

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 2016–17 financial year on 28 February 2017.

2.2 A brief discussion of the portfolio's appearance at the spill-over hearing on 24 March 2017 is at the end of this chapter (paragraph 2.41).

2.3 At commencement of day's hearing, Senator the Hon George Brandis, Attorney-General, stated that he had received a letter signed by Senators Wong, Di Natale, Hinch and Xenophon seeking a response to recent media coverage of his involvement in the Bell Group of Companies matter. The Attorney-General indicated his willingness to address this matter at an appropriate time in the day's proceedings and the Chair recommended that it be covered during questioning of the Attorney-General's Department (AGD, the department).¹ The response given by the Attorney-General, as well as the questioning from senators which followed, is covered later in this chapter (paragraph 2.37).

Australian Human Rights Commission

2.4 At the request of the committee, commissioners of the Australian Human Rights Commission (AHRC) included the President, Professor Gillian Triggs; the Race Discrimination Commissioner, Dr Tim Soutphommasane; and the Disability Discrimination Commissioner, Mr Alistair McEwin. Officers from the AHRC were also in attendance.

2.5 The committee began with questions regarding the National Anti-Racism Strategy and the implementation of the 'Racism. It Stops With Me' community engagement program.² Dr Soutphommasane gave a summary of racism in Australia and the aims of the strategy, and explained how organisations and individuals could join the engagement program.³

2.6 The committee also discussed a number of topics related to the rights of people with disabilities, including:

- employment and the *Disability Discrimination Act 1992*, in follow-up to an answer to a question on notice from supplementary budget estimates 2016–17;⁴
- access to the disability support pension;⁵

1 Committee Hansard, 28 February 2017, p. 5.

2 Committee Hansard, 28 February 2017, pp. 6-7.

3 Committee Hansard, 28 February 2017, pp. 6-7.

4 Committee Hansard, 28 February 2017, p. 8.

5 Committee Hansard, 28 February 2017, pp. 8-9.

- representation of people with cognitive and intellectual impairment in the justice system and in advocacy groups;⁶
- complaints regarding the National Disability Insurance Scheme (NDIS);⁷ and
- the funding of, and access to, interpreters under the NDIS.⁸

2.7 The committee dedicated the remaining time with the AHRC to matters regarding the *Racial Discrimination Act 1975* (the RDA), with questions relating to the functions of sections 18C and 18D of the RDA, the handling of complaints made under these sections, and the inquiry by the Parliamentary Joint Committee on Human Rights into the issue.⁹

Commonwealth Director of Public Prosecutions

2.8 The committee called the Commonwealth Director of Public Prosecutions (CDPP) following the morning tea break, 1 hour 40 minutes behind schedule. The senators who had requested the attendance of the CDPP at the hearing chose to place their questions for the agency on notice in order to not further delay the hearing. No other senator attending had questions for the agency.¹⁰

2.9 Having established that two officers from the CDPP had flown from Sydney to attend the hearing, the committee apologised for the inconvenience and dismissed the agency.¹¹

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

2.10 The committee questioned the Federal Court about orders issued by the courts and applications alleging contempt for non-compliance. Mr Warwick Soden OAM, Chief Executive Officer (CEO) and Principal Registrar of the Federal Court, explained that:

It is an uncommon occurrence that there is an application for contempt. Often, between the parties, there might be the suggestion that a contempt proceeding might need to be initiated, which can produce the result that compliance with an order is achieved. The court makes orders. It does not ask for things to be done; it expects the orders to be complied with. If orders are not complied with, the parties can make application to the court seeking compliance.¹²

6 *Committee Hansard*, 28 February 2017, p. 9.

7 *Committee Hansard*, 28 February 2017, pp. 10-11.

8 *Committee Hansard*, 28 February 2017, pp. 10-11.

9 *Committee Hansard*, 28 February 2017, pp. 11-30.

10 *Committee Hansard*, 28 February 2017, p. 30.

11 *Committee Hansard*, 28 February 2017, p. 31.

12 *Committee Hansard*, 28 February 2017, p. 33.

