between the parliament and the people. Drawing a long bow of liberal democratic theorem, if the people are truly the masters and they elect representatives to parliament and parliament as a whole does not have full information, then the trust between the parliament and the executive government has to be very strong. You cannot legislate for that.

Senator ROBERT RAY—This is a part of our informal compact, is it not—that we allow a very narrow range of functions to the executive without full scrutiny on the basis of trust and on the basis that every other element of government is put to the fullest scrutiny?

Mr Weeding—Yes, and that is partially where the problem arises. Because every other area of government is put to the fullest scrutiny and this one is not, questions are asked as to why not. That is effectively why we are here. People want to know why there is not full information about ASIO and what can be done about it.

Mr McARTHUR—You admit that public accountability is a problem because of the nature of the ASIO activities. So how would you improve on the current set of arrangements? It has been suggested by previous witnesses that we are as good as anywhere in the world in presenting what ASIO does—its position in the scheme of things. How could you improve on that?

Mr Weeding—At the moment, I honestly do not know. There have been constant and consistent improvements over the past 10 years, and if that is going to be a continuing process then it will almost resolve itself, though probably never fully to the public's complete satisfaction. As long as you keep pushing forwards with it rather than stopping and saying 'Its done now,' things will improve. It comes back to what I said earlier: that ASIO, by its nature, is going to remain a conservative organisation in terms of the type of information that it gives the public. It is going to be a step behind the rest of government when new accountability regimes are put in place, and that will be done under the argument that to do otherwise would be a risk to security until it has been fully assessed.

PRESIDING MEMBER—I have a rude question—with your study last year you had reasonably good access to ASIO, I understand. Was that pretty cheeky?

Mr Weeding—How do you mean?

PRESIDING MEMBER—I am talking about that approach. What sort of cooperation did you get, or what sort of things could you investigate with them that may not be available to the general public? Is this the thing that in actual fact has brought out some of the aspects of your submission? You say, for example, that in that document there was not enough on their information and activity.

Mr Weeding—Yes, it probably was a bit cheeky. I cannot recall off the top of my head the specifics of the questions. What I was looking for were impressions from the heads of these organisations as to where they thought they stood within an accountability regime, where they saw problems, if there were any, and whether they were fully committed to the structures that were in place. Happily, they were.

Mr McARTHUR—Because of your original thought on the matter, did your investigations raise any new issues that they had not come across before?

Mr Weeding—Not that I am aware of.

PRESIDING MEMBER—I will ask the ultimate rude question—did you pass?

Mr Weeding—First-class.

PRESIDING MEMBER—Good.

Senator ROBERT RAY—Need to know basis only, though!

PRESIDING MEMBER—There is just one thing that I was going to raise and I think that was on page 2 of your submission. You argue that the information about ASIO's accountability mechanism should be available from ASIO rather than predominantly from the Inspector General. That has virtually been fixed up with the web site.

Mr Weeding—It has, yes. The ASIO annual reports provided detail as to the structure, the legislative basis. The Inspector General's annual report said, 'I go to ASIO and I inspect their files. I do this regularly. These are the sorts of things that I am working on at the moment.' So his annual report went more into the mechanics of the accountability regime rather than the structure of it.

PRESIDING MEMBER—Are you happy for that arrangement to remain?

Mr Weeding—I think that the advent of the ASIO web site is an opportunity for them to probably explain in a little bit more detail the practicalities of their accountability regime. I think it would be worth while on the issue of warrants and special powers, for example, to outline that there is a process that goes on within ASIO. It goes to the Director-General and then it goes to the Attorney-General's Department. They look at it for its legality before it goes to the Attorney-General. It is not as simple a matter as, in some state police jurisdictions, turning up and knocking on a JP's door and getting a warrant or going to a magistrate and getting a warrant. The very fact that it is an elected representative that has the final say on warrants makes it an entirely different system of accountability from that of warrants in other law enforcement areas. I think that point could be emphasised more strongly. The Attorney-General's role places it firmly within executive government.

PRESIDING MEMBER—Are there any further questions? Mr Weeding, thank you very much indeed for coming all this way today and thank you very much indeed for your submission. Good luck with your future endeavours.

[1.59 p.m.]

CAIN, Dr Frank (Private capacity)

PRESIDING MEMBER—I welcome Dr Frank Cain. Would you like to make a brief opening statement?

Dr Cain—Yes. I appear before you as an academic historian who writes and researches in 20th century Australian political history. ASIO, since it was established in 1949, forms a very important part in the structure of the administration of the Australian government. I would argue that there have not been any important political events in which ASIO probably has not been involved in some sense in recording, reporting, investigating or checking up on those affairs. My argument is that, since those years, it has become an essential element in the administration of Australia on the political level. In fact, when it was set up, the Secretary of the defence department, Sir Frederick Sheddan, then referred to intelligence work as being the fourth arm of the defence of Australia. This was a description that was readily embraced by Colonel Spry, who was the first Director-General of ASIO. That is my first point: that it forms a very essential part of the government's administration. There are numerous events in which it has played an essential part. It would be good if more information on these could be released. I will just go through some of these events of which ASIO must be holding very valuable records, and if they could be released they would help cast an entirely new light on the events of those years.

The first event, for instance, was Venona. Venona was the code name given to a decoding operation conducted by the Americans from the late 1940s to 1948 where they were able to crack the Soviet diplomatic code and were able to read all messages going into and coming out of Soviet embassies throughout the world, including the one here in Canberra. For that period, these messages were collected and they were then handed on to the Americans. How they were collected here we do not know—whether it was army intelligence, the post office or whoever, they were then passed on to the Americans. The Americans then took them back to America and have been cracking them ever since. However, in 1996 the Americans released all that they could decode. That gives a demonstration of the huge apparatus that the West had developed of watching the Soviet empire. That in itself, I would have thought, was a very important development.

The release of the Venona material by the Americans through the British then led to the establishment of ASIO, because it indicated that material was leaking from what was then known as the external affairs department, so therefore Chifley was approached by MI5—not directly by the Americans but via MI5 in London. Sir Percy Sillitoe flew out here to interview Chifley, explaining to him what happened. Chifley got in contact with Attlee, and between them they decided to set up a new surveillance organisation to be known as ASIO, along MI5 lines. So in 1949 MI5 officers were sent out here to oversee the establishment of ASIO.

