

REVIEW OF CSIS THREAT REDUCTION ACTIVITIES:A Focus on Information Disclosure to External Parties

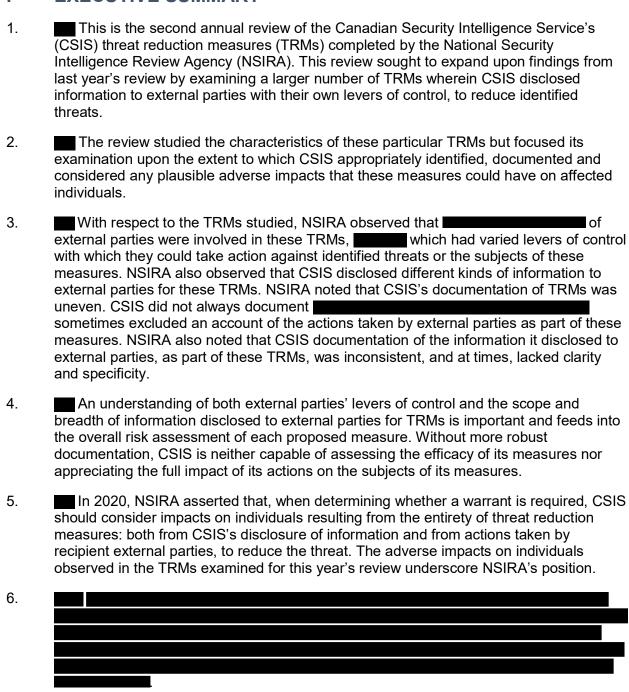
(NSIRA REVIEW 2021-04)

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I EXECUTIVE SUMMARY



The current assessment framework to determine whether a warrant is required is overly narrow and does not sufficiently consider the full impacts of CSIS threat reduction measures. NSIRA recommends that CSIS consider plausible adverse impacts resulting not only from CSIS disclosures of information but also from the actions of external parties as part of TRMs, when determining whether a warrant is required.

8. NSIRA was able to use its direct access to CSIS information repositories to confirm information that it needed to verify and to pursue necessary additional inquiries. For that reason, NSIRA has a high level of confidence in the information on which it relied to complete this review. NSIRA would also like to recognize that CSIS was timely in responding to NSIRA's requests for information throughout the course of this review.

II AUTHORITIES

9. This review was conducted under the authority of subsection 8(2) of the *National Security and Intelligence Review Agency Act (NSIRA Act)*.

III INTRODUCTION

Background

- 10. This review is the second annual review of CSIS threat reduction measures (TRMs) completed by the National Security Intelligence Review Agency (NSIRA).¹
- 11. In its first review of TRMs (NSIRA's 2020 review), NSIRA examined TRMs in which CSIS disclosed information to an external party. In all cases examined, CSIS disclosed the information to an external party in order for the external party to take action in some way using its own levers of control to address the identified threat. This year's review examined a larger subset of TRMs that involved CSIS disclosing information to an external party for the purpose of obtaining a desired threat reduction outcome. NSIRA focused primarily on examining how CSIS identifies and considers the plausible adverse impacts of these measures on affected individuals.

Scope

12. ■ The review period covers June 18, 2015 to December 31, 2020, and includes ■ proposed TRMs that involved CSIS disclosing information to an external party for the purpose of using that external party as a conduit for the desired action against the subject of the TRM. ⁴ Of these ■ proposed TRMs, ■ were approved and ■ were implemented.

Sources and Methodology

13. NSIRA examined information from a variety of sources, including:

ultimately reducing the threat that CSIS had

identified. NSIRA, Review of CSIS Threat Reduction Activities (No. 2020-05), May 2020, pg. 5.

¹ NSIRA's predecessor, the Security Intelligence Review Committee (SIRC), examined CSIS's use of threat reduction measures between 2016 and 2019.

² NSIRA, Review of CSIS Threat Reduction Activities (No. 2020-05), May 2020.

³ These TRMs involved CSIS disclosing information to an external party for the principal purpose of reducing a security threat. The specific goal of these TRMs was for the external parties to take action,

⁴ On June 18, 2015, CSIS received its threat reduction mandate under the Anti-Terrorism Act, 2015.

