

**SENATE COMMUNITY AFFAIRS  
LEGISLATION COMMITTEE**

**ESTIMATES 2001-2002 REPORT**

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Senate Community Affairs Legislation Committee Secretariat

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## **MEMBERSHIP OF THE COMMITTEE**

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Senator Tsebin Tchen	LP, Victoria



# SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

## BUDGET ESTIMATES 2001-2002

### REPORT

#### Introduction

1.1 On 22 May 2001 the Senate referred the following documents to the Committee for examination and report in relation to the portfolios of Health and Aged Care, and Family and Community Services:

- particulars of proposed expenditure for the service of the year ending on 30 June 2002
- particulars of certain proposed expenditure in respect of the year ending on 30 June 2002.

1.2 The Committee has considered the proposed expenditure of the portfolios set out in their respective Portfolio Budget Statements 2001-2002 and related budgetary documents. Explanations relating to the estimates were received from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, and Minister representing the Minister for Health and Aged Care and officers from the portfolio Departments at hearings held on 28, 29 and 30 May 2001. The Committee expresses its appreciation for the assistance of the Minister; Ms Mary Murnane and Mr David Borthwick, Deputy Secretaries, DHAC; and Dr David Rosalky, Secretary, DFACS, and the officers who appeared before it.

1.3 In accordance with Standing Order 26, the Committee has agreed that the date for submission to the Committee of written answers or additional information relating to the expenditure is 29 June 2001.

1.4 The Committee discussed many of the budget measures and information contained in the Portfolio Budget Statements. These discussions are detailed in the Committee's *Hansard* transcripts of 28, 29 and 30 May 2001, copies of which will be tabled in the Senate. *Hansard* transcripts of the estimates proceedings are also available on the Internet at <http://www.aph.gov.au/hansard/senate/commtee/comsen.htm> Volumes of Additional Information received by the Committee containing answers to questions taken on notice and tabled documents relating to the Committee's hearings, will also be tabled separately in the Senate and be accessible on the Internet at [http://www.aph.gov.au/senate\\_ca](http://www.aph.gov.au/senate_ca)

#### Answers to questions taken on notice

1.5 The majority of answers to questions taken on notice at the Additional Estimates hearings held on 19 and 20 February 2001 were provided to the Committee by both portfolios by the due date of 16 March 2001. However, a significant number of answers were not provided to the Committee until the 'last minute' – allowing the Committee only one working day to consider these answers before the commencement of the Budget hearings on 28 May 2001. These extremely late answers related mainly to the aged care area in the Health and Aged Care portfolio and IT outsourcing in the Family and Community Services portfolio.

1.6 Although answers are provided to Senators upon receipt by the Committee Secretariat from portfolio departments, and then also become publicly available, the late provision of answers causes delays in the completion of the volumes of Additional Information. These

volumes contain an indexed list of, and the consolidated answers to, questions on notice listed in Outcome order, as well as documents that were tabled at the hearings.

1.7 The Committee is aware of the problem of the unusually high number of questions being placed on notice at the recent hearings and understands the difficulty in fulfilling the timetable on this occasion. However, the Committee requests that portfolios make every endeavour to provide all answers by the date that the Committee sets for the return of answers to questions taken on notice.

1.8 The late provision of answers from the Family and Community Services portfolio, as noted above, related to IT outsourcing issues raised at the Additional Estimates hearing in February. These answers were accompanied by a letter from DFACS dated 25 May 2001 (Attachment A) outlining reasons for the delay in providing the answers and why some responses still had not been provided. The letter indicated that:

The Minister for Family and Community Services is considering issues of legal privilege, privacy, and commercial confidentiality and sensitivity around some of the requested material. Cabinet confidentiality is also an issue with respect to some material. As a consequence, some answers have not been provided with this letter.

1.9 At the hearing Senator Evans tabled an advice he had sought from the Clerk of the Senate, Mr Harry Evans, in relation to the content of the letter from DFACS (Attachment B). Commenting on the above paragraph in the DFACS letter, the Clerk of the Senate, stated that:

Presumably this paragraph means that the minister is considering whether a claim of public interest immunity should be raised in relation to some of the material required by the questions. The language of the paragraph suggests grounds on which public interest immunity claims might be raised. It also suggests that the department is under a common misconception about claims of public interest immunity. That misconception is that material may be withheld from a parliamentary committee simply on the basis that it is “confidential”. The recent report of the Auditor-General has again sought to dispel this misconception:

The fact that particular information is confidential, for example, because it relates to the commercial activities of a person or body with which the Executive Government is contracting, does not, by itself, provide grounds for resisting disclosure on the basis of public interest immunity. (*The Use of Confidentiality Provisions in Commonwealth Contracts*, paragraph 1.31)

1.10 Senator Evans indicated that the Labor Opposition ‘do not accept on face value the defence given for failing to hand up the documents’<sup>1</sup>, and intend pursuing the material relating to the particular answers which were still outstanding.<sup>2</sup> The Minister undertook to investigate the matter and provide a response as soon as possible.<sup>3</sup>

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1 *Committee Hansard*, 30.05.01, p.CA359.

