

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT BILL 1999

Thank you for your letter of 16 April 1999, in which you invited the Inspector-General of Intelligence and Security (IGIS), Mr Bill Blick PSM, to provide comment upon those aspects of the *Australian Security Intelligence Organisation Legislation Bill 1999*, in which he has a direct interest.

I am responding to your invitation, rather than Mr Blick, because Mr Blick is currently overseas, on approved leave, until 29 April 1999. The Prime Minister has authorised me to serve as the Acting Inspector-General, whenever Mr Blick's duties require him to go overseas, or whenever he takes a period of extended leave. This standing arrangement has been agreed to by the leader of the Opposition.

By way of personal background, I served as the Inspector-General of Intelligence and Security between 5 April 1995 and 18 February 1998, following which I was appointed to my current position as the Commonwealth Ombudsman. I therefore have what I consider to be a good understanding of the role and functions of the Office of the Inspector-General, and also of the Australian Security Intelligence Organisation (ASIO). My duties as the Commonwealth Ombudsman also sometimes require me to interact with the Director-General of Security and ASIO.

As I have not actually been the inspector-General for approximately 15 months and because I am a different person to the incumbent Inspector-General, I might not be in a position to provide a total overview of the origins, purpose and effect of those amendments contained in the above bill which will impact upon this office, however, I have been briefed on these matters and believe the following comments to be both truthful and accurate.

I understand that both the Attorney-General's Department and the Director-General of Security are preparing submissions for the Committee, which address the totality of the amendments proposed in the *ASIO Legislation Amendment Bill 1999*.

While the Inspector-General naturally has an interest in all of the amendments which have been proposed, I think little would be gained if I were to cover ground which I expect will be comprehensively addressed in those submissions. However, before turning to the issues which are of specific interest to the IGIS, I wish to make the following, general, observations.

As the committee will appreciate, the *Australian Security Intelligence Organisation Act 1979*, has only been comprehensively revised once in the last twenty years. Since 1979, the operational environment in which ASIO undertakes its functions, like much in the world around us, has changed enormously. Many of the certainties of that time have crumbled, while the advancement of technology in the brief span between 1979 and now, has significantly altered the way in which we conduct our lives.

I think it is right and proper for the government to bring forward amendments which are aimed at ensuring that, in these changed circumstances, ASIO remains capable of providing relevant intelligence, in fulfilment of its statutory responsibilities, in as timely and efficient a manner as is possible.

While it is clearly imperative for the Organisation to move with the times and improve its efficiency and effectiveness if ASIO is to meet the needs of government, it is important that these goals should not be achieved at the cost of an unreasonable diminution of the freedoms which all Australians have come to expect and enjoy.

The Office of the Inspector-General exists as a 'watchdog' body to oversee the activities of the Australian security and intelligence community. As such, it was frequently consulted during the development of the proposals contained in the *ASIO Legislation Amendment Bill 1999*, and provided a range of comments.

I am confident that the changes which have been proposed are consistent with ASIO's charter responsibilities, and that the extension of the range of special powers which will be available to the

Organisation in no way extends the functions of ASIO, but reflects a necessary evolution in response to a changing operational environment.

I am of the opinion that the purpose of the proposed amendments is accurately and fully described in the Explanatory Memorandum which accompanies the bill. I also believe that any suggestion that these changes may somehow serve as a 'Trojan Horse' for the unjustified extension of ASIO's functions, ignores the safeguards which are in place and proposed, which ensure that ASIO's activities are undertaken in an accountable and verifiable framework.

Leaving aside my views on the wider amendments package, I will turn now to schedules four, five and six of the ASIO Legislation Amendment Bill 1999, as each of these schedules has some relevance to the role and functions of the IGIS.

My primary focus is, of course, concerned with schedule five, which contains several proposed amendments to the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act).

I will then briefly turn my attention to the meaning for this office of changes proposed in schedule four – the *Financial Transaction Reports Act 1988*, and schedule six – the *Taxation Administration Act 1953*.

