

The Senate

Legal and Constitutional Affairs
Legislation Committee

Budget estimates 2010–11

June 2010

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 David Feeney, ALP, VIC
Senator Stephen Parry, LP, VIC
Senator Scott Ludlam, AG, WA
Senator Gavin Marshall, ALP, VIC

Substitute Member

Senator the Hon Jan McLucas, ALP, QLD, replaced Senator Marshall for consideration of the Budget Estimates 2010-11 (24, 25 and 26 May 2010)

Senators in attendance

Senator Patricia Crossin, (Chair), Senator Guy Barnett (Deputy Chair), Senator David Feeney, Senator Scott Ludlam, Senator Gavin Marshall, Senator Stephen Parry, Senator the Hon Eric Abetz, Senator Catryna Bilyk, Senator Simon Birmingham, Senator the Hon Ron Boswell, Senator the Hon George Brandis, Senator Bob Brown, Senator Sarah Hanson-Young, Senator Gary Humphries, Senator Steve Hutchins, Senator Julian McGauran, Senator the Hon Jan McLucas, Senator Scott Ryan, Senator Rachel Siewert, Senator Russell Trood, Senator Nick Xenophon

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PREFACE

On 11 May 2010, the Senate referred to the committee the examination of estimates of proposed budget expenditure for the financial year 2010-11. The committee is responsible for the examination of the Attorney-General's Portfolio and the Immigration and Citizenship Portfolio. The portfolio budget estimates statements were tabled on 11 May 2010.

Reference of documents

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

- Particulars of proposed expenditure in respect of the year ending on 30 June 2011 [Appropriation Bill (No. 1) 2010-2011]; and
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2011 [Appropriation Bill (No. 2) 2010-2011].

The committee was required to report on its consideration of the budget estimates on or before 22 June 2010.

Estimates hearings

The committee met in public session on 24, 25, 26 and 27 May 2010.

Over the course of the four days' hearings, totalling over 38 hours, the committee took evidence from the following departments and agencies:

- Administrative Appeals Tribunal;
- Attorney-General's Department;
- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;
- Australian Customs and Border Protection Service;
- Australian Federal Police;
- Australian Human Rights Commission;
- Australian Institute of Criminology and Criminology Research Council
- Australian Law Reform Commission;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- Classification Board and Classification Review Board;
- CrimTrac Agency;
- Department of Immigration and Citizenship (including the Office of the Migration Agents' Registration Authority);

- Family Court of Australia;
- Federal Court of Australia;
- Federal Magistrates Court of Australia;
- High Court of Australia;
- Migration Review Tribunal;
- National Capital Authority;
- National Native Title Tribunal; and
- Refugee Review Tribunal.

Copies of the *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 2 and Appendix 3.

Ministers

On 24 and 25 May 2010, the committee heard evidence from Senator the Hon Penny Wong, Minister for Climate Change, Energy Efficiency and Water; and Senator the Hon Ursula Stephens, Parliamentary Secretary for Social Inclusion and Parliamentary Secretary for the Voluntary Sector, representing the Attorney-General and the Minister for Home Affairs. On 26 and 27 May 2010, the committee heard evidence from Senator the Hon Chris Evans, Minister for Immigration and Citizenship.

Officers from both departments and associated agencies also appeared. The committee thanks the ministers and parliamentary secretary, 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 Budget Estimates round is 9 July 2010.

CHAPTER 1

ATTORNEY-GENERAL'S PORTFOLIO

Introduction

1.1 This chapter summarises some areas of interest and concern raised during the committee's consideration of the budget estimates for the Attorney-General's portfolio for the 2010-11 financial year.

Classification Board and Classification Review Board

1.2 The committee takes a continuing interest in the work of the Classification Board and Classification Review Board. On this occasion, the committee pursued areas of ongoing concern, including classification compliance levels and enforcement.

1.3 The Director of the Classification Board, Mr Donald McDonald AC, updated the committee on the monitoring of classification compliance levels of adult publications and films:

I can advise the committee that I have called in for classification 440 adult films and 40 adult magazines since July last year. As I advised last time, none of these notices has been complied with.

