The Senate

Legal and Constitutional Legislation Committee

Additional Estimates 2004-05

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ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ACC	Australian Crime Commission
AFP	Australian Federal Police
AGD	Attorney-General's Department
ANCOR	Australian National Child Offender Register
ASIO	Australian Security and Intelligence Organisation
AUSTRAC	Australian Transaction Analysis Centre
CPRS	CrimTrac Police Reference System
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
DPP	Director of Public Prosecutions (Commonwealth)
FOI	Freedom of Information
HREOC	Human Rights and Equal Opportunity Commission
MARA	Migration Agents Registration Authority
MRT	Migration Review Tribunal
NAFIS	National Automated Fingerprint Identification System
NNI	National Names Index
OFLC	Office of Film and Literature Classification
OIPC	Office of Indigenous Policy Coordination
RRT	Refugee Review Tribunal

PREFACE

On 10 February 2005, the Senate referred to the Committee the examination of additional estimates of proposed expenditure for the financial year 2004-2005. The Committee is responsible for the examination of the Attorney-General's and the Immigration and Multicultural and Indigenous Affairs portfolios. The additional estimates statements for both portfolios were tabled in the Senate on 10 February 2005. On 10 February, the Senate also referred to the Committee any issues arising from the Advance to the Finance Minister for its consideration as part of this additional estimates process.

The Committee was required to report on its consideration of the additional estimates on or before 15 March 2005.

Estimates hearings

The Committee met in public session from 14 February 2005 to 18 February 2005 for a total of 28 hours 3 minutes.

Recording of proceedings

The Hansard of the proceedings records the examination of estimates and may be accessed through the internet at:

http://www.aph.gov.au/hansard

The Hansard is also available on the Parliamentary database.

An index of the Hansard for each portfolio appears at Appendix 1 and Appendix 2.

Ministers

The Committee heard evidence from Senator the Hon Chris Ellison, Minister for Justice and Customs who represented the Attorney-General and from Senator the Hon Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs.

Officers from both departments and associated agencies also appeared. The Committee thanks Ministers and officers for their assistance.

Questions on Notice

The Committee notes that the Standing Orders require the Committee to set dates for the lodgement of any written answers or additional information and for supplementary hearings. The Committee resolved that the deadline for the submission of written answers and additional information by both portfolios would be close of business on Friday, 8 April 2005.

Report

In this report, the Committee draws the attention of the Senate to issues and concerns raised in the three days of hearings. These included:

> The Committee again questioned officers from the Attorney-General's portfolio in respect of the activities of Mr Mamdouh Habib and his treatment when in custody overseas. The Committee also canvassed the allegations made by Mr Habib that he had been tortured while in custody.
>
> Statements made by officers in evidence before the Committee can be considered as reflecting adversely upon Mr Habib. The rules of the Senate provide that, where evidence is given to a Committee which may be considered as reflecting adversely on a person, the Committee is required to provide that person with a reasonable opportunity to access and respond to that evidence. The Committee therefore wrote to Mr Habib on 18 February 2005 extending him an opportunity to respond.
>
> Officers from the Department of Immigration and Multicultural and Indigenous Affairs were questioned at length concerning the detention of Ms Cornelia Rau.
>
> The Committee questioned the Commissioner of the Australian Federal Police, Mr Mick Keelty regarding the murder of Australian Protective Service Officer Adam Dunning in the Solomon Islands on 21 December 2004. The Commissioner also responded to questions concerning the safety of officers serving in the Solomon Islands and Papua New Guinea.

CHAPTER 1

ATTORNEY-GENRAL'S PORTFOLIO

Introduction

1.1 This Chapter summarises areas of interest and concern raised during the Committee's consideration of the Additional Estimates of the Attorney-General's portfolio for the 2004-2005 financial year.

