

The Senate

Legal and Constitutional Affairs
Legislation Committee

Additional estimates 2019–20

March 2020

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ISBN 978-1-76093-069-1

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This document was printed by the Senate Printing Unit, Department of the Senate,
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46th Parliament

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Additional Budget Estimates

1.1 The Senate Legal and Constitutional Affairs Legislation Committee (the committee) examined the proposed 2019–20 additional expenditure for the Home Affairs portfolio and the Attorney-General's portfolio at public hearings held on 2 and 3 March 2020.

1.2 This report does not attempt to analyse the evidence presented to the committee; however, it does outline the key issues considered by the committee during its examination of the proposed 2019–20 additional expenditure.

Referral of documents

1.3 The Senate referred the following documents to committees for examination and report:

- particulars of proposed additional expenditure in respect of the year ending on 30 June 2020 [Appropriation Bill (No. 3) 2019–2020];
- particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2020 [Appropriation Bill (No. 4) 2019–2020];
- particulars of proposed additional expenditure in relation to the Parliamentary Departments in respect of the year ending on 30 June 2019 [Appropriation (Parliamentary Departments Bill (No. 2) 2019–2020]; and
- the final budget outcome 2018–19 and the advances under the annual Appropriation Acts for 2018–19.¹

1.4 The Portfolio Additional Estimates Statements for 2019–20 were tabled in the Senate on 13 February 2020.²

Portfolio oversight

1.5 The committee is responsible for examining the proposed expenditure of the departments and agencies within the Home Affairs portfolio and the Attorney-General's portfolio.³

1.6 The committee notes that by operation of the Administrative Arrangements Order dated 29 May 2019, responsibility for workplace relations, including work health and safety, rehabilitation and compensation functions, was moved from the former Department of Jobs and Small Business to the Attorney-General's Department. The Department of Finance issued an instrument on 21 June 2019 which assigned

1 *Journals of the Senate*, No. 42, 13 February 2020, pp. 1283–1284.

2 *Journals of the Senate*, No. 42, 13 February 2020, p. 1284.

3 *Journals of the Senate*, No. 42, 13 February 2020, pp. 1268–1269.

responsibility for the preparation of the 2018-19 annual report and annual performance statements for those functions to the Department of Employment, Skills, Small and Family Business. A motion of the Senate dated 4 July 2019 allocated oversight responsibility for industrial relations to the Senate Standing Committee on Education and Employment. As such, the examination of estimates relating to those functions is considered by that committee.

Questions on notice

1.7 In accordance with Standing Order 26, the committee has drawn the attention of the departments and their agencies to the agreed deadline of Friday, 24 April 2020 for the receipt of answers to questions taken on notice.

1.8 As the committee is required to report to the Senate before responses to questions are due, this report has been prepared without reference to any of these responses.

1.9 Tabled documents from the hearing, along with responses to questions on notice and additional information provided to the committee are tabled in the Senate and uploaded to the committee's website.⁴

Hansard transcripts

1.10 A transcription of the committee's hearings is made via the *Committee Hansard*, which is published on the estimates webpage.⁵

1.11 References in this report are to the proof *Committee Hansard*. Page numbers may vary between the proof and the final versions of the *Committee Hansard*.

Home Affairs Portfolio

1.12 At its hearing on 2 March 2020, the committee examined the outcomes of the Home Affairs portfolio. Evidence was provided by Senator the Hon Michaelia Cash and Senator the Hon Marise Payne, on behalf of the Minister for Home Affairs, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, the Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management and senior officers of the Home Affairs portfolio led by the Secretary of the Department of Home Affairs, Mr Michael Pezzullo.

1.13 The committee thanks the ministers and officers who provided evidence, and support for, the committee's hearings.

1.14 The committee took evidence from the following departments and agencies.

- Australian Border Force (ABF);

4 See http://www.aph.gov.au/Parliamentary_Business/Senate_estimates/legcon/2019-20_Additional_estimates.

5 The *Committee Hansard* is published online at: http://www.aph.gov.au/Parliamentary_Business/Senate_estimates/legcon/2019-20_Additional_estimates

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- Australian Criminal Intelligence Commission (ACIC) and the Australian Institute of Criminology (AIC);
 - Australian Federal Police (AFP);
 - Australian Security Intelligence Organisation (ASIO);
 - Australian Transaction Reports and Analysis Centre (AUSTRAC); and
 - Department of Home Affairs.

Key issues

1.15 The committee discussed a wide range of topics relating to the Home Affairs portfolio, including those outlined below.

