

# Australian Labor Party senators' additional comments

1.1 The Australian Labor Party (Labor) senators support the majority report and all its recommendations. However, Labor senators wish to emphasise their concern about the extent to which the Monis letter issue was politicised by the government and what this has revealed about the government and its relationship with the Australian Public Service, in particular the AGD.

1.2 A chronology of events is included at the end of these comments.

## Politicisation of the issue by government ministers

1.3 During Question Without Notice in the House of Representatives on Thursday 28 May 2015, the shadow Attorney-General and Deputy Manager of Opposition Business in the House, the Hon Mark Dreyfus MP, asked the Foreign Minister and Minister representing the Attorney-General in the House, the Hon Ms Julie Bishop MP:

On 12 September last year, Australia's terror alert level was raised to its highest level in our history. What protocols were changed in ministerial offices, including the Attorney-General's office, as a result of the terror alert level being raised?<sup>1</sup>

1.4 In answer to this relatively innocuous question, Ms Bishop's response was both aggressive and politically-charged. She stated:

I understand where the former Attorney-General is heading with this question. His actions today in questioning the Attorney-General over procedures in the Attorney-General's office is contemptible. For the [former] Attorney-General to seek to make political mileage out of a national tragedy is reprehensible...For this former Attorney-General to seek to question protocols in the Attorney-General's Department that he well knows were in place when he was there, and he received a letter from Mr Monis, is beneath contempt. While the member for Isaacs and the Labor Party were very weak on national security, I did not ever expect them to go so low as to attack the Attorney-General for protocols in the Attorney-General's Department that he well knew were in place when the former Labor government was there...And an attempt to politicise a national tragedy should never occur in this place, not under the former Attorney-General, and certainly we are deeply concerned with Labor's line of questioning that seeks to question protocols that he well knew existed.<sup>2</sup>

---

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

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

1.5 When Mr Dreyfus continued the line of questioning, emphasising that he was not the Attorney-General at a time when 'Australia's terror alert level was raised to its highest level in our history',<sup>3</sup> Ms Bishop stated:

I have to say that this line of questioning from this former Attorney-General is loathsome, because he is seeking to make political capital out of a national tragedy. We have seen it in Senate estimates. We know what Labor is seeking to do here, and I find it utterly deplorable...this line of questioning is utterly contemptible and, as a former Attorney-General, he ought to be ashamed of himself.<sup>4</sup>

1.6 On at least two other occasions Ms Bishop challenged Mr Dreyfus for 'trying to make political gain' out of the Martin Place siege, using the term 'contemptible' to describe his line of questioning.<sup>5</sup> The office of the Attorney-General received a Question Time Brief (QTB) at 10.53 am on 28 May 2015, which was revised at 11.07 am.<sup>6</sup> Labor senators observe that Ms Bishop was 'armed' and ready for the line of questioning, and therefore made a conscious decision to answer Mr Dreyfus's questions in an aggressive and politically-charged style. The confident use of an aggressive style by Ms Bishop suggests the matter was discussed as a political tactic by the government on that day, noting that a similar tone was repeated by Senator Brandis later in the day.

1.7 At estimates, in the evening of 28 May 2015, Senator Brandis stated:

...I am mindful for certain rather reckless claims that have been made by the shadow Attorney-General today. It could perhaps be said that the identity of Monis should have raised an alert in October or early November 2014, but we know that as late as December 2014 Monis was not regarded as a person of concern by ASIO. So, the identity of the author of the letter cannot have been problematic if not even ASIO considered him problematic at the time.<sup>7</sup>

1.8 Mr Brandis followed this comment with a media release, using almost identical text as the Foreign Minister's in the House of Representatives, distributed via email to Attorney-General's Mailing List subscribers at 6.40 pm, which included the following text:

A former Attorney-General, who was asleep at the wheel on national security, has today tried to make a cheap political point out of a national tragedy.

...

---

3 The Hon Mark Dreyfus MP, House of Representatives Hansard, 28 May 2015, p. 58.

4 The Hon Julie Bishop MP, *House of Representatives Hansard*, 28 May 2015, p. 58.

5 The Hon Julie Bishop MP, *House of Representatives Hansard*, 28 May 2015, pp. 59–60

6 Attorney-General's Department, *Further responses to answers to questions taken on notice between 23 June and 10 July 2015* received 27 July 2015, p. 3.

7 Senator the Hon George Brandis QC, Attorney-General and Minister for the Arts, Estimates, 28 May 2015, p. 88.

While Mr Dreyfus and the Labor Party were weak on national security, the Abbott Government has strengthened our counter-terrorism laws, restored the resources of our national security agencies, secured our borders and made our country safer.