2.11 The committee asked the Attorney-General and representatives of the three courts a number of questions on topics relating to family law, including:

- the cross-examination of victims by alleged perpetrators;¹³
- vacancies in the allocation of judges and the resulting effect on caseloads;¹⁴
- video recordings of interviews with family report writers being used in evidence¹⁵ and training for family report writers;¹⁶
- the impact of community legal aid on family law matters;¹⁷ and
- the role of the courts following the Royal Commission into Institutional Responses to Child Sexual Abuse.¹⁸

2.12 In response to one question on cuts to legal aid, the Attorney-General made a broader statement about Commonwealth funding to community legal centres.¹⁹ He outlined the Commonwealth's partnership with the states and territories from 1 July 2015, with a contribution of \$1.6 billion over the five years from that date to three categories of providers – legal aid commissions, community legal centres and Indigenous legal services. In his response, the Attorney-General stated:

In addition to that \$1.6 billion over five years, the Commonwealth provides \$45 million for frontline legal assistance services for victims of family violence. In addition, the government has committed \$34.7 million over five years for community legal services programs—that is additional money.²⁰

2.13 The Attorney-General also set out an anticipated \$19.3 million cut to community legal centres from 30 June 2017, related to a 2013-14 Mid-Year Economic and Fiscal Outlook (MYEFO) measure and the cessation of a four-year program 'designed to terminate' on that date.²¹

2.14 The committee also sought clarification on the purpose of \$22.5 million in additional funding for the courts in the Portfolio Additional Estimates Statement (PAES). Mr Soden explained that this funding was to implement the amalgamation of the corporate services of the three courts, in particular IT services, and for the 'digital

13 *Committee Hansard*, 28 February 2017, pp. 37, 38, 40.

14 *Committee Hansard*, 28 February 2017, p. 38.

15 *Committee Hansard*, 28 February 2017, pp. 41-2.

16 *Committee Hansard*, 28 February 2017, pp. 44-5.

17 *Committee Hansard*, 28 February 2017, pp. 42-4.

18 *Committee Hansard*, 28 February 2017, pp. 45-6.

19 *Committee Hansard*, 28 February 2017, p. 43.

20 *Committee Hansard*, 28 February 2017, p. 43.

21 *Committee Hansard*, 28 February 2017, p. 43.

court program', for the digitisation of paper files from the Federal Circuit Court and Family Court.²²

Office of the Australian Information Commissioner

2.15 The committee questioned the Office of the Australian Information Commissioner (OAIC, the office) on changes to its staffing following the planned abolition, and subsequent reinstatement, of the office. Mr Timothy Pilgrim PSM, Australian Information Commissioner, explained that while the current level was approximately 69.48 full time equivalent staff, the OAIC aimed to reach a total of 75.²³

2.16 Following a question regarding the apparent vacancies in the roles of Freedom of Information Commissioner and Australian Privacy Commissioner, Mr Pilgrim sought to clarify his role within the OAIC:

... I was appointed as the Australian Information Commissioner, and I was concurrently appointed as the Australian Privacy Commissioner. The Freedom of Information Commissioner position is vacant. However, I would hasten to add that, as the Australian Information Commissioner, I hold and can exercise all the functions under the Freedom of Information Act, and I do so.

...the Freedom of Information Act vests the powers and functions under the *Freedom of Information Act* in the Information Commissioner. The Freedom of Information Commissioner picks them up through the *Australian Information Commissioner Act*.²⁴

2.17 The Attorney-General provided further explanation of the efficiencies in this arrangement:

I think there has been something of an effusion of legislation in this area. The appointment of Mr Pilgrim jointly as the Australian Information Commissioner and the Australian Privacy Commissioner and his designation to act as the Freedom of Information Commissioner means that what had previously been three statutory [offices] are in fact discharged by one person, and the efficiencies that have resulted from that have not been at any noticeable cost to the operation of the information availability mechanisms of the government.²⁵

2.18 The committee asked a number of questions about recent media reports regarding the disclosure of personal information of Centrelink clients by the government. Mr Pilgrim stated that while the OAIC were 'making general inquiries ... [he] would stress that this is not a formal investigation at this point in time',²⁶ and that

