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Four: Leadership and coordination

Key points

Australia's CT effort relies on all relevant agencies working seamlessly together.

Using Operation Sovereign Borders as a model for whole-of-government cooperation, the Review considered how best to achieve an OSB-like 'effect' to counter terrorism.

The Review concluded that the foundations of our existing arrangements are robust and don't require structural change.

However, agencies would benefit from clear direction for CT efforts and further strengthened coordination mechanisms. The Review concluded that a senior official should be designated the National CT Coordinator. Options are:

- *the Director-General (DG) of Security*
- *a new senior position in the Attorney-General's Department*
- *a senior position in the Department of the Prime Minister and Cabinet.*

To deliver in this role, the National CT Coordinator should chair a new Senior Executive Counter-Terrorism meeting and be supported by a whole-of-government Australian Counter-Terrorism Centre – a cross-agency body perhaps best located within ASIO which already has suitable facilities.

As outlined in Chapter Three, the evolving terrorist threat environment is challenging the Commonwealth's CT capabilities as never before. It is therefore imperative that all agencies with CT capabilities work together seamlessly.

Operation Sovereign Borders (OSB) is a case study in how to tackle a clearly defined policy problem effectively requiring a whole-of-government response. The lessons that should inform an effective model to counter terrorism are the need for:

- clear and consistent political direction
- ministerial and senior executive accountability
- close cooperation and communication at the strategic decision-making level.

In considering how best to achieve an 'OSB effect', the Review examined how other comparable countries arrange their national security bureaucracies, and considered whether the creation of a new national security department would assist Australia's CT effort.

Based on conceptual and structural considerations, the Review concluded that the creation of a new department is not a necessary or practical way to strengthen our coordination of CT activities. However, existing coordination mechanisms should be strengthened to **ensure that all agencies are working in the closest possible harmony** at the strategic decision-making and operational levels.

It is important to note that ensuring the Commonwealth's CT efforts are well coordinated is only one part of a successful national CT approach. States and territories are responsible for a significant proportion of our national CT capability, so we must ensure the Commonwealth's arrangements dovetail seamlessly with state and territory approaches. Regardless of proposed Commonwealth governance changes, the ANZCTC is the most appropriate body to ensure the national CT effort is coordinated.

International comparisons

Other countries organise their national security agencies in different ways. The United States has adopted a centralised, 'super-agency' model where many functions are consolidated into a single agency. Canada has done the same thing – though to a lesser degree. The UK has taken a different approach. While some UK agencies have been consolidated (e.g. within the UK Border Agency), others retain their distinct roles but are subject to a degree of centralised coordination.

The Review concluded that there is no single international best practice model on which to base Australia's CT governance arrangements.

Do we need a Department of Homeland Security?

The 2008 review of Homeland and Border Security led by Mr Ric Smith AO PSM outlined the broad range of threats facing Australia. These included threats such as espionage and foreign interference, terrorism; natural disasters and pandemics. This 'all hazards' approach, combined with increased public expectations of the Government's response, led Smith to consider the merits of a Department of Homeland Security.

Smith considered a model where a single minister would be responsible for all domestic security-related elements of the Commonwealth. Proponents of the model have suggested that this would:

- improve national security governance
- better balance justice and law enforcement functions
- promote better cooperation and information sharing.

Improved national security governance

National security is dependent on the three main pillars working well together – military, diplomatic, and homeland security capabilities, enabled by intelligence. It has been argued that a more balanced allocation of ministerial and departmental responsibilities around these three main pillars could enhance the representation of national security issues within Cabinet.

Better balance of justice and law enforcement functions

Currently, the Attorney-General must balance his duties as first law officer of the Commonwealth with his national security responsibilities, including bringing forward measures restricting or even removing the rights of certain individuals.

Appointing a separate minister responsible for a Department of Homeland Security could free the Attorney-General to take a more unimpeded view of the legal ramifications and consequences of national security proposals.

Promote better cooperation and information sharing

There are two clear models for a national security department – a large 'super-agency' modelled on the US Department of Homeland Security or a small, coordinating Department of Home Affairs based loosely on the UK Home Office.

Insofar as CT is concerned, a 'super-agency' would likely be less, not more, responsive as large agencies tend to be less agile, less adaptable and more inward looking than smaller departments. Indeed, observers regularly remark on the US Department of Homeland Security's systemic problems in the areas of information sharing, partnerships and accountability.