Document Review

- Ministerial directions issued by the Minister of Public Safety and Emergency Preparedness to CSIS.
- CSIS's internal governance framework for TRMs, which included policies, procedures, guidance and training material, tracking systems and cooperation agreements.

•	All pertinent threat reduction measure documentation,
	email communications,
	operational messages, and

• Relevant Relevant, including responses to NSIRA's Requests for Information.

Briefing

One briefing from the Department of Justice.⁵

Analysis of Administrative Data

- Descriptive statistics of the TRM sample.
- Cross-reference of TRM subjects in the review sample with NSIRA's investigation files for complaints submitted to SIRC (2015 to July 2019) and NSIRA (July 2019 to 2020) in order to document any complaints investigations underpinned by a CSIS TRM.

TRM mandate

- 14. In June 2015, Parliament enacted the *Anti-terrorism Act, 2015*, which authorized CSIS, in the new section 12.1 of the *CSIS Act*, to take measures to reduce threats to the security of Canada, within or outside Canada. The new measures represented an unprecedented departure from CSIS's traditional intelligence collection role.
- In July 2019, the *National Security Act, 2017*, came into force and introduced amendments to CSIS's TRM mandate that sought to clarify and further define this power. In particular, the amendments stressed the importance of compliance with the *Canadian Charter of Rights and Freedoms (Charter)*. They included specific provisions affirming the need for all TRMs to comply with the *Charter*, and stipulating that measures could only limit *Charter* rights or freedoms if authorized by a judge under a warrant. The amendments also included an expanded list of prohibited conduct under the TRM regime: among other things, CSIS cannot engage in measures that cause death or bodily harm, subject an individual to torture, or detain or violate the sexual integrity of an individual.⁷
- 16. The CSIS Act does not provide a precise definition of "measures to reduce the threat." As such, CSIS has developed its own definition to guide its TRM activities. According to CSIS, a TRM is "[a]n operational measure undertaken by the Service,

⁵ Justice briefing for NSIRA, October 18, 2021. Previous briefings, conducted over the course of the NSIRA 2020 review were also considered.

⁶ Anti-terrorism Act, SC 2015, c. 20.

⁷ SC 2019, c.13; *CSIS Act*, sections 12.1 and 12.2.

pursuant to section 12.1 of the CSIS Act, whose principal purpose is to reduce a threat to the security of Canada as defined in s. 2 of the CSIS Act."8

- 17. Section 12.1 of the CSIS Act states that CSIS may only undertake a TRM if there are reasonable grounds to believe that the identified conduct is a threat to the security of Canada. TRMs must be reasonable and proportional in the circumstances, having regard to the nature of the threat, the nature of the measures, the reasonable availability of other means to reduce the threat, and the reasonably foreseeable effects on third parties, including on their right to privacy. CSIS must also consult with other federal departments, where appropriate, with respect to whether they may be in a position to reduce the threat. CSIS must also seek a warrant from a judge where a proposed TRM would limit a right or freedom guaranteed by the Charter or would otherwise be contrary to Canadian law.
- 18. The 2015 Ministerial Direction for Operations and Accountability and the 2019 Ministerial Direction for Accountability issued by the Minister of Public Safety require all TRMs to undergo a four-pillar risk assessment that examines the operational, political, foreign relations, and legal risks of proposed actions on a scale of low, medium or high. In addition, they require that, when assessing the appropriate means of reducing a threat, CSIS consider the range of other possible national security tools available to the broader community, and consult with departments and agencies of the Government of Canada with mandates or authorities closely related to the proposed TRM.

