
The Street Review

**A Review of Interoperability
Between the AFP and its
National Security Partners**



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Membership of the Committee

Chair **The Honourable Sir Laurence Street AC KCMG QC**

- Chief Justice, New South Wales Supreme Court, 1974-1988
- Chairman, International Legal Services Advisory Council, 1990-present

Members **Mr Martin Brady AO**

- Director, Defence Signals Directorate, 1994-1999
- Chairman, Defence Intelligence Board, 1999-2001

Mr Ken Moroney AO APM

- Commissioner, New South Wales Police, 2002-2007

Committee Secretariat

Secretary Assistant Commissioner Andrew Colvin OAM

Members Federal Agent David Batch

Ms Maria de Fatima Vieira, AFP Legal



Foreword

Commissioner M. J. Keelty APM,

We present the Committee's Review of the AFP's national security operations and the effect of the interaction between the AFP and its national security agency partners in carrying out such operations.

The Committee would like to thank all the Australian and international agencies that participated in this review and acknowledge the spirit of cooperation and goodwill in which the assistance was provided.

Since the relatively recent introduction of the suite of terrorism laws enabling the law enforcement and intelligence communities to address the threat to national security, there have thankfully been few occasions that have called for the national security agencies to exercise these new powers and functions. However, there have been occasions where, despite good intentions, the agencies concerned have found that their operational imperatives overlapped and were sometimes in conflict.

During the examination of the issues behind this review, the Committee heard that significant progress has been made by all the parties involved in safeguarding national security in maximising their interoperability, especially given the relatively short time-frame in which cultural and procedural changes have been required.

The Committee did not find major impediments to the ability or will to improve interoperability between national security agency partners. We were heartened by the strength of the shared commitment to ensuring the prevention of a terrorist incident in Australia and the shared understanding that successful prosecutions under Australia's anti-terrorism laws was a central element in this overall strategy. But the Committee notes a number of areas where improved structures, processes and systems are required.

The consequence of these measures should be that agencies work to a common agenda, that the requirements for effective prosecution are addressed early in the investigation process, and that investigations are managed in a structured way through to prosecution action. It is important that this be done lest the effectiveness of Australia's response to terrorist threat is eroded by prosecutions that fail for essentially procedural reasons.

It is the Committee's view that our recommendations can be implemented within the existing legislative framework through executive action. However we would note that parties with whom the Committee met indicated a sense of concern at the impracticability of the *National Security Information (Criminal and Civil Proceedings) Act 2004*, including the Attorney-General's Department which noted

Proceedings) Act 2004, including the Attorney-General's Department which noted that it is developing suitable amendments to the legislation. Given the unanimity with which this was raised by key contributors to this report, we believe this issue is worthy of further examination in other forums.

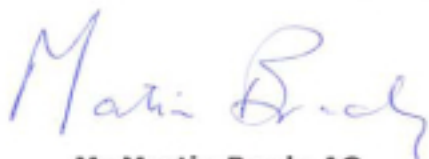
After our detailed discussions with ASIO, the Commonwealth Director of Public Prosecutions and several state police jurisdictions, we believe that each of these stakeholders will support the report and its recommendations. Importantly, the Director-General of Security has informed the Committee that ASIO will work collaboratively with the AFP to implement the recommendations relevant to the two agencies.

The Committee believes that our recommendations should be jointly implemented by the AFP and ASIO in consultation with the Commonwealth Director of Public Prosecutions and State and Territory Police jurisdictions recognising the critical role these agencies play within the national security environment. Furthermore, the Inspector-General of Intelligence and Security should be kept informed of the development of procedures to address these recommendations.

We commend this report to you and thank the Secretariat for their assistance.



The Hon Sir Laurence Street AC KCMG QC
Chair of Committee



Mr Martin Brady AO
Committee Member



Mr Ken Moroney AO APM
Committee Member



Recommendations

Operational Decision Making Processes

Recommendation 1

The Committee recommends that the AFP Commissioner, the Director-General of Security and the Commonwealth Director of Public Prosecutions constitute a committee to ensure issues relevant to national security, strategic priorities and enhanced interoperability are reviewed and resolved on a regular basis. The committee may also include representatives of relevant Commonwealth, State and Territory agencies and other appropriate persons either permanently or on a needs basis.

Recommendation 2

The Committee recommends that a Joint Operations Protocol between the AFP and ASIO be adopted formally establishing a mechanism vesting responsibility in the AFP Deputy Commissioner National Security and the relevant ASIO Deputy Director-General that:

- a. provides for a regular and accountable exchange of all information held by each agency that:
 - i. is relevant to a national security operation of the other agency; or
 - ii. is national security related and is of a nature that the other agency has or may have statutory obligations in respect to that information.
- b. establishes an accountable handover process where it is agreed that lead responsibility for a matter is to be passed between agencies; and
- c. enables a process for ongoing, regular and frequent consultation at a senior level to review matters being jointly managed, or matters where the AFP and/or ASIO may have an operational or functional interest.

This protocol should be supported by regular exchanges in State and Territory capitals between the State and Territory Police and local AFP and ASIO management on threat levels and terrorism investigations. Endorsement of this Protocol by the Attorney-General should be jointly sought by the AFP and ASIO.

