

The Senate

Legal and Constitutional Affairs
Legislation Committee

Additional estimates 2018–19

April 2019

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Membership of the Committee

45th Parliament

Members

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Senator Louise Pratt (ALP, WA) (Deputy Chair)

Senator Jim Molan (LP, NSW)

Senator Nick McKim (AG, TAS)

Senator Jane Hume (LP, VIC)

Senator Murray Watt (ALP, QLD)

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Senator Louise Pratt (Deputy Chair) Senator Patrick Dodson

Senator David Fawcett Senator Derryn Hinch

Senator Jane Hume Senator David Leyonhjelm

Senator Jim Molan Senator Sue Lines

Senator Nick McKim Senator Pauline Hanson

Senator Murray Watt Senator Lee Rhiannon

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ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ABF	Australian Border Force
ACIC	Australian Criminal Intelligence Commission
ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
AFPNCB	Australian Federal Police National Central Bureau
AGD	Attorney-General's Department
ANAO	Australian National Audit Office
ASIO	Australian Security Intelligence Organisation
ASL	Average Staffing Level
AWU	Australian Workers Union
CDPP	Commonwealth Director of Public Prosecutions
CIC	Commonwealth Integrity Commission
CMAL	Central Movements Alert List
CPR	Commonwealth Procurement Rules
DHA	Department of Home Affairs
FamCA	Family Court of Australia
FCA	Federal Court of Australia
FCCA	Federal Circuit Court of Australia
FOI	Freedom of Information
IGIS	Inspector-General of Intelligence and Security
INTERPOL	International Criminal Police Organisation
MRD	Migration and Refugee Division
NCB	National Central Bureau
NDB	Notifiable Data Breaches
OAIC	Office of the Australian Information Commissioner
PJCIS	Parliamentary Joint Committee on Intelligence and Security
PNG	Papua New Guinea
ROC	Registered Organisations Commission
TSOC	Transnational, Serious and Organised Crime

Preface

On 14 February 2019, 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 2018–19.

The committee is responsible for the examination of the Attorney-General's portfolio and the Home Affairs portfolio. The Portfolio Additional Estimates Statements for 2018–19 were tabled on 14 February 2019.¹

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 2019 [Appropriation Bill (No. 3) 2018–2019];
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2019 [Appropriation Bill (No. 4) 2018–2019]; and
- Final Budget Outcome 2017–18.²

The committee was required to report on its consideration of the additional estimates on 16 April 2019.³

Estimates hearings

The committee met in public session on 18 and 19 February 2019 and 22 March 2019. Over the course of the three days of hearings, totalling over 23 hours, the committee took evidence from the following departments and agencies.

Home Affairs portfolio

- Australian Border Force;
- Australian Criminal Intelligence Commission;
- Australian Federal Police;
- Australian Security Intelligence Organisation;
- Department of Home Affairs;

Attorney-General's portfolio

- Administrative Appeals Tribunal;
- Australian Commission for Law Enforcement Integrity;
- Australian Human Rights Commission;

1 *Journals of the Senate*, No. 140, 14 February 2019, p. 4692.

2 *Journals of the Senate*, No. 140, 14 February 2019, p. 4692.

3 *Journals of the Senate*, No. 132, 28 November 2018, p. 4287.

- Attorney-General's Department;
- Commonwealth Director of Public Prosecutions;
- Commonwealth Ombudsman;
- Family Court of Australia;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- Inspector-General of Intelligence and Security; and
- Office of the Australian Information Commissioner.

Copies of the *Hansard* transcripts are available from the committee's webpage at: www.aph.gov.au/senate_legalcon.

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

Ministers

On 18 and 19 February 2019, the committee heard evidence from Senator the Hon Linda Reynolds CSC, representing the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs, and Senator the Hon Michaelia Cash, representing the Attorney-General.

On 22 March 2019, the committee heard evidence from Senator the Hon Zed Seselja, Assistant Minister for Treasury and Finance, representing the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs.

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

Questions on notice

The committee was required to set the due date for the return of questions on notice from the additional estimates for not later than 29 March 2019.⁴ It subsequently set the due date for 29 March 2019.

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.

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.

4 *Journals of the Senate*, No. 139, 13 February 2019, p. 4638.

Chapter 1

Home Affairs portfolio

1.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Home Affairs portfolio for the 2018–19 financial year on 18 February 2019.

Australian Federal Police

Opening statement

1.2 The Australian Federal Police (AFP) Commissioner, Mr Andrew Colvin APM OAM, provided an opening statement to the committee, in which he addressed a number of matters which had received public attention. These matters included:

- the detention of Mr Hakeem al-Araibi in Thailand and his subsequent return to Australia, including involvement by the International Criminal Police Organisation National Central Bureau (INTERPOL NCB);¹ and
- Federal Court proceedings in relation to the AFP's investigation into the unauthorised disclosure of information in relation to the execution of search warrants in support of the Registered Organisations Commission's (ROC) investigations into the Australian Workers Union (AWU).²

Mr Hakeem al-Araibi

1.3 Mr Colvin provided an overview of the AFP's involvement in the matter involving Mr al-Araibi:

As the committee will know, the AFP hosts the Australian Interpol National Central Bureau—or NCB—and AFP staff are seconded to the NCB. On 8 November 2018, at the request of Bahrain, Interpol issued a red notice for Mr al-Araibi, which the AFP conveyed to the Australian Border Force on 9 November. This is a routine process, as many names come on and off Interpol watchlists regularly.

At this time, neither the AFP nor the Australian Interpol NCB was aware of Mr al-Araibi's visa status. This was not known until after his detention in Thailand. Neither the AFP nor the Australian Interpol NCB can access visa information; we rely on notifications from the home affairs department. The home affairs department provided Mr al-Araibi's visa status to the AFP on 28 November, the day after his detention in Thailand. On 29 November the AFP sought and was granted permission by the Department of Home Affairs to refer Mr al-Araibi's visa status to Interpol's Office of Legal Affairs.

...

1 *Committee Hansard*, 18 February 2019, p. 5.

2 *Committee Hansard*, 18 February 2019, p. 5.

