

CHAPTER 4

Impact of budget cuts – full-time commissioners and staffing

Introduction

4.1 In its Background Submission, the ALRC set out the cuts to its budget in recent years. In addition to the government's two per cent efficiency dividend, the ALRC has had a \$0.242 million reduction in its budget in 2010-11, and further reductions of \$0.495 million per year will be made over the forward estimates period (from 2011-12 to 2013-14). The ALRC states in its Background Submission that the \$0.495 million reduction in the budget represents a 20 per cent reduction on 2009-10 levels.¹

4.2 The ALRC noted that a reduction of this magnitude is significant for a small organisation and, as a result, the ALRC has had to reduce expenditure significantly in a budget that has little capacity for savings:

Currently 80% of the ALRC's annual expenditure is in salaries (60.31%) and accommodation (19.35%) with little room in the budget to make savings. Other operational costs such as those associated with consulting, publishing reports and other operational requirements constitute a small proportion of the total budget (14%) so that even significant savings made in these areas have little impact on the budget bottom line.²

4.3 At the committee's first public hearing, Professor Rosalind Croucher illustrated the impact of the budget cuts by reference to the Black Knight in *Monty Python and the Holy Grail*:

After he lost one arm defending his turf he said, 'Tis but a scratch'. After the other one was lopped off, 'Just a flesh wound'. After both his legs departed similarly, he still managed to say, defiantly, 'The Black Knight always triumphs'. It is ridiculous, but somehow fitting. The real reduction in the budget — not just the efficiency dividend, I am talking about the significant 20 per cent reduction in recent years — makes us feel like that poor knight.³

4.4 However, despite the difficulties in finding savings, the ALRC outlined in its Background Submission the steps that it has taken to reduce expenditure, namely:

- delaying the appointment of full-time commissioners;

1 Submission 2, pp 26-7.

2 Submission 2, p. 27.

3 Committee Hansard, 11 February 2011, p. 49.

- reducing the number of staff;
- removing the public information and educational services program (in particular, discontinuing the publication of the ALRC's bi-annual journal *Reform*); and
- changing the processes for the conduct of inquiries to reduce the number of consultation publications per inquiry, making resources available only in soft copy or on a cost recovery basis, and reducing the cost of consultation travel.

4.5 The impacts of these strategies were the subject of submissions and evidence to the committee. The first two strategies mentioned above are discussed in this chapter, while the remaining two are discussed in Chapter 5.

4.6 In addition, during the course of the inquiry, the committee was informed that the ALRC would be moving from its current premises to sub-licensed premises with the Australian Government Solicitor in April 2011. That cost-saving measure is discussed in Chapter 5.

Delaying appointment of full-time commissioners

4.7 One of the key measures that the ALRC has put in place in order to save money has been to delay the appointment of full-time commissioners. The ALRC's Background Submission stated that since December 2009 there has only been one full-time commissioner, the President, Professor Rosalind Croucher – as opposed to having at least two full-time commissioners, as has been the case in the past. The ALRC noted that this arrangement is a short-term strategy, reached with the agreement of the Attorney-General's Department.⁴

4.8 There are four part-time commissioners at the ALRC, who are all also full-time judges of the Federal Court of Australia. As described in Chapter 2 of the report, full-time and part-time commissioners have 'distinct but complementary roles', with full-time commissioners providing leadership, direction and day-to-day management of the legal teams for inquiries; in contrast, the principal role of part-time commissioners is advisory.⁵

4.9 Submissions and evidence to the inquiry highlighted the important role that full-time commissioners play in the law reform process. For example, Mr Warwick Soden, Registrar and Chief Executive of the Federal Court, outlined the central role of full-time commissioners in ALRC inquiries:

...There is no doubt in my mind, from my experience, that the full-time commissioner – often an expert in law reform procedure as well as an expert in the subject under reference – brings a rigour of process and a rigour of thinking to the whole exercise that is, from my perspective,

4 *Submission 2*, p. 27.

