



Law Council
OF AUSTRALIA

Strengthening Oversight of National Intelligence Community Bill 2025

Parliamentary Joint Committee on Intelligence and Security

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About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
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Through this representation, the Law Council acts on behalf of more than 107,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2025 are:

- Ms Juliana Warner, President
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The Chief Executive Officer of the Law Council is Dr James Popple. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

Executive summary

1. The Law Council of Australia welcomes this opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security (**PJCIS**) review of the Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth) (the **Bill**). The Law Council broadly supports this Bill. However, the Bill does raise concerns in certain areas.
2. We make the following recommendations to improve the operation of the Bill:
 - The PJCIS should seek an assurance that the IGIS will have capacity and resourcing to effectively fulfil its additional oversight responsibilities, in particular its oversight of AUSTRAC noting the expansion of AUSTRAC's functions as a result of the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth).
 - The Bill should be amended to provide a definition of the intelligence function for the Department of Home Affairs in the principal legislation under proposed subsection 3A(4) of the IGIS Act. If necessary, a regular review provision could be added to ensure that the definition remains fit for purpose by reference to the evolving functions of the Department of Home Affairs.
 - If the Committee decides that delegated legislation is appropriate, then the Law Council proposes that additional guardrails need to be included in the primary legislation. These should include:
 - listing any legislated intelligence functions of the Department of Home Affairs in the primary legislation; and
 - for any remaining functions, amending subsection 3A(4) of the IGIS Act to expressly require that delegated legislation must specify a definition of an intelligence function of the Department of Home Affairs, rather than list organisational units within the Department.
 - Proposed subsection 22A(3) should require consultation with the intelligence agency under inquiry, but remove the requirement for agreement.
 - The Explanatory Memorandum entry for Item 28 of Schedule 1 at paragraph 130 should be amended to refer to Item 59 of Schedule 1 (rather than Item 57).
 - Item 127 of Schedule 1 Part 2 should be removed from the Bill.
 - The ability to specify additional classes of persons able to rely on immunities through legislative instrument should be removed.
 - The ability to delegate such classification should also be removed.
 - The long title of the Bill should be amended from '... and related purposes' to '... and other purposes' to properly encompass the proposals contained in Schedule 3.
 - The Australian Government should, as a matter of good practice, commit to responding to a formal report of the INSLM within twelve months of the report being tabled in Parliament.

Introduction

3. The primary objective of the Bill—proposed through the amendments proffered by Schedule 1—is to expand the oversight functions of the Inspector-General of Intelligence and Security (**IGIS**) and the PJCIS to cover the full suite of activities of the Australian Criminal Intelligence Commission (**ACIC**), as well as the intelligence functions of the Australian Federal Police (**AFP**), Australian Transaction Reports and Analysis Centre (**AUSTRAC**), and the Department of Home Affairs.
4. Schedule 2 of the Bill seeks to amend provisions of the *Administrative Review Tribunal Act 2024* (Cth) that address review and access of ACIC criminal intelligence assessment records under the archives law.
5. Schedule 3 proposes civil and criminal immunities for Australian Defence Force (**ADF**) personnel for computer offences under Division 476 of the *Criminal Code Act 1995* (Cth) (**Criminal Code**).
6. Schedule 4 proposes amendments to the *Independent National Security Legislation Monitor Act 2010* (Cth) (**INSLM Act**) including to the Independent National Security Legislation Monitor's (**INSLM's**) remit to review any Commonwealth legislation that relates to counter-terrorism or national security.¹
7. The Law Council does not propose to comment on Schedules 2 and 5 to the Bill, the latter of which contains application and transitional provisions.

General comments

8. The Law Council generally supports the policy objective of consolidating the operational oversight of intelligence functions with the IGIS, and policy oversight with the PJCIS.² We recognise that there are advantages to aggregating intelligence oversight experience and security-cleared staff within specialised bodies such as the IGIS and PJCIS.³ We also support the underlying proposition advanced by the *Comprehensive Review of the Legal Framework of the National Intelligence Community* (**Richardson Review**)—and given expression through the Bill—that '[o]versight should follow intelligence function, regardless of the structures used to support the performance of a function'.⁴
9. The Law Council has previously expressed support for the extension of the oversight roles of the PJCIS, IGIS and the INSLM to cover intelligence functions in a manner similar to the proposal in the Bill.⁵ However, this support has always been tempered by the concern that oversight bodies must be sufficiently resourced and staffed to levels commensurate with any increase in oversight body responsibilities.⁶

¹ See Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth) Schedule 4 Item 1, proposed *Independent National Security Legislation Monitor Act 2010* (Cth) paragraph 3(a).

² Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth) Schedule 1. See Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 3 [40.108] and recommendation 169.

³ See also Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 3 [40.99]-[40.102].

⁴ Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 3, 263 recommendation 169.

⁵ Law Council of Australia, '[Comprehensive review of the legal framework governing the National Intelligence Community](#)', Submission to Dennis Richardson AO, Attorney-General's Department (27 November 2018) [95].

⁶ *Ibid.*

10. The Law Council endorses the Attorney-General's remarks in her second reading speech regarding the importance of effective oversight in circumstances where intelligence and security agencies:

... are entrusted with significant powers to detect, disrupt and respond to threats to the nation's security—powers that by necessity may be covert and intrusive, with the potential to infringe individual rights and freedoms if misused.⁷

11. The Law Council welcomes the recognition of the role that oversight bodies play in ensuring compliance with the law and propriety in exercising these important, but necessarily clandestine, functions undertaken by our security and intelligence services. The Attorney-General has rightly articulated that the benefits of oversight are shared more widely than their immediate implications for individual rights and freedoms. Indeed, oversight that is both effective and independent (and perceived to be so, too) is vitally important to:

... ensure that public trust is maintained and the rule of law is upheld. Without such accountability, we risk jeopardising core aspects of our democracy in our noble endeavour to keep Australians safe.⁸

12. While the Law Council has no in-principle objections to the broad policy directions adopted in the Bill, we have provided comments about specific aspects of the proposals in Schedules 1, 3 and 4. These are intended to improve the operation of the oversight functions that are the subject of the Bill.

Implementation concerns

13. The Law Council welcomes the funding uplift to the IGIS and PJCIS which, as noted in the Explanatory Memorandum, was announced in the 2023–24 Budget and will accompany the proposed increase in the scope of the responsibilities of these agencies.⁹
14. While the funding uplift is salutary, the Law Council remains concerned about the practical implications of transitioning oversight from the larger Commonwealth Ombudsman to the much smaller IGIS while at the same time significantly increasing the scope of oversight matters which fall under its purview. Along with the authors of the *2024 Independent Intelligence Review*,¹⁰ we hold some reservations about the practical implications of how the increased oversight mandate will be staffed in light of evidence regarding ongoing recruitment and retention challenges, particularly within the IGIS.
15. These concerns are exacerbated by the foreseeable increase in the volume of downstream oversight work for bodies such as AUSTRAC flowing from the commencement of obligations for the vast number of tranche two entities under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML-CTF Act**). Without a clear plan to manage staffing and resourcing, the Law Council is concerned that this likely substantial increase in workload risks degrading the

⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 30 July 2025 (Michelle Rowland, Attorney-General), 585.

⁸ Ibid.

⁹ See Explanatory Memorandum, Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth) [10].

¹⁰ See Heather Smith and Richard Maude, *2024 Independent Intelligence Review* (2024) [18.29].

practical capacity of the workforce of the IGIS (and potentially the PJCIS) to maintain quality in providing oversight of intelligence functions.

16. The Richardson review concluded in 2019 that the IGIS 'should continue to be resourced to sustain a staff of around 50'.¹¹ The Law Council observes that the staff levels within the IGIS still falls short of the recommended minimum staffing allocation from seven years earlier. The IGIS reported in its most recent Annual Report (for financial year 2023–24) that it was in a position to utilise only 77 percent of its available staffing budget.

