

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Budget estimates 2019–20

May 2019

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# Membership of the Committee

## 45th Parliament

### Members

Senator the Hon Ian Macdonald (LNP, QLD) (Chair)  
Senator Louise Pratt (ALP, WA) (Deputy Chair)  
Senator Jim Molan (LP, NSW)  
Senator Nick McKim (AG, TAS)  
Senator Jane Hume (LP, VIC)  
Senator Murray Watt (ALP, QLD) (until 9.04.2019; resumed on 10.04.2019)  
Senator Kimberley Kitching (ALP, VIC) (from 9.04.2019)

### Substitute member

Senator Kimberley Kitching (ALP, VIC) to replace Senator Watt (on 9.04.2019) for the purposes of the hearing on that date.

### Senators in attendance

Senator the Hon Ian Macdonald (Chair)	Senator the Hon Kim Carr
Senator Louise Pratt (Deputy Chair)	Senator Slade Brockman
Senator Jane Hume	Senator Mehreen Faruqi
Senator Jim Molan AO, DSC	Senator Don Farrell
Senator Nick McKim	Senator Stirling Griff
Senator Murray Watt	Senator Kimberley Kitching
Senator the Hon Michaelia Cash	Senator Rex Patrick
Senator the Hon Richard Colbeck	Senator Duncan Spender
Senator the Hon Linda Reynolds CSC	Senator Larissa Waters
Senator the Hon Anne Ruston	

### Secretariat

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# ABBREVIATIONS

ATSIL	Aboriginal and Torres Strait Islander Legal Services
AAT	Administrative Appeals Tribunal
ABF	Australian Border Force
ACIC	Australian Criminal Intelligence Commission
AFP	Australian Federal Police
AGD	Attorney-General's Department
ANAO	Australian National Audit Office
ASIO	Australian Security Intelligence Organisation
CDPP	Commonwealth Director of Public Prosecutions
EMA	Emergency Management Australia
FITS	Foreign Influence Transparency Scheme
MRT	Migration and Refugee Division
NAA	National Archives of Australia
NPA	National Partnership Agreement on Legal Assistance Services
OAIC	Office of the Australian Information Commissioner



## Preface

On 2 April 2019, the Senate referred to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for examination the estimates of proposed expenditure for the financial year 2019–20.

The committee is responsible for the examination of the Attorney-General's portfolio and the Home Affairs portfolio. The Portfolio Estimates Statements for 2019–20 were tabled on 2 April 2019.<sup>1</sup>

### Reference of documents

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

- Particulars of proposed expenditure in respect of the year ending on 30 June 2020 [Appropriation Bill (No. 1) 2019–2020]; and
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2020 [Appropriation Bill (No. 2) 2019–2020].<sup>2</sup>

The committee was required to report on its consideration of the budget estimates on 14 May 2019.<sup>3</sup>

### Estimates hearings

The committee met in public session on 4, 8 and 9 April 2019. Over the course of the three days of hearings, totalling over 20 hours, the committee took evidence from the following departments and agencies:

#### *Home Affairs portfolio*

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

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

- Administrative Appeals Tribunal;
- Australian Commission for Law Enforcement Integrity;
- Attorney-General's Department;
- Commonwealth Director of Public Prosecutions;

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1 *Journals of the Senate*, No. 141, 2 April 2019, p. 4815.

2 *Journals of the Senate*, No. 141, 2 April 2019, p. 4815.

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

- Office of the Australian Information Commissioner; and
- National Archives of Australia.

Copies of the *Hansard* transcripts are available from the committee's webpage at: [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon).

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

### **Ministers**

On 4 April 2019, the committee heard evidence from Senator the Hon Linda Reynolds CSC, representing the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs, and Senator the Hon Michaelia Cash, representing the Attorney-General.

On 8 April 2019, the committee heard evidence from Senator Reynolds, Senator Cash, Senator the Hon Richard Colbeck, Assistant Minister for Agriculture and Water Resources, and Senator the Hon Anne Ruston, Assistant Minister for International Development and the Pacific, representing the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs.

On 9 April 2019, the committee heard evidence from Senator Ruston, representing the Attorney-General.

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

### **Questions on notice**

The committee set the due date for the return of questions on notice from the additional estimates for 24 May 2019.

Further written explanations, and answers to questions on notice, will be tabled as soon as possible after they are received. That information is also available on the committee's webpage.

### **Note on references**

References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.



# 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 2019–20 financial year on 4 and 8 April 2019.

### Department of Home Affairs

#### *Opening statements*

1.2 Senator the Hon Linda Reynolds CSC, representing the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs, made an opening statement in which she discussed the work of Emergency Management Australia (EMA) and the Crisis Coordination Centre:

This has literally been the busiest season they've had on record. Since July last year, Emergency Management Australia has activated 12 Australian government disaster response plans, coordinated 28 requests for assistance and deployed 19 liaison officers, which compares with eight plans activated last year and three the year before. And since July 2018, 29 events covering 137 local government areas have been activated.<sup>1</sup>

1.3 The Secretary of the Department of Home Affairs (the department) and the Commissioner of the Australian Border Force (ABF) also provided separate opening statements.

#### *Secretary's opening statement*

1.4 On 4 April 2019, the Secretary, Mr Michael Pezzullo, provided an opening statement to the committee which examined a number of matters in relation to the department's operation.

1.5 Mr Pezzullo discussed the evolution of the administration of the immigration program, and provided an overview of the growing demand on the department's immigration system:

Over the last three financial years, visa application lodgements have increased by more than one million annually. This financial year alone we expect to process 9.7 million applications, which will be a record. The department's processing productivity has increased, whereby the department is consistently finalising record numbers of applications year after year while meeting government-directed efficiency and savings measures. Through significant investment in intelligence biometrics and new technology, and closer relationships with partner agencies, our ability to identify threats, manage risk and process applications has increased significantly over the past five years, after we started to introduce more advanced intelligence capabilities in the year 2014–15.<sup>2</sup>

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1 *Committee Hansard*, 4 April 2019, p. 4.

2 *Committee Hansard*, 4 April 2019, p. 6.

1.6 Mr Pezzullo noted that the need to assess applicants against 'more complex and targeted risk profiles,' in addition to an increase in visa applications, had led to higher rates in visa refusals.<sup>3</sup> He noted that a number of visa decisions had been appealed in the Administrative Appeals Tribunal (AAT), increasing from 21,204 cases awaiting review by the Migration and Refugee Division (MRD) in February 2017 to in excess of 55,500 cases in February 2019.<sup>4</sup> He explained that this situation had led to a rise in the number of bridging visas while applicants seeking review waited for their case to be considered.<sup>5</sup> In relation to the review of departmental decisions by the AAT, the Secretary stated:

Where review applications have been finalised by the tribunal, the majority of the department's decisions have been upheld, which is very pleasing as it speaks to the quality of our decision-making processes and to the skill of the officers within the department who undertake this work, many of whom are proud and honoured veterans of the former department, the department of immigration, but who are now armed with more advanced tools, higher-security clearances, better connected systems and deep linkages to national security and law enforcement partners.<sup>6</sup>

1.7 The Secretary stated that the department's budget had been impacted by greater fiscal constraints, such as increasing costs of operations, efficiency dividends and required offsets. He also provided an overview of trends affecting the department's operations and the impact on the budget:

Concurrently, since 2008-09, travel numbers have increased by 95 per cent, temporary visa grants by 52 per cent and air cargo volumes by 518 per cent, and all continue to grow annually. Since December 2017 migration and citizenship litigation costs have increased by 44 per cent. With greater integrity in our migration system, higher-risk detainees now account for 74 per cent of our onshore detention population, putting greater cost pressure on the detention network. During this financial year we have also absorbed costs associated with the growing number of medical transfers from Nauru, which have increased from 35 in the 2017-18 financial year to 461 in this financial year as at 26 March 2019.<sup>7</sup>

1.8 The Secretary also provided details in regards to the following matters:

- funding for regional processing, including agency oversight of the delivery of services and audits by the Australian National Audit Office (ANAO);<sup>8</sup> and

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3 *Committee Hansard*, 4 April 2019, p. 6.

