Australian National University

National Security College

A Regrettable Necessity

The Future of Australian Covert Action

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OCCASIONAL PAPER MAY 2022

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About this paper

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The NSC's Occasional Papers comprise peer-reviewed research and analysis concerning national security issues at the forefront of academic and policy inquiry. They are designed to stimulate public discourse and inform policy solutions.

This paper would not have been possible without the generous insights and advice provided to the author in interviews with a number of current and former senior officials. The author would also like to thank Samuel Williams for his research assistance and NSC colleagues for their advice and production support.

Published by the National Security College, The Australian National University, Acton ACT 2601, Australia

Available to download for free at nsc.crawford.anu.edu.au

ISBN: 978-0-646-86028-2

Contents

Executive Summary

"The world is experiencing more than just a realignment in power. The global rules-based order is being manipulated and subverted. The future will likely be less advantageous to Australia than that we once knew."

Paul Symon, Director-General of ASIS, Lowy Institute, May 2022

Covert action is the most unexamined component of Australia's international statecraft, not least because alongside espionage it is part of the highly classified work of the Australian Secret Intelligence Service (ASIS). Today Australia faces the most important strategic inflection point in its approach to covert action since ASIS was first created, 70 years ago. As a result, new studies, debates, and policies concerning Australia's use of covert action are urgently required, including to help navigate the difficult ethical and strategic challenges presented by covert action. This paper provides a resource to understand Australia's approach to covert action, how it needs to change, and what policy measures could achieve this evolution. It foreshadows some of the ethical and strategic challenges covert action presents.

This paper comprises three parts. Part One leverages recently declassified material to provide the most comprehensive explanation of Australia's approach to covert action yet published. For the past 20 years Australia's approach has been calibrated to disrupt threats, often undertaken in support of otherwise declared military operations, including counter-terrorism, interference with people smuggling, and the recovery of hostages. This focus on disruption has meant that so-called 'special operations' and 'offensive cyber operations', have dominated Australia's recent covert action.

Part one also outlines the strengths and limitations of covert action as a tool of Australian power, with insights from recent British and American scholarship. Covert action can help Australia achieve strategic advantage and favourably shape 'facts on the ground' whilst managing escalation and helping signal deterrence. It should therefore be considered an instrument of international strategy which can increase the impact of overt diplomatic and military capabilities. However, like espionage, it carries risks.

Part Two reflects on Australia's approach to covert action in light of the great power competition defining Australia's future strategic environment. It suggests that the focus on disruption of active threats has become inadequate. It argues that the multimodal campaign of interference by the People's Republic of China (PRC) to win this competition 'without fighting' demands that Australia respond with a new approach to covert action that is less restrained and more imaginative, with a greater focus on what is typically referred to as 'political action'. In particular, it is argued that to bridge the gap between Australia's limited overt power and its growing security responsibilities, covert action will be of particular appeal to Australian governments, especially Australia's near region, where Australia's international security responsibilities are greatest.

In response to this demand for a 'new way' of Australian covert action, Part Three provides policy options for bolstering Australia's relevant capability and instituting an approach to using covert action that is coherent with the government's wider international objectives. It also considers options for commensurate improvements in the role of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) to oversee a potentially expanded tempo of Australian covert operations. It acknowledges that implementation of some of these proposals may need to be kept secret.

The policy options recommended in Part Three include:

- **Improving Strategic Coordination of Covert Action**. Options to undertake covert action should be considered by a new Strategic Action Sub-Committee of the National Security Committee of Cabinet (NSC), to replace existing ad hoc methods with a standing forum for relevant ministers to deliberate on opportunities for covert action. At an operational level, this greater strategic coordination should be supported by a dedicated Centre for Strategic Effects, inspired by the successful joint operating model of the Australian Cyber Security Centre.
- **Restructuring of ASIS.** As the lead Commonwealth agency for the most complex forms of covert action, ASIS's budget and staff numbers should be increased to prepare it for the increased demands on its staff and capabilities. Additionally, consideration should be given to make ASIS directly responsible to the Prime Minister (PM) and relocate the agency to the Department of the Prime Minister and Cabinet to reflect the increased responsibilities of the PM for covert action and the demand for ASIS-led covert action to be aligned with a whole-of-government understanding of Australia's international activities and interests.
- **Improved Cooperation for Shaping Public Narratives.** The criticality of the information domain and information operations to Australia's future covert actions should be supported by the creation of a covert action or 'C Notice' system to facilitate government cooperation with Australian media outlets on the amplification or counteraction of public narratives affecting the national interest. Such a system for closer, voluntary cooperation with media outlets on national security issues should also be used to facilitate ASIS becoming more open about its work with the Australian public to improve transparency, understanding, and public trust.
- **Updating the role of Parliamentary Joint Committee on Intelligence and Security (PJCIS).** The PJCIS should be given greater oversight of Australia's covert action posture by amending the *Intelligence Services Act (2001)* (IS Act) to mandate that the Committee be briefed on the contents of ASIS's Directive and any amendments to it. To support the Committee having greater insight into details of agencies' covert action posture, the IS Act should require PJCIS members to hold a special clearance as a condition of their nomination for the Committee.

To speak of covert action needing to be a larger component of how Australia achieves its foreign objectives will doubtless make some readers uncomfortable, as Australia's historically limited exercise of covert statecraft might be regarded as a virtuous tradition that has aided the nation's good standing internationally. It is probably true that a less constrained use of covert action would have provided comparatively little additional benefit to the needs of recent past governments, hence its historically limited use. However, the risk-benefit calculus has changed.

This paper is concerned with the more difficult demands of Australia's emerging and future international environment. In that context, Australia faces an unsafe and uncertain international situation reminiscent of the 1950s and the early Cold War: when Australia had to navigate precipitous great power competition close to home and with high expectations that it – despite being a comparatively small power – would aid in an allied effort to shape the region. These were the days in which ASIS was created.

Today, it is clear that allied counterparts perceive Australia as a nation with global influence and significant responsibilities to contribute decisively to the security of the Indo-Pacific in the face of a powerful and uninhibited PRC. It is for the task of meeting these expectations and advancing its own vision for the region that the utility of covert action must be re-evaluated as a tool of Australian statecraft.

Part One: The Use and Value of Covert Action to Australia

The Australian Approach to Covert Action

The study of covert action is going through a renaissance. A quiet army of archivists, journalists, and historians have been scouring the trickle of previously classified material being released by many archives, particularly in Five Eyes countries.[1] This has yielded new insights into how liberal democratic governments plan and direct covert action, including post-Cold War. The other factor driving renewed study has been the metastasising strategic environment facing liberal democracies, which has prompted a need among policymakers to re-evaluate and remodel how and why Western countries seek to undertake so-called 'strategic action'. In light of more accessible primary sources, we can speak more confidently about how Australia has used covert action.

Australia's approach is strongly informed by British and American experiences, largely because Australia's relevant agencies have been modelled on their Anglo-American counterparts. Unlike in the United States[2] covert action is not a phrase that appears in Australian statute. Rory Cormac offers a definition that reflects a shared British and Australian understanding, describing covert action as "intervention in the internal affairs of another state or non-state actor in a… deniable manner."[3] With this in mind, the Australian system is structured around a view that covert action comprises two sub-sets of activity: 'special operations' being military-style disruption or sabotage, and 'political action' being interference in a foreign target through measures like propaganda or clandestine political support.[4] Unlike unacknowledged activities that the Commonwealth may undertake domestically against criminal or security targets, covert action as we discuss it here "seeks to influence events abroad" and is therefore "an instrument of foreign policy."[5]

However, the terms 'covert action' and 'special operations,' have at times been used interchangeably in the Australian context. The topic has been further muddled by the use of other bywords such as 'special action', 'disruption', and 'clandestine activities' as well as the concept of the 'grey-zone'. This muddling reflects how Australian covert action has been undertheorised. It is also a result of how responsibility for covert action is devised in Australia, as well as the extent to which military special operations have come to dominate Australia's approach to using clandestine intervention abroad, especially in the post-9/11 era of counter-terrorism operations.

1. The Five Eyes is a partnership of Australia, Canada, New Zealand, the United Kingdom and the United States traditionally for purposes of intelligence sharing and joint operations between the countries' intelligence and law enforcement agencies.
2. The United States Intelligence Authorization Act 1991 describes covert action as activities "…to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent of acknowledged publicly." United States of America, 'Intelligence Authorization Act, Fiscal Year 1991', August 1991, https://www.govinfo.gov/content/pkg/STATUTE-105/pdf/STATUTE-105-Pg429.pdf.
3. Rory Cormac, *Disrupt and Deny: Spies, Special Forces, and the Secret Pursuit of British Foreign Policy*, First edition (Oxford ; New York: Oxford University Press, 2018), 1.
4. The UK, USA, and Australia have legislated around covert action and structured relevant agencies in slightly different ways which reflects different understandings and strategic cultures in relation to its use. As a result, the Australian conception of covert action differs from the American approach, which as Amy Zegart tells us comprises four types of activity: paramilitary operations, information operations, political action, and economic covert action. In the American system, special operations conducted by the military are not regarded as covert action, while in the UK and Australian system they are. See Amy B. Zegart, *Spies, Lies, and Algorithms: The History and Future of American Intelligence* (Princeton ; Oxford: Princeton University Press, 2022), 173–74.
5. Rory Cormac, Calder Walton, and Damien Van Puyvelde, 'What Constitutes Successful Covert Action? Evaluating Unacknowledged Interventionism in Foreign Affairs', *Review of International Studies*, 24 May 2021, 2, https://doi.org/10.1017/S0260210521000231.

