

~~LEGAL IN CONFIDENCE~~Ref: B11/2560
Routine/Low Complexity

DEPARTMENT OF THE PRIME MINISTER AND CABINET

To: Prime Minister (for information)

DOCUMENTS TABLED BY COMMONWEALTH OMBUDSMAN'S OFFICE

Recommendations - that you:

1. Note that I will be meeting the Ombudsman in the near future s 47C
s 47C

Noted

2. s 47C
s 47C

Noted

3. s 47C
s 47C

Noted

Julia Gillard

Date:

Purpose: To advise you of issues relating to the Commonwealth Ombudsman's contact with Senator Hanson Young.

Key Points:

1. Mr Asher has provided submissions and evidence to Parliamentary Committees inquiring into matters related to the Immigration portfolio. In September 2011, he provided a submission to the Senate Legal and Constitutional Affairs Committee inquiry into Australia's agreement with Malaysia in relation to asylum seekers.
2. At the public hearing of the Committee on 16 September 2011, the Ombudsman was asked whether he had consulted members or senators before making the submission. Mr Asher responded in part that he had conversations with Senator Hanson-Young on 'other aspects of this, although nothing in respect of the Malaysian agreement in particular'.
3. Mr Asher was subsequently asked, on notice, to provide the Committee copies of any communications on issues relating to asylum seekers or any matters that were the subject of Senate Estimates or parliamentary inquiries, between the Ombudsman's office and any Senators or Members of the House of Representatives.
4. In response to that question, the Ombudsman's Office has provided a range of material, including what appear to be possible questions given to Senator Hanson-Young's office shortly before the Ombudsman's appearance at Estimates in May 2011 (Attachment A).

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5. The draft questions relate to the Ombudsman's role as Taxation Ombudsman and Defence Force Ombudsman, as well as his role as Immigration Ombudsman. [REDACTED]

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6. The material released by the Ombudsman's Office includes draft questions on the resource constraints of the Ombudsman's Office and subsequent exchanges of press releases from the Greens and the Ombudsman calling for increased funding for the Ombudsman.
7. The Ombudsman's Office provided copies of this material to this Department shortly before it was provided to the Committee. It has not yet been published by the Committee.
8. The *Ombudsman Act 1976* (the Act) establishes the office of the Commonwealth Ombudsman as a statutory office holder to investigate and report on matters of administration and perform other functions conferred by Commonwealth or ACT enactment. He has particular functions under the *Migration Act 1958*. The Ombudsman is able to report directly to the Parliament on matters where there has not been an adequate response to an investigation carried out by the Ombudsman.
9. Mr Asher was appointed for a term of five years commencing on 30 August 2010. [REDACTED]

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Comment

10. The role of the Ombudsman is defined by the Act as investigating matters of administration [REDACTED]

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Options

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Public comment

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20. The Ombudsman's Office resides in the Prime Minister and Cabinet portfolio. As part of my initial round of meetings with portfolio agency heads, a meeting is scheduled with Mr Asher in the week commencing 11 October (in his role as Taxation Ombudsman, Mr Asher is attending the Taxation Forum on 5 and 6 October which limits opportunities).

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I J Watt
Secretary

4 October 2011

Policy Officer: David Macgill
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Consultation: Australian Government
Solicitor

ATTACHMENT A: Possible questions provided by Ombudsman's office to Senator Hanson-Young's office

Possible questionsImmigration Ombudsman

1. No-one would be surprised to learn that the Immigration Ombudsman function is more time consuming and resource intensive than ever before. Yet this year's federal Budget provided no additional funding for this constantly expanding and important role.
 - Will you be able to continue your Immigration Ombudsman work at the level that is required?
 - Will this have an impact on the transparency of detention centre operations?
 - How will it affect the work you do in other areas?
2. In a formal report in February this year, you warned the Government that the situation on Christmas Island was not sustainable. You were right, as demonstrated by the March riots. Since then, you have stated that you consider the Government to be in breach of its own immigration detention values.
 - Are you satisfied that the Government is taking seriously the issues you have raised, especially given the ongoing detention on Christmas Island of families with children, unaccompanied minors and other vulnerable people?
 - Have you been informed of any measures that will be put in place to address the lack of availability of appropriate medical and mental health services on Christmas Island?
 - Has the Department of Immigration and Citizenship acted on the other recommendations in your February 2011 report?
 - What resources do you require to monitor what's happening on Christmas Island and track the progress of work being undertaken to address your recommendations to the Government? How are you funding this work?
3. Why did you choose to announce an inquiry into the March 2011 incidents on Christmas Island after the Government had already announced the Hawke-Williams inquiry?
 - Did the Government consult you about the Hawke-Williams inquiry?
 - How can you justify public expenditure on a second Christmas Island inquiry?
4. You have stated publicly that you are considering an investigation into suicide and self-harm in immigration detention facilities.
 - What is stopping you from going ahead?
 - When will you decide whether or not to conduct this investigation?

Taxation Ombudsman

1. What action is your office taking in response to allegations by high-profile Australians that the Government has treated them unfairly in relation to its Project Wickenby investigation into illegal offshore schemes?
2. In March this year, the media attributed to you criticisms of the Australian Taxation Office made in a private briefing of the Joint Parliamentary Committee of Public Accounts and Audit. It was reported that you said the ATO was plagued by 'systemic problems' and 'institutional rigidities'.
 - What did you mean?
 - What is the impact on taxpayers of these problems?
 - How many complaints does your office receive each year about taxation issues and what are the complaints about?

Defence Force Ombudsman

1. Has the level of ineptness of the Defence Forces to deal with internal complaints, as highlighted by recent events, come as a surprise to you in your role as Defence Force Ombudsman?
2. At least half-a-dozen inquiries and reviews into aspects of Defence culture have been announced during the past month or so. Are you involved in any of these investigations?