



Review of Administration and Expenditure No. 19 (2019-20)

**Submission to the
Parliamentary Joint Committee on Intelligence and Security**

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SUMMARY

1. The Inspector-General of Intelligence and Security (IGIS) provides oversight of the six intelligence agencies within IGIS jurisdiction: Office of National Intelligence (ONI); Australian Security Intelligence Organisation (ASIO); Australian Secret Intelligence Service (ASIS); Australian Signals Directorate (ASD); Australian Geospatial-Intelligence Organisation (AGO); and Defence Intelligence Organisation (DIO). Background information about IGIS is at Attachment A.
2. While the oversight activities of IGIS are focused on the operational activities of the intelligence agencies, the Committee may find some of the outcomes of IGIS oversight informative in its review of administration and expenditure. Key matters arising from IGIS oversight in 2019-20 which relate to general administration and matters noted as areas of focus for this review by the Committee include:
 - The adequacy of mental health support provided to a staff member in one agency was the subject of an IGIS inquiry following a public interest disclosure made by the individual. The inquiry found that there was no evidence to support the allegations made by the individual. However, the inquiry made one recommendation and the Inspector-General has encouraged other agencies to examine and, where appropriate, adopt 'lessons learned' from this matter.
 - Significant improvement in ASIO compliance arrangements following the establishment of an internal compliance area.
 - The establishment of ASD-ASIO joint warrant training and updated procedures for managing warrants and reporting incidents.
 - Arrangements for the administration of visa and citizenship related security assessments are such that the level of administrative error is extremely low; however, there is a significant backlog of cases resulting in very long delays before some cases are processed.
 - COVID-19 had an impact on the operations of all of the intelligence agencies and on IGIS. While there has been an understandable delay in some agencies providing some information to IGIS during periods of significant COVID restrictions, there is no indication that there was any increase in compliance incidents due to COVID restrictions.
 - IGIS, in consultation with the Privacy Commissioner, has completed and published the first review of compliance by intelligence agencies with rules relating to COVID app data (covering 16 May -16 November 2020). Relevant agencies have policies and procedures in place and are taking reasonable steps to avoid intentional collection of COVID app data. Incidental collection in the course of the lawful collection of other data has occurred (and is permitted); however, there is no evidence that any agency within IGIS jurisdiction has decrypted, accessed or used any COVID app data.
 - Delays in the processing of positive vetting security clearances continue to impact on the ability of some agencies, including IGIS, to recruit staff.

There is further information about IGIS oversight activities conducted in 2019-20 available in the [IGIS annual report](#).

INQUIRY RELATING TO MENTAL HEALTH SUPPORT

3. A former staff member of one of the intelligence agencies within IGIS jurisdiction made a public interest disclosure to IGIS in May 2019. The disclosure asserted that there were deficiencies in the mental health support provided by the Agency while the employee was undergoing a security clearance review for cause. This inquiry commenced in August 2019 and was completed in June 2020.
4. The inquiry found evidence contrary to the allegations made and, in all the circumstances, no evidence to support the allegations made about the Agency. It also found that the Agency did not refuse any requests for support and that there was a reasonable level of access by the discloser to psychological support. The inquiry concluded that, in the circumstances, the Agency took all reasonably practicable steps to ensure the health and safety of its employee. The inquiry highlighted the importance of intelligence agencies having a robust system of mental health and welfare support services in place, and ensuring that these are readily available to employees and subject to regular review and improvement. The inquiry made one recommendation, which the agency accepted.
5. Although this inquiry was focused on the case of one individual in one agency, all intelligence agencies in IGIS jurisdiction have procedures for the ‘review for cause’ of security clearances – and all need to provide appropriate mental health support to employees who are subject to this inherently stressful process. Since the conclusion of this inquiry the Inspector-General has engaged with other intelligence agencies to encourage them to consider the recommendation and the adequacy of their systems for providing mental health support to employees. All agencies have employee mental health support and counselling arrangements available for staff through in-house or external psychologists, or a combination of both.
6. In the 2020-21 financial year IGIS will include ‘review for cause procedures’ as part of its programmed inspection schedule.

IMPROVEMENTS IN ASIO COMPLIANCE ARRANGEMENTS

7. In June 2019 the Inspector-General completed an inquiry into an ASIO led multi-faceted, multi-agency foreign intelligence collection operation. The inquiry found significant problems with the planning and execution of the operation, stemming from systemic weaknesses within ASIO’s compliance management framework. The Inspector-General made eight recommendations focused on the establishment of an ASIO compliance team; the implementation of a compliance training program; improving the provision of legal advice; and a review of relevant policies and procedures.
8. At the time the inquiry commenced, ASIO did not have a dedicated compliance unit; however, even before the formal recommendations were made, ASIO had begun to develop a formal compliance framework and had taken steps to establish a dedicated compliance unit. This unit is now well established and is making a significant contribution to the improvement in compliance arrangements within ASIO, including improving the proactive identification of non-compliance issues and reporting to IGIS.