The creation of a small, flexible, coordinating Department of Home Affairs reporting to a Minister for Home Affairs could avoid many of the drawbacks associated with bureaucratic gigantism. In the CT sphere, such a department would provide leadership and coordination to its portfolio agencies.

What could an Australian national security department look like?

Any new national security department would be responsible for a far greater range of issues than just CT. However, the broader merits of such a proposal have not been considered, as they sit outside the scope of this report.

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This Review agrees with the conclusion reached by the Smith Review that a small, coordinating Department of Home Affairs could be effective at

leading Australia's CT effort if the department focussed on strategic issues.

A small Australian national security department could oversight all relevant domestic intelligence and law enforcement agencies – including ASIO, the AFP, and even agencies such as the Office of Transport Security. It might also include other smaller agencies such as the Australian Crime Commission, AUSTRAC, and CrimTrac. Alternatively, to retain a separation between intelligence and law enforcement agencies, ASIO could be left outside such a new portfolio.

Conceptually at least, such a department might also draw in elements of the Department of Immigration and Border Protection. However, those elements are currently in transition to the Australian Border Force (ABF). The emergence of the ABF is itself expected to generate a stronger CT capability.

Testing the idea of a Department of Home Affairs

This section considers the philosophy that underpins the existing structures of Australia's national security community, as well as the necessity and practicality of establishing a Department of Home Affairs. In particular, it focuses on ASIO and the AFP as the two largest operational players in the CT space.

The Attorney-General's oversight is key

In assessing the current arrangements for ministerial oversight of ASIO, the Review drew on earlier reviews, particularly the Royal Commission on Intelligence and Security conducted by Justice Robert Hope from 1974-1977.

Justice Hope concluded that the 'necessity for secrecy means that the normal processes of checks and balances cannot be applied' to ASIO, but that there was a clear need for Ministerial oversight of, and responsibility for, ASIO.

To Justice Hope, this role was an appropriate fit for the Attorney-General, a position best placed to balance the twin demands of security and civil rights.

'... in respect of matters such as issuing warrants, the minister will obviously be required to adopt an entirely non-partisan approach, an approach which, as Attorney-General, he has to adopt in many of his other ministerial functions.'

and

'... he must keep himself sufficiently apart from the organisation so that he can see to it that the interests of the public, both in their rights and in security, are adequately protected.'

Justice Robert Hope – Royal Commission on Intelligence and Security, Fourth Report (1976)

The foundations remain relevant

Nearly four decades later, Justice Hope's findings are still relevant. Overall, the strong culture of oversight and accountability around ASIO has helped build and preserve public confidence in the organisation and in Australia's security and intelligence agencies more generally.

As ASIO's CT operational tempo heightens in the months and years ahead, public confidence in the Attorney-General's role as guarantor both of our security and our civil rights is an increasingly important asset in maintaining community confidence in our security services.

Indeed, it could be argued that the Attorney-General's dual-hatted role has played an important part in securing community and Parliamentary support for security-related legislation. Certainly, Australia has been able to introduce a broader, more effective suite of CT legislation than have other comparable countries. These legislative changes have been critical in maintaining and developing Australia's CT capabilities in the face of evolving threats.

The particular expertise of the Attorney-General by reason of these dual portfolio responsibilities promotes rigorous and integrated Ministerial consideration of security and individual rights and liberties, both in the authorisation of particular operations and in legislative and policy development.

Could the Attorney-General adequately oversee ASIO if it was in another portfolio?

The Review considered a scenario where the Attorney-General would retain responsibility for approving ASIO warrants – and implicitly protect against undue encroachment on civil liberties – even if ASIO was in another portfolio. In particular, the Review examined whether the Attorney-General's role approving Ministerial Authorisations issued in the Defence portfolio for the Australian Signals Directorate (ASD) and the Australian Geospatial-Intelligence Organisation (AGO) might provide a possible model.

Under existing arrangements, ASD, AGO (and ASIS) must seek authorisation from their own ministers for certain operations targeting Australian citizens. They must also seek the concurrence of the Attorney-General where those operations concern Australian persons who may be involved in activities that could pose a threat to security as defined in the *Australian Security Intelligence Organisation Act 1979 (ASIO Act)*.⁵

It is important to note that the Attorney-General's responsibility in relation to ASD, AGO and ASIS activities derives from his national security responsibilities as the Minister responsible for administering the *ASIO Act 1979*, not as First Law Officer. However, the Attorney-General relies on this dual hatted perspective on security and civil rights to assess the impact of individual warrant requests.