Recommendation 3

The Committee recommends that the role of the Commonwealth Director of Public Prosecutions, consistent with its functions and powers in providing advice and prosecuting counter-terrorism offences, where appropriate commencing from the operational planning stage of an actual or likely terrorism offence investigation, be formalised along the lines of the Counter-Terrorism Prosecution Guidelines and Checklist currently being considered by ASIO, the AFP and the Commonwealth Director of Public Prosecutions.

Joint Taskforce Arrangements

Recommendation 4

The Committee recommends full-time attachment, physical co-location and participation of ASIO officers to the Joint Counter-Terrorism Teams in Sydney and Melbourne, with consideration to be given to other appropriate locations, on a mutually agreed basis. The attached ASIO officers should have direct information technology connectivity to ASIO systems.

Information Sharing

Recommendation 5

The Committee recommends that the AFP ensure full adoption of, and adherence to, national security standards and practices for counter-terrorism investigations, with particular focus on the areas of intelligence handling, storage and office infrastructure. Necessarily this will include the need to strictly adhere to caveats on the use of intelligence.

Recommendation 6

The Committee recommends that the AFP develop an integrated information technology system that meets national security standards for national counter-terrorism information, and that the AFP and ASIO cooperate in developing a protocol which provides for the automated sharing of information through such a system. The Committee envisages that this information could only be accessed and utilised by personnel involved in counter-terrorism investigations and that its use be governed by the relevant laws and police disciplinary codes.

Recommendation 7

The Committee recommends that the AFP install desktop secure telephones in the appropriately secure common work areas of the AFP's counter-terrorism teams to facilitate greater ease of communications with intelligence partners.

Training and Education

Recommendation 8

The Committee recommends that the AFP and ASIO develop a training and relationship enhancement program consisting of:

- a. induction training in each agency's key skills, core functions and responsibilities at the police recruit or graduate/new starter intelligence officer level (emphasis to be on investigations methodology, intelligence handling, rules of evidence and effective operational outcomes);
- b. joint training for all police and intelligence officers involved in national security operations, incorporating bilateral counter-terrorism training exercises involving investigational, preventative scenarios rather than exclusively reactive scenarios; and
- c. executive level secondments so that the skills and knowledge of both organisations are mutually accessible and available.

Recommendation 9

The Committee recommends that the AFP request that the National Counter-Terrorism Committee facilitate exercises that specifically address the problems involved in investigating and prosecuting terrorist offenders in Australia. These exercises may need to be separate from, but coordinated with, national counter-terrorism training exercises.

Recommendation 10

The Committee recommends that the AFP, in conjunction with jurisdictional partners, develop and implement policy that will ensure greater recruitment and retention opportunities for personnel attached to the Joint Counter-Terrorism Teams, whilst also ensuring that core police skills are sustained.



List of Abbreviations

AFP	Australian Federal Police
AGD	Attorney-General's Department
AIC	Australian Intelligence Community
APEC	Asia-Pacific Economic Cooperation
ASIO	Australian Security Intelligence Organisation
CDPP	Commonwealth Director of Public Prosecutions
CSIS	Canadian Security Intelligence Service
DESC	Domestic and External Security Coordination
FBI	United States Federal Bureau of Investigation
JCTT	Joint Counter-Terrorism Team
NSWPF	New South Wales Police Force
QPS	Queensland Police Service
RCMP	Royal Canadian Mounted Police
VICPOL	Victoria Police

1 Nature of Issue

- 1.1 On 22 November 2007, the Australian Federal Police (AFP) Commissioner M.J. Keelty APM appointed a committee to review and report on the AFP's national security operations and the effect of the interaction between the AFP and its national security agency partners in relation to those operations.
- 1.2 The Committee, chaired by Sir Laurence Street, included retired New South Wales Police Force Commissioner Mr Ken Moroney and former Director of the Defence Signals Directorate Mr Martin Brady.

Current counter-terrorism environment

- 1.3 Australia's security environment has significantly changed since the 11 September 2001 terrorist attacks in the United States of America. Since this time, Australia has faced its own regional terror incidents including the 2002 and 2005 Bali bombings and the 2004 Australian Embassy attack in Jakarta. In addition there have been over 25 persons prosecuted for terrorism offences within Australia, including matters currently before the courts. This changed environment has led to a greater need for collaboration and information sharing between national security agencies, particularly the AFP and the Australian Security Intelligence Organisation (ASIO).
- 1.4 Terrorism investigations are usually complex and protracted in nature and are carried out in an environment of high public scrutiny. Recent experience shows that these investigations are amongst the largest ever undertaken¹ and, due to their complex, high-impact and urgent nature, are guaranteed to test the limits of investigative and judicial procedures. At such times the interoperability between agencies will be challenged and placed under more pressure than would ordinarily be the case.
- 1.5 The recent case of *R v Izhar ul-Haque*² has highlighted the need for greater interoperability and information sharing between police and the Australian Intelligence Community (AIC)³, particularly ASIO. The ul-Haque investigation resulted in the collection and collation of a significant body of evidence that enabled the Commonwealth Director of Public Prosecutions (CDPP) to form the view that there was a reasonable prospect of conviction of the suspect. However, this prosecution subsequently failed when evidence essential to the Crown's case was ruled inadmissible in pre-trial hearings. NSW Supreme Court Justice Michael Adams was highly critical of the manner in which the AFP and ASIO had dealt with the suspect, and it was on these grounds that he determined critical evidence inadmissible.
- 1.6 The outcome of the ul-Haque matter has demonstrated that the preconditions to criminal prosecution need to be taken into consideration by

¹ Operation Alliance was a joint AFP and Indonesian National Police operation that concerned the investigation of the 12 October 2002 Bali bombings resulting in the death of 202 people, including 88 Australians. This was the single largest investigation ever undertaken by the AFP as measured by cost, persons involved and information managed.

