

## Chapter 2

### Attorney-General's portfolio

2.1 This chapter summarises some of the matters raised during the committee's consideration of the budget estimates for the Attorney-General's portfolio for the 2018–19 financial year.

2.2 The Attorney-General's portfolio appeared over two days, with the Attorney-General's Department (AGD, the department) attending on Wednesday, 23 May 2018 and other agencies of the portfolio attending on Wednesday, 23 May 2018 and Thursday, 24 May 2018.

#### Attorney-General's Department

##### *Proposed reforms to the Family Court of Australia*

2.3 The committee was interested in the proposed reforms being considered by the Australian Government in relation to the structure and operation of the Family Court of Australia.

2.4 Senators queried the department about reports stating that a Family Court judge had suggested a constitutional challenge to any proposal that the Appeals Division of the Family Court be abolished and its responsibilities assumed by the Federal Court of Australia. Mr Chris Moraitis, Secretary, confirmed that the department had received legal advice regarding the matter, but did not comment on the nature of the advice received.<sup>1</sup>

##### *Review of the National Partnership Agreement on Legal Assistance Services*

2.5 The committee asked for an update regarding the progress of the review of the National Partnership Agreement on Legal Services. The Secretary advised the committee that the review is due to be finalised by the end of 2018, with a view to implementing its recommendations quickly.

2.6 The committee sought information regarding the reform project of the Family Court of Australia being conducted by the Australian Government. Mr Moraitis stated that AGD had been advising government as part of the review, and that a range of options and models had been canvassed as part of the review.<sup>2</sup> Officers informed the committee that the review would be informed and assisted by a steering group and an advisory group, the latter of which would be made up of experts in the sector.<sup>3</sup>

2.7 The committee further asked the department whether the findings of the Productivity Commission's December 2014 report, *Access to justice arrangements*, would be considered in the reform project. Officers advised the committee that the

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1 *Proof Committee Hansard*, 23 May 2018, pp. 68–69; *Proof Committee Hansard*, 24 May 2018, pp. 84–86;

2 *Proof Committee Hansard*, 23 May 2018, pp. 69–70.

3 *Proof Committee Hansard*, 23 May 2018, pp. 70–71.

report would be among the documents available to the advisory group in its deliberations.<sup>4</sup> Senators were also interested in whether new research would be conducted in order to inform future budget processes.<sup>5</sup>

### *Elder abuse*

2.8 The committee sought information regarding the department's involvement in addressing instances of elder abuse. Ms Esther Bogaart, Acting Assistant Secretary, Family Violence and Elder Abuse Taskforce, provided an outline of AGD's work in that area:

In the federal budget this year there was an additional \$22 million provided across four years to tackle elder abuse in the More Choices for a Longer Life Package that the government announced. Under that package, the 2016 election commitment of funding of \$15 million has been rephased over a longer time frame, over the same four-year period, to allow us to respond to some of the key recommendations of the Australian Law Reform Commission's report and align with the priorities of government. There is still the \$15 million in the 2016 election commitment as well as an additional \$22 million in the budget. That funding will be used to develop a range of strategies to address elder abuse. That will include building a nationally consistent policy and service response and bring more awareness to the issue of elder abuse and promoting older people's safety. It will support the development and implementation of the national plan on elder abuse, which will be with the Commonwealth and the states and territories and is being progressed through a Council of Attorneys-General working group. The funding will support specialist frontline services to support older people and their families seeking help with elder abuse. That will trial several different models of services, including specialist elder abuse units, family counselling and mediation services and also health justice partnerships as ways to trial what sort of service provision works to help people with their issues for elder abuse. It will include the development of an elder abuse knowledge hub and that hub will be an online gateway to research, training materials, information and best practice guidance on addressing elder abuse and it will help to improve the skills and knowledge of people working in the sector.<sup>6</sup>

2.9 The committee was interested in number of other matters regarding elder abuse, including:

- a budget proposal to develop a national register of enduring appointments in relation to power of attorney rules;<sup>7</sup>
- the development of a national plan on elder abuse, as agreed to by the COAG Council of Attorneys-General;<sup>8</sup> and

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4 *Proof Committee Hansard*, 23 May 2018, p. 72.

