

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Additional estimates 2017–18

March 2018

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# Membership of the Committee

## 45th Parliament

### Members

Senator the Hon Ian Macdonald (LNP, QLD) (Chair)

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)

### Senators in attendance

Senator the Hon Ian Macdonald (Chair)    Senator Doug Cameron

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

Senator the Hon Michaelia Cash    Senator Janet Rice

Senator the Hon Bridget McKenzie    Senator Jordon Steele-John

Senator the Hon Zed Seselja    Senator Rachel Siewert

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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
AGD	Attorney-General's Department
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
ASIO	Australian Security Intelligence Organisation
CMO	Chief Medical Officer
DHA	Department of Home Affairs
DIBP	Department of Immigration and Border Protection
FamCA	Family Court of Australia
FCA	Federal Court of Australia
FCCA	Federal Circuit Court of Australia
NAA	National Archives of Australia
NDLFR	National Drivers Licence Facial Recognition
NFBMC	National Facial Biometric Matching Capability
OAIC	Office of the Australian Information Commissioner
PAES	Portfolio Additional Estimates Statements
UNHCR	United Nations High Commissioner for Refugees





## Preface

On 8 February 2018, 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 2017–18.

The committee is responsible for the examination of the Attorney-General's portfolio and the Home Affairs portfolio. The Portfolio Additional Estimates Statements for 2017–18 were tabled on 8 February 2018.<sup>1</sup>

### Reference of documents

The Senate referred to the committee, for examination and report, the following documents:

- Particulars of proposed additional expenditure in respect of the year ending on 30 June 2018 [Appropriation Bill (No. 3) 2017–2018];
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2018 [Appropriation Bill (No. 4) 2017–2018]; and
- Final Budget Outcome 2016–17.<sup>2</sup>

The committee was required to report on its consideration of the additional estimates on or before 27 March 2017.

The committee notes the following significant changes and measures in the Portfolio Additional Estimates Statements (PAES) 2017–18:

- the establishment of the Home Affairs portfolio, which integrates a number of agencies and functions from other portfolios;<sup>3</sup> and
- under the Attorney-General's portfolio, the establishment of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.<sup>4</sup>

### Estimates hearings

The committee met in public session on 26 and 27 February 2018. Over the course of the two days of hearings, totalling over 20 hours, the committee took evidence from the following departments and agencies:

- Department of Home Affairs;
- Australian Border Force;
- Australian Federal Police;

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1 *Journals of the Senate*, No. 83, 8 February 2018, p. 2647.

2 *Journals of the Senate*, No. 83, 8 February 2018, p. 2647.

3 *Portfolio Additional Estimates Statements 2017–18, Home Affairs Portfolio*, p. 6.

4 *Portfolio Additional Estimates Statements 2017–18, Attorney-General's Portfolio*, p. 3.

- Attorney-General's Department;
- Administrative Appeals Tribunal;
- Australian Human Rights Commission;
- Australian Security Intelligence Organisation;
- Family Court of Australia;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- National Archives of Australia; 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](http://www.aph.gov.au/senate_legalcon).

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

### **Ministers**

On 26 February 2018, the committee heard evidence from Senator the Hon Mitch Fifield, representing the Minister for Home Affairs. The Minister for Home Affairs was represented by Senator the Hon Zed Seselja and Senator the Hon Bridget McKenzie on 27 February 2018.

On 27 February 2018, the committee heard evidence from Senator the Hon Michaelia Cash and Senator the Hon Zed Seselja, representing the Attorney-General.

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

### **Questions on notice**

The committee resolved that the due date for submitting responses to questions on notice from the additional estimates hearings in February would be 10 April 2018.

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.

# 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 2017–18 financial year on 26 and 27 February 2018.

### Creation of the Home Affairs portfolio

1.2 As a result of machinery-of-government changes, the Immigration and Border Protection portfolio was subsumed into the newly created Home Affairs portfolio on 20 December 2017.<sup>1</sup> Consequently, the 2017–18 additional estimates hearings were the new portfolio's first appearance before the committee.

1.3 The Home Affairs portfolio consists of the Department of Home Affairs (DHA, the department), which incorporates the former Department of Immigration and Border Protection (DIBP) and the Australian Border Force (ABF). It also consists of a number of agencies and work areas that were previously within the Attorney-General's portfolio, including:

- The Australian Federal Police (AFP);
- The Australian Criminal Intelligence Commission (ACIC); and
- The Australian Transaction Reports and Analysis Centre.

1.4 Further changes are expected later in 2018 subject to the passage of legislation.

1.5 As a consequence of the agencies' movement between the portfolios, the committee considered the Home Affairs portfolio over the first day and several hours into the second day of hearings to accommodate the inclusion of agencies into the Home Affairs portfolio that previously belonged in the Attorney-General's portfolio.

