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3. Senate Enquiry Concerning Monis

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The Senate

Legal and Constitutional Affairs
References Committee

Handling of a letter sent by Mr Man Haron
Monis to the Attorney-General

September 2015

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Members of the committee

Members

Senator Penny Wright (AG, SA) (Chair) to 25.06.2015

Senator Glenn Lazarus (IND, QLD) (Chair) from 25.06.2015

Senator the Hon Ian Macdonald (LP, QLD) (Deputy Chair)

Senator Catryna Bilyk (ALP, TAS)

Senator Jacinta Collins (ALP, VIC)

Senator the Hon Joe Ludwig (ALP, QLD)

Senator Linda Reynolds (LP, WA)

Secretariat

Ms Sophie Dunstone, Committee Secretary

Mr Hari Gupta, Senior Research Officer

Mr Joshua Wrest, Research Officer

Ms Jo-Anne Holmes, Administrative Officer

Suite S1.61

Telephone: (02) 6277 3560

Parliament House

Fax: (02) 6277 5794

CANBERRA ACT 2600

Email: legcon.sen@aph.gov.au

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Recommendations

Recommendation 1

2.66 The committee reminds government agencies and statutory authorities, that where evidence is given in error to a Senate committee, the primary duty of the department or statutory authority is to the committee. Witnesses must bring errors or suspected errors to the attention of the relevant Senate committee as a priority.

Recommendation 2

2.72 The committee recommends that senior executive staff across the Australian Public Service, including the secretaries of the Department of Prime Minister and Cabinet and the Attorney-General's Department, undergo training in parliamentary accountability provided by the Department of the Senate, including but not limited to seminars routinely provided for senior executives.

Recommendation 3

2.76 The committee recommends that the Attorney-General's Department:

- formally draw to the attention of all of its officers' the document search and document management protocol;
- implement appropriate training programs to ensure adherence to the protocol; and
- consult with the Australian Government Solicitor for the purpose of reviewing this protocol in a comprehensive and purposeful manner.

Recommendation 4

2.78 The committee recommends that the Attorney-General's Department:

- review the allocation of resources across its divisions;
- undertake formal risk assessments to mitigate risks associated with the cross-divisional movement of staff and the ad hoc use of staff across departmental divisions; and
- develop and implement training for its staff relating to intra-departmental document management and communications.

Recommendation 5

2.80 The committee recommends that the Attorney-General's Department implement a training program to ensure that officers responding to

correspondence are better aware of the political and cultural connotations of titles and names, especially in relation to known terrorist organisations.

Recommendation 6

2.82 The committee recommends that the Attorney-General's Department subject its document handling procedures to both regular and random audits, to inform further development of protocols, and training and resource requirements.

Recommendation 7

2.85 The committee recommends that the Attorney-General's Department routinely consult the relevant intelligence and security agencies in relation to sensitive correspondence, especially where it has or may have national security implications.

Recommendation 8

2.87 The committee recommends that all Commonwealth government agencies ensure that they have procedures in place to bring sensitive correspondence which has or may have national security implications to the attention of the relevant intelligence and security agencies in a timely manner.

Recommendation 9

2.90 The committee recommends that the Attorney-General's Department review its procedures related to the application of the *Web Guide: Guidelines for Ministerial and Agency Websites* in a comprehensive and purposeful manner to ensure that these guidelines are applied consistently, objectively and apolitically.

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](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 Café 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

20 The Hon Julie Bishop MP, *House of Representatives Hansard*, 4 June 2015, p. 61.

Chapter 2

Key issues

2.1 This chapter will examine the key issues raised at the hearings. The chapter will then outline the committee's views and recommendations.

Why was the Monis letter not provided to the Thawley-Comley review?

2.2 Mr Chris Moraitis, Secretary of the Attorney-General's Department (AGD), explained that the failure to provide the Monis letter, the AGD's response and four other documents to the Thawley-Comley review resulted from an administrative error. On 19 June 2015, Mr Moraitis stated that the:

administrative error became evident during the course of an internal review that I requested my department to conduct to ensure the accuracy of the search and to confirm what had been passed to the siege review.¹

2.3 Later during the inquiry, it became apparent that several officers at the AGD knew the Monis letter had not been provided to the review during early February 2015.²

2.4 Mr Moraitis described the circumstances leading to the omission, outlining that between 5 and 15 January 2015, in response to a request from the Thawley-Comley review, the AGD carried out searches to compile a list of documents and correspondence relevant to the terms of reference of the review. Copies of the relevant documents were collated and passed on to the Thawley-Comley review team located in the Department of Prime Minister and Cabinet (PM&C).³

2.5 Mr Tony Sheehan, former Deputy Secretary, Strategic Policy and Coordination Group, the AGD, added:

We had nominated one division in the department to be the central point for coordination of the provision of material to the review, and that was the place to which the results of searches came. The letter from Monis was identified in the searches by the department. That was then provided, in search form, to the coordinating division. Unfortunately, when that was provided, the letter was on the second tab of a spreadsheet that was provided to the division; and when the division collated the documents to provide to the review at PM&C they did not realise that there was a second tab to that spreadsheet. So they collated the documents and provided the documents to PM&C appropriately, but they did not know that there was this document which was in scope on another page of the spreadsheet. So it was essentially a human error, and that was not detected through the

1 Mr Chris Moraitis, Secretary, Attorney-General's Department, *Committee Hansard*, 19 June 2015, p. 1.

2 AGD, *Answer to question taken on notice*, Attachment A – 2 June 2015 (received 18 August 2015).

3 Mr Moraitis, *Committee Hansard*, 19 June 2015, pp 1–2.

clearance process that occurred. As a result, although the document had been identified it was not passed to the review.⁴

2.6 Mr Sheehan explained that the spreadsheet had a total of 68 documents listed on the two tabs. Of these 68 documents, 35 were forwarded to the Thawley-Comley review, all of which were listed on the first tab. Although the second tab of the spreadsheet listed a number of documents, only five of them were deemed relevant to the terms of reference of the Thawley-Comley review: the Monis letter together with the AGD's response (treated as a single document), a cover sheet, two separate letters to politicians and a piece of correspondence addressed to another agency.⁵ When asked about why the spreadsheet file was divided into two tabs, Mr Sheehan responded:

It was simply the way the information was electronically organised. There was nothing unusual about that. It was simply that the officer doing the collation did not see it...there was not any difference in general character between what was on tab 1 and tab 2, to my recollection.⁶

2.7 The AGD later confirmed that the first tab listed records that were held in TRIM, the AGD's general records management system, and the second tab listed records that were kept in ExecCorro, the AGD's ministerial correspondence system.⁷ The AGD then confirmed that the first tab listed records created up to and including part of 2010, while the second tab listed records created from 2010 onwards. Therefore, the AGD did not provide any relevant documents that were created after 2010 to the Thawley-Comley review team.⁸

2.8 Mr Neil Gaughan, Acting Deputy Commissioner, National Security, Australian Federal Police (AFP), explained when the AFP first became aware of the Monis letter:

At the time of the siege and immediately thereafter, New South Wales police enacted the terrorism powers—the commissioner of police there has the power to do so—and a number of search warrants were undertaken in New South Wales in relation to the Monis activity. Our understanding is that the particular letter that is the focus of this inquiry was actually seized by the New South Wales police either on the date of the siege or shortly thereafter.

On 28 January, a New South Wales police officer working with the coronial team, and subsequently also working in assisting the Joint Counter

4 Mr Tony Sheehan, former Deputy Secretary, Strategic Policy and Coordination Group, Attorney-General's Department, *Committee Hansard*, 19 June 2015, p. 8.

5 Mr Sheehan, *Committee Hansard*, 19 June 2015, pp 8–9, 24–25; Mr Sheehan, *Committee Hansard*, 23 June 2015, p. 2.

6 Mr Sheehan, *Committee Hansard*, 19 June 2015, pp 8–9.

7 Attorney-General's Department, *Answers to questions taken on notice*, received 23 June 2015 [Q.2].

8 Mr Sheehan, *Committee Hansard*, 3 August 2015, p. 12.

Terrorism Team, asked the AFP whether or not they were aware of a particular piece of correspondence, and the advice was they were not...⁹

2.9 The AFP advised that the Monis letter was the only piece of correspondence that the New South Wales Police Force (NSWPF) had brought to the attention of the AFP.¹⁰ On 28 January 2015, the AFP wrote to the AGD highlighting that it had become aware of the existence of the Monis letter and requested, on behalf of the Joint Counter Terrorism Team (JCTT), a copy of 'all correspondence that may be retained from the past few years' between Man Haron Monis and the AGD or the Attorney-General. In response to this request the AGD officer confirmed that the material could be provided to the AFP by the following week, stating 'I'm confident we'll have all our processes and authorities sorted by then'.¹¹

2.10 The AGD responded to the AFP request on 25 February 2015, handing over a bundle of documents in hard copy on 3 March 2015. These documents, in sealed envelopes, were handed over to the JCTT via the NSWPF on 5 March 2015.¹²

2.11 On 27 July 2015, the committee received a copy of an email dated 1 June 2015 from the AGD to the Attorney-General's Office in which an officer of the AGD stated:

On 2 February 2015, AGD became aware that this correspondence had been omitted from the correspondence provided to the Martin Place Siege Review due to an administrative error related to a spreadsheet...On the same day, AGD advised the Review team by telephone that an additional item of correspondence and response had inadvertently not been provided to the Review due to an administrative error. The Review team member responded that the text of the Review had been finalised and AGD therefore did not provide the document.¹³

2.12 When questioned as to why the information relating to 2 February 2015 was not disclosed to the committee sooner, Mr Moraitis answered:

On the question of the 2 February issue, when you say the department was aware, that emerged on 1 June. That is when it first emerged at a senior level, at any level above that officer who had raised that issue on 2 February, that it had happened. As far as I know—and I will ask Ms Jones and Mr Sheehan to confirm this—that was the first time that anyone apart from that officer was aware of that interchange and discussion between that officer and the review team. That was a development that emerged in the

9 Mr Neil Gaughan, Acting Deputy Commissioner, National Security, Australian Federal Police, *Committee Hansard*, 3 August 2015, p. 23.

