

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Additional estimates 2016–17

May 2017

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# Membership of the Committee

## 45th Parliament

### Members

Senator the Hon Ian Macdonald (LNP, QLD) (Chair until 27.03.2017 and from 30.03.2017)  
Senator Louise Pratt (ALP, WA) (Deputy Chair)  
Senator David Fawcett (LP, SA) (Chair from 28.03.2017 until 30.03.2017)  
Senator Nick McKim (AG, TAS)  
Senator John Williams (NATS, NSW) (until 27.03.2017)  
Senator Murray Watt (ALP, QLD)  
Senator Jane Hume (LP, VIC) (from 27.03.2017)

### Substitute member

Senator John Williams (NATS, NSW) to replace Senator Macdonald (from 27.03.2017 to 29.03.2017)

### Senators in attendance

Senator the Hon Ian Macdonald (Chair)	Senator Derryn Hinch
Senator Louise Pratt (Deputy Chair)	Senator Alex Gallacher
Senator David Fawcett	Senator Skye Kakoschke-Moore
Senator Nick McKim	Senator David Leyonhjelm
Senator Murray Watt	Senator Sue Lines
Senator John Williams	Senator Claire Moore
Senator the Hon Michaelia Cash	Senator Lee Rhiannon
Senator the Hon George Brandis QC	Senator Janet Rice
Senator the Hon Nigel Scullion	Senator Malcolm Roberts
Senator the Hon Kim Carr	Senator Rachel Siewert
Senator Richard Di Natale	Senator the Hon Penny Wong
Senator Patrick Dodson	Senator Nick Xenophon
Senator Jonathon Duniam	

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## ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
AFP	Australian Federal Police
AGD	Attorney-General's Department
AHRC	Australian Human Rights Commission
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
ASIO	Australian Security Intelligence Organisation
CDPP	Commonwealth Director of Public Prosecutions
DIBP	Department of Immigration and Border Protection
FOI	Freedom of Information
JATF	Joint Agency Taskforce
NDIS	National Disability Insurance Scheme
OSB	Operation Sovereign Borders
OAIC	Office of the Australian Information Commissioner
PAES	Portfolio Additional Estimates Statements
RDA	<i>Racial Discrimination Act 1975</i>



# Preface

On 9 February 2017, the Senate referred to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for examination the estimates of proposed additional expenditure for the financial year 2016–17.

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 (PAES) for 2016–17 were tabled on 9 February 2017.<sup>1</sup>

## 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 2017 [Appropriation Bill (No. 3) 2016–2017];
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2017 [Appropriation Bill (No. 4) 2016–2017]; and
- Final Budget Outcome 2015–16.<sup>2</sup>

The committee was required to report on its consideration of the additional estimates on or before 22 March 2017, however the tabling date was extended to 4 May 2017.

The committee notes the following significant changes and measures in the Portfolio Additional Estimates Statements 2016–17 for the Attorney-General's portfolio:

- the establishment and commencement of the Royal Commission into the Protection and Detention of Children in the Northern Territory; and
- the passing of the *Australian Crime Commission Amendment (National Policing Information) Act 2016* by parliament, resulting in the merger of the Australian Crime Commission and CrimTrac to create the Australian Criminal Intelligence Commission, which formally commenced operations on 1 July 2016.<sup>3</sup>

## Estimates hearings

The committee initially met in public session on 27 and 28 February 2017. 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 Human Rights Commission;

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1 *Journals of the Senate*, No. 26, 9 February 2017, p. 889.

2 *Journals of the Senate*, No. 26, 9 February 2017, pp. 888-9.

3 *Portfolio Additional Estimates Statements 2016–17, Attorney-General's Portfolio*, p. 3.

- Commonwealth Director of Public Prosecutions;
- Federal Court of Australia;
- Family Court of Australia;
- Federal Circuit Court of Australia;
- Office of the Australian Information Commissioner;
- Administrative Appeals Tribunal;
- Australian Transaction Reports and Analysis Centre;
- Australian Criminal Intelligence Commission;
- Australian Institute of Criminology;
- Australian Law Reform Commission;
- Australian Security Intelligence Organisation; and
- Australian Federal Police.

Following the February hearings, the committee received correspondence from three committee members requiring a spill-over hearing pursuant to an Order of Continuing Effect of the Senate of 25 June 2014.

