

Parliamentary Joint Committee on Intelligence and Security
Intelligence Oversight and Other Legislation Amendment
(Integrity Measures) Bill 2020
Attorney-General's Department

Hearing date: 06 May 2021

Question date: 06 May 2021

Question type: Spoken

James Paterson asked the following question:

CHAIR: I have a follow-on question to that. You've provided a very helpful table in your submission, outlining the various aspects of oversight—a colour coded table. Next to the AFP, under the PJCIS [inaudible] there's 'certain terrorism functions performed by the AFP'. Does this committee not have other oversight responsibilities for the AFP?

Mr DREYFUS: To add to the chair's question, Mr Walter, it understates the role of this committee, doesn't it?

Mr Walter: Yes, that's probably not an unfair summary. There are other functions, you're quite right. I think this was intended to be that high-level summary for convenience, and there could be some additional nuance. If it would be useful, we can take that additional nuance on notice for you. But, obviously, you're aware of your role.

Senator FAWCETT: I'd add to that that you might also want to look at the issue of metadata and the AFP, and the obligations that the AFP has in terms of informing the committee about its access to metadata. But also, having been on the committee when we were given the AFP counterterrorism functions to oversight when that was taken off the law enforcement committee in 2014, I think you might want to have a pretty close look at that so that you understand our committee's remit just a bit better.

Mr Walter: So, Chair, we're in your hands. Is it useful for us, for the public record, to set that out a bit more clearly?

Mr DREYFUS: Chair, can I suggest—

CHAIR: Yes, on notice. Mr Dreyfus?

Mr DREYFUS: I'm going to ask some questions about the table, too, but can I suggest that the department take this question about the table on notice. Reflect and redo, I think, is the suggestion.

Mr Walter: Understood. Thank you.

CHAIR: Yes, I think that's a good idea—on notice would be helpful. I would just add for your consideration, in addition to the deputy chair's comments and Mr Dreyfus's comments,

the committee's responsibilities for overseeing the foreign interference work and the counterespionage work that the AFP and other agencies are involved in. But I will leave my questions there. Mr Dreyfus, that might be a good segue for you.

The response to the Senator’s question is as follows:

The department has amended Table 1 at Attachment B of its joint submission with the Department of Home Affairs as follows.

Table 1: Oversight for NIC agencies under the Bill (new jurisdiction in green) – amended

	Commonwealth Oversight Bodies						Parliamentary Oversight++	
	IGIS	Ombudsman	ACLEI	OAIC (Privacy)**	OAIC (FOI)**	ANAO	PJCIS+	PJCLE
AFP								
ACIC	*				#			
Home Affairs								
AUSTRAC	*						*	
ASIO								
ASIS		~						
ASD		~						
AGO		~			#			
DIO		~						
ONI		~						

+ The PJCIS’s functions are set out in section 29 of the ISA. This column only indicates where those functions prescribe a role for the PJCIS in relation to a NIC agency. It does not reflect the nature or scope of that role.

++ This table only includes the PJCIS and the PJCLE. Agencies are also subject to additional parliamentary oversight. For example, the Department of Home Affairs’ administration and expenditure is overseen through the Senate Standing Committee on Legal and Constitutional Affairs.

* This jurisdiction only relates to the ACIC and AUSTRAC’s ‘intelligence functions’.

** The OAIC is a single agency. However, because the FOI Act and Privacy Act apply differently to NIC agencies, these two functions (both performed by the OAIC) are reflected in separate columns.

~ Although the Ombudsman formally has jurisdiction over these agencies, by convention they do not exercise this jurisdiction, deferring to the IGIS. Government has agreed to formally remove the Ombudsman’s jurisdiction (Government Response to the Comprehensive Review - Recommendation 167).

Government has agreed to exempt the ACIC from the FOI Act (Government Response to the Comprehensive Review - Recommendation 187), and to remove AGO’s current FOI exemption insofar as documents are not related to intelligence functions (Government Response to the Comprehensive Review - Recommendation 186).

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James Paterson asked the following question:

CHAIR: I have a final question, but I will just check whether any of my colleagues have any further questions. No. I'm not sure if you're familiar with the Law Council's submission. They said there should be modernising reforms of the Intelligence Services Act, specifically as it relates to the PJCIS. Do you share the Law Council's view that the Intelligence Services Act needs modernising with respect to the committee?

Mr Walter: To be honest, I haven't turned my mind to that aspect of the Law Council's submission, and I really need to seek ministerial guidance on that. I don't have any strong views on what that would be. At this point, I think the government's position is that it is happy with how the committee is structured and its remit. I haven't heard anything to suggest otherwise, but I'd really need to take that on notice and consider it further.

The response to the Senator's question is as follows:

Part 4 and Schedule 1 of the *Intelligence Services Act 2001* (Cth) (ISA) set out the role, constitution and responsibilities of Parliamentary Joint Committee on Intelligence and Security (the Committee).

The Government response to the Comprehensive Review of Legislation Governing the National Intelligence Community agreed that the ISA should be amended so that the PJCIS is only precluded from reviewing agency compliance with agency privacy rules, leaving scope for it to review the rules as made (Recommendation 183).

The department is not aware of any other proposed amendments regarding the operation of Part 4 and Schedule 1 of the ISA.

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James Paterson **asked the following question:**

CHAIR: Of course. I understand that. It would be helpful if you could take that on notice. You just said you would seek ministerial guidance. Is the Attorney-General the responsible minister for the Intelligence Services Act? If not, who would it be?

Mr Walter: It depends on which provisions we're talking about, so how about we provide you with that information in relation to those particular provisions of the act?

CHAIR: Yes, that would be good as well

The response to the Senator's question is as follows:

Under the Administrative Arrangements Order, the *Intelligence Services Act 2001* (Cth) is administered by the Minister of State administering:

- the Department of Defence—insofar as it relates to the Australian Signals Directorate and that part of the Department of Defence known as the Australian Geospatial-Intelligence Organisation and the Defence Intelligence Organisation
- the Department of Foreign Affairs and Trade—except to the extent administered by the Prime Minister, the Minister for Defence and the Minister for Home Affairs
- the Department of Home Affairs—insofar as it relates to the Australian Security Intelligence Organisation, and
- the Department of the Prime Minister and Cabinet—insofar as it relates to the powers or functions of the Prime Minister under sections 9A, 13(1A), 17(3) and Schedule 1, clauses 14(1) and 14(5).