

The Senate

Legal and Constitutional Affairs
Legislation Committee

Additional estimates 2015–16

March 2016

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Membership of the Committee

44th Parliament

Members

Senator the Hon Ian Macdonald (LP, QLD) (Chair)

Senator Jacinta Collins (ALP, VIC) (Deputy Chair)

Senator Catryna Bilyk (ALP, TAS)

Senator Barry O'Sullivan (NATS, QLD)

Senator Dean Smith (LP, WA)

Senator Nick McKim (AG, TAS)

Senators in attendance

Senator the Hon Ian Macdonald (Chair)

Senator Jacinta Collins (Deputy Chair)

Senator Catryna Bilyk

Senator the Hon George Brandis QC

Senator David Bushby

Senator the Hon Kim Carr

Senator the Hon Michaelia Cash

Senator the Hon Matthew Canavan

Senator the Hon Concetta Fierravanti-Wells

Senator Alex Gallacher

Senator Katy Gallagher

Senator Sarah Hanson-Young

Senator the Hon Bill Heffernan

Senator Jacqui Lambie

Senator David Leyonhjelm

Senator Sue Lines

Senator Scott Ludlam

Senator John Madigan

Senator Anne McEwen

Senator Nick McKim

Senator Clair Moore

Senator Helen Kroger

Senator Barry O'Sullivan

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Preface

On 2 February 2016, the Senate referred to the Senate Legal and Constitutional Affairs Legislation Committee (committee) for examination the estimates of proposed additional expenditure for the financial year 2015–16. The committee is responsible for the examination of the Attorney-General's Portfolio and the Immigration and Border Protection Portfolio. The Portfolio Additional Estimates Statements for 2015–16 were tabled on 2 February 2016.¹

Reference of documents

The Senate referred to the committee, for examination and report, the following documents:

- particulars of proposed additional expenditure in respect of the year ending on 30 June 2016 [Appropriation Bill (No. 3) 2015–2016];
- particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2016 [Appropriation Bill (No. 4) 2015–2016];

The committee was required to report on its consideration of the additional estimates on or before 1 March 2016.

Estimates hearings

The committee met in public session on 8 and 9 February 2016.

Over the course of the two days of hearings, totalling over 20 hours, the committee took evidence from the following departments and agencies:

- Department of Immigration and Border Protection
- Attorney-General's Department;
- Australian Federal Police;
- Australian Human Rights Commission;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- Family Court of Australia and the Federal Circuit Court of Australia; and
- the Office of the Australian Information Commissioner.

Copies of the *Hansard* transcripts are available from the committee's internet page at: www.aph.gov.au/senate_legalcon.

An index of the *Hansard* for each portfolio appears at Appendix 2.

1 *Journals of the Senate*, No. 137—4 February 2016, p. 3720

Ministers

On 8 February 2016, the committee heard evidence from Senator the Hon Michaelia Cash, Minister representing the Minister for Immigration and Border Protection. Senator Cash was also assisted by Senator the Hon Concetta Fierravanti-Wells, Minister for Multicultural Affairs and Senator the Hon Scott Ryan, Minister for Vocational Education and Skills.

On 9 February 2016, the committee heard evidence from Senator the Hon George Brandis, Attorney-General.

Officers from both departments and associated agencies also appeared. The committee thanks the ministers and officers for their assistance.

Questions on notice

Further written explanations, and answers to questions on notice, will be tabled as soon as possible after they are received. That information is also available on the committee's webpage.

The committee has resolved that the due date for submitting responses to questions on notice from the additional estimates round is 8 April 2016.

Note on references

References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

Chapter 1

Immigration and Border Protection portfolio

1.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Immigration and Border Protection portfolio for the 2014–15 financial year.

1.2 The Secretary of the Department of Immigration and Border Protection (DIBP, the department) and the Commissioner of the Australian Border Force (ABF) provided, at length, opening statements that facilitated senators to ask questions based on the content of those statements. A synopsis of the opening statements is provided below.

