

# Chapter 1

## Budget Estimates 2018–19

### Reference

1.1 On 8 May 2018 the Senate referred the following to the Senate Finance and Public Administration Legislation Committee (the committee) for examination and report:

#### *Particulars of proposed and certain expenditure for 2018–19*

- Particulars of proposed expenditure in respect of the year ending on 30 June 2019;
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2019; and
- Particulars of proposed expenditure in relation to the parliamentary departments in respect of the year ending on 30 June 2019.<sup>1</sup>

#### *Particulars of proposed and certain additional expenditure for 2017–18*

- Particulars of proposed additional expenditure in respect of the year ending on 30 June 2018; and
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2018.<sup>2</sup>

### Portfolio coverage

1.2 The committee has responsibility for examining the expenditure and outcomes of the following:

- Parliament;<sup>3</sup>
- Prime Minister and Cabinet (PM&C) Portfolio;
- Finance Portfolio;<sup>4</sup> and
- Cross Portfolio Indigenous Matters.<sup>5</sup>

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1 *Journals of the Senate*, No. 95, 8 May 2018, pp. 3033–3034.

2 *Journals of the Senate*, No. 95, 8 May 2018, pp. 3033–3034. Appropriations have been sought in respect to the Prime Minister and Cabinet Portfolio within the *Particulars of Proposed Additional Expenditure in respect of the year ending on 30 June 2018*. No additional appropriations were listed within the *Particulars of Certain Proposed Additional Expenditure in respect of the year ending on 30 June 2018*.

3 As a matter of comity between the Houses neither House inquires into the operations of the other House. For this reason, neither the annual report of nor the proposed expenditure for, the Department of the House of Representatives is referred to a Senate committee for review.

4 *Journals of the Senate*, No. 2, 31 August 2016, pp. 75–76.

## Portfolio Budget Statements 2018–19

1.3 The Portfolio Budget Statements (PBS) 2018–19 for the PM&C Portfolio, the Finance Portfolio and the Parliamentary departments were tabled in the Senate on 8 May 2018.<sup>6</sup>

1.4 In addition to changes set out in the PBS, other changes in resourcing since the 2018–19 Budget resulted from changes to the Administrative Arrangements Orders (AAO) otherwise known as Machinery of Government changes.

1.5 In relation to the PM&C Portfolio, amendments to the AAO on 19 April 2018 resulted in the addition of two entities to the Portfolio:

- Australian Institute of Aboriginal and Torres Strait Islander Studies, previously within the Education and Training Portfolio; and
- Workplace Gender Equality Agency, previously within the Employment Portfolio.<sup>7</sup>

1.6 Amendments to the AAO on 10 May 2018 resulted in the omission of the following entities from the PM&C Portfolio to the Attorney-General's Portfolio:

- Independent National Security Legislation Monitor;
- Office of the Inspector-General of Intelligence and Security; and
- Office of the Commonwealth Ombudsman.<sup>8</sup>

1.7 Notwithstanding these changes, the committee agreed that for the purposes of Budget Estimates 2018–19, to examine these agencies during the committee's estimates hearings.

1.8 No changes to the AAO were received for the Finance Portfolio.

## Hearings

1.9 The committee held public hearings from 21 to 25 May 2018. The Parliamentary departments were examined on 21 May, the PM&C Portfolio (excluding Indigenous matters) was examined on 21 and 22 May, the Finance Portfolio was examined on 23 and 24 May, and the Cross Portfolio Indigenous Matters hearing was held on 25 May 2018.

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5 *Journals of the Senate*, No. 22, 26 August 2008, p. 683; *Journals of the Senate*, No. 70, 15 November 2017, p. 2227.

6 *Journals of the Senate*, No. 95, 8 May 2018, pp. 3033–3034.

7 Administrative Arrangements Order, Amendment made 19 April 2018, part 15, available at: <https://www.pmc.gov.au/resource-centre/government/administrative-arrangements-order-19-april-2018> (accessed 30 April 2018).

8 Administrative Arrangements Order, Amendment made 10 May 2018, part 15, available at: <https://www.pmc.gov.au/resource-centre/government/administrative-arrangements-order-amendment-made-10-may-2018> <https://www.pmc.gov.au/resource-centre/government/administrative-arrangements-order-19-april-2018> (accessed 11 May 2018).