Gov	rernance
19.	CSIS's TRM unit is made up of full-time employees, and is responsible for developing and updating policies and procedures related to TRMs; it also provides support to operational units involved with TRMs.
20.	Operational units must consult with the TRM unit at the planning stage, and while drafting
21.	CSIS's governing policy outlines the requirements associated with planning, approving, implementing, and reporting TRMs, including their use in exigent circumstances. ⁹ The policy replicates the relevant provisions of the <i>CSIS Act</i> , without

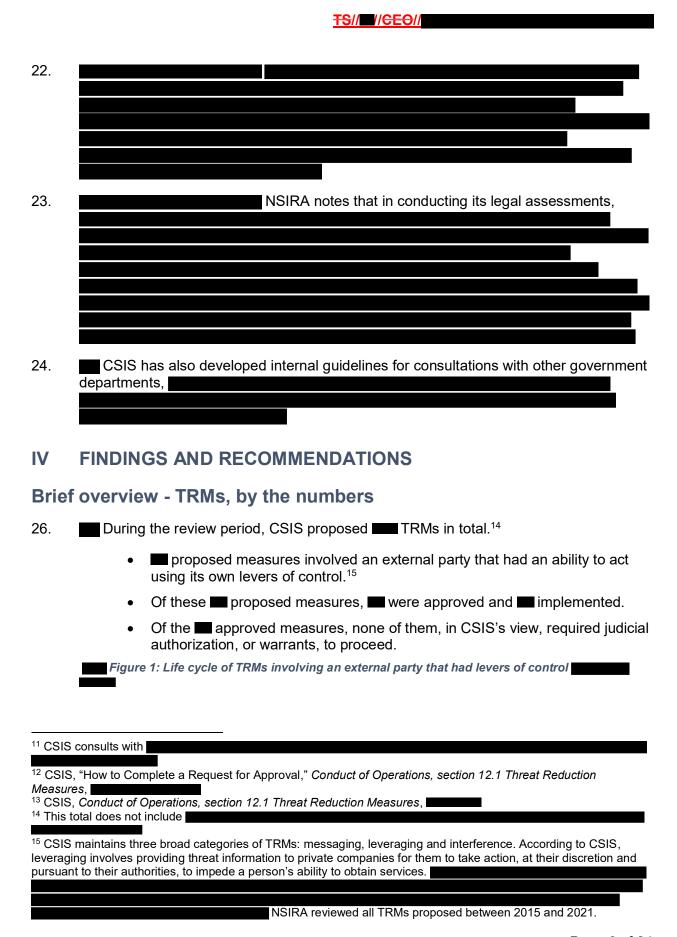
adding much direction beyond citing the existing legislative regime. For example, the policy incorporates the Act's requirement to ensure that TRMs are reasonable and proportional, having regard to the nature of the threat, the nature of the measures, the

reasonable availability of other means to reduce the threat, and the reasonably foreseeable effects of the measure on third parties, including their right to privacy. 10

⁸ CSIS, "Introduction of Threat Reduction Activities"

⁹ The TRM governance suite also included a template and guidelines for the TRM Request for Approval (RFA), Also available were guidelines addressing frequently asked questions related to TRM process and approvals, consultation and assistance and implementation.

10 CSIS, Conduct of Operations, section 12.1 Threat Reduction Measures, Version 4, paras. 3.1, 3.4 and 3.5.



27. Comprising proposed measures, information disclosure to external parties was a common strategy that CSIS proposed as part of TRMs, to reduce perceived threats to the security of Canada.

CSIS's information disclosures as part of TRMs

- 28. NSIRA examined documentation supporting the proposed TRMs, including the implemented TRMs where CSIS disclosed information to an external party to reduce a threat to the security of Canada. NSIRA looked to identify and assess:
 - the types of external parties involved in the proposed TRMs;
 - the nature of the information that CSIS shared as part of these measures; and
 - the extent to which CSIS identified, documented and considered the plausible adverse impacts of the measure on individuals.

Types of external parties involved in proposed TRMs

29. NSIRA provides examples of the types of external parties involved in proposed TRMs, as well as some of the varied actions they could take in Table 1, below.

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Table 1: Proposed TRMs by type of external party, intended outcomes, and TRM status.

