

Picking up after Flood

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Background

In late July 2004 the Report of the Inquiry into Australian Intelligence Agencies by Philip Flood was published. The review was instituted in early March 2004 following a recommendation from the previous inquiry undertaken by the federal parliament's Joint Statutory Committee on ASIO, ASIS and DSD into intelligence on Iraq's weapons of mass destruction. The Australia Defence Association was invited to make a submission to both inquiries and did so.

The Flood Inquiry was given a reasonably free-ranging brief but was requested to report specifically on:

- The effectiveness of the intelligence community's current oversight and accountability mechanisms as they relate to such matters as the setting of priorities, the assigning to the priorities of appropriate resources, and the delivery of high-quality and independent intelligence advice to the government.
- The suitability of the current division of labour among the intelligence agencies and communication between them. The maintenance of contestability in the provision to government of intelligence assessments.
- The adequacy of current resourcing of intelligence agencies and in particular ONA.

The inquiry concentrated on arrangements for the gathering and analysis of intelligence on foreign countries and topics. It did not cover domestic security and intelligence matters other than their interface with foreign intelligence arrangements. Not long after the Flood Inquiry was announced there was also much publicity concerning a letter written to the Prime Minister by Lieutenant Colonel Lance Collins, a serving military intelligence officer, and the subsequent leaking to the press (not by Collins) of various internal Defence reports into Collins' allegations and his subsequent treatment. This led to some of the issues raised by Collins also being referred to the Flood Inquiry.

Early on in the inquiry Australia joined the American-led collective intervention in Iraq. This too impacted on the course and subjects of the inquiry, especially in an election year where opposition parties were alleging that the Howard Government 'played fast and loose with the truth', and was encouraging a bureaucratic culture that had resulted in it not being told things it did not want to hear.

Flood channels

From the beginning the inquiry faced questions as to its credibility. Doubts were expressed about the scope of

its terms of reference, the tight reporting date (initially 30 June but later extended to 30 July), and the practicality of undertaking such an inquiry in an election year. Doubts were also expressed as to the suitability of Philip Flood, as an ex-head of ONA, to undertake a suitably objective review of possible failings in an organisation when some might perceive he (and others) may have contributed to such failings. The Labor Party, especially its foreign affairs spokesman, Kevin Rudd, was particularly concerned in this regard.

The ADA were reassured by the quality of the team assembled to assist Flood undertake his inquiry and by the extensive nature of his consultations. The inquiry also gave the Association a fair hearing, even on topics of some professional or bureaucratic controversy. On balance, the inquiry was conducted relatively thoroughly given the associated limitations and expectations. With more time, a real first-principles approach could have been adopted.

Flood tide

The report made 23 recommendations, some in several parts, and the government essentially accepted all but part of one. The part recommendation not accepted related to an unimportant change in organisational nomenclature only.

Several of these recommendations reflected the thrust, and in some cases were near identical in detail, to proposals advanced by the ADA, and other bodies and individuals concerned about the intelligence profession, for some years. The Association claims no kudos for these reforms but simply notes with relief that they are finally being implemented. The wider problem involved remains the difficulty of initiating thorough reform in the intelligence and security arena, especially where reforms relate to intelligence professional matters and impact on competing bureaucratic interests entrenched in the departments of Defence and Foreign Affairs.

The report's first three recommendations cover overall oversight and jurisdiction issues in the Australian intelligence community. These include expanding the jurisdiction of statutory parliamentary oversight to include all six intelligence and security agencies not just ASIO, ASIS and DSD; the establishment of a statutory basis for the relatively new Defence Imagery and Geospatial Organisation (DIGO); and an expansion of the powers and responsibilities of the Inspector-General of Intelligence and Security (IGIS) so these are uniform across all agencies. These

are sound commonsense housekeeping reforms long since overdue.

The next two recommendations cover the restructuring of ONA and increases to its budget, both directly and by transfer of certain functions, staff and resources from DFAT. These recommendations are consistent with the thrust of the report and have been broadly supported. In fact the comparatively large increase in ONA's staffing resulting from the report is almost entirely attributable to the transfer of the Open Source Unit from DFAT. Given that ONA is meant to value-add to already processed product from the specialist intelligence agencies, the transfer of the open source capability, very much a raw information function, remains somewhat puzzling. There remain sound reasons overall, however, to keep ONA small so it does not suffer the hierarchical and bureaucratic problems that often hamper analysis and reporting in the larger intelligence agencies.

