

Director-General's Address

Sydney Institute

11 September five years later: Where to from here?

4 May 2006

- Thank you Mr Chairman for the opportunity to speak to the members of the Sydney Institute.
- On the morning of 11 September 2001 a situation unfolded in the United States that would be the catalyst for changes in the way governments, security agencies and communities around the world viewed the threat of terrorism.
- As we approach the fifth anniversary of these attacks I would like to reflect on a number of things.
 - The way changes that have taken place in Australia over the last five years compare with those elsewhere in the world;
 - The positive impact of these changes on ASIO's effectiveness and its ability to contribute to keeping Australians safe;
 - What the Australian community might expect of its security intelligence organisation over the next 5 – 10 years; and

- ASIO's place in the broad fabric of Australian society.

The Historical Context

- Before addressing those points, let me give you some historical context.
- ASIO has been around since 1949. Over that time Australia's security environment has been transformed, as has the broader social and political context within which ASIO has operated.
 - ASIO does not exist or operate in a vacuum.
 - It is very much a product of the values and attitudes of the Australian community at a point in time.
 - And it operates within the legislative framework put in place by the Parliament of the day.
- The ASIO of today reflects the broad social values and attitudes of Australian society.
 - That evolving social framework has shaped its organisational culture, policies and approach to the complex and sensitive work of security intelligence.
- One thing that has remained constant has been the requirement for the Organisation to operate outside the public gaze.

- Security intelligence work, which involves working against those who operate secretly and deceptively with the intention of doing harm to others, by necessity must be done discreetly.
- Indeed, much of ASIO's work relies on the cooperation of people who can and will assist only on the basis of secrecy, respect for confidences and trust.
- Trust and respect for confidences are not things which can be a temporary arrangement.
- They go to the very heart of ASIO's continuing effectiveness as a security intelligence organisation.
- In such circumstances, speculation inevitably will generate conspiracy theories and unfounded concerns about the work of the Organisation.
 - There is nothing new in this.
- Let me give you two examples.
- Firstly, in the 1970s and 1980s ASIO was investigated by two royal commissions that arose, in general terms, as a result of concerns about the way ASIO (and other agencies) operated in the context of the Cold War attitudes and values of the time.

- The Royal Commission on Intelligence and Security (RCIS) commissioned by Prime Minister Whitlam in 1974 followed the ‘Murphy Raid’ in March 1973 – the first Hope Royal Commission; and
- The Royal Commission on Australia’s Security and Intelligence Agencies (RCASIA) commissioned by Prime Minister Hawke in 1983 following the ‘Combe–Ivanov Affair’ – the second Hope Royal Commission.
- The first Hope Royal Commission recommended an increase in ASIO’s functions and powers which were subsequently reflected in the *Australian Security Intelligence Organization Act 1979*, including:
 - giving a sharper focus to politically motivated violence (terrorism) and including foreign interference;
 - giving ASIO the power to open mail, enter premises, to use listening devices and to intercept telex and telegrams under warrant.
- Justice Hope’s other recommendations included:
 - establishing a Security Appeals Tribunal;
 - ASIO to publish an Annual Report;

- the Director-General to keep the Leader of the Opposition informed on security matters; and
 - ASIO’s headquarters to relocate to Canberra.
- These changes were directed at making ASIO more effective in the security environment of the day and into the future.
- They also sought to strike a better balance than had existed previously between ASIO’s accountability and the need for much of its work to be done discreetly.
- In 1984 Justice Hope saw a role for ‘an independent person with the power to maintain a close scrutiny of ASIO’s performance of its functions, and to look into complaints’.
 - This was to be the Inspector-General of Intelligence and Security.
- The first Inspector-General officially commenced operations on 1 February 1987 as an independent statutory officer. Since that time there have been five Inspectors-General, including the incumbent, Mr Ian Carnell.
 - The IGIS has presented 18 annual reports to Parliament.
 - Where procedural issues or human errors have been identified by the IGIS or, as often happens, brought to his

attention by ASIO, they have been addressed quickly and effectively.

- Importantly, as intended by Justice Hope, the IGIS has been able to provide **assurance** to the Parliament and the public that ASIO (and other intelligence agencies) operates legally, with propriety and with due regard to civil liberties.
- The second example goes to the issue of how ASIO determines what is relevant to security and undertakes investigations.
 - In 1982 the Church of Scientology, as part of a world-wide program of litigation arising from a belief that it was under scrutiny by security agencies, brought a court action against the Director-General, the Attorney-General and the Commonwealth.
 - It was seeking declarations that it was not a threat to security.
 - It alleged also that the Director-General was acting beyond his powers under the ASIO Act in gathering information about the Church, communicating that information to other persons and characterising it as a security risk.

