

Further to my e-mail of earlier today reviewing the draft transcript, please see below our response to the question on notice posed to us by Mr Hill during the hearing:

Regarding Mr Hill's question on notice (p.9 of draft transcript), he essentially asks whether we believe the Bill needs to be amended to direct IGIS with regard to acknowledging a request from the PJCIS ("The IGIS could in theory do nothing and never write back to us, which doesn't seem to be ideal or in the spirit.") and separately to direct the IGIS to provide advice about amendments to their substantive response to the committee where those amendments are requested by agencies ("And the committee would not necessarily know if the agencies had heavily edited the report that came back."). In relation to the latter, Mr Hill draws a parallel to the editing process for Auditor General reports where the Auditor-General Act apparently makes transparent where redactions have been made.

On reflection, our further response to this question aligns with the preliminary response given by Mr Bassi during the hearing to the effect that the IGIS should be able to act at their own discretion rather than these matters being prescribed. It would make little sense for an IGIS to simply ignore a PJCIS request other than in unusual circumstances. Likewise, it would be practically difficult for IGIS's response to include useful description of redactions made.

There is also a risk in prescribing/legislating that the IGIS must respond in a particular way, as in rare circumstances the IGIS may not wish the PJCIS or others to know they are looking (or indeed not looking) into a particular matter. On the specific question as to whether the IGIS should be obliged to tell the PJCIS if they have not taken on a referral – a problem with such prescription is that, by deduction, if the IGIS has not given that notice it will mean they are indeed investigating. This would potentially remove IGIS's discretion to employ the, at times frustrating but important, 'neither confirm nor deny' response where IGIS deems appropriate.

In this regard, subsequent evidence given by IGIS themselves during the hearing (especially Dr Jessop's response to a question from Mr Hastie at pp.15-16) provides important context and reassurance. This includes Dr Jessop's advice that IGIS could provide classified responses to the PJCIS (with greater opportunity for substantive and detailed advice on the matters referred by the committee), albeit still within the criteria IGIS would need to apply to responses to PJCIS referrals (per the proposed new section 22A of the IGIS Act) – for example inter alia not prejudicing a right to a fair trial or compromising operationally sensitive information.

This reinforces our considered view of the need for the IGIS and PJCIS– per Mr Taylor's evidence – to come to practical arrangements for these processes, building on the existing relationship of trust and confidence between the two: "[T]here will need to be, and I am sure there will be, suitable levels of a confident relationship between the PJCIS and IGIS in the practicalities of this matter. That will occur not only in the referral process but also in the reporting process as well, noting that there is the potential for responses from the IGIS to either be nil or perfunctory and that a suitable modus vivendi will need to be worked out between the IGIS and the committee if indeed these amendments are passed."

It is our view that this is better achieved through coordination and confidence than legislative prescription.

Kind regards,



Chris Taylor

Head of Statecraft and Intelligence Program

Australian Strategic Policy Institute

Level 2, 40 Macquarie St, Barton ACT 2600

twitter.com/StatecraftINT

www.aspi.org.au | www.aspistrategist.org.au | [Policy, Guns & Money: The ASPI Podcast](#)

The information contained in this email is confidential. If you are not the intended recipient, you may not disclose or use the information in this email in any way. The Australian Strategic Policy Institute does not guarantee the integrity of any emails or attached files. It is also not responsible for any changes made to them by any other person.