

**Question on notice no. 957**

**Senator Rex Patrick:** asked the Minister representing the Attorney-General on 25 November 2019—

With reference to Mr 'Alan Johns':

1. Is 'Alan Johns' a person whose true identity is subject to the provisions of section 41 of the *Intelligence Services Act 2001* or section 92 of the *Australian Security Intelligence Organisation Act 1979*.
2. When did an 'investigating authority' commence its investigation:
  - a. who was the referring agency; and
  - b. who was the investigating agency.
3. When was the matter referred to the Commonwealth Director of Public Prosecution.
4. When was 'Alan Johns' charged with an offence against the laws of the Commonwealth.
5. What specific offences was this person charged with.
6. After this person was charged, was he held in custody or placed on bail.
7. Where and in what court was this person brought to trial.
8. On what date did the trial commence and on what date did it conclude.
9. Was 'Alan Johns' represented by a lawyer or counsel of his choice.
10. Were those lawyers/counsel required to undergo security checks.
11. Was the Commonwealth represented by the Australian Government Solicitor.
12. Was the Commonwealth represented by external counsel.
13. How did 'Alan Johns' plead in relation to each alleged offence.
14. What judicial official or officials heard the matter.
15. Did a jury consider the matter; if not, why not.
16. If the court was closed, on what basis was this done.
17. What verdicts was (were) reached in relation to each charge.
18. What sentence or any other penalty was imposed.
19. On what date did 'Alan Johns' begin a custodial sentence at the Alexander Maconochie Centre (AMC) in the Australian Capital Territory.
20. When was "Alan Johns" released from the AMC.
21. Is it the case that, as 'Alan Johns' has stated on Twitter, all he is lawfully permitted to share about his case is that "all enquiries regarding my matter can be made to the Attorney-General's Department (02 6141 3888) quoting reference number 19/1112".
22. What further information will the Attorney-General make public about this case in accordance with the principles of open justice.
23. In the past 5 years, how many other Australians have been tried in secret before a court.

**Answer —**

**Senator the Hon Marise Payne** – The Hon Christian Porter MP has provided the following answer to the honourable senator’s question:

There are court orders in place restricting the disclosure of information in this matter. Consistent with those orders, I can provide the following information.

The offender known under a pseudonym as Alan Johns communicated confidential information contrary to a lawful obligation not to do so. The relevant offences provide that the Attorney-General’s consent is required before a prosecution can commence. The Australian Federal Police referred a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP). The CDPP considered the brief of evidence and subsequently made an independent decision that a prosecution was the appropriate course of action, in accordance with the Prosecution Policy of the Commonwealth. Accordingly, the CDPP sought my consent, which I provided.

The information was of a kind that could endanger the lives or safety of others. This risk remains. The prosecution commenced in the ACT Magistrates Court and was ultimately heard in the ACT Supreme Court. The National Security Information (Criminal and Civil Proceedings) Act 2004 (NSI Act) was invoked to manage the protection of the national security information in the proceedings. Once the NSI Act is invoked, the Attorney-General may be heard on issues relating to the disclosure and protection of national security information. The Attorney-General was represented by the Australian Government Solicitor in relation to the NSI Act. The court made orders under section 22 of the NSI Act, with the consent of the parties, protecting the national security information. The orders provided for a mechanism for closure of the court in circumstances where highly sensitive national security information would have been disclosed, but did not prevent the defendant or his counsel from accessing the information.

The NSI Act balances the need to protect national security information with the principle of open justice and gives the court wide powers to make orders it considers appropriate about such matters. The nature of the national security information involved in this proceeding informed the Commonwealth’s position to seek protective orders. The matter is unique in my experience, and I am not aware of any other similar cases.

Mr Johns was represented by counsel of his choice. Mr Johns pleaded guilty to the offences. He was sentenced to a term of imprisonment for the offences. The term of imprisonment was two years and seven months, imposed across an aggregate of five charges. He was released from custody on recognisance to be of good behaviour for three years.

Consistent with the Supreme Court orders, the defendant may disclose the fact of his conviction and terms of his sentence and that the nature of his offending involved ‘mishandling classified information’. The defendant could not otherwise disclose sensitive information including information that reveals the nature of his offending or the provisions against which the defendant was charged or convicted. The orders did

provide for the defendant to inform persons that the disclosure of the nature of his offending or the provisions against which the defendant was charged and convicted is prohibited by order of a court, and that further inquiries may be directed to the Attorney-General's Department.

Any further comment on this specific matter would be inappropriate in light of the court orders and the risks which led to those orders being made.