

## The eighth review of administration and expenditure

- 1.1 Under Section 29 of the *Intelligence Services Act 2001* (the Act), the Parliamentary Joint Committee on Intelligence and Security has an obligation to review the administration and expenditure of ASIO, ASIS, DSD, DIGO, ONA and DIO, including their annual financial statements.
- 1.2 In 2007 the Committee conducted a broad review of the administration and expenditure of the six intelligence and security agencies for the 2005-2006 financial year. The subsequent report *Review of administration and expenditure: Australian Intelligence Organisations, Number 5* was tabled in Parliament in June 2007.
- 1.3 In 2008-09 the Committee conducted a broad review of the administration and expenditure of the six intelligence and security agencies for the 2006-07 financial year. The subsequent report *Review of administration and expenditure: Australian Intelligence Organisations, Number 6* was tabled in Parliament in September 2009.<sup>1</sup>
- 1.4 In 2009-10 the Committee conducted a broad review of the administration and expenditure of the six intelligence and security agencies for the 2007-08 financial year. The subsequent report *Review of administration and expenditure: Australian Intelligence Organisations, Number 7* was tabled in Parliament in May 2010.
- 1.5 In addition, in 2010 the Committee conducted a broad review of the administration and expenditure of the six intelligence and security agencies for the 2008-09 financial year. This is the report of that review. Submissions were sought from each of the six intelligence and security

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1 The inquiry process was delayed due to the 2007 Federal election.

agencies and from the Australian National Audit Office (ANAO) and from the Inspector General of Intelligence and Security (IGIS) (see Appendix A).

- 1.6 The submissions from ANAO and the six intelligence agencies were all classified Confidential, Restricted or Secret and are therefore not available to the public. As has been its practice for previous reviews, ASIO provided the Committee with both a classified and an unclassified submission; the unclassified version of which is available on the Committee's website.
- 1.7 The Committee also received a submission from the ANAO and from the IGIS. The IGIS' submission was made available on the Committee's website. More comment in relation to the ANAO is contained in Chapter 3 on Expenditure.
- 1.8 Each of the Defence Intelligence agencies provided the Committee with a classified submission. However in a departure from past practice, the agencies marked each paragraph with its relevant national security classification. This has enabled the Committee for its 2008-09 review to directly refer to unclassified information produced in the Defence agencies submissions.
- 1.9 The Committee is grateful to ASIO and the Defence Intelligence agencies for providing an unclassified submission or, in the case of Defence, providing unclassified paragraphs. This has been very helpful in the writing of this report. It means, however, that ASIO and the Defence Intelligence agencies are mentioned quite often in the subsequent chapters of this report while the other agencies are generally not referred to by name. This should not be taken to imply that the inquiry focused primarily on ASIO or the Defence Intelligence agencies or that they were scrutinised more than other agencies. It merely reflects the amount of unclassified information on which the Committee was able to draw and incorporate directly into its report to illustrate its findings.
- 1.10 In October 2009, the Committee wrote to the agencies seeking submissions, outlining the issues it would like to see covered in those submissions. The result was very thorough and comprehensive information. Agency heads were also most forthcoming at the private hearings.
- 1.11 Two private hearings were held to take evidence from the agencies and the Committee appreciates the time commitment each agency made to this process (see Appendix B). In each case the Agency Head and other top-ranking officials attended the hearings and expended a considerable amount of time making further presentations and answering the Committee's questions.

- 1.12 The Committee would, however, add one caveat. Normal parliamentary practice is, where possible, to examine an issue from a variety of community perspectives. This method generally gives confidence as a Committee can test information and interpretation from the different perceptions of an organisation or an issue. This is not possible in this process. The nature of the intelligence organisations and the restrictions of the Act mean that the Committee is constrained in the breadth of submissions in its examination of administration and expenditure. While the Committee has no reason to think that this is a problem to date, the potential exists for the perspective of the Committee to be too narrow.