1.10 Subsequently, in accordance with Standing Order 9B, the committee held an additional hearing to re-examine entities within the PM&C Portfolio. This resolution provides that an additional hearing is taken to be required when any three members of the committee notify the Chair of the requirement in writing. Senator McAllister, Kitching and Rhiannon wrote to the Chair requesting an additional hearing to examine the Australian Public Service Commission, Merit Protection Commissioner and the Department of the Prime Minister and Cabinet (DPM&C). The additional hearing was held on 21 June 2018.

1.11 The committee took evidence from the President of the Senate, Senator the Hon Scott Ryan, and the following Ministers accompanied by officers of relevant departments and agencies:

- Senator the Hon Michaelia Cash, Minister representing the Minister Assisting the Prime Minister for the Public Service, and Minister representing the Minister for Women;
- Senator the Hon Anne Ruston, Minister representing the Minister for Women;
- Senator the Hon James McGrath, Assistant Minister to the Prime Minister;
- Senator the Hon Mathias Cormann, Minister representing the Prime Minister, Minister for Finance and Special Minister of State; and
- Senator the Hon Nigel Scullion, Minister for Indigenous Affairs.

1.12 The committee expresses its appreciation for the assistance of the President, Ministers and the officers who appeared.

1.13 Over the course of the hearings, the committee took evidence from the following departments, agencies and statutory offices:

*Parliament*

- Department of the Senate
- Parliamentary Budget Office
- Department of Parliamentary Services
- Parliamentary Service Commissioner
  - Merit Protection Commissioner

*Prime Minister and Cabinet Portfolio*

- Australian Public Service Commission
- Workplace Gender Equality Agency
- Independent National Security Legislation Monitor
- Digital Transformation Agency
- Office of the Inspector-General of Intelligence and Security
- Office of the Official Secretary to the Governor-General
- Australian National Audit Office

- Office of National Assessments
- Office of the Commonwealth Ombudsman
- Department of the Prime Minister and Cabinet (including the Office for Women and excluding Outcome 2—Indigenous)

#### *Finance Portfolio*

- ASC Pty Ltd
- Australian Naval Infrastructure Pty Ltd
- Future Fund Management Agency
- Commonwealth Superannuation Corporation
- Department of Finance
- Independent Parliamentary Expenses Authority
- Australian Electoral Commission

#### *Cross Portfolio Indigenous Matters*

- Indigenous Land Corporation
- Indigenous Business Australia
- Aboriginal Hostels Limited
- Australian Institute of Aboriginal and Torres Strait Islander Studies
- Office of Township Leasing
- Department of the Prime Minister and Cabinet (Outcome 2—Indigenous)
- Department of Health (in relation to Indigenous Health issues)

### **Questions on notice and Hansard transcripts**

1.14 The committee set 6 July 2018 as the date for the return of answers to questions on notice arising from the Budget Estimates 2018–19 hearings and set 3 August 2018 as the date for the return to questions on notice from the additional hearing held on 21 June 2018.

1.15 Responses to questions on notice once received, together with the Hansard transcripts of proceedings of hearings, are published on the committee's website at: [https://www.aph.gov.au/Parliamentary\\_Business/Senate\\_Estimates/fpa/2018-2019\\_Budget\\_estimates](https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/fpa/2018-2019_Budget_estimates).

### **Procedural matters**

1.16 The following procedural matters arose during the committee's hearings.

#### ***Refusals to provide information***

1.17 There were several occasions during the committee's hearings where officers declined to provide requested information without reference to a properly formed

public interest immunity claim.<sup>9</sup> The committee reminds officers that there is no discretion to withhold information during the consideration of estimates without some specific indication of the harm to the public interest that could result from the disclosure of the information and draws officers' and ministers' attention to the Senate order of 13 May 2009.<sup>10</sup>

### ***Public interest immunity claims and statutory officers***

1.18 On 21 May 2018, the Australian Parliamentary Service Commissioner appeared before the committee with the President of the Senate. The Parliamentary Service Commissioner 'is a statutory officer appointed under the Parliamentary Service Act by the Presiding Officer of the Parliament'.<sup>11</sup> The Commissioner was asked whether he was the subject of a code of conduct investigation by the Merit Protection Commissioner. The Commissioner refused to answer the question raising the possibility that a claim of public interest immunity might be made.<sup>12</sup> The committee noted that the Commissioner is a statutory officer and discussed whether it would be more appropriate for the President (as Minister) or the statutory officer to make a public interest immunity claim.<sup>13</sup>

1.19 The President returned to the committee later that day and declined to make a public interest immunity claim, but noted that it would be appropriate for the Commissioner to make such a claim if necessary. The President made the following statement:

However, it is not simply for the minister, to whom I am analogous in this circumstance, to make such a claim. In this instance I refer to chapter 19 of *Odgers'* and the section entitled 'Statutory authorities and public interest immunity'. In my view it is within the purview of the commissioner—a statutory officer not subject to general direction—to make such a claim. Paragraph 8 of the Senate order of 13 May 2009 contemplates this approach. Such a claim eventually, of course, is a matter for the Senate itself.<sup>14</sup>

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9 *Committee Hansard*, 21 May 2018, p. 16. Questioning in relation to the DPS cleaning contract. See also: *Committee Hansard*, 24 May 2018, p. 43. Questioning in relation to the identity of a ministerial staffer.

10 Procedural order of continuing effect no. 10, *Public interest immunity claims*.

11 Parliament of Australia, *Parliamentary Service Commissioner and Parliamentary Service Merit Protection Commissioner*, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Service\\_Commissioner\\_and\\_Parliamentary\\_Service\\_Merit\\_Protection\\_Commissioner](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Service_Commissioner_and_Parliamentary_Service_Merit_Protection_Commissioner) (accessed 25 June 2018).

12 *Committee Hansard*, 21 May 2018, pp. 46–53.

13 *Committee Hansard*, 21 May 2018, p. 53.

14 *Committee Hansard*, 21 May 2018, p. 68.

### ***Public interest immunity claim***

1.20 On Tuesday 22 May 2018, during the examination of the DPM&C, the committee discussed a Freedom of Information (FOI) request that had been lodged with DPM&C in respect of documents relating to an alleged investigation of the Australian Public Service Commissioner. DPM&C decided to exempt two of the documents requested as part of the FOI request.<sup>15</sup>

1.21 Senator Wong asked DPM&C to table the documents in question. Ms Stephanie Foster, Deputy Secretary, DPM&C advised that a public interest immunity (PII) claim would be made in respect to these documents and that they would not be provided to the committee. Senator Wong asked Ms Foster to refer the question of the disclosure of documents to the Minister representing the Prime Minister—Senator the Hon Mathias Cormann—and asked the Minister to consider this issue and provide a response after the lunch break.<sup>16</sup>

1.22 Minister Cormann then made a public interest immunity claim on the basis of 'privacy of the relevant people involved and not prejudicing an ongoing investigation'.<sup>17</sup> During the lunch break, Minister Cormann wrote to the committee and outlined the public interest immunity claim in more detail. Minister Cormann specified that it would not be in the public interest to release the contents of the requested document on the basis that it would:

- Prejudice the impartial adjudication of a particular case; and
- Be an unreasonable invasion of an individual's privacy.<sup>18</sup>

1.23 Furthermore, Minister Cormann articulated the specific harm that the disclosure of these documents would cause, including:

- Diminishing the opportunity for the matter, i.e. the subject of the communication received and referred by the [DPM&C], to be considered fairly and impartially;

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15 Tabled document, *Freedom of information claim to the Department of the Prime Minister and Cabinet in relation to the Australian Public Service Commissioner*, tabled by Senator Jenny McAllister on 22 May 2018, [https://www.aph.gov.au/~/media/Estimates/fpa/bud1819/Tabled%20documents/PMC/FOI%20claim%20to%20the%20DPMC%20in%20relation%20to%20the%20Australian%20Public%20Service%20Commissioner\\_Redacted.pdf?la=en](https://www.aph.gov.au/~/media/Estimates/fpa/bud1819/Tabled%20documents/PMC/FOI%20claim%20to%20the%20DPMC%20in%20relation%20to%20the%20Australian%20Public%20Service%20Commissioner_Redacted.pdf?la=en) (accessed 25 June 2018). See also: *Committee Hansard*, 22 May 2018, p. 40.

16 *Committee Hansard*, 22 May 2018, pp. 40–41.

17 *Committee Hansard*, 22 May 2018, p. 41.

18 Tabled document, *Correspondence from Senator the Hon Mathias Cormann (Minister representing the Prime Minister) to Senator James Paterson, Chair of the Senate Finance and Public Administration Legislation Committee, dated 22 May 2018*, tabled by Senator the Hon Mathias Cormann on 22 May 2018, [https://www.aph.gov.au/~media/Estimates/fpa/bud1819/Tabled%20documents/PMC/Claim%20of%20Public%20Interest%20Immunity\\_Senator%20Cormann\\_Redacted.pdf?la=en](https://www.aph.gov.au/~media/Estimates/fpa/bud1819/Tabled%20documents/PMC/Claim%20of%20Public%20Interest%20Immunity_Senator%20Cormann_Redacted.pdf?la=en) (accessed 25 June 2018).