Type of External Party	Intended Outcome(s)	TRM Status	Observations	
				İ

Nature of information disclosed

	NSIRA also observed that CSIS used For example,
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	NSIRA observed that CSIS's documentation of the information disc
to the	NSIRA observed that CSIS's documentation of the information disc external party was uneven and, at times, lacked clarity and specificity.
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	external party was uneven and, at times, lacked clarity and specificity.
	external party was uneven and, at times, lacked clarity and specificity.
	external party was uneven and, at times, lacked clarity and specificity.
	external party was uneven and, at times, lacked clarity and specificity.

	direct and indirect impacts may be difficult to ascertain with any precision. This affects the rigour of any associated risk assessment, including the legal risk assessment.
34.	By contrast, NSIRA noted certain instances in which CSIS provided a sufficiently detailed description of the information to be disclosed in its documented materials.
35.	In NSIRA's view, the precise content, including the scope and breadth of the information to be disclosed to an external party as part of a TRM, is important and feeds into the overall risk assessment of the proposed measure. A detailed and precise description of the information to be disclosed would allow for more considered assessments.
36.	Finding 1: NSIRA finds that CSIS's documentation of the information disclosed to external parties as part of TRMs was inconsistent and, at times, lacked clarity and specificity.
37.	Recommendation 1: NSIRA recommends that when a TRM involves CSIS disclosing information to external parties, CSIS should clearly identify and document the scope and breadth of information that will be disclosed as part of the proposed measure.
Ident	tification, documentation and consideration of impacts
38.	NSIRA's 2020 TRM review examined TRMs where CSIS disclosed information to an external party in order to disrupt a threat actor. ³¹ That review underlined the importance of considering all plausible adverse impacts on an affected individual as part of the TRM approval process. In this year's review, NSIRA sought to examine a larger sample of TRMs in which CSIS disclosed information to external parties to reduce an identified security threat. This year's review allowed NSIRA to gain greater insight into CSIS' intended outcomes for these TRMs and how CSIS assessed their impact on the individual.
39.	The following examples highlight common impacts that NSIRA identified:
31 NSIR	A, Review of CSIS Threat Reduction Activities (No. 2020-05), May 2020.

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40.	The interests engaged where measures affect
	have significant and lasting impacts on the subjects and their families. For example, measures that impact the
	interfere with
	Moreover, the associated hardships can affect the subject's inherent dignity. The norms of our liberal democracy dictate that people in society should be able to When CSIS is assessing the reasonableness and proportionality of TRMs that can impact the as well as assessing
	whether a warrant is required, it is important that the analysis sufficiently take these factors into consideration.
Mea	sures affecting
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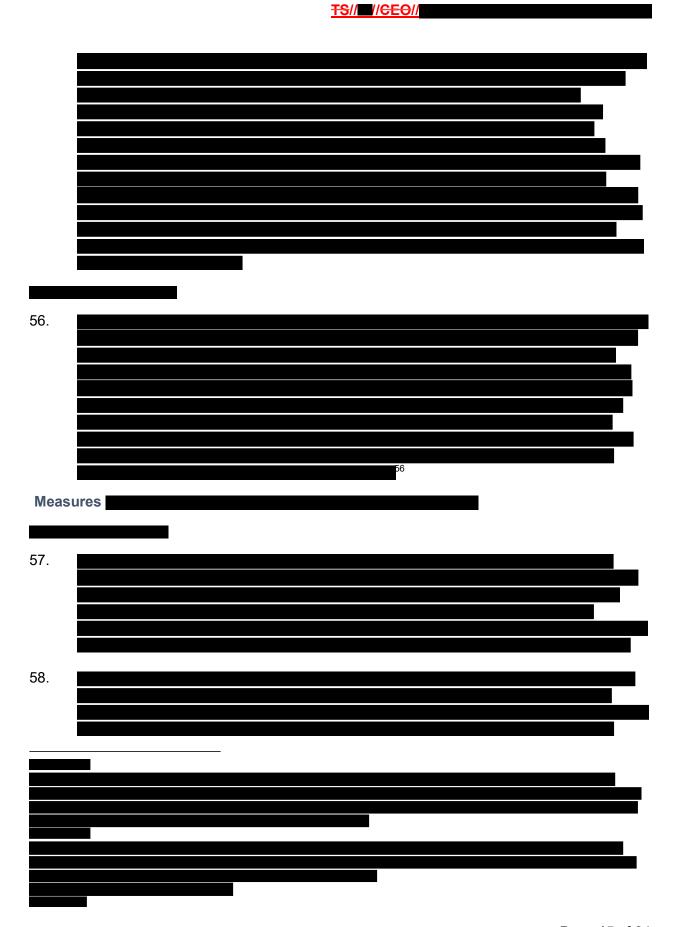
	nt of the risks ass	sociated with	SIRA's view, the i	dentification and yexplore the plate
adverse im	pacts of these ac	ctions.		

