

Report

Referral

1.1 On 1 December 2016, the following matter was referred to the Senate Finance and Public Administration References Committee (the committee) for inquiry and report by 24 February 2017:

The operation of the Administrative Arrangements Order, the effectiveness of the division and performance of responsibilities under it, and any other related matters.¹

1.2 On 13 February 2017, the Senate granted an extension of time for reporting until 23 March 2017.²

Conduct of the inquiry

1.3 Details of the inquiry were placed on the committee's website at: www.apf.gov.au_fpa.

1.4 The committee directly contacted relevant organisations and individuals to notify them of the inquiry and invite submissions by 18 January 2017. Submissions received by the committee are listed at Appendix 1.

1.5 A public hearing was held in Canberra on 14 March 2017. A list of the witnesses who gave evidence at the public hearing is available at Appendix 2. The Hansard transcript may be accessed through the committee's website.

Background

1.6 The Administrative Arrangements Order (AAO) is a legislative instrument made by the Governor-General on the advice of the Prime Minister. The AAO allocates the subject and policy matters dealt with, and the legislation administered by each portfolio.³ In its submission to the committee, the Department of the Prime Minister and Cabinet (PM&C) explained:

The Governor-General makes the Administrative Arrangements Order, on the advice of the Prime Minister. The AAO allocates the principal matters Departments are responsible for and the legislation administered by each portfolio. The AAO therefore has two key parts: '*matters dealt with by the Department*' and '*legislation administered by the Minister*'.⁴

1 *Journals of the Senate*, No. 23 — 1 December 2016, p. 761.

2 *Journals of the Senate*, No. 27 — 13 February 2017, p. 913.

3 PM&C, *Submission 1*, p. 2. Section 61 of the Constitution places the executive power of the Commonwealth in The Queen and provides that it is exercisable by the Governor-General. Section 62 provides for the Executive Council and section 64 provides that the Governor-General may appoint a Minister of State to administer such Departments of State of the Commonwealth as the Governor-General in Council establishes.

4 PM&C, *Submission 1*, p. 2.

1.7 Changes to the AAO are made for a number of reasons. Some changes are largely administrative. The AAO is consolidated every 12 to 18 months to account for the passage, renaming, and repeal of primary legislation in the period since the AAO was made. Changes may also be made to clarify the matters dealt with by particular departments.⁵ The AAO can also be changed following a general election or a cabinet reshuffle.⁶

1.8 The current consolidated AAO was made on 1 September 2016. This was amended on 27 October 2016.⁷ The AAO was amended on 19 July 2016 following the general election. PM&C explained:

The 19 July [2016] amendment was post-election changes and 1 September [2016] was regular consolidation, although it did pick up some clarifications on matters above the line as well as the usual clean-up of legislation.⁸

1.9 PM&C also explained the amendments to the AAO can result in machinery of government changes:

Where functions are moved between portfolios in the AAO, this can result in machinery of government changes. In these circumstances, PM&C engages with the Australian Public Service Commission and the Department of Finance who are responsible for implementing the transfers of staff and funding between agencies.⁹

Issues raised during the inquiry

1.10 During the public hearing, the committee explored whether there were overlaps or gaps in the coverage of particular areas by the AAO. Specifically, the committee looked at the practical application of the AAO in relation to responsibilities for whole of government information and communication technology (ICT); housing; energy; and defence industry.

Whole of government information and communication technology

1.11 On 27 October 2016, amendments to the AAO of 1 September 2016 removed 'whole of government information and communications technology, other than related to government service' from the Finance portfolio and moved it to PM&C.¹⁰ At this time, the Digital Transformation Agency (DTA) was established to deal with these

5 Ms Philippa Lynch, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet, *Proof Hansard*, 14 March 2017, p. 2.

6 Ms Philippa Lynch, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet, *Proof Hansard*, 14 March 2017, p. 2.

7 PM&C, *Submission 1*, p. 34.

8 Mr Peter Rush, Assistant Secretary, Parliamentary and Government Branch, Government Division, Department of the Prime Minister and Cabinet, *Proof Hansard*, 14 March 2017, p. 2.

