



Australian Government
Department of Home Affairs



Home Affairs Portfolio submission to the Review of the Strengthening Oversight of the National Intelligence Community Bill 2025

Parliamentary Joint Committee on Intelligence and
Security

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Introduction

This submission is made by the Department of Home Affairs (the Department) and represents the views of the Department and Home Affairs Portfolio agencies that have equities in the *Strengthening Oversight of the National Intelligence Community Bill 2025* (the 2025 Bill). This includes the Australian Federal Police (AFP), the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australian Criminal Intelligence Commission (ACIC). The Department and these Portfolio agencies support the 2025 Bill.

If enacted, the 2025 Bill will expand the oversight jurisdiction of the Inspector-General of Intelligence and Security (IGIS) and the Parliamentary Joint Committee on Intelligence and Security (PJCIS) to include the intelligence functions of the Department, AFP, and AUSTRAC, and the entirety of ACIC. At a time of increased complexity in the national security environment, there is value in having consistent robust oversight of all ten agencies of the National Intelligence Community.

Clarity regarding the scope of the IGIS's and PJCIS's oversight of the Department is necessary to ensure clear delineation between the Department's intelligence functions, its law enforcement functions, and its functions as a department of State.

This submission focuses on provisions of the 2025 Bill that differ from the *Intelligence Services Legislation Amendment Bill 2023* (2023 Bill).

Intelligence function of the Department

The 2025 Bill will provide for the intelligence function of the Department to be defined in regulations made under the *Inspector General of Intelligence and Security Act 1986* (IGIS Act).

Defining the intelligence function of the Department in regulations provides flexibility for changes to be made where required. The Department, as a Department of State, is subject to changes to mandate through executive action, in contrast to statutory agencies who have a legislatively prescribed set of functions.

Work is underway to settle the definition of the Department's intelligence function definition, with agreement between the Attorney-General and the Minister for Home Affairs, to enable regulations to be made under the *IGIS Act* should the 2025 Bill pass.

New amendments to the 2025 Bill include changes to schedule 1, item 6. The changes amend proposed subsection 3A(5) to enable the regulations to also provide for notification requirements in relation to changes to the intelligence function of the Department. This is in addition to providing for consultation requirements, as enabled by proposed subsection 3A(5) of the 2023 Bill and retained by the 2025 Bill.

These provisions ensure the regulations provide for consultation *and* notification requirements and, with proposed subsection 3A(6), also retained from the 2023 Bill, that the agreement of the responsible Minister for Home Affairs is obtained before any regulations relating to the intelligence functions of the Department are made or amended.

Changes in the approach to the definition

In the Department's submission to the inquiry into the 2023 Bill, the Department's definition of its intelligence function was to be limited to the functions performed by the Intelligence Division¹.

In August 2024, following an internal review, the Department's intelligence functions were distributed across the Immigration Group and the Australian Border Force, whilst retaining a small, centralised governance and engagement capability within the Departments' Executive Group. There is no longer an intelligence division whose functions, as a structural entity, can be the subject of oversight. Therefore, a new functional definition that captures those dispersed functions will be described in regulations.

¹ Department of Home Affairs submission to the *Review of the Intelligence Services Legislation Amendment Bill 2023*, 31 August 2023.

The intention is for the definition of the Department's intelligence function to draw on the definition of an agency with an intelligence role or function in the *Office of National Intelligence Act 2018*, but not to replicate this definition in its entirety.

The intention is to define the intelligence function by relying on a functional description of intelligence activities undertaken by the Department. At a working level, to capture functions related to the production and dissemination of intelligence by the Department that supports the Department's activities relating to border security, cyber security, national security or immigration and are related to an intelligence requirement.

The intention is not to capture functions that collect and analyse information where the primary purpose is law enforcement, risk assessment or administrative decision-making. These functions will continue to be overseen by the Commonwealth Ombudsman and law enforcement oversight bodies.

Parliamentary oversight of the ACIC

The Department supports the proposed amendments to the *Parliamentary Joint Committee on Law Enforcement Act 2010* in Schedule 1 of the 2025 Bill.

The 2023 Bill would have introduced dual parliamentary oversight of the ACIC, with both the Parliamentary Joint Committee on Law Enforcement and PJCIS having oversight functions in relation to the agency. Since the introduction of the Bill, the *Independent Review of the Australian Criminal Intelligence Commission and associated Commonwealth law enforcement arrangements* (the Independent Review) was completed, with a report released in November 2024.

The Independent Review recommended significant reform of the ACIC to better position the agency as Australia's national criminal intelligence agency, focused on providing unique and incisive intelligence on serious and organised crime to Commonwealth, state and territory law enforcement agencies. Consistent with this revised intelligence mandate, the Independent Review recommended parliamentary oversight of the ACIC be exercised solely by the PJCIS, as it is for other intelligence agencies (Recommendation 15). The Government's response to the Independent Review agreed to its recommendations on the ACIC's role and functions, and on its oversight.

In line with the Independent Review and the Government's response, the 2025 Bill would vest parliamentary oversight of the ACIC with the PJCIS and remove the ACIC entirely from the jurisdiction of the PJCLE. This change is in keeping with broader reforms the Department is progressing to implement agreed recommendations of the Independent Review.

Minor Bill amendments

The 2025 Bill clarifies procedures of the Committee to make explicit its function to review counter-terrorism or national security legislation on a referral by a responsible Minister, the Attorney-General or either House of Parliament. Schedule 1 item 54 of the 2025 Bill provides for the Committee to review counter-terrorism and national security legislation based on referrals, and makes clear the ability for the Minister for Home Affairs to refer the full range of legislation that underpins the Department's national security functions.

The Department thanks the Committee for the opportunity to submit to this review.