

Chapter 1

Introduction

Referral of the inquiry

1.1 On 16 June 2015, the Senate referred the following matter to the Legal and Constitutional Affairs References Committee (committee) for inquiry and report by 25 June 2015:

The handling of a letter sent by Mr Man Haron Monis to the Attorney-General, dated 7 October 2014, and the evidence provided during the Budget estimates, including the subsequent correction of that evidence, with particular reference to:

- (a) the details of the internal inquiry conducted by the Secretary of the Attorney-General's Department, Mr Chris Moraitis, following the discovery that incorrect evidence had been provided and any subsequent changes made to administrative practices between the department and the Attorney-General's office;
- (b) the consideration given by the Joint Commonwealth and New South Wales review team to the correspondence sent by Mr Monis to various members of Parliament and other relevant documents and the basis for the assertion by Mr Thawley that the correspondence would make no difference to the findings of the review; and
- (c) what, if any, changes were made to procedures for the handling of incoming correspondence to the Attorney-General's Department and the Attorney-General's office following the raising of the national terrorism public alert level to 'High' on 12 September 2014.¹

1.2 On 25 June 2015, the Senate extended the committee's reporting date to 12 August 2015.²

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website (http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs). The committee held three public hearings in Canberra on 19 June 2015, 23 June 2015 and 3 August 2015 respectively. A list of witnesses who appeared before the committee at the hearings is at Appendix 1.

Acknowledgement

1.1 The committee thanks all those who gave evidence at its hearings.

1 Senate, *Journals of the Senate*, No. 96–16 June 2015, p. 2663.

2 Senate, *Journals of the Senate*, No. 102–25 June 2015, p. 2820.

Structure of the report

1.2 The report is comprised of two chapters. Chapter 1 introduces the matter and provides some background. Chapter 2 examines the substantive issues raised at the hearings and through answers to written questions on notice, and outlines the committee's views and recommendations.

Background

1.4 On 29 January 2015, Counsel Assisting the NSW State Coroner during the Lindt Café siege coronial inquest stated that the investigation would examine:

the product of the work of the Martin Place Siege Joint NSW and Commonwealth Government Review...That Review is not taking oral evidence or dealing with the evidence of the siege. Its work is principally a gathering and a review of documentary records of both state and commonwealth [sic] government contact with or assessment of Mr Monis over the whole of the eighteen years since his arrival in Australia and the ten years since his citizenship.³

1.5 On 22 February 2015, Department of the Prime Minister and Cabinet (PM&C) released the report of the Joint Commonwealth—New South Wales Government Review into the Martin Place Siege (Thawley-Comley review). The report described the Martin Place siege:

At around 8.33 am on 15 December 2014, Man Haron Monis walked into the Lindt Café, on the corner of Martin Place and Phillip Street, in the heart of Sydney's commercial district. Shortly thereafter, he produced a gun and ordered that the customers and staff be locked inside as hostages. After a standoff lasting around 17 hours, the siege ended in gunfire. Three people died: two hostages and Monis. Several of the other hostages sustained injuries.⁴

1.6 Between 25 May 2015 and 5 June 2015, the NSW State Coroner conducted the first segment of the inquest into the deaths arising from the Lindt Café siege (coronial inquest).⁵ On 25 May 2015, the coronial inquest was alerted to correspondence between Mr Man Haron Monis and the Attorney-General (Monis letter) in which Mr Monis asked if it would be legal to write to the leader of Islamic State.⁶

3 Jeremy Gormly SC, Opening for 29 Jan 2015, p. 12 (available <http://www.lindtinquest.justice.nsw.gov.au/Documents/Opening%20as%20of%20Directions%20Hearing.pdf>).

4 Australian Government Department of Prime Minister and Cabinet and NSW Government Department of Premier and Cabinet, *Martin Place Siege: Joint Commonwealth—New South Wales review*, January 2015, p.iv.

5 NSW State Coroner, 'Inquest into the deaths arising from the Lindt Café siege' at <http://www.lindtinquest.justice.nsw.gov.au/> (accessed 17 June 2015).

6 Paul Bibby and Nick Ralston, 'LIVE: Inquest into the Martin Place Lindt Cafe siege', *The Sydney Morning Herald*, 25 May 2015 at <http://www.smh.com.au/nsw/live-inquest-into-the-martin-place-lindt-cafe-siege-20150525-g8r1m.html> (accessed 18 June 2015).

