

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 2009-10 financial year.

Australian Human Rights Commission

1.2 The Committee's initial questioning of the Australian Human Rights Commission (AHRC) focussed on the attendance of Commissioner Calma and AHRC staff at the Durban Review Conference in Geneva on 20-24 April 2009. AHRC representatives attended this conference, although the Government had decided to boycott it.¹

1.3 The Committee also took evidence from the AHRC concerning its promotion of a particular model for a possible Charter of Rights, although the government has not set a policy position on the matter. The President of the AHRC, the Hon Catherine Branson QC, advised the committee that:

...the commission has indicated in broad terms its support for what is ordinarily known as a dialogue model human rights act It would identify the particular rights that Australia wishes to have protected by its overarching human rights institution.²

Australian Transaction Reports and Analysis Centre (AUSTRAC)

1.4 The committee sought information about AUSTRAC's budget cutbacks and the effects on its core business operations, including reductions in staff numbers, and a reduction of \$2.8 million over four years from the budget dealing with *Anti-Money Laundering and Counter-Terrorism Financing Act* compliance.³

1.5 Committee members also questioned officers about the appointment of an AUSTRAC officer who had a criminal record for the supply of drugs dating back eleven years, and who had been disqualified from practising law in NSW and Queensland.⁴ Questions focussed on security vetting processes for this person, who had received a 'protected' level security clearance. Officers explained that the individual had been deemed suitable after two independent reviews and that the

1 *Committee Hansard*, 25 May 2009, pp 6-36.

2 *Committee Hansard*, 25 May 2009, p. 40.

3 *Committee Hansard*, 25 May 2009, p. 52.

4 *Committee Hansard*, 25 May 2009, p. 54.

checking processes had been consistent with the Protective Security Manual procedures for the level, which required checks going back five years.⁵

1.6 As a result of this experience, AUSTRAC advised the committee that a review of security vetting procedures had been completed and the clearance process had been strengthened with the addition of more checks made of information in the public domain; however the agency would maintain the five-year checking period for clearance at the 'protected' level.⁶

Classification Board and Classification Review Board

1.7 The Director of the Classification Review Board, Mr Donald McDonald AC, made an extensive opening statement detailing activities of the board in relation to the pursuit of its responsibilities concerning the sale of unclassified and misclassified pornographic publications.⁷ This matter had been the subject of close questioning by senators in a previous round of hearings.

1.8 While the board has a role in the classification of publications, films and games, it has no enforcement role, which is the responsibility of state and territory police forces. Senators expressed their concern regarding the sale in convenience stores of publications which have been refused classification, and sought details on the government's response in addressing the matter.⁸ The issues of more severe penalties for non compliance and federal laws in this area were also raised by senators.⁹

Family Court of Australia and Federal Magistrates Court of Australia

1.9 The committee questioned the Chief Executive of the Family Court of Australia, Mr Richard Foster PSM, on the judicial complaints handling procedures in that Court.¹⁰ The Legal and Constitutional Affairs References Committee's inquiry into Australia's judicial system and the role of judges has given rise to particular interest among committee members in the Court's procedures. The committee heard that the Deputy Chief Justice has primary carriage of complaints, which are coordinated through a judicial complaints adviser, who is a legally qualified registrar of the court.¹¹

Semple review

1.10 Senators questioned officers of the Family Court of Australia and the Federal Magistrates Court about the implementation of the Semple review recommendations.

5 *Committee Hansard*, 25 May 2009, p. 55.

6 *Committee Hansard*, 25 May 2009, pp 56-57.

7 *Committee Hansard*, 25 May 2009, pp 57-58.

8 *Committee Hansard*, 25 May 2009, pp 62-63.

9 *Committee Hansard*, 25 May 2009, pp 64-65.

10 *Committee Hansard*, 25 May 2009, pp 66-69.

11 *Committee Hansard*, 25 May 2009, p. 67.

The committee heard that at this stage, the review implementation has been confined to the merging of corporate services for the courts.¹²

1.11 When Senators suggested that Simple review implementation is moving ahead of Parliamentary approval, the Chief Executive confirmed that the decision to proceed with integration of administration of both courts was made at a meeting of the Family Court Advisory Group on 23 March 2009.