This additional hearing was held on the afternoon of 24 March 2017 and heard further evidence from the following agency and departments:

- Australian Human Rights Commission;
- Attorney-General's Department; and
- Department of Immigration and Border Protection.

Copies of the *Hansard* transcripts are available from the committee's webpage at: [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon).

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

## **Ministers**

On 27 February and 24 March 2017, the committee heard evidence from Senator the Hon Michaelia Cash, representing the Minister for Immigration and Border Protection.

On 28 February and 24 March 2017, the committee heard evidence from Senator the Hon George Brandis, Attorney-General. The Attorney-General was also assisted by Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, on 28 February and by Senator Cash on 24 March.

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

## **Questions on notice**

The committee resolved that the due date for submitting responses to questions on notice from the additional estimates hearings in February would be 28 April 2017 and from the spill-over hearing in March would be 12 May 2017.

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 notes that 60 answers to questions taken on notice by the Attorney-General's portfolio during additional estimates 2015–16 (February 2016) remain outstanding.

### **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 2016–17 financial year on 27 February 2017.

1.2 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 1.38).

### Opening statement

1.3 The Secretary of the Department of Immigration and Border Protection (DIBP, the department) and the Commissioner of the Australian Border Force (ABF) tabled a written joint opening statement, which they each spoke to at length.<sup>1</sup> A summary of the opening statement is provided below.

1.4 The Secretary, Mr Michael Pezzullo, covered a number of issues concerning the department, particularly in relation to the department's staffing, performance and productivity. He reported that DIBP's funding for the 2016–17 financial year had decreased by \$130 million from previous-year levels and that a further \$400 million in reductions was programmed across forward estimates.<sup>2</sup>

1.5 Since 2013–14, the number of staff employed by DIBP had reduced by more than 300. In an update on the enterprise bargaining process for the department, the Secretary explained that following a third rejection of a proposed enterprise agreement, the Fair Work Commission would now determine employee conditions through arbitration. The workplace determination proposed by the department would require further staff reductions of approximately 656 full-time equivalent positions to meet costs, while the proposed workplace determination from the principal union, the Community and Public Sector Union, would require reductions of more than 1,900 full-time equivalent positions.<sup>3</sup>

1.6 In 2015–16, DIBP processed more than 40 million international air and sea travellers, 35 million air cargo consignments and 3 million sea cargo consignments, and granted almost 8 million temporary visas. The Secretary reported an 11 per cent increase in passenger numbers, 15 per cent increase in visa applications and 14 per cent increase in inbound goods over three years, with forecast increases of 20 per cent, 18 per cent and 26 per cent respectively by 2019–20.

1.7 The Secretary welcomed the new commander of the joint agency taskforce Operation Sovereign Borders (OSB), Air Vice-Marshal Stephen Osborne CSC, and noted the significant role of the taskforce, with more than 900 days having passed since a successful arrival of a people-smuggling vessel in Australia. He also

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1 *Committee Hansard*, 27 February 2017, pp. 3-4.

2 *Committee Hansard*, 27 February 2017, p. 3.

3 *Committee Hansard*, 27 February 2017, p. 3.

welcomed the United States government's commitment to the arrangement regarding the resettlement of refugees from Papua New Guinea and Nauru.<sup>4</sup>

1.8 The Commissioner, Mr Roman Quaedvlieg APM, summarised challenges since the creation of the ABF, including a diversification of criminal activities at the border. He reported that through six major operations with national and international partners, ABF had seized more than 2.3 tonnes of cocaine and more than 350 kilograms of methamphetamine with a combined street value of more than \$900 million.<sup>5</sup>

1.9 The Commissioner provided updates on the work of ABF within the department, including:

- Taskforce Cadena, which targets systemic visa exploitation, detailing 13 operations resulting in 156 unlawful noncitizens being detained and the execution of 36 warrants;<sup>6</sup>
- cooperation with partner agencies in targeting outlaw motorcycle gangs, with six motorcycle gang members having had their visas cancelled as of 6 February 2017, and an additional 130 motorcycle gang members, associates or those involved in organised crime cases having had their visas cancelled or refused as of 31 December 2016;<sup>7</sup>
- the work of the Tobacco Strike team, reporting seizures of 40 tonnes of smuggled tobacco and 95 million smuggled cigarettes since its establishment in October 2015;<sup>8</sup>
- detection and examination of asbestos-contaminated goods, with 6,617 shipments targeted in the 19 months to January 2017, resulting in a total 446 examinations and 22 detections;<sup>9</sup> and
- an overall increase in trade and traveller volumes, with a forecasted growth of 25 per cent in the coming years.<sup>10</sup>

1.10 The committee proceeded to question the department on topics related to cross-portfolio, corporate and general matters related to the Immigration and Border Protection portfolio, and on Outcomes 1 and 2 of the department. Key topics raised during the hearings are provided in more detail below.

