

February 2021

# Submission to the Review of the Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020

Parliamentary Joint Committee on Intelligence and Security

Submission by the Attorney-General's Department and Department of Home Affairs

## Introduction

The Attorney-General's Department and Department of Home Affairs welcome the Parliamentary Joint Committee on Intelligence and Security's (the PJCIS's) review of the Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020 (the Bill). This submission outlines the policy rationale for key aspects of the Bill.

The Australian Government is committed to strong oversight frameworks over agencies that perform intelligence functions, which are essential to keeping us safe. Robust oversight is essential to assuring the public that agencies are acting lawfully and appropriately in the exercise of their functions.

The Bill responds to the 2017 Independent Intelligence Review (the IIR) and the Comprehensive Review of the Legal Framework of the National Intelligence Community (Comprehensive Review) to ensure appropriate oversight for agencies with an intelligence function, and to support the efficient operation of the Commonwealth oversight framework. The key measures in the Bill are expanding the oversight jurisdiction of the:

- Inspector-General of Intelligence and Security (IGIS) to include the intelligence functions of the Australian Criminal Intelligence Commission and the Australian Transaction Reports and Analysis Centre (AUSTRAC), and
- PJCIS to include AUSTRAC's intelligence functions.

The Bill also amends the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act) to ensure that the legislation governing the IGIS is adapted to contemporary circumstances. This includes technical amendments to improve clarity, modernise drafting expressions and remove redundant provisions, as well as amendments to address certain limitations in the IGIS's oversight functions and powers in order to improve the flexibility and strengthen the integrity of inquiry processes.

## Oversight Arrangements for the National Intelligence Community

Oversight arrangements for Australian intelligence agencies were considered in detail by the IIR and the Comprehensive Review.

The IIR identified that "the intelligence enterprise that supports Australia's national security is no longer limited to the six AIC [Australian Intelligence Community] agencies"<sup>1</sup> and that intelligence capabilities within the Australian Federal Police (AFP); the Department of Immigration and Border Protection (now the Department of Home Affairs (Home Affairs)); the Australian Transaction Reports and Analysis Centre (AUSTRAC); and the Australian Criminal Intelligence Commission (ACIC, established as the Australian Crime Commission under the *Australian Crime Commission Act 2002* (ACC Act)) were increasingly integrated with the capabilities of the AIC. Consequently, these four agencies were brought together with the AIC to form the National Intelligence Community (NIC), whose activities are centrally coordinated by the Office of National Intelligence (ONI).

While the IIR found that the current oversight and accountability arrangements for the NIC were "appropriately rigorous", it noted the increasing demands on oversight mechanisms from the

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<sup>1</sup> Michael L'Estrange and Stephen Merchant, *2017 Independent Intelligence Review* (June 2017), para 7.19. The AIC comprises the Australian Security Intelligence Organisation (ASIO), Australian Secret Intelligence Service (ASIS), Australian Signals Directorate (ASD), Australian Geospatial-Intelligence Organisation (AGO), Defence Intelligence Organisation (DIO) and Office of National Intelligence (ONI).

expansion of the intelligence enterprise and new powers to address emerging threats.<sup>2</sup> The IIR considered that due to the increased cooperation between NIC agencies, it was appropriate to ensure “consistent oversight...apply to all the intelligence capabilities that support national security, across the ten agencies of the NIC”.<sup>3</sup> As such, the IIR recommended that the PJCIS and the IGIS should oversee the intelligence functions of the AFP, ACIC, AUSTRAC and the former Department of Immigration and Border Protection (subsequently the Department of Home Affairs).<sup>4</sup>

The Comprehensive Review agreed that existing oversight for NIC agencies was effective,<sup>5</sup> however it recommended that the IGIS “should not have oversight of the Department of Home Affairs or the AFP.”<sup>6</sup> The Australian Government agreed with this recommendation.<sup>7</sup>

In coming to its recommendation, the Comprehensive Review noted that “[t]he NIC is significantly more disparate than the AIC”<sup>8</sup> and the ‘intelligence functions’ performed by its agencies were more varied than within the AIC. Across the NIC agencies, ‘intelligence functions’ include:

- Home Affairs<sup>9</sup> has an intelligence function in its Intelligence Division;
- ACIC (as an intelligence agency) has an intelligence function primarily in the Intelligence Operations Division and some aspects of the Technology and Chief Information Officer and National Criminal Intelligence System Divisions;<sup>10</sup>
- AFP (as a police agency) has an integrated intelligence function, which is found within various elements of its Operations Group, Investigations Group, and Australian Capital Territory Policing;
- AUSTRAC has an intelligence function in its Intelligence Division.

Further detail on the intelligence functions performed by these agencies is contained at **Attachment A**.

Further, while these agencies perform ‘intelligence functions’, they also perform other functions that are not part of their intelligence function and would not generally be considered to be incidental to their intelligence function, which distinguishes them from AIC intelligence agencies. For example:

- Home Affairs develops policies, coordinates activities, and delivers programs on immigration, customs, and key national security issues;

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<sup>2</sup> Michael L’Estrange and Stephen Merchant, *2017 Independent Intelligence Review* (June 2017), Executive Summary, page 8.

<sup>3</sup> Michael L’Estrange and Stephen Merchant, *2017 Independent Intelligence Review* (June 2017), para 7.19.

<sup>4</sup> Michael L’Estrange and Stephen Merchant, *2017 Independent Intelligence Review* (June 2017), para 7.20.

<sup>5</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, para 40.74.

<sup>6</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, para 40.93-40.104 (recommendation 168).

<sup>7</sup> Government response to the Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, page 43.

<sup>8</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, para 40.99.

<sup>9</sup> The Commissioner of the Australian Border Force (ABF) and ABF officers receive intelligence support from the Home Affairs Intelligence Division, as well as other National Intelligence Community agencies where appropriate

<sup>10</sup> In December 2020, the ACIC undertook an organisational restructure to consolidate its operational intelligence functions into a single division. Previously, the ACIC had two separate divisions conducting operational intelligence activities – the Intelligence Operations Division and the former Capability Division. This restructure occurred after the Bill was introduced into Parliament.

- AFP is Australia’s national police force and undertakes a range of policing functions, including criminal investigations, protective services, community policing, and international liaison; and
- AUSTRAC is Australia’s anti-money laundering and counter-terrorism financing (AML/CTF) regulator, and being Australia’s Financial Intelligence Unit (FIU).