The Chief Justice and the Chief Federal magistrate made this decision in advance of the government's announcement on 5 May about the proposed merger of the two courts in order to maximise efficiency and resources and to help address both courts' difficult financial positions, as they are responsible for the administration of the courts. Under their respective acts the jurisdictional heads are responsible for the administration of the acts, and under the act they can direct the CEO to perform certain functions. In effect, they have directed me to proceed with this merger.¹³

Australian Federal Police

1.12 The committee spent considerable time examining the Australian Federal Police (AFP) estimates on the second day of hearings. Questions were asked about AFP involvement in the system of advice to government relating to unauthorised boat arrivals and people smuggling, the nature and form of Australia's interdiction with Indonesia, and the operation of the People Smuggling Taskforce and associated organisations. These issues were examined in the context of the SIEV 36 disaster.¹⁴

1.13 Amongst a range of other matters pursued by the committee, information was sought on the AFP's pursuit of Paul Henry Dean in India. Senators also asked about the resulting difficulties in gathering evidence for the purposes of a prosecution under extra-territorial Australian sex tourism laws.¹⁵

1.14 The committee sought details on the AFP's work with the police force in Burma and was informed that this principally involves developmental and training work in the area of counter narcotics.

1.15 Addressing concerns expressed by Senators about the AFP's activities in Burma, the Commissioner advised:

Certainly we would not provide cooperation where that cooperation would result in offences occurring either in Burma or in Australia. We are very conscious of the political situation but, at the same time, we are aware of the advantages of being there with other agencies trying to develop their capability and certainly trying to get an understanding of the impact of their narcotics production.¹⁶

12 *Committee Hansard*, 25 May 2009, p. 76.

13 *Committee Hansard*, 25 May 2009, p. 77.

14 *Committee Hansard*, 26 May 2009, pp 26-37 and 40-48.

15 *Committee Hansard*, 26 May 2009, p. 16.

16 *Committee Hansard*, 26 May 2009, p. 23.

1.16 The AFP confirmed that there has been a significant reduction in heroin being trafficked from Burma to Australia since the introduction of these programs.¹⁷

1.17 The committee notes that the appearance by Commissioner Mick Keelty APM before the committee was his last before his retirement on 2 September 2009. Members of the committee and Minister Ludwig acknowledged his contribution over his many years of service with the AFP, including as Commissioner since 2001.¹⁸

Australian Customs and Border Protection Service

1.18 Senators sought details about the Australian Customs and Border Protection Service's (ACBPS) risk-based approach to air cargo inspections, first port boarding inspections and sea cargo inspections. The committee was advised that in respect of each of these categories of inspection, there will be fewer inspections than previously.¹⁹

1.19 The committee also sought advice more generally on programs or activities that have been cut back or reduced. Mr Carmody explained that:

a lot of this is about more efficient and effective delivery of what we do. Efficiency requirements that have been in place for many years have been a significant contributor to this. We are continuing with our strategy of ensuring that highest proportion of reductions is in our corporate support areas.²⁰

1.20 Continuing examination of the ACBPS, the committee questioned officers on the operation of the Maritime Incident Operations Group, receiving evidence about the chronology of events and meetings that took place on the day of the SIEV 36 incident.²¹

1.21 The ACBPS was also questioned on airport security and implementation of the recommendation of the Wheeler review which arose out of the treatment of whistleblower Alan Kessing.²² Customs maintained that there had been a substantial change of culture and processes in the organisation that would prevent a repetition of such an incident, but would not be drawn on the case, as it is still before the courts.²³

Australian Security and Intelligence Organisation

1.22 The new Director-General of ASIO, Mr David Irvine AO, was questioned about the large increases in funding for the organisation over the last two budget years. Mr Irvine confirmed that over a four year period, ASIO staffing had increased

17 *Committee Hansard*, 26 May 2009, p. 23.

18 *Committee Hansard*, 26 May 2009, pp 54-55.

19 *Committee Hansard*, 26 May 2009, p. 56.

20 *Committee Hansard*, 26 May 2009, p. 60.

21 *Committee Hansard*, 26 May 2009, pp 62-74.

22 *Committee Hansard*, 26 May 2009, p. 79.