5 *Proof Committee Hansard*, 23 May 2018, p. 72–73.

6 *Proof Committee Hansard*, 23 May 2018, p. 74.

7 *Proof Committee Hansard*, 23 May 2018, p. 74–76.

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- details regarding service trials involving specialist elder abuse units, health justice partnerships and family mediation services.<sup>9</sup>

### ***Royal Commissions***

2.10 The committee inquired into a number of matters regarding multiple Royal Commissions currently on foot or which have been finalised and are being responded to by the Australian Government.

2.11 Senators were interested in the taskforce set up to oversee the implementation of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. Officers informed the committee that the taskforce commenced in January 2018, and was working in conjunction with an interdepartmental committee comprised of all of the relevant agencies who are affected by the recommendations.<sup>10</sup> Ms Autumn O’Keeffe, Acting Assistant Secretary, Royal Commissions Branch, provided further detail about the interaction between the taskforce and the interdepartmental committee:

The task force supports the work of the interdepartmental committee, and the work of the task force has been to work with each of the officers in each of the relevant departments to coordinate the government response to all 409 recommendations. Obviously, that is a fairly high level committee, and people who come there are able to commit their agencies to whether they will accept responsibility for certain recommendations. Then the task force works in conjunction with officers in those respective departments.<sup>11</sup>

2.12 Officers informed the committee that the taskforce had an allocation of \$6.3 million over three years, and would operate until mid-2020.<sup>12</sup>

2.13 Other matters discussed in relation to Royal Commissions included:

- recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse which apply to institutions outside the scope of the federal government, including states, territories and religious institutions;<sup>13</sup> and
- custody of the records for both the Royal Commission into Institutional Responses to Child Sexual Abuse and the Royal Commission into the Protection and Detention of Children in the Northern Territory.<sup>14</sup>

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8 *Proof Committee Hansard*, 23 May 2018, p. 75.

9 *Proof Committee Hansard*, 23 May 2018, p. 76.

10 *Proof Committee Hansard*, 23 May 2018, pp. 79–80.

11 *Proof Committee Hansard*, 23 May 2018, p. 80.

12 *Proof Committee Hansard*, 23 May 2018, p. 80.

13 *Proof Committee Hansard*, 23 May 2018, pp. 89–90.

14 *Proof Committee Hansard*, 23 May 2018, p. 90.

**Other matters**

2.14 The committee had questions relating to several other aspects of AGD, including:

- Commonwealth model litigant obligations, particularly in relation to cases run by the Australian Government Solicitor;<sup>15</sup>
- the proposed foreign influence transparency scheme, including allegations involving foreign countries influencing changes to electoral boundaries;<sup>16</sup>
- AGD's response to the religious freedoms review;<sup>17</sup>
- Australia's obligations to designate a body to carry out inspections of prisons, known as the National Preventative Mechanism, under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);<sup>18</sup>
- indefinite solitary confinement of people with cognitive and psychological disability in states and territories, particularly in relation to Aboriginal and Torres Strait Islander peoples;<sup>19</sup> and
- annual indexation of court and tribunal fees in relation to the National Native Title Tribunal and Administrative Appeals Tribunal.<sup>20</sup>

2.15 While Group 3 of AGD was called to give evidence, no senator had questions for that area, and it was consequently dismissed without questions.<sup>21</sup>

**National Archives of Australia**

2.16 The committee examined the National Archives of Australia (NAA) on 23 May 2018, the only agency from the Attorney-General's portfolio to appear on that day. Other Attorney-General's portfolio agencies were examined on 24 May 2018.

2.17 The committee asked the NAA about a number of matters, including:

- the process regarding the declassification of government documents;<sup>22</sup>
- Increases in applications to access documents, including peaks around certain anniversaries such as the centenary of the First World War;<sup>23</sup>

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15 *Proof Committee Hansard*, 23 May 2018, pp. 63–64.

