



Correspondence ref: ●IGIS/OUT/2020/402

File ref: OIG20/62

Senator James Paterson
Chair
Finance and Public Administration Legislation Committee
CANBERRA ACT 2600

Dear Chair

Thank you for the opportunity to make a submission to the Senate Finance and Public Administration Legislation Committee's inquiry into the Intelligence and Security Legislation Amendment (Implementing Independent Intelligence Review) Bill 2020 (the Bill).

The Bill includes measures to implement the recommendations 21 and 23 of the 2017 Independent Intelligence Review, conducted by Mr Michael L'Estrange AO and Mr Stephen Merchant PSM. Of most relevance to my office, the Bill includes:

- amendments to expand the Inspector-General of Intelligence and Security (IGIS)'s oversight jurisdiction;
- a mechanism for the Parliamentary Joint Committee on Intelligence and Security (PJCIS) to request an IGIS inquiry and report; and
- a requirement for the IGIS to provide regular briefings to the PJCIS.

Consistent with established practices, I do not make any comment on the policy aspects of the Bill. However, through this submission I highlight a number of practical matters the Committee may wish to have regard to during its inquiry.

Expansion of the IGIS's oversight jurisdiction

The Bill amends the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act) to expand the IGIS's functions to include oversight of the activities of the Australian Criminal Intelligence Commission (ACIC) and agencies 'with an intelligence role or function'.

The term 'agency with an intelligence or function' is defined by reference to the existing definition in section 4 of the *Office of National Intelligence Act 2018*. This includes AUSTRAC, the Australian Federal Police, the Department of Home Affairs and the Department of Defence (other than the Australian Geospatial-Intelligence Organisation and the Defence Intelligence Organisation, of which I have existing oversight jurisdiction). The definition is limited to extent that each agency 'collects, correlates, analyses, produces or disseminates intelligence that relates, or may relate, to national intelligence priorities, requirements or capabilities'; or the extent that each agency maintains, or is developing, a capability to 'materially assist' in undertaking those intelligence-related activities.

UNCLASSIFIED

It is a matter of policy as to whether my office's jurisdiction should be expanded to these additional agencies. However, the Committee may wish to note that the inclusion of the Department of Defence (other than the Australian Geospatial-Intelligence Organisation and the Defence Intelligence Organisation) goes beyond Recommendation 21 of the 2017 Independent Intelligence Review. The Committee may also wish to consider:

- whether it is appropriate for my office's functions with respect to the additional agencies to be limited to their activities relating to 'national intelligence priorities, requirements or capabilities'; and
- whether it is necessary for my office's oversight to extend to intelligence *capabilities* of agencies (whether existing or in development), noting my office's current role is to review the *activities* of intelligence agencies.

I also note that the 'national intelligence priorities', set by the Government (and amended as required), to date have not been a public document. The approach taken in the Bill may mean that in practice, the IGIS jurisdiction may not be publicly known in some aspects.

IGIS inquiries requested by the PJCIS

The Bill proposes that the PJCIS may request the Inspector-General to inquire into a matter relating to an intelligence agency, the ACIC or an agency with an intelligence role or function. The Bill also amends existing section 22 of the IGIS Act to provide that the Inspector-General must give to the PJCIS a copy of the final report on any inquiry that was commenced as a result of a request by the PJCIS.

I note that these amendments generally align with Recommendation 23(a) of the 2017 Independent Intelligence Review, although the Committee may wish to consider how operationally sensitive information (as defined in the *Intelligence Services Act 2001*) may be handled in this context.

IGIS briefings to the PJCIS

The Bill proposes that the Inspector-General must, at least once in every quarter, provide the PJCIS with a private briefing about inquiries that the Inspector General is to commence, has commenced or has recently completed. This provision aligns with Recommendation 23(e) of the 2017 Independent Intelligence Review.

While I have no objection to this provision in principle, the Committee may wish to consider whether it is necessary for the minimum frequency of briefings to be set out in legislation or whether a more flexible implementation of this recommendation would be preferable. There may be occasions in which it is not possible to meet this requirement—for example, due to a prorogation or dissolution of the Parliament. The Committee may wish to consider, as an alternative, the provision requiring the IGIS to provide the PJCIS with a private briefing 'on a regular basis', with the exact frequency of those briefings to be determined between the PJCIS and the IGIS.

Other matters

The Bill proposes to expand the IGIS's oversight jurisdiction to the intelligence functions of four additional agencies. My office's oversight will sit alongside the existing oversight functions performed by other integrity bodies—including the Commonwealth Ombudsman, the Australian

UNCLASSIFIED

Commission for Law Enforcement Integrity, the Australian Human Rights Commission, and the Office of the Australian Information Commissioner—of parts of those agencies’ activities. I am confident that any duplication of oversight can be managed administratively between these bodies, to the extent that the legislation allows. However, the Committee may wish to consider whether amendments are required to the IGIS Act to clarify my office’s interaction with other integrity bodies. Noting the strict secrecy offences contained in section 34 of the IGIS Act, it may be appropriate for the Bill to provide mechanisms for the sharing of information and transfer of complaints between the IGIS and other integrity bodies.

In addition to the amendments to the IGIS Act, there may also be a number of consequential amendments required to the enabling legislation of the ACIC and ‘agencies with an intelligence role or function’ to ensure that the my office’s oversight is effective. Specifically, where agencies’ enabling legislation contains an offence for the disclosure of information, it may be necessary for there to be an exception that allows information to be disclosed for the purpose of IGIS officials exercising their powers and performing their functions and duties.

I would be happy to discuss any of these matters further with the Committee, should you require.

Yours sincerely

Margaret Stone AO FAAL
Inspector-General

/ s July 2020