*[The Office of the] IGIS achieved an actual ASL of 44 for the year against a funded ASL of 57. Factors that contributed to this included external labour market shortages in key skill areas, challenges with completing security related pre-employment screening in a timely manner (including TSPV clearances) and staff separations due to the highly competitive market for skilled and cleared staff.*¹²

17. The Law Council notes that there appear to be structural impediments beyond marginal improvements to salary competitiveness impacting recruitment and retention of staff. How this ongoing issue is addressed is a matter for the IGIS. However, without a successful strategy to overcome this personnel shortfall there is a risk of broader national security implications where effective continuous improvement processes cannot be actioned, there are too few staff to perform inspections, and increased demands on existing staff risks exacerbating retention issues.
18. The Law Council would like to see assurances given by the Australian Government to the wide range of professional and commercial entities subject to the AML-CTF Act that the IGIS will be in a position to effectively oversee AUSTRAC when the second tranche of AML-CTF legislation comes online in 2026. The Law Council is concerned that these identified staffing shortfalls risk leading to insufficiently effective or significantly delayed oversight of the legality and propriety of decisions made under this complex legislation.

Recommendation:

- **The PJCIS should seek an assurance that the IGIS will have capacity and resourcing to provide effective oversight of its additional oversight responsibilities, in particular of AUSTRAC noting the expansion of its functions as a result of the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024 (Cth)*.**

¹¹ Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 3 [40.104].

¹² Inspector-General of Intelligence and Security, *Annual Report 2023/24* (2024) 67.

Schedule 1—Principal oversight amendments

Policy objectives

19. Notwithstanding the above comments on the practicalities surrounding implementation, the Law Council remains broadly supportive of the policy aims of this Bill. We have argued in previous submissions that the wider review mandate of the IGIS beyond that of the Commonwealth Ombudsman provides substantial advantages for the oversight of intelligence functions.¹³ In particular, the broader oversight mandate offered under the *Inspector-General of Intelligence and Security Act 1986* (Cth) (**IGIS Act**) to cover not only the legality of Commonwealth agency actions, but also the propriety of those actions,¹⁴ represents an important step towards a more holistic evaluation of actions that are not readily subject to traditional judicial review or democratic accountability mechanisms.
20. We agree with the position adopted in the Richardson Review that the Commonwealth Ombudsman's legislation does not equip it to provide sufficient oversight of matters concerning national security. In particular, the statutory limitations on the Ombudsman's powers to access security intelligence information,¹⁵ or premises where such information is held, represents a significant limitation on that organisation's ability to effectively perform an oversight role of intelligence functions.¹⁶ We agree that the limited access of the Ombudsman to security classified information, means that the current arrangements supporting the Commonwealth Ombudsman do not appear to be 'adequately equipped to protect sensitive national security information'.¹⁷
21. The Law Council therefore endorses the aim of transitioning oversight arrangements of intelligence functions to the IGIS and PJCIS, both to leverage the experience of those bodies and also as a means of addressing the clear and concerning limitations in current oversight arrangements.
22. While we support the policy objectives of Schedule 1 to the Bill, the Law Council offers below a number of recommendations which in our view will improve the operation of oversight.

¹³ See Law Council of Australia, *Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Bill 2020*, Supplementary Submission to the Parliamentary Joint Committee on Intelligence and Security (25 May 2021).

¹⁴ See *Inspector-General of Intelligence and Security Act 1986* (Cth) s 8(1); Cf. *Ombudsman Act 1976* (Cth) s 15.

¹⁵ *Ombudsman Act 1976* (Cth) s 9(3).

¹⁶ See *Ombudsman Act 1976* (Cth) ss 14(2) and (3).

¹⁷ *Comprehensive Review of the Legal Framework of the National Intelligence Community*, vol 3, 244.

Intelligence function of Department of Home Affairs

23. Item 6 of Schedule 1 proposes that a definition of ‘intelligence function’ be inserted into the IGIS Act with reference to the AFP, AUSTRAC, and the Department of Home Affairs. Notably, proposed subsection 3A(4) states:

Intelligence function for the Department of Home Affairs has the meaning given by the regulations.

