

## CHAPTER 2

### ATTORNEY-GENERAL'S PORTFOLIO

2.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Attorney-General's Portfolio for the 2010-11 financial year.

#### **Federal Court of Australia**

2.2 The committee questioned the Federal Court of Australia about proposals for the restructure of the federal judiciary, particularly in relation to military justice. The Registrar and Chief Executive of the court confirmed that there had been consultation with the Attorney-General's Department concerning the administration and governance structure under the new arrangements.<sup>1</sup>

2.3 The Registrar confirmed the court's view as to its role in a restructured federal judiciary:

**Mr Soden**—...I do not know whether our view has ever been expressed publicly, but I think I can summarise it by saying it is a similar view to the one we expressed about how we would be involved with the Federal Magistrates Court. Typically, I think we have said that a military court should be a chapter III court. It should be a self-administering court, but the Federal Court is happy to administer it.

**Senator BRANDIS**—So it is the Federal Court's view that when there is a new military court it should be a standalone court and not a division of the Federal Court?

**Mr Soden**—Yes, that has been our view.<sup>2</sup>

2.4 Other areas of interest to Senators in relation to the Federal Court included: the workload involving long-running commercial litigation cases; initiatives by the court following amendments to the *Native Title Act 1993* which came into effect in 2009 and gave the court the central role in managing native title claims; and the access and fairness survey.<sup>3</sup>

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1 *Committee Hansard*, 22 February 2011, p. 60.

2 *Committee Hansard*, 22 February 2011, p. 60.

3 *Committee Hansard*, 22 February 2011, pp 61-62.

## Attorney-General's Department

### *Provision of legal aid for persons being prosecuted for people smuggling*

2.5 Senators sought details on the allocation of \$17.6 million in the additional estimates for legal aid to support those who are involved in criminal prosecution, including in relation to drugs, terrorism and people smuggling. The committee was informed that the additional estimates for further expenditure was arrived at through consultation with legal aid commissions in relation to the Commonwealth criminal law matters they are dealing with throughout that year, and goes into the Expensive Commonwealth Criminal Cases Fund.<sup>4</sup>

2.6 The committee was advised on how the fund operates:

**Ms Jones**—...When the legal aid commissions have incurred the costs associated with expensive Commonwealth criminal matters, they can apply to the department for reimbursement. It is a matter of once the applications come in, we assess them against the guidelines for the fund and then reimburse the commissions for those costs. The fund was initially established to ensure that legal aid commissions did not have a significant impact on their budget for other Commonwealth law matters because of these expensive Commonwealth criminal cases.<sup>5</sup>

...

**BRANDIS**—And there is no ceiling to the amount by which you reimburse them?

**Ms Jones**—There is no specific ceiling but in relation to the guidelines for the Expensive Commonwealth Criminal Cases Fund there are obligations on the legal aid commissions to take all steps they can to contain costs and manage them as effectively and efficiently as possible.<sup>6</sup>

2.7 In particular, the committee sought further information on the allocation of legal aid funding for those being prosecuted for people smuggling offences. The Secretary advised that there are 280 crew currently being prosecuted for people-smuggling offences.<sup>7</sup>

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4 *Committee Hansard*, 22 February 2011, p. 74.

5 *Committee Hansard*, 22 February 2011, p. 74.

6 *Committee Hansard*, 22 February 2011, p. 76.

7 *Committee Hansard*, 22 February 2011, p. 76.

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***Recent natural disasters and the Commonwealth's role in response and recovery operations***

*Role of Emergency Management Australia*

2.8 There was considerable interest from Senators in relation to the Commonwealth's role in responding to recent natural disasters across Australia. The Director-General of Emergency Management Australia (EMA), Mr Campbell Darby, DSC AM, was scheduled to attend the hearing but was urgently called away on the day of the hearing to deal with the earthquake crisis in Christchurch, New Zealand.

2.9 The minister began this part of the program by making a statement in relation to emergency management and the role of the Australian Government in recent natural disasters.<sup>8</sup> The minister praised the efforts of all government agencies involved in the response and recovery operations, and noted the efforts of officers of the Attorney-General's Department, particularly the Public Affairs Branch and the EMA:

EMA has led and coordinated the response of the Australian government to natural disasters and a range of other threats through its Crisis Coordination Centre, which operated 24 hours a day.

