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Blustering Brandis makes a mockery of IGIS' vaunted 'independence'

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The last appearance of the current Inspector-General of Intelligence and Security, Dr Vivienne Thom, at Senate estimates has left serious questions over the independence of her office, and left the position badly damaged.

Thom is leaving the position on July 18 and appeared before the Finance and Public Administration Legislation Committee for an estimates hearing late on Monday night. The government has ramped up its use of IGIS as a justification for its dramatic expansion of security-agency powers over the last year, insisting IGIS has "royal commission-like powers" of investigation in relation to misbehaviour by intelligence agencies or their staff, and provides an appropriate safeguard against abuse. Thom's [performance](#), and that of Attorney-General George Brandis, was little short of disastrous in terms of maintaining confidence that IGIS can play any credible watchdog role in relation to Australian intelligence agencies.

Thom opened her appearance insisting on making a statement addressing "two concerns that have been expressed about my office and my position" -- that she is insufficiently independent and not transparent in her oversight. On transparency, Thom said that necessarily much of her work must be conducted in secret, though "as much of my work as can be made public should be made public so as to build and maintain confidence in intelligence oversight". On independence, she said "it has been variously asserted that the Inspector-General is not independent, that I am subject to direction and that my office is part of the Department of the Prime Minister and Cabinet or part of the Australian intelligence community. These assertions are wrong in law and wrong in practice. Like the Commonwealth Ombudsman, the Inspector-General is an independent statutory officer."

But that claim of independence was wrecked within minutes, with Brandis overriding Thom and insisting on

derailing efforts by independent Senator Nick Xenophon to ask Thom about whether she had checked to ensure intelligence agencies had complied with an order of the International Court of Justice that Australia returned documents seized from East Timor's lawyer Bernard Collaery unexamined.

The documents were seized by ASIO in Canberra raids authorised by Brandis in December 2013 after a former Australian Secret Intelligence Service officer revealed that ASIS, at the direction of then-foreign minister Alexander Downer, had bugged the cabinet rooms of the East Timorese government to advantage Australia in negotiations over the maritime boundary between Australia and the new state. The ASIS officer had his passport seized by the government to prevent him travelling to the ICJ to give evidence.

It is [a matter of public record](#) that the ASIS officer, known as Witness K, contacted Thom's predecessor, Ian Carnell, and met and corresponded with Carnell. However, Thom has denied such contact ever took place, and refused to explain her basis for maintaining that claim.

On Monday night, when Xenophon asked Thom about whether she had checked to ensure that the documents seized from Collaery had not been tampered with, Brandis intervened to prevent her from answering, insisting on taking all the questions himself and saying he would answer them on notice, ensuring they would not be answered until late this year and in writing by his office.

So much for IGIS' statutory independence.

Brandis refused to make a public-interest immunity claim about the issue, which would have needed to be assessed by the committee, but warned Xenophon to "tread carefully" as litigation on the matter was still ongoing. At one stage, he appeared to argue that checking to observe whether an intelligence agency had complied with an order of an international court might have been outside the scope of IGIS' powers, even though IGIS is not within his own portfolio.

Xenophon, who has doggedly pursued the East Timor spy scandal, tried one more time to get Thom to explain the bizarre discrepancy between what is well-established -- that "Witness K" had extensive contact with the then-IGIS -- and her insistence it never happened.

"Xenophon: I am trying to understand this. Dr Thom, on 6 December 2013 -- we have traversed this previously in estimates, about a year ago -- you stated that no current or former ASIS officer had raised concerns with IGIS, including your predecessor, about alleged Australian government activity -- ASIS activities -- in East Timor. We have Bernard Collaery's statement in the 156th report of the Senate Privileges Committee that in 2008 a former ASIS officer, Witness K, approached your predecessor about these matters. I am just trying to understand what that discrepancy is.

"Thom: I stand by what I said publicly. I do not think I can make any further comment on this matter at all. I have no further information that I can provide on this matter."

After Brandis again tried to interfere, Xenophon continued:

"Xenophon: Can I put it in these terms: you provided a report in good faith on 6 December 2013. The Privileges Committee reported several months later. You were not to know what Mr Collaery was to say at that time. Have you, as a result of the assertions made by Mr Collaery to the Senate Privileges Committee, undertaken further inquiries as to whether there has been any communication with your predecessor in respect of any matters relating to Witness K or Mr Collaery on behalf of Witness K?

"Thom: I stand by what I said publicly previously and what I have said a number of times in this committee."

So Thom gets to leave without ever explaining why she blatantly maintains something contradicted by the public record on the most serious spy scandal in decades. Hopefully, Thom's successor will be both more independent and more transparent. Thom leaves the role of IGIS with major questions unresolved as to the capacity of the office to provide any genuine oversight of Australia's most powerful, least accountable bureaucracies.