Recommendations 6 to 8 cover minor legislative and organisational changes to reflect current practice, and to strengthen ONA's foreign intelligence co-ordination role. The Government rejected the proposal that ONA's name be changed as part of this restructuring and refocusing.

One of these recommendations also proposed the creation of an inter-departmental advisory committee to assist the Director-General of ONA in his co-ordination role, and to have other monitoring and performance assessment responsibilities across the intelligence community. The members of this committee comprise the heads of the six agencies plus deputy-secretary level representation from PM&C, Defence and DFAT. This Foreign Intelligence Co-ordination Committee (FICC) is intended to report to the National Security Committee of Cabinet through the Secretaries Committee on National Security (SCONS). This is a typically bureaucratic solution designed to preserve the power and status of the departments of state, and especially their permanent heads, but not necessarily improve inter-departmental co-ordination.

A more imaginative and comprehensive solution in the long term would be to abolish the SCONS and have the FICC (or a downscaled version) report instead to a true National Security Council comprising the ministers on the NSCC, the directors-general of ONA, ASIO and ASIS, the head of the AFP, the CDF and Service Chiefs, and the permanent heads of PM&C, Defence, DFAT, Treasury and the Attorney-General's Department. As the ADA has noted before, this would combine both executive power and responsibility with specialist expertise, and greatly alleviate the reporting and accountability problems that bedevil current whole-of-government arrangements for national security. Such a council will happen eventually, probably through direct prime-ministerial frustration after yet another public furore over blockages in the passage of information up, or directions downward, but not without further obstruction from senior bureaucrats who love the fuzzy nature of current arrangements.

Recommendation 9 is one of the key recommendations in the report. It seeks to reverse the disgraceful situation whereby major decisions of national importance, including committal of the defence force to combat, and major realignments of our national security strategy (or what passes for them), have been taken without any robust intelligence estimates examining the likely risks and consequences. The only problem is that the report proposes persisting with the National Assessments process, which is not as intellectually robust as one using National Intelligence Estimates would be. This remains a serious concern, and it is even more serious that the difference between an assessment and an estimate is apparently still not understood, or is regarded as simply arcane, by those who should know better.

Recommendations 10 to 14 seek to reinforce the authority of PM&C, ostensibly in servicing the NSCC, in the setting of priorities, the allocation of resources and the measuring of effectiveness regarding the intelligence and security agencies. This includes ASIO, more through a desire for conformity rather than argument in the report.

Recommendations 15 to 17 cover a series of reforms to DIO, DSD and DIGO and how they should interact with the Department of Defence, the ADF and other departments and agencies. The report strongly recommends that DIO be better focused on supporting the needs of the ADF—a proposal that could have also been extracted from a large number of studies, reports and conferences over the last 30 years. There remains some professional concern here that this is an attempt to limit DIO's scope and widen ONA responsibilities. If this results in ONA undertaking exclusive analysis of military strategic and associated matters, where despite self-confidence it generally lacks the expertise, then this too would be a matter of serious concern.

Flood further recommends that the Director DIO position, when it next becomes vacant, be filled on merit with the most qualified candidate (military or civilian). This is tacit recognition that this has rarely happened (some would argue never) over the last 20 to 30 years. Unfortunately the recommendation does not specify that the director should actually be a career intelligence professional (military or civilian) so the risk remains that such officers and specialist public servants will continue to be discriminated against within the department and the ADF.

Flood's other proposals in this regard, especially to significantly increase the number of uniformed staff in DIO, reflect a growing realisation in the Department of Defence that the numbers of uniformed intelligence specialists, of all ranks, in DIO have fallen to potentially catastrophic levels. This should not have been allowed to happen and the fault is as much the ADF's leadership as it is the failure of past and present DIO senior management. The real problem is where to find the numbers of uniformed intelligence specialists needed as there are already numerous vacancies in these specialisations across the ADF. This will require considerable will, effort and time to remedy.

Another part of this recommendation is the back-to-the-future proposal that DIO recreate the position of deputy director and that it be filled with a civilian when the director is military, and vice versa. This has been proposed or tried before at both DIO and DSD, more in the former than the latter. Such ‘balance’ arrangements only work if goodwill and commonsense are applied on both sides. Hopefully, if/when implemented, it will be more successful than it was in the past.