Based on the differing legal and policy permissibility of covert action over the years we can broadly describe Australia's approach to covert action as being characterised by three distinct eras: the 1950s to the 1970s in which covert action supported allied propaganda, paramilitary and counter-insurgency programs; 1985 to 2001 in which covert action was confined to ADF-led operations; and 2001 to the present in which covert action outside of ADF special operations has primarily focused on the task of disrupting active national security threats, namely terrorism.

Responsibility for covert action has been spread across the Australian Defence Force (ADF) and the Australian Secret Intelligence Service (ASIS). The ADF, namely via Special Operations Command and its special forces units, is responsible for leading special operations.[6] Meanwhile, ASIS has the legislative basis to assist the planning of these special operations and carry out "other activities" i.e. political action.[7] However, in recent times the development of an "offensive cyber capability," by the Australian Signals Directorate (ASD) means that ASD also has a remit to assist the ADF and ASIS in executing covert action in the cyber domain.[8] Nevertheless, we can regard ASIS as being the primary agency responsible for covert action of a non-military character, especially for political action. Yet, this responsibility is considerably restrained, reflecting the wider limited appetite for covert action that the Australian government has traditionally maintained.

Initially from its creation in 1952 to the 1970s ASIS was authorised to collect secret intelligence on foreign targets and plan for and carry out covert actions of a broad variety, including both special operations and political action. The addition of an Australian secret service was viewed by the Menzies government as an important component of Australia's capacity to understand, shape and influence its near region amidst the brinkmanship of the Cold War. However, as a small agency ASIS was reliant on collaboration with the ADF, the British Secret Intelligence Service (SIS), and the American Central Intelligence Agency (CIA). Australia's approach to covert action during this period therefore remained skewed to paramilitary and special operations undertaken in support of otherwise declared military operations and counter-insurgency campaigns, particularly in the Asia-Pacific and conducted in partnership with the United States and Britain.

The use of covert action – both special operations and political action – against foreign state actors appears to remain very limited.

Accordingly, ASIS's primary role in relation to covert action was leveraging its intelligence to support special operations largely carried out by the Australian military. Reflecting concern about the impact covert action could have on diplomatic relations, in 1973 the Whitlam government instructed ASIS to limit its covert action activities to only include "a capacity for special operations for use in times of threat to the national security," putting an end to some of the more proactive operations ASIS could undertake, especially in a regional counter-insurgency context.[9] In effect, ASIS's covert action posture under Whitlam was reduced to a contingent capacity for wartime special operations.

6. Australian Army, 'Special Operations Command Information Booklet', November 2020, https://www.army.gov.au/sites/default/files/2020-11/20703%20Defence%20-%20Special%20Operations%20Command%20Booklet-accessible_0.pdf.
7. Section 6(1)(e) *Intelligence Services Act 2001* Parliament of Australia, 'Intelligence Services Act 2001' (Attorney-General's Department), http://www.legislation.gov.au/Details/C2022C00014.
8. The advent of the digital age transformed ASD from being largely a passive collector of signals to being able to engage in active computer operations. This capacity for digital covert action or "offensive cyber operations" was acknowledged by the Turnbull government in 2017, see Parliament of Australia, 'Offensive Cyber Capability to Fight Cyber Criminals', Hansard, 30 June 2017, https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/5375064%22.
9. Commonwealth of Australia, 'Royal Commission on Intelligence and Security Fifth Report [Re Australian Secret Intelligence Service] - Volume I (Copy No 25) - [Reference Copy]', pg 27, A8908, National Archives of Australia, https://recordsearch.naa.gov.au/SearchNRetrieve/Interface/DetailsReports/ItemDetail.aspx?Barcode=30091092&isAv=N.

ASIS's remit to be involved in special operations was further restricted following the notorious botched 1983 training exercise at Melbourne's Sheraton Hotel. Responding in part to this incident, the Second Royal Commission on Australian Security and Intelligence Agencies (1983-1984) resulted in the Hawke government altering ASIS's Directive to exclude the unilateral ability to carry out covert action of a paramilitary nature as well as a prohibition on interference in the politics of other states, that is political action.[10]

The apparent value of covert action is the prospect of outcomes unachievable through diplomacy alone and for which warfare is unjustifiable or undesirable.

This meant that from 1985 onwards ASIS could only collect secret intelligence and use that intelligence to support the planning of ADF-led covert action; it could not carry out special operations independently with its own officers nor undertake political actions. This further cemented the special operations components of the ADF as the primary practitioners and leaders of covert action in the Australian system. ASIS's constrained covert action role would remain in place following the end of the Cold War.

In the early 1990s the Keating government commissioned two still-classified reviews; one to appraise Australia's international situation following the collapse of the Soviet Union and another to assess the suitability of Australia's intelligence community in light of the end of the Cold War.[11] Additionally, .in 1995 there was the Commission of Inquiry into ASIS (the Samuels Report).[12] The effect of these three reviews was that the government was reassured of the continued need for a secret service, albeit with a markedly changed target-set.[13] However, the government reaffirmed Australia's limited appetite for covert action when Foreign Minister Gareth Evans informed parliament that ASIS would be prohibited from undertaking "interference in the internal affairs of other countries by means of paramilitary action or covert interference in politics."[14] ADF special operations would remain the leading form of Australian covert action, such as it was.

This limited Australian posture for covert action would appear to have remained in place until the 9/11 terrorist attacks and the global war on terror. After this, ASIS was placed on a legislative footing via the *Intelligence Services Act, 2001* (IS Act) and its remit for covert action was broadened.[15] The IS Act maintained a prohibition on ASIS-led *paramilitary* covert action (ASIS could still support ADF special operations planning) but it did provide the legal basis for the Foreign Minister to direct ASIS to undertake other forms of covert action or, in the words of the Act, conduct *"other activities*...relating to the capabilities, intentions or activities of people or organisations outside Australia."[16] It was on this newly defined legislative basis that ASIS could be instructed by the government to undertake covert action to disrupt terrorist plots against Australia. Such disruption activities mirrored that of ASIS' counterparts the CIA and SIS, with intelligence officers of the Service assisting military special forces to kill, capture, destroy or otherwise degrade the morale and effectiveness of terrorist targets abroad, and to assist in the recovery of hostages.[17]

10. Lionel Bowen, 'Inspector-General of Intelligence and Security Bill 1986: Second Reading', Hansard, 22 May 1986, https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F1986-05-22%2F0003%22.
11. Commonwealth of Australia, *Report on the Australian Secret Intelligence Service* (Australian Govt. Pub. Service, 1995), 78.
12. Ibid.
13. Paul Keating, 'Statement by the Prime Minister - Review of Australia's Intelligence Agencies' (Commonwealth of Australia, 21 July 1992), https://pmtranscripts.pmc.gov.au/release/transcript-8590.
14. Gareth Evans, 'Ministerial Statements: Australian Secret Intelligence Service' (Parliament of Australia, 1 June 1995), https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F1995-06-01%2F0044%22.
15. Prior to this the legal authority for ASIS to exist was based on the Executive Order issued by the Governor-General's Executive Council in 1952 and the subsequent Directive's issued by the Prime Minister on the Executive Council's behalf.
16. Section 6(1)(e), *Intelligence Services Act 2001,* Parliament of Australia, 'Intelligence Services Act 2001'.
17. Australian Strategic Policy Institute, 'The ASIS Interviews', https://www.aspi.org.au/report/asis-interviews.

In this sense, there is a tacit acceptance that covert action, like espionage and warfare, is sometimes a regrettable necessity.

This emphasis on disruption of threats has characterised the Australian government's approach to covert action ever since and has been the basis for ASD to take a larger role in undertaking covert action online. As well as terrorists, the Australian government has designated cyber criminals, people smugglers, organised criminals and most recently paedophiles as legitimate targets for so-called 'digital disruption', covert action using ASD's offensive cyber capabilities.[18]

For all this, the use of covert action – both special operations and political action – against foreign state actors appears to remain very limited outside of ASD and ASIS support to ADF military operations, such as in Afghanistan, Iraq, and Syria.

The Value of Covert Action

For a state to advance its interests internationally it has two general options. The first, and typically most preferable, is the use of diplomatic engagement to arrive at negotiated agreements with other parties. The second is warfare and the directed threat or use of force to generate an outcome. Alongside these two options is the 'third way' of using covert action to deploy hidden propaganda, political and economic programs, or paramilitary operations to, in Loch Johnson's words, "give the world a secret nudge – or even a shove" in a more desirable direction.[19]

The apparent value of covert action is the prospect of outcomes unachievable through diplomacy alone and for which warfare is unjustifiable or undesirable.

Covert action "represents a third way between doing nothing and expensive commitments,".[20] The risks associated with high-end modern warfare have made the use of this third way more appealing.[21] The integration of new technologies and the opening up of new warfighting domains - cyber and space - mean many countries now possess militaries capable of unprecedented - and therefore somewhat unknown - levels of violence and disruption.[22] It is difficult to comprehend the speed, escalation, and violence of any future high-end conflict. In this context, covert action can present favourable alternatives for states seeking to shape facts on the ground below a threshold of warfare; allowing them to manage escalation and limit the prospects of open conflict. As the war in Ukraine has shown, covert action can also be more efficacious than warfare and diplomacy by allowing third party countries to assist partners with less risk of retaliation.[23]

One of the reasons liberal democratic states undertake such interventions in a covert or deniable manner is an understanding that such activities may undermine the credibility of their commitment to international rules and norms concerning non-interference. In this sense, there is a tacit acceptance that covert action, like espionage and warfare, is sometimes a regrettable necessity.