5 *Submission 2*, pp 11-13.

exponentially greater than you see where very good work is done by others but just not at the level that a full-time expert commissioner can bring to the process. It has been my experience that the full-time commissioner often attacks some of the hardest issues and the most difficult issues in a way which reflects their law reform experience – that is, the logic of law reform, or what I call the science of law reform – together with their...expertise in the field of law or the area under inquiry.⁶

4.10 Submitters and witnesses strongly advocated the need for more full-time commissioners to be appointed to the ALRC.⁷ For example, the New South Wales Law Reform Commission (NSW LRC) argued that the present structure of the ALRC, with the President simultaneously managing the organisation and leading two references inquiries, is a situation requiring at least an additional full-time commissioner.⁸ The submission of the Federal Court of Australia expressed doubts as to whether, without sufficient and adequately resourced full-time commissioners, the ALRC can 'maintain the kind of consultation on which the high quality of the published work of the ALRC depends'.⁹ The Hon. Justice Hammond of the New Zealand Law Commission (NZLC) stated that he did not think that an organisation with only one full-time commissioner constitutes a law reform commission.¹⁰

4.11 The committee questioned Professor Croucher on how she handles the workload that has been placed on her:

It is impossible to be in three places at once. If you are overseeing the inquiries as well as running the organisation, the team members are not going to get the kind of close supervision that they were able to secure and the leadership that they were able to have by having a dedicated commissioner for each inquiry.¹¹

4.12 Professor Croucher outlined her view that the ALRC requires one full-time commissioner per inquiry, in addition to the President.¹²

4.13 The committee canvassed the opinion of witnesses as to the number of full-time commissioners that are required at the ALRC. Mr Bill Rowlings of Civil Liberties Australia submitted that there should be at least two full-time

6 *Committee Hansard*, 11 February 2011, p. 4.

7 On 11 February 2011, the government announced the appointment of a second full-time commissioner for the ALRC's 'Review of censorship and classification' inquiry. This appointment is discussed later in this chapter under the heading 'Appointment of a second full-time commissioner'.

8 *Submission 3*, p. 3.

9 *Submission 22*, p. 4.

10 *Committee Hansard*, 3 March 2011, p. 3.

11 *Committee Hansard*, 11 February 2011, p. 52.

12 *Committee Hansard*, 11 February 2011, pp 50-51 and 53.

commissioners.¹³ Mr Edward Santow of the Public Interest Advocacy Centre (PIAC) believed that two full-time commissioners would be the minimum number required in order to run three concurrent inquiries. However, if the government were minded to reduce the number of inquiries to two, then Mr Santow argued that 'you [could] just about do it with one full-time commissioner'.¹⁴

Board of Management

4.14 The Rule of Law Institute of Australia raised with the committee the very serious concern that it has regarding the operation of the Board of Management of the ALRC in the situation where the President is the only full-time commissioner.

4.15 The ALRC Act provides for a Board of Management (Board) for the Commission. The function of the Board is to manage the ALRC and, in particular, to ensure that the ALRC performs its functions effectively and economically. The Board consists of the President, the Deputy President and other full-time members of the ALRC.¹⁵ A consequence of the President being the only full-time commissioner of the ALRC, is that the President is the sole member of the Board.

4.16 The committee has previously pursued the issue as to whether the ALRC is validly constituted when it has only one full-time member. The advice of the Department in relation to this matter is that the ALRC is not 'improperly constituted'.¹⁶

4.17 In its submission, RoLIA provided a copy of legal advice that it has obtained on this issue. While the legal advice concurs with the Department's assessment that the ALRC is properly constituted when it has only one member, the RoLIA's legal advice raised concerns about the operation of the Board:

For the Commission to have a full time Commissioner as President, but no Deputy President and no other full time members, in my opinion, does not result in the Commission ceasing to exist as a matter of law.

However...for the Commission to have a lone full time Commissioner as President, but no Deputy President and no other full time members, leaves uncertainty about whether the President acting alone, purporting to act as a Board, can properly satisfy the requirements of sections 30 and 31 in exercising the Commission's powers and performance of its functions.¹⁷

13 *Committee Hansard*, 11 February 2011, p. 18. See also: Rule of Law Institute of Australia, *Submission 14*, p. 13, which advocated the appointment of at least one additional full-time commissioner.

