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All Quiet in the Ranks

An exploration of dissent in Australia's security agencies

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Glossary

ABC - Australian Broadcasting Corporation

ADF - Australian Defence Force

AFP - Australian Federal Police

ALP - Australian Labor Party

APS - Australian Public Service

ASIO - Australian Security Intelligence Organisation

ASIS - Australian Secret Intelligence Service

AWB - formerly the Australian Wheat Board, now AWB Ltd

BBC - British Broadcasting Corporation (UK)

DFAT - Department of Foreign Affairs and Trade

DIGO - Defence Imagery and Geospatial Organisation

DIMA - Department of Immigration and Multicultural Affairs

DIMIA - Department of Immigration and Multicultural and Indigenous Affairs

DIO - Defence Intelligence Organisation

DIS - Defence Intelligence Staff (UK)

DPMC - Department of the Prime Minister and Cabinet

DSD - Defence Signals Directorate

FBI - Federal Bureau of Investigation (US)

IGIS - Inspector-General of Intelligence and Security

KGB - Komitet Gosudarstvennoy Bezopasnosti (USSR)

ONA - Office of National Assessments

UK - United Kingdom of Great Britain and Northern Island

US - United States of America

WMD - weapon/s of mass destruction

About the author

Andrew Wilkie resigned from the Office of National Assessments (ONA) over the intelligence used to support the Iraq war on 11 March 2003. He broke ranks because he felt that the impending invasion was not going to be the most sensible and ethical way to resolve the Iraq issue. He was the only serving intelligence official in Australia, the United Kingdom (UK) and the United States (US) to resign publicly before the invasion.

In essence, Wilkie believed that Iraq did not pose a serious enough threat to justify a war at that time, that too many things could go wrong, and that it was bad policy to resort to war so long as there were other options. Wilkie told ABC Radio National shortly after his resignation that ‘Iraq does not pose a security threat to any other country at this point in time ... Its weapons of mass destruction program is very disjointed and contained ... And there is no hard intelligence linking the Iraqi regime to al-Qaeda in any substantial or worrisome way.’¹ He stands by that assessment to this day.

At ONA Wilkie worked as a senior strategic issues analyst and then as the senior transnational issues analyst. In those roles he prepared and contributed to over 100 intelligence assessments for the Howard Government. Prior to his work in ONA Wilkie served in the Australian Defence Force (ADF), attaining the rank of lieutenant colonel, and worked in management roles with the US defence contractor Raytheon.

Wilkie has written a book about his experiences – *Axis of deceit*² – and now lives in Hobart, Tasmania.

¹ ABC Radio National AM, ‘Senior intelligence officer, Andrew Wilkie, resigns in protest’, 12 March 2003.

² A. Wilkie, *Axis of deceit*, Black Inc, Melbourne, 2004.

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The opinions presented, conclusions drawn and any mistakes made remain, of course, the responsibility of the author.

Summary

Australia's security agencies – principally the ADF, Australian Federal Police (AFP), intelligence services and relevant policy departments – have become increasingly politicised under the Howard Government. Direct political interference and self-censorship have shaped the agencies and skewed their outcomes to the point where they now cannot be relied upon to consistently put the public interest ahead of the Government's political interests.

The Government has shaped the agencies by appointing trusted members of its inner circle to head the most important organisations. The Prime Minister's former staffer, Peter Varghese, is the Director-General of ONA, the nation's senior intelligence appointment. Similarly, another former staffer of the Prime Minister, Paul O'Sullivan, heads the Australian Security Intelligence Organisation (ASIO), the lead counter-terrorism intelligence agency.

Moreover the Government is heavily influencing the staffing of all the agencies by pressuring them to tighten up their selection processes and security clearances. While this is apparently to prevent any more embarrassing security lapses – like leaks, outspoken officials and renegade intelligence officials such as Jean-Philippe Wispelaere who tried to sell secrets to a foreign government in 1999 – the effect is to make the agencies increasingly conservative in their outlook and less inclined to challenge the Government when its public statements and policy settings deviate from the information and expertise in the agencies' possession.

The politicisation of the agencies is self-perpetuating as senior officials recruit staff with similar loyalties and biases, and as the prospect of promotion and bonuses encourages a pre-occupation with 'customer focus'. Public praise, awards and attractive appointments for officials who serve the Government well, but let the public down, are also helping to foster the loyalty of senior officials. Loyalty now rules over meritocracy in the Australian Public Service (APS).

The Government has created a climate in which security officials are increasingly concerned that legislation could be used against them if they challenge policies or disclose misconduct. For instance the *Crimes Act 1914* specifies two years gaol for disclosing information, while Howard Government initiatives like the sedition legislation contain provisions which can be applied to outspoken officials under certain circumstances. The Government's haste to call in the police fuels such concerns. Between 1997 and 2004, for example, the Federal Police investigated 111 leaks from government agencies. By contrast, there is no specific Commonwealth whistleblower legislation.

The problem of the politicisation of the security agencies is compounded by the lack of a robust oversight regime. Ministerial responsibility is ineffective as evidenced by the refusal of any minister to take responsibility for the wrongful detention of Australian citizen Cornelia Rau. Moreover the Parliament has little involvement in security matters these days. The Government prevents security officials testifying before some Parliamentary committees, and oversight committees such as the Parliamentary Joint Committee on Intelligence and Security have only limited insight into the security

agencies and are almost invariably undermined by the Liberal-Labor consensus on security matters. Ad hoc committees like Terence Cole's inquiry into AWB are only as good as the Terms of Reference drawn up by the Government which, invariably, exclude instructions to inquisitors to examine in any detail the Government's own conduct.

Numerous examples illustrate the politicisation of the security agencies. For instance, in 1999 the intelligence agencies failed to push the Government over its indecision – and reluctance to confront Indonesia – during the East Timor pre-independence violence despite having had intelligence forewarning of the violence. In 2001 numerous public servants told the Government what it wanted to hear, or acquiesced, over the so-called 'children-overboard' affair. In 2002 ONA decided not to provide the Government with a crucial assessment detailing the dangerous situation in Afghanistan because it contradicted the Government's policy to return refugees to that country. In 2003 the Department of the Prime Minister and Cabinet (DPMC), amongst others, apparently failed to challenge the Government over its flawed case for the Iraq invasion. And in 2005 the inquiry into Rau's detention found widespread cultural defects in the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

As a result of the politicisation and political misuse of the agencies under the Coalition Government, Australia's security has been undermined. For instance, the ADF commitment in Iraq is putting soldiers at risk and denying additional capabilities from being deployed for more relevant security challenges like instability and the need for nation-building in Australia's region. So too the Government's pre-occupation with secondary problems, in particular terrorism, is distracting the security agencies from the more significant security challenges facing Australia, such as the proliferation of nuclear weapons and climate change.

The capacity of the agencies to deal with asymmetric threats like terrorism has been significantly undermined by the Government's manipulation of both the shape and nature of those agencies. The intelligence assessment agencies in particular need the brightest and most lateral thinkers, but such a situation – which tends to create some tensions in the generally conservative agencies – is fundamentally at odds with the Howard Government's strong interest in recasting the agencies as even more conservative and politically reliable.

Neither the public nor the media can reverse the politicisation of the security agencies, in part because the public can only agitate about what it knows – assuming it cares enough to do so – while a not insignificant proportion of the media has proven to be lazy, incompetent and compliant when it comes to security issues. To overcome the problem, a raft of government and agency reforms is needed. Politics needs to be taken out of the appointment of security officials. The agencies need to be opened up to a more diverse group of people whose views are genuinely encouraged. Balance needs to be brought into the legislation so that independent minds and voices are protected, and the security agency accountability regime needs to be enhanced by the strengthening of ministerial, parliamentary, standing committee and ad hoc committee oversight.

Independent-minded security officials and those concerned with government misconduct have little room to move in the current politicised environment, especially when the formidable challenges facing any whistleblower are considered. Most have been silenced, save for the tiny handful of high-profile dissenters like Mike Scrafton

over 'children-overboard', Lance Collins over East Timor and Rod Barton over Iraq. But the concerns of this apparently small group represent only a fraction of the depth of the politicisation in the agencies and the concern amongst security insiders. There are many more restless security officials.

1. Introduction

Do not underrate the civil servant. He is for the most part anonymous and unadvertised, but he is responsible for by far the greater part of the achievements sometimes loudly claimed by others. He provides, as a witty friend of mine once said, ‘a level of competence below which no Government can fall’. He has done a marvellous job in this war. His importance will grow, not diminish, for Government activity is here to stay.

Robert Menzies, 30 October 1942³

Australia’s security agencies – the armed forces, intelligence and law enforcement organisations, and those policy departments significantly involved with national security⁴ – are essential for the defence of the country and for the fulfilment of our international security and humanitarian obligations. Everything about them, including legislation, oversight, culture, structure, resources, processes and operations should be directed at ensuring they operate effectively to that end. The agencies should be environments of excellence involving some of the best thinkers, managers and operational staff in the country.

The security agencies should be no different to the rest of the APS where ‘principles of apoliticism, impartiality, professionalism, responsiveness and accountability [should be] at the heart of strong, productive relationships between the APS and the elected government.’⁵ Governments should respond by respecting the independence of the agencies, and by only interacting with them as much as is needed to oversee their proper operation in accordance with legislation and in the pursuit of strictly non-political outcomes.

Striking an appropriate balance between providing genuinely independent advice and service on the one hand, and responding to government’s needs on the other, has not always been easy for the security agencies. In part this is because they are inherently skewed to the right due to their long focus on the Cold War and to the shaping hand of mostly conservative federal governments over the last 50 years or so.

Not long after Prime Minister Robert Menzies came to power in 1949 he moved to strengthen the fledgling ASIO by the appointment of Colonel Charles Spry as its new head. The organisation quickly came to see its primary role as dealing with subversion, rather than espionage, not only by communists, left-wing dissidents and militant

³ R. G. Menzies, ‘The sickness of democracy’,
<<http://www.menziesvirtualmuseum.org.au/transcripts/Forgotten34.html>> (20 July 2006).

⁴ In this paper, the term ‘security agencies’ is generally taken to mean the Australian Defence Force, Australian Federal Police, Australian Security Intelligence Organisation, Australian Secret Intelligence Service, Defence Imagery and Geospatial Organisation, Defence Intelligence Organisation, Defence Signals Directorate and Office of National Assessments. It includes the policy departments significantly involved with national security matters, in particular the Attorney-General’s Department and the Departments of Defence, Foreign Affairs and Trade, Prime Minister and Cabinet, and Immigration and Multicultural Affairs. Although obviously also involved with national security, Departments like Health and Ageing, and Transport and Regional Services, have been excluded because of the need to keep the discussion within manageable limits.

⁵ Australian Public Service Commission, ‘APS Values and Code of Conduct in practice’,
<<http://www.apsc.gov.au/values/conductguidelines4.htm>> (21 June 2006).

unionists, but also by anyone else exhibiting views contrary to the conservative Menzies Government.⁶ ASIO's operations during Menzies' Government were strongly ideological, for instance its activities against the Australian Labor Party (ALP) were apparently not so much designed to scrutinise the Government's main political opponent, as to hunt down left-wing activists and communists and to strengthen conservative forces. Hence developed the extraordinary situation during the 1960s when ASIO maintained contacts with the New South Wales ALP Right for the purpose of strengthening that faction, while at the same time collecting information on its rival Left faction.⁷

It was unsurprising then that the difficulties arose that characterised the relationship between the Labor Government of Prime Minister Gough Whitlam and the security agencies, ASIO in particular.⁸ Whitlam caused considerable anxiety in the conservative agencies with some of his decisions, for example to pull Australian troops out of South Vietnam and to abolish compulsory military service. Less apparent, but just as rankling for the security officials, were decisions such as the temporary refusal to allow politicians' staff to undergo security clearances. Certainly not helping the relationship was Whitlam's Attorney-General, Lionel Murphy, who in 1973 raided ASIO's headquarters to look for documents he believed were being withheld from the Government. Also not helping, but of great public service nonetheless, was the Whitlam Government's initiation of the Royal Commission on Intelligence and Security under Robert Hope. Although his findings were limited and his report was not finalised until well after the demise of the Whitlam Government, Hope's investigations at least helped to warn the public of ASIO's 'transgressions' on the watch of successive conservative governments and informed some improvement of legislation governing the behaviour of ASIO.⁹

But the Whitlam Government's efforts to reform the security agencies were not enough to achieve deep change. With only some three years in power there was simply too much history to turn around before the agencies faced another long period of relatively conservative oversight. Murphy's raid in particular was a disaster, one that mobilised some ASIO officers to wage a concerted campaign to attack and weaken the Whitlam Government, according to ASIO researcher and author David McKnight, by:

working closely with the Liberal-Country Party Opposition; leaking a confidential telex at a moment calculated to ambush Whitlam; spying on a meeting between Labor politicians and CPA [Communist Party of Australia] leaders; 'vetting' their ministerial boss, Lionel Murphy to check his Soviet connections; and, subverting the 'soft line' chief of ASIO, Peter Barbour and forcing his resignation.¹⁰

Any hope that Prime Minister Bob Hawke's ALP Government, elected in 1983, would fare better than Whitlam's was dashed initially by ASIO's operation against former ALP National Secretary David Combe whom ASIO accused of spying for the Soviet Union in

⁶ D. McKnight, *Australia's spies and their secrets*, Allen and Unwin, Sydney, 1994, p. 38.

⁷ *ibid.*, pp. 200 – 201.

⁸ *ibid.*, pp. 258 – 271.

⁹ R. Hope, *Royal Commission on Intelligence and Security: Fourth Report*, Commonwealth of Australia, Canberra, 1978.