Recommendation 16 is a real curate’s egg and somewhat contradictory and insular in its proposals. It rightly proposes that strategic intelligence estimates should be produced for all significant military operations and other issues of ‘high security relevance to Australia’. That this proposal even has to be made in 2004 is an extremely damning criticism of the management of DIO (and the ADF command structure) over several decades, and stark evidence of the need to fill intelligence management positions with career intelligence professionals. Such estimates should always be prepared as a matter of military professional course. Not only have they not been prepared, senior DIO management have not even thought it important to do so and have castigated career intelligence professionals for pointing out the serious deficiency. This finding of Flood’s alone proves that far too many senior DIO managers, both military and civilian, have simply been unqualified for their positions. It also further underlines the widespread professional belief that the absence of such estimates, even despite the critical need for them, is the result of senior managers fearing to reveal their professional inexperience and ignorance by attempting their production.

However, the failure to produce strategic intelligence estimates is not DIO’s fault alone. It is just as much due to the failure of ADF strategic-level planners and their bosses to insist on them being prepared by DIO (which absorbed the strategic intelligence staff function from the then HQADF in 1993).

Strangely, this proposal for mandatory intelligence estimates is not linked to Recommendation 9 (and Recommendation 18) relating to National Assessments. This may be just a terminology problem but, more dangerously, it may reflect the continuing naïve belief that ‘assessments’ are all that is required at the national level, and that the far more intellectually robust intelligence estimate process can somehow be pigeonholed for only ‘military’ matters. This is a complete fallacy. As practices in comparable allied countries clearly show, the intelligence estimate process remains just as relevant, probably more so, at the national strategic level as it does at the military strategic one (and indeed at both the operational and tactical levels).

Recommendations 19 to 20 make some very commonsense proposals to do with the training and education of intelligence agency staff in foreign languages. Recommendation 21 covers increased funding to expand the accommodation ONA and ASIO share.

Recommendation 22 proposes, very sensibly, that the intelligence community be subject to periodic external

review every 5 to 7 years. This has tended to happen anyway, albeit somewhat patchily as a result of scandals, but it is far better to be proactive in approach for the future.

Recommendation 23 covers the need to produce an unclassified brochure explaining the role of the intelligence agencies, how they fit in to wider governmental structures and processes, and the accountability and oversight mechanisms involved. This is a commonsense idea and hopefully should reduce the large amount of ill-informed media commentary on intelligence issues. It might even stop the media from constantly and incorrectly referring to intelligence officers and intelligence analysts as ‘spies’. Although in their defence, some journalists attribute the chronic continuing error in this regard as due to the desire of sub-editors to come up with short headlines for articles or allegedly snappy introductions for autocues.

Flood’s ebb

The main disappointing aspect of the Flood Report is the missing Recommendation 24 covering the ghost at the feast—the topic studiously not mentioned in the report.

Despite good discussion of the need to improve intelligence training and career development to maximise professionalism in the intelligence agencies, Flood avoids any discussion of the current situation with non-professional agency senior management. At the moment, only one of the six intelligence and security agencies is headed by a career intelligence professional, and this has been the case for some time. This remains inexcusable in this day and age and is principally the result of arrogance and snobbery. After all, if the Solicitor-General is always a lawyer, the Chief Health Officer always a physician, the head of the AFP always a police officer and the Chief Scientist always a scientist, why is it that so many diplomats and generalist bureaucrats are considered suitable to lead intelligence and security agencies. Imagine, after all, the objections if a career ASIS officer was appointed to head DFAT.

At the very least, every second head of each agency should be a career intelligence professional from within the intelligence community. In particular, the appointment of diplomats to such positions should be avoided wherever possible. This is an integral part of the problem with insufficient contestability of assessments, and the flawed way in which policy considerations pollute what should be independent and objective intelligence analysis.

As an ex-diplomat who had once headed ONA, it was always feared that Flood would avoid addressing the longstanding problem caused by the farming out of diplomats and senior bureaucrats to head intelligence and security agencies. While the ADA was prepared to give him the benefit of the doubt in this regard during the inquiry (on the ‘set a gamekeeper to be a poacher’ principle), it is very disappointing to see that the problem remained completely unaddressed in the report.

This cannot be because Flood was unaware of the point, and the serious concerns held about it across the intelligence profession in all agencies. The matter was

raised with him by several interlocutors. The only logical explanation is that he does not see it as a serious problem. The only other possibility is that he was directed not to mention it and it is unlikely someone of Flood's experience and integrity would have accepted such a direction. The irony of this should not be lost on anyone.