In considering what additional oversight is necessary for these agencies, the Comprehensive Review also considered the existing oversight framework over NIC agencies. Currently, the AFP, ACIC, AUSTRAC and Home Affairs are accountable to several forms of oversight and governance, including those agencies and functions that are not (or would not be) subject to oversight by the IGIS or the PJCIS. These agencies and functions are subject to oversight and governance arrangements through a wide range of mechanisms, including the:

- Parliament, through the PJCIS, the Parliamentary Joint Committee on Law Enforcement (PJCLE), and the Senate Standing Committee on Legal and Constitutional Affairs (the SSCLCA);
- Commonwealth Ombudsman;
- Australian Commission for Law Enforcement Integrity (ACLEI);
- Australian National Audit Office (ANAO);
- Australian Human Rights Commission (AHRC);
- Office of the Australian Information Commissioner (OAIC);
- *Freedom of Information Act 1982* (the FOI Act);
- judicial and administrative review of certain decisions;
- agency-specific arrangements; and
- internal audit committees (as required by the *Public Governance, Performance, and Accountability Act 2013*).

Further detail on the oversight arrangements and powers for oversight bodies, is contained at **Attachment B**. Detail on agency-specific arrangements is provided at **Attachment C**.

### Analysis of IGIS jurisdiction

In light of the nature of intelligence functions and the existing oversight arrangements for the NIC agencies, the Government accepted the Comprehensive Review’s recommendation that it was not necessary for the IGIS to oversee the AFP or Home Affairs’ intelligence functions.<sup>11</sup>

The Comprehensive Review considered that, given the centrality of the intelligence functions performed by the ACIC and AUSTRAC, the specialised oversight performed by the IGIS would more readily add value and assurance in respect of those functions.<sup>12</sup> By contrast, the intelligence functions performed by Home Affairs and AFP are relatively minor and are substantially linked to their other functions (border integrity for Home Affairs, and law enforcement for the AFP).

The Bill does not extend IGIS (or the PJCIS’s) oversight to the Home Affairs Intelligence Division. The products prepared by the Intelligence Division use intelligence and information collected by other agencies that are subject to rigorous oversight on how the other agencies collect and use that information. The Intelligence Division receives reports from intelligence agencies and is required to handle those products in accordance with the directions issued by those agencies. The Intelligence

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<sup>11</sup> Government response to the Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, page 43.

<sup>12</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, para 40.100-102.

Division's use of data obtained through the exercise of statutory powers is subject to oversight provisions embedded in the relevant legislation.

The AFP's intelligence function is performed within a specific policing context and informs decision making relating to its policing functions. The AFP's criminal intelligence guides the strategic, operational and tactical decisions of the AFP, as well as assists its national and international partners. AFP intelligence activity allows the AFP to be better informed and capable of responding to a wide range of criminality and criminal justice issues including through detection (identifying threats and vulnerabilities), supporting response action (including criminal investigation leading to a prosecution), and disruption action.

While the Bill will not extend IGIS oversight over the AFP's intelligence functions generally, it would ensure IGIS retains oversight of the AFP's (and the ACIC's) use of network activity warrants, should the Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020 pass the Parliament.

### Analysis of PJCIS jurisdiction

The IIR considered the role of the PJCIS to be a "vitally important accountability mechanism for intelligence agencies",<sup>13</sup> and recommended that its remit be expanded to include all 10 NIC agencies.<sup>14</sup> The Comprehensive Review expressed support for the IIR's recommendation, however noted that 'the ACIC and the AFP are already subject to parliamentary oversight by the Parliamentary Joint Committee on Law Enforcement'.<sup>15</sup> In addition to the PJCLE, the PJCIS oversees the AFP's counter-terrorism functions.<sup>16</sup>

The Bill does not give the PJCIS new jurisdiction over the AFP or the ACIC, on the basis that these agencies are already subject to parliamentary oversight. Similarly, the Bill does not extend the PJCIS's jurisdiction to include Home Affairs as this would create duplication in parliamentary oversight. Home Affairs' expenditure and administration are overseen through the SSCLCA; Home Affairs regularly appears before the PJCIS during their consideration of national security and counter terrorism legislation; and the Secretary of Home Affairs may be called to brief the PJCIS.<sup>17</sup>

## Overview of the Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020

### Expanding oversight jurisdiction

In expanding the IGIS's and PJCIS's jurisdiction, the Bill directs oversight resources where specialised intelligence oversight would provide the greatest assurance. This section outlines the key measures within the Bill.

### IGIS Jurisdiction

The Bill defines 'intelligence function' as:

*the 'collection, correlation, analysis, production, and dissemination:*

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<sup>13</sup> Michael L'Estrange and Stephen Merchant, *2017 Independent Intelligence Review* (June 2017), para 7.28.

<sup>14</sup> Michael L'Estrange and Stephen Merchant, *2017 Independent Intelligence Review* (June 2017), para 7.20.

<sup>15</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, para 42.9

<sup>16</sup> *Intelligence Services Act 2001* (Cth) (IS Act), s 29(1)(baa)-(bab).

<sup>17</sup> IS Act, s 30.

- (a) of intelligence by the ACIC for the purpose of performing its functions under section 7A of the ACC Act (except in relation to Indigenous violence or child abuse within the meaning of that Act); or
- (b) of intelligence by AUSTRAC for the purposes of:
- (i) the AUSTRAC CEO performing the CEO's financial intelligence functions under the AML/CTF Act; or
  - (ii) the AUSTRAC CEO, AUSTRAC or an official of AUSTRAC referred to in paragraph 209(4)(c) of that Act performing functions incidental to that function.<sup>18</sup>

The definition of 'intelligence function' is taken from definition of 'agency with an intelligence role or function' within the *Office of National Intelligence Act 2018* (ONI Act),<sup>19</sup> with modifications to reflect the role of the IGIS and the specific functions of AUSTRAC and the ACIC.

Insofar as the IGIS has jurisdiction over these 'intelligence functions', the IGIS may inquire into:<sup>20</sup>

- a. compliance with the laws of the Commonwealth and of the States and Territories;
- b. compliance with directions or guidelines given to that agency by the responsible Minister;
- c. the propriety of particular activities;
- d. the effectiveness and appropriateness of the procedures relating to the legality or propriety of the activities of the agency;
- e. any matter that relates to an act or practice of the agency, referred to the Inspector-General by the Australian Human Rights Commission that may be inconsistent with human rights, may constitute discrimination or otherwise breach Commonwealth anti-discrimination laws; and
- f. in relation to the ACIC - compliance with directions or guidelines, policies and other decisions given to that agency by the Board and Inter-Governmental Committee.