The staff of EMA have provided the point of contact for the states and territories to access Commonwealth assistance, coordinated inter-jurisdictional and international offers of assistance, deployed numerous liaison officers to state disaster coordination centres, supported the Australian government and helped key decision makers be fully informed about the unfolding disaster events and actions required. Importantly, they have also worked tirelessly to enact arrangements that allow the delivery of financial assistance via a suite of measures like the Australian government disaster recovery payment and the natural disaster relief and recovery arrangements to ensure that those in need can quickly access financial support.<sup>9</sup>

2.10 During subsequent questioning of the department, Senators sought further clarification on EMA's role in the floods crisis. When it was suggested by one Senator that 'EMA was not actually managing the crisis so much as coordinating assistance at the Commonwealth level to agencies at the state level which were actually managing the crisis', the Secretary, Mr Roger Wilkins AO, responded by confirming that this was 'a fair characterisation'.<sup>10</sup>

2.11 While a departmental review of EMA's role in the Queensland floods crisis has not yet taken place, the Secretary advised the committee that the feedback from the leading state agencies and offices, such as the Queensland Commissioner of Police, the relevant Queensland Minister and the head of Emergency Management

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8 *Committee Hansard*, 22 February 2011, pp 79-80.

9 *Committee Hansard*, 22 February 2011, p. 80.

10 *Committee Hansard*, 22 February 2011, p. 86.

Queensland, was positive, and indicated that the command and control coordination systems had worked well.<sup>11</sup> He further advised that the role that the EMA played with respect to the floods crisis may potentially be examined by the commission of inquiry into the flood disaster which has been established by the Queensland Government.<sup>12</sup>

*Activation of the Australian Government Disaster Recovery Payment (AGDRP)*

2.12 The committee sought details on the decision processes involved in the activation of the AGDRP for residents in the Gascoyne region in Western Australia (WA) which was subject to major flooding in early December. The Prime Minister and the Attorney-General announced on 11 February 2011 that AGDRP payments would be made to people affected by both the WA bushfires and the Carnarvon floods, which includes people in the Upper Gascoyne region.<sup>13</sup>

2.13 Concern was expressed by some Senators about what appeared to be a delay in the decision to grant assistance to people impacted by the flooding in the Gascoyne region, when, it was suggested, the Prime Minister had earlier indicated support for this payment.<sup>14</sup> A comparison was drawn by some Senators with the apparent speed of activating the AGDRP in two instances in Queensland following the floods and Cyclone Yasi.<sup>15</sup>

2.14 The minister explained that the government had clarified the activation and eligibility criteria for the AGDRP to encourage greater consistency and rigour in how the payment is made:

...the government decided activation of the AGDRP would be more closely aligned with the NDRRA [Natural Disaster Relief and Recovery Arrangements] category C activations, as category C activations have tended to be an accurate indicator of the severity of an event. To put it in context, the states and territories are the first responders to deal with natural disasters. They advise the Commonwealth of their requests. With this, you then saw it being activated.

...

There has been a change where, in order to clarify it, it has followed the activation of category C. A state would normally declare an area a natural disaster. That would activate A and B—that is the way that it would generally work. It does not necessarily mean that the AGDPR will follow. Usually what happens is that the state would seek the activation of C, which is a higher level. That indicates that there is significant damage or the

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11 *Committee Hansard*, 22 February 2011, p. 86.

12 *Committee Hansard*, 22 February 2011, p. 86

13 See Prime Minister of Australia, media release, 'Further Commonwealth assistance for victims of WA bushfires', 11 February 2011.

14 *Committee Hansard*, 22 February 2011, p. 82.

15 *Committee Hansard*, 22 February 2011, p. 84.

flooding event has created individual concerns and distress. In this instance—and correct me if I am wrong—the Western Australian government did not ask for an activation of category C.<sup>16</sup>

2.15 He further clarified:

Some of the criteria that they would use would be whether category C was activated or not, but it is not the sole determinant; it would also depend on the information flow from the Western Australian government.<sup>17</sup>

2.16 The minister undertook to provide on notice to the committee whether 'category C' under the NDRRA was activated in this instance, and also the information that the Attorney-General had received that led to the activation of the AGDRP.<sup>18</sup>

## **Attorney-General's Department and Australian Federal Police**

### ***Mr Julian Assange and WikiLeaks***

2.17 The committee questioned the department about its involvement in an investigative unit established by the Prime Minister in relation to the conduct of Mr Julian Assange and the posting of classified material on the WikiLeaks website. The department indicated that it was not aware of its officers being involved in an investigative unit or in providing advice to the government with respect to the legality of the conduct of Mr Assange.<sup>19</sup>

2.18 Following the hearing, the committee received additional information from the Secretary of the department regarding the evidence given at the hearing in relation to this matter. The Secretary advised:

In an exchange about whether the Department had given any advice to government about the legality or otherwise of the conduct of Mr Assange or Wikileaks, I answered that I did not know of any such advice being given to anyone on legality and said that I was happy to make further inquiries of my officers...