4 *Committee Hansard*, 4 April 2019, p. 6.

5 *Committee Hansard*, 4 April 2019, p. 6.

6 *Committee Hansard*, 4 April 2019, p. 6.

7 *Committee Hansard*, 4 April 2019, p. 6.

8 *Committee Hansard*, 4 April 2019, pp. 6–7.

- social cohesion and countering extremism, including the use of social media in relation to the terrorist attack at mosques in Christchurch, New Zealand, on 15 March 2019.<sup>9</sup>

*Commissioner's opening statement*

1.9 The Australian Border Force Commissioner (the Commissioner), Mr Michael Outram APM, provided an opening statement.

1.10 Mr Outram began his opening statement by acknowledging the Christchurch terrorist attack, noting that ABF officials work alongside their New Zealand counterparts every day at the Australian Border Operations Centre and during engagement with passenger and cargo movements and enforcement operations. The Commissioner stated that, in response to the attack, a small number of ABF officers were deployed to New Zealand to assist the operations of New Zealand Customs and Immigration New Zealand.<sup>10</sup>

1.11 The Commissioner provided details regarding the ABF's role in managing firearms:

Australia has a strong legislative framework in place surrounding firearms, and the ABF manages the legitimate import and export of firearms across our border, including through engagement, of course, with importers and traders. We also conduct enforcement operations to detect and seize undeclared firearms at the border. Together with the Department of Home Affairs, the Australian Criminal Intelligence Commission, the Australian Federal Police and state and territory police we play an important part in our system of managing firearms, and we also work closely with international partners. In the last financial year we made more than 2,000 detections of undeclared firearms and we have highly skilled officers who are supported by intelligence and trace detection capabilities, including detector dogs and X-ray technology. To combat the increasingly sophisticated methods of concealment employed by organised crime groups, we spent more than \$4 million in recent years to upgrade our X-ray screening capabilities.<sup>11</sup>

1.12 Mr Outram addressed concerns that the ABF had ceased maritime patrols and had failed to meet targets as a result of budget cuts and crewing issues. The Commissioner stated that the ABF had not reduced maritime patrols, and in fact had increased its patrol days at sea over the past three years and had expanded the number of ABF marine crew.<sup>12</sup> He further noted that the terminology of 'active patrolling' was no longer used as the ABF no longer relied solely on maritime patrols. Instead, the

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9 *Committee Hansard*, 4 April 2019, p. 7.

10 *Committee Hansard*, 4 April 2019, p. 7.

11 *Committee Hansard*, 4 April 2019, p. 7.

12 *Committee Hansard*, 4 April 2019, p. 8.

ABR now also utilised technology such as satellite imagery, surveillance data, and intelligence to predict and detect threats in Australian waters.<sup>13</sup>

1.13 The operational successes of the ABF over the financial year to date were detailed, including:

- over 25,200 detections of illicit drugs and precursors, weighing more than 12,000 kilograms, through the international mail, passenger, air and sea cargo streams;
- 140 detections of travellers with objectionable material and media at Australian airports, including child exploitation material and extremist propaganda; and
- over 394 tonnes of illicit tobacco intercepted at the border and 142 tonnes of undeclared tobacco detected with a duty evasion value of approximately \$161 million.<sup>14</sup>

1.14 The Commissioner concluded by noting the ABF's role in maintaining the integrity of the migration system and safeguarding people from people smuggling, human trafficking, foreign worker exploitation, and organised visa and migration fraud. He explained that, while operations such as Taskforce Cedena, Operation Battenrun and Operation Sovereign Borders were effective, the ABF had limited powers under the *Migration Act 1958* to disrupt systemic or criminal threats. Mr Outram stated that the lack of the ABF's powers forced officers to rely on other law enforcement agencies to assist with enforcement operations, which posed issues where other agencies were already often stretched.<sup>15</sup> He further said:

Suffice to say, I think we do need to have a conversation in the future about our ability as the Border Force to prevent, detect and disrupt the systemic exploitation of, for example, our visa program. Organised crime are involved in human trafficking, modern slavery and those sorts of things. When we find opportunities to collect intelligence and evidence, the powers available to us under the Migration Act are very limited in that regard. We therefore have to go to our policing colleagues to ask them, for example, to apply for and execute a section 3 Crimes Act search warrant. Now, of course, the AFP are very good—they're a great partner—but they're often very busy doing other things as well. And so there are examples where significant opportunities have been lost to collect evidence against individuals, and even where individuals have been able to leave the country and avoid any form of justice process being taken.<sup>16</sup>

1.15 The committee proceeded to question the department on topics related to cross-portfolio, corporate and general matters related to the department, and on Outcomes 1, 2 and 3. These Outcomes were also examined on 8 April 2019.

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13 *Committee Hansard*, 4 April 2019, p. 8.

14 *Committee Hansard*, 4 April 2019, p. 8.

15 *Committee Hansard*, 4 April 2019, p. 8.

16 *Committee Hansard*, 4 April 2019, p. 9.

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

1.16 The committee made enquiries into a range of matters relating to administration and corporate matters, as summarised below.

***Budgetary changes arising from the 2019–20 budget***

1.17 The committee asked questions in relation to the department's budgetary position as a result of the 2019–20 budget. Mr Pezzullo stated that the department had either maintained or increased funding across all of its programs, notwithstanding the effect of required efficiency dividends. He stated that additional specific funding had been granted in order to facilitate the introduction of new visa categories, in addition to ongoing additional funding provided for the purposes of the introduction of the proposed automated digital visa system.<sup>17</sup> The department further advised that the budget provided for additional staffing, as the ASL cap for the department had been raised from 14,120 in the 2018–19 budget to 14,545 in the 2019–20 budget.<sup>18</sup>

***Contract and invoice management***

1.18 Following up from questions asked during Additional Estimates hearings in February 2019, the committee sought information in relation to the department's management of contracts with Paladin Group PNG Ltd (Paladin). The department advised that it had requested that specific officers from Paladin be removed from the contract prior to its finalisation.<sup>19</sup> The department further explained that this direction for Paladin to remove one of its staff from working on the contract was due to the department's discovery of a particular officer's drug use.<sup>20</sup>

1.19 Mr Pezzullo further noted, in accordance with responses provided to questions on notice from the Additional Estimates 2018–9 hearings, that the contract had not been subject to cabinet scrutiny, as there was no requirement for such a contract to be subject to cabinet approval.<sup>21</sup>

1.20 The committee made enquiries regarding media reports of allegedly inflated invoices paid by the department to Papua New Guinean company NKW Holdings. The department advised that the media article in question relied on emails between NKW Holdings and its bank, which the department did not have access to. The department further advised that it had referred the matter to its integrity area.<sup>22</sup>

1.21 Mr David Nockels, First Assistant Secretary, Property and Major Contracts, provided an overview of the department's contractual engagement with NKW Holdings:

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17 *Committee Hansard*, 8 April 2019, p. 5.