Interpol removed the notice within 24 hours of the AFP's provision of this information. The red notice was rescinded on 1 December Australia and Thailand time, which was 30 November France time.³

1.4 Mr Ramzi Jabbour, Deputy Commissioner Capability, AFP, provided an overview of the process of ensuring that Interpol Red Notices are not being issued in regards to persons to whom Australia owes protection:

As the commissioner said, back in 2017 the Interpol General Assembly passed a resolution encouraging member states to pass information regarding refugee claimants to Interpol. The intention of that was to allow Interpol the opportunity to consider information as part of their deliberations as to whether to issue a red notice or not. Absent that, in the normal course of their duties they would, at the request of a member state, issue a red notice. The AFP does not have access, as the commissioner said earlier, to the immigration holdings pertaining to people whom Australia has provided protection. On these occasions the process that we rely upon is that we notify the Australian Border Force and if they then identify a match in the Home Affairs holdings, they would advise us. We would then seek authority from Home Affairs to release that information to Interpol for their consideration. That is what we did on this occasion, and the red notice was rescinded at that point in time.⁴

1.5 Mr Colvin assured the committee that the Australian INTERPOL NCB adhered to all procedures and policies of Interpol. He further noted that the Department of Home Affairs (the department) had initiated a number of reviews into the chronology of events and actions taken by officials within the portfolio.⁵ Mr Jabbour also provided details of an AFP investigation into the matter, explaining that human error had in part contributed to the Red Notice being issued but that policies had been implemented to prevent such errors happening in the future.⁶

1.6 Mr Michael Pezzullo, Secretary of the department, also explained how information regarding Mr al-Araibi's status was shared between the department and the AFP. He stated that, while the department and AFP are contained within the same portfolio, both entities are separate from one another and operate under different statutes which contain specific guidance on accessing sensitive material.⁷ Mr Pezzullo further observed that the transfer of data between agencies is not an automatic process.⁸

1.7 This matter was also discussed with the department and the Australian Border Force (ABF) during their examination later in the day.

3 *Committee Hansard*, 18 February 2019, p. 5.

4 *Committee Hansard*, 18 February 2019, p. 18.

5 *Committee Hansard*, 18 February 2019, p. 5.

6 *Committee Hansard*, 18 February 2019, pp. 32–33.

7 *Committee Hansard*, 18 February 2019, p. 19.

8 *Committee Hansard*, 18 February 2019, p. 19.

Federal Court proceedings

1.8 In his opening address, Commissioner Colvin made a number of statements in relation to the AFP's investigation into the unauthorised disclosure of information to the media regarding the execution of search warrants in support of the ROC's investigations into the AWU. The Commissioner noted the ongoing Federal Court proceedings, and provided details regarding the AFP's involvement in the case, including the brief of evidence provided to the Commonwealth Director of Public Prosecutions (CDPP).⁹ He stated:

I've previously stated, and would like to reaffirm, that it is an issue of grave concern to me when AFP operational activity is inappropriately disclosed. As well as impacting on our operations, these disclosures also jeopardise the safety and security of AFP officers. The AFP undertook a thorough investigation into the unauthorised disclosure of its operational activity and compiled the strongest brief of evidence it could, which was then referred to the Commonwealth DPP. In this case the Commonwealth DPP determined that, despite our best efforts, the brief did not have sufficient prospects of success for them to prosecute. Under those circumstances, the AFP could not in good conscience lay charges.¹⁰

1.9 The committee requested additional information from the AFP regarding its investigation, including details regarding witnesses who were interviewed and the conduct of the AFP's execution of the warrant.¹¹

Alleged leak of classified national security information

1.10 The committee sought information regarding the alleged leak of classified national security information to *The Australian* newspaper on 7 February 2019. Mr Colvin confirmed that the Secretary of the department had formally referred the leak of the information to the AFP for investigation.¹²

1.11 Mr Pezzullo explained his decision to refer the matter to the AFP:

If I decide, as I am obligated to as a secretary appointed under section 57 of the Public Service Act, that there has been an unauthorised disclosure of our classified advice—what a minister does with our advice in the parliament is covered by privilege and [w]hat a minister might wish to do in terms of their own personal media is a matter for the minister—where I see references to documents, including paraphrased or, indeed, closely extracted extracts from documents that I know that my department's generated, I will without hesitation refer it to the police commissioner.¹³

9 *Committee Hansard*, 18 February 2019, pp. 5–6.

10 *Committee Hansard*, 18 February 2019, p. 5.

11 *Committee Hansard*, 18 February 2019, pp. 9–11.

12 *Committee Hansard*, 18 February 2019, p. 37.

13 *Committee Hansard*, 18 February 2019, p. 37.

Other issues

1.12 Topics also examined by the committee during the AFP's appearance included:

- total appropriations over the 2017–18 financial period for the AFP, amounting to \$1.7 billion, incorporating increased funding for new measures and ACT Policing revenue;¹⁴
- the appointment of the deputy commissioner as the Commonwealth Transitional Serious and Organised Crime Coordinator;¹⁵
- the use of funds in the Confiscated Assets Account;¹⁶
- the National Anti-Gang Squad's operational outcomes in 2018–19, including 68 arrests made, 233 persons charged, 44 firearms or firearm parts seized and nearly \$1 million in cash seized nationally;¹⁷
- the increasing use of illicit narcotics, such as methamphetamine, opioids and cocaine, and successful AFP actions to intercept importations of narcotics;¹⁸ and
- the implementation of recommendations from the *Cultural change: Gender diversity and inclusion in the Australian Federal Police* report.¹⁹

Australian Criminal Intelligence Commission

1.13 The committee asked questions on a range of topics pertaining to the Australian Criminal Intelligence Commission (ACIC), including:

- reports regarding ACIC's discussions with the Auditor-General about a section 37 certificate being issued under the *Auditor-General Act 1997* in relation to audits into Hawkei vehicles;²⁰
- information collected on the origins, importation and seizure of illicit narcotics;²¹ and
- ACIC investigative powers, particularly in relation to arrest powers.²²

14 *Committee Hansard*, 18 February 2019, pp. 11–13.

15 *Committee Hansard*, 18 February 2019, pp. 13–14.

16 *Committee Hansard*, 18 February 2019, pp. 20–21.

17 *Committee Hansard*, 18 February 2019, pp. 21–22.

18 *Committee Hansard*, 18 February 2019, pp. 26–28.

19 *Committee Hansard*, 18 February 2019, p. 51.

20 *Committee Hansard*, 18 February 2019, pp. 51–52.

21 *Committee Hansard*, 18 February 2019, p. 52.

22 *Committee Hansard*, 18 February 2019, pp. 52–53.

Australian Security Intelligence Organisation

Opening statement

1.14 The Director-General of the Australian Security Intelligence Organisation (ASIO), Mr Duncan Lewis, provided an opening statement, canvassing a number of matters. Mr Lewis particularly noted the alleged leak of classified national security information, which had been discussed with the AFP. He stated:

We recognise that our security intelligence advice is unique and that it is only one input drawn on for policy development advice. In this context, I'd like to make two direct comments about ASIO and our officers. Firstly, ASIO does not and will not use its position to influence the national debate on security-relevant issues through unauthorised disclosures. I have the greatest confidence that ASIO officers work with integrity and do not leak information to third parties, as has been repeatedly implied in the media. Secondly, ASIO does not finalise policy or provide running public commentary on the effectiveness of policy proposals. These are important considerations, because they go to the trust that the parliament and ultimately the Australian people have in the effectiveness of their security service and the confidence that they have in ASIO. I scarcely need to remind senators of the important limitations placed on intelligence services in successful democracies such as ours. When reporting wrongly attributed advice from ASIO or where our classified advice is leaked, it undermines all that we stand for. I want to make this point, as it is often difficult for me as the Director-General of Security to correct the public record: we do not want to enter into a running commentary on every reporting error. ASIO's advice is provided to agencies to assist with policy development, and there are strict controls on how that advice is managed and disseminated and breakdowns in these controls are seriously damaging.²³

