

TON 1

The Hon. DAVID CLARKE: How many Maritime employees have received government funding for legal expenses over the past 10 years?

Mr GLANFIELD: To the best of my recollection only one, but I would have to check to be entirely sure that that is the case.

The Hon. DAVID CLARKE: Will you take that on notice and come back to us?

Mr GLANFIELD: Certainly.

ANSWER

I am advised:

Including Ms Kelly, two employees of NSW Maritime.


(John Hatzistergos)

TON 2

The Hon. DAVID CLARKE: Are you aware of how many have been rejected, if any?

Mr GLANFIELD: In general or in relation to Maritime?

The Hon. DAVID CLARKE: In relation to Maritime.

Mr GLANFIELD: I cannot recall any applications from NSW Maritime but my recollection may be incorrect. I am happy to take that on notice as well.

ANSWER

I am advised:

None.


(John Hatzistergos)

TON 3

The Hon. DAVID CLARKE: If there are any employees of Maritime services, can you take on notice how many of these employees, if any, have been accused of criminal offences?

Mr GLANFIELD: If I find that there have been applications made I am happy, on notice, to provide the details of the circumstances in which those arose.

ANSWER

I am advised:

Only one grant of assistance under Premier's Memorandum 99-11 made to a NSW Maritime employee, Ms Kelly, was in relation to an alleged criminal offence.


(John Hatzistergos)

TON 4

The Hon. DAVID CLARKE: If there are any who have been accused of criminal offences, were any Ministers involved in the approval process? Will you take that on notice too?

Mr GLANFIELD: Yes. I think it would unlikely unless it was the Chief Executive because the guidelines provide that the Chief Executive is the person who supports the application by an individual public servant.

ANSWER

I am advised

No Minister was involved in the approval process.


(John Hatzistergos)

TON 5

The Hon. DAVID CLARKE: In regard to any applications that you may find have been granted in respect of Maritime employees, you have undertaken on notice to find out whether any Ministers were involved in the approval process. Can you also take on notice whether any Ministers made any submissions to the department in regard to any matter that may have come up for approval or otherwise?

Mr GLANFIELD: Certainly, but I cannot recall any submissions being made to me.

The Hon. DAVID CLARKE: But you will take that on notice to be sure?

Mr GLANFIELD: Yes.

ANSWER

I am advised:

No submissions were made to the Department by any Ministers on matters relating to applications by NSW Maritime employees.


(John Hatzistergos)

TON 6

The Hon. DAVID CLARKE: Did the Director of Public Prosecutions prosecute this case?

Mr GLANFIELD: I am not aware of the detail of who was actually prosecuting. I think they were Commonwealth offences.

The Hon. DAVID CLARKE: But you are not sure?

Mr GLANFIELD: No.

The Hon. DAVID CLARKE: Will you take that on notice?

Mr GLANFIELD: If it is relevant I am happy to answer.

ANSWER

I am advised:

The Director of Public Prosecutions prosecuted this case.


(John Hatzistergos)

TON 7

The Hon. DAVID CLARKE: How much has been paid by way of ex gratia payments to date to Ms Kelly?

Mr GLANFIELD: It is paid by NSW Maritime. I will have to take it on notice as I would only be guessing the amount.

The Hon. DAVID CLARKE: Will you take that on notice?

Mr GLANFIELD: Yes, it is something in the order of about \$60,000.

The Hon. DAVID CLARKE: Will you take that on notice and come back to the Committee?

Mr GLANFIELD: I will.

ANSWER

I am advised:

A total of \$61,403.54 has been paid by NSW Maritime.


(John Hatzistergos)

TON 8

The Hon. JOHN HATZISTERGOS: I am more than happy to provide the Committee with a copy of the letter that I have written to the Commonwealth and that will specify the demands that I have made.

The Hon. DAVID CLARKE: That would be very helpful to us.

The Hon. JOHN HATZISTERGOS: I am more than happy to do that.

ANSWER

I am advised:

A copy of my letter to the Minister for Home Affairs is attached for the Committee's information.



(John Hatzistergos)

The Hon Brendan O'Connor MP
Minister for Home Affairs
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

= 6 AUG 2010

Dear Minister

NSW has been approached by the Commonwealth Attorney-General's Department to accept a number of persons who are to be charged and prosecuted in this jurisdiction with people smuggling offences under the *Migration Act 1958*.

Until recently these prosecutions have been conducted in Western Australia however, at that State's request, it is to be given some respite. The Commonwealth propose to commence the prosecutions in Queensland and NSW. Firm estimates of the number of prosecutions anticipated are not available however fortnightly projections are of 4-10 persons a week in both jurisdictions on an ongoing basis.

The Queensland Minister for Police, Corrective Services and Emergency Services, the Honourable Neil Roberts and the Queensland Attorney-General, the Honourable Cameron Dick have recently written to you expressing concern about the proposed course and to seek advice from you on a number of significant aspects of the proposal.

NSW shares many of Queensland's concerns but does not, as is proposed by Queensland, suggest that the Commonwealth should confer jurisdiction on the Federal Court to deal with these prosecutions. NSW Courts and practitioners are experienced in the prosecution of Commonwealth criminal matters and are well placed to conduct these prosecutions. Creating an entirely separate jurisdiction to deal with Federal offences would produce further inequalities between Commonwealth and State offenders which is not desirable.