¹⁰ McKnight, *Australia's spies and their secrets*, p. 249.

concert with the Soviet diplomat and alleged KGB officer, Valeriy Ivanov.¹¹ The Hawke Government initiated another Hope Royal Commission which cleared Combe of misconduct, suggested some legislative adjustment and led to the establishment of the Inspector-General of Intelligence and Security (IGIS).¹² The IGIS is a 'statutory office holder who assists the Prime Minister, the Attorney-General, the Minister for Foreign Affairs and the Minister for Defence, to oversight and review the activities of the six intelligence agencies which collectively comprise the Australian Intelligence Community'.¹³

The culture in the security agencies did become less conservative during the 1980s and 1990s however, in part because of the long period of ALP rule. This reign of some 13 years – including the tenure of Prime Minister Paul Keating – inevitably led to some reshaping and recalibrating of the APS as senior appointments were changed or renewed, and as working for those governments appealed to a broader range of potential recruits, or to at least some people who would not have considered working for the previous conservative governments. While some research has found little evidence of partisan appointments at the Secretary level during the early years of the Hawke Government,¹⁴ the fact that there were six non-career heads of overseas missions in the Department of Foreign Affairs and Trade (DFAT) in 1988¹⁵ and that close ALP ally Michael Costello was appointed Secretary of that department (only to be one of the six departmental heads promptly dismissed by the incoming Howard Government),¹⁶ point to the politicisation of appointments during that period of ALP rule. Some of the positive change in the culture of the security agencies during this period was more practical than political, for instance the move of ASIO's headquarters from Melbourne to Canberra in the mid-1980s prompted the retirement of many older officers who had grown set in their conservative ways.¹⁷ There was also a growing realisation in the agencies of the inherent value, and industrial relations inevitability, of better reflecting Australian society and drawing on the rich diversity of views to be found there. In the intelligence agencies, taps on shoulders became less common as human resource managers increasingly brought their efforts into the open and aligned their recruitment practices with the broader APS.

But the cultural reinvention of Australia's security agencies has stalled – and in some ways is being reversed – because since 1996 the conservative Government of Prime Minister John Howard has made, and continues to make, serious and specific efforts to politicise its relationship with the agencies, manipulate their conduct and misuse their efforts. The situation has deteriorated to the point where there is now little scope in the agencies for the high-level expression of views contrary to those of the Government. The norm has become grinding border security and counter-terrorism operations, and risky and seemingly endless deployments to far-flung Afghanistan and Iraq and, as a

¹¹ F. Cain, *The Australian Security Intelligence Organisation: an unofficial history*, Frank Cass, United Kingdom, 1994, pp. 230 – 240.

¹² R. Hope, *Royal Commission on Australia's Security and Intelligence Agencies General Report*, Commonwealth of Australia, Canberra, 1985.

¹³ The Inspector-General of Intelligence and Security, 'Annual Report 2005-2006', <http://www.igis.gov.au/annuals/05-06/pdf/IGIS_AR_2005-06.pdf> (31 October 2006).

¹⁴ R. Mulgan, *Politicising the Australian Public Service?*, Commonwealth of Australia, Canberra, 1998.

¹⁵ R. Woolcott, speech delivered to the Australian Institute of International Affairs (Canberra Branch), 8 June 2006, Canberra.

¹⁶ R. Mulgan, *Politicising the Australian Public Service?*

¹⁷ McKnight, *Australia's spies and their secrets*, p. 300.

result, the capacity of the agencies to deal with the most significant threats to Australian security has been jeopardised.

There is now a pressing need for reforms aimed squarely at de-politicising the security agencies and the Howard Government's relationship with them. While the cost already of our politicised national security arrangements has been high, the potential cost in the future could be much greater.

2. Current situation

The Howard Government has sought to reverse the cultural renewal of the security agencies of the 1980s and 1990s by vetting senior appointments and installing trusted players in key positions. For example the head of ONA appointed in 2004, Peter Varghese, and the head of ASIO appointed in 2005, Paul O’Sullivan, are both former members of John Howard’s inner circle of advisers. Similarly, the head of the National Security Division in DPMC, Miles Jordana, previously served on John Howard’s staff.¹⁸ All three of these men were closely involved with the Government’s Iraq strategy. Mr Jordana was the recipient of the correspondence from ONA to the Prime Minister’s Office on 7 November 2001 detailing ONA’s concern about the accuracy of a report about the so-called ‘children-overboard’ affair, a concern John Howard claims to have not been aware of when at the National Press Club the following day he used the ONA report to back up his claim that asylum seekers had thrown their children into the water.¹⁹ Such security appointments raise questions about the independence of the agencies at a time when the public needs to have confidence that all is well.

2.1 Misshaped workforce

Aiding the Howard Government’s effort to shape the security agencies is the power given to heads of agencies to grant and rescind the security clearances needed for such work. The aim of the security clearance process – a regime the ministers responsible for the agencies are not required to undergo – is to filter out questionable and unreliable job applicants and serving officials. But it has been tightened up significantly over recent years as the security agencies have responded to direct pressure from the Government to prevent any more embarrassing lapses in security.²⁰

To some degree this has been warranted, considering the convictions for espionage of former Defence Intelligence Organisation (DIO) analysts Jean-Philippe Wispelaere in 2000²¹ and Simon Lappas in 2002.²² The Wispelaere case in particular prompted a detailed IGIS review of security procedures which resulted in more than 50 recommendations, including measures to ‘improve personnel security practices.’²³ But to some degree the security clearance crackdown has also had an obviously political purpose as the Government has sought to prevent damaging leaks, like occurred in 1999 over East Timor, and more outspoken officials such as this author. The result has been that while the services had been trying for some years to better incorporate the diversity of the Australian community, they have now been pressured to lurch back towards the days of recruiting only the most *politically* reliable people.

¹⁸ Varghese, O’Sullivan and Jordana all held the Senior Adviser (International) role on Howard’s staff.

¹⁹ D. Marr and M. Wilkinson, *Dark victory*, Allen and Unwin, Sydney, 2003, pp. 257 – 258.

²⁰ That the security vetting process has been tightened in recent years is the observation of former and serving intelligence officials with whom I have had contact.

²¹ The Inspector-General of Intelligence and Security, ‘2001-2002 Annual Report’, <http://www.igis.gov.au/annuals/01-02/defence_intel.cfm> (2 October 2006).

²² Australian Security Intelligence Organisation, Report to Parliament 2002-2003, Commonwealth of Australia, Canberra.

²³ D. Williams, *Improving security within government*, media release, Commonwealth of Australia, 21 September 2000, Canberra.

The security clearance process, and in particular the top-level ‘positive vet’ – or ‘PV’ as it’s more commonly known – which not unreasonably is required for access to the most sensitive information, is normally an extraordinarily intrusive process undertaken by specially trained officials over lengthy periods and at considerable cost.²⁴ Sometimes the process can take months and cost tens of thousands of dollars. Everything is examined – for example places of residence and travel, schooling, membership of associations of any kind, friends and acquaintances, sexual preferences, financial arrangements and psychological status – to ensure that clearance holders are stable, trustworthy and who they claim to be. The *trustworthy* aspect in particular is highly subjective and these days includes political trustworthiness. In other words, security officials are screened to check not only that they represent no potential risk to the country, but also to the Government.

Both would-be and serving security officials who are denied security clearances are not normally informed of the reason for the decision against them. In practice this results in job applicants being given no information other than their application being unsuccessful. Serving officials are likely to fare a bit better and are probably advised of the problem with their continuing employment at least in general terms. But in both cases the affected person has almost no hope whatsoever that any complaint about the security clearance process will be upheld. They could complain to the politician responsible for the relevant agency, but that is not likely to achieve much if the problem in the first place is the misuse of a security clearance for political purposes. Alternatively they could complain to the IGIS, who is empowered to investigate ‘poor recruitment practices’,²⁵ or with the Security Appeals Division of the Administrative Appeals Tribunal if they know the problem lies specifically with ASIO advice.²⁶ However the chance of a breakthrough is tiny given the disproportionate reliance of such arbitrators on the subjective advice of agencies that can play just about any card to prove that someone is, or could become, somehow ‘unreliable’.

The propriety of the security agencies, in so much as they should award security clearances fairly and without concern for the Government’s political agenda, is not protected in any practical way. The *Public Service Act 1999* gives the matter barely a line, and then in favour of the agencies, where it specifies a condition of APS employment as simply ‘security and character clearances’.²⁷ Just as vague, and potentially as unhelpful, is the wording in individual agency certified agreements. For instance security officials subject to the *Office of National Assessments Certified Agreement 2004–2007*, which includes almost all ONA staff during this period, sign up to ‘ONA-specific conduct requirements including ... compliance with conduct and personal assessment requirements prescribed by an authorised person relating to employment in ONA and/or the Australian Intelligence and Security Community’.²⁸

²⁴ The Parliamentary Joint Committee on Intelligence and Security is reported to have determined the PV process is so lengthy as to actually hinder the recruitment of security officials – *Sydney Morning Herald*, ‘Spies hard to recruit’, 15 August 2006, Sydney.

²⁵ The Inspector-General of Intelligence and Security, ‘What sort of complaints does the IGIS deal with?’, <<http://www.igis.gov.au/complaints.cfm>> (17 July 2006).

²⁶ Administrative Appeals Tribunal, ‘Security appeals’, <<http://www.aat.gov.au/ApplyingToTheAAT/SecurityAppeals.htm>> (17 July 2006).

²⁷ Section 22, ‘Engagement of APS employees’, *Public Service Act 1999*.

²⁸ *Office of National Assessments Certified Agreement 2004-2007*, Commonwealth of Australia, Canberra. pp. 5 – 6.

2.2 Skewed legislative framework

Reinforcing the Howard Government's pressure on the staff of the security agencies is the imbalance in legislation which offers virtually no protection to officials troubled by government misconduct, but which threatens harsh punishment if they speak out about their concerns. Significantly, there is still no Commonwealth whistleblower legislation. All the states and the Australian Capital Territory have developed such schemes²⁹ but doing so seems to be beyond federal governments, despite constant efforts by concerned lawmakers to enquire into the issue and enact legislation. For instance Senator Jo Vallentine (Greens, Western Australia) tried in 1991 and her successor Christobel Chamarette tried again in 1993,³⁰ a Senate Select Committee reported on the issue in 1994³¹ and Senator Andrew Murray (Democrats, Western Australia) tried again in 2001.³² In every case there has been no government interest in advancing such initiatives, presumably because they believe they risk reducing their advantage over those officials who might reveal official misconduct.

The only existing Commonwealth whistleblower protections are contained in the *Public Service Act 1999*³³ and *Ombudsman Act 1976*³⁴, but the brief references in these statutes are only relevant to public servants reporting breaches of the APS Code of Conduct, not government misconduct, and for outspoken officials hoping to avoid civil proceedings. Moreover the courts would still have to decide the primacy of such limited legislation against the provisions of the many statutes clearly threatening prosecution of troublesome officials.

In addition, there are numerous points of detail that legal professionals might understand but which can be more than enough to deter all but the most determined independent voice or dissenter. For instance the Commonwealth Ombudsman is also the AFP Ombudsman, though in most cases complaints are handled by the AFP's Professional Standards Team.³⁵ And the Commonwealth Ombudsman is also the ADF Ombudsman, though in that role he or she has no power to investigate disciplinary matters and can generally only conduct investigations after all internal dispute resolution processes have been exhausted.³⁶ This includes the provisions of the Defence Whistleblower Scheme,³⁷ an arrangement that is not widely publicised in the Department of Defence and the ADF, and which would provide little protection for any official attempting to blow the whistle on serious government misconduct.

²⁹ J. McMillan, *Freedom of Information and Whistleblower Legislation: an Australian Perspective*, paper delivered to the 9th Asian Ombudsman Association Conference, 30 November, 2005, Hong Kong, p. 7.

³⁰ W. De Maria, *Deadly disclosures: whistleblowing and the ethical meltdown of Australia*, Wakefield Press, Kent Town, 1999, pp. 213 – 214.

³¹ McMillan, *Freedom of Information and Whistleblower Legislation: an Australian Perspective*, p. 8.

³² *ibid.*

³³ Section 16, 'Protection for whistleblowers', *Public Service Act 1999*.

³⁴ Section 37, 'Protection from civil actions', *Ombudsman Act 1976*.

³⁵ Australian Federal Police, 'Complaints', <<http://www.afp.gov.au/about/complaints>> (29 May 2006).

³⁶ Commonwealth Ombudsman, 'Defence Force Ombudsman', <http://www.ombudsman.gov.au/commonwealth/publish.nsf/content/legislation_defence#> (17 July 2006).

³⁷ Department of Defence, 'Welcome to the General Investigation and Review Branch', <<http://www.defence.gov.au/ig/gir.htm>> (22 July 2006).

By contrast, a range of legislation gives unambiguous power to the heads of agencies to hire and fire and to help governments take retribution against officials exposing misconduct. Significantly, the *Crimes Act 1914*³⁸ specifies two years imprisonment for any official disclosing virtually any material they obtain from their workplace. Another example is the *Criminal Code Act 1995*³⁹ which specifies 25 years gaol when a disclosure of information is intended to harm national security, as the Government could try to argue is the case when officials speak out during times of conflict, such as during the so-called ‘war on terror’ or the Iraq war. Very tough penalties also exist for anyone publicising material provided by an official, making the job of a would-be security whistleblower or leaker of sensitive information all the more difficult.⁴⁰

To the degree to which legislation pre-dates the Howard Government, the mischief is in the way the Government has created a climate in which security agency officials have become more concerned that existing penalties could be used against them. Reinforcing this has been the Government’s efforts to strengthen relevant legislation, such as how it amended the *Criminal Code Act 1995* to increase the penalty for disclosures ‘intended to harm national security’ from seven years to the current 25 years⁴¹ and how it amended the *Public Service Regulations 1999* to prohibit the disclosure of information ‘if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programs.’⁴² This latter example was especially mischievous, coming as it did in response to the Bennett case where the Human Rights and Equal Opportunity Commission and Federal Court overturned a directive given to an official of the Australian Customs Service, who was also the Federal President of the Customs Officers Association, that he should not make media comments.⁴³

The Howard Government’s sedition legislation could also constitute a formidable deterrent to any official considering speaking out. It is possible, however unlikely, that the Government could claim the actions of an outspoken security official encouraged domestic anti-war activists and provided succour to an enemy state or terrorist organisation. This particular legislation is extraordinarily broad, so much so that no one – not even a legal professional, let alone a security agency official sweating on knowledge of government misbehaviour – can know for sure how it might be applied by this or future governments. Take paragraph eight in Section 80.2 ‘Sedition’ of the *Criminal Code Act 1995*, for instance, which states the following.

A Person commits an offence if:

- (a) the person urges another person to engage in conduct; and
- (b) the first-mentioned person intends the conduct to assist an organisation or country; and
- (c) the organisation or country is engaged in armed hostilities against the Australian Defence Force.

³⁸ Section 70, ‘Disclosure of information by Commonwealth officers’, *Crimes Act 1914*.

³⁹ Section 91.1, ‘Espionage and similar activities’, *Criminal Code Act 1995*.

