

ASIO and its accountability

...the good guys – that is, the forces of law enforcement and intelligence – have to expose themselves to a level of public accountability which may in some small way hinder their effectiveness. But that is the balance that we insist on in a democratic society.¹

Role of ASIO

- 2.1 ASIO is Australia's domestic intelligence service. ASIO's role is to:
- obtain, assess and communicate intelligence relating to threats to security;
 - provide protective security advice; and
 - within Australia, obtain under warrant intelligence relating to the intentions, capabilities and actions of foreign powers.²
- 2.2 ASIO officers do not carry firearms, and cannot question or detain people, or make arrests. Their role is to inform the government (and police agencies where appropriate) on security threats.³
- 2.3 ASIO was established in 1949, but was not given a legislative basis until 1956. A new Act was passed in 1979 (the ASIO Act 1979) which clearly defines ASIO's role and functions, and places limitations on its operations.

1 Nigel Waters, Australian Privacy Charter Council, Transcript of Evidence 17 July 2000, p. 29.

2 ASIO, submission no. 14, p. 5.

3 ASIO internet site: <http://www.asio.gov.au/Employment/comp.htm>, accessed 9 August 2000.

- 2.4 The ASIO Act defines "security" as protection from:
- espionage;
 - sabotage;
 - politically motivated violence;
 - promotion of communal violence;
 - attacks on Australia's defence system; and
 - acts of foreign interference.⁴
- 2.5 The ASIO internet site, at <http://www.asio.gov.au>, gives an overview of ASIO's history. There are also a number of books which provide detailed accounts of the organisation's history.⁵
- 2.6 Information about Australia's other intelligence agencies – the Australian Secret Intelligence Service (ASIS), the Office of National Assessments (ONA), the Defence Signals Directorate (DSD) and the Defence Intelligence Organisation (DIO) – is available on the internet.⁶

ASIO's accountability mechanisms

- 2.7 In order to place our inquiry into context, below is a brief overview of ASIO's accountability mechanisms. Further information on ASIO's accountability is available on the ASIO internet site and in its annual report.⁷

4 *Australian Security Intelligence Organisation Act 1979*, Section 4, available at: <http://scaleplus.law.gov.au/html/pasteact/0/48/top.htm>, accessed 21 July 2000.

5 The history of ASIO is explored in books such as David McKnight, *Australia's Spies and their Secrets*, Allen & Unwin, Australia, 1994; and Frank Cain, *The Australian Security Intelligence Organization: An Unofficial History*, Frank Cass and Co. Ltd, Great Britain, 1994.

6 Australian Secret Intelligence Service – <http://www.asis.gov.au>, accessed 26 July 2000.

Office of National Assessments – <http://www.ona.gov.au>, accessed 26 July 2000.

Defence Signals Directorate – <http://www.dsd.gov.au>, accessed 26 July 2000.

Defence Intelligence Organisation – <http://www.dod.gov.au/dio/welcome.html>, accessed 26 July 2000.

7 ASIO internet site, <http://www.asio.gov.au>, accessed 24 July 2000.

Attorney-General

- 2.8 ASIO's primary accountability is to the Attorney-General, who is in turn accountable to the Australian Parliament and the people. ASIO briefs the Attorney-General on all major security issues and the Attorney has issued guidelines which ASIO is required to follow in undertaking its activities. These guidelines cover ASIO's activities in relation to collection of intelligence, politically motivated violence, and staffing (requiring that ASIO employ staff on terms consistent with the government's general principles for public sector employment). The guidelines are available to the public through the Attorney-General's Department, and on the ASIO internet site.
- 2.9 ASIO must apply to the Attorney-General for warrants to undertake covert investigative work, and the Attorney is involved in vetting ASIO's annual report (these processes are outlined further in the report in Chapter 3).

Inspector-General of Intelligence and Security

- 2.10 The Inspector-General of Intelligence and Security (IGIS) was established in 1986 to provide independent assurance to the Australian government, the Parliament and the people that Australia's intelligence agencies:
- conduct their activities within the law;
 - behave with propriety;
 - comply with ministerial guidelines and directives; and
 - have regard to human rights.⁸
- 2.11 The IGIS is not part of any government department or agency, and is appointed by the Governor-General for a three-year, non-renewable term. The current IGIS is Mr Bill Blick PSM. The activities undertaken by the IGIS include:
- monitoring what the intelligence and security agencies do;
 - conducting inquiries, either self-initiated or at the request of government (and making recommendations where appropriate); and
 - investigating complaints about the agencies.⁹

8 The role of the IGIS is detailed in the *Inspector-General of Intelligence and Security Act 1986*, available at: http://www.austlii.edu.au/au/legis/cth/consol_act/ioiasa1986436/, accessed 9 August 2000.

