

The Senate

Standing Committee on
Legal and Constitutional Affairs

Additional estimates 2008–09

March 2009

Commonwealth of Australia
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Membership of the Committee

Members

Senator Patricia Crossin, **Chair**, ALP, NT
Senator Guy Barnett, **Deputy Chair**, LP, TAS
Senator Don Farrell, ALP, SA
Senator David Feeney, ALP, VIC
Senator Mary Jo Fisher, LP, SA
Senator Sarah Hanson-Young, AG, SA
Senator Gavin Marshall, ALP, VIC
Senator Russell Trood, LP, QLD

Senators in attendance

Senator Patricia Crossin, (Chair), Senator Guy Barnett (Deputy Chair), Senator Don Farrell, Senator David Feeney, Senator Mary Jo Fisher, Senator Sarah Hanson-Young, Senator Gavin Marshall, Senator Russell Trood, Senator Mark Bishop, Senator the Hon George Brandis, Senator Steve Fielding, Senator Concetta Fierravanti-Wells, Senator the Hon Bill Heffernan, Senator Gary Humphries, Senator Steve Hutchins, Senator Barnaby Joyce, Senator Scott Ludlam, Senator Julian McGauran, Senator Rachel Siewert

NOTE: all senators may attend a meeting of a committee in relation to estimates, question witnesses and participate in the deliberation of the committee at such a meeting (see Standing Order 26(8)).

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PREFACE

On 12 November 2008, the Senate referred to the committee the examination of estimates of proposed additional expenditure for the financial year 2008–09, and hearings scheduled for 9 and 10 February 2009. The dates for hearings were subsequently amended, on 5 February 2009, to 23 and 24 February 2009. The committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Citizenship portfolio. The portfolio additional estimates statements were tabled on 4 December 2008.

Reference of documents

The Senate referred to the committee, for examination and report, the following documents:

- Particulars of proposed additional expenditure in respect of the year ending on 30 June 2009 (relating to Appropriation Bill (No. 3) 2008-09);
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2009 (relating to Appropriation Bill (No. 4) 2008-09);
- Issues from the Advance to the Finance Minister as a final charge for the year ending on 30 June 2008; and
- Final budget outcome 2007–08 – Report by the Treasurer (Mr Swan) and the Minister for Finance and Administration (Mr Tanner), September 2008.¹

The committee was required to report on its consideration of the Additional Estimates on or before 17 March 2009.

Estimates hearings

The committee met in public session on 23 February and 24 February 2009.

Over the course of the two days' hearings, totalling over 20 hours, the committee took evidence from the following departments and agencies:

- Attorney-General's Department;
- Australian Crime Commission;
- Australian Customs and Border Protection Service;

1 Appropriation bills are introduced to Parliament in pairs, as the Constitution imposes different requirements on expenditure that relates to the ordinary annual services of government and expenditure that does not relate to ordinary annual services. 'Proposed additional expenditure' relates to the ordinary annual services of government while 'certain proposed additional expenditure' relates to all other expenditure.

- Australian Federal Police;
- Australian Human Rights Commission;
- Australian Law Reform Commission;
- Australian Transaction Reports and Analysis Centre;
- Department of Immigration and Citizenship;
- Family Court of Australia;
- Federal Court of Australia;
- Federal Magistrates Court;
- High Court of Australia;
- Insolvency and Trustee Service Australia;
- Migration Agents' Registration Authority;
- Migration Review Tribunal;
- National Native Title Tribunal; and
- Refugee Review Tribunal.

Copies of *Hansard* are available on the internet at the following address:
<http://www.aph.gov.au/hansard/index.htm>.

An index of the Hansard for each portfolio appears at Appendix 3 and Appendix 4.

Ministers

The committee heard evidence from Senator the Hon Penny Wong, Minister for Climate Change and Water, and Senator the Hon Joseph Ludwig, Minister for Human Services, representing the Attorney-General and Minister for Home Affairs, and from Senator the Hon Chris Evans, Minister for Immigration and Citizenship.

