

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 2014–15 financial year.

Australian Human Rights Commission

2.2 The committee put questions to the Attorney-General and the Australian Human Rights Commission (AHRC) about the appointment of the Sex Discrimination Commissioner. The Attorney-General informed that committee that an 'arms-length process of selection has resulted in the appointment that was decided upon by cabinet' on 8 February 2016.¹ The selection panel consisted of four panellists including Secretary of the Attorney-General's Department (AGD, the department), Mr Chris Moraitis, and the former Sex Discrimination Commissioner, Ms Elizabeth Broderick.²

2.3 The President of the AHRC advised the committee that she was not included in the selection panel and that the Prime Minister had consulted her about the timing and need for a proper process for the selection; however, the President was not subsequently consulted. The President said 'the usual procedure in the past has been to include the President and to consult the President about the appointment'.³

2.4 The committee also discussed with the AHRC its report into *The health and well-being of children in detention* and the High Court's decision in M68. The President said the report's findings confirmed that 19 out of 20 children had 'little hope for the future' and:

They are in despair and they are at high levels of trauma—so much so that the medical experts were able to say that they had never seen so many children reaching these high levels in the tests—that demonstrated that they were deeply traumatised, mentally ill in some cases, and certainly needing medical treatment for mental and other conditions. In essence, the consequence of the medical reports, the outcomes, were to confirm all of the findings that have been made over the last two or three years. This was only, sadly, significantly compounded because these children are now traumatised partly by the conditions of their parents—that they will be sent back to conditions that they are very familiar with, so they knew what they will be going back to if they were to be returned.⁴

2.5 In response to the release of the report, the AHRC is working with the department to address the report's findings. Furthermore, the President noted that the

1 *Estimates Hansard*, 9 February 2016, p. 6.

2 *Estimates Hansard*, 9 February 2016, p. 6.

3 *Estimates Hansard*, 9 February 2016, p. 8.

4 *Estimates Hansard*, 9 February 2016, p. 18.

High Court's decision in M68 did 'clear the air in terms of the constitutional and domestic law'⁵ of returning asylum seekers in Australia, to Nauru.

2.6 The Attorney-General added that:

One of the central issues in the M68 case is whether those people—adults and children—being detained in Nauru were being detained by Australia. The High Court resolved that question by a majority of four to three. The High Court decided unequivocally that people being detained in Nauru under a memorandum of understanding between the government of Australia and the government of Nauru are not being detained by Australia.⁶

2.7 Other matters discussed with the AHRC were:

- Mr Tim Wilson, Human Rights Commissioner's travel to the United States and his former membership of the Liberal Party;⁷
- the adoption of same-sex marriage laws;⁸
- employment opportunities for and discrimination towards indigenous people with a disability;⁹ and
- the AHRC's view on the treatment of people in detention.¹⁰

Office of the Australian Information Commissioner

2.8 The Acting Australian Information Commissioner, in his opening statement, provided the committee with the following statistics for 2014–15:¹¹

No. of inquiries (privacy and FOI matters)	18 066
No. of complaints relating to privacy functions	2 840
No. of voluntary data breach notifications	55
No. of assessments (formerly known as audits)	9
No. of Commissioner investigations into agency decisions on FOI functions	373

2.9 The Acting Commissioner informed the committee that priority would be given to the continued oversight of: the eHealth sector; data retention and foreign

5 *Estimates Hansard*, 9 February 2016, p. 17.

6 *Estimates Hansard*, 9 February 2016, p. 27.

7 *Estimates Hansard*, 9 February 2016, pp 8–9, 12–16, 20–26.

8 *Estimates Hansard*, 9 February 2016, pp 9–12, 30–33.

9 *Estimates Hansard*, 9 February 2016, pp 33–36.

10 *Estimates Hansard*, 9 February 2016, pp 27–29, 39–40.