Having undertaken those further inquiries, I can confirm that the Department has not provided advice on whether an offence had been committed. As we stated during the hearing...advice on that issue is quite properly a matter for the Australian Federal Police. As part of the Department's normal role in administering secrecy provisions, however, we have provided general briefings on the nature of these laws and on the range of potential offences.<sup>20</sup>

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16 *Committee Hansard*, 22 February 2011, p. 83.

17 *Committee Hansard*, 22 February 2011, p. 88.

18 *Committee Hansard*, 22 February 2011, pp 83-84.

19 *Committee Hansard*, 22 February 2011, pp 103-104.

20 Letter from the Secretary of the Attorney-General's Department to the committee dated 9 March 2011.

2.19 The committee also took evidence at the hearing from the Australian Federal Police (AFP) regarding its work in assessing material on the WikiLeaks website. Officers advised that an assessment was commenced following a referral from the department to identify any breaches of Australian law. Commissioner Tony Negus APM clarified the referral procedure in his response:

We do receive referrals from a range of agencies. We sometimes would initiate them ourselves but more often than not the AFP would respond to a referral from another department or another agency.<sup>21</sup>

2.20 The committee heard that the AFP provided advice to the department on 17 December 2010. A media release was issued in relation to the AFP's findings, which were summarised by Deputy Commissioner Peter Drennan APM at the hearing:

Our findings were that we did not identify any criminal offence where Australia would have jurisdiction.<sup>22</sup>

### ***Mr David Hicks's autobiography and proceeds of crime***

2.21 The committee sought details of the department's involvement in the consideration of whether an application under the *Proceeds of Crime Act 2002* should be brought against Mr David Hicks in relation to his book, *Guantanamo: My Journey*.

2.22 The Department advised that, following the publication of Mr Hicks's book, it partook in an initial discussion with officers of the AFP and the Office of the Commonwealth Director of Public Prosecutions.<sup>23</sup> The committee directed further questions on the matter to the AFP, and was provided with background information by Commissioner Negus:

Perhaps I should go back just a few months before that meeting took place. On 24 September there were a range of media articles which articulated the fact that Mr Hicks would be releasing a book. The AFP became aware of those and again was interested in the context of the legislation and what might be applied at a future date. On 27 September the AFP actually generated an internal referral to start an investigation to see whether that would be appropriate and whether Mr Hicks's autobiography would actually fall within the Proceeds of Crime Act and literary proceeds laws. The meeting you talk about was on 13 October, I am advised. It was attended by the AFP, by the Commonwealth DPP and the Attorney-General's Department at the request of the AFP, to discuss the legislation and how it might be applied.<sup>24</sup>

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21 *Committee Hansard*, 22 February 2011, p. 129.

22 *Committee Hansard*, 22 February 2011, p. 130.

23 *Committee Hansard*, 22 February 2011, pp 105-106.

24 *Committee Hansard*, 22 February 2011, p. 125.

2.23 Commissioner Negus confirmed that the investigation by the AFP into the matter is still under way.<sup>25</sup>

***Departmental program structure***

2.24 As a final point, the committee notes that the department's outcome and program structure presented some difficulties for Senators in determining the appropriate place to direct questions during the hearing.

2.25 The current program structure is divided into departmental and administered programs to reflect the type of appropriation they are funded under. Programs 1.1 and 1.2 are departmental programs and Programs 1.3-1.6 are administered programs. This means that a subject area for examination can potentially fall under multiple programs, depending on the specific area of interest and the nature of the questions.

2.26 The committee appreciates the assistance provided by officers of the department in providing guidance during the hearing, but would encourage the department to consider inclusion of greater detail in the program structure in the future.

**Senator Trish Crossin  
Chair**

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25 *Committee Hansard*, 22 February 2011, p. P. 125.

