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Attorney-General's Department

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Parliamentary Joint Committee on Intelligence and Security

Inquiry into the Strengthening Oversight of the National Intelligence Community Bill 2025

Attorney-General's Department Submission

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Introduction

The Attorney-General's Department (the department) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security's (the Committee) Review of the Strengthening Oversight of the National Intelligence Community Bill 2025 (the Bill).

Australia's National Intelligence Community (NIC) performs a vital role in keeping Australians safe and protecting Australia's national interest. To support them in performing their functions, intelligence agencies are entrusted with significant powers – including powers that may be covert and intrusive – to detect, disrupt and respond to threats to the nation's security. Robust statutory and parliamentary oversight of these agencies is critical to giving the community assurance that Australia's intelligence agencies are acting lawfully and with propriety. With national security threats becoming more complex and interconnected, agencies in the NIC are collaborating more closely and sharing intelligence information. The Bill proposes to extend specialised statutory and parliamentary oversight by the Inspector-General of Intelligence and Security (IGIS) and the Committee to all agencies performing intelligence functions to ensure holistic oversight of the NIC.

The Bill is substantially similar to the Intelligence Services Legislation Amendment Bill 2023 (ISLA Bill) that was introduced into Parliament on 22 June 2023, with some minor amendments and clarifications. The ISLA Bill was referred to the Committee on 26 July 2023 and the Committee's inquiry lapsed with the dissolution of the House of Representatives on 28 March 2025.

Noting the Committee's previous consideration of the ISLA Bill, and as requested by the Committee, the department's submission on the Bill is restricted to updates made since the ISLA Bill. This submission is intended to be read alongside, and supplementary to, the department's previous submission on the ISLA Bill.

Overview of the Bill

In brief, the Bill would:

- expand the respective oversight jurisdictions of the Committee and the IGIS to the Australian Criminal Intelligence Commission (ACIC) and the intelligence functions of the Australian Federal Police, the Australian Transactions Reports Analysis Centre and the Department of Home Affairs (Home Affairs)
- expand the jurisdiction of the Committee to conduct own-motion reviews of counter-terrorism or national security legislation or consider such legislation referred to it by the responsible Minister, the Attorney-General or either House of Parliament
- strengthen the relationship between the Committee, the IGIS and the Independent National Security Legislation Monitor (INSLM) by allowing the Committee to request the IGIS undertake inquiries into operational activities, and request the INSLM to provide briefings
- require the IGIS and the Director-General of the Office of National Intelligence to provide annual briefings to the Committee
- make technical amendments to the Committee's procedures to modernise and clarify provisions, and enhance the efficiency of the Committee, and
- provide an exemption from civil and criminal liability for defence officials and others for certain computer-related conduct.

Updates to the Bill since it was previously introduced as the ISLA Bill and which are discussed in further detail below would:

- entirely remove the ACIC from the jurisdiction of the Parliamentary Joint Committee on Law Enforcement and bring it wholly within the oversight of the Committee
- amend the *Independent National Security Legislation Monitor Act 2010* (INSLM Act) to ensure the INSLM is able to conduct own-motion reviews into the full suite of contemporary Commonwealth counter-terrorism and national security legislation, and to modernise and streamline reporting and administrative provisions in the INSLM Act, and
- make technical and minor amendments to correct inconsistencies and reflect the passage of other legislation since the ISLA Bill lapsed.

There has also been a change in the proposed approach to defining the intelligence function of Home Affairs in regulations made under the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act).

Parliamentary oversight of the ACIC

The Bill would amend the *Parliamentary Joint Committee on Law Enforcement Act 2010* to entirely remove the ACIC from the jurisdiction of the Parliamentary Joint Committee on Law Enforcement (PJCLE).¹ Under the ISLA Bill some residual oversight of the ACIC would have remained with the PJCLE, with the PJCLE maintaining a function to monitor, review and examine the annual reporting functions of the ACIC.

The Government has since accepted the recommendation of the *Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements* that the ACIC be entirely overseen by the Committee, noting the ACIC's existing and increased positioning as Australia's national criminal intelligence agency (recommendation 15).