Attorney-General's Department

1.2 The Committee again questioned officers from the Attorney-General's portfolio concerning Mr Mamdouh Habib, his treatment whilst in custody overseas and Mr Habib's allegations that he had been tortured. Officers were also questioned as to the possibility of Mr Habib initiating legal proceedings against the Commonwealth to claim compensation in connection with his detention by United States authorities. The Committee also sought information on why United States authorities had decided to release Mr Habib and not proceed with the charges made against him.[1]

1.3 The Committee inquired into the legal proceedings brought against the Commonwealth by former defence service personnel seeking compensation in relation to the HMAS *Voyager/Melbourne* incident of 1964. Officers informed the Committee that many compensation claims remained outstanding. The Committee was advised that a significant number of claims had been lodged between 1995 and 2003 that related to service on HMAS *Melbourne*. Some 157 cases are reportedly still before the courts.[2]

1.4 Officers from the Attorney-General's Department were again questioned about the effectiveness of the *Family Law Hotline* and the *Regional Law Hotline*. Officers tabled documents detailing *Hotline* staffing numbers, number of calls received, expenditure and number of visits to the Family Law Online website.[3]

Administrative Appeals Tribunal (AAT)

1.5 The Committee sought information on the number of appointments to the AAT over the preceding 12 month period and the number of vacancies expected in the first half of the coming year. Officers advised that 34 appointments had been made in the previous 12 months. Officers also advised that interviews would be conducted

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1 *Proof Committee Hansard,* 14 February 2005, pp.5-7.

2 *ibid,* pp.45-46.

3 *ibid,* pp.48-50.

over the next few months to fill two deputy president and three senior members' positions.[4]

1.6 The Committee asked a number of questions on the AAT's determination of applications for review of freedom of information requests. These questions were taken on notice.[5]

Australian Transaction Analysis Centre (AUSTRAC)

1.7 Officers from AUSTRAC were questioned on the increase in unlawful activity in the area of cheque fraud and money laundering. The Committee heard that the statistical increase in activity was due, at least in part, to the enhanced ability of AUSTRAC to detect such activity through the use of increasingly sophisticated technologies.[6]

1.8 Officials also informed the Committee that, since June 2004, AUSTRAC had established instruments for the exchange of financial information with a further 10 countries including Argentina, Colombia, Ireland, Thailand, Estonia and Spain.[7]

Office of Film and Literature Classification (OFLC)

1.9 The Committee sought information on the reasons for the reclassification of the film *9 Songs* from the X to the R classification. Questions were also asked about the definition of the term 'sexually explicit intent.' Officers from the OFLC advised that various factors must be considered when assessing a film for classification, including content, storyline and context.[8]

Human Rights and Equal Opportunity Commission (HREOC)

1.10 Commissioner Pru Goward was questioned by the Committee on the progress of the *Striking the Balance: Women, Men, Work and Family Project*. The Committee heard that preliminary consultations with key stakeholders had recently been completed, community consultations in Bankstown and Penrith were underway and that the first discussion paper is expected to be available in mid-April.[9]

1.11 Officers were also questioned about: the impact of the *Age Discrimination Act 2004 (Cth)*: follow-up work arising out of the *Isma-Listen* Report on the elimination

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4 *ibid,* pp.59-60.

5 *Proof Committee Hansard,* 14 February 2005, p.60.

6 *ibid,* p.64.

7 *ibid,* pp.67-68.

8 *ibid,* pp.68-70.

9 *ibid,* p.71.

of prejudice against Arab and Muslim Australians; and the extent of HREOC's involvement in DIMIA's Harmony Day Project.[10]

Commonwealth Director of Public Prosecutions (DPP)

1.12 The Committee questioned officials on the provision of DPP briefs to counsel from the private bar. Officers advised that there was policy to increase in-house advocacy. However, the DPP lacked the financial resources to retain in-house senior counsel of the level required to undertake some more significant or complex prosecutions, especially given the breadth of activity which the DPP undertakes. As a result, the DPP occasionally called on specialist skills from the independent bar.[11]