Safety and secrecy are other reason these interventions are hidden. There are after all some things that simply cannot be done without secrecy to protect lives, relationships, and interests. This is what Gregory F. Treverton describes as the inherent tension policymakers must grapple with, with the decision to

18. Parliament of Australia, 'Surveillance Legislation Amendment (Identify and Disrupt) Act 2021' (Attorney-General's Department, n.d.), https://www.legislation.gov.au/Details/C2021A00098/Html/Text, http://www.legislation.gov.au/Details/C2021A00098.
19. Loch Johnson, 'Chapter 10 Ethics and Covert Action: The "Third Option" in American Foreign Policy', in *National Security Intelligence and Ethics* (Routledge, 2022), 169.
20. Luca Trenta, 'Disrupt and Deny: Spies, Special Forces and the Secret Pursuit of British Foreign Policy', ***Intelligence and National Security***, 13 July 2018, 935, https://doi.org/10.1080/02684527.2018.1492060.
21. Mick Ryan, *War Transformed: The Future of Twenty-First-Century Great Power Competition and Conflict* (Annapolis, Maryland: Naval Institute Press, 2022).
22. Ryan.
23. For example foreign intelligence services have been assisting the Ukrainian military and security services to prepare for Russian attacks since at least 2015, Zach Dorfman and Jana Winter, 'How the U.S. Helped Ukraine Prepare for a Russian Invasion', Yahoo News, 25 February 2022, https://au.news.yahoo.com/how-the-us-helped-ukraine-prepare-for-a-russian-invasion-210407079.html.

undertake covert action sometimes simultaneously involving both a "moral evil" and a "moral imperative".[24] For this reason some have argued that covert action becomes "more ethically defensible in a democratic society" when its use is subject to evaluation and oversight by the legislature;[25] so in Australia's case, parliament.

Legislation can be particularly useful as a means to distinguish a democracy's use of covert action from that of authoritarian states by codifying accountability mechanisms and even proscribing particular activities as off limits. In evaluating Australia's use of covert action in the context of current geopolitics, there may be merit in Australian legislation being more explicit in its prohibitions of particular methods of covert action. For example, torture is clearly prohibited, but the use of assassination is arguably still somewhat ambiguous.[26]

Alongside the occasional moral imperative to undertake covert action, such as the need to urgently prevent a terrorist attack or military strike, there is also a political imperative. In considering why successive US Presidents of varying ideological character have continually turned to covert action, Amy Zegart explains that such activities can satisfy a politician's "preference for action."[27] Covert action offers democratic governments typically swifter options than the use of conventional military force, sanctions, or diplomatic responses that take time to mobilise and can get bogged down in bureaucratic or legislative processes. Zegart also stresses that in assessing the comparative value of covert action it is important to remember that the most severe types of covert action are typically used as a last resort when "policymakers believe something has to be done and all other options are worse,".[28] It's this appreciation of covert action that explains why it still exists as a form of statecraft despite admissions like this one from the CIA's Michael Morell: "Are some covert actions effective? Yes. But most are not."[29]

What is clear is that covert action, like espionage and warfare, presents intensely competing ethical considerations for policymakers in liberal democratic states seeking to make decisions in the national interest.

On the one hand, there may be moral and political imperatives to undertake covert action as a means to mitigate perceived harms. On the other, there may also be strategic concerns about potentially harming diplomatic relations and undertaking activities seemingly antithetical to national values. As head of the CIA (1987-91), Judge William H. Webster devised a simple set of questions for considering whether proposed covert actions were ethically proportionate; the answers to which would be conveyed to the White House National Security Council.[30]

24. Gregory F. Treverton, *Covert Action: The Limits of Intervention in the Postwar World* (New York: Basic Books, 1987), vii.
25. Loch K. Johnson, *The Third Option: Covert Action and American Foreign Policy* (New York, NY: Oxford University Press, 2022), 227.
26. The IS Act places a series of restrictions on the use of force by ASIS agents and officers,but could be interpreted as leaving open the prospect of ASIS being involved in the planning of assassinations by other organisations and carrying out killings for the purpose of "removing...a significant threat to security" which could be considered assassination (see Schedule 3, IS Act). See also Rebecca Ananian-Welsh, 'Security Bill Opens Door to Targeted Killings and Broader Control Orders', The Conversation, accessed 27 April 2022, http://theconversation.com/security-bill-opens-door-to-targeted-killings-and-broader-control-orders-33631.
27. Zegart, *Spies, Lies, and Algorithms*, 179,180.
28. Zegart, 180.
29. Interview cited in Zegart, 169.
30. Johnson, *The Third Option,* 233.

Webster's questions were:

- Is the action legal – as in, lawful under the acts governing covert action?
- Is it consistent with the nation's foreign policy? If not, why?
- Is it consistent with national values?
- If it becomes public, do authorities feel they could defend it?

For Webster the answers didn't all have to be 'yes', but would sharpen decisionmakers' focus on the proportionality of covert action proposals. The 'Webster Writs' also reflect four principles common, and perhaps distinctive, to how liberal democracies have come to guide their use of covert action.[31] These principles are that covert action should be: enabled and constrained by laws; coherent with foreign policy; assessed against national values; and democratically accountable. Inculcating and institutionalising these principles will be vital to setting Australia apart from undemocratic adversaries in its use of covert action.

While the American experience gives insight into the perceived value of covert action for liberal democratic states, the British experience is arguably most applicable to Australia. The United Kingdom's approach to using covert action to supplement overt diplomatic and military power is most instructive for Australia as a middle power. Rory Cormac has described the "British way in covert action" as characterised by a cautious, defensive posture that favours maximum deniability. Importantly, the British experience shows that covert action is of most value when highly coordinated with other parts of government and complementary of wider foreign policy efforts.[32] Cormac concludes that the inherent value of covert action for British foreign policy has been "as a force multiplier… a means of closing or at least concealing the growing gap between responsibilities and resources."[33] In the UK context this gap arose out of Britain's imperial decline whereby throughout the twentieth century it gradually lost the resources of empire, while maintaining global interests and responsibilities. Australia by comparison has not had as expansive a foreign policy, though this is changing.

The strategic utility of covert action is not simply in obtaining otherwise unobtainable objectives. The conduct of covert action even when suspected or discovered by external audiences can maintain a performative value for signalling a state's intent or resolve to others. In 2022, CIA efforts to support Ukrainian resistance of the Russian military is an example: officially unacknowledged, yet widely reported.[34] Such implausibly deniable activities can be effective at helping to manage escalation or signal deterrence.[35] That said, Australia's presently restrained approach to covert action of primarily undertaking special operations to disrupt imminent security threats is unlikely to provide such strategic utility.

For the past two decades the value of Australia's foreign intelligence and covert action capabilities has been easy for government to discern, at least at an operational level. When used to support military operations in the Middle East and Afghanistan, Australian agencies could articulate causation from the intelligence they generated to the killing of a high value target, the destruction of an enemy supply depot, or the prevention of an attack.

31. Johnson, 236.
32. Cormac, *Disrupt and Deny.*
33. Ibid, pg 3.
34. Zach Dorfman, *Exclusive: Secret CIA training program in Ukraine helped Kyiv prepare for Russian invasion,* Yahoo News, 16 March 2022.
35. Austin Carson, *Secret Wars: Covert Conflict in International Politics* (Princeton University Press, 2020)

Today, Australia is moving into an era where the utility to the Australian government of having covert capabilities will be determined by the extent to which they contribute to deterring China, influencing and shaping countries in Southeast Asia and the Pacific, and providing clarity about the strategic intent of friendly and unfriendly countries across the Indo-Pacific.

In this sense, the relative value of Australia's covert capabilities will be determined by their ability to contribute to more strategic outcomes than relevant agencies have been used to. However, it is also much more difficult to prove how these covert capabilities contribute to such strategic objectives, because the outcomes themselves are amorphous. How does one know if a state has been successfully deterred? If a country's political system has been favourably shaped? Or if one has truly uncovered the innermost intentions of foreign leaders?

Covert capabilities can contribute greatly to the realisation of such objectives, but this will require more patience and a higher tolerance of risk from the Australian Government, the parliament, and its agencies than has been the case.

Quick wins at the operational level will be harder to come by as agencies seek funding and political support for operations that may take many years to yield results.

Second, the risk of unintended consequences or 'collateral effects'– including exposure or harm to operatives, with diplomatic and political ramifications – will be higher than activities hitherto undertaken against declared adversaries in the context of military operations. However, in the context of a more hostile and uncertain international environment there is also risk associated with maintaining a restrained approach to covert action designed for a different era.