Investigations were made into the external affairs department where these leaks came from, but nothing could be established. The track had gone cold. Various people had left the department and there were certainly no leakages at that time or immediately before the establishment of ASIO. So there was really nothing much to reveal. However, Richard Casey

made a statement in parliament very soon after saying that there was a nest of traitors in the external affairs department and that it would be exposed—just a sort of throwaway statement like that. Very soon after, the Third Secretary of the Soviet Embassy defected in Australia—a chap by the name of Vladimir Petrov. Very soon after, there was a royal commission into the Petrov defection, particular looking at the papers that he brought with him. It was anticipated that he may be able to reveal something about this nest of traitors—that is, maybe some papers were still being held in the KGB archives here in the Soviet Embassy and Petrov may have been able to reveal information about this. He was not able to reveal much about it, nor was his wife able to reveal very much about it, so once again to the Venona trail had gone cold.

You can see it is a very important event in Australian history because it leads to the establishment of ASIO and the necessity to have a counterespionage organisation in Australia. At that stage Australia was connected to the British in establishing missile testing sites at Woomera in South Australia. Certainly Chifley assumed that Australia would be able to enter into the world of high technology, what was then high technology—that is, missile development and manufacturing. That trail also went cold and, unfortunately, Australia was not admitted into the missile development club. Even though the Weapons Research Establishment was established, it was mainly a testing establishment rather than a development establishment, unfortunately.

So the question arises: did the British not trust us? This missile development was purely a connection with the British government, and did they not trust us too? Did they feel that there might be another leak from somewhere else in our department? This is an interesting aspect of Australian technological history, postwar history and Cold War history. I am sorry to take you back. It is a change in times, comparatively ancient times. What I am trying to do is to demonstrate the centrality of ASIO, the papers they must be holding, the discussions they must have had with overseas people, the analyses they must have made.

There was another Soviet spy released when Sir Garfield Barwick was the Attorney-General. There has never been very much released from that affair. Once again, it is a pity that we could not get more because it does demonstrate perhaps that Australia at that stage was still a target for Soviet spying. Why, we do not know. It could have been the Weapons Research Establishment that was the target, but we do not know. If more of that material could be brought out, it would be very helpful.

We move on to the Vietnam War years. In between that, the Australian Labor Party and the Australian Left seemed to become a target of ASIO. Some members of the executive—and I stress only some members of the executive—were members of the Communist Party of Australia. They were effective as trade union leaders because they simply got more wages and better conditions for the workers. But nevertheless it could be interpreted as being an infiltration of the Communist Party into the ALP, both on the trade union level and on the political level.

Once again it would be very interesting to see if we could analyse further details from that because, during the period from 1949 through 1972, Australia was governed by a coalition government, mainly led by Sir Robert Menzies. The Labor Party was totally out of office for all that period. What are the explanations? There are some explanations that we can come up with, but are there more important explanations that we can find here? Is there some connection here between surveillance, espionage and leakages in government department, the Left in Australia, the Labor Party itself, some of the more radical trade unions? It seems that the Americans were

interested in radical trade unions in Australia. The Labour Attache here in the United States Embassy seems to have been reporting back to Washington on this. The role of trade unions and particularly the Left trade unions make up an important and essential element of us trying to understand what happened in the 1950s and perhaps the early 1960s.

Then we move on to the Vietnam War in the 1960s. Once again, I think ASIO would have been very much in the forefront here of keeping track of activists in the moratorium movement. I would think the file of Dr Jim Cairns would be of quite large proportion in ASIO if they were doing their job. It would be a very thick file. It would be very interesting to see once again what this department's attitude—looking on ASIO as a government department—would be towards this moratorium movement. Did they see that as subversive too and the role of Australia in Vietnam as being essential—that is, holding back the dominoes from falling—or did they see it in other ways? What were the connections with overseas intelligence agencies? I will get on to the question of intelligence agencies because it is a very obvious point. We could have a very valuable snapshot of Australia in the late 1960s, early 1970s, of popular dissent against government. Nevertheless, the importance of the American alliance was demonstrated by Australia's involvement in the Vietnam War and then the public reaction against that as the war was seen to become an unwinnable war. There is another very important element in Australian history which would be of great benefit if it were released.

The last topic one could look on as being a highlight of Australian history from 1949 when ASIO was established up until recent times is the collapse of communism in 1991. Communism collapsed utterly—the whole of the Soviet Union broke up into its various parts—I suppose you could say it imploded, it blew up from the centre. We are looking now at very much a broken empire; the Soviet empire has broken up in much the same way as previous empires have, including the Austrian empire and the Ottoman empire. That centrality and cohesion has disappeared and it is rapidly slipping away into Third World status. We see here what seemed to be a large and threatening monolith of the capitalist system, incorporating both communist China and the Soviet Russia and eastern Europe, simply imploding into small pieces and, like Humpty Dumpty, never being able to get their pieces back together again. It would be very interesting to see what ASIO would have on that. I presume that would be outside of the 30-year rule, although it is from 1991 and it could be some decades before we can get a look at it. It would be very helpful if the reports or views that ASIO had of that could eventually be released.

There are other aspects that will probably never be released but will become important in the future—that is, Australia's involvement with the US defence and strategic alliances. That is something the US Secretary of Defence is visiting Australia today over—the role of Pine Gap, the role of players in what used to be called the Western defence alliance but now is purely the United States defence alliance. They are all at Pine Gap, what used to be the role of the Narrungar. I know ASIO was more involved in guarding the premises and ensuring that those who worked there were cleared for the receipt of that very secret information. I think when we look back in a few decades at this US defence alliance and the way in which it went at the turn of the century we will be able to get very interesting insights into how Australia played a role in this US defence alliance. We will see that it played a very important role. What looked to be a mini-country stuck down in the antipodes with 20 million people playing football, eating meat pies and driving Holden motor cars turned out to be a very essential part of the US defence alliance. I do not know how long it dates back, probably to the 1950s and 1960s—we do not

know. We will be able to get a whole new perspective on Australia's role in the late 20th century and early 21st century in that defence and diplomatic alliance.