⁴⁰ For instance Section 79 of the *Crimes Act 1914*, which specifies two years imprisonment for knowingly communicating protected official information.

⁴¹ *Criminal Code Amendment (Espionage and Related Matters) Act 2002*.

⁴² Regulation 2.1, *Public Service Regulations 1999*.

⁴³ Australian Public Service Commission, ‘Disclosure of Information by APS employees – implications of the Bennett Case’, <<http://www.apsc.gov.au/circulars/advice191203.htm>> (24 July 2006).

Penalty: Imprisonment for 7 years.

The Australian Law Reform Commission has strongly criticised the sedition laws, with its President David Weisbrot saying the provisions ‘need amendment to make clear that the Crown must prove beyond reasonable doubt that the person *intentionally* urged others to use force or violence, and intended that this force or violence would occur.’⁴⁴ Moreover the Commission has proposed ‘amendments to offences related to “assisting” an enemy at war with Australia or engaged in armed hostilities against the ADF to clarify that this refers to *material* assistance, such as arms, funds, personnel or strategic information, rather than criticism of government policy.’⁴⁵

2.3 Bullying tactics

The cards are further stacked against officials concerned with the conduct of the Howard Government by its enthusiasm for calling in the police to investigate leaks, especially security leaks, often at enormous cost. Between 2000 and 2004, for example, the AFP spent about 33,000 staff hours investigating some 64 leaks from agencies at a cost of almost \$200,000 plus wages.⁴⁶ Another 47 enquiries kept the AFP busy in the three years before that.⁴⁷ While reliable figures are not available for previous governments, the Howard Government’s enthusiasm for tracking down officials who leak information was clearly signalled by the Secretary of DPMC in 2004, Peter Shergold, when he said that ‘if some people seem surprised that I have called in the police to deal with leaks, they shouldn’t be – I always have and I always will.’⁴⁸ A conservative calculation would put the total cost of the 2000 – 2004 investigations at around \$2 million.

2.4 Softening oversight regime

The Federal Parliament’s role in national security matters has been reduced almost to irrelevance by the Howard Government’s practice of dealing with security issues elsewhere, in particular within DPMC and in the National Security Committee of Cabinet. Not even the decision to commit the country to war in Iraq was decided upon in the Parliament. In any case there are too few sitting days now to allow for much time to be ‘wasted’ on parliamentary debate about national security, even on those rare occasions when the Government and the ALP do depart from their traditional consensus position on security matters⁴⁹ – former Opposition Leader Mark Latham’s pledge to withdraw Australian troops from Iraq, and more recently Kim Beazley’s conversion to this idea, being an example of such a departure. Moreover DIO does not have specific legislation governing its operation⁵⁰ – the *ASIO Act 1979*, *ONA Act 1977* and

⁴⁴ Australian Law Reform Commission, “*Sedition*” should go, focus on urging violence: ALRC, media release,

<<http://www.alrc.gov.au/media/2006/mr2905.htm>> (24 July 2006).

⁴⁵ *ibid.* See also Australian Law Reform Commission, *Fighting Words: A Review of Sedition Laws in Australia*, Report 104, Commonwealth of Australia, Canberra.

⁴⁶ Senate, *Hansard*, Parliament House, 3 August 2004, Canberra.

⁴⁷ *ibid.*

⁴⁸ P. Shergold, *Plan and Deliver: Avoiding Bureaucratic Hold-up*, speech delivered to the Australian Graduate School of Management/Harvard Club of Australia at the National Press Club, 17 November, 2004, Canberra.

⁴⁹ K. Burton, *Scrutiny or secrecy? Committee oversight of foreign and national security policy in the Australian Parliament*, Commonwealth of Australia, Canberra, 2005, pp. 15 – 16.

⁵⁰ The Inspector-General of Intelligence and Security, ‘Accountability Regime’,

*Intelligence Services Act 2001*⁵¹ prescribe the functions of the other intelligence agencies – while the Australian Secret Intelligence Service (ASIS) and ONA do not even produce unclassified annual reports for tabling in Parliament.⁵²

The aversion to proper process has spilled over into the committee system, in particular budget estimates, where the Government habitually manipulates the attendance of officials and the scope of responses that those attending might give. Still memorable is the way in which key witnesses were prevented from involvement in the Select Committee on a Certain Maritime Incident investigating the ‘children-overboard’ affair, including the key witness Mike Scafton who was muzzled until after he left the Public Service some years later.⁵³ The Government’s desire to wind back the role of Senate committees even further, including reducing their number and ensuring they are always chaired by the Government, was signalled by the Minister for Finance and Administration, Senator Nick Minchin, in June 2006 and subsequently adopted from 11 September.⁵⁴

Ministerial oversight is intended to help hold the security agencies to account. For instance the Prime Minister is responsible for ONA, the Minister for Foreign Affairs for ASIS, the Attorney-General for ASIO, the Minister for Defence for the ADF, Defence Imagery and Geospatial Organisation (DIGO), Defence Signals Directorate (DSD) and DIO, and the Minister for Justice and Customs for the AFP and the Australian Customs Service including Coastwatch. But such oversight has deteriorated significantly during recent years, so much so that ministerial involvement is now more of a problem than a solution because of the way it protects failing security agencies and fuels politicisation.

Illustrations of inappropriate ministerial oversight include the Prime Minister’s unqualified praise for the head of ONA, Kim Jones, during the heated public discussion about the absence of weapons of mass destruction (WMD) in post-invasion Iraq.⁵⁵ Defence Minister Robert Hill gave similar public praise to the head of DIO, Frank Lewincamp, at about the same time and for the same reason.⁵⁶ According to the Government, the heads of the two crucial intelligence assessment agencies did a good job on Iraq. However, the agencies’ apparent misreading of the situation constituted a remarkable intelligence failure. Lewincamp was even awarded the Public Service Medal.⁵⁷ Such behaviour was repeated in 2005 when the Secretary of DIMIA, Bill

<<http://www.igis.gov.au/account.cfm>> (17 May 2006).

⁵¹ The *Intelligence Services Act 2001* – a Howard Government initiative – provides the legislative basis for ASIS, DIGO and DSD. It is also the legislation establishing the Parliamentary Joint Committee on Intelligence and Security and before that the Parliamentary Joint Committee on ASIO, ASIS and DSD.

⁵² The Inspector-General of Intelligence and Security, ‘Accountability Regime’.

⁵³ M. Scafton, ‘Opening Statement by Mike Scafton at Select Committee hearing, 1 September 2004’ in *Senate Select Committee on the Scafton Evidence Report*, Commonwealth of Australia, Canberra.

⁵⁴ See H. Coonan and N. Minchin, *Proposal to Reform the Senate Committee System*, media release, Commonwealth of Australia, 20 June 2006, Canberra; and N. Minchin, *Senate adopts Committee reform*, media release, Commonwealth of Australia, 15 August 2006, Canberra.

⁵⁵ C. Banham, ‘Howard agrees to show Labor secret spy report’, *Sydney Morning Herald*, 24 July 2004, Sydney.

⁵⁶ R. Hill, *Defence Minister Robert Hill Announcing New Director of DIO, Major General Maurie McNam*, transcript, Commonwealth of Australia, 14 December 2004, Sydney.

⁵⁷ Lewincamp was granted the Public Service Medal on 26 January 2004 for ‘outstanding public service in the provision of high quality intelligence for the strategic planning and conduct of the Australian contribution to the Iraq War’. See Department of the Prime Minister and Cabinet, ‘It’s an honour’,

Farmer, was awarded an Order of Australia⁵⁸ and given the plum Ambassador's job in Jakarta not long before the release of the report about the wrongful immigration detention of Australian citizen Cornelia Rau.⁵⁹ In 2006, the Government's refusal to acknowledge any bureaucratic failure regarding Australian company AWB's payment of bribes to Iraq during Saddam Hussein's rule also represented a failure of ministerial oversight.⁶⁰ The same can be said of the Army's failure over the repatriation of the wrong body and mangled public explanations following the death of Australian soldier Jake Kovco in Iraq.⁶¹

Parliamentary committees, like the Parliamentary Joint Committee on Intelligence and Security and the Joint Standing Committee on Foreign Affairs, Defence and Trade, possess only limited capacities to offset the problems with legislation and Government oversight because they are handicapped by their own shortfalls. For instance there is no joint standing committee responsible for the AFP, while the Intelligence and Security Committee is monopolised by the two major parties and dominated by the Government – the minor parties are excluded as they are 'regarded as potentially "irresponsible"'.⁶² In practical terms this means the Intelligence and Security Committee is almost always hostage to the enduring consensus on national security between the Government and the ALP, save for those rare occasions when the ALP does break ranks. For instance, in 2006 two ALP members disputed the Committee's recommendation to list the Kurdistan Workers' Party as a terrorist organisation.⁶³

Moreover all members of the security-related standing committees, regardless of their party, are at risk of falling under the spell of the secret work they are involved in. Some who seek membership of such committees are already inclined to enjoy such boys-own adventures. But security work can be intoxicating stuff and committee members tend to become careful not to cause problems, lest they be branded 'irresponsible' and denied their privileged access to the secret world.⁶⁴ A type of Stockholm Syndrome⁶⁵ can develop where the committee members can't but help getting too close to the agencies they are supposed to oversee.

<http://www.itsanhonour.gov.au/honours/honour_roll/search.cfm?aus_award_id=1056499&search_type=quick&showInd=true> (20 June 2006).

⁵⁸ Farmer was made an Officer of the Order of Australia on 13 June 2005 for 'service to the community through contributions to Australias [sic] international relations and to major public policy development including domestic security, border systems, immigration, multicultural affairs and Indigenous service delivery'. See Department of the Prime Minister and Cabinet, 'It's an honour',

<http://www.itsanhonour.gov.au/honours/honour_roll/search.cfm?aus_award_id=1058525&search_type=quick&showInd=true> (20 June 2006).

⁵⁹ *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Commonwealth of Australia, 2005, Canberra.

⁶⁰ For example *Sky News* 2006, 9.00am edition, 3 February.

⁶¹ ABC Radio National *PM* 2006, 'ADF promises inquiry into Kovco bungle', 27 April.

⁶² Burton, *Scrutiny or secrecy? Committee oversight of foreign and national security policy in the Australian Parliament*, p. 39.

⁶³ Parliamentary Joint Committee on Intelligence and Security 2006, *Review of the listing of the Kurdistan Workers' Party (PKK)*, Commonwealth of Australia, Canberra.

⁶⁴ Burton, *Scrutiny or secrecy? Committee oversight of foreign and national security policy in the Australian Parliament*, p. 41.

⁶⁵ 'Stockholm Syndrome' refers to a hostage bonding with his or her captors. It apparently originated in Stockholm, Sweden some years ago when bank robbers held people hostage for a lengthy period.

The Howard Government's control of the terms of reference for ad hoc official enquiries compromises even these apparently apolitical accountability mechanisms. There are numerous examples of the problem, so many in fact that one might suspect a pattern of deliberate obfuscation and deception about the relationship between the Government and the security agencies. For instance the Parliamentary Joint Committee on ASIO, ASIS and DSD's enquiry into the Iraq war was not empowered to look beyond the missing WMD to the broader Government case for war.⁶⁶ Nor was the subsequent enquiry into the war, by inquisitor Philip Flood, ordered by Howard to look at the Government's relationship with the agencies.⁶⁷ Terence Cole's enquiry into AWB is not empowered to look specifically at the Government's involvement in that issue either.⁶⁸ And the terms of reference for the ADF enquiry into the Jake Kovco debacle were reported to have excluded a requirement to consider the involvement of Defence Minister Brendan Nelson, even though the string of inaccurate public utterances by Nelson was central to the matter.⁶⁹

Specialist tribunals also have limited effectiveness. For instance, anyone can approach the Commonwealth Ombudsman if they believe the Government's 'administrative actions and decisions [are] wrong, unjust, unlawful or discriminatory.'⁷⁰ But the Ombudsman 'cannot override the decisions of the agencies ... nor issue directions to their staff. Instead, we [the Commonwealth Ombudsman] resolve disputes through consultation and negotiation, and if necessary, by making formal recommendations to the most senior levels of government.'⁷¹ So again the possibility exists of those officials seeking to break through the politicisation of the security agencies finding that ultimately their disputes are dealt with by the very people about whom he or she is concerned with.

While members of the AFP and most members of the ADF must rely on the Commonwealth Ombudsman, members and former members of the intelligence agencies also have recourse to the IGIS. Just how much of an advantage this provides, however, is open to question as the IGIS comprises only half a dozen or so staff, including just two investigators,⁷² runs out of DPMC and has a whiff of partiality about it. Still significant is that the IGIS report into the October 2002 Bali bombing found that 'there was no intelligence warning of the attack',⁷³ even though it was revealed to the public later in a Senate enquiry that ONA had in fact warned Downer in September 2001

⁶⁶ Parliamentary Joint Committee on ASIO, ASIS and DSD 2003, *Intelligence on Iraq's weapons of mass destruction*, Commonwealth of Australia, Canberra.

⁶⁷ P. Flood, *Report of the Inquiry into the Australian Intelligence Agencies*, Commonwealth of Australia, Canberra, 2004.

⁶⁸ Attorney-General's Department, 'Terms of Reference', <http://www.ag.gov.au/agd/www/UNoilforfoodinquiry.nsf/Page/Terms_of_Reference> (20 June 2006).

⁶⁹ ABC Online, 'Nelson's Kovco comments "not part of investigation"', <<http://www.abc.net.au/news/newsitems/200606/s1652758.htm>> (20 June 2006).

⁷⁰ Commonwealth Ombudsman, untitled, <<http://www.comb.gov.au/#>> (17 July 2006).

⁷¹ Commonwealth Ombudsman, 'Ombudsman's role', <http://www.comb.gov.au/commonwealth/publish.nsf/Content/aboutus_role> (17 July 2006).

⁷² The Inspector-General of Intelligence and Security, 'Corporate and communications', <http://www.igis.gov.au/annuals/04-05/corporate_comm.cfm> (17 July 2006).

⁷³ The Inspector-General of Intelligence and Security, 'Annex 2 – Bali inquiry report', <<http://www.igis.gov.au/annuals/02-03/annex2.cfm>> (17 July 2006).

and twice in June 2002 of the possibility of a terrorist attack against westerners in Bali.⁷⁴ Neither the modest increase in size foreshadowed for IGIS – two more staff by the end of this financial year and a total of six new staff by mid-2010 – nor the decision to keep the organisation in DPMC after the Prime Minister’s department occupies new offices in 2007,⁷⁵ give any cause for optimism about the future effectiveness of what was supposed to be the country’s intelligence oversight and review agency.