9 IGIS internet site: <http://www.igis.gov.au>, accessed 24 July 2000.

- 2.12 The IGIS also routinely reviews the circumstances in which ASIO seeks warrants from the Attorney.
- 2.13 The *Inspector General of Intelligence and Security Act 1986* provides extensive powers for the IGIS to undertake these tasks, including the power to enter the premises of the intelligence agencies, to require a person to answer questions or hand over documents, and to take sworn evidence.
- 2.14 While IGIS inquiries are conducted in private, the IGIS reports its activities in its annual report, which is tabled in Parliament.

Parliamentary Joint Committee on ASIO

- 2.15 Under the ASIO Act, the function of the Committee is to review aspects of ASIO's activities which are referred to us by the Attorney-General or the Parliament, and to report our findings to the Attorney General and to the Parliament (provided the Attorney-General gives permission).
- 2.16 The Committee may not:
- review matters that relate to the obtaining or communicating by ASIO of foreign intelligence;
 - review an aspect of the activities of ASIO that does not affect any person who is an Australian citizen or permanent resident;
 - review matters that are operationally sensitive; or
 - inquire into individual complaints about ASIO's activities.¹⁰
- 2.17 While our oversight of ASIO's activities is limited by the ASIO Act and by the need for inquiries to be referred by the Attorney or by the Parliament, our inquiries provide the community with an opportunity to scrutinise the policies guiding ASIO's operations and to provide advice to the Parliament and the Government on ASIO's operations.

Other members of Parliament

- 2.18 ASIO provides regular briefings to the National Security Committee of Cabinet (NSC), which includes the Prime Minister, Deputy Prime Minister, Foreign Affairs Minister, Attorney-General, Defence Minister and the Treasurer. The NSC, which the Prime Minister chairs, sets broad policy, priorities and budgets for the intelligence agencies. The NSC is supported by a committee of senior departmental officers (the Secretaries' Committee on National Security).

¹⁰ *Australian Security Intelligence Organisation Act 1979*, Part VA.

- 2.19 Under the ASIO Act, the Director-General of ASIO is also required to brief the Opposition Leader on security issues.
- 2.20 ASIO has, from time to time, been called to appear before Parliamentary Committees to give evidence on security related matters. For example, ASIO's Director-General gave evidence to the Senate Legal and Constitutional Legislation Committee for its inquiry into the provisions of the *Telecommunications (Interception) Legislation Amendment Bill 1999*.¹¹
- 2.21 Transcripts of ASIO's public appearances before Parliamentary committees are available to the public. ASIO may also appear 'in camera' (privately) before Parliamentary committees where appropriate. An example of this type of evidence was ASIO's appearance before the Joint Standing Committee on Migration in 1999 to provide detail of security checking procedures for entry into Australia.¹²
- 2.22 Since 1993 ASIO has participated in the Senate Estimates process (as part of the Attorney-General's portfolio, appearing before the Senate Legal and Constitutional Legislation Committee). This allows general questioning of ASIO's budget allocations and expenditure requirements, however, questioning of ASIO is more restrained than questioning of other agencies.
- 2.23 The Senate Estimates hearings are open to the public, and transcripts of the evidence are available from Hansard. However, most members of the public would probably not be aware that the hearings were taking place, or where to access transcripts if they were interested. This is perhaps one area in which the ASIO internet site might be expanded – to include links to the Hansard transcripts of the organisation's appearances before Senate Estimates Committees and other Parliamentary hearings.

11 Senate Legal and Constitutional Legislation Committee, *Inquiry into the Provisions of the Telecommunications (Interception) Legislation Amendment Bill 1999*, Parliament of Australia, May 2000.

12 Joint Standing Committee on Migration, *Going for Gold: Immigration Entry Arrangements for the Olympic and Paralympic Games*, Parliament of Australia, September 1999.

Conclusion

- 2.24 We believe that the accountability framework within which ASIO operates represents a sensible balance between openness and secrecy.
- 2.25 This is not to say that ASIO has always been as open as it could have been about the nature of its operations: there have undoubtedly been occasions in the past when it has been unduly secretive. But, in our view, the accountability structures described in the ASIO Act and the IGIS Act are generally appropriate for Australia's domestic intelligence agency.