Part Two: The Demand for a New Way

In discussing Britain's use of covert action Cormac posits that it has been an important stop gap between the UK's declining international power and retention of a global foreign policy.[36] For Australia today, the reverse appears to be occurring. For many decades Australia has been able to exist in a peaceful, relatively stable portion of the world, with the security backing of the United States, needing only to occasionally make small contributions to allied conflicts in the Middle East and limited security forces to stabilise or rehabilitate countries in its neighbourhood. In this sense, despite being a wealthy middle power with complex interests, Australia has accepted modest international responsibilities, and its allies have not expected more. However, now that great power competition between the United States and China is centred on its region, Australia is attracting expectations of a greater security role – and one larger than its diplomatic and military resources can support. The 2021 AUKUS partnership – with its promise of transferring nuclear propulsion and other strategically transformative technologies to Australia – signifies that Australia's closest allies now regard Australia as having a critical role and responsibility to underscore Western power in the Indo-Pacific. Meanwhile since at least 2016, the People's Republic of China (PRC) has embarked on an ever more disruptive campaign of subversive 'active measures'[37] impacting Australia and its close neighbours, a campaign that demands new responses.[38]

Given the precipitous great power competition, the forecast for Australia's strategic future is cold and grey. Cold because the international balance of power between authoritarian and liberal states looks set to be determined by a 'cold war' led by the United States and China respectively. And grey, because the skirmishes of this cold war appear likely to play out in a so-called 'grey-zone' not so much characterised by the state-sponsored insurgencies and proxy wars of the Cold War of yesteryear, but in even *greyer* arenas of competition: commerce, technology research, and the internet-enabled information domain.

Grim military contingencies dominate commentary and strategising, with warfare particularly over the future of Taiwan discussed in terms of increasing inevitability. Yet it is still most likely that in the short to medium term the competition between liberal and authoritarian states in the Indo-Pacific will predominantly transpire below the threshold of war. Indeed, such methods short of violence are already a central aspect of the PRC's strategy to alter the global balance of power.[39]

Australia's foreseeable strategic circumstances will therefore increasingly invite - and demand - the considered use of covert action as a means of response, but also to supplement other statecraft in proactively shaping the behaviour of those foreign countries at the forefront of the contest for the Indo-Pacific. Indeed, Australia is entering an era not too dissimilar to the 1950s when the need to actively shape the near region, combined with the imperative to manage escalation between great powers, saw means of deniable overseas intervention become more central to Australia's international strategy than they had been before. It was this era that prompted the creation of ASIS as a secret service tasked with intelligence collection as well as a wide remit for covert action (subsequently curtailed).

36. Cormac, *Disrupt and Deny*, 3.
37. 'Covert action' is a Western phrase that places a greater emphasis on secrecy than the Soviet tradition of 'active measures', which is the tradition inherited by the PRC.
38. P. Charon and J.-B. Jeangène Vilmer, 'Chinese Influence Operations: A Machiavellian Moment', (Institute for Strategic Research (IRSEM), October 2021), https://www.irsem.fr/report.html.
39. Ibid.

The PRC's campaign for dominance will continue to be global, so Australia will have to be vigilant for opportunities to respond in multiple regions. Furthermore, Russia's aggression is unlikely to dissipate, for which Australia has shown it can generate useful countermeasures, as demonstrated by the deployment of offensive cyber capabilities to undertake digital covert actions in defence of Ukraine.[40] However, Australia will need to triage the application of its limited covert action capabilities to those areas where it can have the proportionately greatest impact and where national interests most justify the use of such extraordinary measures.

Accordingly, vulnerable states in Australia's near region, particularly the South Pacific, will need to be the areas of Australia's priority contribution to what will ultimately be a coalition resistance effort to the campaigns of China and Russia to make the world compliant with their 'new despotism'.[41] Australia's allies expect this, with the Biden administration recently stating that America will look to be "deputy sheriff" to Australia in countering China in Australia's neighbourhood.[42]

The PRC's Coercion in the Indo-Pacific

The PRC's current activities in the Indo-Pacific demand that Australia's approach to influencing and shaping developing or vulnerable states be recalibrated. In January 2022 Kurt Campbell, the US National Security Council's Indo-Pacific Coordinator, assessed that the PRC's heightened coercive activity to co-opt smaller states raised the prospect of China successfully achieving strategic surprise, including the sudden establishment of Chinese bases.[43] This assessment was recently vindicated by the PRC's signing of a security partnership with the Solomon Islands which provides sufficient pretext for the Chinese military to establish a more regular presence in the country.[44]

The PRC's path to achieving such strategic surprise is predicated on its current efforts to surreptitiously manipulate the decision-making of other states, meaning that responses on that undeclared, political plane are required. The PRC's increasing and multimodal interference in smaller countries means that Australia needs to adjust its appetite for performing covert action closer to home. This should be seen as one option to disrupt or neutralise the impact of Chinese interference, thus bolstering the resilience of these developing nations in a lengthy contest for the region's future.

The urgent need for Australia to more proactively conduct covert action is also heightened because China's own methods of clandestine interference are becoming sharper and less restrained by previous desires to be regarded as a friendly actor amongst the states it targets. A recent report by Paul Charon and Jean-Baptiste Jeangène Vilmer of the Institute for Strategic Research outlines in detail how the PRC's approach to influence operations is undergoing a 'Machiavellian moment' where Beijing has decided it is better – or at least easier – "to be feared than loved."[45] They suggest China's posture is undergoing a 'Russification' whereby the PRC's methods of influencing are increasingly emulating more aggressive Soviet-style active measures with an emphasis *"on disinformation, counterfeiting, sabotage, discredit operations, destabilizing foreign governments, provocations, false-flag operations and manipulation aimed at weakening social cohesion, the recruitment of 'useful idiots,' and the creation of front organizations."*[46]

40. Stephen Dziedzic, 'Ukraine Asks Australia for More "technical Assistance" to Combat Increasing Russian Cyber Attacks', *ABC News,* 20 January 2022, https://www.abc.net.au/news/2022-01-21/ukraine-asks-aus-for-more-technical-assistance-to-combat-russia/100771618.
41. John Keane, *The New Despotism* (Cambridge, Massachusetts: Harvard University Press, 2020).
42. Center for Strategic and International Studies, 'CSIS Australia Chair Launch Event', January 2022, https://www.csis.org/events/csis-australia-chair-launch-event.
43. David Brunnstrom and Kirsty Needham, 'Pacific May Be Most Likely to See "strategic Surprise" -U.S. Policymaker Campbell', ***Reuters***, January 2022, https://www.reuters.com/world/asia-pacific/us-most-likely-see-strategic-surprise-pacific-official-2022-01-10/.
44. 'Australia "deeply Disappointed" by Controversial Security Pact between China and Solomon Islands', *ABC News*, 19 April 2022, https://www.abc.net.au/news/2022-04-19/china-and-solomon-islands-sign-security-pact-says-chinese-foreig/101000530.
45. P. Charon and J.-B. Jeangène Vilmer, 'Chinese Influence Operations: A Machiavellian Moment', 15.
46. P. Charon and J.-B. Jeangène Vilmer, 34.

As one publication explains from China's National University of Defense Technology (an institute of the CCP's Central Military Commission) the ultimate objective of the PRC's active measures is to *"manipulate a country's values, national spirit/ethos, ideologies, cultural traditions, historical beliefs, etc. to encourage them to abandon their theoretical understanding, social system, and development path and hence to achieve strategic objectives without fighting."*[47]

The PRC's use of active measures is distinct in style and substance from the Western way of covert action described earlier. It is profoundly at odds with the principles of Webster's Writs: that consideration of covert action should assess legality, alignment with foreign policy, impact on national values, and democratic accountability. The PRC's intelligence and security agencies are not subject to independent scrutiny or meaningful judicial oversight. As a one-party, centrally controlled state the PRC's legal system is arbitrary and considerations of democratic accountability are irrelevant.

The primary agency for carrying out China's interference operations is the Ministry for State Security (MSS), which sits adjacent to the PRC's Ministry of Foreign Affairs (MFA).[48] The MSS is, in effect, only accountable to the CCP's Politburo, a body which itself is subservient to Chairman Xi. As a result, its activities abroad are likely to often be unaligned or unknown to the MFA. MSS officials are just as likely to authorise covert actions as a means of personal career advancement and pleasing Party patrons, as they are to be driven by a desire to achieve considered foreign policy outcomes.

In comparison to covert actions undertaken by the likes of the US, UK, or Australia the PRC's approach can skew to being reckless and disproportionately heavy-handed. While this means that not all PRC activities will be strategically coherent, the scale of the PRC's activities is enormous and the capacity of its program of interference to seriously damage the cohesion and stability of smaller states, is acute.[49] Indeed, such destabilisation may be deliberate, because unlike Australia and its allies, if China cannot successfully co-opt these states there is still strategic utility for the PRC in up-ending these societies and turning them into costly sources of insecurity for Australia and the United States. This is evidenced in Chinese official psychological warfare doctrine, which acknowledges the utility of sowing confusion and division to paralyse government decision-making and trust in authorities.[50]

The ramping up of China's focus on countries closer to Australia is easily discerned. On Christmas Eve 2021 it was reported that the Solomon Islands government, led by Prime Minister Manasseh Sogavare, would accept PRC law enforcement and security aid to help quell civil unrest,[51] sparked in-part over local grievances that Sogavare was purportedly selling out the Solomon Islands to China.[52] More recently, the PRC's engagement with the Sogavare government has expanded to include a far more comprehensive security agreement that arguably provides sufficient pretext for China to establish a military base in the country. The PRC's use of initially small 'law enforcement' commitments as a precursor to a military presence marks a worrying shift that China will seek opportunities to usurp Australia's status as the 'security partner of choice'

