

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 2013-14 financial year.

Australian Customs and Border Protection Service

2.2 The Australian Customs and Border Protection Service (Customs) updated the committee on reform within the agency, as announced by the government in December 2012.¹ One of the reforms referred to by the recently appointed Chief Executive Officer, Mr Michael Pezzullo, in his opening statement was Customs' new drug and alcohol testing program, which commenced on 13 March 2013. The committee heard that 551 officers have been tested under the program, with no breaches of the alcohol-free policy detected and one confirmed positive result for a cannabis metabolite.²

2.3 The Chief Executive Officer indicated that, at the current rate, Customs expects to 'cycle through' its 5,600 strong workforce every 24-36 months. However, testing is in a pilot phase (concluding at the end of May or June 2013), after which the results will be reviewed to determine how often employees need to be tested in order to obtain the desired deterrent and integrity intelligence effect.³

Family Court of Australia

2.4 The committee examined the budgetary outlook for the Family Court of Australia (Family Court), where Table 3.2.1 of the Portfolio Budget Statements shows deficits for 2012-13 (\$8.4 million), 2013-14 (\$8.5 million) and nearly \$9 million in each of the out years. Specifically, the committee asked for an explanation of the claim that the court will achieve a balanced budget in the current and upcoming financial years.⁴ The Executive Director of Corporate responded:

Mr Harriott:...[U]nder Operation Sunlight the funding in our appropriations for depreciation was removed and we get it separately as an equity injection through our balance sheet. So, in the absence of any other changes, the first thing that would happen is that you would make a technical loss in each of those financial years because of the impact of the depreciation. If you look at the table further down, it talks about the impact of net cash appropriation arrangements. Essentially, in terms of our performance, in terms of a true underlying loss or not, you would add back

1 *Budget Estimates Hansard*, 29 May 2013, pp 9-12.

2 *Budget Estimates Hansard*, 29 May 2013, pp 14 and 16.

3 *Budget Estimates Hansard*, 29 May 2013, p. 14.

4 Family Court of Australia and Federal Magistrates Court of Australia, *2012 – the Year in Review: Chief Executive Officer's Report*, October 2012, p. v.

depreciation. If you look at the 2012-13 figure, which is an \$8,424,000 loss, you would add back on the depreciation expense. If you look under 'Expenses' up at the top, under 'Depreciation/amortisation', if you add back the \$8,424,000 you end up with zero; essentially, you break even. We were representing it as required, but it is a technical loss...So that is the change that came about through Operation Sunlight. Essentially, but for the depreciation impact, we are budgeting to break even over the forward years.⁵

2.5 The Family Court conceded that the financial statements that appear in the annual report are more comprehensive than the budget documents;⁶ however, Mr Harriott, advised the committee 'I do not get a sense, over the time I have been involved, that the notes we have in there now are any less or any more than we have had in the past'.⁷

Federal Court of Australia

2.6 The committee questioned the Federal Court of Australia (Federal Court) about the budget provision for the appointment of three additional judges in Melbourne, Sydney and Brisbane. The Federal Court clarified that it had not specifically requested these appointments and suggested the government had made its decisions based on numerous expressions of concern made by the Federal Court in relation to the increasing workload in those cities.⁸

2.7 The committee also asked the Federal Court about a forecasted operating surplus in the 2012-13 Budget, given that there is a predicted deficit in the forward estimates, including 2012-13. A question was put in relation to how it is possible to have an operating surplus and a significant deficit of \$3.2 million in the same year. The Chief Finance Officer, Mr Bowen, provided the committee with an accounting explanation. He advised the committee that, due to a change in the accounting policies two years ago when depreciation funding was removed from all of the entities, the Federal Court will always have a deficit as a result of depreciation that has to be charged against the Federal Court's financial statements. This deficit is then rebalanced by an increase in the Federal Court's equity increase from the department's annual capital budget.⁹

2.8 Mr Bowen acknowledged:

[The information in the Portfolio Budget Statements] probably should have had a caveat that this is the figure before taking into account depreciation.¹⁰

5 *Budget Estimates Hansard*, 29 May 2013, p. 67.

6 *Budget Estimates Hansard*, 29 May 2013, pp 67-68.

7 *Budget Estimates Hansard*, 29 May 2013, p. 68.

8 *Budget Estimates Hansard*, 29 May 2013, pp 58-59.

9 *Budget Estimates Hansard*, 29 May 2013, p. 60.

10 *Budget Estimates Hansard*, 29 May 2013, p. 60.

Australian Commission for Law Enforcement Integrity

2.9 The committee questioned the Australian Commission for Law Enforcement Integrity (ACLEI) about its budget for 2013-14, staffing levels and the Integrity Commissioner's role in matters involving alleged corruption.