10 Mr Gaughan, *Committee Hansard*, 3 August 2015, p. 24.

11 Australian Federal Police (AFP), *Answers to written questions on notice*, received 23 July 2015, Attachment A.

12 AFP, *Answers to written questions on notice*, received 23 July 2015, Attachment B; Mr Gaughan, *Committee Hansard*, 3 August 2015, p. 24.

13 Attorney-General's Department, *Answers to questions taken on notice*, received 27 July 2015, Attachment E.

course of that process with Mr Sheehan looking into this issue. No-one was aware of that before that time, apart from the officer who raised it...I expected that issue to be raised in the course of the hearings and that we would get to that. Unfortunately, we did not get to that. In retrospect, I would have preferred that I had raised it and I should have, but it was not germane to the reason why the letter had not been passed through.¹⁴

2.13 Mr Sheehan provided further clarification, noting that by 2 February 2015, a second officer would have known that the Monis letter had not been given to the Thawley-Comley review team, by stating:

I think it is important to say that the way in which the events occurred on 2 February—and I spoke with officers on 1 June about this, as we were trying to understand the picture of what had occurred—was that one officer who, in looking at material for the AFP, concluded that the document may not have been passed, contacted another officer in the division that had passed the information and said, "There may be correspondence that has not been passed." That officer then made contact with the review and was told that they were not accepting further correspondence, and the matter rested. There was not proper corporate knowledge of it, so individuals did not create a picture at that time that would have given the department that knowledge. There is a very clear recognition that that is not a good outcome in terms of the way it was handled.¹⁵

Consideration of the Monis letter by the Thawley-Comley review

2.14 As noted in chapter 1, Mr Michael Thawley, Secretary, PM&C wrote to the Prime Minister on 4 June 2015 to advise him that the Thawley-Comley review team had not received the Monis letter, but that this omission 'would have made no difference to the findings in the review'.¹⁶

2.15 Mr McKinnon gave his opinion as to why Mr Thawley may have come to this conclusion, breaking it down into two elements:

One is the amount of information that was available to the review and to the security and intelligence agencies over the very many years when Monis was the subject of their attentions. We are talking about hundreds of thousands of sheets of information. Looking at the subset of letters, there were many letters there. I think that we have 90 readily available to us; there are many more out there. This letter—against the context of the sort of letters that he wrote—was nothing at all special. For example, he had previously written to an earlier Attorney-General seeking information about whether it was legal or illegal to write to Sheikh Hassan Nasrallah, the

14 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 2.

15 Mr Sheehan, *Committee Hansard*, 3 August 2015, p. 3.

16 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.

secretary general of Hezbollah. So this sort of thing where he would write letters asking for that sort of an opinion was common...We look at this letter: it had no threat of violence and no reference to terrorism; it was simply asking a legal opinion about whether he can write to the leader of ISIL. It was really stock standard.¹⁷

2.16 Mr Duncan Lewis, Director-General of Security, Australian Security Intelligence Organisation, in his evidence at estimates, stated:

I find the letter very flat. It is a very flat letter. It has not been assessed, but on first examination I find it very flat. But I am not commenting beyond that.¹⁸

2.17 Mr Thawley took the view that the missing correspondence was a minor issue. However, he stated that the failure by AGD to provide any correspondence for which a record was created after 2010 was 'a mistake and a pity', and that at the time, the AGD 'needed to improve their handling of correspondence'.¹⁹

2.18 Mr Thawley explained that in his opinion Mr Moraitis dealt with the correction of evidence issue in a reasonable manner.²⁰ He noted that 'Chris Moraitis is a very fine secretary' and that he was not surprised that it took the AGD 'a couple of days to sort through it'. Mr Thawley stressed:

...if I were a secretary of a department where there had been 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. I would want to know that I had all the information available.²¹

2.19 When asked about any lessons that could be learned about vigilance in handling correspondence that may have national security implications, Mr Thawley stated that:

I do think that this pointed out a weakness in the process for assessing whether correspondence was relevant. I did make the point that, apart from finding out what happened, the A-G's department did need to make sure that the procedures for handling correspondence which might have security relevance needed to be looked at.²²

17 Mr McKinnon, *Committee Hansard*, 23 June 2015, p. 22.

18 Mr Duncan Lewis, Director-General, Australian Security Intelligence Organisation (ASIO), *Estimates Hansard*, 28 May 2015, p. 87.

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

20 Mr Thawley, *In Camera Committee Hansard*, 6 July 2015, pp 5–6.

21 Mr Thawley, *In Camera Committee Hansard*, 6 July 2015, p. 5.

22 Mr Thawley, *In Camera Committee Hansard*, 6 July 2015, p. 8.

The AGD's document handling processes

2.20 With regard to the AGD's handling of documents and failure to communicate information up the line on 2 February 2015, Mr Moraitis agreed with a comment that the method employed by the AGD for handling documents had been 'haphazard'.²³ He explained that the errors may have occurred because the division dealing with national security issues had been very busy over a period of four to five months in the lead up to the summer break and, due to leave arrangements, some officers were temporarily filling in for others and the division was not fully staffed.²⁴ Mr Moraitis declared:

I have bent over backwards in the department to get a process in place whereby this never happens again. I cannot guarantee that it will never happen again, but I am going to be sure that we do the best we can. Does it mean having three sets of eyes to look at material—one who collates it, one who ensures it goes out and one who verifies it has been received—and they audit and reconcile it? If that has to be done it has to be done... It is not just about setting up a protocol for how you handle material; it is also about my desire to ensure that, when we do set up these sorts of processes, there is someone responsible... One way would have been to have one person in charge of the whole process and for me to say to them, "You are personally responsible for checking every single document in the system, putting it in a folder, making sure it gets to the person at the other end and ticking it all off." We could have had a group of people where one person did that, another person made sure it was all collated and another person oversaw it to make sure X went to Y. Or I could have just said that I wanted to see hard copies of everything in one big folder with an index—everything that was found was in that folder and I physically looked at it.²⁵

The AGD's resources

2.21 When questioned about available resources, the AGD confirmed that it had been the subject of efficiency dividends and other cuts, and that this may have contributed to the AGD's failure to provide the relevant documents to the Thawley-Comley review team. Mr Moraitis declared:

I did not want to give an excuse—and Senator Collins picked me up on that point—but it was a period where there was not full staffing. It was coming off a very intense period of work. That is not an excuse. That just puts it into context. It did not happen in February, March or April when everyone is going at full bottle and is 100 per cent full-steam in terms of work. It is that period between New Year, the first half of January and the end of January when people come and go, people are doing other people's work and we do the best we can.²⁶

23 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 3.

24 Mr Moraitis, *Committee Hansard*, 3 August 2015, pp 11 and 13.

25 Mr Moraitis, *Committee Hansard*, 3 August 2015, pp 12–13.

26 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 13.

2.22 The committee accepts that the AGD was still experiencing a shortage of resources by 2 February 2015 when junior officers failed to notify senior officers of the communications with the Thawley-Comley review team and the AFP.

