

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Budget estimates 2018–19

August 2018

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ISBN 978-1-76010-790-1

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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 Jane Hume (LP, VIC)

Senator Nick McKim (AG, TAS)

Senator Jim Molan AO, DSC (LP, NSW)

Senator Murray Watt (ALP, QLD)

### Senators in attendance

Senator the Hon Ian Macdonald (Chair)

Senator Derryn Hinch

Senator Louise Pratt (Deputy Chair)

Senator Kimberley Kitching

Senator Jane Hume

Senator David Leyonhjelm

Senator Nick McKim

Senator Sue Lines

Senator Jim Molan AO, DSC

Senator Steve Martin

Senator Murray Watt

Senator Claire Moore

Senator the Hon Michaelia Cash

Senator Rex Patrick

Senator the Hon Mitch Fifield

Senator Lee Rhiannon

Senator the Hon Zed Seselja

Senator Janet Rice

Senator David Bushby

Senator Rachel Siewert

Senator the Hon Kim Carr

Senator Lisa Singh

Senator Richard Di Natale

Senator Jordon Steele-John

Senator Patrick Dodson

Senator Amanda Stoker

Senator Stirling Griff

Senator Tim Storer

Senator Pauline Hanson

Senator the Hon Penny Wong

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# Abbreviations

AAO	Administrative Arrangements Orders
AAT	Administrative Appeals Tribunal
ABF	Australian Border Force
ACIC	Australian Criminal Intelligence Commission
AFP	Australian Federal Police
AGD	Attorney-General's Department
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
ASIO	Australian Security Intelligence Organisation
ASL	Average Staffing Level
AUSTRAC	Australian Transaction Reports and Analysis
CDPP	Office of the Commonwealth Director of Public Prosecutions
DHA	Department of Home Affairs
FOI	Freedom of Information
FTE	Full Time Equivalent
MOG	Machinery-of-government
NAA	National Archives of Australia
OAIC	Office of the Australian Information Commissioner
OPC	Office of Parliamentary Counsel
OPCAT	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PBS	Portfolio Budget Statements





## Preface

On 8 May 2018, the Senate referred to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for examination the estimates of proposed and certain expenditure for 2018–19.<sup>1</sup>

The committee is responsible for the examination of the Attorney-General's portfolio and the Home Affairs portfolio.

### Reference of documents

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

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

The committee is required to report on its consideration of the budget estimates on 26 June 2018.

### *Changes to the Administrative Arrangements Orders*

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

In relation to the Attorney-General's Portfolio, amendments to the AAO on 10 May 2018 resulted in the addition of three entities to the Portfolio:

- Independent National Security Legislation Monitor;
- Office of the Inspector-General of Intelligence and Security; and
- Office of the Commonwealth Ombudsman.<sup>2</sup>

The passage of the Home Affairs bill on 9 May 2018 also resulted in the omission of the Australian Security Intelligence Organisation from the Attorney-General's Portfolio. The agency was subsequently moved to the Home Affairs Portfolio.

Notwithstanding these changes, the committee agreed that, for the purposes of Budget Estimates 2018–19, it would examine agencies as reported in the Budget Papers during the committee's estimates.

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1 *Journals of the Senate*, No. 95, 8 May 2018, pp. 3033–4.

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

## **Estimates hearings**

The committee met in public session on 21, 22, 23 and 24 May 2018. Over the course of the four days' hearings, totalling over 37 hours, the committee took evidence from the following departments and agencies:

- Department of Home Affairs;
- Attorney-General's Department;
- Administrative Appeals Tribunal;
- Australian Criminal Intelligence Commission and Australian Institute of Criminology;
- Australian Federal Police;
- Australian Human Rights Commission;
- Australian Law Reform Commission;
- Australian Transaction Reports and Analysis Centre;
- Australian Security Intelligence Organisation;
- Family Court of Australia;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- National Archives of Australia;
- Office of the Australian Information Commissioner;
- Office of the Commonwealth Director of Public Prosecutions; and
- Office of Parliamentary Counsel.

During the May hearings, the committee resolved to hold a spill-over hearing to further examine certain agencies. This additional hearing was held on 3 August 2018 and heard evidence from:

- Department of Home Affairs; and
- Australian Federal Police.

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.

## **Attendance of Ministers, Assistant Ministers and other witnesses**

On 21, 22 and 23 May 2018, the committee heard evidence from Senator the Hon Mitch Fifield, representing the Minister for Home Affairs. Minister Fifield was assisted on 21 and 22 May 2018 by Senator the Hon Zed Seselja, the Assistant Minister for Social Services.

On 23 and 24 May 2018, the committee heard evidence from Senator the Hon Michaelia Cash, representing the Attorney-General. Minister Cash was assisted on

23 and 24 May 2018 by Senator the Hon Zed Seselja, the Assistant Minister for Social Services.

On 3 August 2018, the committee heard evidence from Senator the Hon Zed Seselja, the Assistant Minister for Social Services, who represented the Minister for Home 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 resolved that the due date for answers to questions on notice would be 5 July 2018 for the hearings on 21, 22, 23 and 24 May 2018.

In relation to the hearing on 3 August 2018, the committee resolved that the due date for answers to questions on notice would be 14 September 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.

### **Structure of this report**

This report consists of two chapters:

- Chapter one outlines the issues raised regarding the budget estimates for the Home Affairs portfolio; and
- Chapter two outlines the issues raised regarding the budget estimates for the Attorney-General's portfolio.

### **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 budget estimates for the Home Affairs portfolio for the 2018–19 financial year.

1.2 The Department of Home Affairs (DHA, the department) appeared over two days of hearings, Monday, 21 May 2018 and Tuesday, 22 May 2018.

1.3 Home Affairs portfolio agencies appeared on Wednesday, 23 May 2018, including:

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

1.4 A brief discussion of the portfolio's appearance at the spill-over hearing on 3 August 2018 is at the end of this chapter (paragraph 1.41).

### Department of Home Affairs

#### *Opening statements*

1.5 The Secretary of DHA and the Commissioner of the Australian Border Force (ABF) both made brief opening statements to the committee.

1.6 In his opening statement, the Secretary, Mr Michael Pezzullo, noted that the establishment of the portfolio had effectively been completed as a result of the changes to the Administrative Arrangements Orders (AAO) and the passage of the *Home Affairs and Integrity Agencies Legislation Amendment Act 2018* in May 2018:<sup>1</sup>

With our colleagues in the Home Affairs portfolio agencies, the department will continue to build a portfolio which both respects the independence and traditions of the portfolio agencies, while also harnessing, in a way that has been hitherto impossible, the collective power and strength of the new national architecture of domestic security and law enforcement.<sup>2</sup>

1.7 The Secretary outlined achievements already completed within the newly-established portfolio within its five-month existence, including:

- promoting collaboration between work areas to address cyber threats, such as co-locating the Cyber Security Policy Division within the Australian Cyber Security Centre in the Australian Signals Directorate;

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1 *Proof Committee Hansard*, 21 May 2018, p. 4.

2 *Proof Committee Hansard*, 21 May 2018, p. 4.

