

The year 2009-10 in prospect



The following is a summary of the main activities which I propose be undertaken either by the IGIS, or by OIGIS staff, during 2009-10.

Proposed briefing, inspection and review activities

ASIO

Since taking up his appointment as Director-General of Security in March 2009, Mr Irvine and I have agreed that it would be beneficial if we were to meet on a regular basis to discuss issues in which we share an interest. This is a continuation of our practice when Mr Irvine was Director-General of ASIS.

I find these meetings to be extremely useful and hopefully mutually beneficial. It is therefore my intention to continue these meetings and deepen our exchanges in 2009-10.

In August 2007 I commenced monthly meetings with senior ASIO officers. I proposed that these meetings be used as a forum in which I could be briefed on suitable current issues, and I in turn, could brief ASIO on my current inspection and ASIO-related inquiry activities.

In its initial stages these meetings were marked by some rigidity and strict adherence to the agenda, but I have seen some evidence over the past months of these meetings developing into a genuine exchange of our respective views and opinions.

Notwithstanding that I intend to meet with the Director-General of Security on a regular basis, I see significant utility in continuing these monthly meetings. I am encouraged by the way in which they are developing.

The above meetings and my office's inspection activities naturally raise subjects which are new or novel to this office. Where issues arise in which I have an interest and about which we lack detailed knowledge, it is my practice to seek briefings from the relevant functional area within ASIO.

My staff and I received or participated in a number of briefings of this kind during 2008-09, and would expect to do so again in 2009-10.

My office devotes more resources to inspecting the activities of ASIO than any of the other AIC agencies. This level of commitment will not diminish in 2009-10.

One of the key inspection activities which we undertake is to review the special powers warrants which are issued to ASIO.

Given that nearly all warrants are authorised by the Attorney-General, and the Attorney-General also has direct executive responsibility for ASIO, it is appropriate that there be some form of external oversight of the warrants process.

In addition to this, as every category of special powers warrant which is available to ASIO relies on methods and capabilities which either are, or have the potential to be, very intrusive if not coercive, it is important that these powers be subject to external oversight.

It is therefore my intention in 2009-10 to continue to closely monitor and review the issue of special powers warrants to ASIO and associated accountability documentation.

As indicated elsewhere in this annual report, ASIO has access to so-called "B-party" telecommunications interception warrants, when other collection methods have proven to be ineffective, or are not available.

Given that "B-Party" warrants by their nature are potentially more intrusive than other forms of collection, I will continue to be especially vigilant in monitoring all aspects of their use during 2009-10.

In 2008-09 my office began to regularly inspect each authorisation which has been issued within ASIO permitting ASIO to obtain prospective telecommunications data, and associated documentation. My office will continue to undertake these inspections in 2009-10.

My staff will also continue to conduct periodic spot checks on ASIO's interception systems in 2009-10, to ensure that it complies with all relevant warrant conditions.

Elsewhere in this report, I indicated that ASIO had not obtained any questioning, or questioning and detention warrants in 2008-09.

It has been the past practice of the office to be present for at least the first day of questioning which is conducted pursuant to any questioning warrant which has been granted to ASIO. It is my intention to continue this practice during 2009-10, should any questioning, or questioning and detention warrants be granted to ASIO.

In 2009-10 my staff will continue the practice of examining investigative authorities generated in ASIO's central office, and also reviews of investigations which are generated at the completion of each investigation, or if it is proposed that a particular investigation should be continued.

The office will also continue to review materials of this kind which are generated by specialist areas within ASIO and by ASIO's State and Territory offices, during periodic visits to these various offices.

The files on which actions resulting from the approvals are recorded will also be examined as a part of this inspection process.

I will continue to monitor ASIO's access to, and use of, AUSTRAC and taxation records, to ensure compliance with the legislation under which such access is granted, and the various MOUs under which this access is provided.

I will also continue to monitor ASIO's procedures for controlling the use of alternative documentation associated with assumed identities, but will do this on the basis of internal audit and exception reporting rather than by previous methods.

There will also be monitoring of ASIO's performance with regard to its obligations under the *Archives Act 1983*. This will be principally achieved through consideration of regular reports on this subject which are provided to me by ASIO, and from any archives related complaints which my office receives which I decide to inquire into.

My staff and I will continue to make presentations to ASIO's ethics and accountability training courses, and such other courses as are appropriate to the functions of this office.

My staff and I will also periodically observe training activities associated with ASIO's intelligence officer training program.

ASIO's internal audit program will be monitored and I will obtain reports on reviews that are of interest to my office.

On occasion I am consulted by ASIO in the development of internal guidelines and procedures. I intend for my office to provide constructive and timely input to all requests for comment of this kind.

Subject to the resources available to my office, it is my intention to conduct several pilot projects or reviews, as a means of scoping future inspection activities.

ASIS

During 2009-10 my office will continue the long-standing practice of reviewing all ministerial submissions which are lodged by ASIS with the Minister for Foreign Affairs.

My staff will also closely review all ministerial authorisations which are sought by ASIS under the *Intelligence Services Act 2001*.