9 PM&C, *Submission 1*, p. 4.

10 AAO, ['Summary of Changes'](#), p. 2, 27 October 2016.

responsibilities. The Hon Angus Taylor MP is currently the Assistant Minister for Cities and Digital Transformation.¹¹

1.12 The interim Chief Executive Officer of the DTA, Ms Nerida O'Loughlin explained the transfer of responsibilities at a recent Additional Estimates public hearing:

The agency was established in October 2016 through the renaming of the former Digital Transformation Office and the transfer and creation of a number of important new functions. In essence, the agency continues the capability-building, design and delivery roles of the former DTO, but its remit has been significantly broadened to include whole-of-government ICT policy, strategy and procurement, as well as the creation of a new whole-of-government assurance function. These changes reflect the government's view that its digital transformation agenda can only be delivered by having all the leaders to effect such change in a single central agency.¹²

1.13 At its recent public hearing, the committee explored how the DTA interacts with federal government departments and agencies. The committee was told that the DTA provides an advisory role to federal government departments and agencies as well as working with them to deliver new products and services. However, Ms O'Loughlin noted that the 'accountabilities for those [ICT] projects reside' with the relevant department, not the DTA.¹³

1.14 Ms O'Loughlin described machinery of government changes relevant to the AAO, specifically in relation to the transfer of responsibilities from the Department of Finance:

In a general sense, in terms of the relationship with the Department of Finance, we have been approaching the changes to the admin orders from 27 October in two stages. We have completed the first phase of that machinery-of-government change and that was successfully completed around 16 December last year. That covered functions transferred from the Department of Finance to DTA: ICT policy and strategy, benchmarking, ICT projects dashboard, ICT skills programs, the ICT awards program, cybersecurity view, the government's style manual and projects and P3M3. That was the first stage, in December last year.

The second stage of the machinery of government anticipated under the admin orders includes the ICT procurement functions, policies and services. We have been working with Finance on the scope and timing of that stage

11 The Hon Angus Taylor MP, Assistant Minister for Digital Transformation, 'New Digital Agency establishes agenda', 28 October 2016, <https://ministers.dpmc.gov.au/taylor/2016/new-digital-agency-establishes-agenda> (accessed 9 March 2017). See also: https://www.dpmc.gov.au/sites/default/files/publications/ministry_list_24_january_2017.pdf

12 Senate Finance and Public Administration Legislation Committee, *Estimates Proof*, 27 February 2017, p. 129.

13 Ms Nerida O'Loughlin, Interim Chief Executive Officer, Digital Transformation Agency, *Proof Hansard*, 14 March 2017, p. 8.

two of the MOG. It is a much more complex machinery-of-government change and we are also very sensitive that it needs to take into account a number of current procurement activities, particularly whole-of-government procurement activities. We expect to settle the machinery-of-government timing very soon, but we have been, I suppose, taking a fairly low-risk approach to it, given that there are already negotiations currently on foot for those whole-of-government procurement activities and that we do not want to unsettle those as we do the MOG. So as I said, we expect to settle that quite soon.¹⁴

1.15 The committee remains concerned about how ICT procurement will function after the second stage of machinery of government changes is enacted. As the Department of Finance acknowledged, this change is complex. It is also risky. The committee will be interested to see how the change is managed, and what effect it has on procurement outcomes.

1.16 The committee is also concerned about the changed role of the DTA. The DTA's role seems to have been reduced to providing guidance to departments in undertaking their own digital transformations, rather than driving transformation of its own accord. This would represent a reduction from the vision enunciated for the DTO, and leaves the committee concerned about the government's commitment to digital transformation.