1.15 The Director-General also discussed the current security environment, noting that since his previous appearance before the committee in October 2018, there had been one politically motivated attack in Australia. Mr Lewis stated that since the national threat level had been raised on 12 September 2014, there had been seven terrorist attacks and 15 major disruption operations in relation to imminent attack planning. He further observed that while such attacks in Australia were generally perpetrated by individuals or small groups using small attack methodologies, more complex attacks could not be ruled out.²⁴ Mr Lewis also noted the role and management of foreign fighters in the security environment.²⁵

1.16 Mr Lewis also addressed the issue of counterespionage and foreign interference in his opening statement. He stated:

I reiterate my previous comments to this committee that the current scale of foreign intelligence activity against Australian interests is unprecedented.

23 *Committee Hansard*, 18 February 2019, p. 55.

24 *Committee Hansard*, 18 February 2019, p. 55.

25 *Committee Hansard*, 18 February 2019, p. 55.

Hostile intelligence activity poses a real and existential threat to Australian security and sovereignty. The harm from this threat may not manifest for many years, even decades, after the activity has occurred. We work cooperatively with relevant operational and policy agencies to deliver a cohesive national strategy.²⁶

1.17 The Director-General noted that reports in Australian and international media had mistakenly asserted that the Australian-Chinese community was a target for ASIO and the intelligence community, and stated that this was an incorrect assessment. He emphasised that ASIO did not investigate individuals on the basis of their ethnicity, religious or cultural background, and focussed only on their activities of relevance to security.²⁷

Classified advice provided on Home Affairs bill

1.18 The committee enquired into reports of alleged leaked advice from ASIO in relation to the Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2018 (the Home Affairs legislation). Mr Lewis confirmed that the agency had provided advice to the Opposition Leader in relation to the application of the *Australian Security Intelligence Organisation Act 1979* to the bill as amended by the Senate.²⁸

Other issues

1.19 Matters also examined by the committee included:

- the 70th anniversary of ASIO's creation in 1949;²⁹
- ASIO advice provided in relation to the Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018;³⁰ and
- the nature and extent of a cyberattack on the parliamentary networking system in February 2019, including ASIO's investigation into the incident and its support of the cross-government Electoral Integrity Task Force;³¹

Department of Home Affairs

Opening statements

1.20 The Secretary of the department and the Commissioner of the ABF elected to provide separate opening statements.

26 *Committee Hansard*, 18 February 2019, p. 55.

27 *Committee Hansard*, 18 February 2019, pp. 55–56.

28 *Committee Hansard*, 18 February 2019, pp. 56–64.

29 *Committee Hansard*, 18 February 2019, p. 56.

30 *Committee Hansard*, 18 February 2019, pp. 59–60 and 64–65.

31 *Committee Hansard*, 18 February 2019, pp. 65 and 67–68.

Secretary's opening statement

1.21 The Secretary, Mr Michael Pezzullo, provided an opening statement to the committee which examined a number of matters in relation to the department's operation.

1.22 Mr Pezzullo observed that the department and the portfolio had been in existence for almost 14 months at the time of the hearings. He stated that, in this time, the portfolio had observed four key principles of implementation:

- preserving the traditional strengths of the agencies;
- using the individual skill and knowledge of the agencies to build a larger and more integrated portfolio with new capabilities,
- preserving the statutory independence of the agencies and decision makers; and
- ensuring that protection and security support additional goals such as economic prosperity, social cohesion and an open society.³²

1.23 The Secretary provided an outline of how the implementation of these principles had facilitated the integration process. He pointed to the following examples:

- addressing transnational, serious and organised crime (TSOC) by appointing Mr Karl Kent, the currently serving deputy commissioner of the AFP, as the Commonwealth TSOC Coordinator in order to create a more integrated and strategic national response to these categories of crime;³³ and
- countering foreign interference through the establishment of the office of the National Counter Foreign Interference Coordinator, which has focussed on developing a national approach to identify, assess and respond to foreign interference, particularly by collaborating with the Department of Foreign Affairs and Trade to ensure a similar approach in domestic and international policy.³⁴

1.24 Mr Pezzullo also noted that a number of factors presented challenges to the department, including:

- the expansion of the department and portfolio's core functions beyond the previous remit of the former Department of Immigration and Border Protection;³⁵
- increasing work volumes, including a 50 per cent increase in air cargo consignments processing over the past four financial years, a 20 per cent

32 *Committee Hansard*, 18 February 2019, p. 69.

33 *Committee Hansard*, 18 February 2019, pp. 69–70.

34 *Committee Hansard*, 18 February 2019, p. 70.

35 *Committee Hansard*, 18 February 2019, p. 70.

increase in visa applications and grants, and a 25 per cent increase to the number of citizenship applications;³⁶ and

- addressing a more complex threat environment that requires greater scrutiny and integrity practices.³⁷

Commissioner's opening statement

1.25 The Australian Border Force Commissioner (the Commissioner), Mr Michael Outram APM, provided an opening statement during the committee's consideration of Outcome 1.

1.26 Mr Outram stated that the agency continued to build its capability 'to respond to a rapidly changing environment in a flexible and agile way and to deliver quality outcomes for the Australian community'.³⁸ The Commissioner noted that the ABF had demonstrated its adaptability during the Christmas holiday period in 2018/19, where ABF officers processed in excess of 2.4 million people at international airports nationally, resulting in 143,000 passengers per day over that time, and representing an increase of three per cent in comparison to the same period in 2017/18.³⁹

1.27 The Commissioner provided details regarding the ABF's involvement with the case of Mr al-Araibi, and offered a summary of its actions:

On 8 November 2018, Interpol distributed a red notice regarding Mr al-Araibi. This information was provided to ABF officers on 9 November 2018 by the AFP. The ABF accessed the Interpol red notice on 22 November 2018 and ran details across Home Affairs systems. A central movements alert list, CMAL, alert for Mr al-Araibi was created on the basis of the Interpol red notice. There is an internal service standard of 14 days from the date of publication of the Interpol red notice for loading it onto Home Affairs systems. When the ABF match a person to an Interpol alert, a true match notification advice is manually sent via email from the ABF to the AFP National Central Bureau [AFPNCB] and to the Department of Home Affairs visa and citizenship group.

On this occasion, the true match notification email was not sent by the ABF to the AFP or to the Department of Home Affairs, which was an error and contrary to the agreed process. The true match notification would have included the visa type. This is a high-volume, manual process reliant on the transfer of data across multiple systems. ABF officers manage approximately 600 notifications a month in relation to Interpol. When Mr al-Araibi presented for departure from Australia on 27 November 2018 at 12.08 in the afternoon, as you've been told, the ABF informed the AFPNCB and requested advice as to whether any lawful authority existed

36 *Committee Hansard*, 18 February 2019, p. 70.

