

# Australia's Response to Terrorism

Nicholas Grono

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*In the difficult fight against the new menace of international terrorism, there is nothing more crucial than timely and accurate intelligence.*

—John Howard<sup>1</sup>

The attacks of September 11, 2001, fundamentally changed the understanding of the United States and its allies of the threat posed by terrorism. With this new comprehension has come the realization that significantly improved collection and use of intelligence will be required to prevent catastrophic terrorist attacks in the future.

Accordingly, in the United States, the role of the intelligence community has been scrutinized like never before. US intelligence agencies have received increased resources and powers, and important modifications have been made to the rules governing intelligence collection and dissemination.

In Australia, equally significant changes have taken place. Canberra's process of adjusting its intelligence to meet the challenges of global terrorism, however, started more than two years before the September 11 attacks in New York and Washington, in preparation for the Sydney 2000 Olympic Games. After September 11, the Australia

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<sup>1</sup> Prime Minister's Address to the Nation, 20 March 2003.

lian government further strengthened its intelligence capabilities through legislative and funding adjustments. If many Australians thought that their relative isolation distanced them from the immediate threat of large-scale terrorism, any such complacency was shattered by the Bali bombings on 12 October 2002, which claimed the lives of 89 Australian citizens.

This article examines how the Australian government and intelligence community have responded to the challenges posed by the Olympic Games, the September 11 attacks, and the Bali bombings, and analyzes some of the key differences between Australia's intelligence response to terrorism and that of the United States.

## Australia's Intelligence Agencies

The Australian Security Intelligence Organization (ASIO) is the country's oldest existing intelligence organization and its most important when it comes to preventing terrorism against Australia. As Australia's main counter-terrorism and counter-espionage intelligence agency, ASIO collects information and produces intelligence that will enable it to warn the government about activities or situations that might endanger Australia's security or its

interests abroad. It also collects foreign intelligence within Australia.<sup>2</sup> ASIO reports to the Attorney General.

Unlike America's domestic intelligence agency, the FBI, ASIO is not a law enforcement organization. Australia has a separate federal law enforcement agency, the Australian Federal Police (AFP). This structure of separate domestic intelligence collection and law enforcement agencies is one of the more significant differences between the US and Australian approaches, and will be considered further below.

Australia's counterpart to the CIA is the Australian Secret Intelligence Service (ASIS). ASIS collects foreign intelligence, relying primarily on human resources to obtain information. It produces and disseminates intelligence reports to key government decisionmakers.<sup>3</sup> ASIS reports to the Minister for Foreign Affairs.

Australia's equivalent to the US National Security Agency is the Defence Signals Directorate (DSD), which collects foreign signals intelligence and produces and disseminates reports based on the information it collects.<sup>4</sup> DSD reports to the Minister for Defence.

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<sup>2</sup> The description of ASIO's role is taken from the *Inspector-General of Intelligence and Security Annual Report 2001-2002*, p. 31.

<sup>3</sup> *Ibid.*, p. 45.

<sup>4</sup> *Ibid.*, p. 49.

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Similar to the US National Geospatial-Intelligence Agency, Australia's Defence Imagery and Geospatial Organization (DIGO) is responsible for acquiring and interpreting satellite and other imagery, and for the acquisition and exploitation of data on natural or constructed features and boundaries of the earth. It also reports to the Minister for Defence.

Australia has two intelligence assessment agencies. One is the Office of National Assessments (ONA), which is responsible for producing analytical assessments of international developments. In doing so, it draws on secret intelligence collected by other agencies, as well as diplomatic reporting and open source material.<sup>5</sup> The other assessment agency is the Defence Intelligence Organization (DIO). DIO's role is to provide intelligence to inform defense and government policy and planning, and to support the planning and conduct of Australian Defence Force operations.<sup>6</sup> It should also be noted that ASIO is an assessment as well as collection agency.

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<sup>5</sup> *Ibid.*, p. 58.

<sup>6</sup> *Ibid.*, p. 56.

The United States does not have the direct equivalents of Australia's assessment agencies. Instead, the CIA and the Defense Intelligence Agency carry out assessments of intelligence in addition to their collection roles. In Washington, the National Intelligence Council is also responsible for mid-term and long-term strategic thinking and analysis.

Australia does not have a formally appointed head of its intelligence community. In this it differs from the United States, where the Director of Central Intelligence heads the intelligence community and also directs the CIA.

