

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**INTELLIGENCE SERVICES LEGISLATION AMENDMENT BILL 2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Defence,  
Senator the Honourable Robert Hill)

## INTELLIGENCE SERVICES LEGISLATION AMENDMENT BILL 2005

### OUTLINE

The *Intelligence Services Act 2001* ('the ISA') came into force on 29 October 2001. The ISA stemmed largely from the 1995 Commission of Inquiry into the Australian Secret Intelligence Service (ASIS) – one of the key findings of this Inquiry was the need for a legislative base for ASIS. The ISA also established legislative bases for the activities of the Defence Signals Directorate (DSD), and for the Parliamentary Joint Committee on the Australian Security Intelligence Organisation (ASIO), ASIS and DSD (PJCAAD), which replaced the former Parliamentary Joint Committee on ASIO.

In March 2004, the Prime Minister announced an independent review of the Australian foreign intelligence community including, *inter alia*, the effectiveness of oversight and accountability mechanisms; the suitability of the current division of labour among the agencies; the contestability of intelligence assessments and the adequacy of current resourcing of intelligence agencies. Mr Philip Flood AO conducted the Inquiry into Australian Intelligence Agencies ('the Flood Inquiry') and submitted his report to the Prime Minister in July 2004. The Government subsequently agreed to accept the recommendations of the Flood Inquiry, with the exception of the proposal to change the name of the Office of National Assessments (ONA).

The Bill implements several recommendations from the Flood Inquiry that require legislative amendments to be implemented, namely:

- The mandate of the PJCAAD should be extended to all of Australia's intelligence agencies – that is, it should also cover ONA, the Defence Intelligence Organisation (DIO) and the Defence Imagery and Geospatial Organisation (DIGO) on the same basis as it currently covers ASIO, ASIS and DSD. The parliament may consider renaming the committee as the Parliamentary Joint Committee on Intelligence and Security.
- The functions and ministerial accountabilities of DIGO should be formalised in legislation by amendments to the ISA. Similarly, the *Inspector-General of Intelligence and Security Act 1986* ('the IGIS Act') should be amended to include scrutiny of DIGO on a basis comparable with that which applies to DSD and ASIS.
- The mandate of the Inspector-General of Intelligence and Security (IGIS) should be extended to allow IGIS to initiate inquiries at his or her own discretion into matters relating to ONA and DIO without ministerial referral, consistent with the IGIS jurisdiction in respect of ASIO, ASIS and DSD. The Inspector-General should also conduct a periodic review of ONA's statutory independence.
- The *Office of National Assessments Act 1977* ('the ONA Act') should be amended to remove the references to two assessments board – the National Assessments Board and the Economic Assessments Board – to reflect the reality that there is only one National Assessments Board which covers strategic, political and economic issues, but with provision for different composition according to subject matter. The Act should also be amended to strengthen ONA's community coordination role in section 5(1)(d).

The Government has also agreed that this legislative package include the further amendments that have been agreed as a result of a review of the ISA coordinated by the Department of the Prime Minister and Cabinet (PM&C). This review was initially suggested in the 2002 and 2003 Annual Reports of the IGIS. These reports recommended a review of the operation of the ISA on the basis that its application had shown some refinement was needed. In addition, increased public interest in the activities of intelligence agencies and the ability of some agencies to impact

on the privacy of Australians warranted an examination and fine-tuning of accountability mechanisms.

In August 2004, the PJCAAD proposed to the Government that it consider a number of changes to that committee, including an increase in the size of the committee and other adjustments to help the PJCAAD respond to its increasing workload. The Government agreed that these proposals would be considered in the context of the wider review of the ISA. As a result, the Government has agreed that the committee's membership be increased from seven to nine, a position of Deputy Chair be established, and the committee be empowered to establish subcommittees when required.

**Financial impact statement**

The amendments made by the Intelligence Services Legislation Amendment Bill 2005 have no financial impact.

## NOTES ON SECTIONS AND SCHEDULE ITEMS

### Section 1: Short title

The short title of this Act is the *Intelligence Services Legislation Amendment Act 2005*.

### Section 2: Commencement

This section provides a table that identifies the day of commencement for each item which is noted in the explanation for each item.

Sections 1 to 3 are technical provisions and will commence on Royal Assent.

Amendments listed in Schedules 1, 2, 3, 4, 5, 6, 7 and 8 to, respectively, the *Intelligence Services Act 2001*, the *Inspector-General of Intelligence and Security Act 1986*, the *Office of National Assessments Act 1977*, the *Australian Security Intelligence Organisation Act 1979*, the *Telecommunications (Interception) Act 1979*, the *Privacy Act 1988*, the *Freedom of Information Act 1982*, as well as the consequential amendments to the *Archives Act 1983*, the *Australian Security Intelligence Organisation Act 1979*, the *Crimes Act 1914*, the *Crimes (Overseas) Act 1964*, the *Criminal Code Act 1995* and the *Human Rights and Equal Opportunity Commission Act 1986*, will commence on the 28<sup>th</sup> day after the day this Act receives the Royal Assent.

### Section 3: Schedule(s)

This section provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

## **Schedule 1 – *Intelligence Services Act 2001***

The purpose of this schedule is to amend the ISA primarily to implement two of the proposals recommended in the Flood Inquiry. The first is amendment of the legislation to include the functions and ministerial accountabilities of DIGO, in order to put the newest of Australia's intelligence agencies on a legislative footing. The second change is to extend the mandate of the PJCAAD to include DIGO, DIO and ONA on the same basis as that committee's current mandate. Associated with this change is the proposal to rename the PJCAAD as the Parliamentary Joint Committee on Intelligence and Security (PJCIS).