- the establishment of the Transnational Serious and Organised Crime unit, headed by a coordinator who will report to the Secretary on policy issues and to the Commissioner of the AFP on operational issues;<sup>3</sup>
- the establishment of the National Counter Foreign Interference unit, which will provide leadership in developing whole-of-Government strategies in addressing foreign interference in Australia;<sup>4</sup>
- countering child exploitation by launching the Australian Centre to Counter Child Exploitation, developed by the AFP as a joint agency standing taskforce;<sup>5</sup> and
- the establishment of the National Resilience Taskforce, taking a whole-of-Government approach to preparing for 'intensifying natural hazards'.<sup>6</sup>

1.8 The Secretary also highlighted the commission of a strategic capability review across the portfolio, announced in the 2018–19 Budget:

The advent of the portfolio has also meant that the government, for the first time, has been able to commission a strategic capability review of the entire spectrum of domestic security and law enforcement functions, and to this end, following a decision taken by the government in the 2018–19 budget process, I have established a reform and reinvestment road map task force. This task force will work across the portfolio to ensure that an accurate picture of current and future capability needs is established—how best to fund them; how best to achieve scale, efficiency and better resource allocation; and how to reduce duplication and overlap—as well as investing more extensively in technology and automation in support of our highly skilled and expert workforces. This roadmap will inform decision-making by the government about future capabilities and priorities for the portfolio.<sup>7</sup>

1.9 The Commissioner, Mr Michael Outram APM, commenced his opening statement by noting that the ABF would shortly mark its third anniversary, having been established on 1 July 2015.<sup>8</sup> The Commissioner provided an overview of the ABF's operational priorities, including:

- reinforcing the integrity of the migration and visa system by identifying and addressing systemic vulnerabilities, including the work of Operation Sovereign Borders and Taskforce Cadena;<sup>9</sup>

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3 *Proof Committee Hansard*, 21 May 2018, p. 5.

4 *Proof Committee Hansard*, 21 May 2018, p. 5.

5 *Proof Committee Hansard*, 21 May 2018, p. 5.

6 *Proof Committee Hansard*, 21 May 2018, p. 6.

7 *Proof Committee Hansard*, 21 May 2018, p. 6. This matter was further discussed during the committee's examination of the Australian Federal Police – see *Proof Committee Hansard*, 23 May 2018, p. 20.

8 *Proof Committee Hansard*, 21 May 2018, p. 41.

9 *Proof Committee Hansard*, 21 May 2018, p. 42.

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- monitoring customs and trade, particularly in relation to trade enforcement operations such as the recently announced illicit tobacco task force;<sup>10</sup> and
  - the cross-border movement of prohibited goods or persons who may cause harm, including the detection and seizure of illicit movements of firearms, weapons and parts, asbestos and narcotics, in addition to counter-terrorism activities.<sup>11</sup>

1.10 The Commissioner was also congratulated by the committee on his recent appointment to the role.<sup>12</sup>

1.11 The committee proceeded to question the department on topics related to the budget estimates for the Home Affairs portfolio, including departmental administration and general corporate matters, and Outcomes 1, 2 and 3 of the department. Matters discussed by the committee and department are summarised below.

***Cross-portfolio, departmental administration and other corporate matters***

1.12 The committee asked the department about a number of cross-portfolio, administrative and corporate matters.

***Machinery-of-government changes to the Home Affairs portfolio***

1.13 Senators questioned the department regarding its strategic priorities after the machinery-of-government (MOG) changes. The Secretary noted that the department retained a strong focus on immigration, multicultural and social cohesion.<sup>13</sup>

1.14 The committee sought clarification regarding the ministerial arrangements within the portfolio. The Secretary explained that the new portfolio included three ministers and one assistant minister – the Minister for Home Affairs, the Minister for Citizenship and Multicultural Affairs, the Minister for Law Enforcement and Cyber Security, and the Assistant Minister for Home Affairs.<sup>14</sup> When it was noted by the committee that the previous Immigration and Border Protection portfolio had had fewer ministers, the Secretary further stated that the number of ministers reflected the inclusion of ministers from other portfolios, such as the Minister for Citizenship and Multicultural Affairs, who was previously attached to the Social Services portfolio.<sup>15</sup>

1.15 Senators asked whether the inclusion of multiple ministers had caused measurable delays in decision-making, particularly in relation to immigration decisions. Officers informed the committee that there had been no perceived delays to

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10 *Proof Committee Hansard*, 21 May 2018, p. 42.

11 *Proof Committee Hansard*, 21 May 2018, p. 42.

12 *Proof Committee Hansard*, 21 May 2018, pp. 41 and 43.

13 *Proof Committee Hansard*, 21 May 2018, p. 8.

14 *Proof Committee Hansard*, 21 May 2018, p. 8.

15 *Proof Committee Hansard*, 21 May 2018, pp. 8–9.

decision-making as a result of the portfolio changes, and that fluctuations in the demand for visas were common due to particular surges or peaks.<sup>16</sup>

1.16 The committee asked for the total cost of the MOG changes in relation to the portfolio. Ms Cheryl-anne Moy, Acting Deputy Secretary, Corporate and Enabling, Acting Chief Operating Officer, reported that the cost to date stood at \$5.5 million.<sup>17</sup>

1.17 Senators made inquiries regarding efficiencies of \$256.3 million over five years from 2017–18 through the MOG changes, as per Budget Paper No. 2.<sup>18</sup> Mr Pezzullo explained how the efficiencies were identified:

That budget measure relates to the expectation that the government has, quite properly, that when you bring a number of different agencies together in that scale of portfolio in the way that you have—the portfolio consists of just under 24,000 staff now—you should be able to make advances in areas such as property, shared services, IT and the like. We have a broad plan upon which the government was sufficiently assured to enter that number into the budget profile, and now it's the hard, grinding work, as is always the case with anticipated savings, to work out the specifics of how we're going to achieve each and every item of that broad plan.<sup>19</sup>

1.18 Ms Stephanie Cargill, Acting First Assistant Secretary, Finance Acting Chief Financial Officer, further explained that the figure cited in the Budget papers included efficiencies from agencies and work areas within the Attorney-General's Department (AGD) which had transferred into the portfolio as a result of the MOG changes, in addition to a procure-to-pay system to be operated within the department.<sup>20</sup>

1.19 On questioning from senators relating to the cross-portfolio benefits of the MOG changes, Mr Pezzullo noted the cooperative work being achieved across departments and portfolios, particularly in relation to the Defence portfolio:

We're building on a longstanding interaction with Defence in civil maritime security across surveillance, intelligence, reconnaissance, use of UAVs, and use of advanced technologies for surveillance across the broader ocean environment. That's obviously a longstanding research and capability engagement relationship that we have with Defence. What Home Affairs allows us to do is to take that capability block, or brick, if you like, align it with all the other capabilities that we need to examine, and then give government advice about all the relevant trade-offs that, inevitably, you have to do when you're in a budgeting process. So what's the net result of all that? Rather than each agency having to come forward with how best to optimise its own inputs—previously, Immigration, Customs and Border Protection, the Federal Police, et cetera—it really gives the government an opportunity to look across the entire spectrum, and it allows the government

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16 *Proof Committee Hansard*, 21 May 2018, p. 9.

17 *Proof Committee Hansard*, 21 May 2018, p. 10.

18 Budget Paper No. 2, p. 130.

19 *Proof Committee Hansard*, 21 May 2018, p. 12.