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4 *Committee Hansard*, 27 February 2017, p. 4.

5 *Committee Hansard*, 27 February 2017, p. 4.

6 *Committee Hansard*, 27 February 2017, p. 4.

7 *Committee Hansard*, 27 February 2017, p. 4.

8 *Committee Hansard*, 27 February 2017, p. 4.

9 *Committee Hansard*, 27 February 2017, p. 5.

10 *Committee Hansard*, 27 February 2017, p. 5.

1.11 Following a private meeting of the committee during the afternoon tea break, officers from Outcome 3 were excused from the hearing due to questions in cross-portfolio, corporate and general matters running overtime.

## **Departmental administration and other corporate matters**

1.12 The committee made a number of inquiries about administration and corporate matters throughout the hearing, in particular on issues relating to departmental properties, facilities and office locations; freedom of information practices; and enterprise bargaining.

### ***Properties, office locations and other departmental facilities***

1.13 The committee asked questions regarding the new headquarters for DIBP in response to the tabled opening statement, which quoted a total budget for the project of \$255.3 million.<sup>11</sup> The department clarified that the project would see the consolidation of a number of sites in Canberra into two: one in Belconnen, accommodating around 4,000 staff, and an operational headquarters based near the Canberra airport, with around 2,000 staff.<sup>12</sup> The proposed changes would result in a reduction in accommodation footprint of around 13,000 square metres and reduce the department's properties from 12 to five.<sup>13</sup>

1.14 The matter of management of conflict of interest was raised in relation to leases for new departmental properties<sup>14</sup> and a de-identified copy of the headquarters project Deed of Confidentiality Register was tabled to assist the committee with their questions.<sup>15</sup> The department undertook to check on notice the completeness of the table.<sup>16</sup>

1.15 The committee also asked about the department's involvement in the construction of an immigration transit facility in Papua New Guinea (PNG). The department confirmed that it was assisting with the facility in Port Moresby, but was unable to confirm whether the PNG government's intended purpose for the facility is to accommodate people who are subject to unsuccessful refugee determinations and refuse voluntary deportation.<sup>17</sup>

### ***Freedom of information***

1.16 The committee inquired about the freedom of information (FOI) processes of the department, which reported 14,714 FOI requests in 2013–14, 21,400 requests in 2014–15, 23,800 requests in 2015–16, and 12,600 in the first half of 2016–17 (1 July

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11 *Committee Hansard*, 27 February 2017, p. 39; Department of Immigration and Border Protection, *Opening Statement*, p. 2 (tabled 27 February 2017).

12 *Committee Hansard*, 27 February 2017, pp. 39, 41.

13 *Committee Hansard*, 27 February 2017, p. 40.

14 *Committee Hansard*, 27 February 2017, p. 49.

15 *Committee Hansard*, 27 February 2017, p. 68.

16 *Committee Hansard*, 27 February 2017, p. 71.

17 *Committee Hansard*, 27 February 2017, p. 24.

to 31 December 2016).<sup>18</sup> The department estimated that it was responsible for around 60 per cent of Commonwealth FOI.<sup>19</sup>

1.17 The department provided information about an email, inadvertently sent to *The Guardian* instead of to a staff member, regarding the caseload of FOI requests in the department during 2016:

Senator KIM CARR: It has been put in an article in the *Guardian* that he made a mistake in sending an email to the *Guardian*, in which he alleged that there was a 'freeze' on release of documents for asylum seekers in offshore detention centres and so on and so forth. Is that correct?

Mr Wright: It was an incorrect use of terminology.

Senator KIM CARR: By who?

Mr Wright: By the FOI officer.

...

[Mr Wright:] ... at the time, his supervisor was named Paul Farrell, the same as the *Guardian* reporter Paul Farrell. The use of the terminology 'freeze' was not correctly done. There was no freeze on FOI requests and the officer was doing internal consultation with the area that the FOI related to. And I would say it was a poor use of terminology by the officer involved.

