

# **Chapter Five**

## **Remarks by Government Senators**

### **1. Government Senators' response to recommendations**

1.1 The majority report makes 4 recommendations. Government Senators support Recommendations 2, 3 and 4.

1.2 We do not support Recommendation 1. We see little utility in a yet further inquiry, when the issue has been extensively reviewed not only by this Committee (albeit with restrictions on access to some sensitive intelligence), but also by the Blick Inquiry, which enjoyed unlimited access. The integrity and thoroughness of the Blick Inquiry is not called into question in the majority report. As well, the Joint Standing Committee on ASIO, ASIS and DSD has an increasing oversight role in relation to our intelligence services.

1.3 There are two other reasons why Government Senators do not support a further inquiry. In the first place, nowhere does the majority report point to any important gap, missing piece of evidence, or unpursued line of inquiry, which might suggest that further examination of the events leading to the Bali atrocity on October 12, 2002 would yield any new insights. There may be a case to be made for further inquiry where there is an identified or identifiable gap in existing inquiries. If there is none, it is difficult to see what benefit there would be in further canvassing of the same facts and issues.

1.4 The second reason is a compassionate one. Almost two years have now passed since the Bali bombing. Many of the survivors and the families of the deceased have spoken of their desire for "closure". Government Senators understand and respect that wish. Were there any strong reason to believe that a further inquiry would shed important new light on the events, it may be that the desire of the survivors and families for closure should be secondary to the importance of eliciting that further information. But if there is no particular reason to believe that further important information would be revealed, Government Senators doubt the wisdom of continuing to expose the survivors and families to the continued distress which yet further agitation of the same issues would inevitably bring.

### **2. The core issues**

2.1 There are three core issues considered by the Majority Report. They are:

- (a) The nature, development and extent of Australian intelligence in relation to Islamic extremist movements in south-east Asia, and specifically Indonesia, in the period leading up to the Bali bombing on 12 October 2002. This is the central topic of the Chapter One of the Majority

Report. The central question here is whether there was a culpable failure on the part of any Australian agency or official in failing to anticipate the Bali bombing. Stripped to its essentials, the Majority Report answers that question in the negative. Government Senators agree.

- (b) The content and reach of the Travel Advisories issued by DFAT in the period prior to the Bali bombing. This is essentially a matter of chronicling the Travel Advisories, and is the principal topic of Chapter Two. Selective quotation from, paraphrase or glossing of the Travel Advisories is, in Government Senators' view, of relatively little value: the documents in each case speak for themselves. Accordingly, the sequence of relevant Travel Advisories is compiled in Appendix 4.
- (c) The issue of "commensurability"—in other words, whether each of the Travel Advisories were commensurable with the state of intelligence available at the time they were prepared, in the sense that they sufficiently alerted Australian travellers to Indonesia, and in particular Bali, to the relevant threat level, and whether they did so in the appropriate words. This is the topic of Chapter Three (which compares the threat level as assessed by the agencies with the relevant Travel Advisory operative at the time) and Chapter Four (which treats of the specific case of Bali, and whether, because of its supposedly unique features, it warranted special and different treatment). The Majority Report concludes that the critical Travel Advisories were *not* commensurable with the assessed threat level at critical times. Government Senators disagree.

2.2 The Majority Report is a mixture of fact (both descriptive and historical), discussion, observation, conjecture and conclusions. For the purposes of this Inquiry, the most important feature of the Majority Report is a series of findings which it makes in relation to (sometimes disputed) facts. Although the "findings" are not identified or labelled as such, it is reasonably clear what they are. Subject to our reservations in relation to the matters discussed in section 5, and without adopting the language of the Majority Report, Government Senators agree with the critical findings, which we summarize in sections 3 and 4, in relation to the first two issues, and disagree with what is said in relation to the third, with which we deal in section 5.

### **3. Findings concerning intelligence on terrorism in Indonesia and the region**

3.1 Government Senators agree with the following propositions, which we consider to be the key findings of the Majority Report concerning the nature, development and extent of Australian intelligence in relation to Islamic extremism in south-east Asia, and specifically Indonesia, in the period leading up to the Bali bombing:

- (a) No Australian agency had any foreknowledge of the Bali bombing.<sup>1</sup>
- (b) To the extent that there was an intelligence "failure", that failure was the failure to pick up specific intelligence which might have led Australia to anticipate the bombing. It was not a systemic failure in the way in which our intelligence agencies operated, nor a failure to analyse the specific intelligence which they had. As Dr. Hugh White said, in the quote which introduces Chapter 1 of the Majority Report, "there was no Pearl Harbour here—that is, there was no clear warning which, if identified and acted upon, would have provided an opportunity to prevent the Bali bombing".<sup>2</sup>
- (c) There was a growing awareness and appreciation within the Australian intelligence community, in particular from about early 1999, of the rising significance and militancy within the south-east Asian region of extremist Islamic groups, of their propensity to engage in terrorism, and of the potential threat they posed to Westerners (including Australians).<sup>3</sup>
- (d) After the terrorist attacks in the United States on September 11 2001, Australian agencies redoubled their intelligence-gathering efforts in respect of Islamic militants in south-east Asia.<sup>4</sup>
- (e) On 28 September 2001 ASIO raised its threat assessment level to Australian interests in Indonesia to "HIGH", reflecting a benchmark intelligence judgement of "current intent and capability to attack Australia's interests are established circumstantially, but not confirmed by reliable intelligence", at which level it stayed at all times up to and including time of the Bali bombing.<sup>5</sup>
- (f) In mid-December 2001, following information received in the investigation of terrorist bombings in Singapore, Australian agencies for the first time identified Jemaah Islamiyah ("JI") as a terrorist organisation.<sup>6</sup>
- (g) There is no evidence for or basis to conclude that there were links between JI and another militant group, Laskar Jihad, at the time of the bombing.<sup>7</sup>
- (h) The assessments made by Australian agencies of the terrorist threat posed by JI were always of a generic character; at no time was any Australian

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1 Paragraphs 1.5, 1.7

2 Heading quotation to Chapter 1; Paragraphs 1.18, 1.19

3 Paragraphs 1.35, 1.36

4 Paragraph 1.50

5 Paragraph 1.52, 1.118, 1.119

6 Paragraph 1.58

7 Paragraph 3.38

- agency aware of a threat posed by JI specifically in Bali (or any other particular locality in Indonesia).<sup>8</sup>
- (i) During the first half of 2002, the agencies became more confident that al-Qaeda had links in Indonesia, and during this time were increasingly focussed on assessing the nature and extent of the threat posed by JI and other militant groups in the region.<sup>9</sup>
  - (j) On 18-19 June 2002, at a meeting also attended by officers of DFAT, ONA briefed the Minister for Foreign Affairs, Mr. Downer, on their emerging appreciation of the threat posed by JI and other militant groups in the region, and of the presence in the region of al-Qaeda.<sup>10</sup>
  - (k) While all of the officials who attended the meeting presented the Committee with the best of their recollections, the evidence of Mr. Bill Patterson, a DFAT officer who was the only person at the meeting to take contemporaneous notes of the meeting, must be regarded as the most reliable.<sup>11</sup> Government Senators set out in Appendix 5 the transcript of Mr. Paterson's evidence and explanation of his contemporaneous notes. Government Senators note that the Majority Report makes no criticism of Mr. Downer, either specifically in relation to the June 2002 meeting, or generally in relation to his handling of the matter.
  - (l) In the dispute between witnesses from DFAT and ONA described at Paragraphs 1.189—1.212 as to whether a meeting between officials from those agencies took place *before* or *after* the meeting with Mr. Downer, the balance of evidence falls strongly in favour of the DFAT account (i.e., that the meeting took place *before*, not after the meeting with Mr. Downer), and that the post-Downer meeting alleged by ONA almost certainly did not take place.<sup>12</sup>
  - (m) ONA warrants criticism for failing to respond adequately to DFAT's direct and unambiguous questions about a highly significant issue for Australians and Australian interests abroad—namely terrorism.<sup>13</sup>
  - (n) Nevertheless, DFAT and ONA developed an increasingly close relationship as the new paradigm of international security, focused on terrorism, demanded ever greater cooperation between government agencies.<sup>14</sup>

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8 Paragraphs 1.69, 1.83, 1.94, 1.107

9 Paragraphs 1.68, 1.106, 1.115

10 Paragraphs 1.168, 1.78

11 Paragraph 1.181

12 Paragraph 1.212

13 Paragraph 1.212

14 Paragraph 1.216

- (o) At the most critical time (in the months immediately preceding the Bali bombing), the agencies were carrying out analysis and delivering assessments that were optimal within the bounds of the information and evidence available to them.<sup>15</sup>
- (p) Prior to the Bali bombing, neither DFAT nor ONA were possessed of any actionable intelligence that gave warning of an attack.<sup>16</sup> Government Senators observe that, as ONA itself conceded, of some 20 reports by ONA concerning regional terrorism between the time of the Downer meeting and the Bali bombing, not one mentioned Bali as a possible terrorist target.<sup>17</sup>
- (q) There is no basis for any suggestion that the Australian agencies were not as assiduous as, nor that they lacked the sense of urgency, of their American counterparts in assessing the terrorist threat in Indonesia.<sup>18</sup>