The Flood Inquiry may also have been another lost opportunity to thoroughly examine the nature of ONA itself, its true role, and whether ONA is really an intelligence agency as such. It really boils down to a question of whether ONA really conducts intelligence analysis and value-adds in the truest sense, or whether it is mainly a co-ordinator, integrator and reporter of material already mainly analysed by the specialist intelligence agencies. ONA has no real collection role (or expertise) and, in theory if not so much in practice, should not be dealing with raw information direct from sources. A good argument can be mounted that ONA performs more of an intelligence staff than an intelligence agency function. To use a US comparison, ONA actually functions (or should do so) much like the intelligence staff of the US National Security Council.

To some, this appears somewhat of an arcane discussion but the question does cut to the quick of the matter. If ONA is an intelligence staff masquerading as an intelligence agency then a lot of the problems experienced with it over the years are more readily explained. Not least of these is the perennial debate concerning the skill sets required of its analytical and reporting staff, most of whom have not been career intelligence professionals—sometimes for good reasons. The misplaced intellectual arrogance, and at times amateurism, that has sometimes hampered ONA relations with the specialist intelligence agencies is partly attributable to unhealthy organisational and individual self-belief. Chief among these would appear to be the belief ONA is an intelligence agency strangely combined with the belief that through-career intelligence professional experience is not required to be employed there.

Lance Collins

In regard to the Lance Collins saga the Flood Inquiry was faced with some difficult dilemmas and, while the Flood Report is generally even-handed, several key deficiencies highlighted by Collins remain unaddressed. Collins was willing to give evidence to the inquiry but in the end felt unable to do so. It is believed this is because of his recent experiences, including first reading reports concerning himself when they were leaked, probably maliciously, to the national press. Collins therefore chose to testify only if supported by competent legal advice. Neither the inquiry nor the Army were willing to pay for this advice and Collins was unable to do so.

There is one area in particular, however, where Flood has apparently ducked a key question concerning Collins' actions, although subsequent recommendations address the issue in general. Flood, quite correctly, criticises aspects of the mid 1998 operational-level intelligence

estimate produced by Collins (at the then Headquarters Australian Theatre) as exceeding their remit. Flood notes that some material in the estimate was inappropriate and this is widely agreed among intelligence professionals.

However, Flood then fails to address why numerous operational-level intelligence estimates, prepared in various ADF headquarters throughout the 1990s, were forced to cover some strategic-level matters. This was due to the complete inability and/or unwillingness of DIO to produce the strategic intelligence estimates needed to adequately plan major ADF operations or contingencies (and indeed to underwrite ADF capability development and national strategic reviews). Flood lets DIO and its senior management, and to some extent the senior ADF command structure, off far too lightly in this regard. As noted above, recommendation 16 does specify that it should be mandatory for DIO to produce strategic intelligence estimates. It is a pity that this point was not given appropriate weight when addressing the Collins saga in the report.

Finally, quite correctly, the Flood Report notes that several aspects of Collins' complaints are being considered separately by the Inspector-General of Intelligence and Security.

The way ahead

On balance, Philip Flood has produced a useful report. It is very useful on the matters it does address as can be seen by the near total acceptance of its findings by the Government. That the Flood Inquiry failed to address some matters is a product of its terms of reference, political context, short timescales and, to some extent, the career background of its author.

There are definitely others besides Lance Collins who have remained unwilling to testify to other than a royal commission. The individuals concerned and the issues they represent will not simply go away. Depending on the success of institutional and cultural inertia in blocking reforms proposed by Flood, and accepted by the Government, the concerns of the outcasts in the outer darkness may fester anew in general rather than with just individual cases.

Labor has promised a royal commission if they win government. This may still be the best, or indeed the only, way to cauterise the wounds carried by some ex-members of the intelligence community. At the very least, professionalising the senior management of the intelligence and security agencies would be a big step forward in alleviating many of the concerns held by through-career intelligence professionals across all six agencies.

Philip Flood's recommendations provide some very useful stepping stones to navigate the swamp where intelligence work interacts with the rest of the governmental apparatus. To a large extent, however, through the limits placed on his inquiry and perhaps just Flood being himself, he has not really drained the swamp and firmly established the foundations for a modern and optimal 21st century intelligence community on dry land. ♦