It is contemptible that a failed Attorney-General should attempt to politicise the Martin Place siege.<sup>8</sup>

1.9 An article in *The Guardian Australia* by Mr Daniel Hurst, Political Correspondent, described the events of 28 May 2015:

The shadow attorney general, Mark Dreyfus, directed a series of questions to [Ms] Bishop – who is responsible for answering questions for Brandis in the lower house.

[Mr] Dreyfus suggested the letter should have raised alarm bells since it referred to the Isis leader by an honorific title and arrived a month after Australia's terrorism threat level was increased to "high" in September...In answering the parliamentary questions, Bishop repeatedly criticised Dreyfus for "reprehensible" and "loathsome" attempts to make political points from the Sydney siege...She did not respond directly to a question asking whether the protocol for correspondence containing a reference to Isis had been revised.

Bishop also refused to be drawn on Monis's reference to "Caliph Ibrahim, the leader of the Islamic State" and whether it contradicted Brandis's claim that the letter did not "contain any statements of support or affiliation for Islamic State"...The line of questioning prompted outrage among government members, with Liberal whip Andrew Nikolic becoming one of the few Coalition MPs to have been sent from the chamber by the speaker, Bronwyn Bishop, for interjections.<sup>9</sup>

1.10 On the ABC's *Insiders* program on 31 May 2015, Mr Dreyfus explained:

I think there were good grounds for raising [the issue of the letter]. It's important that the safety of Australians depends on us questioning the Government from time to time. Just as we saw from this spectacular cabinet leak that there was very serious questioning going on in the federal cabinet about another national security proposal, so too the Opposition is entitled to ask questions about national security matters.<sup>10</sup>

1.11 Senator Brandis's media release of 28 May 2015 was taken down from the Attorney-General's website on 29 May 2015, with no further comment and when Ms

---

8 Senator the Hon George Brandis QC, Attorney-General and Minister for the Arts, *Media Release 150528 – Dreyfus' cheap shot*, 28 May 2015.

9 Mr Daniel Hurst, Political Correspondent, *The Guardian Australia*, 'Sydney siege gunman's letter to George Brandis was handled 'appropriately' in *The Guardian Australia*, 28 May 2015 at <http://www.theguardian.com/australia-news/2015/may/28/sydney-siege-gunmans-letter-to-george-brandis-was-handled-appropriately> (accessed 17 August 2015).

10 Mr Mark Dreyfus MP, 'Interview with Mr Barrie Cassidy' on *Insiders*, the Australian Broadcasting Corporation, broadcasted on 31 May 2015, transcript at <http://www.abc.net.au/insiders/content/2015/s4245743.htm> (accessed 17 August 2015).

Bishop corrected the record on Thursday 4 June 2015, she showed no contrition for her previous comments directed towards Mr Dreyfus, simply stating:

I wish to correct an answer I gave in the House during question time on Thursday 28 May in response to a question from the member for Isaacs.<sup>11</sup>

1.12 This approach by the Attorney-General and the Foreign Minister, at the time, belies the politicisation of this issue, which says something about an approach to national security, by the government rather than the opposition.

### **Politicisation of the AGD and the Australian Public Service as a whole**

1.13 On Monday 1 June 2015, at 12.15 pm, Mr McKinnon (from PM&C) informed the AGD that after 'a thorough search of the AG documents...no record of a letter from October 2014 [was] found'.<sup>12</sup> At 1.54 pm on the same day, the AGD stated that 'Ms Jones will correct her evidence to the Senate Committee at the earliest opportunity.' This was sent on to Mr McKinnon at 1.57 pm.<sup>13</sup> As noted in the majority report, at 5.30 pm on the same day, Mr McKinnon wrote to the AGD to check whether the AGD had corrected the Senate Estimates record.<sup>14</sup>

1.14 The AGD did not correct the record on 1 June 2015. Rather, Mr Moraitis admitted to meeting the Attorney-General at 'six or seven in the evening' to brief him on the issue. The Attorney-General 'instructed' him to 'conduct an inquiry to get the facts'.<sup>15</sup> Despite the requests from the office of the Prime Minister to correct the record Mr Moraitis chose to take the matter to the Attorney-General, where they discussed an internal review to determine what happened and decided against allowing Ms Jones to correct the record. This implied that Mr Moraitis considered his primary duty was to the Attorney-General, not to the parliament. Labor senators reiterate that an internal review should have been conducted in February 2015, when the AGD first discovered that it had not provided any 'relevant' documents created after 2010 to the Thawley-Comley review team.

1.15 Throughout the inquiry the AGD insisted that the review was necessary, to determine whether the Monis letter had been received by the Thawley-Comley review team through an alternative mechanism. However, as noted above, by 12.15 pm on

---

11 The Hon Julie Bishop MP, *House of Representatives Hansard*, 4 June 2015, pp. 59–60

12 Email from Mr Allan McKinnon to the Attorney-General's Department, Attachment 5 to Department of Prime Minister and Cabinet, *Answer to written question taken on notice*, received 3 July 2015.

