

Additional Comments by Senator Jacqui Lambie

1.1 Senator Jacqui Lambie, of the State of Tasmania, concurs with the Committee's Report on Matters raised by New South Wales (NSW) Police Strike Force CIVET, and writes separately to further address issues concerning an inability to establish the status of the 'confidential' CIVET report.

1.2 Given the national security times we live in, with an increased risk of terrorism upon our soil, it is key defence agencies; state and local governments working closely together to maintain a level of trust and good communications. While the Committee rightfully does not rely upon the draft CIVET report due to the inability to establish its status, the draft report did raise very serious concerns about the proper workings of federal agencies that have thus far evaded proper Parliamentary scrutiny. In this regard, it is most disappointing that the NSW Police Force refused to cooperate with this Committee and did not make available, even *in camera*, its final CIVET report. The final CIVET report would have certainly aided the Committee in its inquiry.

1.3 While the General Counsel of the NSW Police cites section 49 of the Constitution, and publications by former Clerk of the Senate, Harry Evans, as a proposition that the Senate should not summon officers and documents of state and territory governments for reasons of comity, the issues of these purported limitations have not yet been properly tested. Indeed, Mr Evans noted that 'there are no known limitations in law to this power . . . no authoritative court judgments establishing any such limitations [currently exist]'.¹

1.4 There are judgments that provide some authority that the Commonwealth may not act in such a way as to prevent essential functions of the states.² However, that authority is distinguishable from the present References Committee inquiry in that requiring the final CIVET report to be provided to the Committee would not place a special burden on the State of NSW, by way of legislation or regulations, nor would it curtail or weaken the State of NSW's capacity to exercise their constitutional powers or functions as was the case in *Melbourne Corporation*; the Commonwealth has not introduced an invalid Act as was the case in *Queensland Electricity Commission* nor was this References Committee seeking to introduce any Act whatsoever; nor did this inquiry involve legislation and/or rulemaking that curtailed governmental functions as was the case in *Re Australian Education Union*; and finally this matter has absolutely nothing to do with liability to pay federal tax as was the case in *Austin v Commonwealth* which involved two separate Acts and their construction.

1 Harry Evans, "The Senate's Power to Obtain Evidence", *Papers on Parliament* No. 50, March 2010, p. 3.

2 *Melbourne Corporation v the Commonwealth* 1947 74 CLR 31; *Queensland Electricity Commission v the Commonwealth* 1985 159 CLR 152; *Re Australian Education Union, Ex parte State of Victoria* 1995 128 ALR 609; *Austin v Commonwealth* 2003 195 ALR 321.

1.5 The General Counsel of the NSW Police fails to cite a single established authority where a Senate References Committee did not have the power to compel a document to aid it in its oversight power in the context of an inquiry which has nothing to do with the creation of legislation. Further, the NSW Police General Counsel speculates that it could possibly object to the production of the CIVET report on the basis of a public interest immunity claim without citing any authority to support such possible claim.³

1.6 Given the language of the terms of reference, I do not believe this inquiry would be the proper test case to address the above in the context of production of documents as it relates to a References Committee inquiry being conducted in purely oversight capacity. For these reasons I concur with the Committee's report.

Recommendation 1

1.7 That the inquiry be re-opened should the final NSW Police CIVET report and/or other credible evidence becomes available during the 45th Parliament which contradicts the Committee's reliance upon the Department of Defence's submission of background information and chronology of events.

Jacqui Lambie
Senator for Tasmania

3 Ms Sally Webb, General Counsel, Office of the General Counsel, NSW Police, letter dated 11 May 2017 at p. 4.