24. Proposed subsection 3A(5) states that such regulations may provide for consultation requirements and notification requirements when determining the intelligence functions of the Department of Home Affairs.
25. The Law Council supports the principle expressed by the Senate Standing Committee for the Scrutiny of Bills that ‘significant matters should be included in primary legislation unless a sound justification for the use of delegated legislation is provided’.¹⁸ The justification, in the Explanatory Memorandum,¹⁹ for the use of delegated legislation does not explain why it is not possible to include at least some detail about the intelligence functions of the Department of Home Affairs in the primary legislation. The Explanatory Memorandum makes two arguments in favour of using regulation:
- the functions of the Department of Home Affairs ‘are not legislated ... instead being provided for in the Administrative Arrangements Order’;²⁰ and
 - because Home Affairs functions can change rapidly, the pace of change is best addressed by regulation.
26. The Law Council respectfully submits that neither of these claims fully address either our concerns or those of the Scrutiny of Bills Committee. The first argument confuses matters of responsibility with the methods (i.e. intelligence functions) adopted by a department to action those responsibilities. It is beside the point that these activities can change by way of the Administrative Arrangements Order if the definition of an intelligence function delineates oversight responsibility on the basis of the methods and activities undertaken. Any definition in legislation would remain relevant regardless of any changes in the responsibilities allocated to a department. The Law Council is of the view that democratic accountability and rule of law considerations mean the jurisdiction of oversight bodies ought to be determined by the Parliament in primary legislation, rather than by the Executive via delegated legislation. Arrangements currently in this Bill are especially unsatisfactory as they currently require the oversight agency to reach agreement with the subject of that oversight before a definition of their oversight jurisdiction can pass into law.²¹
27. The second reason advanced in the Explanatory Memorandum is implausible and unsound, as it proposes that following a change in responsibilities it would be quicker and more accurate to prepare and issue novel regulations re-describing an intelligence function. The Law Council submits that defining an intelligence function in the primary legislation would mean that any change in the operations of the department would fall under the oversight of the IGIS at such a time as their activities

¹⁸ Senate Standing Committee for the Scrutiny of Bills, Strengthening Oversight of the National Intelligence Community Bill 2025, Scrutiny Digest 4 of 2025, [1.4].

¹⁹ Explanatory Memorandum, Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth) [60]–[61].

²⁰ Ibid [60].

²¹ As per Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth) Schedule 1 Item 6, proposed *Inspector-General of Intelligence and Security Act 1986* (Cth) section 3A(6).

meet the definition of an intelligence function. In other words, oversight would automatically follow changes in method. For these reasons, the Explanatory Memorandum fails to address why a definition cannot be included in the primary legislation.

28. We agree with the statement by the Parliamentary Joint Committee on ASIO, ASIS and DSD that:

*... the IGIS is a key accountability mechanism. The office of the IGIS is intended to provide independent assurance that Australia's intelligence agencies act legally, with propriety, under ministerial direction, and with regard to human rights.*²²

29. At the same time, the IGIS (necessarily) exercises strong coercive inquiry powers, 'similar to those of a Royal Commission'.²³ Such powers should have known and clear limits—they should reach their fullest appropriate extent, no more and no less.
30. This means that it is important that Parliament (and, in particular, this committee) should have a clear understanding of the extent of IGIS oversight over the activities of the Department of Home Affairs prior to the passage of the Bill.
31. This cannot be achieved without in turn fully understanding the scope and extent of the Department's own intelligence functions. Further committee inquiry may be appropriate here.

32. We refer to Recommendation 169 of the Richardson Review, which states that:

*Legislation establishing oversight responsibilities for the NIC should take a functional approach. Oversight should follow intelligence function, regardless of the structures used to support performance of the function.*²⁴

33. While we note that the Richardson Review recommended against including the Department of Home Affairs or the AFP in the oversight responsibilities of the IGIS, the Law Council argued that all of the National Intelligence Community (including the Department of Home Affairs) should be subject to the oversight of both the IGIS and PJCIS.²⁵ The Law Council agrees that it is important that a functional approach is followed in order to ensure consistency in approach to entities subject to the oversight of the IGIS and PJCIS on the basis of the activities that they are performing rather than how they are structured at any point in time.²⁶ Our recommendations and analysis are directed towards ensuring that the oversight of the intelligence functions of the Department of Home Affairs remain consistent with a policy framework designed to facilitate specialised and appropriately resourced oversight.
34. In the Bill, proposed subsection 3A(6) contains a requirement of agreement between the Minister responsible for administering the IGIS Act and the Minister for the Department of Home Affairs prior to the Governor-General promulgating regulations

²² Parliamentary Joint Committee on ASIO, ASIS and DSD, 'Review of administration and expenditure for ASIO, ASIS and DSD' (Report No 3, 7 March 2005) [3.1].

