

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 2014–15 financial year.

Australian Crime Commission (ACC)

Fiscal constraints and staff reductions

2.2 In his opening statement to the committee, the Chief Executive Officer of the ACC, Mr Chris Dawson, emphasised the importance of the commission as 'the backbone of the Australian Criminal Intelligence Network', and suggested that crime in Australia influenced everything from the welfare of communities and the health of individuals to the profitability of legitimate businesses and government revenue.¹ Mr Dawson informed the committee that the work of the commission had never been higher, yet it had to carry out its operations under increasing resource constraints and reduced government funding. The committee heard that, in the face of this new fiscal environment, full-time employees at the commission would drop from their current level of 524 to 450 by 2017–18, yet, in his view, the commission required 600 full-time employees as a minimum workforce to be fully effective.²

2.3 In response to this, the Attorney-General commented that, given the general fiscal environment that the government operated within, the reductions in funding to the ACC were relatively modest compared to most other government agencies. He further drew the committee's attention to the government's new policy of releasing money collected under the Proceeds of Crime Act and placed in the confiscated assets account to the commission for its operations, which would have returned to general revenue under the previous policy.³

2.4 The committee questioned officials as to the effect that staff reductions might have on the activities and core capabilities of the ACC, and how the activities of the commission would be prioritised in light of this:

Senator SINGH: Will this staff reduction have an effect on some of the programs and the activities of the ACC? I spoke last time in depth with Mr Jevtovic about the National Criminal Intelligence Fusion Capability, which I think has been developed over the last two years. Will a staffing reduction have an effect on the delivery of that kind of capability?

Mr Dawson: We will have to make an assessment of the totality of our capabilities. Fusion is a very important part of the commission's work. I cannot state with certainty that no staff in the fusion area will be reduced. We have a number of different capabilities, whether they be in physical

1 *Committee Hansard*, 26 May 2014, pp 6–7.

2 *Committee Hansard*, 26 May 2014, p. 7.

3 *Committee Hansard*, 26 May 2014, p. 9.

surveillance or whether they be investigators or analysts et cetera. The fusion capability of course is one of the very important elements of the work that we do. With a declining FTE we will proportionately decrease staff across specific areas.

Senator SINGH: Is this where you have to prioritise where you want to see staff lost from? Presumably there are important components, such as fusion capability, that need a certain quota of staff within them to make them run effectively. Surely it is a priority of the ACC to ensure that kind of fusion capability continues. Obviously, with natural attrition, you are going to have people offering voluntary redundancy, but you may not want job losses in those areas. What are you going to do as far as prioritising the most important areas for staff to remain in?

Mr Dawson: I will be ensuring that the core capabilities—and fusion is one of those core capabilities—are maintained so that we can continue to deliver the outputs required. If there are areas which are of a lower priority—and there are some that are lower priority than the fusion—of course we would look at those areas before we look at key priority areas.

Senator SINGH: That is good to hear.⁴

Australian Federal Police (AFP)

2.5 The new security measures being trialled at Parliament House to speed up members' access to the building was cause for concern for some senators. Officials were questioned as to whether the new arrangements, which allow certain pass holders to move through security gates without having their belongings scanned, could pose a significant risk to building security. In particular, it was suggested that certain of these pass holders may be 'compromised' and forced to engage in criminal activity. Mr Tony Negus, Commissioner of the AFP, agreed that the new arrangements did pose a risk and were subject to ongoing consideration by his agency, along with other measures.⁵ Mr Negus indicated that he had expressed his concerns to the Department of Finance about what effect the reductions in funding to the Department of Parliamentary Services might have on the security of Parliament House and that discussions with relevant parties were ongoing.⁶

2.6 The committee questioned the AFP on a range of other matters, including the security of Hobart airport following the proposed removal of all AFP officers; the Prime Minister's transitional accommodation arrangements at the AFP training college in Canberra and associated costs; metadata surveillance of members of parliament; the AFP raid on Seven West Media and associated legal costs; and AFP investigations into breaches of the Commonwealth Electoral Act.

4 *Committee Hansard*, 26 May 2014, p. 10.

5 *Committee Hansard*, 26 May 2014, pp 14–15.

6 *Committee Hansard*, 26 May 2014, p. 15.