### Opening statements

1.6 The Secretary of the Home Affairs portfolio, Mr Michael Pezzullo, tabled a written opening statement, to which he spoke at length.<sup>2</sup> A summary of the opening statement is provided below.

1.7 Mr Pezzullo spent the majority of his opening statement discussing the establishment and organisation of the new portfolio. He stated that DHA was comprised of the previous DIBP, in addition to elements from four other departments, namely: Prime Minister and Cabinet, Infrastructure and Regional Development, Social Services and the Attorney-General.<sup>3</sup>

1.8 The Secretary advised that the core functions of the department are:

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1 *Committee Hansard*, 26 February 2018, p. 4.

2 *Committee Hansard*, 26 February 2018, pp. 4–5.

3 *Committee Hansard*, 26 February 2018, p. 4.

...policy, strategy, planning and coordination in relation to the domestic security and law enforcement functions of the Commonwealth as well as managed migration and the movement of goods across our borders.<sup>4</sup>

1.9 The department would focus particularly on strategic policy development and coordination in support of its cabinet minister, the Minister for Home Affairs, who will 'for the first time in the modern history of the Commonwealth be charged with addressing these issues with full-time cabinet-level focus and accountability'.<sup>5</sup> The Secretary noted that 'in establishing the portfolio the government was especially attracted in this regard by the British precedent, which of course has seen a home office and home secretary in place since the late 18<sup>th</sup> century'.<sup>6</sup>

1.10 The department will be responsible for the delivery of a number of key strategic and policy outcomes, including:

- Immigration and citizenship;
- Multiculturalism and social cohesion;
- Law enforcement, criminal justice, countering transnational and serious organised crime, and addressing violent extremism;
- Transport security and civil maritime security; and
- Emergency management, including crisis management, disaster recovery and disaster resilience.<sup>7</sup>

1.11 The Secretary noted commentary regarding the establishment of the portfolio:

Some commentary on the establishment of the portfolio continues to mischaracterise the new arrangements as being either a layer of overly bureaucratic oversight of otherwise well-functioning operational arrangements or, worse, a sinister concentration of executive power that will not be able to be supervised and checked. Both of these criticisms are completely wrong. As I said to this committee when I last appeared, as secretary of DIBP, the Department of Home Affairs will not engage in the oversight of statutorily independent agencies, which is properly and necessarily vested in parliamentary, judicial and/or statutory processes. Nothing in the establishment of the department will change or affect the accountability and oversight arrangements that this parliament puts in place through the passage of relevant laws.<sup>8</sup>

1.12 The Secretary also stated that DHA will build a strong relationship with the Attorney-General's Department (AGD), noting that the departments will share some

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4 *Committee Hansard*, 26 February 2018, p. 4.

5 *Committee Hansard*, 26 February 2018, p. 4.

6 *Committee Hansard*, 26 February 2018, p. 4.

7 *Committee Hansard*, 26 February 2018, pp. 4–5.

8 *Committee Hansard*, 26 February 2018, p. 5.

powers in relation to the Australian Security Intelligence Organisation (ASIO) and on matters regarding relevant legislation.<sup>9</sup>

1.13 He concluded by stating that the future goals of the portfolio included: preserving the traditional strengths of the portfolio agencies while building capabilities; using the newly integrated capabilities of multiple agencies and departments to improve capability, particularly in areas such as intelligence, biometrics capabilities, and computing systems; preserving the statutory independence of portfolio agencies and decision-makers while ensuring that operations are conducted under law; and ensuring that protection and security are used to promote 'economic prosperity, social cohesion and an open society'.<sup>10</sup>

1.14 In a departure from previous practice, the ABF provided a separate opening statement. The Secretary explained that the ABF, 'while established within the department for budgetary, employment and administrative purposes, is operationally independent'.<sup>11</sup>

1.15 The Acting Commissioner of the ABF, Mr Michael Outram APM, similarly described the challenges presented since the establishment of the Home Affairs portfolio. The Acting Commissioner advised the committee that the new portfolio arrangements built on gains made since 2015 when the ABF's customs and migration enforcement and facilitation functions were merged with DIBP.<sup>12</sup> The Acting Commissioner stated that the incorporation of numerous agencies within the portfolio created an opportunity for the ABF to foster strategic alignment and maximise capabilities with other law enforcement and intelligence agencies.<sup>13</sup>

1.16 Passenger and goods volumes were reportedly expected to increase approximately 22 per cent for passengers and 34 per cent in goods in the years leading up to 2020–21. Similar trends were expected to occur in relation to noncompliant and criminal behaviour at the border.<sup>14</sup>

1.17 The Acting Commissioner provided an update on the Australian Trusted Trader program (ATT), stating that since its inception in July 2016, it had accredited 138 businesses and service providers. The ATT's work was supported by mutual recognition arrangements with five key trading companies, which drew approximately \$500 million in revenue over ten years through reduced customs delays.<sup>15</sup>

1.18 The Acting Commissioner also provided examples of the work conducted by the ABF in relation to illicit drug seizures, including:

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9 *Committee Hansard*, 26 February 2018, p. 5.

