

Review of administration and expenditure for ASIO, ASIS and DSD (Number 3)**Government Response****Recommendation 1**

That the Government give consideration to alternative mechanisms to address the Committee's concerns regarding separate financial statements by DSD which underpinned the Committee's recommendations in the first review of administration and expenditure.

Government response:

This proposal has been considered but the conclusion is that it is not practical for DSD to provide a separate full set of audited financial statements. DSD is an administratively integrated component of the Defence portfolio. Australia's defence capability is based upon the interdependencies of many component capabilities, including the intelligence capabilities of DSD. The Defence budget is managed to maintain the flexibility to direct, and redirect, resources to meet Government directions and maximise operational effectiveness.

DSD is not a separate Commonwealth entity. Unlike ASIO and ASIS which are statutory bodies, it is a part of the Department of Defence and, as a result, is unable to provide a complete set of separate financial statements to the Australian National Audit Office for audit, in accordance with the Finance Minister's Orders made under the Financial Management and Accountability Act 1997. To meet the requirements of the Committee to review the administration and expenditure, however, DSD provided the Committee with a copy of its annual financial information for 2002-2003, and intends to do so for 2003-2004 and subsequent years. The financial information submitted to the Committee by DSD is an accurate depiction of the resources managed within DSD on behalf of Defence.

Recommendation 2

That the Government give further consideration to providing the Committee with the classified annual reports of ASIO, ASIS and DSD.

Government response:

The Government has reviewed the question of access by the Committee to the classified annual reports of the intelligence and security agencies. These reports contain very sensitive details on the agencies' operational activities. Access to these classified reports would be inconsistent with the functions of the Committee as set out in s.29 of the Intelligence Services Act 2001. The Government recognises the Committee's need for documentary material to assist in reviews of agencies' administration and expenditure, and has agreed that extracts from annual reports covering administration and expenditure will, in future, be provided to the Committee. In the case of ASIO, such information is already provided in that organisation's unclassified annual report tabled in parliament. It needs to be noted that classified briefings and information have been, and will continue to be, provided to the Committee on a case-by-case basis in relation to specific issues.

Recommendation 3a

The Committee recommends that appropriate legislation be enacted that would require the Auditor-General to provide the Committee with the annual audits of ASIO, ASIS and DSD and further, that there be a requirement for the Auditor-General to provide any additional information that may be relevant to the Committee's review of administration and expenditure.

Government Response

The Auditor-General undertakes financial statement audits of ASIO and ASIS under Section 11 of the Auditor-General Act 1997 ('the Act'). DSD is not a prescribed agency and the financial operation of DSD is incorporated as part of the financial reporting of the Department of Defence. In undertaking the financial statement audit of the Department of Defence, the ANAO broadly considers DSD's financial matters.

The Government notes that, in relation to the Committee's review of administration and expenditure, the Auditor-General is already available, when required, to respond to parliamentary committee questions in relation to audit work ANAO has

undertaken. In this context, the Committee is free to request, from the Auditor-General, details for the agencies' annual audits as well as any additional information that may be relevant to its review of administration and expenditure, consistent with the provisions of Section 37 of the Act.

The Act specifies the type of information that the Auditor-General can provide in a public report or at a parliamentary committee meeting. Section 37 of the Act provides for the Auditor-General not to include particular information in a public report if:

- he is of the opinion that disclosure of the information would be contrary to the public interest; or
- the Attorney-General has issued a certificate to the Auditor-General stating that, in the opinion of the Attorney-General, disclosure would be contrary to the public interest for any one of a number of specified reasons.

Sub-section 37 (2) specifies that it would not be in the public interest to disclose information that '... would prejudice the security, defence or international relations of the Commonwealth'. The issue of providing information to parliamentary committees is similarly limited by sub-section 37 (3) of the Auditor-General Act. This provision states that if the Auditor-General is not able to include particular information in a public report because it would be contrary to public interest, then it cannot be required, and is not permitted to, disclose the information to, among other bodies, a joint committee of both Houses of Parliament.

In view of the above, the Government considers that legislative amendments along the lines proposed by the Committee are unnecessary because under the arrangements currently in place, the Committee is at liberty to request annual audits and any additional relevant information.

Recommendations 3b and 3c

The Committee recommends that, in consultation with ASIO, ASIS and DSD and with the Committee, the Auditor-General should develop a rolling program of performance audits. Such a program of performance audits should provide comprehensive coverage of agency administration.

In view of the special requirements relating to scrutiny of ASIO, ASIS and DSD by this Committee, the Committee further recommends that consideration be given to amendment of Section 10 of the Auditor-General's Act to reflect the importance of the ANAO in assisting this Committee to discharge its responsibility to review the expenditure and administration of ASIO, ASIS and DSD through an on-going program of performance audits.