14 *Committee Hansard*, 11 February 2011, p. 23.

15 ALRC Act, sections 27-29.

16 Senate Legal and Constitutional Legislation Committee, Additional Estimates Hearings, *Committee Hansard*, 18 October 2010, pp 44-45.

17 *Submission 14*, p. 11.

4.18 In evidence to the committee, Professor Croucher stated that an audit committee has been established to provide quality assurance checking of the decisions she makes when acting in her capacity as the Board. The audit committee is comprised of Professor Croucher, the executive director of the ALRC and one of the standing part-time commissioners.¹⁸

4.19 The committee sought the Department's view on this matter during the hearing. The Department stated that, while the situation would be unusual in the operation of a commercial company, the ALRC is not a commercial company.¹⁹

4.20 The committee notes that the structural changes put in place by the FFLA Act mean that, after 1 July 2011, the Board of Management will cease to exist and will be replaced by a Chief Executive Officer and an advisory board.

Impact on Senior Legal Officers

4.21 The committee notes that it is not only the President of the ALRC who has had increased responsibilities and workload in the absence of the appointment of more full-time commissioners. In its Background Submission, the ALRC noted that a direct consequence in the delay in appointing full-time commissioners has meant that the workload and level of responsibility of Senior Legal Officers at the commission has increased significantly.²⁰ Professor Les McCrimmon, a former full-time commissioner, described displacing the role of commissioners to Senior Legal Officers as 'unsatisfactory':

Senior Legal Officers generally have responsibility for researching and writing significant sections of consultation documents and reports. Their detailed and time consuming involvement in specific aspects of an inquiry makes it difficult for them to engage in the overall strategic research planning and management of teams that an inquiry requires. This, in turn, has a negative impact on the quality of ALRC reports and report recommendations.²¹

Responsibility for report recommendations

4.22 The NSW LRC expressed concerns that, in the absence of other full-time commissioners, the President is placed in a very difficult position in bearing the ultimate responsibility for signing off on report recommendations.

18 *Committee Hansard*, 11 February 2011, pp 67-8.

19 *Committee Hansard*, 11 February 2011, p. 102.

20 *Submission 2*, p. 27.

21 *Submission 19*, p. 2. See also New South Wales Law Reform Commission, *Submission 3*, p. 3, which notes that while the ALRC attracts excellent staff and has Senior Legal Officers with a great deal of experience, those officers are not sufficiently well positioned or remunerated to provide the leadership required to run references.

4.23 The ALRC Act provides for the establishment of Divisions for the purposes of a reference which must comprise at least three members. The ALRC's Background Submission provides the following information on the role of Divisions:

In addition to meetings of the full Commission, the Act permits, but does not mandate, the establishment of Divisions for the purposes of individual references – for example, as structures for the making of policy decisions about recommendations. Divisions...are subject to formal quorum requirements and deadlock resolution mechanisms for the determination of questions arising in the course of inquiries. In practice, however, members assume collegial responsibility for the findings and recommendations in all references.

...Divisions, where constituted, have responsibility for legal policy decisions relating to specific references.²²

4.24 According to the NSW LRC, previously, the President and at least one other full-time commissioner was required to sign off on recommendations of the ALRC. A third full-time commissioner was often involved or available for consultation on each reference. The NSW LRC's submission outlined its concerns that presently, with no other full-time commissioners, and part-time commissioners having an advisory role, the President is the final arbiter of recommendations made by the commission. The NSW LRC notes that this current practice, initially meant as a savings measure until other full-time commissioners could be appointed, will become embodied in the ALRC's structure with the abolition of 'Divisions' from 1 July 2011, pursuant to the FFLA Act.