37 *Committee Hansard*, 18 February 2019, pp. 70–71.

38 *Committee Hansard*, 18 February 2019, p. 105.

39 *Committee Hansard*, 18 February 2019, p. 105.

to prevent travel. No domestic warrant existed and Mr al-Araibi was permitted to depart.⁴⁰

1.28 Mr Outram stated that, upon review of the circumstances regarding Mr al-Araibi's case, it was 'clear that human error occurred within the ABF process'.⁴¹ He outlined steps that have been undertaken to prevent future human error, including:

- requiring that emails sent by the ABF to the AFPNCB and the department are reviewed, including to ensure they include explicit detail regarding the relevant visa type;
- implementing quality assurance processes at shift handovers to review alerts that have been actioned, including email notifications; and
- directing ABF officers actioning Interpol alerts at points of departure to explicitly detail the specific visa type when contacting the AFPNCB.⁴²

1.29 The committee was told that the ABF had successfully carried out a number of investigative and enforcement compliance operations. Mr Outram reported the following results:

- almost 24,000 detections of illicit drugs and precursors weighing more than 10.5 tonnes through international mail and cargo streams;
- in excess of 1,100 detections of undeclared firearm parts and accessories;
- more than 170,000 detections of illicit tobacco at the border representing in excess of \$386 million in evaded duty; and
- a number of successful operations by the Illicit Tobacco Taskforce, including the seizure and destruction of eight acres of illegal tobacco crops with a potential excise value of more than \$9 million.⁴³

1.30 The Commissioner also noted the ABF's role in managing persons in immigration detention facilities, and also Operation Sovereign Borders' contribution to the patrol and security of Australia's territorial waters in conjunction with the Australian Defence Force.⁴⁴

1.31 The committee proceeded to question the department on topics related to cross-portfolio, corporate and general matters related to the department, and on Outcomes 1 and 2. Officers from Outcome 3 were excused from the hearing due to questions in cross-portfolio, corporate and general matters running overtime.

40 *Committee Hansard*, 18 February 2019, p. 105.

41 *Committee Hansard*, 18 February 2019, pp. 105–106.

42 *Committee Hansard*, 18 February 2019, p. 106.

43 *Committee Hansard*, 18 February 2019, p. 106.

44 *Committee Hansard*, 18 February 2019, p. 106.

Departmental administration and other corporate matters

1.32 The committee made enquiries into a range of matters relating to administration and corporate matters throughout the hearing.

Contract with Paladin Group

1.33 The department was asked about its contractual relationship with Paladin Group PNG Ltd (Paladin) and Paladin's role as a contractor for the Australian Government. Ms Cheryl-anne Moy, Deputy Secretary, Corporate and Enabling, Chief Operating Officer, explained to the committee that Paladin had delivered security and related services to governments and organisations across South-East Asia, particularly Papua New Guinea (PNG). Ms Moy stated that in February 2017, the PNG government advised that it would undertake the contracts to manage the facilities providing accommodation to asylum seekers on Manus Island and Port Moresby:

At the senior officers meeting on 5 July 2017 the Papua New Guinea Solicitor General advised he had provided advice to government that they could not proceed with those contracts or the tender based on the fact that they were in caretaker. Their election was finalised sometime about 8 July and the writs were issued on 20 April, so in that period of time the Solicitor General of Papua New Guinea determined that they could no longer continue. That meant that the Australian government, and the department as its actor, was required to step in and assist Papua New Guinea with the provision of services. There was very little time. We had previously undertaken expressions to market for services in regional processing countries. The number of people that replied to those tenders was limited. Primarily the people who expressed some interest early on and then decided that they wouldn't tender gave us the reason that there was too much noise for their organisations—they were international companies—around regional processing.⁴⁵

1.34 Ms Moy further explained the process in which the department examined its options in accordance with Commonwealth procurement policy:

[W]e talked to the Department of Finance, the Australian Government Solicitor and our external probity adviser, a legal firm, and we looked at our options for tendering to have someone provide those services such that we didn't have security risks, lack of accommodation and people not being fed and not having their welfare looked after. In doing that we spoke to the Department of Finance in regard to 2.6 of the CPRs, the Commonwealth Procurement Rules [...]

In our discussions with Finance they provided advice, as did the AGS and our external probity adviser, that under 2.6 of the CPRs we would be able to approach an organisation who may be able to deliver the services. On the basis of that we briefed our accountable authority, the secretary, to determine whether or not he agreed for us to use that process. On 10 August we got the go-ahead to use 2.6, because we did not have time for an open tender to attract others and we weren't even sure anyone would be in the

45 *Committee Hansard*, 18 February 2019, p. 73.

market to provide the services. That is the basis of how we arrived at undertaking 2.6, which is not a limited tender; it is an ability to go to an immediate individual and ask for a quote for the services.⁴⁶

1.35 Mr Pezzullo clarified that this process was otherwise known as 'special measures', and noted that he was the decision-maker as per the Commonwealth Procurement Rules.⁴⁷ He provided the following explanation:

I looked at the matter very carefully, including the lessons learned and the remediation program that we put in place in the context of the ANAO report that you have just referenced. I assured myself that it was government policy. I had to go to the government to ask: is it your policy intent to continue with the withdrawal of Australian delivered support services, under the auspices of the Commonwealth, at midnight on 31 October 2017?

...

I pressed very hard on the question: what options do I really have once the government made clear to me, as any fair-minded person could imagine they would, that they were not going to let people starve or go without food, water et cetera? ... It was determined as a matter of policy that yes, we would step in. Consequently, I, as the accountable authority, had to make a decision about how best to mobilise the market to deliver the desired outcome to support government policy, which was in support of the PNG Immigration and Citizenship Authority.⁴⁸

1.36 The committee also asked questions in relation to the limited tender process, procurement guidelines, ministerial advice regarding the decisions to engage Paladin, and performance management of the contracts in question.⁴⁹

Reopening of the Christmas Island detention centre

1.37 The committee enquired into the announced reopening of the Christmas Island detention centre. The Secretary explained that the recommendation to reopen the Christmas Island facility came from the department as part of contingency planning advice provided in December 2018 during debate of the Home Affairs legislation.⁵⁰

Mr Pezzullo stated:

The declassified submission that has several times been mentioned today was dated, from memory, mid-December. So already at that time we were starting to think about contingency plans should legislation of this nature be passed, remembering that at that point we had the Senate-amended bill to deal with. The best option in the circumstances would be to confine the mass transference of persons from Nauru and Papua New Guinea to

46 *Committee Hansard*, 18 February 2019, p. 73.

47 *Committee Hansard*, 18 February 2019, p. 73.

48 *Committee Hansard*, 18 February 2019, p. 73.