Australian Federal Police

1.16 Commissioner Reece Kershaw APM made an opening statement (pp. 4-5).

1.17 Key issues discussed include:

- the conclusions and recommendations arising out of an examination by Mr John Lawler AM APM of the AFP's response to and management of sensitive investigations (pp. 4-5, 7, 12);
- the referral to the AFP of the matter relating to the Minister for Energy and Emissions Reduction, the Hon Angus Taylor MP, and the Lord Mayor of the City of Sydney, Ms Clover Moore by New South Wales Police, and the AFP's handling of the matter (pp. 5-15, 17-19, 22-26);
- the usage of metadata warrants in relation to parliamentarians (pp. 15-16);
- the AFP's investigation of Witness J/Alan Johns (p. 16);
- the implementation of new measures following the passage of the Combatting Child Sexual Exploitation Legislation Amendment Bill 2019 (pp. 19-21);
- the impact of changes in funding for the AFP on average staffing levels (pp. 26-28); and
- usage of the additional \$600 million provided to the AFP over forward estimates, including in the National Anti-Gang Squad (pp. 28-30).

Australian Criminal Intelligence Commission and the Australian Institute of Criminology

1.18 Key issues discussed include:

- Project Jacto (pp. 30-31);
- trends in visa fraud (pp. 31-33);
- the National Criminal Intelligence System (pp. 32-33);
- analysis from the AIC's report, *Violent extremism in Australia: An overview* (p. 34); and
- security at airports and seaports (pp. 34-35).

Australian Transaction Reports and Analysis Centre

1.19 Key issues discussed include:

- protocols concerning the referral of matters by AUSTRAC to the police (pp. 35-39);
- AUSTRAC's legal action against Westpac for alleged breaches of anti-money-laundering and counter-terrorism finance laws (pp. 39-40, 42-43);
- AUSTRAC's capability to detect breaches of anti-money-laundering and counter-terrorism finance laws (pp. 40-41); and
- media reporting about AUSTRAC's investigation in Westpac and the agency's management (pp. 44-48).

Australian Security Intelligence Organisation

1.20 Mr Mike Burgess, Director-General of ASIO, made an opening statement (p. 49).

1.21 Key issues discussed include:

- threats as discussed in the *Director-General's Annual Threat Assessment* delivered on 24 February 2020 (pp. 49-51);
- activities of the Commonwealth Scientific and Industrial Research Organisation (CSIRO) (pp. 51-52);
- foreign interference (pp. 53-54);
- prosecution of Witness J (p. 54);
- the use of questioning warrants and questioning and detention warrants (p. 54); and
- threats in the course of post-custodial regimes for individuals, particularly those having been imprisoned for terrorism offences (pp. 55-56, 90-91).

Department of Home Affairs

1.22 Mr Michael Pezzullo, Secretary of the Department of Home Affairs and Mr Michael Outram APM, Commissioner of the Australian Border Force gave opening statements (pp. 56-58, 77-78).

1.23 Key issues discussed include:

- Marine Unit patrol days (pp. 59-63, 68-69, 79-80);
- departmental preparation for increased climate risks (pp. 64-67);
- the departmental investigation into an allegation of an integrity issue by a detainee concerning bribes for visas (pp. 69-72);
- the department's response to the High Court's decision in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3 (pp. 72-73);

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- referral to the AFP by the Department of Home Affairs of the disclosure of details about a specific medical transfer of an offshore detainee to a journalist (pp. 73-74);
 - access to individuals' metadata and other surveillance measures directed at individuals by agencies (pp. 80-81);
 - activities undertaken by the CSIRO (pp. 81-82);
 - the confiscated asset fund (p. 83);
 - grants relating to the cost of upgrading airports and operational costs in regional airports (pp. 83-85, 90, 100);
 - COVID-19 (pp. 85-86, 92-95);
 - the Victorian International Container Terminal (pp. 86-87);
 - the documentation verification service and the face verification service – “the hub” – in production by the Department of Home Affairs (pp. 87-90, 95-100, 127-129);
 - threats in the course of post-custodial regimes for individuals, particularly those having been imprisoned for terrorism offences (pp. 90-91);
 - identification of a Chinese research vessel off Western Australia (pp. 91-92);
 - the National Counter Foreign Interference Taskforce (pp. 100-101);
 - preparation for and actions taken throughout the 2019-20 bushfire season (pp. 102-113);
 - the National Catastrophic Natural Disaster Plan (p. 113);
 - the Emergency Response Fund (pp. 113-114);
 - the Australian Government disaster recovery payment (pp. 114-115);
 - negotiations between Australia and the United States on the Clarifying Lawful Overseas Use of Data (CLOUD) Act agreement (p. 115);
 - financial assistance to the Tasmanian Government following bushfires (pp. 115-116);
 - the refugee re-settlement agreement with the United States (pp. 116-118, 133);
 - bribery allegations made against Paladin (pp. 118-124);
 - offshore detention (pp. 124-127);
 - detecting the use of fraudulent passports, SmartGates, biometrics data and the development of the global digital platform (pp. 129-131);
 - resettlement of refugees in offshore detention in New Zealand (pp. 132-133);
 - the detention of a family from Biloea on Christmas Island (p. 134); and
 - individuals who arrive by airplane and subsequently apply for protection visas (pp. 135-140).

