

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: Australian Federal Police

Question No. BE16/028

Senator Smith asked the following question at the hearing on 5 May 2016:

1. In relation to criminal charges arising regarding certain enrolments in the electorate of Indi in 2013, and the subsequent discontinuance of prosecutions by the Commonwealth DPP in the Melbourne Magistrates Court in April this year against two individuals, Ms. Maggie McGowan and Ms. Sophie Fuchsén.

a) Have you been given, or sought, an explanation from the DPP as to why the cases were discontinued? If so, what was that advice?

2. These questions relate to the referral to the AFP, in October 2014, by the Australian Electoral Commission of 28 people for further investigation in relation to their enrolment in the Federal Electorate of Indi in 2013.

The following questions were placed on notice in October 2015, but not answered on the basis that court proceedings were in progress. Now that proceedings appear to be concluded, the questions are re-stated below.

a) According to newspaper reports at the time, the evidence of these individuals' residential and employment status was to be found on the internet, on various social media sites such as Facebook. Is this true? Is it also the case, as reported, that these social media records were rapidly deleted once the story "broke" in the media?

b) To what extent was this social media material important in the investigation? Did the deletion of this material make it difficult to gather evidence?

c) If the social media material was important from an evidentiary point of view in relation to the 28 referrals, how was it established that there were not other individuals who may have removed material from the internet in order to prevent further investigation?

d) Did it appear, on balance, that there was some level or likelihood of organization amongst some portion of the group of 28 people under investigation?

e) In addition to the offence of providing false or misleading information to the AEC, the nature of the activity that occurred in Indi suggests that other offences may also have been potentially committed – for example joint commission, or incitement. Were other charges such as these considered during the course of your investigation (and, if so, please list the specific offences and Acts). How closely were these issues examined?

f) Is it a specific offence under the law for a person to witness an electoral enrolment form without satisfying themselves as to the veracity of the information on the form? Were the witnesses to the enrolment forms of every one of the individuals under investigation themselves questioned? Do you believe all these witnesses did not know they were witnessing a false declaration? Were there any cases where the same witness signed more than one of these forms for the 28 people under investigation? If so, in how many instances did this occur?

g) Of all 28 individuals investigated, how many made admissions of any kind to your officers? How would you summarise those admissions?

The answer to the honourable senator's question is as follows:

1

a) Yes. The Commonwealth Office of Director or Public Prosecutions (CDPP) advised the Australian Federal Police (AFP) that the Crown would not be able to prove beyond a

reasonable doubt that Sophie FUSCHEN and Maggie McGOWEN knew they were providing false or misleading information. This was based upon Defence's assertions that FUSCHEN and McGOWEN, living as itinerant students, were following the Frequently Asked Questions (FAQs) on the Australian Electoral Commission (AEC's) website, that advises to list their parents' address in their applications to change their electoral role addresses.

2

- a) Several of the persons of interest referred by the AEC did have social media profiles, some which included details of their geographic location and employment status. However, the AFP did not rely on social media postings to confirm the residential addresses or employment status of the 27 suspects (refer to answer 2c).

AFP investigators were aware of media articles reporting that some social media records may have been deleted after this matter became public.

- b) Social media aided, but was only one aspect of, the investigation. The deletion of the material did not adversely impact the investigation.
- c) The AFP investigated only the 27 matters referred by the AEC. The AEC later referred a 28th matter. This matter was evaluated and it was determined there was insufficient evidence to support proceeding to prosecution.
- d) Yes, being Indi Expats. The Indi Expats are a group living away from the Division of Indi. FUSCHEN and McGOWEN, plus others of the 27, appeared to be members of this group. There was some evidence of people within this group holding meetings and social gatherings. However this is not necessarily indicative of criminal behaviour.
- e) The evidence available did not support any offences with regard to joint commission or incitement.
- f) Yes. Section 342 of the *Commonwealth Electoral Act 1918* (Cth) states a person witnessing any claim, should before signing, by inquiry or otherwise, satisfy himself or herself that the statements contained in the claim are true – penalty \$1000.

An elector can change their enrolment details either on line via the AEC website or manually via a paper form that is posted to the AEC. If an elector changes his or her address online, there is no requirement for a witness.

Witnessing false declarations was not the subject of the investigation.

- g) Nil