2.23 Mr Moraitis reassured the committee that budgetary measures aimed at cost-savings may be overcome without affecting the AGD's current level of resourcing. Mr Moraitis stated:

...we just need to prioritise. I might have to set up things like a task force when you need to do something like this, where you say, "Okay, I need two or three people offline for three, four or five weeks, and this is their job full time," and they report to someone senior who is doing that. If that means that an area loses two, three or four people for a period of time, so be it. That is one way of doing it. The use of task forces for high-priority issues is a normal procedure in government. It has been used for years now. The reality is resources are tight, staff numbers are tighter, and there are ongoing priorities in the day job that Ms Jones has to work on and Mr Sheehan does as well, as do all my staff. So a task force is one way to do it, where you assign a group of officers who are good at this stuff to come together and work on that as a priority 24/7.²⁷

The AGD's protocols, procedures and staff training

2.24 Mr Moraitis explained that the AGD has developed and promulgated, via the AGD intranet, a protocol defining how to collate information to be provided to an inquiry, stating:

As I said in the first hearing, I asked my department to look at a protocol of procedures of how you collate material that you provide for inquiries and other things. That has been done. I have had a look at it and I was pretty satisfied with it. It is now being promulgated. I raised it with all my executives. I raised it three or four weeks ago at my executive meeting with all my senior executive staff—branch heads and FASs. They have been told to acquaint themselves with it. It is on our intranet. It is there on the first page of the intranet—I have seen it. I have clicked in to see that it is there. The case now is just to ensure that I keep reminding people it is there, don't just leave it on the intranet and not use it, and actually use it when you do these things. And I think there has to be a more hands-on approach from someone at a senior level who is the assigned senior officer who accounts to senior management, in my case, me as the secretary that it has been done to their satisfaction. Short of sitting down and doing it myself—and if in the future I have to, I will do it myself.²⁸

2.25 Mr Moraitis noted that he had been looking at methods to train staff to better equip them to process documents and conduct document searches. He stated that:

Since 1 July, the Australian Government Solicitor has come into the AGD as a functional area, and I want to speak to the Australian Government

27 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 13.

28 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 13.

Solicitor about getting his advice on how they do document searches and how they collate. Obviously, they have a lot of experience because of litigation and discovery. I am thinking about what sort of advice and training they could give to our staff as well because they are very experienced in discovery and other processes of document retrieval. So I will be following that up as well.²⁹

2.26 Mr Moraitis noted that the AGD is comprised of various divisions which may, from time to time, need to be restructured to maximise resources and allow the AGD as a whole to complete its work.³⁰ The committee observes that departmental restructuring may involve requiring officers to undertake further training and be more flexible, to better enable cross-divisional support.

Responding to sensitive correspondence

2.27 When asked whether he intended to conduct a further review into the handling of correspondence on national security-related concerns by the AGD, Mr Moraitis stated that he did not have any such intention. Mr Moraitis explained:

...after the raising of the security alert levels, the acting secretary...informed the staff about the heightened security level, to be vigilant, to be alert. That built on their basic professional dealing with correspondence, and officers at senior levels—EL, director level or above—are the persons who decide how to deal with correspondence. There is a clear protocol in place about dealing with threatening letters, emails or phone calls...There are occasions where we do refer individuals in those situations to the relevant authorities to deal with those concerns...my strong view at this stage is that you still rely on the judgement of professional policy officers to make judgement calls about these things, based on their experience and their knowledge, and, if they have doubts, to raise them up the line with their supervisors if they feel that it is a borderline issue. That is how I would approach it at this stage. That is not to say that, down the track, I may consider further things.³¹

2.28 When asked about the use of the term 'Caliph' in the AGD's response to the Monis letter, dated 5 November 2014, Mr Moraitis responded:

Could I say that it is just a question of responding in the terms that the letter is written in. If I had been an officer responding, I possibly would have written the same thing myself, in my view. I do not see that that has any sort of relevance, in that sense...Having said that, let me say, in a de facto way, given the prominence of this discussion recently, that officers would be sensitised to the new reality of scrutiny. Is it a question of how you use correspondence? Is it a style manual issue of how you respond to correspondence? That might be something that I could finetune.³²

29 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 14.

30 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 11.

31 Mr Moraitis, *Committee Hansard*, 19 June 2015, p. 21.

32 Mr Moraitis, *Committee Hansard*, 19 June 2015, p. 22.

Correction of evidence given during estimates

2.29 As noted in chapter 1, at estimates, Ms Jones and then Senator Brandis both stated that the Monis letter had been provided to and was considered by the Thawley-Comley review. Ms Jones stated that:

On the night of the estimates when I provided the evidence that the letter had been provided to the Martin Place siege review, it was my understanding that that letter had been included in a range of documents that had been provided to the review. My understanding that it had been provided was reinforced by a strong recollection that I had around discussions.³³

2.30 However, Ms Jones also stated that 'I had this strong—though mistaken—recollection that I had seen the letter as a member of the review team'.³⁴

2.31 Ms Jones explained that on Friday, 29 May, she had lunch with Mr Allan McKinnon, Acting Associate Secretary, PM&C. Ms Jones advised that:

In the course of conversation with that colleague I mentioned in passing the fact that there had been discussion at estimates...It was part of a broader conversation that we were having about a range of matters. I mentioned that I had recalled detailed conversations about a letter from Monis seeking legal advice from the minister. During the course of that conversation it became clear that the letter we had had quite a detailed discussion about—and there were several that were provided to the review where Monis had written to ministers asking for legal advice—was not the 7 October letter to the Attorney-General. So at that point I became aware of the fact that I could not conclude conclusively that as a member of the review team I had seen the 7 October 2014 letter from Monis.³⁵

2.32 Ms Jones explained that, on Saturday, 30 May 2015, she went into work, where she reviewed the relevant *Hansard* transcript from estimates. She noted:

...at that point I concluded that we should take further steps to categorically confirm whether or not the letter had been provided. So, on the morning of Monday...1 June, I contacted Tony Sheehan in the department to indicate that I felt that we needed to take some steps to clarify definitively whether that letter had been provided by the department to the Martin Place siege review during the time of the review.³⁶

2.33 Ms Jones continued, by stating:

I was on leave at that time, so Mr Sheehan then undertook to look into the matter to try and give a definitive answer in terms of whether the letter had

33 Ms Katherine Jones, Deputy Secretary, National Security and Criminal Justice Group, Attorney-General's Department, *Committee Hansard*, 19 June 2015, pp 2–3. See also *Committee Hansard*, 19 June 2015, p. 5.

34 Ms Jones, *Committee Hansard*, 19 June 2015, p. 6.

35 Ms Jones, *Committee Hansard*, 19 June 2015, p. 3.

36 Ms Jones, *Committee Hansard*, 19 June 2015, pp 3–4.

been provided. At that point, he and I did have a conversation about the fact that my evidence would need to be corrected if investigations did determine that the letter had not been provided.³⁷

2.34 During questioning on the circumstances in which a media release of 28 May 2015 was removed from Senator Brandis's ministerial website, the AGD was asked on notice to produce records of communications between officials and the office of Senator Brandis. At this point, Ms Jones admitted:

Can I clarify what I said before? You asked if I had any conversations with anyone on the Friday afternoon. Mr Sheehan and I did have a brief conversation late on Friday afternoon following that lunch. I said to him at that point that we probably needed to undertake some investigation to clarify that we definitively have provided the letter. I spoke to him both on Friday night and on Monday morning.³⁸

2.35 Mr Sheehan confirmed that:

...I recollect Ms Jones speaking to me. It was on Friday night. On Friday night I did not do anything with that information, but after Ms Jones called me on the Monday morning I went to see the Secretary, and I said to the Secretary that Ms Jones had called me, and it was at that point that the Secretary asked me to oversee a review.³⁹

2.36 Mr Moraitis added that when Mr Sheehan approached him, he asked Mr Sheehan to clarify what had happened. Mr Moraitis then went to Senator Brandis to tell him that the matter would need to be looked into further. Mr Moraitis stated that Senator Brandis had instructed him:

...to conduct an inquiry to get the facts, to ascertain what had happened, whether the letter had been passed to the review and, if not by that time, did the inquiry have those letters separately, and what happened and why? And if it was true that the review had not inspected those letters then I should confirm that and have the record corrected as soon as possible...As of Monday night I still did not understand whether the letter had been passed or not. Had it been passed [on] by some other agency? Did the inquiry have it? At that stage Mr Sheehan had told me the coroner had the correspondence. It appeared that our searches had provided that correspondence. So, there were all these inconsistencies. Neither Mr Sheehan nor I was confident of where we stood on that letter. So, that is where it was. And, as I said, it took a few days, and I asked Mr Sheehan to conduct a thorough, quick review to ensure that we had captured everything. If there had to be a correction of the record, which I guess was the gut feeling at that stage—that it was possible, or likely; I do not know

37 Ms Jones, *Committee Hansard*, 19 June 2015, p. 5.

38 Ms Jones, *Committee Hansard*, 19 June 2015, pp 11–12.

39 Mr Sheehan, *Committee Hansard*, 19 June 2015, p. 12.

what stage it was at—I wanted the correction to be one correction, to be the absolutely correct correction. I did not want a further correction.⁴⁰

2.37 Mr Sheehan reported that by Thursday, 4 June 2015, after consulting with the relevant officers and repeating the searches, the internal review team had a complete understanding of what had occurred. The internal review determined that the AGD had not provided the Monis correspondence to the Thawley-Comley review, due to the incident with the second tab of the spreadsheet. It was at that point that Ms Jones corrected the record.⁴¹