22 Committee Hansard, 28 February 2017, p. 46-7.

23 Committee Hansard, 28 February 2017, p. 48.

24 Committee Hansard, 28 February 2017, p. 9.

25 Committee Hansard, 28 February 2017, p. 49.

26 Committee Hansard, 28 February 2017, p. 50.

these inquiries were a result of information he saw in the media. He outlined some of the process that had occurred so far,²⁷ but was unable to confirm whether there would be a formal inquiry.²⁸

Administrative Appeals Tribunal

2.19 The committee asked questions of the Administrative Appeals Tribunal (AAT) on a number of topics, including:

- the appointment and reappointment of members, with 127 members' terms expiring on 31 December 2017;²⁹
- funding for the Immigration Assessment Authority within the AAT;³⁰
- clearance rates of cases through the Migration and Refugee Division;³¹
- further integration of divisions in the AAT and related harmonisation of processes through legislation;³² and
- applications related to disability support pensions and Centrelink matters.³³

Australian Transaction Reports and Analysis Centre

2.20 The committee questioned the Australian Transaction Reports and Analysis Centre (AUSTRAC) about a \$1 million reduction in expenses for employee benefits over the forward estimates. Mr Mazzitelli, Chief Financial Officer, explained this reduction as being related to the efficiency dividend,³⁴ and the winding-down of a budget measure related to targeting welfare fraud.³⁵

2.21 AUSTRAC was unable to confirm whether there was any additional funding for the agency in the PAES for 2016-17, either specifically or aggregated in departmental funding. Mr Mazzitelli agreed to respond to the committee's question on notice.³⁶

Australian Criminal Intelligence Commission and Australian Institute of Criminology

2.22 The committee asked questions about the use of encrypted communications in criminal activities. Ms Nicole Rose PSM, Acting CEO of the Australian Criminal

27 *Committee Hansard*, 28 February 2017, pp. 50-3.

28 *Committee Hansard*, 28 February 2017, pp. 53-4.

29 *Committee Hansard*, 28 February 2017, pp. 54-5.

30 *Committee Hansard*, 28 February 2017, pp. 55-6.

31 *Committee Hansard*, 28 February 2017, pp. 56-8.

32 *Committee Hansard*, 28 February 2017, p. 57.

33 *Committee Hansard*, 28 February 2017, pp 58-60.

34 *Committee Hansard*, 28 February 2017, p. 61-2.

35 *Committee Hansard*, 28 February 2017, p. 62.

36 *Committee Hansard*, 28 February 2017, p. 63.

Intelligence Commission and Australian Institute of Criminology, confirmed that use of encrypted communications for this purpose is increasing.³⁷

2.23 The committee also sought information on the status of the new Australian Firearms Information Network.³⁸ Ms Rose confirmed that the network is 'ready to be used by all jurisdictions' but that '[not] all jurisdictions are using it'. She noted that there were issues around current data quality and that the 'system is able to be used, it is just a matter of getting states and territories to put that data into the system',³⁹ which will improve the usability of the database.⁴⁰

Australian Law Reform Commission

2.24 The committee asked the Australian Law Reform Commission (ALRC) to give an overview of its inquiry into elder abuse. The President, Emeritus Professor Rosalind Croucher AM, outlined the key themes of dignity and autonomy, and of protecting and safeguarding older people. She indicated that the ALRC was 'exploring across [a] range of Commonwealth laws, particularly superannuation, aged care, banking and certain health areas, including the National Disability Insurance Scheme'.⁴¹

2.25 Professor Croucher and the Attorney-General also answered questions relating to a new inquiry into Indigenous incarceration rates, discussing the appointment of Judge Matthew Myers AM to lead the inquiry, and other government work in that subject area.⁴²

2.26 Finally, the committee raised a number of questions relating to the 2015 ALRC report into the *Native Title Act 1993* in light of the recent introduction of the Native Title Amendment (Indigenous Land Use Agreements) Bill 2017.⁴³ The committee noted that the bill was at the time referred to the Legal and Constitutional Affairs Legislation Committee for report by 17 March 2017.⁴⁴

Australian Security Intelligence Organisation

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

- changes in the field of counterespionage and cyber threats;

37 *Committee Hansard*, 28 February 2017, p. 63-4.

38 *Committee Hansard*, 28 February 2017, p. 64.

