

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 2012-13 financial year.

Australian Crime Commission

2.2 The Australian Crime Commission's (ACC) recent report on organised crime and drugs in sport, as well as the ACC's involvement in the press conference given by the Hon Jason Clare, Minister for Home Affairs and Minister for Justice, and the Hon Kate Lundy, Minister for Sport, on 7 February 2013, was the subject of extensive questioning by the committee. The Chief Executive Officer of the ACC, Mr John Lawler AM APM, advised that attendance at the press conference was in accordance with due process and past practices of the commission. Mr Lawler informed the committee that the investigation, called Project Aperio, started with work related to the issue of 'serious and organised crime penetration of professional sport' in 2011.¹

2.3 Mr Lawler explained that, although the ACC's report does not contain specifics of particular instances of widespread misuse of drugs by professional athletes in Australia, those details are contained in the classified report, which has been widely circulated to the relevant authorities.² Mr Lawler informed the committee that those authorities include the Australian Sports Anti-Doping Authority (ASADA), which is the lead agency in relation to breaches of World Anti-Doping Agency (WADA) activities.³

2.4 Mr Lawler also updated the committee on the implications for staffing of the funding reduction of the ACC.⁴

2.5 With respect to whether there were some crime-fighting activities which the ACC is not able to engage in due to its reduced staffing levels, Mr Lawler advised:

[I]n relation to the organised crime threats and the issues of crime more broadly in the community there is in actual fact more crime and more criminality than all the resources combined in the country can deal with. Agencies have to constantly prioritise where those resources are best deployed, and that is an exercise of judgement and indeed that is part of my responsibility, along with the board of the [ACC], which has a statutory function to set the priorities and indeed set the strategic direction for the commission and its work in targeting the very highest threat to criminal activities that we face.

1 *Estimates Hansard*, 12 February 2013, p. 74.

2 *Estimates Hansard*, 12 February 2013, p. 81.

3 *Estimates Hansard*, 12 February 2013, p. 81.

4 *Estimates Hansard*, 12 February 2013, p. 73.

So, the commission is no different to any other agency. Yes, there are crimes that the commission cannot tackle that it could tackle if there were more resources available. But I can assure this committee and the Australian public that with the resources we have, and with the support of the board, we have those resources focused on the highest threats and we are making significant inroads into the organised crime threat in this country.⁵

Family Court of Australia and the Federal Magistrates Court of Australia

2.6 Representatives from the Family Court of Australia (FCA) and the Federal Magistrates Court of Australia (FMC) were questioned extensively on the impending merger of the executive and administrative functions of those courts.⁶

2.7 The committee also asked questions about why the funding allocation to the FCA and the FMC differed from the budget figure. A representative of the courts informed the committee:

That allocation in many ways is simply formula based. Essentially, if you are looking at the two courts' budgets, the Family Court's budget is significantly larger than the Magistrates Court budget. Part of the reason is that the Family Court, by and large, pays for the large bulk of the properties that are occupied by both the FMC and the Family Court. It employs the bulk of the registry staff that provide the registry services and also a large portion of the registrars and consultants. So a significant component of the budget is actually a shared budget, so those resources are providing services across both courts. So, on the face of it, yes, it looks like the Family Court is getting a huge amount of funding compared with the [FMC].⁷

2.8 Mr Richard Foster PSM, Chief Executive Officer of the FCA and Acting Chief Executive Officer of the FMC, also explained the funding allocation in the context of the merger of the two courts:

...I think it is important to understand that the Family Court provides nearly \$30 million worth of services to the FMC free of charge. So one of the sound outcomes, I think, about the restructure of the administration of the courts is that the agency has one budget, and that is split up more easily between the two courts. So, assuming this legislation goes through, we will be able to say exactly what each court costs to run, although the money will be in the agency.⁸

Office of the Australian Information Commissioner

2.9 The committee questioned the Office of the Australian Information Commissioner (OAIC) as to why it has taken a long period of time to initiate

5 *Estimates Hansard*, 12 February 2013, p. 74.

6 *Estimates Hansard*, 12 February 2013, pp 60-65.

7 Mr Grahame Harriott, Family Court of Australia and Federal Magistrates Court of Australia, *Estimates Hansard*, p. 67.

8 *Estimates Hansard*, 12 February 2013, p. 68.

Australia's membership of the Open Government Partnership, following an invitation from the US State Department to join in August 2011 and the then Attorney-General's express support in May 2012.⁹ Professor McMillan, the Australian Information Commissioner, advised the committee that it was a case of 'competing priorities' and workload:

[T]he short answer is that there have been competing priorities, certainly in my office, and I expect there would be a similar consideration in, say, the Attorney-General's Department or in other departments. If I can just explain my part. I received a letter from the Attorney-General's Department in mid-August 2012 asking me to advise on what steps my office could take to assist the Australian government to join the Open Government Partnership. It took me five months to reply with the letter that you referred to that was recently released under the FOI Act and placed on our and another website. The only explanation, I think, is that there were quite a number of other competing priorities in the office at the time.¹⁰

2.10 The committee heard that, to date, although the previous Attorney-General has provided express support, Australia has not joined the Open Government Partnership, as no official decision has been made by the government. In response to a question about whether the OAIC anticipates 'receiving additional staff and resources to help drive whatever level of involvement the government decides to bring forward for the [Open Government Partnership]',¹¹ Professor McMillan informed the committee that 'without some supplementary funding or assistance', the OAIC could not 'see any way forward for [it] to take on extra work'.¹²

2.11 Upon questioning as to whether there has been a response to the US Secretary of State's invitation to join the Open Government Partnership, a representative from the Attorney-General's Department (AGD), which is the lead agency in relation to this issue, informed the committee that it has not responded.¹³

2.12 An AGD representative also advised that it would be briefing the new Attorney-General about the Open Government Partnership.¹⁴

Attorney-General's Department

2.13 A number of issues were raised with AGD, including: the Optional Protocol to the Convention Against Torture; the Native Title Respondent Funding Scheme; and the issue of justice reinvestment.