2.5 Media little help

Too often in recent years the media has shown itself to be incompetent and lazy when it comes to security matters. Incompetent, as evidenced regularly in media reports by the obvious lack of deep understanding of security issues, and lazy, as evidenced by the obvious reluctance of many journalists to get their minds around such matters, but coupled with a preparedness to publicise without scrutiny just about anything the Government feeds them.

Compromising much of the media’s work on national security issues over recent years has been the conservative bias of the dominant News Limited, in particular its control of most of the large circulation papers including two of the biggest – the *Herald Sun* in Melbourne and the *Daily Telegraph* in Sydney – and the only national broadsheet, *The Australian*. In one study, over 40 per cent of the contents of the latter’s opinion pages during a six month period were written by identifiably right-wing authors, leaving the remainder of the space for predominantly neutral authors and a small number of identifiable left-wingers.⁷⁶ On the Iraq war in particular, another study found that the editorial stance of all 175 newspapers controlled by News Limited favoured the invasion except for Hobart’s *Mercury*, which had a short dalliance with concern about the war.⁷⁷

2.6 Public indifference

Against this backdrop public opinion assumes an even greater importance. In the absence of independent voices in the security agencies, effective oversight and an obvious role for the judiciary (the Howard Government doesn’t normally break Australian laws when it perverts national security policy) public agitation remains about the only potential force for positive change, or at least reflection, both in government and amongst the agencies. But the public can only agitate about what it knows, and this depends on the media playing a more effective role in fostering debate in Australia.

The media also has a role to play in shaping the public’s perception of, and response to, whistleblowers. Such people are not well regarded by a significant proportion of people in Australia, even when vindicated. They are routinely characterised as unreliable, as ‘dobbers’, or even of having acted treacherously. That people blowing the whistle on politicians’ misconduct in particular are often not regarded highly seems strange considering the widespread public cynicism in Australia about the performance of politicians generally, and about the dishonesty of the Howard Government in particular.

⁷⁴ Office of National Assessments 2003, ‘Senate inquiry Submission by ONA’ in Senate Foreign Affairs, Defence and Trade References Committee 2004, *Bali 2002 Security threats to Australians in South East Asia*, Commonwealth of Australia, Canberra.

⁷⁵ The Inspector-General of Intelligence and Security, ‘Annual Report 2005-2006’.

⁷⁶ D. McKnight, ‘Murdoch and the Culture War’ in Manne, R. (ed.), *Do Not Disturb*, Black Inc, Melbourne, 2005, pp. 56 – 58.

⁷⁷ R. Manne, ‘Murdoch and the War on Iraq’ in *Do Not Disturb*, 2005, pp. 75 – 76.

After all, polling showed that only 35 per cent believed Howard's claim that there had been no deal with Treasurer Peter Costello in 1994 about a future hand-over of the Prime Ministership, 72 per cent of people aware of the Cole enquiry didn't believe Howard's claim that the Government was unaware of AWB's kickbacks to the Iraqi Government and 51 per cent believed Howard had been dishonest over 'children-overboard'.⁷⁸ Furthermore, about three quarters of people polled felt that Howard misled them in one form or another over the invasion of Iraq.⁷⁹

One might think that there would be a hunger for new revelations of official misconduct and that the public would treat kindly those insiders who dare to try to publicise such information. That this is not the case, that whistleblowers are often mistrusted in Australia even when their revelations are significant and in time proven, is indeed perplexing. It is certainly at odds with the value of their public service and apparent need to encourage further outspokenness amongst people uncovering serious official misconduct. It also seems to be at odds with data suggesting that many Australians are not averse to the reporting of misconduct – *Crime Stoppers* police hotlines have been operating in Australia since the 1980s and each year now take some 140,000 calls, while the Victorian Environment Protection Authority is contacted about 18,000 times regarding littering and another 14,000 about smoky vehicles.⁸⁰ Perhaps such evidence is too narrow and related only to issues directly touching people and for which public reporting of misconduct has been established by governments and the media alike as being acceptable. In any case, the contempt many Australians feel for whistleblowers is probably unsurprising when it is remembered that the Government was re-elected with an increased majority at the 2004 election, and that a clear majority of people still seem to prefer Howard as Prime Minister, even though many feel that he misleads them.

Apparently a sizeable number of Australians will tolerate a dishonest person running the country so long as he or she *seems* to run it well, or at least runs it well enough for the 'mainstream' to think its 'doing alright.' Maybe people just don't like being told they voted for a liar. But whatever the public thinks, independent voices and even dissenters will always be vitally important. After all, mixing Government dishonesty with public indifference about such dishonesty and disdain for those outspoken insiders who try to expose right such wrongs, 'provide[s] wrongdoing with a floor on which to dance',⁸¹ as whistleblower expert William De Maria once wrote.

The situation in Australia contrasts strongly with the US where credible whistleblowers are generally regarded much more favourably than they are in Australia. *Time* magazine's 2002 Persons of the Year award to three whistleblowers was illustrative when it proclaimed that '[b]y risking everything to blow the whistle at WorldCom, Enron and the FBI, Cynthia Cooper, Sherron Watkins and Coleen Rowley reminded us of what American courage and American values are all about.'⁸² This was an example of public recognition and social commentary unlike anything you would expect to see in

⁷⁸ M. Grattan, 'Truth, the first casualty', *The Age*, 19 July 2006, Melbourne.

⁷⁹ 'Most say PM mislead nation on Iraq: poll', *The Age*, 18 August 2004, Melbourne.

⁸⁰ R. Falconer, *Listening to the Whistlers*, background paper for the Managing Internal Witness in the Australian Public Sector: Meeting the Challenge, Charting the Way Forward conference, 12 July 2005, Canberra, p. 4.

⁸¹ De Maria, *Deadly disclosures: whistleblowing and the ethical meltdown of Australia*, p. 11.

⁸² *Time* magazine, 'Persons of the year 2002', <<http://www.time.com/time/personoftheyear/2002/>> (17 July 2006).

Australia's mainstream press, and one which summed up nicely the different approach in the US to independent voices.

3. Consequences

The paucity of strong, independent voices at the senior levels of the security agencies is one less obstacle in the way of the Howard Government using the agencies to pursue political goals well beyond Australia's national security objectives.

The degree to which a military or intelligence operation is driven by politics, rather than by genuine security considerations, is often difficult to gauge accurately or inarguably. But while the run of counter-terrorism exercises and occasional well-publicised raids in recent years have merely had a strong whiff of politics about them, other operations have appeared less ambiguously to be political theatre. The extraordinary effort that has gone into border security since about 1999 has clearly been a political exercise. For instance the use of DSD to eavesdrop on the Tampa crew's communications, including to Australia, and the show put on by the Special Air Service when they 'stormed' the ship, were designed to make the Government look tough on border security before the 2001 Federal election. They were, however, a gross misuse of security resources which weakened Australia's capacity to respond to genuine security issues at the time because of the way they pre-occupied scarce intelligence capabilities and wore down ADF ships, aircraft, crews and Army boarding parties.

Even the continued involvement of Australian troops in Iraq is much more political than practical. The operation is tiny and has been mostly out of harm's way – Al Muthana Province, where Australian forces focussed initially, was a relatively peaceful area – indicating that Australia's contribution is little more than a political gesture in support of the Bush Administration in the US. This would appear to also be the view of the American frontline commanders in Iraq, who have been dismayed that their Australian colleagues have not been allowed by the Howard Government to do anything more helpful, or dangerous.⁸³ Whether Government and ADF announcements about taking on more risky roles in Iraq are a genuine departure from this situation remains to be seen.

3.1 Australia vulnerable

Much has been written in recent years about the way in which the Howard Government has sought to exploit the so-called politics of fear. In other words, the exploitation of people's xenophobia for political benefit, for instance by fostering fear about refugees and Muslims.⁸⁴ The effect on the security agencies of such politics has been to distract them as they have struggled to cope not only with the blatant political tasking, such as hunting asylum seeker boats, but also with the knock-on demands for even better security by the increasingly fearful public. Illustrating the way in which the Government sometimes loses control of its cultivation of xenophobia are the regular public and ALP demands for better security at regional Australian airports – a terribly expensive challenge – for instance following the alleged August 2006 plot to bomb Transatlantic airliners originating in the UK.⁸⁵

⁸³ That US military commanders in Iraq have been critical of their Australian colleagues for not doing their fair share of the tough missions was recounted by a reliable source on his return from service there.

⁸⁴ A relatively new addition to the better literature on the politics of fear is provided by C. Lawrence, *Fear and politics*, Scribe, Melbourne, 2006.

⁸⁵ T. Allard, 'Our airport safety "tighter than US"', *The Age*, 28 August 2006, Melbourne.

That the politicisation of the security agencies has weakened Australia's capacity to safeguard national security would be alarming at any time. But it is even more troubling now in light of the significant security challenges confronting Australia, in particular the proliferation of nuclear weapons and climate change, but also the lesser but still complex unconventional threats like terrorism, people smuggling, illicit drugs, pandemics and so on. Climate change in particular will require a sophisticated response by the security agencies as rising sea levels, shortages of fresh water and food, and extreme weather events cause unprecedented intra-state and inter-state hardship and unrest in Australia's area of strategic interest.⁸⁶

The known security challenges facing Australia obviously make a formidable list, even more so when we consider that some are not yet quantified. When added to this list are the threats that are as yet unknown, including new unconventional and asymmetric threats we can barely imagine, there is cause for serious concern. Australia will only be able to deal with such challenges if it possesses the best security policies and resources. The limited terrorist threat highlighted by the 11 September 2001 attacks in the US, and the long-running stand-off with Saddam Hussein in Iraq, were in fact relatively straightforward security challenges and still the Howard Government was incapable of responding to them sensibly and ethically. Obviously much better policies and execution will be crucial if Australia is to do better in the future.

3.2 Policy departments beyond scrutiny

For much of the time, fortunately, politicisation in the security agencies is actually of little consequence. The agencies just get on with their work and generally make a pretty good job of it. After all, most security officials are reasonably competent and while most of their work is mind-numbingly routine, many successes come and go with little public fanfare. Certainly this is the case with most members of the ADF and AFP where most officials have little opportunity to skew their efforts toward helping the Government in any sort of effective political way, even if they want to. Furthermore, if they were to decide to cross the line, their actions would tend to have limited consequences. In such agencies, the opportunity for mischief tends to be in the higher echelons where it is usually only the most senior officials who have both the freedom of action and the power to have a significant influence on political issues – and to pursue opportunities for enhanced agency prestige and funding. When subordinates appear to be acting in accordance with a political agenda, for instance storming asylum-seeker boats or staging theatrical anti-terror raids, they are almost always acting under orders.

The opportunity for political mischief is greater in the intelligence agencies. For instance the collection agencies – ASIO, ASIS, DIGO and DSD – filter all the information they process and decide what additional notes are to accompany it, including what reliability should be attached to it. And the assessment agencies – ASIO again, DIO and ONA – decide what is important and what is not, and how such information should be packaged and pitched to the Government and other customers. Sometimes a single analyst in the assessment agencies will enjoy an extraordinary influence within their agency and hence

⁸⁶ For a detailed exploration of the security aspects of climate change see A. Dupont and G. Pearman, *Heating Up The Planet: Climate change and security*, Lowy Institute Paper No. 12, Lowy Institute for International Policy, Sydney, 2006; and the *Stern review on the economics of climate change*, <http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm> (1 November 2006).

with the Government, especially if he or she is a subject matter expert on an important niche issue, as WMD once was.

It is in the policy departments, however, in particular DPMC, where the politicisation of the APS is having the greatest impact on the security agencies. After all, these are the places where the main advice to the Government on security decisions is crafted, where those decisions are turned into detail, and where the implementation of that detail is managed. Curiously though, they are also the places which routinely escape scrutiny. For instance, while the People-Smuggling Task Force in DPMC was thoroughly investigated during the ‘children-overboard’ enquiries, the official Iraq war enquiries did not properly examine what role DPMC, DFAT and the Department of Defence played in that instance, despite all those agencies being at least as relevant as the intelligence agencies which, conveniently for the Government, took all the heat. Moreover the establishment in 2003 of the National Security Division in DPMC ‘with the mandate to foster greater coordination of, and a stronger whole-of-government policy focus on, national security’⁸⁷ has formalised security policy development and coordination in the Prime Minister’s own department and, in doing so, increased the likelihood of ongoing and increased politicisation of security policy.

3.3 Intelligence failures

The big problems arise in the security agencies at those exceptional points in time when a controversial issue comes along and the need for unbiased support is greater than ever. The failure of the agencies to challenge the Howard Government over its enthusiasm to join in the Iraq war is a standout example of the perils that can be visited upon Australia when politicisation skews advice and silences differences of opinion. Although both official Australian enquiries into the war made findings suggestive of Government misconduct,⁸⁸ the agencies never once challenged the Government over its consistent exaggerations about the threat posed by Saddam Hussein and the urgent need to deal with it. ‘Challenging’ in this instance did not need to cause any embarrassment for the Government – a discreet meeting was all that was required to push the point home that the official case for war was significantly at odds with the information held by the agencies. There is no evidence that any such meeting was ever held. Nor was there any shortage of opportunities to raise the matter because ONA at least fact-checked all of the Prime Minister’s main speeches on Iraq⁸⁹ and, at any time, could have pointed out the gap between the weight of evidence and the thrust of the speeches. It never did. None of this lets the Government off the hook; it just hangs the agencies from the same place. No wonder the Parliamentary Joint Committee investigating the Iraq war in 2003 noted the following in regard to ONA’s fact checking efforts.

Their [ONA] definition of accuracy specifically excluded any views on the broader policy issues ... This is consistent with their role of not providing policy advice ... However, accuracy must also encompass whether the picture being presented is complete. Ignoring significant elements of fact or opinion

⁸⁷ Department of the Prime Minister and Cabinet, ‘National Security Division’, < http://www.pmc.gov.au/about_pmc/divisions/national-security/index.cfm > (2 October 2006).

⁸⁸ Parliamentary Joint Committee on ASIO, ASIS and DSD, *Intelligence on Iraq’s weapons of mass destruction*, p. 94, and Flood, *Report of the Inquiry into the Australian Intelligence Agencies*, p. 25.