10 *Committee Hansard*, 26 February 2018, p. 5.

11 *Committee Hansard*, 26 February 2018, p. 4.

12 *Committee Hansard*, 26 February 2018, p. 60.

13 *Committee Hansard*, 26 February 2018, p. 60.

14 *Committee Hansard*, 26 February 2018, p. 60.

15 *Committee Hansard*, 26 February 2018, pp. 60–1.

- A joint operation with Western Australian Joint Organised Crime Task Force in December 2017, resulting in the seizure of 1.2 tons of methamphetamine with an estimated street value of more than \$1 billion, reportedly the largest seizure of methamphetamine in Australian history;<sup>16</sup> and
- A nine-month operation in partnership with the AFP and law enforcement and border protection agencies internationally, resulting in the seizure of 1.28 tons of cocaine in Sydney with an estimated street value of approximately \$500 million, reportedly the second largest seizure of cocaine in Australian history. This followed other seizures of 700 kilograms and 300 kilograms of cocaine in joint operations with law enforcement agencies in November 2017;<sup>17</sup>

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

1.20 Officers from Outcome 3 were excused from the hearing after the afternoon tea break due to questions in cross-portfolio, corporate and general matters running overtime.

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

1.21 The committee made a number of inquiries about administration and corporate matters throughout the hearing, in particular on issues relating to the Home Affairs portfolio structure and responsibilities, and staffing arrangements.

#### ***Structure and responsibilities of Home Affairs portfolio***

1.22 The committee discussed at length the new arrangements under the Home Affairs portfolio.

1.23 Mr Pezzullo advised the committee that ASIO and some sections currently within AGD were due to move into the Home Affairs portfolio later in the year.<sup>18</sup> The movement of ASIO and the remaining sections in AGD was stated to be subject to the passage of legislation currently before the Parliamentary Joint Committee on Intelligence and Security.<sup>19</sup>

1.24 The committee queried the division of powers between the Minister for Home Affairs and the Attorney-General, particularly in relation to ASIO warrants.<sup>20</sup> Mr Pezzullo explained that the Attorney-General would retain powers such as

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16 *Committee Hansard*, 26 February 2018, p. 61.

17 *Committee Hansard*, 26 February 2018, p. 61.

18 *Committee Hansard*, 26 February 2018, p. 8.

19 *Committee Hansard*, 26 February 2018, p. 12.

20 *Committee Hansard*, 26 February 2018, p. 10.

authorisations of ASIO warrants.<sup>21</sup> As was the case with the movement of ASIO and sections in AGD, these powers were subject to the passage of enabling legislation.

1.25 The department advised the committee that conditions and leave balances had not changed for incoming AGD staff. Minor issues had been identified in relation to unpaid allowances, but DHA stated that this would be rectified.<sup>22</sup>

1.26 The committee asked questions about the estimated cost of the machinery-of-government changes. The department explained that while approximately \$2 million had currently been allocated, a complete total estimate had not yet been provided.<sup>23</sup> Mr Pezzullo stated that it was expected to be less than \$10 million in total, noting that some costs were yet to be identified, such as adequate senior executive office space near Parliament House.<sup>24</sup>

1.27 The committee also inquired into the total budget of the Home Affairs portfolio. The department stated that the total budget allocated for the portfolio, including the department and agencies (excluding ASIO), was approximately \$7 billion for the 2017–18 period and \$23 billion over the forward estimates.<sup>25</sup>

### ***Investigation into the conduct of the ABF Commissioner***

1.28 The committee asked questions regarding investigations into the conduct of Mr Roman Quaedvlieg APM, ABF Commissioner. Mr Pezzullo informed the committee that Mr Quaedvlieg remained on leave while the investigation was ongoing.<sup>26</sup> He further advised the committee that Dr Martin Parkinson AC PSM, Secretary of the Department of Prime Minister and Cabinet, was managing the oversight of the investigation.<sup>27</sup>

1.29 Mr Pezzullo explained the process in which the matter was referred to the Australian Commission for Law Enforcement Integrity (ACLEI) and subsequently to Dr Parkinson:

A matter arose that was the subject of a complaint. It was referred to the Australian Commission for Law Enforcement Integrity. That's the evidence that I've given to the committee before. That's an independent statutory agency with the powers of a standing royal commission. It conducted an investigation. The element that I've added today with the agreement of Dr Parkinson is that, for reasons to do with the management of administrative inquiries, to ensure that natural justice is observed and that due process is observed, Dr Parkinson is leading that element of the administrative inquiry and follow-up action. You say that we're all in the dark; I'm saying to you

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21 *Committee Hansard*, 26 February 2018, p. 10.