49 *Committee Hansard*, 18 February 2019, pp. 80–84, 87, 92 and 100–101.

50 *Committee Hansard*, 18 February 2019, pp. 113–114.

Christmas Island on the basis that the legislation as it then stood—remember, we're talking about pre-amended—referred to both medical and psychiatric treatment and assessment. In the analysis of the department—which is on everyone's website now, able to be reviewed—our concern was that the legislation in prospect, as passed by the Senate in December, attached itself not just to people who were ill but to people who doctors in Australia would want to see for assessment. So, on a reasonable worst-case basis, you were looking at effectively the closure of regional processing and the transfer of a thousand people en masse.⁵¹

1.38 The Secretary further advised the committee that Australian Government had made the decision to reopen the Christmas Island facility in light of the passage of the Home Affairs legislation, the advice provided in relation to the bill, and its impact on one of the central pillars of Operation Sovereign Borders.⁵²

Health care for people on Nauru and Papua New Guinea

1.39 The committee asked for an update on the number of persons seeking asylum remaining on Manus Island and Nauru. Ms Mandy Newton APM, Deputy Commissioner, Operations, stated that as of the date of the hearing there were 431 people on Nauru and 584 in PNG. Of these numbers, 886 persons were found to be refugees, 154 persons were found to be non-refugees (including seven persons with complementary protection that are non-refugees) and 75 persons whose status had yet to be determined.⁵³ Ms Newton explained that those currently found to be non-refugees could qualify for transfer for medical assessment or treatment under the provisions proposed by the Home Affairs legislation.⁵⁴

1.40 The department provided information regarding the number and types of medical professionals available on Manus Island and PNG. Ms Newton stated that there were 33 full-time equivalent (FTE) medical staff (that is, doctors and nurses) and 30.5 FTE mental health professionals.⁵⁵ Ms Newton noted that the ratio of medical professionals to residents was 1-to-7.⁵⁶ The department also provided information in relation to the number of people who had been transferred from regional processing centres to Australia for medical assessment or treatment, advising the committee that 898 people had been transferred, a number which included family members.⁵⁷

Cape class patrol boats

1.41 The department was also questioned on matters relating to ships and vessels in the Cape class fleet, particularly in relation to media reports regarding the operational

51 *Committee Hansard*, 18 February 2019, p. 113.

52 *Committee Hansard*, 18 February 2019, p. 120.

53 *Committee Hansard*, 18 February 2019, p. 115.

54 *Committee Hansard*, 18 February 2019, p. 116.

55 *Committee Hansard*, 18 February 2019, p. 116.

56 *Committee Hansard*, 18 February 2019, p. 117.

57 *Committee Hansard*, 18 February 2019, p. 117.

efficiency and budgetary measures affecting the fleet. Mr Outram acknowledged that there had been pressure on its maritime budget, but that this had not affected the fleet's operations significantly.⁵⁸ Mr Outram stated in response to the media report's claims:

There was a suggestion—it was implied—that we weren't going to be sending vessels out on the sea, and it was also implied that they wouldn't be patrolling. As I said earlier on, the term 'active patrolling' is quite a technical term. If you think about that: in a 28-day swing, how many nautical miles should a vessel sail to achieve the same outcome in terms of surveillance and deterrence? These are the things we were looking at—whether we could achieve the same effect, the same outcome, for fewer dollars. We were looking to see if we could reel in about \$3.2 million in savings in fuel, and the decision was taken not to do that. Since then, the pressure that we've been under in the maritime space—I've raised it with the department and with government, and we've received an estimates variation to supplement our budget in the maritime space. So we're no longer having to look at the patrolling patterns in that way.⁵⁹

1.42 The committee also enquired into evidence provided by the Auditor-General in relation to the possibility of the department seeking a section 37 certificate under the *Auditor-General Act 1997*.⁶⁰ The Secretary advised that the decision to pursue a section 37 certificate would ultimately be made by him as the statutory authority, and that he was unlikely to do so.⁶¹

Reforms to visa programs

1.43 The committee asked the department questions on a range of other matters, including:

- the Independent Health Advice Panel and its role under the Home Affairs legislation, including the composition of the panel and its decision-making powers;⁶²
- the efficiency dividend's effect on the department's budget, in addition to other efficiency measures;⁶³
- intelligence activity in Indonesia conducted by Operation Sovereign Borders officers aimed at detecting people-smugglers, including deterrence efforts through strategic communications programs;⁶⁴
- the incidence of post-traumatic stress disorder in ABF personnel;⁶⁵ and

58 *Committee Hansard*, 18 February 2019, p. 129.

59 *Committee Hansard*, 18 February 2019, p. 130.

60 *Committee Hansard*, 18 February 2019, pp. 86–87.

61 *Committee Hansard*, 18 February 2019, pp. 101–102.

62 *Committee Hansard*, 18 February 2019, pp. 121–122.

63 *Committee Hansard*, 18 February 2019, p. 130.

64 *Committee Hansard*, 18 February 2019, pp. 131–132.

- events receiving assistance under the Disaster Recovery Funding Arrangements, including damage assessments as a result of floods in Townsville, Queensland.⁶⁶

Spill-over hearing

1.44 The committee held a spill-over hearing on the morning of 22 March 2019. The Home Affairs portfolio appeared between 9.00 am and 11.45 am, with the committee recalling the ABF and the department, including Programs 2.1 to 2.4 and Programs 3.1 to 3.2 for examination.

1.45 The Secretary of the Department of Home Affairs opened the hearing by expressing the department's shock and grief at the attacks which took place in Christchurch, New Zealand. The Secretary informed the committee that the department has been working closely with a number of agencies, including ASIO and AFP, to assist its New Zealand colleagues in their investigation.⁶⁷

1.46 Over the course of the hearing, the committee canvassed a number of issues with ABF and the department, including:

- the number of citizenship applications finalised for 2018-19 (up to March) compared to the previous financial year (102,759 compared to 101,422 for the full year in 2017-18);⁶⁸
- the department's refusal to confer citizenship to 5335 applicants based on fraudulent information such as identity fraud and non-disclosure of serious criminal conduct;⁶⁹
- ABF staffing numbers for seagoing operations and whether the number of staff being trained is sufficient for the needs of Operation Sovereign Border;⁷⁰
- the Secretary's address to the Australian Strategic Policy Institute on future challenges to the country's national security;⁷¹
- an update on the department's investigation into allegations that visas were being granted in return for cash payments;⁷²
- the number of visas awaiting processing, which has fallen from around 250,000 to about 230,869 as at 10 March 2019;⁷³ and

65 *Committee Hansard*, 18 February 2019, p. 133.

66 *Committee Hansard*, 18 February 2019, pp. 140–141.

67 *Proof Committee Hansard*, 22 March 2019, p. 2.

68 *Proof Committee Hansard*, 22 March 2019, p. 7.

69 *Proof Committee Hansard*, 22 March 2019, pp. 7–8.