20 *Proof Committee Hansard*, 21 May 2018, p. 12.



to make better choices about, 'If I've got one dollar, where am I going to spend that one dollar?'—across this broad spectrum of capabilities.<sup>21</sup>

### *Workforce and staffing matters*

1.20 The committee discussed a number of issues relating to departmental workforce and staffing, including the:

- the department's implementation of the *Australian Government Guidelines on the Recognition of Sex and Gender* in relation to staff and client information;<sup>22</sup>
- details regarding the Strategic Review of the Department of Home Affairs, costed at \$7 million;<sup>23</sup>
- adaptation of staff to the new portfolio arrangements;<sup>24</sup>
- integrity policies and procedures for staff;<sup>25</sup> and
- the development of a new IT system across the Home Affairs portfolio, including upgrading capacity performance for enterprise identity management systems, analytics and threat management capabilities.<sup>26</sup>

### *Operation Sovereign Borders*

1.21 Senators asked questions regarding reports of a vessel carrying a number of persons which was prevented from departing Malaysia. Air Vice-Marshal Stephen Osborne AM CSC, Commander, Operation Sovereign Borders Joint Agency Task Force, explained that the Malaysian authorities had prevented the vessel, carrying 131 people on board with the alleged intention of reaching New Zealand, from departing Malaysia.<sup>27</sup> Air Vice-Marshal Osbourne also noted that the Malaysian authorities had since arrested 16 people in relation to people-smuggling.<sup>28</sup>

1.22 The committee also commented on the success of Operation Sovereign Borders and queried how this can be maintained in future operations. Air Vice-Marshal Osbourne stated:

Probably the best way I would describe it is Operation Sovereign Borders is a model that's built on a defence in-depth. So in the first instance, the first aim is to deter and disrupt the ventures from taking to the water in the first instance. That's a lot more effective; it has a lot less risk, particularly for the people who want to use the people smugglers, so that's always our

21 *Proof Committee Hansard*, 21 May 2018, p. 11.

22 *Proof Committee Hansard*, 21 May 2018, pp. 24–26.

23 *Proof Committee Hansard*, 21 May 2018, pp. 39–41.

24 *Proof Committee Hansard*, 21 May 2018, p. 10.

25 *Proof Committee Hansard*, 21 May 2018, p. 40.

26 *Proof Committee Hansard*, 21 May 2018, p. 21.

27 *Proof Committee Hansard*, 21 May 2018, p. 43.

28 *Proof Committee Hansard*, 21 May 2018, p. 43.

preference. Failing that, the next layer, if you like, is the requirement to have an on-water response whereby we intercept and when safe to do so, return people to their place of origin or departure. Lastly, in those cases where that's not possible, regional processing is the fall-back, and that is underwritten by the quite clearly stated government position that anybody who comes illegally will never be resettled in Australia.<sup>29</sup>

### *Visas*

1.23 The committee sought information from the department on a number of issues in relation to visa programs.

1.24 Senators asked questions in relation to visas issued to athletes and others participating in the 2018 Commonwealth Games. Ms Malisa Golightly PSM, Deputy Secretary, Immigration and Citizenship Services, informed the committee that a number of visa holders had applied for protection visas while in Australia attending the Commonwealth Games and currently remained in the country lawfully on bridging visas.<sup>30</sup> The committee also heard that there were approximately 50 visa holders who had not left the country and also had not applied for a protection visa.<sup>31</sup>

1.25 The committee asked questions regarding the review of the visa framework, previously discussed in Additional Estimates 2017–18 hearings. Officers advised that the department had provided the Australian Government with a proposal for reform in March 2017, which was subsequently released to stakeholders for consultation over a six- to eight-week period.<sup>32</sup> The Secretary provided further explanation on the consultation process for the department's proposed scheme:

It's a proposal that the department has worked on based on its detailed knowledge of the visa system. We went to government in—Ms Geddes will assist me—March of 2017. The government said, 'You should consult with interested stakeholders.' There is no proposal that's gone back to government that is to say it's 10 or 15 or 12 or 20. That's still a matter that will be considered by the government. But for purposes of—I think, Ms Geddes, it's fair to say—public consultation we went out in August of last year and said, nominally, 'If you were to streamline visas, rationalise how they work together, both in terms of their individual categories and how those categories are interrelated one with the other, what would you think about such a visa system?'

We got several hundred submissions back. Some of them touched on questions of a qualifying period. Some of them touched on questions of the ability of migrants to integrate into the Australian way of life. Some were on the regional type issues that Senator Patrick was referring to, that some parts of Australia need population growth and other parts, perhaps, less so. All of those questions came from very committed expert stakeholders. We

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29 *Proof Committee Hansard*, 21 May 2018, p. 43.

30 *Proof Committee Hansard*, 21 May 2018, pp. 68–69.

31 *Proof Committee Hansard*, 21 May 2018, p. 69.

32 *Proof Committee Hansard*, 21 May 2018, p. 52.

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are currently working through that feedback and preparing advice for government.<sup>33</sup>

1.26 The committee sought further information about elements of the review, including proposed qualifying periods and the number of visa streams.<sup>34</sup>

1.27 Senators queried the proposed introduction of the global visa delivery platform, particularly in relation to automated processing of visas:

Senator PRATT: How can you be sure, though, that you're not outsourcing those decisions that should be made by people within this process?

Mr Pezzullo: Because there is an overriding parameter that no decisions will be taken, other than by public officials, in relation to the grant or denial of a visa.

Senator PRATT: Okay.

Mr Pezzullo: I will give you a practical example. It goes back to Senator Macdonald's question about trying to target or be very precise in how you address skills shortages in one part of Australia and not take a blunt instrument to it. If you have an automated decision support system, you could have an algorithm that is constantly looking for the applications that most suit the need at the time. For instance, we need welders in one part of Australia but we need chefs elsewhere, and we don't particularly need a whole lot of people to go into the outer suburbs of some of our larger cities. If I can state it perhaps too simply, Senator, you and I would agree that you could get a whole lot of humans and paper files in a room, untie the ribbons, open the applications and say, 'Welder keen to live in the lovely parts of WA,' from which you come, or the lovely parts of Northern Queensland from which the chair comes, and a whole lot of humans could stack those files. Now, you could waste a lot of human time doing that, or you could have a very smart machine triage the applications in an instant and throw to the top of the decision pile—not for decision, but to the top of the decision conveyor belt—the applications that are most in tune with our requirement to get the best and brightest into the places and locations and jobs that we want them in.<sup>35</sup>

1.28 The department provided additional information about the global visa delivery platform, including the effect on Home Affairs offices in Tasmania,<sup>36</sup> value-added services within a two-tiered visa system,<sup>37</sup> and the protection of applicants' data and privacy within the platform.<sup>38</sup>

1.29 The committee also sought information on a number of other issues, including:

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33 *Proof Committee Hansard*, 21 May 2018, p. 52.

34 *Proof Committee Hansard*, 22 May 2018, pp. 52–53.

35 *Proof Committee Hansard*, 22 May 2018, p. 81.

36 *Proof Committee Hansard*, 22 May 2018, pp. 83–87.

37 *Proof Committee Hansard*, 22 May 2018, pp. 87–88.

