



Irish Council for
Civil Liberties

ICCL submission for 3rd stage debate on the Policing, Security and Community Safety Bill 2023

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Table of Contents

Introduction	3
Part 2 - An Garda Síochána	3
Row 1	3
Part 3 The Policing and Community Safety Authority	4
Row 2	4
Row 3	4
Row 4	4
Row 5	4
Row 6	5
Row 7	5
Row 8	6
Part 5 - Police Ombudsman	6
Row 9	6
Rows 10, 11, 12	6
Row 13	7
Part 6 - Complaints, Investigations and Other Matters	7
Row 14	7
Row 15	7
Row 16	8
Row 17	9
Row 18	9
Row 19	9
Row 20	10
Row 21	10
Row 22	11
Part 7 – Independent Examiner of Security Legislation	12
Row 23	12
Row 24	13
Row 25	14
Row 26	14
Miscellaneous	15
Rows 27, 28	15
Row 29	15
About ICCL	16

Introduction

1. The Irish Council for Civil Liberties (ICCL) made a submission to members of the Oireachtas in advance of the 2nd Stage debate on the Policing, Security and Community Safety Bill, (PSCS Bill). This submission and the accompanying table are designed to complement that submission and assist with amendments that we believe will ensure Garda oversight bodies are more robust and effective, in line with recommendations from the Commission on the Future of Policing, (CoFPI). ICCL takes this opportunity to endorse the submission on this Bill by the Irish Human Rights and Equality Commission, (IHREC), and the Garda Síochána Ombudsman Commission, (GSOC).
2. This Bill introduces important organisational and structural reforms recommended by CoFPI. ICCL welcomes the creation of an Independent Examiner for National Security Legislation, and reforms to the Garda Síochána Ombudsman Commission, to be renamed the Office of the Police Ombudsman, as well as the creation of a new Policing and Community Safety Authority, amalgamating the Policing Authority and the Garda Inspectorate.
3. However, ICCL considers that the opportunity to create robust oversight mechanisms meeting international standards of best practice will be lost without some key amendments to the Bill. The new Independent Security Examiner must have access to all relevant information and its primary function must be to assess whether security legislation is being used in a manner compatible with Ireland's human rights obligations.
4. The independence of the new Police Ombudsman must be better protected, and its powers strengthened to ensure it can carry out meaningful independent investigations into complaints against AGS. The new Policing and Community Safety Authority must be equipped to provide robust oversight and inspections of AGS.
5. We make several other observations in the briefing below, including on the failure to implement CoFPI's recommendation to remove prosecutorial powers from AGS, the need to ensure disaggregated data is collected by AGS and the need to include reference to the Public Sector Equality and Human Rights duty on each policing and oversight body.
6. Each section below corresponds to the accompanying table and references the relevant rows in that table.

Part 2 - An Garda Síochána

Row 1

7. ICCL reiterates that the retention of the power of AGS to prosecute in the district court is in direct contradiction of both CoFPI's recommendation, and of international best practice.¹ There is no comparable practice to having police services prosecute

¹ See for example 'The European Code of Police Ethics', Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and its explanatory memorandum.

cases in the UK, Canada, Australia, or New Zealand. The prosecution service runs all cases.

8. During pre-legislative scrutiny of the Bill, Government confirmed that they accepted this recommendation from CoFPI, subject to detailed analysis and cost.² We call for all steps to be taken to facilitate the removal of prosecutorial powers from AGS, including allocation of sufficient funding to the DPP, and for this provision to be removed from the Bill.

Part 3 The Policing and Community Safety Authority

Row 2

9. The Bill proposes to replace the Policing Authority and the Garda Inspectorate with a Policing and Community Safety Authority, responsible for overseeing and assessing the performance of AGS in an "independent and transparent manner".³ We consider there is a missed opportunity to task the Authority with oversight of the Local Community Safety Partnerships provided for in Part 3 of the Bill. This should be considered by Government.