² [2007] NSWSC 1251

³ The AIC consists of the Australian Security Intelligence Organisation, the Office of National Assessments, the Australian Secret Intelligence Service, the Defence Signals Directorate, the Defence Imagery and Geospatial Organisation and the Defence Intelligence Organisation.

all of Australia's national security agencies in the conduct of their operations if the full range of preventative measures, including prosecution, is to remain available to combat terrorist activity.

- 1.7 Throughout the review process the Committee has noted a significant improvement in the conduct and management of multi-agency national security investigations since the AFP commenced the ul-Haque investigation in 2003. Notwithstanding this progress, the Committee has concluded that both agencies could do more to ensure that proper efficiency is achieved on a standing basis and has made recommendations to this effect.
- 1.8 The Committee recognises that ASIO and the AFP have different statutory mandates. Both agencies, and State and Territory police jurisdictions, have a clear mandate to prevent terrorist activity. In responding to potential national security threats the ASIO mandate is broadly focused, whereas the AFP and its state and territory counterparts are generally focused on the demands of criminal investigations and potential prosecutions. It is critical that effective and accountable processes exist to reconcile any overlaps or conflicts in organisational mandates and priorities.

2 The Operational Decision Making Process

- 2.1 The Committee identified the lack of a formal structure and process between agencies regarding operational decision making as a significant factor affecting optimum levels of interoperability. The absence of such formality may be conducive to mistakes or errors of judgement, particularly at an operational level.
- 2.2 At both operational and management levels there are informal arrangements between the AFP and ASIO to exchange information and discuss operational matters. In a management context, liaison meetings occur on a fortnightly basis and are held between the AFP National Manager Counter-Terrorism, the AFP National Manager Intelligence, ASIO First Assistant Director-General Collection and ASIO First Assistant Director-General Analysis. It became apparent to the Committee that these liaison meetings are inadequately documented and do not properly establish appropriate operational accountabilities.

Other approaches

- 2.3 By contrast, the Committee heard from several agencies about the success of the decision making models utilised during the recent Operation Pendennis⁴ investigation. Borrowed initially from arrangements used between police jurisdictions in other crime types, the Board of Management arrangement for Operation Pendennis includes ASIO, relevant State jurisdictions and the CDPP; and is chaired by the AFP at Deputy Commissioner level. The Committee heard that this is an effective, documented means of resolving operational priority decisions, avoiding duplication of resources, and maintaining focus on agreed outcomes. Similar arrangements, formally constituted between the AFP and ASIO on an ongoing basis, would significantly strengthen current decision making arrangements.
- 2.4 The Committee believes that lessons could be learned from the Canadian approach to operational decision making between the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS). The Committee received information from the RCMP outlining its formal briefing process with CSIS, particularly where the current aims and objectives of both agencies are concerned. Decisions of when a matter becomes a police matter are made as a result of joint consultation. A joint record of these meetings is made with decisions and agreed outcomes noted for accountability purposes. The framework overseeing information sharing between the RCMP and CSIS is governed by a Memorandum of Understanding (MoU), which establishes a senior level committee to ensure effective coordination by developing a common counter-terrorism threat overview and priorities, and joint review of new and ongoing cases.
- 2.5 The Committee was impressed by the high levels of trust and interoperability that exist within the Canadian model. Also impressive to the Committee was the establishment of a clear operational distinction

⁴ Operation Pendennis is a joint State and Federal police counter-terrorism investigation in Sydney and Melbourne.

between the roles of CSIS and the RCMP. CSIS is responsible for higher-level monitoring and analysis and the setting of strategic threat directions, while the RCMP is responsible for investigation and prosecution once terrorism offences are identified.

- 2.6 The Committee heard from the United States Federal Bureau of Investigation (FBI) of the importance of seamless collaboration between intelligence and law enforcement partners. The FBI particularly noted the benefits of co-location of staff involved in terrorism investigations. Broadly speaking, the views expressed by the FBI are consistent with the views expressed by Canadian and United Kingdom (UK) authorities and are consistent with the recommendations of the Committee.
- 2.7 The Committee received material from the United Kingdom Metropolitan Police Service outlining their decision making arrangements and the relationship between police and intelligence services. The UK model provides for an Executive Liaison Group which is constituted to provide advice and determine lead agency status for terrorism investigations. This integrated operational decision making process brings together law enforcement and intelligence agencies in a committee style arrangement, allowing law enforcers and the intelligence community to assess new information and prioritise it and determine aims for its use.
- 2.8 The New Zealand Police informed the Committee that New Zealand's intelligence, defence and police communities interacted under the Domestic and External Security Coordination (DESC) model adopted in 2002. The DESC model, while bringing together relevant heads of agencies, does not compromise either the responsibility to act or the accountability for acts taken from individual office-holders. New Zealand Police noted that it was in this forum that potentially competing priorities between agencies or functions could be discussed and resolved in the context of what best serves New Zealand's interests.
- 2.9 The Committee's attention was also drawn to the findings of a Senate Legal and Constitutional Affairs Committee report into the 2002 ASIO Legislation Amendment (Terrorism) Bill. The Senate Committee, whilst discussing the formation of the ASIO Joint Counter-Terrorism Intelligence Coordination Unit, noted that "Along with the Unit is a proposed counter-terrorism information oversight committee that would determine when an intelligence matter becomes a criminal investigation."⁵ The Committee understands that no such oversight committee has yet been established to adequately deal with decisions of that nature. This aspect should be addressed with some priority and the Committee believes that the higher-level structures proposed in this report will provide the appropriate way forward.
- 2.10 The New South Wales Police Force (NSWPF) provided the Committee with an insight into the investigation, referral and allocation process that is used by the State Crime Command and adopted by their Counter-Terrorism Team. The Wood Royal Commission into the NSWPF recommended the formalisation of the investigation referral process to ensure greater accountability and integrity in investigations. The Committee believes the measures subsequently introduced by the NSWPF, which include