48.	
49.	Nevertheless, NSIRA observes that CSIS approved a TRM without knowing the actions, if any, that the was required to take under Canadian law or could take, pursuant to its This information could
	have contributed to the assessment of the plausible adverse impacts of the measure upon individuals.
Meas	sures affecting
50.	
51.	

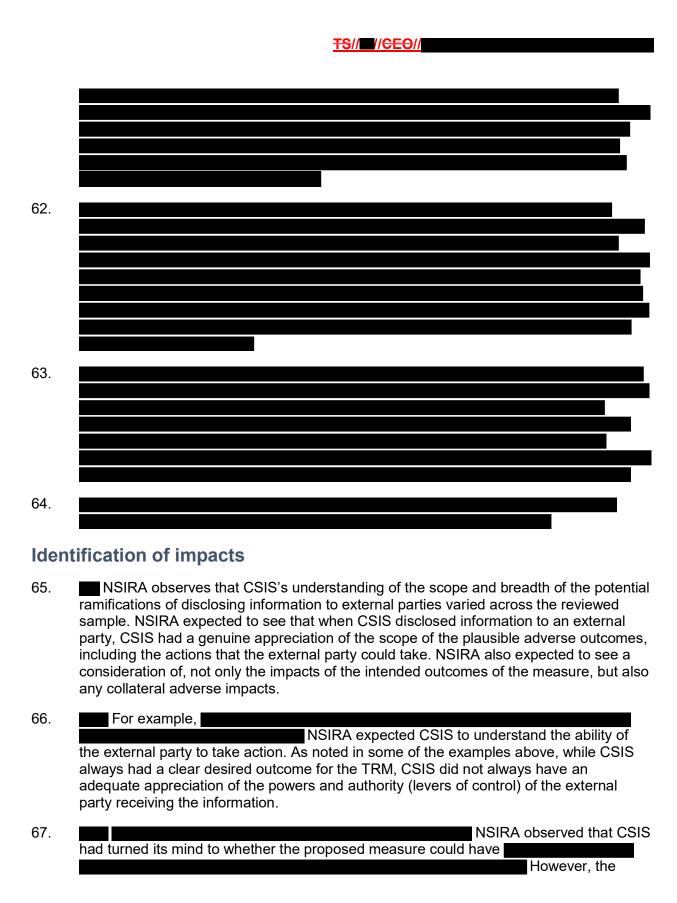
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52.	
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53.	
54.	NSIRA notes that, at the time the proposed measure was assessed, CSIS did not appreciate the authority and capacity of each of the organizations to prevent the individual from
Meası	ures preventing
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scope and nat the time the pr	erritorial applicature of the plausi	tion of the <i>C</i> ible adverse e was asses	<i>harter,</i> NSIR. impacts of th	e measure. N	ssessment of SIRA notes t
understanding	of potential har	ms			



