



**THE HON NICOLA ROXON MP  
ATTORNEY-GENERAL  
MINISTER FOR EMERGENCY MANAGEMENT**

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Mr Graham Perrett MP  
Chair, Standing Committee on Social Policy and Legal Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Mr Perrett

*Graham*

I refer to our previous correspondence regarding the recommendation of the House of Representatives Standing Committee on Social Policy and Legal Affairs in its report on the *Crimes Legislation Amendment (Powers and Offences) Act 2012* that I undertake an audit of the investigative and coercive powers available to security and law enforcement agencies.

My Department has undertaken the recommended audit and has determined that existing scrutiny processes are sufficient to ensure that the powers made available to Commonwealth agencies are necessary and appropriate. The audit draws on the wide range of reviews already undertaken of such powers, including by independent agencies and Parliamentary Committees, and the established processes in place to ensure the introduction, amendment or expansion of these powers is both justified and necessary. The audit outcomes are enclosed for the information of the Committee.

I hope this information assists the Committee.

Yours in friendship

**NICOLA ROXON**

Encl :

1. Audit outcomes
2. Table of existing oversight mechanisms and previous reports and reviews

## **Audit of investigative and coercive powers of Commonwealth agencies**

The Standing Committee on Social Policy and Legal Affairs' (the Committee) *Advisory Report: Inquiry into the Crimes Legislation Amendment (Powers and Offences) Bill 2011* recommended, among other things, that:

*"...the Attorney-General undertake an audit of investigative and coercive powers available to security and law enforcement agencies in order to identify the full scope of powers available to those agencies, with a view to: comprehending the extent to which an individual's right to privacy can be abrogated, and ascertaining whether recent or any further expansion of those powers is necessary or justified."*<sup>1</sup>

Investigative and coercive powers such as entry, search and seizure powers and powers to compel the production or disclosure of documents are fundamental to law enforcement and security agencies' ability to effectively investigate and enforce criminal offences. By their very nature, however, these powers may impinge upon individual rights such as a person's right to privacy. It is important, therefore, that any proposed introduction or expansion of these powers be undertaken in a considered and transparent way, and that the need for these powers be balanced against the need to protect individual rights and freedoms and uphold the rule of law.

The Attorney-General's Department audit has considered the range of mechanisms at the Commonwealth level to ensure that the availability of investigative and coercive powers to Commonwealth agencies is both necessary and justified, and that any abrogation of individual rights is limited. These mechanisms are discussed further below and set out in detail in **Attachment A**. In addition, these powers are the subject of Parliamentary scrutiny upon introduction and amendment, and regular review by a range of other bodies to ensure their availability remains necessary and justified in the longer term. Examples of such reviews are also contained in Attachment A.

### *Consultation on investigative and coercive powers*

In the Department's view, an appropriate balance is maintained between enabling Commonwealth agencies to fulfil their protective mandates and ensuring essential protections around individual privacy and civil liberties are preserved. This is reflected in a range of existing mechanisms for the review of proposed new and amended investigative and coercive powers for use by Commonwealth security and law enforcement agencies.

In many cases, public consultation on proposed investigative and coercive powers is undertaken prior to introduction of the legislation to Parliament. For example, in September 2009, the then Minister for Home Affairs, the Hon Brendan O'Connor MP, released a public consultation paper on proposed amendments including a new scheme to provide for forfeiture of child pornography and child abuse material and items containing

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<sup>1</sup> Recommendation 3

such material. Following public submissions, the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* was passed to implement the reforms.

Another example of public consultation on investigative and coercive powers is the recent referral of a range of national security ideas to the Parliamentary Joint Committee on Intelligence and Security. The Committee has been asked to examine a package of national security ideas comprising proposals for telecommunications interception reform, telecommunications sector security reform and Australian intelligence community legislation reform. The Committee's terms of reference specifically require consideration of whether the proposals contain appropriate safeguards for protecting the human rights and privacy of individuals and are proportionate to any threat to national security and the security of the Australian private sector.

*Scrutiny to ensure availability of investigative and coercive powers is necessary and justified*

The Attorney-General's Department publishes the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide) (**Attachment B**), which outlines the Commonwealth's criminal law policy and the principles that generally apply to the framing of Commonwealth offences and enforcement powers. This includes principles related to:

- the circumstances in which investigative and coercive powers may be appropriately exercised
- the restrictions and safeguards that should be applied where agencies seek to exercise investigative or coercive powers
- the process for developing a legislative proposal involving coercing powers, including consultation processes around the introduction of such powers
- examples of and guidelines applicable to measures that would allow entry, search and seizure, the issuing of warrants, personal search powers, and detention, and
- penalty benchmarks and other issues that should be considered when setting an appropriate penalty.

Any time a Commonwealth agency seeks to introduce a new law enforcement power or create a new criminal offence, the agency is required to consider whether the proposed measure accords with the Guide.

When drafting legislation, the Office of Parliamentary Counsel will instruct agencies to consult and seek advice from the Attorney-General's Department where legislative provisions depart from the principles set out in the Guide. Where an agency seeks to depart from the principles set out in the Guide without sufficient justification, or seeks to create novel or significant enforcement powers or Commonwealth offences, the Attorney-General's Department will ask the instructing agency to seek the Attorney-General's approval of the legislative measure prior to its introduction.

The Attorney-General's Department also performs other similar scrutiny roles. For example, the Department scrutinises legislative provisions that might discriminate against an individual or impact on human rights. This role includes reviewing new laws for consistency with rights and freedoms in the seven core human rights treaties to which Australia is a party, assessing whether new measures would circumscribe these rights and freedoms, and considering whether any limitations of individual rights have been undertaken to achieve a legitimate objective. It also advises on the Statements of Compatibility now required for all Bills and legislative instruments, which contain an assessment of whether the Bill or instrument is compatible with the rights and freedoms in the international human rights treaties which Australia has ratified. Accountability mechanisms, review bodies and provisions relating to evidence and procedure, are also scrutinised.

#### *Parliamentary scrutiny of investigative and coercive powers*

Parliamentary Committees also undertake extensive scrutiny of legislative measures related to coercive and investigative powers.

The remit of the recently created Parliamentary Joint Committee on Human Rights will involve examining Bills, as well as existing Acts, for compatibility with human rights. This will include assessing whether proposed measures sufficiently protect against the unreasonable abrogation of individual privacy, or allow the unwarranted exercise of coercive powers against the individual.

The Senate Standing Committee on the Scrutiny of Bills also identifies measures in Bills that impinge unduly on personal rights and liberties, inappropriately delegate legislative powers, or that make rights or obligations unduly dependent upon non-reviewable administrative decisions. Responsible Ministers are invited to respond to the concerns of the Scrutiny of Bills Committee in relation to such proposals, in order to assist the Committee's determination of whether these measures are appropriate and justified.

Similarly, the remit of the Senate Standing Committee on Legal and Constitutional Affairs covers, among other things, the provision of law enforcement powers to Commonwealth agencies. The Committee has assessed specific powers that have been provided to Commonwealth agencies to deal with particular law enforcement or national security issues.

It is common for amendments to be made to legislation following recommendations by a Parliamentary Committee. For example, in its report on the Crimes Legislation Amendment (Serious and Organised Crime) Bill (No.2), the Senate Committee on Legal and Constitutional Affairs considered provisions to remove an additional test for searches of electronic equipment at warrant premises on the basis that, just as a warrant authorises searches of filing cabinets on the warrant premises, it should be sufficient to authorise searches of electronic equipment.