2.38 When asked why someone did not contact PM&C to directly ask if the Thawley-Comley review team had received the Monis letter, Mr Sheehan confirmed that he 'did speak with people who had been on the review' and that he had gone over to the offices of PM&C on the morning of Tuesday, 2 June 2015, to deliver copies of the documents listed in the second tab of the spreadsheet.⁴² Persistent questioning about why he had not contacted PM&C on Monday, 1 June 2015, led Mr Sheehan to state:

There may have been contact with PM&C on the Monday as well. I said I went to PM&C on the Tuesday with the documents from the second tab of the spreadsheet.⁴³

2.39 Mr Sheehan reiterated this point by stating:

My first discussion with the review was on Tuesday, 2 June... We asked advice as to whether they had the documents and we had a general discussion about that but did not expect to get any information about them at that time... We asked them to provide advice as quickly as possible.⁴⁴

2.40 Although Mr Sheehan stated 'it was clear to me on the Monday that the document was not in the batch that had been sent over',⁴⁵ he later assured the committee that by Monday, 1 June 2015, he could not have categorically said that the Monis letter had not made its way from the AGD to the Thawley-Comley review team by some other pathway.⁴⁶ However, Mr Sheehan later informed the committee that 'at 9.30' on Monday, 1 June 2015, 'PM&C advised that they did not have the letter in question'.⁴⁷

2.41 The AGD subsequently corrected this information, stating that:

40 Mr Moraitis, *Committee Hansard*, 19 June 2015, p. 12.

41 Mr Sheehan, *Committee Hansard*, 19 June 2015, p. 13.

42 Mr Sheehan, *Committee Hansard*, 19 June 2015, p. 21.

43 Mr Sheehan, *Committee Hansard*, 19 June 2015, p. 21.

44 Mr Sheehan, *Committee Hansard*, 19 June 2015, pp 24–25.

45 Mr Sheehan, *Committee Hansard*, 19 June 2015, p. 14.

46 Mr Sheehan, *Committee Hansard*, 19 June 2015, p. 22.

47 Mr Sheehan, *Committee Hansard*, 19 June 2015, p. 27.

...the first advice that PM&C gave to the department about the letter in question was at 12:15pm on 1 June. That advice stated that PM&C had "checked the index of AGD documents for the Martin Place Review very carefully. The letter is not there."⁴⁸

2.42 Mr McKinnon confirmed that at 5.30 pm on Monday, 1 June 2015, he contacted the AGD asking them whether they intended to correct Ms Jones's evidence at estimates. The email stated:

Michael Thawley rang me from PMO. He wanted to know whether AGD had corrected the Senate Estimates record the other night where K Jones had said that [t]he Monis Letter was provided to the Martin Place Review team.

He said that Senator Bishop [sic] had repeated the same line today. He wanted AGD to correct the record and to notify Senator Bishop's [sic] office of the correction.⁴⁹

2.43 Mr Moraitis acknowledged that by Monday, 1 June 2015, he 'was certainly focused on ensuring that the record would be corrected' but was concerned about the nature of the correction. When explaining why he had not immediately informed the committee of his suspicions at that point, Mr Moraitis advised that:

...personally I did not realise that you could half correct the record. My view would be that the record should be corrected absolutely. That has always been my understanding, so that is a good clarification for me...—to be honest, I should have known this but I did not—that I can put on notice a correction to say, "We're not sure about the answer we gave last week, but we're following it up." That is a correction. That would have been a good course of action too, I gather.⁵⁰

Attorney-General's media release

2.44 The AGD confirmed that on or around 3.00 pm on Thursday, 28 May 2015, the AGD's web publishing area published a media release on the ministerial website of Senator Brandis. The AGD stated:

The department subsequently removed the release from the Attorney-General's website on 29 May following an assessment by an officer in the department that placing the release on the website may not be consistent with the "Guidelines for Ministerial and Agency Websites" issued by the Department of Finance. In deciding to remove the release, the officer had regard to the statement in the Guidelines that "agency-funded websites should not contain material of a party political nature". In making

48 Attorney-General's Department, *Answers to questions taken on notice*, received 23 June 2015 [Q.4].

49 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].

50 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 20.

the decision to remove the media release the officer did not consult the Attorney-General's office.⁵¹

2.45 The *Web Guide: Guidelines for Ministerial and Agency Websites* (web guidelines) provide that:

...individual judgement will be required. For example, a minister's explanation and defence of government policy might draw distinctions between Government and Opposition policies. Such material may be placed on a ministerial website funded by an agency. However, material that relates solely to party political issues or that could be categorised as "how to vote" material may not be placed on an agency-funded site.

If agency staff are concerned about material placed (or proposed to be placed) on an agency-funded website, they should raise those concerns promptly with their minister's office.⁵²

2.46 Mr Sheehan explained that the decision to take down the media release resulted from a 'discussion between only two people in the department—one person from web publishing, who saw it, and then another person in communications'.⁵³ Mr Sheehan confirmed that the respective officers failed to communicate their decision and subsequent actions. Mr Sheehan also acknowledged that the web guidelines had not been properly followed as 'the matter should have been reported up and should also have been communicated to the Attorney's office'.⁵⁴

2.47 In answer to a question taken on notice asking 'How many of the Attorney-General's media releases have been taken down from the Attorney-General's website since Senator Brandis became Attorney-General?', the AGD responded:

It is not possible to provide a figure for the number of Attorney-General media releases that the department has taken down since September 2013. To do so would involve a significant diversion of resources. However, the department is able to advise that the media release of 28 May 2015 is not the only media release the department has taken down or not put up since September 2013. Whenever a decision is made to take down or not put up a media release the officer making the decision has regard to the Guidelines for Ministerial and Agency Websites.⁵⁵

51 Attorney-General's Department, *Answers to questions taken on notice*, received 23 June 2015 [Q.1]. See also Australian Government, *Web Guide: Guidelines for Ministerial and Agency Websites* at <http://webguide.gov.au/types-of-websites/ministerial-and-agency-websites/> (accessed 24 June 2015).

52 Australian Government, *Web Guide: Guidelines for Ministerial and Agency Websites* at <http://webguide.gov.au/types-of-websites/ministerial-and-agency-websites/> (accessed 24 June 2015).

53 Mr Sheehan, *Committee Hansard*, 23 June 2015, p. 15.

54 Mr Sheehan, *Committee Hansard*, 3 August 2015, p. 4.

55 Attorney-General's Department, *Answers to questions taken on notice*, received 24 June 2015 [Q.3].

2.48 When asked how non-conforming press releases are put up in the first place, Mr Moraitis stated:

My understanding is that you have a person who is an IT person called a webmaster, and they put it on because that is their job. But then there is someone who actually does the checking to see if the content is right. It is the nature, again, of some people who do their job, which is the IT job, and someone who does the checking...⁵⁶

2.49 Mr Sheehan confirmed that the AGD would look into the process to ensure that the web guidelines are properly implemented in the future.⁵⁷

Committee's views and recommendations

2.50 The committee accepts the evidence of Mr Moraitis that administrative error was the reason why the five documents on tab two of the spreadsheet were not provided to the Thawley-Comley review.⁵⁸ The committee does not wish to imply that the Monis letter was deliberately withheld from the Thawley-Comley review. However, the committee questions the timing of the correction of evidence given during estimates by both Ms Jones and Senator Brandis. The committee has formed the view that the evidence was not corrected at the earliest opportunity. Rather, the committee believes the corrections were delayed until after question time on Thursday, 4 June 2015, so that any immediate parliamentary scrutiny of the corrections would be thwarted.

Inconsistency of evidence and a failure to be proactive

2.51 The committee is concerned about the manner in which this inquiry has been treated by the AGD.

2.52 The committee considers that the AGD has not fully cooperated with the inquiry. The AGD failed to be proactive in its disclosure of relevant information, making the provision of information contingent upon the right question being asked. Furthermore, the committee takes the view that on more than one occasion corrections or clarifications were only made by the AGD after inconsistencies were highlighted by the committee. The failure to properly explain at the first instance why the index of relevant documents had been separated into two tabs is one example. Another example is the initial failure to disclose the AGD's communications with the AFP. Further examples include the way in which the AGD explained the removal of the Attorney-General's media release dated 28 May 2015, and the time at which Ms Jones first spoke to Mr Sheehan about the Monis letter, after estimates. Yet another example was demonstrated during the later stages of the inquiry, when the AGD provided further volumes of email correspondence and was asked why these had not been provided earlier:

56 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 5.

57 Mr Sheehan, *Committee Hansard*, 3 August 2015, p. 5.

58 Mr Moraitis, *Committee Hansard*, 19 June 2015, p. 2.

In the totality of all the searches, they had been parts of chains and maybe had not been separated out...It came about as a course of doing a very final check to ensure that we provided everything comprehensively to the committee and I made the decision that they should be provided.⁵⁹

2.53 A further key example of inconsistent information was that provided by the AGD about when the failure to provide the Monis letter to the Thawley-Comley review was discovered and to whom it was known.

