

# Senate Finance and Public Administration Legislation Committee

## ANSWERS TO QUESTIONS ON NOTICE

Additional Estimates 13-16 Feb 2012

Prime Minister and Cabinet Portfolio

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

**Outcome/Program:** 1.1.2 National Security and International Policy

**Topic:** INSLM engagement with COAG reviews

**Senator:** Senator Rhiannon

**Question reference number:** 45

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### Question:

Senator RHIANNON: Minister, last December the COAG review of federal and state counterterrorism laws was one year overdue. When this issue came up at estimates in October, the Secretary of the Commonwealth Attorney-General's Department, Mr Roger Wilkins, admitted with his delightful use of language – honed over 10 years or more, probably, of state and federal estimates hearings – that the review had drifted. 'Drifted' was his word. Mr Wilkins went on to blame delays on the appointment of the independent national security legislation monitor and how the monitor's role in reviewing counterterrorism legislation would interact. We have heard today from the monitor, Mr Walker, and he told us that his office and the review do not interrelate at all, nor is it appropriate to do so. So in light of Mr Walker's response, was Mr Wilkins' answer incorrect? Who is correct? Mr Wilkins or Mr Walker?

Dr McCarthy: Senator, can you just repeat your account of what Mr Walker said about his role and the planned COAG review of counterterrorism legislation?

Senator RHIANNON: I am referring to what we just heard from Mr Walker. If I understood correctly, when I raised the issue of the COAG review with him, he said his office and the review do not interrelate at all, nor is it appropriate to do so. Whereas when I was questioning Mr Wilkins about the COAG review, probably the main reason he gave for that delay was the appointment of the monitor and how the monitor's role in reviewing counterterrorism legislation would interact. So the two reasons seem to be at odds with each other.

Dr McCarthy: The COAG review is not yet in train but we expect that it will be shortly established. My recollection is that Mr Walker's advice was sought on that interaction and whether there was any reason why the review should be delayed in light of his forthcoming appointment. I also recall, from my hearing of what Mr

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Walker was saying, that he expected to be consulted and, indeed, looking forward to being consulted in the process of the COAG CT review. So we might be talking at slightly cross-purposes.

Senator RHIANNON: I am happy for you to take that on notice but I did think it was an important point in that, when I questioned Mr Walker about interrelating, I understood that he said it was not appropriate that they do so, whereas Mr Wilkins essentially gave that as a reason for the delay. I would just like that clarified. I am trying to understand the process of the reviews and the reason for the delays. I would ask you to clarify the issue. My specific question was: in light of Mr Walker's response was Mr Wilkins' answer incorrect? Who is correct? Mr Wilkins or Mr Walker? Can I leave that one with you?

Dr McCarthy: Certainly. I would, though, refer you to an answer to a question raised by Senator Ludlum in relation to the COAG review of counterterrorism legislation, specifically: how will the Office of the Independent National Security Legislation Monitor be engaged in relation to the review? This was tabled in September. The answer was that the review committee will take account of the appointment of the monitor and the role of the monitor in reviewing the Commonwealth national security and counterterrorism legislation. The government expects the review committee will engage with the monitor in a productive way such as through sharing relevant documents on Commonwealth legislation to avoid unnecessary duplication. And I think we should also check what Mr Walker said. I do not recall him saying that such cooperation would be inappropriate, but we can check the record.

**Answer:** As Mr Wilkins indicated at Senate Estimates on 18 October 2011, the commencement of the COAG Review of counter terrorism legislation has in part been delayed while the Government considered the intersection of the COAG Review with the Independent National Security Legislation Monitor's review. This was necessary because certain provisions of the *Criminal Code Act 1995* and the *Crimes Act 1914* are reviewable by both the COAG Review and the Independent National Security Legislation Monitor.

The government consulted Mr Walker on the COAG Review and Mr Walker provided written advice and described it as 'preliminary suggestions' at Senate Estimates on 13 February 2012.

Having taken into account Mr Walker's suggestions, the Government expects the COAG Review Committee will interact with the Independent National Security Legislation Monitor for example, through sharing relevant documents on

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Commonwealth legislation to avoid unnecessary duplication. As Mr Walker indicated at Senate Estimates, if there is interaction, 'it would be in the nature of frequent and intimate sharing of information and opinions between us'. It would not be appropriate, as Mr Walker correctly stated, 'for his functions to become an adjunct or annex to the COAG Review'.

As the COAG Review of counter terrorism legislation has not yet commenced, there has not yet been any 'interaction' between the COAG Review and the Independent National Security Legislation Monitor.