22 *Committee Hansard*, 26 February 2018, pp. 14–15.

23 *Committee Hansard*, 26 February 2018, p. 16.

24 *Committee Hansard*, 26 February 2018, p. 17.

25 *Committee Hansard*, 26 February 2018, p. 17.

26 *Committee Hansard*, 26 February 2018, p. 18.

27 *Committee Hansard*, 26 February 2018, p. 19.

that a complaint was made, that it was referred to a standing royal commission that focuses on integrity and that the relevant ongoing follow-up action is with Dr Parkinson. He and I agreed last week that I would so advise this committee.<sup>28</sup>

1.30 The committee also discussed an ACLEI investigation into the use of the ABF Commissioner's Twitter account.<sup>29</sup>

### ***Recruitment of a Chief Medical Officer***

1.31 The committee inquired about the recruitment process of a new Chief Medical Officer (CMO). Mr Pezzullo explained that the role was currently unoccupied while a suitable candidate was identified through recruitment.<sup>30</sup> The First Assistant Secretary responsible for the health services administration function was reported to be overseeing the work area and managing functions usually carried out by the CMO.<sup>31</sup> However, the department noted that the First Assistant Secretary was not acting in the role of the CMO or providing clinical advice as per the CMO's duties, as she was not medically trained.<sup>32</sup>

### **Asylum seekers in onshore and offshore centres**

1.32 The committee asked a number of questions relating to asylum seekers in both onshore and offshore detention centres, including:

- the closure of the Manus Island Regional Processing Centre, including the supply of electricity and water;<sup>33</sup>
- refugees transferred as part of the agreement with the United States government;<sup>34</sup>
- the views of the United Nations High Commissioner for Refugees (UNHCR) regarding asylum seekers in offshore centres;<sup>35</sup>
- an offer by the New Zealand Government to accept a number of asylum seekers;<sup>36</sup> and
- medical facilities in offshore centres.<sup>37</sup>

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28 *Committee Hansard*, 26 February 2018, p. 19.

29 *Committee Hansard*, 26 February 2018, p. 51.

30 *Committee Hansard*, 26 February 2018, p. 35.

31 *Committee Hansard*, 26 February 2018, p. 36.

32 *Committee Hansard*, 26 February 2018, p. 44.

33 *Committee Hansard*, 26 February 2018, pp. 71–74.

34 *Committee Hansard*, 26 February 2018, pp. 83–84; 131–2.

35 *Committee Hansard*, 26 February 2018, pp. 106–7.

36 *Committee Hansard*, 26 February 2018, pp. 107; 117–9.

37 *Committee Hansard*, 26 February 2018, pp. 102–3.



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## National Facial Biometric Matching Capability

1.33 The committee inquired into the National Facial Biometric Matching Capability (NFBMC) first announced in 2015, particularly in relation to the National Drivers Licence Facial Recognition Solution (NDLFR). The department advised that the NDLFR was a component of the NFBMC, which allows the department to provide a hub to interface with each of the states' drivers licence biometric systems. The NDLFR would also interface with the visa and citizenships system within the department's system in addition to the Australian Passport Office within the Department of Foreign Affairs and Trade.<sup>38</sup>

1.34 The department provided an updated cost to the project, noting an additional \$2.5 million provided by the Digital Transformation Authority. This was provided in addition to the previous cost of \$18.5 million in the 2014–15 period.<sup>39</sup>

1.35 The committee asked whether the department had taken steps to avoid inherent discriminatory biases in the NFBMC, noting that studies overseas had shown that similar technology identified non-Caucasian people more frequently. Mr Pezzullo undertook to examine the evidence referred to by the committee.<sup>40</sup>

### Reforms to visa programs

1.36 The committee questioned the department on its consultation regarding the simplification of the visa program. The department explained that consultation was undertaken in the context of the 2017–18 budget in order to explore the potential to simplify the visa system, including the number and types of visas.<sup>41</sup> Public consultation was sought in August to September 2017, which culminated in the suggestion of moving from approximately 100 visas to 10.<sup>42</sup> DHA stated that advice was being prepared but had not yet been considered by the Government.<sup>43</sup>

1.37 The committee asked DHA whether the proposal contained advice relating to the privatisation of the visa application processing. The department explained that the Government had authorised the department to assess whether a more effective visa service delivery system was available.<sup>44</sup> Mr Pezzullo further stated:

The government has given us authority to test the market as to what systems, schemes and capabilities the market might be able to produce by way of partnership between the industry players in this field and government. To say right from the outset—I won't try to anticipate specific questions—as a general comment there is no privatisation of the visa

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38 *Committee Hansard*, 26 February 2018, p. 80.