2.54 At the public hearings on 19 June 2015 and 3 August 2015 Mr Moraitis claimed that senior officers of the AGD were unaware that the Monis letter had not been provided to the review until 1 June 2015.⁶⁰

2.55 Documents provided to the committee by the AGD showed that departmental officers knew of the error well before June. An email from an AGD officer to an AFP Federal Agent dated 30 January 2015 stated 'I'm confident we'll have all our processes and authorities sorted by then'⁶¹ and suggests to the committee several AGD officers knew of concerns about whether the Monis letter had been provided at this time. Another email provided to the committee on 18 August 2015 showed that at 11.35 am on 2 February 2015 a Senior Legal Officer, an Acting Senior Legal Officer, a Principal Legal Officer and a Director were parties to an email asking whether the letter from 'Sheikh Haron' to the Attorney-General dated 7 October 2014 had been provided to the review.⁶² Clearly, at least four AGD officers knew about the failure to provide the Monis letter to the Thawley-Comley review team by early February 2015.

Duty to the committee

2.56 Senate committees are appointed by the Senate to investigate and examine in detail particular matters on its behalf. In accordance with Senate procedure, the inquiry which is the subject of this report was referred to the committee by a majority vote in the Senate. On this occasion, the committee is of the view that the AGD has not approached or engaged with the committee in the most appropriate and professional manner. The committee believes it is timely to remind the AGD, and the Commonwealth public service more broadly, that Senate committees are an extension of the Senate and their proceedings are parliamentary proceedings; public agencies and their staff must be accountable to and respectful of committees in the same way required of them by the Senate.

2.57 With particular regard to Senate estimates, this process provides senators with an opportunity to examine the operations and expenditure of government. It plays a key role in parliamentary scrutiny of the executive. Senate committees, both in estimates and in inquiries, are fundamentally reliant on the accuracy of evidence

59 Ms Jones, *Committee Hansard*, 3 August 2015, p. 14.

60 Mr Moraitis, *Committee Hansard*, 19 June 2015, p. 2 and 3 August 2015, p. 2.

61 AFP, *Answers to written questions on notice*, received 23 July 2015, Attachment A.

62 AGD, *Answer to question taken on notice*, Attachment A – 2 June 2015 (received 18 August 2015), p. 76 and AGD, *Answer to question taken on notice* (received 27 August 2015).

provided to them. Where the information sought by a committee pertains to the workings of government agencies and statutory authorities, those agencies and authorities themselves are better equipped than any other party to provide detailed information about the implementation, administration and cost of government policies.

2.58 In order for the Senate to properly oversee the accountability of government agencies, it is imperative that evidence given during estimates is accurate. Where evidence provided to a committee is incorrect the onus falls to the witness, or the relevant department or statutory agency, to correct the error as soon as it is identified. A witness must be proactive and apolitical in this regard.

2.59 Privilege Resolution 6(12)(c) provides that the giving of false and misleading evidence, or evidence which a witness does not believe on reasonable grounds to be true or substantially true in every material particular may be a contempt of the Senate. In determining whether a contempt has been committed, three criteria must be taken into account:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees...against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:
 - (i) knowingly committed that act, or
 - (ii) had any reasonable excuse for the commission of that act.⁶³

2.60 The duty to correct is outlined in the *Government guidelines for official witnesses before Parliamentary Committees and related matters*, which specify:

5.6. Correction or clarification of evidence

5.6.1. Witnesses will receive transcripts of their evidence in the days following their appearance. The transcript should be examined promptly to establish whether any evidence needs to be corrected or clarified. On occasions, a witness may become aware of the need for correction or clarification before the receipt of the transcript or, in the case of a written submission, before the commencement of hearings.

5.6.2. Once the need to provide a committee with revised information has been established, it is most important that the committee receive that revised information at the earliest opportunity. In the case of officials who made submissions or appeared as witnesses in relation to the administration and implementation of government policy...the departmental secretary or agency head (or

senior official who represented the secretary at the hearing) should be informed that revised information is to be provided. Depending on the nature of the correction, it may also be appropriate to inform the minister. Officials need to keep in mind that, while their evidence remains uncorrected or unclarified they are vulnerable to allegations that they have misled a committee.

5.6.3. Supplementary information for a committee should be forwarded to the committee secretary. If uncertain of the most appropriate way to provide a committee with additional or corrected information, officials should seek the guidance of the committee secretary.⁶⁴

Obligation of honesty and candour

2.61 As discussed above, it is a long accepted and well established principle that if ministers or departmental officials for whom they are responsible have given misleading evidence to the Senate or a Senate committee they are expected to correct the record as soon as practicable. This obligation is consistent with the doctrines of ministerial responsibility and parliamentary accountability. Consistent with the importance placed on this obligation of honesty and candour, ministers have been censured for misleading the Senate. For example, on 27 June 1996, Senator John Herron was censured by the Senate for giving misleading answers in relation to funding of Aboriginal programs.⁶⁵

2.62 It is also open to the Senate to censure a minister for failing to correct misleading evidence in a timely manner, if the Senate comes to the view that there was no excuse for the correction not to have occurred earlier, or that the minister's conduct was culpable.

2.63 In respect of departmental officials, the Australian Public Service Code of Conduct requires an Australian public servant to act honestly and with integrity and to act with care and diligence. Moreover, an Australian public servant must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.⁶⁶

2.64 The committee accepts the evidence of Ms Jones, that at the time of giving her evidence before estimates on 27 May 2015, Ms Jones believed her evidence to be true and correct⁶⁷ and in so doing, at that time, she did not intentionally or knowingly give false or misleading evidence. However, the committee believes that the AGD was in a position to correct the error or contact the committee and explain that the record

64 *Government guidelines for official witnesses before Parliamentary Committees and related matters*, February 2015 at http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/Guidelines_for_official_witness (accessed 6 August 2015).

65 *Senate Hansard*, 27 June 1996, pp 2395–2427.

66 *Public Service Act 1999* (Cth), s. 13.

67 Ms Jones, *Committee Hansard*, 19 June 2015, pp 2–3.

may need to be corrected at least three days, if not six days, before it did. In the opinion of the committee, once the error or suspected error had been identified, the first priority of the AGD was to notify the committee. As soon as the error was suspected, the AGD should have contacted the committee to ensure that the committee was not misled, inadvertently or otherwise. The committee takes the view that the AGD should have contacted the committee on 29 May 2015 to flag its suspicions that the evidence given on 27 and 28 May 2015 at estimates may have been given in error. Then, once the error was confirmed, on 1 June 2015, the AGD should have confirmed that the Thawley-Comley review team had not received the Monis letter or the AGD response attached to it under the batch sent in response to the formal request and as such it was highly likely that it had not been considered by the review team.

2.65 Notwithstanding that, in the committee's opinion, the internal review should have been conducted in February 2015 when the AGD became aware that the letter from Mr Monis had been omitted from the documents provided to the review, the committee believes that, while necessary measures, consulting the Attorney-General and conducting an internal review must be considered secondary to the duty to inform the committee of the suspected error. As a result of the delay in informing the committee of the error, the committee and the Parliament were misled for a period of nearly eight days. While the government claims that the Monis letter may not have had any effect on the report of the Thawley-Comley review, the delay limited the capacity of the committee and the Parliament to scrutinise the actions of the AGD.

Recommendation 1

2.66 The committee reminds government agencies and statutory authorities, that where evidence is given in error to a Senate committee, the primary duty of the department or statutory authority is to the committee. Witnesses must bring errors or suspected errors to the attention of the relevant Senate committee as a priority.

2.67 The committee notes Mr Moraitis's statement that he did not realise that the AGD could partially correct the record prior to a final correction.⁶⁸

2.68 As discussed at paragraph 2.55, departmental officers in the division reporting to Ms Jones were aware during early February 2015 that the letter from Mr Monis had not been provided to the Thawley-Comley review. Mr Moraitis claimed that senior officers were not aware of this until 1 June 2015; Ms Jones indicated that she suspected the error⁶⁹ and raised it with Mr Sheehan on 29 May 2015.⁷⁰

2.69 It may be the case that senior AGD officers did not know of the failure to provide the Monis letter to the Thawley-Comley review in the period between 2 February 2015, when the error was first known to the department, and late May/early June 2015. Irrespective, emails provided to the committee showed that the

68 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 20.

69 Ms Jones, *Committee Hansard*, 19 June 2015, p. 3.

70 Mr Sheehan, *Committee Hansard*, 19 June 2015, p. 12.

Department of Prime Minister and Cabinet was convinced by 12.15 pm on 1 June 2015 that the Monis letter had not been provided to the review, and the Attorney-General's office (AGO) was alerted to the error by at least 1.54 pm that same day.⁷¹ Further, a draft response from Ms Jones to the committee to correct her evidence of 27 May 2015 had been prepared by 3.17 pm on 1 June 2015.⁷²

2.70 It remains unclear to the committee why it then took another three days for the AGD to advise the committee of the error and the incorrect evidence given on 27 and 28 May 2015; the committee is not assuaged by Mr Moraitis's argument that the delay was the result of his misapprehension about partially correcting the record.