They are the sorts of topics that, hopefully, could be revealed and would throw tremendously important light on Australia—where it stands in the world, where it comes from, where it is going to and its high points. We tend to look upon Australia as just turning out swimming stars, winning the odd rugby match overseas, growing wheat and wool, and exporting coal. We can say that Australia's inventiveness, its many clever people, the political ideas that drive it, the essentiality of the ordinary people in the street, and the commitment to building a strong and worthwhile society come through in all of these themes that I have been discussing. Therefore, it is not just a matter of what Agent Plod from ASIO said about something or other in the 1950s or 1960s; it is a matter of looking at the peaks, the essential elements and the highlights of Australian history during those years.

I would like to get on to our third topic; that is the role of the Cold War in the establishment of ASIO. ASIO was really established as a device for the Cold War. It was established in 1949 and, as I have explained, it was really directly related to the US breaking those Soviet codes without telling us and then our having to find out from Sir Percy Sillitoe, the Director-General of MI5. So thereafter it was established. Colonel Spry was the director of it. He recruited his staff by tapping on the shoulders gents he knew in Melbourne who came out of the private school system, Geelong Grammar and other such places; these were recruited. Other gents from military intelligence or naval intelligence would be recruited, so it was very much a closed shop. But it was for a very good reason; that is, that it was seen to be the fourth arm of the defence of Australia, so that it had to recruit men who were trusted, who knew the right thing, who came from the right background, whose mum and dad were fairly well known, and who themselves were known in the Melbourne scene, the Sydney scene or perhaps even the Adelaide scene. So that is the reason why it was established and why that was the sort of men that ran it—and indeed they were all men.

It flourished. It had its headquarters in Sydney first of all, then it was moved down to Melbourne. It had very large premises built on St Kilda Road, a very large specialised type of building that I think is still there today. As you know, it moved up to Canberra because it was, I am saying once again, such an essential arm of government that it had to be close to the defence department on Russell Hill. Therefore it became an important element in the Cold War system. It was an essential part of the Cold War; it was as essential for fighting the Cold War as were the three military arms in those days. So it was that essential role that was played in the conduct of the Cold War.

As to my fourth point, the Cold War ended in 1991, marked by the collapse of the Berlin Wall. There were other factors, of course, as well. The whole of the western defence system has undergone very rapid change since then and the question comes up, 'What really is the role of ASIO going into the 21st century?' I do not want to answer that here because that is not a purpose of this joint committee hearing. Nevertheless, it is a question that I suppose we must keep sight of in the background as we are talking about this essential point of the release of ASIO files, the role it plays in Australia and the great benefit from the large number of doors that the release of its files will open.

With the end of the Cold War, we have the situation where we have this Cold War organisation sitting there with its large resources. I think you could argue it has lots of resources—it has those large numbers of men and women employed there. From my point of view, it has its archives; this is really its main asset and its main investment. It must have miles and miles of paper there. I understand a lot it has been put on microfilm. It is an essential source, and certainly one hopes that it is never disposed of, junked, dumped, burned or anything like that, because it is such an important element in understanding what has happened in Australia in the last 50 years or more.

One does not know what will happen to ASIO in the future—will it be run down, will it be displaced by the intelligence section of the Federal Police, will it be displaced by other things such as the intelligence elements of the Customs department, or will the civil police intelligence services be expanded? Who knows? We are entering a period of cyberspace and cyberspace connections and the threat to Australia may be more economic and financial. Assuming drug problems are overcome—as they may be in the next few years with the opening of sites where drug users can be monitored and helped in various ways—maybe the clients will be removed from the drug sellers and that area will dry up as a target for law enforcers. What we will have after that may well be, as I say, probably economic elements. Can ASIO look after our economic essentialities? That is another question that has to remain. At any rate I suppose that is enough of stargazing in that direction.

PRESIDING MEMBER—Perhaps we could move on to questions.

Dr Cain—I just want to bring up the sixth point. This is dealing with overseas contacts. ASIO is part of what used to be the western club of intelligence agencies. It has close connections with American intelligence, German intelligence, British intelligence, Dutch intelligence, French intelligence, probably Israeli intelligence and maybe even Indonesian intelligence. So it has all those connections and, of course, it proclaims that it cannot possibly release anything dealing with those. The answer could be, ‘Yes it could, it could release that information that is generated within Australia.’

The Americans have had this problem. In recent years they have released a lot of information from the NSA, the National Security Agency, into the National Archives in Washington. A lot of that is British material. It is British coding material, British code analysis, information about how the British coding system operated during the war and so on.

The British opposed that being released. They opposed it to the hilt. Apparently, the American government had to negotiate with the British government. The popular rumour is—and as you know, rumours can be very speculative and without base—that the Americans said to them, ‘We have talked about this long enough. If you do not want to release it we are going to release it.’ And they have. This is now available in the National Archives in Washington. That deals with the war years and immediately after. Nevertheless, there is guidance here. A lot of that material sitting in ASIO’s archives has been generated by Australians dealing totally with Australia, paid for by Australian taxpayers, so certainly that element of it could be released.

The last point I want to make—seventh point—comes under the heading of ‘The walls are coming down.’ The walls of communism have already collapsed and the walls of the surveillance organisations that used to watch them are also coming down. Just by sheer

coincidence this morning on my website there was a release of an article from the *Daily Mail* of Saturday 15 July discussing the memoirs of Mrs Remington, who used to be head of MI5 in Britain. She is publishing her memoirs. This has been resisted by the British government. Robin Cook has opposed Dame Stella releasing her memoirs and asked her not to release them. She, however, has met all the restrictions and the directions concerning former intelligence officers publishing their memoirs. She has kept well within the bounds of those requirements. It seems as though it will go ahead—that is, the memoirs will be published. Why? Because it is argued that a large tidal wave is going to come. Already two members of MI5 have left Britain and are publishing theirs. Other people will publish in the future. So in the years ahead we could well have a flood of memoirs from agents in various intelligence organisations, probably throughout the world.

We have never had that tradition in Australia. No, there was an exception. One Director-General did publish his memoirs. He died in Melbourne recently. We do not have a long tradition of intelligence agents doing that here in Australia, but who is to say there is not? Also it underlines this point. We are in a rapidly changing world. People insist that their governments are more accountable. Governments have responded to that with a whole range of things: publications, open committees, websites, all sorts of things. It is a matter of keeping this momentum going and looking at this, what is now, not a redundant organisation, but an organisation which probably has no longer those essentialities about it that it used to have, moving into the twenty-first century and maybe now handing its files over to the Australian Archives—which, hopefully, will be coming soon and can explain just how this can be done—so that Australian historians and Australians generally will have a much better view of what has happened in the essential areas of Australia over the last 50 years.