DIGO is an agency of the Department of Defence, established in November 2000 as a result of an amalgamation of two Defence organisations, realising synergies in the exploitation of imagery and other data to produce intelligence and geospatial information. The term 'geospatial' refers to the location and character of natural and constructed features and boundaries on, under or above the surface of the earth. DIGO's role is to provide imagery and geospatial intelligence in support of Australia's defence interests and other national objectives. Like ASIS and DSD, DIGO has a foreign intelligence focus, however, its role is not limited to that. DIGO's functions are detailed in this Bill.

Schedule 1 to the Bill also includes amendments that have resulted from a review of the ISA ('the ISA Review') coordinated by the Department of the Prime Minister and Cabinet (PM&C). These include clarification of the existing roles and functions of ASIS and DSD, authority for ASIS, DIGO and DSD to communicate incidentally obtained intelligence in defined circumstances and changes to the ministerial authorisation regimes for intelligence collection by agencies covered by the ISA. The changes to the functions of ASIS and DSD are not intended to change the scope of the intelligence functions of those agencies. The inclusion of a provision concerning the communications of incidentally obtained information is to clarify the circumstances when such intelligence, which has been collected unintentionally in the proper conduct of the functions of the agencies, can be communicated.

The amendments to the administration of the ministerial authorisation regime proposed in this schedule to the Bill strengthen the strict procedures contained in the original Act which apply when the activities of an agency are specifically directed at collecting intelligence on an Australian person, by removing the legislative limitation on those procedures which currently applies them to Australians who are outside Australia. Accountability for the activities of the agencies is also increased with the introduction of regular reporting obligations for agency heads on activities that have been authorised by the Minister and by a specific requirement that agency heads must seek a reconsideration of a Ministerial authorisation when the circumstances that justified the authorised activities cease to exist.

Further, under amendments proposed in the Bill, the ministerial authorisation regime will be changed to allow certain other ministers to authorise intelligence collection activities in circumstances where there is a need for emergency collection and the responsible Minister is not readily contactable or available. The group of ministers involved will be the Prime Minister, the Minister for Defence, the Minister for Foreign Affairs and the Attorney-General. This amendment is intended to provide some flexibility to the agencies while maintaining the controls on their activities which are contained in the Act.

## **Part 1 – Amendments**

### **Item 1**

This item includes DIGO in the definition of ‘agency’.

### **Item 2**

This item defines ‘agency head’ in relation to DIGO as meaning the Director of DIGO.

### **Item 3**

This item redefines ‘agency head’ in relation to DSD as the Director of DSD.

### **Item 4**

This item changes the name of the Parliamentary Joint Committee on ASIO, ASIS and DSD to the Parliamentary Joint Committee on Intelligence and Security.

### **Item 5**

This item defines DIGO as that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.

### **Item 6**

This item defines DIO as that part of the Department of Defence known as the Defence Intelligence Organisation.

### **Item 7**

This item repeals the current definition of ‘director’. A definition of ‘director’ is no longer necessary as it is covered under the definition of ‘agency head’.

### **Item 8**

This item defines ‘emergency response function’ to include a function in relation to search and rescue, emergency rescue or response to natural disaster.

### **Item 9**

This item defines ‘foreign power’ as having the same meaning as in the *Australian Security Intelligence Organisation Act 1979*. This definition was previously outlined in subsection 9(1B) of the Act.

### **Item 10**

This item inserts a definition of incidentally obtained intelligence as intelligence obtained by ASIS, DIGO or DSD in the course of carrying out their functions under subsections 6(1), 6B(a), (b) or (c) or 7(a) respectively, but that is not intelligence of a kind referred to in those paragraphs.

### **Item 11**

This item repeals the current definition of intelligence information and replaces it with a definition that means information obtained by ASIS, DIGO or DSD under subsection 6(1),

paragraphs 6B(a) and (b), or (c), or subsection 7(a) respectively, or incidentally obtained intelligence.

### **Item 12**

This item defines ONA as the Office of National Assessments, as established by the *Office of National Assessments Act 1977*.

### **Item 13**

This item repeals the current definition of ‘permanent resident’ and replaces it with a definition which maintains the link to the *Australian Security Intelligence Organisation Act 1979* for the purposes of a natural person, but redefines the understanding of body corporate. For the purposes of the ISA, a permanent resident would include a body corporate incorporated under a law in force in a State or Territory, but would exclude a body corporate whose activities are controlled (or could be controlled) by a foreign power or natural person who is neither an Australian citizen nor a permanent resident.

### **Item 14**

This item repeals the current definition of responsible Minister in relation to ASIS and defines the responsible Minister in relation to an agency under the Act (ASIS, DIGO or DSD) as the Minister responsible for that agency. This item also defines the responsible Minister in relation to DIO as the Minister responsible for DIO.

### **Item 15**

This item defines the responsible Minister in relation to ONA as the Minister responsible for ONA.

### **Item 16**

This item repeals the current definition for staff member in relation to ASIO and defines staff member as a member of the staff of ASIO (whether an employee of ASIO, a consultant or contractor to ASIO, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASIO). This is to ensure consistency in expanding the definition to cover contractors.

