

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN FEDERAL POLICE

Question No. 233

Senator Stott-Despoja asked the following question at the hearing on 31 October 2005:

The *Sydney Morning Herald* on the 26 October 2005 contained an article, “Damned from the start: letters show AFP knew the Bali nine’s whole plot”, about correspondence and the provision of information between the AFP and the Indonesian police.

- (a) Who authorised the provision of information by the AFP to the Indonesian police in relation to the nine Australians?
- (b) Who in the AFP and the Government knew and approved the action?
- (c) Were they aware that such action would almost certainly lead to the death penalty for some, if not all, of the Australians involved?
- (d) When was the government informed of the case and where they told of the provision of information?
- (e) What policy or guidelines are applied in a situation where the provision of information may lead to the death penalty?

The answer to the honourable Senator’s question is as follows:

- a) The National Manager, Border and International Network.
- b) The decision to provide information relating to an offence which was believed to occur in Indonesia was an operational decision made by the AFP. As a matter of policy the Minister is not advised of operational decisions prior to the resolution of the operation.
- c) The decision to arrest the alleged members of this syndicate was an operational decision by the INP. The AFP was aware, following the information being provided to the INP, that arrests might take place in Indonesia; however the AFP was not in a position to predict or speculate as to any offences, charges or penalties that may result from INP investigations.
- d) The Minister for Justice and Customs was briefed directly after the arrest of the Australians in Bali. A briefing paper was submitted to the Minister’s office on 18 April 2005. This briefing was copied to the Attorney-General. A subsequent brief was forwarded to the Ministers office on 27 April 2005.
- e) Police to police relationships are governed by arrangements such as the *AFP Act*, Ministerial Direction, Memoranda of Understanding (MOU), international conventions such as the *United Nations Convention Against Illicit Trafficking In Narcotic Drugs and Psychotropic Substances, 1988* and domestic legislation including the *Mutual Assistance Act and Extradition Act*. Additionally, the AFP utilises the *AFP Guideline on International Police to Police Assistance in Death Penalty Charge Situations*. This document was tabled in November 2005 sitting of the Senate Legal and Constitutional Committee.

Further, Justice Finn stated on 23 January 2006 in his judgement in relation to the discovery motion pursued by members of the Bali 9 in the Federal Court, Darwin, that, "...it needs to be emphasised that the AFP was performing a statutorily mandated function, i.e the provision of legal services in relation to laws of the Commonwealth. The particular subject of the inquiry – transnational crime and illicit drug trafficking – fell within areas of special emphasis in the direction given to the Commissioner by the Minister on 31 August 2004."