1.24 At the hearing on 2 March 2020, the committee did not conclude hearing evidence under Outcome 1 and did not hear evidence under Outcomes 2 and 3 of the Department of Home Affairs. Consequently, the committee agreed to conclude receiving evidence from the Home Affairs portfolio at an additional hearing to be held on Thursday 26 March 2020. On 17 March 2020, the committee decided to cancel this additional hearing in light of the Parliament's response to the COVID-19 outbreak.

Attorney-General's Portfolio

1.25 At its hearing on 3 March 2020, the committee examined the outcomes of the Attorney-General's portfolio. Evidence was provided by Senator the Hon Marise Payne, Senator the Hon Jane Hume and senior officers of the Attorney-General's portfolio led by the Secretary of the Attorney-General's Department, Mr Chris Moraitis PSM.

1.26 The committee thanks the ministers and officers who provided evidence, and support for, the committee's hearings.

1.27 The committee took evidence from the following department and agencies within the Attorney-General's portfolio:

- Administrative Appeals Tribunal (AAT);
- Australian Human Rights Commission (AHRC);
- Attorney-General's Department (AGD);
- Family Court of Australia;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- High Court of Australia (HCA);
- Independent National Security Legislation Monitor (INSLM);
- National Archives of Australia (NAA); and
- Office of the Australian Information Commissioner (OAIC).

Key issues

1.28 The committee discussed a wide range of topics relating to the Attorney-General's portfolio, including those outlined below.

Attorney-General's Department

1.29 While the Secretary of the Attorney-General's Department did not make an opening statement (p. 4), the Official Secretary of the Royal Commission into National Natural Disaster Arrangements did (p. 100).

1.30 Key issues discussed include:

- transfer of Freedom of Information requests to another agency or minister under the *Freedom of Information Act 1982* in the context of proposed appointments to the AAT (pp. 4, 14-17);

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- appointments to the AAT (pp. 4-7, 12-13, 17-19, 22-25);
 - timing of the release of the exposure draft for the Commonwealth Integrity Commission (pp. 7, 35-37);
 - jurisdiction of the proposed Commonwealth Integrity Commission (pp. 7-11, 13-14, 37-38, 43-46);
 - the religious discrimination bill (pp. 19-20, 27-28);
 - contingency planning undertaken by the department for climate change (pp. 20-22);
 - age of criminal responsibility and communiqué arising out of the Council of Attorneys-General meeting (pp. 25-27);
 - the Australian Law Reform Commission's report, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* tabled 28 March 2018 (pp. 28-29);
 - the ALRC's report, *Integrity, Fairness and Efficiency—An Inquiry into Class Action Proceedings and Third-Party Litigation Funders* tabled on 24 January 2019 (p. 29);
 - the ALRC's report, *Family Law for the Future: An Inquiry into the Family Law System* tabled 10 April 2019 (p. 29, 40, pp. 48-51);
 - Mr Philip Moss AM, *Review of the Public Interest Disclosure Act 2013*, July 2016 (pp. 29-31);
 - the prosecution of Witness J (pp. 32-33);
 - reforms to the *Privacy Act 1988* (pp. 34-35);
 - family law reform (pp. 39-40);
 - advice provided to the government by the department relating to the High Court's decision in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3 (pp. 41-43);
 - implications of section 24 of the *Archives Act 1983* where documents have been destroyed (pp. 46-47);
 - House of Representatives Standing Committee on Social Policy and Legal Affairs, *A better family law system to support and protect those affected by family violence*, tabled December 2017 (pp. 49-51);
 - structural reform to the Federal Circuit Court of Australia and the Family Court of Australia (pp. 52-53);
 - family violence (pp. 54-56);
 - funding for the Family Violence and Cross-examination of Parties Scheme (pp. 56-59);
 - the presumption of shared responsibility under the *Family Law Act 1975* (pp. 59-60);