4.25 The NSW LRC noted that its concerns do not reflect on the actions or abilities of the ALRC's President or staff, but rather is a concern about structural issues which places the President in a 'very difficult and exposed' position.²³

4.26 In this regard, the committee notes the information in the ALRC's Background Submission in relation to the expert advisory committees for inquiries. These committees comprise eminent persons in the relevant field of inquiry, to assist in policy analysis and the formulation of key recommendations.²⁴

Appointment of a second full-time commissioner

4.27 On 11 February 2011, the day of the committee's first hearing for this inquiry, the Attorney-General, in an opinion piece in the *Australian Financial Review*, announced the appointment of a second full-time commissioner to lead the ALRC's 'Review of censorship and classification' inquiry (Classification inquiry).²⁵

22 *Submission 2*, pp 13-14.

23 *Submission 3*, p. 3.

24 *Submission 2*, p. 20.

25 The Hon. Robert McClelland MP, Attorney-General, 'ALRC performs vital role', *Australian Financial Review*, 11 February 2011, p. 46.

4.28 In evidence to the committee, Professor Croucher expressed a preference for the appointment of a standing fixed-term commissioner.²⁶ Further, while Professor Croucher noted that the appointment of experts for specific inquiries can work extremely well, there are a number of significant caveats to this:

First, there needs to be sufficient lead-time in planning an inquiry to be able to identify the area of expertise needed, to find someone of sufficient standing who may be available for an inquiry and to have sufficient flexibility in start and end dates for them to be able to direct an inquiry from start to finish – and, if necessary, to move to Sydney. If the appointment is to be advertised, a further period of time needs to be factored in – at least three to six months.

Second, it is not just about expertise...Subject-specific people have to be trained up in the law reform processes, which usually takes a whole reference cycle at least, by which time their expertise has run out, so to speak. What standing full-time commissioners give the ALRC is intellectual capital in law reform and clear independence in our tasks.²⁷

4.29 The committee accepts these caveats, but also notes that it received a creative suggestion which may address some of the concerns in relation to the appointment of inquiry-specific full-time commissioners. Professor Bryan Horrigan suggested the possibility of appointing an academic expert identified by the ALRC as an inquiry-specific full-time commissioner through the Australian Research Council grant process. The outputs associated with any relevant inquiry would form a core part of an overall research project.²⁸

4.30 When questioned on the proposed appointment of a full-time commissioner for the Classification inquiry, Professor Croucher stated that it was 'better than nowt'.²⁹

4.31 The committee received a number of submissions highlighting the important contribution that standing full-time commissioners can make to the ALRC over the term of their appointment. For example, PIAC stated in its submission:

...with different commissioners for every reference, the ALRC loses the capacity to develop expertise in the law reform process itself, and robs the ALRC of having senior staff with the appropriate corporate memory and experience necessary to add to the learning experience of the organisation as a whole.³⁰

26 *Committee Hansard*, 11 February 2011, p. 72.

27 *Committee Hansard*, 11 February 2011, p. 50.

28 *Submission 9*, pp 24-25.

29 *Committee Hansard*, 11 February 2011, p. 72.

30 *Submission 21*, pp 8-9.

4.32 Similarly, Professor Weisbrot noted his experience with standing full-time commissioners:

It is usually the case that a new Commissioner is initially appointed because his or her expertise closely aligns with a particular current inquiry. However, in my experience, it is always the case that the Commissioner's performance in the job improves measurably over time, as they gain experience with the institutional law reform process, even if subsequent inquiries are not in their specialist field. (In fact, it may be that moving experts out of their comfort zone is almost as critical to this improvement as the experience gained with the process.)³¹

Funding

4.33 It does not appear that responsibility for funding the proposed appointment of a full-time commissioner for the Classification inquiry has been settled between the ALRC and the Attorney-General's Department. In her opening remarks to the committee, Professor Croucher indicated that the Commission did not have the financial resources for a second full-time commissioner.³² Professor Croucher stated that she has suggested to the Attorney-General that the position should not be funded out of the ALRC's budget, but emphasised that the appointment has only been discussed in general terms with the Attorney-General.³³

