

From:

Civil Liberties Australia 

To: 2011 Independent Review of the Intelligence Community

Ref: Invitation to comment at: <http://www.dpmc.gov.au/publications/iric/>

Civil Liberties Australia is grateful for the opportunity to make a submission to a review of the intelligence community. We wish we knew more about how the intelligence agencies operate, so that we could contribute more.

1. *how well the intelligence community is positioned to support Australia's national interests, now and into the future;*

The agencies are probably excessively secret. However, as they don't release sufficient information about what they have done, we can't be sure. We trust that the intelligence agencies will make all efforts to comply with the new FOI rules from 1 May 2011 for all information they hold; we ask the review team to recommend that independent auditors be appointed who are able to assess and report by 31 December 2011 on the extent to which they have complied. They should not be exempt from such rules: in fact, the rules should apply more stringently to them.

2. *development of the intelligence community over the last decade, including implementation of intelligence-related reforms;*

In general, the intelligence community has nearly trebled in numbers and almost trebled in budget. ASIO¹ has gone from about 660 to 1810 in the past decade: other intelligence agencies have also had huge increases in staff, funds and resources. At the same time, the Australian Federal Police has gone up by about 2.5 times or more on most relevant measures.

This extraordinary, emergency increase was occasioned by the previously unthinkable threat stemming from "9/11". At the end of 2001, with fear rampant, the allocation of people and money was possibly appropriate.

However, 9/11 has proved to not represent the threat at first thought ("yellow" was and is the threat status...it has not varied one hue). Therefore, it is time the increase was wound back. For example, if ASIO was correctly staffed at 660 in September 2001, the increase in staff required for what is now realised as the additional threat stemming from 9/11 might be 50% more staff on the 2001 figure, to say 990.

¹ For 'ASIO' in this context, we mean our comments to apply equally to any agency whose staff and/or budget has more than doubled in the past decade.

Instead, ASIO at more than 1800 is approaching nearly double that figure, or is overstaffed by more than 180%. *(Please see 'PS' at the end of this document).*

The danger, CLA believes, is that work has to be found for some 800 extra ASIO staff who should not have been employed in the first place. So, all sorts of additional, unnecessary, undemocratic surveillance, reporting and database expansion is probably being carried out, partly to make work.

CLA recommends that ASIO (and other over-staffed, over-funded agencies) be cut in half. In this context, similar cuts should also apply we believe to those elements of the AFP which were similarly allocated too many staff and too much money in the panicked rush immediately following 9/11.

3. *working arrangements and relationships between the intelligence agencies and policy and operational areas of government;*

We are unable to comment in detail on this, as the agencies do not release sufficient information. However, CLA is increasingly worried by the extent to which these agencies – and particularly their heads – comprise a select and potentially unaccountable “club” which could operate largely above-the-law if it chose, or if some of its members elected to do so. We do not suggest this happened (mind you, how would we, or anyone, know?), but the potential danger is in place.

As this review appears intended to create even closer working relationships between these agencies, CLA warns that similar bodies in other countries have not always operated for the good of their nations. In particular, the lessons of history are that such agencies and their closeness needs to be diligently watched. CLA recommends that better, more open and more transparent mechanisms are put in place to keep a closer watch on individual agencies, and particularly on how they work together.

We attach two photos which are alarming to civil libertarians. The idea of the supremos of the intelligence agencies forming a “club” which gathers to be photographed is of itself a worry; however, having the one person who is supposedly monitoring and supervising these agencies as a member of the “club” is beyond the pale. Anyone with even a passing concern for governance in Australia ought to be alarmed about the concentration of secret power indicated by the photos.

There are as many reasons for ensuring these agencies are kept well apart as there are for encouraging them to meet and exchange information. Certainly, parading for the media would not be thought of as a core function for any of the six; and for the seventh to be present is a travesty of the alleged “independence”.

The first photo (over) shows six intelligence agency heads.

