



**SENATOR THE HON MICHAELIA CASH**

SENATOR FOR WESTERN AUSTRALIA

SHADOW ATTORNEY-GENERAL

SHADOW MINISTER FOR EMPLOYMENT AND

WORKPLACE RELATIONS

DEPUTY LEADER OF THE OPPOSITION IN THE SENATE

**SENATOR PAUL SCARR**

SENATOR FOR QUEENSLAND

SHADOW ASSISTANT MINISTER FOR MULTICULTURAL

ENGAGEMENT

DEPUTY CHAIR, LEGAL AND CONSTITUTIONAL

AFFAIRS LEGISLATION COMMITTEE

24 May 2024

Ms Katherine Jones PSM  
Secretary  
Attorney-General's Department  
Via email:

cc: Legal and Constitutional Affairs Committee Secretariat

Dear Secretary,

We write on behalf of the Opposition Senators ahead of the 2024-2025 Budget Estimates hearings scheduled for 29-31 May 2024, to request certain information is provided to the Committee in writing advance of the hearings.

As you would recall from previous Estimates hearings, the provision of information in advance of committee hearings assists Senators in their important role of scrutinising Government expenditure, but also assists the Department by ensuring that relevant information is on hand during the Senate Estimates process.

We note that:

- as discussed in your evidence to the Senate Legal and Constitutional Affairs Committee on Wednesday 24 May 2023, your Department has previously responded to similar requests from Labor Senators while in Opposition by providing detailed information in writing ahead of the relevant Estimates hearings;
- specifically:
  - your Department received a request for information from Senator Kim Carr on 24 May 2021, and responded the following day by providing detailed information in writing;
  - your Department also received a request for information from Senator Kim Carr on 14 February 2022, and responded the following day by providing detailed information in writing;
- on 16 May 2023, your Department received an equivalent letter from Senator Paul Scarr, requesting information similar to that previously requested by Senator Kim Carr—but rather than responding to Senator Scarr in writing (as had previously been the practice) you offered to make witnesses available on the day of the hearing;

- in your evidence to the Senate Legal and Constitutional Affairs Committee at that hearing 24 May 2023 you explained that the reason for the difference in approach was that you had taken the view that the letter had not been provided “through the Committee and the Committee Secretariat”; and
- ahead of the subsequent Additional Estimates hearings on 23 and 24 October 2023, and subsequently, you reverted to the ordinary practice of providing written responses to questions asked in a letter sent by Senator Scarr ahead of the hearings.

I draw your attention to the fact that this letter is provided through the Committee Secretariat. I request that the Department provides the follow specific information to the Legal and Constitutional Affairs Legislation Committee by **midday Wednesday 29 May 2024**:

- 1) **Ongoing staff profile.** The number and levels of staff currently employed by AGD and all agencies within the portfolio.
- 2) **Non-ongoing staff profile.** The number and levels of non-ongoing staff through labour hire, contracts, and non-ongoing arrangements currently employed by AGD and all agencies within the portfolio.
- 3) **Consultants, contractors and labour hire.** For AGD and each agency in the portfolio, please provide information for each financial year to 2027-28 (including) setting out anticipated expenditure on consultants, contractors and labour hire.
- 4) **FOI handling.** Detailed breakdown of AGD’s Freedom of Information (FOI) requests and management. Please include information showing the number of FOI requests the Department currently has on hand, and the number that are currently overdue. Please also include information for each of the last 3 financial years showing:
  - a) how many staff are responsible for progressing FOI requests;
  - b) the average number of days taken to process a request;
  - c) the median number of days to process a request;
  - d) how many requests have been received; and
  - e) the results of the requests—whether approved in full, in-part, or refused.

We note that in your answer to a similar question ahead of additional estimates hearings in February, you provided the Committee with a link to the data.gov.au website. We further note that the most recent data available at that link was for the period ending 30 June 2023 (more than 6 months out of date at the time), and did not provide information answer 3 of the 5 listed questions listed above.

We note in particular that the substance of your response to this question in February—which referred Senators to published statistics and invited them to visit the data.gov.au website—reflects the approach taken in the document “Approaches to SEQoNs asked of all (or multiple) agencies” recently tabled in the Senate.