This jurisdiction is based on the IGIS's existing jurisdiction in relation to AIC agencies.<sup>21</sup>

### Exclusions

The Bill also creates limits on the IGIS's jurisdiction, so ensure that the IGIS's oversight is consistent with its existing jurisdiction, and remains focussed on intelligence functions.

In relation to the ACIC, the Bill prevents the IGIS from inquiring into the actions of ACIC examiners.<sup>22</sup> The ACIC's examiners exercise the ACIC's coercive powers by conducting examinations (also known as coercive hearings) and issuing notices to organisations and individuals to produce documents and things. Generally, the IGIS would not exercise jurisdiction in relation to matters that could be heard in a court or tribunal.<sup>23</sup> As the ACIC's examiners are independent statutory authorities appointed by

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<sup>18</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, Schedule 2, Part 3, item 60. Due to the Bill's interaction with the Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020, several items in the Bill create the definition of 'intelligence function' in the IGIS Act, depending on the sequencing and commencement of both Bills. However, these provisions have the same effect as this excerpt.

<sup>19</sup> *Office of National Intelligence Act 2018* (Cth), s 4.

<sup>20</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, Schedule 2, Part 3, item 60.

<sup>21</sup> *Inspector-General of Intelligence and Security Act 1986* (Cth) (IGIS Act), s 8(2)-(3).

<sup>22</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, Schedule 2, Part 3, item 66.

<sup>23</sup> IGIS Act, ss 9AA, 11(3)-4).

the Governor-General and their activities are subject to judicial review, it is not necessary for the IGIS to oversee these aspects of the ACIC's activities.

Similarly, the Bill prevents the IGIS from considering the actions or decisions of the ACIC Board. The ACIC Board provides strategic direction to the ACIC, authorises the ACIC's special investigations and special operations, authorises the use of the ACIC's coercive powers, and determines the National Criminal Intelligence Priorities. The ACIC Board, and the Inter-Governmental Committee, perform roles analogous to that of a Minister in relation to traditional AIC agencies, and as such, it is appropriate to carve these bodies out from IGIS jurisdiction (as the IGIS does not oversee Ministerial action, except to the extent to determine agencies' compliance with directions or guidelines).

In relation to AUSTRAC, the definition of 'intelligence function' is intended to cover that agency's actions in supporting the CEO to perform only his or her functions under section 212 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), to the extent that they involve intelligence. It is not intended for the definition to cover the agency's actions in supporting the CEO to perform his or her regulatory functions.

The reference to "functions incidental" in the definition of intelligence function in relation to AUSTRAC is not intended to include AUSTRAC's regulatory functions, such as the supervision of regulated businesses' compliance with the AML/CTF Act. For example, the AML/CTF Act imposes transaction and suspicious matter reporting obligations on regulated businesses. AUSTRAC engages with industry in meeting these obligations, and may take enforcement action to ensure that regulated businesses are complying with their reporting obligations. This supervision and engagement as part of AUSTRAC's regulatory function will not generally be 'incidental' to its financial intelligence function, even though the transaction and suspicious matter reports form the basis, or the 'raw material' for, AUSTRAC's financial intelligence function.

#### PJCIS Jurisdiction

The Bill extends the PJCIS's jurisdiction to include:

- *monitoring and reviewing AUSTRAC's performance of its intelligence functions,*
- *reporting to Parliament on any matter relating to AUSTRAC's performance of its intelligence functions, and*
- *inquiring into specific matters relating to AUSTRAC's performance of its intelligence functions, where that matter is referred to the PJCIS by the Parliament.*<sup>24</sup>

The Bill defines 'intelligence function' as:

- *"the collection, correlation, analysis, production and dissemination of intelligence by AUSTRAC for the purpose of performing its functions."*<sup>25</sup>

In making its recommendation, the IIR stated that the PJCIS's remit should only extend to intelligence functions, as "it would be neither appropriate nor necessary to expand the role of the PJCIS or the IGIS beyond the exercise of intelligence capabilities that contribute to national security".<sup>26</sup> The Bill gives effect to this by providing that the PJCIS's functions do not include reviewing "anything done by AUSTRAC in carrying out its functions that are not intelligence

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<sup>24</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, Schedule 1, item 137.

<sup>25</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, Schedule 1, item 136.

<sup>26</sup> Michael L'Estrange and Stephen Merchant, *2017 Independent Intelligence Review* (June 2017), para 7.20.

functions”.<sup>27</sup> As outlined above, AUSTRAC’s regulatory functions are not intended to be captured as ‘intelligence functions’ under the Bill.

### Information-sharing and complaints transfer

Sharing information and transferring complaints (within the parameters of appropriate safeguards) supports the effective operation of the Commonwealth oversight framework as it applies to the NIC, and ensures oversight bodies are able to work together efficiently and effectively. These processes also minimise disruption for complainants, and ensures that anonymous complaints may be dealt with.

As multiple oversight bodies have jurisdiction over the ACIC and AUSTRAC, it is important to ensure that the IGIS, Ombudsman, OAIC, AHRC and ACLEI are able to communicate effectively.

Under the new information-sharing provisions, the IGIS may share information with specified integrity bodies so long as the information is relevant to their functions, and the IGIS is satisfied (on reasonable grounds) that the receiving body can protect the information.

IGIS officials are subject to secrecy offences within their Act,<sup>28</sup> and are bound by the Protective Security Policy Framework and the offences that govern the unauthorised sharing of classified information in the *Criminal Code Act 1995*.

Further, noting that Home Affairs and the AFP perform limited intelligence functions that are overseen by other bodies, ensuring that the IGIS is able to share information (including monitoring methodologies and analysis of trends) with those bodies will support effective oversight of those functions.