The second photo shows who else was present.

iefs come in from the cold... for a photograph

By Ross Peake
National Affairs Writer

Australia's chief spies put themselves on rare public display yesterday but don't assume they shared any secrets.

However, while the conversation of the Secret Six was guarded, their group photo was historic and just had to be dubbed "coming in out of the cold".

The heads of the six spy agencies gathered for the launch of an innocuous booklet that describes their broad functions and the mechanism for the accountability of their agencies.

In the foreword, Prime Minister John Howard notes that intelligence agencies can never be open about their work.

"By the very nature of their work, much of what they do must remain hidden from public view," he said.

"However the intelligence community must be responsible to the Australian government and through it the Australian people, for its activities."

Office of National Assessments boss Peter Varghese said the impact of the public spotlight varied from agency to agency.

"Certainly I think for those of us in the assessment business it does mean a closer interest in some of the judgments we're reaching," he said.

"I think there's always going to be a tension between the importance of intelligence agencies being able to do their work outside of the public glare and the level of interest, so I just see that tension point continuing to rise, probably."

While ASIO now concentrates more on counter-terrorism than

espionage, ASIO chief Paul O'Sullivan warned hostile governments might want to steal secrets from the military as it bought sophisticated weapons systems.

"It would be very naive in my view to assume that that's not of interest to other governments, so counter espionage is an activity that ASIO takes quite seriously and will take quite seriously in the future," he said.

Mr O'Sullivan said his agency expected to be able to find enough recruits to double its staff within four years. The growth being funded in the Budget will require a net increase of 170 agents each year.

"We believe we are well on track to do that," he said. "Across the board in ASIO we have noticed rising numbers of applicants in almost every category, and we think we're maintaining the quality of standards and quality of applicants."

The heads of the agencies were joined by the inspector-general of intelligence and security, Ian Carmel.

The spy agencies are:
■ Australian Security Intelligence Organisation, which deals with domestic security and threats.
■ Australian Secret Intelligence Service, which collects intelligence abroad.

■ Defence Intelligence Organisation, which deals with defence and strategic intelligence.
■ Defence Signals Directorate collects and analyses electronic intelligence.

■ Office of National Assessments provides all-source advice on international, political, strategic and economic developments.
■ Defence Imagery and Geospatial Organisation provides surveillance imagery and maps.



Head of intelligence and security Ian Carmel, left, with DIO director Major-General Maurice McNam, director-general of ASIO Paul O'Sullivan, director-general of ASIS David Irvine, director of DSD Steve Merchant, and director of DIGO Ian McKenzie. Picture: KYM SMITH/News Limited.

Saturday, October 21, 2006 The Canberra Times

Spy chiefs come in from the cold . . . for a photogra



HISTORIC: Inspector-general of intelligence and security Ian Carmell, left, with DIO director Major-General Maurice McNary; director-general of ASIO Paul O'Sullivan; director-general of ONA Peter Varghese; director-general of ASIS David Irvine; director of DSD Steve Merchant; and director of DIGO Ian McKenzie. Picture: KYM SMITH/News Limited.

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4. working arrangements and relationships between the intelligence agencies and their international partners;

The same arguments in relation to the danger of collusion between agencies within Australia, as alluded to above, apply in spades when international partners are included. We ask the review panel to be as mindful of the dangers as of the oft-promoted benefits.

We can illustrate the dangers by using the example of the AFP. To get close to the Indonesian police and security services, the AFP exchanged drug smuggling information in relation to the Bali 9. Three Australians currently face the death penalty – which Australia abjures – because of the AFP desire for a closer partnership with the Indonesian authorities.

At the most senior level, closer working relationships are probably a good thing. However, when played out operationally by less-sophisticated staff, not necessarily well instructed or managed and with a limited purview of matters outside their immediate ken, the consequences can be tragic for Australia, and for individual Australians – as the Bali 9 case so tragically demonstrates.

5. arrangements and practices within the intelligence community for collaborative work, including legislative arrangements; and

The legislation currently allowing collaborative working between these agencies is excessive. CLA believes that such crucial agencies need to be kept as separate as possible for the good of the nation.