The proposed amendments to the PJCLE Act will confer oversight of the ACIC wholly on the Committee. Transitional provisions in the Bill ensure that the Commonwealth Ombudsman will continue to be able to brief the PJCLE on its inspections of controlled operations undertaken by the ACIC under the *Crimes Act 1914* during the period the Ombudsman and the PJCLE had oversight jurisdiction of the ACIC.²

Amendments to the INSLM Act

The ISLA Bill clarified the ability of the Committee to request a briefing from the INSLM, to strengthen the relationship between the Committee and the INSLM. Schedule 4 of the Bill contains amendments to the INSLM Act to expand the INSLM's remit to conduct own-motion reviews and to improve the operational efficiency of the INSLM's office.

Expanding the INSLM's remit to conduct own-motion reviews

The Bill would amend the INSLM Act to expand the INSLM's remit to conduct own-initiative reviews into the full range of contemporary legislation relevant to counter-terrorism and national security, including the core legislation governing the NIC. These amendments would implement recommendation 64 of the 2024 Independent Intelligence Review (2024 IIR), which recommended that the INSLM Act be amended to ensure the INSLM is able to conduct own-motion inquiries into any Commonwealth legislation relating to counter-

¹ Items 89 – 101 of Schedule 1

² Item 3 of Schedule 5

terrorism or national security. The 2024 IIR recommended that, at a minimum, this should include the *Intelligence Services Act 2001*, the entirety of the *Australian Security Intelligence Organisation Act 1979*, the *Office of National Intelligence Act 2018* and provisions relating to intelligence agency powers in the *Telecommunications (Interception and Access) Act 1979*, *Telecommunications Act 1997* and *Surveillance Devices Act 2004*.

Section 6 of the INSLM Act sets out the INSLM's function to review, on his or her own initiative, the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation. 'Counter-terrorism and national security legislation' is currently defined under section 4 of the INSLM Act to mean a prescribed list of legislation. The Bill would amend the INSLM Act to insert a new definition of 'counter-terrorism and national security legislation'.³ The new definition would provide that counter-terrorism and national security legislation means any law of the Commonwealth that relates to counter-terrorism or national security, or Commonwealth laws to the extent they relate to counter-terrorism or national security. Counter-terrorism and national security legislation is intended to take its ordinary meaning, giving the INSLM an appropriate degree of flexibility when exercising his or her initiative to undertake reviews. For the avoidance of doubt, the definition also makes clear that counter-terrorism and national security legislation includes the legislation currently prescribed by the INSLM Act as counter-terrorism and national security legislation, as well as the additional legislation which the 2024 IIR recommended should be included in the INSLM's remit at a minimum.

The Bill would also amend the object clause in section 3 of the INSLM Act to provide that an object of the Act is to appoint an INSLM who will assist in ensuring that Australia's counter-terrorism and national security legislation is effective in deterring, preventing and responding to terrorism, terrorism-related activity and threats to Australia's security. This amendment is designed to reflect the expansion of the INSLM's mandate to conduct own-motion reviews into any Commonwealth law relating to counter-terrorism or national security, acknowledging that such laws may reflect a broader focus than terrorism and terrorism-related activity.⁴

Amendments to improve the operational efficiency of the INSLM's office

The Bill would make a number of minor amendments to the INSLM Act to streamline provisions relating to the INSLM's function to report on reviews he or she conducts and to improve the operational efficiency of the INSLM's office.

In relation to the INSLM's reporting requirements, the Bill would remove references in the INSLM Act to statutory reviews that have been completed by the INSLM,⁵ as these functions have been exhausted, and would consolidate references to the INSLM's function to report on own-initiative reviews (including those referred to it by the Committee), as well as statutory reviews.⁶

The Bill would also amend the INSLM Act to prescribe the INSLM as an official of the department for the purposes of the finance law under the *Public Governance, Performance and Accountability Act 2013*, and to make explicit that the INSLM has complete independence in the performance of their functions.⁷ The INSLM

³ Items 4 and 6 of Schedule 4

⁴ Items 1 and 2 of Schedule 4

⁵ Items 9, 12 and 13 of Schedule 4

⁶ Items 7-10 and 17-20 of Schedule 4

⁷ Item 15 of Schedule 4

is an independent statutory office holder appointed by the Governor-General; in practice, they are supported by an office comprised of staff who are employed under the *Public Service Act 1999* within the department and are made available to the INSLM under section 33 of the INSLM Act. Funds allocated to the INSLM are appropriated to the department and allocated by the department to the INSLM. The amendments would improve the efficiency of the INSLM's office by enabling the INSLM to exercise appropriate financial delegations to support the operation of their office, while making explicit that the INSLM's independence is preserved and they cannot be directed in the performance or exercise of their functions or powers.