The Committee's view was that an additional threshold test should be added because a search of the computer could include data accessible from it, such as data stored on servers at

multiple locations. This proposed amendment was made to the Bill through Government amendments in the Senate.

In addition, issues regarding investigative and coercive powers often arise during Parliamentary debate on relevant legislation. In many cases, debate will require justification to be given for the proposed new powers and, in some cases, powers will be amended through the Parliamentary process to introduce further safeguards.

For example, in 2001 the Measures to Combat Serious and Organised Crime Bill proposed the introduction of the controlled operations regime into the *Crimes Act 1914*. The Bill as originally drafted provided for agencies to internally authorise extensions to the period of a controlled operation authority. However, amendments were in the Senate to introduce a role for the Administrative Appeals Tribunal in authorising extensions to controlled operations. The amendments were passed by Parliament and remain part of the controlled operations regime to this day.

#### *Review and oversight of powers*

The Department's audit identified a range of statutory obligations to review the powers available to agencies and to provide ongoing oversight.

For example, section 61A of the *Australian Crime Commission Act 2002* (Cth) requires a review of the Act to be undertaken every five years. The first review under section 61A was conducted in 2007 by Mark Trowell QC and the report was tabled in both Houses of Parliament. The coercive powers available to the ACC were considered at length in that report.

In addition, section 23YV of the *Crimes Act 1914* (Cth) requires Part ID of the Crimes Act to be independently reviewed. Part ID deals with the collection and use of forensic material, including DNA, by law enforcement agencies. Two reviews have been conducted under this section since the enactment of Part ID.

The first review was conducted in 2001 by Mr Tom Sherman AO and a further review was conducted in 2010 by Mr Peter Ford AO. The terms of both reviews required assessments to be made of the effectiveness of the independent oversight of and accountability mechanisms for the national DNA database system, and other issues relating to privacy or civil liberties arising from forensic procedures that Part ID permits. Reports were tabled in both Houses of Parliament with respect to the 2001 and 2010 reviews.

On both occasions amendments were made to Part ID in response these reviews. For example, the *Crimes Legislation Amendment (Powers and Offences) Act 2012* implemented a number of recommendations arising out of the 2010 Ford review including placing strict conditions on the purposes for which a DNA sample provided by a volunteer may be used, and clarifying how suspects and offenders can access DNA samples for 'innocence testing' purposes.

Law enforcement and security agencies are also subject to a range of legislative reporting requirements aimed at ensuring oversight of the coercive and investigative powers available to those agencies. For example, law enforcement agencies must report to Parliament annually on their use of controlled operations and assumed identities under the Crimes Act. The Attorney-General must also report to Parliament annually on a range of issues relating to telecommunications interception.

Finally, there are a range of independent agencies and statutory officers charged with oversight of law enforcement and intelligence agencies. For example, the Inspector General of Intelligence and Security is an independent statutory office holder who reviews the activities of the six Australian intelligence agencies (the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Defence Intelligence Organisation, the Defence Imagery and Geospatial Organisation, the Defence Signals Directorate, and the Office of National Assessments). The purpose of this review is to ensure that the agencies act legally and with propriety, comply with ministerial guidelines and directives and respect human rights.

Similarly, the role of the Commonwealth Ombudsman is to consider and investigate complaints from people who believe they have been treated unfairly or unreasonably by an Australian Government department or agency. Reports produced by the Commonwealth Ombudsman generally give detailed consideration to whether powers have been exercised in an appropriate manner, whether an individual's information and privacy has been appropriately protected by the agency, and whether there has been compliance with safeguards and other legislative requirements, including record keeping requirements.

### *Conclusion*

The Department's audit has concluded that the existing mechanisms for introducing or expanding investigative and coercive powers are effective in ensuring that the availability of such powers to Commonwealth agencies is appropriate and considered. These mechanisms are complemented by review processes beyond enactment that ensure the availability of these powers in the longer term is appropriate. Together the oversight and review mechanisms ensure that Commonwealth law enforcement and security agencies have the powers they need to fulfil their roles and adequately protect Australia, its people and its interests and that these powers are exercised in an accountable way, protecting key human rights.

## AUDIT OF INVESTIGATIVE AND COERCIVE POWERS OF COMMONWEALTH AGENCIES

**Table 1 – Existing Oversight Mechanisms and Review Bodies**

MECHANISM	RESPONSIBLE BODY	DETAILS
Distribution and publication of the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers	AGD	<ul style="list-style-type: none"> <li>- The Attorney-General’s Department (AGD) publishes the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide) on its website. The Guide sets out the principles that generally apply to the framing of Commonwealth offences, infringement notice schemes and enforcement powers. The Guide sets out restrictions and safeguards that should be included in legislation authorising agencies to exercise such powers.</li> <li>- The current version of the Guide was approved by the then Minister for Home Affairs and Justice, the Hon Brendan O’Connor MP, in September 2011.</li> </ul>
Scrutiny role of the Criminal Law and Law Enforcement Branch	AGD	<ul style="list-style-type: none"> <li>- The Criminal Law and Law Enforcement Branch in AGD also plays a role in examining legislative proposals which depart from the principles set out in the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers or that raise novel or complex criminal law policy issues.</li> <li>- Draft bills or regulations that fall within these categories will be referred to the Branch by the Office of Parliamentary Council and Office of Legislative Drafting and Publication respectively.</li> <li>- Responsible ministers may be required to seek the Attorney-General’s approval for measures that depart from the principles set out in the Guide. The Guide provides guidance on what kinds of departures from the principles set out in the Guide would require the Attorney-General’s approval.</li> </ul>

MECHANISM	RESPONSIBLE BODY	DETAILS
Scrutiny role of the International Human Rights and Anti-Discrimination Branch	AGD	<ul style="list-style-type: none"> <li>- The International Human Rights and Anti-Discrimination Branch (IHRADB) in the Office of International Law (OIL) examines and provides legal advice on legislative proposals that impact on Australia’s international human rights obligations.</li> <li>- Following the commencement of the Human Rights (Parliamentary Scrutiny) Act 2011 on 4 January 2012, all Bills and disallowable instruments must be accompanied by a Statement of Compatibility with human rights.</li> <li>- ‘Human rights’ is defined as the rights and freedoms set out in the seven core international human rights treaties to which Australia is a party.</li> <li>- Each Statement must contain an assessment of the compatibility of proposed measures with the seven core human rights treaties – this includes what rights are engaged, promoted or limited by the measures in the legislation or instrument.</li> <li>- Where rights are limited, the Statement must include the reasons for any limitation, whether the limitation is for a legitimate objective and whether the limitation is reasonable, necessary and proportionate to achieving the objective.</li> </ul>
Scrutiny Role of the Business and Information Law Branch	AGD	<ul style="list-style-type: none"> <li>- The Business and Information Law Branch in AGD examines and advises on policy proposals and draft bills that would impact on the privacy of individuals or impact on the ability of individuals to access information held by government.</li> <li>- This includes assessing proposals that operate as exceptions to limitations on the use and disclosure of personal information in the Information Privacy Principles or the National Privacy Principles in the <i>Privacy Act 1988</i> (such as proposals that would require or authorise certain activities under law) and proposals that seek to modify or affect the operation of the <i>Freedom of Information Act 1982</i> (the FOI Act) in relation to information held by law enforcement agencies.</li> <li>- This scrutiny function applies to Commonwealth agencies and departments that seek to introduce or develop policy proposals and legislative amendments to expand coercive and investigative powers which may impact on the privacy of individuals or impact on the ability of individuals to access or correct personal information collected by the government.</li> </ul>