39 *Committee Hansard*, 26 February 2018, p. 80.

40 *Committee Hansard*, 26 February 2018, p. 81.

41 *Committee Hansard*, 26 February 2018, p. 80.

42 *Committee Hansard*, 26 February 2018, p. 134.

43 *Committee Hansard*, 26 February 2018, p. 134.

44 *Committee Hansard*, 26 February 2018, p. 134.

processing system in so far as officers of the Crown will always be at the pinnacle, the apex, of the visa decision-making system, irrespective of how they're assisted. Whether they are assisted by private sector partners or by automated decision-making tools, officers of the Crown, Commonwealth officers, will always be at the pinnacle of that system.<sup>45</sup>

### **Australian Criminal Intelligence Commission and Australian Institute of Criminology**

1.38 Due to delays in the appearance time of DHA, the committee dismissed ACIC and the Australian Institute of Criminology prior to its appearance.

1.39 The committee thanks ACIC and AIC for their attendance.

### **Australian Federal Police**

1.40 The Australian Federal Police (AFP) appeared before the committee on 27 February 2018, the sole agency from the Home Affairs portfolio to appear on this day. The AFP Commissioner, Mr Andrew Colvin APM OAM, elected not to provide an opening statement.

1.41 Topics examined by the committee included:

- the ongoing implementation of recommendations from the Broderick review in relation to gender diversity and inclusion within the AFP;<sup>46</sup>
- post-traumatic stress disorder affecting AFP officers;<sup>47</sup>
- alleged instances of federal MPs' offices being targeted by neo-Nazi groups;<sup>48</sup>
- amalgamation of AFP into the Home Affairs portfolio, including consideration of budget matters, administrative arrangements and utilisation of resources;<sup>49</sup> and
- investigations into alleged leaks from ministerial offices in relation to the raid initiated by the Registered Organisations Commission on the Australian Workers Union on 24 October 2017.<sup>50</sup>

1.42 The committee also examined international cooperation, particularly in relation to Taskforce Blaze. The AFP explained that Taskforce Blaze worked with Chinese counterparts in relation to illegal drugs:

In respect of Taskforce Blaze, which is our partnership with the Chinese authorities, since its inception back in November 2015 it has resulted in approximately 15.8 tonnes of drugs being seized and precursor material as

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45 *Committee Hansard*, 26 February 2018, p. 134.

46 *Committee Hansard*, 27 February 2018, p. 5.

47 *Committee Hansard*, 27 February 2018, p. 6.

48 *Committee Hansard*, 27 February 2018, p. 15.

49 *Committee Hansard*, 27 February 2018, pp. 16–17.

50 *Committee Hansard*, 27 February 2018, pp. 17–20.

well—so that includes 8,379 kilograms in China itself and 7,452 in Australia as at the end of 2017.<sup>51</sup>

1.43 The AFP stated that it had similar arrangements with authorities in Thailand and Cambodia, which enabled intelligence sharing and cooperation between nations to promote a stronger region.<sup>52</sup>

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51 *Committee Hansard*, 27 February 2018, p. 8.

52 *Committee Hansard*, 27 February 2018, p. 8.



## 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 2017–18 financial year on 27 February 2018.

#### Administrative Appeals Tribunal

2.2 The committee opened its questioning of the Administrative Appeals Tribunal (AAT) by asking for the current lodgement figures for applications for review. Ms Sian Leathem, Registrar, stated that the AAT received 51,426 applications during the 2016–17 year, which was a 24 per cent increase from the 2015–16 year.<sup>1</sup> Ms Leathem also noted:

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.<sup>2</sup>

2.3 A number of other topics were discussed, including:

- a decision announced by the Attorney-General on 2 June 2017 not to renew a number of appointments to the Tribunal;<sup>3</sup>
- appeal rates in relation to the Migration and Refugee Division;<sup>4</sup>
- applications related to social security, child support payments and disability support payments;<sup>5</sup> and
- conflict of interest matters in relation to AAT members.<sup>6</sup>

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

2.4 The committee called the Family Court of Australia, the Federal Circuit Court of Australia, and the Federal Court of Australia (the courts). Prior to the commencement of questioning, Mr Warwick Soden, Chief Executive Officer and Principal Registrar of the Federal Court of Australia (FCA) and the Acting Chief Executive Officer and Principal Registrar of the Family Court of Australia (FamCA), explained that the Chief Justice of the FamCA had asked him earlier in the year to act

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1 *Committee Hansard*, 27 February 2018, p. 37.