38 *Proof Committee Hansard*, 22 May 2018, p. 88.

- the global talent pilot scheme launched by the Minister for Citizenship and Multicultural Affairs, the Hon. Alan Tudge MP;<sup>39</sup>
- the number of visas granted in the migration program;<sup>40</sup>
- findings of the Continuous Survey of Australian Migrants;<sup>41</sup>
- media reports regarding ministerial intervention in the case of a person arriving in Australia in June 2015 on a tourist visa which was cancelled upon arrival at the airport;<sup>42</sup>
- allegations of fraudulent behaviour regarding visa brokers encouraging applicants to purchase invalid visas;<sup>43</sup>
- labour-market testing for temporary work visas;<sup>44</sup>
- new processes between the Fair Work Ombudsman and the department under a new outcome in the Migrant Workers' Taskforce;<sup>45</sup> and
- departmental tracking of the work and study activities of persons holding student visas.<sup>46</sup>

### ***Citizenship***

1.30 Senators sought information regarding the average waiting times for citizenship applications. Officers explained to the committee that there had been an increase in average waiting times for applications for citizenship between lodgement of the application and conferral of citizenship, rising from a 12 month wait in March 2016 to an 18 month wait in April 2018.<sup>47</sup>

1.31 Mr Luke Mansfield, First Assistant Secretary, Refugee, Citizenship and Multicultural Programs, provided further details to the committee regarding the increased average waiting times:

The drivers of those increases in time are threefold. One is that the department has increased the integrity screening checking processes from a national security and criminality risk perspective and enhanced the way it does those activities. The second factor driving that change is growth in the number of applications overall. The number of applications has been increasing year on year from a very significant base. The third factor that's really driving those processing times is that the nature of the applications

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39 *Proof Committee Hansard*, 22 May 2018, pp. 47–48.

40 *Proof Committee Hansard*, 22 May 2018, pp. 44–46.

41 *Proof Committee Hansard*, 22 May 2018, pp. 58–59.

42 *Proof Committee Hansard*, 22 May 2018, pp. 68–78.

43 *Proof Committee Hansard*, 22 May 2018, pp. 94–96.

44 *Proof Committee Hansard*, 22 May 2018, pp. 100–102.

45 *Proof Committee Hansard*, 22 May 2018, pp. 102–103.

46 *Proof Committee Hansard*, 22 May 2018, pp. 113–115.

47 *Proof Committee Hansard*, 22 May 2018, p. 22.

coming through have changed. As was discussed by Ms Golightly at last estimates, there has been an increase in the number of applications from people who arrived some years ago without any form of identity documentation, and the processes around positively establishing identity, obviously, take quite some time to achieve.<sup>48</sup>

1.32 It was also noted by the department that staffing had increased by 16 per cent from 1 July 2015 to 31 March 2018 to process citizenship applications.<sup>49</sup>

1.33 The committee also inquired into the management of citizenship ceremonies. Department officials explained that, where local governments run citizenship ceremonies, they are funded by untied grants from the Commonwealth. Where local councils have their authority to conduct ceremonies withdrawn, the department can run ceremonies to meet demand.<sup>50</sup>

1.34 The committee asked a number of other questions concerning citizenship, including:

- criteria used to assess a 'quality applicant' in relation to the performance criteria for Outcome 2, Program 2.1;<sup>51</sup>
- the Australian Government's proposed bill regarding citizenship;<sup>52</sup> and
- the department's response to the *Delays in processing of applications for Australian Citizenship by conferral* report conducted by the Commonwealth Ombudsman in December 2017.<sup>53</sup>

#### *Shaping a Nation report*

1.35 The committee inquired into the findings of the 2018 report *Shaping a Nation: Population growth and immigration over time*, which was jointly authored by the Treasury and the Department of Home Affairs.<sup>54</sup>

1.36 When asked by the committee what the report had found regarding migration and its impact on job growth in Australia, Mr Jason Russo, Assistant Secretary, Statistics and Information Governance, stated:

The way I would describe that—there's a detailed analysis in there on participation rate trends in the Australian labour market. That part of the report really, I guess, points out the fact that Australia, like many other countries, has an ageing population. What that means over time is that in the absence of immigration you would see a situation where the participation rate would, generally, decline. It would have already started

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48 *Proof Committee Hansard*, 22 May 2018, p. 22.

49 *Proof Committee Hansard*, 22 May 2018, p. 22.

50 *Proof Committee Hansard*, 22 May 2018, pp. 25–26.

51 *Proof Committee Hansard*, 22 May 2018, pp. 24–25.

52 *Proof Committee Hansard*, 22 May 2018, p. 26.

53 *Proof Committee Hansard*, 22 May 2018, p. 26.

54 *Proof Committee Hansard*, 22 May 2018, pp. 32–37.

declining. In fact, the size of the Australian labour market, the labour force, would eventually decline itself.

In the influx or intake of migrants that are generally younger than the broader population we see a high degree of skills, and they are job ready. What that has done is offset that demographic ageing effect. That's allowed the participation rate to stabilise and, in fact, increase slightly over the recent decade or two.<sup>55</sup>

### ***Other matters raised with the department***

1.37 The committee inquired into a number of other matters overseen by the department, including:

- reports relating to crime in Melbourne;<sup>56</sup>
- concerns raised by the Australian Human Rights Commission and a number of state governments in relation to facial recognition technology utilised by the department;<sup>57</sup>
- potential privacy issues relating to protected government data stored by third-party companies;<sup>58</sup>
- the death of a person in a regional processing facility on Manus Island on 22 May 2018;<sup>59</sup>
- primary assessment of applications made from persons within the fast-track group of the legacy case load;<sup>60</sup>
- contracts for expenditure on information technology software and hardware;<sup>61</sup>
- parcels being processed by Customs, including the volume of packages entering Australia and costs associated with screening;<sup>62</sup> and
- a summary of the status of the Trusted Trader program, including statistics regarding accredited participant traders and long-term objections of the program.<sup>63</sup>

### **Australian Federal Police**

1.38 The committee inquired into a number of matters in relation to the AFP, including:

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55 *Proof Committee Hansard*, 22 May 2018, p. 34.

56 *Proof Committee Hansard*, 22 May 2018, pp. 23–24.

57 *Proof Committee Hansard*, 22 May 2018, pp. 16–18.

58 *Proof Committee Hansard*, 22 May 2018, pp. 8–11 and 15.

59 *Proof Committee Hansard*, 22 May 2018, pp. 120–122.

60 *Proof Committee Hansard*, 22 May 2018, p. 122.

61 *Proof Committee Hansard*, 22 May 2018, pp. 63–64.

62 *Proof Committee Hansard*, 22 May 2018, pp. 122–126.

63 *Proof Committee Hansard*, 22 May 2018, pp. 128–130.

