



Introduction

- 1.1 On 21 March 2002 the Parliamentary Joint Committee on ASIO, ASIS and DSD (the Committee) met for the first time. The Committee replaces the previous Parliamentary Joint Committee on ASIO which operated between 1988 and 2001. The former Committee was established under part VA of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act 1979). This part was repealed with the ascent of the *Intelligence Services Act 2001* (the IS Act). The present Committee is established under part 4 of the IS Act.
- 1.2 The Committee's role is broader than that of the former Parliamentary Joint Committee on ASIO, through the requirement to scrutinise ASIO, ASIS and DSD, and to conduct reviews of the administration and expenditure of the three agencies. In addition, the IS Act requires the Committee to table an Annual Report of its activities. This report addresses both the administration and expenditure of the three agencies and the Committee's activities for the period between 21 March and 30 June 2002. The Committee's activities during this period included:
- the review and production of an Advisory Report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 (ASIO (Terrorism) Bill);
 - attendance by two members of the Committee at the third International Intelligence Review Agencies Conference in London between 13 and 14 May, and meetings with US intelligence agencies in Washington D.C.; and
 - scrutiny of the administration and expenditure of ASIO, ASIS and DSD.

- 1.3 In addition to reporting on these activities, the report includes a discussion on the role and operations of the Committee, its method of operation, and its future program of review.

Previous scrutiny of the Australian Intelligence Community

Background

- 1.4 Scrutiny of the Australian Intelligence Community (AIC) has been an evolving process. Before 1988, there was no formal parliamentary scrutiny of the AIC. Governments of the day, when asked about intelligence and security matters, would usually provide a neither confirm nor deny response. In 1977, the Royal Commission on Intelligence and Security (RCIS) recommended that this approach should continue in force.¹
- 1.5 The history of the key intelligence agencies shows that there was a period between their creation and an official acknowledgment of their existence. The Royal Commission on Australia's Security and Intelligence Agencies (RCASIA) stated:
- After World War II, Australia's intelligence and security agencies carried on their activities for many years in considerable secrecy. They were accountable, directly or indirectly, to Ministers, who were in turn accountable to the Parliament, but any public knowledge of what they did and indeed, in some cases, of their existence, was very limited.²
- 1.6 ASIO was established in 1949 under a charter issued by the Prime Minister. Later, in 1956, ASIO was established under legislation which also provided telephone interception powers. In 1979, a new legislative base was provided for ASIO.

1 Royal Commission on Intelligence and Security, *Fourth Report, Volume 1*, Commonwealth Government Printer, Canberra, 1978, pp.259-260.

2 Royal Commission on Australia's Security and Intelligence Agencies, *General Report*, AGPS, Canberra, 1985, p. 1.

- 1.7 ASIS was established by executive direction in 1952. However, it was not until 1977, following recommendations arising from the fifth report of the Hope Royal Commission, that there was an official acknowledgment of the existence of ASIS. ASIS was placed on a statutory basis as a result of the IS Act in 2001. The functions of DSD were also set out in legislation for the first time in the IS Act. Public acknowledgement of DSD's existence had occurred between the RCIS in 1977 and RCASIA in 1984.
- 1.8 Before the ascent of the IS Act, parliamentary scrutiny of the AIC was limited to ASIO. This was through the provisions of the ASIO Act 1979 which provided for the establishment of the former Parliamentary Joint Committee on ASIO (PJCA). ASIO has also appeared, at times, at Senate Estimates. ASIS and DSD have rarely, if ever, appeared before a Parliamentary Committee prior to the establishment of the IS Act.

The former Parliamentary Joint Committee on ASIO – 1988-2001

- 1.9 In 1977, the RCIS debated the need for a Parliamentary Committee to provide oversight of ASIO. Justice Hope recommended that there should not be parliamentary oversight through a Parliamentary Committee. He justified this on the grounds that there were already adequate means of oversight through the Prime Minister's and Minister's supervisory powers, Auditor-General scrutiny of financial statements, and, where individuals rights are concerned, the right to an independent tribunal.³
- 1.10 In 1984, Justice Hope reconfirmed his previous recommendation with the view that 'it is neither necessary nor appropriate that a special parliamentary committee be established.'⁴ Justice Hope acknowledged that Parliament is entitled to hold the Government to account and this process occurs already through the Attorney-General in respect of ASIO. At the same time, Justice Hope proposed that the practice of the Attorney-General, in relation to parliamentary questions, of neither confirming nor denying any allegations or presumed allegations should generally continue.⁵

3 Royal Commission on Intelligence and Security, *Fourth Report, Volume 1*, Commonwealth Government Printer, Canberra, 1978, p. 218.

4 Royal Commission on Australia's Security and Intelligence Agencies, *Report on the Australian Security Intelligence Organisation*, AGPS, Canberra, 1984, p. 345.