Senator KIM CARR: That would be illegal, wouldn't it—to freeze an FOI request?

Mr Wright: Correct. We process all our FOI requests as per the FOI legislation and definitely there is no freeze on FOI requests.

### ***Enterprise bargaining***

1.18 Seeking further information following the secretary's opening statement, the committee asked about salary increases in the proposed enterprise agreement for the department. Mr Pezzullo explained that the range of 6.4 to 10.7 per cent for salary increases over three years was related to the amalgamation of the Australian Customs and Border Protection Service (ACBPS) into DIBP, and therefore two 'legacy workforces' which did not have aligned agreements. The proposed agreements would align salary scales across the department and accommodate a two per cent per annum pay increase in line with the Government's bargaining framework.<sup>20</sup>

### **Australian National Audit Office reports**

1.19 The committee spent a significant amount of time across the day's hearing asking questions relating to three Australian National Audit Office (ANAO) reports about the operations of the department:

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18 Committee Hansard, 27 February 2017, p. 62.

19 Committee Hansard, 27 February 2017, p. 62.

20 Committee Hansard, 27 February 2017, pp.18-19.

- Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services (ANAO Report No. 16 of 2016–17, published 13 September 2016);
- Offshore Processing Centres in Nauru and Papua New Guinea: Contract Management of Garrison Support and Welfare Services (ANAO Report No. 32 of 2016–17, published 17 January 2017); and
- The Australian Border Force’s Use of Statutory Powers (ANAO Report No. 39 of 2016–17, published 27 February 2017).

### ***Reports on garrison support and welfare services***

1.20 A series of questions were asked relating to the feedback and commentary process undertaken by ANAO and the department in relation to the report published 17 January 2017.<sup>21</sup> Officers confirmed that they had received a draft of the report on 15 November 2016 for commentary, and an embargoed copy of the final report on 13 January 2017.<sup>22</sup> On notice, the department also undertook to provide details of the officers involved in the review process.<sup>23</sup>

1.21 In responses throughout the day's hearing, the Secretary made clear to the committee that while he agreed with a number of the recommendations made in the ANAO reports on garrison support and welfare services,<sup>24</sup> he disagreed 'with some of the analysis',<sup>25</sup> particularly in relation to representations of the departmental processes for appropriation and expenditure of money, and record-keeping.<sup>26</sup>

1.22 These comments notwithstanding, the Secretary assured the committee that the department had 'engaged in a process over the last couple of years of significant remediation' in order to improve record-keeping practices.<sup>27</sup> The Chief Operating Officer and Deputy Secretary, Corporate, Ms Jenet Connell, explained:

... There was a range of activities that were underway before the audit. There are activities that were underway while the fieldwork was in place, and there may be a number of items that were a direct result of insights from the ANAO, in terms of our contract management and our record keeping staff and our staff training. You mentioned before the garrison support and welfare contract. There was a complete health check, and we use our internal auditors to provide additional assurance. We conducted a complete health check of our current and planned procurement for garrison and welfare health and settlement services undertaken. And, indeed, we put in a garrison and welfare contract management plan, which is endorsed and

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21 *Committee Hansard*, 27 February 2017, pp. 5-9, 14, 15, 24-9.

22 *Committee Hansard*, 27 February 2017, p. 14.

23 *Committee Hansard*, 27 February 2017, p. 15.

24 *Committee Hansard*, 27 February 2017, pp. 10, 12, 17.

25 *Committee Hansard*, 27 February 2017, pp. 15-16.

26 *Committee Hansard*, 27 February 2017, pp. 12-14.

27 *Committee Hansard*, 27 February 2017, pp. 36-7.

is now in effect. There is a range of activities that go to our systems. The upgrading of our records management systems has been completed, hand in hand with ensuring that our staff are very well equipped. We are conducting mandatory training so that everyone understands the nature of record keeping. Those improvements have been underway over the last few years, and our internal audit was used as a check to see how those improvements are going and whether they are delivering the control mechanisms we have identified.<sup>28</sup>

1.23 One matter raised by the ANAO reports was the insurance of buildings in offshore detention centres, following the destruction of a facility in Nauru, valued at \$75 million, by fire during a riot. As the facility was under construction at the time, it was not on the department's asset register and was therefore not covered by the department's insurance (Comcover), but rather by the builder's insurance, which did not cover riot risk.<sup>29</sup> There was some confusion among officers during the hearing as to whether or not the builder was out-of-pocket for the costs related to the destruction of the facility,<sup>30</sup> however the department clarified in a letter to the committee dated 8 March 2017 that:

The contracted builder was not out of pocket. There was no contractual dispute with the builder. The costs of the destroyed facility were funded by a Commonwealth budget allocation.<sup>31</sup>

1.24 The department explained that it is required to update its Comcover asset register on an annual basis and took on notice to confirm that all Australian government assets on Manus Island and Nauru are currently listed and insured.<sup>32</sup>

#### ***Report on use of statutory powers in ABF***

1.25 In relation to the report on the use of statutory powers in ABF, published on 27 February 2017, the Secretary once again stated his disagreement with the analysis by the ANAO:

Senator PRATT: So you dispute the practices of the ANAO?

Mr Pezzullo: I certainly dispute the analysis. We have factually laid out three times now—and we are on the third of these—where we have disagreed with the diagnosis or the analysis. We have stated that civilly, professionally and without rancour. When there is a conclusion that the Audit Office has reached where, as a management response, we can see common ground we have taken that as constructive input and we have agreed to those recommendations, but on many occasions—and this is

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28 *Committee Hansard*, 27 February 2017, p. 37.

29 *Committee Hansard*, 27 February 2017, pp. 34-5.

30 *Committee Hansard*, 27 February 2017, pp. 35-6.

31 Jenet Connell, Chief Operating Officer and Deputy Secretary, Corporate, Department of Immigration and Border Protection, correspondence dated 8 March 2017 and received 6 April 2017.

32 *Committee Hansard*, 27 February 2017, p. 36.

going to be another instance—we think that the terms that are used and in some cases the analysis that is brought to bear are unworldly.

Senator McKIM: Is what?

Mr Pezzullo: Unworldly.

Senator McKIM: Unworldly?

Mr Pezzullo: Yes, not rooted in any reality that we experience or anything that the commissioner, in this case, does day-to-day.<sup>33</sup>

1.26 The Commissioner agreed with the Secretary, stating that while ABF did not have 'any great exception to the recommendations of the report',<sup>34</sup> he also held concerns about the analysis conducted by the ANAO:

... I do think that the analysis of the ANAO officers was a little bit flawed—for example, in relation to the findings where powers had been exercised, apparently, in breach of statute. I do not disagree that that occurred but I disagree with the general characterisation that these things are endemic and that they are deliberate.

Senator McKIM: Sorry, Commissioner. Did you say you do not disagree that they occurred?

Mr Quaedvlieg: I do not agree with that assessment. I put them in the category of inadvertent or maladministration, rather than an intentional use of powers by officers in flagrant breach of their authorisations.<sup>35</sup>

1.27 Of particular concern to both the Secretary and Commissioner was the ANAO's assessment of instruction and guidance for officers involved in OSB boat turn-backs as being inadequate.<sup>36</sup> Responding to a number of questions from the committee, both officials characterised training for OSB as not only adequate, but of a higher standard than other coercive powers training for ABF officers:

Senator McKIM: The audit office's finding is that the department has not provided adequate instructions or guidance for officers exercising coercive powers. Are you disputing that?

Mr Pezzullo: As I said, across all of these findings the analysis is not always accepted. But to the extent that the audit office then provides quite a minimalist, moderated and quite bland recommendation, they are quite easy to agree to. In terms of the Maritime Powers Act, as a matter of logic, your conflation of the two propositions cannot stand because the commissioner and I do not have any independent discretion in relation to giving directions about the turning back of boats. That is a government decision in each and every case. They are not exercising any independent discretion.

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33 *Committee Hansard*, 27 February 2017, p. 79.

34 *Committee Hansard*, 27 February 2017, p. 79.

35 *Committee Hansard*, 27 February 2017, pp. 79-80.

36 *Committee Hansard*, 27 February 2017, pp. 80-2.

Senator McKIM: But that is not the question I am referring to. I am simply asking questions about the how and what is happening on the ground—or water I should say in this case—and whether or not the coercive powers conferred on the ABF under the Maritime Powers Act are being exercised lawfully. The audit office has found that the department has not provided adequate instructions or guidance for officers exercising coercive powers. Further, they find that there is no single source of instructions or guidance material for border force officers and that much of the guidance material available is inaccurate. That is a finding of the audit office. Again, I will ask the question: how can you have such a high level of confidence that turn-backs are being done lawfully?