⁸⁹ Parliamentary Joint Committee on ASIO, ASIS and DSD, *Intelligence on Iraq’s weapons of mass destruction*, p. 93.

when citing intelligence assessments can have a distorting effect. A true and accurate interpretation must consider the total balance of the point of view being adduced in support of a policy.⁹⁰

All of this comes back to a betrayal of the trust that the public should be able to have in the security agencies. But, unfortunately, when it comes to national security the public interest is much broader than issues concerning trust. It often involves lives, and lots of them, and the agencies' failure to resist political pressure over Iraq contributed indirectly to the needless deaths of tens of thousands of Iraqis and the suffering of countless more.

Similar issues arose in relation to East Timor. The reluctance of DIO and ONA to push hard against the Howard Government's indecision – and reluctance to confront Indonesia until Jakarta was more inclined to accept foreign troops – during the pre-independence violence in 1999 helped to delay foreign intervention while people were being killed and injured. In addition, ONA's disinclination to tell the Government how bad the situation was in Afghanistan in 2002 supported the dangerous return from Australia of Afghan asylum-seekers. An intelligence assessment I prepared detailing the awful situation in Afghanistan was delayed by the head of ONA because it contradicted the Government's public assertions about a much improved situation there and the policy of returning asylum seekers. That the Government's determination to repatriate Afghans was the wrong thing to do is brought out in the constant stream of bad-news media reports⁹¹ and by the seemingly regular official announcements of still more Australian troop deployments to the troubled country.⁹² The Edmund Rice Foundation has gone so far as to claim nine returnees were subsequently killed.⁹³ In the cases of East Timor and Afghanistan, the agencies believed 'relevance' could not be risked in case the Government turned elsewhere for its needs, for instance to the policy departments. But the agencies' timidity just helped to get people killed, though the blood is mostly not on officials' hands, but on the hands of those in the Government who politicised the agencies in the first place.

There is obviously enduring official concern about public perceptions of the security agencies. An unprecedented press conference was convened by the IGIS, Ian Carnell, and all the heads of the intelligence agencies in Canberra on 20 October to reportedly 'explain their [the intelligence agencies] expanded role and systems of accountability in a post-September 11 world.'⁹⁴ The media event was in addition to the well publicised IGIS effort to implement the Flood Iraq war enquiry recommendation that the IGIS conduct regular reviews of the independence of security agencies. The IGIS has apparently spent a not insignificant amount of time on this venture, including the promulgation of 'Principles of ONA independence'.⁹⁵ But whether or not the exercise reduces the politicisation of ONA – or is just window-dressing – is yet to be seen. Ominously, an IGIS survey of ONA staff including at least one question about 'perceptions of any improper pressure/influence from any source such as allies,

⁹⁰ *ibid.*, pp. 93 – 94.

⁹¹ For example, according to P. McGeough, 'Afghanistan is a war that can still go either way' (see McGeough, 'Afghans running out of hope', *The Age*, 15 July 2006, Melbourne).

⁹² 'More troops for Afghanistan: Nelson', *Sydney Morning Herald*, 23 July 2006, Sydney.

⁹³ C. Hart, 'Deported Afghans "tortured and killed"', *The Australian*, 8 August 2006, Sydney.

⁹⁴ S. Smiles, 'Secret service: Australia's spy masters show their faces', *The Age*, 21 October 2006, Melbourne.

⁹⁵ The Inspector-General of Intelligence and Security, 'Annual Report 2005-2006'.

policymakers or politicians, or internal staff' attracted only a 65 per cent response rate,⁹⁶ suggesting a widespread reluctance amongst staff to provide feedback on the significant and enduring accusation that Australia's senior intelligence agency is beholden to the Howard Government.

⁹⁶ *ibid.*

4. The human dimension

All the laws, checks and pressures on the security agencies build a comprehensive deterrent to independent voice. But they are still only a deterrent, because officials retain the right and capacity to resist and speak out. At the end of the day, it is their decision and their decision only. All are potential dissenters. So why don't more break ranks when security issues are contentious and government conduct is found wanting? Why, for instance, didn't many officials speak out when the Prime Minister and Defence Minister Peter Reith claimed repeatedly, and misleadingly, that asylum seekers had thrown their children overboard in 2001?

4.1 Taking a stand

Part of the explanation is broadly consistent with the thesis articulated by the American academic Albert Hirschman in *Exit, Voice, and Loyalty* almost 40 years ago.⁹⁷ He described how some disaffected workers will leave their organisation in the belief they are important enough, or acting with others in such numbers, that their act of exit or subsequent absence from the workplace might bring about positive change. Many disaffected workers would however be unlikely to choose this option, thinking instead that their level of influence will enable them to bring about change from within. Moreover some of those deciding not to exit would instead hope to utilise more creative ways of bringing about internal change, despite the inherent difficulty of this approach in many large organisations. In addition to these factors, Hirschman includes loyalty which can stifle exit and promote voice, even amongst uninfluential workers, so long as they believe that someone else will speak up or that somehow things will get better. 'As a rule then,' Hirschman explains, 'loyalty holds exit at bay and activates voice.'⁹⁸

Loyalty is certainly relevant to understanding the apparently low level of dissent in the security agencies. Many officials feel morally and legally bound to follow orders, regardless of their view of the merit of those orders, and regard transgressors as traitors. Many also have an elevated and distorted sense of what they regard as loyalty to country. This of course is nothing new, as there has long been an attraction to public service amongst those with a strong sense of patriotism. The Howard Government's efforts to play up nationalism might be expected to have fuelled this phenomenon, and it probably has in the intelligence agencies, although enduring recruiting difficulties suggest other factors continue to have a greater impact on attitudes toward service in the ADF.

Moreover many security officials feel an almost cultural loyalty to their particular agency and broader security agency community. Again this is unsurprising, especially considering the difficulty of gaining entry to the security agencies, their relative elitism in the APS and generous conditions of employment. This can include large salaries, a not insignificant factor when it comes to people deciding to tolerate unpalatable things going on around them. A top analyst at ONA, for instance, can draw over \$100,000 in

⁹⁷ A. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*, Harvard University Press, United States, 1970.

⁹⁸ *ibid.*, p.78.

annual salary⁹⁹ plus generous superannuation and a 'Community Allowance' in consideration of 'the need to comply with the requirements of regular high level personal security assessments, financial and psychological assessments and in recognition of the intrusions and restrictions imposed on employees as members of the Australian Security and Intelligence Community.'¹⁰⁰

The paucity of dissenters in the security agencies is, in addition, a product of the nature of public service, or in fact any organisation. For instance, some officials will always share the government's view on an issue whether right or wrong. Others will be prepared to go along with virtually anything, so long as it progresses their careers. Many will probably give any government the benefit of the doubt unless they are closely associated with a controversial issue. And almost all will be financial conscripts, especially in a small town like Canberra. On balance, leaving the APS in controversial circumstances can carry too great an exit price for many officials to seriously contemplate, even more so when additional factors like hanging onto friends, finding work and sometimes just staying alive are considered.

Returning to Hirschman, in his description of most organisations it is either *exit* or *voice* which tends to dominate. As a result, in organisations where exit is easy there tends to be a reduced probability of workers resorting to voice, while in those where exit is relatively difficult there tends to be a higher likelihood of reliance on voice. Making his description more complex is the way in which voice can actually work in opposite ways. On the one hand, the easy *availability* of exit in organisations reduces the likelihood of voice amongst those workers who might find it easier to leave rather than create change from within, while on the other, just the *possibility* of exit can make workers' voices much more effective with those managers concerned about losing staff. The latter depends of course on the existence of special circumstances like significant and genuinely permanent labour shortages, something which is not currently a factor in Australia.

Applying the detail of Hirschman's work to the security agencies does require a little distortion of his general descriptions, however, so as to accommodate the unique circumstances to be found there. Hirschman himself acknowledges the existence of such distortions, in particular where organisations impose a relatively high entry fee and exit price on workers. Take the difficulty of becoming a full-time Army officer through the Royal Military College in Canberra, for instance, where many hundreds of applicants each year try to win a slot in one of the annual intakes. Or ASIS, where each year hundreds more vie for one of only a handful of positions available on the annual Intelligence Officer courses. Gaining entry to such organisations in these circumstances builds high expectations amongst the successful applicants who feel, understandably, that they have gained entry to superior workplaces where things are done right. They won't give up their privileged places lightly.

No wonder then that many officials in the security agencies are more inclined to give the benefit of the doubt. If they do finally become disillusioned, however, their options are much reduced because they are in deeper and the scale of the issues with which they are involved is greater. For instance declarations of war and responses to great natural disasters, some potentially affecting thousands if not millions of lives, are all so great as

⁹⁹ *Office of National Assessments Certified Agreement 2004-2007*, p. 42.

¹⁰⁰ *ibid.*, p. 16.

to make them feel powerless, save only for the tiniest influences which might still seem worth exerting. Hirschman believes that because their employer is able 'to exact a high price for exit, it thereby acquires a powerful defence against one of the member's most potent weapons: the threat of exit. Obviously,' Hirschman continues, 'if exit is followed by severe sanctions the very idea of exit is going to be repressed and the threat will not be uttered for fear that the sanction will apply to the threat as well as to the act itself.'¹⁰¹

In other words, a disgruntled security official tends to not have access to a straightforward choice between speaking up and leaving, because they do not have access to an easy exit nor the leverage with their employer that the possibility of exit might generate in more conventional organisations. Also relevant is that, for most officials, outspoken exit from the security agencies is not only difficult but in fact downright unthinkable, prompting the agencies to develop mechanisms for the expulsion of 'troublesome' and 'unreliable' officials resisting exit. While Hirschman sees this point as an aside to the normal state of organisations' affairs, it is obviously relevant to the security agencies where troublesome officials can be expelled without question, and even prosecuted – the prospect of which further drives down the exercise of voice.

Faced with such a long list of consequences it is no wonder that security officials often look for innovative or easier ways to right the wrongs they detect. Some will consider leaking sensitive information to outsiders in the hope of having the issue highlighted. Others will continue to try and bring about change from within, limiting the expression of their concerns in order to stay out of trouble, but hoping to have some chance of influencing superiors and politicians. If they are senior enough they might achieve some success this way. But such an approach can be the resort of those prone to over-estimating their importance to the Howard Government or to those who seek, consciously or sub-consciously, an excuse for inaction.

No wonder so few security officials choose to dissent. However a tiny number still do break ranks, sometimes at great personal cost, for at the end of the day the security agencies are still populated by human beings, each with their own sense of right and wrong and their own threshold for taking action. So while most officials do nothing, even though such disinterest or inaction could cost them their soul, some slip away quietly, realistic enough to be somewhat content with no longer supporting the Howard Government or a specific policy they find intolerable. A tiny handful do feel compelled, and empowered, to take the opportunity to speak publicly in the hope of applying some pressure on the Government. And sometimes the lone dissenter achieves a lot – much more than one person ought to when up against the power of the state.

So powerful are their detractors and so inadequate can much of the media be, however, that only the most credible dissenter can achieve much beyond a handful of news reports. Even the most timely eyewitness with the best media skills is eventually left to try and live with the consequences of his or her outspokenness. Years later very few can feel much good about it at all other than knowing they did the right thing when it counted. At least a certain sense of moral superiority over one's opponent can be derived from being in such a bind.

¹⁰¹ Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*, pp. 96 – 97.

4.2 Case studies

Some security officials are prepared to try and rise above all this. For instance in 2004 Defence intelligence officer Lance Collins wrote to Howard personally ‘about the failure of institutional controls over the Australian intelligence system’¹⁰² and went on to speak about his concerns on television¹⁰³ and in a book.¹⁰⁴ Also in 2004 former Defence official Mike Scafton broke his silence on ‘children-overboard’ when he wrote to *The Australian* newspaper to reveal that on 7 November 2001 – the day before the Prime Minister told the National Press Club that asylum seekers had thrown their children into the water and two days before the 2001 Federal election – he spoke to the PM three times and told him that ‘no one in Defence that [he] dealt with on the matter still believed any children were thrown overboard.’¹⁰⁵ More recently former senior United Nations weapons inspector Rod Barton went to the media¹⁰⁶ and then wrote a book¹⁰⁷ to reveal how information on Iraqi WMD had been manipulated and how Iraqi prisoners were mistreated. All served the public interest greatly by speaking up about the controversial matters that concerned them.

But such people have invariably been assailed by the Government keen to put troublemakers in their place and to send a strong message to other officials not to step out of line. For instance, Collins’s call for a Royal Commission was dismissed by Howard¹⁰⁸ and he was eventually forced out of Defence by the ‘blowtorching process’.¹⁰⁹ Scafton’s evidence was criticised by the Government as ‘implausible, irrational and evasive’¹¹⁰ and the timing of his claims as ‘politically strategic’.¹¹¹ And Barton was reportedly marginalised at the insistence of the Prime Minister’s staff¹¹² and even ridiculed by the PM himself who pushed the view that ‘it’s quite common for people with no understanding of the process, or little understanding of the process, to misunderstand the things they see’.¹¹³ Moreover Collins, Scafton and Barton were eventually passed over by national media generally disinclined to run too long with any one story, especially those dealing with complicated security issues. So even though this handful of important witnesses have all come across as credible and were vindicated in their concerns, they probably still appeared to many members of the public as exceptions rather than the rule, and not as reflective of broader angst about Government misconduct within the security agencies. Unfortunately though, the Government misconduct

¹⁰² ABC Radio National *Background Briefing*, ‘Intelligence Wars: Behind the Lance Collins Affair’, 30 May 2004.

¹⁰³ ABC Television *Australian Story*, ‘Burnt by the Sun’, 25 July 2005.

¹⁰⁴ L. Collins, L. and W. Reed, *Plunging point: intelligence failures, cover-ups and consequences*, Fourth Estate, Sydney, 2005.

¹⁰⁵ *The Australian*, Letters to the Editor, 16 August 2004, Sydney.

¹⁰⁶ ABC Television *Four Corners*, ‘Secrets and Lies’, 14 February 2005.

¹⁰⁷ R. Barton, *The weapons detective: the inside story of Australia’s top weapons inspector*, Black Inc, Melbourne, 2006.

¹⁰⁸ SBS, ‘Government does not pressure intelligence agencies: Howard’, <<http://www9.sbs.com.au/theworldnews/region.php?id=82989®ion=7>> (20 June 2006).