16 *Proof Committee Hansard*, 23 May 2018, pp. 64–68.

17 *Proof Committee Hansard*, 23 May 2018, pp. 60–62.

18 *Proof Committee Hansard*, 23 May 2018, pp. 82–84.

19 *Proof Committee Hansard*, 23 May 2018, pp. 84–86.

20 *Proof Committee Hansard*, 23 May 2018, pp. 86–87.

21 *Proof Committee Hansard*, 23 May 2018, p. 91.

22 *Proof Committee Hansard*, 23 May 2018, p. 57.

23 *Proof Committee Hansard*, 23 May 2018, pp. 57–58.

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- changes to the NAA's budget and resourcing, and consequential reduction in staffing and services;<sup>24</sup> and
  - measures to address backlogs of applications seeking access to documents, including a planned investment in secure communications networks.<sup>25</sup>

### **Australian Human Rights Commission**

2.18 The committee asked the Australian Human Rights Commission (AHRC) about a number of matters, including:

- details of the forward work plan under the direction of Emeritus Professor Rosalind Croucher, President of the AHRC, including the work plans of individual AHRC commissioners;<sup>26</sup>
- the replacement of the current Race Discrimination Commissioner, Dr Tim Soutphommasane at the end of his appointment in August 2018, including the recruitment process for his successor;<sup>27</sup>
- responses to the National Disability Insurance Scheme from people with disability;<sup>28</sup>
- steps towards the implementation of audio description services on free-to-air television multichannels;<sup>29</sup>
- increases in mental health issues in children and teenagers, including reports of a significant increase in the number of persons under 20 years of age presenting to hospital emergency departments for self-harm, stress, anxiety and other mood, behavioural or emotional disorders;<sup>30</sup> and
- out-of-home care in the context of the Women's Voices project being undertaken by Ms June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner.<sup>31</sup>

### **Office of the Director of Public Prosecutions**

2.19 The committee inquired into a range of topics with the Office of the Commonwealth Director of Public Prosecutions (CDPP), including:

- 22 cases being prosecuted under the Serious Financial Crime Taskforce, including 12 matters in Operation Elbris and 10 other matters which include matters commenced during Project Wickenby;<sup>32</sup>

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24 *Proof Committee Hansard*, 23 May 2018, pp. 58–59.

25 *Proof Committee Hansard*, 23 May 2018, p. 59.

26 *Proof Committee Hansard*, 24 May 2018, p. 4.

27 *Proof Committee Hansard*, 24 May 2018, pp. 4–5.

28 *Proof Committee Hansard*, 24 May 2018, p. 15.

29 *Proof Committee Hansard*, 24 May 2018, pp. 17–18.

30 *Proof Committee Hansard*, 24 May 2018, pp. 19–23.

31 *Proof Committee Hansard*, 24 May 2018, pp. 25–26.

- recruitment and management practices to develop and retain high-quality lawyers;<sup>33</sup>
- additional funding for four measures, provided for in the 2018–19 budget;<sup>34</sup>
- the number of cases prosecuted by the CDPP in relation to corporate crime in the previous financial year;<sup>35</sup> and
- staffing trends, including in relation to the number of prosecutors and the use of labour hire services.<sup>36</sup>

### **Australian Law Reform Commission**

2.20 The committee began its questioning of the Australian Law Reform Commission (ALRC) by asking the Hon. Justice SC Derrington, President, about media reports suggesting that she had internally announced a restructure of the ALRC. Justice Derrington confirmed that a restructure was planned.<sup>37</sup> Justice Derrington also provided the following detail:

I told staff that having looked at the way the organisation had been structured, and in light of the appropriation amounts given to the commission, the operations were unsustainable as the organisation was currently structured. The organisation comprised six members of the corporate services team and had only four continuing legal officers. Given that the only outcome for the Law Reform Commission is the provision of legal research, and then advice to government on law reform matters, it seemed to me that the balance of the staffing arrangements of the organisation was not quite right and, therefore, changes needed to be made.<sup>38</sup>

2.21 The committee inquired into a number of other areas, including:

- the ALRC's review of the family law system, including consultation conducted with groups in rural and regional areas, submissions received to the issues paper released in March 2018, and an online portal available for the public to provide their personal experiences to the review;<sup>39</sup>
- outsourcing of corporate services to the AGD;<sup>40</sup>

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32 *Proof Committee Hansard*, 24 May 2018, p. 28.