### **Policy Framework**

Each Australian intelligence agency reports to its respective minister. Ministers are responsible for policy proposals relevant to their agency. The Attorney General has general portfolio responsibility for domestic national security policy.

Coordination of intelligence policy across the government takes place through two mechanisms: the National Security Committee of Cabinet (NSC) and the Secretaries' Committee on National Security (SCoNS). The NSC is the senior policymaking body in the Australian government on national security matters. It comprises the senior federal ministers with national security responsibilities: the Prime Minister, the Deputy

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Prime Minister, the Treasurer, the Defence Minister, the Minister for Foreign Affairs, the Attorney General, and the Minister for Immigration. Official documents specify that:

*The National Security Committee [shall] be the focus for discussion and decision on major issues, including strategic developments, of relevance to Australia's national security interests:*

*The NSC [shall] also consider policy issues in relation to:*

- *intelligence and domestic security matters;*
- *law enforcement matters which involve security aspects or major strategic issues.*<sup>7</sup>

SCoNS, which answers to the NSC, is composed of the secretaries of the key government departments and the heads of relevant intelligence agencies. In Australia, secretaries of departments are generally career bureaucrats, and not political appointees. Most issues considered by the NSC are first considered by SCoNS. With respect to intelligence matters, its terms of reference are:

<sup>7</sup> 1994 *Cabinet Handbook*, as quoted in Carl Oatley, "Working Paper No. 61—Australia's National Security Framework—A Look to the Future," Australian Defence Studies Centre, October 2000, Appendix A.

*To provide coordinated advice to the NSC on the activities of departments and agencies in connection with intelligence and domestic security matters, including:*

- *resources, staffing policies and cost effectiveness;*
- *priorities;*
- *national interest considerations; and*
- *propriety.*<sup>8</sup>

All of the counter-terrorism policy measures and legislative changes discussed below were the result of SCoNS and NSC decisions.

### **Security for the Olympic Games**

The security operation for the 2000 Sydney Olympic Games was the largest ever to take place in Australia. The demands on Australia's intelligence community were considerable. The Australian government and the intelligence community were acutely conscious that, in the

<sup>8</sup> "The Operation of the Government's National Security Mechanisms," unpublished Defence Department booklet, March 1999, quoted in Oatley, Appendix B.

words of the Attorney General, "these events could provide an international stage on which some groups could seek to advance their cause through acts of violence."<sup>9</sup> Media reports echoed official concerns. Singapore's *Straits Times*, for example, quoted regional intelligence sources as saying that the al-Qa'ida-influenced Jemaah Islamiyah (JI) terrorist organization had planned to attack the Sydney Olympic Games.<sup>10</sup>

ASIO held the main responsibility for intelligence collection and advice with respect to the Olympic Games. To enhance the organization's ability to provide effective intelligence, the government increased its budget appropriation of A\$46 million<sup>11</sup> by approximately 12 percent for budget years 1998-2001—adding a total of some A\$17 million.<sup>12</sup> This augmentation enabled ASIO to recruit staff, acquire special infrastructure and equipment (including new analytical databases), and increase its number of threat assessments. ASIO also

<sup>9</sup> Attorney General Daryl Williams, *Welcome Address to the Dignitary and Athlete Protection Olympic Conference*, 24 July 2000, accessed at: <http://www.ag.gov.au/www/attorneygeneralHome.nsf>.

<sup>10</sup> Felix Soh, "Osama's Men Targeted Sydney Olympics," *Straits Times*, 3 December 2002.

<sup>11</sup> At the time, the exchange rate for A\$1.00 hovered between US\$0.60 and US\$0.50.

<sup>12</sup> See Attorney General press release, 12 May 1998, "Law and Justice-1998/1999 Budget," accessed at: <http://www.ag.gov.au/www/attorneygeneralHome.nsf>

established a Federal Olympic Security Intelligence Centre (FOSIC) to coordinate its national security intelligence contribution to the Olympic Games.

The intelligence effort in the lead up to the Olympics demonstrated the importance of cooperation with intelligence agencies worldwide. Officers from a range of overseas intelligence partners, including the United States, were integrated into Australia's Olympics intelligence effort. Overseas agencies also shared basic data on known terrorists.