⁵Senate Standing Committee on Legal and Constitutional Affairs, *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters*, p 97, para 8.25.

establishing investigational terms of reference, reporting requirements and other management processes, have utility in an inter-agency context.

- 2.11 The NSWPF also informed the Committee about the Asia-Pacific Economic Cooperation (APEC) Forum '07 Scrutiny Panel that was established between the Commissioner of the NSWPF and his heads of department and heads of agency colleagues. The APEC '07 Scrutiny Panel was established prior to APEC '07 as a means of scrutinising the arrangements and relationships in place prior to the APEC '07 meetings, which proved to be a useful mechanism to discover weaknesses in the system, or test processes to ensure they were effective.
- 2.12 Similarly, Victoria Police (VICPOL) advised the Committee of its structures implemented to oversee and manage VICPOL Intelligence Group operations, particularly as they relate to issue motivated groups and individuals. The model used by VICPOL involves the use of a Targeting Oversight Committee to review and oversee the actions of police in this field.
- 2.13 Whilst it is not always appropriate to draw heavily upon the experience of other jurisdictions given the unique nature of the terrorist threat and response framework in each jurisdiction, valuable lessons can be drawn from such comparisons. To this end, relationships between the AFP and ASIO could be substantially improved with the creation of a formal cascading structure around policy and operational decision making.
- 2.14 Drawing on overseas experience the Committee sees the following as central issues for this structure:
1. Strategic guidance on counter-terrorism threat priorities and forecasts.
In line with Canadian practice, the Committee envisages ASIO as the principal source of strategic threat guidance and monitoring, with police responsible for matters which have a criminal aspect.
 2. Establishing accountabilities between intelligence operations and police responsibilities for investigating and prosecuting terrorist offences.
Close consultation and agreement is required on matters such as operational decision making, agreed outcomes and prosecution action. Intelligence outcomes may require that police intervention be deferred or adapted to suit agreed priorities with clear accountabilities being established that allow for police to make early judgments on potential criminal behaviour.

Advice available in the decision making process

- 2.15 The Committee heard from a number of agencies about a need to improve the information and advice available in the decision making process during a national security investigation, particularly as it relates to the prosecution phases.
- 2.16 Concerns were expressed to the Committee by ASIO over court disclosure of national security modus operandi and whether proper consideration was being given to the impact and consequences of a prosecution on agencies' capabilities, sources, future operations and protection of witnesses, human sources, foreign source material and government officers. There is a clear need for all agencies to be fully aware of what the prosecution process is

likely to involve and the levels of information that would be required to be disclosed in court proceedings in order for the prosecution to succeed.

- 2.17 It is noted by the Committee that the CDPP is more accustomed to working with police than with ASIO or other intelligence agencies. ASIO has made significant progress towards conducting its operations to ensure they are consistent with the judicial process. ASIO has expressed an awareness of a need to be more conversant with, and an ability to operate within, the criminal justice system.
- 2.18 Operation Pendennis was again highlighted to the Committee as an example where early prosecution advice by the CDPP during a complex investigation substantially reduced misunderstandings of the prosecution phases. This level of advice significantly improved the quality of the operational decision making between the agencies concerned.
- 2.19 The RCMP also advised that all terrorism investigations included an early and ongoing role for prosecution service throughout the evidence collection and investigation phase. Whilst the advising prosecutor will not present the case in court (another prosecutor will be designated for the court processes) it was acknowledged that this was a critical component of the investigation strategy.
- 2.20 Both the AFP and ASIO have internal legal departments that are routinely consulted during national security investigations. ASIO in particular has significantly increased its in-house legal capacity in recent years. To the extent possible, both of these internal legal departments provide ongoing advice to their respective agencies on matters of legal process, interpretation and the application of formal statutory processes. These departments, however, do not necessarily have involvement and contemporary experience in prosecuting terrorism offences.
- 2.21 The Security Law Branch of the Attorney-General's Department (AGD) also provides advice to the AFP and ASIO regarding matters of policy with respect to national security operations. AGD involvement has proven critical in the past, even resulting in an emergency recall of parliament to make essential changes to legislation to assist national security operations.⁶
- 2.22 The Committee noted arrangements of the CDPP in pursuit of consistent and appropriate advice to the AFP and ASIO, particularly the appointment of a Deputy Director, Counter-Terrorism. The Committee's attention was also drawn to a draft 'Counter-Terrorism Prosecution Guidelines and Checklist' which is currently awaiting endorsement by the AFP, ASIO and the CDPP. The draft Guidelines aim to clarify the roles and expectations of all the agencies with regard to the prosecution of terrorism offences.
- 2.23 Whilst a distinction can be drawn between the CDPP's involvement in the construct of a case and the provision of specific advice, the Committee believes that the availability of consistent, high quality legal advice throughout the investigation process is critical to effective prosecution of