4.34 The Department informed the committee that a second full-time commissioner would cost \$230,000 annually – for salary and on-costs.³⁴ The Department indicated that transitional funding will be provided to the ALRC to cover the cost of the appointment of the second full-time commissioner until the ALRC is in a position to take advantage of the savings from 'rationalisation of rentals' and 'other budgetary strategies'.³⁵ The Secretary of the Department expressed confidence in the ALRC being able to fund the position of a second full-time commissioner on its reduced budget after this transitional period:

So while I appreciate that there has been some anxiety for the commission as they look at this transition, I do think that their capacity to live within their budget and to continue to have another commissioner appointment, as has been announced today by the Attorney-General, for the classification review is still completely manageable within their reduced budget.³⁶

4.35 The committee also notes that correspondence between the Attorney-General and the President of the ALRC, tabled at the Additional Estimates hearing in

31 *Submission 16*, p. 6.

32 *Committee Hansard*, 11 February 2011, p. 49.

33 *Committee Hansard*, 11 February 2011, pp 72-73.

34 *Committee Hansard*, 11 February 2011, p. 86.

35 *Committee Hansard*, 11 February 2011, pp 89-90.

36 *Committee Hansard*, 11 February 2011, p. 86.

February 2011 stated that the Attorney-General's Department 'will assist with meeting the costs of this position'.³⁷

4.36 The committee notes further that during the course of giving evidence, the Secretary of the Department expressed the opinion that there should be a minimum of two full-time commissioners into the future because 'there will be at least that many references coming through'.³⁸

Part-time commissioners

4.37 In its submission, the Department noted that it has facilitated a number of reforms to the ALRC's structure recently in an effort to support the Commission in discharging its functions up to its historically high standards, despite the pressures of the current fiscal environment. According to the Department, these reforms have included facilitating the short-term appointment of part-time Commissioners, targeted for their expert wealth of experience to provide advice on specific references.³⁹

4.38 As the ALRC pointed out in its Background Submission, the description of these positions as 'part-time' is a misnomer, as their role is principally advisory.⁴⁰ At the first public hearing, Professor Croucher outlined for the committee the difficulties in quantifying the involvement of part-time commissioners in terms of days per month:

It is a little bit difficult to pin it down like that. In preparation for a meeting they will be reading all the material. They will be participating in the meeting and they will provide follow-up comments – some more than others depending on the nature of the inquiry. I have heard many times the legal officers make the comment that the comments that part-time commissioner Justice X made had been fantastically helpful – but it is at that very focused time. They also get an opportunity to read the draft chapters of the consultation documents and the reports. The ability to contribute there is also fairly limited.⁴¹

37 Tabled document, *Letter from the Hon. Robert McClelland, Attorney-General to Professor Rosalind Croucher, President of the ALRC, dated 21 February 2011*, Senate Legal and Constitutional Legislation Committee, Additional Estimates Hearings for the Attorney-General's Department, 22 February 2011.

38 *Committee Hansard*, 11 February 2011, p. 96.

39 *Submission 15*, p. 2.

40 *Submission 2*, p. 12.

41 *Committee Hansard*, 11 February 2011, p. 56.

4.39 Professor Croucher highlighted the 'extraordinarily valuable role that part-time commissioners play'; however, the committee also notes Professor Croucher's comments as to the limits of their involvement:

...part-time commissioners do not lead the consultations, they do not lead the development of the research brief and they do not have that kind of research writing and day-to-day management and leadership role.⁴²

4.40 Mr Warwick Soden, Registrar and Chief Executive Officer of the Federal Court of Australia, explained to the committee that the Federal Court judges working as part-time commissioners often had trouble making time in their full-time judicial role for their commitments to the ALRC.⁴³ Mr Soden went on to explain that judges are not given time off from their Federal Court role to perform their duties for the ALRC:

...each of the judges is responsible for managing and disposing of all the cases allocated to them in the most efficient way that they can do that. It is up to each judge to work out how to do that, what time it takes in court, what time it takes out of court, what proportion of time needs to be taken on judgments. We leave it to the judge to work out how that judge can make time available for work related to the ALRC, and we support in principle the time they take off, if I could describe it that way, from all that other work, to do the work for the ALRC. But it is a matter for the judge to work out how to do that. We support it.⁴⁴