33 *Proof Committee Hansard*, 24 May 2018, pp. 29–30.

34 *Proof Committee Hansard*, 24 May 2018, pp. 30–31.

35 *Proof Committee Hansard*, 24 May 2018, pp. 33–36.

36 *Proof Committee Hansard*, 24 May 2018, pp. 37–42.

37 *Proof Committee Hansard*, 24 May 2018, pp. 43–44.

38 *Proof Committee Hansard*, 24 May 2018, p. 44.

39 *Proof Committee Hansard*, 24 May 2018, p. 46.

40 *Proof Committee Hansard*, 24 May 2018, p. 47.

- Justice Derrington's dual appointment as both President of the ALRC and her position as a judge of the Federal Court of Australia;<sup>41</sup>
- the number of cases prosecuted by the CDPP in relation to corporate crime in the previous financial year;<sup>42</sup> and
- staffing trends, including in relation to the number of prosecutors and the use of labour hire services.<sup>43</sup>

2.22 The committee also noted that it was the first appearance of Justice Derrington in her position as President of the ALRC at Senate estimates.<sup>44</sup>

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

2.23 Ms Angelene Falk, Acting Australian Information Commissioner and Acting Privacy Commissioner, provided an opening statement to the committee outlining the current work of the Office of the Australian Information Commissioner (OAIC) and the priority areas for the coming financial year.<sup>45</sup> Ms Falk noted the increasing number of privacy complaints received by OAIC, in addition to a 20 per cent increase in the rate of complaints being finalised.<sup>46</sup> She also reported that the agency had handled 14 325 privacy inquiries in the current financial year, in addition to completing eight privacy assessment covering 21 regulated entities.<sup>47</sup>

2.24 Topics discussed with OAIC included:

- the recruitment of a permanent head of the agency, including how the position incorporates the positions of three Commissioners (the Information Commissioner, Freedom of Information Commissioner and Privacy Commissioner) into one role;<sup>48</sup>
- OAIC's investigation of Facebook in relation to the Cambridge Analytica scandal, including liaison with international counterparts in the United Kingdom, Ireland, Canada, the United States and the Philippines;<sup>49</sup> and
- the resourcing impact of a number of notifications received under the Notifiable Data Breaches scheme.<sup>50</sup>

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41 *Proof Committee Hansard*, 24 May 2018, pp. 49–50.

42 *Proof Committee Hansard*, 24 May 2018, pp. 33–36.

43 *Proof Committee Hansard*, 24 May 2018, pp. 37–42.

44 *Proof Committee Hansard*, 24 May 2018, p. 46.

45 *Proof Committee Hansard*, 24 May 2018, pp. 50–51.

46 *Proof Committee Hansard*, 24 May 2018, p. 50.

47 *Proof Committee Hansard*, 24 May 2018, p. 50.

48 *Proof Committee Hansard*, 24 May 2018, pp. 51–52 and 59–60.

49 *Proof Committee Hansard*, 24 May 2018, pp. 54 and 57.

50 *Proof Committee Hansard*, 24 May 2018, pp. 55–56 and 57–58.