13 Email from Mr Iain Anderson, Attorney-General's Department, to Mr Allan McKinnon forwarding email of Ms Sarah Chidgey, First Assistant Secretary, Strategy and Delivery Division, Attorney-General's Department, Department of Prime Minister and Cabinet, Attachment 6 to Department of Prime Minister and Cabinet, *Answer to written question taken on notice*, received 3 July 2015.

14 Mr Allan McKinnon, Acting Associate Secretary, Department of Prime Minister and Cabinet, *Answers to questions taken on notice*, received 24 June 2015 [Q.3 attachment].

15 Mr Chris Moraitis, Secretary, Attorney-General's Department, *Committee Hansard*, 19 June 2015, p. 12.

---

1 June 2015 it appeared obvious that the review team did not have a copy of the Monis letter.

1.16 If the AGD had provided the Monis letter to the review team than the review team would have had a copy of the letter. By 12.15 pm the AGD was made aware that the review team did not have a copy of the Monis letter, therefore it could have deduced that the Monis letter was not sent to the review team. The insistence of the AGD to conduct a review to try and prove the opposite was illogical at best.

1.17 It appears, from documentary evidence, that the internal review that commenced on 1 June 2015 was simply a mechanism to excuse a delay in correcting the record, allowing the government and the AGD to avoid or delay parliamentary scrutiny. Through its acquiescence, the AGD showed a strong bias towards managing the public message and, therefore, the political interest of the government.

1.18 Attorney-General's Department emails provided to the committee show that after the facts were established beyond doubt, Ms Jones offered, on 1 June, to correct the record and requested correspondence be drafted for her.<sup>16</sup>

1.19 Ms Jones also sought Secretary Moraitis be consulted about her proposal to correct the evidence.

1.20 A letter is drafted to action Ms Jones's desire to correct the record but then Mr Moraitis meets with the Attorney-General.

1.21 Subsequently, the Attorney-General and Mr Moraitis meet and it appears the decision to delay correcting the record occurred at this meeting.

1.22 After Mr Moraitis met with the Attorney General on 1 June, Mr Sheehan's email of 7.05 pm on 1 June<sup>17</sup> to colleagues for the first time, links the internal review to the now documented and identified need to correct the record.

1.23 Mr Sheehan's email specifies that the timeframe for the Review as a further three business days (coinciding with the end of the sitting week in the House of Representatives). Mr Sheehan is therefore an instrument of the delay.

1.24 It is apparent that the PMO was not consulted prior to this decision being made is as evidenced by PM&C's Mr McKinnon's email to the AGD which outlined Mr Thawley's request that the record be corrected.

1.25 While Ms Jones demonstrated an instinct to correct the record, and requested a letter be drafted for this purpose (offering to break her leave to sign the letter) her instinct was either ignored or overruled by a decision of the Secretary and Attorney-General.

1.26 Labor Senators also note that Ms Jones testified that she was thinking of another letter, to a previous Attorney-General (McLelland), when she initially stated

---

16 Attorney-General's Department, *Answer to written question on notice given on 13 August 2015 - Attachment A*, 1 June 2015 (received 18 August 2015).

17 Attorney-General's Department, *Answer to written question on notice given on 13 August 2015 - Attachment A*, 1 June 2015 (received 18 August 2015).

that the Monis letter had been provided to and considered by the Cth/NSW Siege Review.

1.27 Internal emails, provided on notice, demonstrate that the McLelland letter was also not provided by the Attorney General's Department to the Siege Review and wasn't even on the so-called second tab.

1.28 This omission reveals a systemic failure, rather than a single or 'specific error'<sup>18</sup> – by the Attorney-General's Department.

1.29 Ms Jones had requested (while on leave) for this to be found on 1 June but her request was lost until a more "urgent" search was commenced on 4 June.

1.30 Labor Senators note Mr Sheehan was leading the department's response to this issue in Ms Jones's absence and the lack of action on this request add further doubt about Mr Sheehan's and the AGD's stated commitment to provide an 'absolutely correct correction'.<sup>19</sup>

1.31 This is not the first time that the AGD displayed such a bias towards the current government.

1.32 During the Additional Budget Estimates 2014-15 hearings the Human Rights Commission President, Professor Gillian Triggs, confirmed that she had met with Mr Moraitis on 3 February 2015. Professor Triggs claimed that at that meeting, Mr Moraitis, on behalf of the Attorney-General, had asked for her resignation in exchange for the offer of some unspecified further work with the Commonwealth.<sup>20</sup>

1.33 When questioned about whether he had any notes of the meeting, Mr Moraitis responded:

I had taken some notes of my discussion with the Attorney and also annotated those notes after my discussion with Professor Triggs. I had those notes for a while and unfortunately I have travelled to three countries in two weeks and I have lost those notes, losing my briefcase by mistake. I am sorry.<sup>21</sup>