1.13 Officers were also questioned about DPP initiated prosecutions for state offences for which there is no related charge under Commonwealth law. Officers explained that investigations initially involving a combination of state and federal offences can conclude with a finding that the most appropriate charges to be brought are state offences. A decision would then be made to refer the case to the relevant state office.[12]

Australian Crime Commission (ACC)

1.14 Information was sought by the Committee on areas that the ACC's strategic criminal intelligence assessment had identified as emerging areas of criminal threat. Officers advised that the next update would be completed in September 2005 and undertook to provide the Committee with trend data.[13]

1.15 The Committee questioned officers on the operation of the ACC's databases as well as on issues including card skimming, motor vehicle rebirthing and the manufacture of illicit drugs.[14]

Australian Institute of Criminology and Criminology Research Council

1.16 The Committee sought information on staffing costs associated with the establishment of a drink-spiking hotline for research purposes. Officers confirmed the cost as being $5,600 for the provision of staff and the manning of the hotline outside business hours.[15]

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10 *ibid,* pp.72-73.

11 *Proof Committee Hansard,* 14 February 2005, pp.74-75.

12 *ibid,* p.76.

13 *ibid,* pp.79-80.

14 *ibid,* pp.80-81.

15 *ibid,* pp.82-83.

1.17 Issues concerning the *International Violence Against Women* survey were raised by the Committee, particularly in relation to the age group surveyed. The Committee sought information on why the age group targeted was in the 18 to 69 year age bracket and did not include 16 to 18 year olds. Officers informed the Committee that the age range of the group to be surveyed had been determined by an international committee and that all countries had targeted the same age range. The results of the survey were tabled at the hearing.[16]

CrimTrac

1.18 The Committee questioned officers on the operation and availability to law enforcement agencies of a number of CrimTrac databases. These included the National Automated Fingerprint Identification System (NAFIS), the Australian National Child Offender Register (ANCOR) and the CrimTrac Police Reference System (CPRS). Officers outlined the range of information contained in the databases and their uses and effectiveness. Officers also detailed some of the recent upgrades to current systems.[17]

1.19 The Committee also raised the issue of access to the NAFIS database by DIMIA and whether or not the name Cornelia Rau appeared on the National Names Index (NNI). Officers advised that NAFIS was a police tool and as such, they did not believe that DIMIA would have access to the database. The Committee heard that Ms Cornelia Rau's name was listed in the NNI database. However, officials advised that the database did not record when Ms Rau's name was placed on the database.[18]

Australian Federal Police (AFP)

1.20 The Committee followed up with officers from the AFP the previous questions put to officers from the Attorney-General's Department in respect of Mr Habib. Officers were questioned on the chronology of events surrounding Mr Habib's initial capture and detention and the nature of interviews conducted by the AFP and ASIO in both Pakistan and Guantanamo Bay, Cuba.[19]

1.21 The AFP Commissioner was questioned on a number of operational issues arising from the murder of Australian Protective Service Officer Adam Dunning in the Solomon Islands in December 2004. The Commissioner confirmed that he was satisfied with the force protection arrangements that were in place and with the risk assessments and intelligence resources available to AFP officers.[20]

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16 *ibid,* p.83.

17 *Proof Committee Hansard,* 14 February 2005, pp.84-85.

18 *ibid,* pp.92-93

19 *Proof Committee Hansard,* 15 February 2005, pp.5-13.

20 *ibid,* pp.13-16.

Australian Security and Intelligence Organisation (ASIO)

1.1 The Committee sought information on ASIO's interviews of Mr Habib in October 2001. The Director-General of ASIO, Mr Dennis Richardson, informed the Committee that Mr Habib had raised allegations of torture at an interview conducted in Pakistan on 26 October 2001. The Director-General advised that ASIO did not regard these allegations as credible. [21]

1.2 As explained earlier, statements were made by officers that can be considered as reflecting adversely upon Mr Habib. The rules of the Senate provide that, where evidence is given to a Committee which may be considered as reflecting adversely on a person, the Committee is required to provide that person with a reasonable opportunity to access and respond to that evidence. The Committee has therefore written to Mr Habib to extend him an opportunity to respond.

