

Parliament and legislation



The following chapter briefly summarises legislative developments relevant to the AIC and to OIGIS, the input that I have provided to some significant legislative reviews and sets out some of the interactions of this office with parliamentary bodies during the reporting period.

I have also included in this chapter some details of interactions with other government agencies and bodies, which might be characterised as attempts to aid the development and maintenance of public sector governance structures.

Parliamentary oversight

Parliamentary Joint Committee on Intelligence and Security

The PJCIS came into existence on 2 December 2005, as a successor to the Parliamentary Joint Committee on ASIO, ASIS and DSD.

The composition, role and functions of the PJCIS are prescribed under sections 28 and 29 of the *Intelligence Services Act 2001* (ISA).

The PJCIS comprises nine members, four of whom must be drawn from the Senate and five from the House of Representatives. The current Chair of the PJCIS is the Hon Arch Bevis MP, while the Hon Philip Ruddock MP serves as the Deputy Chair.

The PJCIS plays a significant role in overseeing the activities of the AIC agencies, particularly in respect of their administration and expenditure.

Although OIGIS is not formally one of the six AIC agencies, and therefore not itself directly within the remit of the PJCIS, it has been my usual practice to periodically meet with the PJCIS in private to provide an overview of the work of my office and to discuss issues of mutual interest or concern. There are also some matters under the ISA on which the PJCIS can formally seek a briefing from the IGIS.

During 2008-09 my interactions with the Committee covered:

- The PJCIS's inquiry into AIC Expenditure and Administration for 2006-07. I made a submission to the Committee on 1 October 2008.
- Representation by Committee members, my office and I at the IIRAC held in New Zealand, in October 2008.
- The PJCIS's inquiry into AIC Expenditure and Administration for 2007-08. I made a submission to the Committee on 6 February 2009 and appeared before the Committee in respect of this on 19 March 2009.

In 2009-10 I will also liaise with the Committee in planning for the International Intelligence Review Agencies Conference, which we will jointly host in Australia in early 2010.

Senate Finance and Public Administration Committee

I appeared before the Senate Standing Committee on Finance and Public Administration during its Supplementary Budget Estimate hearings on 20 October 2008 and Budget Estimates hearings on 26 May 2009.

Parliamentary Joint Committee of Public Accounts and Audit

I made a submission to the Parliamentary Joint Committee of Public Accounts and Audit inquiry into the impact of the efficiency dividend on small agencies and appeared before the Committee in relation to this on 20 August 2008.

Further discussion on this issue is provided in the 'Management and Accountability' chapter of this report.

House of Representatives Legal and Constitutional Affairs Committee

On 10 July 2008 the House of Representatives Legal and Constitutional Affairs Committee was asked to inquire into and report on *Whistleblowing protections within the Australian Government public sector*.

I made a submission to the inquiry on 17 July 2008 and appeared before the Committee in relation to this on 16 October 2008. A report of the inquiry was tabled on 25 February 2009.²⁴

Recommendation 19 of the report includes a proposal that the IGIS be able to receive public interest disclosures concerning the AIC agencies.

Joint Standing Committee on Migration

On 1 December 2008 the Joint Standing Committee on Migration tabled its report *Immigration detention in Australia: A new beginning – Criteria for release from detention*.²⁵ This is the first of a series of three reports relating to its inquiry into immigration detention in Australia.

The Committee's report highlighted, among other things, the impact of the time taken by ASIO to complete a security assessment, on the timeliness of the release of persons from immigration detention. This is an area that I will continue to monitor closely to ensure ASIO is acting legally and properly.

Legislative proposals and developments

Proposed Amendments to the IGIS Act

As discussed in the previous chapter of this report, the Attorney-General has accepted a recommendation to extend the IGIS's mandate to pursue inquiries into intelligence and security matters which reach beyond or are outside of the AIC, but only upon the basis of approval from the Prime Minister to do so. A Bill to carry the necessary amendments to the IGIS Act forward is to be drafted.

I will take advantage of this opportunity to pursue several other minor and technical amendments to the IGIS Act.