70 *Proof Committee Hansard*, 22 March 2019, pp. 4–5.

71 *Proof Committee Hansard*, 22 March 2019, pp. 9–10.

72 *Proof Committee Hansard*, 22 March 2019, pp. 11–13.

73 *Proof Committee Hansard*, 22 March 2019, p. 19.

- the department's reforms to the way citizenship applications are being processed following the ANAO's report.⁷⁴

Questions on notice

1.47 A full index of questions taken on notice during the additional estimates hearings (including the spill-over hearing) will be available on the committee's website and responses will be published as they are received.

74 *Proof Committee Hansard*, 22 March 2019, pp. 20–21.

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 2018–19 financial year on 19 February 2019.

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

2.2 The Family Court of Australia (FamCA), the Federal Circuit Court of Australia (FCCA) and the Federal Court of Australia (FCA) were heard concurrently during the committee's deliberations.

2.3 Ms Louise Anderson, Acting CEO and Principal Registrar of the FamCA and National Director Court and Tribunal Services for the FCA, provided an opening statement to the committee.¹ Ms Anderson discussed a number of initiatives implemented by the newly appointed Chief Justice of the FamCA, the Hon. William Alstergren. These measures included:

- the establishment of a rules harmonisation working group consisting of members of the FamCA and the FCCA in order to review and harmonise the rules of both courts in relation to family law in addition to establishing new practices of common case management and common forms;
- the implementation of a number of case management initiatives in order to reduce delay and address the case backlog of the FamCA and the FCCA, including the execution of a call-over due to be held in March 2019, working with a case management team to address how to review parenting cases, the use of appeal division judges to hear more first-instance matters, and a protocol instituted across both courts to encourage the timely delivery of reserved judgments; and
- the development of a national management structure for registrars to be used most effectively in the courts.

2.4 The committee questioned the courts regarding the proposed legislation to amalgamate the FCCA and the FamCA. Mr Chris Moraitis, Secretary, Attorney-General's Department (AGD, the department), stated that recommendations made by the Senate Legal and Constitutional Affairs Legislation Committee's report into the bill had not been formally considered or modelled as yet.²

2.5 Senators asked about the status of a case management pilot scheme in the Brisbane registry of the FCCA. Ms Anderson advised the committee that the Chief Justice had regularly been meeting with the judges overseeing the pilot, and where suggestions were found to be appropriate and helpful this had resulted in changes to

1 *Committee Hansard*, 19 February 2019, pp. 5–6.

2 *Committee Hansard*, 19 February 2019, pp. 7–9.

the program.³ Mr Steve Agnew, Executive Director, Performance, Planning and Strategy, FCCA, stated:

The initial data indicates that we have improved the time getting from filing to final hearing. There was a fair disparity in the times between the individual judges up there and there has been some equity delivered, in that regard, to litigants. We found the initial results were to bring the trial times in considerably, but the data is still pretty early and we're undertaking some evaluation of all that work.⁴

2.6 The committee also asked the courts a number of questions on other topics, including:

- the number of judicial vacancies currently across the courts;⁵
- judicial education in relation to jurisdiction-specific training, such as family violence, migration or judgment-writing;⁶ and
- measurement tools used by the courts to establish risk factors and authenticity in relation to allegations made by children in relation to sexual assault or abuse.⁷

Office of the Australian Information Commissioner

2.7 The Office of the Australian Information Commissioner (OAIC) provided an opening statement to the committee. Ms Angelene Falk, Australian Information Commissioner, provided an update on a number of the OAIC's activities since last estimates, including:

- the appointment of Ms Elizabeth Hampton as Deputy Commissioner;⁸
- increasing engagement from community, business and government groups in relation to personal information management and information management, demonstrated by the OAIC's receipt of over 10,000 requests for information about privacy, freedom of information, and other matters, between July 2018 and December 2018;⁹
- a substantial rise in the number of freedom of information (FOI) review requests for decisions of Australian government agencies, receiving 524 requests between July 2018 and December 2018 which represented an increase of 42 per cent from the same period in the previous year, and

3 *Committee Hansard*, 19 February 2019, p. 10.

4 *Committee Hansard*, 19 February 2019, p. 10.

5 *Committee Hansard*, 19 February 2019, p. 9.

6 *Committee Hansard*, 19 February 2019, p. 13.

7 *Committee Hansard*, 19 February 2019, pp. 13–16.

8 *Committee Hansard*, 19 February 2019, p. 16.

9 *Committee Hansard*, 19 February 2019, p. 17.

finalising 318 reviews which represented a 20 per cent increase from the same period during the previous year;¹⁰

- statistics regarding privacy complaints, recording 1,716 privacy complaints from July 2018 to December 2018, representing an increase of 22 per cent on the same period from 2017;¹¹
- the implementation of the Notifiable Data Breaches (NDB) scheme, which had resulted in 812 breaches being notified to the OAIC since the scheme began in February 2018;¹²
- regulation of the privacy provisions applying to the My Health Record system, including raising awareness of privacy controls and responding to queries and complaints regarding privacy;¹³ and
- cooperating with the Australian Competition and Consumer Commission on areas of co-regulation such as digital platforms and consumer data rights.¹⁴

2.8 The committee questioned the OAIC regarding the increase in malicious cyberattacks resulting in data breaches. Ms Falk advised senators that information collected through the NDB scheme had indicated that malicious and criminal cyberattacks were the largest cause of notifiable data breaches. She explained that the main issue arising from attacks was the compromise of credentials. Ms Falk further explained that attacks tended to fall into three categories: phishing attacks, brute force attacks and ransomware.¹⁵

2.9 The OAIC responded to queries regarding the agency's workload over the past three years. Ms Falk explained that, in the past 12 months, the OAIC had experienced an 18 per cent increase in privacy complaints and a 27 per cent increase in FOI review requests. She noted that, while this was consistent with increases over the past three years, further increases to workload had been experienced in the July 2018 to December 2018 period compared to the same period in previous years. Ms Falk also noted that the NDB scheme had caused a significant increase to the agency's workload¹⁶

2.10 The Australian Information Commissioner acknowledged that the increase in workload had resulted in delays in addressing matters such as FOI review requests and privacy concerns. She stated that all requests or complaints regarding FOI or privacy received by the OAIC were triaged and actioned in a timely manner, but that some

10 *Committee Hansard*, 19 February 2019, p. 17.

11 *Committee Hansard*, 19 February 2019, p. 17.

12 *Committee Hansard*, 19 February 2019, p. 17.

13 *Committee Hansard*, 19 February 2019, p. 17.

14 *Committee Hansard*, 19 February 2019, p. 17.

15 *Committee Hansard*, 19 February 2019, p. 17.