⁶ On 3 November 2005 Federal Parliament was recalled to pass emergency amendments to the *Criminal Code Act 1995*. These were interpretative amendments to the existing terrorism offences [ss101.2(3), 101.4(3), 101.5(3), 101.(6) and 103.1(2)] in Division 101 of Part 5.3 of the *Criminal Code* to clarify that, in a prosecution for a terrorism offence, it was not necessary to identify a particular terrorist act. This enabled officers to proceed to criminally charge suspects in Operation Pendennis.

terrorism offences and a key issue in overcoming interoperability issues between the AFP and ASIO. The Committee believes that this principle should be reflected in the Counter-Terrorism Prosecution Guidelines and Checklist.

- 2.24 One option canvassed to address this issue was the prospect of ASIO and the AFP engaging the services of a specialist prosecutorial advisor to provide qualified advice in criminal investigations. However, it is the view of the Committee that given the existing level of support from the in-house legal teams, AGD and the Australian Government Solicitor, this measure would not add further value in contrast to the value derived from ongoing access to the CDPP. Furthermore, there can be no guarantee that any independent advice will be consistent, or even compatible, with the view of the CDPP as the final arbiter of the strength of the prosecution case.

Briefing to Government

- 2.25 The Commonwealth Attorney-General is well-informed of ASIO operations due to the unique nature of the obligations of the appointment, both as the Minister responsible for national security and as the person vested with statutory authority to allow the exercise of ASIO executive powers. This is in contrast to the AFP, and police more generally, who have traditionally briefed Ministers at a later stage of the investigation. The Department of Prime Minister and Cabinet also noted that the Australian public has a high degree of interest in terrorism offences and has an expectation that the Government is aware of the national security situation.
- 2.26 Given that both the AFP and ASIO are responsible to the Commonwealth Attorney-General for matters of national security, an obvious tension arises over the level and frequency of briefing on joint operations. It was noted by the Committee that whilst the issue appeared to be understood well by the AFP, it was of concern to the AFP's state police partners and therefore a matter of concern in an interoperability sense. It was evident to the Committee however, that as the relevant agencies become more accustomed to genuine co-location and joint operational decision making arrangements, as recommended by this report, these concerns should be alleviated.

Recommendations

Recommendation 1

The Committee recommends that the AFP Commissioner, the Director-General of Security and the Commonwealth Director of Public Prosecutions constitute a committee to ensure issues relevant to national security, strategic priorities and enhanced interoperability are reviewed and resolved on a regular basis. The committee may also include representatives of relevant Commonwealth, State and Territory agencies and other appropriate persons either permanently or on a needs basis.

Recommendation 2

The Committee recommends that a Joint Operations Protocol between the AFP and ASIO be adopted formally establishing a mechanism vesting responsibility in the AFP Deputy Commissioner National Security and the relevant ASIO Deputy Director-General that:

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 - i. is relevant to a national security operation of the other agency; or
 - ii. is national security related and is of a nature that the other agency has or may have statutory obligations in respect to that information.
- b. establishes an accountable handover process where it is agreed that lead responsibility for a matter is to be passed between agencies; and
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This protocol should be supported by regular exchanges in State and Territory capitals between the State and Territory Police and local AFP and ASIO management on threat levels and terrorism investigations. Endorsement of this Protocol by the Attorney-General should be jointly sought by the AFP and ASIO.

Recommendation 3

The Committee recommends that the role of the Commonwealth Director of Public Prosecutions, consistent with its functions and powers in providing advice and prosecuting counter-terrorism offences, where appropriate commencing from the operational planning stage of an actual or likely terrorism offence investigation, be formalised along the lines of the Counter-Terrorism Prosecution Guidelines and Checklist currently being considered by ASIO, the AFP and the Commonwealth Director of Public Prosecutions.

3 Joint Taskforce Arrangements

Current Environment and Joint Arrangements

- 3.1 In the period 2002-03 the AFP implemented Joint Counter-Terrorism Teams (JCTT) in every State and Territory police jurisdiction of Australia as the central aspect of its domestic counter-terrorism strategy. Managed centrally from AFP Headquarters in Canberra, each JCTT was funded by the AFP and included seconded members of the relevant State or Territory Police. Since this time, the JCTTs have expanded on a needs basis in order to respond to alleged terrorism offences and have had carriage of all terrorism investigations by police.
- 3.2 JCTTs also form the main point of contact between the AFP and ASIO at a regional office level, with senior management interaction largely confined to respective Canberra headquarters operations.
- 3.3 The Committee heard that in both NSW and Victoria, the JCTT arrangements had expanded since 2002 in response to the increased need for agencies to work in close cooperation on terrorism investigations. In Victoria, Operation Pendennis was the catalyst for an increase in, and re-direction of, AFP and VICPOL co-located resources to that particular investigation. This co-location arrangement in Victoria was established in response to Operation Pendennis and is not ongoing; nevertheless, the benefit of co-location was evident to the Committee.
- 3.4 From the advice of domestic and international contributors to this report it is clear to the Committee that both the joint decision-making processes and the joint taskforce arrangements are notably enhanced by the co-location of all relevant stakeholders. Co-location facilitates timely communication between all parties and enables consultation in a more timely and coordinated manner on operational decisions and come to a jointly agreed outcome as well as building trust and confidence between agencies.
- 3.5 The Committee attended the AFP Sydney Office and observed the co-location of the NSW JCTT, established under a standing joint taskforce arrangement between the AFP, NSWPF and the NSW Crime Commission. The NSW JCTT comprises approximately 55 NSW investigators and 45 AFP investigators.
- 3.6 The Committee heard that with both the Victorian Operation Pendennis taskforce, and the standing NSW JCTT taskforce, ASIO officers have a part-time liaison presence within the teams but are not full-time members. Some of the impediments include difficulties in setting up ASIO computer terminals for its officers in the shared space arrangements, as well as a lack of understanding of the value of ASIO's contribution to the JCTT.
- 3.7 The Committee believes that ASIO's permanent presence and genuine co-location as part of the joint arrangements is critical to the daily decision-making and re-evaluating that occurs as national security investigations unfold. Parallel investigations are not optimal and pose the risk of duplication of work as well as the potential for competing objectives. Whilst ongoing and close cooperation can reduce the negative impact of conducting separate or disconnected investigations, it can never replace the need for all agencies to work in an integrated and fused manner.