4.41 The committee notes that witnesses who appeared at the hearings did not believe that the appointment of part-time commissioners was a satisfactory substitute for appointing full-time commissioners. For example, Mr Edward Santow, CEO of PIAC, expressed the view that part-time commissioners could not adequately fulfil the role played by full-time commissioners:

There have always been part-time commissioners who assist the ALRC in its work. Often they are very eminent...The assistance they give on particular issues is unquestionably invaluable; however, the need for a full-time commissioner goes beyond providing assistance on particular issues. It is in carrying out the consultative process more generally, in workshopping ideas and in working through submissions. I fear that a part-time commissioner, or even several part-time commissioners, would be unable to devote the time necessary to make up for the absence of a full-time commissioner.⁴⁵

42 *Committee Hansard*, 11 February 2011, pp 55-56.

43 *Committee Hansard*, 11 February 2011, pp 3-4. See also Professor Rosalind Croucher, ALRC, *Committee Hansard*, 11 February 2011, p. 56.

44 *Committee Hansard*, 11 February 2011, p. 9. Part-time commissioners do not receive payment for their work for the ALRC; the only support they receive is payment of travel costs: see Professor Rosalind Croucher, ALRC, *Committee Hansard*, 11 February 2011, p. 56.

45 *Committee Hansard*, 11 February 2011, p. 23. See also Macquarie Law School, *Submission 8*, p. 4.

Reduction in staff numbers

4.42 The ALRC's Background Submission outlined that another of the savings measures it has taken is to reduce its complement of staff by not refilling positions as they have become vacant. The following positions have not been refilled: Legal Officer, Research Manager, Executive/Project Assistant, Communications Manager and Publications Coordinator. The submission notes that the duties of these positions have been allocated to remaining staff within the organisation, and, as a result, the workload of all staff has significantly increased.⁴⁶

4.43 The ALRC's submission outlines how staffing levels (full-time equivalents (FTE), excluding statutory members) have decreased over the last decade. In the financial year 2010–11 to date, the ALRC has had 16.2 FTE staff, a figure which has decreased from 25 in 2000–01.⁴⁷ The ALRC estimates that it will continue with 16.2 FTE staff for the financial years 2011–12 to 2013–14.⁴⁸

Staffing levels

4.44 At the hearing, Professor Croucher outlined for the committee her preferred staffing levels. These staffing levels are based on the ALRC having two concurrent inquiries (a so-called 'two inquiry model'):

The core complement, in my view, is one commissioner per inquiry, in addition to the president, and eight to 10 legal officers at different classification levels. The number allocated to each inquiry would obviously depend on the complexity of the inquiry...Obviously the president needs a certain flexibility in being able to bring on people short term on contract as needs be for inquiries, but that is on top of what I have identified as the core complement. In addition,...an inquiry team needs more than solely legal officers. We need people to facilitate the administration of the inquiry, to coordinate the publishing process and to manage the web interface – which is increasingly important in our community engagement work – and the research needs. Therefore the commissioner also needs an inquiry support team as an integral part of the inquiry process.⁴⁹

4.45 In its Supplementary Submission, the ALRC submitted that a team of five people is the 'absolute minimum' which would be required for the complementary inquiry team. This should consist of an executive director; an information manager; a

46 *Submission 2*, p. 27.

47 The number of FTE staff varies from year to year. For example, in 2001–02 there were 22 FTE staff; in 2004–05 there were 18.05 FTE staff; and in 2007–08 there were 19.37 staff. However, there is an overall downward trend in staff numbers.

48 *Submission 2*, pp 28–29.

