

THE CONVERSATION

Academic rigour, journalistic flair

Intelligence oversight and accountability: who watches the watchers?

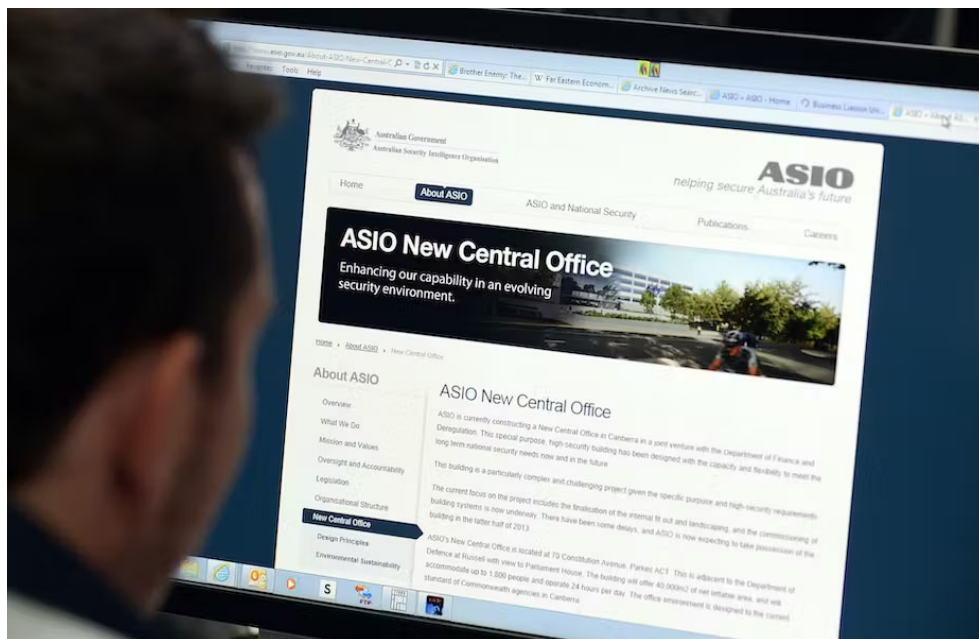
Published: December 11, 2013 6.52am AEDT

John Blaxland

Senior Fellow, Strategic and Defence Studies Centre, Australian National University

Rhys Crawley

Postdoctoral Fellow, Strategic and Defence Studies Centre, Australian National University



Recent revelations of Australia's intelligence practices have brought oversight issues into sharp focus. What mechanisms are there to hold these agencies to account?
AAP/Dan Peled

The recent revelations of alleged telephone interception of Indonesian politicians, espionage in East Timor and raids in Canberra have raised more questions than they have answered about Australia's intelligence activities.

Even though these examples are legal under Australian legislation, many people are left wondering how such actions relate to national security, how they can be in the national interest, and how Australia could end up in this situation.

One of the issues is that successive governments have failed to educate the public about the roles of the Australian Intelligence Community (AIC), let alone the legislation, oversight and accountability mechanisms that guide their activities. So, how did Australia end up with its current system, and how does it work today?

History

The AIC emerged from the organisations created to fight World War Two. These organisations, employing human, signals, imagery and other technical intelligence collection methods, are widely accepted as having helped shorten the war considerably. Successive Australian governments have been so convinced by their utility and value that they have signed up to their maintenance and expansion over nearly 70 years.

During that period, a range of controversies triggered reform initiatives. The defection of KGB spies Vladimir and Evdokia Petrov to Australia in 1954 triggered the Royal Commission on Espionage, which brought the Australian Security Intelligence Organisation (ASIO) into public consciousness. The ASIO Act 1956 emerged as a result and provided the first legal framework for ASIO's activities.

Concerned about ASIO's practices against Vietnam War protesters and "subversives", the Whitlam government established the Royal Commission on Intelligence and Security (RCIS) in 1974 to investigate ASIO and the intelligence community more broadly. In 1977, the RCIS also recommended additional legislation to cover the actions of ASIO regarding telecommunications interception.

The RCIS also saw ASIO's sister agency, the Australian Secret Intelligence Service (ASIS), come out from the shadows. Following ASIS's bungled training exercise at the Sheraton Hotel in Melbourne in 1983, the Hawke government called for a follow-on Royal Commission on Australia's Security and Intelligence Agencies (RCASIA), which then prompted further reforms.

Prior to the RCIS and the RCASIA, there was little accountability beyond the discretion exercised by government ministers. Intelligence agencies had great latitude in conducting their work. The royal commissions generated significant oversight mechanisms for the AIC.

The reviews by Philip Flood following the Iraq War and Robert Cornall and Rufus Black in 2011 validated many of the reforms and accountability mechanisms in place since the 1970s and 1980s and prompted refinements. Throughout this period, the AIC worked on a strict "need to know" principle, with secrets kept to a small circle in order to minimise leaks or inadvertent disclosure.

