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The Hon Anthony Byrne MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Mr Byrne

PJCIS review of AIC finance and administration FY 2010/11

Thank you for your letter of 24 November 2011 inviting me to make a submission to the Parliamentary Joint Committee on Intelligence and Security review of the administration and expenditure of intelligence and security agencies for the financial year 2010/11.

I have set out below some background information about the role and focus of my office as well as some comments based on my inspection and inquiry activities during 2010/11.

Role, functions and focus of the IGIS

The position of the Inspector-General of Intelligence and Security (IGIS) was created by the *Inspector-General of Intelligence and Security Act 1986* (the IGIS Act), which came into effect on 1 February 1987.

The IGIS is an independent statutory office holder who reviews the activities of the agencies which collectively comprise the Australian Intelligence Community (AIC). The IGIS has own motion powers in addition to considering requests from ministers or complaints.

The Office of the Inspector-General of Intelligence and Security (OIGIS) is situated within the Prime Minister's portfolio and reports to the Special Minister of State for the Public Service and Integrity for administrative purposes.

As an independent statutory office holder, the IGIS is not subject to general direction from the Prime Minister, or other Ministers on how responsibilities under the IGIS Act should be carried out.

The role and functions of the IGIS are set out in sections 8, 9 and 9A of the IGIS Act. These sections provide the legal basis for the IGIS to conduct regular inspections of the AIC agencies and to conduct inquiries, of varying levels of formality, as the need arises.

The overarching purpose of these activities is to ensure that each AIC agency acts legally and with propriety, complies with ministerial guidelines and directives, and respects human rights. The majority of the resources of the office are directed towards on-going inspection and monitoring activities, so as to identify issues, including about the governance and control frameworks within agencies, before there is a requirement for major remedial action.

The inspection role of the IGIS is complemented by an inquiry function. In undertaking inquiries the IGIS has strong investigative powers, akin to those of a royal commission. Inquiries are conducted in private because they almost invariably involve highly classified or sensitive information, and the methods by which it is collected. The public ventilation of this material could be potentially harmful to those persons involved in its collection, or compromise collection methodologies, neither of which would serve the national interest.

Although the primary focus of the IGIS relates to the activities of the AIC agencies, the IGIS Act was amended in November 2010 so that IGIS inquiries (at the direction of the Prime Minister) can include intelligence or security matters relating to *any* Commonwealth agency. This provision was used twice in 2010/11.

The inspection and inquiry activities of the IGIS are focused on the operational activities of the AIC agencies rather than their administrative and financial activities per se. While the OIGIS does not set out to inspect or inquire into matters of finance and administration within the AIC agencies, issues of this kind do, from time to time, inevitably arise. It is against this background that the following comments are submitted.

Complaints about the processing of security assessments for visa applicants

In 2010/11 the OIGIS received 1111 complaints about ASIO's processing of security assessments for visa applicants. This figure is an increase of around 9% from the 1015 received in 2009/10.

There are several reasons why I believe my office has continued to receive large numbers of complaints about the timeliness of security assessments for visa applicants. As the numbers of visa applicants referred to ASIO for a security assessment has trended upwards in recent years backlogs develop. This is particularly so for complex cases.

Another reason is that the role and functions of the IGIS have become better known amongst particular groups who have resettled in Australia, and amongst migration agents and refugee advocates. I believe this may be why it has become almost routine for enquiries to be made to my office about the status of visa applications, even in cases where a referral to ASIO for a security assessment might not yet have been made.

I noted a stabilisation and then a relative decline in the number of complaints made to my office in the last quarter of 2010/11. I attribute this to the implementation by the Department of Immigration and Citizenship (DIAC), in collaboration with ASIO, of a triaging approach to security assessments for visa applicants who meet the criteria for refugee status.

It was my practice in 2010/11 to make inquiries of ASIO as to whether or not they had been asked to undertake security assessments in respect of every individual who had been referred to my office, or who had approached us directly. My office would obtain sufficient information to make an assessment as to whether ASIO appeared to have acted unreasonably or made a processing error. However, it is not the role of the IGIS to make judgments about the merits of any particular security assessment.

I have also been firm in my view that the IGIS should not ask ASIO to change the priority of a case, or make the process quicker for a particular applicant. Doing so could lead to claims of queue jumping, and unfairly delay the processing of applications from individuals who have not raised complaints with my office.