Treasury and housing affordability

1.17 The committee discussed the roles and responsibilities of the Assistant Minister to the Treasurer, the Hon Michael Sukkar MP who was appointed on 24 January 2017.¹⁵ Treasury told the committee that the Assistant Minister has responsibility for:

...the Australian Charities and Not-for-profits Commission and is assisting the Treasurer in matters relating to:

- routine foreign investment applications;
- the Global Infrastructure Hub; and
- housing policy.

The Assistant Minister also has partial but minor responsibilities in the portfolio relating to:

- competition policy;
- the Council on Federal Financial Relations;
- social impact investment; and

14 Ms Nerida O'Loughlin, Interim Chief Executive Officer, Digital Transformation Agency, *Proof Hansard*, 14 March 2017, pp 5–6.

15 The Treasury, 'Treasury Portfolio Ministers Portal', <https://ministers.treasury.gov.au/> (accessed 1 March 2017). From 21 September 2015 until 19 July 2016, The Hon Kelly O'Dwyer MP was appointed as Assistant Treasurer, and The Hon Alex Hawke MP was appointed as Assistant Minister to the Treasurer.

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- the not-for-profit sector and mutuals.¹⁶

1.18 Noting the absence of an Assistant Minister prior to Mr Sukkar's appointment, the committee also inquired into who held these responsibilities during this period.¹⁷ The committee was informed that the Assistant Minister had taken responsibility for some matters previously the responsibility of the Treasurer.¹⁸

1.19 The committee attempted to establish which minister was responsible for housing affordability, and which department was the lead agency. Mr Marty Robinson, Principal Adviser on Social Policy at Treasury explained:

The assistant minister, as you mentioned, has indicated that he is leading some of that work. From a departmental perspective, the responsibilities sit across a range of agencies in terms of housing affordability. It goes to housing supply issues, as I mentioned before. So that involves Treasury and the Department of Social Services on supply of social and affordable housing and assistance in that sector. Also, Prime Minister and Cabinet has the cities task force, so there is a role there for the cities agenda. That involves the Department of the Prime Minister and Cabinet. You could also see from an infrastructure and regional development point of view there would be involvement from the Department of Infrastructure and Regional Development.¹⁹

1.20 The Treasury Secretary, Mr John Fraser, previously told the Economics Legislation committee in 2015 that the lead agency was the Department of Social Services.²⁰

1.21 In estimates of this year, Mr Fraser had the following exchange with members of the committee:

Senator GALLAGHER: So, you are not the lead agency? I am trying to understand who has policy authority. Usually you would have kind of a lead agency that develops responses to particular problems.

Mr J Fraser: No, that is shared between ourselves, PM&C, Social Security—it is a big item. It is not a case of trying to be the top dog on it—and I know you are not suggesting that. But it is shared by a number of agencies, and we work in a very collaborative way with them to develop policy options, as do the ministers.

Senator GALLAGHER: Minister, within the cabinet is it clear who has responsibility for housing affordability?

16 Answers to questions taken on notice at the 14 March hearing from Treasury, received 17 March 2017.

17 Mr Peter Robinson, Chief Operating Officer, Department of the Treasury, *Proof Hansard*, 14 March 2017, pp 11–12.

18 Mr Peter Robinson, Chief Operating Officer, Department of the Treasury, *Proof Hansard*, 14 March 2017, pp 10–11.

19 Mr Marty Robinson, Principal Adviser, Social Policy Division, Department of Treasury, *Proof Hansard*, 14 March 2017, p. 12.

20 Senate Economics Legislation Committee, Supplementary Budget Estimates, 21 October 2015 *Estimates Hansard*, p. 34.

Senator Cormann: It is very clear. Obviously the Treasurer is the leader of the economic team, unquestionably, and this is squarely a matter that falls within the Treasury portfolio, absolutely.

Senator GALLAGHER: So the Treasurer has policy lead but the Treasury does not? It is a shared responsibility.

Senator Cormann: I think you are verballing—

Senator GALLAGHER: No, I am not. I am just trying to understand how it works.

