

# Performance



## Outcomes and outputs

In 2008-09 OIGIS had one specified outcome for program budgeting purposes. That output was to provide:

*“assurance that Australia’s intelligence agencies act legally, ethically and with propriety.”*<sup>28</sup>

This outcome is achieved through a single program output which is to:

*“inspect, inquire into, and report on, the activities of the intelligence and security agencies.”*<sup>29</sup>

The fact that the office has only one program outcome reflects our relatively small size and the comparatively narrow focus of our activities. In other words, OIGIS is a small specialist review agency operating within a well defined niche.

OIGIS, like other Commonwealth agencies, will transition in 2009-10 from the ‘outcomes and outputs’ approach detailed above, to a new ‘outcomes and programs’ structure.

Under the agreed new structure the outcome for OIGIS will be to provide:

*“Independent assurance for the Prime Minister, senior ministers and Parliament as to whether Australia’s intelligence and security agencies act legally and with propriety by inspecting, inquiring into and reporting on their activities.”*<sup>30</sup>

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28 PM&C Portfolio Budget Statement 2009-10, p 260. Available from: <<http://www.pmc.gov.au/accountability/budget/2009-10/pbs/oigis.pdf>> (accessed 5 August 2009).

29 Ibid.

30 Ibid. p.262.

The strategy to be employed to achieve this outcome is for OIGIS to:

- *“continue and expand the agency’s inspection activities, which involve proactively monitoring and reviewing the activities of the AIC agencies, and*
- *where appropriate, initiate ‘own motion’ inquiries and investigate complaints/referrals about the activities of the AIC agencies.”*<sup>31</sup>

### **Performance indicators**

The effectiveness of the office can be assessed against several key performance indicators. The following measures take into account the unique role and functions of the OIGIS:

- acceptance by ministers and agency heads of recommendations arising from inquiries
- the responses of agencies to issues raised arising from inspection activities
- the time taken to deal with complaints and conclude inquiries, and
- the level of assurance the Inspector-General can provide that the agencies are conducting their activities legally, with propriety, and regard to human rights.

Under the transitional arrangements which have been foreshadowed for the new outcomes and program structure, performance indicators will in the future also reflect the breadth and depth of inspection work undertaken by OIGIS, and the extent to which there has been change within the AIC agencies as a result of the activities of the office.

### **Complaint handling procedures**

My office receives a wide variety of approaches from members of the public and from some AIC agency employees or people who otherwise have a connection to the AIC.

Contacts can take the form of letters, faxes, audio or video recordings, or sometimes face to face meetings. However, most contacts are initiated by means of email or telephone.

It is worth stating here that it is the policy of the office that no member of staff will meet with any person who has a query or concern about an AIC agency unless that person has first arranged and confirmed an appointment.

This policy exists to ensure that persons with such concerns do not make unnecessary visits to our offices (especially when the issues that are raised may fall outside of our jurisdiction) but also and importantly to ensure that the personal safety of OIGIS staff members is not threatened.

The approaches we receive can generally be divided into two categories, namely “contacts” and “complaints”.

The category of “contacts” includes matters not within the jurisdiction of the IGIS, requests for information and cases where the person decides not to lodge a complaint. Statistics on this category are not detailed in this office’s annual reports.

In the case of those matters falling outside my jurisdiction, it is the practice of my office to refer complainants to an appropriate review body which does have the power to investigate their complaints, where it is appropriate to do so.

These referrals are most frequently to the Commonwealth Ombudsman or to a state-based Ombudsman, but do from time to time include other appropriate review bodies.

Tip-off information received is ordinarily passed to the National Security Hotline, or other agencies as appropriate.

It is only if the information imparted involves allegations of illegality or impropriety on the part of any member of the AIC that it is appropriate for consideration by this office. These matters are registered in OIGIS as complaints.

The approach of this office is to process the majority of complaints we receive administratively rather than by means of inquiry. This approach is preferred because in most cases it is the most efficient and quickest means of responding to a complainant’s concerns.

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31 PM&C PBS 2009–10, op cit

Where complaints cannot be adequately addressed by way of an administrative inquiry (such as when complex issues or serious concerns are raised), a preliminary or full inquiry is the preferred approach.