My staff and I will continue to closely monitor the application of the guidelines and protocols associated with the provision of, training in, and use of weapons and self-defence techniques by ASIS staff.

My staff will continue to closely inspect operational files having regard to the legality and propriety of the conduct of ASIS officers. This is a significant and resource intensive task but is essential in order to provide me with appropriate insight into ASIS's operational activities.

In 2009-10 my office will continue to scrutinise records relevant to ASIS's compliance with the privacy rules, although this is likely to be on a sampling rather than full compliance basis.

It is my intention in the coming reporting period to continue to meet with ASIS's intelligence coordinators, legal and policy staff approximately every six weeks, to be briefed on emerging issues and to discuss issues arising from inspection activities.

While ASIS's procedures for controlling the use of alternative documentation associated with assumed identities are judged to be appropriate we will continue to monitor the six-monthly audit reports received from ASIS on this subject.

My staff and I will continue to be available, as necessary, to address ASIS training courses and other forums on accountability issues.

I will also continue to meet with ASIS officers before they proceed on postings to reinforce that they are subject to internal and external scrutiny and are accountable for their conduct.

In the ASIS chapter of this report I mentioned that there had been a delay in ASIS obtaining direct access to AUSTRAC databases while certain issues were resolved. I would expect these issues to be resolved early in 2009-10, and consequent upon this occurring, my staff will conduct inspection activities to ensure that ASIS complies with the legislation and with its MOU obligations.

DSD

I currently meet with the Director DSD on an approximately monthly basis and would anticipate that these meetings will continue in 2009-10.

My staff and I have for many years met with key DSD staff on a monthly basis to discuss issues arising out of our monitoring activities, the internal monitoring activities undertaken by the relevant section in DSD which deals with such matters, and policy issues affecting compliance. These meetings will continue in 2009-10.

During the coming reporting period staff from my office will continue to access and review every ministerial authorisation submission which DSD puts to the Minister for Defence.

My staff and I will also continue to monitor DSD's compliance with its obligations under the DSD privacy rules.

I will also closely monitor DSD's interactions with ADF and DSTO staff on privacy rules related issues.

I anticipate that in 2009-10 DSD will seek input from this office on possible changes to internal guidelines which are important to their business operations. I am committed to providing detailed input if and when called upon to do so.

As indicated in the Defence intelligence agencies chapter of this report, this office undertook a special project with respect to DSD during 2008-09. I am planning further projects of this kind in 2009-10.

My office will also continue to address DSD training courses and other forums on accountability, as appropriate.

DIGO

My staff and I will meet with DIGO senior managers approximately every two months at DIGO Headquarters to discuss issues arising out of our inspection activities and to discuss matters of common interest.

As has been my practice since DIGO was formally incorporated into the *Intelligence Services Act 2001*

in late 2005, my office will continue to review all submissions made by DIGO to the Minister for Defence seeking a ministerial authorisation.

My office will also continue to review internal submissions made to the Director DIGO specifically seeking authorisation by the Director to image Australian territory or Australian interests.

My staff and I will also monitor compliance with the DIGO privacy rules.

My office will also address DIGO training courses and other forums on accountability, as appropriate.

DIO

My office will regularly review DIO's compliance with the DIO privacy guidelines.

I will continue to monitor the implementation by DIO of recommendations flowing from recent inquiries undertaken by this office.

ONA

I expect to meet with the new Director-General ONA, Mr Gyngell, on an occasional basis, to discuss matters affecting his agency, or the wider AIC, as circumstance dictates.

Early in 2009-10 the inquiry which I had initiated in February 2009 into the independence and integrity of ONA assessments, will be recommenced.

My office will also monitor the application of ONA's privacy guidelines.

Inquiries and complaints

Three preliminary inquiries under the IGIS Act were in progress at the close of the 2008-09 reporting period. Two of these inquiries were only begun in late June 2009. I expect to conclude investigations into each of these matters during the first quarter of the new reporting period.

In addition to the above, I suspended action on my inquiry into ONA's independence and integrity in late March 2009, due to pressure of other work. I expect to reinvigorate this inquiry early in 2009-10 and complete it during that reporting period.

IGIS Staffing and recruitment

It is my intention to run at least one selection exercise in 2009-10.

Other matters to be pursued

The above items are indicative but are by no means an exhaustive list.

As noted in the 'Parliament and Legislation' chapter of this report, this office contributed to a significant number of Parliamentary inquiries and reviews during 2008-09, and early indications are that work related to this will continue in 2009-10.

Various bills or proposed pieces of legislation foreshadow an enhanced role for the IGIS (e.g. extension of the IGIS's remit to inquire into intelligence related issues which extend beyond the AIC when requested to do so by the Prime Minister, to be available as an expert witness in some FOI matters).

There are other legislative proposals which will also impact upon this office (i.e. providing some form of liaison with the proposed National Security Legislation Monitor).

In addition to the above, my office will also be heavily involved in planning for and hosting the International Intelligence Review Agencies Conference, which will be held in the first half of 2010.

These are all considerable undertakings for an agency of such a small size, yet I am confident that the office will rise to these challenges.

As 2009-10 progresses no doubt new matters will arise of which I am currently unaware, which will require attention.