Attorney-General's Department (AGD)

2.7 Officials from the AGD faced a range of questions, on topics including funding arrangements for royal commissions, possible amendments to the *Racial Discrimination Act 1975* and funding arrangements for community legal centres.

Funding arrangements for Royal Commissions into Institutional Responses to Child Sexual Abuse and the Home Insulation Program

2.8 The committee gave particular attention to the funding arrangements for the Royal Commissions into Institutional Responses to Child Sexual Abuse and the Home Insulation Program. Responding to statements made by the Shadow Attorney-General, the secretary of the AGD, Mr Roger Wilkins AO, made a statement to clarify funding arrangements. He informed the committee that funding had been reduced from the Royal Commission into Institutional Responses to Child Sexual Abuse, but that this royal commission did not require that funding.⁷ Some \$4 million in savings had come from the commission's 'capital fit-out works', which had come in under budget.⁸ He confirmed that this money, along with an additional \$2.7 million in savings due to the Commonwealth not incurring budgeted costs for appearing at the commission, were used to fund the Royal Commission into the Home Insulation Program to the amount of \$6.7 million, though he emphasised that this \$6.7 million would have otherwise returned to consolidated revenue and the reductions in funding would not affect the operations of the Royal Commission into Institutional Responses to Child Sexual Abuse.⁹

2.9 The secretary was asked a series of questions relating to these funding arrangements. In particular, he was asked to clarify an apparent contradiction in the department's answer to a question on notice (number 16 from 2014–15 additional estimates) and his own statement to the committee. In the question on notice, it was indicated that \$2.7 in savings were 'redirected from funding provided to the department and not required for 2013–14 for financial assistance for legal costs and related expenses for witnesses'.¹⁰ However, in his statement regarding where those savings were to be made, Mr Wilkins had informed the committee that savings were from:

moneys not required for financial and legal costs that we expect to be incurred by the Commonwealth as a party to the royal commission. It did not impact on funding for other witnesses before the royal commission or the royal commission itself.¹¹

7 *Committee Hansard*, 28 May 2014, p. 37.

8 *Committee Hansard*, 28 May 2014, p. 37.

9 *Committee Hansard*, 28 May 2014, p. 37.

10 *Committee Hansard*, 28 May 2014, p. 44.

11 Mr Roger Wilkins, *Committee Hansard*, 28 May 2014, p. 44.

2.10 In response to this, officials conceded that the answer provided to the question on notice did not sufficiently clarify from where the savings had come.¹² Officials confirmed that the \$2.7 million in savings had come entirely from funding for the Commonwealth's appearances as a party to the commission and had not come from funding for witnesses.¹³

2.11 The Attorney-General faced further questions regarding the model for funding witnesses at the Royal Commission into Institutional Responses to Child Sexual Abuse, and whether such funding could be guaranteed into the future:

Senator KIM CARR: Minister, can you agree that all the survivors of child sexual abuse who wish to give evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse will receive the financial assistance they require?

Senator Brandis: The government has always been fully supportive of the work of the royal commission. It has provided for legal assistance to witnesses who require it. As Ms Dines has said, a lot of them do not because of the circumstances in which they have come before the commission. As far as I can foresee, that will continue.¹⁴

Exposure draft amendments to section 18C of the Racial Discrimination Act

2.12 Of particular interest to the committee was the exposure draft of amendments to section 18C of the *Racial Discrimination Act 1975*. Officials faced a range of questions regarding public opinion on these amendments, their final form and the effect they would have on public discussion in Australia if adopted. The Attorney-General informed the committee that the form of changes to section 18C were yet to be finalised and told the committee that, in the government's opinion, changes were necessary as the current act is 'way too restrictive of freedom of discussion' and 'does not provide effective protection against racial vilification'.¹⁵

2.13 The exposure draft amendments were released for public consultation on 25 March 2014. The AGD received 5,557 related public submissions, which, according to the Attorney-General, represented a wide variety of views regarding the draft. The committee heard that these submissions would not be published by the department, nor would a breakdown of views be made public. This was a cause of consternation for some senators, but the Attorney-General explained:

This was not an opinion poll. This was to solicit views of the community about what was the best way to deal with this matter. We did not embark upon an opinion-polling exercise. What we did was ask the community to tell us their ideas. The government went to the election with the announced policy of reforming section 18C or, as I sometimes put it, repealing section 18C in its current form. That is our policy; that is what we are going to do.

