

Chapter 1

Introduction

Referral and conduct of inquiry

1.1 On 1 December 2016, the Senate referred an inquiry into matters raised by NSW Police Strike Force CIVET and other related matters to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 7 February 2017.¹ On 7 February 2017, the Senate agreed to extend the reporting date to 10 May 2017.² A further extension to 22 June 2017 was agreed by the Senate on 10 May.

1.2 The inquiry relates to the investigation of the so-called 'Jedi Council'—a group of individuals within the Australian Defence Force who were found to have been sharing and receiving inappropriate material via email. Separate investigations of Jedi Council members were conducted by the Australian Defence Force Investigative Service (ADFIS) (Operation JARRAH) and by NSW Police (Strike Force CIVET).

1.3 Matters relating to the investigation of Jedi Council members have been the subject of periodic media reporting since 2013. The particular circumstances surrounding retired Lieutenant Colonel Dubsy were also aired in the Senate in November 2016. This public airing in the Parliament substantially contributed to the inquiry being referred to this committee.

1.4 The motion to refer the inquiry to the committee noted in relation to the Jedi Council:

- (i) in a secret New South Wales Police report, prepared by Detective Sergeant Mark Carter, Strike Force CIVET found that the actions of a number of Australian Defence Force Investigative Service (ADFIS) staff and other sections of the Australian Defence Force (ADF) to deliberately lie, withhold evidence, fabricate information... [mean] the conduct of future investigations [by NSW police] into and with the ADF as [a] whole and ADFIS as a body must be viewed with caution and concern;
- (ii) the personal information of many innocent ADF members, including retired Lieutenant Colonel Dubsy, was provided to the media, in breach of their right to privacy and other fundamental human rights, and without regard for their mental and physical wellbeing;
- (iii) the original ADFIS investigation into the alleged actions of the 'Jedi Council' was limited and was conducted without direct contact with any alleged members of the 'Jedi Council';

1 *Journals of the Senate*, 1 December 2016, p. 755.

2 *Journals of the Senate*, 7 February 2017, p. 830.

- (iv) the ADFIS investigation was limited in scope and did not include appropriate follow-up regarding some of the allegations;
- (v) the ADFIS investigation did not include interviews with alleged victims of material created or distributed by the 'Jedi Council'; and
- (vi) a number of the conclusions reached by the ADFIS were not consistent with the evidence presented to the ADFIS as part of the investigation.

1.5 The committee advertised the inquiry on its website and wrote to individuals and organisations likely to have an interest in the inquiry and invited them to make written submissions. The committee received 10 submissions to the inquiry which are listed at Appendix 1. NSW Police was contacted regarding the inquiry, but did not make a submission. Due to the sensitive nature of the evidence, the committee initially agreed to receive all submissions in camera, but subsequently agreed to publish evidence that enabled it to prepare and table this report. The evidence received from individuals caught up in the Jedi Council affair remains confidential.

1.6 At the close of submissions, the committee did not have in its possession the key document at the centre of the terms of reference: a copy of the NSW Police Strike Force CIVET (post-operational assessment) report prepared by Detective Sergeant Mark Carter at Kings Cross Police Station. The committee agreed that it required a copy of the CIVET post-operational assessment report directly from NSW Police to be able to fulfil the inquiry's terms of reference.

1.7 On 13 February 2017, the committee wrote to the then NSW Police Commissioner, Mr Andrew Scipione AO APM, requesting a copy of the CIVET post-operational assessment report and relevant contextual information. On more than one occasion during March, April and early May the committee secretariat contacted the office of the Commissioner for an update. The advice provided was that it was unlikely a response would be able to be provided before 10 May 2017. Without the CIVET report or any formal communication from NSW Police over a three month period, the committee agreed it would not schedule hearings or seek further evidence.

1.8 On 9 May 2017, the committee agreed to seek a further extension to the reporting date and write to NSW Police Commissioner Mick Fuller insisting that the documents requested in February 2017 be provided to the committee by 9 June 2017. Coincidentally, on 11 May the Office of General Counsel, NSW Police, responded to the committee's letter of 13 February 2017 by writing to the Clerk of the Senate in relation to the letter from the committee of 13 February. The five-page letter outlined reasons why '...NSW Police respectfully declines to produce a copy of the [post operational assessment] report to the Committee'.

1.9 Citing section 49 of the Constitution, publications by former Clerk of the Senate, Harry Evans, and a Senate Select Committee from the 1990s, the letter from the Office of General Counsel expressed the view that the Senate (and by implication a Senate committee) does not have the power to compel NSW Police to produce the post-operational assessment report. It refers to what it described as a limitation to the

Senate's power to compel the production of documents which is observed in practice by the Senate:

...namely, Senate committees should not seek to summon the officers and documents of state or territory governments. This principle is predicated upon the idea that bodies which possess similar powers, such as the Commonwealth Parliament and state and territory parliaments, ought to demonstrate mutual respect for each other and it is essential for comity in the practices of all Houses of Australian Parliaments that this respect is observed.³

1.10 The letter also speculated that NSW Police could object to the production of the CIVET report 'on the basis of a public interest immunity claim', noting that providing the committee with a copy of the report could, in its view:

- prejudice the prevention, investigation or prosecution of offences;
- prejudice national security and defence;
- prejudice the proper functioning of the State; and
- prejudice the relations between the Commonwealth and the State.

1.11 NSW Police subsequently confirmed that the second letter from the committee dated 10 May '...does not change our response in our letter of 11 May 2017'.

1.12 As the report was being finalised, a partially redacted and confidential Strike Force CIVET *Post Operational Assessment* document was made available to the committee by Senator Lambie via an anonymous third party. However, the committee notes the document was unsigned and referenced four different dates. Three of the dates appear on the front title page: 23 July 2012 (immediately beneath the main title), 'version 24/06/2013' in the bottom left-hand corner, and 'Drug Unit 20 April 2014' in the bottom right hand corner. The remainder of the document refers to 'Drug Unit 16 April 2015'. The committee was unable to establish the status of the document and consider it as reliable evidence.

1.13 The committee agreed to finalise the inquiry on 'the papers', summarise the public evidence received (Chapter 2) and make some observations about the nature of the inquiry and the evidence (Chapter 3).

1.14 The committee's correspondence to NSW Police dated 13 February and 10 May 2017, and the response dated 11 May 2017, are included at Appendix 2.

Acknowledgments

1.15 The committee thanks all those who contributed to the inquiry by making submissions and providing additional information.

3 Ms Sally Webb, General Counsel, Office of the General Counsel, NSW Police, correspondence, 11 May 2017