18 *Committee Hansard*, 8 April 2019, p. 5.

19 *Committee Hansard*, 4 April 2019, pp. 15–17.

20 *Committee Hansard*, 4 April 2019, p. 38.

21 *Committee Hansard*, 8 April 2019, p. 6.

22 *Committee Hansard*, 4 April 2019, p. 36.

What I would say, which goes, I think, to the heart of your suggestion around inflated invoices, is that when we engage with NKW around management of invoices, we have a very robust process to ensure that the invoices that we receive and pay actually match to the services received. My team, which is responsible for that process, gives me great confidence that we are getting the services that we are paying for. It's also worth noting here that the contract that we have with NKW is a services based contract, so that we'll be invoiced on a monthly basis. Then we pay for that in arrears, obviously, for the month just gone. We have a range of ways of making sure that the invoices that we receive match to the services rendered. That involves onsite checking. It involves regular management and performance management conversations and email traffic between the service provider.<sup>23</sup>

1.22 Mr Nockels also noted that part of the department's process in considering contractual arrangements was compliance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which included ensuring contractual arrangements were providing value for money. He further explained that, where potential issues were flagged in relation to invoicing, the department employs external auditors to review accounts on a particular company.<sup>24</sup>

### ***Christchurch terrorist attack***

1.23 The committee made enquiries into whether the department or the ABF held intelligence regarding the alleged perpetrator of the Christchurch terrorist attack, Mr Brenton Tarrant, prior to the attack. The Secretary advised that the investigation into the attack was still ongoing, being led by the New Zealand Police (with assistance from Australian law enforcement agencies).<sup>25</sup> He further added that it was confirmed that Mr Tarrant was an Australian citizen, but had spent no more than 45 days in Australia in recent years. Additionally, in relation to Mr Tarrant, the Secretary advised:

All of the agency principals would say that there was nothing in any of our systems that would have suggested either that this person's travel be restricted or that he otherwise be the subject of law enforcement attention, up to and including arrest.<sup>26</sup>

1.24 Senators queried how the Home Affairs portfolio department and agencies divided responsibility in relation to addressing extremism. Mr Pezzullo stated that the Director-General of Security (Director-General) of the Australian Security Intelligence Organisation (ASIO) is ultimately responsible for security threats, in accordance with the *Australian Security Intelligence Organisation Act 1979*. Offences against the *Criminal Code Act 1995* or the *Crimes Act 1914* were explained to be under the remit of the Australian Federal Police (AFP), which works closely with state

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23 *Committee Hansard*, 4 April 2019, p. 30.

24 *Committee Hansard*, 4 April 2019, pp. 36–37.

25 *Committee Hansard*, 4 April 2019, p. 19.

26 *Committee Hansard*, 4 April 2019, p. 21.

and territory police forces to address security matters. Finally, the committee was advised that the department itself has some remit, as it contains programs which address countering violent extremism. Mr Pezzullo further noted that other agencies within the portfolio are utilised in some capacity, such as the Australian Criminal Intelligence Commission (ACIC) and AUSTRAC.<sup>27</sup>

1.25 When asked about whether the attack in Christchurch had prompted the portfolio at large to reconsider its strategic emphasis on counter-terrorism, Mr Pezzullo stated:

There's been an attack, so a risk that was being tracked has manifested itself and, regrettably, 50 innocent lives were lost—persons worshipping in their place of worship gunned down. The challenge in this business—and again I won't speak for my agency colleagues, but I know that we all face the same dilemmas, so I'll speak for myself but you can take this as a general response if you wish—is: as repulsed as we are and as abhorrent as we find what happened in Christchurch, do we reallocate resources on anything other than a ruthlessly, rigorously, scientifically calibrated assessment of the scale, the global reach and the intensity of the threat? I would contend to you ... that, if we drop our guard in relation to other terrorist groups who might have global capacity—up until recently, in some cases, running whole territories known as caliphates in certain parts of the world and potentially able to mobilise tens of thousands of, regrettably, battle-hardened operatives trained in explosives, assassination, long-range sniping and the like—and if we modulate and overcorrect our efforts and campaigns in relation to one threat group, as abhorrent as we find what occurred in Christchurch, we give rise to the possibility that we create space for those other actors to conduct their attacks. So you've always got to modulate according to scale and reach of your enemy.<sup>28</sup>

### ***Reopening of the Christmas Island detention centre***

1.26 The committee enquired into the reopening of the Christmas Island detention centre. The Secretary stated that as of the hearing on 4 April 2019, there had been no transferees moved from regional processing countries or Australian facilities to Christmas Island.<sup>29</sup> He further noted that one person had been transferred on medical grounds to Australia as a result of legislation passed by the Parliament in February 2019.<sup>30</sup>

1.27 The department advised that the budget measure in relation to the Christmas Island facility had been announced in the budget on 2 April 2019, and that \$185.2 million had been provided over two years. This figure comprised of \$158.2 million provided in the 2018–19 financial year, and the remainder in the 2019–

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27 *Committee Hansard*, 4 April 2019, pp. 25–26.

28 *Committee Hansard*, 4 April 2019, pp. 26–27.

29 *Committee Hansard*, 4 April 2019, p. 22.

30 *Committee Hansard*, 4 April 2019, p. 23.

20 financial year.<sup>31</sup> Current staffing on Christmas Island was stated to be eight full-time departmental staff, and approximately 144 Serco staff providing contracted services. The department explained that some service provider staff were employed to ensure prompt response in a 'hot contingency' event, in which services could be stood up within a 72 hour timeframe. In addition, the department told the committee that there were also three Department of Foreign Affairs and Trade staff and one AFP officer on Christmas Island.

***Exploitation of people on temporary visas***

1.28 The committee enquired into the department's role in addressing the exploitation of people on certain categories of temporary visas. The ABF Commissioner stated that its investigations and work through Taskforce Cadena indicated that the exploitation of temporary visas is thought to enable and facilitate a number of illicit industries, such as illegal sex work, human trafficking, slavery, drug and tobacco importations, and money laundering.<sup>32</sup>

1.29 In addressing these operations, the ABF cooperates with other agencies such as the Australian Criminal Intelligence Commission (ACIC), the Australian Federal Police (AFP), the Australian Taxation Office and others to investigate and prosecute groups involved in such behaviour.<sup>33</sup>

1.30 Mr Outram provided further details in relation to the ABF's operations and their outcomes in relation to the exploitation of people on temporary visas:

As at 28 February 2019 there were 26 active Taskforce Cadena investigations being undertaken nationally, and 15 of those were in conjunction with state and federal law enforcement partners. They really relate to exploitation in massage parlours and the sex industry, the construction industry, the agricultural sector, the Working Holiday Maker Program and the Seasonal Worker Program. Since 1 July 2018 we have referred eight suspected victims of human trafficking to the Federal Police in the accordance with the human trafficking referral protocol, and two briefs of evidence are currently with the DPP for assessment in relation to those referrals.<sup>34</sup>

1.31 Mr Pezzullo advised that the department's visa decision-makers were highly skilled in detecting fraudulent applications. The Secretary stated that the department utilised advanced analytical techniques and intelligence gathered by multiple agencies to detect fraud in individual applications, in addition to identifying syndicates engaged in fraudulent activities.<sup>35</sup>

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31 *Committee Hansard*, 4 April 2019, p. 31.