47. 黄昆仑 (Huang Kunlun), "夺取未来战争 制脑权" ("Seizing Mind Superiority in Future Wars"), 解放军报 (PLA Daily) (16 Jun. 2014). Cited in P. Charon and J.-B. Jeangène Vilmer, 31.
48. P. Charon and J.-B. Jeangène Vilmer, 81.
49. P. Charon and J.-B. Jeangène Vilmer, 365.
50. Dean Cheng, 'Winning Without Fighting: The Chinese Psychological Warfare Challenge', The Heritage Foundation, 12 July 2013, https://www.heritage.org/global-politics/report/winning-without-fighting-the-chinese-psychological-warfare-challenge.
51. 'Solomon Islands Accepts Chinese Offer for Riot Police Help', *ABC News*, 24 December 2021, https://www.abc.net.au/news/2021-12-24/solomon-islands-accepts-chinese-offer-for-riot-police-help/100724296.
52. Mihai Sora, 'Dark Days for Honiara in the Shadow of Geopolitics | The Interpreter', n.d., https://www.lowyinstitute.org/the-interpreter/dark-days-honiara-shadow-geopolitics.

for Pacific states. It is only the latest change in a long-running PRC campaign for greater power and control over the South Pacific also pursued via economic leverage (so-called 'debt-trap diplomacy'),[53] diplomatic pressuring,[54] as well as elite capture and corruption.[55] There are diverse views across Pacific states about how to navigate the geo-politics of their region, but some Pacific leaders are worried that their sovereignty is now "sandwiched" by PRC behaviour in the region which they recognise as motivated by "superpower rivalry".[56]

Australia's 2020 Defence Strategic Update (DSU) identified China's coercion campaign as part of the rise of what it calls "grey-zone" activities used to "challenge sovereignty and habits of cooperation".[57] The DSU suggests the Department of Defence regards the task of addressing grey-zone activity as one in which it must lead and that the present Australian posture for doing so is a reactive, defensive one.[58] The DSU acknowledges that there is a need to "expand Defence's capability to respond to grey-zone activities, working closely with other arms of Government".[59] However, the reality is that Defence's capacity and remit to lead a response to the PRC's coercive activities is quite limited given these activities typically occur outside a military context, and can be addressed most effectively by in-kind covert action responses that Defence has very little legal remit to engage in.

Ultimately, timely and effective responses to the PRC's subversive activities requires the option of in-kind measures to counter China on the same plane of covert and unacknowledged activity where it seeks to 'win without fighting'.

Australia's existing raft of overt activities to influence and shape other countries will of course continue to be highly important to steering them onto stable, well-governed and broadly democratic development trajectories and cementing Australia as a key security partner. Forthcoming measures, like recently announced investment in PNG's port infrastructure,[60] the government-backed acquisition of Pacific telco Digicel by Telstra,[61] and the long-term modernisation of the Royal Australian Navy, will also be pivotal. But these large scale overt measures to shore up Australia's position will take time to have effect. Initiatives that will take decades to fulfil will not directly mitigate the PRC's current interference in Pacific states.

53. Roland Rajah, Alexandre Dayant, and Jonathan Pryke, 'Ocean of Debt? Belt and Road and Debt Diplomacy in the Pacific', n.d., https://www.lowyinstitute.org/publications/ocean-debt-belt-and-road-and-debt-diplomacy-pacific.
54. Barbara Dreaver, 'Fears over China's Involvement in Kiribati's Ditching of Marine Reserve', 1 News, n.d., https://www.1news.co.nz/2021/11/11/fears-over-chinas-involvement-in-kiribatis-ditching-of-marine-reserve/.
55. Jonathan Pryke, 'The Risks of China's Ambitions in the South Pacific', *Brookings* (blog), 20 July 2020, https://www.brookings.edu/articles/the-risks-of-chinas-ambitions-in-the-south-pacific/.
56. Mar-Vic Cagurangan- For Variety, 'In the Shadow of Geopolitical Conflicts: How China Triggers Domestic Division in Pacific Island Nations', Marianas Variety News & Views, January 2022, https://mvariety.com/news/in-the-shadow-of-geopolitical-conflicts-how-china-triggers-domestic-division-in-pacific-island-nations/article_57445b06-7225-11ec-9191-3bb2a1c961b1.html.
57. Australia and Department of Defence, *2020 Defence Strategic Update.*, 2020, 12.
58. Australia and Department of Defence, 25.
59. Australia and Department of Defence, 25.
60. Yoni Bashan, 'AUKMIN Talks: Papua New Guinea Push as Britain Flexes Muscles', *The Australian*, 21 January 2022, sec. Defence, https://www.theaustralian.com.au/nation/defence/aukmin-talks-papua-new-guinea-push-as-britain-flexes-muscles/news-story/4fc3e63d0532a09c8801b036a3f5b622.
61. Marian Faa, 'Telstra Secures Deal to Buy Largest Telecommunications Company in the Pacific with Canberra's Support', *ABC News*, 25 October 2021, https://www.abc.net.au/news/2021-10-25/telstra-digicel-pacific-telecommunications-deal-finalised/100564976.

Ultimately, timely and effective responses to the PRC's subversive activities requires the option of in-kind measures to counter China on the same plane of covert and unacknowledged activity where it seeks to 'win without fighting'.

To counteract the impact of the PRC's unrestrained interference in vulnerable societies, Australia will need to undertake well-planned covert actions such as:

- information campaigns to promote favourable messages and discredit pro-Chinese Communist Party (CCP) actors;
- providing financial and other support to political candidates and organisations who are anti-CCP and pro-democratic; and
- exposing and where necessary sabotaging the PRC's interference operations, including via digital and economic means.[62]

Such measures should be strategically aligned and scrutinised against agreed principles of proportionality and probity, similar to Webster's Writs.

The Information Domain

The contest between authoritarian and liberal democratic nations for the future of the international system is profoundly ideological, involving competing narratives across a globalised information domain. Digital means of shaping the information environment offer a wider range of options for highly effective and comparatively easy-to-hide covert action. This is not to say that information campaigns should rely on falsehoods. Indeed, the swift broadcasting of truthful messages, sometimes involving the sharing of intelligence, can be powerfully effective at countering disinformation. This has been evidenced by the mobilisation of intelligence throughout the narrative contest of the war in Ukraine.[63]

To protect and shape the future of countries vital to Australia's interests information operations will be particularly valuable to a 'new way' of Australian covert action. This will likely require enhanced cooperation with Australian media outlets to project favourable narratives and actively counter malicious ones. However, as Russia's disinformation campaigns against American elections show, activities on social and alternative media platforms are likely to be most effective in this regard.[64] An additional consideration is the need to maintain the trusted reputation of Australian news media organisations, which are themselves public diplomacy assets. As will be explored in the next section, increased, and more coordinated information capabilities from across and outside government will require improved coordination mechanisms.

62. The leaking by Australia of the draft security pact between China and the Solomon Islands is an example of the kind of exposure activities that will need to be more readily, and strategically, undertaken. See Anthony Galloway Bagshaw Eryk, 'Australian Spy Agency Involved in Solomon Islands Leak in Last-Ditch Effort to Stop Deal', The Sydney Morning Herald, 22 April 2022, https://www.smh.com.au/politics/federal/australian-spy-agency-involved-in-solomon-islands-leak-in-last-ditch-effort-to-stop-deal-20220422-p5affg.html.
63. 'An Address from GCHQ Director Sir Jeremy Fleming', National Security College (The Australian National University, 31 March 2022), https://nsc.crawford.anu.edu.au/department-news/20103/address-gchq-director-sir-jeremy-fleming.
64. Phillip N. Howard, Bharath Ganesh, and Dimitra Liotsiou, 'DemTech: The IRA and Political Polarization in the United States', University of Oxford, n.d., https://demtech.oii.ox.ac.uk/research/posts/the-ira-and-political-polarization-in-the-united-states/.

Part Three: Implementing a New Way

This part identifies policy options for improving Australia's preparedness to undertake covert action in a more concerted, strategic manner that remains accountable, while managing diplomatic and other risks. These recommendations focus on ASIS as the agency with the most expansive remit to undertake the political action central to a 'new way' of Australian covert action, but are also intended to improve the conduct of covert action as a Commonwealth-wide function. Given the nature of covert action, a government may not be able to publicise its specific consideration of these options.

Improving Strategic Coordination of Covert Action

To properly undertake the more robust and comprehensive approach argued for in this paper, new planning structures are required to institute covert action as contestable within government and strategically coordinated with other means of statecraft. The current mechanisms for identifying and considering options for Australian covert action do not seem sufficiently developed to generate the broadest range of creative (while still relatively low risk) options. Indeed, existing mechanisms have been described to the author as 'myopic', lacking effective inter-agency coordination, and subject to a preference for zero risk operations.

As outlined earlier, Australia's strategic circumstances demand a readiness to undertake a wider range of covert actions which current agencies are not necessarily best equipped to perform. Such actions include:

- information operations to influence and shape target countries through the amplification of truthful messages and exposure of foreign interference;
- political action to support favourable political candidates overseas in a deniable manner;
- unattributable activities to promote narratives favourable to Australian interests, including online; and
- economic activities to financially denude foreign targets[65] as well as measures that might involve close collaboration with private businesses to undertake commercial activities complementary to Australia's national interests.