5 Royal Commission on Australia's Security and Intelligence Agencies, *Report on the Australian Security Intelligence Organisation*, AGPS, Canberra, 1984, p. 337.

- 1.11 Justice Hope proposed a range of alternative methods which would enhance scrutiny. This included the creation of a position of Inspector-General of Security who would scrutinise ASIO's compliance with the law, the propriety of its actions, and the appropriateness of its internal procedures.⁶ In addition, Justice Hope pointed out that the Act contained provisions for the Leader of the Opposition to be briefed by the Director-General of ASIO and be provided with a copy of the classified Annual Report.⁷
- 1.12 On 22 May 1985, the then Government tabled the reports of the RCASIA and responded to key recommendations. In response to Justice Hope's recommendations on the utility of parliamentary oversight, the then Prime Minister, the Hon Bob Hawke, MP stated:
- The Government has given a great deal of consideration to the question. It has weighed His Honour's comments about the adequacy of existing oversight and accountability measures—particularly when supplemented by the new office of Inspector-General. The Government accepts that these measures will be improved by the creation of the Office of Inspector-General. Nevertheless, it believes a further improvement can be obtained by directly involving the Parliament - on both sides and in both Houses - in imposing the discipline of an external scrutiny of the intelligence and security agencies quite independent of the Executive. While the Government has been conscious also of the need to carefully protect intelligence and security information, it believes that appropriate arrangements can be made to ensure that a small but informed parliamentary committee would operate effectively in the public interest⁸.
- 1.13 In 1986, the then Government introduced a Bill amending the ASIO Act 1979. One of the key amendments was the inclusion of part VA which established the PJCA. The amending Bill received Assent on 2 December 1986 and the first Committee was appointed on 31 August 1988.

6 Royal Commission on Australia's Security and Intelligence Agencies, *Report on the Australian Security Intelligence Organisation*, AGPS, Canberra, 1984, p. 332.

7 Royal Commission on Australia's Security and Intelligence Agencies, *Report on the Australian Security Intelligence Organisation*, AGPS, Canberra, 1984, p. 339.

8 House of Representatives, 22 May 1985, p.2888

- 1.14 In the period between 1988 and 2001, the PJCA conducted four inquiries which were the subject of the following reports:
- *ASIO and the Archives Act*, April 1992;
 - *ASIO and Security Assessment*, March 1994;
 - *An Advisory Report on the Australian Security Intelligence Organisation Legislation Amendment Bill 1999*, May 1999; and
 - *A Watching Brief, The nature, scope and appropriateness of ASIO's public reporting activities*, September 2000.
- 1.15 The members of the PJCA, in the 39th Parliament, also served on the Joint Select Committee on the Intelligence Services, which reviewed the Intelligence Services Bill 2001.

The Committee's role and responsibilities

Functions of the Committee

- 1.16 The Committee's functions are set out in section 29 of the IS Act. The Committee must review the administration and expenditure, including the annual financial statements of ASIO, ASIS and DSD. In addition, the Committee must review any matters in relation to the agencies referred by either the responsible Minister or a resolution of either House of Parliament. The Committee may request a responsible Minister to refer a matter to it for inquiry and report.
- 1.17 There is a significant difference between the Committee's functions and those of the previous PJCA. The PJCA was dependent on the Minister or a House of the Parliament referring a reference to it for inquiry. This is partly the reason why the PJCA conducted very few inquiries during its 13 year history. In contrast, the present Committee is required to review the administration and expenditure of the three agencies and report its findings to the Parliament. In fulfilling this responsibility there is no requirement for a reference from either a responsible Minister or a House of the Parliament.
- 1.18 The Committee's requirement to review administration and expenditure of the agencies will be conducted, at a minimum, on an annual basis and the findings will be reported in the annual report. In addition, the Committee may, at any time, initiate its own inquiries into aspects of the administration and expenditure of the agencies. These inquiries will be the subject of a separate and dedicated report.

- 1.19 The Committee's functions do not include examination of operational matters. These matters are detailed in subsection 29(3) of the IS Act. Section 29 of the IS Act is reproduced in full in appendix B.

Powers, duties and methods of operation

- 1.20 In line with the Committee's functions, section 30 of the IS Act provides express powers to call and request a briefing from the Directors-General of both ASIO and ASIS, the Director of DSD and the Inspector-General of Intelligence and Security.
- 1.21 Section 6 of the IS Act sets out the functions of ASIS. Paragraph 6(1)(e) provides for ASIS to undertake 'such other activities as the responsible Minister directs relating to the capabilities, intentions or activities of people or organisations outside Australia.' Section 6A states that, if the responsible Minister gives a direction under paragraph 6(1)(e), then the 'Minister must as soon as practicable advise the Committee of the nature of the activity or activities to be undertaken.'
- 1.22 Section 6A is an important accountability measure contained in the IS Act and ensures that the Parliament, through this Committee, is kept informed of any variations to ASIS's functions. The Committee is aware of views made by Justice Hope, as part of RCASIA, about the receipt by a committee of sensitive operational information. Justice Hope stated:
- If a special committee to oversee ASIO were to have access to detailed information consideration would have to be given to the practical problems which would be created by further widening access to such information. When the information is of sensitive operational activities, committee members would in a real sense share a degree of responsibility for those operations.⁹
- 1.23 The IS Act recognised the potential problems associated with the disclosures under section 6A. The IS Act specifies the security arrangements which need to be undertaken by the Committee and its secretariat in order to protect such information. Members are particularly cognisant of the need to protect the safety and security of information on operational matters which is supplied to the Committee.