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- proposed legislation to enable AFP officers to ask for proof of identity in airports, including funding from existing appropriations;<sup>64</sup>
  - a recorded operating loss of \$27.2 million in 2017–18 as detailed in the Portfolio Budget Statements (PBS) and the implications for the loss in that financial year over the forward estimates;<sup>65</sup>
  - the recruitment of 300 specialist members over four years;<sup>66</sup>
  - the establishment of the Australian Centre to Counter Child Exploitation, including its operations and coordination with other agencies within the Home Affairs portfolio;<sup>67</sup>
  - education of officers in distinguishing between child grooming offences and Carly's Law offences, including AFP collaboration with intelligence agencies;<sup>68</sup>
  - findings of the 168<sup>th</sup> report of the Senate Privileges Committee in relation to metadata and parliamentarians;<sup>69</sup>
  - workload and sources of the AFP office in Sydney;<sup>70</sup> and
  - the AFP's response to an incident at Parliament House on 22 November 2017.<sup>71</sup>

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

1.39 The committee had questions for the ACIC and AIC in regards to a number of matters, including:

- appropriations over the forward estimates for specific projects, including tranche 1 of the National Criminal Intelligence System and the national criminal intelligence checking;<sup>72</sup>
- the National Order Reference System in relation to domestic violence orders across states and territories;<sup>73</sup> and
- reports conducted into identity misuse and public attitudes to biometrics in various settings.<sup>74</sup>

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64 *Proof Committee Hansard*, 23 May 2018, pp. 11–19, 21–22, and 31–35.

65 *Proof Committee Hansard*, 23 May 2018, pp. 3–5.

66 *Proof Committee Hansard*, 23 May 2018, pp. 7–8.

67 *Proof Committee Hansard*, 23 May 2018, pp. 9–11.

68 *Proof Committee Hansard*, 23 May 2018, pp. 25–27.

69 *Proof Committee Hansard*, 23 May 2018, pp. 27–28.

70 *Proof Committee Hansard*, 23 May 2018, pp. 28–31.

71 *Proof Committee Hansard*, 23 May 2018, pp. 36–7.

72 *Proof Committee Hansard*, 23 May 2018, pp. 47–48.

73 *Proof Committee Hansard*, 23 May 2018, p. 48.

## Australian Transaction Reports and Analysis Centre

1.40 Senators sought information from AUSTRAC on various matters including:

- departmental appropriation under section 74 retained revenue receipts and its impact on the budget outcomes;<sup>75</sup> and
- plans to increase FTE staff levels from 300 to 330 over the forward estimates.<sup>76</sup>

### Spill-over hearing

1.41 The committee held a spill-over hearing on the morning of 3 August 2018. The Home Affairs portfolio appeared between 9.00 am and 12.30 pm, with the committee recalling AFP and the department, including cross-portfolio, corporate and general matters, and Programs 1.4 and 2.4.

1.42 The committee asked the AFP and the department a number of questions in relation to:

- media reports alleging that AFP had transferred its ongoing case into the Australian Workers' Union offices to the Commonwealth Director of Public Prosecutions, which the AFP claimed a Public Interest Immunity claim in order to avoid prejudicing ongoing investigations;<sup>77</sup>
- the implementation of the recommendations of reviews into the mental health of AFP staff;<sup>78</sup> and
- details contained in a response to a question on notice from the Budget Estimates hearings in May in relation to a case of ministerial intervention.<sup>79</sup>

### Questions on Notice

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

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74 *Proof Committee Hansard*, 23 May 2018, p. 50.

75 *Proof Committee Hansard*, 23 May 2018, pp. 50–51.

76 *Proof Committee Hansard*, 23 May 2018, p. 52.

77 *Proof Committee Hansard*, 3 August 2018, pp. 2–9 and 11.

78 *Proof Committee Hansard*, 3 August 2018, pp. 16–17.

79 *Proof Committee Hansard*, 3 August 2018, pp. 18–28.



## Chapter 2

### Attorney-General's portfolio

2.1 This chapter summarises some of the matters raised during the committee's consideration of the budget estimates for the Attorney-General's portfolio for the 2018–19 financial year.

2.2 The Attorney-General's portfolio appeared over two days, with the Attorney-General's Department (AGD, the department) attending on Wednesday, 23 May 2018 and other agencies of the portfolio attending on Wednesday, 23 May 2018 and Thursday, 24 May 2018.

#### Attorney-General's Department

##### *Proposed reforms to the Family Court of Australia*

2.3 The committee was interested in the proposed reforms being considered by the Australian Government in relation to the structure and operation of the Family Court of Australia.

2.4 Senators queried the department about reports stating that a Family Court judge had suggested a constitutional challenge to any proposal that the Appeals Division of the Family Court be abolished and its responsibilities assumed by the Federal Court of Australia. Mr Chris Moraitis, Secretary, confirmed that the department had received legal advice regarding the matter, but did not comment on the nature of the advice received.<sup>1</sup>

##### *Review of the National Partnership Agreement on Legal Assistance Services*

2.5 The committee asked for an update regarding the progress of the review of the National Partnership Agreement on Legal Services. The Secretary advised the committee that the review is due to be finalised by the end of 2018, with a view to implementing its recommendations quickly.

2.6 The committee sought information regarding the reform project of the Family Court of Australia being conducted by the Australian Government. Mr Moraitis stated that AGD had been advising government as part of the review, and that a range of options and models had been canvassed as part of the review.<sup>2</sup> Officers informed the committee that the review would be informed and assisted by a steering group and an advisory group, the latter of which would be made up of experts in the sector.<sup>3</sup>

2.7 The committee further asked the department whether the findings of the Productivity Commission's December 2014 report, *Access to justice arrangements*, would be considered in the reform project. Officers advised the committee that the

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1 *Proof Committee Hansard*, 23 May 2018, pp. 68–69; *Proof Committee Hansard*, 24 May 2018, pp. 84–86;

2 *Proof Committee Hansard*, 23 May 2018, pp. 69–70.

3 *Proof Committee Hansard*, 23 May 2018, pp. 70–71.

report would be among the documents available to the advisory group in its deliberations.<sup>4</sup> Senators were also interested in whether new research would be conducted in order to inform future budget processes.<sup>5</sup>

### *Elder abuse*

2.8 The committee sought information regarding the department's involvement in addressing instances of elder abuse. Ms Esther Bogaart, Acting Assistant Secretary, Family Violence and Elder Abuse Taskforce, provided an outline of AGD's work in that area:

In the federal budget this year there was an additional \$22 million provided across four years to tackle elder abuse in the More Choices for a Longer Life Package that the government announced. Under that package, the 2016 election commitment of funding of \$15 million has been rephased over a longer time frame, over the same four-year period, to allow us to respond to some of the key recommendations of the Australian Law Reform Commission's report and align with the priorities of government. There is still the \$15 million in the 2016 election commitment as well as an additional \$22 million in the budget. That funding will be used to develop a range of strategies to address elder abuse. That will include building a nationally consistent policy and service response and bring more awareness to the issue of elder abuse and promoting older people's safety. It will support the development and implementation of the national plan on elder abuse, which will be with the Commonwealth and the states and territories and is being progressed through a Council of Attorneys-General working group. The funding will support specialist frontline services to support older people and their families seeking help with elder abuse. That will trial several different models of services, including specialist elder abuse units, family counselling and mediation services and also health justice partnerships as ways to trial what sort of service provision works to help people with their issues for elder abuse. It will include the development of an elder abuse knowledge hub and that hub will be an online gateway to research, training materials, information and best practice guidance on addressing elder abuse and it will help to improve the skills and knowledge of people working in the sector.<sup>6</sup>

2.9 The committee was interested in number of other matters regarding elder abuse, including:

- a budget proposal to develop a national register of enduring appointments in relation to power of attorney rules;<sup>7</sup>
- the development of a national plan on elder abuse, as agreed to by the COAG Council of Attorneys-General;<sup>8</sup> and

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4 *Proof Committee Hansard*, 23 May 2018, p. 72.

