

# CHAPTER 1

## ATTORNEY-GENERAL'S PORTFOLIO

1.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Attorney-General's portfolio for the 2013–14 financial year.

### **National Archives of Australia**

1.2 The committee questioned representatives from the National Archives of Australia (NAA) on a number of issues including the accumulated backlog of applications for access to records and the steps taken to address the backlog; updates on the agency's accommodation requirements, as well as its current staffing profile.

1.3 Agency officials provided statistics that gave context to the current waiting periods for access to documents, followed by the actions taken to address the backlog of applications:

There are 20,000 records awaiting examination so that they can be opened under the Archives Act. Within the broader context of several million applications or requests for access that we receive each year—and five million of those dealt with our material which is already online and digitised, delivered very efficiently through online channels as it should be—over and above that we receive annually about 43,000 applications for files which have not yet been examined for access under the Archives Act. I think that last year, out of those 43,000, we were able to open about 40,000. So the maths is quite simple here: there were 3,000 which were over and above our capacity to respond.

...

We have devoted an area of our website now to provide public scrutiny of how we are doing eroding that backlog. We are making progress. I have diverted for the Archives significant resources in the last several months to set up a task force to focus on that backlog. We are entering into refreshed agreements with all the government agencies we work with to clear that backlog. It is an area of intense activity within the Archive.<sup>1</sup>

1.4 The agency updated the committee on its accommodation requirements. The current lease on the facility in Tuggeranong is due to expire in 2017. It was explained that arrangements are being made with the intention to look for a new facility in the ACT region. A tender process at the expression of interest stage is currently underway and its timing is being coordinated to facilitate consolidation of the agency's holdings into the new repository.<sup>2</sup> Mr Lennard Marsden, Assistant Director-General of the Executive and Information Services Branch of the NAA stated:

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1 *Estimates Hansard*, 24 February 2014, p. 16.

2 *Estimates Hansard*, 24 February 2014, p. 17.

We were basically looking to consolidate digital archive for repository holdings from Greenway... The existing Mitchell site is currently out for tender at the moment, and we are looking at 75 shelf kilometres equivalent to basically refurbish... The new site will accommodate the bulk of the holdings, but not all holdings going forward.<sup>3</sup>

1.5 The agency provided an update on their staffing statistics. As at 30 June 2013 the agency had a total of 450 staff, consisting of 371 ongoing, 32 non-ongoing and 47 casual employees. The full-time equivalent was 411 and the average staffing level was 422. This was compared to the statistics as at 31 December 2013, where a total of 417 staff was reported, consisting of 365 ongoing, 16 non-ongoing, 36 casuals and a full-time equivalent of 385.<sup>4</sup>

### **Office of the Australian Information Commissioner**

1.6 Representatives from the Office of the Australian Information Commissioner (OAIC) were questioned on the progress of Australia's entry to the Open Government Partnership.<sup>5</sup> The Attorney-General, Senator the Hon George Brandis, provided some information on developments in this area:

Australia announced its intention to join the Open Government Partnership on 22 May last year. There have since been three interagency meetings to discuss progress, including the requirements of an action plan. One of those meetings was held before the elections, on 17 July, and the other two have been held since the election, on 29 October and on 5 November. So the action plan is in development.<sup>6</sup>

1.7 In addition to this, the Information Commissioner addressed the issue of delays in dealing with some of the applications for Information Commissioner (IC) or merit review of Freedom of Information (FOI) decisions, FOI complaints and privacy complaints that were reported in the annual report.<sup>7</sup> Attention was drawn to the figures published on the web in December, which indicated that the rate of completion of IC review cases has risen to 1.4 cases per day, compared to 0.7 in the previous annual report. Also, the completion of privacy complaints has risen to six per day, compared to 3.79 in the previous annual report. The Information Commissioner stated that 'the office battles gamely to deal with a growing workload'.<sup>8</sup>

### **Australian Human Rights Commission**

1.8 The Australian Human Rights Commission (AHRC) updated the committee on developments at the commission since its last appearance at Senate estimates, which included the announcement of the third national inquiry into children in

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3 *Estimates Hansard*, 24 February 2014, p. 17.

