

CHAPTER 1

ATTORNEY-GENERAL'S PORTFOLIO

Introduction

1.1 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 2009-10 financial year.

Australian Human Rights Commission

1.2 The committee welcomed the new Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Gooda, who commenced his five-year term in early February.¹

1.3 The committee followed up an answer provided by the Australian Human Rights Commission to a question on notice from the supplementary Budget Estimates 2009-10 hearings concerning Australia's anti-terrorism laws.² In an answer provided to the committee, the Commission concluded that some provisions of Australia's anti-terrorism laws do not adequately meet Australia's international obligations.³ The answer stated that the Commission's views were in submissions made to the government in relation to relevant anti-terrorism laws. While the Commissioner would not be drawn on whether a person being dealt with under these laws is likely to have had their human rights violated, she advised the committee that:

Human rights involves a balancing of competing interests on all occasions. It is the case that it is possible for different people to reach different conclusions on that balancing exercise. We have not sought to suggest precise answers to any of the issues raised, but we have sought to raise the issues where we understand, for reasons which are contained in the submissions...that Australia's position should be reviewed to be consistent with international obligations set out in the submissions.⁴

Classification Board and Classification Review Board

1.4 The committee took a continuing interest in the work of the Classification Board and the Classification Review Board. The Director of the Classification Board

1 Committee Hansard, 8 February 2010, p. 7.

2 Answers to Question on Notice No. 7, Supplementary Budget Estimates 2009-10.

3 In this context, the Commission specifically identified obligations under the following:

- *International Covenant on Civil and Political Rights (ICCPR)*
- *Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (CAT)*
- *Convention on the Rights of the Child (CRC)*.

4 *Committee Hansard*, 8 February 2010, p. 10.

advised the committee that, since July 2009, he has 'called in' for classification 440 adult films and 36 adult magazines. However, none of the publishers of the relevant films and magazines complied with these notices. All of the publishers have subsequently been referred to relevant state and territory law enforcement agencies for appropriate action.⁵ The Department provided the committee with a list of the films and magazines called in for classification between 1 July and 31 December 2009.⁶

1.5 The Director also explained to the committee that the National Classification Scheme is a cooperative scheme between the Commonwealth and all Australian states and territories.⁷ While it is the Classification Board's fundamental role to make classification decisions, it is the states and territories that are primarily responsible for enforcement. The Australian Customs and Border Protection Service regulates the importation of material into Australia. In response to a suggestion from some senators that the current system is inadequate, the Attorney-General's Department conceded that there are shortcomings in the system:

BARNETT—To sum up, the department and the government are overlooking a system that you have confirmed today, and which you confirmed at least in part in October, is in failure, a system that is not working...We are overseeing a system in failure. That seems to be confirmed again today by the opening statement from Mr McDonald and the evidence that we have had before this committee. Is that correct?

Mr Wilkins—I think that overstates the position considerably.

Senator BARNETT—That is how I see it.

Mr Wilkins—There are obviously shortcomings in the system and we are trying to address those. That is undoubtedly the case.

Senator BARNETT—But you have been doing that for years.

Mr Wilkins—There is always room for improvement.

Senator BARNETT—Indeed.

Mr Wilkins—For example, the minister has now stiffened the penalties under the customs legislation and regulations to try to ensure that people have appropriate negative incentives to report matters and to make them available. That gives Customs more power. Of course there are problems with this system and it is under considerable strain with the emergenc[e] of new technologies, the burgeoning of publications et cetera. So it is silly to pretend that there are not a whole bunch of questions and some quite radical challenges to the system of classification—for example, with the R-rated games question. That is a whole new genre of material that may or may not come within the classification scheme. Also, there is the federal system—in

5 *Committee Hansard*, 8 February 2010, p. 14.

6 Tabled document number 6, Attorney-General's Portfolio: Films called in for classification between 1 July and 31 December 2009 and adult magazines called in for classification between 1 July and 31 December 2009.

7 *Committee Hansard*, 8 February 2010, p. 14.

other words, the fact that we rely on the states to basically enforce the law while the standards are made at a national level. All of that needs to be kept under close review, and it is being kept under close review. There are significant challenges for us all in doing that.⁸

1.6 Senators also questioned officers on the consultation process and recently released discussion paper relating to an R18+ Classification for computer games. Officers of the Attorney-General's Department advised the committee that they had received 6,239 submissions to date, and that a majority of those processed tended to support having an R18+ classification for computer games.⁹ During questioning on the submission process, including the template for submissions and the information required of submitters, officers assured the committee that submissions would be equally weighted and that advice to the minister would be both qualitative and quantitative.¹⁰

Australian Federal Police (AFP)

1.7 The committee sought details of the AFP's recent organisational restructure which came into effect on 1 February 2010, following the audit conducted by Mr Roger Beale AO. Commissioner Tony Negus APM provided some background information on the restructure:

This is really a philosophical or cultural change for the AFP in the investigations area. What we are saying is that we should look at organised crime—quite apart from terrorism, which is a specialist and separate portfolio, and quite apart from the international deployment group, again which is a separate portfolio—in the investigations area wholistically. What we are saying is that we need to address these issues in taskforces jointly with our partners. We need to look at the states and territories and the Australian Crime Commission and what they are doing, deconflict in some of those areas about who is investigating what, and bring people in with specialist skills, such as forensic accountants and others, as needs be, but look at criminal syndicates wholistically rather than looking at them as drug traffickers, fraudsters or money launderers. It is a cultural and philosophical change in the way they do their business.¹¹

1.8 In response to concerns raised by senators about the impact of the restructure on the AFP's focus and efforts in the area of counter-terrorism, the Commissioner advised the committee that there will be a separate area for counterterrorism and that current resourcing levels will be maintained:

I can assure you that counterterrorism remains an important, if not the most important, thing we do for the Australian community. Resources can be taken from any other portfolio and are taken from other portfolios when there is a requirement to investigate a counterterrorism offence. I look back

8 *Committee Hansard*, 8 February 2010, p. 23.