### **Item 17**

This item repeals the existing definitions for staff member in relation to ASIS and DSD, and provides a common definition of staff member for ASIS, DIGO and DSD. A staff member for those agencies is a member of the staff of the agency (whether an employee of the agency, a consultant or contractor to the agency, or a person who is made available by another Commonwealth or State authority or other person to perform services for the agency).

### **Item 18**

This item proposes the insertion of specific reference to the fact that, in performing its functions, ASIS is able to provide assistance to Commonwealth authorities, including to the Defence Force in support of military operations, and to State authorities.

### **Item 19**

This item provides the legislative basis for the activities of DIGO and outlines its five categories of functions.

Under function (a), DIGO obtains imagery and geospatial data to produce foreign intelligence relating to people or organisations outside Australia.

Under function (b), DIGO obtains imagery and geospatial data to produce intelligence to support ADF exercises, training and operations wherever they may occur. This function includes providing data and material in support of ADF decision making for targeting.

Under function (c), DIGO obtains imagery and geospatial data to produce intelligence to support Commonwealth and State authorities in their national security role.

Under function (d), DIGO communicates the material produced as a result of the exercise of the functions described above, in accordance with the requirements of the Government.

Under function (e), DIGO provides non-intelligence products and assistance to Commonwealth and State government agencies, as well as to approved non-government bodies and foreign governments. Non-intelligence products include routine topographic data and products. Assistance in search and rescue, and response to natural disasters is specifically included in this function to acknowledge the importance of non-intelligence work done by DIGO in this area.

#### **Item 20**

Amendments under this item make changes to the functions of DSD. The amended paragraph 7(d) specifically allows DSD to provide assistance to the Defence Force in support of military operations and to cooperate with the Defence Force on intelligence matters. This is not an extension of the functions of DSD but a clarification of them.

The proposed paragraph 7(e) clarifies the scope of non-intelligence assistance which is provided by DSD. The amendment will allow DSD to assist Commonwealth and State authorities in relation to cryptography and communication and computer technologies as well as assistance in relation to other specialised technologies acquired by DSD in connection with the performance of its other functions. The amendment also makes it clear that DSD can provide assistance to other authorities in the context of search and rescue.

#### **Item 21**

Section 8(1) of the ISA requires the Minister responsible for ASIS and the Minister responsible for DSD to issue certain written directions in relation to the activities of the relevant agency to the agency head. This item imposes the same obligation on the Minister responsible for DIGO.

#### **Item 22**

This item deletes the words 'who is overseas' from the current legislation. As a result of this amendment, ASIS, DIGO and DSD will be required to seek a ministerial authorisation to produce intelligence on an Australian person, whether that person is overseas or in Australia.

#### **Item 23**

This item repeals the definition of foreign power. The definition has been inserted into section 3 by amendment at item 32A of this Bill.

#### **Item 24**



This item allows the Prime Minister, the Minister for Defence, the Minister for Foreign Affairs or the Attorney-General to issue an authorisation for an activity under section 9 in an emergency and where the Minister responsible for ASIS, DIGO or DSD is not readily available or contactable.

#### **Item 25**

This item provides that where the agency head is satisfied that the grounds for the authorisation no longer exist, an agency head must so inform the responsible Minister, and ensure that relevant activities are discontinued. The proposed amendment also requires the Minister to consider canceling the authorisation as soon as practicable after being so informed.

#### **Item 26**

This item inserts a new provision requiring agency heads to report to their Ministers on the results of each collection activity authorised under section 9. It is intended that the report must be provided to the Minister within three months of the authorisation ceasing to have effect.

#### **Item 27**

Subsection 11(2) of the ISA makes it clear that, although the agencies do not have a law enforcement or policing role, agencies are permitted to obtain and communicate to police and law enforcement agencies intelligence relevant to serious crime. This item of the Bill applies this provision to DIGO.

#### **Item 28**

This item makes it clear that ASIS, DIGO and DSD are not prevented from providing to police and law enforcement agencies non-intelligence assistance under subsection 6(7), paragraph 6B(e) or paragraph 7(e) respectively.

#### **Item 29**

This item enables agencies to communicate incidentally obtained information to appropriate Commonwealth or State authorities or to approved authorities of other countries, in the limited circumstances set out in the item. This is limited to intelligence unintentionally but properly collected and only in accordance with limits adapted from section 9(1A). Information to be communicated must relate to the involvement, or likely involvement, by a person in activities that present a significant risk to a person's safety; acting for, or on behalf of, a foreign power; activities that are a threat to security; activities related to the proliferation of weapons of mass destruction or the movement of goods listed from time to time in the Defence and Strategic Goods List; or committing a serious crime.

#### **Item 30**

Subsection 11(3) of the ISA provides that the restrictions contained in subsection 11(1) do not apply to the functions of DSD that are unrelated to intelligence collection. This item in the Bill maintains that exclusion and extends its operation to the non-intelligence functions of DIGO.

In addition, because the function of DIGO in support of national security agencies and the functions of DIGO and DSD in support to the ADF may not be affected by people or

organisations outside Australia, by the amendments in this item these functions are also excluded from the operation of subsection 11(1)

### **Item 31**

This item ensures that the special responsibilities outlined in the provision apply to the Director of DIGO, the Director of DSD and the Director-General of ASIS. The heading of this provision is amended to reflect both the Directors of DIGO and DSD.

