



Australian Government
Department of Foreign Affairs and Trade

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Committee Secretary
Senate Finance and Public Administration Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Secretary

**Department of Foreign Affairs and Trade (DFAT) Comments on the Proposed
*Intelligence Services Amendment (Enhanced Parliamentary Oversight of Intelligence
Agencies) Bill 2018***

Thank you for the opportunity to comment on the proposed *Intelligence Services Amendment (Enhanced Parliamentary Oversight of Intelligence Agencies) Bill 2018* (the bill).

DFAT is not a member of the National Intelligence Community (NIC) but has strong interests in the contribution Australia's intelligence community makes to Australia's national security and international relations. DFAT works in close partnership with all members of the NIC, both within Australia (including as an important participant in intelligence policy development and coordination arrangements) and overseas. DFAT also has important responsibilities in relation to Australia's compliance with international human rights obligations.

DFAT considers that the fundamental architecture of intelligence oversight in Australia is sound. This includes an appropriate balance between Ministerial accountability and oversight, Parliamentary oversight, and independent oversight through the Inspector-General of Intelligence and Security (IGIS) and the Independent National Security Legislation Monitor (INSLM). Each of these elements are intrinsic to the lawfulness and public legitimacy of the intelligence function, and underwrite the integrity and independence of intelligence, especially assessment.

In addition to the proposed bill, DFAT is aware of several proposals in recent years to adjust Parliamentary oversight arrangements. DFAT considers that evolution of these arrangements is desirable as the nature of intelligence frameworks and missions adapts to new requirements and as public expectations change. However, this should be undertaken with great care to

protect the central role of Ministerial authority and accountability, the operational integrity of intelligence activities and the indispensable contribution of our foreign intelligence partnerships.

The stated aim of the proposed bill engages these considerations directly – to extend the functions of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) to examine and review intelligence agency operations and other activities including intelligence policy and coordination. Although the proposed bill retains existing prohibitions on reviewing information provided by a foreign government where that government does not consent to the disclosure of the information, extending PJCIS examination and functions requires special care to ensure that Australia's international obligations and foreign relations interests are appropriately protected.

The Committee will be aware of the close attention given to oversight arrangements in the 2017 Independent Intelligence Review (IIR). This review made a number of recommendations about Parliamentary oversight and the relationship between the PJCIS and the IGIS and INSLM.

The Committee will also be aware of the establishment of a Comprehensive Review of Legal Framework of the National Intelligence Community, announced in May 2018. An explicit element of the Comprehensive Review's terms of reference is consideration of oversight-related legislation, such as the *Inspector-General of Intelligence and Security Act 1986* and *Independent National Security Legislation Monitor Act 2010*.

DFAT is contributing to the development of the Government's response to the IIR recommendations and to the Comprehensive Review. It is DFAT's view that these processes are important vehicles for considering whether enhancements to oversight of intelligence agencies are required, and their outcomes should be factored into any proposed legislative amendments.

Therefore, DFAT considers the proposed bill is premature and any legislative action should be informed by the outcomes of the IIR and Comprehensive Review processes. Should the proposed bill progress further, the appropriate forum for the consideration of classified submissions, including from NIC agencies, would be the PJCIS.

Yours sincerely

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International Security, Humanitarian and Consular Group