²³ 'Inquiries', *Inspector-General of Intelligence and Security* (Web Page) <<https://www.igis.gov.au/about/what-we-do/inquiries>>

²⁴ Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 3, 263.

²⁵ Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 3, 258 and 262.

²⁶ See Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 3, 264.

under the IGIS Act.²⁷ This requirement risks a situation where such agreement fails to be reached.

35. We note that there is no requirement that the Minister for Home Affairs prescribe any functions of the Department as 'intelligence functions'. In such a circumstance, there is no mechanism to ensure that functions that might substantively be described as intelligence functions are subject to any effective oversight by the IGIS. Recognising that, in such circumstances, oversight of the activities of the Department would remain with the Commonwealth Ombudsman and remain subject to the limitations of that Act on the oversight of actions and activities with national security implications.
36. The Law Council is of the view that such a deferential approach to the agency subject to oversight is misguided in this context. It raises rule of law concerns because it should not be left to the Executive branch of government to determine for itself 'what powers it has', while also determining for itself how it might be subject to oversight.²⁸ In practical terms, it is foreseeable that an agency or department may wish to limit oversight of controversial policy implementation or operations by failing to assign oversight to the IGIS, who has greater access to intelligence systems and fewer restraints on access to security classified information than the alternative oversight body, the Commonwealth Ombudsman.
37. The Bill should be amended to provide a definition of the intelligence function for the Department of Home Affairs in the principal legislation, for IGIS scrutiny purposes, under proposed subsection 3A(4) of the IGIS Act. If necessary, a regular review provision could be added to ensure that the definition remains fit for purpose by reference to the evolving functions of the Department of Home Affairs.
38. Should the Committee decide otherwise, we consider that the primary legislation should list any legislated intelligence functions of the Department of Home Affairs. For any remaining functions, it should provide greater guidance that the disallowable regulations should specify the functions or activities of the Department of Home Affairs that constitute intelligence functions, rather than list organisational units. This would be consistent with Recommendation 169 of the Richardson Review, as noted above.

²⁷ Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth), Schedule 1 Part 1 Item 6 proposed *Inspector-General of Intelligence and Security Act 1986* (Cth) s 3A(6).

²⁸ See Law Council of Australia, *Rule of Law Principles* (Policy Statement, March 2011), Principle 6.

Recommendations:

- **The Bill should be amended to provide a definition of the intelligence function for the Department of Home Affairs in the principal legislation under proposed subsection 3A(4) of the IGIS Act. If necessary, a regular review provision could be added to ensure that the definition remains fit for purpose by reference to the evolving functions of the Department of Home Affairs.**
- **If the Committee decides that delegated legislation is appropriate, then the Law Council proposes that additional guardrails need to be included in the primary legislation. These should include:**
 - **listing any legislated intelligence functions of the Department of Home Affairs in the primary legislation; and**
 - **for any remaining functions, amending subsection 3A(4) of the IGIS Act to expressly require that delegated legislation must specify a definition of an intelligence function of the Department of Home Affairs, rather than list organisational units within the Department.**