ASIO's collection powers were also enhanced. The ASIO Amendment Act, passed in November 1999, authorized, for the first time, the use of tracking devices under warrant and remote access to computers. Additional powers were granted in 2000. Under the Telecommunications (Interception) Legislation Amendment Act, intelligence agencies gained the power to obtain named-person warrants. These warrants differ from traditional interception warrants in that they do not apply to a specific telephone number or service, but instead allow the agency to intercept any telecommunications service used by the person named in the warrant—the typical situation being where an individual uses multiple mobile phones to avoid interception. The legislation also introduced a new kind of warrant known as a foreign intelligence warrant. This war-

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[Canberra] enhanced intelligence against potential terrorism at the 2000 Olympic Games.  
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rant provides broad powers to intercept “communications that are being made to or from any telecommunications service that a person or foreign organization is using, or is likely to use, for the purpose of obtaining foreign intelligence,” subject to certain restrictions.<sup>13</sup>

These measures all contributed to an Olympic Games that was free of terrorist incidents.

**Post-September 11 Threat Environment**

The September 11 attacks in New York and Washington were acts of terrorism on a scale the world had not previously experienced. They fundamentally changed the way terrorism is perceived by the United States and its allies and underscored the critical necessity of significantly improving the collection and use of intelligence.

From Australia's perspective, according to the Attorney General, September 11 “changed the international security environment forever. As an ally of the United States, Australia's profile

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<sup>13</sup> Section 11B (1) of the Telecommunications (Interception) Legislation Amendment Act.

as a terrorist target has increased significantly...Australia's security environment has altered forever.”<sup>14</sup>

Of course the Australian government was already conscious of the threat of fundamentalist Islamic terrorism. Australia's intelligence agencies had for some time been monitoring the activities of a number of terrorist organizations in the region and the activities of some people in Australia linked to international terrorism. Australia's vulnerability was underscored on 3 November 2001 when the Arab world's al-Jazeera television channel broadcast a statement by al-Qa'ida leader Osama bin Laden identifying Australia as an enemy of Islam.<sup>15</sup>

ASIO Director General Dennis Richardson reflected on the changed security environment in testimony before the Senate Legal and Constitutional Legislation Committee in April 2002:

*We have operated for many years in the very-low to low zone of the threat spectrum, with levels occasionally broaching medium level. Our normal operating level is now low-to-medium, with threat levels occasionally reaching high. We now have a sustained, high-level level of threat to the*

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<sup>14</sup> Opening address by the Attorney General to the “Globalizing Terror, Political Violence in the New Millennium Conference,” held in Hobart, Tasmania, Australia, on 8 May 2002.

<sup>15</sup> See report on the broadcast in *The Australian*, 5 November 2001, p. 3.

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**As a US ally, Australia's profile as a terrorist target has increased significantly.**

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*US, the UK and the Israeli interests in Australia and a higher level of threat to some other diplomatic missions and government visitors. The threat from chemical, biological and radiological terrorist attacks has been raised from low to medium. Likewise, the threat to aviation interests has been raised from low to medium. Also, attention is now paid to threats to national symbols and infrastructure.*

*Since September 11 the threat to Australian interests abroad has also increased. In early November a grenade was thrown into the grounds of the Australian International School in Jakarta. In December, Singapore authorities uncovered advanced terrorist planning for an attack against largely US interests. The planning also included the Australian High Commission in Singapore. ... [S]ome terrorist groups with global reach have a small number of supporters in Australia and a small number of Australians have trained in [al-Qaeda] terrorist camps in Afghanistan. Not all the latter are in US military custody.<sup>16</sup>*

### Enhancing Intelligence

Responding to the September 11 attacks, the Australian government allocated significant additional funds—totaling A\$96

<sup>16</sup> See transcript of the Committee hearing, accessed at: [http://parlinfoweb.aph.gov.au/piweb/view\\_document.aspx?id=27710&table=COMMBILL](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?id=27710&table=COMMBILL).

million over 4 years—to ASIO, ASIS, ONA and the defense intelligence agencies. The bulk went to ASIO, which saw its budget allocation of A\$65 million for 2001-02 supplemented by A\$48 million over 4 years.<sup>17</sup>

A Joint Counter Terrorism Intelligence Coordination Unit was established in ASIO, with officers from ASIO, ASIS, DIO, DSD, DIGO, and the AFP. The Unit has access to the databases of all relevant agencies, and is designed to ensure the effective sharing and coordination of intelligence information across agencies.<sup>18</sup>

Numerous legislative changes were made to strengthen Australia's ability to respond to terrorism. A number of those were of relevance to the collection and use of intelligence. The federal criminal code was amended

<sup>17</sup> Attorney General's portfolio budget statements, 2002-03, accessed at: <http://www.ag.gov.au/www/agdHome.nsf/Web+Pages/25FDFC7E87235921CA256BDB000B2B62?OpenDocument>. See also, Attorney General's press release "Counter-Terrorism Measures," 14 May 2002, accessed at: <http://www.ag.gov.au/www/agdHome.nsf/Web+Pages/305C354AF0D4D4A9CA256BDB000B2AFA?OpenDocument>.