### **Item 32**

This item makes it clear that the Director of DIGO is included in this provision in the same way as the Director of DSD and the Director-General of ASIS.

### **Item 33**

Section 15(1) of the ISA provides that the relevant responsible Minister must make written rules regarding the communication and retention by ASIS and DSD of intelligence information concerning Australian persons. This item in the Bill extends this requirement to the Minister responsible for DIGO. This will ensure that, like ASIS and DSD, DIGO will act with propriety and in accordance with Government policy to protect the privacy of Australian persons.

### **Item 34**

This item requires the Minister to consult with the Director of DIGO before making the rules.

### **Item 35**

This item clarifies that, in relation to DSD, the Minister must consult with the Director of DSD before making the rules.

### **Item 36**

This item requires the Minister to consult with the Inspector-General of Intelligence and Security and the Attorney-General in relation to making the rules for ASIS, DIGO or DSD.

### **Item 37**

This item excludes contractors from those to whom the Director-General of ASIS may delegate his/her powers relating to the management of the staff of ASIS or the financial management of ASIS.

### **Item 38**

This item repeals the heading of Part 4 and replaces it with the 'Committee on Intelligence and Security'.

### **Item 39**

This item changes the name of the Committee from the Parliamentary Joint Committee on ASIO, ASIS and DSD to the Parliamentary Joint Committee on Intelligence and Security.

### **Item 40**

This item increases the membership of the Committee from seven to nine, comprised of five Members of the House and four Senators.

## **Items 41 and 42**

These items expand the mandate of the Committee to review the administration and expenditure, including the annual financial statements, of DIGO, DIO and ONA, in addition to ASIO, ASIS and DSD. Because DIGO, DIO and DSD are not statutory agencies, but part of the Defence Portfolio, they do not produce separate financial statements but rather report through the Defence Portfolio Budget Statements. This will have an impact on any review by the Committee of the administration and expenditure of these agencies.

## **Item 43**

This item expands the mandate of the Committee to include DIGO, DIO and ONA.

## **Item 44**

This item expands the mandate of the Committee to include DIGO, DIO and ONA.

## **Items 45, 46, 47 and 48**

These items provide that the limitations on the powers of the Committee extend, as appropriate, to DIGO, DIO and ONA.

## **Item 49**

This item provides that the Committee cannot review the content or conclusions of assessments or reports made by DIO or ONA, or review the sources of information on which such assessments or reports are based. This item also limits the Committee from reviewing the coordination and evaluation activities undertaken by ONA.

## **Item 50**

This item allows the Committee to request that the Directors of DIGO and DIO brief the Committee.

## **Item 51**

This item allows the Committee to request the Director-General of ONA brief the Committee.

## **Item 52**

This item inserts a new offence into the ISA in relation to the communication of certain information relating to DIGO. This offence mirrors that applying to the communication of information relating to DSD contained in section 40 of the Act.

## **Item 53**

This item clarifies references to the Director of DSD in relation to communicating DSD-related information.

## **Item 54**

This item changes the heading of Schedule 1 of the Act, acknowledging the changed name of the Committee to the *Committee on Intelligence and Security*.

## **Item 55**

This item changes the heading to read Part 1A – Preliminary, rather than Part 1A – Definitions.

**Item 56**

This item expands the scope of the word ‘agency’ in the context of the Committee to include DIGO, DIO and ONA.

**Item 57**

This item includes the Directors of DIGO and DIO in the definition of ‘agency head’.

**Item 58**

This item includes the Director-General of ONA in the definition of ‘agency head’.

**Item 59**

This item extends the definition of ‘operationally sensitive information’ in relation to sources of information, other operational assistance or operational methods available to DIGO, DIO and ONA.

**Item 60**

This item extends the definition of ‘operationally sensitive information’ in relation to particular operations that have been or are being or are proposed by DIGO or DIO.

**Item 61**

This item inserts a definition of staff member for the purposes of the Committee. The definition mirrors that included in items 41 and 43 of this Bill.

**Item 62**

This item ensures that Parts 1 and 2 and clauses 20, 21 and 22 of the Schedule regarding the Committee on Intelligence and Security apply to subcommittees appointed under clause 23. The heading of clause 3 of Schedule 1 would be altered to reflect its expanded mandate to cover all Australian intelligence agencies.

**Item 63**

Paragraph 7(1)(a) of Schedule 1 to the ISA precludes the Committee from disclosing the identity of certain persons. This item in the Bill includes a person who is or has been an agent of DIGO in the provision.

**Item 64**

This item establishes a Deputy Chair of the Committee on Intelligence and Security. The Deputy must be a Government member elected by the members of the Committee.

**Item 65**

To account for the increased size of the Committee from seven to nine members, this item provides that a quorum is constituted if at least five members of the Committee are present.

**Item 66**

Acknowledging the Committee's expanded mandate to cover DIGO, DIO and ONA, this item stipulates that the Committee must not conduct a review in public without the approval of the Ministers responsible for ASIO, ASIS, DIGO, DIO, DSD and ONA.

**Item 67**

This item empowers the Committee to appoint one or more subcommittees of at least three Committee members to conduct inquiries and report to the Committee. The subcommittee must report to the Committee as soon as practicable on each matter to the Committee and may sit at any time. The proposed provision stipulates the term of office for a member of a subcommittee and outlines the operation of a subcommittee.

