

## Other issues

### Introduction

- 4.1 This chapter brings together a range of clauses which do not fit into previous chapters. The examination of the Bill revealed the need for additional definitions. The first section of this chapter addresses examples where significant terms are used in the Bill but are not defined.
- 4.2 Clause 19 provides for briefing of the Leader of the Opposition about ASIS. This issue was examined briefly during hearings.
- 4.3 Clause 41 provides for penalties relating to the publication of the identity of staff. Again, this issue was raised briefly during hearings.

### Clause 3 – Definitions

- 4.4 Clause 3 of the IS Bill sets out a range of definitions for terms used in the Bill. During hearings, a range of significant terms were examined which are not defined in clause 3. The majority of these terms have been discussed in previous chapters. The terms requiring definition, and the location in the previous chapters where they are discussed, is shown below:

paramilitary	paragraph 2.13
intelligence	paragraph 2.34
national security	paragraph 2.35
police functions	paragraph 2.35
serious crime	paragraph 2.27

Australian organisations paragraph 2.109

4.5 In addition, the Premier of Western Australia, the Hon Geoff Gallop, MLA, commented on the definition in the IS Bill relating to ‘State Authority’.<sup>1</sup> Mr Gallop stated that the ‘definition however does not clearly state that the Western Australian Police Service is a ‘State Authority’. Mr Gallop proposed that the following additional paragraph be inserted into the existing definition of ‘State Authority’:

- ‘without limiting the generality of paragraph (a), the Police Force of that state’.

## Conclusions

4.6 We support the need for further definitions in the IS Bill. It is not considered necessary, however, to include ‘police force of that state’ in the IS Bill’s existing definition relating to ‘State Authority’. It is assumed that ‘State Authority’ will include the police force of that state.

## Recommendation 17

4.7 **Clause 3 of the Intelligence Services Bill 2001 should be amended to include definitions on the following terms:**

- **paramilitary;**
- **intelligence;**
- **national security;**
- **police functions;**
- **serious crime; and**
- **Australian organisations.**

**In defining national security, consideration must be given to a definition that includes protecting Australia from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia’s defence system, acts of foreign interference, and unauthorised movements of persons or objects across Australia’s national borders.**

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<sup>1</sup> The Premier of WA, *Submission No. 12*, p. 1.

## Clause 19 – Briefing the Leader of the Opposition about ASIS

- 4.8 Clause 19(1) of the IS Bill states that the ‘Director-General may, with the authorisation of the Prime Minister, brief the Leader of the Opposition in the House of Representatives about ASIS.’ Clause 19(2) states that the ‘Leader of the Opposition may at any time request the Prime Minister to authorise the Director-General to provide a briefing about ASIS.’

### Analysis

- 4.9 Some witnesses noted that the provisions for briefing the Leader of the Opposition on ASIO and ASIS were marginally different. Under the ASIO Act, there is no restriction on the Leader of the Opposition being briefed by the Director-General of ASIO. Under the IS Bill, the Leader of the Opposition may request the Prime Minister for a briefing by the Director-General of ASIS.<sup>2</sup>

### Conclusions

- 4.10 The Committee considers that the greater opportunity for briefing of the Leader of the Opposition by the Director-General of ASIO is based on the domestic focus of that agency. ASIS functions have an overseas focus and there is potentially less need to brief the Leader of the Opposition. However, this view is less persuasive as greater numbers of Australians travel and conduct business overseas. In view of this, the arrangements for briefing the Leader of the Opposition on ASIS should be the same as those that apply to ASIO.

### Recommendation 18

- 4.11 **Clause 19 of the Intelligence Services Bill 2001 be amended to ensure that arrangements for briefing the Leader of the Opposition about ASIS are the same as those relating to ASIO as set out in section 21 of the *Australian Security Intelligence Organisation Act 1979*.**

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2 Mr Mark Weeding, *Submission No. 6*, p. 3

## Clause 41 – Publication of identity of staff

4.12 Clause 41 provides for an offence punishable by imprisonment for 1 year for a person who identifies a persons as being, or having been an agent or staff member of ASIS. Clause 41 is shown, in full, below.

### ***41 Publication of identity of staff***

(1) *A person is guilty of an offence:*

(a) *if:*

- (i) *the person identifies a person as being, or having been, an agent or staff member of ASIS; and*
- (ii) *the identification is not of the Director-General or such other persons as the Director-General determines; or*

(b) *if:*

- (i) *the person makes public any information from which the identity of such a per son could reasonably be inferred, or any information that could reasonably lead to the identity of such a person being established; and*
- (ii) *the Minister or Director-General has not consented in writing to the information being made public; and*
- (iii) *the information has not been made public by means of broadcasting or reporting proceedings of the Parliament (other than proceedings of the Committee) as authorised by the Parliament.*

*Penalty: Imprisonment for 1 year or 60 penalty units, or both.*

*Note: For agent and staff member see section 3.*

(2) *A prosecution for an offence against subsection (1) may be instituted only by the Attorney-General or with the Attorney-General’s consent.*

4.13 The EM states that the clause makes it ‘an offence, subject to limited exceptions, to identify a person as an agent or staff member of ASIS or make information public from which the identity of such a person could reasonably be inferred or that could reasonably lead to the identity of such a person being established.’

## Analysis

- 4.14 The key reason for clause 41 is to protect ASIS officers and agents who must, through the nature of their work, remain secret. This is essential for the conduct of their activities, and for their personal safety. The protection of the identity of former ASIS officers is also covered under 41 because knowledge of their former employment could provide knowledge of current officers and agents.
- 4.15 During hearings, ASIS discussed the possible application of clause 41. If an ASIS officer, for example, passed on information that could identify another ASIS officer or agent then they would be subject to the penalties under clause 41. If the person who receives the information, such as a reporter, then publishes that information then they also would be subject to clause 41.
- 4.16 The Attorney-General's Department indicated that clause 41 mirrors section 92, publication of identity of officer of Organisation, in the ASIO Act 1979. Section 92 also applies a penalty of imprisonment for one year.<sup>3</sup>

## Conclusions

- 4.17 We support the purpose of clause 41 and note that a similar provision exists in the *Australian Security Intelligence Organisation Act 1979*, relating to the publication of the identify of staff of ASIO. During the inquiry some media sources gave attention to clause 41. There also seemed to be some ignorance that a similar provision exists in the ASIO Act.

**DAVID JULL, MP**

Chairman

23 August 2001

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<sup>3</sup> Mr Keith Holland, Attorney-General's Department, *Transcript*, p. 88.