21 *ibid,* pp.21-25.

CHAPTER 2

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

Introduction

2.1 This Chapter summarises areas of interest and concern raised during the Committee's consideration of the Additional Estimates of the Immigration and Multicultural and Indigenous Affairs portfolio for the 2004-2005 financial year.

Department Of Immigration and Multicultural and Indigenous Affairs

2.2 The Committee raised a number of issues regarding the apprehension and detention of Ms Cornelia Rau as a suspected unlawful non-citizen. The Committee questioned officers extensively concerning the events that led to Ms Rau's detention. The Committee also canvassed Ms Rau's treatment in detention including: the physical and psychological care afforded to her; the number of times she was visited by DIMIA officials whilst in the Brisbane Women's Correctional Facility; and her involuntary hospitalisation under Queensland mental health legislation.[1]

2.3 DIMIA officials were also questioned at length about the Department's efforts to determine Ms Rau's identity. The Committee heard that Ms Rau had not given her correct name to officials which the Committee was advised made it more difficult for the Department to confirm her true identity in a timely manner.[2]

2.4 The Committee was advised that former AFP Commissioner, Mr Mick Palmer AO APM, would be conducting an inquiry into the events surrounding Ms Rau's detention and that this inquiry would extend to why Ms Rau had not been identified earlier.[3]

2.5 Minister Vanstone and officers from DIMIA stressed to the Committee on a number of occasions that the detention of Ms Rau was neither improper nor unlawful. Minister Vanstone informed the Committee that the *Migration Act 1958* (Cth) requires officials to detain any person whom they have reasonably suspect to be an unlawful non-citizen. This detention would only become unlawful if the person concerned was not released once it had been established that they were not an unlawful non-citizen.[4]

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1 *Proof Committee Hansard,* 15 February 2005, pp.30-62 & 74-111.

2 *Ibid,* pp.30-62 & 74-111.

3 *Ibid,* pp.96-97.

4 *Ibid,* p.87.

2.6 Officers from the Department were also questioned on the break-up of ATSIS, the way in which services would now be provided to indigenous persons and communities and the role of the newly formed Office of Indigenous Policy Coordination (OIPC).[5]

Migration Review Tribunal and Refugee Review Tribunal (MRT & RRT)

2.7 The Committee sought information on the reasons for the decline in the number of cases coming before the RRT. Reasons referred to by officers included a reduced backlog of cases, declining numbers of undocumented boat arrivals and a significant drop in the number of unmeritorious applications for review being lodged.[6]

2.8 MRT officers were questioned about case completion targets and why not all members had reached their agreed individual case target. The Committee heard that reasons for the shortfall included illness, the complexity of various cases, and varying levels of experience within the Tribunal's membership. Officers advised that, despite individual members failing to reach their agreed productivity targets, the MRT had achieved its best case completion rate of 10,022 decisions over the year.[7]

Migration Agents Registration Authority (MARA)

2.9 The Committee questioned officers about the slow down in the growth of newly registered migration agents over the 2003-04 year. Questions were also asked about the failure rate of applicants undertaking MARA recently introduced prescribed examination.

2.10 Officers informed the Committee that there had been a reduction in initial applicants of 30 per cent over the last eight months. The Committee heard that the failure rate for the prescribed examination was approximately 66 per cent. Officers indicated that a reason for this failure rate was that the exam was intended to test more than simply knowledge of the *Migration Act 1958 (Cth)*.[8] As is explained to course providers, the exam is intended to test a range of abilities and skills, including planning and organisational skills.

Senator Marise Payne

Chair

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5 *Proof Committee Hansard,* 18 February 2005, pp.3-9.

6 *Proof Committee Hansard,* 15 February 2005, pp.62-63.

7 *Ibid,* pp.70-71.

8 *Proof Committee Hansard,* 18 February 2005, pp.22-24.

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