2.10 The Integrity Commissioner advised that there will be an increase of \$0.725 million in ACLEI's 2013-14 budget, but funding for the surveillance capability enhancement project will cease on 31 December 2013.¹¹ This pilot project is currently funded from the proceeds of crime and, in the view of the Integrity Commissioner, 'has proven its worth, particularly in the context of recent investigations conducted jointly with the [Australian Federal Police and Customs]. It has helped the investigation to be efficient and it has produced strong criminal briefs'.¹² A review of the project's effectiveness is underway and the committee heard that it is likely that the project will continue.¹³

2.11 The Integrity Commissioner explained that ACLEI accesses the project's surveillance capability by arrangement with the Australian Crime Commission (ACC), which manages the surveillance team. ACLEI has first call on this capability and utilises it in cases where physical surveillance is required in an investigation.¹⁴ If funding for the project were discontinued, the committee heard that ACLEI would not be able to access surveillance capability for its investigations.¹⁵

Australian Crime Commission

2.12 The committee asked the Australian Crime Commission (ACC) about the impact of its reduced budget, from \$104.867 million in 2012-13 to \$101.787 million in 2013-14, on work projects and staffing levels. The Chief Executive Officer, Mr John Lawler AM APM, advised that the ACC's response has been to reduce its supply costs in order to maintain staff, and to develop efficiencies to manage the budget.¹⁶

2.13 The committee also questioned officers about the *Illicit drug data report 2011-12*, which was released on 7 February 2013. The Chief Executive Officer confirmed that there have been a record number of seizures (at 23 tonnes), but stated that it is difficult to attribute supply to increased street quantity.¹⁷ Based on figures provided by the World Bank and the United Nations Office on Drugs and Crime, the Chief Executive Officer estimated the conservative worth of the illicit drug market in

11 *Budget Estimates Hansard*, 30 May 2013, p. 7.

12 *Budget Estimates Hansard*, 30 May 2013, p. 8.

13 *Budget Estimates Hansard*, 30 May 2013, p. 8.

14 *Budget Estimates Hansard*, 30 May 2013, p. 8.

15 *Budget Estimates Hansard*, 30 May 2013, p. 8.

16 *Budget Estimates Hansard*, 30 May 2013, p. 15.

17 *Budget Estimates Hansard*, 30 May 2013, p. 17.

Australia at about \$6 billion (or two per cent of Australia's \$1.3 trillion gross domestic product).¹⁸

Australian Federal Police

2.14 The committee questioned the Australian Federal Police (AFP) about its use of section 313 of the *Telecommunications Act 1997* (Telecommunications Act). The AFP acknowledged that the provision was previously used to block malicious software emanating from a particular server. However, section 313 of the Telecommunications Act is now used for a broader purpose:

Mr Phelan: Section 313 is not limited to blocking websites. It is a requirement that content service providers, ISPs or telecommunications carriers do everything in their power to assist law enforcement and stop offence[s] against the criminal law. It is not only about blocking websites. The Australian Federal Police do use that section for other requirements that we do have that are not related at all to blocking websites—that, as a matter of fact have nothing to do with websites. They are about carriers assisting the AFP in lawful duties under warrant et cetera.¹⁹

2.15 The committee heard that the AFP revised its approach upon discovering that it is much more useful, and far more valuable, to work with the host companies offshore and block material at its source, rather than attempt to manage the problem from within Australia.²⁰

2.16 In a similar vein, the committee pursued a line of questioning in relation to the AFP's access of non-content data under sections 178-180 of the *Telecommunications (Interception and Access) Act 1979*. The AFP Commissioner confirmed that, in the last two financial years, over 93,000 requests were made for such access: 50,841 in 2010-11 and 43,362 in 2011-12.²¹ The committee heard that these requests did not include access to content on overseas servers for which mutual assistance requests are normally required.²²

2.17 The committee also questioned AFP officers extensively on Interpol red notices and their application in relation to the assessment of particular individuals, including an IMA individual currently in detention who has been convicted of serious crimes 'in absentia' by a military tribunal in Egypt.²³

2.18 The committee was informed that all law enforcement agencies have access to Interpol information which is normally facilitated through the AFP. Mr Colvin emphasised that a red notice is not an arrest warrant and has no legal basis in Australia:

18 *Budget Estimates Hansard*, 30 May 2013, p. 17.

19 *Budget Estimates Hansard*, 30 May 2013, p. 30.

20 *Budget Estimates Hansard*, 30 May 2013, p. 31.

21 *Budget Estimates Hansard*, 30 May 2013, p. 25.

22 *Budget Estimates Hansard*, 30 May 2013, p. 26.

23 *Budget Estimates Hansard*, 30 May 2013, p. 58.

