

# Senate Foreign Affairs, Defence and Trade Legislation Committee

## Report to the Senate

### Introduction

1. On 8 February 2006, the Senate referred to the Committee for examination and report, the following documents:
  - Particulars of proposed additional expenditure for the service of the year ending 30 June 2006; and
  - Particulars of certain proposed additional expenditure for the service of the year ending 30 June 2006 relating to the Defence portfolio and the Foreign Affairs and Trade portfolio.
2. The Committee has considered the proposed additional expenditure for the year ending 30 June 2006, and has received evidence from the Minister representing the Minister for Defence, the Minister for Foreign Affairs and the Minister for Trade; also the Parliamentary Secretary representing the Minister for Veterans' Affairs and officers of the departments and agencies concerned.
3. The Committee met in public session on 15 and 16 February. Further written explanations provided by departments and agencies will be presented separately in volumes of additional information. This information will also be placed on the Committee's internet site ([www.aph.gov.au/senate\\_fadt](http://www.aph.gov.au/senate_fadt)).

### Questions on notice

4. The Committee resolved, under Standing Order 26, that written answers and additional information should be submitted to the Committee by close of business on Thursday, 30 March 2006.

### Defence portfolio

#### *Department of Defence*

5. The Committee acknowledged the presence at the hearings, of Mr Ric Smith, AO, Secretary of the Department of Defence, and Air Chief Marshal, Angus Houston, AM, Chief of Defence Force (CDF).

#### *Matters of procedural significance during proceedings*

6. Before proceeding to outline matters examined during the hearing, the Committee draws attention to a number of matters of procedural significance that arose while taking evidence.

### Sensitive information

7. The committee sought information on advice received from Australia's security units with regard to Australia's presence in Iraq and insurgency. The CDF declined to answer the question on the grounds that he believed it touched on intelligence assessments which he stated were 'very sensitive matters'.<sup>1</sup> The Committee did not pursue the matter.

8. A similar question was put to Defence officers later in the hearing. This time it dealt with DIO presence in Iraq after the Iraqi Survey Group had finished its work. The Secretary of Defence urged the officer answering the question to be cautious about describing the functions of Australia's intelligence officers stating 'the functions of our intelligence officers is a matter which I think intrudes into the kind of territory we are sensitive about on the basis of not discussing intelligence issues'.<sup>2</sup> The committee did not pursue the matter.

9. The Committee observed a long-standing convention that sensitive intelligence matters are not aired during public hearings.

### *Matters before a board of inquiry*

10. Questions were also asked about common law implications that may derive from an accident under investigation by a board of inquiry. The CDF advised the committee that:

Eventually the outcome of the board of inquiry will come through the Chief of Navy to me. It will then be reported to government and, presumably, to you in the fullness of time. May I suggest that once the report is on the record is the time that we would come back to you and take questions on that.<sup>3</sup>

11. The matter was not pursued.

### *Matters that might come before the Cole Royal Commission*

12. While taking evidence on the Iraqi Survey Group, the Secretary of Defence declined to answer questions that may lead 'into the ground of the Cole commission into certain Australian companies in relation to the oil for food program'. He referred to a government directive. The minister then explained to the Committee that it was the government's policy to ensure that the commission's inquiry 'takes place without having a parallel set of inquiries' within estimates hearings'. He read into the record the government's position on matters before the commission of inquiry being conducted by the Hon Terrence Cole:

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1 *Committee Hansard*, 15 February 2006, p. 12.

2 *Committee Hansard*, 15 February 2006, p. 89.