Failure to comply with a call-in notice is a breach of classification laws. I can assure senators that these breaches have all been referred to the relevant state and territory law enforcement agencies for appropriate attention and action.¹

1.4 Senators expressed concern with the continuing failure of relevant distributors to comply with call in notices. While Mr McDonald conceded that he was not satisfied with the current situation he advised that '(a)ny shortcomings in the legislation are not the fault of the Classification Board. Powers that belong elsewhere are for people in other places to exercise'.²

1.5 Following the additional estimates hearings in February, the committee wrote to the Minister for Home Affairs on 21 April 2010 to express its concern in relation to the non-compliance by certain publishers with call in notices.

1.6 The committee sought an update on the initiatives flowing from the Standing Committee of Attorneys-General compliance and enforcement working party to improve the current enforcement regime. The Secretary of the Attorney-General's Department, Mr Roger Wilkins AO, advised the committee:

Censorship ministers received an update on the work done by this working group in developing options to improve compliance with and enforcement

1 *Committee Hansard*, 24 May 2010, p. 51.

2 *Committee Hansard*, 24 May 2010, p. 55.

of classification laws and other initiatives. Ministers requested that the working group continue its identification assessment of options.

Six issues in particular were identified for further work: reforms to the serial declaration scheme for publications; wrapping requirements for publications, principally adult magazines, and labelling provisions; staged penalties for selling submittable publications depending on how they are later classified; prosecution strategies; alternative penalties; and reviewing the costs and availability of enforcement applications. They are things which the working party is taking forward.

I would expect progress to be made on some of those things at a different rate. In fairness, we are looking at different strategies around prosecution and enforcement. The current processes are too time consuming. It may be one of the reasons why states and territories are reluctant to enforce at the rate we would like to see them doing so. But there are also issues of priorities. Maybe we can find some more summary processes that could be used where there are offences or failure to comply with the law. The working group is looking at that.³

1.7 Some senators also questioned the Board and Review Board on the recent R18+ classification decision for a modified DVD version of a previously banned and controversial 1970s film, *Salo*.⁴

Family Court of Australia and Federal Magistrates Court of Australia

1.8 The committee sought an update on the delayed restructure of the federal courts, an issue that has been the subject of extensive examination at recent rounds of estimates. It was advised that the government had announced, on 24 May, the new arrangements following resolution of the Military Court of Australia issue. The Attorney-General's Department tabled the Joint Media Release of the Attorney-General and the Minister of Defence which described the new structure:

Federal Magistrates Court

- The Federal Magistrates Court will be retained to hear general federal law matters and will continue to exercise general federal law jurisdiction.
- The Court will provide an appropriate pool of judicial officers (with the requisite military background or familiarity) who may be offered dual commissions to the lower Division of the new military court.
- The Federal Court will be responsible for the administration of the Federal Magistrates Court.

Family Court

- The Family Court will be the single court dealing with all family law matters.
- The restructured court will have two divisions:

3 *Committee Hansard*, 24 May 2010, p. 56.

4 *Committee Hansard*, 24 May 2010, pp 59-70.

- The Appellate and Superior Division will hear complex first instance family law and child support cases as well as appeals. It will comprise the existing Family Court judges.
- The General Division will hear all but the most complex family law cases (as the Federal Magistrates Court does now). It will comprise those Federal magistrates who undertake mainly family law work and accept commissions.
- Matters will be able to be transferred between the two Divisions where appropriate.

Federal Court

- The Federal Court will continue to exercise its jurisdiction in its current form.
- Judges of the Federal Court with the requisite military background or familiarity may be offered dual commissions to the upper Division of the new Military Court.⁵

1.9 The new structure was described by the Secretary of the Attorney-General's Department as being able to 'achieve a more integrated and efficient system in order to effectively deliver legal and justice services both to the civilian and defence community'.⁶

1.10 In further questioning on the difference between the announced restructure and the recommendations in the Semple review, Mr Wilkins described the key difference as being the 'retention of the federal magistrates to hear general federal law matters'.⁷

1.11 Questioning then turned to the role of Mr Richard Foster as Chief Executive Officer of the Family Court as well as the Acting Chief Executive Officer of the Federal Magistrates Court. One Senator asserted that there was a potential for a conflict of interest in Mr Foster's advice to government about the role of the two courts, in light of the government's proposed restructure of the federal courts.