5 *Proof Committee Hansard*, 23 May 2018, p. 72–73.

6 *Proof Committee Hansard*, 23 May 2018, p. 74.

7 *Proof Committee Hansard*, 23 May 2018, p. 74–76.

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- details regarding service trials involving specialist elder abuse units, health justice partnerships and family mediation services.<sup>9</sup>

### ***Royal Commissions***

2.10 The committee inquired into a number of matters regarding multiple Royal Commissions currently on foot or which have been finalised and are being responded to by the Australian Government.

2.11 Senators were interested in the taskforce set up to oversee the implementation of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. Officers informed the committee that the taskforce commenced in January 2018, and was working in conjunction with an interdepartmental committee comprised of all of the relevant agencies who are affected by the recommendations.<sup>10</sup> Ms Autumn O’Keeffe, Acting Assistant Secretary, Royal Commissions Branch, provided further detail about the interaction between the taskforce and the interdepartmental committee:

The task force supports the work of the interdepartmental committee, and the work of the task force has been to work with each of the officers in each of the relevant departments to coordinate the government response to all 409 recommendations. Obviously, that is a fairly high level committee, and people who come there are able to commit their agencies to whether they will accept responsibility for certain recommendations. Then the task force works in conjunction with officers in those respective departments.<sup>11</sup>

2.12 Officers informed the committee that the taskforce had an allocation of \$6.3 million over three years, and would operate until mid-2020.<sup>12</sup>

2.13 Other matters discussed in relation to Royal Commissions included:

- recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse which apply to institutions outside the scope of the federal government, including states, territories and religious institutions;<sup>13</sup> and
- custody of the records for both the Royal Commission into Institutional Responses to Child Sexual Abuse and the Royal Commission into the Protection and Detention of Children in the Northern Territory.<sup>14</sup>

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8 *Proof Committee Hansard*, 23 May 2018, p. 75.

9 *Proof Committee Hansard*, 23 May 2018, p. 76.

10 *Proof Committee Hansard*, 23 May 2018, pp. 79–80.

11 *Proof Committee Hansard*, 23 May 2018, p. 80.

12 *Proof Committee Hansard*, 23 May 2018, p. 80.

13 *Proof Committee Hansard*, 23 May 2018, pp. 89–90.

14 *Proof Committee Hansard*, 23 May 2018, p. 90.

**Other matters**

2.14 The committee had questions relating to several other aspects of AGD, including:

- Commonwealth model litigant obligations, particularly in relation to cases run by the Australian Government Solicitor;<sup>15</sup>
- the proposed foreign influence transparency scheme, including allegations involving foreign countries influencing changes to electoral boundaries;<sup>16</sup>
- AGD's response to the religious freedoms review;<sup>17</sup>
- Australia's obligations to designate a body to carry out inspections of prisons, known as the National Preventative Mechanism, under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);<sup>18</sup>
- indefinite solitary confinement of people with cognitive and psychological disability in states and territories, particularly in relation to Aboriginal and Torres Strait Islander peoples;<sup>19</sup> and
- annual indexation of court and tribunal fees in relation to the National Native Title Tribunal and Administrative Appeals Tribunal.<sup>20</sup>

2.15 While Group 3 of AGD was called to give evidence, no senator had questions for that area, and it was consequently dismissed without questions.<sup>21</sup>

**National Archives of Australia**

2.16 The committee examined the National Archives of Australia (NAA) on 23 May 2018, the only agency from the Attorney-General's portfolio to appear on that day. Other Attorney-General's portfolio agencies were examined on 24 May 2018.

2.17 The committee asked the NAA about a number of matters, including:

- the process regarding the declassification of government documents;<sup>22</sup>
- Increases in applications to access documents, including peaks around certain anniversaries such as the centenary of the First World War;<sup>23</sup>

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15 *Proof Committee Hansard*, 23 May 2018, pp. 63–64.

16 *Proof Committee Hansard*, 23 May 2018, pp. 64–68.

17 *Proof Committee Hansard*, 23 May 2018, pp. 60–62.

18 *Proof Committee Hansard*, 23 May 2018, pp. 82–84.

19 *Proof Committee Hansard*, 23 May 2018, pp. 84–86.

20 *Proof Committee Hansard*, 23 May 2018, pp. 86–87.

21 *Proof Committee Hansard*, 23 May 2018, p. 91.

22 *Proof Committee Hansard*, 23 May 2018, p. 57.

23 *Proof Committee Hansard*, 23 May 2018, pp. 57–58.

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- changes to the NAA's budget and resourcing, and consequential reduction in staffing and services;<sup>24</sup> and
  - measures to address backlogs of applications seeking access to documents, including a planned investment in secure communications networks.<sup>25</sup>

### **Australian Human Rights Commission**

2.18 The committee asked the Australian Human Rights Commission (AHRC) about a number of matters, including:

- details of the forward work plan under the direction of Emeritus Professor Rosalind Croucher, President of the AHRC, including the work plans of individual AHRC commissioners;<sup>26</sup>
- the replacement of the current Race Discrimination Commissioner, Dr Tim Soutphommasane at the end of his appointment in August 2018, including the recruitment process for his successor;<sup>27</sup>
- responses to the National Disability Insurance Scheme from people with disability;<sup>28</sup>
- steps towards the implementation of audio description services on free-to-air television multichannels;<sup>29</sup>
- increases in mental health issues in children and teenagers, including reports of a significant increase in the number of persons under 20 years of age presenting to hospital emergency departments for self-harm, stress, anxiety and other mood, behavioural or emotional disorders;<sup>30</sup> and
- out-of-home care in the context of the Women's Voices project being undertaken by Ms June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner.<sup>31</sup>

### **Office of the Director of Public Prosecutions**

2.19 The committee inquired into a range of topics with the Office of the Commonwealth Director of Public Prosecutions (CDPP), including:

- 22 cases being prosecuted under the Serious Financial Crime Taskforce, including 12 matters in Operation Elbris and 10 other matters which include matters commenced during Project Wickenby;<sup>32</sup>

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24 *Proof Committee Hansard*, 23 May 2018, pp. 58–59.

25 *Proof Committee Hansard*, 23 May 2018, p. 59.

26 *Proof Committee Hansard*, 24 May 2018, p. 4.

27 *Proof Committee Hansard*, 24 May 2018, pp. 4–5.

28 *Proof Committee Hansard*, 24 May 2018, p. 15.

29 *Proof Committee Hansard*, 24 May 2018, pp. 17–18.

30 *Proof Committee Hansard*, 24 May 2018, pp. 19–23.

31 *Proof Committee Hansard*, 24 May 2018, pp. 25–26.