Mr LEO McLEAY—I am sure ASIO would like to think they are as central to things as you seem to think they are.

Dr Cain—If they are not, they should be.

Mr LEO McLEAY—Preferably not.

Dr Cain—They should be because they are there to defend the security of Australia. They are there to look at any threat that is imminent or prospective or today. They have to vet everybody who is going into the public service, the military forces and any immigrant coming in. They have this huge role of defending the frontiers. They have to assess all these people and reject them if they are found wanting. They have to maintain communications with other intelligence agencies throughout the world as a warning. I see them very much as that fourth arm—defending Australia from interlopers, threats and that sort of thing. I am sure you would agree that that would be the role in the 1950s and 1960s—

Mr LEO McLEAY—If the security service was as central to our society as you have suggested, then our society is in more strife than I think we are.

Dr Cain—Not necessarily. The concept of the 1950s and 1960s was that the Third World War was imminent, that heavy expenditure was required. Certainly that was demonstrated in the case of America. Up until the 1980s they were spending \$1 billion a day on the defence armament and the industrial complex. Australia was certainly not expending anything like that.

Nevertheless, the attitude and the philosophy was that the Third World War is imminent, that the combination of the Chinese dragon and the Russian bear are constantly facing us and it is a matter of hoping for the best and preparing for the worst. The large expenditure on Australian armaments, the national service that we had for the recruiting of young men because we could not get enough volunteers, all reflects the mood of those years. As Mr Menzies said, 'We're on the edge of this volcano.' That is why an organisation like ASIO would have to, if it were doing its duty, be very closely monitoring what was going on and preparing reports. You might say it was a sad reflection but I would have thought this would have been the role. They had over 700 people working for them, they had access to all the technology of those years, so I would have thought that would have been an essential part of their operations.

PRESIDING MEMBER—Just for the record, if you want to have access to ASIO archives now, what processes do you have to go through?

Dr Cain—I have to write to the archives. Let me take the case of the Petrov affair. When Petrov defected, a chap by the name of Dr Bialoguski, who was a medical practitioner during the daytime and a part-time ASIO agent at night-time, befriended Petrov, and together they used to roam around Kings Cross and visit the various brothels and gambling centres. Petrov used to stay at Bialoguski's house when he was there and Bialoguski used to go through his pockets to see if he could find any little nugget of information he could pass on to ASIO. He was a part-time ASIO agent and a liaison between ASIO and Petrov.

He was very close to Petrov and presumably would have been a recipient of all sorts of information from Petrov and had insights to Petrov. Petrov ran a black market whisky operation. He used to be able to buy whisky from wholesalers at the wholesale price on the Soviet Embassy's impressed account. He used to walk around the night clubs of Kings Cross and flog it off to the proprietors of the night clubs. It sounds a very enterprising enterprise for a Communist from the Soviet Union. Nevertheless, he adapted himself very closely, I suppose, to the essentialities of the Australian economy.

Dr Bialoguski was very central to this whole operation. He published a book after the Petrov affair was over and it sunk like a lead balloon. I am trying to get from ASIO the almost weekly reports that Dr Bialoguski was surely writing for ASIO or reporting to ASIO. He must have been reporting every time Petrov coughed, said something or did something. There must have been a day by day running account of what Petrov was up to whenever he came to Sydney, particularly his black market whisky operation. He must have reported on that.

I have been trying to get those reports out of ASIO for years. What I have to do is contact the National Archives of Australia and say, 'Can I have what I believe would be reports from Dr Bialoguski to his ASIO handler. They probably would have been filed away in ASIO. I do not know the number. I do not even know if they were created, but I suspect that this is how it would have operated.' ASIO say, 'Sorry, we can't find anything. We've released information already.' Yes, they have released information but that was under the royal commission. As you know, a royal commission into the Petrov affair was held in 1954. Very soon after the Hawke government came to power those papers on ASIO's contribution to the royal commission were released, but they did not release all the other day-by-day stuff—the argy bargy that went on, who said what to whom and all those sorts of details—which they did not pass on to the royal commission. That is why they, 'We've released the royal commission material and it is in that.'

Then when I go back to them and say that it is not in that, they say, 'We're not really certain that those records were actually kept.' So what do I do now? I am assuming that, if it were an efficient, professional organisation, that is how it would operate. So what is my next move? I keep writing to them asking them to release it. This is the sort of problem that historians have. You really are very much in their hands as to what they have got. For a start, you do not know what they have got. Secondly, if you do make a guess at what they would have, you are still in their hands as to whether your guess is correct or not because they are not going to tell you that your guess is correct.

PRESIDING MEMBER—So you cannot go on a fishing expedition?

Dr Cain—No, you do not have access. That is why I have suggested in my submission to you that they hand over their indexes to the National Archives of Australia. Most government departments do: for example, the Department of Defence, the Department of Foreign Affairs and Trade, the Customs department. When their records are handed over the indexes become available too. So historians can simply look up the index of that department, track back what the file number is and find it that way. ASIO could well do the same. I think it is almost getting into that area of ancient history. My students do not know what ASIO is. They have never heard of Petrov and Colonel Spry and all the stuff that I have been talking about today. I might as well be talking about the Assyrians or the Egyptians, for all they know. So it really has entered that realm of ancient history. That is why I argue that it could be deposited where our history—ancient and otherwise—is deposited; that is, in our archives.

PRESIDING MEMBER—As there are no further questions, I thank you very much indeed for your appearance this afternoon and the information you have provided.

Dr Cain—Thank you for inviting me.

[2.33 p.m.]

NICHOLS, Mr George Ernest, Director-General, National Archives of Australia

KENNA, Ms Margaret, Director, Access and Information Services, National Archives of Australia

PRESIDING MEMBER—I welcome representatives of the National Archives of Australia. Would you like to make a short opening statement?

Mr Nichols—I will make a very brief statement. With respect to the committee's terms of reference, by the committee's acceptance of our submission what we set out to do has been accomplished, which was merely to remind the committee that, in terms of reporting, records and archives—as our submission outlines—are as crucial to public perception and assessment about the appropriateness of reporting as are the other more traditional forms of reporting. I outlined on page 6 of the submission a number of limitations in relation to published reporting. They are fairly obvious: that published reporting is invariably provided at summary level, it is tailored to fit prescribed templates, it is selected and shaped consciously by the authoring agency and, on occasion, it is only available for a fee—but that is an incidental.