3 *Committee Hansard*, 15 February 2006, p. 36

While examination of officials by the committees might be appropriate in the future, the government considers that Mr Cole should be able to proceed with his inquiry and present his findings without parallel public questioning that would not assist consideration of complex issues.<sup>4</sup>

13. The Minister explained further that it would be 'entirely appropriate' for matters before the Cole Commission to be canvassed at length once Mr Cole has completed his investigation. The chair advised that Senators could ask questions which would be answered in a way that 'ultimately, depending on any action you would take, resolves itself in the Senate'.<sup>5</sup>

14. The Committee now turns to matters examined during the hearings. They included:

*Portfolio overview and major corporate issues:*

- Comprehensive operational overview by Air Chief Marshal Houston, of foreign deployment of ADF personnel. The Committee was particularly interested in the ADF operations in Al Muthanna.<sup>6</sup>
- Recruitment and retention of special forces personnel; Special Forces Direct Recruiting Scheme; security preparation for the Commonwealth Games (pp. 14–16; 107).
- Afghanistan: provincial reconstruction in Afghanistan; partnership with the Netherlands; insurgency activity; International Stabilisation of Afghanistan Force (ISAF) (pp. 17–19).
- Financial statements and remediation plans; project management (pp. 69–70).
- Air warfare destroyer project; strategic priorities; capabilities of the Australian shipbuilding industry (pp. 70–73).

*Defence Materiel Organisation*

- Seasprite helicopters certification testing; software load. Contract liquidated damages provisions; contract time line and delays; prime contractor's difficulties (pp. 19–23, 30; 71).
- DMO projects with costs increases and decreases (pp. 83)
- ADF personnel trained in anticipation of the aircraft being introduced into service; number of aircraft accepted to date; flying hours and limitations to availability; maintenance regime; life expectancy of the aircraft ( pp. 22–27).

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4 *Committee Hansard*, 15 February 2006, p. 85.

5 *Committee Hansard*, 15 February 2006, p. 85.

6 *Proof Hansard*, Wednesday, 15 February 2006, pp. 6–14.

- Black Hawk helicopter: reduced flight hours; unscheduled maintenance (pp. 27–28).
- Tigers: availability of qualified flying instructors (pp. 29–30).
- Sea Kings: suspension of flying; full audit and review; return to flying; air crew confidence in the aircraft. Cost of having the fleet grounded; replacement aircraft in the capability plan (pp. 30–33; 107).
- Protective clothing and associated personal equipment: overview of situation; reports of defective unit materiel and equipment (RODUMs); number of reports made by equipment type (pp. 38–49).
- Length of time the RODUM system has been used; keeping statistics on RODUMs (pp. 62–63). Other reviews and feedback avenues (pp. 63–66). Replacement of equipment by ADF personnel (pp. 67–68).
- Tender process for personal equipment; investigation of a complaint by a tenderer; design deviations from tender specifications; safety issues (pp. 49–50, 56–59, 63). Administrative and disciplinary action against two officers and the letting of a contract (pp. 53–59).
- Investigation of the employment by a tenderer of a former DMO technical adviser (pp. 51–56, 61).
- Probity of the tendering, commercial and contracting practices in DMO (p. 62).
- Air combat capability; joint strike fighter (pp. 73–74, 83).
- Flying suits issues to C130Hercules crews in the Middle East (pp. 75–80, 82–83). Ballistic goggles worn by ADF personnel in Iraq (pp. 80–81)
- Defence Organisation's response to media coverage of issues relating to ADF personal equipment and clothing. Directorate of Trials; evaluations. (pp. 81–82).

#### *Capital facilities projects*

- Defence update in late 2005 (pp. 36–38).

#### *Outcome 6—Intelligence*

- Duefler report; role of the Iraq Survey Group (ISG) in Iraq; lines of reporting; function of individuals (pp. 83–4; 86–88, 89).
- Intelligence officers and DIO; standing up and standing down of personnel in the ISQ; returning DIO personnel (pp. 89–90). Australian elements in Iraq other than military involvement (pp. 91–92).
- Search, coordination and dissemination of Defence material relevant to the Cole Inquiry (pp. 93–95).

*People**Defence personnel*

- Compensation payments: ADF personnel killed aircraft accident in Indonesia; complaints by families about lack of advice on entitlements or receiving various payments. Economic dependence of claimants (pp 34–36)
- Overview of recruitment and retention: skills shortage and a competitive labour market; action to improve recruiting performance; total package approach to retention; managing the separation rate (pp. 95–96).
- Recruiting methodologies and percentage rates per year; recruitment and retention at various levels; branding and marketing the ADF; research findings (pp. 97–99).
- National marketing manager; term of employment of the director general; companies retained to do research on recruitment and retention (pp. 100–101).
- Sustainable recruitment capability: four key activities (pp. 101–102).
- Response to critical comment on some practices in some parts of the ADF (pp. 102–103).
- ADF permanent force: increase retention within the Army (p. 103). Cadet recruitment (pp. 103–106).
- ADF drug policy and employment of contractors and civilians working in ADF establishments (pp. 106–107).

*Department of Veterans' Affairs*

15. The Committee acknowledged the presence at the hearings of Mr Mark Sullivan, Secretary, and officers of the Department of Veterans' Affairs.

16. Issues that were discussed included:

*Outcome 1—Compensation*

- Sea King accident in Indonesia: progress of compensation claims for families (pp. 108–110).

*Outcome 2—Health*

- Water contamination on Navy ships during Vietnam War; amendment of statements of principles (SOPs) relating to certain diseases; advice to veteran community; renewed claims for compensation (pp. 116–119). Health study: exposure to contaminated water (p. 121).
- Vietnam veterans counselling service: access to service by members of a veteran's family; rate of use and cost to use service (pp. 119–120; 122).
- Atomic veterans health study: completion and release of findings (pp. 120–121).
- Vietnam veterans mortality study and cancer incidence study (pp. 121–122).

- Travel expenses for veterans: reinstatement of certain entitlements (pp. 122–123).
- Repatriation pharmaceutical benefits scheme (RPBS): safety net threshold; removal of calcium tablets from the PBS (pp. 123–124).

#### *Outcome 3—Commemorations*

- Anzac Cove: archaeological and historical survey; road works (pp. 110–111). Subsidence of carpark area and roadway; general road conditions (pp. 114–115). Drainage and flooding issues (p. 125).
- Recommendations of Senate report on Gallipoli Peninsula: erosion at Anzac Cove; remedial planting of vegetation (pp. 111–112). Clearer guidelines for the future management, recovery, reburial and storage of human remains at Gallipoli (p. 112–113). Government's response to the report's recommendations, such as, military historical audit of the battlefield at Gallipoli; and, coordination of conservation management planning (p. 113).

#### *Output 6*

- Director of the Office of Australian War Graves; progress on recruiting a new director (pp. 124–125).

## **Foreign Affairs and Trade portfolio**

### *Department of Foreign Affairs and Trade*

17. The Committee acknowledged the attendance at the hearings, of Mr Doug Chester, and Ms Gillian Bird, and officers of the Department of Foreign Affairs and Trade. It also acknowledged the presence of Mr Charles Tapp, AusAID and Mr Hamish McCormick, from Austrade, and attending officers from each respective agency.

#### *Matters of procedural significance*

18. Before the hearing began, the committee had decided that the hearings would start with a combined portfolio overview, bringing together officers from three separate portfolios—Department of Foreign Affairs, Austrade and AusAID. The minister at the table had been informed about the committee decision. There were no objections.

#### *Matters that might come before the Cole Commission*

19. The Minister at the table made an opening statement informing the committee of a government directive to officials. She stated:

...the government has directed that officials appearing before Senate legislation committees should not answer questions directed to them on matters before the commission of inquiry being conducted by the Hon. Terrence Cole into certain Australian companies in relation to the oil for food program. While examination of officials by the committees might be

appropriate in the future, the government considers that Mr Cole should be able to proceed with his inquiry and present his findings without parallel public questioning that would not assist consideration of complex issues.<sup>7</sup>

20. She elaborated further on her statement:

The government takes the view that there should not be parallel public questioning during the currency of the inquiry. It is not meant to be forever. Indeed, the statement comprehends that the kinds of questions you might want to ask are, no doubt, questions that would be a proper line of inquiry once the commission has concluded.<sup>8</sup>

21. The minister explained that:

...the royal commission has been set up to deal with those issues in a public way, in a transparent way, that enables all those matters to be properly canvassed. The government has taken the view that it should run its course at an appropriate time.<sup>9</sup>

22. When asked whether evidence might be given in camera, the minister replied:

Even parallel questioning in camera is not consistent with the commission having an opportunity to pursue this inquiry the way they want and to not subject potential witnesses to another line of inquiry at the same time.<sup>10</sup>

23. Later during the hearing the minister wanted to make clear the distinction between being able to put a question and the response to it. She wanted to make plain that no-one was suggesting that committee members were not entitled to put questions or that they should not be asking questions.<sup>11</sup> The minister went further and added:

It is not that we are refusing to answer questions; we are not. We are simply saying that there is another place, another process, a royal commission set up to deal with these matters in an appropriate and transparent way. There can be proper findings and then it is a matter for what proper responses should be made. I want to repeat that for the record because it is important. The government has taken this course not in any way to deny this committee its core job. It is simply a matter of timing to allow the inquiry to run its course. The statement itself says that it might be appropriate for us to make responsive answers to all these questions once the inquiry has reported.<sup>12</sup>

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7 *Committee Hansard*, 16 February 2006, p. 4

8 *Committee Hansard*, 16 February 2006, p. 7.

9 *Committee Hansard*, 16 February 2006, p. 56.

10 *Committee Hansard*, 16 February 2006, p. 7.

11 *Committee Hansard*, 16 February 2006, pp. 50–51 and 57.

12 *Committee Hansard*, 16 February 2006, pp. 58–59.

*Definition of matters*

24. A committee member sought a definition of the terms 'matters' contained in the minister's opening statement.

25. The minister explained that the term would be interpreted very broadly and would go to any matters that relate to the oil for food program that might go to the knowledge of the Commonwealth.

*Status of officers of Austrade*

26. A committee member sought clarification on whether officers with the Australian Trade Commission would be subject to the cabinet directive.

27. The minister noted that there was some uncertainty about the status of Austrade but stated that the government takes the view in relation to Austrade that 'the directive applies to all officers in Austrade.'<sup>13</sup> The minister was asked whether she had legal advice to the effect that despite Austrade being a statutory authority its officers were subject to the government directive. The minister took the question on notice.<sup>14</sup>

28. A committee member, however, drew attention to the Senate Rural and Regional Affairs and Transport Legislation Committee that was able to establish that the Wheat Export Authority, being a statutory body, was not subject to this particular direction. The minister replied that:

Austrade has always been subject to the direction of the government. That has certainly always been the policy and the practical effect of how the government and Austrade relate. The government takes the view that Austrade is subject to the direction I have referred to this morning.<sup>15</sup>

29. She explained that although the directive did not specifically mention Austrade officials they are included in the directive. She noted further:

We have not exhaustively set out in the direction the officials who would be in and who would be out. I am saying that it applies to those who operate under the direction of the government, and that includes Austrade.<sup>16</sup>

30. The committee then turned to the matter of the mode of transmission of the directive to Austrade officials. A question was asked whether the minister provided to Austrade, under the terms of section 10 of the Australian Trade Commission Act, 'a directive in similar terms to that which the minister announced at the beginning of the hearing.

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13 *Committee Hansard*, 16 February 2006, pp. 6–7.

14 *Committee Hansard*, 16 February 2006, p. 6.

15 *Committee Hansard*, 16 February 2006, p. 7.

16 *Committee Hansard*, 16 February 2006, p. 7.

31. The minister declined to answer the question stating that she was being asked for a legal interpretation and would not give an opinion on whether there had been compliance with a specific section of an act.<sup>17</sup> At a later stage, she again stated that she would not provide legal advice about what would comply with the act.<sup>18</sup>

32. During the course of the hearing a number of questions were asked that the minister deemed to come under the government's directive that matters likely to become before the Cole Commission should not be the subject of questioning.<sup>19</sup>

33. The Committee now takes up matters raised during the hearing. They included:

*Combined portfolio overview*

- Austrade and the *Australian Trade Commission Act 1985* (16 February 2006, pp. 6–13).
- Coalition Provisional Authority (CPA); Australians deployed with the CPA; reporting obligations to AusAID and DFAT; contractual arrangements (pp. 14–19, 53–55).
- AusAID employment in Iraq of individuals and goods and service providers; the tender process; procurement guidelines; processes and procedures (pp. 18–22).
- Discussion on specific contracts between AusAID and individuals or organisations in 2003 (pp. 22–27).
- Previous regime in Iraq and suicide bombers (p. 28).
- Iraq Task Force (pp. 28–31, 36–37, 46–47).
- Volcker inquiry and notices to produce documents for the Cole Inquiry; search for documents (pp. 32–42).
- Monitoring proceedings at the Cole Royal Commission; media statements (pp. 42–45, 48, 51, 53).
- Canada and the Australian Wheat Board (pp. 52–55).
- DFAT annual report (pp. 58, 65).
- Australian ambassador to Washington (p. 61).
- Solicitors representing DFAT (pp. 67–68).

*Other matters raised:*

- Appointment of a US ambassador to Australia (pp. 91–92).

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17 *Committee Hansard*, 16 February 2006, p. 12.

18 *Committee Hansard*, 16 February 2006, pp. 64. and 66.

19 See for example *Committee Hansard*, 16 February 2006, pp. 22–24, 28, 49, 52, 53–54, 57–62, 65–67.

- DFAT appointment to the United Nations post (pp. 92–93).
- Van Nguyen case (pp. 93–96).
- Australians on death row; prisoner transfer programs (pp. 97).
- Ministerial travel to the Middle East (pp. 97).
- Australia–US free trade agreement (pp. 98–100).

### *AusAID*

35. Matters raised by the Committee included:

- Coalition Provisional Authority: staff engaged by AusAID; and, contracts to provide goods and services; procurement guidelines (pp. 15–26).
- AuAID's role in Iraq (pp. 17–21).
- Iraq Task Force (pp. 29–31, 46).
- Process of allocating funding to projects; government–to–government programs; guidelines on risk assessment; financial regulations (pp. 69–72).
- Asia Pacific Leadership Forum; HIV task force (pp. 73–74).
- Illegal fishing on the north–west coast of Australia; Antara development program (p. 75).
- Role of Australian contractors in the aid program; types and size of contracts; sub–contracting parts of projects (pp. 75–77).
- Introduction of Aidworks (activity management system); ANAO report on AusAID contract management; major contracts awarded (pp. 77–79).
- Aid activity expenditure of other government departments; request to AusAID to provide more detailed information of other government department aid expenditure (pp. 80–81).
- AusAID funding of NGOs; funding of certain projects (pp. 81–82).
- Report of government's core group of experts; observations and recommendations from the report; issues of aid effectiveness (pp. 82–85).
- Australia's aid activities in Africa (pp. 85–86).
- Development Assistance Committee (DAC) (pp. 86–87).

### *Austrade*

36. Matters raised by the Committee included:

- Communications from AWB; communications from Minister for Trade (p. 62–64).
- Brief to the Minister for Trade (pp. 66).

- Trade mission into the Middle East; Australian businesses achieving export deals; promotion of trade with Iraq; security issues in general (pp. 87–88).
- Austrade's role in providing assistance to exporters (pp. 89–90). Expanding Australia's trade relationship with Iraq (pp. 89–90).
- Ministerial travel to the Middle East (pp. 90–91).
- Austrade and Invest Australia in Europe (p. 90).

### **Acknowledgements**

37. The Committee expresses its appreciation of the assistance given during its hearings by Senator the Hon Ian Campbell, Senator the Hon Helen Coonan and Senator the Hon Sandy Macdonald. The Committee also acknowledges the attendance and cooperation of the many departmental and agency officers and the services of various parliamentary staff involved in the estimates process.



David Johnston

**Chair**

