

CHAPTER 2

ATTORNEY-GENERAL'S PORTFOLIO

2.1 This chapter summarises some of the matters raised during the committee's consideration of the budget estimates for the Attorney-General's Portfolio for the 2015–16 financial year.

Attorney-General's Department (AGD)

Arts Portfolio

2.2 The committee questioned officials from the Attorney-General's Department (AGD), the Australia Council and Screen Australia, in relation to outcome 2 of the Attorney-General's portfolio. This covers the participation in and access to Australia's arts and culture through developing and supporting cultural expression. The committee questioned officials about the operation of the Australia Council, with a particular focus on the allocation and distribution of funds.

2.3 Questions were posed regarding the implementation of the National Program for Excellence in the Arts and its impact on the work of the Australia Council. The Attorney-General explained that the allocation of arts grants would operate on an arms-length basis from government, through a peer reviewed process overseen by the Australia Council.¹ The Attorney-General explained the justification for greater contestability:

....we are talking about values, we are talking about an approach to governance. And, the approach to governance, for the reasons that I have already outlined—and I do not want to be tedious or delay the committee, so I will not repeat them—is the desirability of having contestability, diversity, making arts funding available to a broader variety of organisations, festivals, individuals, groups than are able to fit within the Australia Council's current guidelines. This is, I think, when you say what evidence is there, a decision based on a philosophy of governance and a philosophy of the way in which arts funding ought to be administered.²

2.4 The Attorney-General also detailed specific funding initiatives, including support for Bell Shakespeare and the establishment of the Regional Artist Development Fellowships Program, which is designed to foster and support the experience and professional development of artists in regional centres.³

1 *Committee Hansard*, 27 May 2015, p. 12.

2 *Committee Hansard*, 27 May 2015, p. 21.

3 *Committee Hansard*, 27 May 2015, pp 13, 28.

2.5 Other matters discussed included the management of the Australian International Cultural Council, the process of appointments to the governing bodies of arts and cultural institutions, the proposed Book Council and the ongoing funding for national cultural institutions.⁴

Civil Justice and Legal Services Division

2.6 The committee questioned officials from the AGD on matters falling under the Civil Justice and Legal Services Group, including the funding of legal aid commissions and community legal centres, the oversight of royal commissions and measures being taken to combat domestic abuse.

2.7 The committee pursued questions in relation to the funding allocated to legal aid bodies. The Attorney-General detailed the process of distributing legal aid funding, explaining that:

We are applying a neutral formula which seeks to adjust the aggregate pool of Commonwealth funding fairly between the various states and territories.

Secondly, within the aggregate amount of Commonwealth funding we are indicating our priorities in various ways. For example, as Mr Manning I think it was said before, we are identifying the priority client groups—that is, the most vulnerable people—and requiring that the Commonwealth's contribution be spent in priority on those most vulnerable client groups. That is a condition of the funding arrangements.

Thirdly, I have, as a result of a decision I made some time ago now, decided that we would not fund advocacy—for example, EDOs—not because there is anything wrong with advocacy and not because advocacy might not be useful but because, given that resources are finite, I adopted a policy that we might describe as cases before causes; in other words, actual clients with actual needs in a particular case seemed to me to be a more compelling claim on the Commonwealth's legal assistance dollar than people who wanted to use it to promote political, philosophical, environmental or ideological causes.⁵

2.8 Questions were raised about the role of the AGD in relation to the Royal Commission into Institutional Child Sex Abuse and the Defence Abuse Response Taskforce (DART). The Attorney-General clarified that whilst the AGD administers royal commissions, these operate and reach conclusions independently.⁶ In relation to the DART, it was detailed that three matters have been referred to the police by the taskforce but no referrals in relation to the 'ADFA 24' have been made.⁷

2.9 The Attorney-General also provided details to the committee about steps being taken to combat domestic abuse. It was explained that this has been elevated as a priority for the Council of Australian Governments, with initiatives being

4 *Committee Hansard*, 27 May 2015, pp 33, 35, 44, 50.

