

CHAPTER 2

ATTORNEY-GENERAL'S PORTFOLIO

2.1 This chapter summarises some of the matters raised during the committee's consideration of the budget estimates for the Attorney-General's Portfolio for the 2011-12 financial year.

Australian Human Rights Commission

2.2 The committee sought the Commission's view of the proposed arrangement to send asylum seekers in Australia to Malaysia for processing. The President, the Hon Catherine Branson QC, informed the committee that her concerns on the proposed arrangements were already on the public record through the issue of a press release. However, she articulated them at the request of the committee, advising that as Malaysia is not a signatory to the Refugee Convention, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the International Covenant on Civil and Political Rights, there is a risk in sending people there if adequate protections are not negotiated. Ms Branson also noted that Australia's international human rights obligations may also be breached.¹

2.3 Another matter that was raised with the Commission was the decision of the United Nations Human Rights Council in Geneva to replace the condemnation of religious defamation with a resolution underlining the rights of individuals to freedom of belief. On notice, the committee sought the Commission's view on the implications for Australia of that decision.²

2.4 The Commission indicated to the committee that it had not considered the decision and, as such, was reluctant to provide a response on notice. However, after considerable discussion around the requirements to provide a response, the Chair advised the President to review the *Hansard* and the Commission agreed to provide responses to all questions asked by Senators in this regard.³

2.5 Other issues raised during the examination of the Commission, included the imprisonment of persons with cognitive or intellectual disabilities, employment of people with disabilities in the public sector, the community education program as part of the Human Rights Framework, the appointment and resourcing of the Age Discrimination Commissioner, and the Sex Discrimination Commissioner's chairing of the review of the treatment of women at the Australian Defence Force Academy and in Australian Defence Force policies.

1 *Committee Hansard*, 25 May 2011, p. 19.

2 *Committee Hansard*, 25 May 2011, p. 20.

3 *Committee Hansard*, 25 May 2011, p. 26.

Australian Transaction Reports and Analysis Centre (AUSTRAC)

2.6 Further information on the savings measures of \$12.1 million over four years from operational efficiencies, which were identified in Budget 2011-12, was sought by members of the committee. It was explained that AUSTRAC is currently considering a number of options to deliver services under the budget allocation, including reviewing discretionary expenditure, such as travel, and the restructure of internal business units.⁴ The committee was assured by AUSTRAC that its current workload would be maintained despite the reduced budget.⁵

2.7 Industry concerns about AUSTRAC's cost recovery model were canvassed, and further information was sought on its response to the impact on small business. AUSTRAC summarised amendments to the model intended to address certain concerns. These include the exemption of affiliates of remitter networks to the levy; non-employing entities and microbusinesses will not be subject to the base component of the levy, and most would not be subject to any levy; and small gaming venues (entities with an entitlement to 15 or fewer gaming machines) would be exempt from the levy.⁶

Australian Security Intelligence Organisation (ASIO)

2.8 The committee asked a range of questions concerning the construction of ASIO's new building, including an update on its progress. The project is running within the current budget and is expected to be completed in the middle of next year. When asked about the \$69 million increase from the 2010-11 capital outlays, ASIO advised that this accounted for \$19.2 million for the replacement of existing assets and \$41.5 million for equity injection for the new building.⁷ ASIO also advised the committee that, at the time of the hearings, it had not been successful in finding a tenant to occupy 4,000 square metres of space in the building, following withdrawal of the Office of National Assessments as a prospective tenant.

2.9 Another area of interest to the committee was security on site as a result of an incident of unauthorised entry. It was advised that this incident led to a review of security arrangements. The Director-General of ASIO, Mr David Irvine AO, advised the committee that '[m]y advice is that comprehensive security procedures have been developed with the managing contractor for the design and construction phases that are commensurate with the level of risk for this project'.⁸

4 *Committee Hansard*, 25 May 2011, p. 29.

5 *Committee Hansard*, 25 May 2011, p. 30.

6 *Committee Hansard*, 25 May 2011, p. 31.

7 *Committee Hansard*, 25 May 2011, p. 71.

8 *Committee Hansard*, 25 May 2011, p. 73.

2.10 Following the discussion on security checks for IMAs during the earlier examination of the Department of Immigration and Citizenship, Mr Irvine provided a helpful summary of the new streamlining processes which were introduced around late February:

The criteria under which that referral process takes place have been determined by ASIO. It is an ASIO managed process right across the board. It is an intelligence led process, it is a risk managed process and it involves close cooperation with DIAC.

...

