

CHAPTER 1

ATTORNEY-GENERAL'S PORTFOLIO

Introduction

1.1 This chapter summarises areas of interest and concern raised during the committee's consideration of the budget estimates for the Attorney-General's portfolio for the 2008-09 financial year.

Australian Federal Police (AFP)

1.2 At the commencement of the first day of hearings, the Commissioner of the AFP made an opening statement in which he responded to the Committee of Privileges 133rd report.¹ The commissioner told the committee that he had 'always accurately relayed my knowledge and understanding from briefings and updates received of the events surrounding Mr Habib'², observing that 'at times members of the committee clearly misinterpreted these responses...'.³

1.3 The Commissioner also responded to criticism in the report that answers to questions on notice were delayed and too narrowly focused, arguing that the delays were a result of the Commonwealth practice of obtaining ministerial clearance for answers.⁴ The Commissioner told the committee that 95% of the AFP's answers had been provided to the Minister before the due date.⁵

1.4 The committee questioned officers about an item in the budget which will provide for the recruitment of an additional 500 AFP officers over 5 years.⁶ Senators were interested to know why the bulk of the officers would be recruited in the final two years of the measure.⁷ Officers told the committee that the AFP College was currently working at capacity and could not train additional recruits.⁸ Officers told the committee that additional capital expenditure would increase the capacity of the AFP College allowing for recruitment of the extra officers.⁹

1 *Committee Hansard*, 26 May 2008, pp 5-7.

2 *Committee Hansard*, 26 May 2008, p. 6.

3 *Committee Hansard*, 26 May 2008, p. 6.

4 *Committee Hansard*, 26 May 2008, p. 6.

5 *Committee Hansard*, 26 May 2008, p. 6.

6 *Committee Hansard*, 26 May 2008, pp 30-34.

7 *Committee Hansard*, 26 May 2008, pp 30-34.

8 *Committee Hansard*, 26 May 2008, p. 32.

9 *Committee Hansard*, 26 May 2008, p. 32.

Australian Commission for Law Enforcement Integrity (ACLEI)

1.5 The committee questioned officers on ACLEI's current caseload.¹⁰ Officers told the committee that since its establishment ACLEI had received some 48 corruption complaints.¹¹ Officers told the committee that of these 48, 20 had been dismissed with no further action with the remaining 28 being the subject of ongoing investigations.¹²

1.6 Continuing its examination of ACLEI, the committee sought details on ACLEI's current and projected funding.¹³ Officers told the committee that in the forward estimates ACLEI would receive an additional \$7.5 million in funding over four years.¹⁴ The committee heard that \$1.5 million of this funding would be appropriated in the 2008-09 financial year.¹⁵

1.7 Officers told the committee that ACLEI had plans to increase its staffing level by seven employees with three additional staff in 2008-09 and a further four in 2009-10.¹⁶ Seeking further detail the committee heard that five of these staff would hold investigative roles with the remaining two dedicated to ACLEI's corporate functions.¹⁷ Officers told the committee this would increase ACLEI's total investigative staff to 8 by 2012.¹⁸

Australian Crime Commission (ACC)

1.8 The committee sought information on the current and projected financial position of the ACC.¹⁹ The committee heard that the proposed annual appropriation for the 2008-09 financial year totalled \$96.663 million.²⁰ Officers went on to advise that the ACC receives an additional \$12.335 million from Commonwealth, state and territory agencies, taking the ACC's projected total budget for the 2008-09 financial year to \$108.99 million.²¹ Officers told the committee that the 'net impact of the

10 *Committee Hansard*, 26 May 2008, pp 75-76.

11 *Committee Hansard*, 26 May 2008, p. 75.

12 *Committee Hansard*, 26 May 2008, p. 75.

13 *Committee Hansard*, 26 May 2008, pp 74-83.

14 *Committee Hansard*, 26 May 2008, p. 81.

15 *Committee Hansard*, 26 May 2008, p. 81.

16 *Committee Hansard*, 26 May 2008, p. 78.

17 *Committee Hansard*, 26 May 2008, p. 78.

18 *Committee Hansard*, 26 May 2008, p. 78.

19 *Committee Hansard*, 26 May 2008, pp 83-88.

20 *Committee Hansard*, 26 May 2008, p. 83.