1.7 At the Senate Legal and Constitutional Affairs Legislation Committee (Legislation Committee) Budget estimates 2015-16 hearings on 27 May 2015, the Attorney-General, Senator the Hon George Brandis QC, stated that the Attorney-General's Department (AGD) received and considered the Monis letter.⁷ The AGD prepared a reply, which was sent from the AGD to Mr Monis on 5 November 2014.⁸ Senator Brandis tabled these letters on 27 May 2015 and narrated the contents of the Monis letter:

I would like to send a letter to Caliph Ibrahim, the leader of the Islamic State, in which making some comments and asking some questions. Please advise me whether the communication is legal or illegal. Thank you, Monis.⁹

1.8 On the same day, the Attorney-General stated that '[c]ertainly Mr Thawley and Mr Comley had access to any documents they needed to have access to'.¹⁰ Ms Katherine Jones, Deputy Secretary, National Security and Criminal Justice Group, AGD stated:

Ms K Jones: Senator Collins, I was seconded to the Department of the Prime Minister and Cabinet as part of the Thawley-Comley review, and we had access to correspondence from all relevant Commonwealth departments and agencies. To specifically reference every piece of correspondence that was provided to review would not have been possible in that review. There were literally hundreds of different pieces of correspondence.

Senator JACINTA COLLINS: Are you able to tell me whether this correspondence was considered by that review?

Ms K Jones: It was provided to the review and we considered all the correspondence that was provided to us.¹¹

1.9 On 28 May 2015, the Minister representing the Attorney-General in the House of Representatives, the Hon Julie Bishop MP, said at question time:

The letter...was placed before the inquiry into the Martin Place siege; the response from the Attorney-General's Department likewise...the Attorney-General is confident that all appropriate protocols were adopted.¹²

1.10 Also on 28 May 2015, the Hon Mark Dreyfus MP asked whether protocols on the handling of correspondence to ministerial offices had been changed after the

7 Senator the Hon George Brandis, Attorney-General, *Estimates Hansard*, 27 May 2015, pp 121–123 and 28 May 2015, p. 87.

8 Senator Brandis, *Estimates Hansard*, 27 May 2015, p. 121.

9 Senator Brandis, *Estimates Hansard*, 27 May 2015, p. 121.

10 Senator Brandis, *Estimates Hansard*, 27 May 2015, p. 124.

11 Ms Katherine Jones, Deputy Secretary, National Security and Criminal Justice Group, *Estimates Hansard*, 27 May 2015, p. 124.

12 The Hon Julie Bishop MP, *House of Representatives Hansard*, 28 May 2015, p. 61.

national terror alert level was increased on 12 September 2014.¹³ Ms Bishop responded by saying that 'the procedure related to the handling of a letter received...is exactly the same procedure as occurred' under the previous government.¹⁴

1.11 During the Senate Legal and Constitutional Affairs Legislation Committee Budget estimates hearing on 28 May 2015, when asked about the letter from Mr Monis to the Attorney-General, Mr Duncan Lewis, Director-General of the Australian Security Intelligence Organisation (ASIO) stated:

I read the letter this morning. I have come to the conclusion, and I advised the Attorney, that it is a simple letter seeking legal advice, from my point of view. It was therefore appropriate that it was passed down to the Attorney-General's Department for a legal opinion...I am not prepared to comment at all on the intelligence value of the letter for a number of reasons. First of all, we are seven months down the track, so the context of it is that it is being looked at through a rear-vision mirror. Secondly, and most importantly, this letter, along with many volumes of ASIO material, are currently the subject of the coronial inquiry in New South Wales. I am not prepared to pass comment on the value or otherwise of the letter in an intelligence context. On my reading of the letter this morning, I came to the view that it was a letter seeking legal advice. I find therefore that it is, in my view, appropriate that the matter was referred to the Attorney-General's Department—and that was the conversation the Attorney and I had.¹⁵

1.12 Also in response to further questions about the Monis letter on 28 May 2015, Senator Brandis stated that:

When the Thawley-Comley review—which is the review by PM&C and the New South Wales premier's department—looked at this, it looked at all of this material including this letter, and it concluded that as late as December, so after this exchange of correspondence, it was still the case that Monis was not somebody who should have raised alerts.¹⁶

1.13 On 4 June 2015, the Legislation Committee received correspondence from both Ms Jones and Senator Brandis. The letter from Ms Jones stated that:

I write to correct the record of evidence provided to the Senate Standing Committee on Legal and Constitutional Affairs hearing of 27 May 2015...I have since checked my recollections with another colleague on the Review. I have concluded that my recollection was incorrect and related to a separate document. While it is the case that the Review considered all the

13 The Hon Mark Dreyfus MP, *House of Representatives Hansard*, 28 May 2015, p. 56.

14 The Hon Julie Bishop MP, *House of Representatives Hansard*, 28 May 2015, p. 56.

15 Mr Duncan Lewis, Director-General, Australian Security Intelligence Organisation (ASIO), *Estimates Hansard*, 28 May 2015, p. 124.

16 Senator Brandis, *Estimates Hansard*, 28 May 2015, p. 126.

correspondence that was provided to it, the correspondence raised by Senator Collins was not provided to the Review.¹⁷

1.14 The letter from Senator Brandis advised:

I am writing to clarify evidence provided by me to the Senate Standing Committee on Legal and Constitutional Affairs at the Budget Estimates hearing on Thursday 28 May 2015.

On page 87 of the transcript, in responding to Senator Collins' questions regarding a letter my Office received from Man Monis, I stated that, "When the Thawley-Comley review—which is the review by PM&C and the New South Wales premier's department—looked at this, it looked at all of this material including this letter, and it concluded that as late as December, so after this exchange of correspondence, it was still the case that Monis was not somebody who should have raised alerts."

That evidence was based on advice I had received from my Department. It was consistent with the evidence of Ms Katherine Jones...This error has since been drawn to my attention...¹⁸

1.15 Senator Brandis also explained that the AGD had provided a copy of the Monis letter to the Secretary of PM&C, Mr Michael Thawley. On 4 June 2015, Mr Thawley wrote to the Prime Minister, the Hon Tony Abbott MP, confirming that the Monis letter was not made available to the Thawley-Comley review. Mr Thawley, after considering the contents of the letter against the background of the information and documents available to the review and the other letters that Mr Monis had sent to politicians and others, assured the Prime Minister that the availability of the Monis letter 'would have made no difference to the findings in the review.'¹⁹

1.16 On 4 June 2015, Ms Bishop corrected her answer to the House of Representatives of 28 May 2015, stating:

My statement was based on the evidence given by the deputy secretary of the Attorney-General's Department...in budget estimates the previous day, Wednesday 27 May 2015. The Attorney-General's Department has now advised that Ms Jones's evidence was incorrect and that the letter and reply were not provided to the review due to an administrative error in the Attorney General's Department...I am advised that both letters have now

17 Correction and clarification to evidence provided by Ms Katherine Jones, Deputy Secretary, National Security and Criminal Justice Group, Attorney-General's Department, *Letter to Senator the Honourable Ian Macdonald, Chair, Senate Standing Committee on Legal and Constitutional Affairs*, 4 June 2015.

18 Correction and clarification to evidence provided by Senator the Honourable George Brandis QC, Attorney-General and Minister for the Arts, *Letter to Ms Sophie Dunstone, Committee Secretary, Senate Standing Committee on Legal and Constitutional Affairs*, 4 June 2015.

19 Letter from Mr Michael Thawley to the Prime Minister, the Hon Tony Abbott MP dated 4 June 2015 as reproduced in Correction and clarification to evidence provided by Senator the Honourable George Brandis QC, Attorney-General and Minister for the Arts, *Letter to Ms Sophie Dunstone, Committee Secretary, Senate Standing Committee on Legal and Constitutional Affairs*, 4 June 2015.

been referred to officials at the Department of the Prime Minister and Cabinet who were responsible for the Sydney siege review.

The secretary of the Department of Prime Minister and Cabinet, Mr Michael Thawley, has written to the Prime Minister today to inform him that the letter and response would have made no difference to the outcome of the review. I note that Mr Monis's letter and the response were provided to the coronial inquest into the tragedy. When advised of the error, the Attorney-General asked the secretary of his department, Mr Chris Moraitis, to conduct a comprehensive review into the matter to enable Ms Jones and ministers who were relying on her evidence to correct the record. I should also reiterate that the director-general of ASIO, Mr Duncan Lewis, provided evidence to Senate estimates on Thursday 28th of May 2015 that the handling of the letter by the Attorney-General's office and the subsequent reply by the Attorney-General's office was appropriate.²⁰