32 *Committee Hansard*, 4 April 2019, p. 10.

33 *Committee Hansard*, 4 April 2019, p. 10.

34 *Committee Hansard*, 4 April 2019, p. 10.

35 *Committee Hansard*, 4 April 2019, p. 10.



### ***Restricted items in detention facilities***

1.32 The committee asked a number of questions in relation to items that may be restricted in detention facilities pending the passage of the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017. The department advised that bill's purpose was to restrict certain items within detention facilities owned and operated by or on behalf of the Commonwealth, which may be used to commit crimes or harm another person.<sup>36</sup>

1.33 Mr Pezzullo explained that the legislation was drafted to balance security concerns with the particular status of detainees:

So the prohibited items legislation attempts to strike a balance which is best formulated in the way the government has constructed the legislation, recognising on the one hand we are not dealing with prisons or correctional facilities—this is administrative detention for the purposes of managing a person who has no lawful basis for otherwise being in Australia, either subject to deportation or subject to pending proceedings—and, on the other hand, ensuring the good order and safety of all the occupants of these centres, the workers there as well as other residents.<sup>37</sup>

1.34 The bill would prohibit items such as weapons or things that could be potentially used as weapons. Other items that would be prohibited also include telephones or mobile phone devices, which are currently permitted in detention facilities.<sup>38</sup>

1.35 Ms Mandy Newton APM, Deputy Commissioner, Operations, ABF, also reported concerns that aerial devices such as drones may be used to deliver dangerous items into detention facilities. She noted that it was very difficult to ascertain where such devices originated from or the person controlling them. She further stated that this issue would be taken into consideration for future legislative requirements.<sup>39</sup>

### ***Family visa stream***

1.36 The department was questioned on matters relating to the family stream of the visa program. The department stated that as of February 2019, the department had the following number of applications yet to be determined: 75,274 partner applications; 2,866 child applications; 1,215 orphan relative applications; 51,816 contributory parent applications; 49,983 parent applications, and 8,111 other family applications.<sup>40</sup> Ms Peta Dunn, First Assistant Secretary, Immigration and Visa Services, provided advice regarding wait times for applications to be processed:

Seventy-five per cent of partner applications are processed between 14 and 21 months. Seventy-five per cent of child applications are between 10 and

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36 *Committee Hansard*, 4 April 2019, pp. 33–35.

37 *Committee Hansard*, 4 April 2019, pp. 34–35.

38 *Committee Hansard*, 4 April 2019, p. 34.

39 *Committee Hansard*, 4 April 2019, p. 34.

40 *Committee Hansard*, 4 April 2019, p. 76.

12 months. We don't have figures for orphan relative because of the very low volume of applications.<sup>41</sup>

1.37 The department explained that the wait time was related to the relative size of the family stream, as it makes up one-third of the total migration program.<sup>42</sup> It also explained that spouse visas were prioritised and thus were expected to comprise approximately 40,000 places of the 47,732 places in the family stream for the coming year.<sup>43</sup>

### ***Automated digital visa service***

1.38 The committee made enquiries regarding the release of tender documents on 5 April 2019 in relation to the automated digital visa service. The department advised that the documents were released to signify the project's progression to Phase 2, and was done after the documents were reviewed by the delegate responsible.<sup>44</sup>

1.39 Mr Andrew Kefford PSM, First Assistant Secretary, Visa Delivery Transformation, provided further detail regarding the transition between Phase 1 and Phase 2 of the project and the nature of the documents published:

The staging of the process was described in the documents that we released in December, and they've been restated in the documents that are published. Essentially, when the tender was released it was always intended to be conducted in two phases. The first phase had two key purposes—essentially, having had the department specify the actual requirements that were sought coming off the back of co-design that we've discussed with you in this context previously. What happened for the first time in the tender, though, was that the department specified a service fee level of \$35. So essentially the question at stage 1 was: could what the department was seeking through the statement of requirement be delivered in that context?

There are also two particular issues where the department chose to refine requirements. One was in relation to 'attract and match' capability in the platform, and the other was in the application of new accounting standards. Those responses were received on 20 February from the two tenderers, and it took the time through until March, as Mr Mansfield has described, for that advice to be given that the process should proceed to the next stage. The second stage of the tender really is more traditional. The assessment at the end of this is the value-for-money assessment and selection of a preferred tenderer, if any. So the distinction is that we've now finalised the requirements. We have published this time a draft agreement, which wasn't there last time. But, as I say, the question for the delegate and subsequently for the government at the end of this process is the normal selection of a preferred tenderer with the value-for-money assessment in a competitive process. That's the other point I would stress. The phase 1 assessment was

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41 *Committee Hansard*, 4 April 2019, p. 76.

42 *Committee Hansard*, 4 April 2019, p. 76.

43 *Committee Hansard*, 4 April 2019, p. 77.

44 *Committee Hansard*, 8 April 2019, p. 28.

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not a comparative process; we were assessing whether the two proposals could survive those conditions.<sup>45</sup>

1.40 The department further advised that staff currently engaged in visa services may be redeployed to focus on decision-making, risk assessment and complex case engagement.<sup>46</sup>

***Other matters***

1.41 The committee asked the department questions on a range of other topics, including:

- cooperation between state and Commonwealth agencies in addressing the importation of illicit drugs, including appropriations in the budget to the Home Affairs portfolio for this purpose;<sup>47</sup>
- importation of items resembling controlled goods, such as gel blasters;<sup>48</sup>
- compliance with the Australian Signals Directorate's mandatory top four mitigation strategies, including regulation and assessment;<sup>49</sup>
- net overseas migration statistics, including how statistics are gathered and motivations for overseas migration;<sup>50</sup>
- reductions in the number of applications lodged for Regional Sponsored Migration Scheme visas, including refusals under this visa category;<sup>51</sup>
- possible criminal offences in relation to extremist activism regarding animal welfare issues;<sup>52</sup>
- the ANAO audit examining the department's procurement of garrison support and welfare services;<sup>53</sup>
- off-terminal clearances performed by ABF staff;<sup>54</sup>
- the introduction of Sponsored Parent (Temporary) visas, including caps on intake, visa fees and duration of visas;<sup>55</sup> and
- citizenship application and approval rates.<sup>56</sup>

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45 *Committee Hansard*, 8 April 2019, pp. 33–34.

46 *Committee Hansard*, 8 April 2019, p. 34.

47 *Committee Hansard*, 4 April 2019, pp. 14–16.

48 *Committee Hansard*, 4 April 2019, pp. 50–51.

49 *Committee Hansard*, 4 April 2019, pp. 64–65.

50 *Committee Hansard*, 4 April 2019, pp. 69–74.

51 *Committee Hansard*, 4 April 2019, pp. 80–82.

52 *Committee Hansard*, 8 April 2019, pp. 23–24.

53 *Committee Hansard*, 8 April 2019, pp. 24–26.