Mr Pezzullo: You will have to go back to the source document and see how precise the language has been. But, absent the sort of caveats we have commended upon the audit office, it is not within our responsibility if they have created that mistaken impression that OSB is somehow caught within that general analysis you have just conveyed through your question. Frankly, they need to write more precisely.

Mr Quaedvlieg: I am fairly confident that the ANAO did not examine the governance of the application of powers within the Maritime Border Command. I am fairly confident that the parameters of those ANAO efforts were in relation to other activities like field compliance et cetera. So, there is a distinction here where I am drawing out a very professional unit sitting within the auspice of the Australian Border Force, which is the Maritime Border Command, which I would rate very, very highly compared with some of those other areas, where I absolutely concede that there is a deficiency in the way instruction, guidance, training and delegations are recorded and managed over time.

Senator McKIM: Perhaps I could just try to summarise. Is what you are saying that the guidance and instruction given to those parts of the ABF that are involved in turn backs is of a different quality to the instructions and guidance given to other parts of the ABF—

Mr Quaedvlieg: That is correct. It is comprehensive, explicit and exceptionally well documented, yes. That is an accurate summary.<sup>37</sup>

1.28 As with the ANAO reports on garrison support and welfare services, the department confirmed that work had begun on implementing the recommendations of the report, particularly in relation to updating training materials and policy documents.<sup>38</sup>

## **Refugees in onshore and offshore detention centres**

1.29 The committee asked a number of questions relating to refugees in both onshore and offshore detention centres, including:

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37 Committee Hansard, 27 February 2017, pp. 81-2.

38 Committee Hansard, 27 February 2017, p. 85.

- the operations of OSB, with the department confirming that 29 vessels with a total of 740 people have been turned back or taken back since September 2013;<sup>39</sup>
- the process for refugee status determinations relating to detainees in offshore detention centres, including appeals;<sup>40</sup>
- the legality of deporting individuals whose applications for refugee status are unsuccessful back to their country of origin;<sup>41</sup>
- implementation of the agreement made with the US government to resettle refugees from regional processing centres;<sup>42</sup> and
- detainees' access to mobile phones in onshore immigration detention centres.<sup>43</sup>

## Visas

1.30 The committee inquired into reports of exploitation of temporary workers under various visa programs, including 416, 417, 457 and 462 visas. The department explained how Taskforce Cadena has expanded to combat exploitation:

That task force was originally set up to deal with exploitation of 417 workers—working holidaymakers—but has since been expanded to include other forms of exploitation or exploitation of people in other visa categories. It is a task force we conduct in conjunction with the Fair Work Ombudsman's office and it is what I call a lead generation capability, which in essence means it does a lot of work with intelligence functions with our own organisation, with other criminal intelligence agencies and certainly with enforcement partners to identify instances where there is exploitation of workers which is organised or syndicated, by syndicates with footprints either onshore or offshore. We apply a whole range of modern law enforcement techniques to investigate those offences of exploitation, including intelligence analysis, investigation and surveillance, both electronic and physical; and certainly the more traditional investigative techniques in terms of interviews and prosecutions form a very big part of that. So, where there is work falling out of the Migrant Workers' Taskforce which is of a criminal or a regulatory nature under the Migration Act, that is where the Border Force gets involved and undertakes all of those activities.<sup>44</sup>

1.31 There was further discussion regarding the number of temporary working visa holders under various categories. While the department was able to provide some

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39 *Committee Hansard*, 27 February 2017, p. 11.

40 *Committee Hansard*, 27 February 2017, pp. 24, 33, 44-5, 55, 93-94.

41 *Committee Hansard*, 27 February 2017, pp. 24, 34, 44-7, 92-4.

42 *Committee Hansard*, 27 February 2017, pp. 20-2, 31-4.

43 *Committee Hansard*, 27 February 2017, pp. 88-92.