<sup>18</sup> Dennis Richardson, "Address to Australian Homeland Security Conference," 31 October 2002, accessed at: <http://www.asio.gov.au/Media/comp.htm>.

to include a new offense of terrorism and offenses relating to membership and other specified links with a terrorist organization. The Telecommunications (Interception) Act was adjusted so that offenses involving terrorism now fall within the most serious class of offenses for which interception warrants are available.

Because of potential jurisdictional ambiguities in terrorist situations, the federal government reached an agreement with state governments that federal authorities would have lead responsibility for "national terrorist situations." The states also agreed to refer necessary constitutional powers to support the prosecution of terrorists by the federal government.

Important new legislation, the Intelligence Services Act, was passed in late September 2001. This legislation placed ASIS, which had existed under executive orders, on a statutory basis for the first time. The act also defined DSD's functions in legislation for the first time. The legislation established a parliamentary joint committee to oversee the two agencies' and ASIO's expenditure and administration. The act specifically proscribed paramilitary activities or activities involving personal violence or the use of weapons in connection with the planning and conduct of all the functions of ASIS.<sup>19</sup>

<sup>19</sup> Section 6(4), Intelligence Services Act.

An ASIO Legislation Amendment (Terrorism) Bill, containing even more wide-ranging proposals for change, was introduced into the Australian parliament in early 2002. The bill proposed that ASIO be given the power to obtain warrants to detain and question persons aged 14 or over for a period of up to 48 hours—extendable for up to seven days—for the purposes of investigating terrorism offenses. Questioning would take place before specified current or retired judges or legally qualified members of the Administrative Appeals Tribunal. People detained under this power would not necessarily have to be suspected of having committed any offense—the possibility of possessing information about terrorism offenses would be sufficient. There would be no right to silence and, in exceptional circumstances, detainees could be denied access to a lawyer for the first 48 hours of detention. Warrants would be approved by the Attorney General and a federal magistrate or a judge.

This bill was strongly opposed in parliament—opposition members and minor parties combined in the senate to block its passage throughout 2002. Proposed amendments included: excluding people under the age of 18 from detention, restricting questioning of detainees to 20 hours, and ensuring detainees' access to legal representation at all times. The government rejected the proposed amendments. A compromise was finally reached, and the bill became law in June 2003. The

minimum age for potential detainees was changed to 16, detainees were given the right to have a lawyer present as soon as questioning began, and limitations were imposed on the length of time a person could be questioned—no more than eight hours at a time, for a total of 24 hours over seven days.<sup>20</sup>

### Impact of the Bali Bombings

In the evening of October 12, 2002, in a coordinated terrorist attack, three bombs exploded almost simultaneously in Bali, Indonesia—two near tourist night spots and one on a street around the corner from the American consulate in Bali's capital, Denpasar.<sup>21</sup> The blasts killed 202 people, 89 of whom were Australian citizens.<sup>22</sup> This was the greatest loss of Australian life as result of a single incident since the Second World War.<sup>23</sup>

Australia's immediate response was to provide a 46-member team of officers from the AFP, ASIO, and state police forces to

assist the Indonesian police in their investigation of the bombings. The Commissioner of the AFP and the Directors-General of ASIO and ASIS flew to Indonesia to meet with local authorities about the bombings. The United States provided forensic specialists and FBI agents to assist the investigation.

In early November 2002, Indonesian police detained a suspected member of the Islamic fundamentalist Jemaah Islamiyah in connection with the bombings. On 9 November, the Indonesian Defense Minister stated: "The way it was carried out, I'm convinced it is the work of al-Qa'ida."<sup>24</sup> The following months saw additional arrests of members of JI, including the placing of JI's spiritual leader, Abu Bakar Bashir, under house arrest. But the alleged mastermind of the Bali bombings, Riduan Isamuddin, alias Hambali, remains at large.

In parallel with Indonesian actions, ASIO stepped up its investigation of alleged JI and al-Qa'ida members and associates in Australia. In conjunction with the AFP, ASIO conducted raids on a number of homes in cities around Australia in late October in search of evidence that JI was operating inside the country. One person was arrested as a result of the raids and charged with planning to blow up the

<sup>20</sup> Some further minor technical amendments were made to the ASIO Act on 5 December 2003.