2 *Committee Hansard*, 27 February 2018, p. 37.

3 *Committee Hansard*, 27 February 2018, pp. 39–40.

4 *Committee Hansard*, 27 February 2018, pp. 40–1.

5 *Committee Hansard*, 27 February 2018, pp. 41–3.

6 *Committee Hansard*, 27 February 2018, pp. 43–4.

as Chief Executive and Principal Registrar of that court. He was therefore appearing as a representative for the two agencies.<sup>7</sup>

2.5 The committee questioned the courts about discussions regarding the possibility of restructuring the court systems. Dr Stewart Fenwick, Chief Executive Officer and Principal Registrar, Federal Circuit Court of Australia (FCCA), stated that discussions with officials, in addition to public consultations, were underway but that they were in very early stages.<sup>8</sup> It was also stressed that the process was not being considered as a review of the courts, but instead as 'an exploration of possible options for reform, looking at the effectiveness and efficiency of the existing structure'.<sup>9</sup>

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

- the impending retirement of Chief Justice of the FamCA and plans for his eventual successor;<sup>10</sup>
- timeliness statistics for the FamCA and the FCCA in relation to family law matters;<sup>11</sup>
- the number of judges and their associated workloads across the FamCA and the FCCA;<sup>12</sup>
- the role of registrars in the FCCA and the FamCA;<sup>13</sup> and
- pilot programs and studies regarding the use of night courts.<sup>14</sup>

### **Office of the Australian Information Commissioner**

2.7 The Office of the Australian Information Commissioner (OAIC, the office) provided an opening statement to the committee which detailed a number of matters relevant to the agency. In particular, the opening statement highlighted the impending retirement of Mr Timothy Pilgrim PSM, Australian Information Commissioner, who noted his twenty years of appearances before the committee in Senate estimates in various capacities and paid tribute to OAIC staff.<sup>15</sup>

2.8 The committee questioned the OAIC regarding privacy concerns in connection with drones. Mr Pilgrim explained that, as the OAIC's functions extended only to informational privacy in relation to entities covered under the Privacy Act,

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7 *Committee Hansard*, 27 February 2018, pp. 46–7.

8 *Committee Hansard*, 27 February 2018, p. 47.

9 *Committee Hansard*, 27 February 2018, p. 48.

10 *Committee Hansard*, 27 February 2018, p. 48.

11 *Committee Hansard*, 27 February 2018, pp. 50–1.

12 *Committee Hansard*, 27 February 2018, p. 51.

13 *Committee Hansard*, 27 February 2018, p. 53.

14 *Committee Hansard*, 27 February 2018, p. 53.

15 *Committee Hansard*, 27 February 2018, pp. 56–7.

complaints between individuals regarding drone use were outside its remit.<sup>16</sup> When questioned about government agencies using drones to collect information, Mr Pilgrim stated:

There would be two aspects we'd look at. We would look at the statute that covered the particular agency's collection behaviours in the first place. That is one consideration. We would also look at the application of the Privacy Act. Certainly, they would need to comply with the privacy principles if they were, in fact, collecting personal information by that means, in the same way they would if they were collecting it by soliciting it through a form or some other means like that.<sup>17</sup>

2.9 The committee queried the OAIC's response to proposed secrecy laws. Mr Pilgrim stated that the office had given feedback to AGD in addition to providing evidence to the bill inquiry led by the Parliamentary Joint Committee on Intelligence and Security.<sup>18</sup>

2.10 The committee inquired whether additional statutory office holders should be appointed. The OAIC noted that a previous model had envisaged three separate roles, but that the statutory framework allowed for the individual officers in those roles to exercise powers under other acts.<sup>19</sup> It further stated:

The government's view has been that it has been working have very well with Mr Pilgrim as the Privacy Commissioner and the Information Commissioner. The department engages with Mr Pilgrim on how the office is functioning. Mr Pilgrim has pointed to a question of resourcing; that's often a challenge for agencies in this portfolio, where they might be subject to downstream workload impacts flowing from matters in other portfolios. For example, if there are privacy issues flowing from the actions of another portfolio then that workload is felt by the Officer of the Information Commissioner. So it's a challenge sometimes to engage those other portfolios as to whether they can provide additional resourcing for the OIC to cope with that downstream workload impact.<sup>20</sup>

### **Australian Human Rights Commission**

2.11 At the request of the committee, commissioners of the Australian Human Rights Commission (AHRC) included the President, Emeritus Professor Rosalind Croucher AM; the Race Discrimination Commissioner, Dr Tim Soutphommasane; the Age Discrimination Commissioner, the Hon Dr Kay Patterson AO; and the Disability Discrimination Commissioner, Mr Alistair McEwin. Officers from the AHRC were also in attendance.

