



Inquiry into the Public Interest Disclosure Bill 2013

**Submission to the
Senate Standing Committee on Legal and Constitutional Affairs**

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The role of the Inspector-General of Intelligence and Security

The Inspector-General of Intelligence and Security (IGIS) is an independent statutory officer who reviews the activities of the agencies which collectively comprise the Australian Intelligence Community (AIC):

- Australian Security Intelligence Organisation – ASIO
- Australian Secret Intelligence Service – ASIS
- Defence Signals Directorate – DSD
- Defence Imagery and Geospatial Organisation – DIGO
- Defence Intelligence Organisation – DIO
- Office of National Assessments – ONA.

The overarching purpose of the IGIS is to ensure that each AIC agency acts legally and with propriety, complies with ministerial guidelines and directives, and respects human rights.

The *Inspector-General of Intelligence and Security Act 1986* (the IGIS Act) provides the basis for the IGIS to conduct inspections of the AIC agencies and to conduct inquiries, of varying levels of formality, as the need arises. The IGIS can receive and investigate complaints about activities of the AIC agencies including complaints from current and former public officials.

The IGIS has own motion powers in addition to considering requests from Ministers and complainants. In undertaking inquiries the IGIS has strong investigative powers including the power to obtain information and can 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 highly classified or sensitive information, and the methods by which it is collected.

A significant proportion of the resources of the office are directed towards on-going 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.

Although the primary focus of the IGIS relates to the activities of the AIC agencies, an amendment to the legislation made in late 2010 allows the Prime Minister to request the IGIS to inquire into an intelligence or security matter relating to any Commonwealth agency.

The Public Interest Disclosure Bill 2013

The Public Interest Disclosure Bill 2013 (PID Bill) seeks to establish a framework to encourage and facilitate reporting of wrongdoing by public officials in the Commonwealth public sector; ensure that Commonwealth agencies properly investigate and respond to public interest disclosures; and provide protections to public officials who make qualifying public interest disclosures.

The Bill sets out particular functions for the IGIS in relation to intelligence agencies. These functions complement the existing oversight and investigative powers of the IGIS.

Disclosure to the IGIS

Where a discloser believes on reasonable grounds that it would be appropriate for a matter relating to an intelligence agency to be investigated by the IGIS they would be able to make a public interest disclosure directly to the IGIS (clause 34). The IGIS may then investigate the matter or, with the agreement of the agency, refer it to the agency for investigation (clause 43).

This arrangement is similar to the current provisions in the IGIS Act that allow the IGIS to inquire into complaints about the actions of intelligence agencies (see s. 11 of the IGIS Act). The protections in Part 2 of the PID Bill would apply to disclosures made under the PID scheme.

When investigating a matter that has been disclosed to the IGIS, the IGIS has the option of using the separate investigative power available under the IGIS Act (see clause 49 of the Bill). This would enable the IGIS to use the coercive powers for the conduct of inquiries as set out in the IGIS Act.

Oversight by the IGIS

The general functions of the IGIS under the IGIS Act include oversight of the legality and propriety of the actions of intelligence agencies. This gives the IGIS scope to inquire into compliance with the PID scheme including the adequacy of protections against reprisals within an intelligence agency, the adequacy of investigations, and the adequacy of a principal officer's response to recommendations in a report that relates to that agency. Clause 52 of the PID Bill allows the IGIS to extend the time limit for investigations by an intelligence agency, thus enabling the IGIS to closely monitor the timeliness of these investigations.

There is no provision in the PID Bill for the external disclosure of intelligence information or conduct relating to an intelligence agency, and there is no provision for emergency disclosure or disclosure to a legal practitioner of intelligence information. This places additional emphasis on the role of the IGIS in ensuring that disclosures are handled appropriately and that investigations by intelligence agencies are adequate. The IGIS would be able to address an allegation of an inadequate investigation by an AIC agency under the IGIS Act.

Additional functions of the IGIS

Clause 63 of the PID Bill sets out additional functions of the IGIS in relation to the operation of the public interest disclosure scheme for intelligence agencies:

- assisting current and former public officials in relation to the operation of the scheme
- conducting educational and awareness programs
- assisting the Ombudsman in relation to the performance of their functions under the scheme.

The PID Bill notes that proposed consequential amendments to the IGIS Act would extend the IGIS's functions under the IGIS Act to cover disclosures of information allocated under clause 43 of the PID Bill (whether or not they are allocated to the IGIS), if the disclosable conduct with which the information is concerned relates to an intelligence agency (see note to clause 63).

Standards in the PID scheme

The Ombudsman would be required to consult with the IGIS when determining standards relating to procedures for dealing with internal disclosure, the conduct of investigations, the preparation of reports, and the provision of information and keeping of records for the annual report on the operation of the Public Interest Disclosure scheme. The IGIS would be able to monitor compliance with these standards using existing powers under the IGIS Act.

Conclusion

The IGIS supports the objectives of the PID Bill to promote the integrity and accountability of Australian government agencies by encouraging the disclosure and proper investigation of misconduct.

The oversight and investigative functions allocated to the IGIS in the PID Bill appear to align well with the current role of the IGIS in receiving and handling complaints and conducting inquiries, and in the oversight of the activities of intelligence agencies.

Note

The Inspector-General of Intelligence and Security has provided a submission in similar terms to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the Public Interest Disclosure Bill 2013.