## **Committee oversight of Australian Federal Police Counter-terrorism functions**

- 1.13 On 29 May 2008 the Committee met and discussed the Australian Federal Police's (AFP) substantial role in counter-terrorism in collaboration with the Australian Intelligence Community (AIC). The Committee wrote to the Attorney-General seeking his consideration of an amendment to the *Intelligence Services Act 2001* to allow the Committee to review the administration and expenditure of the AFP counter-terrorism elements.
- 1.14 The Committee acknowledges the correspondence received from the Attorney-General in relation to this matter and records its thanks and appreciation for his cooperation, particularly in proposing that the Commissioner of the AFP, Tony Negus, brief the Committee on the AFP's Counter-terrorism role.
- 1.15 The Attorney-General wrote to the Committee on three separate occasions on this matter. The first letter, dated 23 December 2008, advised of the Government's decision to enable the PJCIS to extend inquiries to include the AFP in appropriate cases with the Attorney-General's consent.
- 1.16 The second, dated 12 May 2009, outlined the Attorney-General's reasons for requiring the Attorney-General's consent, those being that such an arrangement provided the most flexible and appropriate means of identifying whether a matter involving the AFP has a relevant link with security and intelligence issues.
- 1.17 The third, dated 11 March 2010, advised that the Government was not pursuing the proposal to extend the mandate of the PJCIS to include oversight of the AFP's counter-terrorism functions at this time.

- 1.18 The following sections outlines the close relationship between sections of the AFP and the AIC, the role of the PJCIS in overseeing the AIC and the compelling reasons for the PJCIS to oversee the AFP's Counter-terrorism role.

## The AFP's Counter-terrorism role

- 1.19 Following the bombing of the Hilton Hotel in Sydney in March 1978 former London Metropolitan Police Commissioner, Sir Robert Mark, was appointed to examine policing resources, protective security and counter-terrorism in Australia.<sup>2</sup> Amongst other things, Mark recommended that 'an Australian Federal Police Service establish an anti-terrorist squad'.<sup>3</sup>
- 1.20 Since the 11 September 2001 terrorist attacks in the United States and the 12 October 2002 terrorist attacks in Bali, the AFP has been increasingly involved in counter-terrorist activities aimed at preventing terrorist attacks in Australia and on Australian interests overseas. As set out in the Ministerial direction to the AFP Commissioner issued in August 2008, the AFP focuses on:
- . . . countering the threat of terrorism to the safety and security of Australians and Australian interests, inside and outside Australia.<sup>4</sup>
- 1.21 There are sections of the AFP that have been created to address significant counter-terrorism and national security functions. This is evidenced by AFP involvement in the National Counter-terrorism Committee (NCTC). The AFP website states that the:
- AFP works with representatives of the Australian Government and State and Territories on the National Counter-terrorism Committee (NCTC).<sup>5</sup>
- 1.22 The AFP website also provides information on its counter-terrorism unit, stating:
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2 Nathan Hancock, "Terrorism and the Law in Australia: Supporting Materials" *Research Paper No. 13 2001-02* Parliamentary Library p. 28. <<http://www.afp.gov.au/library/pubs/rp/2001-02/02rp13.pdf>> at 9 April 2010

3 Nathan Hancock, "Terrorism and the Law in Australia: Supporting Materials" *Research Paper No. 13 2001-02* Parliamentary Library p. 28. <<http://www.afp.gov.au/library/pubs/rp/2001-02/02rp13.pdf>> at 9 April 2010

4 *AFP Annual Report 2008-09*, p. 10. <[http://www.afp.gov.au/\\_data/assets/pdf\\_file/132193/AFP-Annual-Report-2008-2009.pdf](http://www.afp.gov.au/_data/assets/pdf_file/132193/AFP-Annual-Report-2008-2009.pdf)> at 14 April 2010

5 [http://www.afp.gov.au/national/fighting\\_terrorism.html](http://www.afp.gov.au/national/fighting_terrorism.html)

The counter-terrorism team provides timely, accurate intelligence and support to deployed intelligence and operational teams, the AFP Executive, external law enforcement and intelligence partners. This contributes to the wider Australian response to terrorism and helps to maintain effective liaison and information sharing between the AFP and the intelligence community.<sup>6</sup>

- 1.23 As well as working within Australia, the AFP also maintains overseas liaison channels. The National Counter-Terrorism Plan states that:

ASIO, other Commonwealth intelligence agencies and the AFP maintain overseas liaison links to gather intelligence and to pursue investigations.<sup>7</sup>

- 1.24 It is clear that the AFP has evolved to include a significant intelligence function and that sections of the AFP have deep operational and intelligence linkages with the AIC. These are discussed in the next section.