Row 3

10. In terms of the inspection function of the new Authority, ICCL notes that the General Scheme referred explicitly to the power to carry out inspections relating to policing services, including in relation to adherence to "human rights standards and cooperation with other public service bodies to enhance community safety". The Bill refers only to the power "to carry out inspections".⁴ We consider the explicit language on human rights should be reintroduced.

Row 4

11. To safeguard the independence of the Authority, we consider that its annual reports should be laid before the Oireachtas and not submitted to Minister for Justice. This is in line with other oversight bodies in the State and IHREC, as well as comparative jurisdictions such as England and Wales.⁵

Row 5

12. S.139 and s.140 provide for the Chief Executive of the new Authority to give evidence to Oireachtas Committees but state that they shall not: "question or express an

² See the Joint Committee on Justice, Report on pre-legislative scrutiny of the Policing, Security and Community Safety General Scheme, p.19. The Department of Justice confirmed in writing that "subject to detailed analysis and evaluation of the cost to the Exchequer, the Government accepted the CoFPI's recommendation that prosecution decisions should be under the remit of an expanded state solicitor or national prosecution service."

³ PSCS Bill, S.122 (1)

⁴ PSCS Bill, S.122 2(d)

⁵ See the Police Act 1996. S.54(4) provides that "The chief inspector of constabulary shall in each year submit to the Secretary of State a report on the carrying out of inspections under this section, and the chief inspector shall lay a copy of that report before Parliament."

opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy". ICCL considers this is a disproportionate interference with the right of the Chief Executive to express concerns and make recommendations on legal and policy issues that may go to the heart of their oversight functions. These sections should be removed.

Row 6

13. Reference to cooperation with the new Inspector of Places of Detention, as provided for in the General Scheme of the Inspection of Places of Detention Bill 2022, should be included in this Bill given the importance of ensuring inspections of places of garda custody are informed by the expertise of policing oversight bodies. It is vital that these two key pieces of legislation work together to provide for a robust mechanism of inspecting places of garda custody, in compliance with the Optional Protocol to the UN Convention against Torture (OPCAT).
14. The Garda Síochána Act 2005 allows for the conducting of inspections by the Inspectorate in relation to security services.⁶ The creation of the Independent Examiner removes oversight of security services from the Authority and limits its inspection powers to "policing services".⁷ However, the Bill does not provide specifically for inspection powers for the Independent Examiner, beyond the ability to request "appropriate facilities and accommodation be made available within the premises of an information holder to permit the examination of information, documents or things and to put questions to individuals and where he or she so requests an information holder shall comply with the request."⁸ This power is subject to approval by the Minister⁹ and can therefore be considered a far more limited power than the inspections that the Garda Inspectorate can currently undertake.
15. ICCL considers that this creates a potential gap in oversight that must be remedied by providing for joint inspections by the Authority and the Independent Examiner or sole but independent, unannounced inspections by the Independent Examiner.

Row 7

16. The legislation should also make clear that where joint inspections take place with the new Inspectorate of Detention, s.142(5) requiring notice to be given to the Garda Commissioner of all inspections by the Authority, should be disapplied as this would conflict with Ireland's international obligations under the Optional Protocol to the UN Convention against Torture. This treaty, once ratified, will require that inspection bodies can make unannounced visits to Garda stations.

⁶ Garda Síochána Act 2005

⁷ Policing, Security, Community Safety Bill 2023, S.146(1)

⁸ PSCS Bill, S.239 (6)

⁹ PSCS Bill, S.239 (7)

17. Of note, in England and Wales, the relevant legislation provides that “Nothing in any inspection programme or inspection framework is to be read as preventing the inspectors of constabulary from making visits without notice”.¹⁰

Row 8

18. As is the case in Northern Ireland, we recommend that the Policing Authority is staffed with a full-time human rights expert. Such an expert can assist the Authority to ensure that it complies with its own human rights obligations, including the public sector equality and human rights duty. The expert could also provide invaluable advice regarding the compliance of An Garda Síochána with its human rights obligations.