<sup>21</sup> Geoffrey Barker, "20 Seconds of Maximum Slaughter," *Australian Financial Review*, 2 November 2002.

<sup>22</sup> See, for example, "Australian Toll of Bali Bomb Victims Rises to 89," *Agence France Presse*, 4 March, 2003.

<sup>23</sup> To put this in an American context, based on relative populations, on a per capita basis, the Bali toll was the equivalent of over 1,200 American fatalities.

<sup>24</sup> Martin Chulov, "Bali Bombs: Al-Qa'ida Did It—Indonesians 'Convinced' of Islamic Terror Link," *The Australian*, 9 November 2002.

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laws.**

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Israeli Embassy in Australia. An investigation by ASIO determined that Abu Bakar Bashir had visited Australia a number of times in the 1990s.

One month after the Bali bombings, an audiotape, apparently made by Osama bin Laden, was broadcast on al-Jazeera, claiming al-Qa'ida's involvement in the bombings. In the broadcast, bin Laden states: "We warned Australia before not to join in the war in Afghanistan, and against its despicable effort to separate East Timor. But it ignored this warning until it woke up to the sounds of explosions in Bali. Its government subsequently pretended, falsely, that its citizens were not targeted." The tape went on to call on Australia and other US allies to abandon the US "gang of criminals."<sup>25</sup> The capture in Pakistan in 2003 of one of al-Qa'ida's senior figures, Khalid Shaikh Mohammed, has provided further evidence of that terrorist group's involvement with JI.<sup>26</sup>

Responding to the Bali bombings, the Australian government put increased emphasis on the anti-terrorism initiatives underway. ASIO received additional funding immediately after the bombings, and further funding

was provided in the 2002-03 budget, handed down in May 2003.

On October 16, less than a week after the Bali bombings, the federal parliament passed a long-proposed package of legislation updating Australia's espionage laws. The most significant change was an increase in the penalty for serious cases of espionage from seven years' imprisonment to 25 years. In a key provision, the legislation strengthened protections for intelligence sources, providing the same protection to information from non-Australian intelligence agencies as that provided to Australian-sourced information. This provision was enacted to reassure intelligence partners that classified information provided to Australian counterparts would be properly guarded.

Australia has also signed memorandums of understanding on counter-terrorism with Indonesia, the Philippines, Malaysia, and Thailand. The agreements promote increased bilateral cooperation between intelligence and law enforcement agencies and defense officials of Australia and the signatory countries.

### The War Against Iraq

Australia's participation in the recent war against Iraq increased its profile as a possible target of fundamentalist Islamic terrorists. On March 30, 2003, following a suicide attack by an Iraqi bomber that killed four US soldiers in Iraq, the then-Vice-President of the country, Taha Yassin Ramadan, stated: "We will use any means to kill our enemy in our land and we will follow the enemy into its land. This is just the beginning. You'll hear more pleasant news later. You will not find any American, British, or Australian soldiers desecrating our land."<sup>27</sup>

Conscious of the public sensitivities about commitment of Australian armed forces to the war against Iraq, the government sought to downplay the increased terrorist risk. Shortly after the commencement of the war, the Prime Minister stated: "We now have been on a much higher terror alert for quite a long time now... [S]ince the start of operations in Iraq we haven't received any specific intelligence that would warrant a further upgrading or heightening of the terrorist alert."<sup>28</sup>

In his address to the nation on March 20, 2003, announcing Australia's decision to participate in

<sup>25</sup> See report on the broadcast in the *Times Online*, 14 November 2002, accessed at: <http://www.timesonline.co.uk/article/0,,4281-480210,00.html>.

<sup>26</sup> Kimina Lyall and Martin Chulov, "9/11 Arrest Throws Light on JI," *The Australian*, 3 March 2003.

<sup>27</sup> Ian McPhedran, "Iraq Threatens World Terror," *The Australian*, 31 March 2003.

<sup>28</sup> "Transcript of Press Conference of the Prime Minister at Parliament House," 23 March 2003, accessed at: <http://www.pm.gov.au>.