2.71 The committee considers that statements by both Mr Moraitis and Mr Thawley about correcting the *Hansard* record show a lack of understanding on the part of Commonwealth officials about their roles and responsibilities with respect to parliamentary accountability, correcting the *Hansard* record and providing accurate and timely information. The committee believes that senior executive staff (SES) must be better informed about these responsibilities and therefore recommends that SES across the Australian Public Service, including the secretaries of PM&C and the AGD, undergo training in parliamentary accountability provided by the Department of the Senate.

Recommendation 2

2.72 The committee recommends that senior executive staff across the Australian Public Service, including the secretaries of the Department of Prime Minister and Cabinet and the Attorney-General's Department, undergo training in parliamentary accountability provided by the Department of the Senate, including but not limited to seminars routinely provided for senior executives.

Document management and intra-departmental communication

2.73 The committee stresses that the failure of the AGD to provide relevant correspondence created after 2010 to the Thawley-Comley review team posed a significant issue for national security. The committee believes that the failure to properly index and then provide information to the Thawley-Comley review went beyond the Monis letter itself; indeed, during the course of the inquiry, the question of 'what if this letter had been more significant?' was raised.⁷³

2.74 Security assessments do not rely solely on individual pieces of information in isolation; they also give consideration to the cumulative impact of intelligence drawn from various sources. It is likely therefore that the Monis letter may have contributed to a more accurate overall assessment of the security situation in Australia if it had been shared with intelligence agencies at an earlier stage. The committee highlights that both the NSWPF and the AFP determined that the letter had some significance and specifically requested that the AGD provide a copy of the letter to the JCTT. The

71 AGD, *Answer to question taken on notice*, 19 June 2015 (received 23 June 2015).

72 AGD, *Answer to question taken on notice*, 13 August 2015 (received 18 August 2015), p. 138.

73 Senator Jacinta Collins, *Committee Hansard*, 3 August 2015, p. 11.

error by the AGD pointed out a weakness in the process for assessing whether correspondence was relevant. The committee concludes that, in the current high security-threat environment, all government agencies and statutory authorities need to ensure that any correspondence that may have national security implications is referred immediately to relevant intelligence agencies.

2.75 The committee commends the AGD for developing a document search and document management protocol to ensure that an error such as this is not repeated.⁷⁴ However, a formal protocol is only part of the solution. The committee understands that the protocol has been published on the AGD's intranet and that the AGD's senior executive officers have been asked to acquaint themselves with it.⁷⁵ The introduction of a formal protocol must be complemented by the allocation of adequate resources and training of AGD officers about how to best implement and adhere to the protocol. The committee supports the suggestion by Mr Moraitis of integrating into the protocol the institutional knowledge held by the Australian Government Solicitor on litigation discovery and document searches.

Recommendation 3

2.76 **The committee recommends that the Attorney-General's Department:**

- **formally draw to the attention of all of its officers' the document search and document management protocol;**
- **implement appropriate training programs to ensure adherence to the protocol; and**
- **consult with the Australian Government Solicitor for the purpose of reviewing this protocol in a comprehensive and purposeful manner.**

2.77 The committee is also cognisant of the likely contribution of resourcing and restructuring issues to the AGD's error in handling sensitive correspondence. The committee recommends that the AGD review the allocation of resources across its various divisions. This review should take account of the risks posed by any cross-divisional movement, using a formal risk assessment model. The committee further recommends that, in order to mitigate risks associated with the ad hoc use of staff across departmental divisions, the AGD develop and implement appropriate

74 See Attorney-General's Department, *Answers to questions taken on notice*, received 6 August 2015, Attachment.

75 Mr Moraitis, *Committee Hansard*, 3 August 2015, p. 13.

training for its staff relating to intra-departmental document management and communication.

Recommendation 4

2.78 The committee recommends that the Attorney-General's Department:

- **review the allocation of resources across its divisions;**
- **undertake formal risk assessments to mitigate risks associated with the cross-divisional movement of staff and the ad hoc use of staff across departmental divisions; and**
- **develop and implement training for its staff relating to intra-departmental document management and communications.**

Responding to sensitive correspondence

2.79 The committee notes the use of the word 'Caliph' in the AGD's response to the Monis letter and the explanation by Mr Moriatis that this was merely a question of responding in the terms in which the letter was written.⁷⁶ However, given the heightened national security environment, the committee takes the view that the language used in responding to correspondence of a sensitive nature is a very important issue, as Mr Thawley conceded (see paragraph 2.19). The use of terms such as 'Caliph' may be read as de facto acceptance of the title and legitimisation of an organisation or cause. The committee suggests that the AGD reflect on the importance of language used in correspondence, especially in relation to matters of a sensitive nature, such as correspondence that refers to a known terrorist organisation.

Recommendation 5

2.80 The committee recommends that the Attorney-General's Department implement a training program to ensure that officers responding to correspondence are better aware of the political and cultural connotations of titles and names, especially in relation to known terrorist organisations.

2.81 To ensure that staff across the AGD is appropriately trained to implement document management and search functions as intended, and to respond to correspondence appropriately, the committee recommends that the AGD subject its document handling procedures to both regular and random audits.

Recommendation 6

2.82 The committee recommends that the Attorney-General's Department subject its document handling procedures to both regular and random audits, to inform further development of protocols, and training and resource requirements.

⁷⁶ Mr Moriatis, *Committee Hansard*, 19 June 2015, p. 22.

Principles for handling and responding to sensitive correspondence

2.83 More generally, the committee believes that the AGD needs to improve its engagement with the relevant intelligence agencies when handling and responding to sensitive correspondence.

2.84 The AGD should establish processes whereby intelligence and security agencies are routinely informed about and consulted on sensitive correspondence, especially where it has or may have national security implications.

Recommendation 7

2.85 The committee recommends that the Attorney-General's Department routinely consult the relevant intelligence and security agencies in relation to sensitive correspondence, especially where it has or may have national security implications.

2.86 This approach to dealing with sensitive correspondence should not be restricted to the AGD. The committee recommends that all Commonwealth government agencies examine their processes in this regard and ensure that procedures are in place so that sensitive correspondence which has or may have national security implications is brought to the attention of the relevant intelligence and security agencies in a timely manner.

Recommendation 8

2.87 The committee recommends that all Commonwealth government agencies ensure that they have procedures in place to bring sensitive correspondence which has or may have national security implications to the attention of the relevant intelligence and security agencies in a timely manner.

Taking down ministerial media releases

2.88 The committee is concerned about whether the web guidelines have been applied consistently by the AGD. The committee questions whether two people, who are qualified experts in ICT and communications policy respectively, are in the best position to make a determination on whether a media release is of a party-political nature. The committee cites the tabled media release of 28 May 2014⁷⁷ and suggests that there appears to be a high degree of inconsistency in the application of the guidelines by the AGD. The committee notes that the officers had failed to follow the web guidelines, not only because the webmaster allowed the press release to be published in the first place but also because the webmaster and the officer from the communications division failed to raise their concerns and consult with the minister's office.

77 'Media Release: Dreyfus's deceptions can't hide the Coalition's support for the Arts', *Document tabled by Senator Catryna Bilyk at public hearing 23 June 2015* at <http://www.aph.gov.au/DocumentStore.ashx?id=fc41f760-0436-40c9-88bc-bdc036705ceb> (accessed 24 June 2015).

2.89 The committee takes the view that a decision to publish or take down a media release from an agency-funded website on grounds that it contains or may contain material of a party-political nature is a decision that must be made through a consistent, objective and apolitical process.

Recommendation 9

2.90 **The committee recommends that the Attorney-General's Department review its procedures related to the application of the *Web Guide: Guidelines for Ministerial and Agency Websites* in a comprehensive and purposeful manner to ensure that these guidelines are applied consistently, objectively and apolitically.**

**Senator Glenn Lazarus
Chair**

Senator Catryna Bilyk

Senator Jacinta Collins

Senator the Hon Joe Ludwig

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.