Finally, the Bill would amend the INSLM Act to modernise leave of absence provisions. Section 14 of the INSLM Act provides that the Attorney-General may grant leave of absence to a full-time or part-time INSLM on terms and conditions determined by the Governor-General, which is not consistent with the approach taken to other statutory officeholders. The Bill would modernise these provisions to enable the Attorney-General to grant a leave of absence to the INSLM on terms and conditions determined by the Attorney-General, rather than as determined by the Governor-General.⁸

Technical and minor amendments

A number of technical and minor amendments have been included in the Bill since it was introduced as the ISLA Bill.

These amendments would clarify procedures of the Committee to:

- make explicit the Committee's function to review counter-terrorism or national security legislation on the basis of a referral by a responsible Minister, the Attorney-General or either House of Parliament,⁹ and
- clarify the circumstances in which the Committee must obtain the advice of relevant Minister(s) before it discloses or publishes evidence it receives to ensure that the Committee would only be required to seek advice where it considers it reasonably likely that disclosure or publication of evidence might disclose sensitive information which is not permitted to be disclosed.¹⁰

The Bill would also include other minor changes from the ISLA Bill to:

- remove items previously included in the ISLA Bill (items 22 and 23, intended to clarify that the IGIS was not required to consider implausible complaints), to ensure the IGIS retains their existing broad discretion to inquire into the conduct of intelligence agencies and is not inadvertently precluded from inquiring into potential serious misconduct by an intelligence agency on the basis that it appears implausible
- update consequential and contingent amendments to recognise the passage of a range of legislation since the introduction of the ISLA Bill, and
- make technical and minor amendments to address inconsistencies and update commencement provisions to reflect the passage of other legislation since the ISLA Bill lapsed.

⁸ Item 14 of Schedule 4

⁹ Item 54 of Schedule 1

¹⁰ Item 77 of Schedule 1

Approach to defining the ‘intelligence function’ of Home Affairs

The Bill provides that the ‘intelligence function’ of the Department of Home Affairs (Home Affairs) is to be defined by regulations made under the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act).¹¹

The department’s submission to the Committee’s inquiry into the ISLA Bill noted that the Government’s intention was to progress regulations which define Home Affairs’ intelligence function by reference to the ‘Intelligence Division’ within Home Affairs, as at that time Home Affairs’ intelligence functions were confined to that Division.

Home Affairs has subsequently undergone a departmental restructure and now maintains a distributed intelligence capability across the department. As such, further consideration is being given to the most appropriate way to define the intelligence function of Home Affairs by reference to a functional description of intelligence activities undertaken by Home Affairs.

Work is underway to settle the definition of Home Affairs’ intelligence function between Ministers to enable regulations to be made under the IGIS Act, subject to passage of the Bill.

The Bill also provides that the regulations may provide for notification requirements (in addition to consultation requirements, as was previously included in the ISLA Bill) in relation to changes to the intelligence function of Home Affairs.¹² This will ensure that any changes in Home Affairs’ intelligence function that may impact on oversight arrangements are notified to the department promptly, enabling the regulations to be updated expeditiously.

Conclusion

The department thanks the Committee for the opportunity to make a submission to its review of the Bill. Strong and effective oversight mechanisms are an essential part of advancing Australia’s national security interests. The Bill would ensure consistent treatment across the NIC with respect to parliamentary and statutory oversight, giving Australia’s intelligence agencies the licence to exercise significant powers while assuring the public that they are doing so with accountability and integrity.

¹¹ Item 6 of Schedule 1

¹² Ibid

Addendum: Responses to the Committee's queries regarding proposed amendments to the *Intelligence Services Act 2001*

Question 1 – Operation of paragraphs 29(1)(ba) and 29(1)(baaa)

Proposed paragraphs 29(1)(ba) and (baaa) each provide that it is a function of the Committee to 'review and inquire into' any proposed reforms to or expiry, lapsing or cessation of effect of certain legislation (with or without a referral, respectively).

- a) What is the intended effect of the words 'inquire into' in proposed paragraphs 29(1)(ba) and (baaa)? Is the word 'inquire' intended to be interpreted differently to the word 'review', which is used alone in relation to most of the Committee's other functions in Part 4 of the *Intelligence Services Act 2001*?
- b) Is there any risk that including both terms in paragraphs (ba) and (baaa) could lead to the Committee's existing 'review'-only powers in paragraphs (1)(a) and (1)(b) being interpreted more narrowly?