11 Data extracted from *Estimates Hansard*, 9 February 2015, pp 44–45.

fighters' acts; privacy implications arising from the enhanced welfare payment integrity initiative; issues relating to the national facial biometric matching capabilities; and the proposed mandatory data breach notification scheme.¹²

2.10 The Attorney-General reminded the committee that the Office of the Australian Information Commissioner (OAIC) had received in the last budget a sum of \$1.7 million for its continued operation and that the government's intention remains to abolish the OAIC, and have its functions consolidated.¹³ The Acting Commissioner said that this funding would run out on 30 June 2016.¹⁴

2.11 Other matters raised with the OAIC were:

- the implementation of changes to its functions, such as the transfer of functions to the Administrative Appeals Tribunal (AAT) and the Attorney-General's Department;¹⁵
- the number of full-time equivalent staff.¹⁶

Family Court of Australia and the Federal Circuit Court of Australia

2.12 The Family Court of Australia and the Federal Circuit Court of Australia (the courts) were questioned by the committee on the blow-out in wait times. In response, the Chief Executive Officer (CEO) provided the following data on applications for final orders from the past six years:¹⁷

Year	Family Court	Federal Circuit Court	Total no. of final orders
2010–11	3249	17 512	19 426
2011–12	3271	17 412	19 326
2012–13	2807	17 364	18 999
2013–14	2923	17 565	19 279
2014–15	2936	17 685	19 480

2.13 The courts projected that the 2015–16 figures would be 3200 applications for the Family Court and 18 000 for the Federal Circuit Court for a sum of 20 000. The CEO said:

12 *Estimates Hansard*, 9 February 2016, p. 45.

13 *Estimates Hansard*, 9 February 2016, p. 45.

14 *Estimates Hansard*, 9 February 2016, p. 48.

15 *Estimates Hansard*, 9 February 2016, pp 46–48.

16 *Estimates Hansard*, 9 February 2016, p. 48.

17 Data extracted from *Estimates Hansard*, 9 February 2016, p. 50.

the workload has increased again back to that of nearly 15 years ago. I do not think there is a judge who works in—and these are family law figures only; not general federal law—this jurisdiction who would not say that the work has become much more complex than it was. It is much more complex. I think that is one of the factors that impacts on delays.¹⁸

2.14 The committee heard that, in 2014–15, the average time from lodgement to the first day of a trial was 13 months for the Family Court and 14.1 months for the Federal Circuit Court. The wait time had increased and, at the time of the hearing, was 15.9 months for the Family Court and 15 months for the Federal Circuit Court.¹⁹

2.15 The CEO attributed the complexity of the cases, in particular family violence and the level of conflict between parties, to the increase in waiting times. Other factors identified by the CEO included proceedings in other courts; delay matters in the courts; and the availability of judicial resources.²⁰

2.16 Other matters raised with the courts were:

- the vacancies and appointments of judges to the courts;²¹
- broadening the skill base of judicial officers;²² and
- the recommendation from the Productivity Commission on the rules to prevent perpetrators of domestic violence cross-examining their victims in court.²³

Australian Transaction Reports and Analysis Centre

2.17 The Australian Transaction Reports and Analysis Centre (AUSTRAC) were questioned by the committee on matters relating to the monitoring of transactions between Australia and Vanuatu and other countries in the South Pacific region.

2.18 AUSTRAC stated that it works with the Asia-Pacific Group on money-laundering, and is a member of the Egmont Group²⁴, in which Australia was a member of Asia-Pacific. AUSTRAC also had over 77 memoranda of understanding with countries around the world.²⁵

2.19 AUSTRAC confirmed that Vanuatu 'has challenges around money laundering and terrorism financing' and that 'Australia ha[d] done a lot of work to help build Vanuatu's capabilities over the years';²⁶ however:

18 *Estimates Hansard*, 9 February 2016, p. 50.

19 *Estimates Hansard*, 9 February 2016, p. 50.