Constraints on the IGIS reporting to the PJCIS

39. The Law Council supports the insertion of proposed section 22A into the IGIS Act. The proposed section would provide the IGIS with a discretion in deciding whether to conduct an inquiry into operational activities of an intelligence agency at the request of the PJCIS. We agree in principle with the balance that has been struck in terms of formalising that the PJCIS may request an inquiry, while preserving the independence of the IGIS in deciding how to respond to such a request.
40. We do, however have some concern about the conditions proposed by the Bill that insert functional limitations on the independence of the IGIS in responding to a PJCIS request. For example, proposed subsection 22A(3) requires agreement between the IGIS and the head of the intelligence agency under inquiry that the terms of the proposed response would not prejudice:
- (a) *security, the defence of Australia or Australia's relations with other countries; or*
 - (b) *law enforcement operations, including methodologies and investigative techniques; or*
 - (c) *confidential commercial information held by AUSTRAC; or*
 - (d) *operationally sensitive information (within the meaning of Schedule 1 to the Intelligence Services Act 2001).*
41. We query whether the requirement to reach agreement with the principal agency under investigation is consistent with the independent nature of the oversight body. Under the proposal, it would appear that a failure to reach agreement about the prejudicial consequences of particular disclosures (especially on broad terms such as 'Australia's relations with other countries'), means that the IGIS may not be able to independently respond to oversight matters.

42. The Law Council contends that the IGIS is well placed to balance disclosure and national security concerns in consultation with the head of an intelligence agency, and, in our view, this decision should ultimately rest with the IGIS rather than requiring agreement. Our concerns are not ameliorated by the requirement that the IGIS notify PJCIS that agreement could not be reached on this matter.²⁹
43. We contend that effective oversight is better supported by enabling the IGIS to respond to the PJCIS in a manner that they see as appropriate to the oversight matter under consideration. This can be achieved by noting that agreement could not be reached with the head of the affected intelligence agency regarding concerns that the disclosure might prejudice security. In such a situation, where an oversight matter is enlivened, it should be for the affected intelligence agency to relay their concerns to the PJCIS rather than inhibit the oversight body reporting back to a parliamentary committee in a situation where agreement could not be reached.
44. Finally, we note that there appears to be an error in the Explanatory Memorandum in explaining the operation of proposed section 22A and subsection 29(2A) that we recommend correcting.

Recommendations:

- **Proposed subsection 22A(3) should require consultation with the intelligence agency under inquiry, but remove the requirement for agreement.**
- **The Explanatory Memorandum entry for Item 28 of Schedule 1 at paragraph 130 should be amended to refer to Item 59 of Schedule 1 (rather than Item 57).**

Proposed amendments to section 25A of the *Australian Crime Commission Act 2002* (Cth)

45. Item 127 of Part 2 of Schedule 1 proposes to insert a number of subsections to section 25A of the *Australian Crime Commission Act 2002* (Cth) (**ACC Act**) as it relates to the conduct of ACIC examinations.
46. The proposed changes would enable the examiner to:
- ... prevent an IGIS official from being present during the examination if the examiner is satisfied that the official's attendance would be reasonably likely to prejudice:*
- (a) the life or safety of a person; or*
- (b) the effectiveness of the examination.³⁰*
47. Where an IGIS official has been prevented from being present at an examination, proposed subsection 25A(4A) provides that '[t]he official must be provided with an audio-visual recording of the examination as soon as possible after the end of the examination'.

²⁹ Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth), Schedule 1 Part 1 Item 28 proposed *Inspector-General of Intelligence and Security Act 1986* (Cth) s 22A(8).

³⁰ Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth), Schedule 1 Part 2 Item 127 proposed *Australian Crime Commission Act 2002* (Cth) s 25A(4A).

48. Proposed subsection 25A(4B) states that the power to exclude an inspection of an ACIC examination can be enlivened either:

(a) by written notice given to the official before the examination; or

(b) by notifying the official orally during the examination.³¹

49. The Law Council is concerned that the current operation of this proposed amendment to the ACC Act has the potential to constitute an impediment to independent oversight of the ACIC. This is particularly the case where an examiner deems that the presence of an IGIS official is reasonably likely to prejudice the effectiveness of the examination, which appears to be a relatively low threshold.

50. The Law Council is concerned that the power to exclude is entirely at the discretion of the examiner and that a representative of the oversight body can be excluded orally and without warning.³² There is a real risk that, in haste or out of frustration at a perceived impediment, an examiner may seek to use such a discretion to prevent what they may interpret as the impediment of an investigation. As drafted, this provision allows for the situation where an examiner may exclude an IGIS official through oral notification because interventions concerning the legality or propriety³³ of the examination are considered by the examiner to be reasonably likely to prejudice the effectiveness of their line of questioning. The Law Council considers the ability of the examiner to exclude the representatives of the oversight body to be antithetical to any substantive provision of safeguards against potential abuse in the exercise of coercive powers.