Government response:

These two recommendations are inter-related. With regard to recommendation 3b, the Auditor-General selects audits for inclusion in the performance audit work program having regard to the audit principles of the Parliament, as required by Section 10 of the Act, and the key risks and challenges facing the Commonwealth public sector, within the context of the resources available to the ANAO. The audit work program is also developed on the basis of materiality and sensitivity, which allows ANAO resources to be allocated to priority topics. The Government considers that a rolling program, on a standing basis, of audits of ASIS, ASIO and DSD is likely to undesirably constrain the flexibility of ANAO's audit program.

In developing its performance audit work program for the subsequent financial year (recommendation 3a), the ANAO is required by legislation to consult with the Joint Committee of Public Accounts and Audit (JCPAA) which, in turn, consults with the other parliamentary committees for their views which the JCPAA takes into account in finalizing its guidance for this element of ANAO's work program. The current process, consequentially, already provides a standing mechanism for all parliamentary committees to convey their priorities to the Auditor-General through the JCPAA. The Government believes that an amendment to the Audit Act as proposed is, accordingly, unnecessary and could disrupt the established and well-functioning mechanism for ANAO engagement with the Parliament, primarily through the JCPAA.

The issue of not disclosing information that would be contrary to the public interest, as discussed above in relation to recommendation 3a, also applies in relation to recommendation 3b and 3c.

Recommendation 3d

The Committee further recommends that appropriate legislative provision should be made to require the Auditor-General to provide the Committee with copies of classified performance audits in relation to ASIO, ASIS and DSD.

Government response:

Under the arrangements currently in place, which enable the Auditor-General, when required, to respond to parliamentary questions in relation to audit work the ANAO has undertaken, the Committee is at liberty to request copies of classified

performance audits consistent with the provisions of Section 37 of the Auditor-General Act 1997. Accordingly, the Government does not consider that any legislative amendments, along the lines proposed, are required.

Recommendation 4

The Committee recommends that consideration be given, as appropriate, to greater liaison between the IGIS and the Commonwealth Ombudsman (and State Ombudsman), including the development of a memorandum of understanding or protocol governing possible joint reviews of combined ASIO/police operations.

Government response:

The Government is favourably disposed to settling an MOU between IGIS and the Ombudsman which would deal with the issue of abutting responsibilities. Such an MOU would be negotiated in the context of a planned amendment to section 16 of the IGIS Act, to enable the Inspector-General to consult formally with the Ombudsman.

Recommendation 5

The Committee recommends that the Government provide the Committee with a copy of the report on the outcomes of the ASIO polygraph trial as soon as it is completed.

Government response:

The Government expects to receive from ASIO, during 2005, a classified report on the outcomes of the polygraph trial. Favourable consideration will be given to the option of ASIO providing the Committee with a briefing on the outcome of the trial.

Recommendation 6

It is the view of the Committee that the Chair of the Committee or members nominated by the Chair should be invited by ASIO, ASIS and DSD to attend orientation sessions with new recruits thereby gaining a greater understanding of the orientation process and to provide opportunities for new recruits to be advised of the Committee's role and responsibilities.

Government response:

The Government agrees that new recruits to the intelligence and security agencies be briefed on the Committee's role and responsibilities through the participation of the Committee Chair or other members in AIC training sessions.

Recommendation 7

The Committee recommends that ASIS produce an unclassified version of its Code of Conduct and that this be tabled in Parliament by the Minister for Foreign Affairs, be sent out to all ASIS applicants, and be made publicly available on request.

Government response:

The Government does not agree that the ASIS Code of Conduct should be tabled in Parliament. The Code of Conduct is currently being reviewed with a view to an unclassified version being placed on the ASIS website for public access.

Recommendation 8

The Committee would like to encourage all intelligence agencies to undertake regular staff surveys and, if they are not already doing so, to make use of suggestion boxes that allow for anonymous feedback by staff. The Committee recommends that at each review of administration and expenditure, the results of staff surveys are made available to the Committee for examination.

Government response:

It is already standing policy in the intelligence and security agencies to conduct regular staff surveys. The Government agrees that the Committee be briefed on outcomes, relevant to its mandate, from these surveys during each review of administration and expenditure. Because of the operational sensitivity of some information, it would not be appropriate to provide the survey results in full.

Recommendation 9

That a review be undertaken on the extent of public reporting across all the intelligence agencies overseen by the Committee.

Government response:

The need for a Committee-resourced review into public reporting and accountability is a matter for the Committee to determine. The Government would be prepared to have agencies contribute any details relevant to the Committee's inquiry, subject to operationally-sensitive information not being disclosed.