Part 5 - Police Ombudsman

Row 9

19. A properly equipped, empowered and independent Ombudsman is vital to ensure proper oversight and accountability of AGS. ICCL considers that the Police Ombudsman should be established in line with international best practice for national institutions mandated with the promotion and protection of human rights, as found in the Principles relating to the Status of National Institutions ('The Paris Principles').¹¹
20. A national institution must be independent, and must be granted adequate funding to enable it to have its own staff and premises and to be able to function smoothly. This funding structure must allow the national institution to be independent from the Government and must ensure that it is not subject to financial control that might affect its independence.¹²

Rows 10, 11, 12

21. ICCL reiterates its previous support of GSOC's submissions in relation to sections 179-181 of the Bill. It is vital that the Ombudsman is both independent from Government, and seen to be independent. Section 179 particularly poses an unnecessary risk to undermining the institutional independence of the Ombudsman, given that a governance framework is already provided for by the Civil Service Corporate Governance Code. We have not found any comparative provisions for sections 179-180 in the Ombudsman offices for the jurisdictions of the UK, Canada, Australia, or NZ.
22. S.180 and S.181 provide that the Minister should lay the Ombudsman Strategy Statement and Annual Reports before the Oireachtas, which is not consistent with the practice of other Ombudsman Offices in Ireland. The Police Ombudsman should lay its own Strategy Statement and Reports before the Oireachtas to maintain its actual and perceived independence.

¹⁰ Schedule 4A, s 2(5) of the Police Act 1996

¹¹ General Assembly resolution 48/134, 'Principles relating to the Status of National Institutions (The Paris Principles)' (20 December 1993).

¹² General Assembly resolution 48/134, 'Principles relating to the Status of National Institutions (The Paris Principles)' (20 December 1993).

Row 13

23. The Ombudsman should designate one Officer of the Police Ombudsman as a dedicated human rights expert to both ensure compliance of the Ombudsman with its human rights obligations, and to assist with assessment of complaints against AGS using a human rights based approach.

Part 6 - Complaints, Investigations and Other Matters

Row 14

24. Section 200(1) of the Bill places an obligation on the Garda Commissioner to notify the Ombudsman of 'incidents of concern'. An 'incident of concern' is defined under section 189(1) as a situation in which a member of AGS may have (i) committed an offence, or (ii) behaved in a manner that constitutes notifiable misconduct. 'Notifiable misconduct' is a breach of standards of professional behaviour that would justify bringing conduct proceedings, or as otherwise prescribed by the Minister.
25. ICCL notes that there may be situations relevant to the public's confidence in AGS, which require a level of oversight and scrutiny from the Ombudsman, and that do not fall under this restrictive definition. We recommend that the definition 'incident of concern' is broadened to include situations that include the use of certain weapons, including firearms, by the Gardaí, and the loss of such weapons.
26. Comparison may be made with the legislation underpinning the Police Investigations and Review Commissioner for Scotland. The Chief Constable must refer serious incidents involving the police to the Scottish Commissioner.¹³ The definition of 'serious incident' includes situations in which a firearm or a baton is used by the police, or any circumstance in which an officer attempts to cause injury to a member of the public.¹⁴
27. We also consider that incidents of concern should include any incident or behaviour that is alleged to have violated human rights or, on the face of it, risks public confidence in An Garda Síochána.

Row 15

28. S.199 (1) of the Bill provides that the Garda Commissioner shall refer to the Police Ombudsman "any matter that appears to the Garda Commissioner to indicate that the act or omission of a member of garda personnel may have resulted in the death of, or serious harm to, a person". Similarly, S.204(1) provides that the Police Ombudsman shall investigate any matter that "appears to the Police Ombudsman to indicate

¹³ Sections 33A, 41B of the Police, Public Order and Criminal Justice (Scotland) Act 2006; Regulation 3 of the Police Investigations & Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013.