1.3 The Secretary informed the committee that the High Court of Australia's ruling on the case known as M68 upholds 'the legal foundations of both turn back and take back maritime operations'.¹ The Secretary stated that any attempt to enter Australia by illegal maritime means would result in vessels either being safely turned around or being 'taken to Papua New Guinea or Nauru for the purposes of being assessed and processed for potential settlement outside Australia or return[ed] to [their] country of origin'.²

1.4 In relation to people that are currently in the regional processing centres (RPCs) or currently in Australia for medical purposes, the Secretary stated:

[T]he department will continue to ensure that adequate medical services are provided to those who require them. Transferees and refugees temporarily in Australia for medical treatment or accompanying those in need of treatment will be returned to Nauru and Papua New Guinea, as the case applies, at the conclusion of their treatment, noting that determinations on this will be made on a case-by-case basis.³

1.5 The amalgamation of DIBP with the Australian Customs and Border Protection Service (ACBPS) was also commented on by the Secretary. As of 1 July 2015, the integrated department with the ABF as the enforcement arm would:

manage our nation's border processes by which we oversee the flow of people and goods to and from our nation...we are Australia's gateway to the world and the world's gateway to Australia. On occasions, we will need to act as gatekeepers and, as necessary, protect the border by all lawful means. However, the daily operating mode of the department will be to act as the open conduit of Australia's engagement with the world around us for the purposes of trade, travel or migration. The amalgamation of immigration and customs has been successfully accomplished.⁴

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

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

3 *Estimates Hansard*, 8 February 2016, p. 4.

4 *Estimates Hansard*, 8 February 2016, p. 4.

1.6 However, the Secretary informed the committee that reforms and the integration of staff, financial, legal, infrastructure, technology and organisational policies and processes remain ongoing. It was noted that the amalgamation would save the Commonwealth \$270 million over the forward estimates period.⁵

1.7 Finally, an update was provided to the committee on the ongoing enterprise agreement negotiations. The Secretary said that a reduction of only 184 employees, over the life of the agreement would have been required had employees accepted the previous offer. A larger pay increase would result in more employee reductions.⁶

1.8 The Commissioner for the ABF provided further details on the establishment and activities of the ABF. The Commissioner highlighted the record drug seizure of 7.3 tonnes in 2014–15 and the work of the counter-terrorism unit (CTU) teams at Australia's international airports. CTU officers have assessed almost 110 000 inbound and outbound passengers. These assessments had resulted in 1100 outcomes, including the collection of intelligence and referrals to security and intelligence partners. ABF had detected more than \$3 million in undeclared currency in 2014–15.⁷

1.9 During the Commissioner's opening statement, the committee was informed that the ABF had assumed responsibility for Australia's onshore immigration detention facilities and is now responsible for the 2000 detainees in those facilities. The ABF had 'embarked on a substantial remediation program to improve the security, safety and amenity of these facilities'.⁸ Compulsory training courses had been instituted for ABF officers that incorporated 'input and delivery from NGOs and oversight bodies such as the Australian Human Rights Commission, the Commonwealth Ombudsman, the Minister's Council on Asylum Seekers and Detention, and the Child Protection Panel'.⁹ The operating policies and practices of the detention facilities had been overhauled, with the implementation of new risk assessment tools and community monitoring mechanisms. Service providers to these facilities had also been engaged to improve security, medical and recreational services.¹⁰

1.10 The Commissioner's opening statement provided senators with an update on the ABF's maritime capabilities. It was reported that the new Cape class fleet was fully operational, as was the ABF's berthing facility and marine base in Darwin. The ABF has had operational success relating to illegal maritime people smuggling and other civilian maritime threats, especially illegal foreign fishing within Australia's maritime borders.¹¹

5 *Estimates Hansard*, 8 February 2016, p. 4.

6 *Estimates Hansard*, 8 February 2016, p. 5.

7 *Estimates Hansard*, 8 February 2016, p. 5.

8 *Estimates Hansard*, 8 February 2016, p. 5.

9 *Estimates Hansard*, 8 February 2016, p. 6.

10 *Estimates Hansard*, 8 February 2016, p. 6.

11 *Estimates Hansard*, 8 February 2016, p. 6.