16 *Committee Hansard*, 19 February 2019, p. 19.

matters were more complex and thus took longer to resolve.¹⁷ She provided further information on the delays when compared to previous time periods:

I can give you some comparisons as at October last year. For instance, for privacy the allocation time was around 7.5 months, and that's moved to nine months. For FOI, at October last year it was 8.5 months. It's moved to 11 months. In terms of addressing that very real issue, we're working proactively in terms of the causes of the increase in matters, working to seek to ensure that there's good FOI decision-making happening in the first place, and, in terms of privacy, that there's good awareness across government and business around responsibilities. At the same time that we're looking at our internal processes, we are putting more focus and resources on our early resolution, which is bearing fruit. As well as that, we are looking at what our resourcing needs might be moving forward, should that workload be sustained.¹⁸

2.11 The committee examined other matters related to the OAIC, including:

- current and future resourcing needs of the OAIC;¹⁹ and
- the application of the *Privacy Act 1988* in relation to media reports regarding the conduct of a House of Representatives committee inquiry.²⁰

Commonwealth Director of Public Prosecutions

2.12 The committee asked questions on a number of matters in relation to the Commonwealth Director of Public Prosecutions (CDPP), including:

- potential prosecutions arising from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, including additional appropriations for the purposes of pursuing further prosecutions;²¹
- an unauthorised leak of police information allegedly originating from a ministerial office, including discussion of the brief of evidence and the Commonwealth prosecution policy;²² and
- CDPP recruitment campaigns for additional legal officers and prosecutors.²³

Administrative Appeals Tribunal

2.13 The Administrative Appeals Tribunal (AAT) was questioned on the appointment process of AAT members. Ms Sian Leathem, Registrar, provided an overview of the process:

17 *Committee Hansard*, 19 February 2019, p. 19.

18 *Committee Hansard*, 19 February 2019, p. 19.

19 *Committee Hansard*, 19 February 2019, p. 23.

20 *Committee Hansard*, 19 February 2019, pp. 24–28.

21 *Committee Hansard*, 19 February 2019, pp. 28–31 and 45.

22 *Committee Hansard*, 19 February 2019, pp. 34–42 and 46–58.

23 *Committee Hansard*, 19 February 2019, p. 45.

For the first half of this 2017-18 year, we've received a further 29,537 applications. That actually is equivalent to 57 per cent of what we received at the same point in time the previous year, so it's effectively a 16 per cent increase from that period in time.²⁴

2.14 Dr Albin Smrdel, Assistant Secretary, Legal Services and Policy Division, AGD, explained that the current appointments process is a protocol, which was preceded by a process in which appointments were made in reference to the Australian Public Service Commission's Merit and Transparency policy, in accordance with many other statutory appointments.²⁵

2.15 Mr Iain Anderson, Deputy Secretary, Legal Services and Families Group, AGD, stated that the President of the AAT had made recommendations about the appointment needs for 2019, which included the reappointment of some members.²⁶

2.16 The committee also enquired into the backlog of cases for each division of the AAT.²⁷ Ms Leathem stated that the AAT had had a significant increase in lodgements which had resulted in backlogs. She provided detailed information in relation to the AAT's caseload:

There was in fact a total of 63,858 cases on hand as at 31 September 2018. The largest increases have been in the Migration and Refugee Division [MRD], where they have effectively doubled in the last two years and quadrupled over the last decade. In fact, last year we received 37,933 MRD lodgements, whereas at amalgamation it was about [18,000] lodgements.

...

I would say, however, that in the other divisions it's a different pattern. In the SSCSD—the Social Services and Child Support Division—we still get through the matters quickly and the clearance ratio remains healthy. Similarly, in the general and other divisions we don't have the same size of backlog that obviously is the case in the MRD.²⁸

2.17 AAT officials further noted that there was a significant increase in the work of a number of divisions:

For the Migration and Refugee Division—sorry; it's the percentage change over the last six months. So the change for the MRD from 30 June 2018 is 22 per cent, so they've increased by 22 per cent. For the general and other divisions, it's a four per cent increase. For the Social Services and Child Support Division, it's a 23 per cent increase.

...

24 *Committee Hansard*, 19 February 2019, pp. 58–59.

25 *Committee Hansard*, 19 February 2019, p. 61.

26 *Committee Hansard*, 19 February 2019, p. 60.

27 *Committee Hansard*, 19 February 2019, pp. 62–64.

28 *Committee Hansard*, 19 February 2019, p. 62.

What I can tell you is where we have seen increases in the Migration and Refugee Division. Permanent business visas have increased by 230 per cent. We've seen nomination and sponsor visas have gone up 127 per cent. Student visa refusals have increased by 75 per cent. In relation to protection visas, there has been a 42 per cent increase, particularly in applications relating to people from Malaysia.²⁹

2.18 Ms Leathem attributed the backlog in cases partially to the increased workload of the divisions in addition to having fewer members to make decisions or new members taking time to become fully productive.³⁰ She also acknowledged that clearance rates have declined over a number of years.³¹

2.19 A number of other topics were discussed, including:

- statistics in relation to social services and child support cases, including payments such as Newstart and Youth Allowance;³²
- training for AAT members;³³ and
- percentage changes to the Family Tax Benefit and the age pension.³⁴

Australian Commission for Law Enforcement Integrity

2.20 Questions were put to the Australian Commission for Law Enforcement Integrity (ACLEI) in relation to a range of issues, such as:

- media reports relating to Operation Arrowhead and Operation Dureau;³⁵
- staffing rates and resourcing, particularly in relation to the work of investigators;³⁶
- ACLEI's coercive hearing powers and their use in prosecution;³⁷ and
- the proposed National Integrity Commission Bill 2018.³⁸

Office of the Commonwealth Ombudsman

2.21 The committee enquired into the agency's response to the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Telecommunications Act). The Office of the Commonwealth Ombudsman

29 *Committee Hansard*, 19 February 2019, p. 63.

30 *Committee Hansard*, 19 February 2019, p. 63.

31 *Committee Hansard*, 19 February 2019, p. 64.

32 *Committee Hansard*, 19 February 2019, pp. 66–67.

33 *Committee Hansard*, 19 February 2019, p. 69.

34 *Committee Hansard*, 19 February 2019, p. 72.

35 *Committee Hansard*, 19 February 2019, p. 73.

36 *Committee Hansard*, 19 February 2019, pp. 73–75.

37 *Committee Hansard*, 19 February 2019, p. 76.

38 *Committee Hansard*, 19 February 2019, pp. 77–78.

(the Ombudsman) stated that there were additional functions now required of the agency, which were being discussed with the Department of Home Affairs in order to establish the required additional resourcing.³⁹ Ms Jaala Hinchcliffe, Acting Commonwealth Ombudsman, stated that the additional resourcing required would amount to an additional five ASL (Average Staffing Level).⁴⁰

Inspector-General of Intelligence and Security

2.22 The Inspector-General of Intelligence and Security (IGIS) was examined in relation to the following matters:

- the IGIS's response to recommendations by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in relation to the Telecommunications Act;⁴¹
- the integration of IGIS into the Attorney-General's portfolio after machinery-of-government changes;⁴² and
- comments made during public hearings of the PJCIS's inquiries in relation to the Department of Home Affairs' engagement with independent operational oversight.⁴³

Attorney-General's Department

2.23 The committee called Groups 2, 3 and 4 of the AGD to attend the estimates hearing. Group 4 was dismissed during the hearing without being questioned.