Really all we want to do is put a bookmark down for the committee to remind them that archives are important and the eventual availability of public records of any agency is an important part of the overall material on which an agency can be assessed as to its performance, accountability, et cetera. It is a very simple message that we are putting to you.

PRESIDING MEMBER—Indications from today's evidence would appear to show that interest in what you hold on ASIO takes up a fair bit of your time in terms of public requests?

Mr Nichols—Unfortunately, I have not heard the evidence you have heard today. So I am not sure—

PRESIDING MEMBER—Can you give us some indication of the amount of work that you are involved in in terms of the ASIO information? Is it one of your bigger request areas?

Mr Nichols—I will put it in scale. Of the 50,000 to 60,000 items we issue in the reading rooms each year, over the last four years 1,500 to 2,000-odd were for records created by ASIO. That is not insignificant. It is not surprising. It is an area where there is a degree of interest. However, it is not the total picture: 1,500 to 2,000 out of 60,000 is not large. Where it is more of an effort for us is in the examination of the records in terms of the exemptions and the reconsiderations that occur, and from time to time there are appeals to the Administrative Appeals Tribunal on that. That does create an area of workload but, given the nature of the material you are handling, it is not surprising.

PRESIDING MEMBER—Would those requests be mainly about individual files?

Mr Nichols—I would think they are mainly about individual files, but not entirely and not necessarily by the subject.

PRESIDING MEMBER—Frankly, I am quite surprised at that figure of up to 3,000.

Mr Nichols—2,000.

PRESIDING MEMBER—Or 2,000 figure. It is a heck of a lot.

Mr LEO McLEAY—Would it be your largest individual thing?

Mr Nichols—No—by no means.

Mr LEO McLEAY—Who would get more inquiries than that?

Mr Nichols—Foreign Affairs, Defence. The other thing that distorts statistics here is that we are talking about record issues. For very popular used items, they are available on microfilm, et cetera in the reading room. It is self-service, so we do not count any of that. There would be a lot more access on some of those. The other heavily accessed area is, of course, the World War I dossiers, which we provide access to by mail order only. They are not in these figures and they are a very significant group of records.

PRESIDING MEMBER—So some of this ASIO information could be available on microfiche?

Mr Nichols—No, not the ASIO information. I am saying that the total of 50,000 to 60,000 items distorts the fact that a lot of common use material is available on microfilm.

Senator ROBERT RAY—Just for the record, what is the distinction in terms of waiting periods? Isn't it exactly the same for ASIO as any other classified material—the 30-year rule?

Mr Nichols—Yes.

Senator ROBERT RAY—So ASIO is not different from that point of view?

Mr Nichols—No, the 30-year rule applies to all agencies.

Senator ROBERT RAY—So the next distinction is that the nature by which it can be accessed is slightly different to others?

Mr Nichols—Yes. Like any other material, it is still subject to exemptions. It is presumed to be available at 30 years unless it is otherwise exempted.

Senator ROBERT RAY—We have had the argument put to us that maybe 30 years is too long. It is just a question of more revision as history being written later, isn't it, to keep the 30-year rule?

Mr Nichols—Thirty years is quite an arbitrary figure. As members of the committee might recall, it used to be 50 and it was reduced to 30 in the late 1960s or early 1970s purely in response to changes elsewhere. It is very much a matter of judgment as to whether it is 10, 20, 30 or 40 years, quite frankly, but 30 seems to have been settled on as a reasonable period of time. It is the length of an average working life. Certainly the sensitivities relating to records would be greater the further you come down, so you would expect to have greater exemptions.

Senator ROBERT RAY—Should it be by classification? As I understand it, there are some records in the UK to do with the Irish problem that go back 100 years that they still cannot release because of their sensitivity. Is it possible to do it by category, with a different rule for a different period? For someone like Dr Cain, who wants to do systemic type research rather than individual type research, maybe the 30-year rule is inappropriate—that is, that it is appropriate for a particular nature of research but not for others.

Mr Nichols—You can establish any regime. I favour a regime that is simple and consistent rather than one with a series of tiers, et cetera. I think it would just become terribly difficult to make the distinctions, and then you would be arguing over whether something fell into one category or another. I do not think you would remove the arguments; I think you would create more possibility for arguments. At the moment Australia has a very simple system which I think is fairly well understood. There are grounds of appeal for people who wish to take that avenue. I think, by and large, we are well served by what we have. It is a balance between administrative efficiency and the public right to know.

PRESIDING MEMBER—Do you have any set formula in releasing ASIO information to the public?

Mr Nichols—I am not sure I understand your question.

PRESIDING MEMBER—Are there any particular steps that you are required to take before you would let documents or information go? Is it in such a format that, after the 30 years is up and somebody asks for something specific, you just hand them the file?

Mr Nichols—No. If ASIO material is requested and it has not previously been released, then we would go to ASIO for information about that material. They make their own assessment on examination of the exemption provisions of the Archives Act as to whether material can be made available. They then pass to us what can be made available on the topic requested. We make a final assessment in terms of personal privacy, and then those records are made available.

PRESIDING MEMBER—How long does that process from application to delivery normally take?

Mr Nichols—I am not sure. ‘Normally’ is difficult to answer. Perhaps Margaret Kenna can give some detail on that.

Ms Kenna—In the broad scope of things, not necessarily just with ASIO records but also across the board, we do about 78 per cent of requests very quickly. The rest require folio by folio examination. It really depends on the nature of what is in the file, whether it is something that relates to operations. If it relates to foreign liaison, there are methods whereby this material

has to be examined. One of the methods may be that it has to be sent overseas for foreign input. So you cannot necessarily put a time frame on a particular file. We can put the ones that we know are fairly innocuous through pretty quickly.

PRESIDING MEMBER—How does that information appear? Once you have been to ASIO and they have decided that this has been cleared, do you provide original documents with blacked out names and situations or do you physically prepare a more composite document?

Ms Kenna—The material that is provided to us from ASIO is a copied document with the blacked out pieces in it. For other agencies, we do that work.

Senator CALVERT—I think, Mr Nichols, you said earlier that you get between 1,500 and 2,000 inquiries for ASIO documents. Out of that many inquiries, how many results do you get? You would not get 2,000 replies from ASIO. What is the percentage rate?

Mr Nichols—The figures that I was giving to you were actually for the items issued; that is the 1,500 to 2,000.

