OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

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Senator Raff Ciccone
Chair
Parliamentary Joint Committee on Intelligence and Security
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By email to: pjcis@aph.gov.au

Dear Senator Ciccone

Review of the Strengthening Oversight of the National Intelligence Community Bill 2025

Thank you for the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security's (**the Committee**) review of the Strengthening Oversight of the National Intelligence Community Bill 2025 (**the Bill**).

I note that many of the Bill's provisions are similar or identical to the provisions of the Intelligence Services Legislation Amendment Bill 2023 (**ISLAB**) which lapsed earlier this year. To avoid duplication, the Committee intends to consider submissions and oral evidence previously made to it in reviewing ISLAB, as part of this review.

The Inspector-General of Intelligence and Security (**IGIS**) previously provided a submission to the Committee on its review of ISLAB on 4 September 2023 (submission 7). A supplementary submission was made in relation to questions taken on notice during the public hearing into ISLAB on 12 December 2023 (submission 7.1).

This submission is limited to only new and amended items of the Bill, as requested by the Committee.

At item 22 of ISLAB, a new subparagraph was proposed to subsection 11(1) of the *Inspector-General of Intelligence and Security Act 1986* (Cth) (**IGIS Act**) as follows:

> Insert:
>
> (aa) the Inspector-General is satisfied that the action is the kind of action that is reasonably likely to be taken by an intelligence agency; and

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Linked to this proposed amendment was item 23, which included the following at the end of subsection 11(1):

> Add:
>
> Note: For paragraph (aa), action includes the making of a decision or recommendation, and the failure or refusal to take any action or to make a decision or recommendation (see subsection 3(2)).

The basis for item 22 was discussed at paragraph 14 of the Explanatory Memorandum to ISLAB:

'This amendment is necessary to clarify the IGIS's complaint handling functions in circumstances where activity alleged in a complaint is considered to be implausible or otherwise not credible.'

As further noted in the Attorney-General's Department (**AGD**) submission to the Committee's review of ISLAB: 'This measure will assist the IGIS to more effectively and efficiently manage its complaints handling function in light of an increased jurisdiction by allowing it to more easily deal with contacts where the IGIS is not satisfied that the action complained of is the kind of action that is reasonably likely to have been taken by an intelligence agency.'

While the intention of this amendment remains a relevant focus for the IGIS (ensuring my office is not using resources towards implausible complaints), upon review and further consideration of the other submissions provided to the Committee I identified there were possible unintended effects as a result of the proposed amendments. I also considered the amendments were not strictly necessary on the basis that I have the ability not to inquire into a complaint that is not credible or plausible through section 11(2)(c) of the IGIS Act.

I understand the original intention may have been for this subparagraph to act as a discretion for the IGIS not to inquire into a complaint that was considered highly implausible or otherwise not credible where the IGIS is not satisfied that the action complained of is the kind of action that is reasonably likely to have been taken by an intelligence agency.

However, in considering the drafting of the provision, subparagraph (aa) is not in fact a discretion, rather, it is a consideration or element of a statutory power that must be exercised. This is evident when the proposed amendment is considered in totality with subsection 11(1):

> If:
>
> (a) a complaint is made to the Inspector-General in respect of action taken by an intelligence agency; **and**
>
> (aa) the Inspector-General is satisfied that the action is the kind of action that is reasonably likely to be taken by an intelligence agency; **and**
>
> (b) inquiring into the action in response to a complaint is within the functions of the Inspector-General referred to in section 8;
>
> the Inspector-General **must**, subject to this section, inquire into the action. [emphasis added]

As can be seen from this construction, the Inspector-General would be required to consider whether each complaint relates to an action, the kind of which is reasonably likely to be taken by an intelligence agency. This could capture all conduct that may in fact relate to a legitimate complaint.

For example, if an individual complains that an intelligence agency has sent them on a posting despite suffering from a mental health condition, it would be open for the Inspector-General to be satisfied that it is reasonably unlikely that the alleged conduct would be of the kind undertaken by that agency, noting they are required to follow and abide by work health and safety laws. The discretion is not one of allowing the Inspector-General to decline to inquire into implausible complaints but rather excludes possibly any complaint if it relates to an alleged contravention of an Australian law (given it is unlikely an intelligence agency would contravene an Australian law, for example). This example only expands further when you include impropriety or breaches of human rights by an intelligence agency.

For the above reasons, my office raised these concerns with AGD during the drafting of the Bill and they agreed to remove items 22 and 23.

While I acknowledge my office was consulted extensively by AGD on these proposed amendments as part of ISLAB, and we also provided a submission to the Committee that was in favour of them, I ultimately determined that the possible consequences of the amendments warranted their removal from the Bill and no longer support their inclusion.

I trust this information is of assistance to the Committee.

[redacted]

The Hon Christopher Jessup KC
Inspector-General

17 September 2025