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the war against Iraq, the Prime Minister had spoken at length about the importance of intelligence in the fight against terrorism, and the close ties between Australia, the United States, and the United Kingdom on intelligence matters:

*A key element of our close friendship with the United States and indeed with the British is our full and intimate sharing of intelligence material. In the difficult fight against the new menace of international terrorism there is nothing more crucial than timely and accurate intelligence. This is a priceless component of our relationship with our two very close allies. There is nothing comparable to be found in any other relationship—nothing more relevant indeed to the challenges of the contemporary world.*

*I know that some people are saying that what we have done makes it more likely that terrorists will attack Australia. Australia has been a terrorist target at least since the 11th of September 2001. Australia is a western country with Western values. Nothing will or should change that. That is why we are a target. Remember that bin Laden specifically targeted Australia because of our intervention to save the people of East Timor.*

*Does any Australian seriously suggest that if bin*

*Laden's warning had come before the East Timor action we should have caved in and changed our policy? That will never be the Australian way. We believe that so far from our action in Iraq increasing the terrorist threat it will, by stopping the spread of chemical and biological weapons, make it less likely that a devastating terrorist attack will be carried out against Australia.<sup>29</sup>*

### Similarities in Responses

The ties between the US and Australian intelligence communities are close and longstanding. As a consequence, it is not surprising that the intelligence responses to terrorism by the two countries bear many similarities. Each country has reacted to the threat of catastrophic terrorist attacks by significantly enhancing intelligence collection capabilities. Each has allocated additional resources to intelligence agencies, strengthened powers, and legislated harsher penalties for terrorism.

<sup>29</sup> Prime Minister's Address to the Nation, 20 March 2003, accessed at: <http://www.pm.gov.au>.

Both the United States and Australia have enhanced their warrant powers in recent years, with new authority to issue named-person warrants and intercept some electronic communications. Largely in response to the Oklahoma City and 1993 World Trade Center bombings, the United States substantially increased penalties for terrorism offenses in 1996 under the Anti-terrorism and Effective Death Penalty Act. Australia made similar amendments to its terrorism provisions in 2002.

Efforts have also been made to better coordinate counter-terrorism intelligence. In Australia, this has taken place under the auspices of ASIO's Joint Counter Terrorism Intelligence Coordination Unit. Australia's intelligence community is small compared to that of the United States, and efforts to coordinate counter-terrorism intelligence domestically have not encountered the same difficulties as in the United States. ASIO has a staff of just under 700 personnel; in contrast, in 2002, the FBI had more than 2500 agents working on counter-terrorism issues alone.<sup>30</sup>

<sup>30</sup> Similar size differences affect foreign-intelligence efforts. Australia's foreign-intelligence agency, ASIS, had a budget of approximately US\$36 million in 2002-03, compared to the CIA's estimated budget in 2001 of US\$3.5-4 billion. The CIA's budget is classified. These estimates come from the Centre for Defence Information's Terrorism Project—see "Intelligence Funding and the War on Terror," 26 February 2002, accessed at: [http://www.cdi.org/terrorism/intel-funding-pr.cfm#\\_edn7](http://www.cdi.org/terrorism/intel-funding-pr.cfm#_edn7).



Washington's efforts to integrate counter-terrorism intelligence have long been hampered by agency turf battles and the sheer scope of the task. The tradition of the FBI as a predominantly law-enforcement body has particularly complicated efforts to improve intelligence coordination.

The small pool from which many of the senior management are drawn facilitates cooperation among agencies in Australia. The current Director-General of ASIO, Dennis Richardson, spent much of his career in Australia's Department of Foreign Affairs and Trade—joining the Department around the same time as the current Director-General of ASIS, David Irvine. The previous Director-General of ASIS, Alan Taylor, was also a longtime foreign affairs officer. Kim Jones, the Director-General of ONA, spent much of his career in the Department of Foreign Affairs, rising to the level of deputy secretary before being appointed to ONA.

Following the September 11 attacks, Washington renewed efforts to better integrate intelligence analysis. In June 2002, President George W. Bush declared that the new Department of Homeland Security would be responsible for coordinating intelligence about threats against the US homeland. Then, in his State of the Union Address in January 2003, he announced the creation of a new Terrorist Threat Integration Center (TTIC) to “close the seam” between foreign- and domestic-intelligence

analysis. Opened on 1 May 2003, the Center is co-located with the Director of Central Intelligence's Counterterrorist Center and the FBI's Counterterrorism Division, in temporary premises at the CIA's Langley headquarters. The Center reports to the Director of Central Intelligence and is charged with providing coordinated counter-terrorism intelligence analysis. It is also to work with the Department of Homeland Security and other relevant US intelligence agencies.