A minister solely responsible for ASIO would not be able to provide the same level of oversight on matters requiring a reconciliation of security and civil rights. Similarly, without a detailed understanding of operational activities, the Attorney-General would also be unable to provide adequate oversight and assurances that a proposed activity has proper regard to both security and civil rights considerations.

The occasions when the Ministers responsible for AGO, ASD and ASIS must seek the Attorney-General's concurrence represent a relatively small proportion of these agencies' activities given their focus primarily on *foreign* intelligence.

⁵ This provision is provided for under the *Intelligence Services Act 2001*.

But given ASIO's activities focus more heavily on Australian citizens, the level of assurance the Attorney-General can provide in his oversight of operations is dependent on a well-developed understanding of the operational tools available. Separating operational oversight from the Attorney-General's portfolio risks breaking down this understanding.

The Attorney-General and the AFP

Even though law enforcement warrants are generally issued by a judicial officer or a nominated tribunal member appointed in a personal capacity, the AFP is nevertheless subject to and benefits from the Attorney-General's oversight.

A further example of the Attorney-General's oversight of law enforcement activities in relation to CT is the requirement that the AFP must obtain consent from the Attorney-General prior to making an application for an interim control order and also before commencing prosecutions for certain security offences. This includes prosecution for foreign incursions offences under Division 119 of the *Criminal Code Act 1995*.

Operational cooperation is well-established and effective

This Review also considered the relationship between ASIO and the AFP as a result of their collocation within the Attorney-General's portfolio. The relationship – including through the Joint Counter-Terrorism Teams located in all states and territories – has benefited significantly from collocation.

There are high levels of cooperation and mutual trust between the two organisations. Collocation has greatly enhanced Australia's international cooperation in building legal and law enforcement capacity in our region. Indonesia is a powerful example of where the two agencies – in cooperation with other relevant agencies – have agreed on an objective, coordinated efforts and achieved strong results.

While it would be possible for ASIO and the AFP to collaborate from different portfolios, the Review concluded that the collocation of these two agencies was a structural strength of the current system. There is no pressing rationale to interrupt the close, constructive way these agencies work together directly.

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Similarly, the Street and Clarke inquiries stressed the importance of a close relationship between the AFP and the Office of the Commonwealth Director of Public Prosecutions, which has been greatly enhanced by collocation within the Attorney-General's portfolio.

Practical challenges establishing a Department of Home Affairs

There are also a range of practical considerations that suggest establishing a Department of Home Affairs would not be an optimal response to the terrorism threat to Australia.

- Australia's agencies with CT capabilities also perform a wide range of other functions – such as counter-espionage, or combatting drug-related crime. Putting these agencies together under the remit of a department with broad responsibility for domestic national security matters may leave our CT efforts in competition for attention and resources.
- A small department could struggle to gain traction leading a portfolio containing large, operationally focussed agencies with statutory independence such as ASIO and the AFP. The Smith Review came to the same conclusion.
- Given the CT threat must be addressed *both* through a domestic *and* an international lens, the consolidation of national security agencies within a Department of Home Affairs might lead to a tendency to privilege the domestic over the international elements of the problem. Such a tendency would be unhelpful in the current fluid threat environment.
- The creation of a new department – even on this limited scale – would involve disruptive change with the attendant risk of distracting from the CT task.

In respect of CT, this Review therefore concludes there is no compelling reason to change the current system of ministerial oversight and departmental structures. Rather, it should be retained and strengthened.

Better coordination of existing machinery of government

Our CT approach needs to be more consistently whole-of-government in outlook. We must ensure all relevant government departments and agencies bring their expertise to bear.

One way to achieve the increased cooperation that is needed in the Commonwealth's CT arrangements could involve either PM&C or AGD playing a more active role on the basis of a clear mandate and resourcing from Government.

However, this would not be the only option. Given the evolving threat environment, another model with some attractions would involve a new approach combining oversight of the Commonwealth's policy and operational activities by elevating the DG of Security to the key CT coordinating role.

The model developed to implement OSB has proven the value of a relatively small and agile coordinating body, led by a senior official acting as a single authoritative point of contact and accountability. The governance mechanisms put in place in August 2014, involving the establishment of a new centre bringing together all of the key Commonwealth agencies, are a positive step towards achieving the same effect.