20 *Estimates Hansard*, 9 February 2016, p. 50.

21 *Estimates Hansard*, 9 February 2016, pp 50, 52–54, 58

22 *Estimates Hansard*, 9 February 2016, p. 51.

23 *Estimates Hansard*, 9 February 2016, pp 60–61.

24 155 countries are members of the Egmont Group.

25 *Estimates Hansard*, 9 February 2016, p. 66.

26 *Estimates Hansard*, 9 February 2016, p. 67.

One of the challenges in trying to fight organised crime and terrorism financing is that they do not always use the legitimate financial sector, which we can monitor. They will use criminal enterprises, they will use other forms of money laundering—hawala, cash smuggling, for example—and obviously that places us at a disadvantage...that is where strong law enforcement partnerships are really important, because that is where we can exchange intelligence, share information and experiences and hopefully minimise the opportunities for criminals to use the black market money channels.²⁷

Australian Security Intelligence Organisation

2.20 The Director-General of the Australian Security Intelligence Organisation (ASIO) in his opening statement advised the committee on:

- the three attacks that had occurred since September 2014 in Australia and a further six attacks that were disrupted by law enforcement operations;
- the approximately 110 Australians that were fighting or engaged with terrorist groups in Syria or Iraq, with at least 45 Australians confirmed killed in the conflict. It was reported that 190 people were actively supporting extremist groups whilst in Australia;
- the cancellation and refusal of passports for Australians, with 156 adverse security assessments issued by ASIO;
- security assessments of 12 000 Syrian refugees; and
- espionage threats to Australia and its interests.²⁸

2.21 The committee asked further questions about the nature of the thwarted attacks. In response, the Director-General informed the committee that the planned attacks were regarded as 'low-tech'. He said there were attempts to assemble an explosive device, 'but it [was] fairly unsophisticated and not of the sort of magnitude that you might imagine with large, vehicle-borne incendiary devices or explosive devices'.²⁹

2.22 ASIO also advised the committee that the number of people who engaged with these terrorist organisations had plateaued. The Director-General commented that this decline may indicate that engagement had reached a 'saturation point' and had 'taken up the obvious candidates'.³⁰

27 *Estimates Hansard*, 9 February 2016, p. 67.

28 *Estimates Hansard*, 9 February 2016, pp 67–68.

29 *Estimates Hansard*, 9 February 2016, p. 71.

30 *Estimates Hansard*, 9 February 2016, p. 71.

2.23 Other matters discussed with ASIO were:

- the attack in Indonesia and the problem of returned fighters from the Middle East to South-East Asia,³¹ and
- the screening of humanitarian entrants, in particular the 12 000 Syrians seeking asylum in Australia.³²

Australian Federal Police

2.24 The Commissioner of the Australian Federal Police (AFP) informed the committee in his opening statement that the AFP has seen an increase in its work, in particular national security and counter-terrorism. The Commissioner commented that since September 2014, the AFP's 'threat level specifically against police was raised to high or probable' under the new threat advisory system.³³ He said that there were two people subject to control orders and 11 Australians that are offshore 'that are subject to first-instance arrest warrants for matters relating to counter-terrorism'.³⁴

2.25 The committee discussed with the AFP the unauthorised disclosure of and access to the diary of a former Speaker of the House of Representatives. The AFP confirmed that search warrants were executed on the premises of three individuals in relation to the investigation.³⁵ The Deputy Commissioner said that the investigation was ongoing and:

we are relying heavily on electronic records, which we have obtained from various entities. Because of the complex nature of this matter we have also had to obtain legal opinion in respect of search warrants and other avenues of inquiry. Just to demonstrate, some of the investigation time frames are quite lengthy, because we have recovered, to date, in excess of 7,600 emails, 141,000 documents, 116,000-plus images and thousands of email attachments. That just highlights for you the extent of the investigation we are undertaking.³⁶

2.26 If 'sufficient evidence beyond reasonable doubt' is obtained through the investigation, the AFP would put a prima facie case to the Commonwealth Director of Public Prosecutions (CDPP). The CDPP would then need to decide whether charges are to be laid in respect of any people.³⁷

31 *Estimates Hansard*, 9 February 2016, p. 71.