## **Part 2 – Application and transitional provisions**

### **Item 68**

This item proposes that the amendment sought under Item 25 would apply to authorisations issued under section 9 of the ISA in force at the time of commencement of the Amendment Bill, and to those authorisations issued after the commencement of the Bill.

### **Item 69**

This item proposes that the amendment made by Item 25 applies to an activity authorised under section 9 of the ISA after the commencement of the Bill.

### **Item 70**

This item provides for the transition of the PJCAAD to the PJCIS. It provides that the Committee continues in existence, subject to the amendments made by Schedule 1. A person who held office as a member of the PJCAAD immediately prior to the commencement of the Act is taken to have been appointed as a member of the PJCIS. Similarly, the person who held office as Chair of the PJCAAD immediately prior to commencement of the Act is taken to have been elected as Chair of the PJCIS. All reviews being conducted by the PJCAAD should continue to be conducted by the PJCIS.

## **Schedule 2 – *Inspector-General of Intelligence and Security Act 1986***

The primary purpose of this schedule is to amend the IGIS Act to implement three proposals recommended in 2004 by the Inquiry into Australian Intelligence Agencies. The first is an amendment of the legislation to provide a legislative basis for the Inspector-General to monitor DIGO on a similar basis to his/her current scrutiny of ASIS and DSD. The second change is to give the Inspector-General authority to initiate inquiries at his/her own discretion into matters relating to DIO and ONA – at present a ministerial referral is required before the Inspector-General can undertake an inquiry into these two agencies. The third of these changes is to give the Inspector-General authority to conduct periodic reviews of ONA’s statutory independence.

The schedule also includes a number of amendments that have resulted from the ISA Review. These include a provision to allow the Inspector-General to consult with the Commonwealth Ombudsman to avoid a duplication of effort, as currently occurs with the Auditor-General. Another provision establishes a clear right for the Inspector-General to access to any place being used for detention as a component of IGIS’s role to monitor questioning by ASIO under the special powers conferred by Division 3 Part III of the *Australian Security Intelligence Organisation Act 1979* (‘the ASIO Act’). A further provision allows the Inspector-General, in relation to an inquiry or report directly concerning the head of an agency, to advise the Secretary of the Department of Defence, in relation to the Defence intelligence agencies, or the relevant Minister in the case of the other intelligence agencies, of an inquiry and to consult on a draft inquiry report as an alternative. A further amendment also clarifies the Inspector-General’s role in relation to investigating complaints regarding conditions of employment in ASIS, which would preclude such an investigation by the Inspector-General where another independent mechanism was or is available and had not been exhausted. This change is in line with the Inspector-General’s current role in relation to such matters concerning ASIO.

### **Part 1 – Amendments relating to DIGO**

#### **Item 1**

This item extends the definition of agency to include DIGO.

#### **Item 2**

This item inserts a definition of DIGO to mean that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation, and any part of the Defence Force that performs functions on behalf of that part of the Department. This extended definition makes it clear that the Inspector-General oversees all of DIGO’s activities, including any carried out on behalf of DIGO by the Defence Force.

#### **Items 3 and 4**

These items include a reference to the Director of DIGO as a head of an agency covered by the Act.

#### **Item 5**

Subsection 8(2) of the IGIS Act sets out the functions of the Inspector-General in relation to ASIS and DSD. This item in the Bill means that the functions of the Inspector-General under this subsection are extended to DIGO.

### **Item 6**

Subsection 8(4) of the IGIS Act limits the performance of the functions under subsection 8(2) in relation to ASIS and DSD. This item in the Bill means that the subsection 8(4) limitations on functions of the Inspector-General are extended to DIGO.

### **Item 7**

This item relates to the oversight of DIGO by the Inspector-General. It allows the Inspector-General to obtain certain periodically prepared reports related to DIGO. The item also ensures that, where the Director of DIGO has not provided the Secretary to the Department of Defence with a copy of the report, the Director need not give a copy to the Inspector-General until the Director has given the report to the Minister or Secretary.

### **Item 8**

Subsection 32B of the IGIS Act concerns the provision of a copy of Ministerial guidelines or directions to the Inspector-General. This item provides that the Minister in relation to DIGO must give a single copy of any Ministerial directions or guidelines relating to DIGO to the Inspector-General.

## **Part 2 – Other amendments**

### **Item 9**

This item defines Ombudsman as meaning the Commonwealth Ombudsman.

### **Item 10**

This item empowers the Inspector-General to initiate own-motion inquiries in relation to ONA and DIO.

### **Item 11**

This item empowers the Inspector-General to conduct periodic reviews of ONA's statutory independence. The IGIS reviews of ONA's statutory independence may include consideration of whether or not ONA was improperly influenced in a decision to produce or not to produce a particular judgment or assessment.

### **Items 12 and 13**

These items extend the current limitations on inquiries by the Inspector-General into complaints made by an employee of ASIO to complaints made by an employee of ASIS in relation to the conditions of employment.

### **Item 14**

This item empowers the Inspector-General, after notifying the Director-General of Security, at any reasonable time, to enter any place where a person is being detained under Division 3 of Part III of the ASIO Act for the purposes of an inspection under this Act.