⁹ Royal Commission on Australia's Security and Intelligence Agencies, *Report on the Australian Security Intelligence Organisation*, AGPS, Canberra, 1984, p. 345.

- 1.24 However, the Committee does not accept, if such is implied by Justice Hope, that the knowledge of any operational matters under section 6A implicates the Committee in responsibility for those matters. Executive Government will always be responsible and accountable for its policy and administration. The Committee's receipt of information under section 6A does not mean that it is integrated into the activity. The Committee does not have the power to vary or halt the activities provided through a section 6A notice. Executive Government will remain fully responsible for its actions. When a section 6A notice is received the Committee may, depending on the nature of the advice, call the Director-General of ASIS to provide a briefing to the Committee.
- 1.25 Section 15 of the IS Act provides for rules to protect the privacy of Australians. The Committee can request the Inspector-General of Intelligence and Security (IGIS), under subsection 15(6), to brief the Committee on the content and effect of the rules or if the rules change. Where the Committee seeks information under this provision, the findings will be reported in the annual report.
- 1.26 The Committee will use a range of approaches to conducting its inquiries. Where possible, inquiries will be conducted in public and submissions will be sought. For example, the Committee's review of the ASIO (Terrorism) Bill was advertised and over 160 submissions were received. Public hearings were then conducted in Canberra, Sydney and Melbourne. The Committee receives support from a permanent secretariat, and, where necessary, will seek expert advice. During the review of the ASIO (Terrorism) Bill expert legal advice was received from the Parliamentary Library.
- 1.27 The scrutiny of certain matters relating to the agencies, however, may preclude scrutiny being conducted in public. For example, detailed scrutiny of an agency's administration may require a team of agency representatives to appear before the Committee and give evidence. However, only the agency heads are publicly known. It is an offence under the IS Act to identify a person who is or has been a staff member of ASIO or ASIS. Therefore, the Committee will, at times, need to conduct all or parts of its reviews in private. A report will always be prepared and tabled in the Parliament.

Objectives and scope

- 1.28 The Committee's primary objective is to scrutinise and hold executive government to account. This will include scrutiny and consideration of policy relating to administration and expenditure, and scrutiny of Bills. These objectives are broadly consistent with other parliamentary committees. However, the Committee's work is subject to constraints because of the secret nature of the work carried out by the agencies.
- 1.29 To be effective, the agencies require secrecy and protection of their intelligence. In addition, the agencies, particularly ASIS and DSD, do not have a culture or history of being held to account by the Parliament. These agencies are reacting positively to their new responsibility.
- 1.30 The Committee's challenge is to find a balance between the agencies' need for secrecy and the Parliament's need for scrutiny and accountability. This will be an evolving process and the Committee will, periodically, comment on the effectiveness of its scrutiny and accountability role.
- 1.31 In 2001-2002, a key task of the Committee was to complete on time the review of the ASIO (Terrorism) Bill and to contribute to the improvement of the legislation through making effective recommendations. It was not possible to complete the review on time. This was partly because of the complexity and breadth of the subject matter, the large number of submissions received, the short time frame for reporting and the poor technical quality of the original Bill.
- 1.32 The drafting of ASIO (Terrorism) Bill was inadequate in certain aspects. This required the Committee to focus on technical aspects and unintended consequences arising from the drafting. First, this required much more expenditure of time and resources on discovering and amending technical flaws. The Committee is not generally geared to this type of micro-examination. Rather, the Committee conceives its role in conducting Bills inquiries as reviewing the underlying policy and implementation aspects of a Bill.
- 1.33 A key objective during 2001-2002 was the completion of the first review of the administration and expenditure of ASIO, ASIS and DSD. This task was completed before the Committee tabled its advisory report on the ASIO (Terrorism) Bill. The review was conducted in private, but proved to be effective for the range and detail of programs that were scrutinised.

- 1.34 The Committee, through its functions set out in the IS Act, is an essential part of the reporting and accountability framework applying to the agencies. It is much more than just a watching brief or a monitoring role. The agencies understand that their credibility and effectiveness are raised through having viable and effective parliamentary scrutiny. The Committee will ensure that there is a sufficient level and quality of scrutiny, and that its findings are reported to the Parliament.