39 *Committee Hansard*, 28 February 2017, p. 64.

40 *Committee Hansard*, 28 February 2017, pp. 64-6.

41 *Committee Hansard*, 28 February 2017, p. 66.

42 *Committee Hansard*, 28 February 2017, pp. 67-8.

43 *Committee Hansard*, 28 February 2017, p. 68-73.

44 *Committee Hansard*, 28 February 2017, p. 69.

- increased work in counterterrorism, with four attacks that have occurred in Australia since September 2014, and a further 12 major counterterrorism disruption operations;
- the number of Australians that were fighting or engaged with terrorist groups in Syria or Iraq, which has been revised from 110 at the last estimates hearing down to 100, due largely to the probable deaths of the Australians involved;
- the increasingly young age of people who are being investigated by ASIO for extremism, with most common age demographic dropping from 25–34 years in 2013 to 15–24 years in 2017;
- individuals under ASIO investigation regarding terrorism, noting that many, but not all, are motivated by a 'violent, extremist interpretation of Sunni Islamic ideology' and that they represent less than 0.1 of one per cent of the approximately 0.5 million Australian Muslims;
- the growing concern about individuals 'who combine extreme right-wing anti-Islam ideology with a willingness to use violence'; and
- the work of ASIO with its national security and law enforcement partners to identify and counter possible threats.⁴⁵

2.28 The committee asked questions about the number of journalist information warrants requested by ASIO.⁴⁶ Mr Lewis referred to a previous answer to a question on notice on the matter, and suggested that the detail to the answer the committee sought was covered in part in a classified report tabled by ASIO. It was noted however that not all members of the committee have access to that classified report.⁴⁷ In his response to the questions, Mr Lewis reiterated:

Because the numbers are so small, were I to give you a number, it would be very easy for some deductive work to be done on who was and who was not under investigation. The people under investigation are not necessarily ignorant of the fact that they are being investigated. It is in our classified report. I cannot and I will not give it to you in an open forum.⁴⁸

2.29 Mr Lewis also reminded the committee that ASIO is exempt from freedom of information requests due to the nature of its work, and that the Inspector-General of Intelligence and Security provides an avenue for investigations of this nature.⁴⁹

Australian Federal Police

2.30 To assist the committee in their questioning, the Commissioner of the Australian Federal Police (AFP), Mr Andrew Colvin APM OAM, gave an opening statement covering a number of topics, including: operational successes in

45 *Committee Hansard*, 28 February 2017, pp. 73-5.

46 *Committee Hansard*, 28 February 2017, pp. 75-8.

47 *Committee Hansard*, 28 February 2017, p. 76.

48 *Committee Hansard*, 28 February 2017, p. 77.

49 *Committee Hansard*, 28 February 2017, pp. 77-8.

counterterrorism and seizure of illicit drugs; work within the AFP following the public release of an independent review of organisational culture led by Ms Elizabeth Broderick AO, former Sex Discrimination Commissioner; and approaches to mental health in the AFP and an audit of this issue initiated by the Australian National Audit Office.⁵⁰

2.31 The commissioner also provided some detail about a counterterrorism operation conducted in Young, NSW earlier on the day of the hearing. He stated that a 42 year old man had been arrested, and would be charged with a number of offences, including two serious foreign incursion offences under the Commonwealth Criminal Code, which carry a maximum penalty of life imprisonment. It was alleged that the man used the internet to perform services for ISIL activities in Syria and Iraq.⁵¹

2.32 The committee discussed with the AFP the relationship between the AFP's national operations (Outcome 1) and ACT Policing (Outcome 2). The commissioner clarified that:

It is called ACT Policing, but it is the Australian Federal Police. We conduct community policing operations here within the ACT jurisdiction on a purchase agreement between the ACT government and the Australian Federal Police. That is an agreement that is routinely reviewed every 12 months, on a longer five-year basis—the contract.

...