ESTABLISHMENT OF JOINT ASD-ASIO WARRANT TRAINING AND UPDATED PROCEDURES FOR MANAGING WARRANTS AND REPORTING INCIDENTS

9. In May 2019 the Inspector-General completed an inquiry related to the unlawful collection of communications during an operation facilitated by warrants sought by ASIO under the *Telecommunications (Interception and Access) Act 1979* (TIA Act). The inquiry found that the unlawful

interception occurred due to an error made by ASIO in preparing the relevant warrant documentation, combined with a failure by ASD to check the accuracy of the documentation before relying on it. The inquiry also found that ASD's initial reporting of this matter to the Inspector-General and the Minister for Defence was inadequate. The classified inquiry report made five recommendations aimed at reducing the risk of recurrence and improving the reporting of any future breaches of the TIA Act.

10. In October 2019, ASD and ASIO reported to IGIS their progress in implementing the recommendations. Remedial action has included the establishment of ASD-ASIO joint warrant training and updated procedures for managing warrants and reporting incidents.

VISA AND CITIZENSHIP RELATED ASSESSMENTS

11. The bulk of the complaints received by IGIS from members of the public relate to delays in the processing of visa and citizenship assessments. The Department of Home Affairs processes visa and citizenship applications and there are occasions when applications will be referred to other government agencies, including ASIO, to conduct necessary background checks.
12. In 2019-20, IGIS received 300 complaints about visa or citizenship applications. This represents a significant reduction from the 750 complaints received in the 2018-19 reporting period. The reason for the reduction is unknown but the restriction on overseas arrivals due to COVID-19 may be relevant. The most frequent complaint about visa and citizenship applications remains the length of time taken to finalise an application beyond the indicative timeframes listed on the Department of Home Affairs' website. Of the 300 complaints about visa and citizenship applications, 90% concerned the time taken to finalise visa applications and 10% concerned citizenship application. Of these, 25 were found to fall outside the jurisdiction of the Inspector-General. No instances of illegality or impropriety were identified in the remaining 275 complaints and there was only one complaint where a processing error had occurred.
13. Given the very low number of errors identified in the investigation of visa and citizenship related complaints made about intelligence agencies the Inspector-General has changed the way these complaints are investigated. Since March 2020 IGIS inspection teams have monitored the processing of visa and citizenship related assessments as part of scheduled inspections.
14. In some cases the lengthy delays in the conduct of security related visa and citizenship checks are due to the complexity of an investigation and the need to obtain information from overseas partners. However, there is also a significant backlog of cases that are waiting to be processed. This is largely related to the allocation of resources rather than any administrative error or issue of legality.

IMPACT OF COVID-19

15. Although it is not something that IGIS has specifically reviewed, it is clear that COVID-19 has affected the operations of intelligence agencies. Intelligence agencies, like other employers, needed to take steps to protect their staff while maintaining essential functions. The agencies will be better placed than IGIS to brief the Committee on the changes they made in response to COVID-19, but it may assist the Committee to know that:
 - IGIS has not received any complaints from intelligence agency staff about changes implemented as a result of COVID-19.

- IGIS has not detected any trend towards an increase in compliance incidents during COVID-19. This includes compliance with warrants, special intelligence operations, ministerial authorisations and privacy rules.

16. IGIS inspections were suspended or scaled back during the peak of COVID-19 restriction in Canberra, but have since resumed. There was some understandable delay in some agencies responding to IGIS questions as a result of reduced staffing during COVID-19 restrictions; however, this has not had a significant or lasting impact on oversight activities.