32 *Estimates Hansard*, 9 February 2016, pp 73–74.

33 *Estimates Hansard*, 9 February 2016, p. 89.

34 *Estimates Hansard*, 9 February 2016, p. 89.

35 *Estimates Hansard*, 9 February 2016, p. 94

36 *Estimates Hansard*, 9 February 2016, p. 95

37 *Estimates Hansard*, 9 February 2016, p. 95

2.27 Questions were also asked of the AFP about the resources allocated to the Trade Union Royal Commission. The committee was informed that between 13 March 2014 and 31 December 2015, the AFP contributed 30 staff to the Royal Commission; the cost to the AFP was \$5.5 million. On 1 January 2016, the AFP received a further \$6 million to continue its work in 'finalising the investigations that arose during the royal commission and also assess any arising from the final report of the royal commission'.³⁸

2.28 The Deputy Commissioner confirmed that there were currently 11 defendants before court (both for state or Commonwealth offences) arising from the Royal Commission. One charge against an individual in the ACT did not proceed and there was one matter with the CDPP for its consideration.³⁹

2.29 Other matters raised with the AFP were:

- additional funding for the AFP's counter-terrorism activities;⁴⁰
- the AFP's community engagement efforts relating to foreign fighters;⁴¹
- allegations of human rights abuses by the Criminal Investigation Department in Sri Lanka and the Indonesian National Police (Detachment 88) in West Papua.⁴²

Attorney-General's Department

2.30 A number of issues were raised with the AGD. Some of these issues detailed below.

Marriage plebiscite

2.31 The Attorney-General outlined his responsibilities for the proposed plebiscite on marriage equality. The Attorney-General said:

As the Attorney-General, I have responsibility for the Marriage Act, which would be the statute to be amended were the proposal to succeed. I also have responsibility, as you know, for antidiscrimination law, but the acting Special Minister of State...has responsibility for electoral matters, which would include the conduct of a plebiscite. I think it is correct to say that I have overall carriage of the issue, but, on the specific matter of what we might call the mechanics of the plebiscite, Senator Cormann as acting Special Minister of State has an involvement as well.⁴³

38 *Estimates Hansard*, 9 February 2016, p. 99.

39 *Estimates Hansard*, 9 February 2016, p. 99.

40 *Estimates Hansard*, 9 February 2016, pp 90–92.

41 *Estimates Hansard*, 9 February 2016, pp 102–103.

42 *Estimates Hansard*, 9 February 2016, pp 108–114.

43 *Estimates Hansard*, 9 February 2016, p. 80.

2.32 The Attorney-General confirmed that both a non-binding plebiscite and a self-executing plebiscite were being considered by government,⁴⁴ and that the referendum was no longer being considered as an option. The plebiscite would 'be conducted at some time after the election', and no submission had been taken to cabinet at the time of the hearing.⁴⁵

2.33 A decision about the structure of the plebiscite would include whether both the 'yes' and 'no' campaigns would be publicly funded. Cabinet would also need to determine whether an exposure draft would be released for consultation.⁴⁶ The Attorney-General also confirmed that his:

disposition is to publish the proposed amendments to the Marriage Act so that people voting in the plebiscite would know what the shape of the legislation would be, were they to vote yes or no—that people who vote in the plebiscite would know what the legislative amendment would look like in the event the plebiscite were passed.⁴⁷