But of course we are all one organisation, so I do maintain broad oversight of what is going on here in the ACT. I see my role as bifurcated in some ways—outcome 1 and outcome 2. Outcome 1 is the national operations that this committee generally takes an interest in. Outcome 2 is operations within the ACT for which we are usually answerable to the ACT government estimates process.⁵²

2.33 Related to this, the committee had questions regarding the ACT Policing and AFP investigation of a car explosion on 21 December 2016 outside Eternity House in Deakin, ACT, which houses the Australian Christian Lobby. As the investigation is ongoing, the AFP were unable to provide a level of specificity in their answers,⁵³ but did clarify a number of issues for the committee, including: the driver's mental and physical health following the explosion;⁵⁴ the driver's motivation for the explosion, which was believed to be suicide;⁵⁵ and the AFP's view that there was no ongoing threat to the Australian Christian Lobby.⁵⁶

50 *Committee Hansard*, 28 February 2017, pp. 80-1.

51 *Committee Hansard*, 28 February 2017, p. 80.

52 *Committee Hansard*, 28 February 2017, p. 82.

53 *Committee Hansard*, 28 February 2017, p. 83.

54 *Committee Hansard*, 28 February 2017, pp. 83-5.

55 *Committee Hansard*, 28 February 2017, pp. 84-5.

56 *Committee Hansard*, 28 February 2017, pp. 83-5.

2.34 Following questions about funding, the AFP explained that around \$20 million of its \$33 million deficit for 2015–16 was related to additional spending in operational matters, such as the investigation into the shooting-down of flight MH17. The commissioner reminded the committee that the operational work of the AFP is 'not completely predictable'.⁵⁷

2.35 The committee also asked questions about the international travel of convicted sex offenders;⁵⁸ the costs of protective services provided by AFP officers for the residences of the Prime Minister and Governor-General;⁵⁹ cultural change in the AFP;⁶⁰ and support for mental illness and post-traumatic stress disorder within the AFP.⁶¹

Attorney-General's Department

2.36 The committee called Groups 1, 2 and 3 of the department to attend the estimates hearing, however due to the late start for the department and additional time spent questioning the cross-portfolio/corporate/general session and Group 1, the committee excused Groups 2 and 3 at 10.10 pm, following the evening tea break.

The Attorney-General's involvement in the Bell Group of Companies matter

2.37 Following the earlier direction of the Chair to contain the questions related to the Bell Group to the AGD session of the hearing, the Attorney-General made his statement in response to the letter signed by Senators Wong, Di Natale, Hinch and Xenophon seeking a response to media coverage about his role in the litigation between the Western Australian government and certain creditors of the Bell Group of Companies.⁶²

2.38 The Attorney-General rejected the suggestion that a statement made by the Attorney-General of Western Australia on Friday, 24 February 2017 contradicted his own statements about his involvement in the matter,⁶³ and the committee sought further explanation of what constituted 'personal involvement' by the Attorney-General, and of the timeline of the issue.⁶⁴

2.39 The committee also asked questions of the department regarding their involvement in the matter, and regarding a public interest immunity claim, made in

57 *Committee Hansard*, 28 February 2017, p. 86.

58 *Committee Hansard*, 28 February 2017, pp. 85-6.

59 *Committee Hansard*, 28 February 2017, pp. 89-91.

60 *Committee Hansard*, 28 February 2017, p. 91.

61 *Committee Hansard*, 28 February 2017, pp. 91-6.

62 *Committee Hansard*, 28 February 2017, p. 105.

63 *Committee Hansard*, 28 February 2017, p. 105.

64 *Committee Hansard*, 28 February 2017, pp. 109-30.

the course of the Legal and Constitutional Affairs References Committee's inquiry into the matter.⁶⁵

Other matters covered

2.40 The committee also asked questions of AGD relating to:

- the recent opening of a joint cyber security centre in Brisbane, and the anticipated opening of further centres in Melbourne, Sydney and Perth;⁶⁶
- proposed amendments to the *Family Law Act 1975* dealing with family violence, the National Plan to Reduce Violence against Women, and the National Domestic Violence Order Scheme;⁶⁷
- the proposed marriage equality plebiscite;⁶⁸ and
- the Senate order on former ministers and lobbying meetings, following advice from the (at the time Acting) Clerk of the Senate, Mr Richard Pye, to Senator Lee Rhiannon on that issue.⁶⁹

Spill-over hearing

2.41 The committee held a spill-over hearing on the afternoon of 24 March 2017. The Attorney-General's portfolio appeared between 1:20 pm and 3:45 pm, with the committee recalling both the AHRC and AGD.