¹⁴ Section 41B of the Police, Public Order and Criminal Justice (Scotland) Act 2006; Regulations 6-7 of the Police Investigations & Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013.

that the conduct of a member of garda personnel may have resulted in the death of, or serious harm to, a person”.

29. S.189 of the Bill provides that “serious harm”, in relation to a person, means– (a) an injury to the person that– (i) creates a substantial risk of death, (ii) causes serious disfigurement, or (iii) causes substantial loss or impairment of mobility of the body as a whole or of the function of any particular bodily member or organ, (b) he or she is the victim of a sexual offence, or (c) he or she is the victim of an abuse of power for a sexual purpose.
30. ICCL has previously recommended, in line with comments from international human rights experts, that independent oversight bodies should have the power to investigate human rights abuses, in particular where such abuses constitute ill treatment.¹⁵ The current proposed jurisdiction appears to be limited to physical harm, while the European Court of Human Rights has made clear that ill treatment includes ‘intense mental suffering’.¹⁶

Row 16

31. The Bill allows for the Ombudsman to refer certain complaints to AGS for resolution. ICCL recommends that, in line with international best practice, provision is made to allow the Ombudsman to retain some level of oversight in matters that have been referred.
32. When the Ombudsman refers a matter to the Chief Constable in Northern Ireland, the Ombudsman can assert the right to approve the officer assigned to investigate the complaint. The Ombudsman can supervise the investigation if it is in the public interest, and can impose requirements on the investigation. The Chief Constable’s report following the investigation is then sent to the Ombudsman.¹⁷ The Police Investigations and Review Commissioner for Scotland may similarly supervise reconsiderations of complaints by the police, and can require that it approves the officer investigating the complaint.¹⁸
33. In England and Wales, there are two mechanisms by which the Director General has oversight for police investigations of complaints. Where the police authority deals with a complaint itself, complainants can apply to the Independent Office for Police Conduct for a review of the outcome of their complaint.¹⁹ The Director General can

¹⁵ See for example, the European Committee for the Prevention of Torture (CPT) following its visit to Ireland in 2014, stated that ‘it goes without saying that any police action which may fall within Article 3 of the European Convention on Human Rights, notably allegations of excessive use of force at the time of apprehension, should be investigated by an independent body such as the Ombudsman Commission’. See also, ICCL, Rights-Based Policing: How Do We Get There? A Submission By The Irish Council For Civil Liberties To The Commission On The Future Of Policing, 2018, p.41 and 42.

¹⁶ See eg Council of Europe, Definitions document available at <https://www.coe.int/en/web/echr-toolkit/definitions>.

¹⁷ Section 57 of the Police (Northern Ireland) Act 1998.

¹⁸ Section 37 of the Police, Public Order and Criminal Justice (Scotland) Act 2006.

¹⁹ Paragraph 6A, Schedule 3 of the Police Reform Act 2002, as amended.

also direct investigations being made by policing authorities into complaints, and require that it approves the police investigator.²⁰

Row 17

34. Under section 200(6) the Garda Commissioner shall only notify the Ombudsman of an incident of concern insofar as it would not be prejudicial to State security, and would not endanger the life or safety of an informant.
35. There is no comparative provision to section 200(6) in the legislation underpinning the Police Ombudsman for Northern Ireland, the Police Investigations and Review Commissioner for Scotland, the Independent Office for Police Conduct for England and Wales, the Canadian Office of the Independent Police Review Director, the Australian Independent Broad-based Anti-corruption Commission, or the New Zealand Independent Police Conduct Authority.
36. ICCL recommends that this provision should be removed. Or, if this provision is retained, amendments are necessary to ensure that sufficient safeguards are in place. This section should include a requirement that the Garda Commissioner can only refuse to notify the Ombudsman where appropriate and necessary.
37. Under section 200(7) the Garda Commissioner shall notify the Independent Examiner when subsection (6) applies. The Independent Examiner's review functions under section 240 do not include this situation. ICCL recommends that the Independent Examiner's role must be clarified in relation to reviewing the refusal of notification under section 200(6). Further, where a refusal is upheld by the Minister, following the Independent Examiner's review, provision must be made for how such incidents of concern are then subject to oversight and review.