## The AFP and the AIC

- 1.25 During the conduct of this inquiry the Committee took evidence on the extent of AFP engagement with the AIC. One agency advised that the AFP had an internal 'intelligence body'<sup>8</sup> which the intelligence agencies work with and, through which, the agencies provide classified material to the AFP.
- 1.26 The Committee took evidence from a number of the agencies that they have attachments or secondments with the AFP, where there is either an employee of the AFP working within the intelligence agency or where there is an employee of the intelligence agency working within the AFP.<sup>9</sup>
- 1.27 ASIO's unclassified submission to the current inquiry corroborated this evidence noting that in 2008-09 an ASIO senior manager was attached to

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6 [http://www.afp.gov.au/recruitment/current\\_vacancies/counter\\_terrorism.html](http://www.afp.gov.au/recruitment/current_vacancies/counter_terrorism.html)

7 *National Counter-Terrorism Plan*, Second Edition September 2005, p. 3:2

<[http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/\(3273BD3F76A7A5DEDAE36942A54D7D90\)~National+Counter-Terrorism+Plan+-+Alert+System+Changes+October+2008+PDF.PDF/\\$file/National+Counter-Terrorism+Plan+-+Alert+System+Changes+October+2008+PDF.PDF](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/(3273BD3F76A7A5DEDAE36942A54D7D90)~National+Counter-Terrorism+Plan+-+Alert+System+Changes+October+2008+PDF.PDF/$file/National+Counter-Terrorism+Plan+-+Alert+System+Changes+October+2008+PDF.PDF)> at 7 April 2010

8 *Classified Transcript*, 19 March 2010, p. 44.

9 *Classified Transcript*, 19 March 2010, p. 11.

the AFP to improve cooperation and interoperability between the organisations.<sup>10</sup>

- 1.28 Some of the intelligence agencies also stated to the Committee that they work 'very closely'<sup>11</sup> with the AFP in overseas missions, in conjunction with other Government departments and in 'established'<sup>12</sup> Joint Counter-terrorism Units, which also incorporate state police forces.<sup>13</sup>
- 1.29 The *Parliamentary Joint Committee on Law Enforcement Bill 2010* currently before Parliament establishes the Parliamentary Joint Committee on Law Enforcement (PJCLE) (by renaming and extending the functions of the current Parliamentary Joint Committee on the Australian Crime Commission). This Bill provides for the powers, proceedings and functions of the committee and gives the committee responsibility for overseeing the Australian Federal Police and the Australian Crime Commission.<sup>14</sup>
- 1.30 In considering Parliamentary oversight of the AIC it is essential that all of the agencies with a significant role in intelligence come before the same Committee of the Parliament. This is not to say that they appear before only one committee. Rather, it refers to the need for one committee to have oversight of the complete AIC. In order for Parliamentary oversight to be effective all agencies need to report to the one Committee. Without this oversight, it is inevitable that black spots in knowledge and supervision will dramatically impair the effectiveness of Parliamentary oversight.
- 1.31 ASIO, ASIS, DIO, DSD, DIGO and ONA all currently report to the PJCIS. However, the elements of the AFP engaged in intelligence functions do not report to the PJCIS.
- 1.32 The interrelationship between these agencies is such that it is not possible to get an accurate picture of any agency without having access to all agencies within or working closely with the AIC. Therefore the Parliamentary oversight framework of the AIC is impaired by the omission of the AFP counter-terrorism elements. The Committee regards this omission as unacceptable.

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10 *ASIO Unclassified Submission*, No. 9, p. 37.

11 *Classified Transcript*, 19 March 2010, p. 25.

12 *Classified Transcript*, 19 March 2010, p. 12.

13 *Classified Transcript*, 19 March 2010, p. 12.