1.12 Under extensive questioning about his advice to government, and following the Chair's reference to Privilege Resolution 1(16) regarding the giving of opinions by public servants, Mr Foster advised the committee:

I think I can best answer that by saying that I am not quite sure that I would say that I argued or was an advocate for one position or another. The courts were asked for their views. The Federal Magistrates Court's view had not changed. The Federal Magistrates Court's view was the same as it was when the Semple report was released. All I did was say, 'That is the view of the court supported by the Chief Federal Magistrate and the court.' The view of the Family Court was basically that it preferred to have family law

5 Tabled document No. 5, 24 May 2010, Joint Media Release – Attorney-General and Minister for Defence, 24 May 2010, entitled *Establishment of the Military Court of Australia*.

6 *Committee Hansard*, 24 May 2010, p. 73.

7 *Committee Hansard*, 24 May 2010, p. 74.

jurisdiction under the umbrella of the Family Court and that the court had two divisions or two tiers. That was basically the extent of what was put to the department when we were consulted. It was really nothing different from the Semple report, except that—

Senator BRANDIS—Except whether the Federal Magistrates Court, of which you are the acting CEO, should continue to exist or not.

Mr Foster—Whether the Federal Magistrates Court should be retained.

...

Mr Foster—... The court's view in relation to whether the Federal Magistrates Court would be abolished or not was purely left as a matter of a government decision. It was not a matter that the Family Court thought it had any view to put in any way. It was a decision that once family law was put into the Family Court, that was what the Family Court thought was the best thing for the litigants of family law in this country.

The question about whether the Federal Magistrates Court was to become a division of the Federal Court or not was really a question on which I certainly did not put a view on behalf of the Family Court because the Chief Justice had not expressed a strong view about that in any event. It was really a matter that was subsequent to getting family law into the one court—that is, having one court exercising that highly specialised jurisdiction. That is what was trying to be achieved.⁸

Australian Security Intelligence Organisation (ASIO)

1.13 The committee began examination of ASIO with questions concerning the savings of \$15.1 million over four years outlined in the budget,⁹ and the likely impact on its operations and ability to maintain the current recruitment program. It was explained that savings have been achieved through a variety of internal efficiency measures and there would be no cuts to programs.¹⁰ The Deputy Director-General of Security provided some further detail:

What we have done is achieved some operational efficiencies by rationalising our management structures, by introducing some business process reforms across the organisation and by rolling out some of the new IT facilities and information sharing systems that we have. Other improvements in our IT are virtualising servers and rationalising storage systems et cetera. All of these things assist in achieving efficiencies off our budget.¹¹

1.14 The committee heard that the agency was maintaining a growth plan with staff numbers increasing from 1,700 to 1,860 by next financial year.¹²

8 *Committee Hansard*, 24 May 2010, p. 78.

9 *Budget Measures, Budget Paper No. 2 2010-11*, p. 95.

10 *Committee Hansard*, 24 May 2010, p. 105.

11 *Committee Hansard*, 24 May 2010, p. 105.

12 *Committee Hansard*, 24 May 2010, p. 105.