### Strengthening the IGIS’s independence (IGIS appointments and employment protections)

The Comprehensive Review noted that “the IGIS’s independence is essential for the Office to function as a strong accountability mechanism”.<sup>29</sup> Noting that the IGIS Act already contains a number of safeguards to uphold the independence of the IGIS,<sup>30</sup> the Comprehensive Review recommended amending the IGIS Act to prevent a person whose immediate prior role was as head or deputy head of an agency within the IGIS’ oversight remit from being appointed as the IGIS.<sup>31</sup> The Bill implements this recommendation,<sup>32</sup> as agreed by Government.<sup>33</sup>

The Bill also updates the IGIS Act to clarify the circumstances in which the Governor-General is required, or has discretion, to terminate the appointment of the Inspector-General. Currently, the IGIS Act allows the Governor-General to terminate the appointment of the IGIS “by reason of

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<sup>27</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, Schedule 1, item 141.

<sup>28</sup> IGIS Act, s 34

<sup>29</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, para 41.18

<sup>30</sup> For example, the guaranteed tenure of the IGIS (ss 26, 30 IGIS Act), and the broad information-gathering powers of the IGIS (s 18 IGIS Act).

<sup>31</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, recommendation 172.

<sup>32</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, item 9 of Schedule 1.

<sup>33</sup> Government Response to the Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, page 44.



misbehaviour or physical or mental incapacity”.<sup>34</sup> The Bill would clarify this provision, by noting that the Governor-General may only terminate the appointment of the Inspector-General on the grounds of a physical or mental incapacity if the Inspector-General is unable to perform the duties of their office.<sup>35</sup> This protects the IGIS from arbitrary and unwarranted dismissal for a medical condition which is completely irrelevant to the performance of the Inspector-General’s duties.

The Bill also ensures that the Governor-General has appropriate discretion as to whether to terminate the appointment of the IGIS in cases of minor or technical breaches (for example, where the Inspector-General is physically incapacitated and unable to seek leave of absence).<sup>36</sup>

Cumulatively, these measures uphold and strengthen the independence of the IGIS by reinforcing the need to appoint individuals who both are, and appear to be, suitably independent from an agency that will be overseen by the IGIS, and protecting the office-holder from arbitrary and improper termination.

### IGIS employment jurisdiction

The Bill expands IGIS’s employment jurisdiction in relation to ONI staff. Currently, the IGIS can inquire into employment-related grievances for ASIO, ASIS and ASD employees, where alternative redress mechanisms (and internal processes) are not reasonably available.<sup>37</sup> This is because employees of these agencies are not employed under the *Public Service Act 1999* (Cth) (Public Service Act), and hence have limited access to external employment dispute resolution mechanisms.

Under section 33 of the ONI Act, ONI staff can be employed under either the Public Service Act (ONI APS employees) or directly under the ONI Act. While ONI APS employees are entitled to reviews of actions or decisions that relate to their APS employment under section 33 of the Public Service Act, staff engaged directly under the ONI Act are not, and as such these staff currently have limited access to external employment dispute resolution mechanisms.

To address this issue, the Comprehensive Review recommended that the IGIS be given an inquiry function for employment-related grievances where alternative redress mechanisms are not reasonably available to staff employed under the ONI Act.<sup>38</sup> The Bill implements this recommendation,<sup>39</sup> as agreed by Government.<sup>40</sup>

The Bill also addresses an additional issue in relation to ONI staff in relation to reviews of security clearances. The majority of ONI employees, regardless of whether they are engaged under the Public Service Act or the ONI Act, are required to maintain an Australian Government Top Secret (Positive Vetting) security clearance as a part of their employment (currently this is the security clearance (within the meaning of the Criminal Code) of the highest level). The loss of that clearance generally results in the termination of that employee’s employment.

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<sup>34</sup> IGIS Act, s 30(1).

<sup>35</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, item 94 of Schedule 1.

<sup>36</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, item 97 of Schedule 1.

<sup>37</sup> IGIS Act, s 8(6)-(7).

<sup>38</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, recommendation 174

<sup>39</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, items 21-23 of Schedule 1.

<sup>40</sup> Government Response to the Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, page 45.

The Bill ensures that, where an ONI employee's security clearance is processed by an agency that does not have an external appeals process to contest decisions, there would be an opportunity for an employee to request a review by the IGIS.<sup>41</sup> This would ensure that an individual would not face the consequences of a loss of a Top Secret (Positive Vetting) clearance without having access to an external review process. The IGIS's jurisdiction in relation to security clearance complaints applies to all ONI staff, whether employed under the Public Service Act or under the ONI Act. It does not apply to prospective employees of ONI.

### Amendments to IGIS powers and processes

The Bill makes a number of technical amendments and updates to the IGIS Act, which are aimed at clarifying its structure (ie. inserting headings and dividing the Act into Divisions), and ensuring the efficient operation of the Office of the IGIS in relation to performing its inspection, inquiry and reporting requirements.

#### Inspections

Under the IGIS Act, it is a function of the IGIS to conduct such other inspections as the Inspector-General considers appropriate for the purpose of giving effect to the purposes of the Act.<sup>42</sup>

Although powers to enter premises and access documents may be implicit in this function, the Bill will clarify the IGIS Act to explicitly provide that during an inspection, IGIS officials are entitled to:

- a. enter and remain on any premises at all reasonable times,
- b. all reasonable facilities and assistance that the head of the agency is capable of providing,
- c. full and free access at all reasonable times to any information, documents or other property of the agency, and
- d. examine, make copies or take extracts from any information or documents.<sup>43</sup>

This amendment ensures that it is clear on the face of legislation that agencies are required to cooperate fully with IGIS inspections, and brings the IGIS Act in line with legislation conferring inspection functions on other integrity agencies with oversight of the ACIC and AUSTRAC, such as the Ombudsman.

#### Reporting processes

The Bill streamlines the IGIS's reporting procedures by removing the two-step consultation process which required the IGIS to consult an agency head both before an IGIS inquiry is concluded and again before IGIS report is finalised.<sup>44</sup> This amendment does not relieve the IGIS of the obligation to afford procedural fairness to agencies in the course of its inquiries, and does not remove the requirement that the IGIS give the head of an agency reasonable opportunity to appear before the IGIS and to make submissions in relation to the matters that are the subject of the inquiry. However, it does create greater flexibility in when agency head views are sought. This supports the efficient operation of the oversight framework by reducing duplicative administrative processes.

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<sup>41</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, item 18 of Schedule 1.

<sup>42</sup> IGIS Act, s 9A.

<sup>43</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, item 68 of Schedule 1.

<sup>44</sup> IGIS Act, ss 17, 21.