1.11 Additional commentary was provided on the work of ABF at Australia's airports, namely the recruitment of front-line officers and the investment and installation of automated smart gates, with an anticipated 90 outbound smart gates being commissioned by the end of this calendar year across the entire airport network.¹² The Commissioner also highlighted the creation of the Trusted Trader program that had 22 participants and is projected to include approximately 1000 traders, representing 30 per cent of Australia's two way trade by 2020.¹³

1.12 The committee proceeded to enquire on matters relating to the opening statements of the Secretary and Commissioner, and the funding and operations of both DIBP and ABF. Key topics raised during the hearings are provided in more detail below.

The High Court's ruling on M68 and subsequent return of asylum seekers to Nauru and Manus Island

1.13 Senators asked questions relating to the planned return of asylum seekers in Australia for medical purposes to offshore RPCs. The Secretary advised the committee that advice would be first sought by medical practitioners to determine whether an individual is able to be returned to the RPCs. Subsequently, the Secretary stated that the department 'will work through those [determinations] in a staged fashion...They will not be, does not need to be and should not be a bulk determination'¹⁴ and '[a]ll persons, when they are fit to travel, will be sent back to Nauru. That is both policy and law. And then, within that, individual determinations will be made on a compassionate and empathetic basis'.¹⁵

1.14 The Secretary highlighted that the High Court ruling on M68 had provided the department with a 'very clear legal footing that it is able to return persons'¹⁶ to Nauru and Manus Island. Additionally:

As [the department] improve[s] the medical facilities on Nauru, with the agreement of the Nauru government and in support of their role as the processing authority, there will be less and less opportunity and requirement to repatriate people to Australia.¹⁷

1.15 The department advised the committee on the number of transferees and refugees that are currently in Australia, particularly those whose return to the RPC on Nauru was delayed due to the M68 case. Details of those numbers are in Table 1.1.¹⁸

12 *Estimates Hansard*, 8 February 2016, p. 6.

13 *Estimates Hansard*, 8 February 2016, p. 7.

14 *Estimates Hansard*, 8 February 2016, p. 14.

15 *Estimates Hansard*, 8 February 2016, p. 40.

16 *Estimates Hansard*, 8 February 2016, p. 14.

17 *Estimates Hansard*, 8 February 2016, p. 14.

18 *Estimates Hansard*, 8 February 2016, p. 19, p. 41.

Table 1.1:

	Transferees¹⁹	Refugees
Individuals in Australia to be returned to the Nauru RPC	280	16
Individuals currently in Nauru RPC	357	840
Individuals in Australia to be returned to the Manus Island RPC	34	2
Individuals currently in Manus Island RPC	472	404

1.16 In total, 267 people would be returned to Nauru as a result of the recent High Court (M68) ruling. Of this number, 37 transferees are babies born in Australia;²⁰ 62 people from Nauru RPC were not subject to the M68.²¹

The welfare of children in detention

1.17 The welfare of children in detention, in particular, children in the open centre on Nauru, was discussed during the hearing.

1.18 In regards to children's education, the department informed senators that DIBP, in partnership with Nauru's Department of Education, had enhanced Nauru's school infrastructure by building eight new classrooms at a value of approximately \$9 million. School counsellors and teachers have been provided through the Brisbane Catholic Education Office. Assistance was also provided through the University of New England's campus on Nauru and the University of the South Pacific.²²

1.19 The department stated that a number of child detainees did not attend school. Approximately 50 per cent of children from the RPC were not attending school, which roughly reflects the number of children that had not engaged with the education facilities in the RPC. Preschool activities are provided to younger children within the centre, and older children are encouraged to go to school. Other services include the children protection unit and a gender violence unit that provide counselling to refugees, transferees and Nauruans.²³

1.20 In regards to the medical conditions of children held in detention, the Chief Medical Officer (CMO) of DIBP informed the committee that his 'general impression of the health services has been very positive—of the skilled clinicians [he] had met. [Clinicians] know their patients and have an interest in their clinical situation and

19 Transferees are individuals that have not yet had their refugee status determined.

20 *Estimates Hansard*, 8 February 2016, p. 40.

21 *Estimates Hansard*, 8 February 2016, p. 42.