1.15 The increase in security assessments of irregular maritime arrivals and the agency's capacity to deal with the increased demand on resources was an area that was also pursued by the committee. ASIO advised that security assessments had increased approximately 10-fold from the 2008-09 year. There were 207 irregular maritime arrival security assessments for the 2008-09 year and 2,028 from July 2009 to 31 March 2010.¹³

1.16 While the Director-General of Security was reluctant to go into detail about resource allocation for security reasons, he assured the committee that ASIO has been able to adequately respond to this increased demand without a derogatory effect:

We are responding to DIAC priorities. We have had a lot of people working very hard. We have had to rationalise some of our activities in other areas. I do not say we are detracting from our security assessment activities in other areas, but there has been a drop in the number of security assessments completed in some other areas. For example, the number of protection visas or other visa classes has fallen by about 40 per cent. Part of that has been achieved through a much more sensible and rational process that we have agreed on with the department of immigration as to when they are referred to us in what circumstances. A lot of what you might call unnecessary checking has in fact been eliminated.¹⁴

1.17 The Deputy Director-General further added:

...might I add that technology has played a large part in the efficiency gains made in this area as well. Together with the department of immigration we have invested quite a bit in IT systems, automated connectivity between our agencies, data standardisation and levels of automation in the process. They have delivered significant productivity gains as well, which has helped both agencies meet this challenge.¹⁵

1.18 The committee also sought background on the establishment of the National Intelligence Coordination Committee (NICC). The Director-General of Security advised that this is proceeding on schedule and that he would have responsibility for the NICC's management.¹⁶

Australian Customs and Border Protection Service (Customs)

1.19 Customs was questioned extensively by the committee on a range of matters: the program to replace the Bay Class vessels; Customs' involvement with recent unauthorised maritime arrivals; interception processes for boats found in distress in Australian waters; the seizure of a shipment of 326 seahorses in the United States from a Tasmanian company due to a bureaucratic error; SmartGate (self-processing through passport control); shipping arrival processes; and the reduction of vessel surveillance in the Southern Ocean.

13 *Committee Hansard*, 24 May 2010, p. 108.

14 *Committee Hansard*, 24 May 2010, p. 109.

15 *Committee Hansard*, 24 May 2010, p. 109.

16 *Committee Hansard*, 24 May 2010, p. 116.

1.20 Senators sought details on the gross savings of \$146.3 million over four years proposed in the budget and questioned officials about whether this would result in staff reductions of 250. The Chief Executive Officer, Mr Michael Carmody, advised the committee that the proposed figure for staff reductions is about 180 full-time equivalent staff and explained the difference to the higher figure:

At the time of the preparation of the budget that was our estimate of the impact. Since then we have done further work and we have found ways to achieve further efficiencies in supply figures.¹⁷

1.21 He assured the committee that:

The bottom line for me is that I believe none of this impacts on our ability to provide an appropriate management of the border, and none of it is adversely impacting on our ability to do that.¹⁸

Australian Federal Police (AFP)

1.22 Senators sought detail from the AFP on the \$23.5 million of savings identified over four years through efficiencies resulting from the implementation of the recommendations of the *Federal Audit of Police Capabilities*.¹⁹ The Commissioner, Mr Tony Negus APM, explained that:

Most of those savings are as a result of the all-in model moving into aviation, where the AFP would take over responsibility for community policing at airports, from what is the current position where states and territories second officers to the AFP for a period of two years. There are substantial costs associated with that which we pay to the states and territories in training and turnover of staff. In Mr Beale's review he has identified savings. Those savings are to be retained by the AFP and reinvested into other components—that is, increasing our staffing numbers.²⁰

1.23 Questioning then turned to the AFP's recruitment target of 500 new officers by 2012 and the funding required to meet this target:

Mr Negus—Senator, perhaps I could give you some context. As part of Mr Beale's review we also looked at the government's pledge of 500 new officers for the AFP over five years.

... What he did was identify that there was a shortfall in the money that had been provided to get to the 500 officers.

Senator BRANDIS—Just pausing there, when you say 'he identified a shortfall' you mean that less money was allocated than was expected to be received. Is that right?

17 *Committee Hansard*, 25 May 2010, p. 22.

18 *Committee Hansard*, 25 May 2010, p. 22.

19 *Budget Measures, Budget Paper No. 2 2010-11*, p. 106.

20 *Committee Hansard*, 25 May 2010, p. 61-62.

Mr Negus—For the AFP to make the target of 500, they required additional money.