The incidence of administrative error which I have identified in the processing of security assessments by ASIO is very small. In 2010/11 only one case out of 1111 warranted a formal preliminary inquiry. While delay in the completion of security assessments has been a cause of genuine concern to me, I am satisfied that this delay has not been caused by systemic administrative errors or improper processes by ASIO, but has been largely a by-product of external factors.

Given the low instance of administrative error by ASIO and the need to best utilise limited resources, I have decided to adopt a more strategic approach to scrutinising ASIO's processing of security assessments. My objective is to regularly inspect ASIO's systems and case management strategies, with a focus on cases which are more than 12 months old rather than to inquire into every case raised with my office. A new inspection process has been developed in consultation with ASIO.

DSD testing inquiry

In November 2010 DSD identified that a particular compliance testing regime may have been compromised through the use of a 'study guide' or 'cheat sheet' by DSD staff. The Minister for Defence requested that I conduct an inquiry into the matter and make appropriate recommendations.

DSD staff were required to undertake training on particular subjects and pass a test demonstrating competency. Staff were required to undertake the online training package at their own workstations. The open-book test was also conducted at their workstations and not in a controlled environment.

I found that there was evidence of the use of a number of 'study guides' or 'cheat sheets' within certain teams in DSD over a period of years. The investigation revealed that the distribution and promotion of the use of the 'study guide' was an accepted practice at the junior analyst level and, in some cases, was promoted by first-level supervisors. This finding was supported by the perceived view of a number of interviewed staff members of the relative unimportance of the subject matter and the test.

The investigation also found that staff and team leaders distributed the 'study guide' to assist colleagues to overcome significant and ongoing technical issues with accessing an on-line training and testing regime. Despite attempts by staff, these technical issues had not been escalated to senior staff and were not resolved satisfactorily. The use of the 'study guide' was seen as a workaround solution by some staff.

I made recommendations concerning: the re-testing of staff; future coordination of compliance training and testing; and, professional development of first-level supervisors. Due to the systemic nature of the issue, I decided not to recommend that DSD investigate individual staff involved for possible breach of duty or misconduct.

DSD accepted all of my recommendations and advised me in September 2011 that all recommendations had been implemented.

The investigation found that adequate controls had been put in place for other compliance testing regimes within DSD and that there was no evidence of other tests being compromised in a similar manner, including the important training and testing on the requirements of the *Intelligence Services Act 2001*.

Inquiry into the arrest and detention overseas of Mr Mamdouh Habib

In January 2011, at the request of the Prime Minister, I initiated a full inquiry into the actions of relevant Australian agencies in relation to the arrest and detention overseas of Mr Mamdouh Habib from 2001 to 2005.

The work of the inquiry was substantial. A team of four within the OIGIS examined many thousands of pages of documents and formally interviewed twenty five individuals. The inquiry was ongoing as at 30 June 2011, but was completed and the report provided to the Prime Minister and relevant Ministers in late December 2011.

Other preliminary inquiries

During 2010-11 I initiated three new preliminary inquiries about the activities of ASIO and concluded one ASIO inquiry carried over from 2009/10. This compares with twelve preliminary inquiries into ASIO which were initiated and/or concluded in 2009/10.

Two of the preliminary inquiries (one new and one carried over) involved concerns about the processing of visa security assessments. Both inquiries identified some administrative errors and highlighted issues relating to communication between ASIO and DIAC. The new inspection methodology implemented by my office from 1 July 2011 takes into account the outcomes of these investigations. The other two preliminary inquiries into ASIO concerned alleged misconduct of ASIO officers in their dealings with members of the public. In both cases I found no evidence to support the allegation that ASIO officers acted in an illegal, inappropriate or unprofessional manner.

I also initiated a preliminary inquiry into the handling of personal information by DSD during a recruitment process and delays in that process. I found that the time taken to finalise the recruitment process was not unreasonable. However, I also found that there had been a breakdown in DSD's internal procedures in regard to the handling of certain documents. DSD formally apologised to the complainant for the error and made a commitment to improving its procedural controls in order to prevent any reoccurrence.

Further information

I hope that the information provided in this submission is of some assistance to the Committee. Should you require clarification or additional information with respect to any of the above, I would be pleased to provide it.

Yours sincerely

Dr Vivienne Thom
Inspector-General

31 January 2012