Whether this melding of analysis in the Center will eventually result in better coordination of counter-terrorism intelligence remains to be seen. The challenges facing TTIC are considerable. After its first six months of operation, it was still in the process of building its staff, integrating diverse information technology systems, and sorting out jurisdictional issues.

### **Contrasts in National Approaches**

Notwithstanding the similarities in their overall reaction to heightened terrorism, significant differences characterize the intelligence responses of Australia and the United States. It is not the author's intent to explore the relevant US responses in detail—key differences are mentioned here only to provide a basis for contrast with Australia.

Many of the differences stem from the fact that the September 11 attacks were fundamentally

attacks on the United States and its way of life. Highly visible targets in the US homeland were destroyed—and the tragedy played out live on television in front of a national audience. The Bali bombings, horrific though they were, took place outside of Australia and were not captured on television. Thus, the Bali bombings were not as devastating a shock to the Australian people as the September 11 attacks were to Americans.

President Bush and the US Congress declared “war on terrorism,” and many of the US intelligence responses in the past two years are those of a country at war. An obvious example is the manner in which Washington is alleged to have obtained intelligence information from the interrogation of al-Qa'ida suspects at Bagram Airbase in Afghanistan, Guantanamo Bay, Cuba, and, possibly, through “renditions” of suspects to intelligence agencies in third countries, such as Egypt, Jordan, and Morocco. From reports in *The Washington Post* and the *New York Times*, it appears that the United States is prepared to go to considerable, and previously inconceivable, lengths to obtain information from alleged terrorist detainees—including the condoning, if not actual use, of torture.<sup>31</sup>

US authorities also have used an array of detention powers to hold suspects who may be able to provide information about terrorism. Detention in the United States has been both preventative in

nature and coercive in its attempt to obtain relevant information. Hence, the Justice Department has made extensive use of immigration laws and material-witness powers to detain those whom it considers a threat, or who know someone who might be a threat.<sup>32</sup> In addition, over 600 alleged al-Qa'ida and Taliban members are being held at the US base at Guantanamo Bay as enemy combatants.

The contrast with Australia is significant. In Australia, the only practical means of detention, other than arrest for offenses already committed, is that available under the new ASIO Act. This power allows the detention of persons for the purposes of questioning by ASIO. Superficially, this detention power is similar to the US material-witness provisions, which allow the holding of individuals if their testimony is critical to a criminal proceeding. In substance, however, there are considerable differences. The ASIO power allows detention for a maximum of seven days—with questioning

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<sup>31</sup> Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations—'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities," *The Washington Post*, 26 December 2002. Raymond Bonner, Don Van Natta, Jr., and Amy Waldman, "Threats and Responses: Interrogations—Questioning Terror Suspects In a Dark and Surreal World," *New York Times*, 9 March 2003.

<sup>32</sup> Laurie Levenson, "Detention, Material Witnesses and the War on Terrorism," 35, *Loyola of Los Angeles Law Review*, p. 1217.

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limited to eight-hour blocks, not to exceed 24 hours in total (48, if an interpreter is used). A subsequent warrant can only be issued against the same person if it is based on new information—*i.e.*, information not known to the Director-General of ASIO when the previous warrant was issued. Any questioning of the detainee has to take place before specified current or retired judges or legally qualified members of the Administrative Appeals Tribunal. Detainees have a right to a lawyer throughout the questioning. In contrast, material-witness powers have been used by US authorities to detain individuals for months at a time, often in solitary confinement, and without access to a lawyer or the courts.<sup>33</sup>

To date, Australian authorities have not arrested or detained any alleged terrorists or terrorist suspects in connection with the

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<sup>33</sup> See, for example, Steve Fainaru, "Suspect Held 8 Months Without Seeing Judge; Civil Liberties Advocates Decry Treatment; U.S. Says Man Forfeited Rights," *The Washington Post*, 12 June 2002.

September 11 or Bali bombings. One Australian citizen was arrested in November 2002 for an alleged plot to bomb the Israeli embassy in Sydney. This individual has been charged with terrorism offenses. And in October 2003, an Australian resident with French citizenship was arrested on immigration charges and departed to France, where he was detained and interrogated about alleged terrorism activities. With these exceptions, it appears that the only Australians in detention for terrorism-related matters are two men captured by US forces in Afghanistan, currently being held at Guantanamo Bay as members of al-Qa'ida or the Taliban.<sup>34</sup>

Australia and the United States have also taken different approaches to the use of covert action and assassination by intelligence agencies. In Australia, the issue is straightforward: Australia's foreign-intelligence agents are specifically prohibited from engaging in "paramilitary activities or activities involving personal violence or the use of weapons." In strong contrast, the CIA has a paramilitary division whose members include snipers and demolition experts. The paramilitary division participated in the Afghan campaign and, according to media reports, was engaged in trying to kill members of President Saddam

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<sup>34</sup> The two detainees are David Hicks and Mamdouh Habib. See press release of the Australian Attorney General, "David Hicks and Mamdouh Habib Treated Well," 23 May 2002.