- recruitment and management practices to develop and retain high-quality lawyers;<sup>33</sup>
- additional funding for four measures, provided for in the 2018–19 budget;<sup>34</sup>
- the number of cases prosecuted by the CDPP in relation to corporate crime in the previous financial year;<sup>35</sup> and
- staffing trends, including in relation to the number of prosecutors and the use of labour hire services.<sup>36</sup>

### **Australian Law Reform Commission**

2.20 The committee began its questioning of the Australian Law Reform Commission (ALRC) by asking the Hon. Justice SC Derrington, President, about media reports suggesting that she had internally announced a restructure of the ALRC. Justice Derrington confirmed that a restructure was planned.<sup>37</sup> Justice Derrington also provided the following detail:

I told staff that having looked at the way the organisation had been structured, and in light of the appropriation amounts given to the commission, the operations were unsustainable as the organisation was currently structured. The organisation comprised six members of the corporate services team and had only four continuing legal officers. Given that the only outcome for the Law Reform Commission is the provision of legal research, and then advice to government on law reform matters, it seemed to me that the balance of the staffing arrangements of the organisation was not quite right and, therefore, changes needed to be made.<sup>38</sup>

2.21 The committee inquired into a number of other areas, including:

- the ALRC's review of the family law system, including consultation conducted with groups in rural and regional areas, submissions received to the issues paper released in March 2018, and an online portal available for the public to provide their personal experiences to the review;<sup>39</sup>
- outsourcing of corporate services to the AGD;<sup>40</sup>

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32 *Proof Committee Hansard*, 24 May 2018, p. 28.

33 *Proof Committee Hansard*, 24 May 2018, pp. 29–30.

34 *Proof Committee Hansard*, 24 May 2018, pp. 30–31.

35 *Proof Committee Hansard*, 24 May 2018, pp. 33–36.

36 *Proof Committee Hansard*, 24 May 2018, pp. 37–42.

37 *Proof Committee Hansard*, 24 May 2018, pp. 43–44.

38 *Proof Committee Hansard*, 24 May 2018, p. 44.

39 *Proof Committee Hansard*, 24 May 2018, p. 46.

40 *Proof Committee Hansard*, 24 May 2018, p. 47.

- Justice Derrington's dual appointment as both President of the ALRC and her position as a judge of the Federal Court of Australia;<sup>41</sup>
- the number of cases prosecuted by the CDPP in relation to corporate crime in the previous financial year;<sup>42</sup> and
- staffing trends, including in relation to the number of prosecutors and the use of labour hire services.<sup>43</sup>

2.22 The committee also noted that it was the first appearance of Justice Derrington in her position as President of the ALRC at Senate estimates.<sup>44</sup>

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

2.23 Ms Angelene Falk, Acting Australian Information Commissioner and Acting Privacy Commissioner, provided an opening statement to the committee outlining the current work of the Office of the Australian Information Commissioner (OAIC) and the priority areas for the coming financial year.<sup>45</sup> Ms Falk noted the increasing number of privacy complaints received by OAIC, in addition to a 20 per cent increase in the rate of complaints being finalised.<sup>46</sup> She also reported that the agency had handled 14 325 privacy inquiries in the current financial year, in addition to completing eight privacy assessment covering 21 regulated entities.<sup>47</sup>

2.24 Topics discussed with OAIC included:

- the recruitment of a permanent head of the agency, including how the position incorporates the positions of three Commissioners (the Information Commissioner, Freedom of Information Commissioner and Privacy Commissioner) into one role;<sup>48</sup>
- OAIC's investigation of Facebook in relation to the Cambridge Analytica scandal, including liaison with international counterparts in the United Kingdom, Ireland, Canada, the United States and the Philippines;<sup>49</sup> and
- the resourcing impact of a number of notifications received under the Notifiable Data Breaches scheme.<sup>50</sup>

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41 *Proof Committee Hansard*, 24 May 2018, pp. 49–50.

42 *Proof Committee Hansard*, 24 May 2018, pp. 33–36.

43 *Proof Committee Hansard*, 24 May 2018, pp. 37–42.

44 *Proof Committee Hansard*, 24 May 2018, p. 46.

45 *Proof Committee Hansard*, 24 May 2018, pp. 50–51.

46 *Proof Committee Hansard*, 24 May 2018, p. 50.

47 *Proof Committee Hansard*, 24 May 2018, p. 50.

48 *Proof Committee Hansard*, 24 May 2018, pp. 51–52 and 59–60.

49 *Proof Committee Hansard*, 24 May 2018, pp. 54 and 57.

50 *Proof Committee Hansard*, 24 May 2018, pp. 55–56 and 57–58.

## **Administrative Appeals Tribunal**

2.25 Ms Sian Leathem, Registrar, provided an opening statement to the committee, covering matters such as the role of the Administrative Appeals Tribunal (AAT) in reviewing decisions made by the National Disability Insurance Agency (NDIA) and in reviewing decisions to refuse or cancel a visa on character grounds.<sup>51</sup> On the latter topic, Ms Leathem provided an overview of the AAT's work:

The review of decisions to refuse or cancel a visa on character grounds is a small component of the broad range of visa decisions that we review in the AAT and an even smaller component of our overall case load. To put these matters in context, in the 2016-17 year the tribunal finalised 42,224 reviews, of which 168 decisions, or less than 0.4 per cent, related to visa cancellations or refusals on character grounds. In considering and deciding these matters the tribunal members are bound to apply ministerial direction No. 65, which sets out three primary considerations that must be taken into account. These include protection of the Australian community, the best interests of minor children in Australia and expectations of the Australian community. The direction also sets out five other considerations that must be taken into account, including international non-refoulement obligations; the strength, nature and duration of ties; the impact on Australian business interests; impact on victims; and the extent of any impediments if removed. These decisions are routinely published and contain an explanation of the member's evaluation of each of these considerations.<sup>52</sup>

2.26 On questioning by the committee, the AAT provided information on a number of issues, including:

- revision of the publication policy in relation to decisions involving the cancellation of visas, including confidentiality orders applied to decisions;<sup>53</sup>
- media reports regarding an AAT national conference held at the Sunshine Coast in May 2018, including tender processes and speakers invited;<sup>54</sup> and
- the role of tribunal reviewers, including recruitment processes and employment conditions.<sup>55</sup>

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

2.27 The Family Court of Australia (the Family Court) and the Federal Court of Australia (FCA) were represented by Mr Warwick Soden, Chief Executive Officer and Principal Registrar. He provided an explanation regarding his role overseeing the Family Court and the FCA:

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51 *Proof Committee Hansard*, 24 May 2018, pp. 61–62.

52 *Proof Committee Hansard*, 24 May 2018, p. 62.

53 *Proof Committee Hansard*, 24 May 2018, pp. 63 and 69–71.

54 *Proof Committee Hansard*, 24 May 2018, pp. 63–65.

55 *Proof Committee Hansard*, 24 May 2018, pp. 66–68.