MECHANISM	RESPONSIBLE BODY	DETAILS
		<ul style="list-style-type: none"> <li>- Instructing agencies also consult the Office of the Australian Information Commissioner about various proposals (such as those which potentially adversely affect privacy interests), and the responsible minister may be required to seek the Attorney-General's approval where a proposal has a major impact on the privacy of individuals or seeks to modify or affect the operation of the FOI Act.</li> <li>- Agencies can also undertake a Privacy Impact Assessment, which is an assessment tool that describes in detail the personal information flows in a project and analyses the possible privacy impacts of the project.</li> </ul>
<p>Oversight of interception warrants under the <i>Telecommunications (Interception and Access) Act 1979</i></p>	<p>AGD</p>	<ul style="list-style-type: none"> <li>- The Telecommunications and Surveillance Law Branch of the Attorney-General's Department administers the <i>Telecommunications (Interception and Access) Act 1979</i> and the <i>Surveillance Devices Act 2004</i>.</li> <li>- The TIA Act contains a number of safeguards and controls in relation to interception as well as a number of reporting requirements. These requirements are designed to ensure that appropriate levels of accountability exist. The most significant of these requirements are: <ul style="list-style-type: none"> <li>o the Attorney-General must be given copies of telecommunications interception warrants and revocations and reports on outcomes</li> <li>o the Managing Director of a carrier who enables interception to occur under a warrant must report to the Attorney-General within three months of the warrant ceasing to be in force</li> <li>o the Secretary of the Attorney-General's Department must maintain a General Register which includes particulars of all telecommunications interception warrants.</li> <li>o the ACC, ACLEI and the AFP are required to maintain records relating to interceptions and the use, dissemination and destruction of intercepted information, which must be inspected by the Commonwealth Ombudsman on a regular basis</li> <li>o the Commonwealth Ombudsman must report to the Attorney-General regarding these inspections and to include in his or her report a summary of any deficiencies identified and any remedial action taken. Parallel requirements are imposed by State and Territory legislation on State and Territory interception agencies.</li> </ul> </li> </ul>

MECHANISM	RESPONSIBLE BODY	DETAILS
Parliamentary Joint Committee on Human Rights	Administered by the Senate	<ul style="list-style-type: none"> <li>- The Parliamentary Joint Committee on Human Rights was established pursuant to the <i>Human Rights (Parliamentary Scrutiny) Act 2011</i> on 13 March 2012 by a joint resolution of Parliament.</li> <li>- The functions of the Committee are to: <ul style="list-style-type: none"> <li>o scrutinise Bills and legislative instruments for compatibility with human rights (as set out in the seven core international human rights treaties)</li> <li>o examine existing Acts for compatibility with human rights, and</li> <li>o undertake inquiries in to any matter relating to human rights referred to it by the Attorney-General.</li> </ul> </li> <li>- The Committee has released a Practice Note which sets out the Committee’s approach to scrutiny and the Committee’s expectations for Statements of Compatibility (<a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/practice_notes/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/practice_notes/index.htm</a>).</li> </ul>
Standing Committee on Legal and Constitutional Affairs	Senate	<ul style="list-style-type: none"> <li>- The Senate Standing Committee on Legal and Constitutional Affairs is one of eight legislative and general purpose standing committees. It is comprised of a pair of committees – a <u>Legislation</u> Committee, whose purpose is to deal with bills referred by the Senate, the Estimates process and oversee the performance of departments, including their annual reports, and a <u>References</u> Committee whose purpose is to deal with all other matters referred by the Senate.</li> <li>- The Committee has previously held inquiries into the provision of enforcement and investigative powers to the Australian Security Intelligence Organisation, Australian Securities and Investments Commission, Australian Federal Police, as well as providing ongoing review of most Bills that confer specific coercive powers at the time these are introduced.</li> </ul>

MECHANISM	RESPONSIBLE BODY	DETAILS
<p>Standing Committee for the Scrutiny of Bills</p>	<p>Senate</p>	<ul style="list-style-type: none"> <li>- The Senate Standing Committees for the Scrutiny of Bills assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.</li> <li>- The Committee examines all bills which come before the Parliament and reports to the Senate whether such bills may: <ul style="list-style-type: none"> <li>o trespass unduly on personal rights and liberties</li> <li>o make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers</li> <li>o make rights, liberties or obligations unduly dependent upon non-reviewable decisions</li> <li>o inappropriately delegate legislative powers, or</li> <li>o insufficiently subject the exercise of legislative power to parliamentary scrutiny.</li> </ul> </li> <li>- The Scrutiny Committee regularly publishes an Alert Digest, which outlines each of the bills introduced in the previous sitting week, as well as any comments the committee wishes to make in relation to a particular bill. The Digest has previously outlined how a proposed measure has departed from principles that are generally applied in the framing of Commonwealth Criminal offences</li> <li>- If concerns are raised in the Digest, the Committee writes to the Minister responsible for the bill, inviting the Minister to respond to those concerns and produces a Report containing the Minister's response.</li> <li>- The Committee also can initiate and undertake 'stand-alone' inquiries which assess the abrogation of an individual's rights, or to review the current availability of grants of power to Commonwealth Departments and agencies. Previous relevant inquiries are available on the Committee's at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=scrutiny/completed_inquiries/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=scrutiny/completed_inquiries/index.htm</a>.</li> </ul>

MECHANISM	RESPONSIBLE BODY	DETAILS
Parliamentary Joint Committee on Law Enforcement (PJC-LE)	Administered by the Senate	<ul style="list-style-type: none"> <li>- The PJC-LE's primary function involves monitoring and reviewing the performance of the Australian Crime Commission (ACC) and the Australian Federal Police (AFP).</li> <li>- The Committee was established in 2010 to replace the Parliamentary Joint Committee on the Australian Crime Commission.</li> <li>- The PJC-LE's remit includes examination of current and proposed coercive and investigative powers of the ACC and AFP (see section 7(1) of the <i>Parliamentary Joint Committee on Law Enforcement Act 2010</i>). Reports are published outlining the findings of such inquiries, including consideration given to whether the powers of the ACC and the AFP are appropriately gauged to the threat environment, and whether these agencies are exercising their power in an accountable and transparent manner.</li> <li>- The Committee has completed inquiries into the Commonwealth's unexplained wealth legislation and arrangements, and the use of law enforcement powers by the ACC and the AFP to maintain aviation and maritime security measures.</li> </ul>
Parliamentary Joint Committee on Intelligence and Security (PJC-IS)	Administered by the House of Representatives	<ul style="list-style-type: none"> <li>- The PJC-IS's primary function is to review the administration and expenditure of the Australian Intelligence Community, which is made up of the Australian Security Intelligence Organisation (ASIO), the Australian Secret Intelligence Service (ASIS), the Defence Intelligence Organisation (DIO), the Defence Imagery and Geospatial Organisation (DIGO), the Defence Signals Directorate (DSD) and the Office of National Assessments (ONA) (see section 29 of the <i>Intelligence Services Act 2001</i>).</li> <li>- Within this remit, the PJC-IS examines legislative changes relating to these agencies. The PJC-IS also performs oversight of the listing of certain organisations as terrorist organisations under the <i>Criminal Code Act 1995</i>.</li> <li>- The PJC-IS can review any matter in relation to ASIO, ASIS, DIGO, DIO, DSD or ONA referred to the Committee by the responsible Minister or a resolution of either House of the Parliament.</li> </ul>