22 *Estimates Hansard*, 8 February 2016, p. 15.

23 *Estimates Hansard*, 8 February 2016, p. 15.

care'.²⁴ The CMO commented that 'the government and the department's concerted efforts to remove children from detention' has meant that there are fewer children in detention,²⁵ however, the CMO acknowledged that '[t]he scientific evidence is that detention affects the mental state of children. It is deleterious and for that reason wherever possible children should not be in detention'.²⁶

1.21 The Secretary of DIBP, in response to the CMO's comments, reminded the committee that:

it is the government's policy that it will do whatever possible within the ambit of the policy to get children out of detention. Those who are repatriated to Nauru do not go back to detention; it is an open centre. The handful that are left in Australia... We are working as carefully as we can with relevant families to try to come up with arrangements where, even if one or both parents have to be held in detention for security concerns, which the department is well briefed about as is the minister, accommodative arrangements are put in place so that the children are outside of detention.²⁷

1.22 A concern was raised regarding developmental delays of children in detention. In response to this concern, the CMO advised the committee that it was for this reason he highlighted the importance of children having access to a multidisciplinary team of medical experts that included psychologists, psychiatrists, occupational therapists and speech pathologists.²⁸

Allegations of the sexual abuse of a minor on Nauru

1.23 The committee queried the department on reports of the alleged rape of a five year old child at the Nauru RPC. The committee heard that the department had contacted a paediatrician from the Royal Children's Hospital in Sydney and were advised that the child was not five years old and the allegations of sexual assault are against an older child from within the facility. The department stated that this was not an allegation of rape and that it was in fact 'physical skin to skin contact'.²⁹

1.24 Furthermore, the allegations had already been brought to the attention of the department and had been investigated by the child protection panel; the incident was also considered in the Moss report. The child protection panel determined that the department's actions were correct and the department ensured support services were provided including medical, welfare and counselling. Within one month of the

24 *Estimates Hansard*, 8 February 2016, p. 20.

25 *Estimates Hansard*, 8 February 2016, p. 21.

26 *Estimates Hansard*, 8 February 2016, p. 21.

27 *Estimates Hansard*, 8 February 2016, p. 21.

28 *Estimates Hansard*, 8 February 2016, p. 30.

29 *Estimates Hansard*, 8 February 2016, p. 16.

incident, the child was moved to Australia for further counselling and was living in the community with his family.³⁰

1.25 The incident and the allegations of sexual assault were, at the time of the hearing, under investigation by Nauruan police.³¹

Enterprise Agreement negotiations

1.26 The Commissioner of the ABF and the Secretary of DIBP were questioned by the committee on matters relating to ongoing wage negotiations. The Secretary advised the committee that the department was currently preparing for a second offer after the first offer was rejected by 91 per cent of employees. The Secretary said the 'offer that we are putting is as reasonable and as generous as we can craft within the government's parameters'.³²

1.27 The amalgamation of the ACBPS and DIBP had resulted in some tension during the wage negotiation process. The Secretary informed the committee the one tension has been reconciling the two different pay scales of ACBPS and DIBP employees. Some of the difficulties confronted by the department were:

How you reconcile those scales over time; how you trade-off giving workers a general pay increase but also deal with anomalous situations...in some cases with quite ancient allowances that have not been reviewed for many, many years and that in some cases are not at all connected with contemporary work practices; and how you, at the same time as blending a workforce, preserve traditional benefits that have arisen through two different streams, as it were, of entitlements is very complicated.³³

1.28 The Secretary denied that the department's proposal was based on 'a legacy Customs pay offer and a legacy immigration pay offer'; instead, the department was proposing 'one set of pay outcomes [for its] staff'.³⁴ Furthermore:

[employees] cannot be doing the same job prima facie, insofar as a former Customs officer—former—who brings a different set of skills to the job that is currently being done certainly should not be docked salary and go backwards; so they are going to retain that salary. For a former Immigration officer who is asked to come up to, say, the standard of being an investigator or to operate in the new arrangements that we have and who brings, potentially, a lower salary, in terms of local management, consideration will have to be given to additional training for that officer and to supporting them to operate at the level that is expected.³⁵

30 *Estimates Hansard*, 8 February 2016, p. 16.

