



Australian Government

Attorney-General's Department

Submission to the Senate Legal and Constitutional Affairs Committee
Inspector-General of Intelligence and Security Amendment Bill 2011

The *Inspector-General of Intelligence and Security Amendment Bill 2011* (the Bill) was introduced into the Parliament on 23 March 2011. On 12 May 2011, the Senate referred the provisions of the Bill to the Senate Legal and Constitutional Affairs Committee for inquiry and report.

The Bill makes amendments to the *Inspector-General of Intelligence and Security Act 1986* and is intended to update and modernise the Act. The amendments will expressly recognise the role of the Inspector-General of Intelligence and Security (IGIS) in assisting the Government to provide the Parliament and the public with assurances that the use of special powers and capabilities by the Australian Intelligence Community (AIC) is subject to scrutiny; enable the IGIS to undertake own-motion preliminary inquiries; extend the capacity of the IGIS to undertake own-motion full inquiries; enable the IGIS to delegate the powers of the Office of the IGIS, subject to ministerial approval and enable the IGIS to release material to Royal Commissions at the discretion of the Government.

The Attorney-General's Department supports the Bill. We understand that the proposed amendments will enable the IGIS to undertake the work of the Office of the IGIS more effectively and efficiently by addressing issues which have arisen with the legislation. The IGIS is an important accountability mechanism for Australia's security and intelligence agencies and it is essential that the IGIS is supported by legislation that facilitates effective oversight. The IGIS operates independently of government and has extensive investigatory powers. The purpose of the oversight and review activities undertaken by the IGIS is to ensure that each security and intelligence agency acts legally and with propriety, complies with ministerial guidelines and directives and respects human rights.

One of the key amendments in the Bill will amend the IGIS Act to provide the IGIS with the capacity to delegate the powers of the Office of the IGIS, subject to ministerial approval. This will strengthen the accountability and oversight framework of the Office of the IGIS by ensuring that the IGIS is able to delegate powers in appropriate circumstances to undertake more than one inquiry at the one time. Currently, the IGIS has no power of delegation under the IGIS Act and is required to personally exercise the significant powers of the Office. This limits how many inquiries can be effectively conducted at any one time and could prevent the IGIS from undertaking multiple major inquiries where this is needed.

The Bill strikes an appropriate balance by allowing the IGIS to delegate his or her powers while maintaining safeguards to ensure the delegation powers can only be exercised in appropriate circumstances. For example, the Bill requires the IGIS to seek approval from the relevant Minister and the person to whom the powers are to be delegated must maintain a security clearance to at least the level held by members of the Australian Secret Intelligence Service (unless this requirement is waived by the Minister).

The Bill will also amend the IGIS Act to provide the IGIS with the capacity to assist the work of prescribed royal commissions. The Bill provides that a royal commission must be expressly prescribed in regulations as authorised to seek evidence from, or cooperate with, the IGIS. This amendment will ensure the IGIS is capable of providing information to a royal commission where the IGIS has relevant information and the Government determines that the IGIS should provide that information to a royal commission. We recognise the desirability of enabling the IGIS to provide assistance to royal commissions in certain circumstances. We also agree that it is appropriate that the Bill prevent the resources of the IGIS being unnecessarily diverted by making clear that the IGIS is not under an obligation to give evidence to all royal commissions. In this context, we note the importance of the IGIS undertaking consultation with relevant agencies before sensitive intelligence material is disclosed to a royal commission, to ensure that such material is clearly identified and protected.

The Department does not have any specific comments on the other amendments in the Bill at this time. However, we are supportive of the Bill's intention to improve the operation of the IGIS Act by addressing various issues that have been identified through practical experience with those provisions.