## **Administrative Appeals Tribunal**

2.25 Ms Sian Leathem, Registrar, provided an opening statement to the committee, covering matters such as the role of the Administrative Appeals Tribunal (AAT) in reviewing decisions made by the National Disability Insurance Agency (NDIA) and in reviewing decisions to refuse or cancel a visa on character grounds.<sup>51</sup> On the latter topic, Ms Leathem provided an overview of the AAT's work:

The review of decisions to refuse or cancel a visa on character grounds is a small component of the broad range of visa decisions that we review in the AAT and an even smaller component of our overall case load. To put these matters in context, in the 2016-17 year the tribunal finalised 42,224 reviews, of which 168 decisions, or less than 0.4 per cent, related to visa cancellations or refusals on character grounds. In considering and deciding these matters the tribunal members are bound to apply ministerial direction No. 65, which sets out three primary considerations that must be taken into account. These include protection of the Australian community, the best interests of minor children in Australia and expectations of the Australian community. The direction also sets out five other considerations that must be taken into account, including international non-refoulement obligations; the strength, nature and duration of ties; the impact on Australian business interests; impact on victims; and the extent of any impediments if removed. These decisions are routinely published and contain an explanation of the member's evaluation of each of these considerations.<sup>52</sup>

2.26 On questioning by the committee, the AAT provided information on a number of issues, including:

- revision of the publication policy in relation to decisions involving the cancellation of visas, including confidentiality orders applied to decisions;<sup>53</sup>
- media reports regarding an AAT national conference held at the Sunshine Coast in May 2018, including tender processes and speakers invited;<sup>54</sup> and
- the role of tribunal reviewers, including recruitment processes and employment conditions.<sup>55</sup>

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

2.27 The Family Court of Australia (the Family Court) and the Federal Court of Australia (FCA) were represented by Mr Warwick Soden, Chief Executive Officer and Principal Registrar. He provided an explanation regarding his role overseeing the Family Court and the FCA:

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51 *Proof Committee Hansard*, 24 May 2018, pp. 61–62.

52 *Proof Committee Hansard*, 24 May 2018, p. 62.

53 *Proof Committee Hansard*, 24 May 2018, pp. 63 and 69–71.

54 *Proof Committee Hansard*, 24 May 2018, pp. 63–65.

55 *Proof Committee Hansard*, 24 May 2018, pp. 66–68.

The Federal Court of Australia is the national federal trial court for federal general law. Its jurisdiction is wide and diverse: corporations, competition, native title, industrial, bankruptcy, industrial relations et cetera—that's a very short-form version of it. I'm actually the acting CEO and principal registrar of the Family Court of Australia. The Family Court of Australia has a family law jurisdiction, most of which is shared with the Federal Circuit Court jurisdiction. My colleague here can explain what the Federal Circuit Court does, but that's in essence the difference between the Federal Court and the Family Court, with one qualification: in 2015–16 there was what was called a back-office merge, so all of the corporate services for the other courts are now given by the Federal Court.<sup>56</sup>

2.28 Dr Stewart Fenwick, Chief Executive Officer and Principal Registrar, represented the Federal Circuit Court of Australia (FCCA) and also provided an explanation of that court's functions:

The Federal Circuit Court is effectively the federal national trial court, a lower jurisdiction that sits beneath the superior courts—the Family Court and the Federal Court. As Mr Soden has indicated, the jurisdiction of the Circuit Court in family law is quite broad and largely co-extensive with that of the Family Court, with a couple of exceptions, and there is extensive jurisdiction granted by a very wide number of pieces of legislation in areas of federal law covering a broad range of federal actions.<sup>57</sup>

2.29 The committee asked the courts for information in regards to:

- the planned restructure of the Family Court and the FCCA, including the consultation process conducted by the Attorney-General with the heads of jurisdiction, members of the court's administration, and external stakeholders;<sup>58</sup>
- caseloads across both the Family Court and the FCCA, including a backlog of matters currently on foot and matters in relation to family and migration law across the two courts;<sup>59</sup>
- enforcement and compliance with orders of the Family Court,<sup>60</sup> and
- case management pilot hearings in Brisbane and methods of alternative dispute resolution.<sup>61</sup>

### **Office of Parliamentary Counsel**

2.30 Senators asked about a range of topics in relation to the Office of Parliamentary Counsel (OPC), including:

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56 *Proof Committee Hansard*, 24 May 2018, p. 75.

57 *Proof Committee Hansard*, 24 May 2018, p. 76.

58 *Proof Committee Hansard*, 24 May 2018, pp. 76–79.

