



Inspector-General of  
Intelligence and Security

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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 2009/10***

I am writing in response to your letter of 8 December 2010 inviting me to make a submission to the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) review of the administration and expenditure of the six intelligence and security agencies which comprise the Australian Intelligence Community (AIC) for the financial year 2009/10.

I am pleased to accept the Committee's invitation and to this end would like to offer some general background information about the role and focus of my office, and then comment on issues that my office dealt with in the period under review, which might be of interest to your inquiry.

***Role, functions and focus of 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 role 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) could include Commonwealth departments and agencies that are not members of the AIC for intelligence or security matters. This provision was used in December 2010 when the Prime Minister requested me to inquire into the actions of Australian government agencies in relation to the arrest and detention overseas of Mr Mamdouh Habib from 2001 to 2005

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 come to attention. It is against this background that the following comments are submitted.

### ***Complaints about the timeliness of ASIO security assessments***

In previous submissions to this Committee, the IGIS has noted a significant increase in the number of complaints made to the office from members of the public who were concerned about the timeliness with which ASIO processes security assessments in relation to visa applications. During 2009-10, this office received a significant increase in this type of complaint. We received a total of 1015 new complaints of this kind in 2009-10, compared to 153 such complaints received in 2008-09.

This office can check whether or not ASIO is acting unreasonably or has made a processing error but we are not able to direct ASIO to change the priority of a case, or make the process quicker for a particular applicant. We can look at individual complaints to see whether they indicate systemic problems.

During 2009-10, this office received a number of complaints concerning the timeliness of ASIO's processing of security assessments for irregular maritime arrivals applying for non-statutory refugee status assessments. In addition to a number of individual complaints, we received several complaints made on behalf of groups of individuals who were being held in the Christmas Island Immigration Detention Centre.

We continue to have discussions with senior ASIO staff about its approach to security assessments for persons in this situation and have looked at ASIO's handling of a large number of these security assessments. In considering these assessments we have found no evidence that ASIO had acted in anything other than a proper and legal manner.

### *Archives related complaints*

ASIO routinely receives a large number of requests, via the National Archives of Australia (NAA), for access to its records which are more than 30 years old. These records are in the so-called 'open period'. Such applications range from straightforward requests from people seeking the records of a family member, through to professional researchers who submit multiple applications for considerable volumes of records.

Upon receipt of an application for access to open period records, the *Archives Act 1983* provides that there can be up to 90 days to:

- examine records to which access is sought
- determine if those records, or parts of those records, are exempt records
- release any record, or part of a record, that is not exempt.

To assist my general monitoring of ASIO's overall archives performance, the Director-General of Security provides my office with quarterly progress reports.

In 2008-09 IGIS conducted a preliminary inquiry into an archive related matter which was concerned with the adequacy or otherwise of the transfer of historical cinefilm records to VHS cassette format and the subsequent destruction of the original cinefilm in the early 1990s.

This inspection confirmed that the storage arrangements were inadequate and contributing to the degradation and destruction of the cinefilm. To minimise further damage, ASIO undertook to relocate the film to an appropriate location, in negotiation with the NAA. This relocation was delayed and at 30 June 2010 the cinefilm remained in inappropriate storage conditions. We have since been notified that the transfer of the film was completed in December 2010.

### *Administrative arrangements*

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

Yours sincerely



Vivienne Thom  
Inspector-General

7 February 2011