21 *Committee Hansard*, 26 May 2008, p. 83.

efficiency dividend and weighed indexation is a reduction in appropriation in the 2008-09 year of \$2.320 million.²²

1.9 Committee members sought detail on how the reduced appropriation would affect the ACC's current functions.²³ Officers told the committee that the ACC would look at several areas where efficiencies could be obtained,²⁴ including:

- infrastructure costs;
- operational costs; and
- supply costs.

1.10 Committee members went on to question officers about projected staffing levels and how they were affected by the application of the efficiency dividend.²⁵ Officers told the committee that the ACC was estimated to reduce staffing by 50 full time equivalent positions.²⁶ This, officers told the committee, would result in savings of approximately \$5-6 million.²⁷

1.11 The committee also questioned officers about the ACC's National Indigenous Violence and Child Abuse Intelligence Task Force (the Task Force).²⁸ The committee heard that the ACC had 37 staff working in the Task Force, 17 of whom work in the Northern Territory.²⁹ Officers told the committee that since the establishment of the Task Force:

...we have conducted 163 visits to 128 different communities and we have also attended over 1,200 meetings across Australia. As a result of all that activity, we have disseminated 330 pieces of information to the various agencies...we have uploaded 750 information reports into the Australian Criminal Intelligence Database...Also seven intelligence reports have been produced on situations or persons of interest...³⁰

Australian Security Intelligence Organisation (ASIO)

1.12 The committee sought information about ASIO's current and future appropriations. Officers told the committee that ASIO's total appropriations in 2007-

22 *Committee Hansard*, 26 May 2008, p. 83.

23 *Committee Hansard*, 26 May 2008, p. 83.

24 *Committee Hansard*, 26 May 2008, p. 83.

25 *Committee Hansard*, 26 May 2008, pp 84-85.

26 *Committee Hansard*, 26 May 2008, p. 84.

27 *Committee Hansard*, 26 May 2008, p. 84.

28 *Committee Hansard*, 26 May 2008, pp 85-94.

29 *Committee Hansard*, 26 May 2008, p. 89.

30 *Committee Hansard*, 26 May 2008, p. 90.

08 were \$291,460,000 rising to \$352,653,000 in 2008-09.³¹ Officers explained that this increase in appropriations was largely attributable to the employment of additional staff.³² The committee was told that for 2007-08 the average staffing level is expected to be 1,349 full-time equivalent staff³³ and this would rise in 2008-09 to 1,535 full-time equivalent staff, representing an increase of 186.³⁴ Officers told the committee that ASIO is on track to increase staffing levels to 1,860 by 2010-11.³⁵

1.13 Committee members also sought information on the processing of security assessments for persons entering Australia.³⁶ Officers told the committee that for the period 1 July 2007 to 31 March 2008 ASIO completed approximately 49,000 visa assessments, consisting of 38,000 temporary visas and 11,000 permanent visas.³⁷ Officers went on to explain that they expect to finalise 65,000 assessments in the 2007-08 financial year compared to 53,000 assessments in 2006-07.³⁸

National Native Title Tribunal (NNTT)

1.14 Committee members questioned officers on the number of native title claims currently before the NNTT.³⁹ Officers told the committee that as of 31 March 2008, the NNTT had 557 native title applications, including 513 claimant applications.⁴⁰ Senators sought details on how long the NNTT projected it would take to finalise these applications.⁴¹ Officers told the committee:

Using our projections and looking at analysis of how many claims have been lodged each year, and factoring that over the forthcoming years... we anticipate it will be around 30 years.⁴²

31 *Committee Hansard*, 26 May 2008, p. 52.

32 *Committee Hansard*, 26 May 2008, p. 52.

33 *Committee Hansard*, 26 May 2008, p. 51.

34 *Committee Hansard*, 26 May 2008, p. 51.

35 *Committee Hansard*, 26 May 2008, p. 62.

36 *Committee Hansard*, 26 May 2008, pp 52-53.

37 *Committee Hansard*, 26 May 2008, pp 52-53.

38 *Committee Hansard*, 26 May 2008, p. 52.

39 *Committee Hansard*, 27 May 2008, pp 5-8.

40 *Committee Hansard*, 27 May 2008, p. 5.