## Delegation

The Bill would allow the Inspector-General to delegate their functions under the IGIS Act to IGIS staff (employed under the Public Service Act) who the Inspector-General considers are appropriately qualified to exercise the delegated functions.<sup>45</sup>

Currently, the Inspector-General may only delegate their functions or powers under the IGIS Act to staff employed under subsection 32(3) of the IGIS Act (persons employed to assist the IGIS for the purposes of a particular inquiry), and may only delegate inquiry and reporting powers. While this was appropriate when the IGIS was a smaller office, with limited jurisdiction, this limitation is no longer appropriate given the expanded size of the IGIS's office. The Bill's amendments reflect the practicalities of the expanded office of the IGIS, and enables the IGIS to fulfil their inquiry and other functions in a timely manner.

The Bill does not allow the Inspector-General to delegate their ability to employ a person to assist with an inquiry under section 32(3) of the IGIS Act. This is appropriate to ensure that the Inspector-General retains personal control over the employment of persons under section 32(3), which requires Ministerial approval.

## Conclusion

The Attorney-General's Department and the Department of Home Affairs recognise the importance of the PJCIS's inquiry into the Bill, and hopes that this submission assists the PJCIS in understanding the purpose and intent of the proposed measures in the Bill. The Bill will ensure that Australia's intelligence oversight infrastructure remains appropriate and fit for purpose.

NIC agencies perform important functions to protect Australians from threats. Independent and robust oversight is an essential part of maintaining public confidence in these agencies. However, it is also essential that amendments to oversight regimes are appropriate and manage duplication between oversight bodies. The Bill provides responsible and sensible amendments to the existing oversight infrastructure to support oversight. Specifically the Bill enhances oversight by:

- extending IGIS's jurisdiction to include the intelligence functions of the ACIC and the AFP,
- supporting information sharing and complaints transfer between Commonwealth integrity bodies, and
- enabling the PJCIS to oversee AUSTRAC.

The Attorney-General's Department developed the Bill in close consultation with the Office of the IGIS, to ensure that it supports effective oversight, and with Home Affairs, relevant Commonwealth agencies, the National Intelligence Community and other Commonwealth oversight bodies.

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<sup>45</sup> Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020, item 102 of Schedule 1.

## Attachment A: Intelligence functions of NIC agencies

### The Australian Criminal Intelligence Commission

The ACIC works with state and territory, national and international partners on investigations and to collect intelligence to improve the national ability to respond to crime impacting Australia. The ACIC's coercive powers give it a unique intelligence collection capability and allows it to inform and provide critical contributions to national strategies to combat serious and organised crime. The ACIC's intelligence function does this by:

- enhancing the national picture across the spectrum of crime by developing strategic criminal intelligence assessments and advice on national crime
- working with international and domestic partners to disrupt the activities of serious and organised crime targets and reduce their impact on Australia;
- conducting special operations and special investigations addressing priority areas; and
- developing and maintaining national information and intelligence sharing services and systems.

The ACIC's intelligence function operates under a strict legislative framework as outlined in the (s) 7A of the *Australian Crime Commission Act 2002* (the ACC Act).

### The Australian Transaction Reports and Analysis Centre

AUSTRAC is Australia's FIU and AML/CTF regulator. It is responsible for detecting, deterring and disrupting criminal abuse of the financial system to protect the community from serious and organised crime.

As the AML/CTF regulator, AUSTRAC oversees the compliance of more than 15,000 reporting entities with their AML/CTF obligations, including the reporting of financial transactions and suspicious activity.

As the FIU, AUSTRAC analyses the information reported by reporting entities to identify potential criminal activity or risks to national security. AUSTRAC intelligence analysts use that information to identify financial transactions and produce actionable intelligence linked to crimes including money laundering, terrorism financing, organised crime, child exploitation and tax evasion. AUSTRAC shares its findings with a wide range of domestic and international partner agencies in law enforcement and security. AUSTRAC's intelligence function supports the AUSTRAC Chief Executive Officer to perform their functions as outlined in section 212 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the AML/CTF Act).

### The Australian Federal Police

The AFP's role is to enforce Commonwealth criminal law, contribute to combating complex, transnational, serious and organised crime impacting Australia's national security and to protect Commonwealth interests from criminal activity in Australia and overseas. The AFP also has responsibility for providing policing services to the Australian Capital Territory and Australia's territories, including Christmas Island, Cocos (Keeling) Islands, Norfolk Island and Jervis Bay. The AFP works closely with a range of other law enforcement and government agencies at state, territory, Commonwealth and international levels, enhancing safety and providing a secure regional and global environment. The AFP's intelligence function supports the AFP's functions as outlined in section 8 of the *Australian Federal Police Act 1979*.

## Home Affairs Intelligence Division

The Home Affairs Intelligence Division directly supports, and is a fundamental enabler of, the security of Australia's border and the integrity of Australia's immigration programs. It provides intelligence products and analysis to support the Secretary of the Department of Home Affairs and the Commissioner of the Australian Border Force in their responsibilities to protect Australia's sovereignty, security, and safety. The Intelligence Division provides a unique contribution to national intelligence through its assessment and analytical functions. It operates under a strict legislative framework, including the *Customs Act 1901*, the *Migration Act 1958*, and the *Australian Border Force Act 2015*.

## Attachment B: Oversight jurisdiction of Commonwealth integrity bodies

As outlined above, the AFP, ACIC, AUSTRAC and Home Affairs are subject to a range of different oversight and transparency mechanisms that are not suitable for AIC agencies. While oversight varies for each agency, it generally includes oversight by the Commonwealth Ombudsman (Ombudsman), the Australian Commission for Law Enforcement Integrity (ACLEI), and the Office of the Australian Information Commissioner (OAIC). It also includes different forms of parliamentary oversight, such as the Parliamentary Joint Committee on Law Enforcement (PJCLE) in relation to the ACIC and the AFP and the PJCIS for the AFP’s counter-terrorism functions.

The following table provides an overview of the current and proposed oversight arrangements for the NIC agencies.

