

Dissenting Report from Government Senators

1.1 The *Handling of a letter sent by Mr Man Haron Monis to the Attorney General*¹ Inquiry (the Inquiry) by the Legal and Constitutional Affairs References Committee (the References Committee) is an abuse of Senate processes and a complete waste of taxpayers' money.

1.2 The sum total results from the Inquiry where taxpayers' money and senate staff time has been wasted, has been a series of fatuous, irrelevant and, in the main, redundant recommendations calling for actions that have already been taken and which have been clearly explained by the witnesses who gave evidence during the course of the hearings. These actions had already occurred independently of the Inquiry.

1.3 Nowhere in the report of the Labor, Greens and Green-Independent Senators is there any evidence or findings of fault, "cover-ups" or political interference, in the handling of the letter sent by Mr Man Haron Monis to the Attorney-General on October 7, 2014 (the October 7 letter) which has been alleged by Labor, Greens and Green-Independent Senators.

1.4 The matter of the October 7 letter was raised in the Legal and Constitutional Affairs Legislation Committee (the Legislation Committee) as part of the Senate Estimates hearings which followed the 2015-16 Budget (the Estimates hearings).

1.5 At the Estimates hearings on May 27, 2015 Senator Collins asked public servant Katherine Jones from the Attorney-General's Department (the Department) the following question regarding the provision of the October 7 letter to the Thawley-Comley review into the Martin Place siege (the Thawley-Comley review):

Are you able to tell me whether this correspondence was considered by that review?²

1.6 The following answer was given:

It was provided to the review and we considered all the correspondence that was provided to us.³

1.7 Subsequently Ms Jones had doubts about her own evidence, looked into the matter further and discovered that the October 7 letter had in fact not been given by the Department to the Thawley-Comley Review as had been indicated to the Estimates hearings.

1 Legal and Constitutional Affairs References Committee, *Inquiry into the Handling of a letter sent by Mr Man Haron Monis to the Attorney General*, 16 June, 2015.

2 Senator Jacinta Collins, *Estimates Hansard*, 27 May 2015, p.124.

3 Ms Katherine Jones, Deputy Secretary, Attorney-General's Department, *Estimates Hansard*, 27 May 2015, p.124.

1.8 At the direction of the Secretary of the Department a full and complete investigation was instigated to ascertain the facts in relation to the letter and its fate.⁴

1.9 As senior Departmental witnesses indicated, having given incorrect advice to the Legislation Committee on one occasion, the Department was determined to be absolutely accurate with the correction advice and on this basis conducted a very thorough investigation which has been related in detail in the evidence given to the References Committee.

We were given a clear job to do by a secretary who wanted to be absolutely sure that, having detected an error, we got to the bottom of it, were sure that the document had not been provided, that, if a correction needed to be made, it was made once and correctly, and we did the work that we needed to do as diligently and as quickly as we could.⁵

1.10 Because the Estimates hearings had been completed, the Attorney-General advised the parliament on the first available occasion following the completion of the Department's investigation, that is on 4 June 2015, of the correction to the evidence that had been wrongly provided by Ms Jones to the Estimates hearing.

1.11 As a consequence of this correction Senators Collins, Bilyk and Wright, pursuant to the Order of Continuing Effect of the Senate relating to additional hearings of Committees, gave notice to the Chair of the Legislation Committee on June 5 2015 that they required the Legislation Committee to be reconvened in an Estimates Spill-over to further examine this exact matter.

1.12 The Legislation Committee indicated that in accordance with Senate rules this would occur, and the matter was set down for the next available regular meeting of the Legislation Committee on 18 June 2015 to determine a date, time, place and witnesses for the spill-over hearing.

1.13 On June 16, 2015 the Labor, Greens and some Cross-benchers in the Senate voted for the References Committee to examine the October 7 letter: exactly the same issue that had already been referred to the Legislation Committee which had commenced the process for arranging a hearing.

1.14 The References Committee (which was then Chaired by a Green Senator and subsequently by a Green-Independent Senator, with a majority of Labor members on it) then proceeded to establish the logistics for the committee usually without reference to the two government members on the committee and usually on dates when government members of the committee had indicated they had other parliamentary committee commitments or commitments in their own electorates which had been longstanding and could not be changed.

4 Mr Tony Sheehan, the then Deputy Secretary, Strategic Policy and Coordination Group, Attorney-General's Department, *Committee Hansard*, 23 June 2015, p.14.

5 Mr Sheehan, *Committee Hansard*, 23 June 2015, p.14.

1.15 As a result, most of the hearings of the Inquiry proceeded either without a government Senator present or with only one government Senator present.

Report Recommendations of Labor Green and Green-Independent Senators

1.16 The signatories to this report disagree strongly with Recommendation One. Ministers are responsible to Senate Committees and in giving evidence at Estimates hearings take advice from senior public servants and sometimes ask specific public servants to answer questions which are in his or her direct area of responsibility. Where an error has been made by a public servant, that person's first duty is to establish the real facts, and then to correct the record if the Estimates hearings are in session. The alternative is to have the Minister correct the record in parliament as occurred in this instance. In making Recommendation One Labor, Green and Green-Independent Senators are re-inventing history.