49 *Committee Hansard*, 11 February 2011, pp 50–51.

website manager (handling online submissions, consultations, discussion forums, inquiry blogs and newsletters); an inquiry coordinator; and publication support.⁵⁰

4.46 The ALRC has three ongoing inquiries listed on its website – 'Family Violence and Commonwealth Laws'; 'Discovery of documents in Federal Courts' (Discovery inquiry) and the Classification inquiry. The ALRC's current inquiry 'Family Violence and Commonwealth Laws' follows on from an earlier ALRC inquiry into Family Violence which was finalised in November 2010. The Discovery inquiry was due to report on 31 March 2011, and the committee understands that this report has been forwarded to the Attorney-General. On 24 March 2011, the ALRC received the Terms of Reference for the Classification inquiry. Professor Croucher told the committee that, based on the current level of staffing, once the Terms of Reference were provided for the Classification inquiry, the ALRC could not commence work on that inquiry until the Discovery inquiry has reported.⁵¹ Professor Croucher noted that, on a previous occasion, the Department had also assisted in providing a senior officer to commence work on the Discovery inquiry while other staff were fully engaged in finishing another inquiry.⁵²

4.47 In its Supplementary Submission, the ALRC reiterated the point that there is no further capacity for it to reduce staff and maintain its current workload:

By far the biggest expense to the Commission is its inquiry staff, and we rely on this staff to undertake the current workload and to meet our deadlines. The ALRC has no further capacity to reduce expenditure if it is to be able to discharge its current workload.⁵³

4.48 Mr Edward Santow from PIAC expressed concern that further reductions in staff will compromise the independence of the ALRC:

...the ALRC will inevitably be more reliant on analyses from stakeholders and especially, perhaps, well-funded stakeholders, because it lacks the resources to do them internally.⁵⁴

4.49 The committee sought the view of the Department on staffing levels within the ALRC. The Secretary of the Department informed the committee that staffing levels in the ALRC have 'remained relatively constant':

Their staff complement or staff ratios have remained relatively constant, actually. The staffing levels since 2004-05 have fallen from, basically, a full-time equivalent of 18.05 to 16.2, which is not huge. Compared with what has happened in the Attorney-General's Department over the last little while, or Customs or any of those sorts of agencies, this is not a massive

50 *Supplementary Submission 2*, p. 13.

51 *Committee Hansard*, 11 February 2011, p. 54.

52 *Committee Hansard*, 11 February 2011, p. 67.

53 *Supplementary Submission 2*, p. 15.

54 *Committee Hansard*, 11 February 2011, p. 20.

decline in terms of the staffing complement. So I would have thought that, if a person could manage within that envelope, a professional public servant would be expected to manage their functions within that type of envelope.⁵⁵

4.50 The committee also questioned the Department on the observation contained in the RoLIA submission that, while the ALRC has been losing staff, there has been an increase in staff in the Department, from 760 to 1550, over the period 2004-2009.⁵⁶ The Department indicated that its staffing levels increased as it took on new responsibilities:

I am sure you would be aware that most of that succeeded the events of September 11, after which the department took on significant new responsibilities for national security. These matters were of significant concern to the previous government and continue to be for this government. Those new functions for, first, national security and then later for emergency management naturally came with resources.

...I think that the comparisons neglected to take into account that the commission has continued to have one function throughout that time, which is to do two references a year, whereas we have had significant new functions for which we have been resourced.⁵⁷

High turnover of legal officers

4.51 In relation to both the commissioner position and legal officer positions, Professor Croucher highlighted the advantages of maintaining the 'intellectual capital' of the ALRC:

The key point I would like to make is that the intellectual capital of a standing law reform commission requires a core complement of both commissioners and staff. The maintenance of that intellectual capital also generates an enormous efficiency, where the ALRC is expert at the process of law reform and, with its reputation and the standing of its commissioners, it is able to leverage enormous expertise and contributions – all honorary – informing the work and development of the recommendations for reform.⁵⁸

4.52 To this end, in addition to the issues raised in relation to the need for more full-time standing commissioners to be appointed, concerns were raised during the inquiry about the high turnover of legal officers at the commission.⁵⁹

55 *Committee Hansard*, 11 February 2011, p. 96.

56 See *Submission 14*, p. 17.

57 *Committee Hansard*, 11 February 2011, pp 103-104.