### **Items 15, 16 and 17**



These items give the Inspector-General a discretion about advising the head of an agency before commencing an inquiry where the inquiry relates directly to the head of the agency. Where the Inspector-General does not advise the head of an agency of his/her proposal to conduct an inquiry into a matter that directly relates to the head of the agency, the Inspector-General must, if the matter relates to the head of ASIO, ASIS or ONA, advise the responsible Minister in relation to ASIO, ASIS or ONA. Where the matter relates to the head of DIGO, DIO or DSD, the Inspector-General must advise the Secretary of the Department of Defence. Item 155 expressly refers to the natural justice provisions of section 17 in conducting inquiries under section 15.

### **Items 18, 19 and 20**

These items empower the Inspector-General to consult with the Commonwealth Ombudsman, in addition to the Auditor-General, with a view to avoiding inquiries being conducted into a matter by the Inspector-General and either or both of the Auditor-General and the Ombudsman. This is to ensure that there is no duplication between Government accountability agencies.

### **Item 21**

This item omits section 19(1).

### **Item 22**

This item empowers the Inspector-General, after notifying the Director-General of Security, at any reasonable time, to enter any place where a person is being detained under Division 3 of Part III of the ASIO Act for the purposes of an inquiry under this Act.

### **Item 23**

This item requires the Inspector-General to give a copy of the draft report to the head of the agency, subject to the discretion placed on him/her in subsections (1A) and (1B) below in item 165.

### **Item 24**

This item gives the Inspector-General a discretion about giving the head of an agency a copy of a draft report setting out conclusions and recommendations in respect of a matter that relates directly to the head of the agency. Where the Inspector-General does not give a copy of the report to the head of an agency, he/she must, if the matter relates to the head of ASIO, ASIS or ONA, give the responsible Minister in relation to ASIO, ASIS or ONA a copy. Where the matter relates to the head of DIGO, DIO or DSD, the Inspector-General must give the Secretary of the Department of Defence a copy of the report. Item 165 expressly refers to the natural justice provisions of section 17 in drafting reports related to inquiries under section 21.

### **Items 25 and 26**

These items require the Inspector-General to include in his/her final report into a matter that directly involves the head of an agency, such comments from the head of the agency, the responsible Minister or the Secretary, as are relevant to the final report.

### **Item 27**

This item requires the Inspector-General to provide a copy of the final report to either the head of the agency or the person to whom a copy of the draft report was given under subsection 21(1B).

**Item 28**

This item empowers the Inspector-General to prepare and provide a full report to the Prime Minister if the responsible Minister or the Secretary does not take, within a reasonable period, action that the Inspector-General considers is adequate and appropriate in the circumstances.

**Item 29**

This item requires the Inspector-General to include mention of any inquiry into the statutory independence of ONA in the Inspector-General's annual report.

### **Schedule 3 - *Office of National Assessments Act 1977***

The purpose of this schedule is to amend the ONA Act primarily to implement two of the proposals recommended in 2004 by the Inquiry into Australian Intelligence Agencies. First, amendment of the legislation to remove the references to two assessment boards (National Assessments Board and Economic Assessments Board) to reflect the reality that there is only one assessments board, which covers all strategic, political and economic issues, but with provision for different composition according to the subject matter under consideration at each board meeting. Second, amendment of the legislation to strengthen ONA's intelligence community coordination role. In addition, the schedule includes an amendment to update provisions relating to the basis of the Director-General's remuneration.

#### **Item 1**

This item repeals the current definition of 'Assessments Board' and 'Board' in section 3.

#### **Item 2**

This item adds a definition of the 'Department of Defence' to section 3, in relation to the need for a representative of that department to be a member of the National Assessments Board. The 'Department of Defence' is defined as the Department administered by the Minister administering section 1 of the *Defence Act 1903*.

#### **Item 3**

This item adds a definition of the 'Department of Foreign Affairs and Trade' to section 3, in relation to the need for a representative of that department to be a member of the National Assessments Board. The 'Department of Foreign Affairs and Trade' is defined as the Department administered by the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

#### **Items 4 and 5**

These items replace paragraph 5(1)(d), which is the current basis for ONA's intelligence community coordination and evaluation role, with new provisions which will provide a clearer and stronger authority for this role.

The coordination functions of the Office will be:

- (a) to coordinate the foreign intelligence activities that Australia engages in, including in relation to setting Australia's foreign intelligence requirements based on Australia's foreign intelligence priorities; and
- (b) to coordinate matters of common interest to Australia's foreign intelligence agencies, including, but not limited to: policy in relation to foreign intelligence; long-term planning and cross-agency planning in relation to foreign intelligence; and liaison with international partners, consistent with the capacity of the intelligence agencies to develop relationships with their counterparts in other countries.

The evaluation functions of the Office will be:

- (a) to evaluate the foreign intelligence activities that Australia engages in, having regard to Australia's foreign intelligence priorities and requirements; and the intelligence needs of relevant Ministers;
- (b) to provide advice to the Prime Minister or to relevant departments on the adequacy of the resources available for foreign intelligence activities; and

- (c) to provide advice to the Prime Minister on any improvements or changes that should be made to remedy inadequacies, including, but not limited to, inadequacies relating to coordination arrangements.

#### **Item 6**

This item specifies that membership of the National Assessments Board is subject to new subsections (2A) and (2B) of section 6, the substance of which are outlined under item 7 below.

