

Chapter 2

Attorney-General's portfolio

2.1 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 2017–18 financial year on 27 February 2018.

Administrative Appeals Tribunal

2.2 The committee opened its questioning of the Administrative Appeals Tribunal (AAT) by asking for the current lodgement figures for applications for review. Ms Sian Leathem, Registrar, stated that the AAT received 51,426 applications during the 2016–17 year, which was a 24 per cent increase from the 2015–16 year.¹ Ms Leathem also noted:

For the first half of this 2017-18 year, we've received a further 29,537 applications. That actually is equivalent to 57 per cent of what we received at the same point in time the previous year, so it's effectively a 16 per cent increase from that period in time.²

2.3 A number of other topics were discussed, including:

- a decision announced by the Attorney-General on 2 June 2017 not to renew a number of appointments to the Tribunal;³
- appeal rates in relation to the Migration and Refugee Division;⁴
- applications related to social security, child support payments and disability support payments;⁵ and
- conflict of interest matters in relation to AAT members.⁶

Family Court of Australia, Federal Circuit Court of Australia, and Federal Court of Australia

2.4 The committee called the Family Court of Australia, the Federal Circuit Court of Australia, and the Federal Court of Australia (the courts). Prior to the commencement of questioning, Mr Warwick Soden, Chief Executive Officer and Principal Registrar of the Federal Court of Australia (FCA) and the Acting Chief Executive Officer and Principal Registrar of the Family Court of Australia (FamCA), explained that the Chief Justice of the FamCA had asked him earlier in the year to act

1 *Committee Hansard*, 27 February 2018, p. 37.

2 *Committee Hansard*, 27 February 2018, p. 37.

3 *Committee Hansard*, 27 February 2018, pp. 39–40.

4 *Committee Hansard*, 27 February 2018, pp. 40–1.

5 *Committee Hansard*, 27 February 2018, pp. 41–3.

6 *Committee Hansard*, 27 February 2018, pp. 43–4.

as Chief Executive and Principal Registrar of that court. He was therefore appearing as a representative for the two agencies.⁷

2.5 The committee questioned the courts about discussions regarding the possibility of restructuring the court systems. Dr Stewart Fenwick, Chief Executive Officer and Principal Registrar, Federal Circuit Court of Australia (FCCA), stated that discussions with officials, in addition to public consultations, were underway but that they were in very early stages.⁸ It was also stressed that the process was not being considered as a review of the courts, but instead as 'an exploration of possible options for reform, looking at the effectiveness and efficiency of the existing structure'.⁹

2.6 The committee asked the courts a number of questions on topics, including:

- the impending retirement of Chief Justice of the FamCA and plans for his eventual successor;¹⁰
- timeliness statistics for the FamCA and the FCCA in relation to family law matters;¹¹
- the number of judges and their associated workloads across the FamCA and the FCCA;¹²
- the role of registrars in the FCCA and the FamCA;¹³ and
- pilot programs and studies regarding the use of night courts.¹⁴

Office of the Australian Information Commissioner

2.7 The Office of the Australian Information Commissioner (OAIC, the office) provided an opening statement to the committee which detailed a number of matters relevant to the agency. In particular, the opening statement highlighted the impending retirement of Mr Timothy Pilgrim PSM, Australian Information Commissioner, who noted his twenty years of appearances before the committee in Senate estimates in various capacities and paid tribute to OAIC staff.¹⁵

2.8 The committee questioned the OAIC regarding privacy concerns in connection with drones. Mr Pilgrim explained that, as the OAIC's functions extended only to informational privacy in relation to entities covered under the Privacy Act,

7 *Committee Hansard*, 27 February 2018, pp. 46–7.

8 *Committee Hansard*, 27 February 2018, p. 47.

9 *Committee Hansard*, 27 February 2018, p. 48.

10 *Committee Hansard*, 27 February 2018, p. 48.

11 *Committee Hansard*, 27 February 2018, pp. 50–1.

12 *Committee Hansard*, 27 February 2018, p. 51.

13 *Committee Hansard*, 27 February 2018, p. 53.

14 *Committee Hansard*, 27 February 2018, p. 53.