## **Inquiries**

Preliminary inquiries will usually be pursued if there is a question about the jurisdiction of the IGIS which requires further information before it can be resolved, or in cases where further information is required from the agency in question, in order to form a view as to whether a fuller inquiry is required.

Preliminary inquiries are, as the name suggests, less formal than a full inquiry and will ordinarily be sufficient to address issues raised by a complainant, or any concerns which the Inspector-General might have, without the need to undertake a full inquiry.

The final means of investigating a complaint, responding to a formal request from a responsible Minister for an investigation into a matter within my remit, or for me to pursue a matter on my own motion, is by means of an inquiry, as provided for under Division 3 of the IGIS Act.

Inquiries of this kind are more commonly referred to as “full inquiries” in my office, so as to readily distinguish them from the other form of inquiries my office undertakes.

Full inquiries can be very intrusive should I use the full array of special investigative powers which are available to me. These powers include the power to compulsorily obtain information and documents, to enter premises occupied or used by an AIC agency, to issue notices to persons to attend before me to answer questions relevant to the matter under inquiry, and to administer an oath or affirmation when taking such evidence.

Four full inquiries were completed in 2008/09. These are discussed in the following sections of this report:

- ASIO chapter - for the inquiry into ASIO's purported mistreatment of Mr Izhar UI-Haque in 2003
- Defence Intelligence Agencies chapter – for the inquiry into the integrity of DIO's assessment activities
- Defence Intelligence Agencies chapter - for the

inquiry into the allegation that an individual or individuals associated with DSD investigated the then Minister for Defence, the Hon Joel Fitzgibbon MP, and

- Classified Annex – for the inquiry into a sensitive ASIO personnel matter. (This annex is not available to the public.)

## **Inspection and visits program**

An increase in office staffing meant that I was able to expand the office's inspection program. I see an important part of this office's inspection program being to monitor agency use of relatively new powers and capabilities, to gauge whether these are being used professionally and with suitable controls. This is in addition to the general value of the inspection program in identifying issues, including about the governance and control frameworks within agencies, before there is a requirement for major remedial action.

During 2008-09 approximately two-thirds of the resources of my office were devoted to scheduled inspection activities and agency visits, while approximately one-third of the resources of the office were spent on inquiries and complaints handling.

This ratio is subject to variation depending on the number of inquiries which are being pursued at any one time but has remained reasonably constant in the five and a half years which I have spent as Inspector-General.

Fuller details of the various visits and inspection activities undertaken by my office during 2008-09 are provided in the chapters on each of the agencies.

## **Complaint numbers**

There were 284 complaints processed by my office in 2008-09 compared to 304 in 2007-08.

The decline in the total is attributable to a reduction in the number of complaints alleging delay by ASIO in making security assessments for visa purposes (there were 193 new complaints received in 2007-08 compared to 153 such complaints in 2008-09). This reduction is likely to be due to improved connectivity and processing arrangements between ASIO and the Department of Immigration and Citizenship.

In 2008-09 complaints processed were made up as follows:

- eleven new complaints which led to preliminary or full inquiries, compared to 15 such complaints in 2007-08 and 10 in 2006-07.
  - seven of these 2008-09 matters commenced following complaints from members of the public about ASIO (related to security assessments, handling of historical material, dealing with the public and allegations of harassment)
  - four of the inquiries arose from complaints concerning DSD on employment related issues (two from employees and two from contractors)
  - of the eleven new complaints leading to inquiries during the reporting period three remained open at 30 June 2009 (two were lodged in late June 2009)
- two complaints about alleged delays by ASIO in conducting immigration related security assessments which were carried over from 2007-08 (and were completed early in 2008-09)
- 153 new complaints that were handled administratively (including nine repeat contacts from former complainants seeking further assistance) about alleged delays by ASIO in conducting immigration related security assessments
- 72 approaches from individuals who have previously been in contact with OIGIS and who were seeking a re-examination of their original complaint or who were wishing to initiate a new complaint, and
- 46 approaches from individuals who have not previously been in contact with OIGIS who wished to lodge a complaint against an AIC agency or AIC agencies generally.

### **Inquiry numbers**

At the conclusion of 2007-08 two full own motion inquiries and one preliminary inquiry remained open and thus were carried into the 2008-09 reporting period.