5 *Committee Hansard*, 27 May 2015, p. 103.

6 *Committee Hansard*, 27 May 2015, p. 68.

7 *Committee Hansard*, 27 May 2015, p. 98.

implemented to develop a model national framework.⁸ Reforms to advance this issue have included amendments to the *Family Law Act 1975*, funding for the development of online resources for judges and judicial practitioners and funding to legal aid centres which directly assist those suffering from family violence.⁹

National Security and Criminal Justice Group

2.10 The committee questioned AGD officials from the National Security and Criminal Justice group. The committee was updated on the status of a number of matters including measures to counter violent extremism, the administration of government disaster financial support payments and the operation of proposed new citizenship laws.

2.11 Departmental officials detailed the allocation of funds and measures being adopted to counter violent extremism. In particular, details were provided about the government's Living Safe Together initiative, which provides funding to support community led prevention projects.¹⁰ The AGD explained that these grants were designed to identify the range of community organisations who could be partnered with in order to assist those on the trajectory of radicalisation.¹¹

2.12 The AGD was questioned about variations in the operation of the government's disaster financial support payments, particularly in relation to greater investment in mitigation.¹² This investment is designed to pre-empt and prevent damage by natural disasters, rather than developing a payment system that focusses solely on recovery and reconstruction.¹³

2.13 Questions were raised in regards to the operation of proposed new citizenship and anti-terrorism laws. The Attorney-General explained that this remained a matter before the government and that a discussion paper would be released shortly.¹⁴ It was detailed that any such measures would see interdepartmental cooperation regarding the development and oversight of anti-terror laws.

8 *Committee Hansard*, 27 May 2015, p. 75.

9 *Committee Hansard*, 27 May 2015, p. 75.

10 *Committee Hansard*, 27 May 2015, p. 118.

11 *Committee Hansard*, 27 May 2015, p. 118.

12 *Committee Hansard*, 27 May 2015, p. 116.

13 *Committee Hansard*, 27 May 2015, p. 116.

14 *Committee Hansard*, 27 May 2015, p. 119.

Australian Human Rights Commission (AHRC)

2.14 The committee questioned the AHRC on a range of matters including the celebrations organised for the *Racial Discriminations Act's* 40th anniversary, the current functions performed by the Human Rights Commissioner Mr Tim Wilson and the status of the current inquiry into age discrimination.

2.15 President of Australian Human Rights Commission, Professor Gillian Triggs, commenced her opening statement by making public interest immunity claims in relation to previous questions on notice regarding MG, Mr Basikbasik and Mr Charlie.¹⁵ The committee deferred making a determination on this matter until a later date.¹⁶

2.16 The committee questioned Race Discrimination Commissioner, Dr Tim Soutphommasane, about the plans for the celebration of the 40th anniversary of the *Racial Discrimination Act 1975*.¹⁷ Dr Soutphommasane explained this would include public consultations and lectures to reflect on the operation of the act.¹⁸

2.17 Mr Tim Wilson was questioned about his current focus and primary duties as the Australian Human Rights Commissioner. Mr Wilson explained the breadth of this role under the *Australian Human Rights Commission Act 1986* and detailed his specific focus on several topics, including LGBTI rights, indigenous property rights, the need to modernise the *Copyright Act*, the enduring relevance of religious freedom and issues regarding the protection of free speech.¹⁹

2.18 The committee also sought details from the Age and Disability Discrimination Commissioner, the Honourable Susan Ryan AO, regarding the current inquiry being conducted into age discrimination. Ms Ryan explained that research was being undertaken in order to collect data regarding cases of age discrimination and that policy proposals were being crafted to redress and avoid cases of long term unemployment.²⁰

Federal Court, Federal Circuit Court and Family Court

2.19 The committee questioned officials from the Federal Court, Federal Circuit Court and the Family Court, regarding the courts' current workload, delays in proceedings, the implementation of new fee structures, the expenditure of additional revenue received and the operation of different concessional fee arrangements.

