

Legal & Constitutional Committee inquiry into the *Privacy Act 1988*

Australian Federal Police Questions on Notice from Hearing of 20 May

Question 1

Senator STOTT DESPOJA—I have one final question. One of our submissions—the submission from the Australian Law Reform Commission—suggested that a new criminal offence be created in the case of nonconsensual collection or analysis of DNA samples. Do you have a view on that particular recommendation? I am happy for you to respond to that now or to take it on notice, whatever suits. [page 44 transcript]

AFP answer

The AFP understands that the ALRC has made the same recommendation in its report *Essentially Yours: The Protection of Human Genetic Information in Australia*. This is a matter for the government response to the report.

Question 2

Chair:....whether the AFP has been hindered by the Privacy Act, There have been some suggestions with respect to sex offenders overseas and the tsunami...Could you take it on notice to inquire as to what the range of other remedies might very well be that we could consider as well? [page 41 transcript]

AFP Answer

The Privacy Act has not hindered the AFP in fulfilling its responsibilities in relation to child sex offenders overseas. As the law currently stands, the AFP is not precluded from sharing information with overseas law enforcement agencies in appropriate circumstances, such as where it is considered necessary to do so to prevent the commission of an offence against Australian law. For offences committed offshore, there is a range of extraterritorial legislation and in the case of child sex offences overseas, this would include offences under Part IIIA of the *Crimes Act 1914 (Child sex tourism)*. The amendments to the *AFP Act 1979*, introduced to the House of Representatives on 26 May 2005, seek to clarify and confirm the legislative framework within which the AFP operates. These amendments will confirm the AFP's role in assisting and cooperating with law enforcement agencies and government regulatory and intelligence bodies, both domestic and foreign. This includes sharing information regarding child sex offenders.

During the response to the Tsunami in late 2004, the AFP did not experience any difficulties by virtue of the Privacy Act in disclosing information that it held, however, it did experience some difficulties in accessing information from other agencies such as the Department of Foreign Affairs and Trade (DFAT) which DFAT referred to in its submission to this inquiry. The amendments to the AFP Act referred to above will also confirm the AFP's ability to disclose such information in future emergency response situations.

Following the experience of Australian Government agencies in responding to the Tsunami, the Government has established a whole of government inter-departmental committee to identify and evaluate the options to ensure that its agencies can, during an emergency response, make clear and timely decisions on information exchange. The Committee is focussing on ensuring that agencies can access the information they need and exchange it with the appropriate Australian Government and State and Territory agencies as well as with appropriate non-government organisations.

Options that may be evaluated by the Committee include a public interest determination by the Privacy Commissioner covering the exchange of information during emergencies or natural disasters, amending Information Privacy Principle 11.1(a) and amending the Privacy Act 1988 to provide for disclosure during an emergency or natural disaster.

Question 3

CHAIR— it was suggested that the Privacy Act provisions prevent Australian governments from providing to the New Zealand government the information of a person who has been released from jail but may be on parole or other conditions when they go back to New Zealand. I wonder if you have any comments ... [page 41 transcript]

AFP Answer

Deportations and removals following visa cancellations are the responsibility of the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA). The AFP, like all Australian police services, provides escort services for DIMIA in support of this responsibility. The AFP was not involved in the deportations to New Zealand given as examples by the Committee.

If the AFP was involved in a deportation to New Zealand the AFP would be able to disclose information to the New Zealand authorities within the framework established by the *Australian Federal Police Act 1979* (AFP Act) and the *Privacy Act 1988*.

If information about a deportee was provided to the AFP by another agency, including DIMIA, under Information Privacy Principle (IPP) 11.1, IPP 11.3 would prevent the AFP from disclosing that information to New Zealand authorities.

If the AFP held other information about the deportee, for example because the deportee had committed federal offences, the AFP could disclose that information if it was necessary to do so in the performance of its functions under the AFP Act, such as the provision of police services in relation to Commonwealth laws or the safeguarding of Commonwealth interests (s 60A of the AFP Act and IPP11.1(d)). The AFP could also disclose information about the deportee under any of the other exemptions in IPP 11.1 if any of those other exemptions were applicable in the circumstances – for example if the deportee consented to the disclosure (IPP11.1(b)); or if there was a reasonable likelihood the deportee was aware that the information would be disclosed as part of the deportation process (11.1(a)); or if the disclosure was reasonably necessary for the enforcement of Australian criminal law. However, these exemptions do not appear likely to be applicable in the circumstances of a standard deportation process.

The proposed amendments to the AFP Act contained in the *Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005* clarify and confirm the AFP's role in assisting and cooperating with law enforcement agencies and government regulatory and intelligence bodies, both domestic and foreign. If these amendments, which insert two additional and specific functions provisions into the AFP Act, are passed and the relevant New Zealand authorities are considered to be "regulatory agencies" for the purposes of the relevant functions, the provision of information held by the AFP to the NZ authorities would fall more clearly within AFP functions.