

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Parliamentary Joint Committee on Intelligence and Security
Inquiry into the Review of Part 14 of the Telecommunications Act 1997
Telecommunications Sector Security Reforms

QoN Number: 01

Subject: Engagement with Communications Alliance on Mandatory Data Retention Report

Asked by: Mark Dreyfus

Question:

Mr DREYFUS: On that last point that Senator Keneally was asking you about, on the mandatory data retention report of this committee, which I think the government now has had for seven months, the Communications Alliance said that the Department of Home Affairs had not spoken to them about the report at all. Is that right?

Mr Ablong: That is not in my line of accountability within the department, so I really can't answer that question.

Mr DREYFUS: Maybe you could take it on notice and come back to us?

Mr Ablong: I would be happy to do that.

Answer:

The Department is working with relevant departments and national security and law enforcement agencies to prepare advice to the Government on the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) report on the mandatory data retention regime.

The complexity of the PJCIS' recommendations and the number of government stakeholders at the Commonwealth, State and Territory levels has necessitated additional time in which to formulate advice to Government on the response.

The Department has not consulted industry directly on the development of the response. The Department is considering the submissions made by industry to the Committee and the recommendations made by the Committee on issues that are relevant to or were raised by industry.

The Department will engage with industry as necessary in the implementation of the Government's response to the PJCIS report after it has been agreed and published.

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Parliamentary Joint Committee on Intelligence and Security
Inquiry into the Review of Part 14 of the Telecommunications Act 1997
Telecommunications Sector Security Reforms

QoN Number: 02

Subject: Regulator Performance Framework

Asked by: Mark Dreyfus

Question:

Mr DREYFUS: Just pause there. Before you go on, does the Australian government's Regulator Performance Framework apply to the telecommunications sector security reforms? If it doesn't, why doesn't it?

Mr Grunhard: The department's statement on the Regulator Performance Framework notes that functions that extend to national security, such as the telecommunications sector security reforms, are exempt from the department's reporting under the RPF. Instead what the department has done is report under section 315J of the Telecommunications Act, as recommended by this committee.

Mr DREYFUS: Just to be clear: the government, via the Attorney-General's Department, assured this committee that the Australian government's Regulator Performance Framework would be applied to the telecommunications sector security reforms. This committee recommended the passage of the bill partly on the basis of that assurance. What happened between 2017 and now?

Mr Grunhard: I can't speak to the evidence given in 2016, Mr Dreyfus, but I can say that the department has considered the matter. That's why, in the statement it put out under the Regulator Performance Framework, it's noted that some functions are exempted. But the annual reporting provided under 315J covers off on regulatory performance measures.

Mr DREYFUS: The failure of the government to give effect to the assurance that was provided to this committee by the Attorney-General's Department in 2017—is this something that the Department of Home Affairs has ever thought to draw to the attention of this committee?

Mr Grunhard: I'm happy to seek further information, on notice, about the decision-making that went to that exemption under the Regulator Performance Framework, if that would be helpful.

Mr DREYFUS: It would be helpful. This exemption, or the reason that you're offering for not applying the Australian government's Regulator Performance Framework, which the Attorney-General's Department assured this committee would be applied—where does that exemption come from?

Mr Grunhard: My understanding is that it's a decision made under the statement that the department publishes under that framework, but, as I say, I'm very happy to seek

some further information about that process.

Mr DREYFUS: What I would appreciate is a detailed explanation of when the decision was made not to apply the Regulator Performance Framework to the TSSR, who made the decision, and a detailed explanation of why the decision was made. While you're about it, it would be helpful if you could explain why the decision has never been communicated to the Intelligence and Security Committee.

Mr Grunhard: Understood

Answer:

While using the Regulator Performance Framework was discussed during hearings on the Telecommunications and Other Legislation Amendment Bill 2016, the Parliamentary Joint Committee on Intelligence and Security (PJCIS) Advisory Final Report ultimately recommended that the Telecommunications Sector Security Reforms annual report, mandated under s315J of the *Telecommunications Act 1997*, be used to report on regulatory performance measures. This is in accordance with Recommendation 7 of the PJCIS Advisory Final Report.

The Government accepted this recommendation in its response to the report tabled on 10 August 2017, noting that section 315 of the proposed bill would be amended to specify the recommended reporting requirements.

The Regulator Performance Framework requires regulators to assess and publically report their overall regulatory performance. Section 315J of the Telecommunications Act 1997 provides for such a report on the Department's regulatory performance, including both quantitative measures and a summary of feedback or complaints. Two such reports have been published on the Department of Home Affairs website (for 2018-19 and 2019-20).

The Regulator Performance Framework report for Home Affairs was approved by the then Minister for Home Affairs on 25 September 2019, noting that national security regulatory functions are excluded from reporting requirements of the RPF.