MECHANISM	RESPONSIBLE BODY	DETAILS
Independent National Security Legislation Monitor	PM&C (independent statutory position)	<ul style="list-style-type: none"> <li>- The Independent National Security Legislation Monitor provides ongoing scrutiny of the operation, effectiveness and implications of Australia’s counter-terrorism and national security legislation.</li> <li>- The Monitor reports to the Prime Minister and the Parliament on existing counter-terrorism laws on an ongoing basis.</li> <li>- The Monitor’s annual reports have regard to whether these laws are effective and contain appropriate human rights safeguards and protections. Particular regard is given in those reports to whether existing laws comply with Australia’s obligations under international agreements, and whether these laws remain proportionate to any threat of terrorism or threat to national security or both, and remain necessary.</li> <li>- The Monitor can also undertake inquiries on referral from the Prime Minister and the PJC-IS, as well as own-motion inquiries.</li> </ul>
Inspector General of Intelligence and Security (IGIS)	Independent statutory position	<ul style="list-style-type: none"> <li>- The IGIS is an independent statutory office holder who reviews the activities of the six Australian intelligence agencies (the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Defence Intelligence Organisation, the Defence Imagery and Geospatial Organisation, the Defence Signals Directorate, and the Office of National Assessments).</li> <li>- The purpose of this review is to ensure that the agencies act legally and with propriety, comply with ministerial guidelines and directives and respect human rights.</li> <li>- The Inspector-General can undertake a formal inquiry into the activities of an Australian intelligence agency in response to a complaint or a reference from a minister. The Inspector-General can also act independently to initiate inquiries and conducts regular inspections and monitoring of agency activities.</li> <li>- In conducting an inquiry, the Inspector-General has significant powers which include requiring the attendance of witnesses, taking sworn evidence, copying and retention of documents and entry into the premises of an Australian intelligence agency.</li> <li>- Under Part IAC of the Crimes Act, IGIS also considers reports from intelligence agencies about the use</li> </ul>

MECHANISM	RESPONSIBLE BODY	DETAILS
		of assumed identities.
Office of the Australian Information Commissioner (OIAC)	Independent statutory agency	<ul style="list-style-type: none"> <li>- The Commissioner has independent oversight of privacy, freedom of information and information management, including complaint resolution functions.</li> <li>- The Commissioner has developed the 'Privacy Fact Sheet No 4 – A Tool for assessing and implementing new Law Enforcement and National Security Powers' (2011), available on the OAIC's website at <a href="http://www.oaic.gov.au/publications/factsheets.html">http://www.oaic.gov.au/publications/factsheets.html</a>. This framework is applied to assess whether proposed new powers provided to law enforcement and national security agencies are 'necessary, effective and proportional'. During the development of any proposal to introduce new powers, the framework ensures that analysis is undertaken to identify whether what is being proposed is the least privacy invasive option, and whether the option is consistent with community expectations. In order to make this determination, consideration is given to the size, scope and likely longevity of the problem and whether the measure is proportional to the risks.</li> </ul>
Office of the Commonwealth Ombudsman	Independent statutory agency	<ul style="list-style-type: none"> <li>- The role of the Commonwealth Ombudsman is to consider and investigate complaints from people who believe they have been treated unfairly or unreasonably by an Australian Government department or agency.</li> <li>- The Commonwealth Ombudsman can initiate 'own motion' investigations into the actions of Government agencies, including law enforcement and security agencies.</li> <li>- The reports produced by the Commonwealth Ombudsman generally give detailed consideration to whether powers have been exercised in an appropriate manner, whether an individual's information and privacy has been appropriately protected by the agency, and whether there has been compliance with safeguards and other legislative requirements, including record keeping requirements.</li> <li>- Recent inquiries by the Commonwealth Ombudsman that have involved a review or audit of law enforcement and regulatory agency powers include: <ul style="list-style-type: none"> <li>o Australian Customs and Border Protection Service: Administration of coercive powers in</li> </ul> </li> </ul>

MECHANISM	RESPONSIBLE BODY	DETAILS
		<p>passenger processing (2010)</p> <ul style="list-style-type: none"> <li>○ Fair Work Ombudsman: exercise of coercive information-gathering powers (2010), and</li> <li>○ Australian Crime Commission: Review of collection, storage and dissemination of information—27 October (2009).</li> </ul> <p>- Under Part IAB of the <i>Crimes Act 1914</i> (Cth), every six months, law enforcement agencies must provide information to the Commonwealth Ombudsman regarding controlled operations authorised by the agency. The Ombudsman may require the chief officer of the agency to provide additional information. The Ombudsman must then prepare an annual report on its work and activities regarding controlled operations, which must be tabled in Parliament.</p> <p>- Under the <i>Telecommunications (Interception and Access) Act 1979</i> (TIA Act), the Commonwealth Ombudsman must inspect records of Commonwealth law enforcement agencies concerning their use of telecommunications interception powers (at least twice a year) and access to stored communications. The Ombudsman also inspects the records of State law enforcement agencies for access to stored communications. The purpose of the inspections is to ensure compliance with the TIA Act's accountability requirements and to ensure powers under the TIA Act are used appropriately. The Ombudsman is required to report to the Minister (Attorney-General) on the outcomes of inspections.</p> <p>- Section 35 of the TIA Act also provides for inspection at least twice a year by State and Territory oversight bodies of records relating to State and Territory law enforcement agencies' use of telecommunications interception powers. These bodies are required to report to their relevant Minister, who in turn is required to give the Commonwealth Attorney-General a copy of the report.</p> <p>- Under the <i>Surveillance Devices Act 2004</i>, the Commonwealth Ombudsman is required to inspect the records relating to the use of surveillance devices and authorisations under the federal scheme to ensure compliance with the Act. The Ombudsman must make a written report to the Attorney-General at six monthly intervals on the results of each inspection. The Attorney-General must table this report in Parliament.</p>

MECHANISM	RESPONSIBLE BODY	DETAILS
		<ul style="list-style-type: none"> <li>- Under the Criminal Code, the AFP is required to notify the Commonwealth Ombudsman when preventative detention and prohibited contact orders are made under Part 5.3, and provide copies of the order (see especially sections 105.8(8), 105.12(8), 105.15(6), 105.16(6)). The AFP must also notify persons who are subject to preventative detention orders of their rights to contact the Ombudsman (sections 105.28(2)(e) and 105.29(2)(d)). The Code also makes express provision for persons subject to preventative detention orders to contact the Ombudsman (in addition to rights of complaint under police professional standards frameworks) (section s 105.36). While these provisions do not require the Ombudsman to undertake an investigation, they provide him or her with visibility of orders issued, in order to make a decision whether or not to do so.</li> </ul>
Annual reporting and other requirements imposed on law enforcement and security agencies	Numerous	<ul style="list-style-type: none"> <li>- Law enforcement and security agencies are subject to reporting requirements imposed by statute. Examples of these reporting requirements are as follows. <ul style="list-style-type: none"> <li>o Under Part IAB of the <i>Crimes Act 1914</i> (Cth), each agency authorised to undertake controlled operations (AFP, ACC and ACLEI) must submit an annual report to the Minister setting out a range of details relating to the controlled operations authorised by the agency during the past 12 months. These details include the number of controlled operations authorisations granted, the nature of the criminal activities against which the controlled operations were directions and the nature of the controlled conduct engaged in. The Minister must table these annual reports in Parliament. A copy is also required to be given to the Commonwealth Ombudsman.</li> <li>o Under Part IAC of the <i>Crimes Act 1914</i> (Cth), each law enforcement agency authorised to obtain assumed identities ( AFP, Customs, ACC, ACLEI, ATO) must submit an annual report to the Minister regarding the assumed identities obtained and used by officers of their agency within the last 12 months. The Minister must table these annual reports in Parliament. Part IAC also requires intelligence agencies authorised to obtain assumed identities (ASIO and ASIS) to report to the Minister but this annual report is not tabled in Parliament.</li> <li>o Under Part IACA of the <i>Crimes Act 1914</i> (Cth), the chief officer of a law enforcement agency authorised to issue witness identity protection certificates must submit a report about</li> </ul> </li> </ul>