1.17 In relation to Recommendation Two the signatories to this report disagree strongly with the recommendation. Senators believe that senior executives across the Australian public service are fully aware of their obligations and have more important things to do with their time than attend "training sessions" directed by Labor, Greens and Green-Independent Senators.⁶

1.18 In relation to Recommendation Three of the Report by Labor, Greens and Green-Independent Senators, signatories to this report note that the Department has prior to the release of the Report already put in place the more relevant and sensible of the suggestions made and have already given evidence accordingly.⁷

1.19 In relation to Recommendation Four the signatories to this report say that the allocation of additional resources in portfolio departments is a matter for the portfolio department and not for Labor, Greens and Green-Independent Senators who would have little idea of what is involved in operating a department of State. Furthermore the Department is well aware of risk assessment issues.

1.20 In relation to Recommendations Five signatories to this report are confident that officers of the department of state that deals principally with security matters are in a better position to be aware of the political and cultural connotations of titles and names, than any group of inexperienced Labor, Greens and Green-Independent

6 See *Protocol for Official Searches for, and Extraction of, Documents*, Attorney-General's Department internal document.

7 Mr Chris Moraitis, PSM, Secretary, Attorney-General's Department, *Committee Hansard*, 3 August 2015, p.14.

Senators. Signatories to this report are confident in the professionalism, expertise and commitment of officers in the Attorney-General's Department and its agencies.⁸

1.21 Recommendation Six is a nonsense recommendation that as the evidence shows is already occurring within the department.⁹

1.22 In relation to Recommendation Seven signatories to this report disagree with the recommendation, noting that according to the evidence this already occurs.¹⁰

1.23 In relation to Recommendation Eight this is again a nonsense recommendation, recommending something that is already in place.

1.24 In relation to Recommendation Nine, as indicated by the Secretary of the Department, this has already occurred.

1.25 The recommendations of the Labor, Greens and Green-Independent Senators are nonsense recommendations which attempt to justify the time, expense, waste of resources and abuse of Senate process evident from the report.

Evidence to the Inquiry

1.26 As soon as doubt arose regarding the accuracy of testimony provided at Estimates hearings by an official of the Department regarding the provision of the October 7 letter to the Thawley-Comley Review, a thorough and urgent investigation was immediately instigated.¹¹

1.27 Evidence to the Inquiry indicated the possibility that the October 7 letter may have found its way to the Thawley-Comley Review specifically, or to the Department of Prime Minister and Cabinet (PM&C) more generally, by an alternative pathway. As such the Department proceeded to devote a number of senior officials to the conduct of a methodical investigation designed to yield a certain and transparent result. Government Senators are satisfied from the evidence that once the existence of an error on the record had been established, the Department adopted a disciplined approach and conducted a thorough investigation that illuminated the salient facts.

8 Letter from Chris Moraitis PSM to Attorney-General the Hon George Brandis regarding the Attorney-General's Department's handling of correspondence from man Haron Monis, 3 June 2015.

9 See *Protocol for Official Searches for, and Extraction of, Documents*, Attorney-General's Department internal document.

10 Letter from Chris Moraitis PSM to Attorney-General the Hon George Brandis regarding the Attorney-General's Department's handling of correspondence from man Haron Monis, 3 June 2015.

11 Ms Katherine Jones, Deputy Secretary, National Security and Criminal Justice Group, Attorney-General's Department, *Committee Hansard*, 19 June, 2015, p. 22.

1.28 The large volume of mail, emails and telephone calls between the Department, PM&C, the Australian Federal Police and the Prime Minister's office over the period from May 28 to June 4 2015 that have been provided in answers to questions on notice over the course of the Inquiry are a clear indication of the serious and immediate attention that was devoted to resolving this issue.

1.29 Acting Associate Secretary of PM&C Mr Allan McKinnon remarked that:

This letter – against the context of the sort of letters that he wrote – was nothing special at all.¹²

1.30 Further evidence was received by the Inquiry in the form of a letter from the Secretary of PM&C to the Prime Minister in which the Secretary referred to the October 7 letter and advised that:

I can assure you that the letter would have made no difference to the finding of the review.¹³

1.31 The Director-General of ASIO also examined the October 7 letter and deemed it to be no more than a request for legal advice and that therefore the Department—as opposed to a national security agency—was the proper place for it to be processed.¹⁴

1.32 Following the advice that the October 7 letter would not have impacted the findings of the Thawley-Comley Review, it is then not supportable to suggest there was any incentive or value to be derived from deliberately concealing the October 7 letter. Deliberately delaying a correction to the record would similarly have been of no utility. On the contrary, ensuring the accuracy of the parliamentary record would have been considered a priority.