Proposed Commonwealth Integrity Commission

2.24 The committee questioned the AGD on matters relating to the proposed Commonwealth Integrity Commission (CIC) as announced by the Attorney-General in December 2018. The department confirmed that it had been assisting the Australian Government regarding the model of the CIC for almost one year prior to the announcement.⁴⁴ Ms Sarah Chidgey, Deputy Secretary, Integrity and International Group, explained:

The model in the proposal paper, which has a law enforcement integrity division and a public sector integrity division, was arrived at because of the fact that law enforcement agencies wield significant coercive powers and have access to highly sensitive information and that officers in those agencies are also very well informed about the kind of investigative techniques that might be applied by oversight bodies as well. That partly was the same thinking that drove the establishment of ACLEI as a law

39 *Committee Hansard*, 19 February 2019, p. 78.

40 *Committee Hansard*, 19 February 2019, pp. 78–79.

41 *Committee Hansard*, 19 February 2019, p. 80.

42 *Committee Hansard*, 19 February 2019, pp. 80–81.

43 *Committee Hansard*, 19 February 2019, pp. 81–82.

44 *Committee Hansard*, 19 February 2019, pp. 82–83.

enforcement oversight body in the first place. The decision was then taken in the proposal paper to have the difference with the two divisions reflecting that difference in the nature of the functions and risks for law enforcement agencies as opposed to other public sector agencies.⁴⁵

2.25 The department advised that the CIC review panel's selection process had been undertaken by the Attorney-General with advice from the AGD. It was explained that some members of the panel would receive remuneration for their positions but that a variety of arrangements were in place for the panel appointees.⁴⁶

2.26 The AGD further advised the committee that the legislation regarding the CIC was still being drafted, and that the CIC's scope was yet to be fully determined.⁴⁷

Legal assistance

2.27 The AGD was asked questions in relation to staff members of ministerial offices receiving legal assistance from the department. The department provided an outline of how legal assistance was provided to employees of the Australian Public Service or staff members employed under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act):

The process that is in place for legal assistance to be provided either to employees of Commonwealth agencies or persons employed under the MOP(S) Act is appendix E to the Legal Services Directions. The decision-maker for applications for legal assistance is not either the Attorney-General or the Attorney-General's Department as a matter of course. If the applicant is an employee of an agency, the decision-maker is the accountable authority of that agency. If the applicant is an MOP(S) Act employee, the decision-maker is the finance minister. Pursuant to appendix E, the Office of Legal Services Coordination in the Attorney-General's Department will be consulted by the relevant agency to ensure that all the appropriate rules and guidelines under the Legal Services Directions are understood by either the person making the decision or the people giving the advice to the people making the decision. So it's not for the department to give that assistance.⁴⁸

2.28 The committee also asked questions in relation to funding for ministerial legal representation.⁴⁹

Other matters

2.29 In addition to the matters contained above, the committee also sought information from the AGD relating to:

- appointments to the AAT;⁵⁰

45 *Committee Hansard*, 19 February 2019, p. 83.

46 *Committee Hansard*, 19 February 2019, pp. 84–85.

47 *Committee Hansard*, 19 February 2019, pp. 137–138.

48 *Committee Hansard*, 19 February 2019, p. 92.

49 *Committee Hansard*, 19 February 2019, pp. 93, 96–102 and 109.

- advice provided by the Solicitor-General in relation to the constitutional validity of legislation;⁵¹
- staffing changes since machinery-of-government changes occurred in 2018, including 443 FTE staff being transferred from the AGD to the Department of Home Affairs and other agencies;⁵²
- the constitutional eligibility of federal parliamentarians;⁵³
- proposed reforms to the family court system;⁵⁴
- the operations of the Native Title Officer Funding Scheme;⁵⁵
- the department's role in monitoring outcomes in relation to the Royal Commission into Institutional Responses to Child Sexual Abuse;⁵⁶ and
- the transfer of functions of the Lobbying Code of Conduct and its associated lobbying register between portfolios.⁵⁷

Senator the Hon. Ian Macdonald

Chair

50 *Committee Hansard*, 19 February 2019, pp. 85–92.

51 *Committee Hansard*, 19 February 2019, pp. 94–95.

52 *Committee Hansard*, 19 February 2019, pp. 115–116.

53 *Committee Hansard*, 19 February 2019, pp. 122–125.

54 *Committee Hansard*, 19 February 2019, pp. 126–128.

55 *Committee Hansard*, 19 February 2019, pp. 128–133.

56 *Committee Hansard*, 19 February 2019, pp. 135–136.

57 *Committee Hansard*, 19 February 2019, pp. 139–140.

Appendix 1

Departments and agencies for which the committee has oversight

Attorney-General's Portfolio

- Attorney General's Department;
- Administrative Appeals Tribunal;
- Australian Financial Security Authority;
- Australian Commission for Law Enforcement Integrity;
- Australian Human Rights Commission;
- Australian Law Reform Commission;
- Commonwealth Ombudsman;
- Family Court of Australia;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- High Court of Australia;
- Independent National Security Legislation Monitor
- Inspector-General of Intelligence and Security
- National Archives of Australia;
- Office of the Australian Information Commissioner;
- Office of the Director of Public Prosecutions; and
- Office of Parliamentary Counsel.

Home Affairs Portfolio

- Department of Home Affairs
- Australian Border Force;
- Australian Federal Police;
- Australian Criminal Intelligence Commission;
- Australian Institute of Criminology;
- Australian Security Intelligence Organisation; and
- Australian Transaction Reports and Analysis Centre.

Appendix 2

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Appendix 3

Tabled documents

Home Affairs portfolio

Monday, 18 February 2019

No.	Tabled by:	Topic
1	Mr Andrew Colvin APM, OAM, Commissioner, Australian Federal Police	Opening Statement
2	Mr Michael Pezzullo, Secretary, Department of Home Affairs	Opening Statement
3	Mr Michael Outram APM, Commissioner, Australian Border Force	Opening Statement

Attorney-General's portfolio

Tuesday, 19 February 2019

No.	Tabled by:	Topic
1	Senator Murray Watt	Article, "Liberal MP Tim Wilson faces 'breach of privacy' claims"

Home Affairs portfolio

Friday, 22 February 2019

No.	Tabled by:	Topic
1	Mr Michael Pezzullo, Secretary, Department of Home Affairs	Opening Statement
2	Mr Michael Pezzullo, Secretary, Department of Home Affairs	All Staff Message: Harmony Day
3	Mr Michael Pezzullo, Secretary, Department of Home Affairs	The Administration of the Immigration Program

