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OFFICE OF THE  
INSPECTOR-GENERAL  
OF INTELLIGENCE  
AND SECURITY

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# Review of Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*

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Submission to the Parliamentary Joint Committee on  
Intelligence and Security

01 February 2024

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## 2. Introduction

1. The Inspector-General of Intelligence and Security welcomes the opportunity to make this submission to the review by the Parliamentary Joint Committee on Intelligence and Security (the Committee) on the operation, effectiveness and implications of Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), the questioning warrant scheme.
2. Consistent with established practices, the Inspector-General does not make any comment on the policy rationale underlying legislation. Rather, this submission discusses the key features of the relevant provisions that relate to oversight and the outcomes of the Inspector-General's oversight work regarding exercise by the Australian Security Intelligence Organisation's (ASIO) of its powers and functions pursuant to Division 3 of Part III of the ASIO Act.

## 3. IGIS Background and functions

3. The Inspector-General is an independent statutory officer appointed under the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act).<sup>1</sup>
4. Under his existing jurisdiction, the Inspector-General oversees the activities of the following six intelligence agencies:
  - Australian Security Intelligence Organisation (ASIO)
  - Australian Secret Intelligence Service (ASIS)
  - Australian Signals Directorate (ASD)
  - Australian Geospatial-Intelligence Organisation (AGO)
  - Defence Intelligence Organisation (DIO)
  - Office of National Intelligence (ONI)and the intelligence functions of the Australian Criminal Intelligence Commission and Australian Federal Police, as currently defined in the IGIS Act.<sup>2</sup>
5. The overarching purpose of the Inspector-General's functions is to assist Ministers in the oversight and review of the activities of each intelligence agency to ensure that they are legal and proper, comply with ministerial guidelines and directions, and respect human rights.<sup>3</sup>
6. The Inspector-General regularly conducts proactive and independent inspections of the legality, propriety and human rights implications of intelligence agency activities and compliance incidents. He takes a risk-based approach to the inspection program, targeting high risk activities and activities with the potential detrimentally to affect the lives or rights of Australian persons.
7. The inspection role of the Inspector-General is complemented by an inquiry function, which is the most formal activity undertaken to review the operations of the agencies within his jurisdiction. The IGIS Act provides that the Inspector-General may conduct an independent inquiry into the

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<sup>1</sup> The purposes of the IGIS include the functions of the Inspector-General referred to in sections 8, 9 and 9A of the IGIS Act (paragraph 6AA(e) IGIS Act).

<sup>2</sup> The intelligence functions of the ACIC and AFP, as defined in section 3 of the IGIS Act, are the collection, correlation, analysis, production and dissemination of intelligence obtained by the ACIC or AFP from the execution of a network activity warrant; or the performance of a function, or the exercise of a power, conferred on a law enforcement officer of ACIC or AFP by the network activity warrant provisions of the *Surveillance Devices Act 2004*.

<sup>3</sup> See section 4 IGIS Act.

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activities of an intelligence agency either of his own motion, at the request of the responsible Minister, or the Attorney-General, or in response to a complaint. The Prime Minister can request the Inspector-General to conduct an inquiry into an intelligence or security matter relating to any Commonwealth agency under section 9 of the IGIS Act.

8. Finally, the Inspector-General receives and inquires into complaints about the intelligence agencies within his jurisdiction.<sup>4</sup> Complaints can be made by a member of the public, or by a current or former employee of an intelligence agency, about the activities of an intelligence agency. The Inspector-General also receives and, where appropriate, investigates public interest disclosures about suspected wrongdoing within the intelligence agencies.

## 4. The Australian Security Intelligence Organisation Amendment Act 2020

### 4.1 The 2020 Act

9. In December 2020, the *Australian Security Intelligence Organisation Amendment Act 2020* (the amending Act) was passed by Parliament and received Royal Assent. The amending Act repealed and substituted the provisions in Division 3 of Part III of the ASIO Act, in order to implement the Government's response to the report by the Committee on the operation, effectiveness and implications of the ASIO Act's compulsory questioning framework, as it was at that time.<sup>5</sup>
10. The provisions substituted by the amending Act, which are the subject of the Committee's current review, came into effect on 7 September 2020.

### 4.2 The Inspector-General's Submission

11. On 3 July 2020, the Inspector-General provided a submission in response to the Committee's review of the amending Act.<sup>6</sup> That submission noted the changes between the then current questioning warrant powers and the proposed provisions, such as the expanded application of the questioning framework to minors, which reduced the minimum age from 16 years to 14 years, the possibility that a minor may be questioned without a parent, guardian or preferred representative present, and the new apprehension framework in place of the detention function.
12. The Inspector-General noted that these changes represented areas of potential oversight focus once the legislation was amended.