Senator CALVERT—How many requests would you have had?

Ms Kenna—As an example, from January to July 2000 we have received 230 applications.

Senator ROBERT RAY—I think what Senator Calvert was trying to establish was how many knock-backs. Is that right, Senator Calvert?

Senator CALVERT—Yes. What percentage of knock-backs do you get?

Ms Kenna—Thirty-eight per cent of these, no record found.

Senator ROBERT RAY—That is part of the answer. What I think Senator Calvert was asking was this: how many requests do you actually withhold the information on? Even though the information is there, how many people's requests get knocked over because the information cannot be given?

Ms Kenna—There are very few that are fully closed. I would say on just about every ASIO file there is an exemption, be it a word or a folio or a paragraph.

Senator ROBERT RAY—There was some confusion earlier from Mr Richardson's evidence. The eight or nine people working on archival stuff are actually working in ASIO, not in Archives. That is right, isn't it?

Ms Kenna—That is ASIO staff that are dealing with the initial queries.

Senator ROBERT RAY—Yes, okay, because I thought that was a bit confusing.

PRESIDING MEMBER—Any further questions?

Mr LEO McLEAY—Would it assist Archives in its work if you had ASIO's file index? When you get answers back that no file has been found, would that add to your confidence that no file was found?

Mr Nichols—That is a difficult question to answer. Actually I am not sure. Under the provisions of the archives legislation, there is no mandatory transfer requirement for ASIO records. We hold records from ASIO that have only been transferred to us as a result of requests for access. It would depend very much on the nature of the indexes that ASIO holds—I do not know anything about those—as to whether they were transferable or not. Because of the way legislation is shaped in that there is no mandatory requirement of transfer, it is really a question for ASIO.

Mr LEO McLEAY—What other elements of government have that same provision that they do not have to transfer their archives to you?

Mr Nichols—The other intelligences agencies.

Mr LEO McLEAY—Tell me those for the record.

Mr Nichols—It would be the Defence Intelligence Organisation, ASIS, the Office of National Assessments and DSD, the Defence Signals Directorate.

Mr LEO McLEAY—Are all the foreign affairs department's archives turned over to you after 30 years?

Mr Nichols—Yes, there is no exemption of the mandatory transfer arrangements for them. It is specifically for the intelligence agencies.

Mr LEO McLEAY—What about the predecessors of the organisations that you have just mentioned? Are they mentioned in your act or did they get handed over with someone else's files?

Mr Nichols—It depends—

Mr LEO McLEAY—Through the war a lot of the intelligence stuff was done by military intelligence. Are those files handed over by the defence department to you or not?

Mr Nichols—Yes, they are if they are in the possession of Defence. I thought you were talking about predecessor agencies like the Commonwealth Intelligence Service, whose records were subsumed by the new intelligence organisation, ASIO, when it was created, so in effect they became their records although we do hold substantial numbers of CIS records now.

Mr LEO McLEAY—Do you hold all of them or some of them?

Mr Nichols—I would not be sure.

Ms Kenna—We are not sure.

Mr Nichols—We would not be sure about how much we hold, but we hold substantial quantities that have come to us from ASIO.

Mr LEO McLEAY—Would some of the information that ASIO are holding themselves actually be available in other files that you have? Would that be something that you would not have any idea about?

Mr Nichols—I do not really know, but I think it unlikely.

Mr LEO McLEAY—Are you willing to say whether you think it is useful that they do this or not? Are you interested in the truth or—

Mr Nichols—That they do?

Mr LEO McLEAY—That they keep these files secret for 50 years, 100 years or 1,000 years—hell will freeze over and no one will know who an ASIO source was.

Mr Nichols—The arrangement we have with ASIO is that we have authorised disposal authorities signed by them and us which govern the management of their records, just the same as with any other agency. I am quite confident that that record-keeping regime is in place in ASIO, as it is elsewhere, and that governs the disposal and retention of material.

Mr LEO McLEAY—You are not allowed to dispose of material you have. Are they allowed to dispose of material that they have in their archives?

Mr Nichols—The nature of the business we are in is that, desirably, about 98 per cent of what is created ought to be disposed of over a period of time. Agencies keep records, whatever the agency is, for their business purposes, and most of those records are of a temporary nature. It may be that the proportions are higher in some agencies than others, but there is a constant process—and there should be in good record keeping—of sifting and disposing of unnecessary material and, at the same time, identifying material that needs to be kept in the longer term.

Mr LEO McLEAY—It is really in the eye of the beholder, is it not?

Mr Nichols—It is a judgment all the time. We can set the guidelines, but they have to be interpreted by someone and judgments have to be made. Just the same as when I am working at my desk and I take a piece of paper that I have written on and put it in the rubbish bin, I have made a decision about its disposal as opposed to another piece that I would place on a file. It happens all the time.

Senator CALVERT—This morning the Inspector-General of Intelligence and Security was talking about how his staff had visited ASIO headquarters and discussed with their staff compliance and whatever. Do you have any direct dealings with the Inspector-General?

Mr Nichols—Yes we do; in fact, the Inspector-General sits on our council.

Senator CALVERT—So he would be aware of the number of inquiries you get and the number of ‘no shows’ that come up from ASIO when those inquiries are made?

Mr Nichols—Yes, he certainly has access to that.

Mr LEO McLEAY—I think the last admission you made is the most damaging.

PRESIDING MEMBER—There being no further questions, I thank you both very much for appearing here this afternoon.

[2.54 p.m.]

RICHARDSON, Mr Dennis, Director-General, Australian Security Intelligence Organisation

PRESIDING MEMBER—I now recall the Director-General of ASIO. Mr Richardson, I understand you may like to make a statement to the committee. Perhaps we could also ask some questions if anyone has some.

Mr Richardson—I am happy to take any supplementary questions.

PRESIDING MEMBER—In terms of some of the evidence we have received today, are you happy with the majority of the answers? Most of these statements and allegations—

Mr Richardson—I have not heard too many allegations.

PRESIDING MEMBER—They have been pretty well on cue?

Mr Richardson—Yes. On one very small point, because I would not like it to be left on the record, in relation to the New Zealand service and the fact that some time this year they will put on the record the number of warrants that they do each year, that is in our submission. I think an impression was left with the committee that we might have skated over that. In fact, it is in our submission very clearly.