The dangers of a centralised database were demonstrated decades ago by the rise and rise to uncontrollable power of J. Edgar Hoover in the United States. The potential now for misuse of centralised database(s) is so much greater because of the easy facility with which information (right or wrong) can be aggregated.

As much as the danger of one person running amok, there now exists the capacity for a small cabal of people to misuse centrally-collated data. Again, in Australia we have an over-confidence that “something like that could never happen to us”. The unfortunate Japanese people now scrabbling for water and the daily essentials of food, without homes and power, said something similar just a week ago from the time of writing, before an earthquake and tsunami hit. You can’t control those forces of nature, but you can control their management/governance equivalence by prudent non-centralisation of power and by ensuring that individuals permitted to operate on or outside the boundaries of the law are not able to do so in collusion.

6. level of resourcing dedicated to the intelligence community and apportionment of resources across the community, noting that any future proposals would need to be offset consistent with the Government's overall fiscal strategy.

We have addressed above the fact that far too many human resources have been allocated to the intelligence community since 9/11, and that the funding allocated has been equally over-the-top. With the benefit of hindsight, and again using ASIO as an example illustrative of the sector, a rise from 610 employees in September 2001 to 990 employees in September 2011 might have been appropriate.

It should be remembered that the massive growth in the Australian security and police sector has come at the expense of other agencies of government. For example, the Australian Law Reform Commission*, the National Museum of Australia*, the private sector aid agencies* – not to mention struggling civil liberties groups** who receive no funding, and cannot even get the Minister to add one line to legislation to allow the most tenuous of access to the ever-expanding Proceeds of Crime money – have all gone backwards in staff and funding in relative terms while the agencies considered here have prospered, with more than double the staff and more than double the funding.

On one side are the agencies of the human condition, and of hope: on the other side are the agencies of fear. For a decade, Australia has fed fear and starved hope.

** Again, these agencies are illustrative. There are probably dozens of agencies and entities in the public and private sectors which have been under-funded partly because the intelligence community has been so wastefully over-funded.*

*** Civil liberties, human rights and similar bodies do as much, most of the time, for the daily quality of life of Australians as do security agencies. If this notion seems strange to you, it merely indicates how out of balance the allocation of resources and emphasis is in Australia.*

PS: CLA makes one further comment. We are not aware of any periodic or snap audit or review of the accuracy and relevancy of information collected by the security agencies (and the AFP in similar contexts). From experience of ASIO files released under the 30-year rule, where CLA members have been able to examine what was recorded about them, contemporaneously, by government security agents, we estimate that:

- About 10% of the recorded data was totally wrong (eg, wrong date, time, place, name, etc);
- About 10% of the recorded date was practically wrong (wrong connections, linkages, relationships, nuances, etc); and
- About 10% of the recorded data was irrelevant, by any measure (no connection to the reasons the person was under watch, and useless in a practical sense).

Because some of these elements overlap, the overall assessment is that about 25% of the collected data was in error (ignoring that the errors gave the entirely wrong slant to an understanding of the person under watch, in most instances).

CLA believes that today's standards of accuracy in relation to collected surveillance and 'secret' information by ASIO and the other security agencies, and the AFP, is not likely to be any better.

In fact, we think it is highly likely to be worse in today's "information society", given the prevalence of potential errors in data sources and in the entering and manoeuvring of data into, around, across and out of computer records.

We believe such periodic and/or snap audits as to quality and accuracy of data should be mandatory, and frequent, and should involve at least some external (non-security) personnel, such as civil liberties or human rights people, who are able to report publicly on accuracy of figures, percentages and trends.

Overall, we believe the intelligence community should be much more stand-alone in terms of individual agencies (locally and internationally), publicly accountable, open and transparent than it is. Without more information, it is hard to be precise...but we would be surprised if security agencies were not able to be overwhelmingly more open than at present without any diminution of their effectiveness. After all, for whom do they work – a select Executive, or the people of Australia?

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