2.20 The AGD detailed reforms currently being undertaken in regards to variation of the fee structure applicable in the different courts. Whilst it was explained that the amending regulation was still under consideration, certain fees, specifically those in

15 *Committee Hansard*, 28 May 2015, pp 7–8.

16 *Committee Hansard*, 28 May 2015, p. 30.

17 *Committee Hansard*, 28 May 2015, p. 14.

18 *Committee Hansard*, 28 May 2015, p. 14.

19 *Committee Hansard*, 28 May 2015, pp 15, 16, 18, 20, 28.

20 *Committee Hansard*, 28 May 2015, p. 31.

relation to insolvency applications, were scheduled for reduction.²¹ Whilst certain fees would increase, in relation to divorce applications and consent orders, it was explained that the Family Court operates according to a two-tier fee system. This system applies concessional fee rates where certain needs-based criteria are met.²²

Office of the Australian Information Commissioner (OAIC)

2.21 The committee heard from the Office of the Australian Information Commissioner (OAIC), with specific focus on its role in streamlining Freedom of Information (FOI) matters and its ongoing administrative arrangements.

2.22 The Australian Information Commissioner, Professor John McMillan AO, explained that the OAIC has continued to discharge a streamlined FOI review and oversight function.²³ It was further detailed that the office has been working to the fulfilment of its statutory function and that steps were being taken to resolve the backlog of FOI claims.²⁴ The status of the OAIC's budgetary, staffing and office arrangements were also detailed.

National Archives of Australia

2.23 The committee questioned the National Archives of Australia in relation to its processes for the declassification of documents, the release of documents to the public, the determination of exempt documents and the costs associated with handling applications.

2.24 The Director-General, Mr David Fricker, explained that the National Archives':

statutory role is to collect, preserve and make accessible the records of the Commonwealth. To make accessible the records of the Commonwealth, I feel, brings with it an obligation for us to do everything we can within our powers and within our resources to release those records to the public.²⁵

Criminal justice portfolio agencies

2.25 The committee heard from a number of portfolio agencies including the Australian Crime Commission (ACC), the Australian Institute of Criminology (AIC) and the Commonwealth Director of Public Prosecutions (CDPP).

2.26 Details were provided to the committee concerning the ongoing activities of the ACC in disrupting, understanding and responding to serious and organised crime threats.²⁶ The work of the ACC over the last year has included a report on crystal

21 *Committee Hansard*, 28 May 2015, p. 52.

22 *Committee Hansard*, 28 May 2015, p. 53.

23 *Committee Hansard*, 28 May 2015, p. 33.

24 *Committee Hansard*, 28 May 2015, p. 33.

25 *Committee Hansard*, 28 May 2015, p. 45.

26 *Committee Hansard*, 27 May 2015, p. 52.

metamphetamine, conducting operations against organised crime syndicates and continued investigations into international and national money-laundering schemes.²⁷

2.27 The committee pursued questioning about a potential merger of the ACC and the AIC. It was explained that the government had made no formal decision to proceed with a merger, but the matter was under consideration due to overlaps in the functions of the agencies.²⁸

2.28 The CDPP was questioned about the establishment of the Serious Financial Crime Taskforce, which is designed to foster cooperation and information sharing between participating agencies in the prosecution of organised financial crime.²⁹ This taskforce will build on the prior work of Project Wickenby, which focussed on reviewing offshore arrangements in the pursuit of trusts and superannuation fraud.³⁰

Australian Federal Police (AFP)

2.29 The Australian Federal Police (AFP) was questioned on matters including the events leading up to the arrests of Mr Andrew Chan and Mr Myuran Sukumaran, the development of a national facial recognition database, the number of cases relating to unauthorised disclosures by Commonwealth officials, and investigations into electoral fraud allegations in the federal seat of Indi.