...the nature of the security checking is on a case-by-case basis. It is not determined solely by nationality, by ethnic origins or by religious or other reasons. The checking that we carry out varies according to the purpose for which we have been asked to make the check...We make two types of assessment in respect of IMAs...The first one is to determine suitability for community based detention and the second one is to determine the suitability for an individual to reside permanently in Australia. The level of checking that we undertake is commensurate ultimately with the level of risk we assess the individual to have.

This referral process has been developed in consultation with DIAC. What it has done, particularly recently, is enable us to streamline security checking for what I will call non-complex cases and that is commensurate with the level of risk that they present. What it does is allow us to focus our most intensive security investigation effort into the groups or individuals of most security concern. The result is, I believe, particularly in recent times, that our security checking has become more thorough and more effective. In fact, this is evidenced in the number of adverse security assessments, which have increased as a result of our ability to focus on these complex cases.

The final point to make is that, prior to this year, it was government policy that all irregular maritime arrivals be subject to the full ASIO investigative process. In other words, every one was treated as a complex investigation. This was proving particularly difficult for everybody, partly because of the complexity of the investigations themselves and because of the numbers involved. Therefore, at the end of last year, the government agreed on two significant decisions. The first was that ASIO would refer to us for complex security checking, while it would security-check only those people who had already been accorded refugee status. In the jargon it is known as '1A met'; in other words, their refugee claims could be accepted. Prior to that, we had been conducting full investigations on every IMA, even on those people who were unlikely to be or ultimately not accepted. So we were wasting a lot of effort on that. That decision has relieved the pressure to some extent. The second decision was to streamline the process, use greater risk management and align the process much more closely with the process that we apply to every other visa applicant.⁹

9 *Committee Hansard*, 25 May 2011, pp 74-75.

2.11 The Director-General also provided the committee with a review of the role of the new multi-agency Counter Terrorism Control Centre (CTCC):

Mr Irvine: The purpose of the control centre is to ensure that the government's counterterrorism effort both at home and overseas is properly coordinated between the various agencies who conduct Australia's counterterrorism effort—between the collectors of intelligence and between the consumers. It is responsible not simply for assisting in the coordination of the federal government effort but also for ensuring that the cooperation and coordination in the flow of intelligence backwards and forwards between federal and state authorities is optimal. One of the big problems in intelligence, particularly in relation to counterterrorism, is ensuring that the right piece of information gets to the right person at the right time; that is part of its job.

The other key element of the work of the CTCC is to establish the priorities for our counterterrorism effort, both at a strategic level and at what I will call a granular level in terms of individual investigations and so on. It is designed to ensure that the collectors of intelligence are collecting according to the right priorities, that we are coordinating the collection and that the collectors can look at those priorities and plan their resource dispositions accordingly. It also performs a role in evaluating the quite granular intelligence that comes in to ensure that the collectors are in fact meeting real, genuine requirements.

Senator LUDLAM: Thanks very much. I think that is probably the most expansive statement that we have heard on that to date, so I appreciate that.¹⁰

2.12 ASIO was also questioned on whether it had investigated the Wikileaks organisation; and its involvement in the IGIS inquiry into the actions of relevant Australian agencies in relation to the arrest and detention overseas of Mr Mamdouh Habib from 2001 to 2005.

Australian Federal Police (AFP)

2.13 The AFP was questioned extensively on a range of issues. Of particular interest to the committee was the AFP's involvement in recent incidents of public disorder at the Christmas Island Detention Centre and the Villawood Detention Centre.

2.14 The committee sought information on a range of issues associated with the March 2011 riots at the Christmas Island Detention Centre, including when the AFP first became aware of the high-level risk of the public disorder, the interactivity between the AFP and the detention centre's contracted provider, Serco, the circumstances in which the AFP takes control of the detention centre over Serco, the number of AFP officers involved in returning the detention centre to order, and the prosecutions arising out of the riots.

10 *Committee Hansard*, 25 May 2011, p. 91.

2.15 Questioning along similar lines continued with respect to the riots at the Villawood Detention Centre in April 2011. Senators were advised that at present no formal memorandum of understanding exists between the AFP and the NSW Police in response to incidents at Villawood. However, work is currently underway to formulate one. The committee heard details of the AFP's involvement in the response to the incident in April and also sought details on the subsequent investigation and prosecutions arising from the riot.

