

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Budget Estimates Hearing 25-29 May 2015

Prime Minister and Cabinet Portfolio

Department/Agency: Independent National Security Legislation Monitor

Outcome/Program: Outcome 1: Prime Minister and Cabinet

Topic: Complaint procedures

Senator: Senator the Hon Nick Xenophon

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Question:

Senator XENOPHON: In respect of your role, under section 3 of the objects of your role - and I am not going to be trite and rehash those that you are well familiar with - can you advise how you would interpret that in the context of a complaint about the Inspector-General of Intelligence and Security. If a person were dissatisfied with their dealings with IGIS, do you see that you have a role to deal with any systemic issues, or to do with any particular complaints? How far do you see your role going in the context of your statutory responsibilities?

Mr Gyles: The IGIS's jurisdiction and legislation certainly are relevant in the architecture of the field. As you know, it was referred to by a number of people in the inquiry that I am conducting at the moment. Whether or not that could be the focus of a particular inquiry is another issue that I would like to think about, but certainly there is no inhibition on looking at how that is working.

Senator XENOPHON: Again, I am very happy for you to take this on notice -

Mr Gyles: I would have to think.

Senator XENOPHON: I am very happy for you to reflect on this. I am not demanding or requesting an answer immediately. Looking at the objects of the act about whether agencies are acting consistently with Australia's international obligations, that includes a number of factors. If there is an allegation that a certain operation by ASIS or ASIO was not lawful but, on the face of it, there was a finding by the Inspector-General of Intelligence and Security that there was no issue with the legality or the lawfulness of that particular operation, but there is a contrary, cogent view that has been expressed, is that something that you would look into under the objects of the legislative framework that has appointed you?

Mr Gyles: I rather doubt that one instance would be enough to make that a focus.

...

Senator XENOPHON: No, I am not asking a question on merits; I am just trying to establish whether or not, if a person has a complaint about the conduct of IGIS, Mr Gyles as the Independent National Security Legislation Monitor has jurisdiction to look at those matters. It is not a trick question; it is a question as to whether the monitor has those powers or not.

CHAIR: And it may be that some advice is needed.

Mr Gyles: I follow what you are asking, and I do not wish to say more than I have about it. You will understand that IGIS is not a named person in the statute, I think.

Senator XENOPHON: Although it does say that -

Mr Gyles: I do not want to -

Senator XENOPHON: For the act, yes. It is a question of interpretation as to whether the objects of the act and other parts of the act are broad enough. That is something I have invited you to take on notice.

Answer:

As outlined in Section 6(1) of the *Independent National Security Legislation Monitor Act 2010* (the Act), the Independent National Security Legislation Monitor (the Monitor)'s principal role is to review the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation. The counter-terrorism and national security legislation within the scope of the Monitor's consideration is set out in section 4 of the Act. The *Inspector-General of Intelligence and Security Act 1986* is not included.

Subclause 6(2) of the Act provides that it is not a function of the Monitor to 'consider any individual complaints about the activities of Commonwealth agencies that have functions relating to, or are involved in the implementation of, Australia's counter-terrorism and national security legislation'. Thus, individual complaints about the activities of the Inspector-General are not within jurisdiction. That does not mean that the activities of the Inspector-General are necessarily excluded from review, where relevant to a function being performed under the Act.