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Inquiry into the Australian Federal Police's Oil for Food Taskforce

Senate Legal and Constitutional Affairs References Committee

On 14 July 2014, the Australian Federal Police (AFP) received an invitation from the Committee to provide a submission into the following terms of reference:

- a) the work undertaken by the Australian Federal Police's Oil for Food Taskforce;
- b) the level of resourcing that was provided and used by the taskforce; and
- c) any other related matters.

Background

By Letters Patent issued on 10 November 2005, the former Governor-General of Australia, His Excellency Major-General Michael Jeffery, announced the inquiry into the *Report of Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme* (Cole Inquiry). The Cole Inquiry was conducted by the Hon Terence Cole QC with his final report provided to the Government on 24 November 2006.

Commissioner Cole QC found that failure by Australian companies and/or their officers to act in a manner consistent with United Nations (UN) sanctions should be regarded as serious criminal conduct.

The former Attorney-General, the Hon Philip Ruddock MP, announced the establishment of the AFP led Oil for Food Taskforce (OFFTF) on 20 December 2006. The terms of reference for the OFFTF were:

- consider the Commissioner's findings in relation to possible breaches of the law in the context of the report and information obtained by the Cole Inquiry;
- co-ordinate consultation between agencies and authorities with an interest in the finding;
- undertake investigations into possible offences and other breaches of the law that are referred to in the findings of the Cole Inquiry report;
- consult with prosecuting and other relevant authorities on the question of whether prosecutions, or other legal proceedings, should be instituted against any person in connection with the Commissioner's findings;
- refer briefs of evidence and other relevant material to prosecuting or other authorities to enable the appropriate authority to consider whether prosecutions or other proceedings should be commenced for breach of a law; and
- investigate, or refer to appropriate authorities, matters relating to possible breaches of the law not referred to in Commissioner Cole's findings that are discovered during the Task Force's investigations.

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The OFFTF commenced work on 22 January 2007.

The OFFTF was comprised of officers from the AFP, Victoria Police (to advise on potential offences under the *Crime Act 1958 (Vic)*) and the Australian Securities and Investments Commission (ASIC), with administrative and legal support comprising of the Commonwealth Director of Public Prosecutions (CDPP), Attorney-General's Department (AGD) and the Department of Prime Minister and Cabinet (PM&C).

Work of the OFFTF

Resources

In 2006 the Government allocated \$20.3 million to the OFFTF for the three years to 2008/09. This quantum of funding covered the anticipated expenditure for the AFP, ASIC, CDPP, AGD and PM&C for the duration of the OFFTF.

An additional \$3.1 million was committed in the 2009/10 budget to continue the OFFTF for a further 12 months to June 2010. This consisted of \$1.4m for the AFP, \$0.9m for the CDPP, and \$0.8m for the AGD.

The AFP considers that the level of resourcing made available to it through the provision of funding specifically for the OFFTF was sufficient to implement the terms of reference. Although resources fluctuated across the life of the OFFTF, at the height of the investigation, there were 28 people allocated to the OFFTF.

Governance

Upon inception of the OFFTF, a Senior Coordination Group (SCG) was established to report to Government on the work of the OFFTF. The SCG was chaired by the Secretary of the AGD, and included representation from the Deputy Commissioners of the AFP and Victoria Police, the ASIC Chairman and the CDPP. Senior executive officers also represented PM&C and the Department of Finance and Deregulation.

The role of the SCG was to provide strategic oversight to the OFFTF. The SCG met quarterly to ensure the OFFTF was operating effectively and had appropriate resources. The SCG had no role in relation to the conduct of investigations by the OFFTF and associated operational decision making.

Investigation

The scope of the OFFTF was to investigate all allegations of criminality raised by the Cole Inquiry. The OFFTF conducted wide ranging inquiries including interviewing a large number of witnesses and examining approximately 900,000 pages of documents submitted to the Cole Inquiry together with documents obtained from the UN, shipping records, and banking records.

The OFFTF identified numerous present or former Australia Wheat Board (AWB) employees who may have held information relevant to the investigation. The OFFTF formally corresponded with the individuals identified by Commissioner Cole QC as possibly committing criminal offences, however all declined to participate in formal records of interview. The OFFTF also interviewed a number of former and current Department of Foreign Affairs and Trade (DFAT) and AUSAID employees.

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The OFFTF directed significant resources towards a financial analysis of all relevant transactions, and in support of this sought evidence from seven foreign jurisdictions via mutual assistance requests through the AGD.

In July 2007, ASIC determined it would pursue a separate investigation into whether offences had been committed contrary to the *Corporations Act 2001* and, in August 2007, withdrew its members from the OFFTF.

The AFP understands that ASIC is also preparing a submission to the Committee.

Challenges

Throughout the investigation the OFFTF exhaustively canvassed and assessed readily-available evidence, however, the OFFTF faced a number of key challenges in the course of the investigation including:

- Evidence obtained from the Cole inquiry from witnesses was not in an admissible form for use in criminal proceedings and had to be recollected, in an admissible form using *Crimes Act 1914* powers and in accordance with the requirements of the *Evidence Act 1995*. In addition, the AFP could not force witnesses to provide statements in relation to the matter;
- Much of the material relevant to the investigation was held by international entities, which required time-consuming legal processes and the cooperation of overseas agencies. In particular there were significant delays in obtaining information in an admissible form through MAR's from other jurisdictions, as is the case in many complex fraud offences involving other jurisdictions; and
- when the AFP sought relevant material from ASIC, under section 127 of the *Australian Securities and Investment Commission Act 2001* (Cth); the dissemination of this material was challenged through court action by AWB.

Hastings QC Advice

In July 2009, the then AFP Commissioner Mick Keelty engaged Peter Hastings QC to “undertake a review of the material gathered to date and to consider the likelihood, or otherwise, of a successful conclusion to the matter, including future avenues of enquiry further evidence to be gathered”.

Mr Hastings QC advised the resources required to mount a prosecution, and the consequential costs, would be disproportionate to the prospects of the criminal prosecution succeeding.

On 28 August 2009, former Commissioner Keelty publicly announced that based on the findings of Mr Hastings QC and in consultation with ASIC, AGD and the CDPP, the AFP was discontinuing the investigation into the AWB and other allegations raised by the Cole Inquiry.

Related Matters

The AFP notes that the OFFTF was previously discussed in the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity in August 2012, where a copy of the legal advice provided by Mr Hastings QC was requested.

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The AFP took this request on notice as a potential claim for Public Interest Immunity (PII). The Committee was subsequently advised in writing in September 2012 by the Minister for Home Affairs and Justice that the AFP would claim PII over the legal advice provided by Mr Hastings QC, but also offered a private briefing to the Committee on the decision to discontinue the investigation. This detailed private briefing was subsequently held on 20 September 2012.

It is further noted that this Committee reported in June 2013 and made no recommendations about the work of the OFFTF.

Further assistance to the Committee by the AFP

The AFP would be happy to make officers available to appear and give evidence before the Committee, noting that while the majority of our evidence would be public, if certain detailed aspects of operations were to be discussed it may be necessary to provide this evidence *in camera*.