4 *Estimates Hansard*, 24 February 2014, p. 18.

5 *Estimates Hansard*, 24 February 2014, p. 75.

6 *Estimates Hansard*, 24 February 2014, p. 75.

7 *Estimates Hansard*, 24 February 2014, p. 76.

8 *Estimates Hansard*, 24 February 2014, p. 76.

immigration detention; the appointment of a seventh commissioner, Mr Tim Wilson, to the AHRC; and the commission's priority over the next year to engage more directly with business, to positively encourage small to medium businesses to meet human rights standards, particularly in regard to anti-discrimination law, but to do so with a minimum of red tape.<sup>9</sup>

1.9 The committee raised issues with the Disability Discrimination Commissioner, Mr Graeme Innes AM, relating to the imprisonment of people with a disability, with a particular focus on Aboriginal and Torres Strait Islander persons.<sup>10</sup> Mr Innes made reference to the recently published access to justice report, which examined the issue of people with disabilities, who are significantly disadvantaged in the justice system, and stated:

I have written to the Attorney-General of the Commonwealth and to the state and territory attorney-general to advocate these issues and to talk to them about my report.<sup>11</sup>

1.10 The committee also inquired into the progress of the report on pregnancy and return to work: the commission advised that the headline prevalence data will be available by the beginning of April and the full report will become available in June.<sup>12</sup> The commission advised that the report would be looking at all sizes of companies across all sectors, which will facilitate the identification of potential trends in the size of a company compared to the prevalence of discrimination.<sup>13</sup>

1.11 The President of the AHRC, Professor Gillian Triggs advised that the new inquiry into children in immigration detention had just started and is scheduled for completion by September–October this year, with a view to report to government within that time frame.<sup>14</sup> The inquiry is in response to the high numbers of children in closed immigration detention that were recorded in 2013, with 1,600 recorded on 30 April 2013 and 2,000 recorded in July 2013.<sup>15</sup> Professor Triggs reported that this number has decreased recently, with the number of children currently in detention at approximately 1,000.<sup>16</sup>

### **Attorney-General's Department**

1.12 A number of issues were raised with the Attorney-General's Department (AGD) including: developments in considering reforms to the *Racial Discrimination Act 1975* (Racial Discrimination Act); the review into the efficiency and

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9 *Estimates Hansard*, 24 February 2014, pp 55–56.

10 *Estimates Hansard*, 24 February 2014, p. 63.

11 *Estimates Hansard*, 24 February 2014, p. 63.

12 *Estimates Hansard*, 24 February 2014, p. 66.

13 *Estimates Hansard*, 24 February 2014, p. 66.

14 *Estimates Hansard*, 24 February 2014, p. 55.

15 *Estimates Hansard*, 24 February 2014, p. 55.

16 *Estimates Hansard*, 24 February 2014, p. 55.

cost-effectiveness of government-funded legal assistance programs; and administrative issues relating to the Royal Commission into the Home Insulation Program.

### ***Racial Discrimination Act***

1.13 The Attorney-General updated the committee on the government's consideration of reforms to the Racial Discrimination Act. The Attorney-General advised:

...There will be significant amendments to remove, from the Racial Discrimination Act, language which, in the view of the government, unreasonably penalises freedom of speech. There has been absolutely no change to the government's declared intention to reform the Racial Discrimination Act so as to protect freedom of speech.<sup>17</sup>

1.14 Further to this, the Attorney-General added:

That will involve repealing from section 18C some of the language, but the government has not yet decided on how extensive that legislative amendment will be. That is a matter of current discussion within the government...we are carefully, steadily and methodically going about giving effect to that which we undertook to do.