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Hussein’s inner circle in Iraq.<sup>35</sup> In November 2002, missiles launched from an unmanned CIA Predator aircraft killed six suspected al-Qa’ida members in Yemen.<sup>36</sup>

A final key difference between the US and Australian intelligence responses to terrorism relates to the extent of integration between domestic intelligence and law enforcement agencies. In Australia, intelligence (ASIO) and law enforcement (AFP) remain separate. In the United States, domestic law enforcement and intelligence functions are combined in the FBI. The FBI began as a law enforcement organization; its counterintelligence and counterterrorism powers and responsibilities were clarified and expanded after the Second World War.

The separation between intelligence and law enforcement in Australia is a reflection of the Australian intelligence community’s British heritage. ASIO was established in 1949 following a recommendation from the UK security service, MI5, to the Australian government. ASIO was modeled on MI5 and the British practice of separating intelli-

gence and law enforcement functions. The rationale for this separation is that it enables stronger powers to be given to an intelligence agency—which investigates for intelligence purposes only and has no powers of arrest—than would be acceptable for a law enforcement agency. New Zealand and Canada also follow the British model.

After September 11, the FBI was subject to trenchant criticism—some of it internal—charging that it was too focused on law enforcement and not focused enough on terrorism prevention. Over the past two years, the Bureau has undergone a significant reorganization and has shifted its primary attention to counter-terrorism.<sup>37</sup> The question remains, however, whether it would be more effective to have the FBI’s counter-terrorism role performed by a separate agency. This issue is somewhat moot, because the FBI and its supporters in congress would strongly oppose a separation of functions. Such a move might have been possible in the aftermath of Sep-

tember 11, taking advantage of the legislative momentum that enabled passage of the Homeland Security Act and the USA Patriot Act, but it is probably not feasible in the current environment in the absence of a significant and identifiable intelligence failure on the part of the FBI.

In Australia, where the functions are separate, ASIO and the AFP support the continued division of intelligence and law enforcement functions, although in recent times the AFP has been keen to enhance its intelligence gathering powers at the possible risk of encroaching on ASIO’s role. From ASIO’s perspective, there are many occasions when a law enforcement approach to terrorism is not desirable. In many of its operations, the primary focus must be on disruption and prevention, with prosecution being a secondary consideration. The continuing separation of functions ensures that the culture at ASIO remains one of an intelligence agency. And the close ties between the AFP and ASIO ensure that the AFP gets the lead in those cases where a law enforcement approach—and prosecution—is more appropriate.

### Conclusion

Australia has placed intelligence at the forefront of its response to the September 11 attacks and the Bali bombings. It has done this in the belief that improving the collection and use of intelligence

<sup>35</sup> Dana Priest, “U.S. Teams Seek to Kill Iraqi Elite—Covert Missions Target Hussein’s Inner Circle,” *The Washington Post*, 29 March 2003.

<sup>36</sup> On the issue of assassinations, see also Fred Hitz, “Unleashing the Rogue Elephant: September 11 and Letting the CIA Be the CIA,” 25, *Harvard Journal of Law and Public Policy*, p. 765.

<sup>37</sup> See “President Speaks at FBI on New Terrorist Threat Integration Center,” 14 February 2003, accessed at: <http://www.whitehouse.gov/news/releases/2003/02/200302145.html>.

is the best way to reduce the risk of further catastrophes. Hence, Australia's intelligence agencies have received most of the powers and resources that they have sought in this new age of terrorism.

As a result, Australia's intelligence community is now well placed to fight terrorism inside the country and better placed than previously to fight terrorism within the region. Of course, no matter how well resourced the intelligence community is, its ability to prevent acts of terrorism will always depend on many factors, not the least of which may be a degree of good fortune.

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In light of Australia's role as a member of the “Coalition of the Willing” in the war against Iraq, its profile as a potential target for fundamentalist Islamic terrorists will remain high—guaranteeing challenges to the enhanced capabilities of Australia's intelligence community for the foreseeable future.