1.33 Government Senators congratulate the departmental officials involved for the dedication to duty that led them to question the accuracy of the testimony provided, initiate investigations into these concerns, and at the earliest possible time provide to the relevant Ministerial offices advice regarding the perceived error and the need to conduct further investigations.

1.34 Attempts by Labor, Green and Green-Independent Senators to infer from an administrative error that a deliberate attempt had been made to conceal evidence are clearly not supported by the facts. It is offensive to suggest that senior and respected public servants would engage in or be complicit with any kind of deception.

1.35 The Secretary of PM&C provided evidence to the Inquiry that:

12 Mr Allan McKinnon, Acting Associate Secretary, Department of Prime Minister and Cabinet, *Committee Hansard*, 23 June 2015, p. 22.

13 Mr Michael Thawley, Secretary, Department of Prime Minister and Cabinet, correspondence to the Prime Minister of Australia, 4 June 2015.

14 Senator the Hon George Brandis QC, Attorney-General and Minister for the Arts, *media release*, 28 May 2015.

I do not think there is any question of a cover-up...I am not in the slightest bit surprised that it took them a couple of days to sort through it, because if I were secretary of a department where there had been a missing correspondence I would want to check exactly what happened so that I had a full story, so that I did not have my minister going out and giving half a story or half a correction.¹⁵

1.36 The delay in reporting the facts of the error to the parliament and the Legislation Committee until June 4 ensured that the Legislation Committee and the parliament did not waste taxpayers' resources subjecting the matter to unnecessary speculative scrutiny in the absence of the full facts which, once revealed, precluded the need for such scrutiny.

1.37 Had it not been for the high standard of professionalism exhibited by senior public servants at the Department and at PM&C, this particular administrative error may not have come to light for some time, if at all. It is disappointing and unacceptable that Labor, Green and Green-Independent Senators would attempt to impugn the reputations of these highly respected and professional bureaucrats whose records of service to the Australian people are of the highest distinction and beyond reproach.

1.38 The Attorney-General has repeatedly provided the parliament with precise and detailed answers to questions regarding the time it took for the Department to conduct the investigation, namely that the Attorney-General and his Department were determined to provide a complete, accurate and final correction. These answers have been provided to the Senate by the Attorney General on June 15, June 18, June 24, June 25 and August 10, 2015. The Attorney-General also corrected the Estimates hearings' record on June 4, 2015.

1.39 Government Senators also note that the whole course of the Inquiry has been conducted by the Chair (who is now a Green-Independent Senator following the resignation of the previous Greens Chair prior to the commencement of the Inquiry) and the Labor and Green members of the References Committee without any attempt to involve Government Senators and with what appeared to be a deliberate attempt of the majority to organise hearings to the exclusion of Government Members of the References Committee. This type of political approach demeans the processes of the Senate and the heretofore high regard in which Senate committee reports have been held.

1.40 Additionally Government members of the committee are satisfied that the Department's evidence to the Inquiry gives a full and satisfactory explanation of the circumstances surrounding the removal of a media release from the Attorney-General's website. The evidence provided by officials clearly indicates that the

15 Mr Michael Thawley, Secretary, Department of Prime Minister and Cabinet, *In Camera Committee Hansard*, 6 July 2015, p. 5.

decision to remove the media release was made at a departmental level in accordance with the relevant guidelines, and not by the office of the Attorney General:

...in response to Senator Collins's question about why the press release issued by the Attorney-General on 28 May was taken down from the Attorney-General's website on 29 May, I can confirm that the decision to remove the media release was done without consulting the Attorney-General's office. The media release was published by the department on 28 May at 3 pm and the department removed the release on 29 May following an assessment by a departmental officer that placing the release on the website may not be consistent with the Department of Finance's guidelines for ministerial and agency websites. In deciding to remove the release, the departmental officer had regard to the statement and the guidelines that agency funded websites should not contain material of a party political nature.¹⁶

1.41 Government members of the Committee expressly disagree with parts 2.52 to 2.56 (which constitute belated additions to the several draft reports issued by the Chair). These comments are pedantic and nit picking at best and at worst demonstrate a complete misunderstanding of the evidence and of the operations of Government.

1.42 As the evidence has shown, the whole charade of the Inquiry has not produced one shred of evidence to suggest any wrong-doing by the government, by any Minister, any public servant or anyone at all. All the Inquiry has confirmed is that one honest and competent public servant made a human mistake that she corrected at the earliest time.

1.43 Government Senators do not support the implementation of additional layers of administrative oversight within the Attorney-General's Department as suggested in the References Committee Chair's report. The recommendations for these additional layers of administrative oversight will necessarily impose additional operational costs on the Department, which costs will be borne by the taxpayer. Additionally these oversight functions will be of little or no utility in that they will substantially duplicate existing departmental practice.

1.44 The Government members of the committee reject all nine of the References Committee Chair's recommendations.

Senator the Hon Ian Macdonald
Deputy Chair

Senator Linda Reynolds

Senator Barry O'Sullivan

16 Mr Sheehan, *Committee Hansard*, 23 June 2015, pp. 1–2.