Table 1: Oversight for NIC agencies under the Bill (new jurisdiction in green)

|              | Commonwealth Oversight Bodies |           |       |                |            |      | Parliamentary Oversight++ |       |
|--------------|-------------------------------|-----------|-------|----------------|------------|------|---------------------------|-------|
|              | IGIS                          | Ombudsman | ACLEI | OAIC (Privacy) | OAIC (FOI) | ANAO | PJCIS                     | PJCLE |
| AFP          |                               |           |       |                |            |      | +                         |       |
| ACIC         | *                             |           |       |                | #          |      |                           |       |
| Home Affairs |                               |           |       |                |            |      |                           |       |
| AUSTRAC      | *                             |           |       |                |            |      | *                         |       |
| ASIO         |                               |           |       |                |            |      |                           |       |
| ASIS         |                               | ~         |       |                |            |      |                           |       |
| ASD          |                               | ~         |       |                |            |      |                           |       |
| AGO          |                               | ~         |       |                | #          |      |                           |       |
| DIO          |                               | ~         |       |                |            |      |                           |       |
| ONI          |                               | ~         |       |                |            |      |                           |       |

+ PJCIS oversees certain terrorism functions performed by the AFP

++ This only includes the PJCIS and the PJCLE. Agencies are also subject to additional parliamentary oversight, for example, through the Senate Standing Committee on Legal and Constitutional Affairs

\* Jurisdiction only relates to the ACIC and AUSTRAC’s ‘intelligence functions’

~ Although the Ombudsman formally has jurisdiction over these agencies, by convention they do not exercise this jurisdiction, deferring to the IGIS. Government has agreed to formally remove the Ombudsman’s jurisdiction (Government Response to the Comprehensive Review - Recommendation 167)

# Government has agreed to exempt the ACIC from the FOI Act (Government Response to the Comprehensive Review - Recommendation 187), and to remove AGO’s current FOI exemption insofar as documents are not related to intelligence functions (Government Response to the Comprehensive Review - Recommendation 186)

## The Inspector-General of Intelligence and Security

The Inspector-General of Intelligence and Security is an independent statutory office holder established by the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act). The IGIS has jurisdiction over the six AIC agencies – ASIO, ASIS, AGO, ASD, DIO and ONI.<sup>46</sup>

The IGIS may inquire into:

- a. compliance by an agency with the laws of the Commonwealth and of the States and Territories;
- b. compliance by an agency with directions or guidelines given to that agency by the responsible Minister;
- c. the propriety of particular activities of an agency;
- d. the effectiveness and appropriateness of the procedures of an agency relating to the legality or propriety of the activities of the agency; and
- e. any matter that relates to an act or practice of an agency, referred to the Inspector General by the Australian Human Rights Commission that may be inconsistent with human rights, may constitute discrimination or may otherwise breach Commonwealth anti-discrimination laws.<sup>47</sup>

The IGIS also has jurisdiction in relation to certain employment matters.<sup>48</sup>

The IGIS is able to inquire into matters of the Inspector-General's own initiative (called an own-motion inquiry), in responses to complaints, and in response to a request by the Prime Minister, the Attorney-General, or a Minister with responsibility for an intelligence agency.<sup>49</sup>

The IGIS has significant powers to support its inquiry functions, including powers to require the attendance of witnesses, take sworn evidence, copy and retain documents and to enter an Australian intelligence agency's premises.

The IGIS is required to produce annual reports on their activities.<sup>50</sup> The Attorney-General may redact sensitive parts of the report to "avoid prejudice to security, the defence of Australia, Australia's relations with other countries, law enforcement operations or the privacy of individuals",<sup>51</sup> and the report must be tabled in both Houses of Parliament. The Opposition Leader receives an unedited version of the report.<sup>52</sup>

IGIS officials are subject to strict secrecy provisions to ensure that any information provided to the IGIS is tightly controlled.<sup>53</sup>

## The Commonwealth Ombudsman

The Commonwealth Ombudsman (Ombudsman) is an independent statutory officer established by the *Ombudsman Act 1976* (Ombudsman Act). The purpose of the Ombudsman is to provide assurance that government departments and agencies act with integrity and treat people fairly, and to influence enduring systemic improvement in public administration in Australia.<sup>54</sup>

The Ombudsman has broad jurisdiction over Commonwealth agencies (including all of the NIC agencies, excluding ASIO) to consider actions that relate to matters of administration.<sup>55</sup> In addition to its general jurisdiction, the Ombudsman has specific oversight responsibilities in relation to the

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<sup>54</sup> Commonwealth Ombudsman, *Annual Report (2017-18)* pg 8.

<sup>55</sup> *Ombudsman Act 1975* (Cth) (Ombudsman Act), s 5.

use of the following covert and intrusive powers to assess compliance with legislative requirements associated with the use of these powers. These include:

- telecommunications interceptions by the ACIC and AFP<sup>56</sup>
- stored communications by the AFP, ACIC and the Department of Home Affairs<sup>57</sup>
- telecommunications data accessed by the AFP, ACIC and Department of Home Affairs (Chapter 4A TIA Act)<sup>58</sup>
- surveillance devices use by the AFP and ACIC<sup>59</sup>
- controlled operations under Part IAB of the *Crimes Act 1914* (Cth)<sup>60</sup>
- industry assistance powers under the Telecommunications Act<sup>61</sup>
- Delayed Notification Search Warrants, Control Orders, Preventative Detention Orders and Prohibited Contact Orders.<sup>62</sup>

The Ombudsman has additional responsibilities in relation to the AFP's professional standards and AFP conduct and practices issues.<sup>63</sup>

During an Ombudsman inspection, there may be a range of issues identified, including minor administrative errors, instances of serious non-compliance and systemic issues. The Ombudsman may make suggestions for improvement or make formal recommendations about particularly serious issues and/or instances where an issue has not been addressed by the agency despite previous findings.

The Ombudsman may consider matters in response to a complaint or by their own motion.<sup>64</sup>

The Ombudsman Act gives the Ombudsman and delegated staff wide powers to obtain information for the investigation of complaints. These powers include:

- a. requiring a person or agency to provide documents or other written records relevant to an investigation
- b. requiring a person to attend a specified place and answer questions
- c. examining witnesses on oath or affirmation, and
- d. entering premises.

The Comprehensive Review (discussed in more detail below), noted that although the Ombudsman has jurisdiction over several AIC agencies, the Ombudsman "is not adequately equipped to protect sensitive national security information".<sup>65</sup> Government has accepted the Comprehensive Review's

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<sup>56</sup> *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act), Chapter 2.

<sup>57</sup> TIA Act, Chapter 4A.