¹⁰⁹ ABC Television, *Australian Story*, ‘Burnt by the Sun’, 25 July 2005.

¹¹⁰ *Senate Select Committee on the Scafton Evidence Report*, p. 57.

¹¹¹ *ibid.*, p. 74.

¹¹² H. McDonald, ‘Words of Mass Deception’, *Sydney Morning Herald*, 13 May 2006, Sydney.

¹¹³ House of Representatives, *Hansard*, Parliament House, 17 February 2005, Canberra.

signalled by Collins, Scrafton and Barton is so widespread, and in so many forms, that the pattern revealed is just as worrying as the individual examples.

Take, for instance, former ONA officer – and now my wife – Kate Burton. She joined ONA in 2001 as a strategic analyst and went on to work on transnational issues. But soon after joining ONA she became alert to the politicised culture in the security agencies and in particular to ONA's obsession with 'customer focus' or, in other words, of delivering what the Howard Government wanted, rather than needed. Burton became disenchanted with ONA's pro-US bias and also refused to work on the People-Smuggling Task Force because of her revulsion at the Government's policy in that area. In 2003, barely half way through her contract, she left ONA and went on, in 2005, to secure a position on the staff of the Parliamentary Joint Committee on ASIO, ASIS and DSD. But by then the Government was alert to her 'disloyalty' – and probably her relationship with me – and she was summoned by her new manager on the first day to be told that some members of the Committee were concerned that her perceived political views could lead to a conflict of interest with the Committee's needs. Burton accepted the offer of a move onto the staff of another committee.

Another interesting case study is former ONA officer Anthony Billingsley. He had served for many years in the Middle East with DFAT and was a senior Middle East analyst in ONA during 2002 and 2003. But Billingsley, despite being well-placed to offer an informed opinion on the problems with the official case for war, did not appear as a witness at the enquiry into the Iraq war conducted by the Parliamentary Joint Committee on ASIO, ASIS and DSD in 2003¹¹⁴, not because he was suspected of wanting to deliberately cause problems for the Government, but because he was likely to embarrass it nonetheless by simply revealing what he knew. Nor did ONA grant him permission later in 2003, shortly after his resignation from ONA, to speak about the war at a lecture organised by the Macquarie University Centre for Middle East and North African studies.¹¹⁵ This was an extraordinary intercession by ONA, not only because its officers had previously been free to write and speak about their area of expertise after leaving, so long as sensitive information was never disclosed, but also because this specific commitment had been approved by ONA earlier in the year.

Nor was Billingsley's experience a one-off for none of the Middle East analysts, or even the crucial senior strategic issues analyst covering the bulk of the Iraq workload, appeared before the Parliamentary Joint Committee. The involvement of the senior strategic issues analyst in particular, responsible for most of the assessments on Iraq, would have allowed him to explain the significant shift he and his superiors brought to the more measured assessments drafted by his predecessor, Carl Ungerer, who covered Iraq from 1999 until 2002. More than a dozen reports were written on Iraq during this period, including several joint reports with DIO. At no stage did Ungerer argue that the evidence on Iraq's WMD programs was conclusive. However, the senior management of ONA consistently sought to underplay the ambiguities on the Iraqi WMD threat because to do otherwise would have been inconsistent with their, and the Howard Government's, more hawkish position. So time and again Ungerer drafted relatively measured

¹¹⁴ Parliamentary Joint Committee on ASIO, ASIS and DSD, *Intelligence on Iraq's weapons of mass destruction*, pp. 107 – 108.

¹¹⁵ That Billingsley was prevented from delivering the Macquarie University address came to my attention when I was invited at short notice to fill the vacancy at the event.

assessments - which portrayed Saddam Hussein's potential WMD capability as limited and unsophisticated - only to see his analysis 'hardened' as it went up the line.¹¹⁶

Clinton Fernandes, an Army major, provided another telling example of the treatment meted out in the military and intelligence services.¹¹⁷ He was forced to fight a protracted battle with the Department of Defence – which he eventually won – before he could publish his Army-approved university thesis about Australia's involvement in East Timor. Fernandes' book, *Reluctant Saviour*,¹¹⁸ was prepared using unclassified material but was critical of the Howard Government, so much so that national security and secrecy laws were invoked in the attempt to stop it.

An obvious risk for the security agencies, and the Government, in employing such people is that they might insist on telling the Government what it needs to know, rather than what it wants to hear. Less obvious is that such people could embarrass the Government by including critical information in security briefings to opposition politicians.¹¹⁹ Although such briefings are at the whim of the Government, and though only ASIO and ASIS have a statutory requirement to keep the Opposition Leader informed of security matters,¹²⁰ they do take place from time-to-time but only so as to pass on information consistent with the Government's policy position. This is the politicisation of the agencies at their worst: senior officials deliberately strengthening those aspects of their assessments that are consistent with the Government's view, while tempering or deleting the sections which might give the Opposition some political advantage.

The circumstances surrounding the removal from Australia in late 2005 of peace activist Scott Parkin is an interesting case-in-point. He had his visa cancelled, was arrested by the AFP, held in custody for five days and finally escorted back to the US, all apparently on the basis of an adverse ASIO security assessment.¹²¹ This was despite Parkin's interest in non-violent protest being widely known throughout the activist community, the US Federal Bureau of Investigation (FBI) being quick to say that the FBI had no concerns with the man and would allow him to return to the US to go about his life unhindered,¹²² and the head of ASIO acknowledging that Parkin had not been engaged in violent activities in Australia.¹²³ However, none of this seemed to stop ASIO from

¹¹⁶ The senior strategic issues analyst involved with Iraq is still in Government service and should remain nameless. The information regarding Ungerer was provided by him in a statement.

¹¹⁷ ABC Radio National *The World Today*, 'Labor claims defence force politicised', 13 October 2003.

¹¹⁸ C. Fernandes, *Reluctant Saviour*, Scribe, Melbourne, 2004.

¹¹⁹ I was involved in three ONA briefings for the then Opposition Leader Simon Crean. During a session which included discussion about the situation in Iraq, all the ambiguity about the issue was downplayed by ONA while emphasis was added to matters including the unlikely proposition that Iraq had developed and weaponised smallpox.

¹²⁰ See Section 21, 'Leader of Opposition to be kept informed on security matters', *Australian Security Intelligence Organisation Act 1979*; and Section 19, 'Briefing the Leader of the Opposition about ASIS', *Intelligence Services Act 2001*.

¹²¹ Parliament of Australia Parliamentary Library, 'Recent developments in refugee and immigration law 2005',

<<http://www.aph.gov.au/library/intguide/law/refugeeandimmigrationlaw.htm>> (18 July 2006).

¹²² J. Gibson, 'Parkin deported to US: FBI says he's "welcome"', *Sydney Morning Herald*, 15 September 2005, Sydney.

¹²³ Senate Legal and Constitutional References and Legislation Committee, *Official Committee Hansard*, Parliament House, 31 October 2005, Canberra.

delivering a briefing to Beazley so alarming that he was persuaded to support the removal.¹²⁴ Clearly the briefing team had gone in hard to back up the Government's political decision to remove the trouble-maker, regardless of the facts or ambiguity of the matter.

The Parkin case raises another question about the apoliticism of the IGIS. Despite all the evidence that the American peace activist was treated badly, the subsequent IGIS investigation into the affair still managed to conclude that there was 'no evidence or reason to think that ASIO's security assessment [and verbal presentation of that assessment to Beazley] in respect of Mr Parkin was influenced from elsewhere within the Australian Government or by external bodies.' Despite the overwhelming evidence to the contrary, the IGIS concluded that Parkin's 'security assessment was based on credible and reliable information and the legislative requirements were met.'¹²⁵

4.3 Australian Public dis-Service

The number of security officials involved in the provision of misleading political briefings is fortunately quite small – perhaps just the head of the relevant agency involved and an off-sider. Even on some stand-out issues the total number of cowed or compliant officials is surprisingly tiny. In ONA during the lead-up to the Iraq war, for instance, there was often just one analyst, his Assistant Secretary-level Branch Head, and the Director-General, involved in preparing the key intelligence advice for the Government and briefings for the Opposition.

But sometimes the scale of the problem is much bigger, for instance with border security where the carriage of the detail is more often with officials than with politicians. At least the failure of the security agencies to stand up to the Howard Government during the 2001 Tampa and 'children-overboard' incidents is widely understood now due to the Senate's enquiries, Scafton's outspokenness and David Marr's and Marian Wilkinson's highly accurate account in *Dark Victory*.¹²⁶

The Tampa and 'children-overboard' incidents were not exceptional. The wrongful detention of Cornelia Rau, and the expulsion of Australian citizen Vivian Alvarez Solon,¹²⁷ showed just how widespread the enthusiasm is amongst officials involved with border security to make decisions based on political considerations, rather than the public interest. Nor is this culture restricted to the Department of Immigration and Multicultural Affairs (DIMA). All the security agencies understand the politics behind the Government's border security policy and are hesitant to challenge it, no matter how expensive, irrational and unethical at least some aspects of it might be. In this context Rau and Solon did not just suffer from bureaucratic muddling, but rather the consequences of a system corrupted by a determination to ruthlessly implement Government policy.

¹²⁴ M. Grattan, A. Jackson, and B. Nicholson, 'Protest advice led to US activist's detention', *The Age*, 14 September 2005, Melbourne.

¹²⁵ The Inspector-General of Intelligence and Security, 'Annual Report 2005-2006'.

¹²⁶ D. Marr and M. Wilkinson, *Dark victory*.

¹²⁷ The circumstances surrounding the wrongful expulsion of Vivian Alvarez Solon are also addressed in the *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*.

At least some good has come out of the revelations surrounding the dreadful official mistreatment of Rau and Solon. The public now knows about the endemic problems in DIMA and the Department seems to be determined to improve itself.¹²⁸ Hence, the hundreds of other victims identified in the process¹²⁹ may eventually receive some justice. But whether or not such reform extends to all the other organisations involved with irregular immigration is probably something we will never know because most of the associated agencies are secretive security agencies. ASIS, DIGO and DSD would still be busy with the collection of information in source countries like Iraq, Afghanistan, Vietnam and China, in countries of first asylum like Iran and Pakistan and in transit countries like Thailand and Malaysia. Agencies like the AFP and ASIS are probably still involved in disruption activities in Indonesia and elsewhere. DIO and ONA are still involved in the preparation of intelligence assessments on the issue and ASIO is still involved in the domestic security intelligence aspect. And the ADF and Coastwatch are still grinding away with border security operations, while the Attorney-General's Department, DPMC and DFAT continue in their policy roles.

Australia's border security effort is highly complex. Not only are all the security agencies deeply involved, but all are interconnected via numerous inter-agency arrangements. For instance DPMC convenes over-arching coordination meetings, ONA remains responsible for relevant information oversight and multiple agencies still cooperate on disruption operations. The significance of all this is that reforming the culture in DIMA is necessarily just the start of any genuine attempt to address the problems in Australia's immigration system. Until reform is extended to addressing the politicisation in and between all the security agencies, such politicisation will continue to undermine the ability of those agencies to support the proper development and implementation of appropriate Government border security policy.

My own observation is that the politicisation of the security agencies does compromise their ability to respond appropriately to irregular immigration. In 2000 and again between late 2001 and early 2003 I was the ONA representative on the DPMC People-Smuggling Task Force and DIMIA People Smuggling Operations Oversight Committee, as well as the Deputy Chairperson of the ONA Irregular Immigration Information Oversight Committee, during which time I saw officials repeatedly make compromised decisions on the basis of trying to keep the Government happy. For instance, sensible imperatives to wind back Operation Relex and shut down the Manus Island processing centre were both significantly watered down because they were at odds with the Howard Government's political desire to look tough on border security. The incident described earlier involving ONA's refusal to release an assessment on the humanitarian situation in Afghanistan in 2002 due to its conflict with Government policy adds to this worrying pattern of the agencies too often putting the Government's political interest ahead of the public interest.

There are other examples, of course, of security officials behaving in ways that appear to be influenced by the political interests of the Government. For instance the way in which AFP Commissioner Mick Keelty was so quick to retract his quite reasonable public

¹²⁸ The 'high-level document' articulating the plan for the reform of DIMA is *The DIMA Plan 2006-07*. It can be found at <<http://www.immi.gov.au/about/department/dima-plan/the-dima-plan.pdf>> (21 July 2006).

¹²⁹ L. Dodson, L. Glendinning, and J. Kerr, 'Scandal explodes to 200 detainees', *Sydney Morning Herald*, 26 May 2005, Sydney.

assertion – one at odds with the Government’s claim to the contrary – that the 2004 Madrid train bombing was likely to have been related to Spain’s involvement in the Iraq war.¹³⁰ And the way in which the then ADF chief Peter Cosgrove sided with the Government by suggesting that the train bombing would not have had anything to do with Iraq.¹³¹ Another example occurred in early 2005 when Australian soldiers in Iraq potentially caused a problem for the Government when they shot and killed a civilian. Cosgrove stated publicly at the time that the victim had drums of petrol in his vehicle, as though such behaviour was somehow mischievous in a country wracked by fuel shortages.¹³² A compensation payment of over \$50,000 has reportedly been paid to the victim’s widow.¹³³ Cosgrove’s successor, Angus Houston, has been willing to confront the Government – he publicly contradicted the Government’s ‘children-overboard’ claim¹³⁴ and more recently challenged the Defence Minister’s initial assertions about the death of Jake Kovco.¹³⁵

Problems associated with the politicisation of the APS have also been highlighted in the AWB affair. Regardless of exactly what the Government knew about the wheat exporter’s behaviour, numerous officials with at least some understanding of the matter opted to leave it well alone or to make statements at odds with other credible information available. For instance, there was the curious scene during the Cole enquiry when former DFAT official Jane Drake-Brockman insisted she knew nothing about controversial AWB payments and, in particular, about a missing letter from AWB to DFAT detailing the matter, even though Drake-Brockman’s former staff member Jill Courtney had testified that DFAT knew about the payments for years and other testimony suggested a letter to that effect existed.¹³⁶

4.4 UK and US no better

That a handful of independent souls in the security agencies will find different ways to break through with their views, and that governments will find innovative ways to respond, is obviously not a uniquely Australian phenomenon. British defence official and weapons expert David Kelly spoke to a BBC journalist ‘off the record’ shortly after the invasion of Iraq to express his concern that Prime Minister Tony Blair’s Government had, with the support of some senior staff and officials, exaggerated the case for war. A fracas ensued when the BBC subsequently reported Kelly’s concern, though it did not name him at the time, that the Government had ‘sexed up’ the case for war. In response the British Government publicly vilified him. Kelly was unexpectedly named as the

¹³⁰ C. Banham and F. Petersen, ‘Keelty retreats on terrorism remarks’, *Sydney Morning Herald*, 17 March 2004, Sydney.

