

Parliamentary Joint Committee on Intelligence and Security

Attorney-General's Department

Hearing date: 11 April 2023

Question date: 14 April 2023

Senator James Paterson asked the following question:

Prior to the introduction of the Comprehensive Review and Other Measures Bill No. 2 into the House of Representatives on 29 March 2023, were any of the following people consulted on or advised of the proposed changes to the composition of the Parliamentary Joint Committee on Intelligence and Security:

1. The Leader of the Opposition?
2. The Shadow Attorney General?
3. The Shadow Minister for Home Affairs?
4. The Shadow Minister for Defence?
5. The Deputy Chair of the PJCIS?
6. The Leader of the Opposition in the Senate?
7. The Leader of the Greens?
8. Any other representative of the Greens?
9. Any of the crossbench members of the House of Representatives, including Mr Wilkie, Dr Ryan, Ms Daniel, Ms Chaney, Ms Steggal, Ms Spender, Ms Tink, Mr Katter, Mr Gee, Ms Scamps, Ms Haines, Ms Le or Ms Sharkie?
10. Any of the crossbench Senators, including Senator Lambie, Senator Tyrell, Senator Babet, Senator Hanson, Senator Roberts, Senator Thorpe or Senator David Pocock?
11. The Director General or any other representative of ONI?
12. The Director General or any other representative of ASIO?
13. The Director General or any other representative of ASIS?
14. The Director General or any other representative of ASD?
15. The Inspector General of Intelligence and Security or any other representative of the IGIS?
16. The Commissioner or any other representative of the AFP?

The response to the question is as follows:

The Attorney-General's Department did not consult with or advise non-government parliamentarians on the proposed changes to the membership and composition of the Committee.

This measure was a recommendation of Government.

Officers from the National Intelligence Community agencies as well as the Departments of the Prime Minister and Cabinet, Defence, Foreign Affairs and Trade, Home Affairs and Infrastructure, Transport, Regional Development, Communications and the Arts were consulted on the National Security Legislation Amendment (Comprehensive Review and

Other Measures No. 2) Bill 2023, and no comments were received on the proposed changes to the composition of the Parliamentary Joint Committee on Intelligence and Security

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Raff Ciccone asked the following question:

Senator CICCONE: I've only got a few [questions], but I want to get some confirmation on that. I want to get a sense too, being fairly new to this Committee, of how members are appointed to the Committee. The way I read the Act, it is obviously appointed by the Prime Minister, but the appointment is done by the House or the Senate, on the nomination of the Prime Minister and the Leader of the Government in the Senate. Is that your understanding?

Ms HARTIGAN: Clause 14, Schedule 1, deals with appointments of members. Is that where you're reading from?

Senator CICCONE: Yes, that is normally done through consultation with the Leader of the Oppositions?

Ms HARTIGAN: Correct, as per, I think, subsections (2) and (4) of that provision.

Senator CICCONE: To get some confirmation too, was this current regime applied under previous Prime Ministers like Abbott, Turnbull and Morrison in how they went about appointing members to this Committee?

Ms HARTIGAN: Sorry, are you asking me if clause 14 was as it is written now for those Prime Ministers?

Senator CICCONE: How members were appointed to the Committee currently, yes – has that changed?

The response to the question is as follows:

How members are appointed to the Committee under clause 14 of schedule 1 of the *Intelligence Services Act 2001* (IS Act) has not been amended since the Act entered into force in 2001.

The number of members and composition of membership of the Committee have been amended twice since then. The number of members on the Committee is currently specified in subsection 28(2) of the IS Act.

In 2005, the *Intelligence Services Legislation Amendment Act 2005* increased the membership of the Committee from 7 to 9 members. It also altered the constitution of the Committee, stating that 4 members must be Senators and 5 members must be Members of the House of Representatives, up from 3 and 4 respectively.

In 2011, the *Telecommunications Interception and Intelligence Services Legislation Amendment Act 2011* increased the membership of the Committee from 9 to 11 members. It

again altered the constitution of the Committee, stating that 5 members must be senators and 6 members must be Members of the House of Representatives, up from 4 and 5 respectively. The Department of Foreign Affairs and Trade has policy responsibility for administering the provisions in the IS Act that relate to the Committee's membership and appointments.

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Senator Raff Ciccone asked the following question:

Senator CICCONE: Could you also take on notice when it (how members are appointed to the Committee) was changed?

The response to the question is as follows:

How members are appointed to the Committee under clause 14 of schedule 1 of *the Intelligence Services Act 2001* (IS Act) has not been changed since the IS Act entered into force.

The number of members and composition of membership has been changed twice (refer to the department's response reference **IQ23-000028**).

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Mr Andrew Wallace MP asked the following question:

Mr Wallace: For the purposes of the record, for the bill review, can you outline the history and justification behind the convention of [the Commonwealth Ombudsman] not undertaking investigative action on NIC agencies? Why was this not rectified in legislation earlier?

The response to the question is as follows:

Sections 6 and 7 of the *Ombudsman Regulations 2017* (Ombudsman Regulations) provide that the Australian Security Intelligence Organisation (ASIO) and the Director-General of Security are not prescribed bodies or person for the purpose of the *Ombudsman Act 1976* (Ombudsman Act). The Australian Secret Intelligence Service (ASIS), Australian Geospatial-Intelligence Organisation (AGO), Australian Signals Directorate (ASD), Office of National Intelligence (ONI) and Defence Intelligence Organisation (DIO) currently fall within the definition of a prescribed authority for the purposes of the Ombudsman Act and are legally within the Ombudsman's jurisdiction.

By long standing convention, the Ombudsman does not exercise its jurisdiction over ASIS, AGO, ASD, ONI and DIO. Instead, those agencies are overseen by the Inspector-General of Intelligence and Security (IGIS) under the *Inspector-General of Intelligence and Security Act 1986*. Since 14 December 2005, the Ombudsman and the IGIS have had a memorandum of understanding which guides the approaches of these offices to oversight of these intelligence agencies.

This matter was considered by the Comprehensive Review of the Legal Framework of the National Intelligence Community (Comprehensive Review) in December 2019, which made a recommendation that ASIS, AGO, ASD, ONI and DIO should be excluded from the Ombudsman's jurisdiction (recommendation 167). The Government is committed to implementing the outstanding recommendations from the Comprehensive Review and the National Security Legislation Amendment (Comprehensive Review and Other Measures No. 2) Bill 2023 was identified as suitable to implement this recommendation.