54 *Committee Hansard*, 8 April 2019, pp. 37–42.

55 *Committee Hansard*, 8 April 2019, pp. 43–55

## Australian Federal Police

### *Opening statement*

1.42 Mr Andrew Colvin APM OAM, Commissioner, AFP, provided a short opening statement to the committee, in which he addressed the findings of the Senate Standing Committee of Privileges' 174<sup>th</sup> report, *Parliamentary Privilege and the use of search warrants*.<sup>57</sup> He noted the committee's findings and confirmed that work was underway in relation to the committee's suggestion that the Memorandum of Understanding (MOU) and the guidelines within the current framework be review. Mr Colvin advised this work was being undertaken in conjunction with the Attorney-General's Department (AGD), the Department of Home Affairs, and other partner agencies.<sup>58</sup>

1.43 Mr Colvin further stated:

It is my view, following the tabling of the 174th report, that what is now also required is a more comprehensive review of how the criminal law intersects and balances with the expectations of the parliament surrounding the application of privilege, particularly given how far the Senate considers the law of privilege extends. We will work with the departments to consider this so there can be no uncertainty or ambiguity for all parties.<sup>59</sup>

### *Budget*

1.44 Mr Colvin stated that the AFP had received a significant boost of its budget over the forward estimates, covering a range of matters. Mr Darren Box, Chief Financial Officer, provided further detail:

In the current budget just handed down, the total current-year resource available to the AFP is \$1.56 billion, which was an increase of \$75 million from the previous PBS. The budget papers sustain that funding over the forward estimates, which is provided for by budget measures totalling \$615 million. Those budget measures cover a range of activities, including \$130 million for the whole-of-government drug strategy, which you mentioned and the Commissioner just mentioned, as well as the National Anti-Gangs Squad, enhanced AFP capability to target illicit gun crime and the new Joint Agency Ice Strike Team. We also received \$9.9 million to strengthen counterfraud arrangements. We got \$464 million for national security additional resourcing, which covers a range of activities, including enhanced counterterrorism response, the Fraud and Anti-Corruption Centre and enhanced technical capabilities for covert intelligence collection. We also received money to counter remotely piloted aircraft—drones—and for

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56 *Committee Hansard*, 8 April 2019, pp. 56–64.

57 Senate Standing Committee on Privileges, *174<sup>th</sup> report: Parliamentary Privilege and the use of search warrants*, 2 April 2019  
<[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Privileges/Dispositionofmaterial/174th\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Privileges/Dispositionofmaterial/174th_report)>

58 *Committee Hansard*, 4 April 2019, p. 85.

59 *Committee Hansard*, 4 April 2019, p. 85.

the Royal Commission into Trade Union Governance and Corruption. We also received money for cybersecurity. In addition to that, we also received \$6.7 million for countering foreign interference, which is our part of a broader measure, obviously, which was discussed earlier, I heard, by Home Affairs. We also received \$3.2 million for regional processing at Christmas Island. That's the total \$615 million in the forward estimates, which provides a stability of funding over those forward estimates of about \$1.5 billion.<sup>60</sup>

1.45 The committee asked questions of the AFP in relation to how the budget addressed outlaw motorcycle gangs. Mr Colvin stated that two measures in particular were contained in the budget which would support the AFP's work in relation to outlaw motorcycle gangs: the revitalisation of the National Anti-Gang Squad and the Keep Illegal Guns Off Our Streets and Our Communities Safe measure.<sup>61</sup> The National Anti-Gang Squad had received new funding over the forward estimates, beginning with \$26.2 million in 2019–20, while the Keep Illegal Guns Off Our Streets and Our Communities Safe program, originally a terminating measure, would receive additional funding over the forward estimates, starting with \$6.4 million in 2019–20.<sup>62</sup>

#### *Other issues*

1.46 Topics also examined by the committee included:

- an evaluation of information conducted by the AFP in relation to the personal international travel of a Member of Parliament;<sup>63</sup> and
- the AFP's process in responding to extremism, including how it responds to threats made via social media.<sup>64</sup>

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

1.47 The Australian Security Intelligence Organisation (ASIO) was asked to appear at the hearing on 4 April 2019, but was released before it could be questioned. It was subsequently called to appear on 8 April 2019 by request of the committee. The committee thanks ASIO for making itself available to appear on both days.

#### *Events in New Zealand and potential threat of extremism*

1.48 The Director-General of ASIO, Mr Duncan Lewis, provided a short opening comment. Mr Lewis stated that, since the committee's examinations in Additional Estimates in February 2019, little had changed in relation to ASIO's operations with the notable exception of the terrorist attack in Christchurch. He stated that ASIO was involved in providing assistance to New Zealand authorities, and noted that the

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60 *Committee Hansard*, 4 April 2019, pp. 89–90.

61 *Committee Hansard*, 4 April 2019, p. 90.

62 *Committee Hansard*, 4 April 2019, p. 90.

63 *Committee Hansard*, 4 April 2019, pp. 86–89 and 93–94.

64 *Committee Hansard*, 4 April 2019, pp. 90–92.

agency's thoughts were with the attack victims and their families, in addition to the wider New Zealand community.<sup>65</sup>

1.49 The committee asked questions in relation to the potential threat of right-wing extremism in Australia. Mr Lewis noted that he had previously spoken in estimates hearings about the potential risk of right-wing extremism in Australia, and reiterated that the threat was coming off a very low base. He noted that Australian right-wing extremism has been present as a security risk for several decades, but has been highly fractured amongst individuals and organisations. However, he noted that current organisations are relatively well-organised in comparison to the past and that ASIO continued to monitor such groups.<sup>66</sup> Mr Lewis also noted that, out of 22 terrorism-related incidents since September 2014, there has been only one incident in Australia that has been attributable to right-wing extremism.<sup>67</sup>

1.50 The Director-General stated:

The events of Christchurch, specifically to your question, don't really change the calculus here in that if you have a look at the terrorist attacks that have occurred in this country over the last five years, since September 2014, there have been seven attacks and 15 thwarted attacks, adding to 22. Of those 22 incidents, one was allegedly perpetrated by a right-wing extremist, and that case is still before the courts. I just mention those stats in order to try to put this into perspective—that it is an important issue for ASIO, it is an important vector of threat which we have watched historically and which we will continue to watch into the future. We are currently looking to see the extent to which we might need to rebalance our own internal work. What I can say is that there's no early evidence to suggest to me that there will be some dramatic reset around this.<sup>68</sup>

### ***Foreign interference***

1.51 The committee enquired into the broad threat of espionage and foreign interference in light of the passage of the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* and the *Foreign Influence Transparency Scheme Act 2018*. Mr Lewis stated that ASIO had noticed an effect as a result of the passage of the legislation, but was unable to comment further on particular details.<sup>69</sup>

1.52 Senators also asked questions about media reports of specific instances of alleged foreign interference. The Director-General stated:

I have made very plain to this committee on previous occasions that the threat from foreign interference and foreign espionage in Australia is running at what I described then—and I describe it that way again—as an

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65 *Committee Hansard*, 8 April 2019, p. 78.

66 *Committee Hansard*, 8 April 2019, p. 78.

67 *Committee Hansard*, 8 April 2019, p. 80.

68 *Committee Hansard*, 8 April 2019, pp. 78–79.