PRESIDING MEMBER—One of the things that was raised this morning, which I would just like to clear up, was the statement that there was virtually nothing available to stop somebody impersonating an ASIO agent.

Mr Richardson—I think you will find that it is a criminal offence.

Senator ROBERT RAY—You say ‘I think’. Can you not specify?

Mr Richardson—If I could come back to the committee and confirm that, but I believe it is. I consulted with my AG colleagues this morning, and they said it was, but I would want to confirm that 100 per cent, but I think it is. Indeed, there was a case in court. You will find over the last 18 months there was a case in court in which someone was impersonating an ASIO officer as part of trying to do some other crime. Our officers are, in fact, issued with identity. There have been cases where we believe some people have attempted to impersonate an ASIO officer.

Mr McARTHUR—Who authorises their identity?

Mr Richardson—I do. It is an identifier where I sign to say that the person is an ASIO officer.

Mr LEO McLEAY—Is it a photo identity?

Mr Richardson—Yes, it is.

Senator ROBERT RAY—If someone knocks on my door and says, ‘I am agent so and so and I have got Dennis Richardson’s signature,’ how can I check before I discuss anything?

Mr Richardson—You could ring up our toll free number. That is one way. If you have any concerns you could get in touch with the Office of the Inspector-General. Certainly, we seek to make it known that any individual who is approached by someone claiming to be an ASIO officer can and should ask for identity and, secondly, if they have any concerns they should pursue it either with ASIO or the Inspector-General.

Mr LEO McLEAY—Going back to the archives, Mr Richardson, what was the reason again that your organisation does not have to comply with the 30-year rule? What is the major argument?

Mr Richardson—But we do comply with the 30-year rule the same as everyone else.

Mr LEO McLEAY—What is the major argument behind you not releasing a lot of information even though it is subject to the 30-year rule?

Mr Richardson—From our point of view, we are concerned primarily about source protection and whether the information or the methodology in a report remains current today. To give you some idea of what we do on the archives front, in terms of your asking for some statistics previously: in the financial year 1999-2000, more than 27,000 individual folios were assessed and released to National Archives. Eighty per cent of the 27,000 were released whole or in part, and many of the 60 per cent of the folios which were released in part had only the officer’s name, code names and symbols exempt. If we cross out the name of an ASIO officer in material that we release, that is recorded as the folio being partly released—not fully released.

The decision making of the archives can be subject to appeal through the AAT. Since 1986 there have been 29 appeals to the AAT. At the moment we average about one a year. The outcome of those appeals is recorded in our annual report. You will find, certainly over the last five or six years, that we have a pretty good record in the AAT.

Mr LEO McLEAY—Of those 29 appeals, how many were upheld? By ‘upheld’ I mean: how many did ASIO win and how many did the applicant win?

Mr Richardson—I cannot give you an answer to that off the top of my head, but I could certainly take it on notice and come back.

Mr LEO McLEAY—From what you have said with respect to those figures, does that mean that you have not released 20 per cent of the applications?

Mr Richardson—I think that is right.

Mr LEO McLEAY—What would those sorts of things be?

Mr Richardson—That is right—20 per cent would not have been released. Again, I would need to go back to get more detail and advice on it, but it would be material that remains relevant today. What other categories, I am not sure.

Mr LEO McLEAY—Could you give me an idea—and it can be a theoretical idea; I am not asking for an actual idea—of what type of material remains relevant today?

Mr Richardson—We have had investigations that have gone back into the 1970s remaining relevant in the 1990s. I suppose it is on the public record that, in the US, they have had arrests and other investigations that have come to light that go back 20 years and more.

Mr LEO McLEAY—I can understand keeping sources and names as long as they are alive. What is your policy on revealing the names of sources or assets once they are no longer with us?

Mr Richardson—You can have issues of surviving family who might consider that they have some legitimate view about a government organisation taking it upon themselves to publicly reveal something about an immediate family that they did not want publicly known.

Mr LEO McLEAY—So you just have this blanket view then?

Mr Richardson—Yes, from where we come from, we believe that a source should be protected. If you cannot protect the identity of a source, that gets in the way of you being able to do your job.

Mr LEO McLEAY—What if you had a 30-year rule for some things and a 50-year rule for the 20 per cent? My point is that one can now read all the cabinet decisions and discussions from what happened in the Second World War. That is of considerable interest to people and that time has passed. Why must we keep your organisation's records locked up forever? What is more significant about what your organisation did than what Foreign Affairs, Prime Minister and Cabinet, or Defence did?

Mr Richardson—It is no more significant, and our records are subject to precisely the same law that governs the material that is held in Foreign Affairs and Defence. We make our decisions in relation to what can be released and what cannot be released on precisely the same basis that other agencies do and that is subject to appeal through the AAT just as anyone else's are.

Mr LEO McLEAY—How does one access your files if one cannot find the file register?

Mr Richardson—Our file titles have names of officers on them some times. They very often have codenames on them. They will have sourced names and liaison countries' names. That is all part of the file titles in many cases. Researchers can come to us and discuss with us their area of interest. We have on occasions helped them narrow precisely where their interest is and we have gone from there. We do help researchers in that way if they are interested. Where people

do give a broad area of interest, we have an obligation to pursue it and go through the files and bring forward the information that we can.

Mr LEO McLEAY—I suppose we could bat this around for hours, which will drive my colleagues mad, you mad and me mad.

Senator ROBERT RAY—It would be a pain.

Mr LEO McLEAY—A bit tough? I might keep doing it, it is nice to keep senators here. But they will probably leave.

Senator ROBERT RAY—No, we don't do any committee work at all!

Mr LEO McLEAY—I can accept that some organisations have a need to keep current secrets secret. I have a significant problem with why the secret has to be kept 30, 40, 50, 60 or 70 years—forever.

Mr Richardson—We are not arguing that and I have not said that.

Mr LEO McLEAY—If you do not make it all available, by definition you are arguing that.

Mr Richardson—Neither does DFAT and neither does Defence necessarily. As I said, the 30 years applies to us and other organisations precisely the same. The Archives Act applies to us and other organisations precisely the same. We are governed by the same law and we operate under that law in the same way as others do.

Mr LEO McLEAY—But you have a greater ability to reject or get exemption from those laws than others do. On your own evidence here you said that you have been unable to deal at all with 20 per cent of the requests that you have and 60 per cent of the ones you have dealt with have been changed in some form.