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?¹

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.²

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',³ 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.⁴

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.⁵ 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.⁶ 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.⁷

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.⁸

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.⁹

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.¹⁰

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.¹¹

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'.¹² 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.¹³ 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.¹⁴

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'.¹⁵ 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.¹⁶

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 June¹⁷ 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'¹⁸ – 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'.¹⁹

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.²⁰

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.²¹

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.²²

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'.²³ 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.²⁴

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 (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

Monis letter chronology

AG Attorney General
 AGD Attorney General's Department
 DCoS Deputy Chief of Staff
 DLO Departmental Liaison Officer
 PMC Prime Minister & Cabinet
 PMO Prime Minister's Office
 QON Question on Notice
 QTB Question Time Brief

Date/time	Event	Notes
12.09.14	Australia's Terror alert level raised to its highest level in history.	
07.10.14	Haron Man Monis writes to AG Brandis	Monis asks whether writing to "Caliph Ibrahim" is illegal.
09.10.14	Letter received, DLO refers it to AGD Ministerial Correspondence Unit noting it should be referred to the National Security Law and Policy Division.	
05.11.14	Acting Assistant Secretary of National Security Law and Policy Division Karen Horsfall writes back to Monis	
15.12.14	Sydney Lindt Café siege commences.	
17.12.14	Joint NSW Cth Review (Siege Review) and coronial inquest announced	

Date/time	Event	Notes
05.01.15	AGD begins to conduct search of documents relevant to review and identifies 68 documents held by the Department within the terms of reference of the review.	According to AGD Deputy Secretary Sheehan 19.06, the Monis letter was identified in the searches and provided to the co-ordinating Division of the AGD. The letter and its response, and four other documents, was listed on the second tab of a spreadsheet provided to the Division. When the documents were collated by the Division, the second tab was missed by human error.
14.01.15	AGD provides documents to review, but not the letter and 4 other documents.	(AGD QON 03.07)
02.02.15	AGD becomes aware that review has not considered Monis correspondence and that its non-provision is related to an “administrative error related to a spreadsheet”. Review team member advises AGD the text of the review had been finalised and, therefore, did not want the letter.	Note: Discovery of the “second tab” seemed implied as information related to the Sheehan review but was known in February .
04.02.15	Review provides its final report to PM.	
22.02.15	PM releases report	
24.05.15	Monis letter to AG Brandis mentioned by counsel-assisting in opening address to inquest	Letter and contents are reported in Advertiser, Canberra Times, Australian, Tele and the SMH, ABC Radio and 7.30 Report.
27.05.15	Senator AG Brandis and Ms Jones, Deputy Secretary of National Security and Criminal Justice Group AGD, advise a Budget Estimates hearing that a) AGO did not refer letter to agencies; b) the letter was provided to and considered by the review; and c) there was nobody at the AGD who was concerned about Man Monis.	19.06, Ms Jones gave evidence that this was not based on an Estimates brief or document but on her personal recollection. Ms Jones also states Monis had written “hundreds” of letters across the government.
28.05.15 10.50	Question Time Brief provided to the AGO by Ms Horfsall.	(AGD QON 03.07)

Date/time	Event	Notes
28.05.15 14.00- 15.30	Foreign Minister Bishop answers eight national security questions in QT. Without prompting, Bishop raises the Monis letter “I understand where [Dreyfus] is heading ...” and at Question 4 says “the letter and the AGD’s reply were both placed before the inquiry into the Martin Place siege [which] did not have any criticism of the way in which the Monis letter was dealt”. Reiterates twice in further questions. Describes Dreyfus and Sen Collins as contemptuous for politicising a national tragedy.	
28.05.15 15.00	AG Brandis publishes media release “Dreyfus’ Cheap Shot” stating letter had been provided to review and stating ASIO D-G Duncan Lewis, had “examined” the letter and said it was appropriate that the letter only be referred to the AGD.	At least nine articles (MX Sydney, Melbourne and Brisbane) The Age, The Australian, ABC On Line report on the matter, the letter, Labor questions and Bishop/Brandis responses.
28.05.15 15.11	Hansard of Legal & Con Budget Estimates hearings from 27.05 published on the APH website.	
28.05.15 15.42	PMO to PM&C (ALL Senior Executive) noting eight questions to Foreign Minister in Question Time related to the handling of the Monis letter.	
28.05.15	AG Brandis reiterates at Estimates that the letter was considered by the review. ASIO D-G Lewis gives evidence that on the morning of 28.05 he had been given the letter to read but that it had not been “assessed” by ASIO. Confirms the ASIO assessment of Monis (which was referred to the review) did not consider the letter.	

Date/time	Event	Notes
29.05.15	Various print articles appear sympathetic to Labor questions including <i>Monis Letter a red flag that was ignored</i> (Australian), <i>Labor slammed for questioning Monis response: Attorney General in spotlight</i> (SMH) and <i>Killer's interest in terror ignored</i> (West Australian).	
29.05.15 Before 12.40	Link to "Dreyfus' cheap shot" media release disabled on the Attorney General's website.	
29.05.15 Afternoon	Ms Jones has "long-planned" lunch meeting about a range of matters with PMC Deputy Secretary (National Security) McKinnon from review taskforce. "In passing", discusses Estimates evidence from 27.05. Realises she was thinking about other correspondence when she gave evidence on 27.05. Determines to check her evidence.	On 19.06, Ms Jones says she did not take any notes of this meeting, takes on notice precise nature of the other letter. Jones also agreed to provide, on notice information about which letter she was thinking about. On 23.06, Mr McKinnon says "I immediately felt it had not been provided ... I said, 'No, we never discussed that'".
29.05.15 Night	Ms Jones discusses the matter with Mr Sheehan who testified he did nothing about it.	On 23.06 Mr Sheehan states discussion occurred after COB.
30.06.15 Afternoon	Ms Jones reviews Estimates transcript from APH website. Decides to take further steps to clarify whether letter had actually been provided.	
01.06.15 Morning	Mr McKinnon takes call from AGD officer ("I don't recall who") who asked whether "we had that letter ... I immediately rang Kath".	24.06 Mr McKinnon is "unable to identify or recall who rang me about the Monis/Brandis letter" (QON Response).
01.06.15 08.43	McKinnon receives email from AGO	"Further to our conversation earlier, please find attached QTB concerning the Monis letter" indicates the caller to McKinnon's call is from the Attorney-General's Office.
01.06.15 08.55	Ms Jones advises McKinnon (Tel contact) she thinks letter "may not have been sent" to the review.	(AGD QON, 23.06)

Date/Time	Event	Notes
01.06.15 (approx 10.45)	Ms Jones calls Mr Sheehan. Discussed potential need to correct Jones' evidence to Senate.	(Oral testimony, 19.06) Note: On 23.06, Mr Sheehan states this call occurred "in the vicinity of 10.45".
01.06.15 11.00	AGD asks PMC whether correspondence had been provided.	(AGD QON, 23.06)
01.06.15 11.30	McKinnon is aware that the letter was not received by the review.	(Oral evidence, 23.06)
01.06.15 11:50	McKinnon to PMO (email) describes the AGD as "ducking for cover".	
01.06.15 12.15	<p>PMC to AGD "we have checked the index for AGD documents very carefully. The letter is not there ... the PMO says the AGD can answer any questions on this issue now that they know the review team didn't receive it". Enclosed attachment says "The Team was never aware of the existence of the letter".</p> <p>Separate PMC to AGD email between non SES officers candidly says "no record of a letter from October 2014 has been found ... you're more than welcome to come and look through the files".</p>	
01.06.15 13.06	Email Chidgey to redacted.	"Grateful for your assistance in identifying a reason the following items were not provided to the review".

Date/time	Event	Notes
01.06.15 13.08	First DRAFT email (Chidgey to AG Brandis's DCoS) appears.	Ms Chidgey sends the draft email to Mr Sheehan at 13.25. At 13.37 Ms Chidgey sends the draft to Ms Jones and Mr Moraitis "here are proposed points for the AGO". Mr Sheehan is copied in. Ms Jones responds at 13.46 "I think it's broadly okay" and suggests amendments. Mr Sheehan and Mr Moraitis are copied into this email. On 3 August at a public hearing Mr Sheehan tried to distance himself from correspondence he's had the opportunity to comment on - "it is not a particularly well written email".
01.06.15 12.39- 13.22	AGD to AGO/AGO to AGD emails copying Assistant Secretary, Counter-Terrorism Law Branch about the QTB advising "Update not necessary. We're just leaving it as it is".	
01.06.15 13.50	Ms Jones identifies that she was "confusing this was the one Monis wrote, I think to an Attorney-General, asking permission to register Hizbollah in Australia. Can someone please confirm for me that such a letter was provided by AGD to the Review".	
01.06.15 13.54	AGD to AGO email Chidgey to the Attorney General's Deputy Chief of Staff (DCoS) (includes Mr Sheehan, Ms Jones & Mr Moraitis) says Jones had "concluded that her evidence was incorrect [and that she would] correct her evidence ... at the earliest opportunity". Email refers admin error in spreadsheet.	On 19.06 Mr Moraitis said "I provided an update to the Attorney late on 1 June to the effect that it was unclear whether the department had provided the letter to the siege review ... of Monday night I still did not understand whether the letter had been passed or not".
01.06.15 13.57	AGD to PMC to confirm Chidgey to Attorney's DCoS email has been sent.	(AGD QON, 23.06)