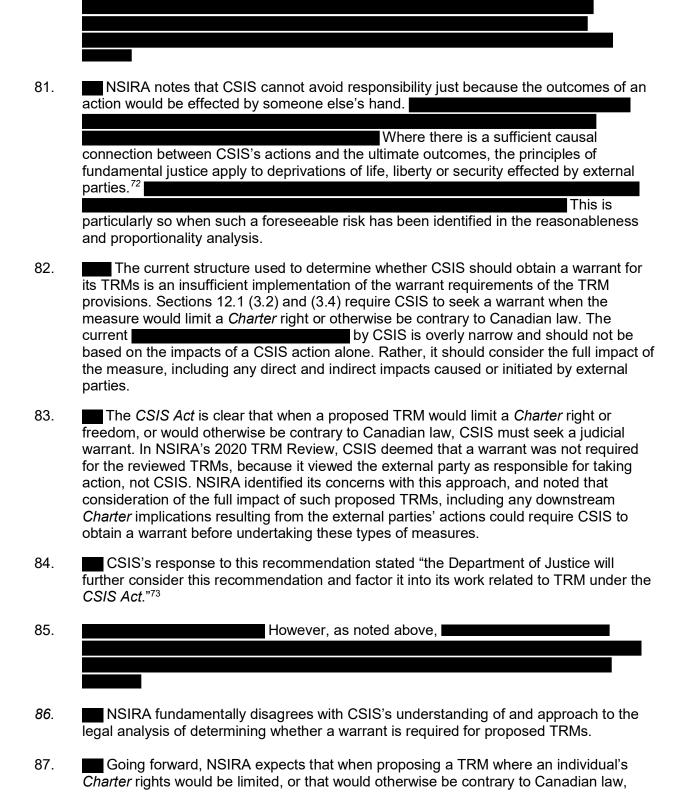
	the individual could be
68.	Finding 2: NSIRA finds that CSIS does not systematically identify or document the external parties' authority and ability to take action, or plausible adverse impacts of the measure.
69.	Recommendation 2: NSIRA recommends that CSIS fully identify, document and consider the authority and ability of the external party to take action, as well as the plausible adverse impacts of the measure.
Docu	umentation of outcomes
70.	NSIRA expected to obtain more certainty with respect to the outcomes of these measures by reading official outcomes reports,
	This suggested that CSIS's reporting system was inadequate or that these reports were improperly filed or non-existent. ⁶³
71.	
72.	NSIRA observes that follow-ups with the external party should be an essential component of measures involving information disclosure whose principal purpose is to reduce a security threat. Without robust documentation and after action reports on TRMs, CSIS is incapable of assessing the efficacy of the measure as well as appreciating the full impact of its actions. An examination of well-documented after action reports will also enable CSIS to determine whether their initial reasonableness and proportionality assessment may have failed to consider important considerations, which can, in turn, inform the assessments of future proposed TRMs.
73.	Finding 3: NSIRA finds that CSIS did not consistently document the outcomes of TRMs in accordance with its policy. Furthermore, CSIS policy does not require it to document the actions taken by external parties.
74.	Recommendation 3: NSIRA recommends that CSIS should amend its TRM policy to include a requirement to systematically document the outcomes of TRMs, including actions taken by external parties. This practice should inform post-action assessments and future decision-making.

⁶³ NSIRA notes that in the early years of the TRM program, outcome reporting was not required, however SIRC reviews of CSIS TRM activities as well as a CSIS internal audit both highlighted the need for after action reporting. Since this time, CSIS has formalized outcome reporting as part of the TRM process. ⁶⁴ CSIS, *Frequently Asked Questions*, version 3, 2019.

75. Recommendation 4: NSIRA recommends that CSIS comply with its record-keeping policies related to documenting the outcomes of TRMs.

Consideration of impacts when assessing whether a warrant is required

NSIRA	e variety of impacts observed in this year's TRM review highlights the salience of secommendation in 2020, namely that CSIS consider more comprehensively all adverse impacts of these types of measures on the affected individuals. This
recomn where t	mendation underlined that all potential impacts on an affected individual, even they are carried out by the external party and not CSIS, should be considered letermining whether a warrant is required. ⁶⁵
This review.	s limited consideration of the impacts of TRMs was also evident in this year's
	In an October 2021 briefing between NSIRA and
	in an October 2021 briefing between Nonva and
SIRA <i>Review</i>	
JII (A, Neview	10000 Threat Neduction Activities (No. 2020-00), May 2020.



⁷¹ Justice, LRA for 2017-09, February 21, 2017.

⁷² Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 SCR 3 at para 54.