2 Questions on notice 20.02.01: FaCS Nos.87a-b, d-f; Centrelink Nos.22d, f, j, k, n.

3 *Committee Hansard*, 30.05.01, pp.CA358-59.

## Portfolio Budget Statements

1.11 As part of its continued monitoring of the format and content of the Portfolio Budget Statements, the Finance and Public Administration Committee sought comments from Senators during the various Legislation Committees' consideration of the estimates. Committee members took the opportunity to comment on the PBSs throughout the course of the hearings.

1.12 The suggestion was made that it would be very useful to have the four-year forward estimates (by outcome, major appropriation and special appropriation) included in the PBS. DHAC, which provides these forward estimates to the Committee on request, was asked to consult with the Departments of Finance and Treasury regarding the possible inclusion of four-year forward estimates in future PBS.<sup>4</sup> Dr Rosalky advised that the Family and Community Services portfolio could similarly provide a breakdown of the four-year forward estimates.<sup>5</sup>

1.13 Senators encountered some difficulties in identifying where Outcome questions should be asked of portfolios due to the PBS 2001-2002 containing a greater number of measures that spread across two or more Outcomes.<sup>6</sup> The Deputy Secretary of DHAC, Mr Borthwick, explained that this is a reflection of payments mechanism and policy development issues being in different divisions (and thus outcomes) within the portfolio.

It also reflects the fact that we are trying to break down the silos within the department and get related areas of the department working in teams across divisions; so increasingly we have measures that span two or three divisions in the department.<sup>7</sup>

1.14 In relation to the FaCS portfolio, the Secretary, Dr Rosalky explained that:

While the documentation is under an outcomes basis, under the accruals – and that is what these expenditures lead to in the different outcomes we are pursuing, be it families or communities – there are often identifiable processes and decisions of government such as the Stronger Families and Communities Strategy that, by their very nature, straddle some of those outcomes.<sup>8</sup>

1.15 In order to overcome the uncertainty as to which Outcome questions should be asked, and to facilitate the attendance of Departmental officers, the Committee suggested that prior to the next round of estimates hearings Departments provide the Committee with guidance as to which Outcome questions on the major issues should be directed.<sup>9</sup> This proposal received support from both portfolios<sup>10</sup> which will hopefully expedite future proceedings.

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4 *Committee Hansard*, 28.05.01, p.CA6.

5 *Committee Hansard*, 30.05.01, p.CA303.

6 *Committee Hansard*, 29.05.01, pp.CA128-29; 30.05.01, p.CA303.

7 *Committee Hansard*, 29.05.01, p.CA128.

8 *Committee Hansard*, 30.05.01, p.CA300.

9 *Committee Hansard*, 29.05.01, pp.CA129; 30.05.01, p.CA303.

10 *Committee Hansard*, 29.05.01, p.CA129; 30.05.01, p.CA300.

1.16 Difficulties were encountered by one Senator when comparing previous years' figures with the current year, particularly when it was found necessary to consult the Departmental Annual Report and other budget documents as well as the PBS.<sup>11</sup> It was also suggested that cross-referencing by page number would be more useful than a 'see also' type of cross-reference.<sup>12</sup>

1.17 Another Senator expressed some difficulties with the format of the PBS because 'there is no actual line item to identify how much is estimated or how much is budgeted to be spent in this financial year'.<sup>13</sup>

## Issues

1.18 The Committee discussed a range of issues with both portfolio departments during the course of the hearings. There was considerable discussion with Health and Aged Care officers on aged care matters, particularly with regard to the publishing of review audits.<sup>14</sup> Pharmaceutical issues were also discussed in some detail.<sup>15</sup>

1.19 During its examination of the Family and Community Services portfolio, the Committee discussed with Centrelink the Auditor-General's report into the assessment of new claims for the age pension and Centrelink's response to the report.<sup>16</sup> An informative discussion also took place with the Director of the Australian Institute of Family Studies regarding the Institute's activities, particularly as the Melbourne-based agency had not been required to attend estimates hearings for some time.<sup>17</sup> These, and a number of important administrative and process issues raised during the hearings, are detailed in the *Hansard* transcripts of evidence.

Senator Sue Knowles  
Chairman  
June 2001

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11 *Committee Hansard*, 28.05.01, pp.CA4, 94.

12 Senator Crowley, *Committee Hansard*, 29.05.01, p.CA225.

13 Senator West, *Committee Hansard*, 28.05.01, p.CA99.

14 *Committee Hansard*, 28.05.01, pp.CA8-78.

15 *Committee Hansard*, 29.05.01, pp.CA129-147.

16 The Auditor-General, Audit Report No.34 2000-01, *Assessment of New Claims for the Age Pension by Centrelink*; *Committee Hansard*, 30.05.01, pp.CA246-263.