23 *Committee Hansard*, 26 May 2009, p. 81.

from 800 to 1600, and was projected to increase to approximately 1800 by the end of next year. Mr Irvine explained that the increased staffing related to ASIO's needs to increase its expertise and capabilities following the advent of terrorism:

..it [ASIO] has had to develop the capability to provide reliable and useful threat assessments to the Australian government, which requires a highly developed analytical capability that four or five years ago we did not have to the extent required. It has required us to have considerably more intelligence officers who get out and do the business of security intelligence collection to identify and if necessary, and often in consultation and collaboration with other government agencies, to disrupt potential terrorist threats to Australia.²⁴

1.23 The committee also questioned Mr Irvine about a wide range of other areas, including accountability mechanisms, the extent to which the organisation monitors environmental and other civil protest groups, outcomes of the inquiry into the Ul-Haque case, telecommunications interceptions, the Habib and Hicks cases, and security checking of visa applicants.

Non provision of information and public interest immunity

1.24 This round of estimates was the first since the Senate passed the order on public interest immunity claims on 13 May 2009. This order sets out the process to be followed by public sector witnesses who believe that they have grounds for withholding information from Senate committees. The order requires witnesses to state recognised public interest grounds for withholding information and, at the request of a committee or any senator, refer the matter to the responsible minister, who is also required to state recognised public interest grounds for any claim to withhold the information.

1.25 The issue of public interest immunity claims arose on several occasions during consideration of the Attorney-General's portfolio.

1.26 During examination of the AHRC senators requested that the President of the Commission table briefing notes that were prepared for use during the estimates hearings in relation to the attendance by Commissioner Calma at the Durban Review Conference.²⁵ The Commission was reluctant to provide the notes and the President of the Commission referred the matter to the Minister who provided reasons why the notes should not be provided:

Senator Ludwig—The question has been asked of the president of the Commission to provide a briefing note that has been prepared by her office to assist her in answering estimates questions. I do not think it is appropriate to provide that briefing booklet; ...What would otherwise occur is that, at every turn, you would be in a position where estimates committees would ask for briefing booklets to be provided. The question as to whether or not public officials would provide information into the future

24 *Committee Hansard*, 26 May 2009, p. 95.

25 *Committee Hansard*, 25 May 2009, p. 29.

to assist estimates committees would be of grave concern of all us I suspect. ... Questioning of course can be detailed and the witness should provide answers to those questions. If they are difficult questions, the president of the commission can either take them on notice or provide full answers here. I think that is the appropriate way to proceed.²⁶

1.27 The committee did not pursue the matter further, the Senator asking for the notes expressing agreement with the Minister's view. The committee notes that the Minister did not make any public interest immunity claim, and that none of the established grounds for making such a claim are applicable in these circumstances.

1.28 A claim also arose during questioning of program 2.1.2 of the Attorney-General's Department. The committee requested that a report commissioned by the Department on the state of volunteering in Australia be tabled. Officials were reluctant to provide the report on the grounds that it was subject to public interest immunity on the basis that it is a Commonwealth-state document and had not yet been considered by state ministers.²⁷

1.29 The Minister took the tabling of the report on notice, advising the committee that:

... I want to take the question on notice and find out whether there is a claim of public interest immunity, particularly because it goes to state and federal relations. If it does not, the minister will be able to provide an answer to you...²⁸

1.30 The committee notes that prejudice to relations between the Commonwealth and the States is a recognised ground for making a public interest immunity claim.

1.31 A further occasion when this issue arose was during consideration of the Estimates for the High Court. Committee members sought a copy of submissions made by the Chief Justice to the Government in relation to the funding for the Court. The Minister representing the Attorney-General, Senator the Hon. Chris Evans, refused to release the documents, telling the committee that:

As you know, we do not release documents relating to the preparation of a budget. Discussions between the High Court and the department regarding budgetary matters in the lead-up to the presentation of the budget would not be made available to the committee in accordance with long-standing practice.²⁹

26 *Committee Hansard*, 25 May 2009, p. 30.

27 *Committee Hansard*, 25 May 2009, p. 88.

28 *Committee Hansard*, 25 May 2009, p. 89.

29 *Committee Hansard*, 27 May 2009, p. 14.