MECHANISM	RESPONSIBLE BODY	DETAILS
		<p>certificates given during that year to the Minister. The report must be tabled in Parliament.</p> <ul style="list-style-type: none"> <li>○ <i>Telecommunications (Interception and Access) Act 1979</i> Annual Report – Sections 99, 104 and 159 of the <i>Telecommunications (Interception and Access) Act 1979</i> (Cth) require the Attorney-General to prepare and table an annual report in Parliament that includes information about the type, number and duration of telecommunications interception (TI) warrants issued to law enforcement agencies, the categories of offence specified in the warrants, the number of arrests, prosecutions and convictions based on intercepted information, and average expenditure per warrant. Similar reporting requirements existing for stored communication warrants.</li> <li>○ <i>Surveillance Devices Act 2004</i> Annual Report – Section 50 of the <i>Surveillance Devices Act 2004</i> (Cth) requires the Attorney-General to prepare and table an annual report in Parliament that includes information on the type and number of surveillance device warrants and the number of arrests, prosecutions and convictions on the basis of information obtained under these warrants.</li> </ul> <ul style="list-style-type: none"> <li>- Section 61A of the <i>Australian Crime Commission Act 2002</i> (Cth) requires a review of the Act to be undertaken every five years and this would incorporate a review of relevant coercive powers.</li> <li>- Under section 94 of the <i>Australian Security Intelligence Organisation Act 1979</i>, ASIO must include details of questioning and detention warrants in its Annual Report.</li> <li>- Under the Criminal Code, an annual report must be prepared and tabled on the use of control orders and preventative detention orders each year (sections 104.29 and 105.47)</li> </ul>

**Table 2: Reports and reviews of coercive and investigative powers of Commonwealth agencies**

TOPIC	AUDIT	ACTIONS
<b>Parliamentary Committee inquiries</b>		
<p>Unexplained wealth legislation and arrangements</p>	<p>Parliamentary Joint Committee on Law Enforcement</p> <p><i>Inquiry into Commonwealth unexplained wealth legislation and arrangements</i></p> <p>(2012)</p>	<ul style="list-style-type: none"> <li>- The report examined the effectiveness of Commonwealth proceeds of crime legislation and administrative arrangements in targeting unexplained wealth in connection with serious and organised crime.</li> <li>- It considered the scope and effectiveness of investigative and coercive powers used by the Australian Federal Police, the Australian Crime Commission (ACC) and the Criminal Assets Confiscation Taskforce to target unexplained wealth in connection with serious and organised crime.</li> <li>- The powers that the Committee considered included: the ability to conduct coercive hearings; to hold individuals in contempt for lying to ACC examiners; search warrant powers in the <i>Proceeds of Crime Act 2002</i> (Cth) (POCA); the ability of agencies to restrain assets and compel the production of documents or assets.</li> <li>- The Committee made 18 recommendations aimed at enhancing the effectiveness of the Commonwealth unexplained wealth provisions. These included recommendations to expand the role of the ACC in supporting proceeds of crime proceedings, amend the POCA to strengthen existing unexplained wealth provisions and to ensure that unexplained wealth proceedings are efficient and fair; and pursue greater consistency between Commonwealth, State and Territory unexplained wealth laws to ensure gaps in those laws cannot be exploited.</li> <li>- The report can be found at the Committee’s website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=le_ctte/unexplained_wealth/report/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=le_ctte/unexplained_wealth/report/index.htm</a>.</li> </ul>

TOPIC	AUDIT	ACTIONS
Coercive information gathering powers	<p>Commonwealth Ombudsman</p> <p><i>Fair Work Ombudsman: exercise of coercive information-gathering powers</i></p> <p>(June 2012)</p>	<ul style="list-style-type: none"> <li>- The Ombudsman reviewed recent expansions of coercive information-gathering powers held by the Office of the Fair Work Ombudsman including powers to enter and search premises, require the production of documents and records and to issue compliance notices.</li> <li>- Consideration was given to whether the exercise of coercive powers by the Office of the Fair Work Ombudsman had been exercised in accordance with the requirements of the <i>Fair Work Act 2009</i> (Cth), as well as the adequacy of internal policy and record keeping with respect to the exercise of these powers.</li> <li>- Examination of the Office of the Fair Work Ombudsman's internal processes involved consideration of whether best practice investigative principles had been applied and the assistance provided to persons subject to investigation.</li> <li>- The report is available on the Ombudsman's website at <a href="http://www.ombudsman.gov.au/files/fair_work_omb_coercive_info_gathering.pdf">http://www.ombudsman.gov.au/files/fair_work_omb_coercive_info_gathering.pdf</a>.</li> </ul>
Law enforcement powers with respect to mutual assistance requests	<p>Senate Standing Committee on the Scrutiny of Bills</p> <p><i>Inquiry into the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011 (Extradition Bill)</i></p> <p>(February 2012)</p>	<ul style="list-style-type: none"> <li>- The Committee examined measures in the Extradition Bill that, among other things, increased the range of law enforcement tools available to Australian law enforcement to assist investigations and prosecutions by foreign countries.</li> <li>- The report considered whether the measures would unduly trespass on personal rights and liberties, and whether appropriate safeguards were applied to the new powers.</li> <li>- The Committee assessed the safeguards applying to widened circumstances in which telephone interception, surveillance devices and forensic procedures could be utilised to assist in foreign investigations and prosecutions.</li> <li>- The report is in the Scrutiny of Bills First Report of 2012 (8 February 2012) and Second Report of 2012 (29 February 2012) at <a href="http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=scrutiny/bills/2012/index.htm">http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=scrutiny/bills/2012/index.htm</a>.</li> </ul>

TOPIC	AUDIT	ACTIONS
<p>Changes necessary to facilitate Australia's accession to the Cybercrime Convention</p>	<p>Joint Select Committee on Cyber-Safety</p> <p><i>Review of the Cybercrime Legislation Amendment Bill. (2011)</i></p>	<ul style="list-style-type: none"> <li>- The Committee examined measures in the Cybercrime Legislation Amendment Bill 2011 amending law enforcement agencies' powers and obligations consistent with the relevant articles of the Council of Europe Convention on Cybercrime. Changes include the preservation of stored communications in anticipation of a warrant and provisions which facilitate effective international cooperation.</li> <li>- The Committee considered the adequacy of privacy protections and safeguards in the Bill, including the circumstances of cooperation with other Parties to the Cybercrime Convention, the particulars of public reporting requirements, the threshold requirements that must be met before any disclosure of telecommunications data can take place and whether conditions on the use of disclosed information by other Parties to the Convention can be enforced.</li> <li>- The Committee recommended that certain amendments be made to the Cybercrime Bill. One recommendation was that the Bill more precisely elaborate the matters that an officer authorising the disclosure of telecommunications data held by a carrier or carriage service provider must consider, including that the officer must weigh the proportionality of the intrusion into privacy against the value of the potential evidence and the needs of the investigation.</li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsc/cybercrime_bill/report.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsc/cybercrime_bill/report.htm</a>.</li> </ul>
<p>Intelligence collection by security agencies</p>	<p>Senate Standing Committee on Legal and Constitutional Affairs</p> <p><i>Inquiry into the Intelligence Services Legislation Amendment Act 2011</i></p>	<ul style="list-style-type: none"> <li>- The Committee examined the rationale for the proposed changes relating to the definition and collection of foreign intelligence under the <i>Australian Security Intelligence Organisation Act 1979 (Cth)</i>, and the change in the threshold test for the collection of that intelligence. This included considering whether there was sufficient justification and explanation as to why the amendments were necessary, and whether safeguards existed to ensure the appropriate use of foreign intelligence collection.</li> </ul>