2.30 Officials from the AFP were questioned about the organisation's role in sharing information with Indonesian police about Mr Chan and Mr Sukumaran prior to their arrest.³¹ AFP officials detailed why they had not requested that Mr Chan and Mr Sukumaran be allowed to pass through Indonesian security and into Australia, explaining that:

A decision was made at the time that that request would be an unfeasible and unreasonable request to make of the Indonesians because that is just not how it is done. Those sorts of requests to allow the narcotics to run in an uncontrolled situation do not occur. We do not make them in Australian either. The whole issue around a controlled operation is to have control. If you do not have control, you must take whatever action you deem necessary at the time to stop narcotics or other illicit drugs getting on the street. We knew full well, though, that if the Indonesians, through surveillance activity, which we had requested in the first instance, believed there were any drugs or saw drugs that they would interdict them themselves. This is exactly the same as we would do and the same as would happen in any other country throughout the world. So that was the basis of that original request that went to the Indonesians.³²

27 *Committee Hansard*, 27 May 2015, p. 52.

28 *Committee Hansard*, 27 May 2015, p. 53.

29 *Committee Hansard*, 28 May 2015, p. 59.

30 *Committee Hansard*, 28 May 2015, p. 59.

31 *Committee Hansard*, 28 May 2015, p. 61.

32 *Committee Hansard*, 28 May 2015, p. 61.

2.31 The committee pursued questioning in relation to the establishment of a national facial recognition database. Information was provided to the committee about the steps being taken to develop the capability to share and compare facial biometric information held by other agencies, in order to ensure an enhanced level of accuracy in identification.³³

2.32 The committee raised questions about the number of investigations instigated in relation to section 70 of the *Crimes Act 1914*, which prohibits the disclosure of information by Commonwealth officials.³⁴ The AFP detailed that at the time of the hearing 17 matters were under investigation.³⁵

2.33 AFP officials provided the committee with further details regarding the investigation into possible incidences of electoral fraud in the federal division of Indi. The committee was informed that 28 alleged fraudulent enrolments were referred to the AFP, and that 27 of these had been investigated.³⁶ Of the 27 referrals investigated, 4 briefs had been provided to the CDPP.³⁷

Australian Security Intelligence Organisation (ASIO)

2.34 The committee questioned the Australian Security Intelligence Organisation (ASIO) about programs to counter terrorism, the number of Australians participating in conflicts in Syria and Iraq, the operation of the National Terrorism Public Alert System and the use of the term 'Islamic State.'

2.35 ASIO officials explained that the success of measures to combat terrorism requires a combination of security measures in unison with community cohesion policies.³⁸ In response to questions about the number of Australians fighting in Syria and Iraq, the committee was informed that there are a little over 100 Australians currently participating and that 115 passports had been cancelled.³⁹

2.36 The committee questioned ASIO officials about the operation of the National Terrorism Public Alert System. ASIO officials explained that a new five tiered warning system was currently being proposed.⁴⁰ The range of this warning system would extend from 'not expected' to, 'possible', 'probable,' 'expected' and 'certain.' It was clarified that once the national security level is raised, the whole-of-government response is coordinated by the AGD.⁴¹

33 *Committee Hansard*, 28 May 2015, pp 69–70.

34 *Committee Hansard*, 28 May 2015, p. 77.

35 *Committee Hansard*, 28 May 2015, p. 77.

36 *Committee Hansard*, 28 May 2015, p. 76.

37 *Committee Hansard*, 28 May 2015, p. 76.

38 *Committee Hansard*, 28 May 2015, p. 78.

39 *Committee Hansard*, 28 May 2015, p. 79.

40 *Committee Hansard*, 28 May 2015, p. 81.

41 *Committee Hansard*, 28 May 2015, p. 82.

2.37 The committee also questioned ASIO officials about the inception of the term 'Islamic State' and its use in security briefings. The Attorney-General explained that a number of names have been attached to Islamic State and briefly summarised its intentions in seeking to establish a theocratic caliphate.⁴²

**Senator the Hon Ian Macdonald
Chair**

42 *Committee Hansard*, 28 May 2015, pp 85–86.