

Introduction

- 1.1 On 15 October 2003, the House of Representatives referred the Intelligence Services Amendment Bill 2003 (the Bill) to the Parliamentary Joint Committee on ASIO, ASIS and DSD for an advisory report. The House requested that the Committee report as soon as practicable.
- 1.2 The Committee resolved to hold a private hearing with a number of agencies and departments affected by the legislation on 27 October 2003, and to report to the House on 24 November 2003. This date lapsed due to the Committee's decision to recall ASIS on 27 November 2003. The Committee's sign-off processes also delayed the tabling of the report until now. Submissions are listed at Appendix A, and witnesses at Appendix B to this report.

Background

- 1.3 The purpose of this Bill is to amend the *Intelligence Services Act 2001*. This Act put the Australian Secret Intelligence Service (ASIS) on a statutory basis for the first time. It emerged from a judicial inquiry held into complaints about ASIS made on a *Four Corners* program on 21 February 1994. Honourable Gordon J Samuels AC and Mr Michael H Codd AC reported in March 1995 and recommended that ASIS be put on a statutory basis, that the Inspector-General of Intelligence and

Security conduct audits of ASIS activities and that this Parliamentary Committee be established to provide parliamentary scrutiny of the administration and expenditure of ASIS, as well as ASIO and DSD.

- 1.4 *The Intelligence Services Act 2001* specified the functions, powers and limits to the powers of two of the intelligence collection agencies, ASIS and DSD. When the *Intelligence Services Act 2001* was under consideration by the Joint Select Committee on the Intelligence Services, considerable attention was paid to the meaning and scope of Clause 6, which delineated ASIS' functions. The Select Committee noted that, in 1984, the Hope Royal Commission inquiring into the incident at the Sheraton Hotel in Melbourne in November 1983, had recommended that the covert action function of ASIS be abolished. During the Select Committee inquiry ASIS itself pointed out that its functions did not include paramilitary operations:

ASIS is not a police or law enforcement agency. It does not have para-military responsibilities and does not employ force or lethal means in carrying out the tasks set for it, nor are ASIS members trained in such techniques. ASIS may only perform functions determined by the Government to protect and promote Australia's national security, foreign relations or economic interests.¹

- 1.5 This policy was reflected in the Intelligence Services Act 2001 in Clause 6(4) that emphasises that ASIS must not be involved in paramilitary operations or activities involving personal violence or the use of weapons.
- 1.6 Accountability for the actions of ASIS was established in the Act by the provisions which required the Minister, when tasking ASIS, to consult with other Ministers with related responsibilities, to make the directions in writing and to inform the Inspector-General of Intelligence and Security and advise the Parliamentary Committee as soon as practicable.

1 Joint Select Committee on the Intelligence Services, *An Advisory Report on the Intelligence Services Bill 2001, the Intelligence Services (Consequential Provisions) Bill 2001 and certain parts of the Cybercrime Bill 2001*, August 2001, p. 10.

Purpose of the Bill

1.7 The Government argues in the explanatory memorandum to the present Bill that ‘terrorist activities and the threat of proliferation of weapons of mass destruction have contributed to fundamental changes in the environment in which ASIS must undertake its functions.’² The Foreign Minister, the Hon Alexander Downer, MP, told the House on the introduction of the Bill that there are complex intelligence challenges facing the agencies today. The intention of the amendments was to enable ASIS to ‘protect its staff members and agents’³ within this changed environment. The changed environment includes ‘an imperative that ASIS be able to cooperate closely with other agencies to ensure a coordinated approach to the Government’s objective of protecting Australia against the threat of international terrorism and trans-national crime.’⁴ Some of these agencies are legitimately able to use violence in the course of their work. It is the view of the Government that the limitations of Clause 6(4) prevent close cooperation between ASIS and these agencies. Specifically, the amendments seek to remove the limitations of 6(4) of the current Intelligence Services Act whereby:

- It is not possible ... for an ASIS staff member or agent to be given close personal protection as part of an activity necessary for the proper performance of the agency’s functions; and
- It is not possible for ASIS to provide a weapon to an ASIS staff member or agent for the purpose of self-defence.
- It is not possible for ASIS to provide training in the use of weapons to its staff members and agents.
- It is not possible for ASIS to cooperate or engage with other agencies in legitimate activities, which may involve the use of force.

1.8 The Foreign Minister argued in his second reading speech that the changes to the Act would not enable ASIS staff members to use force themselves and that the functions of ASIS have not changed. Weapons would only be approved for use in self-defence outside Australia. Accountability would be ensured by the necessity of written Ministerial approval being sought when weapons or training

2 Explanatory Memorandum, Intelligence Services Amendment Bill, 2003.

3 *ibid*

4 *ibid*

were to be provided to an ASIS staff member or agent and that notification of each approval would be given to the Inspector-General of Intelligence and Security. Guidelines on the use of weapons and the provision of training would be developed by the Director-General of ASIS.