ASIS is currently regarded as the lead agency for Australian covert action outside of military operations. This is because of the scope of its powers under the IS Act and because its human intelligence (HUMINT) activities abroad give its officers a natural insight to identify options for strategic activities. At present, the IS Act gives the authority to the Foreign Minister, in consultation with relevant ministers, to approve covert action undertaken by ASIS.[66] ASIS therefore, with input from DFAT, is primarily responsible for devising the options for what activities the Minister may consider approving, informed by policy priorities set by relevant departments. While not explained in the IS Act, the Prime Minister as well as relevant ministerial advisers will typically also have input on this process.[67]

65. Helen Warrell, 'Secretive MoD "Banking" Unit Helps UK Wage Economic Warfare', *Financial Times*, 22 October 2021, https://www.ft.com/content/af703b19-7e1e-47b0-83fc-4d58d5b4da10.
66. Section 6(1)(e) *Intelligence Services Act 2001*
67. Chapter 6, Commonwealth of Australia, *Report on the Australian Secret Intelligence Service.*

However, as an operational agency ASIS does not have the remit to shape the Commonwealth's entire covert action policy, especially where such actions may need to be led by other organisations and may not involve usage of ASIS's powers. This higher-level policy responsibility is split across the departments of the Prime Minister & Cabinet (PM&C), Defence, and Foreign Affairs to advise how covert action might be used to benefit Australia's wider international objectives on a case-by-case basis.

The Department of Defence leads on deciding how best covert action might support ADF missions, and portions of the military e.g., Special Operations Command and Joint Operations Command lead in determining when covert action can be used as part of declared military operations. At present, it is most likely that the body applicable for the task of guiding the use of covert action ***outside*** of military operations is a high-level committee of the National Intelligence Community (NIC) assembled to considers 'intelligence effects' – the use of intelligence capabilities to achieve strategic outcomes. This identifies opportunities for agencies to use existing capabilities in a joint manner through mutually beneficial intelligence activities that complements their respective missions.

To support a higher tempo of covert activity the government should formally create a 'Strategic Action Sub-Committee' of the National Security Committee of Cabinet.

This is insufficient for achieving an approach to covert action that is more strategically coordinated across government and characterised by more frequent and diverse activities. Confining this covert action planning to intelligence agencies predominantly engaged in collection and analysis also presents challenges to maintaining the desirable separation of intelligence collection and assessment functions from policy decisions. This is one of the reasons the CIA keeps its intelligence collection and operations functions distinctly separate, so to minimise the chance that those engaged in collecting and analysing intelligence might be perversely incentivised to alter their judgements to reinforce decisions regarding operations.

A forum comprising senior public servants is unable to approve activities for which ministers have not already granted appropriate delegations. For example, ASIS's Directive issued by the government of the day can include general, pre-emptive delegations of authority to the Director General to undertake certain categories of activity at their discretion.[68] This is to expedite ASIS in undertaking 'routine' or low-risk activities without the DG needing to seek the minister's permission for each instance. So, in the case of an intelligence effects committee, its agility would be constrained by what decisions relevant ministers have or have not already delegated to public servants.

For this reason, in order to support a higher tempo of covert activity the government should formally create a 'Strategic Action Sub-Committee' of the National Security Committee of Cabinet (NSC) for considering and approving options for covert action that support overt policy objectives.[69]

Comprising the Prime Minister, Ministers for Defence and Foreign Affairs, as well as relevant co-optees, the work of this smaller body would be distinct from the more procedural matters that dominate the NSC's agenda, like agency budgets, legislative reform, and crisis response. While there will be natural overlaps with the work of the wider NSC, a dedicated sub-committee would provide a standing

68. This is exampled in past Directives (sometimes referred to as charters), copies of which can be found in Commonwealth of Australia, 'Royal Commission on Intelligence and Security Fifth Report [Re Australian Secret Intelligence Service] - Volume I (Copy No 25) - [Reference Copy]', A8908, National Archives of Australia, and Brian Toohey and William Pinwill, ***Oyster** : The Story of the Australian Secret Intelligence Service* (W. Heinemann Australia, 1989).

69. As UK Prime Minister, David Cameron instituted a similar body in the form of the National Security Council, see Cormac, *Disrupt and Deny*, 251

forum for ministers with the relevant executive authorities to deliberate on opportunities for undertaking covert action. It would also provide a standardised channel for a wider range of departments and agencies to suggest – or contest – options for covert action.

Additionally, the government should consider creating a dedicated centre for covert action, perhaps with a politically palatable title such as a Centre for Strategic Effects. This Centre could be governed by a board comprising the heads of NIC agencies, Defence and DFAT representatives, and chaired by the DG of ASIS. To maintain IGIS's separation from operational decision making, its representatives should not be included on the board but its investigators should be well integrated into the operations of this Centre.

This model would resemble the manner by which the Australian Criminal Intelligence Commission (ACIC) is directed; by a board comprising the nation's leading law enforcement officials. This board lays out through 'determinations' the criminal threats against which the ACIC should use its extraordinary powers (which practically speaking are not too dissimilar to those of ASIS). In this way, the ACIC remains independently responsible for the exercise of its powers, but the strategic guidance for the agency is thoroughly informed by and aligned with the needs of its key partners. This mechanism also mitigates the extent to which extraordinary, intrusive powers can be politically co-opted, as in the case of the ACIC the responsible minister cannot directly instruct against which organised crime targets its powers should be used. In the case of a Centre for Strategic Effects, a board including NIC agency heads could outline directives for covert action priorities aligned with intelligence collection priorities and government strategies

At an operational level, the structure of this Centre could be modelled on the Australian Cyber Security Centre (ACSC), which has proven an asset for Australia's cyber defence. The ACSC led by ASD, co-locates officials from various law enforcement and intelligence agencies and can bring in state, territory and private sector representatives as required. For the conduct of offensive cyber operations or 'digital disruption' this allows agencies to pool resources and deconflict their activities. On covert action, this approach could be replicated by co-locating officials from ASIS, ASIO, ASD, DFAT, and Defence. It could also, where necessary, include officials from arms of government resourced to support information and economic operations respectively, such as AUSTRAC, the Department of Communications, and the Treasury. Such a collaborative model could create a space for managed confidential engagement with major Australian corporations and organisations that contribute to Australian 'soft power' such as the ABC, QANTAS, Telstra, or even universities.

It could be argued that establishing such a Centre might simply add another lay of bureaucracy where ASIS and ASD could simply undertake case-by-case engagements. However, as the ACIC and ACSC models show, where a national security function requires multiple organisations to execute an operation in tandem, a standing body helps standardise operating procedures, internal compliance, and accountability in a manner than can be regularly scrutinised by oversight bodies. A standing arrangement may also improve contestability of covert action.

For DFAT and other agencies responsible for international relationships, like Defence and Home Affairs, this joint model would help identify early on the diplomatic risks associated with particular covert actions, providing opportunities to argue against the proposed actions or inform mitigation measures. This would be a vital to identifying medium and long-term risks of collateral effects, to ensure that the net impact of any actions were not inadvertently de-stabilising and counterproductive. The Centre would thus facilitate greater contestability in the design of covert action than an ad hoc model. For intelligence agencies, another advantage of a multi-agency Centre leading the design and coordination of covert action

is that it would help mitigate the risk that a larger covert action posture could undercut essential intelligence collection activities by dominating agencies' resource allocations, particularly those of ASIS and ASD. This is a risk the CIA has long contended with. As Zegart has explained, "no organisation can do it all. The more CIA people are hunting, the less they are gathering… too much attention to today's priorities leaves the nation vulnerable to nasty surprises tomorrow."[70]

A 'whole of nation' approach would help ensure covert action is used effectively, contestably, and in the national interest. Australian official thinking needs to move past a conception of covert action as an activity that only one or two entities can perform (i.e. ASIS and special forces); rather it should be regarded as a general function of the Commonwealth, achieved through the concerted effort of multiple parts of government. acting in whatever operational configuration is most suitable to the larger national objectives being pursued. Importantly, it requires fulsome contestability from a wider of spectrum of government entities in recognition that Australia's modern foreign relations are not solely managed by DFAT. As Cormac warns "disconnection from overt policy is a common cause of covert action failure. It must be an adjunct, albeit a secret one, to broader political or military strategy."[71] In this regard a joint centre offers a mechanism for determining to what extent covert action should complement wider international objectives and overt activities. An obvious challenge of such a multi-agency approach is the tension between the collaborative openness that supports creativity and the operational imperative for secrecy. However, the protection secrecy affords needs to be weighed on a case-by-case basis against its potentially stifling effect on innovation and contestability. This is particularly important for covert action, because for it to be most effective and justifiable it must be strategically synchronised with other means of statecraft.

Improved Cooperation for Shaping Public Narratives

Information operations will be central to any expanded Australian approach to covert action. New mechanisms will be required to plan these operations, collaborate with non-government organisations on such activities, and build public understanding and transparency about this policy shift.

Primarily, information operations will be required to counter malicious narratives and propagate Australia's own proactive messaging. This will have to occur across multiple mediums, involving social media, internet news media, and entertainment media, requiring voluntary partnerships with non-official entities.

To help this collaboration, the government could institute a covert action or C Notice system, modelled on the old D Notice framework. The D Notice system comprised a meeting chaired by Defence officials, sometimes including the minister, and key news editors and producers from Australia's major media outlets.[72] The system was somewhat passive: Defence would issue 'D Notices' on specific topics that it asked news outlets to refrain from reporting on. The meetings with officials were a confidential space in which editors and producers could have explained to them the harm that would be caused by reporting on certain topics. Compliance was entirely voluntary and was a means to mitigate the need for the Commonwealth to block media reporting through litigation. While it appears to have fallen into disuse in the late 1980s, the D Notice system could offer a useful model for engaging with news outlets to assist with information operations.

