

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN FEDERAL POLICE

Question No. 19

Senator Stott-Despoja asked the following question at the hearing on 18 February 2008:

In relation to the inquiry being conducted by former NSW Chief Justice Sir Laurence Street in light of the failed prosecution of Mr Izhar Ul-Haque:

1. What funds have been allocated for the conduct of the inquiry?
2. What is the source of these funds?
3. What resources will the inquiry have at its disposal?
4. Will the inquiry hear evidence from anyone other than employees of the various agencies involved?
5. Why is the inquiry being conducted in secret rather than in public?
6. Will the outcome of the inquiry have any bearing on the Government's proposed judicial inquiry into the Dr Mohamed Haneef matter?

In answer to a question from Senator Nettle during the Additional Estimates hearing on 18 February 2008, Commissioner Keelty stated that the terms of reference for the inquiry included, among other things a review of 'the existing practices, policies, legal frameworks and operational environment applicable to the AFP when conducting national security operations':

7. Are you able to provide a copy of the terms of reference for the inquiry to the Committee?
If no, why not?
8. Will the consideration of the 'legal framework' include an analysis of any of the following:

Whether the laws:

- a. adequately safeguard Australian citizens from the threat of terrorism;
- b. reasonably and adequately define 'terrorism' and terrorism related offences;
- c. provide reasonable and adequate guidance on matters of policy, practice and procedure to investigative and enforcement agencies;
- d. maintain an appropriate balance between the need to curtail individual freedoms in situations involving a terrorist threat and the fundamental civil liberties and human rights of Australian citizens;
- e. have abrogated fundamental principles of justice such as the presumption of innocence and habeus corpus, and the granting of bail;
- f. allow for periods of indefinite detention of suspects or contain provisions allowing for periods of 'dead time' which require amendment or review;
- g. are in accordance with notions of procedural fairness and natural justice;
- h. contain or require provisions allowing parliamentary or judicial review;
- i. are compatible with Australia's obligations under international law;
- j. interact appropriately with other powers of detention, for example immigration laws;

- k. contain sufficient safeguards regarding access to legal counsel during detention;
- l. have sufficiently rigorous guidelines and evidentiary basis thresholds for the degree of curtailment of individual freedoms;
- m. any other related matters pertaining to the operation of the laws?

If not, why not?

- 9. Why were the cases involving Dr Mohamed Haneef and Mamdouh Habib not included in the terms of reference?

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

- 1. The costs of the review have been internally absorbed. No separate budget was allocated.
- 2. The Street Review is an internal AFP Review and the costs of the review have been internally absorbed.
- 3. The Review has drawn on the existing resources of the AFP with the main resource allocation being AFP employees who constitute the secretariat of the Committee. The Review secretariat consists of an assistant commissioner, a federal agent and a member of the internal AFP Legal Team.
- 4. Yes.
- 5. The review was not public as it was an internal review looking at the interoperability between the AFP and its national security partners. The review findings have been made public.
- 6. The conduct of the Clarke inquiry into the handling of Dr Haneef's case is a matter for Mr Clarke. The findings of the review will be made available to the Clarke inquiry
- 7. Yes. The Terms of Reference are attached.
- 8. a) to m). No.

Consistent with the terms of reference the Committee considered matters of direct relevance to the AFP's interoperability with its national security partners only.

- 9. The review was initiated as a result of the issues surrounding interoperability between the AFP and its national security partners generally. The Committee was informed by key stakeholders of the issues each considered to be central to interoperability between the national security agencies, not the specifics of any individual investigation. Dr Haneef's case is now subject of the Clarke inquiry and Mr Habib's case is the subject of legal proceedings in the Federal Court.