12 *Committee Hansard*, 28 May 2014, p. 45.

13 *Committee Hansard*, 28 May 2014, pp 45–46.

14 *Committee Hansard*, 28 May 2014, pp 46–47.

15 Senator the Hon George Brandis QC, *Committee Hansard*, 28 May 2014, pp 57–58.

For that reason our policy was not to leave section 18C unamended, nor was it our policy to repeal section 18C entirely, as a lot of people would like to see us do. What I am particularly interested in are those people who have good ideas about ways in which the section can be improved. That is what I am looking for; I am looking for ideas. If I can put it this way, this is a qualitative, not a quantitative, exercise.¹⁶

2.14 The effect amendments to the Racial Discrimination Act might have more broadly upon Australian society was also explored. In particular, one senator questioned the Attorney-General on the possible risk that changes to the Act might create a perception overseas that Australia is a country tolerant of racism and the effect this might have on Australia's standing as a major education provider to the international market.¹⁷ In response, the Attorney-General stated his opinion that, while Australia was not a racist country, there were pockets of the community that were, and that it was best to expose such racism head on. He informed the committee that he believed changes to the Racial Discrimination Act would help achieve this.¹⁸

Cuts to legal services advocacy funding for community legal centres

2.15 As part of new funding arrangements announced in the May 2014 budget, community legal centres were informed that they could no longer access funding from the Commonwealth for advocacy and law reform work. The committee sought details about the rationale behind this decision. The Attorney-General indicated that the ultimate shape of the policy would be informed by a number of things, including the Productivity Commission's final report into access to justice services, which is due for release by the end of the year.¹⁹ He indicated that a decision had been made to prioritise what he described as 'the most important work' of providing front-line services for those most in need in the community, given a budget-constrained environment and finite resources.²⁰ According to the Attorney-General:

My view is that where people are missing out on legal representation and legal advice, then that is a bad thing. If they miss out because there are not enough resources in the system, then an injustice is done. Whereas, the kind of advocacy work or law reform work of which you are speaking can still be done by those very access to justice providers in a voluntary way, rather than funded through government, and often they do. The many witnesses before this very committee over the years, who have come and commented on various pieces of legislation, very often do so in a voluntary capacity. It is not an either/or question. If the unrepresented litigate misses out on their day in court, they will never get that day in court back again. But if money is not provided for advocacy services, it does not mean that the legal aid provider cannot be an advocate anyway by volunteering their services in

16 *Committee Hansard*, 28 May 2014, pp 56–57.

17 *Committee Hansard*, 28 May 2014, p. 96.

18 *Committee Hansard*, 28 May 2014, pp 96–97.

19 *Committee Hansard*, 28 May 2014, pp 65–66.

20 *Committee Hansard*, 28 May 2014, pp 65 and 67.

writing papers, appearing before parliamentary committee or all the other range of activity comprehended by that term.²¹

Changes to the Australian Human Rights Commission (AHRC)

2.16 At the request of the committee, Professor Gillian Triggs, President, Mr Graeme Innes AM, Disability Discrimination Commissioner, Dr Tim Soutphommasane, Race Discrimination Commissioner, and Mr Tim Wilson, Human Rights Commissioner, appeared on behalf of the Australian Human Rights Commission. Professor Triggs informed the committee that the commission was currently in a period of transition to manage budgetary constraints. The committee heard that the AHRC was in the process of finalising its strategic plan for the next four years, which will see it prioritise engagement with the business sector on human rights, violence, harassment and bullying, and the general human rights education program.²²

2.17 The committee heard that Mr Innes' term as Disability Discrimination Commissioner would soon conclude²³ and asked questions regarding this role following Mr Innes' departure from the AHRC.²⁴

2.18 Mr Wilson further advised the committee of his intention to fund some of the AHRC's activities, such as a planned symposium on free speech, with private sector support and sponsorship, to reduce or eliminate public expenditure on such initiatives.²⁵ When asked what arrangements were in place to ensure transparency around the sponsorship of such initiatives, Mr Wilson indicated that sponsorship of the AHRC's activities had precedent in the commission's history, and that the commission had guidelines regarding transparency and accountability to ensure the AHRC was not unduly influenced by such sponsorship.²⁶

Australian Security Intelligence Organisation (ASIO)

2.19 Mr David Irvine, the Director General of Security, advised the committee that there exist two mechanisms by which reviews of adverse security assessments of asylum seekers occur. According to Mr Irvine, ASIO itself has been reviewing the adverse assessments it has given over the previous 'three or four years'.²⁷ Reviews are also conducted independently by former judge Margaret Stone, acting in her role as Independent Reviewer of Adverse Security Assessments:

Mr Irvine: ...She mostly interviews the people concerned and she then provides advice to me on whether she believes our original assessment was

21 *Committee Hansard*, 28 May 2014, p. 66.

