

**Senate Finance and Public Administration Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

Budget Estimates 26 May-6 June 2014

Prime Minister and Cabinet Portfolio

**Department/Agency:** Department of the Prime Minister and Cabinet

**Outcome/Program:** 1.1 Prime Minister and Cabinet

**Topic:** Independent National Security Legislation Monitor

**Senator:** Senator the Hon Penny Wong

**Question reference number:** 177

**Type of Question:** Written

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**Question:**

When did the Prime Minister decide that the position of the Independent National Security Legislation Monitor would not be filled upon the expiry of Mr Walker's appointment on 20 April 2014?

How have the statutory functions of the Independent National Security Legislation Monitor been undertaken since 20 April 2014?

Does section 7A of the *Independent National Security Legislation Monitor Act 2010* provide that the Committee on Intelligence and Security may refer matters to the Independent National Security Legislation Monitor? How will references under the Act be managed?

Does section 20 of the Independent National Security Legislation Monitor Act 2010 provide that an Acting Independent National Security Legislation Monitor may be appointed? Why has an Acting Independent National Security Legislation Monitor not been appointed?

**Answer:**

1. On 25 January 2014, the Prime Minister agreed that the *Independent National Security Legislation Monitor Act 2010* (the Act) should be repealed. The Monitor has concluded a thorough review of key national security and counter-terrorism legislation in the Monitor's statutory mandate. The Government is considering a total of 82 complex recommendations made by the Monitor in his four reports and will respond in due course. The Government has not appointed a new Monitor, pending passage of the Independent National Security Legislation Monitor Repeal Bill 2014 (the Repeal Bill).
2. While the Government has not appointed a new Monitor pending passage of the Repeal Bill, comprehensive oversight of relevant national security and

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counter-terrorism legislation remains. A number of other standing, independent statutory offices and parliamentary committees have broad powers of review in relation to the exercise of counter-terrorism powers, the Parliament also plays an integral role in scrutinising proposed legislation, and the Government can appoint executive reviewers to undertake ad hoc inquiries as needed.

3. Section 7A(1) of the Act enables the Parliamentary Joint Committee on Intelligence and Security to “refer to the Independent National Security Legislation Monitor a matter that the Committee:
  - a. becomes aware of in the course of performing its functions under subsection 29(1) of the Intelligence Services Act 2001; and
  - b. considers should be referred to the Monitor.”

The Monitor has not been referred any such matter under the Act to date.

4. Section 20(1) of the Act enables the Prime Minister to “appoint a person to act as the Independent National Security Legislation Monitor:
  - a. during a vacancy in the office of the Monitor (whether or not an appointment has previously been made to the office); or
  - b. during a period, or during all periods, when the Monitor:
    - i. is absent from duty or from Australia; or
    - ii. is, for any reason, unable to perform the duties of the office; so long as the period, or the total of all periods, is not more than 12 months.”

The Government’s intention is to repeal the Act. While the Act allows for the appointment of an acting Monitor, there is no statutory requirement to make such an appointment.