9 *Committee Hansard*, 8 February 2010, pp 18-19.

10 *Committee Hansard*, 8 February 2010, p. 20.

11 *Committee Hansard*, 8 February 2010, p. 75.

to Operation Neath, which were the arrests in Melbourne late last year. There were a significant number of resources taken from other portfolios to support that counterterrorism operation. It is one of the strengths of the AFP that we can move flexibly into and out of investigations as required.¹²

1.9 The AFP was also questioned extensively on a range of other issues, including people smuggling, staffing levels, measures to combat organised crime, and regional partnership arrangements.

Australian Customs and Border Protection Service (Customs)

1.10 The committee took evidence from Customs on a range of issues. Customs was closely questioned on the rescue of 78 Sri Lankan asylum seekers by the Customs vessel, *Oceanic Viking*, in October last year. Senators also sought details more broadly on the rules of engagement in relation to interception of suspected irregular entry vessels by the Border Protection Command.¹³

1.11 Senators also questioned officials on the frequency of suspected irregular entry vessels over recent years and the ability of Customs to deal with this increased demand while also suffering a decline in staffing numbers. The Chief Executive Officer, Mr Michael Carmody, explained to the committee:

...overall staffing levels have been declining in recent years. However, customs and border protection performs a whole range of roles, and that decline is not reflected in the staff that we have engaged in border protection issues, including people smuggling. You would be aware that the government injected a series of sums of money into customs and border protection both for patrol assets and others. We have increased our capacity within what you might call a central intelligence and operational hub for dealing with maritime people-smuggling. So, while I do not have the figures right in front of me, I am sure you would find that the actual number of staff there has certainly not diminished and, if anything, has increased. We were also given staff for expanding our overseas representation.¹⁴

1.12 The committee also took evidence during the hearing on the Australian Government's decision to lift anti-dumping duties on toilet paper imports from the People's Republic of China and the Republic of Indonesia. Officials provided details on the processes leading to the decision to remove the duties.¹⁵

Australian Security and Intelligence Organisation (ASIO)

1.13 The committee questioned ASIO about its officers approaching members of various ethnic, religious or activist communities seeking information. The committee was assured that, if ASIO officers do approach members of the public to obtain

12 *Committee Hansard*, 8 February 2010, p. 74.

13 *Committee Hansard*, 8 February 2010, pp 102-109.

14 *Committee Hansard*, 8 February 2010, p. 113.

15 *Committee Hansard*, 8 February 2010, pp 88-101.

information in the course of investigative inquiries, they would identify themselves and seek the support of the person being questioned.¹⁶

1.14 ASIO was further questioned about its policy and resourcing relating to the tracking of peaceful demonstrations or protest activity. The Director-General of Security addressed this issue in some detail:

ASIO does not devote any resources to constraining legitimate protest. We are specifically prevented from doing so by our act, and we do not do it. Our sole interest—and this is the second point—in protest activity is where that activity may be associated with or have the potential for political violence and, as such, it would come under the ASIO head of security relating to the issue of politically motivated violence. At present, the protest movement—if that is what you want to call it—or the demonstrations that take part in Australia are overwhelmingly peaceful. ASIO would devote only minimal resources to concerns about politically motivated violence related to protest activity. If there were an upswing in the potential for violent protest then ASIO would devote more resources accordingly. But I think the important thing to say is that ASIO's first and foremost priority at the moment is preventing terrorist attacks in Australia and against Australians. The vast majority of our resources are focused on this fact.¹⁷

1.15 Senators sought details of ASIO's involvement in the processing of Sri Lankan asylum seekers aboard the *Oceanic Viking* and, more broadly, detainees on Christmas Island. The committee heard that ASIO makes security assessments of asylum seekers in order to assess whether the granting of a visa to enter or remain in Australia is consistent with Australia's security interests and that this information is then passed to other departments, including the Department of Immigration and Citizenship.¹⁸ In relation to the processing of asylum seekers on the *Oceanic Viking*, questioning focussed on the timing and prioritising of those assessments.¹⁹

Attorney-General's Department

1.16 The committee sought an explanation from the Attorney-General's Department on the timing of the release of the Anti-Terrorism White Paper, which was due for publication over one year ago. Officials explained the delay by reference to the evolving character of the anti-terror environment, and the need to amend the document accordingly.²⁰

16 *Committee Hansard*, 8 February 2010, p. 42.

17 *Committee Hansard*, 8 February 2010, p. 43.

18 *Committee Hansard*, 8 February 2010, p. 46; and *Committee Hansard*, 9 February 2010, p. 67.

19 *Committee Hansard*, 8 February 2010, pp 46-48 and pp 53-55.

20 *Committee Hansard*, 8 February 2010, pp 125-126 and pp 130-138.