9 *Estimates Hansard*, 12 February 2013, p. 83.

10 *Estimates Hansard*, 12 February 2013, p. 83.

11 *Estimates Hansard*, 12 February 2013, pp 84-85.

12 *Estimates Hansard*, 12 February 2013, p. 85.

13 *Estimates Hansard*, 12 February 2013, p. 85.

14 Ms Elizabeth Kelly, Attorney-General's Department (AGD), *Estimates Hansard*, 12 February 2013, p. 87.

Optional Protocol to the Convention Against Torture

2.14 AGD officials provided an update on the progress of the department's work with states and territories to develop model legislation in relation to the Optional Protocol to the Convention Against Torture, (OPCAT). The committee was informed that a draft of the model legislation has been developed under the auspices of New South Wales as they are taking the lead in its drafting.

2.15 In response to questions as to the detail of the draft model legislation, a representative from AGD advised:

I do not have the detail with me but, essentially, the arrangements are necessary to both establish the national preventative mechanism, and the legislation would also govern visits by the international body. The legislation could also be supported by MOUs or agreements between ministers to facilitate those visits as well. It sets up the regime under which the OPCAT would be introduced in every jurisdiction.¹⁵

2.16 In relation to the delay in implementing the OPCAT treaty Australia signed in 2009, the representative explained:

It is the complexity of implementing a treaty of this nature in a federal context. I should say that [I] do not think the delay can necessarily be perceived as a problem in [the] sense that there has been a lot of work amongst jurisdictions to get the system right in a way that every jurisdiction is satisfied with, and that takes time as well.¹⁶

2.17 The AGD representative explained that the Commonwealth's intention is to 'continue to work with the states and territories to achieve agreement about how [OPCAT] should be implemented'.¹⁷

Native Title Respondent Funding Scheme

2.18 The AGD was questioned on changes to the Native Title Respondent Funding Scheme. Officers confirmed those changes had reduced funding to respondents in native title claims but clarified that the pool of funding is not disaggregated from the larger funding pool for financial assistance schemes:

Mr Fredericks: The financial assistance for the Native Title Respondent Funding Scheme is in an appropriation which picks up funding for all legal financial assistance programs. I can tell you the reduction in the level of funding across all of those financial assistance schemes.

Senator BRANDIS: No, I want to know the reduction in that part of that funding which is attributable to the Native Title Respondent Funding Scheme.

...

15 Mr Greg Manning, AGD, *Estimates Hansard*, 12 February 2013, p. 99.

16 Mr Greg Manning, AGD, *Estimates Hansard*, 12 February 2013, p. 99.

17 Mr Greg Manning, AGD, *Estimates Hansard*, 12 February 2013, p. 100.

Mr Fredericks: ...I can give you a three-year figure. In the financial year 2010-11, expenditure on the Native Title Respondent Funding Scheme was \$2.815 million. In the financial year 2011-12, it was \$2.749 million. For the financial year 2012-13, the year to date figure is \$1.299 million. That is actual expenditure, because, as I say, there is not an individual appropriation for that scheme on its own.¹⁸

Justice reinvestment

2.19 In response to questions concerning the area of justice reinvestment, AGD representatives informed the committee that the National Justice Chief Executive Officers Working Group on Justice Reinvestment or Causes of Crime (NJCEOs) is active and has produced a report related to the topic areas of justice reinvestment and causes of crime. The Secretary indicated that the report could be made available to the committee, subject to approval from all states and territories.¹⁹

2.20 Another area of focus by the NJCEOs is improving data collection:

One of the other things that the group is focused on is efforts around improved data collection to better inform justice reinvestment approaches. Often the difficulty we have is that the data is not collected in a way that gives you the ability to make informed judgements, so the NJCEOs have requested the National Corrective Services Statistics Unit board consider specific improvements to the currently available national data prisoner set to give us a better idea of effectively why people are in prison. On 19 April [2012] the board agreed to include this request in its upcoming review of the National Corrective Services quarterly data set. That review is currently being undertaken by the Australian Bureau of Statistics in consultation with all agencies with an interest in improving data. A key issue that the department raised during those consultations was the fact that the quarterly national corrections data collection does not currently identify offence type, which is one of the barriers to accurately identifying the key drivers of incarceration generally and Indigenous incarceration specifically. The ABS is expected to conclude that review by the middle of this year.²⁰

Other matters of interest

2.21 Other matters canvassed with the AGD by the committee included:

- the growing availability of guns in the community and the effectiveness of the work of the Commonwealth Firearms Advisory Council;²¹
- payments for people affected by natural disasters and the criteria used to assist people;²²

18 *Estimates Hansard*, 12 February 2013, pp 93-94.

19 *Estimates Hansard*, 12 February 2013, pp 101-102.

20 Mr Kym Duggan, AGD, *Estimates Hansard*, 12 February 2013, p. 101.

21 *Estimates Hansard*, 12 February 2013, pp 109-114.

22 *Estimates Hansard*, 12 February 2013, pp 114-119.

- a court case before the Victorian Court of Appeal in relation to the release of sources by two journalists in the prosecution of a number of former employees from Securrency and Note Printing Australia;²³ and
- reviews of ASIO adverse security assessments by the Independent Reviewer of Adverse Security Assessments.²⁴

Senator Trish Crossin
Chair

23 *Estimates Hansard*, 12 February 2013, pp 97-99.

24 *Estimates Hansard*, 12 February 2013, pp 103-104.