Firstly, based on my own experience as Inspector-General, I can advise you that some proposals for amendments to the IGIS Act, have been on the agenda for several years.

When I became Inspector-General in April 1995, the Commission of Inquiry into the Australian Secret Intelligence Service (ASIS), which was conducted by Justice Gordon Samuels AC QC and Mr Michael Codd AC, had just reported its findings and recommendations to the government of the day.

In their report, the Commissioners offered their opinion that the IGIS should concentrate most of the energies of the office on the monitoring and oversight functions envisaged for the office by Justice Hope when he inquired into Australia's security and intelligence agencies in 1983-84.

The Commissioners also made several recommendations for technical amendments to the IGIS Act, so as to further focus the attention of the Inspector-General onto monitoring and oversight activities. (See chapter 9 of the Public Edition of the Commissioners Report on the Australian Secret Intelligence Service, Australian Government Printing Service, Canberra, March 1995, pp. 93-105.)

I supported the amendment of the IGIS Act to reflect the Commissioners' recommendations but the view of the previous government was that these amendments should not go forward in isolation, but be incorporated into a wider reform package, the primary element of which was to give effect to the Commissioners' recommendation that ASIS be put onto a statutory footing.

Following the change of government, my successor as Inspector-General, accepted the rationale for not proceeding in isolation with the technical amendments to the IGIS Act which had been proposed by Commissioners Samuels and Codd. However, he identified three areas of the IGIS Act which he believed could be improved, and developed a proposal for these changes accordingly.

The changes to the IGIS Act which Mr Blick sought were as follows:

- making the monitoring role for the IGIS more explicit;
- amending the secrecy provisions of the Act to permit disclosure of information if the safety of a person may be at risk; and
- reducing the number of steps required to obtain clearances before completing an inquiry.

Mr Blick explained the rationale for each of these proposed amendments in the following terms:

“Make explicit a monitoring role for the IGIS

The objectives underlying the creation of the IGIS, as set out in section 4 of the IGIS Act, include assisting ministers in the oversight and review of the activities of the intelligence and security agencies. The Act empowers the IGIS to investigate actions of the agencies at the

request of the responsible minister, in response to complaints about the collection agencies, or of his 'own motion'.

That the IGIS is intended to perform a continuing monitoring role is reflected in comments made by Royal Commissioner Hope in his 1984 report into Australia's security and intelligence agencies, and Commissioners Samuels and Codd in their 1995 report into ASIS.

In his report, Justice Hope examined the pros and cons of establishing an Inspector-General, concluding that:

“What is needed is an independent person with power to maintain a close scrutiny of ASIO's performance of its functions, and look into complaints, in order to give greater assurance to the Attorney-General, and through him parliament and the public, that ASIO is acting with propriety and within its charter ... I believe the title 'Inspector-General' is more descriptive of the intended role of the office.”

Commissioners Samuels and Codd supported the view that an integral function of the IGIS is to inspect, ... (and) that monitoring should be regarded as a non-discretionary part of the functions of the IGIS. Samuels and Codd contend that this is “consistent with the primacy of the monitoring function envisaged for the Office.”

Consistent with the thrust of the objectives clause in the Act (and comments made by the Royal Commissioners), it has increasingly been the practice for Inspectors-General, either by arrangement with the agencies or at the request of government, to undertake regular inspection of certain activities undertaken by the collection agencies.

The Act as it stands does not make separate provision for such inspections. On one interpretation it requires the IGIS to use his 'own motion' powers (involving a formal report to the relevant minister and consultation with the agency head), for each inspection.

The proposed amendment would empower the IGIS to inspect on a regular basis, so that problems can be identified and remedied at an early stage. Such monitoring should have regard to the agencies' compliance with applicable Australian laws, as well as Government and ministerial directives.

The amendment would also make clear the nexus between this function and the role of the IGIS in assisting ministers and require the IGIS to report in relation to the function in his Annual Report and, as necessary, directly to the relevant minister of the Prime Minister.