<sup>58</sup> TIA Act, Chapter 4A. This excludes telecommunications data that is accessed outside of the TIA Act (e.g. *Migration Act 1958* (Cth) and the *Telecommunications Act 1997* (Cth)).

<sup>59</sup> *Surveillance Devices Act 2004* (Cth), Part 6.

<sup>60</sup> *Crimes Act 1914* (Cth) (Crimes Act), Division 4, Part IAB.

<sup>61</sup> *Telecommunications Act 1997* (Cth), s 317ZRB.

<sup>62</sup> Crimes Act, Part IAAB and *Criminal Code Act 1995* (Cth) Division 105.

<sup>63</sup> *Australian Federal Police Act 1979* (Cth), Part V.

<sup>64</sup> Ombudsman Act, s 5.

<sup>65</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, para 40.30.



recommendation that the Ombudsman no longer have jurisdiction over ASIS, AGO, ASD, DIO and ONI.<sup>66</sup>

### The Australian Commission for Law Enforcement Integrity

The Integrity Commissioner, supported by the Australian Commission for Law Enforcement Integrity (ACLEI), investigates allegations of corruption in the following Australian Government law enforcement agencies:

1. Australian Competition and Consumer Commission
2. Australian Criminal Intelligence Commission (including the former Australian Crime Commission, the former CrimTrac Agency and the former National Crime Authority)
3. Australian Federal Police (including ACT Policing)
4. Australian Prudential Regulation Authority
5. Australian Securities and Investments Commission
6. Australian Taxation Office
7. Australian Transaction Reports and Analysis Centre (AUSTRAC)
8. Department of Home Affairs, including the Australian Border Force, and
9. prescribed aspects of the Department of Agriculture, Water and the Environment.<sup>67</sup>

ACLEI prioritises investigations into serious corruption and systemic corruption issues.<sup>68</sup>

ACLEI may investigate a matter upon receiving a referral or notification, or on the Integrity Commissioner's own initiative.<sup>69</sup> ACLEI may also refer corruption issues to law enforcement agencies for investigation, or carry out investigations in partnership with law enforcement agencies.

ACLEI also advises agencies within its jurisdiction of potential corruption risks and vulnerabilities and provides advice and assistance to agencies to develop integrity and anti-corruption plans and procedures.

ACLEI has significant powers conferred by Part 9 of the LEIC Act and other Commonwealth legislation, including the ability to:

- a. hold hearings and issue notices compelling a person to provide information, documents, or things;
- b. execute search warrants;
- c. intercept and access telecommunications;
- d. use surveillance devices;
- e. conduct controlled operations; and
- f. use assumed identities.

### Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) monitors, investigates and reports on agency compliance with the *Freedom of Information Act 1982* (FOI Act) and the *Privacy Act 1988*

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<sup>66</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, recommendation 167, and Government Response to the Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC.

<sup>67</sup> *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act), s 5 (definition of 'law enforcement agency'); *Law Enforcement Integrity Commissioner Regulations 2017*, s 6A.

<sup>68</sup> *Law Enforcement Integrity Commissioner Act*, s 16.

<sup>69</sup> LEIC Act, Division 1, Part 4.

(Privacy Act) as well as reporting to the Attorney-General on the Commonwealth government's collection, use, disclosure, management, administration and storage of information more broadly.

The OAIC may investigate acts or practices that might breach the Privacy Act in response to a complaint or of their own motion.<sup>70</sup> The OAIC may investigate an action taken by an agency in the performance of functions or the exercise of powers under the FOI Act on a complaint from a person, or on the Information Commissioner's initiative.<sup>71</sup>

The OAIC is able to use a number of powers in carrying out its functions, including:

- a. power to obtain information and documents
- b. power to examine witnesses (including under oath or affirmation), and
- c. directions power for a person to attend a compulsory conference, and to produce documents.

### The Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) may inquire into complaints of unlawful discrimination, and any act or practice that may be inconsistent with or contrary to human rights, as defined in the *Australian Human Rights Commission Act 1986* (AHRC Act).<sup>72</sup>

The AHRC may initiate an inquiry into any act or practice that may be inconsistent with or contrary to human rights in response to a complaint, of their own motion, or if requested to do so by the Attorney-General.<sup>73</sup> The AHRC may initiate an inquiry into any act or practice (including any systemic practice) that may constitute discrimination in response to a complaint, of their own motion, or if requested to do so by the Attorney-General.<sup>74</sup>

The AHRC has broad jurisdiction to consider any act or practice that may be inconsistent with or contrary to any human right. The AHRC also has functions in relation to unlawful discrimination.

The AHRC Act enables the AHRC to use the following powers in the exercise of its functions:

- a. power to obtain information and documents (including a requirement to attend at a place), and
- b. power to examine witnesses

### Australian National Audit Office

The Australian National Audit Office (ANAO) audits financial statements and performance statements and conducts performance audits. Financial audits provide relevant and reliable information about a reporting entity's financial performance and position. The ANAO's performance audits identify areas where improvements can be made to aspects of public administration, and often make specific recommendations to assist entities to improve their performance.<sup>75</sup>

ANAO reports on audits of financial statements to the Parliament twice a year. ANAO may perform a performance audit at any time.<sup>76</sup>

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<sup>70</sup> *Privacy Act 1988* (Cth), s 40.

<sup>71</sup> *Freedom of Information Act 1982* (Cth), Part VIIB.

<sup>72</sup> *Australian Human Rights Commission Act 1986* (AHRC Act), s11.

<sup>73</sup> AHRC Act, s 20.

<sup>74</sup> AHRC Act, s 32.

<sup>75</sup> *Auditor-General Act 1997*, Part 4.

<sup>76</sup> *Auditor-General Act 1997*, s 17.

As an independent officer of the Parliament, the Auditor-General has complete discretion in the performance or exercise of the functions or powers. In exercising the mandated and discretionary functions and powers, the Auditor-General is not subject to direction from anyone in relation to:

- a. whether a particular audit is to be conducted;
- b. the way a particular audit is to be conducted; or
- c. the priority to be given to any particular matter.

The Auditor-General Act 1997 provides the following powers to the Auditor-General:

- a. directions power to provide information
- b. directions power to attend and give evidence
- c. directions power to produce documents.
- d. access to premises
- e. ability to full and free access to documents, and to examine and make copies of documents

The Auditor-General may require that information or answers to questions be given under oath or affirmation.