In addition to this Bill, there are likely to be amendments to the IGIS Act if changes to

²⁴ See <<http://www.aph.gov.au/house/committee/laca/whistleblowing/report.htm>> (accessed 5 August 2009).

²⁵ See <<http://www.aph.gov.au/house/committee/mig/detention/report.htm>> (accessed 5 August 2009).

whistleblowing arrangements in the Commonwealth sector are progressed.

I also think it is important not to lose sight of recommendation 6-3 made by the Australian Law Reform Commission in its 2007 report *Privilege in Perspective: Client Legal Privilege in Federal Investigations*. This recommendation was that the IGIS Act (and two other pieces of legislation) should be amended to make it clear that client legal privilege cannot be claimed by an agency in relation to either litigation privilege or advice privilege.

Consequential Amendments to the IGIS Act

On 25 June 2009 the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2009 was passed by both Houses of Parliament.

The *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* was assented to on 8 July 2009. Among other things, it updates the IGIS Act to:

- refer to the ‘Australian Human Rights Commission’ (rather than the superseded title of ‘Human Rights and Equal Opportunity Commission’), and
- include inquiries into disability discrimination within the express functions of the IGIS.

Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008

The Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008 was introduced into Parliament on 26 November 2008. The Bill was referred to the Senate Finance and Public Administration Committee for inquiry.

Among other measures, the Bill proposes a role for the IGIS to appear as a special witness before the AAT, should an application be made for the review of a decision to refuse access to official information under a national security, defence, international relations or confidential government communication exemption.

On 10 March 2009 the Committee provided its inquiry report to the Senate and recommended that the Bill be passed.

Independent Reviewer of Terrorism Laws Bill 2008 [No. 2] and the National Security Legislation Monitor Bill 2009

On 12 September 2008 I made a submission to the Senate Standing Committee on Legal and Constitutional Affairs regarding its inquiry into the Independent Reviewer of Terrorism Laws Bill 2008 [No. 2].²⁶

I appeared before the Committee in relation to this on 18 September 2008, where I expressed my continuing support for the creation of such a position.

On 14 October 2008 the Committee recommended to the Senate that the Bill be supported in principle, but suggested a number of amendments be implemented prior to it being passed.

The Government subsequently introduced the National Security Legislation Monitor Bill 2009 into the Parliament on 25 June 2009. It provides the Government’s response to the proposal that an independent reviewer of Australia’s counter-terrorism and national security legislation be appointed.

The Bill was referred to the Senate Finance and Public Administration Committee for inquiry and report by 7 September 2009.

The Bill provides a capacity for a National Security Legislation Monitor to consult with the IGIS in the performance of his or her functions.

Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009

The Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009 was introduced into the Parliament on 24 June 2009 and was referred to the Senate Legal and Constitutional Affairs Committee on 25 June 2009.

The Bill includes amendments to assumed identities and witness identity protection arrangements applying to ASIO and ASIS, and their reporting obligations to the IGIS.

26 See <http://www.aph.gov.au/senate/committee/legcon_ctte/terrorism/submissions/sub13.pdf> (accessed 5 August 2009).

Anti-Terrorism Laws Reform Bill 2009

The Anti-Terrorism Laws Reform Bill 2009 was introduced into the Parliament on 23 June 2009 and was referred to the Senate Legal and Constitutional Affairs Committee on 25 June 2009.

Among other matters, the Bill seeks to amend provisions in the ASIO Act relating to the questioning and detention of terrorism suspects.

ALRC review of privacy law and practice

The ALRC report *For Your Information: Australian Privacy Law and Practice (ALRC 108)* was publicly launched on 11 August 2008.

The report contained two recommendations applicable to OIGIS.

Recommendation 34-5 was that the office not be exempt from the operation of the Privacy Act 1988 in relation to our administrative functions. This was raised by the ALRC in its discussion paper and was something with which I agreed.

Recommendation 35-5 was that OIGIS develop and publish information handling guidelines in respect of the non-administrative functions of the office.