Row 18

38. Section 201 allows for the Ombudsman to conduct an investigation on their own motion, and allows for referral of a matter from the Minister, the Authority, and the Garda Commissioner, as long as the matter appears to be a 'relevant cause of concern'. Subsection (10) restricts a 'relevant cause of concern' in the same terms of an 'incident of concern' under section 189(1), but without the possibility of Ministerial extension of the definition.
39. ICCL reiterates its submissions made regarding 189(1) at Row 14 of the accompanying table in relation to this provision. This section is more restrictive than section 189(1) as it also fetters the discretion of the Minister in determining what should be referred for investigation in the public interest.

Row 19

40. ICCL submits that section 201 should be amended to clearly stipulate the power of the Ombudsman to investigate matters that have previously been raised to the

²⁰ Paragraph 15(6) and 18, Schedule 3 of the Police Reform Act 2002, as amended.

Office. This would protect the power of the Ombudsman to conduct investigations fully and fairly. The Ombudsman may wish to instigate an investigation that it previously declined when a complaint was made, on foot of new information, for example.

41. This clarification would be in line with the Ombudsman power under s169(3) of the Bill, which provides that the Ombudsman "*shall have all such powers as are necessary or expedient for the performance of his or her functions*". A stronger iteration of this inherent power of the Ombudsman can be found in England and Wales, which provides for the Director General to do "*anything which appears... to be calculated to facilitate, or is incidental or conducive to, the carrying out of [their] functions.*"²¹

Row 20

42. ICCL submits that an explicit statutory obligation should be placed on AGS to fully co-operate with the Ombudsman in a full and timely manner. Comparison can be made to Scotland, where there is a duty on the Constabulary, the Auditor-General, and the Commissioner, to co-operate and co-ordinate activity, and to make arrangements to exchange information.²²

Row 21

43. Under section 207, the Ombudsman must consult with the Garda Commissioner prior to seeking a warrant to search an AGS premises. If the Garda Commissioner objects to the search, the application for a warrant before a District Court judge cannot proceed. Instead, the matter is referred to the Independent Examiner for review, before a decision by the Minister. The Minister is then limited in the decision to be made, and can only make a direction where the search would not be prejudicial to State security, or where it is proportionate and necessary to the investigation of a matter of death or serious harm. There is no provision for a balancing exercise to take place to allow the application to proceed in any other circumstances.
44. The requirement for a mandatory consultation with the Garda Commissioner to take place prior to every application for a warrant undermines the ability of the Ombudsman to conduct an independent investigation. The function of the Ombudsman to provide oversight and accountability of a body is seriously weakened by the requirement to obtain consent from the head of that body to conduct a search. The independence of this process is further called into question with the Minister's decision-making process in subsections (14) and (15). This would be a decision, with statutorily limited options, made by a political representative.
45. ICCL recommends that section 207 is deleted in its entirety, and that the power to search AGS premises is contained within the ordinary powers conferred onto the Ombudsman, that are equivalent to a member of AGS, under section 206. To this end, it is recommended that the phrase "(other than a Garda Síochána premises)" is

²¹ Section 10(6) of the Police Reform Act 2002, as amended.

²² Section 85, Police and Fire Reform (Scotland) Act 2012.

removed from section 206. This recommendation is in line with international best practice.

