

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

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Question No. 80

Senator Stott-Despoja asked the following question at the hearing on 18 February 2008:

1. Has the Department reviewed or analysed the operation of the National Security Information (Criminal and Civil Proceedings) Act 2004 (Act)? If so, please provide details.
2. Is the Department aware of how many times the Act has been invoked in criminal or civil proceedings pursuant to sections 6 or 6A, respectively? If so, please provide details.
3. Is the Department aware of how many notices have been issued to the Attorney-General's office pursuant to sections 24, 25, 38D and 38E of the Act? If so, please provide details.
4. Is the Department aware of how many orders have been made pursuant to sections 31 and 38L of the Act? If so, please provide details.
5. Is the Department aware of how many matters have involved arrangements being made between the defence and prosecution pursuant to section 22 of the Act?
6. Is the Department satisfied that arrangements reached pursuant to section 22 of the Act are not having an adverse impact upon the prospect of a successful prosecution?
7. Is the Department satisfied that the operation of the Act is not excluding material evidence from proceedings?
8. Is the Department aware of any procedural difficulties (for example, inordinate delays to proceedings) caused by the application of the Act?
9. What has been the reaction of the criminal defence bar and Commonwealth Director of Public Prosecutions to the operation of the Act?
10. In the Department's view, has the operation of the Act caused any interference to the ordinary and timely conduct of criminal and civil trials?
11. Have there been any applications made by litigants to abort trials due to the operation of the Act? If so, please provide details.
12. Does the Department consider that the application of the Act in the matter of R v. Abdul Nacer Benbrika & ors contributed to the length of time that the defendants in that matter were incarcerated prior to trial?
13. Are both the Department and the Attorney-General satisfied that the reporting requirements pursuant to section 47 of the Act are sufficient to provide adequate Parliamentary oversight to the operation of the Act?
14. Does the Government intend to review the operation of the Act?
15. Does the Government intend to review the operation of any other Commonwealth laws that relate to terrorism or national security?

The answer to the honourable senator's question is as follows:

1. The Department regularly analyses and reviews the operation of all legislation it administers.
2. Yes. To date, the Act has been invoked ten times pursuant to section 6 and once pursuant to section 6A.
3. Yes. To date, notices have been issued pursuant to section 24 on ten occasions.
4. Yes. To date, orders have been made pursuant to section 31 on one occasion.
5. Yes. To date, arrangements have been negotiated pursuant to section 22 in seven matters.
6. Yes. Arrangements made pursuant to section 22 of the Act allow for flexibility and for outcomes to be negotiated.
7. Yes. The Act gives courts more options as to the form in which admissible evidence can be adduced.
8. No.
9. It would not be appropriate for the Department to comment on the views of other organisations or agencies. The Department has received correspondence on the Act from legal professional bodies including the Australian Bar Association and Law Council of Australia. With respect to the Commonwealth Director of Public Prosecutions, as with other relevant Commonwealth agencies, the Department has ongoing discussions about the operation of the Act.
10. No.
11. No.
12. It is not appropriate to comment on criminal prosecutions currently before the court.
13. Yes.
14. The Government will consider lessons learnt from cases in which the Act has been invoked.
15. The Government is committed to ensuring that Australia's national security and counter-terrorism legislation is continually reviewed to ensure that laws remain effective and balanced.

As part of this process, the Government is giving detailed consideration to the recommendations made by the by the Parliamentary Joint Committee on Intelligence and Security and the Security Legislation Review Committee chaired by the Hon Simon Sheller in their reviews of counter-terrorism and security legislation.

The counter-terrorism laws enacted in 2005, including the control order and preventative detention regimes, will be comprehensively reviewed by the Council of Australian Governments in 2010. The Clarke inquiry into Dr Haneef's case will also ensure that lessons learnt from counter-terrorism investigations are identified and addressed.