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

Questions on notice

Further written explanations, and answers to questions on notice, will be tabled as soon as possible after they are received. That information is also available on the committee's internet page at the following address:
http://www.aph.gov.au/Senate/committee/legcon_ctte/estimates/index.

The committee has resolved that the due date for submitting responses to questions on notice from the Additional Estimates round is 14 April 2009.

CHAPTER 1

ATTORNEY-GENERAL'S PORTFOLIO

Introduction

1.1 This chapter summarises areas of interest and concern raised during the committee's consideration of the Additional Estimates for the Attorney-General's portfolio for the 2008-09 financial year.

Budget cuts

1.2 Committee members questioned a range of organisations in considerable depth about the effects of the increased efficiency dividend on staffing, and in particular on law enforcement and security. It emerged for example that the Australian Crime Commission had lost 35 staff positions and 15 funded seconded places from a total of 573 positions in the last six months,¹ the Australian Customs and Border Protection Service had lost 151 staff,² and the Australian Federal Police (AFP) lost 'around 170 members',³ including a number from the Air Security Officer Program.

Australian Human Rights Commission

1.3 The committee took evidence from the Commission in relation to a number of projects it is currently undertaking. These included explorations of freedom of religion and belief, and sex and gender.⁴ The Commission also gave evidence on consultations regarding a national Indigenous representative body.⁵

1.4 The committee sought information on Australia's international standing in respect of different aspects of human rights. The Commission was not aware of any composite assessment of Australia's overarching human rights record, but undertook to follow-up and provide advice to the committee.⁶

Federal and Family Courts of Australia and the Federal Magistrates Court

1.5 The committee heard that the functions and administration of the courts have become intermingled to varying extents. The reason given to the committee was that the financial accounting system used by the Federal Magistrates Court was unreliable,

1 *Committee Hansard*, 23 February 2009, p. 98.

2 *Committee Hansard*, 23 February 2009, p. 108.

3 *Committee Hansard*, 23 February 2009, p. 71.

4 *Committee Hansard*, 23 February 2009, pp 8–13.

5 *Committee Hansard*, 23 February 2009, pp 15-17.

6 *Committee Hansard*, 23 February 2009, p. 15.

resulting in the Family Court assuming responsibility for accounting, human resources and caseload management functions.⁷ The committee was told that the Semple review, which examined the future operation of family law services by federal courts, was still before Government and that a public announcement on action going forward had yet to be made. One senator queried whether the migration of administrative arrangements effectively pre-empted the Government's decision on the future of the Federal Magistrates Court.⁸

1.6 Officials from the Family Court also provided various performance statistics for the committee's information, as well as details on judicial vacancies and the operation of family relationship centres.⁹

Australian Federal Police

1.7 The AFP was closely questioned about the recent execution of a search warrant on the *Steve Irwin*, which had docked in Hobart following its anti-whaling activities in Antarctic waters. The committee was told that this action was triggered by Australia's signatory status to the *Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*. Officials provided a comprehensive statement of the legal requirements that were incumbent on the Australian Government.¹⁰ This was in contrast to claims from the AFP on some previous occasions that questions would not be answered in relation to ongoing investigations or operational matters.

1.8 The committee also took evidence during the hearing in relation to child exploitation, the Britt Laphorne case, security of air travel, a pending audit of police capability, IT security within the AFP, and the AFP's new accommodation.

High Court of Australia

1.9 The committee heard that the High Court has an operating loss of \$1.2 million, but appears to be short of funding, due to a combination of inadequate budget funding, the efficiency dividend and structural problems with the building and the forecourt. The committee was told that the Court's roof has leaked for many years and has recently become a problem to the extent that the court has been forced to decamp to Sydney and Melbourne.¹¹

7 *Committee Hansard*, 23 February 2009, pp 20–22.

8 *Committee Hansard*, 23 February 2009, pp 32–35.

9 *Committee Hansard*, 23 February 2009, pp 27–30.