#### 4. Findings concerning Travel Advisories

4.1 Government Senators agree with the following key findings in relation to Travel

Advisories prepared by DFAT:

- (a) DFAT did not in this particular instance, and does not as a matter of practice, temper Travel Advice according to diplomatic considerations.<sup>19</sup>
- (b) Travel Advisories issued by DFAT during the period from September 11 2001 until the Bali bombing reflected an increasing concern with the risks posed by the rise of militant Islamists.<sup>20</sup>
- (c) The travel advice for Indonesia was changed on 12 July 2002 in a way which noticeably strengthened it, to warn travellers of the need to "maintain a high level of personal security awareness", and to warn that bomb had been exploded "including in areas frequented by tourists" and that "further explosions may be attempted".<sup>21</sup>

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15 Paragraph 1.112

16 Paragraph 1.216

17 *Transcript of evidence*, 20 June 2003, p. 86 (evidence of Mr. Jones, ONA analyst); see also *Transcript of evidence*, 5 August 2003, p. 544, (evidence of Mr. Paterson & Mr Kemish, DFAT officers).

18 Paragraph 1.117

19 Paragraph 2.22

20 Paragraphs 2.54, 2.80, 2.102

21 Paragraphs 2.99, 2.116, 3.80

- (d) The travel advice was strengthened again on 10 September 2002, by the inclusion in the headline boxed summary of the words "In view of the ongoing risk of terrorist activity in the region, Australian in Indonesia should maintain a high level of personal security awareness".<sup>22</sup>
- (e) The travel advice which was in force at the time of the Bali attack, i.e. that issued on 20 September 2002, contained the words "Bombs have been exploding periodically in Jakarta and elsewhere in the past, including areas frequented by tourists. Further explosions may be attempted. In view of the ongoing risk of terrorist activity, Australians should maintain a high level of personal security awareness at all times".<sup>23</sup>
- (f) In its travel advisories DFAT employed the relevant level of warning and language that corresponded to the threat being conveyed by the intelligence agencies.<sup>24</sup>

## 5. The issue of "commensurability"

5.1 The principal point of difference between Government Senators and the Majority Report is on the related issues of the sufficiency of the DFAT travel advisories in conveying to the traveller a level of caution commensurate with the agencies' (and particularly ASIO's) threat assessments at the relevant time; and whether—even assuming the level of caution to have been generally appropriate—whether sufficient was contained to convey to intended travellers to Bali the message that Bali was no safer than anywhere else in Indonesia (and indeed, as a so-called "soft target" known to be frequented by Westerners, was arguably for that reason more at risk than elsewhere).

5.2 In the view of Government Senators, the ultimate test of the sufficiency of the Travel Advisories is whether they were accurate. The central point here is that *at no time* was there any intelligence suggesting a particular threat to Bali as distinct from other tourist destinations. The generic nature of the Travel Advisories at all times reflected the generic nature of the threat assessments. There was, in Government Senators' view of the evidence, simply no proper basis known to the Australian authorities upon which to assert that Bali was any *more* dangerous than any other tourist destination. In such circumstances, pitching the Travel Advisories at the level of generic risk of bombings, but specifying likely targets by *type but not locality*, was not only correct; there was no basis to localize the advisories in the absence of any assessed threat to any particular locality. How can a Travel Advisory which warns of the risk of terrorist bombing of tourist facilities in generic terms not be commensurate with the threat assessment, when the threat assessment was itself generic? How can a

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22 Paragraphs 2.117, 3.93

23 Paragraphs 3.95, 3.96

24 Paragraph 3.110

locality be identified in the Advisory which was not identified in the threat assessment?

5.3 Criticism is also made of the fact that the Travel Advisories contained a statement that Bali was "calm" and "tourist services were operating normally". That was objectively true. The statement, as DFAT witnesses explained, was included merely because of the high frequency of inquiries concerning Bali from Australian travellers; not to suggest that, for any other reason, Bali was a special case. There is no inconsistency between that observation, which was descriptive and accurate, and the warning that tourist facilities (which necessarily included Bali) were at risk of terrorist bombings. Would an Australian traveller to Bali, reading that warning, think that Bali was *not* at risk, given that it was the very destination in which he or she was interested, and the purpose of the travel was tourism? We think not.