Australian Human Rights Commission

2.42 On 2 March 2017, the committee received correspondence from Professor Gillian Triggs, President, AHRC, relating to reports in the *Australian* on that date. These reports alleged that Professor Triggs had misled the Senate during the estimates hearing on 28 February 2017 when discussing a complaint made against cartoonist the late Mr Bill Leak. In her correspondence, Professor Triggs set out the evidence she had provided to parliament in Senate Estimates hearings and in hearings of the Parliamentary Joint Committee on Human Rights; included a chronology of the complaint against Mr Leak; and provided an itemised series of correspondence between the commission and the legal representatives of Mr Leak and the *Australian*.⁷⁰

2.43 At the spill-over hearing, the committee sought clarification from Professor Triggs regarding her evidence on 28 February 2017 and her letter of 2 March 2017. Much of the questioning related to the AHRC's approach to the complaint against Mr Leak, in particular following advice from the legal representatives around the

65 *Committee Hansard*, 28 February 2017, pp. 96-101.

66 *Committee Hansard*, 28 February 2017, pp. 101-2.

67 *Committee Hansard*, 28 February 2017, pp. 107-8.

68 *Committee Hansard*, 28 February 2017, pp. 122-3.

69 *Committee Hansard*, 28 February 2017, pp. 129-34.

70 Professor Gillian Triggs, President, Australian Human Rights Commission, correspondence received 2 March 2017.

intention of their clients to make a particular argument should a public hearing have occurred. Professor Triggs provided a comprehensive explanation of the AHRC's approach to the complaint within the confines of its statute.⁷¹

2.44 The committee then asked about the culture of the AHRC in responding to complaints and the legal framework of the commission. Professor Triggs explained that the culture of the commission 'is to bring the parties to the table to discuss the complaint' and reach a conciliation.⁷²

2.45 The committee then asked questions relating to the Human Rights Legislation Amendment Bill 2017, which was referred to the Legal and Constitutional Affairs Legislation Committee the previous day, 23 March 2017, and was due to report the next week, on 28 March 2017. As the Attorney-General had not been in attendance in the public hearing for the inquiry on the morning on 24 March 2017, the committee sought his views on the consultation process for the bill, including his discussions with AHRC.⁷³ Both Professor Triggs and the Attorney-General confirmed that discussions relating to the bill were still ongoing, and that amendments to the bill were anticipated.⁷⁴

Attorney-General's Department

2.46 The committee continued its questioning in relation to the Human Rights Legislation Amendment Bill 2017 and the Attorney-General's consultation with AHRC until the Attorney-General was relieved by Senator the Hon Michaelia Cash.⁷⁵

2.47 The committee then covered a number of topics which were not reached or covered in sufficient detail at the initial hearing on 28 February 2017, including:

- the possibility of a 'postal plebiscite' on the topic of marriage equality;⁷⁶
- financial implications of various Act amendments and their implementation on legal aid services;⁷⁷
- funding for legal aid services;⁷⁸
- the National Disaster Relief and Recovery Arrangements;⁷⁹ and
- the National Firearms Agreement.⁸⁰

71 *Committee Hansard*, 24 March 2017, p. 8.

72 *Committee Hansard*, 24 March 2017, p. 8.

73 *Committee Hansard*, 24 March 2017, pp. 9-17.

74 *Committee Hansard*, 24 March 2017, pp. 12-13.

75 *Committee Hansard*, 24 March 2017, pp. 18-20.

76 *Committee Hansard*, 24 March 2017, pp. 20-2, 24.

77 *Committee Hansard*, 24 March 2017, p. 22.

78 *Committee Hansard*, 24 March 2017, pp. 24-5.

79 *Committee Hansard*, 24 March 2017, pp. 25-7.

80 *Committee Hansard*, 24 March 2017, p. 27.

Questions on Notice

2.48 A total of 148 questions were taken on notice by the portfolio across the February and March hearings. A full index is available at the committee's website.

2.49 At the date of reporting, the committee had received no responses.

Senator the Hon Ian Macdonald
Chair