10 *Committee Hansard*, 23 February 2009, pp 47–60.

11 *Committee Hansard*, 23 February 2009, p. 135.

Procedural Issues

1.10 The Attorney-General's Department was hesitant to reveal the process underlying the appointment of a committee of four people to conduct the National Human Rights Consultation, other than to say that they were appointed by the Attorney-General. Officials were also initially unwilling to reveal the sitting fees paid to the consultants, and did so only after confirming that no confidentiality clause was present in the service contract.¹² This reluctance is in spite of long-standing Senate declarations which make clear that claims of commercial confidentiality do not trump a request for details by a Senate committee.¹³

1.11 During the hearings senators also questioned officers on the response of the Federal Court to a review of the delivery of family law services by Australia's federal courts (the Semple review). While several courts have publicly responded to the Semple review, the Federal Court response, which took the form of a letter from the Chief Justice to the Attorney-General, was kept confidential at the request of the author.¹⁴ Officials resisted disclosing the contents of the letter. The discussion concluded with the committee inviting the Judge or Minister to publish the letter.

12 *Committee Hansard*, 23 February 2009, pp 115–118.

13 Odgers' *Australian Senate Practice*, 12th edition, 2008, pp 478–488.

14 *Committee Hansard*, 23 February 2009, p. 37.

CHAPTER 2

IMMIGRATION AND CITIZENSHIP

PORTFOLIO

Introduction

2.1 This chapter summarises areas of interest and concern raised during the committee's consideration of the additional estimates for the Immigration and Citizenship portfolio for the 2008-09 financial year.

Department of Immigration and Citizenship

2.2 The committee sought information on current staffing levels, and changes in the Department's staffing profile due to redundancy. The Secretary informed the committee that the financial 'health check' about which the committee heard at its 2008 Additional Estimates hearing, had been completed. The committee was told that 149 staff had accepted voluntary redundancy, all of whom worked in the national office.¹

Temporary workers

2.3 The committee continued its long standing interest in the subclass 457 visa program and skilled migration more generally. The committee was particularly interested in how the Government would tailor the skilled visa intake to the rapidly changing economic environment. The Minister submitted that:

...there is ongoing engagement between my department and DEEWR on employment issues. We work very closely with them on a range of matters. We take advice from them on things like skill vacancies. So they provide advice about employment markets et cetera and we respond in our immigration role. But, as I made clear yesterday when asked about this, we are in a situation where the economic circumstances have changed quite dramatically. The immigration program in the skills area is largely run to meet the skills needs of the economy and I have been keen to change the focus of the program to a demand driven economy—that we actually bring in the people whom we need to fill the skill shortages that exist in the Australian economy...I see the overall [intake] being lower. Clearly the priority is on creating jobs and job opportunities for Australians, but, nevertheless, there will still be skills that we are looking to bring into the country. Long term, we will continue to have to bring migrants in to meet various labour and skills shortages.²

1 *Committee Hansard*, 24 February 2009, p. 54.

2 *Committee Hansard*, 24 February 2009, p. 19.

2.4 The Minister also told the committee that the migration program size was part of the budget process:

First of all, to be clear, the decision about the 2009-10 migration program size and composition is a decision for cabinet, as part of the budget process, as has been the tradition for many years in Australia. That decision has not been taken as yet.³

2.5 The committee also raised the case of Dr Moeller, whose visa application, together with those of his family, was rejected by the Department on the basis of the costs to the health system for his disabled son. The Minister informed the committee that he had asked the Parliamentary Joint Committee on Migration to examine the current terms of the 'health waiver', under which the Department had no choice but to decline Dr Moeller's application.⁴

2.6 The committee was also informed that the trial of guest workers from the Pacific was underway, with 50 Tongan workers due to arrive and work in Australia between February and August 2009.⁵