58 *Committee Hansard*, 11 February 2011, p. 48.

59 See, for example, Rule of Law Institute of Australia (RoLIA), *Submission 14*, p. 17; Professor David Weisbrot, *Submission 16*, p. 8.

4.53 Professor Croucher told the committee that only one legal officer remains from the complement of 10 legal officers who were working for the commission in December 2009.⁶⁰ In its Supplementary Submission, the ALRC explained the impact of this turnover on the organisation:

There has been a significant turnover of ALRC legal staff in the past year, and the additional workload placed on staff, as resources have decreased, may have affected morale. Of course, staff turnover always occurs for a number of reasons, and the ALRC's complement of legal officers remains of an extremely high professional standard. Staff turnover nevertheless has an impact on the efficiency of the ALRC as new staff have to be trained in the law reform process...[I]n order to attract and retain staff who are skilled and experienced in the law reform process, the ALRC must have adequate resources so that appropriate and competitive salaries and benefits can be offered. The continuing quality of ALRC reports is dependent on access to these highly talented and committed law reformers.⁶¹

4.54 Professor Croucher informed the committee that the ALRC has invested resources in providing an induction program to try and capture some corporate memory and provide new legal officers with a 'solid grounding in the processes of law reform'. However, Professor Croucher noted that, in her experience, it takes at least one reference cycle to 'really get the hang of what really works in a law reform process'.⁶²

4.55 The committee questioned Professor Croucher as to the reasons for the high turnover of staff. Professor Croucher provided the following explanation:

I will put the reasons in a bunch, if I may. The cuts in the budget and the way they were introduced and the lack of appointment of additional commissioners once we completed the [initial] family violence inquiry were destabilising factors in terms of staff. A number of staff at that point had opportunities that they took. They were for them good opportunities and for many a solid promotion, based on the experience that they had acquired at the ALRC. There are a lot of factors that feed into it. I must say that the workload last year was extraordinarily heavy in order to complete the [family violence] report...So it is a combination of destabilising and looking for opportunities, perhaps as a result of that destabilising, and the additional burden certainly played very heavily at least in one case.⁶³

4.56 The committee also heard evidence from Professor David Weisbrot, the immediate past President of the ALRC, who stated:

60 *Committee Hansard*, 11 February 2011, p. 57.

61 *Supplementary Submission 2*, pp 8-9.

62 *Committee Hansard*, 1 February 2011, p. 57.

63 *Committee Hansard*, 11 February 2011, p. 58. The ALRC's current inquiry 'Family Violence and Commonwealth Laws' follows on from an earlier ALRC inquiry into Family Violence which was finalised in November 2010.

...it has hurt me deeply that in just over a year, in the year and a bit since I left, there has been more than 100 per cent turnover of legal staff.⁶⁴

4.57 Professor Weisbrot highlighted the fact that only one legal officer remains at the ALRC with more than one year's experience, with the result that there has been an almost complete loss of institutional memory and experience.⁶⁵ Further, Professor Weisbrot described as a 'double whammy' the combination of short-term commissioner appointments and the high turnover of legal staff at the ALRC:

Now we have a very junior and inexperienced staff at the ALRC. I think that is a double whammy. Who there is going to say to the commissioner, 'You know, we had that kind of problem three references back, and this is how we handled it,' or, 'Two references back, this organisation was especially useful to us and this one wasn't so good; they just gave us the standard work.'⁶⁶

4.58 The committee sought the Department's view on the high turnover of staff at the ALRC. The Secretary of the Department stated that he did not know why there was a 90 per cent turnover of staff at the ALRC, but it was a matter for the CEO of the organisation. However, the Secretary did note that there is 'nothing about [the ALRC's] budget that requires a 90 per cent turnover'.⁶⁷

64 *Committee Hansard*, 3 March 2011, p. 8.

65 *Committee Hansard*, 3 March 2011, p. 8.

66 *Committee Hansard*, 3 March 2011, p. 10.

67 *Committee Hansard*, 11 February 2011, p. 97.