¹³¹ M. Grattan, ‘Canberra spinning around in the world of “clarifying statements”’, *The Age*, 18 March 2004, Melbourne. Cosgrove has recently sought to qualify his criticism of Keelty – *The Sunday Telegraph*, ‘Cosgrove “wrong about Iraq”’, 15 October 2006, Sydney.

¹³² T. Hyland, ‘Secrets and lives: how we pay Iraq when diggers kill’, *The Sunday Age*, 2 July 2006, Melbourne.

¹³³ *ibid.*

¹³⁴ M. Forbes, M. Gordon and K. Taylor, ‘Defence chief told Reith: no children overboard’, *The Age*, 20 February 2002, Melbourne.

¹³⁵ ABC Radio National *The World Today*, ‘Defence Force Chief criticises Brendan Nelson in statement to Kovko inquiry’, 8 September 2006.

¹³⁶ *The Age*, ‘Ex-DFAT official denies removing AWB letter’, 20 March 2006, Melbourne.

source of the BBC report and abused by the Government-dominated British Foreign Affairs Committee which he fronted on 15 July 2003.¹³⁷

The official savaging of Kelly was despite his concerns being clearly warranted. The British Defence Intelligence Staff (DIS), equivalent to Australia's DIO, had tried to temper the tone of Britain's official case for war outlined in the now infamous dossier *Iraq's Weapons of Mass Destruction: The Assessment of the British Government*¹³⁸ but to no avail. Significantly, on the unambiguous official claim that Iraq was able to deploy its chemical and biological weapons within 45 minutes, DIS had tried without success to have the alarming claim watered down to reflect that the assertion was based on a single and uncorroborated report. But not only was this particular claim incorporated in the dossier without qualification at the insistence of the head of the Joint Intelligence Committee, equivalent to the Director-General of Australia's ONA, the entire document was then further strengthened by Blair's personal staff.

In July 2003 Kelly committed suicide. The testimony of an Oxford Professor of Psychiatry at the subsequent official enquiry into Kelly's death included the observation that 'the major factor [contributing to Kelly's decision to commit suicide] was the severe loss of self-esteem, resulting from his feeling that people had lost trust in him and from his dismay at being exposed to the media.'¹³⁹ That may not be the end of the story though, as some people do not accept the official explanation that Kelly committed suicide. For instance British Parliamentarian Norman Baker (Liberal Democrats) has publicly challenged the conclusion, citing apparent inconsistencies in the evidence.¹⁴⁰

Notwithstanding the generally more favourable public response to whistleblowers in the US, the Bush Administration is no better than Blair's or Howard's when it comes to dealing with independent voices on security matters. This is evidenced by its response to Joe Wilson's opinion piece in the *New York Times* in July 2003 about the misleading official claim that Iraq had tried to purchase uranium in Niger.¹⁴¹ Wilson was perfectly placed to shed light on this aspect of Iraq's alleged attempts to constitute a nuclear weapons programme. After all, he had been despatched to Niger in early 2002 to officially investigate the claim that Iraq had tried to buy uranium there and had reported back, and widely, that there was simply no basis for the claim. Frustrated by the Administration's continued reliance on the Africa uranium story into 2003, and by then no longer in government service, he went public.

The Bush Administration responded by leaking to syndicated columnist Robert Novak the story that Wilson's trip to Niger had been a low-level project organised by his partner, Valerie Plame, who worked at the Central Intelligence Agency.¹⁴² Someone in

¹³⁷ The Kelly story is detailed in B. Hutton, *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G.*, House of Commons, United Kingdom, 2004.

¹³⁸ *Iraq's Weapons of Mass Destruction: The Assessment of the British Government*, 2002, United Kingdom.

¹³⁹ Hutton, *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G.*, p. 325.

¹⁴⁰ ABC Online, 'British MP casts doubt on David Kelly suicide', <<http://www.abc.net.au/cgi-bin/common/printfriendly.pl?http://www.abc.net.au/news/newsitems/200607/s1694205.htm>> (23 July 2006).

¹⁴¹ J. Wilson, 'What I Didn't Find in Africa', *New York Times*, 6 July 2006, United States.

¹⁴² R. Novak, 'The mission to Niger', *Chicago Sun-Times*, 14 July 2003, United States.

the Administration also seems to have worded-up *Newsday* columnists Timothy Phelps and Knut Royce because they wrote a follow-up piece only days after Novak's column in which Plame's undercover intelligence role was emphasised.¹⁴³ This was a bombshell revelation, not because it damaged Wilson's credibility – Wilson had in fact been a senior diplomat specialising in Africa and Iraq – but because it was an extraordinary act of bastardry aimed at getting even with Wilson by ruining Plame professionally. It was also potentially a serious criminal offence under at least the US *Espionage Act 1917* and *Intelligence Identities and Protection Act 1982*,¹⁴⁴ and under Section 371 'Conspiracy to commit offense or to defraud United States' of the *US Code*.¹⁴⁵ At the time of writing former US Deputy Secretary of State Richard Armitage has admitted disclosing the information,¹⁴⁶ US Vice-President Dick Cheney's former Chief of Staff, 'Scooter' Libby, faces perjury and obstruction of justice charges, and Wilson and Plame are suing a number of officials, including Cheney, for violating their 'constitutional rights, invading their privacy, endangering their children and ruining their careers.'¹⁴⁷ Only time will tell what damage might be done to the White House by this issue.

4.5 My story

That I felt the need to resign from ONA over the Iraq war in March 2003 points to a role for dissent regarding Government misconduct, regardless of how well the security agencies are working. In other words, dissent in the agencies can be much more about Government misbehaviour than what is or isn't going on inside the agencies.

ONA responded to my high-profile resignation by announcing almost immediately that I was not involved in work on Iraq. The next day a member of the Prime Minister's staff advised the media I was mentally unstable, a development discussed with me in detail by the Prime Minister's Chief of Staff, Arthur Sinodinos, who rang me to claim that Howard had no hand in it. And in mid-2003 a secret report I had written on Iraq was leaked to *Herald Sun* columnist Andrew Bolt in another attempt to discredit me.¹⁴⁸ Although ONA records point to Foreign Minister Alexander Downer's staff being responsible, the leak went uninvestigated for months and has never been resolved. AFP sources have since told me they are pretty sure who leaked the document but are unable to prove it.

In mid-2004 the Government also censored the book I wrote about my resignation, *Axis of Deceit*. This was another intimidating exercise, during which a small number of text deletions were insisted upon apparently for no reason other than to bully me, my publisher, a documentary maker with whom I was cooperating and my former colleagues. The whole episode was heavy with the threat of Government legal action,

¹⁴³ T. Phelps and K. Royce, 'Columnist Blows CIA Agent's Cover', *Newsday*, 22 July 2003, United States.

¹⁴⁴ J. Dean, 'The Bush Administration Adopts a Worse-than-Nixonian Tactic: The Deadly Serious Crime Of Naming CIA Operatives', 2003, <<http://writ.news.findlaw.com/dean/20030815.html>> (19 July 2006).

¹⁴⁵ J. Dean, 'A Further Look At The Criminal Charges That May Arise From the Plame Scandal, In Which a CIA Agent's Cover Was Blown', 2003, <<http://writ.news.findlaw.com/dean/20031010.html>> (19 July 2006).

¹⁴⁶ D. Johnston, 'Regretful Armitage admits he revealed spy's name', *The Age*, 9 September 2006, Melbourne.

¹⁴⁷ D. Deane, 'Couple Reiterate Claims They Were Punished', *The Washington Post*, 15 July 2006, United States.

¹⁴⁸ A. Bolt, 'Spook misspoke', *Herald Sun*, 23 June 2003, Melbourne.

though in exactly what form such action might have materialised was far from clear to me as I could not afford anything like the sort of legal support either the Government or my publisher were benefiting from. A Research Brief prepared subsequently by the Parliamentary Library in Canberra noted that four separate provisions could have been engaged if the book had been published without the amendments demanded by the Government: Division 91 ‘Offences relating to espionage’ of the *Commonwealth Criminal Code 1995*; Section 70 ‘Disclosure of information by Commonwealth officers’ and Section 79 ‘Official secrets’ of the *Crimes Act 1914*; and Section 73A ‘Unlawfully giving or obtaining information as to defences’ of the *Defence Act 1903*.¹⁴⁹

The Government censorship of *Axis of Deceit* did have an air of comic theatre air about it though, as page 155 of the published version of the book contains an insignificant point of detail fastidiously purged from elsewhere, presumably because none of the officials tasked to pour over the draft noticed it.¹⁵⁰ Even the Research Brief published by the Parliamentary Library did not escape Government meddling – it was adjusted and re-released on 20 October this year, some seven months after its initial release, so as to include an appendix containing a response from the Attorney-General, Philip Ruddock. This included his view that the proposition in the Brief – that ‘consent [by a member of the public, for instance to agree to censorship] should not allow government officials to undertake actions that they would not otherwise be authorised to do under warrant’ – is ‘quite ridiculous and manifestly wrong’. He disagreed just as strongly with the suggestion that consent in my case ‘may have been vitiated by duress’ and claimed that ‘those most closely involved ... were legally represented in their dealings with the Commonwealth.’ Unfortunately, though, it is the Attorney-General who is wrong, as I did regard myself as being under duress when confronted with the Government’s demands about the book and certainly had no capacity to obtain equitable legal representation.

Nor was this the only censorship I experienced. In 2003 the Government sent a submission to the UK Foreign Affairs Committee enquiry into the Iraq war, at which I was appearing as a witness, claiming I had not been involved in the Iraq issue, and then in 2004 I was not invited to appear as a witness at Philip Flood’s official Australian enquiry into the war. The latter was an extraordinary development, if only because Flood had been tasked by the Prime Minister to look into intelligence aspects of the Iraq war, and I had been the only serving intelligence officer in the so-called ‘coalition of the willing’ to have publicly expressed concerns before the invasion.

The personal challenges faced by dissenters in Australia are obviously formidable, so much so as to make a mockery of the popular notion that this country is a generous place where everyone is given a fair go. In my experience it is not, and this just reinforces the Howard Government’s specific efforts to silence independent voices. Certainly my experience has been tough enough to convince me to never encourage others to blow the whistle on government misconduct unless they are absolutely certain of their concerns and capacity to survive afterwards.

¹⁴⁹ S. Harris Rimmer, *Spy versus spy: Government control of sensitive information*, Commonwealth of Australia, Canberra, 2006.

¹⁵⁰ The specific text can not be identified because of the terms of a Deed of Agreement insisted upon by the Government during the censorship process.

For a start there is a significant employment issue, or rather the lack of it. Not only did I instantly lose a good job when I resigned, but straight away I cut myself out of all future APS appointments as well as private sector roles where the employer disagreed with me over Iraq, distrusted me because I had caused trouble for another employer, or felt they could not associate with me because they relied on business with the Government. Other sectors have also shunned me, including for being ‘political’ – apparently a dirty word in Australia. Then there are the relationship issues: some ‘friends’ back off because they disagree with you, or instead you start to avoid them in order to shield them from your adversaries or because you realise how different you really are; some fair-weather friends shun you because they can’t stand the heat, or afford to; and some you just drift away from as you change personally and seek to deal with the weight of it all. Moreover the people who were never your friends, but now know of you because of your outspokenness and hate you for it, can make things even more difficult as they gutlessly send hate mail and make death threats. To live with all this is obviously unpleasant, as is the knowledge that the Government is prepared to commit serious crimes to get at you. It is all a terribly disorientating experience which can eat at your sense of self-worth and leave you feeling isolated and broken.

4.6 Choosing between right and wrong

Consciously or sub-consciously, all of the discontented security officials described here have needed to deal with numerous choices, for instance the crucial choice between doing what would be acceptable to other security officials, and what would be the ‘right’ thing to do in the circumstances. In that case, and in many others, the decision obviously hinges on judgements about what is *right* – in turn judged against the profound moral principles that distinguish good human behaviour from bad – and where the threshold lies for recoiling against wrong.

The distinctions drawn between ‘right versus wrong’, and ‘right versus right’, by the American ethicist Rushworth Kidder are relevant here.¹⁵¹ According to Kidder, deciding whether or not to do the *right* thing when confronted with something that is obviously *wrong* is a relatively straightforward and easy matter: to do anything but what is right in this situation would be to succumb to ‘moral temptations’.¹⁵² A simple example might be how a security official, discovering a drunken colleague recklessly divulging secret information at a social gathering, should know to quickly pull the offender aside and possibly take the matter up later with someone like their agency’s security adviser. Much tougher situations for security officials to deal with, however, are ‘right versus right’ where officials must choose between two apparently right options and which, according to Kidder, ‘reach inward to our most profound and central values, setting one against the other in ways that will never be resolved simply by pretending that one is “wrong.”’¹⁵³ Such a situation might be where an official finds himself or herself considering the need to do the right thing by blowing the whistle on serious Government misconduct, but must reconcile this with his or her senses of professionalism and patriotism. Some officials will be able to deal with such tensions and be able to live with the consequent accusations. Others will be less successful - it killed David Kelly. Many security officials, however, finding themselves in such a situation, will not be able to

¹⁵¹ R. Kidder, *How good people make tough choices: resolving the dilemmas of ethical living*, Morrow, United States, 1995.

¹⁵² *ibid.*, p. 17.

¹⁵³ *ibid.*

move beyond the dilemma and will find themselves defaulting to inaction or instead seeking a ‘middle way’¹⁵⁴ out of the impasse, for instance by leaking documents to the media.

I would describe my own experience concerning Iraq as ‘right versus wrong’ because my decision to take a stand was simply an attempt to do the right thing at a time of monstrous wrongdoing. Although I also confronted the ‘ethical dilemmas’¹⁵⁵ that might be found in many ‘right versus right’ situations, for me the competing sentiments of professionalism and patriotism, for example, were much less significant than the serious Government misconduct contained in its waging of an unjustified and illegal war.

