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Statement to the Senate Legal and Constitutional Affairs Legislation Committee

Senate Estimates Hearing

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On 20th December 2017, the Department of Home Affairs was established, and I was appointed as its Secretary. The former Department of Immigration and Border Protection (DIBP) was completely incorporated within the new Department, as were elements of four other departments – namely, from the Departments of Prime Minister and Cabinet; Infrastructure and Regional Development; Social Services; and the Attorney-General’s Department.

In addition to the Department of Home Affairs, the portfolio will also consist of the following agencies:

- Australian Security Intelligence Organisation (subject to the passage of relevant legislation which is currently before the Parliament);
- Australian Federal Police;

- Australian Border Force (which, while established within the Department of Home Affairs for budgetary, employment and administrative purposes, is operationally independent);
- Australian Criminal Intelligence Commission; and
- Australian Transaction Reports and Analysis Centre (AUSTRAC).

In terms of ministerial oversight, the portfolio has the following ministers: the Minister for Home Affairs, who sits in the Cabinet, and who is also separately sworn as the Minister for Immigration and Border Protection; the Minister for Citizenship and Multicultural Affairs; the Minister for Law Enforcement and Cyber Security; and the Assistant Minister for Home Affairs.

The core functions of the Department are policy, strategy, planning and coordination in relation to the domestic security and law enforcement functions of the Commonwealth, as well as managed migration and the movement of goods across our borders. Of particular note, the Department will focus on strategic policy development and coordination in support of its Cabinet Minister who will for the first time in the modern history of the Commonwealth be charged with addressing these issues with full-time Cabinet-level focus and accountability.

On this note, I should say that in establishing the portfolio the Government was especially attracted in this regard by the British precedent, which of course has seen a Home Office and a Home Secretary in place since the late 18th Century. I should like to quote from an observation that I wrote last year after visiting London for relevant discussions:

‘One early observation is the paramount strategic role played by ministers in the UK system. There is no doubt in anyone’s mind here that at the apex of the architecture of domestic security governance and coordination are the Prime Minister and the Home Secretary, the latter of whom is fully focussed on the security and good order of the nation. Our British colleagues have been tested in this realm and have clearly arrived at a governance and risk posture where unity of command, singularity of purpose and clarity of political authority are hardwired into the security architecture in very tangible and operative ways. As we establish the Home Affairs enterprise, we would do well to reflect on this hard-earned learning – as a matter of constitutional principle and as an operative organising frame.’

Additionally, the Department will perform the role of the nation’s immigration authority, a function with which former officers of DIBP are very familiar, and to which we are unwaveringly committed, as we understand fully well the vital role that immigration has played in building our nation and enriching our society and national culture.

Specifically, the Department will be responsible for the delivery of key national policy and programmatic responsibilities:

- immigration and citizenship;
- multiculturalism and social cohesion (working with other departments and agencies on programmes which are designed to help engender an inclusive, united and tolerant society);

- Commonwealth law enforcement and elements of criminal justice, and countering transnational and serious organised crime;
- Commonwealth counter-terrorism;
- countering violent extremism;
- customs and border protection;
- transport security;
- civil maritime security;
- identity and biometrics policy and programmes;
- anti-money laundering and counter-terrorist financing;
- emergency management (including crisis management, disaster recovery, and disaster resilience);
- critical infrastructure protection;
- cyber security policy and coordination (noting that cyber security capabilities and systems are being consolidated into the Australian Signals Directorate, which will become an independent statutory agency within the Defence portfolio, subject to the passage of relevant legislation); and
- countering foreign interference and espionage.

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Some commentary on the establishment of the portfolio continues to mischaracterise the new arrangements as being either a layer of overly bureaucratic oversight of otherwise well-functioning operational arrangements, or (worse) a 'sinister' concentration of executive power which will not be able to be supervised and checked. Both of these criticisms are completely wrong.

As I said to this Committee when I last appeared, as Secretary of DIBP, the Department of Home Affairs will not engage in the oversight of statutorily independent agencies, which is properly and necessarily vested in parliamentary, judicial and/or statutory processes. Nothing in the establishment of the Department will change or affect the accountability and oversight arrangements which this Parliament puts in place through the passage of relevant laws.

Of particular importance in this regard will be the especially close relationship that the Department will build with the Attorney-General's Department, which of course supports the Attorney-General and the nation's First Law Officer, and who will retain (with the passage of relevant legislation) important oversight powers with respect to ASIO Ministerial Authorisations and warrants, and special intelligence operations. The Department of Home Affairs and the Attorney-General's Department will work closely across the entire span of issues that the nation faces in the areas of responsibility that I listed earlier – and reinforcing my Department's own intrinsic understanding of the importance of the rule of law, our colleagues will be trusted and valued partners on all questions of legal and constitutional policy.

As I said at the last Estimates meeting of this Committee, all executive power is subject to the sovereignty of this Parliament and to the supremacy of the law. In bringing together the security powers, capabilities and capacities of the Commonwealth into a single portfolio, these fundamentals will remain in place – all of which are crucial attributes of liberty. I repeat what I said last year to this Committee: any contrary suggestion that the establishment of Home Affairs will somehow create an extra-judicial apparatus of power bears no relationship to the facts or to how our system of government works, and any suggestion that we in the portfolio are somehow embarked on the secret deconstruction of the supervisory controls which envelop and check executive power are nothing more than flights of conspiratorial fancy, which read into all relevant utterances the ‘master blueprint’ of a new ideology of undemocratic surveillance and social control. Such charges are not worthy even of the original Representative from Buncombe County.

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The national infrastructure assets, the supply chains and cargo systems, the air and sea travel systems, and the cyber networks which the Department will seek to protect, in conjunction with other agencies of state and with industry partners, are Australia’s great platforms for economic activity and

social connection. We will not achieve our mission if, in the name of ‘protection’ and ‘security’, Australia is a closed-off and isolated place. If nothing else, our national character and our outwards-orientation would in any event counter any such inclination. The Department’s mission will be to secure our nation’s vital networks, systems and assets while at the same time facilitating the legitimate movement of goods, people and data, as well as managed and orderly migration. Doing anything else would see ‘protection’ and ‘security’ become ends in themselves, whereas the purpose of state action is to ensure that all can - to the maximum extent possible within the law - pursue prosperity, happiness and social fulfilment.

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To conclude, the Government has decided to reorganise itself in the face of new challenges and before the nation is caught out and unprepared in the face of new vectors of threat and risk. In building a new institutional system of security, at all times under law, the challenge before the Department and its portfolio agencies, under the direction of the Government of the day, will be to accomplish four key tasks simultaneously:

1. Preserve the traditional strengths of the Home Affairs agencies and, standing on the shoulders of those deep legacies, which are embodied

in each of their highly professional and expert workforces, build future agency-specific capabilities.

2. Take advantage of the creation of this larger and more integrated portfolio to build 'scaled-up' capabilities and exploit previously unattainable synergies – especially in areas such as intelligence, data exploitation, advanced identity and biometrics capabilities, highly advanced digital systems (where digital is designed into all processes and practices by default), artificial intelligence and natural machine learning systems, as well as ever-more powerful computing systems and analytical tools.
3. Preserve the statutory independence of Home Affairs agencies and decision makers, and ensure that all Home Affairs activities and operations are always conducted under law, and subjected to the supervisory checks that this Parliament decrees.
4. Ensure that 'protection' and 'security' are means to pursue greater ends – namely economic prosperity, social cohesion and an open society.

I look forward to appearing before this Committee in the years ahead.

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