14 See

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr4318%22> at 21 April 2010

## The Committee's public accountability role

- 1.33 The Committee is an important part of the accountability framework providing oversight for the security and intelligence agencies. This accountability framework plays a key role in providing reassurance to the public and the Parliament. It is important that the Committee's role be amended to provide oversight for the AFP counter-terrorism unit.
- 1.34 The Committee is aware that some concerns have been raised that requiring the AFP counter-terrorism unit to appear before the PJCIS may be onerous and unnecessary duplication.
- 1.35 A comparison can be drawn with the requirements placed on the Department of Defence. For example the *Defence Annual Report 2008-09*<sup>15</sup> reports that the Defence Department appeared before the following Parliamentary Committees:
- Joint Committees:
    - ⇒ Joint Committee on Public Accounts & Audit
    - ⇒ Joint Standing Committee on Foreign Affairs, Defence & Trade
    - ⇒ Joint Standing Committee on Treaties
    - ⇒ Joint Standing Committee on Electoral Matters
    - ⇒ Parliamentary Joint Committee on Intelligence & Security
    - ⇒ Joint Standing Committee on Public Works
  - Senate Committees:
    - ⇒ Senate Standing Committee on Foreign Affairs Defence & Trade
    - ⇒ Senate Standing Committee on Economics
    - ⇒ Senate Standing Committee on Environment, Communications & the Arts
  - House Committees:
    - ⇒ House of Representatives Standing Committee on Industry, Science & Innovation
    - ⇒ House of Representatives Standing Committee on Legal & Constitutional Affairs
    - ⇒ House of Representatives Standing Committee on Petitions
    - ⇒ House of Representatives Standing Committee on Communications

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15 Department of Defence, *Defence Annual Report 2008-09*, pp. 146-149  
<[http://www.defence.gov.au/budget/08-09/dar/vol1/append01\\_01.htm](http://www.defence.gov.au/budget/08-09/dar/vol1/append01_01.htm)> at 7 April 2010

- 1.36 It is clearly not unusual for a particular agency or department to report to a number of Committees. An examination of the *AFP's Annual Report 2008-09*<sup>16</sup> shows that, in addition to estimates appearances, the AFP appeared before the following Parliamentary Committees:
- Joint Committees:
    - ⇒ Joint Standing Committee on Public Works
    - ⇒ Joint Standing Committee on Foreign Affairs, Defence & Trade
    - ⇒ Joint Committee on the Australian Crime Commission.
    - ⇒ Joint Committee on the Australian Commission for Law Enforcement Integrity
  - Senate Committees:
    - ⇒ Senate Standing Committee on Foreign Affairs Defence & Trade
  - House Committees:
    - ⇒ House of Representatives Standing Committee on Legal & Constitutional Affairs
- 1.37 Requiring the AFP counter-terrorism element to appear before the PJCIS would reflect normal oversight practice as applied to all other Commonwealth Departments and Agencies. It cannot be reasonably described as 'unfair' or 'a burden' upon the AFP. It is worth repeating that the only aspect of the AFP to be reviewed by the PJCIS would be the AFP counter-terrorism elements.

## **Attorney-General's consent**

- 1.38 In its oversight capacity, the Committee has close and cooperative relationships with each of the six intelligence agencies based on regular contact with each of them. As a result of this contact, the Committee has access to a range of sensitive information from each of the agencies. This includes regular briefings, visits to classified installations.
- 1.39 To support this close contact and to serve its statutory functions the staff of the Secretariat are cleared to the required level of Top Secret Positive Vet. The Committee regularly views classified documents relevant to performing its functions.

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16 *AFP Annual Report 2008-09*, p. 170.  
<[http://www.afp.gov.au/\\_data/assets/pdf\\_file/132193/AFP-Annual-Report-2008-2009.pdf](http://www.afp.gov.au/_data/assets/pdf_file/132193/AFP-Annual-Report-2008-2009.pdf)> at 7 April 2010