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16 *Committee Hansard*, 27 February 2018, pp. 57–8.

17 *Committee Hansard*, 27 February 2018, p. 58.

18 *Committee Hansard*, 27 February 2018, p. 58.

19 *Committee Hansard*, 27 February 2018, p. 58.

20 *Committee Hansard*, 27 February 2018, p. 60.

2.12 The committee discussed a number of topics in relation to disability discrimination, including: complaints received by the AHRC in relation to the Disability Discrimination Act;<sup>21</sup> and recruitment practices and targets or quotas in order to increase the representation of people with disabilities in the workforce.<sup>22</sup>

2.13 The committee asked the AHRC about the priorities of the work of the Age Discrimination Commissioner. Dr Patterson stated that she was prioritising work on reducing ageism in the workplace, elder abuse, and older women at risk of homelessness.<sup>23</sup>

2.14 The committee also questioned the President regarding the work of the Religious Freedom Review, of which Professor Croucher is a panel member.<sup>24</sup>

### **Attorney-General's Department and Australian Security Intelligence Organisation**

2.15 The committee called Groups 2 and 3 of the Attorney-General's Department (AGD) to attend the estimates hearing. While the Australian Security Intelligence Organisation (ASIO) had originally been scheduled to appear separately to AGD, delays in calling AGD prompted the committee to call ASIO in conjunction with Group 3—Criminal Justice and National Security Group at 9.36 pm, after the evening tea break.

#### ***Oversight of the investigation into the Australian Border Force Commissioner***

2.16 The committee questioned AGD by seeking clarification on a number of matters regarding the investigation into the Australian Border Force Commissioner.<sup>25</sup> The Secretary, Mr Chris Moraitis, explained that AGD had played very little role in the investigation, and that Dr Parkinson, Secretary of the Department of Prime Minister and Cabinet, was better placed to respond to questions.<sup>26</sup>

#### ***Machinery-of-government changes***

2.17 The committee asked questions regarding the changes to the administrative arrangements in relation to staffing, finance and other related matters. The Secretary stated that the machinery-of-government changes had moved a number of staff and work areas to the new Home Affairs portfolio, with the second phase expected subject to the passage of legislation.<sup>27</sup> The Secretary also noted that a parallel process was in place in relation to cyberactivities, which involved the creation of the Australian

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21 *Committee Hansard*, 27 February 2018, pp. 65–66.

22 *Committee Hansard*, 27 February 2018, p. 66.

23 *Committee Hansard*, 27 February 2018, pp. 66–8.

24 *Committee Hansard*, 27 February 2018, pp. 71–3.

25 *Committee Hansard*, 27 February 2018, pp. 75–7.

26 *Committee Hansard*, 27 February 2018, p. 75.

27 *Committee Hansard*, 27 February 2018, p. 79.



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Signals Directorate as a statutory authority within the Defence Portfolio, and would require the movement of staff out of AGD into the new agency.<sup>28</sup>

2.18 The Secretary advised that, in relation to financial and staffing matters, there had been a movement of accrued liabilities and leave entitlements, which had been reconciled. He explained that a transfer of responsibilities had occurred, which were reflected in the administrative arrangement orders, including areas such as money laundering and criminal justice.<sup>29</sup>

2.19 The committee also asked questions regarding the Attorney-General's future role in relation to ASIO. Mr Moraitis advised that the Attorney-General would continue to oversee warrants and special operations in ASIO, as announced by the Prime Minister in July 2017. Consequentially, some staff would remain in AGD to advise the Attorney-General in relation to authorising warrants.<sup>30</sup> Mr Duncan Lewis AO DSC CSC, Director-General of ASIO, also noted that the Attorney-General would continue to exercise ministerial discretions.<sup>31</sup>

### ***Other matters***

2.20 The committee also asked questions of AGD and ASIO relating to:

- the legal status of extremist material;<sup>32</sup>
- criteria and procedures for Commonwealth employees seeking assistance from the Office of Legal Services Coordination;<sup>33</sup>
- officers engaged in overseas programs or activities; examples provided included officers assisting the Indonesian government to strengthen the legal system; and prosecutors stationed in Papua New Guinea providing skills in capacity building, particularly in relation to gender violence;<sup>34</sup>
- whether proposed national security legislation addressed a perceived threat of covert foreign influence in Australian elections;<sup>35</sup>
- proposed legislative amendments to the Native Title Act;<sup>36</sup>
- matters concerning the Royal Commission into Institutional Responses to Child Sexual Abuse, including draft legislation and an AGD task force established to coordinate the implementation of the recommendations;<sup>37</sup>

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28 *Committee Hansard*, 27 February 2018, pp. 79–80.