#### **Items 7 and 8**

These items replace current provisions concerning the functions and membership of the National Assessments Board. It specifies that the Board's function is to consider all national assessments prepared by the Office. It gives the Director-General authority to vary the membership of the Board, but requires that it include officers of the Departments of Foreign Affairs and Trade, of Defence and of the Prime Minister and Cabinet as well as a member of the Defence Force. These amendments also require the Director-General to take reasonable steps to ensure that a meeting of the National Assessments Board includes representatives of departments and agencies appropriate to the subject matter of the national assessment or national assessments under consideration by the Board at that meeting.

#### **Item 9**

This item repeals the current provisions relating to an Economic Assessments Board.

#### **Items 10, 11, 12, 13, 14 and 15**

These items amend section 8 to clarify that the Director-General's duty to consult the National Assessments Board relates to national assessments and not other forms of assessment product prepared by ONA.

#### **Item 16**

This item repeals a subsection that specifies that "the rates of remuneration and allowances payable to the Director-General shall not be less than the rates of remuneration and allowances for the time being payable, in pursuance of a determination by the Remuneration Tribunal, to Secretaries of Departments to whom no responsibility loading is payable". This provision has been inoperable since the commencement of the *Public Service Act 1999*, when the Remuneration Tribunal's power to determine departmental secretaries' remuneration was removed. That Tribunal will continue to determine the Director-General's remuneration. This amendment is not intended to result in any reduction in the Director-General's standing or level of remuneration.

## **Schedule 4 – *Australian Security Intelligence Organisation Act 1979***

The purpose of this schedule is to amend the ASIO Act to implement a measure agreed in response to the ISA Review. This change will enhance accountability arrangements for any use by the Director-General of Security of his power under section 29 of the ASIO Act to authorise intelligence collection under an emergency warrant for up to 48 hours in advance of ministerial authorisation. It will require IGIS to be advised, by being provided with a copy of the warrant, within three working days of each case where this authority is exercised.

### **Item 1**

This item creates a new subsection 29(4) that requires the Director-General to inform the Inspector-General of Intelligence and Security, by providing a copy of the warrant, of the exercise of the emergency warrant power within three working days of the emergency warrant being approved.

## **Schedule 5 – *Telecommunications (Interception) Act 1979***

The purpose of this schedule is to amend the *Telecommunications (Interception) Act 1979* (‘the TI Act’) to implement a measure agreed in response to the ISA Review. This change will enhance accountability arrangements for any use by the Director-General of Security of his power under section 9 of the TI Act to authorise intelligence collection for up to 48 hours in advance of ministerial authorisation. It will require the Inspector-General of Intelligence and Security to be advised, by being provided with a copy of the warrant, within three working days of each case where this authority is exercised.

### **Item 1**

This item creates a new subsection 10(5) that requires the Director-General to inform the Inspector-General of Intelligence and Security, by providing a copy of the warrant, of the exercise of the emergency warrant power within three working days of the emergency warrant being approved.

## **Schedule 6 – *Privacy Act 1988***

The purpose of this schedule is to amend the *Privacy Act 1988* ('the Privacy Act') to provide DIGO with a similar standing under that legislation to the other intelligence collection agencies. This is consistent with the recommendation by the Flood Inquiry that DIGO be put on a proper legislative footing. This schedule also extends the exemption currently provided to ASIO and ASIS under section 7(1A) of the Privacy Act to DSD.

### **Item 1**

In line with the proposed amendments to the *Freedom of Information Act 1982* in Schedule 7 of this Bill, this item changes reference in this section to Division 1 Part 1 of Schedule 2.

### **Item 2**

This item preserves the current application of the Privacy Act to acts done by DIGO, DIO and DSD, which may otherwise have been affected by the changes made in Schedule 7 of the Bill.

### **Item 3**

This item amends the paragraph to include reference to the Defence Imagery and Geospatial Organisation.

### **Item 4**

This item creates a new paragraph 7(1A)(c) to include reference to the Defence Signals Directorate of the Department of Defence.

### **Item 5**

This item amends the paragraph to include reference to Defence Imagery and Geospatial Organisation.

## **Schedule 7 – *Freedom of Information Act 1982***

The purpose of this schedule is to amend the *Freedom of Information Act 1982* ('the FOI Act') to provide DIGO with a similar standing under that legislation to the other intelligence collection agencies. This is consistent with the recommendation by the Inquiry into Australian Intelligence Agencies in 2004 that DIGO be put on a proper legislative footing.

The various intelligence agencies are currently treated differently under the FOI Act. ASIO, ASIS and ONA are exempt agencies under the FOI Act by virtue of being listed in Part I of Schedule 2 to the FOI Act. Subsection 7(1) of the FOI Act provides that these agencies are exempt from the operation of the FOI Act. They do not have to comply with the procedural requirements of the Act. DSD and DIO, on the other hand, are treated as an integral part of the Department of Defence. The Department is the agency for FOI purposes. By virtue of subsection 7(2) and being listed in Part II of Schedule 2 to the FOI Act, documents relating to the activities of DSD and DIO are exempt. However, the Department of Defence must still comply with the procedural requirements of the FOI Act. That is, it must respond to an FOI request on behalf of DSD and DIO in accordance with the FOI Act timeframes, and give written reasons for refusing access to any documents which the applicant sought. These access decisions are subject to internal review and Administrative Appeals Tribunal merits review.