15 *Committee Hansard*, 27 February 2018, pp. 56–7.

complaints between individuals regarding drone use were outside its remit.¹⁶ When questioned about government agencies using drones to collect information, Mr Pilgrim stated:

There would be two aspects we'd look at. We would look at the statute that covered the particular agency's collection behaviours in the first place. That is one consideration. We would also look at the application of the Privacy Act. Certainly, they would need to comply with the privacy principles if they were, in fact, collecting personal information by that means, in the same way they would if they were collecting it by soliciting it through a form or some other means like that.¹⁷

2.9 The committee queried the OAIC's response to proposed secrecy laws. Mr Pilgrim stated that the office had given feedback to AGD in addition to providing evidence to the bill inquiry led by the Parliamentary Joint Committee on Intelligence and Security.¹⁸

2.10 The committee inquired whether additional statutory office holders should be appointed. The OAIC noted that a previous model had envisaged three separate roles, but that the statutory framework allowed for the individual officers in those roles to exercise powers under other acts.¹⁹ It further stated:

The government's view has been that it has been working have very well with Mr Pilgrim as the Privacy Commissioner and the Information Commissioner. The department engages with Mr Pilgrim on how the office is functioning. Mr Pilgrim has pointed to a question of resourcing; that's often a challenge for agencies in this portfolio, where they might be subject to downstream workload impacts flowing from matters in other portfolios. For example, if there are privacy issues flowing from the actions of another portfolio then that workload is felt by the Officer of the Information Commissioner. So it's a challenge sometimes to engage those other portfolios as to whether they can provide additional resourcing for the OIC to cope with that downstream workload impact.²⁰

Australian Human Rights Commission

2.11 At the request of the committee, commissioners of the Australian Human Rights Commission (AHRC) included the President, Emeritus Professor Rosalind Croucher AM; the Race Discrimination Commissioner, Dr Tim Soutphommasane; the Age Discrimination Commissioner, the Hon Dr Kay Patterson AO; and the Disability Discrimination Commissioner, Mr Alistair McEwin. Officers from the AHRC were also in attendance.

16 *Committee Hansard*, 27 February 2018, pp. 57–8.

17 *Committee Hansard*, 27 February 2018, p. 58.

18 *Committee Hansard*, 27 February 2018, p. 58.

19 *Committee Hansard*, 27 February 2018, p. 58.

20 *Committee Hansard*, 27 February 2018, p. 60.

2.12 The committee discussed a number of topics in relation to disability discrimination, including: complaints received by the AHRC in relation to the Disability Discrimination Act;²¹ and recruitment practices and targets or quotas in order to increase the representation of people with disabilities in the workforce.²²

2.13 The committee asked the AHRC about the priorities of the work of the Age Discrimination Commissioner. Dr Patterson stated that she was prioritising work on reducing ageism in the workplace, elder abuse, and older women at risk of homelessness.²³

2.14 The committee also questioned the President regarding the work of the Religious Freedom Review, of which Professor Croucher is a panel member.²⁴

Attorney-General's Department and Australian Security Intelligence Organisation

2.15 The committee called Groups 2 and 3 of the Attorney-General's Department (AGD) to attend the estimates hearing. While the Australian Security Intelligence Organisation (ASIO) had originally been scheduled to appear separately to AGD, delays in calling AGD prompted the committee to call ASIO in conjunction with Group 3—Criminal Justice and National Security Group at 9.36 pm, after the evening tea break.

Oversight of the investigation into the Australian Border Force Commissioner

2.16 The committee questioned AGD by seeking clarification on a number of matters regarding the investigation into the Australian Border Force Commissioner.²⁵ The Secretary, Mr Chris Moraitis, explained that AGD had played very little role in the investigation, and that Dr Parkinson, Secretary of the Department of Prime Minister and Cabinet, was better placed to respond to questions.²⁶

Machinery-of-government changes

2.17 The committee asked questions regarding the changes to the administrative arrangements in relation to staffing, finance and other related matters. The Secretary stated that the machinery-of-government changes had moved a number of staff and work areas to the new Home Affairs portfolio, with the second phase expected subject to the passage of legislation.²⁷ The Secretary also noted that a parallel process was in place in relation to cyberactivities, which involved the creation of the Australian

21 *Committee Hansard*, 27 February 2018, pp. 65–66.

22 *Committee Hansard*, 27 February 2018, p. 66.

23 *Committee Hansard*, 27 February 2018, pp. 66–8.

24 *Committee Hansard*, 27 February 2018, pp. 71–3.

25 *Committee Hansard*, 27 February 2018, pp. 75–7.

26 *Committee Hansard*, 27 February 2018, p. 75.

27 *Committee Hansard*, 27 February 2018, p. 79.