- 5) **Judicial vacancies, appointment processes and cessations.** Current lists showing:
  - a) all federal judicial officer positions that are vacant, including the reason for the vacancy;
  - b) the expected date on which each federal judicial position will become vacant (eg: because the judicial officer will turn 70, or has given an indication they will retire)
  - c) for each judicial appointment made since 1 July 2022—the elapsed time in days between the point at which the role became vacant, and the point at which the newly appointed judicial officer commenced in their role.

- 6) **AAT/ART appointments.** Please provide information outlining the current status of appointments to the AAT/ART, including
  - a) the number of existing AAT members not expected to be reappointed to the ART on abolition of the AAT;
  - b) the number of ART members expected to be appointed in the next 12 months, broken down by position type; and
  - c) any anticipated vacancies in the ART on commencement.
- 7) **Handling of high-risk terrorist offenders.** A timeline of the Department's handling of any other in which an order was considered under Divisions 104, 105 and 105A of the *Criminal Code* after 1 January 2023, updated to reflect any developments since this information was last provided on 12 February 2024. Please include dates any ministerial submissions were sent to the Attorney's office, dates those submissions were returned to the Department, and the dates of any key steps in taken in the courts (such as the date on which any application for a post-sentence order was lodged with a court).
- 8) **Immigration detention litigation.** An outline of the Department's involvement in the ASF17 case in the High Court, including a timeline setting out the Department's involvement in:
  - a) the decision to remove the case into the High Court;
  - b) consideration of any other matters immigration detention matters that may have been considered for removal into the High Court following the *NZYQ* decision; and
  - c) any consultation over the proposed Migration Amendment (Removal and Other Measures) Bill 2024.
- 9) **Settlements.** A list of matters in respect of which, since 1 July 2022:
  - a) the Attorney-General has been asked to approve a proposed settlement under paragraph 3.2 of the *Legal Services Directions 2017*; and
  - b) a delegate of the Attorney-General has considered a proposed settlement under paragraph 3.2 of the *Legal Services Directions 2017*.

Please indicate any matters in respect of which the Commonwealth agreed that the terms of the settlement were confidential.

- 10) **Ministerial submissions.** An outline of A list of all ministerial submissions that have been created on or after 1 May 2023, providing the PDR number, subject, date sent to the Minister's office, and the relevant portfolio Minister.

We note specifically that the information we have requested about ministerial submissions in the Attorney-General's Portfolio is the same information that was released recently released by the Department of Home Affairs, in relation to Minister Giles. We further note that the information released in the Home Affairs portfolio was released on the basis that there was "a legally enforceable right to obtain access" under the FOI Act, and accordingly that there is no tenable basis on which to assert that it would not be appropriate to provide the information.<sup>1</sup> We note that this is the same question asked on behalf of Coalition Senators on 9 February 2024, and that your Department is yet to provide a response.

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<sup>1</sup> See the publicly accessible list available at the following address:  
[https://www.righttoknow.org.au/request/10397/response/32295/attach/5/fa%20230601261%20document%20released.pdf?cookie\\_passthrough=1](https://www.righttoknow.org.au/request/10397/response/32295/attach/5/fa%20230601261%20document%20released.pdf?cookie_passthrough=1)

- 11) **Parole for federal offenders.** A table showing a breakdown of approved grants of parole since, in the same format as set out in the Department's answer to SBE23-078, for parole decisions from 1 July 2022.
- 12) **Listing of terrorist organisations.** Please provide a timeline in relation to the listing of Ansar Allah as a terrorist organisation, including details of timing of any involvement in the listing process by relevant departments and agencies.
- 13) **Engagement with CDPP.** Please provide a list of any meeting briefs prepared by the Department in relation to any meetings or telephone discussions between the Attorney-General and the Commonwealth Director of Public Prosecutions, dating from 1 November 2023.
- 14) **Handling of Questions on Notice.** Provide a table of all questions on notices from the February 2024 Additional Estimates hearings, and advise what date was each question provided to the Attorney-General's office, what date each question was signed off by their office.

Please also indicate any cases where the tabled answer was amended from proposed answer initially put forward by the Department.

Please note that this list of topics is not exhaustive, and Opposition Senators will likely have questions referring to expenditure across the whole of the Attorney-General's portfolio.

Yours sincerely,

**Senator the Hon Michaelia Cash**

**Senator Paul Scarr**

Cc: Legal and Constitutional Affairs Committee Secretariat