Senator Cormann: The Treasurer is the leader of the economic team, and to the extent that these are matters that are relevant to the economic team then obviously the Treasurer is the lead. But there are clearly other parts of government that have key responsibilities in this space, so to the extent that there are other parts of government that have key responsibilities in this place then that is as would be the case in other policy areas: a coordinated approach across government.²¹

1.22 Given the conflicting advice provided in 2015 and 2017 (as set out in paragraphs 1.20 and 1.21 above), the committee asked when responsibility for housing had changed. Treasury informed the committee that:

There has been no change to the allocation of housing responsibilities noted in the Administrative Arrangements Order (AAO) signed on 1 September 2016. According to the AAO, responsibility for matters relating to housing are shared between the following agencies:

Department of Social Services: Social housing, rent assistance and homelessness, Housing affordability; and

Department of the Treasury: Housing supply policy.²²

1.23 The committee was informed that in order to coordinate the work on housing across agencies, an interdepartmental committee is chaired by PM&C:

Commonwealth Departments are working collaboratively on issues around housing affordability, including through an interdepartmental committee (IDC) chaired by the Department of the Prime Minister and Cabinet with the Department of the Treasury, Department of Social Services and the Department of Infrastructure and Regional Development.²³

1.24 This committee is concerned that the lack of clarity about who is responsible for housing has contributed to the policy paralysis in the area. The committee acknowledges that housing is a complex issue that could touch on the subject matter of various portfolios, and that there are many ways in which responsibilities could effectively and efficiently be divided between ministers and departments. However,

21 Senate Economics Legislation Committee, Additional Estimates, *Estimates Hansard*, 1 March 2017, pp 14–15.

22 Answers to questions taken on notice at 14 March hearing from Treasury, received 17 March 2017.

23 Answers to questions taken on notice at 14 March hearing from Treasury, received 17 March 2017. See also Mr Marty Robinson, Principal Adviser, Social Policy Division, Department of Treasury, *Proof Hansard*, 14 March 2017, p. 13.

the current division at both a ministerial and departmental is not clear enough to be either effective or efficient. For instance:

- (a) PM&C chairs the IDC, despite having no portfolio responsibility for housing.
- (b) The Department of Social Services has responsibility for housing affordability under the AAO, whilst the Treasurer leads in cabinet, but only to the extent that the measures are relevant to the economics team.
- (c) The Assistant Minister has described himself as being responsible for 'housing affordability',²⁴ has been described by the department as being responsible for 'housing policy', whilst the AAO limits Treasury's role to 'housing supply'. Each of these terms means different things.
- (d) There is no clear responsibility for 'housing demand'.

1.25 As the Treasury Secretary acknowledged, housing affordability is a 'big item'. It deserves more clarity and policy focus.

Energy

1.26 On 19 July 2016, the Department of the Environment became the Department of the Environment and Energy. The Hon Josh Frydenberg MP is the Minister for the Environment and Energy.²⁵ Mr Peter Rush, Assistant Secretary at PM&C explained to the committee how the AAO amendments of 19 July 2016 and the consolidation on 1 September 2016 changed the division of responsibilities under the new portfolios:

They were energy specific international organisations and activities moved from Industry to the Department of Environment and Energy. Most of the Energy functions moved to the environment portfolio in July, but there were some specific energy related activities that, until September, remained with the industry portfolio, so that was just a further change to consolidate those energy related functions in the Environment and Energy portfolio.

Similarly, we clarified that the responsibility for liquid fuels was with Environment and Energy but oil and liquefied natural gas remained with Industry. It starts to get into the weeds a little bit. Again, it was after the changes made in July. With the move of Energy functions some clarification was needed to confirm where certain details sat between industry and environment portfolios.²⁶

1.27 Treasury informed the committee that there is an internal energy working group set up in November 2016 and Treasury interacts with other departments on

24 See: <http://mss.ministers.treasury.gov.au/media-release/001-2017/>

25 Parliament of Australia, 'Hon Josh Frydenberg MP', http://www.aph.gov.au/Senators_and_Members/Parliamentarian?MPID=FKL (accessed 14 March 2017).