2.16 Another area of questioning concerned the new Channel Nine reality television program *AFP*, based on the work of real AFP officers. Concerns were raised about the involvement of officers in the program who are undercover officers. The Commissioner advised that participation was voluntary and that the officers had a choice to reveal their faces and identities and, if they chose not to, would have their faces pixelated through the series.¹¹

2.17 The Commissioner revealed that staff of the production company were cleared to the appropriate level.¹² Mr Andrew Wood, Chief Operating Officer, explained further:

There are a number of layers to the management of the information for which the security clearance is important to establish a base level of trustworthiness. But there are of course protocols that continue to reiterate briefing them in terms of levels of classification of the information they have access to, and there are also clauses within the contract that enable us to ensure that they continue to meet their obligations in relation to the commitments they have made.¹³

2.18 The Commissioner informed the committee of the objectives and benefits of participating in the program, and addressed the issue of risks associated with the program:

Understanding what the AFP does and being involved in the fight against organised crime is what we are all about and we want to publicise some of that, particularly in relation to the amount and quality of intelligence provided to law enforcement and how people can assist in that regard. It will inform and educate the public about how they may be affected by crime and put preventative measures in place so that people can see how crimes are committed, because not all of them have the opportunity to go and sit in a court room.

There has been a research survey done in 2009 to establish a benchmark of public attitudes and awareness of the AFP, and after the show has been aired we will do that again and make sure we take account of what that tells us. The AFP did not receive any financial benefit from this program from the production company and the television series. However, we were able

11 *Committee Hansard*, 26 May 2011, p. 28.

12 *Committee Hansard*, 26 May 2011, p. 31.

13 *Committee Hansard*, 26 May 2011, p. 33.

to negotiate free community messaging with Channel 9 to the value of \$500,000 in advertising value. So there will be advertising, there will be community messaging around important issues like missing persons and online child protection put forward by Channel 9 at no expense to the Commonwealth but because of the participation of the AFP in this program. And when the contract was negotiated and spoken about four years ago, almost, those issues were seen to outweigh the risks, and for any risks that were identified there were appropriate mitigation strategies put in place with the production company, of which they have lived up to those strategies.¹⁴

2.19 The Commissioner was asked about the re-shooting of scenes to include the new Prime Minister, the Hon Julia Gillard MP, to replace previously shot scenes with the Hon Kevin Rudd MP. The AFP confirmed that this was done at the request of the production company after that request was put to Ms Gillard, and that the cost to the AFP of this exercise was 'very moderate'.¹⁵

2.20 The AFP was also questioned about its involvement in the examination of the Wikileaks organisation following the publication of classified material in 2010. It confirmed that it had received a referral from the Attorney-General's Department on 30 November 2010 in relation to potential criminality, and on 17 December 2010 advised the department that the evaluation was complete and that it had not identified any criminal offences.¹⁶

2.21 The AFP pointed out that this initial referral was not an 'investigation' but an evaluation of material to assess if there were sufficient grounds to commence an investigation:

We were evaluating the material before us to see whether there was sufficient material to commence an investigation. It is a subtle distinction, but it is actually about looking at the material which is on hand. One of the primary areas of focus there is to establish whether or not there would be criminal offences and whether we would have jurisdiction. If those two issues were established then we would progress to a formal investigations. The threshold was not met for either of those two things.¹⁷

2.22 The committee sought further details of this evaluation and the AFP advised that it did not believe anyone was interviewed in regard to the matter as 'the thresholds were not met for a criminal offence being identified for which we had jurisdiction, so therefore there was no requirement to go forward to interview any persons outside of examining those documents.'¹⁸

14 *Committee Hansard*, 26 May 2011, p. 35.

15 *Committee Hansard*, 26 May 2011, pp 38-39.

16 *Committee Hansard*, 26 May 2011, p. 43.

17 *Committee Hansard*, 26 May 2011, p. 43.

18 *Committee Hansard*, 26 May 2011, p. 44.

2.23 The AFP further advised that it provided two people to be involved in a whole-of-government taskforce which commenced on 29 November 2010 to assess the implications of the release of the cables. Their involvement was for a short period and then continued on an as-needs basis as further cables were released, and there is no ongoing involvement at the present time.¹⁹

2.24 Other areas of interest to the committee during examination of the AFP included: AFP deployment in Afghanistan; the increase in the number of AFP sworn officers; AFP involvement in the independent review of the intelligence community; policing and security at airports; complaints about the behaviour of AFP officers on the Solomon Islands; and the Alan Kessing case.

Attorney-General's Department

2.25 The Attorney-General's Department was questioned on a range of matters, including the provision of legal advice in relation to plain packaging for tobacco products, a legal aid agreement with Norfolk Island, legal aid for people smugglers, inter-country adoption, reduction in funding for family relationship centres, funding for safer suburbs initiatives, delays in the provision of funding to assist flood-affected areas in the Gascoyne region of Western Australia, and security implications of people changing their names.

Senator Trish Crossin
Chair

19 *Committee Hansard*, 26 May 2011, p. 43.