Might other intelligence officials have been justified in seeing the Iraq issue as one of ‘right versus right’ because of the inherent goodness in blowing the whistle on the Government’s fraudulent claims, but also the merit in removing the venal Saddam Hussein from power? Of course, though for them the challenge would then have been, according to Kidder, to test both rights in an attempt to break the deadlock. Some officials would have done this by resort to an ‘ends-based’,¹⁵⁶ utilitarian process which could have convinced them that the removal of Saddam would ultimately be a good enough achievement to justify the deceit underpinning the war, or instead that the war could ultimately tear Iraq apart, destabilise the Middle East and increase both the global risk of terrorism and the likelihood of the proliferation of WMD. Some officials would probably have preferred a ‘rules-based’¹⁵⁷ approach, in which case they would almost certainly have come to the conclusion that the war’s disregard for acceptable human behaviour and the rule of law discredited the project, regardless of the end result. Some officials might even have opted for a ‘care-based’¹⁵⁸ approach where they would have imagined themselves in the shoes of the ordinary Iraqis on the receiving end of the invasion, occupation and potential eventual anarchy. By any such measure then, many if not most officials finding themselves in my shoes might have reached the same conclusion about the need to dissent. That they did not reflects the stifling environment that has been created by the Government in the security agencies – perhaps more stifling than in the UK and US where a number of officials resigned before the Iraq war, for instance Elizabeth Wilmshurst from the Foreign and Commonwealth Office who regarded the invasion as a ‘crime of aggression’,¹⁵⁹ and John Brady Kiesling from the State Department who saw the war as ‘incompatible not only with American values but also with American interests.’¹⁶⁰

¹⁵⁴ *ibid.*, p. 22.

¹⁵⁵ *ibid.*, p. 17.

¹⁵⁶ *ibid.*, p. 155.

¹⁵⁷ *ibid.*, p. 157.

¹⁵⁸ *ibid.*, p. 158.

¹⁵⁹ C. Brown, ‘Iraq War: The Smoking Gun?’, *The Independent*, 24 March 2005, United Kingdom.

¹⁶⁰ J. B. Kiesling, ‘U.S. Diplomat’s Letter of Resignation’, *New York Times*, 27 February 2003, United States.

5. Solutions

There is much that can, and should, be done in Australia to foster individual voices within the security agencies and to deal more appropriately with officials feeling compelled to break ranks. Perhaps the first step is simply for all politicians, the public, the media and the agencies themselves to understand and acknowledge that the security apparatus has become politicised and timid, that this is compromising the public interest, and that we must turn this around by refreshing the Government's relationship with the agencies as well as the agencies' culture, legislation and oversight.

One might hope that the security agencies will automatically de-politicise somewhat with the next change of government. But more likely is that such a change will do little more than regenerate the existing problem, rather than bring about any sort of fundamental correction. The ALP is, after all, probably no less likely than the Government these days to try and skew the security agencies in their favour by adjusting senior appointments and by playing to people's timidity and obsequiousness. After all, it was Whitlam who really started the practice of replacing departmental heads on winning government. There will be no shortage of security officials prepared to recalibrate their loyalty come the inevitable change of government, and anyway, the security policy settings are unlikely to change radically given the Government and ALP's history of bipartisanship on foreign and security policy.

While the idea remains unpalatable – more so because of the trauma brought about by John Kerr's sacking of Gough Whitlam in 1975 – the only effective check on the head of government in some circumstances currently may be the head of state, meaning of course the Governor-General. And, notwithstanding the politicised nature of that appointment, he or she could intervene, even if it is only to privately express concerns to the Prime Minister. Whether or not Michael Jeffery, for instance, would cross John Howard is not the issue here. The issue is that the Governor-General has the potential for some form of moderating role in the future.

5.1 Encourage independent minds and voices

In any case the security agencies need to become genuinely apolitical, regardless of which political party or parties and which personalities are in power. There's obviously nothing revolutionary with this proposition. But such de-politicisation of the agencies will not be achieved until the inherent conservative bias in the security agencies is rectified, and that will not occur until there is a concerted effort to fill the agencies with the broadest range of political views, from left through right.

Opening up the security agencies would enhance their capacity to operate more laterally, the advantages of which are self-evident in these days of unconventional and asymmetric security threats. And it would help to dilute the legacy bias and shortfalls in the agencies, and foster the development of a workforce more representative of the Australian community. The issue here is not to just keep throwing money at security generally or to recruit more people specifically, both of which are underway currently right across the agencies,¹⁶¹ but to build a more diverse group of people; culturally,

¹⁶¹ A useful commentary on the non-military security initiatives and expenditure contained in the 2006-2007 Commonwealth of Australia Budget is contained at Safeguarding Australia 2006, '2006-07

ethnically and religiously. This would help to bring the agencies more into line with Australian society, obviously making for a richer workforce, but also help to better connect the public with its security apparatus. Claims that this is happening currently is shallow window-dressing.

The current – Howard Government – approach to the granting and reviewing of security clearance would need to be adjusted to facilitate such a broadening of recruitment in the security agencies and encouragement of independent voice among serving officials. This would not be a big challenge, because the types of people who could cause genuine problems for the agencies – foreign spies, the ill-disciplined, people in financial strife and so on – have detectable signs in their history or makeup. Opening up the security agencies to a broader range of views and personalities from the outside would not, in itself, compromise the propriety of the agencies or increase the likelihood of dissenters, leaks or other similar problems. Sure there would be challenges in ensuring that people who might have very strong political views at odds with the government of the day are not intent on mischief. But identifying such people is not too big a challenge for the competent psychologists and other agency security officials whose job it is to screen people applying to work in the agencies and re-screen periodically those already there.

The effectiveness of the old – pre-Howard Government – security screening process was demonstrated in 1983 and again in 1996 when changes of governments did not in themselves prompt security officials supportive of the outgoing administrations to cause trouble for the incoming administrations. Nor have the relatively tiny number of politically risqué officials who have actually made it into the agencies over recent years caused problems for the Government, for instance those who vote for political parties like Socialist Alliance and the Greens and were to be seen at anti-war rallies in Canberra around the time of the invasion of Iraq in 2003. Burton again provides an interesting case study in this regard, because she was accepted into ONA despite declaring that she once was arrested at an anti-US bases protest at the Joint Defence Facility at Nurrungar in South Australia. Despite her history and obvious misgivings about Government policy she went on to never cause any angst for ONA during her time there. Significantly, the real dissenters of recent years like Collins, Scrafton and Barton have all been of the old mould: straight, well regarded and apparently trustworthy. Their outspokenness would not have been prevented by even tougher security vetting processes.

5.2 Encourage public service

Expanding the range of personalities and ideas in the security agencies would only succeed, of course, if such a change was genuinely embraced by the senior management of the agencies and formalised in relevant arrangements. A fundamental mind shift would be required – that it should not only be acceptable, but in fact desirable, to have spirited debate, outrageous ideas and even downright arguments in the workplace – the very idea of which will probably cause apoplexy amongst some of the apparatchiks currently in the security agencies. This internal resistance to change would have to be overcome, because it would be the senior managers who would have to sell to the Government the dividends of recruiting such talent, including the innovative ideas that would be encouraged to bubble up. Senior managers in the security agencies would do well to keep in mind that such lateral thinking, and management preparedness to listen to

Australian Government Budget Analysis',
 <http://www.safeguardingaustralia.org.au/News/10_May06.html> (19 July 2006).

unexpected ideas, might well have prevented the 11 September 2001 terrorist attacks in the US. This was revealed, for example, by FBI whistleblower Coleen Rowley in 2002 when she went public with information that FBI Headquarters in Washington had failed to understand and act on information provided by FBI field officers, well before the attacks, about the so-called 20th hijacker Zacarias Moussaoui.¹⁶²

Aiding the embrace of positive change in the security agencies would be any development that tones down the current inclination towards ‘customer focus’ on the part of agency heads; in other words to deliver what the Government wants, rather than what it needs. To that end there needs to be a reconsideration of the practice of paying performance bonuses in the security agencies, because while such cash payments might have their place in the broader APS, they can encourage the politicisation of security advice, which can jeopardise national security. The withdrawal of performance bonuses could be easily and appropriately compensated by salary increases.

Moreover there needs to be a revitalisation of the requirement for the heads of security agencies to be appointed on merit. They lead, after all, much specialised organisations employing highly trained staff operating in often extra ordinary circumstances. The cost of failure can be high, even fatal, not just for the intelligence officers involved but sometimes very large groups of other people. There is simply no place for incompetence, timidity or political appointments, as seems to be the case these days. Getting the politics out of senior security appointments is obviously an ambitious goal. But the two were somewhat less entangled once – well before the removal of permanency for department heads in 1994, it should be said – and a mechanism giving us some hope of returning to that state of affairs exists already in the office of the Public Service Commissioner. Former Commissioner Andrew Podger makes a persuasive case for strengthening the role of Public Service Commissioners. While he stops short of advocating the New Zealand approach, where the State Services Commissioner employs agency heads, he does see the need for improving Australia’s arrangements and the value of giving the Commissioner a much expanded role in appointing, terminating and appraising heads. He argues that ‘our system would have greater credibility and demonstrate stronger adherence to the merit principle if the public service commissioner had a stronger role’.¹⁶³

5.3 Enact whistleblower legislation

Fairness needs to be brought to the legislation relevant to the security agencies. At a minimum there is a pressing need for effective Commonwealth whistleblower legislation. The collaborative whistleblower project led by Griffith University in Queensland, ‘Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations’, may finally provide some impetus for the development of such legislation.¹⁶⁴ The three-year endeavour involves other universities as well as representatives from the state, territory and federal

¹⁶² *Time* magazine, ‘Coleen Rowley’s Memo to FBI Director Robert Mueller’, <<http://www.time.com/time/covers/1101020603/memo.html>> (20 June 2006).

¹⁶³ A. Podger, *Ethics and Public Administration*, address to the Institute of Public Administration Australia National Conference, Hobart, 2005.

¹⁶⁴ Griffith University, ‘“Whistling While They Work”: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations’, <<http://www.griffith.edu.au/centre/slrc/whistleblowing/>> (22 July 2006).

governments (the Commonwealth Ombudsman's office is involved) and is scheduled to report by the end of 2007. While federal governments have a history of disinterest in whistleblower legislation, the Commonwealth Ombudsman John McMillan remains hopeful that this project will at least 'contain recommendations that will help inform the debate on the adequacy, or otherwise, of the existing Commonwealth whistleblower legislation, as well as agency procedures for the handling of whistleblower allegations and the protection of whistleblowers once they have made those allegations.'¹⁶⁵ Only time will tell if McMillan's optimism is warranted, and in particular if any Commonwealth legislation that might eventually be created is able to work in the extraordinary environments that exist in many of the security agencies.

5.4 Strengthen the oversight regime

There is also a pressing need to enhance the mechanisms and processes which hold to account the security agencies and the Government's relationship with those agencies, as well as the Government's conduct on national security matters more broadly. Only the certainty of properly functioning agencies, that interact with government in a confident and apolitical manner and are responsive to fundamentally competent and ethical governments – kept on their toes by effective oppositions, unlike the current ALP Opposition at least so far as security matters go – will genuinely encourage frank and fearless service from the security agencies without promise of hope or favour.

For a start the Parliament needs to be more involved in national security matters. The way in which it generally stands back from such matters, and how the Government in particular has marginalised it on major security developments – like decisions to prolong the commitment in Iraq and the way in which security legislation is rushed through without proper debate – is at best irresponsible, and at worst dangerous. In any case it is not in the public interest, because people have a right to contribute to such momentous decisions and should be allowed to develop a sense of ownership about them. There obviously also needs to be enough sitting days to allow enough time for such consideration and debate about security matters.

Moreover the Parliament needs to have the tools to become more involved in the conduct of national security. Every agency needs specific legislation governing their operation and every agency needs to table unclassified reports in the Parliament detailing the broad scope of their operations. Permanent committee oversight is also needed for all of the security agencies, including the AFP, and for all officials and Government staffers, none of whom should ever again be prevented from testifying in any oversight committee. And such committees concerned with security need to represent the range of views in the Parliament, not just the Centre-Right position of the Government and current ALP front bench. Public cynicism about the way in which the Government controls the terms of reference for ad hoc official enquiries suggests also that these accountability mechanisms are not widely regarded as functioning effectively in the public interest.

Beyond the accountability mechanisms which the Government can easily manipulate, there remains the inadequate but promising IGIS. Inadequate because it is tiny, arguably politicised and limited in role. Promising because relocation out of DPMC, an expansion and strengthening of its remit, and a genuine boosting of its resources could

¹⁶⁵ *Freedom of Information and Whistleblower Legislation: an Australian Perspective*, p. 9.

turn it into the credible and effective scrutineer of the security agencies that is urgently needed. Independent voices in the security agencies would then have much more confidence in their role and place if they knew there was a strong and independent overseer and arbitrator to look after their interest

6. Conclusion

The security agencies have become increasingly politicised during the Howard Government. Direct political interference and self-censorship, rather than consistently genuine consideration for Australia's security interests, have corrupted the operation of the agencies and fostered compliance and timidity amongst their personnel. The 'apoliticism, impartiality, professionalism, responsiveness and accountability' which should characterise such organisations, as they should the entire APS, have now been compromised to the point where the public can have little confidence that such attributes will be unambiguously applied the next time a politically contentious security issue arises.

Independent thinkers in the security agencies have little room to move in this environment. The freedom they do have to voice concerns is limited to the gentlest expressions of discontent. The moment they push harder their reliability is suspect and they are sidelined and at risk of being pushed out of the agencies. Faced with the choice of silence or being sacked, with nothing in between, the disaffected usually default to silence. Fortunately for the public interest at least a small number of independent voices have broken through the politicisation of the agencies on controversial issues. That former officials like Collins, Scafton and Barton have all been vindicated is obviously to the great credit of these three men. But that they have all been attacked or undermined by the Government or its lackeys, that the media has not done enough to scrutinise the official misconduct which pre-occupied them, and that the public remains largely indifferent to such matters is Australia's shame.

Getting the politics out of security these days might seem to be an ambitious goal. But it is eminently achievable with a change of heart on the part of governments and the implementation of sensible reform measures. The alternative is for governments to continue to betray the trust put in them by the public, for the security agencies to continue to buckle, and for the public to continue to be oblivious or to tolerate it. All of which might be of apparently little consequence for a while longer, but in the long term there is a significant risk that serious harm could eventuate if the current situation is allowed to persist. And people will die, possibly including our children and others for whom the future is shaped today by our actions and by our inaction.



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