The first of these full inquiries concerned ASIO's actions in respect of Mr Izhar UI-Haque, and was concluded on the 12 November 2008. The second full inquiry was an investigation into DIO's analytical integrity, which was concluded on 12 September 2008.

The preliminary inquiry carried over to 2008-09 was in relation to an ex-employee of ASIO and was concluded on 15 July 2008. As noted earlier, eleven new complaints in 2008-09 led to inquiries being conducted.

I also commenced three new 'own motion' inquiries in 2008-09. The first of these inquiries in 2008-09 concerned a sensitive personnel matter in ASIO. I commenced this inquiry in July 2008 and concluded it in April 2009.

The second new 'own motion' inquiry which I initiated was a follow up inquiry into the statutory independence of ONA, which I am committed to undertaking on regular and periodic basis. I commenced this inquiry on 23 February 2009 but suspended it in late March 2009 due to competing priorities. This inquiry remained suspended at 30 June 2009, but my intention is to resume it early in 2009-10.

The third own motion inquiry which I initiated was into allegations of improper access to the computer systems used by the then Minister for Defence by an individual or individuals connected to DSD, as part of an alleged covert investigation into the Minister's activities and associations. I initiated this inquiry on 27 March 2009 and concluded it on 1 June 2009.

### **Acceptance of Recommendations**

It is not usual for an agency to reject recommendations which are made by an Inspector-General following the conclusion of an inquiry.

This is because recommendations for change are not made lightly, always involve prior discussion with the agency which is directly concerned, and hopefully reflect a practical response to a particular issue or concern.

In all circumstances where I made formal recommendations in reports of inquiries which were concluded during 2008-09, these were accepted by the relevant agency.

Comment on implementation of these recommendations is contained in the relevant chapters on each agency.

## **Responsiveness to issues raised**

Following inspection visits to each of the AIC agencies, it is the agreed practice that I write to the relevant agency head on the outcome of the visit, and where appropriate, offer suggestions about opportunities to improve procedures.

I also meet on a regular basis with senior members of the collection agencies and use these meetings to discuss topical issues, or to follow up on issues raised in correspondence.

During 2008-09 I made a number of suggestions for procedural changes and reforms. These suggestions were generally accepted and acted upon.

I can also advise that the intelligence and security agencies continue to seek my views on draft policies and procedures. Where I have an interest or a concern about a particular activity, which cannot be adequately discussed in our periodic meetings, I do not hesitate to seek a specific briefing on the matter.

In the majority of cases where I have sought such briefings, or additional information, my requests have been agreed to without question or qualification.

I continue to be encouraged by the willingness of the agencies to seek and accept input from this office and believe that it demonstrates a commitment on their part to conduct their activities legally and with propriety.

## **Timeliness**

The timeliness with which full and preliminary inquiries were completed went from 100 days in 2007-08 to 110 days in 2008-09.

The relatively small numbers of completed inquiries involved mean that taking a significant amount of time with any one complex inquiry will potentially have a disproportionate effect on the average figure. This was particularly the case in 2008-09.

## **Level of assurance**

The number of complaints made to my office is small compared to other integrity/accountability agencies but nonetheless is significant when compared to the relatively small size of the AIC (and the size of my office).

The fact that this number of members of the public do in fact find their way to my office seems to reflect a greater knowledge of the existence of my office than might otherwise be imagined. This is especially so in relation to the timeliness with which security checks are undertaken for immigration related purposes.

Awareness of the role and functions of the office is aided by a presence on the Internet which allows such information to be readily accessible to larger numbers of people than has previously been the case.

In 2008-09 the OIGIS website was updated and now includes an online complaint form. This makes the services of the office more readily accessible than has been previously the case.

The website and online forms are regularly reviewed and amended as needed for content and usefulness. I am confident that those individuals who have need of our services can reach us.

Importantly, when I reflect on the results of my office's inspection program, complaint handling and inquiry activities in 2008-09, it is clear that a relatively low level of genuine errors were found, and nothing which showed agency staff deliberately acting outside the limits of their lawful authority.

Where individual instances needed to be remedied and/or better governance and controls put in place, the agencies were responsive in nearly all instances.