Recommendation

Recommendation 4

The Committee recommends full-time attachment, physical co-location and participation of ASIO officers in the joint counter-terrorism teams in Sydney and Melbourne, with consideration to be given to other appropriate locations, on a mutually agreed basis. The attached ASIO officers should have direct information technology connectivity to ASIO systems.

4 Information Sharing

- 4.1 Effective and meaningful sharing of information across agencies and jurisdictions is critical if successful terrorism investigations and prosecutions are to be conducted. Much has been achieved in developing effective intelligence arrangements for crisis situations, but more work is needed in the area of preliminary investigations and prosecutions.
- 4.2 The Committee heard that current information sharing between ASIO and the AFP largely occurs on an informal basis, often dependent on personal relationships and on a case by case arrangement. No formal protocols or frameworks exist to ensure that all information is shared, or to give direction as to when and how it should be shared.
- 4.3 Overall, whilst the intentions of both agencies are good, trust between agencies could be further enhanced. Trust is a critically important aspect of the AFP/ASIO relationship and can be achieved through the enhancement of effective intelligence sharing frameworks and genuine partnerships across all levels of both organisations.

Information Security Issues

- 4.4 The technical capabilities of the AFP must be enhanced in order to provide another platform upon which trust can be fostered. Several agencies raised before the Committee challenges posed by security considerations. Information technology (IT) systems are incompatible across agencies, and the AFP's main IT system currently operates at a non-national security classification level. Both the AFP and ASIO have affirmed a need for appropriate and functional AFP information databases to allow for the storage and retrieval of nationally classified material.
- 4.5 A preference has been expressed for a single repository of information to which ASIO contributes and which is available to law enforcement agencies. Such a database would ensure that intelligence data is quickly and automatically transferred between ASIO, the AFP, and State and Territory Police partners. At present, the processes are complex and involve a high level of manual intervention.
- 4.6 The AFP is currently investing in national security level systems through a number of recent policy initiatives which once successfully implemented will largely satisfy this need, although some additional expenditure may be required.
- 4.7 Law enforcement agencies are now operating in an environment that increasingly requires an understanding of information security. It is necessary to ensure that all parties in receipt of national security information understand the use and purpose of caveats. Whilst not formally a recommendation, the Committee believes that the AIC should undertake a more intensive education effort about the use and management of national security information.
- 4.8 The Committee observed a number of AFP secure locations which housed joint counter-terrorism operations and were encouraged by the opportunity they present to ensure a truly secure environment for police and intelligence agencies to co-exist and share information. Implementation of a secure telephone network across the counter-terrorism units of the AFP, compatible with the national security and intelligence community, would

signify membership of that community and contribute to mutual trust and effective sharing of information.

- 4.9 Discussions with overseas police authorities, and in particular the FBI, indicated that the Committee's information sharing and IT proposals are consistent with the practices and systems in similar overseas jurisdictions.

Information exchange

- 4.10 Police authorities in several jurisdictions noted to the Committee that they believe they do not receive in a timely manner all relevant information available. One issue recognised by ASIO is that it sometimes does not identify all of the intelligence needed by law enforcement because it does not always know what the AFP or State or Territory Police require in order to discharge their functions. The Committee heard that this was an important element in the current relationship between the AFP and ASIO.
- 4.11 The holdings of respective agencies must be made available on an open and equal partner basis for effective exchange to occur. The Committee acknowledges that this poses difficulties for ASIO which has large data holdings, some of which are highly sensitive, and have been subject to only limited evaluation. But all such material will potentially be subject to legal processes during a prosecution, so mechanisms need to be developed to ensure that the material is shared early in the investigation process, rather than late in the prosecution stage.
- 4.12 Information exchange cannot take place on the basis of what one agency assesses may be relevant to the other. The Committee heard examples of where information relevant to one or both agencies had not been communicated because it was not believed to be relevant at the time. The lack of clear communication channels in the ul-Haque matter could be characterised in this manner.
- 4.13 Whilst this issue is addressed more directly in Part 2 above on 'Operational Decision Making', the Committee believes that formalisation of the information exchange networks of the AFP and ASIO will meet this need. The Committee's attention was drawn to the RCMP and CSIS MoU which sets out the principles facilitating cooperation and consultation between the two agencies, including the provision to each other, on a timely basis, of information and intelligence in the possession of one agency relating to the responsibilities of the other agency.