46. Investigators for the Police Ombudsman for Northern Ireland similarly have the power of constables when conducting enquiries and therefore, with lawful authority, they may search police premises and filing systems, and may seize relevant documentation and materials.²³ Where the Police Investigations and Review Commissioner for Scotland seeks to enter a police premises, inspect the premises, or remove relevant materials, the person requested is obliged to comply and to provide any other assistance that the Commissioner may reasonably require.²⁴ The Independent Office for Police Conduct for England and Wales may similarly require access to inspect police premises, and to documents and materials in the premises, with 24-hour notification period for the body request.²⁵ This power is in addition to the provision that an investigator for the Independent Office has the powers of a constable in conducting investigations.²⁶

47. In Canada, the Office of the Independent Police Review Director may enter and search a police premises, including any vehicles on the premises, at any reasonable time with notice to the Chief of Police. An investigator can apply to a justice of the peace/provisional judge without notice to the Chief of Police for a search warrant, in circumstances where the investigator was, or is likely to be, prevented for exercising a right of entry to the premises.²⁷

48. It is recommended that, in order to address the concerns of State security that arise in this section, provision may be made to ensure that sensitive information is protected once it becomes a part of the Ombudsman's investigation. This would have the effect of strengthening public and AGS confidence in the Ombudsman as an oversight mechanism. Comparison in this respect can be made to the safeguards in the legislation underpinning the Australian Independent Broad-based Anti-corruption Commission.²⁸

Row 22

49. Under section 212, the Ombudsman can make recommendations to the Garda Commissioner where they consider that a matter should be dealt with by way of conduct proceedings or performance proceedings. The Garda Commissioner is only required to notify the Ombudsman of the action (if any) it will take in response to the recommendations, and any supporting reasons.

²³ Police Ombudsman for Northern Ireland, 'Power of Constable', accessible at <<https://www.policeombudsman.org/Information-for-Police-Officers/Power-of-Constable>>; Authorisation for search can be given by a justice of the peace under section 10 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

²⁴ Regulations 5 of the Police Investigations & Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013.

²⁵ Section 18 of the Police Reform Act 2002, as amended.

²⁶ Paragraph 19, Schedule 3 of the Police Reform Act 2002, as amended.

²⁷ Section 26.6 of the Police Services Act, R.S.O. 1990, c. P.15, as amended.

²⁸ Sections 45 to 50 of the Independent Broad-based Anti-corruption Commission Act 2011.

50. ICCL submits that this provision effectively removes the ‘teeth’ from the oversight and accountability functions of the Ombudsman. Where a report identifies behaviour that requires discipline, and where the Ombudsman makes relevant recommendations, there is no mechanism by which the Ombudsman can ensure that its recommendations are followed. This provision is in direct contradiction of international best practice.
51. In Northern Ireland, the Police Ombudsman can recommend to the Policing Board and/or disciplinary authority that disciplinary proceedings should take place. If the Chief Constable is unwilling to bring proceedings following the Ombudsman’s recommendation, the Ombudsman can direct them to bring proceedings, following a consultation.²⁹ In England and Wales, where recommendations are made by the Director General for action to be taken in respect of an officer’s unsatisfactory performance, the Director General can direct the authority to take certain steps, and the authority is obliged to comply.³⁰ The Director General can additionally recommend that compensation is to be paid.³¹
52. In Canada, where a hearing is held by the Office of the Independent Police Review Director and misconduct is shown on clear and convincing evidence, the Director “shall... direct” the police services board to take disciplinary action. The disciplinary powers are clearly set out in legislation, and include dismissal, demotion, suspension, and forfeit of pay.³²
53. The New Zealand Independent Police Conduct Authority has recommendation functions similar to those proposed under the Bill, but with stronger powers of accountability. Where the Authority recommends action to the Police Commissioner, the Commissioner must similarly notify the Authority of action to be taken, and the reasons for departing from a recommendation. However, if no adequate and appropriate action is taken within a reasonable time, the Authority “must” send a copy of its opinion and recommendations, with the comments of the Commissioner, to the Attorney-General and the Minister of Police. It may then have the report tabled before the House of Representatives through the Attorney-General.³³

Part 7 – Independent Examiner of Security Legislation

Row 23

54. Under section 231, the Independent Examiner must ensure that information relevant to their functions is made publicly available to the greatest extent possible “*without prejudicing the security of the State, defence or international relations*”. This would restrict the Examiner’s ability to fulfil their functions in a more restrictive manner than

²⁹ Section 59 of the Police (Northern Ireland) Act 1998.