Signals Directorate as a statutory authority within the Defence Portfolio, and would require the movement of staff out of AGD into the new agency.²⁸

2.18 The Secretary advised that, in relation to financial and staffing matters, there had been a movement of accrued liabilities and leave entitlements, which had been reconciled. He explained that a transfer of responsibilities had occurred, which were reflected in the administrative arrangement orders, including areas such as money laundering and criminal justice.²⁹

2.19 The committee also asked questions regarding the Attorney-General's future role in relation to ASIO. Mr Moraitis advised that the Attorney-General would continue to oversee warrants and special operations in ASIO, as announced by the Prime Minister in July 2017. Consequentially, some staff would remain in AGD to advise the Attorney-General in relation to authorising warrants.³⁰ Mr Duncan Lewis AO DSC CSC, Director-General of ASIO, also noted that the Attorney-General would continue to exercise ministerial discretions.³¹

Other matters

2.20 The committee also asked questions of AGD and ASIO relating to:

- the legal status of extremist material;³²
- criteria and procedures for Commonwealth employees seeking assistance from the Office of Legal Services Coordination;³³
- officers engaged in overseas programs or activities; examples provided included officers assisting the Indonesian government to strengthen the legal system; and prosecutors stationed in Papua New Guinea providing skills in capacity building, particularly in relation to gender violence;³⁴
- whether proposed national security legislation addressed a perceived threat of covert foreign influence in Australian elections;³⁵
- proposed legislative amendments to the Native Title Act;³⁶
- matters concerning the Royal Commission into Institutional Responses to Child Sexual Abuse, including draft legislation and an AGD task force established to coordinate the implementation of the recommendations;³⁷

28 *Committee Hansard*, 27 February 2018, pp. 79–80.

29 *Committee Hansard*, 27 February 2018, p. 79.

30 *Committee Hansard*, 27 February 2018, pp. 79–80.

31 *Committee Hansard*, 27 February 2018, p. 129.

32 *Committee Hansard*, 27 February 2018, p. 78.

33 *Committee Hansard*, 27 February 2018, pp. 84–7; 89–92.

34 *Committee Hansard*, 27 February 2018, pp. 88–90.

35 *Committee Hansard*, 27 February 2018, pp. 94–7; 125.

36 *Committee Hansard*, 27 February 2018, pp. 103–6.

- consultation regarding security concerns in relation to private sector company participation in a 5G working group;³⁸ and
- correspondence from September 2013 between the Secretary of the then-Department of Immigration and Border Protection and the former Director-General of ASIO, in relation to security clearances for people seeking permanent protection visas.³⁹

National Archives of Australia

2.21 The committee asked the National Archives of Australia (NAA) about applications to declassify historic Australian secret intelligence records relating to East Timor and Indonesia.⁴⁰ When queried about the decision-making process for the declassification of secret intelligence records, Mr David Fricker, Director-General of NAA, explained that documents contained by the Australian Secret Intelligence Service were not held by NAA, and that arrangements made under the Archives Act enabled NAA to begin a process of retrieval for release.⁴¹

2.22 In response to a question regarding the decision-maker in such decisions, he stated:

The ultimate decision-maker is my office, the Office of Director-General of the National Archives. As the occupant of that position, I have to satisfy myself that the requirements for exemption have been fulfilled as required under the act, so I do make it a practice to understand as completely as possible what the nature of those records are and the reasons for exemption. Ordinarily that would involve me seeing those records. However, I further add that the section 35 arrangements as prescribed under the act allow us to make arrangements for the proper examination and handling of records, and the advice that I would receive from the controlling agencies would weigh very, very heavily upon any decision that the Archives would make.⁴²

2.23 The committee also questioned NAA's temporary relocation to Old Parliament House in Canberra, which was stated to be as a result of the sale and remediation of the East Block facilities.⁴³ Mr Fricker noted that most functions of the agency had been maintained, with the exception of certain public programs which could not be accommodated within the temporary site.⁴⁴

37 *Committee Hansard*, 27 February 2018, pp. 109–16; 120–1.

38 *Committee Hansard*, 27 February 2018, pp. 123–5.

39 *Committee Hansard*, 27 February 2018, pp. 126–9.

40 *Committee Hansard*, 27 February 2018, pp. 135–7.

41 *Committee Hansard*, 27 February 2018, pp. 135.

42 *Committee Hansard*, 27 February 2018, pp. 135.

43 *Committee Hansard*, 27 February 2018, pp. 137.

44 *Committee Hansard*, 27 February 2018, pp. 137–8.

Senator the Hon. Ian Macdonald
Chair

