

Parliamentary Joint Committee on Intelligence and Security

Attorney-General's Department

Hearing date: N/A

Question date: 16 May 2024

Peter Khalil asked the following question:

1. Item 52 of Schedule 1 of the Bill proposes to add to the Committee's functions under the Intelligence Services Act 2001, an ability to inquire into certain legislation on its own motion.

- a. Is this function intended to provide for the Committee to inquire on its own motion into new counter-terrorism and national security bills—that is, bills to create entirely new Acts—or only bills that amend [make 'reforms to'] existing legislation?
- b. Is this function intended to empower the Committee to review, on its own motion, the substance (eg operation, effectiveness and implications) of legislation before it expires, or only to review the 'expiry, lapsing or cessation of effect' of the legislation (ie whether the legislation should expire or not)?

The response to the question is as follows:

- a. Item 52 of Schedule 1 of the Bill is intended to enable the Committee to review and inquire into any proposed reforms to counter-terrorism or national security legislation of its own motion, including proposed amendments to existing legislation and bills to create new principal Acts. This would not prevent the Committee performing any of its other functions including considering matters referred to it by relevant Ministers or Parliament.
- b. This function is intended to provide the Committee with discretion to decide whether and how to undertake a review or inquiry into reforms or legislation that is due to expire, lapse or cease having effect. This could extend to consideration of the operation, effectiveness and implications of the legislation.

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Peter Khalil asked the following question:

1. Item 74 of Schedule 1 of the Bill proposes to amend subclause 6(5) of Schedule 1 of the Intelligence Services Act 2001 so as to require the Committee to obtain explicit ministerial approval before publishing or disclosing any evidence or document provided to it. [This would include, for example, every submission to every Committee inquiry.]

a. Is this the intended scope of the provision, as amended?

b. If so, noting the significant implications of such a provision for parliamentary privilege and for the operation of the Committee, can the Department please provide further information as to why the amendment is considered necessary?

The response to the question is as follows:

The proposed amendment would require the Committee to obtain the advice of the responsible Minister(s) about whether disclosure or publication of evidence taken by the Committee or the contents of documents produced to the Committee might disclose a matter not permitted to be disclosed under clause 7 of Schedule 1 of the *Intelligence Services Act 2001*. Clause 7, as amended by the Bill, would prevent disclosure of particularly sensitive information held by the Committee.

The amendment is intended to ensure that the Committee must seek ministerial advice if the Committee considers the information it proposes to disclose might be of a nature that it would be subject to restrictions under clause 7. It is not intended to require the Committee to seek ministerial advice about the disclosure of all information that it receives, noting that much of this information may be in the public domain and/or not sensitive.