TOPIC	AUDIT	ACTIONS
		<ul style="list-style-type: none"> <li>- The Committee considered the scope of proposed amendments to clarify what can be collected through the use of computer access warrants, and widen the circumstances in which warrants for foreign intelligence collection can be authorised and issued.</li> <li>- The Committee considered existing safeguards and requirements that would apply to the collection of intelligence by ASIO, the role of the Inspector-General of Intelligence and Security in reviewing ASIO warrants, and whether the proposed amendments were necessary to respond to existing national security threats.</li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/intelligence_services/report/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/intelligence_services/report/index.htm</a>.</li> </ul>
Protection of individual privacy	<p>Senate Environment and Communications References Committee</p> <p><i>The adequacy of protections for the privacy of Australians online</i> (2010)</p>	<ul style="list-style-type: none"> <li>- The Committee considered the adequacy of protections relating to the privacy of Australians online, including protections in the <i>Privacy Act 1988</i> (Cth), the role of telecommunications laws in protecting privacy in Australia, and the relevance of Australian Communications Media Authority and Telecommunications Industry Ombudsman complaints mechanisms to online privacy breaches.</li> <li>- The Committee identified and reviewed the circumstances in which Commonwealth, State and Territory law enforcement agencies may authorise the collection and disclosure of information related to an individual's online communication and internet usage.</li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=ecte/online_privacy/info.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=ecte/online_privacy/info.htm</a>.</li> </ul>

TOPIC	AUDIT	ACTIONS
Telecommunication interception powers	Senate Committee on Legal and Constitutional Affairs  <i>Inquiry into the Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010</i>	<ul style="list-style-type: none"> <li>- The Committee considered the Bill, specifically the broadening of security agencies' powers and the need to balance the public interest in law enforcement and national security agencies sharing information to facilitate their legitimate activities and the public interest in protecting the personal information of individuals.</li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/telecommunication_interception_intelligence_services/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/telecommunication_interception_intelligence_services/index.htm</a>.</li> </ul>
Oversight mechanisms for the AFP and ACC, other national security legislation	Senate Committee on Legal and Constitutional Affairs  <i>Inquiry into the National Security Legislation Amendment Bill (NSLA Bill) and Parliamentary Joint Committee on Law Enforcement Bill (PJCLE Bill) 2010</i>	<ul style="list-style-type: none"> <li>- The Committee examined the NSLA bill that implemented a package of reforms to Australia's national security legislation. These reforms implemented certain recommendations from several independent and bipartisan parliamentary committee reviews of Australia's national security and counter-terrorism laws. (These reviews include, in particular, a series of inquiries undertaken in 2006-07 – the Sheller Review, the 2006 and 2007 PJC-IS inquiries, and the Australian Law Reform Commission Review of Seditious Laws).</li> <li>- The Committee considered clarifications and expansions of investigative and coercive powers exercised by the Australian Federal Police in relation to terrorism investigations including: time limitations on investigation periods when a person has been arrested for a terrorism offence and powers allowing the Australian Federal Police to enter premises and seize things without warrant.</li> <li>- The Committee considered the proposal to create the Parliamentary Joint Committee on Law Enforcement with responsibility for providing parliamentary oversight of the Australian Federal Police and the Australian Crime Commission.</li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/national_security_legislation/report/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/national_security_legislation/report/index.htm</a>.</li> </ul>

TOPIC	AUDIT	ACTIONS
Law enforcement powers to combat organised crime	Parliamentary Joint Committee on the Australian Crime Commission  <i>Inquiry into the legislative arrangements to outlaw serious and organised crime groups (2009)</i>	<ul style="list-style-type: none"> <li>- Among other things, the Committee reviewed the existing legislative approaches to combating organised crime in Australia, and in particular proceeds of crime laws and policing laws which confer additional powers on police to enable them to more easily investigate and prove organised crime offences.</li> <li>- The Committee also assessed the adequacy of investigative tools provided to the Australian Federal Police, the ACC, CrimTrac, AUSTRAC, as well as State and Territory counterparts. This included a review of the ability of some agencies to utilise telecommunications interception and surveillance powers, conduct controlled operations or assume false identities and hold coercive hearings in serious and organised crime investigations.</li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=acc_ctte/laoscg/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=acc_ctte/laoscg/index.htm</a>.</li> </ul>
Law enforcement powers (including investigative and coercive powers)	Senate Committee on Legal and Constitutional Affairs  <i>Inquiry into the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009</i>	<ul style="list-style-type: none"> <li>- The review considered:               <ul style="list-style-type: none"> <li>o amending the <i>Proceeds of Crime Act 2002</i> (Cth) to strengthen the Commonwealth's criminal assets confiscation regime</li> <li>o implementing model laws for controlled operations, assumed identities and witness identity protection aimed at enhancing the ability of law enforcement agencies to investigate and prosecute multi-jurisdictional criminal activity</li> <li>o extending criminal liability to cover joint commission of criminal offences, and</li> <li>o amending the <i>Telecommunications (Interception and Access) Act 1979</i> to facilitate greater access to telecommunications interception for criminal organisation offences.</li> </ul> </li> <li>- Endorsement was given to the legislative tools contained in the Bill to enable the more effective investigation and prosecution of the perpetrators of serious and organised crime.</li> <li>- However the Committee made specific recommendations to increase the reporting on controlled operations, to give courts greater discretion to revoke unexplained wealth orders,</li> </ul>

TOPIC	AUDIT	ACTIONS
		<p>and to limit the disclosure to third parties of information obtained by law enforcement agencies during investigations under the <i>Proceeds of Crime Act 2002</i>.</p> <ul style="list-style-type: none"> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/organised_crime/report/c06.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/organised_crime/report/c06.htm</a>.</li> </ul>
<p>Law enforcement powers (including investigative and coercive powers)</p>	<p>Senate Committee on Legal and Constitutional Affairs</p> <p><i>Inquiry into the Crimes Legislation Amendment (Serious and Organised Crime) Bill (No.2) 2009</i></p>	<ul style="list-style-type: none"> <li>- The Committee considered provisions of the Bill including: <ul style="list-style-type: none"> <li>o amendments to strengthen criminal asset confiscation and anti-money laundering laws</li> <li>o enhancements to search and seizure powers and the ability of law enforcement to access data from electronic equipment</li> <li>o amendments to the operation of the National Witness Protection Program</li> <li>o the introduction of new offences targeting persons involved in organised crime and facilitating greater access to telecommunications interception for the investigation of new serious and organised crime offences</li> <li>o amendments to the operation and accountability of the Australian Crime Commission, and</li> <li>o amendments to the money laundering, bribery and drug importation offences.</li> </ul> </li> <li>- The Committee recommended amendments to the Bill that would increase safeguards around the seizure of equipment in organised crime investigations and to ensure that the offence of providing support to a criminal organisation would apply only where the provision of support facilitated criminal conduct.</li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/organised_crime_two/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/organised_crime_two/index.htm</a>.</li> </ul>