Senator BRANDIS—How much additional money?

Mr Negus—It was around \$30 million.

Senator BRANDIS—And in what year, or across what years, did the shortfall emerge?

Mr Negus—It was since the pledge was made, which is three years ago. We are on track and in fact in front of those targets in our recruitment. But to get to the 500 number he identified that there were higher costs associated with that, and we would require supplementation to reach that.

Senator BRANDIS—So you were \$30 million short, according to Mr Beale, in reaching the 500 promised by the Prime Minister, or then opposition leader Rudd in 2007. So that \$30 million is being found elsewhere in the AFP budget.

Mr Negus—Mr Beale recommended that the \$23 million in savings from the airports would be reinvested into the AFP to allow us to substantially reach that target.

Senator BRANDIS—So we are taking this money away from airports through what are described as efficiencies in order to fund a promise that was not being delivered on because there was, to use your words, a shortfall of \$30 million. Is that right?

Mr Negus—Efficiencies that had been realised through better practice were being reinvested in the AFP.²¹

1.24 The Commissioner confirmed that the AFP is currently meeting planned recruitment targets to achieve the 500 figure by 2012.²²

1.25 The committee also raised the Securrency case during its examination of the AFP. This case concerns allegations of bribery of the banknote supplier company, Securrency. Under questioning, the Commissioner confirmed that a complainant did go to the AFP in April 2008 with allegations relating to Securrency, and it was decided at that time that there was insufficient material to launch an investigation.²³ The Commissioner then conceded that:

...Obviously, with the benefit of hindsight, looking back, more could have been done at that time to look further and deeper into the issue. At a later stage, more material was provided to the Australian Crime Commission, which was again provided to the AFP. Another assessment was done at about that time and the matter was formally referred to us by the RBA [Reserve Bank of Australia], after the matter was featured in the Age newspaper.

21 *Committee Hansard*, 25 May 2010, p. 66.

22 *Committee Hansard*, 25 May 2010, p. 70.

23 *Committee Hansard*, 25 May 2010, p. 78.

Senator BOB BROWN—Just going back to the hindsight situation, what evidence was sought by the AFP in the wake of the very serious accusations being made to corroborate or to enable the AFP to make an independent assessment that those claims were not correct?

Mr Negus—I do not have the details of all the inquiries, but certainly over a number of months an assessment was done of the material that was provided. Certain checks were done but, again, in the context of what we now know, I think that could have gone further at the time. I have had that reviewed to have a look at how that process was undertaken. As you have said, it is a very serious matter. Currently, we have up to 20 investigators working on this full time now in a number of countries around the world. What I would not want to do is discuss in any detail the context of what material was assessed and what evidence has been gleaned at this stage because it may well impact upon the ongoing investigation.²⁴

1.26 The Commissioner later responded to concerns raised by Senators that the delay in launching the investigation may have compromised evidence in the case:

...Given that some of these issues go back 10 years, as you have already identified, my best advice to you is that I do not think it has. I think that we certainly got onto the trail quickly enough. There have been a range of things that have now been captured, and we have seen no indication that anything had been destroyed or tampered with during that period in which the material gained momentum to then be accepted for an investigation by the AFP.²⁵

Attorney-General's Department

1.27 The Department implemented changes to the outcomes and programs structure for 2010-11 and these are outlined in Appendix 4.

1.28 Examination of the Department was spread over the first two days of the hearings. Senators pursued a range of issues, including Australia's claim to an extended exclusive economic zone in the context of the use of Elizabeth and Middleton islands, regulation of the legal profession, Family Relationship Centres, legal aid and access to justice funding, and the Administrative Review Council.

Procedural issues

1.29 During examination of the National Native Title Tribunal, some Senators attempted to question the Tribunal and officers of the Attorney-General's Department, about the *Queensland Wild Rivers Act 2005* and its consistency with the *Native Title Act 1993*. As the Legal and Constitutional Affairs Legislation Committee was at the time inquiring into the Wild Rivers (Environmental Management) Bill 2010 [No. 2], the Chair ruled this line of questioning out of order on the basis that the Senate had

24 *Committee Hansard*, 25 May 2010, p. 78.