## 5. Oversight of Division 3 of Part III

13. In accordance with subsection 8(1) of the IGIS Act, the Inspector-General has oversight of the powers and functions exercised pursuant to Division 3 of Part III of the ASIO Act.
14. The nature of the activities potentially undertaken by ASIO pursuant to Division 3 of Part III of the ASIO Act meets the Inspector-General's threshold for high risk and, as a consequence, ASIO's use of these powers are the subject of proactive oversight. This oversight has, among other things,

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<sup>4</sup> These agencies are ASIO, ASIS, ASD, AGO, ONI and DIO. Where the complaint is in respect of the intelligence functions of ACIC or AFP, as defined in the IGIS Act, IGIS also has jurisdiction.

<sup>5</sup> Explanatory Memorandum, Australian Security Intelligence Organisation Amendment Bill 2020, [1].

<sup>6</sup> IGIS's submission can be accessed at [Sub 32 - IGIS.pdf](#), and supplementary submission can be accessed at [Sub 32.1 - IGIS.pdf](#)

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considered the areas of change to the questioning warrant framework brought about by the amending Act, as noted above at paragraph 11. No concerns have been identified in respect to those changes. There has also been no inquiry, or request for an inquiry to be, undertaken by the Inspector-General in relation to any of ASIO's activities pursuant to Division 3 of Part III of the ASIO Act since the amending Act came into force.

### 5.1 Statement of procedures

15. The questioning warrant scheme is managed, pursuant to section 34AF of the ASIO Act, by a written statement of procedures prepared by the Director-General of Security to be followed in the exercise of any authority under a questioning warrant. Subsection 34AF(2) requires the Director-General to consult with the Inspector-General about the preparation of the statement. The statement is then approved by the Attorney-General. The statement of procedures is a legislative instrument, available to the public. The Inspector-General was consulted regarding the preparation of the current statement.
16. In the latter half of 2023 the statement of procedures was reviewed by the Attorney-General's Department. During this review the Inspector-General noted that the requirement for the prescribed authority to explain certain matters to the subject of the questioning warrant under section 34DC of the ASIO Act had resulted in an unwieldy introductory process to the questioning sessions which did not meaningfully assist the subject of the questioning warrant. The Inspector-General's concern was addressed by the review, which recommended an amended process to better aid the subject of the questioning warrant in understanding the required information.

### 5.2 ASIO's use of Division 3 Part III powers

17. To date, ASIO has obtained four questioning warrants under Division 3 of Part III of the ASIO Act.
18. In the course of oversight activities, the Inspector-General has exercised his power under section 9B of the IGIS Act to attend each questioning session conducted in accordance with the warrants issued to ASIO. No concerns have been raised by the IGIS during the course of questioning, or with the execution of the warrants more broadly.
19. In exercising a questioning warrant, pursuant to section 34HB of the ASIO Act, the Director-General must, as soon as practicable, give each of the following to the Inspector-General:
  - i. a copy of the request for a questioning warrant;
  - ii. a copy of the warrant or relevant written record;
  - iii. a copy of any request to vary a questioning warrant;
  - iv. a copy of any such variation made or equivalent written record;
  - v. a statement containing details of any seizure or apprehension made;
  - vi. a statement outlining any action taken by the Director-General as a consequence of a concern raised by the IGIS under section 34DM;<sup>7</sup> and
  - vii. a copy of any video recording made under section 34DP.<sup>8</sup>

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<sup>7</sup> Section 34DM of the ASIO Act enables the IGIS to inform the prescribed authority and Director-General of any concern the IGIS has about impropriety or illegality in connection with the exercise or purported exercise of powers under Division 3 Part III in relation to the subject of a questioning warrant.

<sup>8</sup> Section 34DP of the ASIO Act, requires the Director-General to make video recordings of, among other things, the appearance of the subject of a questioning warrant before a prescribed authority for questioning.

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20. In respect of the above legislative requirements, the Inspector-General has had no concerns with the provision of information to date. ASIO has complied with its obligations to provide information in respect of all questioning warrants issued since December 2020, noting the one compliance incident set out below.

### 5.3 Compliance incident

21. During the 2020 - 2021 financial year, ASIO notified the Inspector-General of a failure to comply with the requirements of subsection 34DP(1) of the ASIO Act, which requires the Director-General to ensure that video recordings are made of the appearance of the subject of a questioning warrant for questioning. Due to a technical issue, a small portion of the proceedings was not recorded. In addition, separate technical issues meant that a contingency copy of the recording was not made.
22. The Inspector-General concurred with ASIO's assessment and agreed with the measures ASIO intended to implement to prevent a similar reoccurrence at any future questioning sessions. The compliance incident was reported in the Inspector-General's 2021-2022 Annual Report.<sup>9</sup>
23. No further compliance incidents have been identified in respect of Division 3 of Part III of the ASIO Act.

## 6. Conclusion

24. In the course of undertaking his oversight activities of Division 3 of Part III of the ASIO Act, the Inspector-General has not identified any matters of significant concern regarding legislative compliance, propriety or human rights.

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<sup>9</sup> [Inspector-General of Intelligence and Security \(IGIS\) 2021–2022 Annual Report](#), p88.