69 *Committee Hansard*, 8 April 2019, p. 82.

unprecedented level. Those words in the little shorts that I've seen and you have seen during the course of today are repeated, I think, in the show, but that remains to be seen when it shows this evening. But I don't respond to media shows or reports. We have a challenge here with foreign interference in Australia. It comes, as I have said on a number of occasions, from a wide range of sources. I have not been country-specific and I will not be country-specific because of the range of sources from which it comes and the issue of what is in Australia's interests. I am running a security intelligence organisation and I'm not in the business of identifying various nations and what they may or may not be doing in Australia.<sup>70</sup>

1.53 Mr Lewis also provided detail in relation to how ASIO assesses what constitutes 'foreign interference':

I go back to the ASIO legislation. On one of the opening pages of that legislation there's a very clear definition of 'foreign interference'. The legislation is quite specific. It requires a degree of clandestinity. It requires a degree of covertness about it. If it's overt, it can very easily be construed as just being the issue of influence around the place. All governments and all large corporate entities get involved in influencing various circumstances in which they operate. Every government that I have ever run into has been running influence operations through its diplomatic service, for example, with diplomats abroad, through its foreign policy, through its trade policy teams and so forth. The difference with foreign interference from an ASIO point of view is that it has this dimension of clandestineness and covertness about it, between the exercise of the influence and the government from which it may be emanating.<sup>71</sup>

### ***Budgetary matters and administrative transformation***

1.54 The committee sought information in relation to the effect of the 2019–20 budget on ASIO's operations. Mr Lewis stated that ASIO had received a total budget of \$557.8 million, and that \$60.6 million was reserved for new measures. He noted that the agency received \$463 million for operating costs, \$23 million in revenue earned through activities such as security clearances, \$70 million in capital, and an additional \$58.6 million to sustain current operations and undertake preliminary work to further enhance future operations. Funding for new measures included \$20.9 million for transformation, which was as a result of recommendations in a review by Mr David Thodey AO. Additionally, Mr Lewis stated that \$1.6 million had been provided in order to support countering foreign interference, addressed at the 'intersection' between ASIO and the Countering Foreign Interference Coordinator within the Department of Home Affairs.<sup>72</sup>

1.55 In relation to transformation, the Director-General provided further detail:

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70 *Committee Hansard*, 8 April 2019, pp. 82–83.

71 *Committee Hansard*, 8 April 2019, p. 83.

72 *Committee Hansard*, 8 April 2019, p. 84.

It's a requirement, I think, of all public sector institutions and, in fact, all enterprises. You need, every now and again, to have a look at your business model. Is your business model suited for the tasks that you are being asked to do or you are required to perform? As I say, I've never had any doubt that ASIO was well structured and in good shape for countering the kind of threats that we are facing currently. But it has struck me, if we look to the future and particularly the advent of big data, the influence of globalisation, the complexity of the world and the speed at which information is travelling, that if you're in my kind of business you need to be preparing yourself for doing business at machine speed. Humans are always going to be required. There is no suggestion we are replacing humans with machines, but humans can be so much more empowered if the machines are working at machine speed and delivering solutions to them. Basically, it's a technical lift, but the big mistake would be to view it as just a technical lift, because it is also an attitudinal lift; it's a lift of the mindset and, indeed, the qualification of a workforce. It's the way that you do business that's so critical as we move forward.<sup>73</sup>

### ***Other issues***

1.56 Matters also examined by the committee included:

- investigations conducted by the ASIO Ombudsman in relation to the ASIO Code of Conduct;<sup>74</sup> and
- access to ASIO documents via the National Archives of Australia.<sup>75</sup>

### **Australian Criminal Intelligence Commission**

1.57 The Australian Criminal Intelligence Commission (ACIC) was originally called to appear at the hearing on 4 April 2019, but was released before it could be questioned. However, the ACIC reappeared on 8 April 2019 at the request of the committee. The committee thanks the ACIC for making itself available to appear on both days.

1.58 The committee asked questions in relation to the ACIC's role and actions in the context of the Christchurch terrorist attack. Mr Michael Phelan APM, Chief Executive Officer and Director, stated:

Obviously the agency responsible for security intelligence is ASIO, and we've had those discussions before. Where the ACIC is interested is where there's a convergence with serious and organised crime. We have one of the references under our act in relation to national security which enables us to use our coercive powers to assist in relation to special investigations and special operations that deal with national security incidents. We've used those powers in the past for returning foreign fighters, for example, but if we're looking at extremism in general, we work with ASIO very closely,

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73 *Committee Hansard*, 8 April 2019, p. 85.

74 *Committee Hansard*, 8 April 2019, p. 86.

75 *Committee Hansard*, 8 April 2019, pp. 86–87.



particularly to look for that nexus between serious criminality and terrorism in any of its forms, whether it be extremism on the right wing or whether it be Islamist extremism, so we work very closely with those agencies. Not only do we hold a number of databases, obviously, from the Commonwealth intelligence databases, but we also have access to a lot of state and territory information. Through our pass-through, ASIO has access to that information. On occasion, we do analytics on products, most particularly around firearms and their availability and so on for terrorist groups. That's really where our nexus is. Also, like I alluded to before, we have the ability to use our coercive powers. As you know, under the ACC Act there are certain operations and investigations that are deemed to be called 'special', which enables us to use some of those powers. We have used those powers. We use those powers in both a top-secret environment and the environment that's classified to the public, of course, but the information and intelligence that's gleaned from that is passed on to relevant agencies—most particularly the AFP, state police or ASIO.<sup>76</sup>

1.59 The ACIC provided information in relation to organised crime groups, such as outlaw motorcycle gangs.<sup>77</sup> It also provided detail in relation to its coercive powers, such as the authority to conduct investigations and operations on the basis of national security.<sup>78</sup>

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76 *Committee Hansard*, 8 April 2019, p. 90.

77 *Committee Hansard*, 8 April 2019, pp. 90–91.

78 *Committee Hansard*, 8 April 2019, p. 91.

## 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 2019–20 financial year on 4 and 9 April 2019.

#### Commonwealth Director of Public Prosecutions

2.2 The committee enquired into a number of matters pertaining to the Commonwealth Director of Public Prosecutions (CDPP), including:

- expected briefs for prosecution arising from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, including additional funding provided to the CDPP to assist in managing the anticipated workload;<sup>1</sup> and
- prosecution guidelines in relation to cases involving whistleblowers under the *Public Interest Disclosure Act 2013*.<sup>2</sup>

#### Administrative Appeals Tribunal

##### *Workload of the AAT*

2.3 Ms Sian Leathem, Registrar of the Administrative Appeals Tribunal (AAT), provided an opening statement to the committee in which she outlined the current workload of the AAT:

Senators may recall that since the Administrative Appeals Tribunal, or AAT, was amalgamated in 2015 there has been a significant increase in demand for our services. In 2017–18, we received almost 59,000 applications, with around 51,000 in 2016–17 and 41,000 in the preceding financial year. This growth in demand is particularly evident in the Migration and Refugee Division, where applications have more than doubled over the past three years and quadrupled over the previous decade. The AAT is currently funded to finalise 18,000 matters in the Migration and Refugee Division each year. Last financial year we received almost 38,000 applications for review in this division. The historical funding model means that we are unable to finalise enough matters to keep pace with the growth in demand for services, and the consequence has been an increasing active case load.