17 *Committee Hansard*, 30.05.01, pp.CA265-280.



**Attachment A**

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The Secretary  
Senate Community Affairs Legislation Committee  
Parliament House

**ADDITIONAL ESTIMATES HEARINGS – 20 FEBRUARY 2000  
RESPONSES TO QUESTIONS ON NOTICE – IT OUSOURCING**

I am enclosing the portfolio's responses to IT Outsourcing questions on notice from the Additional Estimates hearings held on 20 February 2001.

Please find attached responses to questions numbered 1 to 6 and number 22, directed to Centrelink; and questions numbered 81 to 87 directed to FaCS. Responses to questions which required an update on previously provided information have not been given a number but are included with a reference to the Hansard transcript page.

We apologise for the delay in responding. The necessity to locate and review a considerable amount of background material led to delays in our preparation of responses. In addition, some of the requested material is of a highly sensitive nature and guidance on conditions of its release was required.

The Minister for Family and Community Services is considering issues of legal privilege, privacy, and commercial confidentiality and sensitivity around some of the requested material. Cabinet confidentiality is also an issue with respect to some material. As a consequence, some answers have not been provided with this letter.

Yours sincerely

*[signed]*

Andrew Herscovitch  
Assistant Secretary  
Ministerial & Communications Branch

25 May 2001

Encl.



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30 May 2001

Senator Chris Evans  
The Senate  
Parliament House  
CANBERRA ACT 2600

Dear Senator Evans

**DEPARTMENT OF FAMILY AND COMMUNITY SERVICES –  
ANSWERS TO QUESTIONS ON NOTICE**

I have been asked to comment on the letter dated 25 May 2001 from the Assistant Secretary, Ministerial and Communications Branch, of the Department of Family and Community Services, concerning responses to questions on notice about IT outsourcing.

The last paragraph of this letter states:

The Minister for Family and Community Services is considering issues of legal privilege, privacy and commercial confidentiality and sensitivity around some of the requested material. Cabinet confidentiality is also an issue with respect to some material. As a consequence, some answers have not been provided with this letter.

Presumably this paragraph means that the minister is considering whether a claim of public interest immunity should be raised in relation to some of the material required by the questions. The language of the paragraph suggests grounds on which public interest immunity claims might be raised. It also suggests that the department is under a common misconception about claims of public interest immunity. That misconception is that material maybe withheld from a parliamentary committee simply on the basis that it is “confidential”. The recent report of the Auditor-General has again sought to dispel this misconception:

The fact that particular information is confidential, for example, because it relates to the commercial activities of a person or body with which the Executive Government is contracting, does not, by itself, provide grounds for resisting disclosure on the basis of public interest immunity. (*The Use of Confidentiality Provisions in Commonwealth Contracts*, paragraph 1.31)

Before the consideration referred to in the letter proceeds any further, it might be advantageous to remind the department of the appropriate scope of the grounds which are suggested in the letter. The letter appears to refer to the following grounds:

- “legal privilege” The rule about admissibility of evidence in courts which the courts recognise under the name of “legal professional privilege” has never been accepted as a ground for withholding information from a parliamentary committee. Legal advice to government is frequently disclosed. The only recognised basis on which it may be withheld in a parliamentary forum is that its disclosure would prejudice the positions of litigants, including the Commonwealth, in legal proceedings.
- “privacy” A recognised ground for not disclosing information in a parliamentary forum is that the disclosure of the information would unreasonably invade the privacy of individuals. In most instances where information is required by parliamentary committees, however, this problem is easily avoided by not identifying the individuals to whom the required information relates.
- “commercial confidentiality” As the Auditor-General’s report has recently reminded us, the mere fact that information relates to commercial transactions or is covered by a confidentiality clause in a contract does not provide a ground for non-disclosure in a parliamentary forum. The recognised ground is that disclosure of the information would damage the commercial interests of traders, including the Commonwealth, engaged in transactions. A department must be able to demonstrate a reasonable apprehension of damage to commercial interests before raising this ground for a public interest immunity claim.
- “sensitivity” I do not know what this term means. It appears to be used as a catch-all phrase in the public service when no other ground for withholding information will stand up. There is no ground for a public interest immunity claim known as “sensitivity”.
- “Cabinet confidentiality” There is a misunderstanding in the public service that anything remotely connected with cabinet can be withheld. The recognised ground for a public interest immunity claim is that disclosure of particular information would reveal the deliberations of cabinet and thereby imperil the ability of cabinet to deliberate freely while preserving collective ministerial responsibility. This is how the ground has been expounded by the courts in several recent cases. A department cannot put a “Cabinet” sticker on any document and then claim cabinet confidentiality for it.

Perhaps the department should be reminded of the foregoing matters before it gets to the stage of recommending inflated or unrecognised grounds for public interest immunity claims.

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely

[*signed*]

(Harry Evans)