



Joint Select Committee on the Intelligence Services

Chairman, the Hon David Jull, MP

CANBERRA

27 August 2001

REPORT OF INTELLIGENCE SERVICES COMMITTEE Findings and Recommendations

The Joint Select Committee on the Intelligence Services tabled its report on the review of the Intelligence Services Bills on Monday, 27 August 2001.

The Parliament requested the Joint Select Committee on the Intelligence Services to review three Bills focusing on the Australian Secret Intelligence Service (ASIS). The Committee has reported on the legislative reforms in the:

- Intelligence Services Bill 2001;
- Intelligences Services (Consequential Provisions) Bill 2001; and
- the provision in the Cybercrime Bill 2001 relating to ASIS and DSD – Liability for Certain Acts (these Bills are available from the Committee's website shown below).

The Intelligence Services Bill 2001 (IS Bill) makes an historic contribution to the development of the Australian intelligence community. For the first time, the functions of both the Australian Secret Intelligence Service (ASIS) and the Defence Signals Directorate (DSD) are provided for in legislation.

The findings of the 1995 Commission of Inquiry into the Australian Secret Intelligence Service provide the basis for the IS Bill. One of the key recommendations of the Commission of Inquiry was the need for a legislative base for ASIS.

The key features of the IS Bill include the provision of immunities for both ASIS and DSD, the provision of rules to protect the privacy of Australians, and the creation of a Parliamentary Joint Committee on ASIO and ASIS (PJCAA).

The focus of the Committee's review was the accountability mechanisms applying to the use of the immunity provisions under clause 14 of the Bill. The Committee's scrutiny identified a number of unintended consequences in the IS Bill.

The recommendations will eliminate these concerns and ensure that the accountability framework is effective. The major findings and recommendations include:

- amendments to clause 14 which will ensure that immunity can only be granted where an act is done in the proper performance of a function of the agency; (p/2)

- the development of protocols to guide the operation of clause 14, and the requirement that clause 14 not come into effect until the Inspector-General of Intelligence and Security has received the protocols and the PJCAA has been briefed on the protocols;
- amendments to clauses 8 and 9 regarding Ministerial directions and authorisations which will narrow the scope of possible intelligence collection directed towards Australian persons or Australian organisations based overseas to matters of national security;
- the strengthening of clause 15 regarding rules to protect the privacy of Australians by ensuring that the responsible Minister must consult with the Attorney-General before making the rules relating to the communication and retention of information concerning Australian persons; and
- amendments which enhance Parliamentary scrutiny through expanding the powers of the PJCAA. These additional powers include:
 - the requirement that the Minister advise the Committee of the nature of any direction made under paragraph 6(1)(e) regarding ASIS undertaking such other activities as the responsible Minister directs;
 - the requirement to be briefed by the IGIS on the protocols relating to clause 14, and the privacy rules made under clause 15; and
 - the requirement that DSD be subject to scrutiny by the Committee.

These recommendations will enhance the Intelligence Services Bill 2001 by providing an effective accountability framework which will provide confidence for the Parliament and the Australian public.

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