Thirdly, surely you will appreciate that this is an issue that does provoke very strong feelings on both sides of the question...What I have made it my business to do throughout the summer, starting in November and throughout the summer until as recently as last week, was to hold extensive discussions. They were careful, far-reaching and sometimes very long discussions with the number of individual community leaders—most particularly, from the ethnic community.<sup>18</sup>

1.15 The committee questioned the Attorney-General as to whether any formal consultation or community engagement process had been sought in considering the legislation. The Attorney-General advised the committee of the government's intention to introduce legislation in the first half of 2014, and expected to be subject to the Senate committee process.<sup>19</sup>

### ***Efficiency and cost-effectiveness of government funded legal assistance programs***

1.16 The AGD was asked to provide information relating to the review into the efficiency and cost-effectiveness of four Australian government-funded legal assistance programs. Officers reported the review was currently in draft form and although it had not been publicly released, it is known to the government and it is under consideration.<sup>20</sup> The Deputy Secretary of the Civil Justice and Legal Services

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17 *Estimates Hansard*, 24 February 2014, p. 31.

18 *Estimates Hansard*, 24 February 2014, p. 31.

19 *Estimates Hansard*, 24 February 2014, p. 32.

20 *Estimates Hansard*, 24 February 2014, pp 33–34.

Group of the AGD, Mr David Fredericks provided more information on the conduct, scope and potential applications of the review:

The report is prepared as a consequence of the national partnership agreement [NPA] on legal assistance. That agreement provided that an independent review needed to be conducted before the expiration of the agreement. So it is under the rubric of that national partnership agreement. The review has been conducted by ACIL Allen Consulting.

...

The review will deal with a number of issues. Firstly, the review will include a framework for evaluating all four Commonwealth funding legal assistance programs—that is, legal aid commissions, community legal centres, Aboriginal and Torres Strait Island legal services and family violence prevention legal services for Indigenous Australians. Secondly, the report will include an evaluation of the quality, efficiency and cost-effectiveness of those four programs. Thirdly, there will be a review of the state legal aid commissions against the performance indicators that are set in the NPA and the benchmarks that are set in the NPA. Fourthly, the review will include a market analysis of the legal services sector. It will be quite comprehensive.

It will be of great utility in a number of ways. Firstly, because the review is being conducted under the rubric of the NPA, it will ultimately be considered by the Standing Council on Federal Financial Relations. It will also be provided to the now Law, Crime and Community Safety Council, so it is an important report for the states as well and will be shared with them in that way. Secondly, the report will also be useful input to the Productivity Commission review... So both organisations have ensured that they have been in contact in that regard. Thirdly, it will ultimately be useful in assisting the government to determine its position on legal assistance services, both under the NPA and generally moving forward.<sup>21</sup>

1.17 The total cost of the contract for the review was reported at \$815,366 with the states and territories contributing \$167,341 to meeting that cost.<sup>22</sup>

1.18 The committee questioned the department on the December 2013 Mid-year Economic and Fiscal Outlook (MYEFO) which indicated a redirection of legal policy reform and advocacy funding to the amount of \$43.1 million, over four years, by removing funding support to policy reform and advocacy activities provided to four legal assistance programs (the legal aid program; the Indigenous legal assistance program; the community legal services program; and the family violence prevention legal services program (now residing with the Department of the Prime Minister and Cabinet))<sup>23</sup>.

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21 *Estimates Hansard*, 24 February 2014, p. 33.

22 *Estimates Hansard*, 24 February 2014, p. 34.

23 *Estimates Hansard*, 24 February 2014, pp 34–35.

1.19 The Attorney-General highlighted the Productivity Commission's review into the access to justice issue, which is due to report at the end of 2014 and will be available at that time.<sup>24</sup>

### ***Royal Commission into the Home Insulation Program***

1.20 In response to questions relating to the Royal Commission into the Home Insulation Program, AGD representatives provided details of the department's engagement with administrative matters relating to the Royal Commission.