41 *Committee Hansard*, 27 May 2008, p. 5.

42 *Committee Hansard*, 27 May 2008, p. 6.

1.15 The committee sought information on the years in which claims currently before the NNTT had been lodged.⁴³ Officers provided a breakdown⁴⁴ which is contained in the table below:

Year lodged	2003 onwards	Between 1998-2002	Before 1998
Number	282	282	112

1.16 Officers told the committee that the oldest application currently before the NNTT was lodged 14 years ago. Officers explained that time taken to resolve an application was affected by several factors, including⁴⁵:

- timetabling, management, preparation and assessment of connection material;
- timetabling and working of tenure analysis;
- overlapping claims; and
- the number of parties involved and assessing their interest in the application itself.

1.17 The committee heard that the government intends to reform the native title process which it is hoped will reduce the time taken to resolve claims.⁴⁶

Federal Magistrates Court

1.18 The committee questioned officers on the current number of sitting magistrates on the Federal Magistrates Court (the court). Officers told the committee that owing to a retirement and a death the number of sitting magistrates had reduced from 53 to 51.⁴⁷ The committee heard that it was proposed to increase the number of sitting magistrates by 9 in the near future.⁴⁸

1.19 Committee members also sought information on the current workload of the court.⁴⁹ Officers told the committee that family law matters accounted for 79 per cent of the court's workload.⁵⁰ Officers told the committee that since the creation of the

43 *Committee Hansard*, 27 May 2008, p. 5.

44 *Committee Hansard*, 27 May 2008, p. 5.

45 *Committee Hansard*, 27 May 2008, p. 6.

46 *Committee Hansard*, 27 May 2008, pp 7-8.

47 *Committee Hansard*, 27 May 2008, p. 102.

48 *Committee Hansard*, 27 May 2008, p. 103.

49 *Committee Hansard*, 27 May 2008, pp 104-105.

50 *Committee Hansard*, 27 May 2008, p. 104.

court there had been an increase in the number of family law matters as a percentage of total matters.⁵¹

Attorney-General's Department (AGD)

1.20 Changes to the Outcome and Output structure of AGD can be found at Appendix 8.

National Community Crime Prevention Program

1.21 Committee members sought information on why the forward estimates did not contain funding for the National Community Crime Prevention Program (NCCPP). This program:

...provided for a range of targeted community crime prevention projects as part of the Safer Suburbs Program, which aims to reduce crime [and], antisocial behaviour...⁵²

1.22 Officers told the committee that the program had been funded for 4 years and as such would lapse on 30 June 2008.⁵³ Officers also told the committee that although the NCCPP would lapse, some of the projects funded would continue to operate until 2010-11.⁵⁴ The committee heard that 417 small grants and 311 large grants had been awarded under the NCCPP.⁵⁵

Clarke Inquiry into the case of Dr Mohamed Haneef

1.23 On 13 March 2008 the Attorney-General announced the appointment of the Hon. John Clarke QC to conduct an inquiry into the case of Dr Mohamed Haneef. The committee sought information about the inquiry's establishment and funding.⁵⁶ The committee heard that the inquiry was estimated to cost \$4.2 million dollars with \$2.2 million appropriated for 2008-09 and the remainder of the funds coming from unspent appropriations for the Equine Influenza Inquiry.⁵⁷ The committee also questioned officers on staffing, consultants and other costs associated with the inquiry.⁵⁸

51 *Committee Hansard*, 27 May 2008, p. 104.

52 *Committee Hansard*, 27 May 2008, p. 45.

53 *Committee Hansard*, 27 May 2008, pp 43-46.

54 *Committee Hansard*, 27 May 2008, p. 44.

55 *Committee Hansard*, 27 May 2008, p. 44.

56 *Committee Hansard*, 27 May 2008, pp 62-73.

57 *Committee Hansard*, 27 May 2008, p. 62.

58 *Committee Hansard*, 27 May 2008, pp 62-73.