- 1.40 It is untenable that the Committee cannot seek information from the AFP on its counter-terrorism role and intelligence functions in the same way that it does with ASIO, ASIS, DIO, DIGO, DSD and ONA.
- 1.41 The *Intelligence and Security Act 2001* requires all six of the AIC agencies to appear before it, including the most sensitive. An indication of the degree of sensitivity is contained in section 92 of the *ASIO Act 1979*, which makes it illegal to divulge the names of employees or former employees of ASIO.<sup>17</sup> Section 41 of the *Intelligence Services Act 2001* makes it illegal to divulge the names of employees or former employees of ASIS. Sections 39, 39A and 40 make it illegal to divulge any information or matter that was prepared by, or on behalf of, ASIS, DIGO or DSD in connection with their functions or relates to the performance by ASIS, DIGO and DSD of their functions.<sup>18</sup>
- 1.42 For good and proper reason these agencies are required to come before the PJCIS without any approval from the Attorney-General or relevant Minister. It is inconceivable that such a constraint be applied to an appearance before the Committee of the AFP counter-terrorism elements.
- 1.43 Of all the AIC agencies, and agencies that work closely with the AIC, the AFP is the most public and visible. The Committee sees no reason why the AFP alone, of all the agencies encompassing the AIC, should be immune from Committee review other than with specific consent of the Attorney-General. These matters are too important to be left to the variations in views that the Attorney-General of the time may hold.
- 1.44 Such a restriction has the unintended consequence of inviting criticism that the AFP or Government of the day may wish to avoid thorough Parliamentary scrutiny from the only Parliamentary Committee that has regular access to matters relating to the AIC.
- 1.45 The PJCIS' oversight of the counter-terrorism role of the AFP should apply on the same basis as that of the PJCIS' role in relation to oversight of the six AIC agencies.
- 1.46 The Committee therefore recommends that the *Intelligence Services Act 2001* be amended to include AFP counter-terrorism elements in the list of organisations that the Committee reviews.

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17 *ASIO Act 1979* (Cth) s. 92.

18 *Intelligence Services Act 2001* (Cth), s. 39, 39A, 40.

## Recommendation 1

**The Committee recommends that the Intelligence Services Act 2001 be amended to include AFP counter-terrorism elements in the list of organisations that the Committee reviews.**

- 1.47 Suggested amendments to Section 29 of the Intelligence Services Act 2001 follow with additions in bold and deletions struck-through:

### INTELLIGENCE SERVICES ACT 2001 - SECT 29

#### Functions of the Committee

(1) The functions of the Committee are:

(a) to review the administration and expenditure of ASIO, ASIS, DIGO, DIO, DSD and ONA, including the annual financial statements of ASIO, ASIS, DIGO, DIO, DSD and ONA; and

**(aa) to review the administration and expenditure of the AFP, including the annual financial statements of the AFP, in relation to the performance by the AFP of their functions in relation to:**

**(i) Part 5.3 of the *Criminal Code*; and**

**(ii) Any other provision of the *Criminal Code* as far as it relates to that Part; and**

(b) to review any matter in relation to ASIO, ASIS, DIGO, DIO, DSD or ONA referred to the Committee by:

(i) the responsible Minister; or

(ii) a resolution of either House of the Parliament; and

**(ba) to review any matter in relation to the AFP referred to the Committee by the Attorney-General; and**

~~(ba) to review, as soon as possible after the third anniversary of the day on which the *Security Legislation Amendment (Terrorism) Act 2002* receives the Royal Assent, the operation, effectiveness and implications of amendments made by that Act and the following Acts:~~

~~(i) the *Border Security Legislation Amendment Act 2002*;~~

~~(ii) the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*;~~

~~(iii) the *Suppression of the Financing of Terrorism Act 2002*; and~~

(bb) to review, by 22 January 2016, the operation, effectiveness and implications of Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and

(c) to report the Committee's comments and recommendations to each House of the Parliament and to the responsible Minister.

**(1A) To avoid doubt, the Committee may combine performance of its function under paragraph (1)(a), (aa) or (ba) of conducting a review of one or more other reviews under one or more of those paragraphs.**

(2) The Committee may, by resolution, request the responsible Minister to refer a matter in relation to the activities of ASIO, ASIS, DIGO, DIO, DSD or ONA (as the case may be) to the Committee, and the Minister may, under paragraph (1)(b), refer that matter to the Committee for review.

