

Defence Portfolio

INQUIRY QUESTION

(Question No.1)

Senator the Honourable David Fawcett and Mr Julian Hill MP asked the Department of Defence the following question, upon notice, on 19 December 2022:

Senator Fawcett: Sure. So you'd be aware of the November 2018 report of this committee which suggested essentially a replica of the PJCIS but with a defence focus? So, again, it would have limited numbers and the same legislative constraints in terms of the handling of classified information. The other advantage it gives to the agencies is that they know that, with a change of government, the decision that's been reached is one that's going to stand because it has already been contested between differing views within politics. Are you aware of any evidence that that has provided stability to those agencies and confidence in terms of their adoption and implementation of those laws?

Vice Adm. Johnston: No, not to my knowledge, particularly because I'm not a member of the PJCIS.

Senator Fawcett: That's fine. If you have not read that report of 2018, I'd welcome Defence's views, on notice, as to how they could see that kind of process informing, in a timely and classified manner, the two parties of government—in a similar manner to PJCIS—so that a decision to deploy troops actually had a degree of parliamentary oversight in a controlled manner, which would give the public the same confidence that they have around the operation of our national intelligence agencies. If you could come back to the committee, having reviewed that report, that would be very useful. Thank you.

Chair: I might just throw in a supplementary there, Senator Fawcett, because, if we frame that question too broadly, we risk an answer saying, 'We're not able to express a view, because it's a matter for government and a policy question.' My supplementary question is: if the committee was of a mind to consider such a proposal, what might be the considerations which, from a security and defence point of view, we would need to be cognisant of? Having listened to your evidence and thought about some of the legislative constraints around the PJCIS, I know that there are human sources, highly sensitive capabilities and specific intelligence shared by allies at a Top Secret classification, for example. Most of the rest is up for grabs, within the confines of us all going to jail if we breach the security, and the Director-General of Security has been asked many times and has said he has no concerns about those arrangements because of the checks and balances that sit around them. So I think that's a question you could answer, as opposed to the perhaps broader question of whether we should do it.

Vice Adm. Johnston: We will take that on notice.

The Department of Defence has provided the following answer to the question:

Defence has a longstanding commitment to operating with transparency and with accountability. As part of this commitment, Defence already engages with a number of existing parliamentary committees that play an oversight role, including the Joint Standing Committee on Foreign Affairs, Defence and Trade; and the Senate Standing Committees on Foreign Affairs, Defence and Trade. Parliament also has opportunities to scrutinise Executive decision-making relating to deployment of the ADF, including through urgency motions, Senate Estimates and Question Time.

The role and functions of the PJCIS are constituted under Part 4 and Schedule 1 of the *Intelligence Services Act 2001* (the Act). The primary functions of the PJCIS are to review of the administration and expenditure of specific intelligence agencies and to review the operation of specific legislation. The activities of the Committee are limited and must not require the disclosure of operationally or otherwise sensitive information. Committee membership is comprised of 11 members, five of whom must be Senators and six of whom must be members of the House of Representatives, with the majority of Committee members required to be from Government.

The establishment of an additional parliamentary committee to inform, and provide parliamentary oversight of, decisions to deploy the ADF beyond existing arrangements is a matter for the Government and Parliament. As stated in Defence's submission, Defence assesses that current Executive-led decision-making arrangements, as they relate to ADF deployments into international armed conflicts, remain appropriate.

Relevant security factors in considering any proposal to establish a PJCIS-like body would include the critical importance of maintaining timely and flexible decision-making for ADF deployments, and ensuring the ongoing confidentiality of highly classified information. Any such proposal would also need to consider the potential impacts on the ADF's operational security; the ADF's relative strategic and tactical advantages over adversaries; and Australia's international credibility as a security and intelligence partner.