31 *Estimates Hansard*, 8 February 2016, p. 47.

32 *Estimates Hansard*, 8 February 2016, p. 50.

33 *Estimates Hansard*, 8 February 2016, p. 51.

34 *Estimates Hansard*, 8 February 2016, p. 51.

35 *Estimates Hansard*, 8 February 2016, p. 52.

1.29 The current proposal, with a wage increase of two per cent, was being negotiated at the time of the hearing and the department informed the committee it meant a reduction of 680 employees. Further productivity savings would also be needed.³⁶

Riot on Christmas Island

1.30 Another matter raised with ABF was the issue of the riot that occurred at the Christmas Island detention centre on 9 November 2015. The Commissioner informed the committee that the investigation was being conducted by the Australian Federal Police (AFP) in relation to the conduct of any alleged criminal acts during the riot. An internal review, conducted by the service provider Serco, and the department's Integrity, Security and Assurance Division, had proposed recommendations in relation to intelligence, better governance arrangements and hardening of the facilities, and were in the process of being implemented by ABF.³⁷

1.31 The cost of repairs to the facility came to \$10 million, with \$3.4 million expended on rectification, and an estimated amount of \$7.6 million would go towards full recovery of the facility.³⁸ These improvements would include:

Installation of security gates over a range of roller doors; some more heavy-duty furniture and the attachment of the furniture; other shutters, particularly around medical facilities; security screening; fencing; an upgrade of the inner perimeter fence.³⁹

1.32 The committee was informed that the facility is now fully operational, however not all detainees have been, and potentially would not be, returned to the facility.⁴⁰ At the time of the riot, there were 'around 200 detainees'⁴¹ and approximately 180 of those people participated, 50 of which were New Zealand citizens.⁴² One detainee managed to escape⁴³ during the riot and the committee heard that Serco had conducted a review on the convergence of circumstances that led to the detainees escape.⁴⁴

Operation Sovereign Borders

1.33 Major General Bottrell of Operation Sovereign Borders (OSB) informed the committee in his opening statement that during the last two years of OSB operations, they had 'seen the successful return of 23 boats and more than 680 people to their

36 *Estimates Hansard*, 8 February 2016, p. 56.

37 *Estimates Hansard*, 8 February 2016, p. 59.

38 *Estimates Hansard*, 8 February 2016, p. 59.

39 *Estimates Hansard*, 8 February 2016, p. 59.

40 *Estimates Hansard*, 8 February 2016, p. 60.

41 *Estimates Hansard*, 8 February 2016, p. 60.

42 *Estimates Hansard*, 8 February 2016, p. 60.

43 The detainee was subsequently recaptured.

44 *Estimates Hansard*, 8 February 2016, p. 61.

country of departure'.⁴⁵ For more than 560 days, no boat has successfully entered into Australia's migration zone.⁴⁶

1.34 During the hearing it was discussed that since the October 2015 round of estimates hearings, there had been two turn-backs in November 2015, one of which came close to Christmas Island. There were 17 people on one boat, and three on the other. Both boats had departed from Indonesia.⁴⁷

1.35 Questions were asked in relation to UNHCR registered refugees residing in Indonesia. The Secretary advised the committee that:

[The department's] preference is to take such persons from the Middle East and other places. Now that we have defeated the boats, the next pull factor becomes getting to Indonesia because there is another way to, if you like, queue yourself into Australia so the policy position remains one of assisting Indonesia. We work with Indonesian authorities. We work with the [International Organisation on Migration] to make sure that people in Indonesia are as comfortable as circumstances can be and that they are given durable options to apply for settlement places in the appropriate manner. But our focus at the moment is really to focus on refugees from the Middle East and elsewhere but not those who have travelled to Indonesia for the conscious purpose of getting on a boat to come to Australia, which is a path that is now blocked.⁴⁸

1.36 When asked about how OSB communicates its policy position regarding Australia's border control operations to deter illegal maritime arrivals, Major General Bottrell said that OSB strategic communication is based on fact and focused on four key messages:

- highlighting the hazardous nature of the journey;
- the financial risk taken to engage with people smugglers;
- the deception and lies of people smugglers; and
- the consequences of illegal migration to Australia.⁴⁹

1.37 This communication strategy was delivered across 13 countries and in 18 different languages via television, radio, press, online and social media, billboards, transit advertising, roadshows, leaflets, stickers and community workshops.⁵⁰

45 *Estimates Hansard*, 8 February 2016, p. 77.