A C Notice forum could be used to engage with leaders of Australian media outlets in a confidential way on what messages need to be amplified – or countered – in the national interest. Officials could provide C Notices and

70. Zegart, *Spies, Lies, and Algorithms*, 194.
71. Rory Cormac, Michael S Goodman, and Tom Holman, 'A Modern-Day Requirement for Co-Ordinated Covert Action: Lessons from the UK's Intelligence History', *The RUSI Journal* 161, no. 2 (3 March 2016): 6, https://doi.org/10.1080/03071847.2016.1174478.
72. Commonwealth of Australia, 'Cabinet Memorandum JH96/0319 - Handling of Legislative and Related Reforms Arising from the Samuels Commission of Inquiry into Australian Secret Intelligence Service (ASIS) - Decision JH96/0319/NS' (National Archives of Australia, n.d.), NAA: A14370, JH1996/319.

sanitised intelligence products to editors and producers that outline narratives that would ideally be amplified to international audiences. Such notices could also be used to explain malicious narratives that appear to be state-sponsored and for which outlets should exercise caution in reporting or provide additional editorial context. C Notices could be particularly useful as a means to cooperate with Australia's international broadcasters, SBS and the ABC. For example, Australian agencies who identify that PRC affiliates are propagating a malicious narrative to sow discord in a Pacific country could issue a C Notice to inform Australian broadcasts into that country.[73]

Of course, national interest discussions already occur between officials, politicians and journalists, producers and editors to inform news reporting. However, this is currently ad hoc, uncoordinated, and reliant on strong personal relationships. A C Notice system would help regularise the Commonwealth's engagement with Australian media outlets on national interest topics and provide a confidential forum for editors and producers to advocate to government their own public interest reporting on national security matters.

By working collaboratively with Australian media partners, rather than in the passive manner of the old D Notices, the C Notice system would also provide a space to help inform public reporting on little understood national security topics, not least of all the work of ASIS. The hyper-secrecy of ASIS about its past and present activities and its almost non-existent presence in Australia's cultural and political memory means it has forfeited opportunities to influence and shape narratives about itself and Australia's role in the world, conceding to others the ability to establish the 'social facts' about what ASIS is for and what impact it has had. As a result, despite having existed for seven decades ASIS' public reputation is largely defined by a handful of high-profile scandals: accusations of involvement in the 1973 Chilean coup; the botched Sheraton Hotel exercise of 1983; a reported fire at ASIS headquarters in 1994; and the alleged 2004 bugging operation in Timor Leste.

This low and largely unflattering public profile is a strategic liability for an organisation that while secret, must still rely on a degree of public trust or least goodwill to continue to exist.[74] Disbandment is never entirely inconceivable for an agency that has almost been closed several times and has had three directors general ignominiously fired.[75] Furthermore, the growing technological and operational obstacles to HUMINT operations means governments will be tempted to deprioritise HUMINT resourcing over other, seemingly lower-risk intelligence capabilities, namely signals intelligence (SIGINT).[76] If it is to lead the wider covert action program Australia's strategic circumstances demand and sustain the argument for the requisite resources, ASIS will need deeper collaborative relationships with other government and non-government organisations and for this a strong public reputation will be key. The Chief of the UK's SIS, Richard Moore, has acknowledged this is also a reality for his agency, stating that "the changing nature of the threats we face requires a greater degree of openness from a modern intelligence agency"[77].

ASIS Structural Reform

For the task ahead ASIS is almost certainly too small and will require a larger budget and staffing allocation to improve its readiness to support a higher tempo of more frequent and

73. This type of cooperation is not new and took place throughout the Cold War, see Karim Najjarine and Drew Cottle, 'The Department of External Affairs, the ABC and Reporting of the Indonesian Crisis 1965 – 1969', *Australian Journal of Politics and History* 49, no. 1 (2003): 48–60.
74. This has also been acknowledged by SIS Chief Richard Moore, who has stated that public engagement "is an important part of the way we hold ourselves to account, within a democracy, of how we retain public support for what we do, and – I hope – how we inspire people to want to come and join us." See 'Human Intelligence in the Digital Age - Speech by Richard Moore, Chief of the UK's Secret Intelligence Service', IISS, accessed 27 January 2022, https://www.iiss.org/events/2021/11/human-intelligence-digital-age.
75. Alfred Deakin Brookes was dismissed as Director-General in 1957 by Minister for External Affairs Richard Casey, William Robertson was dismissed by Prime Minister Gough Whitlam in 1975, and John Ryan was asked to resign in 1983 following the Sheraton Hotel affair.
76. Bradley A. Lewis, 'The Death of Human Intelligence: How Human Intelligence Has Been Minimized Since the 1960s', *Military and Strategic Affairs, Volume 8, No. 1*, July 2016, https://www.inss.org.il/publication/the-death-of-human-intelligence-how-human-intelligence-has-been-minimized-since-the-1960s/.
77. Ibid.

complex covert actions. The precise size of ASIS is not officially stated,[78] however a rudimentary estimate based on publicly available information would suggest it is approximately 1,000 personnel.[79] This is in comparison with the British SIS which is larger than ever, with a staff of over 3,500 personnel; a size which in part reflects its larger covert action posture.[80] More covert action involving ASIS will not only require more personnel to carry out such activities, but it will also require an uplift in the number of those staff collecting foreign intelligence, as the two tasks are mutually reinforcing. The task of collecting, sifting through and analysing a wider range of information and presumably managing a larger number of sources will doubtless be very resource intensive.

As the Director-General of ASIS, Paul Symon, recently acknowledged in a speech to the Lowy Institute ASIS requires a "considered and comprehensive transformation" in order to be able to provide the Australian government with an expanded suite of options to match its "increasingly complex strategic environment".

Furthermore, as mentioned earlier, ASIS's approach to covert action over the past 20 years has been heavily enmeshed with ADF special forces and supporting activities within declared military operations. Due to its size, it is most likely that ASIS has had to lean on Defence resources to augment its own, including perhaps most importantly support from the ADF to protect the safety of its officers and agents in places like Afghanistan, Iraq, and Syria. Should the government expect ASIS to operate more frequently and separately from military operations, support from the ADF may not be as readily available; indeed there will be instances where it will simply not be feasible to use ADF support. As a result, ASIS will have to become more independent in undertaking a range of enabling activities for covert action that the ADF has previously delivered, including specialised transport, logistics, reconnaissance, tactical communications, and personal security.

A more concerted approach to covert action may also warrant a review of whether it is most appropriate for ASIS to remain an agency in the foreign affairs portfolio and legally accountable to the Foreign Minister. It is essential that Australia's secret service continue to work hand-in-glove with Australia's diplomatic corps as, for example, it is vital that Australia's heads of mission abroad have visibility and input regarding activities affecting their diplomatic relationships. However, there are two reasons that a more 'whole of government' approach to covert action could be strengthened by ASIS being moved into the Department of the Prime Minister & Cabinet and the IS Act being amended to make the the aforementioned Strategic Action Sub-Committee – or even the Prime Minister – legally responsible for authorising covert action.

First, this relocation would make ASIS primarily accountable to the Prime Minister who is ultimately responsible for the political and national risks associated with Australia's use of covert action.[81] Over recent decades, prime ministers and their offices have acquired greater direct control over the setting of Australia's international strategies and the Commonwealth's response to international crises. So much so that in today's conditions it is almost inconceivable a Foreign Minister would authorise significant covert activity without the PM's prior approval or knowledge. Indeed, the power available to prime ministers makes it possible for them to request covert options pre-emptively of their Foreign Minister.

78. Australian Secret Intelligence Service, 'ASIS Overview - FAQs', n.d., https://www.asis.gov.au/About-Us/ASIS-Overview/FAQs/.

79. For the financial year 2020-21 ASIS had an annual budget of $637.5 million (https://www.dfat.gov.au/sites/default/files/pbs-2021-22-foreign-affairs-and-trade-portfolio-budget-statements-2021-22.pdf). The two other human intelligence organisations most similar in function to ASIS are the Australian Security Intelligence Organisation and the Australian Criminal Intelligence Commission. For FY 2020-21 ASIO had a budget of $590.8 million and a staffing of 1,930. (https://www.homeaffairs.gov.au/reports-and-pubs/budgets/2020-21-asio-pbs.pdf) and for the same FY ACIC had a budget of $410.6 million and a staffing of 850. (https://www.homeaffairs.gov.au/reports-and-pubs/budgets/2021-22-acic-pbs.pdf) This equates per capita budget allocation of approximately $300,000 per staff member for ASIO and $483,058 for ACIC. With these two data points we can create a rudimentary estimate that within its annual budget ASIS is probably able to sustain a staffing size of between 2,100 at the upper scale and 1,300 towards the smaller scale. Approximately 1,000 personnel is probably closer to the real number given ASIS staff are paid more than their ASIO and ACIC counterparts and ASIS must sustain an extensive international presence that the other two agencies do not. (https://www.asis.gov.au/Careers/Current-Vacancies/)

80. Cormac, *Disrupt and Deny*, 266.

81. It was for this reason that ASIS's first Director-General, Alfred Deakin Brookes, argued (unsuccessfully) for ASIS to be moved to the Prime Minister's portfolio in 1954, see Brian Toohey and William Pinwill, ***Oyster :*** *The Story of the Australian Secret Intelligence Service*, 40.