44 *Committee Hansard*, 27 February 2017, p. 130

statistics on 417 visas, officers agreed to provide on notice comprehensive details of how many 417 and 462 visas are currently issued, by country, and the nature of any visa exchange arrangements.<sup>45</sup>

1.32 Another topic regarding visas that was of interest to the committee was sponsored parent visas.<sup>46</sup> The department reported that there were 'four or five' different categories of parent visas across two broad categories: contributory parent, which requires a 'significant financial requirement' to 'help offset the costs of the parent during their time [in Australia]', and standard parent, which requires no such obligation.<sup>47</sup> The department reported that the current waiting times for those two categories are 30 months and 30 years respectively.<sup>48</sup>

1.33 The committee asked about the types of statistics gathered about permanent migrants, with a particular focus on risk assessment in relation to religious extremism.<sup>49</sup> When asked about whether data on an applicant's religion is collected by the department, officers confirmed that Australia's immigration policy is non-discriminatory in regards to religion and that data of that nature is only collected in refugee cases where religion is 'pertinent to the nature of [a] protection claim', not for skilled or family visas.<sup>50</sup> In relation to this topic, the department reiterated that while it did not collect data on religion:

... visa risk assessment capabilities are applicable to all visa applicants of any race, creed, religion, sexual orientation and so on and so forth. The risk assessment attaches to the person. If the person who is making the application in the permanent program has tendencies [towards crime], that there is reason to believe they might be associated with Islamist terrorism or the like, then they will not get a visa.<sup>51</sup>

1.34 The department provided an update on its new visa risk assessment digital capability, an analytics intelligence program that uses 'predictive analytics, parameters, profiling [and] algorithms' to consolidate and analyse data in order to assess risk across entire visa classes. At a cost of \$100 million, it is anticipated that the program will be rolled out in a pilot form this year to assess risks against selected visa categories.<sup>52</sup>

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45 *Committee Hansard*, 27 February 2017, p. 133

46 *Committee Hansard*, 27 February 2017, pp. 117-8.

47 *Committee Hansard*, 27 February 2017, p. 117

48 *Committee Hansard*, 27 February 2017, p. 118

49 *Committee Hansard*, 27 February 2017, p. 119.

50 *Committee Hansard*, 27 February 2017, p. 119.

51 *Committee Hansard*, 27 February 2017, p. 120.

52 *Committee Hansard*, 27 February 2017, pp. 118-9.

## Spill-over hearing

1.35 The committee held a spill-over hearing on the afternoon of 24 March 2017. The Immigration and Border Protection portfolio appeared between 4:00 pm and 5:30 pm, with the committee recalling Outcomes 2 and 3 of the department.

1.36 The committee asked a number of questions in relation to visas and border protection. Topics included:

- industry labour agreements for 457 visa holders, in particular fast food and fine dining agreements;<sup>53</sup>
- Operation Sovereign Borders and boat turn-backs;<sup>54</sup>
- the detection and interception of asbestos-containing materials at the border;<sup>55</sup> and
- a number of matters relating to citizenship, including the process for a permanent resident or other visa holder to become an Australian citizen; application numbers; and citizenship ceremonies.<sup>56</sup>

## Questions on Notice

1.37 A total of 299 questions were taken on notice by the portfolio across the February and March hearings. A full index is available at the committee's website.

1.38 At the date of reporting, the committee had received a total of 194 responses.

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53 *Committee Hansard*, 24 March 2017, pp. 32-8.

54 *Committee Hansard*, 24 March 2017, p. 38.

55 *Committee Hansard*, 24 March 2017, pp. 39-40.

56 *Committee Hansard*, 24 March 2017, pp. 41-9.



## 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).<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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;<sup>4</sup>
- access to the disability support pension;<sup>5</sup>

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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;<sup>6</sup>
- complaints regarding the National Disability Insurance Scheme (NDIS);<sup>7</sup> and
- the funding of, and access to, interpreters under the NDIS.<sup>8</sup>

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.<sup>9</sup>

### **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.<sup>10</sup>

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.<sup>11</sup>

### **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.<sup>12</sup>

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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;<sup>13</sup>
- vacancies in the allocation of judges and the resulting effect on caseloads;<sup>14</sup>
- video recordings of interviews with family report writers being used in evidence<sup>15</sup> and training for family report writers;<sup>16</sup>
- the impact of community legal aid on family law matters;<sup>17</sup> and
- the role of the courts following the Royal Commission into Institutional Responses to Child Sexual Abuse.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup>

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

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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.<sup>22</sup>

## **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.<sup>23</sup>

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*.<sup>24</sup>

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.<sup>25</sup>

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',<sup>26</sup> and that

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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,<sup>27</sup> but was unable to confirm whether there would be a formal inquiry.<sup>28</sup>