Recommendations

Recommendation 5

The Committee recommends that the AFP ensure full adoption of, and adherence to, national security standards and practices for counter-terrorism investigations, with particular focus on the areas of intelligence handling, storage and office infrastructure. Necessarily this will include the need to strictly adhere to caveats on the use of intelligence.

Recommendation 6

The Committee recommends that the AFP develop an integrated information technology system that meets national security standards for national counter-terrorism information, and that the AFP and ASIO

cooperate in developing a protocol which provides for the automated sharing of information through such a system. The Committee envisages that this information could only be accessed and utilised by personnel involved in counter-terrorism investigations and that its use be governed by the relevant laws and police disciplinary codes.

Recommendation 7

The Committee recommends that the AFP install desktop secure telephones in the appropriately secure common work areas of the AFP's counter-terrorism teams to facilitate greater ease of communications with intelligence partners.

5 Training & Education

- 5.1 The Committee heard from a number of agencies the benefits that would be achieved through the establishment of an enhanced training regime. The current arrangements between agencies are not sufficient to provide officers from policing and intelligence disciplines a good understanding of each other's core skills and duties.
- 5.2 Mutual trust and confidence are key to the required levels of cooperation between police and intelligence agencies which traditionally have different cultures and different responsibilities. The opportunity for AFP and ASIO officers to train together is critical to forming those foundation levels of confidence.
- 5.3 For both ASIO and the AFP, there is minimal structured training provided at the recruit level in each other's basic skills, core functions and responsibilities. Whilst it is recognised that entry-level officers perform a range of functions outside of the national security arena, an environment of cooperation between both agencies is required. Even entry-level recruits should possess an understanding of each other's agency and operating principles.
- 5.4 As an indication of the positive intentions on the part of both agencies, in-depth training is provided every so often to each respective agency by the other in the form of guest lectures, specific topic awareness, seminars and the like. This has been important as both agencies have been on a steep learning curve regarding their respective roles and functions; however this level of training does not meet the needs of both agencies with respect to trust, confidence building and effective interoperability.
- 5.5 The AFP also has Basic and Advanced Counter-Terrorism Investigator Training programs as a means to bridge the divide between normal police investigations and what is required in a terrorism context. These programs are attended by both AFP and State and Territory Police involved in terrorism investigations. It is intended that all officers deployed into a counter-terrorism unit will attend these programs.
- 5.6 There are also regular counter-terrorism training exercises conducted at State and National level that bring the JCTTs and ASIO together to respond to a fictitious scenario, in real-time, allowing operational members and management from both agencies a greater understanding of the differing roles, capabilities and skills each participant contributes to the resolution of such an incident.

Exercises

- 5.7 The Committee heard that relationships and understanding between the agencies would derive a substantial benefit through the conduct of counter-terrorism training exercises that are more proactive in nature. This could be achieved through the exercises being intelligence-led with a focus on disrupting and/or preventing terrorist activity and subsequent prosecution.
- 5.8 The proposed training enhancement package aims to foster relationships between individuals across agencies by building a level of trust which is critical to good working relationships. It would also allow police officers to understand the functions and powers of ASIO officers in addition to enhancing their understanding of how intelligence product is most

appropriately classified, handled, utilised and stored and why such strict guidelines apply. Conversely, it was suggested that intelligence officers could benefit greatly from greater knowledge of police powers and obligations, the prosecution process and the law surrounding evidence handling and collection.

Secondments

- 5.9 There are current exchanges of personnel between the AFP and ASIO. An ASIO officer performs liaison functions on a part-time basis in AFP's counter-terrorism area, however the officer is not 'seconded' to the AFP. Two AFP members are seconded on a full-time basis to ASIO's National Threat Assessment Centre, and one AFP officer is seconded to the Joint Counter-Terrorism Intelligence Coordination Unit. All three AFP officers assume the role of an ASIO employee in their respective positions.
- 5.10 The Committee heard from several parties that suggested that an increase in secondments between the agencies, both at senior and operational levels, would be highly beneficial to fostering a greater understanding of each other's role in national security operations. A program of secondments or exchanges between law enforcement and intelligence agencies would serve to further enhance mutual understanding.
- 5.11 ASIO noted that particular effort could be paid to the establishment and maintenance of mutual training/education programs to ensure there is a consistent appreciation of the role, functions and mandates of the two areas, and an acquisition of fundamental skills. The CDPP indicated to the Committee that it was willing to assist in training on the CDPP's role and the prosecution process.

Concentrating and retaining expertise

- 5.12 Australia is fortunate in that we have thus far had a small number of terrorism related cases. Experience in major investigations into terrorism offences is limited, and the applicable legislative powers are often still new and untested. Strategies need to be developed to ensure that investigations are tightly managed, and that all possible expertise and experience is made available to the investigation.
- 5.13 This issue is compounded by the difficulty that all national security and police agencies are facing in recruiting and retaining qualified personnel. Several agencies mentioned that consistency and longevity of staffing were important factors in the development of mutual respect and understanding between the relevant law enforcement and intelligence agencies, particularly since the current informal process of information sharing is largely dependent on personal relationships. Maintaining a stable and highly qualified core of personnel in all the agencies is therefore essential.