1.21 Departmental officials explained the budget allocation for the Royal Commission into the Home Insulation Program. The total cost allocated to the Royal Commission to date was \$20 million. This consisted of the monetary amount that was allocated to the commission itself, which was \$12.2 million and the additional costs for Commonwealth representation and support for witnesses.<sup>25</sup>

1.22 Included in the \$20 million appropriated to the Royal Commission was the cost of eleven staff from the Attorney-General's Department allocated to provide administrative support to the commission.<sup>26</sup>

1.23 The committee examined the Attorney-General's Department extensively on issues pertaining to summonses for the production of documents, including cabinet documents. The Attorney-General tabled a letter that outlined the approach the government would take in the event of a summons being issued by the Royal Commission for the production of cabinet documents.<sup>27</sup> The Attorney-General read from a letter to the former Attorney-General the Hon Mark Dreyfus, during the hearing:

This is the letter from me to Mr Dreyfus in response to his request that I indicate on behalf of the government what attitude the government would take.

And this is what I said: "To ensure a proper approach to dealing with issues of cabinet confidentiality while not frustrating the process of the royal commission, the government has decided that in response to the summons directed to the Commonwealth, the documents the Commonwealth will produce for the commission to examine and consider will include documents over which a claim for public interest immunity might be made, such as cabinet documents. However, in providing such documents to the commission, the government will indicate that it does not waive its right to claim the immunity. Accordingly, should the commission wish to publish

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24 *Estimates Hansard*, 24 February 2014, pp 32.

25 *Estimates Hansard*, 24 February 2014, p. 25.

26 *Estimates Hansard*, 24 February 2014, p. 26.

27 Attorney-General, Senator the Hon George Brandis, Attorney-General's Department, *Response to summons to produce cabinet documents in relation to the Royal Commission into the Home Insulation Program*, tabled on 24 February 2014:

[http://www.aph.gov.au/~media/Estimates/Live/legcon\\_ctte/estimates/add\\_1314/AGD/AG\\_4.as\\_hx](http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/add_1314/AGD/AG_4.as_hx)

any of the cabinet documents or use them in such a manner that the contents might become public, the Commonwealth requests that it be notified so that it can consider whether it is necessary to make submissions in relation to such documents or uses or whether it should seek other protective orders. Whether the Commonwealth makes such submissions or application will be a matter for the Commonwealth at the relevant time".<sup>28</sup>

### ***Other matters of interest***

1.24 Other matters canvassed with the Attorney-General's portfolio by the committee included:

- an update of issues relating to the Organisation for Economic Cooperation and Development's (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;<sup>29</sup>
- questions relating to the department's interception capability plans which outline how nominated carriers and carriage service providers can help law enforcement agencies with lawful interception of telecommunication services;<sup>30</sup>
- Creative Partnerships Australia's engagement with business and its offices in regional areas;<sup>31</sup>
- vacancies on the Screen Australia Board;<sup>32</sup>
- matters regarding data retention by the Attorney-General's Department following the election;<sup>33</sup>
- progress on the Australian Security Intelligence Organisation's new building;<sup>34</sup>
- the Australian Federal Police's (AFP's) execution of a search warrant on Channel 7's offices in relation to alleged negotiations to interview Chappelle Corby;<sup>35</sup> and
- parliamentary security and the implications of possible savings measures relating to the AFP's perimeter security for Parliament House.<sup>36</sup>

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28 *Estimates Hansard*, 24 February 2014, pp 20–21.

29 *Estimates Hansard*, 24 February 2014, pp 54, 116, 120–121 and 133.

30 *Estimates Hansard*, 24 February 2014, pp 50–51.

31 *Estimates Hansard*, 24 February 2014, pp 7–11.

32 *Estimates Hansard*, 24 February 2014, pp 13–14.

33 *Estimates Hansard*, 24 February 2014, pp 22, 47, 52 and 113.

34 *Estimates Hansard*, 24 February 2014, pp 107–110.

35 *Estimates Hansard*, 24 February 2014, pp 115–116, 118–120, 122–130 and 132.

36 *Estimates Hansard*, 24 February 2014, pp 117–118.