- In its decision, the High Court of Australia considered the meaning of the term ‘relevance to security’ used in the ASIO Act.
 - The court found that it may be ‘relevant to security’ to determine that a person is not a risk to security just as it would be relevant to security if they were a risk.
- That decision still shapes ASIO’s approach to its work.
- These two examples occurred against the background of a different security environment and community attitudes to those of today.
 - Yet, it is worth noting that Justice Hope twice found that Australia was well-served by its intelligence community.
 - Indeed, as a former Director-General of Security, Harvey Barnett, said ‘Neither commission revealed any nameless horrors, bloody crimes, gross perversions of justice, or dark conspiracies fretting at the hem of Australian democracy.’
 - Similarly, the High Court decision validated ASIO’s role in determining what is relevant to security.
- And, since 1988 ASIO’s activities have been scrutinised by a Parliamentary Joint Committee.

- In its current form, the Parliamentary Joint Committee on Intelligence and Security consists of experienced parliamentarians, including some former Ministers.
- So you can see that ASIO has a long heritage of being accountable within a rigorous oversight regime, of acting within its legislative guidelines and of actually being seen to operate with legality and propriety.
 - It is against the background of this heritage and experience that ASIO has shaped its response to the challenges of the post 9/11 world.

Post 11 September Changes

- While the events in September 2001 certainly were the catalyst for significant changes, it is not the first time there has been a ‘structural adjustment’ in the security apparatus in Australia.
 - And, if previous experience is any guide, such adjustments, including expanding ASIO’s powers to allow it to fulfil its functions better, have not signalled any fundamental change to the balance of freedom and civil liberties in Australian society.

- Let me step through some of the changes that have occurred in the five years following the 9/11 attacks.
- Prior to September 2001 we had established and practised arrangements under the National Anti-Terrorism Plan.
 - The terrorist threat to Australia was assessed to be at the lower end of the spectrum and this was reflected in the level of ASIO resources.
 - Intelligence sharing arrangements were in place for threat assessments and security intelligence advice.
 - But not with the same level of coordination and connectivity across agencies as now exists.
 - In the event of a crisis, responsibilities between Federal and State and Territory agencies were generally well understood.
 - Although counter-terrorism exercises continued to highlight coordination and communication issues which have since been addressed and tested.
 - And, with the benefit of hindsight, the range of terrorist scenarios that had been practised was unrealistically narrow.

- Our legislative framework previously was focussed on the criminal prosecution of the perpetrators after an attack rather than on the act of preparing for, or supporting others engaged in, terrorist acts.
- The Parliament has put in place a legislative framework that better reflects the circumstances of the current security environment.
 - It clearly criminalises any activities that are connected with terrorism;
 - Joseph Thomas, the first person to be convicted on terrorism charges, is now serving a custodial sentence.
 - Under the questioning and detention provisions of the ASIO Act a person can be compelled (as a matter of last resort and only if other methods would be or have proven to be ineffective) to provide information in connection with a terrorist offence or face criminal sanctions;
 - As the Attorney-General said in Parliament on 29 March 2006, the questioning regime is proving to be a useful tool in the fight against terrorism.
 - The new legislative framework allows for the proscription of groups as terrorist organisations if they are engaged in

acts in connection with the preparation or conduct of terrorist acts;

- 19 groups have been proscribed as terrorist organisations making it an offence for people in Australia to be a member of, or engage in a range of activities in connection with, these organisations.
- Legislation also allows ASIO to keep pace with technological and other developments in connection with the interception of telecommunications.
- Other initiatives have improved coordination and intelligence sharing arrangements across government, with the business sector and with the wider community.
 - The establishment of the National Threat Assessment Centre in ASIO brought together agencies with a role in identifying and assessing threats to Australian interests.
 - The Business Liaison Unit will enhance ASIO's links to the business community.
 - It will assist owners and operators of critical infrastructure and others to gain access to timely information on matters affecting the security of their assets and staff.

- This is particularly important as around 90% of Australia's critical infrastructure is in the hands of the private sector.
 - Building these relationships represents a new dimension to ASIO's work.
- The community has been encouraged to report suspicious activity through the National Security Hotline.
 - Some of the information provided to the Hotline has been valuable.
 - Let me emphasise again the importance of ordinary people passing on information that may help prevent a terrorist attack.
- How do these changes compare with the response of others around the world?
- While there is variation in the detail of how Australia and other countries have responded, all generally have sought to do three main things:
 - build more effective connectivity between relevant agencies;
 - enhance the capabilities of their agencies with additional resources and an appropriate legislative framework; and

- build stronger partnerships and information sharing arrangements.
- Let me illustrate with the following examples.
- Some countries, for example Britain and France, already had robust arrangements in place before 9/11 as a result of their previous experience with the threat of terrorism.
- Britain had enacted anti-terrorism legislation even before the 11 September attacks with its *Terrorism Act 2000* and *Anti-Terrorism, Crime and Security Act in 2001* to assist British agencies counter the threat of terrorism. The *Prevention of Terrorism Act 2005*, following the July bombings in London, further strengthened Britain's counter-terrorism regime.
- France has had a strong anti-terrorist legislative framework since 1986 which had allowed for the pre-emptive arrest of potential terrorists.
 - But the French still boosted their counter-terrorism legislation following 9/11 and again following the July 2005 London bombings to increase police and telecommunications interception powers.
- The United States had been focussed on the threat of terrorism, particularly to US interests abroad, following the

attacks on US embassies in East Africa in 1998 and against the USS Cole in Yemen in 2000 to name just a few instances.

