



Australian Government

**Department of the
Prime Minister and Cabinet**

**Submission to the Senate Standing Committees on
Finance and Public Administration**

**Intelligence Services Amendment
(Enhanced Parliamentary Oversight of
Intelligence Agencies) Bill 2018**

October 2018

1. The Department of the Prime Minister and Cabinet (the Department) welcomes the opportunity to provide a submission to the Senate Standing Committees on Finance and Public Administration on the Intelligence Services Amendment (Enhanced Parliamentary Oversight of Intelligence Agencies) Bill 2018.
2. This submission seeks to reemphasise the perspectives on intelligence oversight presented by Mr Michael L'Estrange AO and Mr Stephen Merchant PSM in the 2017 *Independent Intelligence Review* (the Review).
3. The question of intelligence oversight was given much consideration by the Review — including whether the role of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) should be expanded to oversee intelligence operations. The Review received views both strongly in support and firmly opposed.
4. While reaffirming the democratic importance of parliamentary oversight over the intelligence community, the Review declined to recommend that the PJCIS' role be expanded to directly oversee intelligence operations. They noted:

“We consider expanding the role of the PJCIS to include own-motion inquiry into the operational activities of intelligence agencies is not required to ensure agencies are operating effectively, legally and with propriety.”

5. In coming to this conclusion, the Review considered the intelligence oversight regimes of our Five Eyes partners (the United States, Canada, the United Kingdom and New Zealand). The Review noted that although several of these countries do have parliamentary / congressional oversight of intelligence operations, those systems were not directly analogous to Australia's:

“Australia's oversight framework is unique, with significant powers afforded to the independent statutory office of the IGIS [the Inspector-General of Intelligence and Security].”

6. Given the uniquely strong oversight powers of the IGIS — including unfettered access to intelligence records and the ability to compel witnesses — the Review determined that the IGIS was best placed to oversee intelligence operations, and that expanding the PJCIS' role into this area risked unnecessarily complicating the Australian intelligence oversight regime:

“In our view, it is appropriate and effective for the primary oversight of the legality and propriety of operations conducted by intelligence agencies to be carried out by the IGIS Office.”

and

“Giving the PJCIS a role to conduct its own inquiries into the operations of the intelligence agencies would duplicate the reporting requirements already in place for AIC [Australian Intelligence Community] agencies in respect of the IGIS. It would also duplicate resourcing needs of the IGIS and PJCIS and it could result in simultaneous inquiries by both the PJCIS and the IGIS on the same issue.”

7. The Review also considered the relationship between responsible Ministers and the PJCIS, in the context of the protection of sensitive information in other jurisdictions. They noted:

“In the Australian context, we consider the responsible Ministers are best placed to judge the effectiveness of the operations of the agencies and to be accountable for them to the Parliament and the broader Australian community. Ministers have the

information, insights and powers necessary to perform this role and they have the ability to engage with the PJCS by referring matters to it.”