Date/time	Event	Notes
01.06.15 13.59	Iain Anderson (First Assistant Secretary, Criminal Justice Division, AGD) asks Ms Jones “would you like me to have a draft letter to Hansard prepared for you to consider”.	Ms Jones answers (@14.06): “I think the sooner we do that, the better. I can come in to sign. Should clear it with Chris” [Moraitis].
01.06.15 14:06	Ms Jones offers to break leave and come into the office to sign a letter to correct the record: “I think the sooner we do that, the better ... Should clear it with Chris [Moraitis]”.	(@ 15.19) Draft letter of correction first appears.
01.06.15 17.30	PMC to AGD: PMC Secretary Thawley, who is at the PMO wants to know has “AGD corrected the Senate Estimates Record [of] K Jones”. Refers Bishop “has repeated the same line today”	(PMC QON, 24.06)
01.06.15 Approx. 18.00	Mr Moraitis meets AG Brandis. According to Sheehan’s evidence 19.06, the AGD has come to the view that the letter had not been given to PM&C in “the first batch”.	AG Brandis statement 04.06 says that he ordered Mr Moraitis to conduct a review at this time, but this conflicts with 19.06 evidence (Sheehan) that a review was ordered on morning of 01.06.
01.06.15 19.05	Post meeting with AG Brandis – Mr Sheehan emails key staff in AGD outlining a timeframe for the review (three days) and stating that Ms Jones will correct the record after the internal review is done.	
01.06.15 19.38	Sheehan to McKinnon email requesting a meeting the next morning “I think we have all the information we will need”.	
02.06.15 Approx. 10.15	McKinnon & Sheehan meet at PM&C.	
02.06.15 13.15	Internal AGD Email states that the “the [Question Time Brief] has been amended to reflect but not highlight that not all documents were provided to the Siege Review”.	Note: FM Bishop is in Paris. Warren Truss is answering questions that would normally be directed to the Foreign Minister.
02.06.15 13.53 onwards	AGD officers work all day on a detailed email documenting the steps its Criminal Justice Decision took in relation to the coordination process for the Siege Review.	Email states that the National Security Law Policy Division “identified that the correspondence ... had not been provided to the Review”.

Date/time	Event	Notes
02.06.15 20.25	Ms Chidgey responds to Mr Sheehan's 1 June email requesting she draft a letter from Mr Moraitis to AG Brandis. The draft responds to Mr Sheehan's "skeleton". The draft states "Ms Jones will correct the record at the earliest opportunity".	Unclear if the draft was copied to the Attorney-General's office.
03.06.15	Officers in the AGD spend the day nuancing draft letter from Mr Moraitis to the Attorney-General. At 14.49 email from AGD to AFP sent with extracts from draft Moraitis letter for comment without notifying the Secretariat of Ms Jones's incorrect evidence.	
04.06.15 13.00	AGD realises that it has not actioned Ms Jones 1 June request to find Monis correspondence relating to Hizbollah. "Further to my previous calls – there is a letter that needs to be located urgently".	This email sets off an urgent search within the AGD. @13.05, email PM&C to AGD "I was able to track down the attached copy of the letter to former AG McLelland".
04.06.15	AGD arrives at a "complete understanding" of the matter [according to Sheehan 19.06].	
04.06.15	AG Brandis Media Release: "My office received Mr Moraitis report early this afternoon ... the Foreign Minister was advised shortly before Question Time". Bishop: (@15.09) "Madam Speaker, I wish to correct an answer I gave in the House in response to a question from the member for Isaacs". AG Brandis (@15.15, 6 minutes after Ms Bishop corrects the record) correction delivered to the L&C Secretariat – Ms Jones correction arrives at the same time.	On 24.06 – Foreign Minister Bishop in QT claims she was informed "at 2.43pm", not before QT as stated by the AG. On 25.06 – AG Brandis in Question Time: "I believe that the foreign minister was herself advised during the course of question time, which is what she said. Her office was advised shortly before question time."

Date/time	Event	Notes
04.06.15 15.45	<p>After an exhaustive search, the AGD acknowledges another correspondence item has not been provided to the Review.</p> <p>From: [REDACTED] Sent: Thursday, 4 June 2015 3:45 PM To: [REDACTED] Cc: [REDACTED]; Pahlow, Michael; Gifford, Cameron; Chidgey, Sarah; [REDACTED] Subject: RE: Urgent search for letter for Katherine Jones [DLM=For-Official-Use-Only]</p> <p style="text-align: center;">For Official Use Only</p> <p>Hi [REDACTED]</p> <p>Further to the below enquiries and following confirmation from [REDACTED] – we can confirm that:</p> <ol style="list-style-type: none"> 1. Do we have a record of the letter on AGD files. No – even following receipt of the letter from PM&C (attached) we could not locate this letter based on the details in the letter. 2. Did we provide a copy of the letter to the Review – No. 3. If the answer to (2) is no, what was the reasoning for this (i.e. was it on the second page of the table along with the other four, etc). - It was not provided to the Review as AGD did not have this letter. <p>Please let us know if you need anything further.</p>	<p>This email indicates yet another letter that was not provided by the AGD to the Siege Review and, alarmingly, was not even behind the second tab because “AGD did not have the letter” (it was from 2008).</p> <p>We suspect that the letter was likely provided by PM&C to the review as then Prime Minister Rudd was copied into the correspondence.</p>
04.06.15	Secretary Thawley writes to PM advising he has now seen the Monis to AG Brandis correspondence and says it would not have made a difference to the outcome of his review.	

Appendix 1

Public hearings and witnesses

Friday 19 June 2015—Canberra

JONES, Ms Katherine, Deputy Secretary, National Security and Criminal Justice Group, Attorney-General's Department

MORAITIS, Mr Chris, PSM, Secretary, Attorney-General's Department

SHEEHAN, Mr Tony, Deputy Secretary, Strategic Policy and Coordination Group, Attorney-General's Department

Tuesday 23 June 2015—Canberra

McKINNON, Mr Allan, Acting Associate Secretary, Department of the Prime Minister and Cabinet

SHEEHAN, Mr Tony, Deputy Secretary, Strategic Policy and Coordination Group, Attorney-General's Department

Monday 3 August 2015—Canberra

ALDERMAN, Mr Tony, Acting Manager, Government and Communications, Australian Federal Police

GAUGHAN, Mr Neil, Acting Deputy Commissioner, National Security, Australian Federal Police

JONES, Ms Katherine, Deputy Secretary, Attorney-General's Department

MORAITIS, Mr Chris, Secretary, Attorney-General's Department

SHEEHAN, Mr Tony, Deputy Secretary, Strategic Policy and Coordination Group, Attorney-General's Department

Appendix 2

Answers to questions on notice

- 1 Attorney-General's Department – answers to questions taken on notice from 19 June 2015 (received 23 June 2015)
- 2 Attorney-General's Department – attachment to answers to questions taken on notice from 19 June 2015 (received 23 June 2015)
- 3 Department of Prime Minister and Cabinet – answers to questions taken on notice by Mr Allan McKinnon from 23 June 2015 (received 24 June 2015)
- 4 Attorney-General's Department – answers to questions taken on notice from 23 June 2015 (received 24 June 2015)
- 5 Attorney-General's Department - answer to written question on notice given on 25 June 2015 (received 2 July 2015)
- 6 Attorney-General's Department - answer to written question on notice given on 25 June 2015 (received 3 July 2015)
- 7 Department of Prime Minister and Cabinet – answer to written question taken on notice from 25 June 2015 (received 3 July 2015)
- 8 Department of Prime Minister and Cabinet – attachment to answer to written question taken on notice from 25 June 2015 (received 3 July 2015)
- 9 Australian Federal Police – answer to written question taken on notice from 10 July 2015 (received 24 July 2015)
- 10 Attorney-General's Department – further responses to questions on notice taken between 23 June 2015 and 10 July 2015 (received 27 July 2015)
- 11 Attorney-General's Department – Attachment to further responses to questions on notice taken between 23 June 2015 and 10 July 2015 (received 27 July 2015)
- 12 Attorney-General's Department - answer to written question on notice given on 31 July 2015 (received 31 July 2015)
- 13 Attorney-General's Department – answers to questions taken on notice from 3 August 2015 together with clarification of evidence (received 6 August 2015)
- 14 Attorney-General's Department – attachment to answers to questions taken on notice from 3 August 2015 (received 6 August 2015)
- 15 Attorney-General's Department - answer to written question on notice given on 13 August 2015 (received 18 August 2015)

16 Attorney-General's Department - index of answer to written question on notice given on 13 August 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)

18 Attorney-General's Department - answer to written question on notice given on 13 August 2015 - attachment A 2 June 2015 (received 18 August 2015)

19 Attorney-General's Department - answer to written question on notice given on 13 August 2015 - attachment A 3 June 2015 (received 18 August 2015)

20 Attorney-General's Department - answer to written question on notice given on 13 August 2015 - attachment A 4 June 2015 (received 18 August 2015)

21 Attorney-General's Department - answer to written question on notice given on 20 August 2015 (received 27 August 2015)