The September 11 turning point

But this all changed following the September 11 terrorist attacks. Investigations in the US indicated that information was known in different pockets of the US intelligence community but had not been put together. Had they been shared, perhaps something could have been done to pre-empt the attacks.

This realisation led to a dramatic shift from the "need to know" to the "need to share" – a principle that was also implemented in Australia. What we are witnessing now, however, with both the revelations from WikiLeaks and Edward Snowden, is the end of the "need to share" era. Shared information is having negative repercussions when shared too widely. Governments will seek to avoid further such incidents.

Disclosures by Julian Assange's WikiLeaks and Edward Snowden may mark the end of the 'need to share' era of intelligence. EPA/Facundo Arrizabalaga

The hopes of civil libertarians that these revelations would lead to greater openness are probably misplaced. The opposite is more likely to be the case. Fear of disclosure, severe embarrassment and exposure to ridicule and persecution is eroding the trust and confidence many had in their "watertight" and "secure" systems.

The challenge for intelligence agencies in a democracy like Australia is in balancing their work while maintaining public and bipartisan political support. This is difficult, especially if the agencies are not at liberty to engage with the public. That means accountability mechanisms have had to be devised that provide politicians and the public with sufficient confidence that the AIC is not acting in a vacuum or in a foolhardy manner.

Who watches the watchers?

Today, we have four key institutional mechanisms to hold the AIC to account. One is the Office of National Assessments (ONA) – responsible for managing intelligence priorities and assessments.

With guidance from ONA and the broader AIC, the National Security Committee of Cabinet sets intelligence collection priorities.

A third oversight body is the Parliamentary Joint Committee on Intelligence and Security (PJCIS), which has oversight of the AIC's administration and budgets.

Finally, the Inspector-General of Intelligence and Security (IGIS), Dr Vivienne Thom, is in the pivotal position to manage the accountability mechanisms along with her staff. With the enduring power of a royal commissioner, the IGIS has full access to the AIC's records.

The IGIS is tasked with providing reassurance that the AIC is performing within the bounds of the law. The public, the AIC and the government require that reassurance now more than ever. Without it, there will likely be a further loss of trust in those agencies, even though they perform an important national function.

The National Security Advisor (Dr Margot McCarthy) also has a co-ordinating role to play with the AIC and is a key conduit for national security advice to the prime minister.

Combined, these arrangements place the AIC as one of the most accountable in the Western world in terms of oversight and responsiveness to audit and inquiry.

Many would like to know more, and the revelations from Snowden, WikiLeaks and beyond would suggest that those concerns are valid. Yet MPs and successive royal commissioners and reviewers have all come to the conclusion that the activities permitted under legislation are in the national interest and warrant remaining protected and kept secret.

Legislative cover for the AIC

The AIC, especially the collection agencies – ASIO, ASIS, the Australian Signals Directorate (ASD) and the Australian Geospatial-Intelligence Organisation (AGO) – is given a broad remit to collect information that will assist Australian interests.

Some of this is about protecting national security, but equally it is about national advantage and national interests. Inevitably, the public receive only a portion of the picture. Therefore, assessing whether one particular item is in the national interest or to the national advantage is impossible to gauge without knowledge of the full range of factors considered within the AIC and by their ministers.

The Intelligence Services Act 2001 provides the legislative basis for ASIS and ASD. ASIS' website states clearly that:

ASIS's primary goal is to obtain and distribute secret intelligence about the capabilities, intentions and activities of individuals or organisations outside Australia, which may impact on Australia's interests and the well-being of its citizens.

It goes further and clarifies that:

Our work can involve collecting intelligence relating to national defence, international relations and economic issues.

As per the same act, the ASD's website outlines the functions of the agency to:

...obtain signals intelligence about the capabilities, intentions or activities of people or organisations outside of Australia.

In addition to national security (terrorism, counter proliferation, and transnational security), the AIC collection agencies look for material that the Australian government can use – if it so chooses – to the nation's advantage.

Elected ministers are tasked with making the decisions. And in doing so, they are required to weigh up the risks and benefits – and the risk can be as serious as harming Australia's relations, or the safety of its people and intelligence personnel. These decisions are not made lightly.

The legislation, governance and accountability mechanisms are clearly outlined on each of the agencies' websites. We have ASIO to protect Australian interests, whether that be national security or otherwise, and to stop, deter, or monitor other countries (or groups) from collecting covert information about Australia for their own national interests (including economic interests), hacking Australian government computers – or even, reportedly, industrial espionage at the CSIRO.

Likewise, we have agencies such as ASIS to do what they can – within the broad parameters of the legislation – to obtain information from other nations that Australia can use to its advantage. They exist for valid reasons. We should be conscious of the fact that if the reports of Australia's spying and espionage activities are accurate, some additional accountability mechanisms may be called for.

But we should be very careful not to deny Australia the information long considered essential to the maintenance of the security and prosperity of the nation.