³⁰ Paragraph 27, Schedule 3 of the Police Reform Act 2002, as amended.

³¹ Paragraph 28ZA, Schedule 3 of the Police Reform Act 2002, as amended.

³² Sections 84-85 of the Police Services Act, R.S.O. 1990, c. P.15, as amended.

³³ Section 29 of the Independent Police Conduct Authority Act 1988.

the wording of the General Scheme, which was limited to situations of “*prejudicing the security of the State or risking a threat to life*”.³⁴

55. ICCL reiterates that a key function of the Independent Examiner role is to ensure transparency as far as possible in the operation of security legislation in Ireland. The exemption to make information public where ‘international relations’ may be prejudiced is entirely too broad and vague. Most information relating to national security can arguably impact upon international relations, particularly when this phrase is not defined in the Bill.
56. Comparison can be made to the UK’s Independent Reviewer of Terrorism Legislation, who reviews the operation of terrorism legislation in a way similar to that proposed in sections 231(2)(a) and (c) of the Bill. The Independent Reviewer’s role is to inform the public and political debate on anti-terrorism law in the UK, and they are not statutorily restricted from promoting public transparency in their functions.³⁵

Row 24

57. ICCL recognises that this Bill seeks to place many different functions on the role of Independent Examiner. The Examiner would assess the operation of security legislation, act as a *de facto* adviser to the Minister on matters arising under section 240, and additionally replace the role of judge in assessing and reviewing the authorisation of surveillance techniques.³⁶
58. There is significant value to opening the candidate pool to those who are senior counsel, or to others with the requisite skills, expertise, and experience. The UK’s Independent Reviewer role has never been held by a judge. Since 2001, the role has been occupied only by senior counsel.³⁷ In Australia, neither the Independent National Security Legislation Monitor (INSLM) nor the Inspector-General of Intelligence and Security exclude non-judiciary applicants for appointment.³⁸ For INSLM, in particular, the key criteria is whether the person has the required “*qualifications, training or experience*” for the role.³⁹
59. In Canada, the National Security and Intelligence Review Agency (NSIRA), which reviews the activities of the national security and intelligence bodies, is comprised of a chair and a number of members. There is no requirement for such persons to have held judicial office.⁴⁰ The role of the Inspector-General of Intelligence and Security in New Zealand similarly does not restrict eligibility on this basis.⁴¹ In this role, the

³⁴ Head 194 of the General Scheme of the Policing Security and Community Safety Bill.

³⁵ Independent Reviewer of Terrorism Legislation, ‘Reviewer’s role’ <https://terrorismlegislationreviewer.independent.gov.uk/about-me/> (last accessed 28 March 2023)

³⁶ Sections 269, 271, and 278 of the Bill.

³⁷ Independent Reviewer of Terrorism Legislation, ‘History’ <https://terrorismlegislationreviewer.independent.gov.uk/history/> (last accessed 28 March 2023)

³⁸ Section 6 of the Inspector-General of Intelligence and Security Act 1986.

³⁹ Section 11 of the Independent National Security Legislation Monitor Act 2010.

⁴⁰ Section 3 of the National Security and Intelligence Review Agency Act 2019.

⁴¹ Section 157 of the Intelligence and Security Act 2017.

Inspector-General has the additional function of reviewing intelligence warrants made by the Minister and by the Director-General of the intelligence and security agency.⁴² ICCL recommends that this provision is amended in line with the best practice examples of Australia and New Zealand.