Amend the secrecy provisions to permit disclosure of information if the safety of a person may be at risk.

The IGIS Act makes it a criminal offence for the IGIS, or his staff, otherwise than in the course of their duties under the Act, to divulge to any person, any information obtained in the course of their duties.

The IGIS sometimes receives complaints from unstable or disturbed people. Some have shown a tendency towards inflicting violence on themselves and/or others.

In such cases, it can be important for the IGIS to be able to seek expert professional guidance, or to refer the matter to the police. To remove all doubt about the legality of doing so, it is proposed that the Act be amended to permit the IGIS to reveal information about an individual to a responsible authority, where he is of the opinion that the well being or safety of a person may be at risk.

Reduce the number of steps required to obtain clearances before completing an inquiry

This proposed amendment would require that the relevant agency head, rather than the minister, clear the IGIS's final responses to complainants on national security grounds.

The IGIS Act now requires that at the completion of a formal inquiry, the IGIS provide the head of the relevant agency with, first, a draft report, then a final report which must include any

relevant comments of the agency head on the draft report. The minister also receives a copy of the final report and a written response must be provided to the complainant.

Subsection 23(2) of the Act requires that before the complainant can receive a response, the minister and the IGIS must agree that it will not prejudice security, the defence of Australia or Australia's relations with other countries. This final step typically involves correspondence from the IGIS to minister, advice from the minister's department and/or the relevant agency, and correspondence from the minister to the IGIS.

In the normal course of events letters to complainants contain nothing of security significance and are cleared by agency heads. The steps involving the minister lead to unnecessary double handling, (and has led to) significant delays and frustration for complainants awaiting a timely response.

In order to streamline these procedures, it is proposed that subsection 23(2) of the IGIS Act be amended, by deleting the words "responsible minister" and inserting in their place the words "responsible Agency Head", or some similar formulation.

So as to ensure that ministers' interests are recognised, the Act should require that the IGIS provide the relevant minister with a copy of the proposed response (for information), when providing it to the agency head."

Policy approval for these changes was given at government level and they are reflected in the proposed amendments contained in schedule five of the *ASIO Legislation Amendment Bill 1999*.

The proposed amendments are designed to reinforce the Inspector-General's monitoring role. This is of particular importance as it strengthens the accountability framework which will apply to, amongst other things, ASIO's access to, and usage of, sensitive financial transaction reporting and taxation information, which is proposed in schedules four and six of the *ASIO Legislation Amendment Bill 1999*.

If the amendments proposed in schedule four are agreed to by the Parliament, the IGIS will be required to monitor ASIO's compliance with the *Financial Transactions Reports Act 1988*, the memorandum of understanding the Director of AUSTRAC and the Director-General of Security are to enter into regarding ASIO's access to information contained on the AUSTRAC database, the ministerial guidelines which cover ASIO's handling of personal information, and to report to the Attorney-General on those matters.

The amendments to the *Taxation Administration Act 1953* proposed in schedule six, generally mirror the structure of the changes proposed under schedule four, although there is no requirement for the Taxation Commissioner to formally enter into any MOU's with either the Director-General of Security of the IGIS.

I envisage that the IGIS would monitor ASIO's handling of any taxation information it obtained, in exactly the same manner as other ASIO activities are currently subjected to inspection.

I trust that these comments will be helpful to the Committee in its consideration of the *ASIO Legislation Amendment Bill 1999*. I regret that my comments have been fairly general in nature but this reflects the fact that I am presently only the Acting Inspector-General and have not been directly involved in progressing these proposed changes, and the necessarily truncated period in which submissions had to be prepared.

Finally, I note that in your letter of 16 April 1999, you expected the Committee to invite Mr Blick to appear before it, most probably on Tuesday, 27 April 1999.

As indicated elsewhere in this submission, Mr Blick is presently overseas, and will not resume duty until 29 April 1999. In Mr Blick's absence, I would be happy to provide evidence before the Committee, should the Committee deem it desirable, noting the limitations I have described above.

April 1999