New paragraph 29(1)(ba) would provide that it is a function of the Committee to review and inquire into any proposed reforms to, or expiry, lapsing or cessation of effect of, counter-terrorism or national security legislation referred to it by the responsible Minister, the Attorney-General or either House of Parliament. New paragraph 29(1)(baaa) would provide for the Committee to perform the same function of its own initiative and without a referral.

The amendments are intended to explicitly recognise the Committee's existing role in relation to counter-terrorism and security legislation in the Committee's functions. The amendments are not intended to imply a substantive difference between the Committee's functions to review or inquire into legislation, nor to narrow the Committee's 'review'-only functions through use of the term 'inquire'. We note that both terms are already in use in various parts of subsection 29(1) of the *Intelligence Services Act 2001* in respect of other functions of the Committee.

Question 2 – Operation of paragraph 29(1)(bad)

The Explanatory Memorandum (para [224]) states that proposed new paragraph 29(1)(bad) is consistent with the PJCS's existing function to review any matter in relation to an intelligence agency referred to it by the responsible Minister, the Attorney-General or by a resolution of either House of the Parliament (set out in existing paragraph (1)(b)). However, unlike existing paragraph (1)(b), proposed new paragraph (1)(bad) includes both a monitoring and a review power. Moreover, the function is limited to monitoring and reviewing the performance by the AFP, AUSTRAC or Department of Home Affairs of their intelligence functions, rather than any matter in relation to the relevant body's intelligence functions. In this respect, the paragraph seems to borrow language from existing paragraph (1)(baa), which provides an ongoing role for the PJCS to monitor and review the AFP's counter-terrorism functions without the need for a prior referral.

- a) What is the intended effect of the words 'to monitor' in paragraph (1)(bad), as opposed to the words 'to review'?

- b) If ‘to monitor’ is intended to allow for longer term and ongoing oversight of AFP, AUSTRAC or Home Affairs intelligence functions, what is the purpose of requiring that the Committee first receive a referral before undertaking this role?**
- c) What would be the effect, if any, if the words ‘to monitor and’ were to be removed from paragraph (bad) for consistency with existing paragraph (1)(b)?**
- d) What would be the effect of replacing the words ‘the performance by AFP, AUSTRAC or the Department of Home Affairs of the intelligence functions of that body’ with ‘any matter in relation to the intelligence functions of AFP, AUSTRAC or the Department of Home Affairs’, for consistency with existing paragraph (1)(b)?**

New paragraph 29(1)(bad) would provide that it is a function of the Committee to monitor and review the performance of intelligence functions by AFP, AUSTRAC or the Department of Home Affairs referred to the Committee by a responsible Minister, the Attorney-General or either House of Parliament. This amendment is intended to align with the Committee’s existing function to review any matter in relation to an intelligence agency referred to it under paragraph 29(1)(b).

The use of the term ‘monitor’ was included to ensure alignment with the Committee’s existing functions in relation to oversight of the AFP’s performance of functions under Part 5.3 of the Criminal Code. It was not intended to imply the Committee should have an ongoing monitoring role of the performance of intelligence functions by AFP, AUSTRAC or the Department of Home Affairs, that goes beyond the existing oversight role performed by the Committee in relation to intelligence agencies within jurisdiction under paragraph 29(1)(b).

The reference to ‘the performance by AFP, AUSTRAC or the Department of Home Affairs of the intelligence functions of that body’ was also included to ensure alignment with the Committee’s existing functions in relation to the AFP. It was not intended to imply any difference in practice between the Committee’s review functions under paragraph 29(1)(bad) in relation to the AFP, AUSTRAC and Home Affairs and the Committee’s existing functions under paragraph 29(1)(b) to review ‘any matter’ in relation to other intelligence agencies.

For that reason, the Department does not consider there would be an issue with amending new paragraph 29(1)(bad) to remove the words ‘to monitor and’ and to amend the reference to ‘the performance by AFP, AUSTRAC or the Department of Home Affairs of the intelligence functions of that body’ to instead be ‘any matter in relation to the intelligence functions of AFP, AUSTRAC or the Department of Home Affairs’, for consistency with existing paragraph 29(1)(b).