Recommendations

Recommendation 8

The Committee recommends that the AFP and ASIO develop a training and relationship enhancement program consisting of:

- a. induction training in each agency's key skills, core functions and responsibilities at the police recruit or graduate/new starter intelligence officer level (emphasis to be on investigations methodology,

- intelligence handling, rules of evidence and effective operational outcomes);
- b. joint training for all police and intelligence officers involved in national security operations, incorporating bilateral counter-terrorism training exercises involving investigational, preventative scenarios rather than exclusively reactive scenarios; and
 - c. executive level secondments so that the skills and knowledge of both organisations are mutually accessible and available.

Recommendation 9

The Committee recommends that the AFP requests that the National Counter-Terrorism Committee facilitate exercises that specifically address the problems involved in investigating and prosecuting terrorist offenders in Australia. These exercises may need to be separate from, but coordinated with, national counter-terrorism training exercises.

Recommendation 10

The Committee recommends that the AFP, in conjunction with jurisdictional partners, develop and implement policy that will ensure greater recruitment and retention opportunities for personnel attached to the Joint Counter-Terrorism Teams, whilst also ensuring that core police skills are sustained.



Contributors to the Review

Australian Security Intelligence Organisation

Director-General of Security
Deputy Director-General
First Assistant Director-General Collection
Acting First Assistant Director-General - Legal

Australian Federal Police

Mr John Lawler APM
Deputy Commissioner National Security
Assistant Commissioner Frank Prendergast
National Manager Counter-Terrorism
Dr Grant Wardlaw
National Manager Intelligence
Mr James Watson
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Ms Sharon Dean
Senior Investigation Officer

New South Wales Police Force

Mr Andrew Scipione APM

Commissioner

Mr Nick Kaldas

Deputy Commissioner, Counter-Terrorism & Special Tactics Command

New South Wales Crime Commission

Mr Phillip Bradley

Commissioner

Victoria Police

Ms Christine Nixon APM

Chief Commissioner

Mr Kieran Walsh APM

Deputy Commissioner

Mr Richard Grant

Detective Superintendent

Queensland Police Service

Mr Bob Atkinson APM

Commissioner

Royal Canadian Mounted Police

Mr William J. S. Elliot

Commissioner

Mr Mike McDonnell

Assistant Commissioner

United States Federal Bureau of Investigation

Special Agent Michael J. Heimbach

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Special Agent John Robert Shoup

Unit Chief - Asia Unit, Office of International Operations

United Kingdom Metropolitan Police Service

Mr Peter Clarke

Deputy Assistant Commissioner

New Zealand Police

Mr Howard Broad

Commissioner



Appendix A

Terms of Reference



AFP

AUSTRALIAN FEDERAL POLICE

COMMISSIONER

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www.afp.gov.au
AFB 17 004 001 143

Pursuant to your appointment of 22 November 2007, you, as part of the AFP National Security Operations Review Committee ('the Committee'), are to review and report on the AFP's national security operations and the effect of the interaction between AFP and our national security agency partners in relation to those operations.

The Committee is to specifically report on:

1. the current role and responsibilities of the AFP and other relevant national security agencies, including ASIO and State police, in conducting national security operations.
2. the status and terms of the current relationship and interaction between relevant national security agencies including observations about the effect that the current interaction has on the discharge of AFP functions in the conduct of national security operations.
3. the existing practices, policies, legal frameworks and operational environment applicable to the AFP when conducting national security operations.
4. any current or future impediments which adversely impact upon the AFP effectively fulfilling its role in the conduct of national security operations having particular regard to ASIO's operations.
5. the impact of current AFP procedures and those procedures of other relevant national security agencies, on the ability to sustain effective prosecution action in national security operations.

RECOMMENDATIONS

The Committee is to make recommendations, among other things, upon the following:

1. whether attention should be directed to correct or improve any training, orders, instructions or publications you consider should be subject to attention;
2. for principles of best practice for cooperation and collaboration between the AFP and relevant national security agencies on national security operations, particularly to improve prospects of evidence gathering and investigative and intelligence procedures withstanding the scrutiny of judicial processes.
3. whether attention should be paid to correct or improve current legislative requirements so as to improve the AFP's ability to conduct successful national security operations.

WITNESSES

The Committee is to advise me in writing if it is unable to obtain information from any person who could give information relevant to the review, including the reasons for their non availability.

In the likely event that the Committee needs to obtain information from any person outside the AFP, you should notify my nominated contact, so that appropriate arrangements can be made.

VARIATION

If during the review it becomes apparent that a line of inquiry should be commenced which falls outside the confines of these terms of reference the Committee is to advise me in writing requesting variation of these terms of reference with reasons for the request.

DOCUMENTATION

The following documents are to be attached to the Committee's report:

1. any supporting material including, but not limited to, documents, statements and transcripts which your review deems relevant;
2. these Terms of Reference.

CLASSIFIED INFORMATION

All material gathered and generated by the Committee is to be treated in accordance with the Commonwealth Protective Security Manual.

REPORT

Pursuant these Terms of Reference I direct that the report be submitted to me by no later than 26 February 2008 and if the review is not completed by that date an interim report setting out the reason for any delay is to be submitted on that date. In the event that an extension is granted to complete the report the Committee is to provide me with progress reports every seven days on the reasons for any further delay until the review is completed.



M J Keelty
Commissioner

1 / December 2007