Appointment processes for federal judges and magistrates

1.24 Continuing its interest from the 2007-08 Additional Estimates round⁵⁹ the committee sought an update on the implementation of new appointment procedures for federal judges and magistrates.⁶⁰ Officers told the committee that selection processes had commenced for both the Federal Court of Australia and the Federal Magistrates Court.⁶¹

1.25 In relation to the Federal Magistrates Court, officers told the committee that following the placement of advertisements, 109 nominations had been received.⁶² Officers also told the committee that a 4 person selection panel had been appointed consisting of a current and a retired magistrate as well as two officers from the Attorney-General's Department.⁶³ The committee heard that interviews were underway.⁶⁴

1.26 In relation to the Federal Court of Australia, officers told the committee that following the placement of advertisements a selection panel was appointed consisting of two judges and two officers from the Attorney-General's Department.⁶⁵ The selection panel received over 90 nominations. These nominations had been considered and a report provided to the Attorney-General.⁶⁶ Officers told the committee that the Attorney-General had indicated that two appointments would be made in Sydney.⁶⁷

Other agencies and themes

1.27 Detailed questioning of departments and agencies on expenditure, both past and predicted, was a consistent feature of the hearings. The committee questioned several agencies on the application of the one off increase in the efficiency dividend; seeking detail on how this would affect staffing levels and programs.

1.28 The committee also sought updates on a number of matters from previous estimates rounds, these included:

- the extradition of Dr Jayant Patel;
- the Northern Territory Emergency Response; and
- Commonwealth purchasing of legal services.

59 *Committee Hansard*, 18 February 2008, pp 109-116.

60 *Committee Hansard*, 27 May 2008, pp 33-42.

61 *Committee Hansard*, 27 May 2008, pp 33-35.

62 *Committee Hansard*, 27 May 2008, p. 35.

63 *Committee Hansard*, 27 May 2008, p. 35.

64 *Committee Hansard*, 27 May 2008, pp 36-37.

65 *Committee Hansard*, 27 May 2008, p. 33.

66 *Committee Hansard*, 27 May 2008, p. 41.

67 *Committee Hansard*, 27 May 2008, p. 34.

Procedural Issues

Provision of legal advice

1.29 In continuation from the Additional Estimates round in March 2008 committee members questioned both AGD and the Office of Parliamentary Counsel on legal advice provided to the government regarding possible compensation to the 'stolen generation'. Officers tabled a letter from the Secretary of the Department of Prime Minister and Cabinet, Mr Terry Moran, stating the government's revised position on the disclosure of legal advice (Appendix 1).

1.30 This letter represented a significant change in stance from that previously adopted, which had conflicted with the Senate's resolutions about the provision of advice. The letter stated that the Government 'will not generally disclose the content of legal advice' but went on to state that:

...it will generally be appropriate for an official to disclose whether legal advice has been sought and obtained on a particular issue, and if asked, who provided the advice, unless there are compelling reasons to keep such information confidential.

1.31 Nonetheless, the committee still experienced some difficulties in obtaining answers to questions about whether legal advice had been obtained.

1.32 As in previous rounds, Senators asked representatives of the Australian Government Solicitor (AGS), a provider of advice, if advice had been sought. The officer asked the committee to consider that 'AGS as a legal services provider is in a slightly different position to an official of a department who may or may not have sought legal advice from an organisation like my own or, in fact, any private sector law firm.'⁶⁸ When subsequently questioned about the provision of advice in relation to amendments to the *Reserve Bank Act*, the officer responded that 'whether or not AGS has provided advice is more appropriately a matter for the government'.⁶⁹

1.33 The Minister subsequently attempted to clarify the position, advising the committee in the following terms:

...the most appropriate place to direct that is to the relevant department at the relevant committee. The reason is that, if there are questions about whether or not the information may itself disclose information that may not have been anticipated, then it would be the relevant department that would be in a position to claim the matter is outside of what they could reasonably provide to a committee. They may also raise the issue that it is a matter that might, for argument's sake, go to national security or some other case.

In respect of AGS, it is, as you can appreciate, a client of the department. It is placed in two issues. One, it provides a competitive market in legal

⁶⁸ *Committee Hansard*, 27 May 2008, p. 20.