25 *Committee Hansard*, 25 May 2010, p. 80.

given the committee the task of conducting an inquiry specifically into that bill and that any questions about the bill should be directed through that inquiry process.²⁶

1.30 Senators pursued the question of the relationship of the Native Title Act with the Queensland legislation and departmental officers advised:

...in our view the Queensland Wild Rivers Act 2005 does not affect a person's native title rights or interests. There is a provision in that act—section 44(2)—that explicitly indicates that it cannot directly or indirectly limit a person's native title rights or interests. I would further add that section 13A of Queensland's Acts Interpretation Act provides that future legislation only affects native title if it expressly provides. The Wild Rivers Act does not make this express provision. That leads to our view that it does not affect native title rights and interests.²⁷

1.31 When Senators subsequently returned to this line of questioning, the Chair tabled advice from the former Clerk (provided during the hearing by the current Clerk) which supported her earlier ruling (see Appendix 5).

26 *Committee Hansard*, 24 May 2010, p. 94.

27 *Committee Hansard*, 24 May 2010, p. 95.

CHAPTER 2

IMMIGRATION AND CITIZENSHIP PORTFOLIO

Introduction

2.1 This chapter summarises some areas of interest and concern raised during the committee's consideration of the budget estimates for the Immigration and Citizenship portfolio for the 2010-11 financial year.

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

2.2 The committee questioned representatives from the RRT and officers from the Department of Immigration and Citizenship about the recent recruitment processes for members of the RRT. Senators referred to media reports¹ regarding the selection process of members to the RRT, asserting that the recent processes were politicised because, among other things, applicants were questioned about 'set aside' rates at interview.

2.3 The Secretary of the Department, Mr Andrew Metcalfe, refuted these allegations in absolute terms. The committee was informed that the recruitment of members to the MRT and RRT follows the guidelines set out by the Australian Public Service Commission for recruitment of members of tribunals and other statutory appointments. Mr Metcalfe then described in some detail the recruitment processes for recent selection rounds.²

2.4 The Department subsequently tabled the interview questions for MRT-RRT member recruitment in July 2009 and July 2010, in addition to a document outlining the process for appointment of MRT-RRT members for the July 2010 round.

Department of Immigration and Citizenship

Suspension of asylum claim processing for Sri Lanka and Afghanistan

2.5 The committee raised the issue of the Australian Government's decision on 9 April 2010 to suspend the processing of refugee claims for arrivals from Sri Lanka and Afghanistan.

2.6 The Minister explained that, in relation to the Sri Lankan processing 'pause', the Cabinet decided that it would review this decision no later than three months after the date of the announcement.³ The Minister was then questioned about the impact of the expected delay of the UNHCR country report on Sri Lanka on this review. While the Minister acknowledged that such reports are an important factor in the decision-making processes, he advised:

1 See *Financial Review*, 7 May; *Herald Sun*, 13, 14 and 26 May 2010.

2 *Committee Hansard*, 26 May 2010, p. 9.

3 *Committee Hansard*, 26 May 2010, p. 81.

Th[e] UNHCR report will not be critical in the sense of affecting the government's timing or policy decision. But clearly it is an important piece of advice that if it is issued we will take into consideration.⁴

2.7 The Minister was then questioned about publicly reported legal opinions commissioned by the Human Rights Law Resource Centre about the suspension decision and the claim that it breaches international conventions and domestic law. The Minister confirmed that legal advice was sought before making the decision on the suspension policy and stated his belief that it does not breach the refugee convention and Australian law, and that he did not accept the legal advice to the contrary.⁵

2.8 Mr Peter Hughes PSM, Deputy Secretary, confirmed the Department's view that the processing suspension does not breach any Australian or international law:⁶

I think it is worth remembering that under the refugee convention the principal responsibility for a state that is party to the refugee convention is not to have an act of refoulement—not to send any person back to a place where they will be persecuted. Of course, nothing about the suspension would result in that happening. The convention does not actually lay down any particular procedure or timing of looking at persons with regard to the obligations that apply to a state under the convention. Therefore, a suspension is not prohibited by the convention. As the minister said, many other countries do take periods of time to assess refugee claims much in excess of what the time would be, even for people who are suspended.