51. The Law Council is not convinced that supplying an audio-visual recording offsets the risk of abuse of this discretion,³⁴ nor does it address potential harm to the legitimacy of the examination process flowing from an examinee witnessing the oversight body being summarily excluded from the process.

52. In our view, this provision cannot be supported and this Item should be removed from the Bill. We are concerned that, as drafted, this provision introduces an unacceptable threat to effective oversight. No evidence has been provided for the necessity or utility of this provision in the Explanatory Memorandum.³⁵ In the event that, contrary to our advice, this provision is retained, we submit that the threshold should be elevated to require that the presence of an IGIS official is reasonably likely to 'seriously' prejudice the examination.

Recommendation:

- **Item 127 of Schedule 1 Part 2 should be removed from the Bill.**

³¹ Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth), Schedule 1 Part 2 Item 127 proposed *Australian Crime Commission Act 2002* (Cth) s 25A(4B).

³² See Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth), Schedule 1 Part 2 Item 127 proposed *Australian Crime Commission Act 2002* (Cth) s 25A(4B).

³³ See *Inspector-General of Intelligence and Security Act 1986* (Cth) s 8(1).

³⁴ See Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth), Schedule 1 Part 2 Item 127 proposed *Australian Crime Commission Act 2002* (Cth) s 25A(4A).

³⁵ See Explanatory Memorandum, Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth) [431].

Schedule 3—Immunities for computer-related acts

53. Schedule 3 to the Bill seeks to amend the Criminal Code to introduce an exemption from civil and criminal liability for defence officials and others, for certain computer-related conduct connected to an effect outside Australia. Although not directly related to oversight, the issue of immunities for the Australian Defence Force (**ADF**) in conducting cyber-operations which may otherwise generate civil and criminal liability was discussed in the Richardson Review.³⁶
54. The Law Council remains concerned about the rule of law implications of immunities. In this instance, we are concerned that the definition of a 'defence official' is broader than Richardson Review's narrow focus on ADF members and agents.³⁷ The proposed definition of a 'defence official' in the Bill is itself significantly broader than the current definition of a 'staff member'³⁸ under the existing section 476.6 immunities provision.
55. The current definition of a 'staff member' of the Australian Secret Intelligence Service (**ASIS**), the Australian Signals Directorate (**ASD**) or the Australian Geospace-Intelligence Organisation (**AGO**) for the purposes of granting immunity from civil and criminal liability is set out in section 476.6 of the Criminal Code. The definition of a 'staff member' is limited to the Director-General or Director (as appropriate) of ASIS, ASD or AGO,³⁹ and employees, contractors, consultants and secondees from a Commonwealth or State authority to the agency in question. There is no scope to extend the definition or classes of persons affected by delegated legislation.
56. In contrast, proposed subsection 476.7(8) of the Criminal Code would define a 'defence official' as:
- (a) *a member of the Australian Defence Force; or*
 - (b) *a defence civilian (within the meaning of the Defence Force Discipline Act 1982); or*
 - (c) *the Secretary of the Defence Department; or*
 - (d) *an APS employee of the Defence Department; or*
 - (e) *a consultant or contractor to the Defence Department; or*
 - (f) *a person who is made available by another Commonwealth or State authority or other person to perform services for the Defence Department; or*
 - (g) *any other person included in a class of persons specified under subsection (9).*⁴⁰

57. The Law Council has reservations about proposed paragraph 476.7(8)(g) which enables—through the operation of proposed subsection 476.7(9)—the Secretary of the Defence Department or the Chief of the Defence Force to specify, by legislative instrument, one or more classes of persons for the purposes of the definition of 'defence official'. Notably, the ability of either the Chief of the Defence Force or the

³⁶ See Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 2, [24.173]–[24.203].

³⁷ See Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 2, 225–227.

³⁸ See *Criminal Code Act 1995* (Cth) s 476.6(10).

³⁹ See *Criminal Code Act 1995* (Cth) s 476.6(10).

⁴⁰ Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth), Schedule 3 Item 4 proposed *Criminal Code Act 1995* (Cth) s 476.7(8).