COVID APP DATA

17. Part VIII A of the *Privacy Act 1988* (Privacy Act) commenced in May 2019 and introduced strict restrictions on access to and dissemination of COVID app data. The Inspector-General and the Privacy Commissioner have overlapping jurisdiction in relation to intelligence agency compliance with Part VIII A of the Privacy Act. Shortly after Part VIII A commenced the then Inspector-General and the Commissioner agreed that the most effective and efficient way to oversee compliance with Part VIII A by the intelligence agencies would be for the Inspector-General to review the activities of the six agencies within IGIS jurisdiction and to provide an unclassified report to the Commissioner. That report was provided to the Commissioner and also published on the IGIS website in November 2020. The summary of the report stated that:

The Office of the Inspector-General of Intelligence and Security (IGIS) has worked with agencies within IGIS jurisdiction to ensure that they are aware of their obligations under the Privacy Act 1988 in respect of COVID app data. We have also been briefed on technical capabilities and have reviewed the policies and procedures that have been implemented by relevant intelligence agencies in the event that collection of COVID app data occurs. As at 16 November 2020, the acting Inspector-General is satisfied that the relevant agencies have policies and procedures in place and are taking reasonable steps to avoid intentional collection of COVID app data. Incidental collection in the course of the lawful collection of other data has occurred (and is permitted by the Privacy Act); however, there is no evidence that any agency within IGIS jurisdiction has decrypted, accessed or used any COVID app data. Inspection activities are planned in coming months to verify data deletion and to provide further assurance that no COVID app data has been accessed, used or disclosed.

18. The Privacy Act requirements replaced interim arrangements set out in the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements – Public Health Contact Information) Determination 2020*.

DELAYS IN SECURITY VETTING

19. IGIS has not specifically looked at the impact that delays in the processing of positive vetting security clearances have on intelligence agencies. However, IGIS is aware anecdotally and from briefings that some agencies are having difficulty meeting recruitment targets and that this is, at least in part, related to vetting delays. The issue seems most significant in agencies which do not do their own vetting. A number of agencies have reviewed the classification at which some work needs to be done and have implemented strategies such as establishing separate facilities to enable some work to be done by staff with a lower security clearance. In some cases staff are engaged temporarily in these lower security classification tasks in appropriate locations while their clearances are processed, in other cases staff are engaged permanently to work in a lower security classification area. IGIS supports these strategies but has noted that agencies need to be clear with prospective employees what the consequences will be if they are not found suitable for a positive vetting clearance. Similarly, if staff

are engaged permanently to work in an area that does not need a positive vetting clearance and, as such, they are not asked to undergo that level of vetting, what impact this will have on mobility within the agency and career progression for the individual.

20. The IGIS office itself has had difficulty meeting recruitment targets due to delays in the positive vetting process. The long delays mean that a high number of prospective staff, particularly at lower levels, find other jobs or are promoted elsewhere before vetting is completed. IGIS has had a high rate of success with retaining people during vetting when they are 'placed' in another agency, such as the Commonwealth Ombudsman or ACLEI, while undergoing vetting. These placements also help to strengthen the links between agencies.

ATTACHMENT A: BACKGROUND INFORMATION ABOUT THE ROLE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

The Inspector-General reviews the activities of the following six intelligence agencies:

- Office of National Intelligence (ONI)
- Australian Security Intelligence Organisation (ASIO)
- Australian Secret Intelligence Service (ASIS)
- Australian Signals Directorate (ASD)
- Australian Geospatial-Intelligence Organisation (AGO)
- Defence Intelligence Organisation (DIO).

IGIS is an independent agency within the Attorney-General's portfolio. As at 30 June 2020 IGIS had 33 staff employed under the *Public Service Act 1999*. The Inspector-General is an independent statutory officer appointed under the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act). In 2019-20 the Inspector-General was the Hon Margaret Stone AO FAAL.

The overarching purpose of the IGIS's activities is to provide assurance that each intelligence agency acts legally and with propriety, complies with ministerial guidelines and directives, and respects human rights. A significant proportion of the resources of IGIS are directed towards ongoing inspection and monitoring activities, so as to identify issues, including about the governance and control frameworks within agencies, before there is a need for major remedial action.

The IGIS Act provides the legal basis for IGIS to conduct inspections of the six intelligence agencies listed above and to conduct inquiries into the agencies of the Inspector-General's own motion, at the request of a Minister, or in response to complaints. The Prime Minister can request the Inspector-General to conduct an inquiry into an intelligence or security matter relating to any Commonwealth agency.

The inspection role of the IGIS is complemented by an inquiry function. In undertaking inquiries, the IGIS has strong investigative powers, including the power to require any person to answer questions and produce relevant documents, take sworn evidence, and enter agency premises. IGIS inquiries are conducted in private because they almost invariably involve classified or sensitive information, and the methods by which it is collected. Conducting an inquiry is resource intensive but provides a rigorous way of examining a complaint, serious incident or systemic matter within an agency. The Inspector-General also receives and investigates complaints and public interest disclosures about the six intelligence agencies within the Inspector-General's jurisdiction. These come from members of the public and from current and former agency staff.