## Parliamentary oversight

NIC agencies are directly accountable to the parliament through the Parliamentary Joint Committee on Intelligence and Security (PJCIS) and the Parliamentary Joint Committee on Law Enforcement (PJCLE).

### Parliamentary Joint Committee on Intelligence and Security

The PJCIS is a joint statutory parliamentary committee, established by the *Intelligence Services Act 2001* (Cth) (IS Act).

The PJCIS oversees the administration and expenditure of ASIO, ASIS, AGO, DIO, ASD, ONI, as well as specific AFP's activities (mostly relating to counter-terrorism). The functions of the PJCIS, as set out in the IS Act, are to:

- a. review the agencies' administration and expenditure
- b. review matters referred to it by a responsible minister, or by parliamentary resolution, and
- c. report its recommendations to Parliament and the responsible minister.<sup>77</sup>

In recent years, almost all draft national security legislation has been referred to the PJCIS for review prior to debate in the Parliament.<sup>78</sup>

The PJCIS is able to request briefings from the heads of ASIO, ASIS, AGO, ASD, DIO, ONI, Home Affairs, the AFP and the IGIS.<sup>79</sup> This does not allow the PJCIS to compel the production of operationally sensitive information.<sup>80</sup> The PJCIS is expressly prohibited from reviewing agencies' operations and activities.<sup>81</sup>

PJCIS staff are required to hold high-level security clearances,<sup>82</sup> and all members, including Committee members, are subject to required to maintain the secrecy of information provided to the Committee.<sup>83</sup>

### Parliamentary Joint Committee on Law Enforcement

The PJCLE is a joint statutory parliamentary committee, established by the *Parliamentary Joint Committee on Law Enforcement Act* (Cth) (PJCLE Act). The PJCLE monitors and reviews the performance by the ACIC and the AFP of their functions, and also oversees the operation of Part 2-6 and section 20A of the *Proceeds of Crime Act 2002* (relating to unexplained wealth).<sup>84</sup>

The PJCLE can initiate its own inquiries.<sup>85</sup> However, it is expressly prohibited from reviewing sensitive operational information or operational methods, and particular operations or investigations.<sup>86</sup>

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<sup>77</sup> IS Act, s 29.

<sup>78</sup> Comprehensive Review of the Legal Framework of the National Intelligence Community by Mr Dennis Richardson AC, para 40.40.

<sup>79</sup> IS Act, s 30

<sup>80</sup> IS Act, Schedule 1, clause 1.

<sup>81</sup> IS Act, s 29.

<sup>82</sup> IS Act, Schedule 1, clause 21.

<sup>83</sup> IS Act, Schedule 1, Part 2.

<sup>84</sup> *Parliamentary Joint Committee on Law Enforcement Act 2010* (Cth) (PJCLE Act) s 7(1).

<sup>85</sup> PJCLE Act, ss 7(1)(b), 7(1)(e).

<sup>86</sup> PJCLE Act, s 7(2).

## Attachment C: Agency-specific oversight arrangements

### The Australian Criminal Intelligence Commission

The ACIC is also subject to external governance arrangements. The ACIC Board is chaired by the Commissioner of the AFP and provides strategic direction, authorises the ACIC's special investigations and special operations, authorises the use of the ACIC's coercive powers; and determines the National Criminal Intelligence Priorities. The ACIC's Intergovernmental Committee also monitors the ACIC and oversees the strategic direction of the ACIC and the ACIC Board, including the ACIC's coercive powers. Further, a mandatory review into the operation of the ACC Act must be undertaken every five years (section 61A of the ACC Act refers).

The ACIC has an independent audit and risk committee, which provides the ACIC CEO with independent assurance on oversight and management of risk. Through the current annual audit plan, the ACIC's Audit Committee reports on the effectiveness of key operational controls in areas such as the use of assumed identities, management of covert cash, management of firearms and credentials, intelligence platform improvement projects, and the health and safety of operational personnel.

### The Australian Transaction Reports and Analysis Centre

AUSTRAC's regulatory function is subject to judicial and administrative review. This review covers decisions such as registrations and issuing infringement notices. Further, activities such as legal proceedings seeking the imposition of civil penalties for regulatory breaches are entirely within the jurisdiction of the courts.

AUSTRAC's regulatory function is subject to additional scrutiny through public reporting requirements and other external reviews. AUSTRAC reports yearly on its performance as a regulator under the Australian Government's Regulator Performance Framework. AUSTRAC's performance as a regulator is also considered as part of ongoing reviews of Australia's anti-money laundering and counter-terrorism financing performance through Mutual Evaluations by the Financial Action Task Force and occasional reviews of anti-money laundering and counter-terrorism financing rules and regulations by the Parliament. In 2019, AUSTRAC's industry contribution levy – which contributes to AUSTRAC's funding – was also reviewed (four years after implementation, as required by legislation).

AUSTRAC has an independent audit and risk committee, which provides the AUSTRAC CEO with independent assurance on oversight and management of risk. Over the next twelve months, the committee will oversee audits in relation to AUSTRAC's intelligence response to unsolicited information to ensure unsolicited referrals are examined and triaged appropriately according to AUSTRAC's regulatory Targeting and Prioritisation model, so that it can continue supporting AUSTRAC's risk-based approach to regulation and improve the identification of non-compliance with anti-money laundering and counter-terrorism financing legislation.

### The Australian Federal Police

The AFP's intelligence function also supports the AFP's policing functions in accordance with strategic direction provided through Ministerial Directions issued by the Minister for Home Affairs.

The AFP also has an independent audit and risk committee and an Internal Audit function, which provide the AFP Commissioner with independent assurance on oversight and management of risk. The AFP's Audit and Risk Committee has examined audits of various aspects of the AFP's operations,

including access to and use of information, operational capabilities, program management and property. However, it has not recently directly audited the AFP's intelligence function.

### Home Affairs Intelligence Division

The Department of Home Affairs also has an independent internal audit function. The internal audit function is designed to assist the Department to better manage its business or risks, or provide assurance as to whether key projects, systems and governance structures are operating as intended. Audit reports are presented, discussed and endorsed by the Department's Audit and Risk Committee, and the implementation of recommendations is monitored by the Department. Internal audits that have been undertaken in relation to Intelligence Division activities include privacy obligations and stored communications processes.

Administrative decisions made by the Department are subject to judicial review. A significant number of the decisions made by the Department are also subject to merits review by the Administrative Appeals Tribunal.