5.4 We proceed to deal with the sequence of Travel Advisories in detail. We also draw to the attention of readers the sequence of actual Advisories, in the format they were issued—as they "strike the eye"—in Appendix 4.

5.5 Chapter 3 of this Report opens with a quotation from the parent of a young man who was killed in Bali.

My son, Scott, was killed in that tragedy. I would like you to know that neither I nor any member of my family consider that the Government's travel warnings were in any way inadequate. We do not feel there was any lack of advice that contributed to Scott's death.

5.6 The rest of the Chapter provides a detailed account of the travel advisories produced by DFAT, and the intelligence reports and threat assessments that underpinned them. On the basis of this evidence, which is elaborated with considerable attention to detail, it is abundantly clear that DFAT's Travel Advice in the months leading up to Bali—and especially from September 2002—was wholly commensurate with the level of threat being conveyed by the intelligence agencies.

5.7 The Government Senators simply cannot fathom how, given the extensive evidence canvassed in the Report, it can be asserted that the DFAT Travel Advice was somehow inadequate.

5.8 During the first half of 2002, while intelligence agencies were trying to come to grips with the security and threat implications for Australia of the discovery of JI as a terrorist group, DFAT's Travel Advice was conveying information about the dangers from extremists in Indonesia. The advisories had been doing so even earlier than that.

5.9 DFAT's Travel Advice by mid-2001 was employing the language of a level 3 Advice. (There are 7 levels or categories of advice, each of which tends to use certain key phrases and terminology.) Level 3 advices often have some reference to the risk of terrorism.

5.10 The 'headline' summary of DFAT's 27 August 2001 Advice used fairly standard level 3 phraseology. The *Safety and Security* section drew attention to US

and UK warnings about heightened terrorist threats, referred to explosions in Jakarta, and warned Australians to take bomb threats seriously.

5.11 The first DFAT Travel Advice after the September 11 terrorist attacks on the World Trade Centre was issued on 20 September 2001. The headline advice remained identical to that of 27 August, and the body of the advice was almost so—including the reference to 'explosive devices...detonated recently in Jakarta... [so] take seriously any bomb threats'. To the body of the advice was added the sentence:

In view of the heightened tension associated with the recent terrorist attacks in the United States of America, Australian travellers are advised to be especially alert to their own security at this time.

5.12 The next advisory, six days late on 26 September further upgraded the warning level from previous advices. The boxed, 'headline' summary introduced the additional phrase 'and exercise great caution at this time'. This is typical of level 4 terminology. Level 4 terminology in a Travel Advice is DFAT's standard setting if ASIO's threat assessment for politically motivated violence (PMV) against Australians is HIGH.

5.13 The *Safety and Security* section advised about explosive devices being detonated in Jakarta, and telling Australians to take any bomb threats seriously. This advice, or warnings very similar, appeared in the body of all later Travel Advices.

5.14 The next event of significance was the commencement of US-led military activity in Afghanistan on 8 October, prompting new DFAT Travel Advice headlined:

Australians should consider deferring all holiday and normal business travel to Indonesia, excluding Bali. Australians in Indonesia are advised to monitor carefully developments that might affect their security and exercise great caution at this time.

5.15 The 8 October DFAT Advice also said 'It is highly likely that there will be further demonstrations in a number of cities in Indonesia which could have anti-Western overtones' and that Australians were advised to take 'special care' and 'exercise sensible precautions'.

5.16 The Bali exclusion was made on the basis that the concerns were related to violence associated with protests, and Bali did not pose that risk. As DFAT explained:

The key focus in the period you are talking about—and actually it is the key focus for the ASIO threat assessment as well—was the possibility of protest action, civil disorder and in particular protests outside our embassy in Jakarta in the context of the coalition attacks in Afghanistan. That is what the advice was about. The situation in Bali was calm. That was the fact of the matter...<sup>25</sup>

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25 *Transcript of evidence*, 28 May 2004, p. 496 (Kemish, DFAT).



5.17 DFAT's travel advice of 7 December 2001 for Indonesia urged heightened vigilance and personal security awareness, relating this advice to the possibility of further protest activity against the War on Terror and civil unrest, and a range of serious threats across Indonesia.

5.18 The first DFAT Travel Advice of 2002, issued on 8 March, was virtually identical to the December 2001 Advice. The Travel Advice of 28 March 2002 was a substantially re-written advisory, and drew attention to the fact that the advice had been 'reviewed ... [and]... contains new information or advice'.

5.19 Its headline opened with advice to Australian's travelling to, or resident in, Indonesia to register with the Jakarta Embassy or Bali Consulate, and concluded with advice against travel to certain regions, and a caution about travel in Irian Jaya and North Sulawesi.