Second, this move would likely give ASIS greater visibility of the wider objectives and priorities of the Commonwealth. This would reinforce an iterative cycle of identifying where other arms of government can complement ASIS-led covert action, and conversely where other organisation's international programs could be assisted by covert action (a process assisted by the creation of a dedicated centre, as recommended earlier). This relocation would reflect the modern reality that Australia's international activities and interests are not solely contained within the DFAT portfolio. While ASIS makes use of diplomatic cover, it does not need to reside in DFAT for this, as demonstrated by its use of diplomatic cover when the agency originally resided in the defence portfolio.[82]

Today, Australia's departments of Defence and Home Affairs have extensive international footprints and relationships comparable to DFAT's and many other agencies and departments have programs supported by liaison officers and operational staff deployed abroad or embedded with foreign counterparts. As a result, PM&C as the Commonwealth's senior policy-setting department has acquired greater insight and influence in setting the range of Australia's international strategies. For ASIS to confidently undertake covert action in a manner synchronised with the wider international efforts of the Commonwealth, it needs a vantage point for understanding the international objectives and activities of different components of government. Finding the most effective configuration of ASIS's position within government and its accountability to Cabinet are challenges with which past Directors-General of ASIS have contended and is something which warrants fresh consideration.[83]

Strengthened PJCIS Oversight

Special national security powers exercised by Commonwealth agencies need to be balanced with oversight and accountability processes to assure the public, and the parliament in particular, that such powers are being exercised with propriety and proportionally to the operating environments in which they are used.

The Inspector-General of Intelligence and Security (IGIS), residing in the Attorney-General's Portfolio, is the primary organisation for overseeing the operations of Australia's intelligence agencies. Its robust statutory powers and wide remit for scrutinising the probity and proportionality of agencies' activities make it notionally well prepared for any changed use of covert action. Its structure within the AG's portfolio helps maintain its independence by keeping it sufficiently separate from the NIC. However, ensuring the IGIS remains appropriately resourced to keep pace with a swiftly expanding NIC remains a perennial issue that would also affect its capacity to oversee an expanded covert action posture.

For the covert action powers discussed in this paper, the most important parliamentary oversight body is the Parliamentary Joint Committee on Intelligence and Security (PJCIS). While the PJCIS has some important powers under the IS Act to hold NIC agencies accountable on behalf of the Australian people, these would need adjustment to an era of heightened covert action by the Australian Government as well as the policy changes outlined above.

82. Commonwealth of Australia, *Report on the Australian Secret Intelligence Service.*
83. 'Correspondence between RG Casey (Minister for External Affairs) and Alfred Brookes.' (National Archives of Australia, 14 March 1955), NAA: A7133, 4.

As a result of Australia's historically restrained use of covert action for more risky purposes, the role of parliamentary oversight is currently limited. For example, the PJCIS is required to be informed by the Minister for Foreign Affairs when they have approved covert action to be carried out by ASIS.[84] However, the IS Act does not state that the PJCIS is entitled to any particular degree of specificity regarding the detail of such operations, nor does it empower the Committee with any intervening role to suggest alterations. Furthermore, beyond an expectation that agency heads will attend briefings, the PJCIS is not entitled to receive details regarding other agencies' covert actions, such as those of ASD.[85] This may become a more pertinent issue given the expected tripling of ASD's offensive cyber capabilities.[86] Any detail provided is therefore at the personal discretion of agency heads. Similarly, while the PJCIS can request agency heads to brief the Committee, it cannot ask for sensitive information regarding operations.[87]

The use of covert means by a liberal democratic nation to advance its international objectives is a regrettable necessity that, in its most grave forms, can affront national values or contradict full respect for others' sovereignty.

As the demand for covert action becomes greater, particularly for activities that involve multiple agencies and targets outside of declared military operations and digital targets, the current parliamentary oversight of such activities will prove increasingly inadequate. Doubtless, there will always be operations so sensitive that the benefits of sharing information are outweighed by the risk of exposure (inadvertent or otherwise) generated from communicating information to parliamentarians. Concerns that sharing such information with PJCIS members may increase their exposure to targeting by foreign intelligence will also be pertinent. However, these operational sensitives do not justify obscuring the nature of Australia's covert action policies from the PJCIS.

The use of covert means by a liberal democratic nation to advance its international objectives is a regrettable necessity that, in its most grave forms, can affront national values or contradict full respect for others' sovereignty.

It is for this reason that a greater role for parliament is required in relation to the conduct of covert action overseas. As the elected representatives of the Australian people, only parliament has the moral authority to provide agencies with the powers to perform activities that may be counter to national values but nevertheless necessary for Australia's national interests. The IS Act therefore ought to be amended in a number of key ways to improve the ability of the PJCIS to understand how these powers are being used.

Firstly, the PJCIS should be briefed on the content of ASIS's classified Directive and updated whenever the Directive is amended. The IS Act should be amended to give the PJCIS this as an express entitlement. Parliament has extended special powers to agencies, namely ASD and ASIS, to perform non-military covert actions. Yet in the case of ASIS as Australia's primary agency for this activity, parliament's visibility of what exactly it has authorised ASIS to do is obscured. This is because, while parliament has empowered ASIS via the IS Act to perform "other activities" authorised by the Foreign Minister, the Act is supplemented by a classified Directive historically issued by the Prime Minister

84. Parliament of Australia, 'Intelligence Services Act 2001'.
85. Parliament of Australia.
86. Matthew Knott, 'Cyber Defence Bolstered by $10 Billion via Project REDSPICE', The Sydney Morning Herald, 29 March 2022, https://www.smh.com.au/politics/federal/cyber-defence-bolstered-by-10-billion-via-project-redspice-20220323-p5a79m.html.
87. Parliament of Australia, 'Intelligence Services Act 2001'.

under executive authority which specifies what activities the Service should and should not be prepared to undertake. This Directive functions as a supplement to the IS Act and, as described earlier, can pre-emptively delegate permissions to ASIS to undertake a range of activities without case-by-case Ministerial approval. Taken together, the IS Act and the Directive are what articulate the freedom of action ASIS has for covert action and may also specify things such as priority targets and key relationships that ASIS should build with other entities.[88] The Directive is therefore key to understanding the government's covert action policy and agencies' operational posture. While it must be secret, it should be readily available to the PJCIS so members can contextualise how the government of the day intends to use the extraordinary powers parliament has approved.

With this extra insight for the Committee, the government will need to prioritise other reforms to the PJCIS that are already long overdue, including provisioning PJCIS members with appropriately cleared staff; amending the IS Act so they can discuss the content of their briefings from agencies with their advisers; and empowering the PJCIS to instruct the Inspector-General of Intelligence and Security (IGIS) to undertake investigations.[89] This latter reform will be especially important as a means to assure the parliament of the probity of particular operations without directly involving parliamentarians in the scrutinisation of highly classified material, for which IGIS should remain the responsible entity. However, the clearance status of PJCIS members themselves will also need to change. Historically, PJCIS members do not have to hold a security clearance to be appointed to the Committee, and there has been a norm in the relationship between agencies and members that agencies will share classified information with members in a risk-managed manner, subject to the discretion of agency heads, and reliant on an expectation that members will hold such information in confidence. This polite, uncodified norm is no longer sufficient and certainly will not be appropriate should PJCIS members have an entitlement to additional information regarding the Commonwealth's covert action posture. The IS Act should therefore be amended to mandate that the Prime Minister can nominate members of Parliament for the Committee, subject to those members first being specially vetted in a manner tailored to the unique obligations and entitlements of being a Parliamentarian.

88. Commonwealth of Australia, 'NAA: A8908, 5A'.

89. William Stoltz, 'Improving National Security Governance: Options for Strengthening Cabinet Control and Parliamentary Oversight', National Security College (The Australian National University, October 2021), https://nsc.crawford.anu.edu.au/publication/19398/improving-national-security-governance-options-strengthening-cabinet-control-and.

Conclusion

Many democracies, including Australia, maintain the ability to undertake covert action to overcome intractable obstacles to their national interests. Yet, hidden interventions in foreign affairs are not something liberal democracies can easily reconcile with their desires to see an international system predicated on respect for sovereignty and universal rights. Furthermore, in turning to covert action as a useful means to counter autocrats and despots, democracies must consider whether they may invite these adversaries to further deepen their own use of secret statecraft. There are also ethical implications of using - and not using - deniable interventions as well as effects on the impact of other tools of statecraft.

These conundrums take on a sharper quality for Australia now that it faces a more difficult international environment, with precipitous great power competition close to home and high expectations that it will aid in allied efforts to shape its region.

In this difficult era, covert action's potential utility comes into sharper focus, but so too does its inherent moral dilemmas.

Addressing these challenges is the subject of robust debate in a burgeoning academic discourse that sorely requires more Australian voices. After all, covert action is not a new field of activity for Australia. Covert Australian statecraft is as old as Federation, and in its modern form has been authorised by governments since the 1950s. Despite this, a healthy conversation has been lacking on how Australia reconciles options to undertake covert action with other considerations affecting the nation's strategic objectives, integrity, and international standing. It is hoped that this paper encourages others to engage in this debate by critically examining this hidden realm of Australian power.

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