2.34 The government had not conducted a costing for the plebiscite.⁴⁸

Emergency Management Australia and the Tasmanian bush fires

2.35 The department advised senators that at the time of the hearing, there were 73 active fires in Tasmania, 26 were uncontrolled/uncontained and 47 were in control. Approximately 110 000 hectares had been burnt by the fire, encompassing a perimeter of approximately 815 kilometres. There were at time, over 400 firefighters on the ground, with 32 aircraft operating in the state, with support (personal and vehicles) coming from Queensland, the Australian Capital Territory, New South Wales, Victoria, South Australia and New Zealand.⁴⁹

2.36 In total, 30 000 hectares of wilderness had been impacted by the fires, and Emergency Management Australia (EMA) estimated that of that 30 000 hectares, between 14 000 and 17 000 hectares comprises of sensitive biodiversity areas.⁵⁰

2.37 EMA noted that the fires had facilitated 'the biggest single mobilisation of firefighting resources to Tasmania...and it happened quite rapidly, facilitated by Commonwealth coordination through EMA'.⁵¹

2.38 The committee was advised that the Commonwealth had not contributed any funds towards the cost of the firefighting operation, however:

44 *Estimates Hansard*, 9 February 2016, p. 80.

45 *Estimates Hansard*, 9 February 2016, p. 81.

46 *Estimates Hansard*, 9 February 2016, p. 82.

47 *Estimates Hansard*, 9 February 2016, p. 82.

48 *Estimates Hansard*, 9 February 2016, p. 82.

49 *Estimates Hansard*, 9 February 2016, p. 118.

50 *Estimates Hansard*, 9 February 2016, p. 119.

51 *Estimates Hansard*, 9 February 2016, p. 118.

Tasmania has contacted the Commonwealth in relation to its forecast assistance under the Natural Disaster Relief and Recovery Arrangements. They are working through their costs. They are working through the criteria of those arrangements, and we have been maintaining a dialogue with Tasmania to assist them with their interpretation and with some of those programs that may come forward.⁵²

Confidential volumes in relation to the Trade Union Royal Commission

2.39 The committee asked the department about the two confidential volumes of the Trade Union Royal Commission. The first non-publication order was made when the interim report was released on 11 December 2014 and was required to protect the identity of a person who had provided evidence before the Commission.⁵³

2.40 In respect of the final report, the department said:

There was no...non-publication order on the final report. The only statement that the commissioner added was that it was recommended that this volume not be published and be kept confidential. Any particular decision to publish should take into account the fact that the safety of some witnesses and sources of information may be imperilled by publication. So there was not a non-publication order for the final report, but it was to remain confidential and he recommended it on those terms.⁵⁴

2.41 The department was not able to provide an answer to the committee as to why the Commissioner decided not to place a non-publication order on the final report,⁵⁵ however, it was stated that there was:

a paragraph within the confidential report that actually states that the volume should not be published and to be kept confidential, but [the Commissioner] did not put a non-publication direction on like he did for the interim report, which he has subsequently amended to give restricted access.⁵⁶

2.42 The Attorney-General reiterated the reason for the restrictions:

The reason the two volumes were to remain confidential, as we know, is that there was concern for the physical safety of the named witnesses, given the violent criminality of some of those involved in certain unions, which was disclosed by the public volumes of the report. The commissioner had a fear that those people could be physically harmed, which is why the reports were made confidential. So the redaction of the names of the individuals seems to me to be an appropriate measure not only to protect those individuals; also, in the unhappy event that something did happen to one of them, so it could never be suggested that the source of the person who

52 *Estimates Hansard*, 9 February 2016, p. 121.

53 *Estimates Hansard*, 9 February 2016, pp 114–115.

54 *Estimates Hansard*, 9 February 2016, p. 115.

55 *Estimates Hansard*, 9 February 2016, p. 115.

56 *Estimates Hansard*, 9 February 2016, p. 116.

identified that witness was a member of parliament who had been given access to the report.⁵⁷

**Senator the Hon Ian Macdonald
Chair**

57 *Estimates Hansard*, 9 February 2016, p. 126.