Refugees

2.7 The committee took evidence on the circumstances surrounding the decision by two temporary protection visa holders residing in Australia to travel to Indonesia, and the forewarning to them of the implications of their decision on their right of return. The committee also discussed the abolition of Temporary Protection Visas and the incidence of 'safe haven' visas in the previous reporting period.⁶

Citizenship Test

2.8 As with previous hearings the committee questioned officers on the citizenship test (the test). Further to the evidence taken at the last Additional Estimates hearing, the committee heard that a review of the test had been undertaken at a cost of \$221 131.⁷

2.9 In response to questions asked by committee members about the outcome of the review, the Minister told the committee that:

... the committee recommended, and we endorsed, that the test remain in English.⁸

3 *Committee Hansard*, 24 February 2009, p. 20.

4 *Committee Hansard*, 24 February 2009, pp 23–25.

5 *Committee Hansard*, 24 February 2009, p. 31.

6 *Committee Hansard*, 24 February 2009, p. 45.

7 *Committee Hansard*, 24 February 2009, p. 86.

8 *Committee Hansard*, 24 February 2009, p. 83.

2.10 Officers subsequently outlined other outcomes of the review in relation to the citizenship test:

The review committee recommended, and the government accepted, that the resource book for becoming an Australian citizen could consist of two components. The first is testable and the second is information that might be of use and of interest to people becoming or wishing to become citizens. The review committee formed the opinion that the words of the pledge of commitment that new citizens are required to make—in fact, it is the final step in becoming a citizen—and that the ideas encapsulated in the wording of the pledge should form the basis of knowledge that people have in regard to responsibilities and privileges and in regard to Australia’s democracy and democratic beliefs, et cetera, and the fact that we require people to uphold law, and that we have a rule of law. Those concepts will form the basis of the testable section of the resource book and will become the basis for questions in future tests.⁹

Senator Trish Crossin

Committee Chair

9 *Committee Hansard*, 24 February 2009, p.85.

APPENDIX 1

DEPARTMENTS AND AGENCIES UNDER THE TWO PORTFOLIOS FOR WHICH THE COMMITTEE HAS OVERSIGHT

Attorney-General's Portfolio

- Attorney General's Department;
- Administrative Appeals Tribunal;
- Australian Federal Police;
- Australian Customs and Border Protection Service;
- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;
- Australian Government Solicitor;
- Australian Human Rights Commission;
- Australian Law Reform Commission;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- Classification Board;
- Classification Review Board;
- CrimTrac;
- Commonwealth Director of Public Prosecutions;
- Copyright Agency Ltd;
- Family Court of Australia;
- Family Law Council;
- Federal Court of Australia;
- Federal Magistrates Court;
- High Court of Australia;
- Insolvency and Trustee Service Australia;
- National Capital Authority;
- National Native Title Tribunal;
- Office of Film and Literature Classification Board and Classification Review Board;

- Office of Parliamentary Counsel; and
- Audio-Visual Copyright Society Limited (Screenrights).

Immigration and Citizenship Portfolio

- Department of Immigration and Citizenship;
- Migration Agents Registration Authority;
- Migration Review Tribunal; and
- Refugee Review Tribunal.

APPENDIX 2

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Documents tabled at Hearing

Monday, 23 February 2009

- Federal Magistrates Court of Australia: Correspondence from John Mathieson, CEO, Federal Magistrates Court of Australia to Ian Govey, Deputy Secretary, Attorney-General's Department, dated 15 August 2008
- Attorney-General's Department: Background information on the *Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*
- Australian Federal Police: Federal Audit of Police Capabilities, Terms of Reference
- Attorney-General's Department: Attachment A – Intellectual Property Principles for Australian Government Agencies

- Attorney-General's Department: Attorney-General and Minister for Broadband, Communications and the Digital Economy, News Release: 'Rudd Government implements COAG agreement on telephone-based emergency warning system', 23 February 2009

Letter of Correction tabled after hearings

- Attorney-General's Department, dated 24 February 2009

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- Department of Immigration and Citizenship: Australian Citizenship Test Snapshot Report January 2009