Mr Richardson—Given the nature of our work relative to other organisations, I do not see anything surprising about that.

Mr LEO McLEAY—I am surprised that 30 years later it is still the same.

Mr Richardson—Secondly and I think more importantly, the judgments we make are subject to appeal to the AAT. If we say no to that 20 per cent, then people can take us to the AAT, as indeed they do, and an independent arbiter can make a decision as to whether our judgments are reasonable or not. Our record in the AAT over the last six years has been very good.

Mr LEO McLEAY—But that is like Fairfax saying to you, 'It's unfortunate, Mr McLeay. We wrote this very bad story about you yesterday and we are absolutely wrong, but sue us.' I have a modest house and children I cannot raffle so I do not have the money to sue Fairfax. If the Commonwealth says to some person out there, 'We're not going to give you what you want, take us to court', the really obsessive ones will, but most of them will just say, 'I suppose that's the end of the line.'

Mr Richardson—That has not been our experience.

Mr LEO McLEAY—It must be because you said you knocked back 20 per cent of the applications and in the last five years only 29 people have taken you to court. Are you trying to tell me that 20 per cent of those who got knocked back were happy?

Mr Richardson—I have not said that at all, Mr McLeay. You have put in a series of figures there that are totally confused and are not quoting what I have said accurately.

Mr LEO McLEAY—Let me ask you another question, Mr Richardson.

Senator ROBERT RAY—Leo, let me help you out. You have 2,000 applications a year; is that right?

Mr Richardson—No. I think there is confusing evidence here. I think what Mr Nichols said—I stand to be corrected—was that in their public access area there are some 50,000 to 60,000 access requests a year, of which 1,500 to 2,000 are of ASIO material. I think over and above that we have people who, under the Archives Act, seek to access ASIO material. To put that in perspective, during 1998-99 we received 186 requests covering 328 different subjects, and 75 per cent of those requests were finalised within 90 days. Of the 14,512 individual folios that were examined during the year 1998-99, 87 per cent were released either in whole or part.

Senator ROBERT RAY—So you have 13 per cent of 186 not released at all.

Mr Richardson—That is right.

Senator ROBERT RAY—Which, if you will permit me to round out, is about 24. So you have 24. Of those, on balance, I think you said one per year goes to the AAT.

Mr Richardson—Yes.

Senator ROBERT RAY—What Mr McLeay is saying is that four per cent of people challenge at an AAT, 96 per cent do not.

Mr Richardson—I do not know whether that is right because I think you will find that those 186 requests are not necessarily 186 different people. In particular, you will find that in respect of ASIO there are a number of researchers who constitute the bulk of the requests in terms of the amount of work.

Senator ROBERT RAY—But the amount that go to the AAT is just one case.

Mr Richardson—Yes.

Senator ROBERT RAY—So you can relate the cases back to the original figures, if not the people.

Mr Richardson—Yes. Again, the precise statistics I would need to burrow down and find out for you. I could easily do that. It is normally the researchers who take us to the AAT.

Mr LEO McLEAY—Which takes me back to my original point. If 80 per cent of the applications are successful in whole or in part, 20 per cent are not.

Mr Richardson—That is right.

Mr LEO McLEAY—And of those 20 per cent, a couple take you to the AAT.

Mr Richardson—But of that 20 per cent, how many people are involved in that 20 per cent—

Mr LEO McLEAY—I do not know and I do not care, I suppose. What I am asking you is: do you think that all the rest of the 20 per cent, the ones who did not take you to the AAT, are happy with the outcome? You do not know and neither do I, because maybe they were just little people who do not have the money, persistence, stupidity or manic disposition to take you to the AAT. I do not know why, 30 years afterwards, they cannot get the answer to their question.

Mr Richardson—Equally, that 20 per cent could consist of one, two, three or four researchers.

Mr LEO McLEAY—They all could be Dr Cain for all I know.

Mr Richardson—I do not know either. I can ascertain that detail if you wish me to.

Mr LEO McLEAY—That might be a useful starting point.

Senator ROBERT RAY—I just think that you are a little too blithe about people going off to the AAT. I have been involved in only one case there. It is so time consuming. You have to have conferences and you have to put money up here and there. You have to have at least a silk in reserve even if you do not use them. It is not an easy process. I am not criticising the process; I just think you are a bit blithe when you say, ‘Oh, they go to the AAT.’ It is not quite that simple.

Mr Richardson—My point about the AAT is that the framework in which ASIO operates in respect of the Archives Act and the AAT is not a special framework created for ASIO. It is precisely the same framework across government.

Mr LEO McLEAY—But, Mr Richardson, you put forward the AAT as a suggestion to us that ‘most people must be happy because we have had only 29 cases go to the AAT’. If you were not putting that forward as an argument to us, then I do not know why you raised all the AAT stuff. What Senator Ray and I are putting to you is that, as for someone to go from wanting to get some information from ASIO as one point of call and then deciding when you say no, ‘I will just waltz off down the road to the AAT and I will write them a little note,’ most people know they cannot do that. They do not have either the money, the resources or the time.

Mr Richardson—The reason why I mentioned the AAT is because, in terms of quality control of our decision making, that clearly is one window that others and I have on it. Secondly, it is primarily the researchers who take us to the AAT, who argue their case quite strenuously and with some historical and academic knowledge about the subject. That is why I mention it. In terms of the little people you refer to who cannot access the AAT, before we make assumptions about that I could get the detailed statistics which your questions go to. I could provide them to you and you could then make your own judgment as to whether it is the little people who are being denied the information here.

Senator ROBERT RAY—Have you ever taken anything to the AAT in your life?

Mr Richardson—No.

Senator ROBERT RAY—One day you might have to.

Mr Richardson—I am sure it is not an easy process.

Senator ROBERT RAY—Until a couple of years ago I had not either so I was as blase as you, I have to say.

Mr LEO McLEAY—So you will provide that information to the committee, Mr Richardson?

Mr Richardson—Yes. If I can just add one thing, I can confirm that it is an offence to impersonate an ASIO officer. Section 91 of the ASIO Act makes it an offence for an ASIO officer to be impersonated. Also, section 75 of the Crimes Act makes it an offence to impersonate a Commonwealth officer.

PRESIDING MEMBER—Thank you for that, Mr Richardson, and thanks very much for appearing.

Resolved (on motion by **Senator Calvert**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 3.20 p.m.