5.20 The body of the advice elaborated on the hot spots of ethnic and separatist violence, and discussed the risks to foreigners in the light of kidnappings conducted by the Abu Sayyaf terrorist group in locations near Indonesia.

5.21 The advice also repeated the warning to 'maintain a high level of personal security awareness'. This advice remained extant until 12 July 2002.

5.22 The DFAT Travel Advice of 12 July 2002 was noticeably strengthened, opening its headline summary with the warning that :

Australians in Indonesia should monitor carefully developments that might affect their safety and should maintain a high level of personal security awareness.

5.23 This message was repeated in the first paragraph of the main body of the advice.

5.24 DFAT issued a further Travel Advice on 13 August. The bolded and boxed summary or 'headline' section opened with the warning that Australians in Indonesia should 'monitor carefully developments that might affect their safety' and that they should 'maintain a high level of personal security awareness'. It concluded with the statement: 'Tourist services elsewhere in Indonesia are operating normally, including Bali.'

5.25 This statement was repeated in the *Safety and Security* section of the Travel Advice. The *Safety and Security* section retained the July warning that bombs had exploded, including in areas frequented by tourists, and that further explosions may be attempted.

5.26 The next Travel Advice, issued on 10 September 2002, was noticeably strengthened, even though it was still prefaced by the statement that 'the overall level of advice has not been changed' and to that extent was again misleading. The headline boxed summary now opened with the statement: 'In view of the ongoing risk of

terrorist activity in the region, Australians in Indonesia should maintain a high level of personal security awareness.'

5.27 The advisories of 13 and 20 September were essentially the same as the 10 September Travel Advice, also retaining, in the *Safety and Security* section, the reference to bombs exploding 'periodically in Jakarta and elsewhere in the past, including areas frequented by tourists. Further explosions may be attempted'.

5.28 The Travel Advice of 20 September was the advisory extant at the time of the Bali attacks. That Advice, as discussed above, opened its headline summary statement with the sentence 'In view of the ongoing risk of terrorist activity in the region, Australians in Indonesia should maintain a high level of personal security awareness'.

5.29 The *Safety and Security* section in the body of the advisory also contained the paragraph:

Bombs have been exploded periodically in Jakarta and elsewhere in the past, including areas frequented by tourists. Further explosions may be attempted. In view of the ongoing risk of terrorist activity, Australians should maintain a high level of personal security awareness at all times.

5.30 In the view of the Government Senators, any fair-minded reading of these travel advisories could leave no one reading them in any doubt that they should be on high alert regarding risks of terrorism, and that this could well involve bombs, as had already happened in areas frequented by tourists and might be attempted again.

5.31 Given that Bali was a premier tourist destination, it is important to note that the Travel Advice was quite explicit—and had been so since July 2002—that bombs had exploded in areas frequented by tourists.

## **6. A concluding observation**

6.1 We must never lose sight of the fact that the Bali atrocity was Australia's greatest peacetime disaster. It was a time of almost unparalleled grief and anguish, in which the whole nation vicariously participated, and was felt, in some measure, by every Australian.

6.2 Those at the very front line in dealing with the tragedy were DFAT consular officers. The overwhelming evidence of the survivors and the families of victims was one of appreciation for the extraordinary efforts of those men and women. As Mr. Ian Kemish, the DFAT officer with overall responsibility for consular support, summarized the response:

I am pleased to say that ... quite deep personal bonds have developed between some of those who lost their families in Bali and some of our officers. It is an extraordinary thing and I find it amazing every time I see it. Certainly, there is ongoing support. You will, of course, recall the very high level of support that consular officers were involved in immediately after the bombing—including undertaking activities

which, frankly, no public servant should be asked to undertake, such as the management of remains and work in the morgue in Bali. It also included very active work in ensuring that they had answers to questions about disaster victim identification and so on. We moved beyond that. We had a very strong role in organising the Bali commemorating last October and were in very strong contact with many of the family members after that. If I may, Chair, on previous occasions in response to questions I have asked leave to table correspondence from families. I know it is not core to the focus of the Committee, but it does go to the professionalism of the department and our relationship with families.<sup>26</sup>

The understandable, very human desire of some to seek to point the finger of blame must never diminish our appreciation of the real valour of those officers who confronted this terrible tragedy, and rose to the occasion in a magnificent spirit of public service.

**Senator Sandy Macdonald**

**Deputy Chair**

**Senator David Johnston**

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26 *Transcript of evidence*, 28 May 2004 p. 495