The Review suggests that these arrangements be amended to:

- designate a leader for the CT community who would coordinate across agencies and support the Attorney-General in reporting to NSC
- provide for regular, focussed head of agency level engagement
- focus on strategic policy challenges and resolving impediments to CT coordination
- bring together all agencies from across government who can contribute to the CT effort.

Either the DG of Security, a senior official (Associate Secretary) in AGD or a similarly senior official in PM&C would be designated as the **National Counter-Terrorism Coordinator (CT Coordinator)**. The CT Coordinator would be the most senior point of contact on CT matters. If the

CT Coordinator was the DG of Security or a senior official in AGD he (or she) would be responsible to the Attorney-General – who would retain ministerial oversight for the Commonwealth's CT efforts – and would support the Attorney-General in providing regular updates to NSC.

Establishing the position of CT Coordinator in AGD would build on the policy oversight of agencies such as ASIO, AFP and AUSTRAC which fall within the Attorney-General's portfolio.

If the CT Coordinator was based in PM&C he (or she) would report to the Prime Minister through the Secretary of PM&C. A National CT Coordinator based in PM&C would bring PM&C's traditional convening power to the role.

The CT Coordinator would also chair a regular secretary and agency head-level **Senior Executive Counter Terrorism Group** (Executive Group). The Executive Group's role would be to set the strategic direction and priorities for the Commonwealth's CT effort, and oversee the effective implementation of the suite of new CT measures endorsed by Government.

The newly constituted **Australian Counter-Terrorism Centre** (ACTC) – led by a senior official (for example at the SES Band 3 level) – would need to become a whole-of-government CT capability located within, but not as part of, ASIO. This distinction would be important in ensuring the ACTC remains credibly impartial, including for its evaluation of agencies' performance.

The ACTC's focus should be on progress against priorities and overcoming impediments to an effective CT approach. It would need to take on an important role in the **coordination** of strategic CT policy across the Commonwealth. But its focus should be on ensuring departments and agencies bring their expertise to bear in developing and implementing policy solutions, rather than taking on a role that is properly performed by an existing department or agency.

Chart 10 displays the proposed governance arrangements for the Executive Group and the ACTC.

It is imperative that Commonwealth CT efforts align with arrangements in the states and territories. To help ensure this, the Executive Director of the ACTC should seek membership on the ANZCTC. This would help to provide a level of shared visibility and accountability between the two bodies, as well as a strong connection to the Executive Group.

A clear statement of objectives

The OSB experience shows the importance of establishing a clear mandate for agencies to work to. To this end, the Review recommends that Government, through the ANZCTC, develops a new national CT strategy given the changes in the threat environment. This could be supported by the Prime Minister delivering a clear statement on Australia's CT objectives and priorities. The statement would focus on setting out the Government's strategic level objectives and priorities for promoting community resilience, disrupting terrorist networks and preventing attacks.

Table 1: Factors contributing to the success of OSB – Lessons for the ACTC

Factor	OSB	ES/ACTC
Implemented on basis of clear government policy	√	√
Comprised of representatives from a wide range of agencies	√	√
Senior-level attendance at key coordination meetings	√	√
Task groups allocated substantial responsibilities, led by senior officials	√	√
Reports regularly to agency head/deputies reference group	√	√
Regular cabinet reporting ensures continued ministerial attention/priority	√	√

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Recommendations

1. The Government, in close consultation with states and territories through the ANZCTC, develop a new national CT strategy which appropriately coordinates and balances our efforts to counteract the various threats we face, including from home-grown lone actors and radicalisation in our community.
2. The Government implement the following arrangements to provide strong, clear and co-ordinated leadership to ensure agencies respond effectively and appropriately to terrorism:
 - a. designate a senior official as the National CT Coordinator.
 - b. establish and expand an Executive Group at the Secretary/Agency Head level, chaired by the CT Coordinator, to set the strategic direction for the Commonwealth's CT efforts
 - c. mandate that the Australian Counter-Terrorism Centre draw together policy and operational agencies, including secondees from the states and territories, to work together closely on operations, policy challenges and capability development.

Chart 10: Proposed Executive Group and ACTC governance arrangements

Strategic Direction

Coordination

Functions

Australia-New Zealand Counter-Terrorism Committee