The AAT currently has more than 65,000 matters on hand, with 85 per cent of these in the Migration and Refugee Division. We are in ongoing discussions with the government about an appropriate future funding model. In addition, we are working to increase our ability to address the growing case load. We've responded to these challenges by ensuring our processes are as streamlined and efficient as possible, and we're pursuing,

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1 *Committee Hansard*, 4 April 2019, pp. 98–99.

2 *Committee Hansard*, 4 April 2019, pp. 99–101.

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with promising results, innovative case management strategies, including using staff in triaging and early assessment of matters. While we are always looking at ways to improve our operations, this won't be enough to address the scale of growth in the volume of work and the likelihood that this trend will continue.<sup>3</sup>

2.4 Mr Chris Matthies, Executive Director, Strategy and Policy, stated that there were approximately 26,000 applications in relation to visa decisions and 11,500 applications in relation to protection visas which were directed to the Migration and Refugee Division.<sup>4</sup> An additional 11,000 Centrelink-related applications were received by the Social Services and Child Support Division, along with approximately 2,500 applications in relation to other matters such as the National Disability Insurance Scheme, workers compensation, taxation and veterans' appeals.<sup>5</sup>

2.5 The AAT provided further detail on the nature of applications being received in relation to migration and protection visas, and explained that a marked growth had occurred in the refusal of business visas over the past three years. Officials also noted that protection visa decisions made by delegates of the minister were commonly referred to the AAT.<sup>6</sup>

#### ***Appointment process for AAT members***

2.6 The committee queried the means by which AAT members are selected.

2.7 Mr Iain Anderson, Deputy Secretary, Legal Services and Families Group, Attorney-General's Department (AGD), stated that the previous protocol, entered into in November 2015, required that the President of the AAT write to the Attorney-General and indicate the number of members which the President believed would be necessary to be appointed or reappointed in order to facilitate the AAT's work. The Attorney-General would subsequently consider whether to add further members, and – if so decided – an advertised selection process would take place.<sup>7</sup>

2.8 Dr Albin Smrdel, Assistant Secretary, Legal System Branch, Attorney-General's Department, stated that the revised process had been devised by the President of the AAT and the Attorney-General, and that the new protocol commenced on 25 March 2019:

Under the revised protocol, the President of the AAT will every year seek expressions of interest in appointment to the AAT by public advertisement. The AAT will establish a register to receive applications addressing AAT-specific selection criteria. The President of the AAT will establish a process to assess the suitability of applicants who have provided expressions of interest by reference to AAT-specific selection criteria and will establish a

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3 *Committee Hansard*, 4 April 2019, p. 101.

4 *Committee Hansard*, 4 April 2019, pp. 101–102.

5 *Committee Hansard*, 4 April 2019, p. 101.

6 *Committee Hansard*, 4 April 2019, p. 102.

7 *Committee Hansard*, 4 April 2019, p. 107.

register of suitable candidates. The president will then supply the Attorney-General with advice and recommendations about appointments, and then it reverts to how the current consideration goes. It's up to the Attorney-General to consider those recommendations from the president.<sup>8</sup>

2.9 The AAT further noted that the Attorney-General retained the ability to make appointments outside the newly reformed process.<sup>9</sup>

### ***Other matters***

2.10 A number of other topics were discussed, including:

- the gender ratio of AAT members and deputy presidents;<sup>10</sup> and
- the announcement of 86 new appointments to the AAT made by the Attorney-General in February 2019, including 52 reappointments of existing members.<sup>11</sup>

### **National Archives of Australia**

2.11 The committee asked the National Archives of Australia (NAA) questions regarding a range of topics including:

- plans for a review overseen by the AGD examining the NAA's functional operations and efficiency;<sup>12</sup>
- contractual arrangements with Deloitte to review the NAA's asset management policy;<sup>13</sup>
- outstanding applications for access to ASIO records;<sup>14</sup> and
- reductions in staffing as a result of savings and efficiency measures over cumulative budgets.<sup>15</sup>

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

2.12 The Office of the Australian Information Commissioner (OAIC) appeared before the committee on 9 April 2019. The committee queried the OAIC in relation to budget increases for the upcoming financial year. Ms Angelene Falk, Australian Information Commissioner, stated:

Since the last occasion that I appeared before the committee the government has announced ... proposed provisions to strengthen privacy protections

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8 *Committee Hansard*, 4 April 2019, pp. 113–114.

9 *Committee Hansard*, 4 April 2019, p. 114.

10 *Committee Hansard*, 4 April 2019, pp. 102–103.

11 *Committee Hansard*, 4 April 2019, pp. 107–120.

12 *Committee Hansard*, 4 April 2019, pp. 121–14.

13 *Committee Hansard*, 4 April 2019, pp. 120–121.

14 *Committee Hansard*, 4 April 2019, p. 124.

15 *Committee Hansard*, 4 April 2019, pp. 124–125.

under the Privacy Act, including increased penalties and a new system of infringement notices. Importantly, my office will receive \$25 million over three years to deliver new work, as well as to enhance the office's ability to prevent, detect, deter and remedy interferences with privacy. It is also intended that there will be an enforceable code to introduce additional safeguards across social media and online platforms that trade in personal information. The code will require greater transparency about data-sharing and requirements for the consent, collection, use and disclosure of personal information. This will incorporate stronger protections for children and other vulnerable Australians within the online environment. Accordingly, the OAIC will be focused on working collaboratively and constructively with all parties to enhance privacy protections both online and offline and to give Australians greater control over their personal information, ensuring that it is handled in a way that is transparent, secure and accountable.<sup>16</sup>

2.13 Ms Falk noted that the budget would allow an increase in staffing, raising the ASL cap from 93 staff to 124 staff. The budget also contained an increase in capital expenditure of \$2 million, which would be used to facilitate additional accommodation as a result of increased staffing and new investment.<sup>17</sup>

2.14 The committee sought information in relation to applications made under the *Freedom of Information Act 1982* (FOI Act) before the OAIC awaiting decision. Ms Elizabeth Hampton, Deputy Commissioner, explained that the significant backlog in applications made under the FOI Act had made the reduction of waiting periods difficult to accomplish. She stated that the OAIC had engaged consultants to assess their work practices in this area and recommend efficiencies where possible.<sup>18</sup>

2.15 The committee also examined the OAIC's findings in an investigation regarding the application of the *Privacy Act 1988* to the actions of a parliamentarian in the course of a committee inquiry.<sup>19</sup>

### **Attorney-General's Department**

2.16 The committee called cross-portfolio, corporate and general matters and Group 2 of the AGD to attend the estimates hearing on 4 April 2019. Groups 1 and 3 were also called on 9 April 2019.

#### ***Legal assistance***

2.17 The committee sought information in relation to the operation of the new national mechanism for Commonwealth legal assistance. The Secretary, Mr Chris Moriatis, stated that the National Partnership Agreement on Legal Assistance Services (NPA) would begin in 2020 pending consultation with the states and territories. He provided further detail regarding its operation:

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16 *Committee Hansard*, 9 April 2019, p. 5.

17 *Committee Hansard*, 9 April 2019, p. 5.

18 *Committee Hansard*, 9 April 2019, p. 6.

19 *Committee Hansard*, 9 April 2019, p. 7–8.