I continue to believe (as outlined in my submission to the ALRC dated 6 December 2007) that the protective framework for personal information provided by the IGIS Act is very sound, and that Recommendation 35-5 would not add further to the protections that already exist. On this basis I do not support the recommendation.

ALRC review of secrecy provisions in Commonwealth legislation

On 5 August 2008 the ALRC received terms of reference from the Attorney-General, the Hon Robert McClelland MP, to review relevant Commonwealth laws and practices relating to secrecy, confidentiality, and the protection of Commonwealth information. I was pleased to be invited to serve on the Advisory Committee for the review.

In December 2008 the ALRC released an issues paper *Review of Secrecy Laws (Issues Paper 34)*. A more detailed Discussion Paper *Review of Secrecy Laws (Discussion Paper 74)* was released on 18 June 2009.

I hosted a roundtable meeting between the ALRC and AIC agencies (with the Attorney-General's Department also in attendance) to discuss issues relevant to the review on 3 February 2009.

ALRC review of Royal Commissions Act

On 20 January 2009 the Attorney-General announced that he had asked the ALRC to review the *Royal Commissions Act 1902*, and also to explore whether other less formal (and less expensive) alternatives might be developed. On 6 April 2009 the ALRC released an issues paper *Review of the Royal Commissions Act* seeking feedback from the community.

I made a submission to the review on 12 May 2009. My submission emphasised the considerable advantages which can result from having a standing body (such as the OIGIS) to conduct inquiries in terms of flexibility, less formality and cost-effectiveness.

OIGIS itself results from a recommendation of a Royal Commission,²⁷ to ensure ongoing focus on the legality and propriety of the activities of the AIC agencies. A flexible inquisitorial approach by a standing body with strong powers can be highly cost effective.

OIGIS usually conducts three or four full inquiries each year, as well as undertaking a number of preliminary inquiries, pursuing an extensive inspection program and resolving a significant number of complaints administratively.

The operating appropriation for the office in 2009-10 totals a modest \$2.1 million. When compared to the cost of alternate mechanisms for pursuing such matters, I believe that this represents excellent value for the taxpayer.

The ALRC commissioner in charge of the inquiry,

²⁷ Report of the second Royal Commission into the Australian Intelligence Agencies by the Honourable Justice Robert Hope QC of December 1984.

Professor Les McCrimmon, made a presentation to the Australian Institute of Administrative Law about the review on 15 May 2009. I was asked, and agreed, to attend to provide a commentary on Professor McCrimmon's presentation.

Liaison with other Commonwealth integrity agencies

During 2008-09 I attended several meetings of heads of Commonwealth agencies which have as their role promoting integrity and accountability in public administration.

Contributions to public sector governance

Membership of the Administrative Review Council

The then Attorney-General, the Hon Mr Philip Ruddock MP, announced in a media release dated 26 April 2007, that I had been reappointed as a part-time member of the *Administrative Review Council (ARC)* for a further three years.

I found these periodic meetings to be a useful forum for the exchange of ideas and of assistance in developing common approaches to issues of mutual interest or concern.

These meetings are likely to continue on a regular basis.

The functions of the ARC (as provided for in section 51 of the *Administrative Appeals Tribunal Act 1975*) include keeping the Commonwealth's administrative laws and practices under review, monitoring developments, recommending improvements to the system to the Attorney-General and promoting knowledge about the Commonwealth administrative law system.

During 2008-09 I continued to meet my obligations as an ARC member.

CrimTrac Audit Committee

Immediately prior to commencing as Inspector-General, I served for a number of years as a Deputy Secretary in the Attorney-General's Department. During that time I was involved in the establishment of a new specialist agency, CrimTrac and was the first Chair of its Board of Management (2000 04).

CrimTrac exists to provide specialist support to Australian police services through the provision of information and specialist investigative tools, and national criminal history record checks for accredited agencies.

Given my earlier involvement I was happy to be invited in 2007 to sit on CrimTrac's Audit Committee. I continued to attend CrimTrac Audit Committee meetings during 2008-09.