- additional funding for legal aid in relation to family law and family violence (p. 60);
- the suitability of the Family Court building in Launceston (p. 61);
- the National Legal Assistance Partnership agreement (pp. 61-62, 65-67, 94-96);
- the Royal Commission into Violence, Abuse Neglect and Exploitation of People with Disability (pp. 63-65, 69-74);
- the Royal Commission into Aged Care Quality and Safety (pp. 67-69);
- changes to the administration of Aboriginal and Torres Strait Islander legal assistance (pp. 93-94);
- the Commonwealth's response to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory (p. 96);
- the implementation of the *Optional Protocol of the Convention Against Torture* (OPCAT) in Australia (p. 96);
- reporting of responses by the non-government sector to the Royal Commission into Institutional Responses to Child Sexual Abuse (pp. 97-98);
- the Royal Commission into National Natural Disasters Arrangements (pp. 100-102);
- usage of the Foreign Influence Transparency Scheme (pp. 103-107); and
- the planned visit by the UN Subcommittee on Prevention of Torture and the Working Group on Arbitrary Detention to Australia (pp. 108-110).

Australian Human Rights Commission

1.31 Dr Ben Gauntlett, Disability Discrimination Commissioner, gave an opening statement (pp. 84-85).

1.32 Key issues discussed include:

- the AHRC's perspective on the Director-General of ASIO's comments regarding potential terrorist threats and other extremist activity (pp. 74-75, 82-83);
- the Universal Periodic Review (pp. 77-78);
- older women at risk of homelessness (p. 78);
- the *Wiyi Tani U Thangani* report (p. 79);
- *Guidelines for the inclusion of transgender and gender diverse people in sport* published in 2019 (pp. 79-81);
- press freedom and the Right to Know campaign (pp. 83-84);
- trends in complaints made to the AHRC (p. 85); and
- the religious discrimination bill (pp. 85-87).

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

1.33 Key issues discussed include:

- works being undertaken to address the backlog in the Federal Circuit Court and the Family Court (pp. 88-89);
- charging of vacation fees (pp. 89-90);
- funding for the Family Violence and Cross-examination of Parties Scheme (pp. 90-91);
- workload of the Family Court and the Federal Circuit Court (pp. 91-92); and
- merging of the Family Court and the Federal Circuit Court (pp. 92-93).

Administrative Appeals Tribunal

1.34 Key issues discussed include:

- the issuance of warrants by Tribunal members under the *Telecommunication (Interception and Access) Act 1979* and the *Surveillance Devices Act 2004* for law enforcement purposes (pp. 111-113, 118-119);
- caseload data for Centrelink payment applications and appeals (pp. 115-118);
- overpayment of senior tribunal members' wages (pp. 120-122);
- defined benefit scheme payments for new tribunal members (p. 122-123); and
- appointments to the AAT (pp. 123-124).

Office of the Australian Information Commissioner

1.35 Key issues discussed include:

- the OAIC's consideration of a complaint referred to it regarding the Department of Prime Minister and Cabinet handling of an application made under the Freedom of Information Act (p. 124);
- the OAIC's investigations into the Department of Home Affairs (pp. 124-125, 127-128);
- caseload management (pp. 125-126); and
- additional funding for the OAIC in the 2019-20 Federal Budget (pp. 126-127).

High Court of Australia

1.36 The key issue discussed was:

- special leave applications and caseload management (pp. 128-129).

Independent National Security Legislation Monitor

1.37 The INSLM, Dr James Renwick CSC SC, gave an opening statement (pp. 130-131).

1.38 Key issues discussed include:

- the INSLM's investigation to into the circumstances of the case involving Alan Johns (pp. 130-131); and
- other matters under the *National Security Information Act 2004* (p. 121).

National Archives of Australia

1.39 Key issues discussed include:

- the Tune Review (pp. 133-136); and
- the conclusions of the Australian National Audit Office report received on 31 October 2019.

Senator Amanda Stoker

Chair

Appendix 1

Departments and agencies for which the committee has oversight

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.

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.