- Infringing privacy to the extent that it may negatively affect the reputation of particular individuals; and
- Discouraging the willingness of individuals to communicate information to the DPM&C in the future.<sup>19</sup>

1.24 Later that afternoon, the Chair informed the public hearing that the committee had considered the public interest immunity claim made by Minister Cormann and resolved to accept the claim.<sup>20</sup>

### *Independence of each House of Parliament*

1.25 During the examination of the Australian Electoral Commission, the committee asked questions in relation to the Australian Electoral Commissioner's advice to the Speaker of the House of Representatives with respect to a series of by-elections scheduled for 28 July 2018. The Minister appearing with the Australian Electoral Commissioner reminded senators that each House of Parliament functions independently of the other, and that as matter of comity, Senate committees do not inquire into the proceedings of the House of Representatives:

While the President of the Senate is answerable to the Senate and its committees; the Speaker of the House of Representatives is not. The questions that you are posing now are seeking to elicit information about members of the House of Representatives, the role of the Speaker and the functions of the House and its proposed expenditure, which fall outside the responsibility of the Senate and should not be answerable here in the Senate estimates committee. That is a constitutional principle that, of course, relates to the fact that the House of Representatives and the Senate act quite separate to each other.<sup>21</sup>

1.26 Senators adjusted their questions accordingly.

### **Answers to questions on notice—Additional Estimates 2017–18**

1.27 The committee's examination of the Additional Estimates 2017–18 took place on 26 and 27 February and 2 March 2018. The Parliamentary departments were examined on 26 February, the PM&C Portfolio (excluding Indigenous matters) was examined on 26 and 27 February, the Finance Portfolio was examined on 27 February, and the Cross Portfolio Indigenous Matters hearing was held on 2 March 2018. The

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19 Tabled document, *Correspondence from Senator the Hon Mathias Cormann (Minister representing the Prime Minister) to Senator James Paterson, Chair of the Senate Finance and Public Administration Legislation Committee, dated 22 May 2018*, tabled by Senator the Hon Mathias Cormann on 22 May 2018, [https://www.aph.gov.au/~media/Estimates/fpa/bud1819/Tabled%20documents/PMC/Claim%20of%20Public%20Interest%20Immunity\\_Senator%20Cormann\\_Redacted.pdf?la=en](https://www.aph.gov.au/~media/Estimates/fpa/bud1819/Tabled%20documents/PMC/Claim%20of%20Public%20Interest%20Immunity_Senator%20Cormann_Redacted.pdf?la=en) (accessed 25 June 2018).

20 Senator James Paterson, Chair, Senate Finance and Public Administration Legislation Committee, *Committee Hansard*, 22 May 2018, p. 68.

21 Senator the Hon Mathias Cormann, Minister representing the Prime Minister, *Committee Hansard*, 24 May 2018, p. 90.

committee set 16 April 2018 as the date for the return of answers to questions on notice.

***Timeliness of answers to questions on notice***

1.28 The committee had a total of 335 questions taken on notice (encompassing questions taken during the hearings and written questions on notice) with a total of 166 answers being received by the due date.

1.29 Before the due date no portfolio provided a complete set of answers to questions on notice, however, the Parliamentary departments and the Finance Portfolio provided all but one answer before the due date. The remaining answer from the Parliamentary departments was provided on 3 May 2018 and the remaining answer from the Finance Portfolio was provided on 18 April 2018.

1.30 The PM&C Portfolio (including Cross Portfolio) provided 51 of its 205 answers to questions on notice from its hearings on 26 and 27 February and 2 March 2018 by the due date of 16 April 2018. The remaining 154 answers to questions on notice were provided between 17 April and 3 May 2018. From the Cross Portfolio hearing on 2 March 2018, the Department of Health took 13 questions on notice, of which none were answered by the due date of 16 April 2018. Answers to questions were received intermittently through April and May 2018.

1.31 In accordance with Standing Order 26, the committee reminds departments, agencies and Ministers to submit responses to questions taken on notice by the due date fixed by the committee.

**Note on references**

1.32 References in this report to the estimates Hansard are to the proof Hansard; page numbers may vary between the proof and the official Hansard transcript.