The Federal Court of Australia is the national federal trial court for federal general law. Its jurisdiction is wide and diverse: corporations, competition, native title, industrial, bankruptcy, industrial relations et cetera—that's a very short-form version of it. I'm actually the acting CEO and principal registrar of the Family Court of Australia. The Family Court of Australia has a family law jurisdiction, most of which is shared with the Federal Circuit Court jurisdiction. My colleague here can explain what the Federal Circuit Court does, but that's in essence the difference between the Federal Court and the Family Court, with one qualification: in 2015–16 there was what was called a back-office merge, so all of the corporate services for the other courts are now given by the Federal Court.<sup>56</sup>

2.28 Dr Stewart Fenwick, Chief Executive Officer and Principal Registrar, represented the Federal Circuit Court of Australia (FCCA) and also provided an explanation of that court's functions:

The Federal Circuit Court is effectively the federal national trial court, a lower jurisdiction that sits beneath the superior courts—the Family Court and the Federal Court. As Mr Soden has indicated, the jurisdiction of the Circuit Court in family law is quite broad and largely co-extensive with that of the Family Court, with a couple of exceptions, and there is extensive jurisdiction granted by a very wide number of pieces of legislation in areas of federal law covering a broad range of federal actions.<sup>57</sup>

2.29 The committee asked the courts for information in regards to:

- the planned restructure of the Family Court and the FCCA, including the consultation process conducted by the Attorney-General with the heads of jurisdiction, members of the court's administration, and external stakeholders;<sup>58</sup>
- caseloads across both the Family Court and the FCCA, including a backlog of matters currently on foot and matters in relation to family and migration law across the two courts;<sup>59</sup>
- enforcement and compliance with orders of the Family Court,<sup>60</sup> and
- case management pilot hearings in Brisbane and methods of alternative dispute resolution.<sup>61</sup>

### **Office of Parliamentary Counsel**

2.30 Senators asked about a range of topics in relation to the Office of Parliamentary Counsel (OPC), including:

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56 *Proof Committee Hansard*, 24 May 2018, p. 75.

57 *Proof Committee Hansard*, 24 May 2018, p. 76.

58 *Proof Committee Hansard*, 24 May 2018, pp. 76–79.

59 *Proof Committee Hansard*, 24 May 2018, pp. 79–81.

60 *Proof Committee Hansard*, 24 May 2018, p. 83.

61 *Proof Committee Hansard*, 24 May 2018, pp. 88–90.

- a trial program to outsource legislative drafting undertaken by the Treasury and the extent of OPC's involvement in that process;<sup>62</sup> and
- increases in total ASL rates.<sup>63</sup>

### **Australian Security and Intelligence Organisation**

2.31 The Director-General of the Australian Security and Intelligence Organisation (ASIO), Mr Duncan Lewis AO DCS CSC, gave an opening statement, advising the committee on:

- counter-terrorism operations, including Australia's national terrorism threat level, Australians involved in conflict, and collaboration with regional partners to detect and mitigate threats involving returning foreign fighters;<sup>64</sup> and
- counter-espionage activities, including foreign intelligence activity against Australian interest, the establishment of the National Counter Foreign Interference Coordinator position in the Department of Home Affairs, and the Foreign Interest Transparency Scheme (FITS).<sup>65</sup>

2.32 The Director-General also discussed ASIO's move from the Attorney-General's Portfolio to the Home Affairs Portfolio. Mr Lewis noted that this appearance would be ASIO's last appearance in the Attorney-General's portfolio, as the agency will move to the Home Affairs portfolio for future estimates hearings as a result of the portfolio changes.<sup>66</sup> He made further comments on the agency's move into the Home Affairs portfolio:

As you can appreciate, the move from the Attorney-General's portfolio to the Home Affairs portfolio is a highly significant event for ASIO. In my view this change is a reflection of the complexity of the contemporary situation with regard to security and the need for the national security apparatus to become increasingly integrated and responsive in protecting our national interests. I welcome the historic change in our national security architecture as ASIO continues working to settle into these new portfolio arrangements.

It is important to note that although this move is significant for ASIO, it doesn't change the statutory independence, nor do I expect it to affect our day-to-day operational activities and business. This is outlined in the Home Affairs portfolio arrangements, which purposely preserve the operational independence and focus of ASIO and indeed that of the other statutory authorities within the portfolio. I have been in close contact with Minister Dutton and the secretary of the Department of Home Affairs for many

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62 *Proof Committee Hansard*, 24 May 2018, pp. 91–97.

63 *Proof Committee Hansard*, 24 May 2018, p. 98.

64 *Proof Committee Hansard*, 24 May 2018, pp. 99–100.

65 *Proof Committee Hansard*, 24 May 2018, pp. 100–101.

66 *Proof Committee Hansard*, 24 May 2018, p. 99.

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months now, and in my view the transition to our new portfolio is progressing well. This is a large and complex machinery of government change, and there will be many issues to resolve as we move forward. There is, however, palpable goodwill and commensurate levels of cooperation all around to progress this work. I'm very positive about the new arrangements.<sup>67</sup>

2.33 The committee sought information from ASIO in relation to a number of topics, including:

- the process of listing organisations as terrorist organisations, including ASIO security assessments;<sup>68</sup>
- a statement made by to the Parliament on 22 May 2018 by Mr Andrew Hastie MP, Chair of the Parliamentary Joint Committee on Intelligence and Security;<sup>69</sup>
- the number of Australian children supporting or in the area of operations of ISIS or other extremist groups;<sup>70</sup> and
- parliamentary privilege in relation to the metadata of members of parliament.<sup>71</sup>

### **Questions on Notice**

2.34 A full index of questions taken on notice during the hearings is available on the committee's website and responses will be published as they are received.

### **Senator the Hon Ian Macdonald Chair**

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67 *Proof Committee Hansard*, 24 May 2018, p. 99.

68 *Proof Committee Hansard*, 24 May 2018, pp. 101–103.

69 *Proof Committee Hansard*, 24 May 2018, pp. 103–104 and 107–108.

70 *Proof Committee Hansard*, 24 May 2018, p. 108.

71 *Proof Committee Hansard*, 24 May 2018, p. 109.



# 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 Human Rights Commission;
- Australian Law Reform Commission;
- Family Court of Australia;
- Family Law Council;
- 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 Commission for Law Enforcement Integrity;
- Australian Criminal Intelligence Commission;
- Australian Institute of Criminology;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;



## Appendix 2

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## Appendix 3

### Tabled documents

#### Home Affairs portfolio

**Monday, 21 May 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 Outram APM, Commissioner, Australian Border Force	Opening Statement

**Wednesday, 23 May 2018**

<b>No.</b>	<b>Tabled by:</b>	<b>Topic</b>
1	Senator the Hon. Ian Macdonald	Details of social media accounts
2	Mr Andrew Colvin, Commissioner, Australian Federal Police	AFP measures which terminate over the forward estimates – List
3	Department of Home Affairs	Information regarding IBM contracts requested by Senator the Hon. Kim Carr

**Friday, 3 August 2018**

<b>No.</b>	<b>Tabled by:</b>	<b>Topic</b>
1	Senator Murray Watt	Two submissions for decision released under FOI (NB. Annotations made after FOI publication of original document – annotations on paragraph 11 of the submission dated 17 June 2015, and paragraph 8 of the submission dated 1 November 2018)

**Attorney-General's portfolio****Thursday, 29 May 2018**

<b>No.</b>	<b>Tabled by:</b>	<b>Topic</b>
1	Ms Sian Leathem, Registrar, Administrative Appeals Tribunal	Opening Statement
	Ms Sian Leathem, Registrar, Administrative Appeals Tribunal	Program for the Administrative Appeal Tribunal National Conference 2018
	Senator Louise Pratt	Minutes of Registrars' Meeting