



Review the Home Affairs and Integrity Agencies Legislation Amendment Bill 2017

**Submission to the Parliamentary Joint Committee on Intelligence and
Security**

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18 January 2018

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Background

Consequent on the establishment of the Home Affairs portfolio, the Parliamentary Joint Committee on Intelligence and Security (PJCS) is currently reviewing amendments to the following statutes, proposed in the *Home Affairs and Integrity Agencies Legislation Amendment Bill 2017 (Home Affairs Bill)*:

- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
- *Independent National Security Legislation Monitor Act 2010*
- *Inspector-General of Intelligence and Security Act 1986*
- *Intelligence Services Act 2001*

This submission is confined to the proposed amendments to s 9 of the *Inspector-General of Intelligence and Security Act 1986 (IGIS Act)*. My concern is that those amendments have the potential to compromise or to be perceived as compromising the Inspector-General's independence.

The Office of the IGIS presently falls within the Prime Minister's portfolio, however it is anticipated that at some time during the first quarter of 2018 responsibility for administering the *IGIS Act* will be transferred to the portfolio of the Attorney-General. Changes to the *IGIS Act* are necessary to give effect to this change and to the Government's intention that the Attorney-General should be the Minister for integrity. In my view the proposed changes to s 9 are not necessary for this purpose.

Current role of the Inspector-General of Intelligence and Security

The IGIS is an independent statutory officer currently charged with reviewing the legality and propriety of activities of the six intelligence agencies comprising the Australian Intelligence Community:

- 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 Assessments (ONA).

Objects of the *IGIS Act* and the importance of independence

The functions referred to above are conferred for the purpose of enabling the Inspector-General to meet the objects set out in s 4 of the *IGIS Act*. These objects include assisting "the Government in assuring the Parliament and the public that intelligence and security matters relating to Commonwealth agencies are open to scrutiny, in particular the activities and procedures of intelligence agencies"; s 4(d) *IGIS Act*.

The ability of the Inspector-General to meet these objects depends on the demonstrable independence of the office. In fact, our independence, both real and perceived, is the mainstay of our efforts to establish, build and maintain, parliamentary and public confidence in our intelligence agencies. Any compromise of the Inspector-General's independence will seriously limit the ability to present this office to the public and the parliament as being free of special interests or political concerns.

The *IGIS Act* inspection and inquiry functions are the practical foundations of the Inspector-General's work to meet the objects of the *IGIS Act*. As the *Act* presently stands it is for the Inspector-General to

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decide which inspections are “appropriate for the purpose of giving effect” to the objects of the *Act*. Similarly, subject to only one exception, it is for the Inspector-General to decide if and when to conduct an inquiry. The Responsible Minister for an agency may “request” that the Inspector-General carry out an inquiry but the request is not mandatory. Of course it would be rare for the Inspector-General to refuse such a request but the real and perceived value, especially for the public, in the decision resting with the Inspector-General cannot be overrated.

The only present exception to the Inspector-General’s freedom in deciding whether to conduct an inquiry is to be found in s 9 which provides that the Prime Minister may request that the Inspector-General inquire either into a matter which is within the functions of the Inspector-General, or “into an intelligence or security matter relating to a commonwealth agency”. In both cases the Inspector-General **must** comply with the request.

Amendments to s 9 proposed in the *Home Affairs Bill* have the effect of giving the Attorney-General the same power to compel the Inspector-General to undertake an inquiry as the Prime Minister. Doubling the number of ministers with this power is, in itself, a significant incursion into the independence of the Inspector-General. Nevertheless, given the Prime Minister’s position of overall responsibility for the National Intelligence Community it is not inappropriate that this power should be retained. In the case of the Attorney-General this consideration does not apply; moreover the Attorney’s position as the minister responsible for authorising warrants requested by ASIO is likely to give rise to a perceived conflict of interest. For instance, could a direction to undertake a particular inquiry be seen to divert the resources of this office from a review of ASIO warrants?

The power of the Attorney-General to compel an inquiry would materially detract from the Inspector-General’s ability to assure the public, as well as Parliament, that the decision to conduct an inquiry is free from political influence.

For the above reasons I urge that the proposed amendments to s 9(1) and s 9(3) of the *Inspector-General of Intelligence and Security Act 1986 (IGIS Act)* be rejected.

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