59 *Proof Committee Hansard*, 24 May 2018, pp. 79–81.

60 *Proof Committee Hansard*, 24 May 2018, p. 83.

61 *Proof Committee Hansard*, 24 May 2018, pp. 88–90.

- a trial program to outsource legislative drafting undertaken by the Treasury and the extent of OPC's involvement in that process;<sup>62</sup> and
- increases in total ASL rates.<sup>63</sup>

### **Australian Security and Intelligence Organisation**

2.31 The Director-General of the Australian Security and Intelligence Organisation (ASIO), Mr Duncan Lewis AO DCS CSC, gave an opening statement, advising the committee on:

- counter-terrorism operations, including Australia's national terrorism threat level, Australians involved in conflict, and collaboration with regional partners to detect and mitigate threats involving returning foreign fighters;<sup>64</sup> and
- counter-espionage activities, including foreign intelligence activity against Australian interest, the establishment of the National Counter Foreign Interference Coordinator position in the Department of Home Affairs, and the Foreign Interest Transparency Scheme (FITS).<sup>65</sup>

2.32 The Director-General also discussed ASIO's move from the Attorney-General's Portfolio to the Home Affairs Portfolio. Mr Lewis noted that this appearance would be ASIO's last appearance in the Attorney-General's portfolio, as the agency will move to the Home Affairs portfolio for future estimates hearings as a result of the portfolio changes.<sup>66</sup> He made further comments on the agency's move into the Home Affairs portfolio:

As you can appreciate, the move from the Attorney-General's portfolio to the Home Affairs portfolio is a highly significant event for ASIO. In my view this change is a reflection of the complexity of the contemporary situation with regard to security and the need for the national security apparatus to become increasingly integrated and responsive in protecting our national interests. I welcome the historic change in our national security architecture as ASIO continues working to settle into these new portfolio arrangements.

It is important to note that although this move is significant for ASIO, it doesn't change the statutory independence, nor do I expect it to affect our day-to-day operational activities and business. This is outlined in the Home Affairs portfolio arrangements, which purposely preserve the operational independence and focus of ASIO and indeed that of the other statutory authorities within the portfolio. I have been in close contact with Minister Dutton and the secretary of the Department of Home Affairs for many

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62 *Proof Committee Hansard*, 24 May 2018, pp. 91–97.

63 *Proof Committee Hansard*, 24 May 2018, p. 98.

64 *Proof Committee Hansard*, 24 May 2018, pp. 99–100.

65 *Proof Committee Hansard*, 24 May 2018, pp. 100–101.

66 *Proof Committee Hansard*, 24 May 2018, p. 99.

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months now, and in my view the transition to our new portfolio is progressing well. This is a large and complex machinery of government change, and there will be many issues to resolve as we move forward. There is, however, palpable goodwill and commensurate levels of cooperation all around to progress this work. I'm very positive about the new arrangements.<sup>67</sup>

2.33 The committee sought information from ASIO in relation to a number of topics, including:

- the process of listing organisations as terrorist organisations, including ASIO security assessments;<sup>68</sup>
- a statement made by to the Parliament on 22 May 2018 by Mr Andrew Hastie MP, Chair of the Parliamentary Joint Committee on Intelligence and Security;<sup>69</sup>
- the number of Australian children supporting or in the area of operations of ISIS or other extremist groups;<sup>70</sup> and
- parliamentary privilege in relation to the metadata of members of parliament.<sup>71</sup>

### **Questions on Notice**

2.34 A full index of questions taken on notice during the hearings is available on the committee's website and responses will be published as they are received.

### **Senator the Hon Ian Macdonald Chair**

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67 *Proof Committee Hansard*, 24 May 2018, p. 99.

68 *Proof Committee Hansard*, 24 May 2018, pp. 101–103.

69 *Proof Committee Hansard*, 24 May 2018, pp. 103–104 and 107–108.

70 *Proof Committee Hansard*, 24 May 2018, p. 108.

71 *Proof Committee Hansard*, 24 May 2018, p. 109.