**(2A) The Committee may, by resolution, request the Attorney-General to refer a matter that relates to the activities of the AFP to the Committee, and the Attorney-General may, under paragraph (1)(ba), refer that matter to the Committee for review.**

(3) The functions of the Committee do not include:

(a) reviewing the intelligence gathering and assessment priorities of ASIO, ASIS, DIGO, DIO, DSD or ONA **or the AFP**; or

(b) reviewing the sources of information, other operational assistance or operational methods available to ASIO, ASIS, DIGO, DIO, DSD or ONA **or the AFP**; or

(c) reviewing particular operations that have been, are being or are proposed to be undertaken by ASIO, ASIS, DIGO, DIO or DSD **or the AFP**; or

(d) reviewing information provided by, or by an agency of, a foreign government where that government does not consent to the disclosure of the information; or

(e) reviewing an aspect of the activities of ASIO, ASIS, DIGO, DIO, DSD or ONA **or the AFP** that does not affect an Australian person; or

(f) reviewing the rules made under section 15 of this Act; or

(g) conducting inquiries into individual complaints about the activities of ASIO, ASIS, DIGO, DIO, DSD or ONA **or the AFP**; or

(h) reviewing the content of, or conclusions reached in, assessments or reports made by DIO or ONA, or reviewing sources of information on which such assessments or reports are based; or

- (i) reviewing the coordination and evaluation activities undertaken by ONA.

## **Committee access to information beyond administration and expenditure**

- 1.48 It would clearly be impossible for the Committee to conduct any meaningful review of the Administration and Expenditure of the Australian Intelligence Community (AIC) without knowledge of their activities, operations, skills, methods and the product they create all being made available to the Committee. This had been acknowledged by previous Committees and by the AIC. During this Parliament, as with previous Parliaments, the Committee has been provided with significant and meaningful information by the agencies on these issues.
- 1.49 The availability of this information is critical to the capacity of the Committee to fulfil its obligations and to meet the expectations of the Parliament and the wider community.
- 1.50 In this respect, the practices and operations of the Committee are similar to those of the Intelligence and Security Committee in the United Kingdom Parliament which operates with a similar legislative authority.
- 1.51 It is important that for the Committee's oversight responsibility that access to appropriate information, such as those matters listed in paragraph 1.48, continues to be available. The most effective way of ensuring this is the case is to amend the act to provide that appropriate activities, operations, skills, methods and the product they create be made available to the Committee.
- 1.52 The Committee recognises that the drafting of such an amendment would require close consultation with the agencies and the Committee.
- 1.53 Although the Committee has regularly received good cooperation from the AIC, it is important that the above situation is provided for in legislation. The Committee therefore recommends that the Government agree to amend the *Intelligence Services Act 2001* to enable specific material which does not affect current operational activity to be provided to the Committee. A small working group drawn from relevant Departments, Agencies and the Committee should be set up to prepare this amendment for consideration by the Government.

## Recommendation 2

**The Committee recommends that the Government agree to amending the *Intelligence Services Act 2001* to enable specific material which does not affect current operational activity to be provided to the Committee. A small working group drawn from relevant Departments, Agencies and the Committee should be set up to prepare this amendment for consideration by the Government.**

## Scope of the eighth review

- 1.54 The eighth review of administration and expenditure broadly looked at all aspects of the administration and expenditure of the six intelligence and security agencies. In particular the Committee looked into ASIO's new central office. Comment is made on this in paragraphs 2.103 - 2.110.
- 1.55 As mentioned above, the Committee took considerable classified evidence from the agencies which cannot be published. The discussion in the following chapters will, in some instances, not identify specific organisations due to the classified nature of the evidence received. The Committee trusts that the report will serve to assure the Parliament, and the public, that the administration and expenditure functions of the intelligence and security agencies are being monitored by the Committee in a meaningful and important manner albeit limited to the extent of the Committee's powers as set out in the Act.
- 1.56 The words 'the agencies' or 'the organisations' refer to all or any combination of ONA, DIO, ASIO, ASIS, DSD and DIGO. In the footnotes the notation 'Classified Submission' is used to refer to submissions from any of the agencies whether the actual submissions were classified Secret, Restricted or Confidential.