Equally, we do not think that there is any difficulty with the Racial Discrimination Act, because the suspension is not based on race or ethnicity. It is based on people of a particular nationality making claims against either the government of the country of origin or non-state actors in the country of origin. So we do not think there is a breach of the Racial Discrimination Act. Equally on the detention point, detention is authorised by the Migration Act, and equally under international conventions periods of detention authorised by law for legitimate purposes are considered acceptable. Our legal advice is that we do not accept the views that were prepared in that report originating in Melbourne.⁷

2.9 When asked about the release of the government's legal advice on the policy, the Minister advised that, 'in accordance with normal government practice in this regard', it would not be released.⁸

4 *Committee Hansard*, 26 May 2010, p. 82.

5 *Committee Hansard*, 26 May 2010, p. 82.

6 *Committee Hansard*, 26 May 2010, pp 82-84.

7 *Committee Hansard*, 26 May 2010, p. 83.

8 *Committee Hansard*, 26 May 2010, p. 87.

Extent budget estimates based on projected figures for irregular maritime arrivals

2.10 The Department was questioned in depth about the budget appropriations for community and detention services under Program 4.3: Offshore Asylum Seeker Management. In particular, Senators questioned officers about the significant increase in the revised 2009-10 budget figure and the 2010-11 budget appropriations, and the extent to which these figures are based on the projected number of irregular maritime arrivals in detention.

2.11 The committee heard that the revised 2009-10 budget figure of \$149,412,000 (an increase from the original provision of \$40.8 million) is based upon the estimated number of 4,500 in detention by 30 June 2010.⁹ Senators then sought the estimated number of arrivals in detention which the 2010-11 appropriation figure of \$327.5 million was based on:

Mr Metcalfe—The figure that has been put into the budget for estimation purposes is 2,000.

Senator HUMPHRIES—You are spending \$149 million for 4,500 arrivals and more than double that for 2,000 arrivals. Can you explain that?

Senator Chris Evans—The cost is not in the arrivals, the cost is in the detention.

Mr Metcalfe—Because people will stay across the program year, and as we have been indicating some of those people will be in detention for a longer period of time, it is the number of people in detention for a number of days that becomes important. The arrival figure is one factor, but the length of detention is another factor that goes into these figures.¹⁰

2.12 Mr Metcalfe emphasised that the appropriation figure for detention costs was based on three factors: 'how many people arrive, how long they stay for and then what happens to them'.¹¹

2.13 It was explained that there were indications that there is an increasing refusal rate for refugee status for irregular maritime arrivals, particularly in light of the recently announced decision to suspend the processing of asylum seeker claims from Afghanistan and Sri Lanka. As a result, it is expected that people will stay longer in detention:

Even though it may sound a strange thing to say, that increasing cost reflects the fact that the department is now refusing more cases and we therefore expect those people to do as they are entitled to do—that is, to pursue review rights. But that will lead to an increase[d] length of detention. It is not a commentary upon the arrival numbers. That is one

9 *Committee Hansard*, 27 May 2010, p. 13.

10 *Committee Hansard*, 27 May 2010, p. 14.

11 *Committee Hansard*, 27 May 2010, p. 17.

factor, but it is an important factor—actual length of stay in detention. That is where a significant part of those costs are coming from.¹²

2.14 The Minister summed up the evidence presented by the Department in relation to the cost estimates in the Portfolio Budget Statements:

What Mr Correll has done is take you through the projection for how many people are likely to be in detention. That is telling you how many people will be a cost to the Commonwealth and the basis on which those calculations have been done. He has indicated that they have started from a higher base, as you would expect, so therefore they have a higher cost across the year. He has indicated the judgments about people being in detention longer due to a couple of factors. He has told you what he thinks the estimated population will be which underpins the costs. That is the basis for the calculation of the costs.¹³