22 *Committee Hansard*, 29 May 2014, p. 7.

23 *Committee Hansard*, 29 May 2014, p. 7.

24 *Committee Hansard*, 29 May 2014, pp 8–9, 16–17.

25 *Committee Hansard*, 29 May 2014, p. 11.

26 *Committee Hansard*, 29 May 2014, p. 12.

27 Mr David Irvine, *Committee Hansard*, 29 May 2014, p. 62.

warranted or not. So far, of about 45 or 50 left, she has completed 22 such reviews.

Senator XENOPHON: How many has she changed?

Mr Irvine: Of that 22 she has agreed that ASIO's assessment was justified in 18 cases. In three cases she felt that our assessment was not appropriate and she asked me and my organisation to reassess those people.

Senator XENOPHON: Yes.

Mr Irvine: In two cases she thought the assessment was wrong and we looked at it and agreed that we would issue a non-prejudicial assessment.

Senator XENOPHON: In two cases?

Mr Irvine: In two cases, yes. In one case she argued that we should have issued a qualified assessment, and we agreed with that. On the basis of new information which she drew to our attention we actually changed an assessment to a qualified assessment of the fourth person. So, that is four out of 22.

Senator XENOPHON: So, there is a check and balance in the system through former Judge Stone.

Mr Irvine: There is.²⁸

2.20 Mr Irvine was questioned about the involvement of Australian nationals in the conflict in Syria and ASIO's interventions to limit that involvement. The committee was informed that ASIO is currently investigating approximately 150 people:

both onshore in Australia who are supporting, facilitating, helping organise, providing material or indeed seeking to recruit or be recruited into the foreign fighters in Syria, as well as the foreign fighters in Syria itself.²⁹

2.21 For security reasons, Mr Irvine could not detail the exact breakdown of the group.³⁰

2.22 One of the principle mechanisms for nullifying illegal participation of Australian nationals in the conflict is through the cancellation of passports. Mr Irvine outlined the process by which ASIO can seek to effect such cancellations, in collaboration with the Department of Foreign Affairs and Trade and the Minister for Foreign Affairs. He suggested that, while he was comfortable with current arrangements, in certain circumstances it would be useful, in situations of particular urgency, for there to be a more direct way for ASIO to cancel passports itself, which would be automatically subject to a review within a set period.³¹

28 *Committee Hansard*, 29 May 2014, p. 62.

29 Mr David Irvine, *Committee Hansard*, 29 May 2014, p. 66.

30 *Committee Hansard*, 29 May 2014, p. 66.

31 *Committee Hansard*, 29 May 2014, p. 66.

Other matters of interest

2.23 Other areas of interest to the committee during examination of the department and portfolio agencies included: cuts to funding for the arts;³² cabinet confidentiality and former Prime Minister Kevin Rudd's statement to the Royal Commission into the Home Insulation Program;³³ funding levels for Aboriginal and Torres Strait Islander Legal Services;³⁴ the proposed amalgamation of the MRT, Refugee Review Tribunal, Administrative Appeals Tribunal and the Classification Review Board;³⁵ funding arrangements and payments under the National Disaster Relief and Recovery Arrangements;³⁶ the new ASIO building;³⁷ and the legality of US drone strikes that killed two Australians in Yemen, among other subjects.³⁸

Senator the Hon Ian Macdonald
Chair

32 *Committee Hansard*, 28 May 2014, pp 6–14.

33 *Committee Hansard*, 28 May 2014, pp 50–53.

34 *Committee Hansard*, 28 May 2014, pp 79–82.

35 *Committee Hansard*, 28 May 2014, pp 77–79.

36 *Committee Hansard*, 28 May 2014, pp 100–102.

37 *Committee Hansard*, 29 May 2014, pp 64–65.

38 *Committee Hansard*, 29 May 2014, pp 72–74.