Row 25

60. Under section 239(5), information holders can withhold information sought by the Independent Examiner in order to safeguard international intelligence sources, or to conceal the identity of a person where their life or safety may be endangered. There is no provision for how this denial of information can be reviewed. ICCL could not identify any other jurisdiction that restricted the jurisdiction of a security examiner in this way.
61. The UK's Independent Reviewer has unrestricted access to classified documents and national security personnel.⁴³ The UK Investigatory Powers Commissioner's Office, which independently oversees the use of investigatory powers, has similar unrestricted access to information. It therefore must take steps to protect sensitive information once it has been obtained.⁴⁴
62. In Australia, INSLM has unrestricted access to information, and information holders are specifically empowered to provide information without being prosecuted under secrecy provisions.⁴⁵ Australia's Inspector-General of Intelligence and Security (IGIS), who reviews the activities of the intelligence services, has similar powers of access to information. There is an obligation on IGIS to protect national security documentation if it is retained as part of an inquiry.⁴⁶ The New Zealand Inspector-General of Intelligence and Security has unrestricted access to information, and information holders are required to disclose information as required, despite any obligation of secrecy.⁴⁷ Finally, Canada's NSIRA has unfettered access to classified information, with the sole exception of information relating to a confidence of the Queen's Privy Council for Canada.⁴⁸
63. ICCL recommends that the Independent Examiner is granted the same powers and jurisdiction as its international counterparts, and that relevant provision is made for the Examiner to protect any sensitive information obtained.

Row 26

64. S.240 allows the Independent Examiner to review refusals of the Garda Commissioner and other persons to provide information to the Authority and the Ombudsman, and to review the Garda Commissioner's objection to a search of a garda

⁴² Sections 77 and 82 of the Intelligence and Security Act 2017.

⁴³ David Anderson Q.C., *'The Terrorism Acts In 2015; Report Of The Independent Reviewer On The Operation Of The Terrorism Act 2000 And Part 1 Of The Terrorism Act 2006'*, (December 2016), page 3.

⁴⁴ Section 232 of the Investigatory Powers Act 2016.

⁴⁵ Section 26 of the Independent National Security Legislation Monitor Act 2010.

⁴⁶ Section 20 of the Inspector-General of Intelligence and Security Act 1986.

⁴⁷ Section 180 of the Intelligence and Security Act 2017.

⁴⁸ Section 9 of the National Security and Intelligence Review Agency Act 2019.

premises. The Examiner may then make a recommendation to the Minister following this review.

65. Without any mechanism to ensure that the Minister engages with and responds to the Examiner's recommendation, the Examiner under section 240 becomes merely a *de facto* adviser to the Minister. The element of accountability and oversight that the role is intended to have, as a separate layer to the final decision of the Minister, is lost without further safeguards in place. ICCL recommends that a duty is placed on the Minister to respond substantively to the recommendations by the Examiner under section 240, and that reasons are given by the Minister where they choose to deviate from the Examiner's recommendations. The Examiner should subsequently be obliged to keep a record of the cases in which the Minister has accepted and rejected the Minister's recommendations, for the purpose of their annual report.
66. As noted above, provision should be made for the Examiner's review function in section 240 for the utilisation of section 200(6) of the Bill.

Miscellaneous

Rows 27, 28

67. Sections 77 and 122 of the Bill do provide for obligations on AGS and the Authority to collect certain data. ICCL reiterates that disaggregated equality data must be collected to ensure transparency, accountability, and evidence-based responses in policing, going forward. ICCL recommends that provision is made to for the collection of this aggregated data in relation to all areas of policing, in particular the use of police powers, based on equality grounds, socio-economic status, geographic location, and ethnicity.

Row 29

68. ICCL echoes IHREC's authoritative call for the Bill to provide for all public sector actors including AGS, the Authority, the Ombudsman and the Independent Security Examiner to have regard to their public sector equality and human rights duty in creating their strategy statement, governance framework and annual report.

About ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights.