

The Senate

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Legal and Constitutional  
Legislation Committee

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Budget estimates 2003–04

June 2003

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## PREFACE

On 13 May 2003, the Senate referred to the Committee the examination of estimates of proposed expenditure for the financial year 2003-2004. The Committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Multicultural and Indigenous Affairs portfolio. The portfolio budget statements were tabled in the Senate on 13 May 2003.

The Committee was required to report on its consideration of the budget estimates on or before 19 June 2003.<sup>1</sup>

### Estimates hearings

The Committee met in public session from 26 May to 29 May 2003 for a total of 41 hours and 5 minutes.

### Record of proceedings

The Hansard of the proceedings records the examination of budget 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.

### Minister

The Committee heard evidence from Senator the Hon. Chris Ellison, Minister for Justice and Customs, who represented the Attorney-General and the Minister for Immigration and Multicultural and Indigenous Affairs. The Committee also heard evidence from Senator the Hon. Judith Troeth, Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry, who represented the Minister for Justice and Customs for part of the proceedings.

Officers from both departments and associated agencies also appeared, and the Committee thanks them and the Minister and Parliamentary Secretary for their assistance.

### Questions on notice

The Committee recorded that there were no outstanding questions on notice from the Attorney-General's portfolio from Additional Estimates 2002-2003 and that answers to a small number of outstanding questions on notice from the Immigration and Multicultural and Indigenous Affairs Portfolio were provided during budget estimates hearings.

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 written answers and additional information were to be

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1 By order of the Senate 11 December 2002.

submitted by close of business on Friday, 4 July 2003 for the Attorney-General's and Immigration and Multicultural and Indigenous Affairs Portfolios.

## **Report**

In this report, the Committee draws the attention of the Senate to issues and concerns raised during the four days of hearings. Amongst others, these included:

- funding arrangements for the Family Court and the Federal Magistrates Service;
- the detention of Mr Hicks and Mr Habib by the USA in Guantanamo Bay;
- counter-terrorism initiatives by the Australian Customs Service and ASIO;
- the new Australian Crime Commission's funding and operations;
- the review of community legal services in New South Wales and Western Australia;
- the impact of self-represented litigants before the courts;
- paid maternity leave;
- conditions in onshore and offshore detention centres;
- illegal immigrant sex workers;
- people smuggling;
- the effect of recent High Court and Federal Court decisions in immigration matters; and
- Indigenous issues, including the 'whole of government' approach in the NT's Wadeye community; expenditure on litigation; the restructure of ATSIC; housing, health and employment programs; and capacity building within Indigenous communities.

**Senator the Hon Nick Bolkus**

**Deputy Chair**



# Chapter 1

## Attorney-General's Portfolio

### Introduction

1.1 In the following sections of this report, the Committee summarises areas of interest and concern raised during its consideration of the Budget Estimates of the Attorney-General's portfolio for the financial year 2003-2004.

### Attorney-General's Department

1.2 Officers were again questioned on the physical condition and legal status of Mr David Hicks and Mr Mamdouh Habib, Australian citizens detained at Guantanamo Bay by the United States Government as "unlawful combatants". Questions also arose about visitor access and the possibility of Mr Hicks and Mr Habib being held in Australia rather than Guantanamo Bay.

1.3 Members of the Committee also sought information about the National Action Plan on Human Rights and expressed concern over the length of time taken to revise the plan.

1.4 Other issues canvassed with the Department included:

- the government's position on the optional protocol against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- funding arrangements for the Family Court and the Federal Magistrates Service, including the appointment of four new federal magistrates;
- the current status of the review of community legal services in New South Wales and Western Australia;
- Australia's contribution to the International Criminal Court, including Australia's nomination for the position of prosecutor;
- the operation of the terrorism hotline;
- the arrest in Sweden of Mr Khaleed Daoed, who is the subject of extradition proceedings for breaches of the *Migration Act* (people smuggling) and the *Proceeds of Crime Act* (money laundering); and
- Emergency Management Australia with regard to the implementation of strategies to protect Australians from the SARS epidemic.

## **Australian Transaction Reports and Analysis Centre**

1.5 Members of the Committee sought information on the National Illicit Drugs Strategy, particularly concerning funding arrangements and the operation of cost recovery arrangements with partner agencies such as Commonwealth law enforcement agencies and the Australian Taxation Office.

## **Australian Government Solicitor**

1.6 Members of the Committee questioned officers on the legal services provided to the Commonwealth in relation to the HIH and Building and Construction Industry Royal Commissions, as well as Indigenous issues.

1.7 Inquiries were also made about the progress of the review into the Commonwealth's purchasing of legal services being conducted by the Office of Legal Services Coordination.

## **Insolvency and Trustee Service Australia**

1.8 Officers from the Insolvency and Trustee Service Australia (ITSA) were questioned concerning the status of the review of part X of the *Bankruptcy Act* and ITSA's role in dealing with assets or estates that are the subject of court orders or otherwise encumbered.

## **CrimTrac**

1.9 Members of the Committee inquired into access to CrimTrac's National Names Index (for criminal history checks) by various police forces and other government bodies, cost recovery arrangements with users and funding for the upgrade of the database.

1.10 Members of the Committee also inquired as to progress in the development of the National Child Sex Offender System and its funding arrangements.

## **Office of the Director of Public Prosecutions**

1.11 Members of the Committee sought information from officers concerning any legal action that may arise as a result of the findings of the HIH and Building and Construction Industry Royal Commissions. Officers declined to answer some questions on the basis that they related to matters under consideration for appeal or the subject of possible future legal action.

## **Australian Customs Service**

1.12 Officers of the Australian Customs Service were questioned on a range of matters arising from increased funding for counter-terrorism initiatives. These included a significant increase in the number of vessels boarded by Customs Officers on arrival in Australia and the trial of technologies for the detection of chemical, biological and nuclear weapons.

1.13 Members of the Committee sought information on staffing levels, particularly on staffing for the recently acquired x-ray machines at major ports including Sydney, Melbourne and Fremantle. Inquiries were also made about the operating costs of the machines and the basis for their continued operational funding, including cost recovery initiatives.

### **Administrative Appeals Tribunal**

1.14 Officers of the Administrative Appeals Tribunal were asked to detail the approach of the Tribunal in identifying ongoing savings in light of budgetary restrictions.

1.15 Members of the Committee sought information on the composition of the Tribunal's membership, including present and previous numbers of female members.

### **Australian Crime Commission**

1.16 Members of the Committee inquired about the initial funding levels of the Australian Crime Commission, including whether when the Commission was created on 1 January 2003, its funding included the previous year's funding from the former National Crime Authority, the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments.

1.17 Committee Members also sought information on the Commission's use of its coercive powers, the oversight mechanisms and which former National Crime Authority projects would continue and which would either cease or be reviewed.

### **Australian Law Reform Commission**

1.18 Members of the Committee raised concern that given increased costs the Commission may be forced to reduce staff numbers, including the projected loss of a full-time commissioner and legal officer in 2004 and the likely loss of a further position in 2006-07.

### **High Court**

1.19 Members of the Committee again raised the matter of self-represented litigants appearing before the Court and inquired about the options the Court was exploring to reduce the workload caused by self-represented litigants seeking special leave applications.

1.20 Officers of the Court informed the Committee that over a 10 year period, applications for special leave filed by self-represented litigants increased from an initial 5 per cent in 1992-93 to 49 per cent in civil matters in the current financial year.

### **Federal Court**

1.21 Members of the Committee inquired about recent appointments to the Federal Court, as well as the progress of a proposal from the Attorney-General's Department

for a protocol dealing with serious complaints against federal judges, and what if any response had been received from the courts.

1.22 The issue of self-represented litigants was also explored, the Committee inquiring as to whether the Federal Court had considered amending its rules or procedures or restructuring fees. The proportion of migration and native title matters in the Court's workload and the case management system were also raised.

### **Federal Magistrates Service**

1.23 The Committee was advised that a report on the review of the Federal Magistrates Service was in its final stages of preparation before presentation to the minister. Officers advised that the Committee's request for a copy of the report would be brought to the minister's attention.

1.24 Members of the Committee also asked whether the Federal Magistrates Service currently conducted 'night courts' or if there were any proposal to do so. Officers responded that although it was not unusual for a court to sit until 7.00pm, there were at this time no plans for night court sessions.

### **Family Court**

1.25 Officers were questioned about the workload of the Family Courts in Melbourne and Adelaide and when the Court was made aware that judges in those courts would not be replaced. Mediation services were also explored.

### **National Native Title Tribunal**

1.26 Committee members questioned officers on the nature of matters before the Tribunal and the current review of funding in native title. The report of the review, which is being conducted by staff from a range of agencies including the Federal Court, ATSIC, the Department of Prime Minister and Cabinet and the Tribunal, is soon to be released.

1.27 Members of the Committee also questioned officers regarding the use of mediation as a means of resolution as an alternative to more formal processes.

### **Office of the Federal Privacy Commissioner**

1.28 Members of the Committee raised with officers concerns over privacy issues relating to the use of caller number displays (CND) and the possible improper use of CND information by service providers. Members also inquired as to whether or not the Privacy Commissioner proposed to investigate the issue. The Committee awaits a clear response on this matter.

### **Human Rights and Equal Opportunity Commission**

1.29 Officers were questioned about the progress of the Commission's national inquiry into children in immigration detention, and whether any comment had been

received from the Department of Immigration and Multicultural and Indigenous Affairs.

1.30 The issue of paid maternity leave was raised with the Sex Discrimination Commissioner, Ms Prue Goward, and the possibility of a future Parliamentary forum on the issue was canvassed.

### **Office of Film and Literature Classification**

1.31 Members of the Committee questioned officers on Internet classification and the relationship between the Office and the Australian Broadcasting Authority.

### **Australian Security and Intelligence Organisation (ASIO)**

1.32 The Director-General of ASIO, Mr Dennis Richardson, was questioned on the intended use of increased funding for 2003-04. The Committee heard that the funds would go towards increasing ASIO's analytical and collection capabilities, expanding overseas liaison activities and vetting and security assessments in civil aviation.

1.33 Questions were also asked regarding Australia's perceived threat level and if ASIO had had any contact with Mr David Hicks and Mr Mamdouh Habib since the November 2002 hearings.

### **Australian Federal Police**

1.34 The AFP was questioned on a number of issues, including the people smuggling disruption program and the locations and roles of AFP officers in Jakarta. Members also asked questions regarding SIEV X, including whether the AFP or Indonesian police had placed a tracking device on the vessel and what contact its officers may have had with survivors of SIEV X.

1.35 Difficulties in successfully prosecuting slavery and sexual servitude offences were discussed, as were the difficulties in detaining persons who may have information regarding the commission of these crimes.



## Chapter 2

# IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### Introduction

2.1 In this chapter, the Committee summarises matters of interest and concerns raised during its consideration of the Budget Estimates of the Immigration and Multicultural and Indigenous Affairs portfolio for the financial year 2003-2004.

### Department of Immigration and Multicultural and Indigenous Affairs

2.2 Departmental officers were questioned on a range of issues beginning with the role and cost effectiveness of Airline Liaison Officers in detecting fraudulent travel documentation at various overseas airports.

2.3 Members of the Committee also questioned officers about the granting of visas to former members of Jemaah Islamiah.

2.4 The cost and project history of the Christmas Island reception and processing centre was also discussed. Lines of questioning included cost variations from the original budget estimate, the tendering process and departmental control of the project. The Department initially declined to answer some questions on the grounds that the information was 'commercial in confidence' but has taken certain questions on notice.

2.5 Questions were also asked about the management of offshore facilities at Manus and Nauru and the processing outcomes for those held there, as well as the conditions of detention in Australia's onshore facilities, particularly in relation to women and children.

2.6 Other issues were:

- illegal immigrant sex workers and people smuggling;
- the effect of recent High Court and Federal Court decisions in immigration matters (including decisions on the privative clause in the *Migration Act* and habeas corpus applications); and
- the numbers of East Timorese living in Australia on bridging visas and the status of their applications for Temporary Protection Visas.

## **Office of Aboriginal and Torres Strait Islander Affairs**

2.7 Officers answered questions from Committee members on the progress of the shared responsibility agreements between the Northern Territory government, the Commonwealth and various Indigenous communities for the provision of services to those communities.

2.8 Particular issues included the ‘whole of government’ approach being trialled in eight communities, including Wadeye in the Northern Territory; housing, health and employment programs including CDEP; and capacity building within Indigenous communities.

2.9 Questions were also put on current and recent expenditure on relevant litigation, including Hindmarsh Island.

## **Aboriginal and Torres Strait Islander Commission (ATSIC)**

2.10 Officers were questioned about the upcoming change in administrative arrangements for ATSIC with the formation of the Aboriginal and Torres Strait Islander Service (ATSIS) from 1 July 2003. Questions concerned the administrative, corporate and organizational structures of the two bodies and the funding arrangements that will be put into place.

2.11 ATSIC officials were questioned on contractual arrangements for major projects and infrastructure maintenance for remote Indigenous communities.

## **Australian Institute of Aboriginal and Torres Strait Islander Studies**

2.12 The questioning of officers revolved around a decline in funding for three programs during 2002-03, those being the Research, Dissemination of Information and Collection Development and Management areas.

## **Indigenous Business Australia**

2.13 Members of the Committee questioned officials about the number of ventures with which Indigenous Business Australia had decided not to proceed and plans for further investment in marine resources, particularly quota access rights for fisheries.

## **Indigenous Land Corporation**

2.14 The Indigenous Land Corporation (ILC) was questioned about the purchase of the Boona pastoral property, its leasing arrangements and any perceived conflict of interest arising from an ILC board member also being a director of the Boona Pastoral Company.

2.15 Committee members also inquired about leasing arrangements by both private companies and Aboriginal corporations on land owned by the ILC and a report commissioned by the ILC on the Roebuck Plains Station. The Committee sought a



copy of the report, known as the Rogers Report. The ILC undertook to respond to the Committee on that request.

### **Refugee Review Tribunal**

2.16 Officers of the Tribunal answered questions in relation to their expected case loads for the 2003-04 financial year and the staffing levels required to facilitate their operations.

2.17 Members of the Committee also sought information on the cost benefits of the amalgamation of the Refugee Review Tribunal and Migration Review Tribunal's administrative arrangements and the forthcoming co-location of the two tribunals.

### **Migration Review Tribunal**

2.18 Officers were questioned on the sources of revenue available to the Tribunal and the consequences of the closure of the principal registry in the ACT.

2.19 As with the Refugee Review Tribunal, officers were also asked about the amalgamation and future co-location of the two tribunals.

### **Migration Agents Registration Authority**

2.20 Officials from the Migration Agents Registration Authority (MARA) were questioned about the establishment and implementation of the migration professional knowledge entry exam and registration fees.

2.21 Members of the Committee raised concerns over the operation of the migration agents information telephone service. Concerns were centered around the cost of the service to consumers and whether it was designed to raise revenue for MARA.



## Appendix 1

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