Question 3 – Operation of paragraph 29(1)(bae)

Proposed paragraph 29(1)(bae) appears to require a second referral from the responsible Minister, Attorney-General or either House of the Parliament before the PJCS could report on any of its findings in relation to the ‘to monitor and to review’ function referred under paragraph (bad). This is unlike any of the Committee’s existing functions and appears to apply in addition to the Committee’s general reporting function in paragraph (1)(c).

- a) Given the Committee’s existing general reporting power at paragraph (1)(c), what is the intended effect of proposed paragraph (1)(bae), and what would be the effect if this paragraph was to be removed from the Bill?**
- b) Would the Committee require an additional referral under paragraph (bae) before it could report to the Parliament on the outcomes of its monitoring or review powers under paragraph (bad)? If so, noting the already strict limitations the PJCS’s disclosure of information to the Parliament (see**

Intelligence Services Act 2001, sch 1, cl 7, as amended by the Bill) what is the purpose of this additional referral requirement?

New paragraph 29(1)(bae) would require the Committee to report to both Houses of Parliament on any matter connected to the performance of the intelligence functions of the AFP, AUSTRAC or Department of Home Affairs referred to the Committee by the responsible Minister, Attorney-General or either House of Parliament.

This amendment was intended to ensure the Committee could report to the Parliament on any matter referred to it under new paragraph (bad). It was not intended to require an additional referral under paragraph 29(1)(bae) before the Committee could report to the Parliament. The department therefore considers that the reference to a matter 'referred to the Committee under this paragraph' in paragraph 29(1)(bae) should be a reference to a matter referred under paragraph 29(1)(bad).

We note that the drafting of new paragraph 29(1)(bae) was intended to align with the Committee's existing functions in relation to oversight of the AFP's performance of functions under Part 5.3 of the Criminal Code, in particular existing paragraph 29(1)(bab). However, the department does not consider there would be an issue with removing new paragraph 29(1)(bae) and relying instead on the Committee's existing general function in paragraph 29(1)(c) to report to each House of the Parliament, to the responsible Minister and to the Attorney-General on reviews it conducts. We note that, unlike paragraph 29(1)(bae), this would require reports to be provided to the responsible Minister and the Attorney-General, in addition to both Houses of Parliament.

Question 4 – Possible drafting error in subsection 29(2)

The Explanatory Memorandum (para [230]) states that the intent of the amendments to subsection 29(2) is to reflect the PJCIS's expanded jurisdiction in relation to the whole of the ACIC and in relation to the intelligence functions of the AFP, AUSTRAC and Home Affairs. However, as drafted, the amendments would only enable the PJCIS to request a referral under paragraph (1)(b), which relates exclusively to the ACIC and the existing six intelligence agencies within the Committee's jurisdiction.

- a) To meet the intention expressed in the Explanatory Memorandum, should subsection 29(2) be further amended to include the proposed new referral powers in paragraphs (1)(ba), (bad) and (bae)?**

Amendments to subsection 29(2) would provide that the Committee may, by resolution, request the responsible Minister or the Attorney-General refer a matter related to the activities of the agencies within the Committee's jurisdiction to the Committee for review, and clarify that the Minister may make such a referral to the Committee under its existing referral powers.

This amendment was intended to reflect the Committee's expanded jurisdiction by ensuring the Committee is able to make such a request in relation to the ACIC and the intelligence functions of the AFP, AUSTRAC and Home Affairs, and that the Minister is able to refer the matter under either existing paragraph 29(1)(b) or new paragraph 29(1)(bad). To give effect to this intention, we consider that amendments may be necessary to ensure the Minister or the Attorney-General may refer a matter at the request of the Committee in relation to the activities of all agencies within the Committee's jurisdiction.

However, the amendment was not intended to pick up the new referral powers in paragraphs 29(1)(ba) and 29(1)(bae).

New paragraph 29(1)(ba) concerns referrals for reviews into counter-terrorism or national security legislation, rather than referrals related to the activities of agencies. The amendment to subsection 29(2) was intended to update the Committee's existing ability to request a referral in relation to the activities of intelligence agencies in order to reflect the Committee's expanded jurisdiction. It was not intended to pick up the Committee's function to review and inquire into counter-terrorism and national security legislation under new paragraph 29(1)(ba), noting the Committee would be able to review these matters of its own motion under new paragraph 29(1)(baaa).

Likewise, the amendment was not intended to capture referrals under new paragraph 29(1)(bae). Noting our response to question 3, paragraph 29(1)(bae) was not intended to operate as an additional referral provision.