



Australian Government
Department of Defence

Parliamentary Committee on Intelligence and Security

Review of the National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Bill 2021

Department of Defence Submission

February 2022

Introduction

1. The Australian Geospatial-Intelligence Organisation (AGO) and Defence Intelligence Organisation (DIO) welcome the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) Review of the National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Bill 2021.
2. Both AGO and DIO were extensively consulted and contributed to the Department of Home Affairs (Home Affairs) submission and support the information outlined therein.
3. The Home Affairs submission addresses the Schedules of the Bill that relate to AGO and DIO, being:
 - a. AGO:
 - i. Schedule 1 – Emergency authorisations
 - ii. Schedule 2 – Authorisations relating to counter-terrorism
 - iii. Schedule 3 – Authorisation for activities in support of the Australian Defence Force
 - iv. Schedule 4 – Authorisations for producing intelligence on Australians
 - v. Schedule 6 – AGO cooperating with authorities of other countries
 - vi. Schedule 9 – Online activities
 - b. DIO
 - i. Schedule 10 – Privacy
4. This AGO and DIO submission provides additional context on two Schedules that contain provisions that apply exclusively to AGO and DIO, being:
 - a. **Schedule 6** – which enables AGO to cooperate with an authority of another country without ministerial approval where the cooperation is in regard to its non-intelligence functions.
 - b. **Schedule 10** – which requires the responsible Minister in relation to DIO to make written rules regulating the communication and retention by DIO of intelligence information concerning Australian persons, and for those rules to be publicly available.

Schedule 6 – AGO cooperating with authorities of other countries

5. AGO strongly supports the proposed reforms to this schedule as they will enhance our ability to provide timely non-intelligence support, particularly in situations such as following a natural or humanitarian disaster in our near region. The ability to provide immediate and effective non-intelligence information to authorities of other countries on these matters is vital to support Australia's active contribution to regional safety and security.
6. Cooperation with authorities of other countries is critical in enabling AGO to support Defence and national security requirements.

7. Section 13 of the *Intelligence Services Act 2001* establishes a framework under which AGO, ASD and ASIS may cooperate with Commonwealth authorities, State and Territory authorities and authorities of other countries in the performance of the agencies' own functions.
8. In the case of cooperation with an authority of another country, cooperation can only occur where those authorities are approved by the responsible Minister as being capable of assisting the agency in the performance of its functions.
9. Currently, these cooperation arrangements apply to all of AGO's functions, both intelligence and non-intelligence – such as the Australian Hydrographic Office.
10. AGO's other non-intelligence functions include providing geospatial data, mapping products, software and research to support regional partners, organisations and universities in circumstances such as following a natural or humanitarian disaster.
11. The proposed reforms exempt the AGO from the requirement to seek ministerial approval for cooperation with authorities of other countries for its non-intelligence functions.
12. These proposed reforms would mirror existing arrangements in the *Intelligence Services Act 2001* for ASD's non-intelligence function.
13. The *Intelligence Services Act 2001* requirement to seek ministerial approval for cooperation with authorities of other countries was originally designed to capture only intelligence activities. Its purpose is to provide an additional layer of oversight where the cooperation carries particular foreign relations and other risks. This results from the use of covert and intrusive activities and capabilities.
14. However, over the years, AGO's functions have been extended to a number of non-intelligence activities and AGO's non-intelligence functions do not involve covert or intrusive activities.
15. The requirement to seek ministerial approval for cooperation in relation to AGO's non-intelligence functions has hindered AGO's ability to effectively carry out these functions.
16. AGO's non-intelligence functions do not fall within the intended scope of the cooperation approvals framework under the *Intelligence Services Act 2001*, which is required for higher risk activities.
17. Under the amendments, AGO will continue to be required to report to the Minister for Defence and the Inspector-General of Intelligence and Security (IGIS) on any significant non-intelligence cooperation AGO undertakes with authorities of other countries.
18. As with all AGO activities, the IGIS will continue to have oversight of any cooperation AGO undertakes with authorities of other countries.

Schedule 10 – Privacy

Part 2 – Privacy Rules of DIO

19. Part 2 of Schedule 10 amends the *Intelligence Services Act 2001* to introduce a requirement for the responsible Minister in relation to DIO to make written rules regulating the communication and retention by DIO of intelligence information concerning Australian persons, and for those rules to be, as soon as is practicable, published on DIO's website.
20. There is currently no legislative requirement for the Minister for Defence to issue and publish Privacy Rules in relation to the communication and retention of intelligence information concerning Australians by DIO. This is in contrast to ASIS, AGO, ASD and ONI who all have provisions in legislation for their responsible Minister to issue privacy rules.
21. The amendments do not change the current practices for DIO, which already has Privacy Guidelines approved by the Minister which are publicly available on DIO's website.
22. Rather, the amendments enhance transparency by ensuring there is a legislative requirement for the Minister for Defence to make written Privacy Rules for DIO and for those privacy rules to be publicly available.
23. The amendments also enhance governance and accountability by requiring the responsible Minister to consult with the Inspector-General of Intelligence and Security and the Attorney-General before making the privacy rules and by introducing a function for the Parliamentary Joint Committee on Intelligence and Security (PJCIS) to review those privacy rules.
24. Schedule 10 Part 2 does not impose any requirements on DIO additional to other intelligence agencies, and is consistent with the legislative framework governing the privacy rules for ASIS, ASD and AGO.
25. The IGIS is responsible for overseeing agencies' compliance with their Privacy Rules. The Bill also makes minor amendments to the *Inspector-General of Intelligence and Security Act 1986* to include DIO as one of the agencies that the IGIS is required to include in its reporting of Privacy Rules compliance in its annual report.
26. DIO was consulted on the submission provided to the Committee by the Department of Home Affairs, and DIO's equities have also been addressed in that submission.