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Appendix 3

Tabled documents

Home Affairs portfolio

Monday, 2 March 2020

No.	Tabled by	Topic
1	Senator Keneally	Home Affairs - FOI Documents
2	Senator Keneally	Article: "'A new paradigm': Australia's new top cop promises era of transparency.'
3	Senator Keneally	Letter from AFP to Shadow Attorney-General (dated 6 February 2020)
4	Senator Keneally	NSW Police Statement of a Witness, Lord Mayor Clover Moore (dated 6 December 2019)
5	Senator Keneally	AFP CCPM Log
6	Senator Keneally	City of Sydney metadata
7	Senator Keneally	Letter from the Shadow Minister for Climate Change and Energy to the FOI Officer of the Department of Prime Minister and Cabinet (undated)
8	Senator Keneally	<i>Sydney Morning Herald</i> article: 'Taylor's advisor airs just four of 18 papers in City travel bill saga' (dated 21 January 2020)
9	Senator Keneally	Australian Criminal Intelligence Commission, <i>Trends and Issues</i> No 491, March 2017
10	Senator Pratt	<i>The Daily Telegraph</i> article: 'Financial crimes watchdog AUSTRAC under fire over delays, alleged bungles in Westpac child sex affair' (dated 29 February 2020)
11	Senator Pratt	<i>News.com.au</i> article: 'Govt backs financial crimes watchdog' (dated 1 March 2020)
12	Director-General, ASIO	Opening statement of the Director-General, ASIO
13	Director-General, ASIO	First Annual Threat Assessment Speech, Director-General of ASIO (dated 24 February 2020)
14	Secretary, Department of Home Affairs	Opening statement of the Secretary, Department of Home Affairs

No.	Tabled by	Topic
15	Senator Keneally	Exerpt from the <i>Department of Home Affairs Annual Report 2018-19</i> (p. 209)
16	Senator Keneally	Exerpt from the <i>Department of Home Affairs Annual Report 2018-19</i> (p. 211)
17	Senator Keneally	Exerpt from the <i>Department of Home Affairs Annual Report 2018-19</i> (p. 17)
18	Commissioner, Australian Border Force	Opening statement of the Commissioner, Australian Border Force
19	Senator Watt	<i>Australian Financial Review</i> article: 'Government buried climate risk action plan' (dated 11 January 2020)
20	Senator Stoker	<i>The Australian</i> article : 'Fire chiefs' climate group a pet 'project' of activist Tim Flannery' (dated 17 December 2019)
21	Senator Pratt	<i>Sydney Morning Herald</i> article: 'Security firm figure willing to tell all about "bribery bids"' (dated 28 January 2020)
22	Senator Ciccone	<i>Sydney Morning Herald</i> article: 'Rejected airplane asylum seekers at new high' (dated 17 February 2020)
23	Commissioner of the Australian Federal Police	Opening statement of the Australian Federal Police Commissioner

Attorney-General's portfolio

Tuesday, 3 March 2020

No.	Tabled by	Topic
1	Senator Waters	Transcript of interview with the Attorney-General on RN Breakfast (dated 3 March 2020)
2	Senator Stoker	Letter from the Attorney-General to Senator the Hon Marise Payne regarding round tables on the Religious Discrimination Bill (dated 2 December 2020)
3	Secretary, Attorney-General's Department	Australian Government Solicitor, Summary of the High Court's decision in <i>Love v Cth</i> and <i>Thoms v Cth</i> (dated 17 February 2020)

No.	Tabled by	Topic
4	Secretary, Attorney-General's Department	Consultation round tables regarding the exposure draft of the Religious Discrimination Bill
5	Senator Carr	<i>Weekend Australian</i> article: 'Abbott: I'm no foreign agent' (dated 2 November 2019)
6	Senator Carr	<i>Weekend Australian</i> article: 'In pursuit of commonsense' (dated 2 November 2019)
7	Senator Carr	Open letter to the Attorney-General and the Shadow Attorney-General from ACCOS (dated 18 April 2019)
8	Senator Carr	Media release from NATSILS: "'Self-determination is the path to justice" Aboriginal and Torres Strait Islander Legal Services call for action from incoming Federal Government' (dated 3 June 2019)
9	Senator Carr	CPAC Chronology
10	Office of the Australian Information Commissioner	Opening statement of the Information Commissioner
11	Independent National Security Legislation Monitor	Media release from the INSLM: 'New review: The operation of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004 (Cth)</i> arising out of the matter of Alan Johns (a pseudonym) '
12	Independent National Security Legislation Monitor	Opening statement of the Independent National Security Legislation Monitor
13	Disability Discrimination Commissioner, Australian Human Rights Commission	Opening statement of the Disability Discrimination Commissioner, Australian Human Rights Commission
14	Chief Executive Officer of the Family Court of Australia and the Federal Circuit Court of Australia	Opening statement of the Chief Executive Officer of the Family Court of Australia and the Federal Circuit Court of Australia
15	Official Secretary of the Royal Commission into National Natural Disaster Arrangements	Opening statement of the Official Secretary of the Royal Commission into National Natural Disaster Arrangements