

SENATE ESTIMATES COMMITTEE
AUSTRALIAN FEDERAL POLICE
QUESTIONS ON NOTICE

Senator McKeirnan asked the following question at the hearing of 18/19 February 2002.

Page 18 of the AFP annual report notes that it provides external agencies with access to AFP expertise by outposting officers to other organisations. It states: The presence of these agents also provides ready access to police powers, such as the execution of search warrants. A graph appears at page 109 which details the various agencies where the outposting occurs. At the very bottom there is mention of a private company. What information can you give the committee about that particular outposting?

I am advised that the answer to the honourable Senator's question is as follows:

The entry in the table at page 109 of the 2001-02 Annual Report relates to an unsworn AFP employee who, while on leave without pay, was employed in the private sector with a view to developing desk-top computing skills. That entry should not have appeared in the table that is designed to report on outposted sworn officers.

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Senator McKeirnan asked the following question at the hearing of 18/19 February 2002.

- Was information about the operations of Mr Enniss and people smuggling passed to Canberra?
- If so, when and by whom?

I am advised that the answer to the honourable Senator's question is as follows:

- Yes.
- During the period of the AFP's relationship with Mr Enniss, information about the operations of Mr Enniss and people smuggling were relayed by the AFP Liaison Office, Jakarta, to AFP Headquarters, Canberra.

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Senator Sherry asked the following question at the hearing of 18/19 February 2002.

Does Mr Enniss own a fishing boat or boats? Does he lease them? Do you have any details of his working relations?

I am advised that the answer to the honourable Senator's question is as follows:

Mr Enniss was a part owner of a fishing vessel in Indonesia that was the subject of civil action between the partners. The vessel is currently "detained" pending the results of that action. The AFP is unaware of any other vessels owned or leased by Mr Enniss.

The AFP is aware of reports that Mr Enniss is captaining a vessel from Dili.

The AFP is investigating allegations made in relation to Mr Enniss on the Sunday program. This investigation will include Mr Enniss' current employment status.

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Senator Sherry asked the following question at the hearing of 18/19 February 2002.

Are they (the 451 people apprehended) the people who have been detained in Indonesia?

I am advised that the answer to the honourable Senator's question is as follows:

These 451 people were detained as follows:

<u>DATE</u>	<u>PLACE</u>	NO. DETAINED
27 January 2001	Semau Island	15
1 February 2001	MV Willis, Surabaya	66
9 February 2001	Tenau Harbour, Kupang	16
9 February 2001	Kp Solor, Kupang	17
15 February 2001	Solor Island	75
15 February 2001	Lembata	34
16 June 2001	Roti Island	14
16 June 2001	Sabu Island	16
17 June 2001	Kupang City (local residence)	30
22 July 2001	Vessel at Larantuka	34
26 July 2001	Sumba Barat	134

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Senator Sherry asked the following question at the hearing of 18/19 February 2002.

- a. How many other informants do you have?
- b. How many arrests have there been as a consequence of the information given to you by other informants?

I am advised that the answer to the honourable Senator's question is as follows:

- a. It should be noted that the use of informants by the AFP in pursuing its investigative mandate is but one of a range of investigative tools that the AFP has available to it. Accordingly, the information gathered by AFP investigators that lead to arrests, etc, are usually drawn from diverse sources using a range of investigative tools. The current informant review mechanisms enable the assessment of the effectiveness and value of the AFP and informant relationship.

It is the view of the AFP – as is the case in most matters of an operational nature - that specific information relating to the actual conduct of operations is protected and that the disclosure of information relating to the actual number of informants falls within this ambit. Accordingly, the AFP maintains that it is not in the public interest to reveal the number of informants it has.

It must be remembered that Commissioner Keelty explained during his evidence to the Committee the AFP policy in relation to non-disclosure of informant details. It must also be remembered that Commissioner Keelty acknowledged the relationship between the AFP and Mr Enniss based on the publicity that the relationship received as result of the *Sunday* Program and Mr Enniss' public confirmation of the relationship.

- b. From February 2000 to 30 June 2001, in excess of 3000 persons suspected of intending to enter Australia illegally were interdicted by Indonesian authorities. These results were gained through a combination of investigative processes. Whilst a good portion of the 451 interdictions – that have been attributed to information provided as a result of the AFP's relationship with Mr Enniss – occurred in this period; to provide further information that specifically attributes arrests to other AFP informants would be contrary to the reasons previously detailed.

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Senator Ludwig asked the following question at the hearing of 18/19 February 2002.

- What information was Mr Enniss provided with by the Australian authorities, including the AFP or the task force that has been set up about anti-people-smuggling measures?
- When was the last contact that the AFP had with Mr Enniss?

I am advised that the answer to the honourable Senator's question is as follows:

- The AFP made Mr Enniss aware that they were investigating people smuggling syndicates based in Indonesia. The AFP did not provide Mr Enniss with any operational information regarding investigations or other anti-people smuggling measures.
- The AFP ceased its relationship with Mr Enniss on 21 September 2001.

As at 19 February 2002, the AFP's last contact with Mr Enniss was on 18 February 2002, following an unsolicited telephone call from him.