⁷³ NSIRA, *2020 Annual Report*, page 62.

whether at the direct hand of CSIS or that of an external party to whom CSIS disclosed information, CSIS will seek a warrant to authorize the TRM.

- 88. Finding 4: NSIRA finds that when determining whether a warrant is required, CSIS's assessment is overly narrow due to a failure to appropriately consider the impacts resulting from external party actions.
- 89. Recommendation 5: NSIRA recommends that CSIS appropriately consider the impacts resulting from external party actions when determining whether a warrant is required.

V CONCLUSION

- 90. The variety of impacts observed in this year's review, combined with the gaps identified in CSIS's understanding and assessment of these impacts highlights the salience of a number of NSIRA's recommendations in 2020.
- 91. The TRM regime was introduced in 2015 to address an evolving security and intelligence landscape. NSIRA recognizes that CSIS' threat disruption powers can be an effective tool to diminish a national security threat. While these powers provide CSIS with additional flexibility, they also demand heightened responsibility, given their covert nature and ability to profoundly impact, not only the subject of a given TRM, but others potentially captured by its scope. As this review demonstrates, TRMs can interfere with

Mindful of the need to reduce threats, but recognizing the competing values at stake, it is critical that CSIS subject its TRMs to robust and thorough analyses, both prior to and following their implementation.

- 92. NSIRA reiterates its recommendation that CSIS consider more comprehensively the plausible adverse impacts of these types of measures on the affected individuals, even when they are carried out by the external party and not CSIS. These impacts should be considered not only when considering the reasonableness and proportionality of a proposed measure, but also when determining whether a warrant is required.
- 93. In addition, this year's review again highlighted the importance of Justice's involvement in the TRM approval process. More specifically, the necessity for Justice to be provided sufficient information, in this case on the nature of the information to be disclosed by CSIS as well as the authority and actions (levers of control) the external party can take, to allow Justice to provide considered legal advice.
- 94. Finally, without robust documentation and after action reports on TRMs, CSIS is incapable of assessing the efficacy of the measures or appreciating the full impact of its actions. CSIS should systematically identify the actions that are taken by external parties for threat reduction measures that involve CSIS disclosures of information. Identifying and recording these actions and the subsequent impacts on TRM subjects will inform not only TRM risk assessments, but also enable CSIS to build upon its experience with TRMs and guide future decision-making.
- 95. While outside of the scope of this review, NSIRA is aware that in January 2021, CSIS launched

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NSIRA may in the future review	and
whether it has impacted the identification and consideration of plausible adve	erse impacts
of measures on individuals.	

VI ANNEX A: FINDINGS and RECOMMENDATIONS

- **Finding 1:** NSIRA finds that CSIS's documentation of the information disclosed to external parties as part of TRMs was inconsistent and, at times, lacked clarity and specificity.
- **Finding 2:** NSIRA finds that CSIS does not systematically identify or document the external parties' authority and ability to take action, or plausible adverse impacts of the measure.
- **Finding 3:** NSIRA finds that CSIS did not consistently document the outcomes of TRMs in accordance with its policy. Furthermore, CSIS policy does not require it to document the actions taken by external parties.
- Finding 4: NSIRA finds that when determining whether a warrant is required, CSIS's assessment is overly narrow due to a failure to appropriately consider the impacts resulting from external party actions.
- **Recommendation 1:** NSIRA recommends that when a TRM involves CSIS disclosing information to external parties, CSIS should clearly identify and document the scope and breadth of information that will be disclosed as part of the proposed measure.
- **Recommendation 2:** NSIRA recommends that CSIS fully identify, document and consider the authority and ability of the external party to take action, as well as the plausible adverse impacts of the measure.
- **Recommendation 3:** NSIRA recommends that CSIS should amend its TRM policy to include a requirement to systematically document the outcomes of TRMs, including actions taken by external parties. This practice should inform post-action assessments and future decision-making.
- **Recommendation 4:** NSIRA recommends that CSIS comply with its record-keeping policies related to documenting the outcomes of TRMs.
- **Recommendation 5:** NSIRA recommends that CSIS appropriately consider the impacts resulting from external party actions when determining whether a warrant is required.