46 *Estimates Hansard*, 8 February 2016, p. 77.

47 *Estimates Hansard*, 8 February 2016, pp 77–78.

48 *Estimates Hansard*, 8 February 2016, pp 80–81.

49 *Estimates Hansard*, 8 February 2016, pp 81–82.

50 *Estimates Hansard*, 8 February 2016, p. 82.

Other matters of interest

1.38 A wide range of other matters were also canvassed. These included:

- the Doogan review relating to the dismissal of Save the Children staff;⁵¹
- the reduction of incidents of self-harm in onshore and offshore detention facilities;⁵²
- the status of the resettlement of 12 000 Syrian refugees;⁵³
- \$9.864 million spent on ABF rebadging;⁵⁴
- the cancellation of visas based on character assessments (section 501 of the *Migration Act 1958*);⁵⁵ and
- an update on the visa status of the 30 000 legacy caseload.⁵⁶

51 *Estimates Hansard*, 8 February 2016, pp 22–24.

52 *Estimates Hansard*, 8 February 2016, pp 25–27.

53 *Estimates Hansard*, 8 February 2016, pp 32–36.

54 *Estimates Hansard*, 8 February 2016, pp 56–57.

55 *Estimates Hansard*, 8 February 2016, pp 61–68.

56 *Estimates Hansard*, 8 February 2016, pp 83–86.

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.

Appendix 1

Departments and agencies for which the committee has oversight

Attorney-General's Portfolio

- Attorney General's Department;
- Administrative Appeals Tribunal;
- Australian Federal Police;
- Australian Financial Security Authority;
- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;
- Australian Human Rights Commission;
- Australian Institute of Criminology;
- Australian Law Reform Commission;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- CrimTrac;
- Family Court of Australia;
- Family Law Council;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- High Court of Australia;
- National Archives of Australia;
- Office of the Australian Information Commissioner;
- Office of the Director of Public Prosecutions; and
- Office of Parliamentary Counsel.

Immigration and Border Protection Portfolio

- Department of Immigration and Border Protection (inclusive of Australian Border Force and Operation Sovereign Borders Joint Agency Task Force).

Appendix 2

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Appendix 3

Tabled documents

Immigration and Border Protection portfolio, Monday, 8 February 2016

No.	Tabled by:	Topic
1	Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection	Opening statement
2	Mr Roman Quaedvlieg APM, Commissioner, Australian Border Force	Opening statement
3	Major General Andrew Bottrell CSC, Commander, Joint Agency Task Force	Opening statement

Attorney-General's portfolio, Tuesday, 9 February 2016

No.	Tabled by:	Topic
1	Mr Timothy Pilgrim, Acting Australian Information Commissioner, Office of the Australian Information Commissioner	Opening statement
2	Mr Duncan Lewis AO DSC CSC, Director-General, Australian Security Intelligence Organisation	Opening statement
3	Senator Jacinta Collins, Deputy Chair, Legal and Constitutional Affairs Legislation Committee	ABC News, Peter Slipper diary affair
4	Senator Jacinta Collins, Deputy Chair, Legal and Constitutional Affairs Legislation Committee	Letter from Senator the Hon Michaelia Cash to Senator Lambie
5	Ms Sue Innes-Brown, Chief Executive Officer, Royal Commission into Trade Union Governance and Corruption	Non-Publication Direction, The Hon John Dyson Heydon AC QC, Commissioner
6	Senator the Hon George Brandis, Attorney-General	Letter from Family Court of Australia to Ms Cathy McGowan AO, MP
7	Senator Jacqui Lambie	Letter from Chief of the Defence Force to Senator Jacqui Lambie
8	Senator Scott Ludlam	Senate Question on Notice No. 2626