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Senator McKeirnan asked the following question at the hearing of 18/19 February 2002.

- When was the AFP made an integral part of the anti people smuggling task force?
- When exactly was the AFP alerted to the movement of people to Christmas Island aboard HMAS Adelaide?
- Was any information withheld from the AFP.

I am advised that the answer to the honourable Senator's question is as follows:

- In the context of the AFP's involvement in the Prime Minister and Cabinet Interdepartmental Committee (IDC) (People Smuggling Task Force), the first attendance of AFP member at the IDC was on 27 August 2001.
- The AFP was first alerted to the movement of people to Christmas Island aboard HMAS Adelaide on Tuesday 9 October 2001.
- The AFP is not aware of any information that was withheld from it.

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Senator Sherry asked the following question at the hearing of 18/19 February 2002.

On what date was a copy of the Navy video made available to AFP Headquarters and to whom?

I am advised that the answer to the honourable Senator's question is as follows:

Staff in the AFP Commissioner's Office in Canberra received copies of the videotapes on 23 November 2001.

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Senator Sherry asked the following question at the hearing of 18/19 February 2002.

- Has anyone from the Prime Minister's office made contact with Federal Agent Castles (in connection with the videos, the photos and the issues surrounding them)?
- Please provide dates of task force meetings Federal Agent Castles attended.

I am advised that the answer to the honourable Senator's question is as follows:

- No
- The table detailed below is a record of the meetings of the Prime Minister and Cabinet, Interdepartmental Committee (People Smuggling Task Force) that Federal Agent Castles attended in his capacity as the AFP's representative.

Sept 2001	Oct 2001	Nov 2001	Dec 2001	Jan 2002	Feb 2002
1 st Saturday	2 nd Tuesday	1 st Thursday	4 th Tuesday	8 th Tuesday	1 st Friday
3 rd (x 2) Monday	3 rd Wednesday	5 th Monday	11 th Tuesday	10 th Thursday	12 th Tuesday
5 th Wednesday	4 th Thursday	9 th Friday	21 st Friday	31 st Thursday	
24 th Monday	10 th Wednesday	13 th Tuesday			
25 th Tuesday	12 th Friday	14 th (x 2) Wednesday			
26 th Wednesday	16 th Tuesday	15 th Thursday			
27 th Thursday	19 th Friday	21 st Wednesday			
28 th Friday	20 th Saturday	27 th Tuesday			
30 th Sunday	21 st Sunday	29 th Thursday			
	22 nd Monday				
	23 rd Tuesday				
	25 th Thursday				
	29 th Monday				

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Senator Sherry asked the following question at the hearing of 18/19 February 2002.

- In relation to Mr Castles, who requested that an officer join this working group task force?
- Who requested that an (AFP) officer join the task force?
- What were the circumstances that led to the selection and placement of Federal Agent Castles on the task force?

I am advised that the answer to the honourable Senator's question is as follows:

- Federal Agent Castles' involvement in the Prime Minister and Cabinet Interdepartmental Committee (People Smuggling Task Force) was at the request of Federal Agent Andrew Hughes, the former General Manager for International and Federal Operations.
- The request came from the Department of Prime Minister and Cabinet.
- Federal Agent Castles' involvement in the Prime Minister and Cabinet Interdepartmental Committee (People Smuggling Task Force) was at the request of Federal Agent Andrew Hughes, the former General Manager for International and Federal Operations. Federal Agent Castles' selection was consistent with his occupation of the former position of Coordinator Transnational Crime Operations.

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Senator Collins asked the following question at the hearing of 18/19 February 2002.

I am asking about the provision of any evidence from the AFP perspective on the nature of the interdepartmental communications surrounding this incident or any other material held by the AFP that was drawn upon in Ms Bryant's investigations. Did the AFP provide either any written or oral evidence or documentary evidence of a secondary nature or any other material held by the AFP to the Department of Prime Minister and Cabinet inquiry conducted by Ms Bryant?

I am advised that the answer to the honourable Senator's question is as follows:

No.

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Senator Ludwig asked the following written question on notice following the hearing of 18/19 February 2002.

When it commenced dealing with Mr Enniss as a paid informant, did the AFP have knowledge as to whether he was or had been involved in people-smuggling activities?

I am advised that the answer to the honourable Senator's question is as follows:

The AFP is not aware of any actions taken by Mr Enniss that constitute criminal activity in Indonesia, nor is it aware that Mr Enniss was involved in the actual smuggling of people into Australia.

At the commencement of the AFP's relationship with Mr Enniss the AFP was aware that Mr Enniss moved in a circle of friends and associates who were either closely linked to persons, or were themselves involved, in people smuggling.

The AFP is investigating allegations made in relation to Mr Enniss's alleged actual involvement in people smuggling.

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Senator Ludwig asked the following written question on notice following the hearing of 18/19 February 2002.

What people-smuggling activities on the part of Kevin John Enniss is the AFP aware of, and what are the dates of such activities?