The plan is to have a single one with all of them together, including the ATSILs [Aboriginal and Torres Strait Islander Legal Services], but the view is that we should also have the funding quarantined for each group. Before this current NPA, for example, community legal centres were also outside the NPA. They've been brought in over the time of this NPA, and that's worked. The thinking of the department was that bringing them altogether will also provide those efficiencies, especially in the ATSIL space. We certainly endorse some of the principles of that review, but the view of the government was that there are synergies to bringing them all together if you ensure the quarantining of the funds and if you ensure the culturally appropriate role that ATSILs play. You can achieve efficiencies, for example, in terms of reconciling and accounting.<sup>20</sup>

2.18 Ms Ariane Hermann, Acting Assistant Secretary, Legal Assistance Branch, stated that a number of programs would be drawn into the NPA that are currently funded through separate streams in the Attorney-General's portfolio. These programs include the Expensive Commonwealth Criminal Cases Fund, family advocacy and support services, domestic violence units and health justice partnerships.<sup>21</sup> She further explained:

It will have a number of benefits for the sector as well as the jurisdictions and the Commonwealth. It will enhance cooperation and collaboration across the legal assistance sector. It will align sector reporting requirements and data obligations through a single framework. It will reduce the risk of fragmented responses to legal need by providing better visibility of Commonwealth legal assistance funding and a more cooperative approach to addressing the needs of disadvantaged individuals in the justice system. It will promote consistency by allowing all levels of government to better understand the volume of legal assistance services and other services delivered by legal aid commissions, CLCs, and Aboriginal and Torres Strait Islander legal services.<sup>22</sup>

2.19 The department further explained that funding for Indigenous legal assistance would be drawn into the NPA, but that the funding would be quarantined to ensure that only Aboriginal and Torres Strait Islander Legal Services providers would be able to access it.<sup>23</sup>

### ***Foreign Influence Transparency Scheme***

2.20 The committee asked questions regarding the AGD's activities in promoting the Foreign Influence Transparency Scheme (FITS) register. The department advised that it had undertaken consultations, written to a number of agencies and relevant authorities, and contacted approximately 700 bodies. The Secretary advised that the

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20 *Committee Hansard*, 4 April 2019, p. 127.

21 *Committee Hansard*, 4 April 2019, p. 127.

22 *Committee Hansard*, 4 April 2019, p. 127.

23 *Committee Hansard*, 4 April 2019, p. 127.

department had also conducted advertising campaigns, costing almost \$100,000, and planned to spend an additional \$60,000 on further advertising campaigns.<sup>24</sup>

2.21 The Secretary explained that the AGD wrote to particular individuals or organisations to draw their attention to the FITS register:

[I]t was to highlight the existence of the register, how it works, and that they should consider whether they should or shouldn't register or be familiar with the register's existence and its scope, with a view to being sure that in future if they were to engage—they may not be engaging—in, say, lobbying or other things, then that clicks them into an obligation to register. It was reminding them of the penalties for failure to register if it is registrable entity, and then just making them be aware that, while they would be okay now doing nothing while working in this sphere, if they change their activities they could be subject to the regime. It was just being upfront about how the system will work and what it may imply for them in their future operations.<sup>25</sup>

2.22 The Secretary provided further detail on the nature of the register and its intended operation, explaining that the register was not designed to punish persons or organisations listed on the register but rather to provide transparency.<sup>26</sup>

### ***Dispute resolution***

2.23 The committee enquired into the department's oversight of and role in dispute resolution. The AGD advised the committee that it had a range of policy responsibilities, especially in relation to Commonwealth services. Mr Anderson stated:

The Legal Services Directions make rules about how the Commonwealth should engage in dispute resolution, the use of alternative dispute resolution wherever possible and things like that. Those are the rules for the Commonwealth's conduct of litigation. Apart from that, in the family law area, which I think you touched on in your question, we have a range of funded programs where we seek to encourage parties to mediate the disputes rather than to litigate. The Family Relationships Services Program helps 170,000 people a year through, primarily, mediation-related services before they go to the federal Family Court. So we generally have a strong emphasis on encouraging parties to resolve their disputes in ways other than direct court litigation.<sup>27</sup>

2.24 The committee also sought information in relation to the Commonwealth's policy regarding cost recovery in cases involving public interest matters.<sup>28</sup>

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24 *Committee Hansard*, 4 April 2019, p. 130.

25 *Committee Hansard*, 9 April 2019, p. 14.

26 *Committee Hansard*, 9 April 2019, p. 14.

27 *Committee Hansard*, 9 April 2019, p. 17.

28 *Committee Hansard*, 9 April 2019, pp. 17–18.

***Other matters***

2.25 The committee also asked questions of AGD relating to:

- Commonwealth funding to Environmental Defenders Officers;<sup>29</sup>
- the Commonwealth Integrity Commission, including a related consultation paper and the funding contained in the budget for the new body;<sup>30</sup>
- legislation before the Senate which would restructure the family courts system;<sup>31</sup>
- staffing statistics, including the total number of employees who transferred from the AGD to the Department of Home Affairs as a result of machinery-of-government changes in 2018;<sup>32</sup>
- allegations of foreign interference reported in the media;<sup>33</sup>
- state and territory laws regarding radical activism in relation to animal welfare matters;<sup>34</sup>
- the Australian Law Reform Commission's report into reforming the family law system;<sup>35</sup> and
- Commissioner appointments to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability.<sup>36</sup>

**Senator the Hon. Ian Macdonald**

**Chair**

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29 *Committee Hansard*, 4 April 2019, pp. 129–130.

30 *Committee Hansard*, 4 April 2019, pp. 132–134.

31 *Committee Hansard*, 4 April 2019, pp. 135–137; *Committee Hansard*, 9 April 2019, pp. 28–36.

32 *Committee Hansard*, 4 April 2019, p. 135.

33 *Committee Hansard*, 9 April 2019, pp. 9–11; 15–16; 25–28.

34 *Committee Hansard*, 9 April 2019, pp. 12–13.

35 *Committee Hansard*, 9 April 2019, pp. 22–23; 35–36.

36 *Committee Hansard*, 9 April 2019, pp. 36–38.



# Appendix 1

## Departments and agencies for which the committee has oversight

### Attorney-General's Portfolio

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

### Home Affairs Portfolio

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



## **Appendix 2**

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## Appendix 3

### Tabled documents

#### Home Affairs portfolio

Thursday, 4 April 2019

No.	Tabled by:	Topic
1	Mr Michael Pezzullo, Secretary, Department of Home Affairs	Opening Statement
2	Mr Michael Pezzullo, Secretary, Department of Home Affairs	<i>The Administration of the Immigration Program</i> , Second edition, 3 April 2019
3	Mr Michael Outram APM, Commissioner, Australian Border Force	Opening Statement
4	Senator Louise Pratt	Off Terminal Clearances
5	Mr Andrew Colvin, Australian Federal Police Commissioner	Opening Statement

Monday, 8 April 2019

No.	Tabled by:	Topic
1	Mr Luke Mansfield, Acting Deputy Secretary, Immigration and Citizenship Services, Department of Home Affairs	Internal blog post, 'Immigration Reform update - RFT Phase Two release'

#### Attorney-General's portfolio

Thursday, 4 April 2019

No.	Tabled by:	Topic
1	Ms Sian Leathem, Registrar, Administrative Appeals Tribunal	Opening Statement