TOPIC	AUDIT	ACTIONS
<p>Law enforcement powers to combat serious and organised crime</p>	<p>Parliamentary Joint Committee on the Australian Crime Commission</p> <p><i><u>Future impact of serious and organised crime on Australian society(2007)</u></i></p>	<ul style="list-style-type: none"> <li>- The Committee assessed the adequacy of legislative arrangements governing law enforcement bodies, including the Australian Crime Commission. Check it wasn't just limited to ACC legislation?</li> <li>- The Committee considered the legislative powers of these bodies, including the conduct of contempt proceedings for the ACC, telephone interception powers and whether the abrogation of individual privacy as a result of these powers was appropriate.</li> <li>- The Committee considered the need for amendments to law enforcement agency powers to counter the increasing sophistication of serious and organised criminal activity, and noted the potential community unease in relation to increases in these powers required consideration prior to such an approach being adapted.</li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=acc_ctte/completed_inquiries/2004-07/organised_crime/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=acc_ctte/completed_inquiries/2004-07/organised_crime/index.htm</a>.</li> </ul>
<p>Proscription of terrorist organisations</p>	<p>Parliamentary Joint Committee on Intelligence and Security</p> <p><i><u>Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code (2007)</u></i></p>	<ul style="list-style-type: none"> <li>- The Committee reviewed the operation, effectiveness and implications of the proscription of terrorist organisations regime contained in the Commonwealth Criminal Code.</li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pjcis/proscription/report.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pjcis/proscription/report.htm</a>.</li> </ul>

TOPIC	AUDIT	ACTIONS
Investigative and coercive powers in Commonwealth legislation	Senate Standing Committee on the Scrutiny of Bills <i>Inquiry into Entry, Search and Seizure Provisions in Commonwealth Legislation (2006)</i>	<ul style="list-style-type: none"> <li>- The Committee reviewed the fairness, purpose, effectiveness and consistency of entry and search provisions in Commonwealth legislation. Included a review of the provisions in Commonwealth legislation that authorise the seizure of material and, in particular: <ul style="list-style-type: none"> <li>o the extent and circumstances surrounding the taking of material that is not relevant to an investigation and the use and protection of such material; and</li> <li>o whether the rights and liberties of individuals would be better protected by the development of protocols governing the seizure of material.</li> </ul> </li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=scrutiny/entrysearch/index.htm">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=scrutiny/entrysearch/index.htm</a>.</li> </ul>
Expansion of national security powers (including investigative and coercive powers)	Parliamentary Joint Committee on Intelligence and Security <i>Review of Security and Counter Terrorism Legislation (2006)</i>	<ul style="list-style-type: none"> <li>- The Parliamentary Joint Committee reviewed the operation, effectiveness and implications of the security and counter terrorism legislation passed in response to the threat of international terrorism, including an assessment of coercive and investigative powers in the: <ul style="list-style-type: none"> <li>o <i>Security Legislation Amendment (Terrorism) Act 2002</i></li> <li>o <i>Border Security Legislation Amendment Act 2002</i></li> <li>o <i>Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002</i>, and</li> <li>o <i>Suppression of the Financing of Terrorism Act 2002</i>.</li> </ul> </li> <li>- The report is available on the Committee's website at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bycomlist.asp?id=993">http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bycomlist.asp?id=993</a>.</li> <li>- The Review was a statutory requirement under s 19(1)(ba) of the <i>Intelligence Services Act 2001</i>, which provided for the review to be undertaken as soon as practicable after the third anniversary of the <i>Security Legislation Amendment (Terrorism) Act 2002</i>.</li> </ul>

**Government initiated reviews**

<p>Existing and new national security legislation (including investigative and coercive powers)</p>	<p>Parliamentary Joint Committee on Intelligence and Security  (Proposed) review of telecommunications related national security legislation (2012)</p>	<ul style="list-style-type: none"><li>- On 9 July 2012, the Parliamentary Joint Committee commenced its inquiry into potential reforms of national security legislation. The ideas being considered are designed to:<ul style="list-style-type: none"><li>o ensure the telecommunications interception regime allows law enforcement and intelligence agencies to operate in the contemporary telecommunications environment while ensuring privacy is protected (via reform of the <i>Telecommunications (Interception and Access) Act 1979</i>)</li><li>o better manage national security challenges to Australia’s telecommunications infrastructure and protect the social and economic wellbeing of the nation (via reform of the <i>Telecommunications Act 1997</i>),and</li><li>o improve the operational capacity of intelligence agencies to deal with national security threats, while ensuring accountability (via reform of the <i>ASIO Act 1979</i> and the <i>Intelligence Services Act 2001</i>).</li></ul></li> <li>- It is anticipated that the Committee will report on its findings by the end of 2012.</li></ul>
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<p>Collection and use of forensic material by Commonwealth law enforcement agencies</p>	<p><i>Further Independent Review of Part 1D of the Crimes Act 1914 (2010)</i></p> <p>Completed in accordance with section 23YV of the <i>Crimes Act 1914</i></p>	<ul style="list-style-type: none"> <li>- Broadly, this review looked into the operation of Part 1D of the <i>Crimes Act 1914</i> (Cth) which deals with the collection and use of DNA forensic material by the Australian Federal Police.</li> <li>- The review considered the privacy and civil liberties issues arising from forensic procedures permitted to be performed by Commonwealth law enforcement pursuant to Part 1D and made recommendations in relation to: <ul style="list-style-type: none"> <li>o increasing the transparency and reducing the complexity surrounding the procedures governing the collection, use and analysis of DNA forensic material</li> <li>o facilitating the exchange of DNA information and material between Commonwealth, State, Territory and foreign law enforcement agencies,</li> <li>o providing greater access to suspects and offenders to their DNA sample for the purposes of innocence testing</li> <li>o strengthening the auditing and accreditation requirements on laboratories conducting DNA forensic analysis for law enforcement purposes, and</li> <li>o improving consent and complaints mechanisms for persons giving DNA samples for law enforcement purpose.</li> </ul> </li> <li>- The report is available at <a href="http://www.ag.gov.au/Consultationsreformsandreviews/Pages/Archive/FurtherindependentreviewofPart1DoftheCrimesAct1914.aspx">http://www.ag.gov.au/Consultationsreformsandreviews/Pages/Archive/FurtherindependentreviewofPart1DoftheCrimesAct1914.aspx</a>.</li> </ul>
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**Other reviews and reports**

<p>Review of the 2005-6 Commonwealth, state and territory counter-terrorism reforms agreed to by COAG.</p>	<p>Council of Australian Governments Review of Counter-Terrorism Laws</p>	<ul style="list-style-type: none"> <li>- At the special meeting on counter-terrorism on 27 September 2005, COAG endorsed a series of legislative reforms. These included the control and preventative detention order regime under Part 5.3 of the Criminal Code, and under state and territory criminal laws. COAG agreed that it was appropriate for these provisions, once enacted, to be formally reviewed after a period of five years.</li> <li>- The Prime Minister announced the commencement of the Review on 9 August 2012.</li> <li>- The Review is being conducted by an expert committee chaired by retired judge, the Hon Anthony Whealy QC. It is required to report within six months of its commencement.</li> <li>- Details of the review, including its terms of reference, are at: <a href="http://www.coagctreview.gov.au">http://www.coagctreview.gov.au</a></li> </ul>
<p>Operational mandate of Commonwealth intelligence agencies</p>	<p>Review initiated in 2011 by the Prime Minister and conducted by Mr Robert Cornall AO and Associate Professor Rufus Black.</p> <p><i>Independent Review of the Intelligence Community (2011)</i></p>	<ul style="list-style-type: none"> <li>- The review considered legislation relating to the security and intelligence agencies as part of its assessment of the current operational mandate of the intelligence agencies.</li> </ul>

