

OFFICIAL



ONI SUBMISSION TO PJCIS – 21 APRIL 2023

Submission to the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) review of the Australian Security Intelligence Organisation Amendment Bill 2023

Introduction

Thank you for the opportunity to provide a submission to PJCIS review of the Australian Security Intelligence Organisation (ASIO) Amendment Bill 2023 (the Bill).

The Office of National Intelligence (ONI) has progressed consequential amendments to the *Office of National Intelligence Act 2018* (ONI Act) as part of the Bill. These amendments are to enable the Quality Assurance Office (QAO) in ONI to independently assess the quality, consistency, and transferability of the TOP SECRET-Privileged Access (TS-PA) security clearances, and drive the uplift of the insider threat capability of government agencies that sponsor these clearances.

ONI's submission is focused on changes to the ONI Act.

The Quality Assurance Office

The QAO is a new function for ONI and part of the National TS-PA Capability that was established on 1 December 2021. The role of the QAO is being designed to align with the TS-PA Standard, the central policy that was issued under the Protective Security Policy Framework (PSPF) on 30 November 2021.

Over time the assurance provided by the work of the QAO will strengthen and deliver a consistent TS-PA security clearance process, addressing the clearance transfer barriers currently experienced by the National Intelligence Community (NIC) and broader government.

Audit & Compliance: The QAO's audit and compliance capability once fully operational will provide confidence that the granting of TS-PA security clearances and related activities are conducted in accordance with the TS-PA Standard. Audit and compliance activities will be applied across all areas and activities contained within the TS-PA Standard and will be conducted by teams of subject matter experts. This includes vetting, psychology, TS-PA practitioner requirements, TS-PA sponsor requirements (including insider threat programs) and TS-PA contract management.

OFFICIAL

OFFICIAL

Insider Threat: The QAO will drive the uplift of the mandatory insider threat capability across government agencies that sponsor TS-PA security clearances. Insider threat programs are designed to enable sponsoring entities to identify and manage insider risk in a holistic and coordinated way. The QAO will ensure the continued development of these programs in line with identified threats and established best practice, including through the provision of training, education and advice.

Requirement for targeted amendments to the ONI Act

ONI's leadership function under section 7(1)(a) of the ONI Act applies to the National Intelligence Community (NIC). However, the QAO will undertake the activities described above in relation to all government agencies that sponsor TS-PA security clearances, not just NIC agencies.

Section 10(2) of the current ONI Act clarifies that ONI does not have a function of inquiring into individual complaints about NIC agencies; nor inquiring into the legality, propriety or integrity of activities undertaken by intelligence agencies. The QAO's role in auditing and reporting against compliance with the TS-PA Standard, and reviewing the processes for making decisions relating to TS-PA security clearances, may require ONI to indirectly consider processes which have been the subject of one or more complaints, and to assess whether legal, policy and probity requirements have been consistently adhered to.

To ensure the QAO has a clear statutory framework to undertake necessary activities in support of the new National TS-PA Capability, a small number of highly targeted amendments to the ONI Act are proposed to overcome those limitations. These amendments apply exclusively to the QAO, and have no impact on the balance of ONI's statutory functions.

Importantly, no other safeguard in the ONI Act is diminished by these proposed amendments.

Amendments

- In **Section 3, Simplified outline of this Act**, the proposed amendment would add a short description of the QAO's role as "providing quality assurance and advice in relation to the Commonwealth's highest level of security clearances" to the existing description of ONI's functions.
- In **Section 7, Functions of ONI**, the proposed amendment would add the QAO's functions as new paragraph 7(1)(ba):
 - (i) provide quality assurance, reporting and advice to support the consistency and transferability of the highest level of security clearances issued by the Commonwealth; and
 - (ii) assist the Commonwealth authorities that sponsor those security clearances to establish and maintain those authorities' capability to prevent and detect insider threats.
- In **Section 10, Matters that are not part of ONI's functions**, the proposed amendment adds subsection 10(2A) that states "Paragraphs (2)(b) and (d) do not prevent ONI from

OFFICIAL

performing its function under paragraph 7(1)(ba)". The aforementioned paragraphs stipulate that ONI functions do not include conducting inquiries into individual complaints about an intelligence agency or an agency with an intelligence role or function (10(2)(b)), and inquiring into the legality, propriety or integrity of activities undertaken by an intelligence agency; or an agency with an intelligence role or function (10(2)(d)).

- Specific to 10(2)(b): this amendment makes it clear the QAO is not precluded from conducting reviews and collecting information relating to the processes for making decisions relating to the highest level of security clearance, and managing such clearances. This includes where one or more complaints have been made in respect of those processes or about a particular decision.
- Specific to 10(2)(d): while legality, propriety and integrity are not the QAO's focus, this amendment makes it clear the QAO may incidentally identify, consider, review information about and, where appropriate, report or refer such concerns where they arise.

For the avoidance of doubt, the use of the word "inquiries" in this context is intended to have its plain English meaning. The QAO does not propose to undertake the type of inquiries the Inspector General of Intelligence and Security can undertake pursuant to the *Inspector-General of Intelligence and Security Act 1986*, including as part of its inspection role.

- In **Section 39, Ability of agencies to provide information, documents or things to ONI relating to its functions**, the proposed amendment would add subsection 39(3) which states "For the purpose of ONI performing its function under paragraph 7(1)(ba), any Commonwealth authority may provide to ONI information, documents or things that relate, or may relate, to that function, even if doing so would not otherwise fall within the Commonwealth authority's statutory functions." This makes it clear that Commonwealth entities that sponsor TS-PA security clearances may communicate with ONI in respect of ONI's new section 7(1)(ba) function, regardless of whether such communications would fall within their statutory functions.

To futureproof the ONI Act in the event the nomenclature of TS-PA security clearances are changed in future, the proposed amendments to the ONI Act refer to this generically as "the highest level of security clearance".

ONI thanks the Committee for the opportunity to provide this submission.