



# ADDITIONAL ESTIMATES 23 MARCH 2021

## INSLM

### Opening Statement

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1. This is my first appearance before the Committee.
2. I was appointed by the Attorney-General on 8 July 2020 to act as the Independent National Security Legislation Monitor, or the INSLM, while arrangements for my permanent appointment were progressed.
3. I was then appointed by the Governor-General as the fourth INSLM for a three year term on 26 November 2020.
4. The 2019-2020 annual report was tabled in Parliament in February. It sets out my plan for work going forward.
5. During my term I am required by the *INSLM Act* to review two pieces of legislation; Division 105A of the Commonwealth *Criminal Code*; and Division 82 and Parts 5.2 and 5.6 of the *Code*.
6. Division 105A, otherwise known as the High Risk Terrorist Offenders scheme, allows the Minister for Home Affairs to apply to a State or Territory Supreme Court for a Continuing Detention Order. I will report on the operation of this scheme by 8 December 2021. Work on this has commenced.
7. Division 82 concerning sabotage, Part 5.2 concerning espionage and related offences, and Part 5.6 concerning the secrecy of information, were introduced by what is known as the *Espionage and Foreign Interference Act* or the *EFI Act*. I am required to commence this review as soon as practicable after June 2021. I anticipate this to be the largest and most complex review any INSLM has undertaken.
8. In addition to being required to undertake these two reviews, the *INSLM Act* empowers me to decide to undertake reviews of other counter-terrorism and national security legislation. On 2 March I announced that I had commenced an ‘own initiative’ review into the operation of Part 3



Division 1 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (the *NSI Act*) as it applies in the 'Alan Johns' matter.

9. My predecessor, James Renwick, was unable to complete a similar review prior to his term concluding.
10. I hope that it assists if I remind the Committee of the following.
11. Alan Johns is a pseudonym. He was charged, arraigned, convicted on his plea of guilty, sentenced and served his sentence - without public awareness of any of this. The court was, for all appearances, closed. No reasons of any Magistrate or Judge who presided over any of the various steps in the process have been published.
12. The only public disclosure of any aspect of this matter was an answer to a question from Senator Patrick that was conveyed to the Senate on 19 December 2019.
13. These unique circumstances arose from orders made with the consent of the Commonwealth Director of Public Prosecutions (CDPP), Alan Johns and the Attorney-General, who was heard by reason of the invocation of the *NSI Act*. The orders that were actually made are now available on the INSLM website.
14. The power exercised to make these orders is in Part 3 Division 1 of the *NSI Act*, dealing with orders made by consent.
15. As part of my review I have already looked at a great deal of information from relevant Commonwealth agencies. I have arranged to confer with Alan Johns and his legal representatives to get their insights into these matters. I have also arranged to confer with the judicial officers who presided over Alan Johns' prosecution. Public hearings will be held in June. I am hopeful that my invitation on the INSLM website seeking submissions will be taken up widely.
16. I should also mention Part 3 Division 2 of the *NSI Act* that provides for non-consensual processes by which the Attorney-General can intervene in federal criminal proceedings to protect disclosure of national security information. The procedures to be followed, when Part 3 Division 2 of the Act is invoked, are complex.

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17. These are the provisions that have been invoked in prosecutions before the ACT Courts of Bernard Collaery and a former intelligence officer referred to as 'Witness K'.
  18. Equivalent provisions relating to civil proceedings have been invoked in defamation proceedings before the Federal Court brought by Ben Roberts-Smith against Fairfax Media Publications Pty Ltd.
  19. The operation of these provisions of the *NSI Act* were reviewed by one of my predecessors in 2013, though with a specific focus on their operation in counter-terrorism trials.
  20. Having regard to concerns that have been expressed, I will at the appropriate time be considering whether to undertake a further review of these provisions of the *NSI Act*. That time is not now. If any such review is to be undertaken it will doubtless be greatly assisted by input from, at least, those involved in the prosecutions of Mr Collaery and 'Witness K'.
  21. I also note that since Dr Renwick's last appearance before this Committee, he completed his review of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (TOLA) and provided this report to the Attorney-General and the PJCIS. I am assured that the PJCIS found the report beneficial in its own review of TOLA.