[It] is a flag so [the AFP] can go back to the country that has asked Interpol to create this red notice if [the AFP] need[s] to establish certain things which include [the requesting country's] preparedness to seek extradition and [that country's] ability to meet the Australian [extradition] threshold... [The extradition process] is a process that is managed by the Attorney-General's Department.²⁴

Attorney-General's Department

Emergency Management Australia

2.19 The committee questioned the Attorney-General's Department (AGD) on the work undertaken in relation to the \$12 million committed to the National Risk Information Project, which arose from the Natural Disaster Insurance Review. The committee sought information about the ongoing mapping of flood-prone areas and how much information would be collected and made accessible.²⁵

2.20 The Secretary, Mr Roger Wilkins AO, advised that although there is reasonable knowledge of past and current flood-prone areas, the issue in relation to the project's difficulty, is more related to 'the quality of the data than the extent of the data', and the use of different methodologies in different areas.²⁶ The department's contribution to the project is to develop common guidelines for a framework that will ensure 'existing data [is made] more easily available and accessible through a single web portal' and 'work with jurisdictions to improve standards'.²⁷

2.21 In relation to a question about how much of the \$12 million funding has already been spent, a departmental officer advised that Geoscience Australia, the agency building the portal, manages all of the funding allocated to the project.²⁸

National Plan to Reduce Violence Against Women and their Children

2.22 The committee requested an update on how the National Plan to Reduce Violence Against Women and their Children has progressed via the Standing Council on Law and Justice since the last estimates hearings.

2.23 The committee heard that of the 186 recommendations in the Australian Law Reform Commission's *Family violence—a national legal response* report, the department is 'halfway through' those components where it has responsibility to contribute to a national response, via the Standing Council on Law and Justice, and where the department is responsible for a Commonwealth-specific response.²⁹ The 24 recommendations that the Commonwealth and the states and territories have jointly

24 *Budget Estimates Hansard*, 30 May 2013, p. 57.

25 *Budget Estimates Hansard*, 29 May 2013, pp 79 and 80.

26 *Budget Estimates Hansard*, 29 May 2013, p. 80.

27 *Budget Estimates Hansard*, 29 May 2013, p. 80.

28 *Budget Estimates Hansard*, 29 May 2013, p. 81.

29 *Budget Estimates Hansard*, 29 May 2013, p. 93.

responded to are publicly available on the Standing Council on Law and Justice's website.³⁰

2.24 The recommendations that have already been progressed by the Commonwealth, and are publicly available, include: changes to the *Family Law Act 1975* in relation to family violence and definitions of family violence; a greater focus on training packages around family violence, which resulted in the release of the AVERT Family Violence training package to assist professionals to better understand the subject matter; and preparation of the DOORS (Detection Of Overall Risk Screen) package, which assists lawyers in their interactions with clients to identify issues of family violence.³¹

Federal judicial appointments

2.25 The committee pursued an extensive line of questioning in relation to the advertisement and appointment of three new Federal Court judges in Melbourne, Sydney and Brisbane. The AGD explained that an existing process to fill vacancies in Melbourne and Sydney was used to shortlist applicants for the new positions in those cities,³² with the Brisbane appointment advertised on 10 May 2013.³³ The AGD informed the committee that the Attorney-General's office had requested that expressions of interest be advertised on 10 May 2013. The positions were advertised prior to the announcement of the vacancies in the Budget on 14 May 2013, because 'the Treasurer had in a sense given his permission for a measure that was to be announced in the budget to be announced effectively before the budget'.³⁴

Other matters of interest

2.26 The committee questioned the department and its agencies about a range of other matters, including:

- the arrival of 66 Sri Lankan asylum seekers at Geraldton, Western Australia on 9 April 2013;³⁵
- the amount, and application, of revenue to be collected by federal courts in 2013-14;³⁶
- the current status of the Open Government Partnership Agreement;³⁷
- an update on the ratification of the Optional Protocol to the Convention against Torture;³⁸

30 *Budget Estimates Hansard*, 29 May 2013, p. 92.

31 *Budget Estimates Hansard*, 29 May 2013, p. 93.

32 *Budget Estimates Hansard*, 29 May 2013, pp 108 and 111.

33 *Budget Estimates Hansard*, 29 May 2013, p. 113.

34 *Budget Estimates Hansard*, 29 May 2013, p. 114.

35 *Budget Estimates Hansard*, 29 May 2013, pp 18-20.

36 *Budget Estimates Hansard*, 29 May 2013, pp 61-65 and 68-70.

37 *Budget Estimates Hansard*, 29 May 2013, pp 75-77.

- funding arrangements in relation to support provided by the AFP to the Department of Immigration and Citizenship;³⁹ and
- the Australian Security and Intelligence Organisation's new security assessment process for Irregular Maritime Arrivals.⁴⁰

Answers to questions on notice

2.27 The committee commented on the late provision of the CrimTrac Agency's (CrimTrac) answers to questions on notice for Additional Estimates 2012-13. The committee had set 2 April 2013 as the return date for answers but did not receive CrimTrac's responses until approximately three hours prior to their appearance before the committee.⁴¹

2.28 The committee reiterated its view that it is not acceptable for responses to be provided weeks after the due date. The late provision of answers does not allow committee members sufficient time to consider them before the hearings, and impedes the role of the committee in examining proposed expenditure by Commonwealth departments and agencies.

Senator Trish Crossin
Chair

38 *Budget Estimates Hansard*, 29 May 2013, pp 97-99 and 103-105.

39 *Budget Estimates Hansard*, 30 May 2013, p. 55.

40 *Budget Estimates Hansard*, 30 May 2013, p. 67.

41 *Estimates Hansard*, 30 May 2013, p. 80.