Secretary of the Defence Department to specify additional classes of persons may be delegated under proposed subsections 476.7(10) and 476.7(11).

58. Under this approach, liability for a criminal offences and pathways to civil liability can be curtailed by executive action exercisable by either a public servant or senior officer of one of the branches of the armed forces. In this regard, the Explanatory Memorandum states that:

*... the decision maker should determine factors such as types of activities such a class of persons is involved in, the nexus to the activities taking place, the period for which they are included, and any other limitations that might be relevant in the particular case.*⁴¹

59. The presence of non-binding suggestions about process in the Explanatory Memorandum does not offset the Law Council's concerns with this provision.
60. Immunities continue to raise serious rule of law concerns in relation to equality under the law in terms of the applicability of criminal offences and barriers to compensation for loss. In our view, immunities should be clearly expressed in the principal legislation (and agreed by Parliament), rather determined through delegated instruments.

Recommendations:

- **The ability to specify additional classes of persons able to rely on immunities through legislative instrument should be removed.**
- **The ability to delegate such classification should also be removed.**

Bill title

61. As the question of immunities raised in Schedule 3 is of a considerably different kind to the oversight matters addressed in the other schedules of the Bill, the Law Council notes that this Schedule likely falls outside the ambit of the long title of the Bill as a 'related purpose'.⁴² We note that the General Rule proposed by the Office of Parliamentary Counsel (**OPC**) is that '[t]he title of a Bill must encompass all the matters included in the Bill'.⁴³ The long title of this Bill is 'A Bill for an Act to amend the law relating to intelligence services, and for related purposes'. OPC guidance provides an example of the ambit of 'related purposes' including such matters as transitional provisions.⁴⁴
62. As Schedule 3 to the Bill amends the Criminal Code in relation to the immunity of the ADF members and defence officials, we regard this as being distant from the law relating to intelligence services insofar as it relates to a different part of the executive branch and amends the Criminal Code. The Law Council is concerned that such distance from the primary purpose of the Bill would have been better reflected by the phrase '... and other purposes'.⁴⁵
63. We note that the Bill might be described as an example of 'a portfolio Bill combining a significant set of amendments of one or several Acts with minor miscellaneous

⁴¹ Explanatory Memorandum, Strengthening Oversight of the National Intelligence Community Bill 2025 (Cth) [1121].

⁴² Office of Parliamentary Counsel, *Long and short titles of Bills and references to proposed Acts*, Drafting Direction 1.1 (28 May 2019).

⁴³ Ibid [1].

⁴⁴ Ibid [1].

⁴⁵ See Ibid [7].

amendments of other Acts'.⁴⁶ However, such an interpretation requires interpreting Schedule 3 as a 'minor miscellaneous amendments'. We are concerned that it is, in fact, a more substantive amendment than those words allow. The Law Council contends that the phrase '... and for other purposes' is more appropriate to cover the range of subject matter included in all schedules of the Bill.

Recommendation:

- **The long title of the Bill should be amended from '... and related purposes' to '... and other purposes' to properly encompass the proposals contained in Schedule 3.**

Schedule 4—Independent National Security Legislation Monitor

64. The Law Council supports the clarification, modernisation and expansion of the INSLM's mandate contained in Schedule 4 to the Bill.

65. We are of the view that this important office plays a vital role in building public trust in national security agencies while making pragmatic and human rights consistent suggestions for improvement to their practices and legislation. To this end, we suggest that a modest increase in funding to support this additional function is warranted.

66. incidentally, we take the view that there should be a requirement that the Australian Government provides a response to recommendations contained in INSLM reports in a manner similar to a committee report or a Royal Commission. We note that the Richardson Review recommended that 'the Government should provide a publicly accessible response to the INSLM's recommendations within 12 months of the INSLM's report being tabled in Parliament'.⁴⁷ We endorse this position.

Recommendation:

- **The Australian Government should, as a matter of good practice, respond to a formal report of the INSLM within twelve months of the report being tabled in Parliament.**

⁴⁶ Ibid [7].

⁴⁷ Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (2019) vol 3, 294 recommendation 178.