1.34 Mr Moraitis wrote to the committee on 27 April 2015, 35 days after the hearing, to explain:

...it has been drawn to my attention that my evidence has been misunderstood as indicating that I had lost a briefcase. I would like to point

---

18 Mr Tony Sheehan, the then Deputy Secretary, Strategic Policy and Coordination Group, Attorney-General's, *Committee Hansard*, 3 August 2015

19 Mr Moraitis, *Committee Hansard*, 19 June 2015

20 Professor Gillian Triggs, Human Rights Commission President, *Estimates Hansard*, 24 February 2015, p. 24.

21 Mr Moraitis, *Estimates Hansard*, 24 February 2015, p. 68.

---

out that I did not provide any evidence regarding the loss of a briefcase, for the reason that I did not lose a briefcase.<sup>22</sup>

1.35 At the Budget Estimates 2015-16 hearings, Mr Moraitis claimed that there 'was a mistranscription of what I had said', stating that he had not lost his briefcase. Then, in response to a question about whether he had sought to correct the *Hansard* transcript, he stated:

No, because I was waiting for supplementary estimates to be able to do that. Orally there was not an opportunity, so I followed up with a letter. I apologise for that.

1.36 At that point Mr Moraitis was reminded and acknowledged his duty to clarify evidence provided to the committee 'as immediately as possible'.<sup>23</sup> The *Hansard* transcript was never amended.

1.37 This is another example of where the AGD has attempted to mislead the committee for an extended period of time and/or recast its evidence because of a realisation that the original evidence was perceived badly by senators and the community. It also reflects the way in which the AGD, and government departments generally, have been used as political tools by the current government. The Australian Public Service Values state:

- The APS is apolitical, performing its functions in an impartial and professional manner.
- The APS is openly accountable for its actions, within the framework of ministerial responsibility to the government, the Parliament and the Australian public.
- The APS is responsive to the government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the government's policies and programs.<sup>24</sup>

1.38 Labor senators acknowledge that departments of state have an obligation to serve the government of the day. However, this obligation rests within the framework of ministerial responsibility and accountability to the Parliament.

1.39 Successive Australian governments have worked with the Australian Public Service to correct both administrative and policy errors, the Australian Public Service should never be used by the government as a tool to cover up its mistakes.

---

22 Mr Chris Moraitis, *Letter to Senator the Honourable Ian Macdonald, Chair, Senate Standing Committee on Legal and Constitutional Affairs*, 27 April 2015 at [http://www.aph.gov.au/~media/Committees/legcon\\_ctte/estimates/add\\_1415/AGD/AGD\\_Additional\\_Information\\_Chris\\_Moraitis\\_PSM.pdf](http://www.aph.gov.au/~media/Committees/legcon_ctte/estimates/add_1415/AGD/AGD_Additional_Information_Chris_Moraitis_PSM.pdf) (accessed 18 August 2015).

23 Mr Moraitis, *Estimates Hansard*, 28 May 2015, p.

24 Australian Public Service Commission, 'Working with the Government and Parliament', *APS Values and Code of Conduct in practice: A guide to official conduct for APS employees and agency heads* at <http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/working-with-the-government-and-the-parliament> (accessed 18 August 2015).

## Conclusion

1.40 This inquiry has unearthed a pattern of concerning behaviour from the Attorney-General and his department.

1.41 The mishandling of this letter by the Attorney-General and the AGD may appear to be a relatively minor mistake if that were the only mistake that occurred in relation to this issue.

1.42 Other mistakes include the

- (a) non-provision of the letter to the Siege Review – along with all correspondence (and arguably most relevant correspondence) since November 2010;
- (b) AGD's realisation of its non-provision and failure to investigate it in February;
- (c) the incorrect evidence by Ms Jones;
- (d) Foreign Minister's attack on Labor for asking questions;
- (e) decision to delay correcting the record until the end of the sitting week;
- (f) the realisation that there were not one but five items behind the so-called second tab and subsequent realisation that a sixth item (recalled by Ms Jones at Budget Estimates) was also not provided by AGD to the Siege Review;
- (g) oral testimony at the first hearings which was subsequently unsupported by the documentary evidence.

1.43 This Minister sits on Cabinet's National Security Committee and the AGD is at the centre of Australia's national security apparatus.

1.44 But the Minister and his department have, since February, been managing the politics of the issue rather than addressing a flaw in Australia's National Security capability within the AGD.

1.45 In defending their actions, the Attorney-General and his department have sought to recontextualise their own evidence and even evidence of officers from other departments.

1.46 The Government should consider its approach to this issue when it asks the Parliament to take its statements and proposals about managing Australia's National Security seriously.

**Senator Catryna Bilyk**

**Senator Jacinta Collins**

**Senator the Hon Joe Ludwig**