26 Mr Peter Rush, Assistant Secretary, Parliamentary and Government Branch, Government Division, Department of the Prime Minister and Cabinet, *Proof Hansard*, 14 March 2017, p. 3.

energy issues through 'a number of interdepartmental committee meetings and working level interactions'.²⁷

Defence

1.28 In July 2016, the Hon Christopher Pyne MP was appointed the Minister for Defence Industry.²⁸ Senator the Hon Marise Payne has been the Minister for Defence since September 2015.²⁹

1.29 Mr Brendan Sargeant, Associate Secretary, Department of Defence provided the committee with a brief breakdown of the responsibilities held by each Minister. Mr Sargeant was unable to identify who was the senior minister, noting that:

The Department of Defence regards each minister as being the senior minister for matters under their respective responsibilities.³⁰

1.30 Mr Sargeant added that the Minister for Defence held responsibility for all legislation listed under the Department of Defence in the AAO.³¹

1.31 The committee was also told that the Minister for Defence was responsible for presenting the department's budget to ERC.³²

1.32 The committee heard how the Ministers work together on areas of mutual interest:

On a large project, it might be that both ministers are engaged. They are both in cabinet. For example, there might be a large acquisition project. The Defence minister is responsible for development of capability requirements and so the Defence minister would be responsible for providing advice to government or for making a decision on whether the capability is appropriate for Defence. The Minister for Defence Industry would be responsible for matters concerning how that capability might be acquired and the industry aspects of that.³³

27 Answers to questions taken on notice at the 14 March hearing from Treasury, received 17 March 2017.

28 Parliament of Australia, 'Hon Christopher Pyne MP', http://www.aph.gov.au/Senators_and_Members/Parliamentarian?MPID=9V5 (accessed 14 March 2017).

29 Department of Defence, 'Department of Defence Ministers', <https://www.minister.defence.gov.au/> (accessed 14 March 2017).

30 Mr Brendan Sargeant, Associate Secretary, Department of Defence, *Proof Hansard*, 14 March 2017, p. 16.

31 Mr Brendan Sargeant, Associate Secretary, Department of Defence, *Proof Hansard*, 14 March 2017, p. 16.

32 Mr Brendan Sargeant, Associate Secretary, Department of Defence, *Proof Hansard*, 14 March 2017, p. 18.

33 Mr Brendan Sargeant, Associate Secretary, Department of Defence, *Proof Hansard*, 14 March 2017, p. 17.

1.33 The committee discussed more generally how the Department works with both ministers, particularly in situations where competing priorities may arise. Mr Sargeant noted:

We operate as a single department, and we support ministers in their role. We expect all officers of the department to be able to operate across both ministers. I have spoken to both ministers about this. When Minister Pyne was coming in as Defence industry minister, one of the comments I made to him was that he would engage with the whole department and that we were not going to cordon off a part of the department just to look after him. The reason we try to ensure that does not happen is because we have, through the First Principles Review, integrated the old DMO into the department and integrated the work of capability development across the organisation, so many different parts of Defence engage with both ministers on issues.³⁴

1.34 These assurances do not meet the committee's concerns. The committee remains worried that the failure to nominate a senior minister impacts the work of department.

Conclusion

1.35 The committee notes the importance of clear divisions of responsibilities between ministers and between departments. Clarity guides public servants in the exercise of their duties. It supports a robust and comprehensive policy making process, and enables ministers to be held accountable for it. The committee thanks the officers who appeared at the public hearing which allowed the committee to explore and clarify the division of responsibilities in a number of areas, but also notes that the precise division of responsibilities in many of the areas explored still remain unresolved.

Senator Jenny McAllister

Chair

34 Mr Brendan Sargeant, Associate Secretary, Department of Defence, *Proof Hansard*, 14 March 2017, p. 19.