### **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;<sup>29</sup>
- funding for the Immigration Assessment Authority within the AAT;<sup>30</sup>
- clearance rates of cases through the Migration and Refugee Division;<sup>31</sup>
- further integration of divisions in the AAT and related harmonisation of processes through legislation;<sup>32</sup> and
- applications related to disability support pensions and Centrelink matters.<sup>33</sup>

### **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,<sup>34</sup> and the winding-down of a budget measure related to targeting welfare fraud.<sup>35</sup>

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.<sup>36</sup>

### **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

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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.<sup>37</sup>

2.23 The committee also sought information on the status of the new Australian Firearms Information Network.<sup>38</sup> 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',<sup>39</sup> which will improve the usability of the database.<sup>40</sup>

### **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'.<sup>41</sup>

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.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup>

### **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;

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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.<sup>45</sup>

2.28 The committee asked questions about the number of journalist information warrants requested by ASIO.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup>

## 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

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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.<sup>50</sup>

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.<sup>51</sup>

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.<sup>52</sup>

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,<sup>53</sup> but did clarify a number of issues for the committee, including: the driver's mental and physical health following the explosion;<sup>54</sup> the driver's motivation for the explosion, which was believed to be suicide;<sup>55</sup> and the AFP's view that there was no ongoing threat to the Australian Christian Lobby.<sup>56</sup>

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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'.<sup>57</sup>

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

## **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.<sup>62</sup>

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,<sup>63</sup> and the committee sought further explanation of what constituted 'personal involvement' by the Attorney-General, and of the timeline of the issue.<sup>64</sup>

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

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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.<sup>65</sup>

### ***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;<sup>66</sup>
- 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;<sup>67</sup>
- the proposed marriage equality plebiscite;<sup>68</sup> 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.<sup>69</sup>

### **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*.<sup>70</sup>

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

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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.<sup>71</sup>

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.<sup>72</sup>

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.<sup>73</sup> 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.<sup>74</sup>

### ***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.<sup>75</sup>

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;<sup>76</sup>
- financial implications of various Act amendments and their implementation on legal aid services;<sup>77</sup>
- funding for legal aid services;<sup>78</sup>
- the National Disaster Relief and Recovery Arrangements;<sup>79</sup> and
- the National Firearms Agreement.<sup>80</sup>

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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**

# **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 Criminal Intelligence Commission;
- Australian Human Rights Commission;
- Australian Institute of Criminology;
- Australian Law Reform Commission;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- 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).



## Appendix 2

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## **Appendix 3**

### **Tabled documents**

#### **Immigration and Border Protection portfolio**

**Monday, 27 February 2017**

<b>No.</b>	<b>Tabled by:</b>	<b>Topic</b>
1	Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, and Mr Roman Quaedvlieg APM, Commissioner, Australian Border Force	Opening Statement
2	Mr Ben Wright, First Assistant Secretary, Corporate Services Division, Department of Immigration and Border Protection	Headquarters Project ACT - Deed of Confidentiality Report

**Friday, 24 March 2017**

<b>No.</b>	<b>Tabled by:</b>	<b>Topic</b>
1	Senator Louise Pratt	Application for conferral of Australian Citizenship

#### **Attorney-General's portfolio**

**Tuesday, 28 February 2017**

<b>No.</b>	<b>Tabled by:</b>	<b>Topic</b>
1	Senator the Hon George Brandis QC, Attorney-General	Administrative Appeals Tribunal - Decision - Dreyfus and Attorney-General - 22 December 2015
2	Senator the Hon George Brandis QC, Attorney-General	Administrative Appeals Tribunal - Protocol - Appointments to the AAT
3	Mr Andrew Colvin APM OAM, Commissioner, Australian Federal Police	Opening Statement
4	Senator Lee Rhiannon	Clerk of the Senate - Senate order on former ministers and lobbying meetings

5	Senator the Hon Penny Wong	Hansard transcript extract, Monday 28 November 2016
6	Senator the Hon George Brandis QC, Attorney-General	Statement to the Senate - Bell Litigation, Monday 28 November 2016

**Friday, 24 March 2017**

<b>No.</b>	<b>Tabled by:</b>	<b>Topic</b>
1	Senator Murray Watt	Media - Letter signed by gun control advocates calls for 'unbiased' review of laws