– But US Congressional committees in December 2002 and the 9/11 Commission in July 2004 reported:

- a general lack of preparedness to deal with the challenge of international terrorism brought about by inadequate resources;
- an unwillingness to share information between US agencies; and
- conceptual inadequacies in terms of understanding the nature of the threat and its many potential manifestations.

• Changes in the US since then have been focussed on putting in place a more connected system underpinned by the *Patriot Act 2001*.

– American authorities since have disrupted terrorist cells in Buffalo, Seattle, Portland, Detroit, Tampa and in North Carolina, and prevented several attempts to infiltrate al-Qa'ida operatives into the United States.

– Canada has also sought to build greater connectedness into its systems, engage in greater cooperation with US and other international partners, and through the enactment of

the *Anti-Terrorism Act 2001*, it provided additional investigative powers to Canadian agencies.

- Another major thrust has been the implementation or refinement of arrangements for sharing intelligence – including with the community and business sector – and for responding to information about threats within nations and across international boundaries.
 - In North America, the United States amalgamated 23 agencies into a new Department of Homeland Security, established the National Counter-Terrorism Centre and created a Director of National Intelligence; Canada established the Integrated Threat Assessment Centre.
 - In Britain the Home Office implemented arrangements to improve communications with the Muslim community and separately with the business sector. They now have a number of working groups to drive these efforts. The British also established the Joint Threat Assessment Centre.
 - The European Union has established a European arrest warrant regime, appointed a Counter-Terrorism Coordinator, set up a Joint Situation Centre and implemented a range of other initiatives, including in connection with biometrics, money laundering and airline passenger data transfer.

- Singapore has established a National Security Coordination Centre and Joint Counter-Terrorism Centre.
- Seen in this light, action taken in Australia to improve connectivity, capabilities, partnerships and the legislative framework, while tailored to our particular situation, compares favourably with other countries.

What does the future hold?

- Looking forward, Australians can expect that ASIO will continue to build its capabilities and to work with others to provide high quality advice directed at protecting them from the range of threats to security as defined in the ASIO Act.
- While the threat of terrorism has been a major focus for the last five years, ASIO's responsibilities also include protecting Australia and Australian interests from the threats of:
 - espionage;
 - sabotage;
 - politically motivated violence (including terrorism);
 - promotion of communal violence;
 - attacks on Australia's Defence system; and
 - acts of foreign interference.

whether those threats are within Australia or against Australian interests abroad.

- As such, ASIO's role is defined by subject, not geography.
 - This means our work is global in reach – in fact much of our work is about security threats to Australians and Australian interests, including business interests, overseas.
- The additional resources committed by Government over the next five years will equip ASIO to meet its responsibilities better across the full range of these threats to security.

ASIO in Australian Society

- I have said publicly on a number of occasions that Australians and Australian interests are at threat and will continue to be so for some time.
 - Planning for attacks in Australia has been detected and disrupted but a terrorist attack in Australia remains feasible and could well occur, possibly without warning.
 - The threat could originate off-shore or from people who are already in the community, including from those who were born here or have lived here for a long time.

- It is a tragedy that Australians already have been killed or injured in attacks abroad – more attacks are likely, some of which could occur without prior intelligence to enable appropriate warnings to be issued.
- It would be naïve and unrealistic to expect that we will always be able to prevent people being injured or killed by terrorists.
 - Or indeed always prevent other threats to security from being realised.
- ASIO will of course need to continue to do much of its work out of the public gaze.
 - As do similar intelligence organisations around the world.
 - To do otherwise, quite simply, would render the Organisation ineffective.
- But the ongoing work of the Inspector-General, the Parliamentary Joint Committee and the other elements of ASIO's accountability and oversight regime should continue to provide assurance that ASIO is serving the Australian community as it should.
- Let me finish on this note.

- Our own experience and that of other countries with the threat of terrorism in particular shows that those who would do harm are persistent, resourceful, capable and committed.
 - As a result we need to be even more persistent, determined, resourceful and innovative if we are to stay ahead of the challenge.
- It is a responsibility the people of ASIO take very seriously.
- Thank you.