<b>Other reviews and reports</b>		
Coercive information-gathering powers held by government agencies	Administrative Review Council  <i>The Coercive Information-Gathering Powers of Government Agencies (2008)</i>	<ul style="list-style-type: none"> <li>- The Council reviewed the way agencies use coercive information-gathering powers for monitoring legislative compliance and in the context of formal investigations where there has been or could be a breach of the law.</li> <li>- The review identified a set of best-practice principles that are consistent with the administrative law values of fairness, lawfulness, rationality, openness (or transparency) and efficiency and that are relevant to all agencies using coercive information-gathering powers. These principles aimed to secure the correct balance between the interests of agencies and the protection of rights of individuals in relation to the scope and use of coercive information-gathering powers.</li> <li>- The report is available on the Council's website at <a href="http://www.arc.ag.gov.au/Documents/a00Final+Version+-+Coercive+Information-gathering+Powers+of+Government+Agencies+-+May+2008.pdf">http://www.arc.ag.gov.au/Documents/a00Final+Version+-+Coercive+Information-gathering+Powers+of+Government+Agencies+-+May+2008.pdf</a>.</li> </ul>
Actions of Commonwealth agencies with respect to Mr Mamdouh Habib	Inspector-General of Intelligence and Security (IGIS), at the request of the Prime Minister  <i>The 2011 Inquiry into the actions of Australian government agencies in relation to the arrest and detention overseas of Mr Mamdouh Habib from 2001 to 2005</i>	<ul style="list-style-type: none"> <li>- The IGIS considered the adequacy of relevant agencies' policies and practices at the time of Mr Habib's arrest and detention overseas, as well as any changes since that time.</li> <li>- Made six recommendations in respect of directed primarily to strengthening the policies and procedures of the AFP, ASIO and DFAT to ensure the proper treatment of Australians detained overseas. consular responsibilities, the passage of information to foreign authorities, and on the prohibition on the use of, or involvement in, torture or other cruel, inhuman or degrading treatment or punishment.</li> <li>- An unclassified version of the report was released by the Prime Minister on 23 March 2012, and is available at: <a href="http://www.igis.gov.au/inquiries/index.cfm#habib">http://www.igis.gov.au/inquiries/index.cfm#habib</a></li> </ul>
Practices and policies of the Defence Signals	IGIS (Own-motion inquiry) <i>Report by the Inspector-General of Intelligence and Security into</i>	<ul style="list-style-type: none"> <li>- The IGIS inquired into allegations which had appeared in the media that an individual or individuals employed by DSD may have improperly accessed information technology used by the then Minister for Defence, the Hon. Joel Fitzgibbon MP, as part of a covert investigation</li> </ul>

<b>Other reviews and reports</b>		
Directorate (DSD)	<i>the Defence Signals Directorate (2009)</i>	into the Minister's activities and associations.
Actions of Commonwealth agencies with respect to Dr Mohamed Haneef	The Hon. John Clarke QC (appointed by the Attorney-General in March 2008)  <i>Report of the inquiry into the Case of Dr Mohamed Haneef (November 2008)</i>	<ul style="list-style-type: none"> <li>- The report reviewed the operations of relevant Australian Government departments and agencies during the Haneef matter.</li> <li>- Examined the police investigative detention powers for counter-terrorism offences (under the Crimes Act 1914) and the offence of providing support to a terrorist organisation under the Criminal Code, as these provisions were engaged in Dr Haneef's case. among other things, the applicable legislation including the investigatory powers contained in the Crimes Act 1914 (Cth), and identified deficiencies, which were addressed in Mr Clarke's recommendations.</li> <li>- The primary objective of the inquiry was to ascertain the facts of Dr Haneef's case so as to identify any potential improvements to how Australia's security and law enforcement agencies work and cooperate in terrorism matters. Mr Clarke made 10 recommendations directed to this objective.</li> </ul>
Actions of ASIO with respect to Mr Izhar Ul-Haque.	IGIS conducted an inquiry into the actions  <i>Report into inquiry into Actions taken by ASIO in 2003 in respect of Mr Izhar Ul-Haque (2008)</i>	<ul style="list-style-type: none"> <li>- The IGIS inquired into the actions taken by ASIO in 2003 in respect of Mr Izhar Ul-Haque following the dismissal of charges against Mr Ul-Haque in the NSW Supreme Court and criticism of two Australian Security Intelligence Organisation (ASIO) officers by that court.</li> <li>- The report included consideration of ASIO's policies, procedures and general practices for the interviewing of persons of security interest.</li> </ul>
Telecommunications interception legislation	Mr Tony Blunn AO  <i>Report of the Review of the Regulation of Access to Communications (2005)</i>	<ul style="list-style-type: none"> <li>- The review considered the policy options for the regulation of access to telecommunications with particular emphasis on new and emerging telecommunications technologies.</li> <li>- The review assessed whether the <i>Telecommunications (Interception) Act 1979</i> provides an appropriate balance between protecting privacy and meeting agencies' need to access communications.</li> <li>- The review included recommendations for legislative amendments to ensure the ongoing</li> </ul>

**Other reviews and reports**

		effectiveness of the interception regime including the development of provisions about access to telecommunications data.
'Named person' warrants	Mr Tom Sherman AO <i>Telecommunications (Interception) Act 1979, Report of the Review of Named person Warrants and other matters.</i>	<ul style="list-style-type: none"> <li>- The review assessed the adequacy of safeguards governing the issue of 'named person' warrants.</li> <li>- The review considered whether the current regulatory regime around the use of these warrants by Commonwealth law enforcement agencies contained adequate safeguards and reporting mechanisms.</li> <li>- The review considered the compliance culture and auditing arrangements relating to the use of these warrants.</li> <li>- The report is available on the Attorney-General's Department website at <a href="http://www.ag.gov.au/Publications/Pages/ReportofreviewofnamedpersonwarrantsandothermattersJune2003.aspx">http://www.ag.gov.au/Publications/Pages/ReportofreviewofnamedpersonwarrantsandothermattersJune2003.aspx</a>.</li> </ul>
Telecommunication interception legislation and powers	Mr Peter Ford <i>Telecommunications Interception Policy Review (1999)</i>	<ul style="list-style-type: none"> <li>- The review provided recommendations which formed the basis of amendments to the <i>Telecommunications (Interception) Act 1979</i> in 2000.</li> <li>- The most significant of these amendments was the creation of a named person warrant regime, which permitted the issuing of a warrant that authorised the interception of multiple services used by the person of interest, and the extension of the purposes for which information from intercepted communications can be used, including use in enforcing proceeds of crime legislation.</li> <li>- The report is available on the Attorney-General's Department Website at <a href="http://www.ag.gov.au/Documents/1teleintreview15mayd1999.pdf">http://www.ag.gov.au/Documents/1teleintreview15mayd1999.pdf</a>.</li> </ul>