29 *Committee Hansard*, 27 February 2018, p. 79.

30 *Committee Hansard*, 27 February 2018, pp. 79–80.

31 *Committee Hansard*, 27 February 2018, p. 129.

32 *Committee Hansard*, 27 February 2018, p. 78.

33 *Committee Hansard*, 27 February 2018, pp. 84–7; 89–92.

34 *Committee Hansard*, 27 February 2018, pp. 88–90.

35 *Committee Hansard*, 27 February 2018, pp. 94–7; 125.

36 *Committee Hansard*, 27 February 2018, pp. 103–6.

- consultation regarding security concerns in relation to private sector company participation in a 5G working group;<sup>38</sup> and
- correspondence from September 2013 between the Secretary of the then-Department of Immigration and Border Protection and the former Director-General of ASIO, in relation to security clearances for people seeking permanent protection visas.<sup>39</sup>

### **National Archives of Australia**

2.21 The committee asked the National Archives of Australia (NAA) about applications to declassify historic Australian secret intelligence records relating to East Timor and Indonesia.<sup>40</sup> When queried about the decision-making process for the declassification of secret intelligence records, Mr David Fricker, Director-General of NAA, explained that documents contained by the Australian Secret Intelligence Service were not held by NAA, and that arrangements made under the Archives Act enabled NAA to begin a process of retrieval for release.<sup>41</sup>

2.22 In response to a question regarding the decision-maker in such decisions, he stated:

The ultimate decision-maker is my office, the Office of Director-General of the National Archives. As the occupant of that position, I have to satisfy myself that the requirements for exemption have been fulfilled as required under the act, so I do make it a practice to understand as completely as possible what the nature of those records are and the reasons for exemption. Ordinarily that would involve me seeing those records. However, I further add that the section 35 arrangements as prescribed under the act allow us to make arrangements for the proper examination and handling of records, and the advice that I would receive from the controlling agencies would weigh very, very heavily upon any decision that the Archives would make.<sup>42</sup>

2.23 The committee also questioned NAA's temporary relocation to Old Parliament House in Canberra, which was stated to be as a result of the sale and remediation of the East Block facilities.<sup>43</sup> Mr Fricker noted that most functions of the agency had been maintained, with the exception of certain public programs which could not be accommodated within the temporary site.<sup>44</sup>

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37 *Committee Hansard*, 27 February 2018, pp. 109–16; 120–1.

38 *Committee Hansard*, 27 February 2018, pp. 123–5.

39 *Committee Hansard*, 27 February 2018, pp. 126–9.

40 *Committee Hansard*, 27 February 2018, pp. 135–7.

41 *Committee Hansard*, 27 February 2018, pp. 135.

42 *Committee Hansard*, 27 February 2018, pp. 135.

43 *Committee Hansard*, 27 February 2018, pp. 137.

44 *Committee Hansard*, 27 February 2018, pp. 137–8.

**Senator the Hon. Ian Macdonald**  
**Chair**



# Appendix 1

## Departments and agencies for which the committee has oversight

### Attorney-General's Portfolio

- Attorney General's Department;
- Administrative Appeals Tribunal;
- Australian Financial Security Authority;
- Australian Commission for Law Enforcement Integrity;
- Australian Human Rights Commission;
- Australian Law Reform Commission;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- Family Court of Australia;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- High Court of Australia;
- National Archives of Australia;
- Office of the Australian Information Commissioner;
- Office of the Director of Public Prosecutions; and
- Office of Parliamentary Counsel.

### Home Affairs Portfolio

- Department of Home Affairs (inclusive of Australian Border Force).
- Australian Federal Police;
- Australian Criminal Intelligence Commission;
- Australian Institute of Criminology;



## **Appendix 2**

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## **Appendix 3**

### **Tabled documents**

#### **Home Affairs portfolio**

**Monday, 26 February 2018**

<b>No.</b>	<b>Tabled by:</b>	<b>Topic</b>
1	Mr Michael Pezzullo, Secretary, Department of Home Affairs	Opening Statement
2	Mr Michael Pezzullo, Secretary, Department of Home Affairs	Organisational Chart
3	Mr Michael Outram APM, Acting Commissioner, Australian Border Force	Opening Statement
4	Senator Nick McKim	Media Statement, Minister for Immigration and Border Security, Papua New Guinea

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

**Tuesday, 27 February 2018**

<b>No.</b>	<b>Tabled by:</b>	<b>Topic</b>
1	Mr Timothy Pilgrim PSM, Australian Information Commissioner, Office of the Australian Information Commissioner	Privacy Act – Privacy Commissioner Functions & interaction with other statutes and entities