These amendments to the FOI Act result in all intelligence agencies being treated alike. DIGO is included in Part I of Schedule 2 and DSD and DIO are moved from Part II to Part I of Schedule 2. All intelligence agencies are then fully exempt from the operation of the FOI Act.

### **Items 1, 2 and 3**

These items insert definitions of DIGO, DIO and DSD into the FOI Act.

### **Items 4 and 5**

These items reflect the changed structure of Part 1 of Schedule 2 and moves the current list of exempt agencies from Part 1 to Division 1 of Part 1.

### **Item 6**

This item creates a new subsection 7(1A) which provides clarity in relation to the definition of *agency* as it applies to a part of the Department of Defence specified in Division 2 of Part I of Schedule 2 to the FOI Act.

### **Item 7**

This item amends the subsection to include reference to the Defence Imagery and Geospatial Organisation.

### **Item 8**

This item amends the subsection to include new paragraphs 16(2)(c) and 16(2)(d) which provide for requests relating to a document that originated with, or has been received from, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2 to the FOI Act, to be transferred to that Department.



**Item 9**

This item amends the subsection to include new paragraphs 51C(2)(c) and 51C(2)(d) which provide for applications relating to a document that originated with, or has been received from, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2 to the FOI Act, to be transferred to that Department.

**Item 10**

This item inserts a new heading 'Division 1' after the heading of 'Part 1' in Schedule 2.

**Item 11**

This item amends Part I of Schedule 2 to add a new Division 2. Division 2 is comprised of the Defence Imagery and Geospatial Organisation, the Defence Intelligence Organisation and the Defence Signals Directorate.

**Item 12**

This item amends Part II of Schedule 2 to omit reference to the Department of Defence, in relation to documents in respect of activities of the Defence Intelligence Organisation and the Defence Signals Directorate.

## **Schedule 8 – Consequential amendments of other Acts**

This schedule has two purposes. The first is to implement a series of consequential amendments to the *Archives Act 1983*, the *Australian Security Intelligence Organisation Act 1979*, the *Crimes Act 1914*, the *Crimes (Overseas) Act 1964*, the *Criminal Code Act 1995* and the *Human Rights and Equal Opportunity Commission Act 1986* to provide DIGO with a similar standing under those Acts to the other intelligence agencies. This is consistent with the recommendation by the Inquiry into Australian Intelligence Agencies that DIGO be put on proper legislative footing.

The second purpose is to achieve consequential changes to references in the ASIO Act to reflect the proposal, in Schedule 1, to change the name of the Parliamentary Joint Committee on ASIO, ASIS and DSD to the Parliamentary Joint Committee on Intelligence and Security. This name change was also recommended by the Inquiry into Australian Intelligence Agencies.

### **Part 1 - Consequential amendments relating to DIGO**

#### ***Archives Act 1983***

##### **Item 1**

This item amends the subsection to include new paragraph 29(8)(ba) which adds DIGO to the list of agencies exempted from requiring the concurrence of the Director-General in making a determination under subsection 29(1).

#### ***Australian Security Intelligence Organisation Act 1979***

##### **Item 2**

This item amends the section by including reference to DIGO in the definition of *intelligence or security agency*.

#### ***Crimes Act 1914***

##### **Items 3 and 4**

These items amend the section to include reference to DIGO in the definition of *intelligence or security agency* to ensure consistency with the other agencies being excluded from the federal spent convictions scheme, for the purpose of in-depth security clearance of staff members.

#### ***Crimes (Overseas) Act 1964***

##### **Items 5 and 6**

These items amend the section to state that *DIGO* has the same meaning as in the ISA and to include reference to DIGO in the definition of ‘staff member’.

##### **Item 7**

This item amends the paragraph to include reference to DIGO after any reference to ASIS. The heading to subsection 3A(10) is also amended by inserting *DIGO* after *ASIS*.

##### **Item 8**

This item amends paragraph (a) of the note to subsection 3A(10) to include reference to DIGO.

## ***Criminal Code Act 1995***

### **Item 9**

This item amends the subsection to include reference to DIGO.

### **Item 10**

This item amends the subsection to state that *DIGO* means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation.

### **Item 11**

This item includes ‘contractor’ in the definition of staff member in relation to ASIS and DSD.

### **Item 12**

This item includes a definition of staff member in relation to DIGO.

## ***Human Rights and Equal Opportunity Commission Act 1986***

### **Item 13**

This item amends the subsection to include the Defence Imagery and Geospatial Organisation in the reference to intelligence agencies.

### **Item 14**

This item amends the subsection to include the Defence Imagery and Geospatial Organisation in the reference to intelligence agencies.

## **Part 2—Consequential amendments relating to the Parliamentary Joint Committee on Intelligence and Security**

## ***Australian Security Intelligence Organisation Act 1979***

### **Items 15 and 16**

These items repeal the definition of *Committee on ASIO, ASIS and DSD* and replace it with a new definition of *Committee on Intelligence and Security*.

### **Item 17**

This item amends the subsection by substituting reference to the *Committee on ASIO, ASIS and DSD* with *Committee on Intelligence and Security*.

### **Item 18**

The item amends the paragraph by substituting reference to the *Parliamentary Joint Committee on ASIO, ASIS and DSD* with *Parliamentary Joint Committee on Intelligence and Security*.

### **Item 19**

The item amends the subsection by substituting reference to the *Committee on ASIO, ASIS and DSD* with *Committee on Intelligence and Security*.