I am advised that the answer to the honourable Senator's question is as follows:

The AFP is aware that Mr Enniss moved in the same circles as people smugglers and provided information in relation to those activities. The AFP is not aware of any actions taken by Mr Enniss that constitute criminal activity in Indonesia, nor is it aware that Mr Enniss was involved in the actual smuggling of people into Australia.

The AFP is investigating allegations made in relation to Mr Enniss's alleged involvement in people smuggling.

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Senator Ludwig asked the following written question on notice following the hearing of 18/19 February 2002.

Did Mr Enniss maintain an involvement in people-smuggling activities during and/or after the period in which he accepted money from the AFP?

I am advised that the answer to the honourable Senator's question is as follows:

The AFP is aware that Mr Enniss moved in the same circles as people smugglers and provided information in relation to those activities. The AFP is not aware of any actions taken by Mr Enniss that constitute criminal activity in Indonesia, nor is it aware that Mr Enniss was involved in the actual smuggling of people into Australia.

The AFP is investigating allegations made in relation to Mr Enniss's alleged actual involvement in people smuggling.

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Senator Ludwig asked the following question at the hearing of 18/19 February 2002

What specific activities is the AFP empowered to authorise in another jurisdiction?

I am advised that the answer to the honourable Senator's question is as follows:

The question, as framed, is very broad. However, in an endeavour to assist the Committee the following response is provided.

In general terms and in context with the Committee's line of enquiry regarding the smuggling of people into Australia from Indonesian territory, the AFP has no power to authorise conduct by other persons that is unlawful in an overseas jurisdiction, nor can it authorise activity in an overseas location if it would be subject to criminal sanction within Australia.

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Senator Ludwig asked the following question at the hearing of 18/19 February 2002.

Can the AFP authorise in another jurisdiction activities that are criminal offences under Australian Law? Does it do so?

I am advised that the answer to the honourable Senator's question is as follows:

No.

No.

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Senator Ludwig asked the following question at the hearing of 18/19 February 2002.

Does Australian legislation making people smuggling a criminal offence have extra-territorial application?

I am advised that the answer to the honourable Senator's question is as follows:

The provisions making people smuggling an offence are found in Subdivision A of Division 12 of Part 2 of the *Migration Act 1958*. Section 228A of that Act states that "This Subdivision applies in and outside Australia".

The AFP engages a number of people within Indonesia as informants. Their supervised role is to make known the identity of, and methods used by, persons involved in the transit of suspect unlawful non citizens (SUNCS) throughout Indonesia, including boat departures from Indonesia destined for Australia. Relevant informant information is then passed to Indonesian authorities so that SUNCS are either;

1. intercepted in Indonesia,
2. prevented from boarding boats destined for Australia, or
3. returned to shore if detected in Indonesian waters en route to Australia.

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Senator Ludwig asked the following question at the hearing of 18/19 February 2002.

Commissioner Keelty referred at the 19 February 2002 Additional Estimates hearing to “controlled operations legislation” (p. 146). To which statute(s) was Mr Keelty referring? Does this legislation have extra-territorial application?

I am advised that the answer to the honourable Senator’s question is as follows:

The controlled operations provisions of the Crimes Act 1914.

The Crimes Act 1914 is expressed as applying throughout the whole of the Commonwealth and the Territories and also beyond the Commonwealth and the Territories: Section 3A.

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Senator Ludwig asked the following questions at the hearings of 18/19 February 2002.

In relation to informants reporting on criminal activities, Commissioner Keelty stated at the 19 February 2002 Additional Estimates hearing that “they are not authorised to engage in criminal activity about which we have no knowledge – remembering again that the criminal activity referred to gets into that area of ambiguity about the laws in Indonesia and the laws in Australia” (p. 145).

1. To what extent are informants “authorised” to engage in criminal activity about which the AFP *does* have knowledge?
2. How is the general rule on this matter applied to informants situated outside Australia?
3. How is the rule further adapted to accommodate a situation where the relevant activity is a criminal offence in Australia, but not in the country where the informant is located?
4. For parts (1)-(3) above, is the “rule” grounded in legislation, case law or merely practice?
5. How were the rules referred to in paragraphs (1)-(3) above applied in the specific case of Mr Enniss?
6. Which Indonesian sources provided the AFP with information about Mr Enniss’s involvement in people-smuggling activities?
7. What was this information, and when was it provided?
8. Who within the Australian Embassy in Jakarta was provided with this information, apart from the AFP, and when?
9. Which agencies in Canberra apart from the AFP were provided with this information and when?

I am advised that the answers to the honourable Senator’s questions are as follows:

1. They are not authorised.
2. There is no difference
3. The AFP does not require informants to commit criminal offences.

4. Legislation and practice.

5. As an informant, Mr Ennis was tasked by the AFP to provide information on people smuggling activities. At no time was he authorised by the AFP to commit any offences under Australian or Indonesian law.

6. Following the "Sunday" program I directed an immediate comprehensive internal investigation of AFP involvement in this matter, including the involvement of any AFP officers who dealt with Mr Ennis overseas. I will be in a better position to answer this question when the outcome of the investigation is known.

7. See answer to question 6 above.

8. See answer to question 6 above.

9. See answer to question 6 above.