⁶⁹ *Committee Hansard*, 27 May 2008, p. 21.

services to the government. Two, it provides confidential advice to government departments where legal privilege would be attracted. Therefore, there are two ways we can proceed. We can ask AGS whether they can obtain, in respect of the information that you seek, clearance from the relevant department—I think that is a difficult direction to proceed—or you can direct the question to the relevant department to provide that advice that you seek in respect of whether legal advice was sought, the date and the usual matters that you have raised before.⁷⁰

1.34 The Secretary of the Attorney-General's Department, Mr Robert Cornall AO, also elaborated on the intentions of Mr Moran's letter as applied to the AGS:

If, for example, we sought advice from the AGS, we would advise you that we sought advice from the AGS. I do not think you can read into this paragraph a requirement that the AGS should respond that the department sought advice from it. 'It' is the service provider and this letter is directed to government departments to disclose to you on request from whom they sought advice.⁷¹

1.35 In subsequent discussions, Mr Cornall tabled a letter dated 22 April 2008 from the Clerk of the Senate, Mr Harry Evans, which he said 'indicates that the Minister who receives the advice should be asked for it...'.⁷²

1.36 When committees ask for copies of legal advices, there is a clear distinction to be drawn between advices sought by Ministers and those sought by Departments, as was made clear in a further note provided to the committee by the Clerk on 30 May. As pointed out by the Clerk:

...as advices provided to ministers by definition belong to ministers, in the absence of circumstances mentioned in the note [to Mr Cornall, dated 22 April] officers are justified, under the rules of the Senate, in referring requests for such advices to the relevant ministers.⁷³

1.37 In relation to advice sought by departments, as pointed out by the Clerk, 'there may well be circumstances in which a department is able to disclose such advice without reference to a minister'.

1.38 The committee observes however that in raising objections to some of the questions asked, officers were failing to distinguish between questions seeking copies of advice and questions about whether advice had been provided, when and to whom.

1.39 The committee considers that this is an important distinction. While there may be an argument that the owner of an advice is the appropriate person to ask for that advice, the same cannot be said about questions about whether advice was sought, or

⁷⁰ *Committee Hansard*, 27 May 2008, p. 22.

⁷¹ *Committee Hansard*, 27 May 2008, p. 23.

⁷² Appendix 2.

⁷³ Appendix 4.

when it was sought. The committee is of the view that such questions should be answered, whether they are asked of the recipient of the advice or the agency that gave the advice, such as the AGS.

1.40 If officers consider that there are sound reasons for not answering a question as to whether advice was sought and when, then they must immediately refer the question to the minister who must make a public immunity interest claim. The committee does not consider that it is reasonable for an officer to refuse to answer such a question simply on the basis that they consider that it is a question more appropriately answered by the organisation who sought the advice.

Claim of public interest immunity

1.41 Committee members questioned officers on the specifics of negotiations between the Australian and Chinese governments on the Olympic Torch relay conducted in Canberra.⁷⁴ Officers expressed concerns about answering the questions given the confidential nature of the negotiations between Australian and Chinese officials. The minister, claiming public interest immunity, subsequently objected to officers answering the questions on the grounds that to do so would prejudice Australia's international relations.⁷⁵

Allegation that the committee was misled

1.42 On 1 November 2007, the committee received a letter by facsimile alleging that an officer of the Attorney-General's Department, Ms Sue Pidgeon, had provided evidence that appeared to be 'inaccurate or misleading' at the Budget Estimates in May 2007. The evidence in question was in relation to family relationship centres, and was given in response to questions asked by Senator Ludwig.

1.43 The committee sought a response from Ms Pidgeon, who stated that she had answered all questions accurately and to the best of her recollection at the time of the hearing. The committee considered Ms Pidgeon's response and the letter from the complainant, together with transcripts of the evidence received, with a view to determining whether to recommend to the Senate that a reference to the Standing Committee of Privileges be made in relation to the matter.

1.44 In considering this matter, the committee was mindful of the criteria to be taken into account when determining matters relating to contempt, as laid out in Parliamentary Privilege Resolution 3. On the basis of these criteria and Ms Pidgeon's response, the committee determined that it would not recommend a reference to the Privileges Committee and resolved to take no further action in relation to the matter.

1.45 In accordance with a request from the complainant for confidentiality, the committee has determined that all correspondence in relation to this matter is to be kept in-camera.

⁷⁴ *Committee Hansard*, 26 May 2008, pp 34-41.

⁷⁵ *Committee Hansard*, 26 May 2008, pp 40-41.