My concern is to ensure that the NSW's involvement in these prosecutions is adequately resourced and does not impose a financial burden on it. NSW already manages a significant proportion of the Commonwealth prosecutions conducted across Australia, most notably 20 month terrorism trial of accused in Operation Pendennis.

NSW receives some funding from the Commonwealth, however, the people smuggling matters differ in significant respects and must be considered separately. The offences will not, as other Commonwealth matters are, be prosecuted in NSW because the offences are committed here. People smugglers will be prosecuted here because the Commonwealth has elected to commence proceedings in this jurisdiction. As a result NSW will bear the cost of accommodating a person, who will likely be a prohibited non-citizen in a correctional facility and managing a prosecution which will likely go to trial given the mandatory sentencing provisions of the *Migration Act 1958*. The trials, as the Western Australia experience suggests, will also likely be costly to run as they will involve multiple defendants, interpreters and remote witnesses.

Similarly to Queensland, NSW is concerned that it is being asked to bear the cost of prosecuting offences over which they have little control. The offences are committed outside this jurisdiction and we do not control the response.

It is of concern that NSW is now long asked to take responsibility for trials involving offences with mandatory sentencing, prosecutions which this State has chosen not to introduce. NSW has made concerted efforts in recent years to streamline its criminal justice processes and has introduced legislation to encourage early pleas.

NSW appreciates that the States are best placed to deal with these matters. In light however of the nature of this referral, both in its complexity and due to the fact it is by way of election, NSW join with Queensland in requesting your urgent advice as to:

- 1) the process by which New South Wales, Queensland and Western Australia were chosen as the sponsor jurisdictions for these matters;
- 2) the timing for other jurisdictions, particularly Victoria, South Australia and Tasmania being included in the equitable management of these matters so as to ensure equality between jurisdictions;
- 3) your commitment for direct Commonwealth funding for the costs associated with the trial and detention of these defendants;
- 4) your assurance that legal aid costs for defendants will be met directly from the Commonwealth's expensive cases fund, and that there will be no negative impact on the NSW Legal Aid Commission's budget;
- 5) your assurance that the costs for health treatments including any preventative or anticipatory treatments will be covered by the Commonwealth and the Commonwealth will indemnify the State of New South Wales (or any related or necessary entities) for any costs, treatments and liabilities involved in detaining these persons; and

- 6) your assurance that the Commonwealth will cover costs reflective of the demands and burdens placed on Corrective Services NSW by these federal offenders including length of accommodation, transport, escort, dietary and health screening requirements.

Yours faithfully



(John Hatzistergos)

TON 9

Mr DAVID SHOEBRIDGE: How many preventive detention orders have been made under the Terrorism (Police Powers) Act in the past 12 months?

The Hon. JOHN HATZISTERGOS: That would be in the annual report, which is tabled from time to time. I can get you that information but I think you will find that it is public information.

Mr DAVID SHOEBRIDGE: But to the extent that it is not will you take that question on notice?

The Hon. JOHN HATZISTERGOS: To the extent that anything is not publicly available I am happy to provide it. However, I will not rehash reports that are already in the public domain.

Mr DAVID SHOEBRIDGE: Do you know how many covert search warrants have been executed?

The Hon. JOHN HATZISTERGOS: Again that is a matter of public information.

Mr DAVID SHOEBRIDGE: Could you identify the number and timing of those covert search warrants?

The Hon. JOHN HATZISTERGOS: I think we detailed that previously. Those covert search warrants were issued in relation to the Pendennis matter. The Ombudsman conducts a review of those powers. We will guide you to the appropriate venue where you can look at that information. It is part of the service that we provide.

ANSWER

I am advised:

As indicated at the end of the hearing, the report regarding covert search warrants issued to the Crime Commission under the *Terrorism (Police Powers) Act 2002* (TPPA) for the year ended 30 June 2009 was tabled in the Legislative Council on 10 September 2009. The report from the NSW Police was tabled in the Legislative Council on 10 November 2009.

Details of the only covert search warrants that have been issued and executed under the TPPA can be found on pages 71 and 72 of the Ombudsman's Review of Parts 2A and 3 of the *Terrorism (Police Powers Act) 2002*, which is available on the Ombudsman's website.

With respect to preventative detention orders, as the powers under the Act have never been exercised, no report has ever been submitted to the Attorney General. Should a preventative detention order be made the appropriate report will be submitted and tabled.



(John Hatzistergos)

TON 10

Mr DAVID SHOEBRIDGE: Last year it was reported that the DPP's caseload had gone down but the workload had gone up. Has that trend continued?

The Hon. JOHN HATZISTERGOS: The workload is not measured. There is a tool called activity based costing, which the DPP proposes to introduce by the end of the year, I have been told. Hopefully, this will give us a better indication of time. I can give you some information about the caseload. The figures I have are for the last 10 years. Do you want those?

Mr DAVID SHOEBRIDGE: Not for the last 10 years. I am interested really in the last two years. If you have not got the figures, perhaps you could take the question on notice.

The Hon. JOHN HATZISTERGOS: I can give you the figures, which are the latest published, but I would have to update them.

ANSWER

I am advised:

Matters received and completed (excluding Court of Criminal Appeal matters and advice work), are published in the Annual Report of the Office of the Director of Public Prosecutions.



(John Hatzistergos)