2.15 The Department also outlined the individual cost drivers used in the calculation of the \$327 million figure:

There are many factors that we agree on with Finance over increasing the estimate for IMAs [irregular maritime arrivals]. The key part is understanding the number of beds required at the various facilities and then the costs of servicing those centres. The types of costs that we incorporate are: charter costs; escorts paid to Serco, the detention service provider operating additional facilities for a full 12-month period; health service provider costs; interpreting costs; DIAC staff travel allowances; DIAC staff airfares; rental R&M [repairs and maintenance] utilities—so staff accommodation; accommodation for Serco officers; IAAAS [Immigration Advice and Assistance Scheme], which is one of the programs the department runs; transport to CI [Christmas Island]; maintenance of infrastructure plus utility costs; communications, including satellite costs for various facilities; minor plant and equipment and miscellaneous office expenses; health services provided by Christmas Island hospital; estimated costs for Community Detention, run by the Australian Red Cross and Life without Barriers; IHMS [International Health and Medical Services] pass through costs; DIAC IMA-specific training costs; community liaison officer costs; contract audit costs; and allocation of corporate overheads.¹⁴

2.16 Senators then sought details of the increase in some of these costs for the 2010-11 financial year. The committee heard that the following larger cost lines would increase by the following amounts indicated: the Serco provider contract, \$56.8 million; interpreting costs \$22.3 million; DIAC staff travel, approximately \$5 million; maintenance of infrastructure plus utility costs, \$14 million; minor plant and equipment, \$2.5 million; IHMS pass-through costs, \$5.9 million; allocation of corporate overheads, estimates at \$24.8 million (for a mixture of Christmas Island and onshore); estimated charter costs, \$8.1 million; health costs, \$12 million;

12 *Committee Hansard*, 27 May 2010, pp 14-15.

13 *Committee Hansard*, 27 May 2010, p. 28.

14 *Committee Hansard*, 27 May 2010, p. 39.

accommodation for Serco \$1.5 million; accommodation for departmental staff, \$3.7 million; transport around Christmas Island, just under \$900,000; and communications \$2.4 million.¹⁵

Visa processing at 'high risk' posts

2.17 The committee also raised the issue of visa processing of 'high risk' applicants, including those more likely to overstay. It was advised that there was a number of developing countries, including those in Africa, parts of South America, the Middle East, and Asia, which the Department considered were medium- to high-risk and where the posts may use a range of measures in visa application processes to counter the incidence of fraud. For example, applicants may be required to submit paper applications and be interviewed. The committee was advised that the risk at a particular post may vary with different visa categories.¹⁶

2.18 The committee heard that the higher risk posts generally correspond to the higher deployment of Australian officers. Mr Metcalfe advised:

...our biggest overseas post now, due to volume and risk and fraud issues, is New Delhi. There is a big source of high quality migrants and workers and students from India, but there are a lot of non-genuine applicants as well. Our second biggest post is Shanghai, again because we have many high quality applicants but we have a lot of fraud as well. So we undertake a whole range of different measures.

Earlier I indicated that we had created a division...to focus in a concentrated way on risk, fraud and integrity issues and a global manager in South Australia to focus on these issues. I expect that we will continue to pursue ways to identify and to overcome fraud. The minister has made it very clear that he has expectations that we do this in a more timely manner, that we understand what is happening with the business and understand where trends are developing or issues are concerning far more quickly than we have now. We have a range of measures as to how we will meet that requirement. That is part of the overall sort of search for efficiencies in how we can in fact identify the easy cases more quickly and let those people through with minimum trouble but to focus in quite quickly and deal with those more difficult cases.

Finally...there are a range of other devices and arrangements. For example, we have the opportunity for some visitor visas. Where our post has a concern that a person coming to visit family members may not abide by the conditions of their visa, there is the opportunity for a so-called sponsored family visitor visa. A performance bond is taken from the family, which is returned if in fact the person departs Australia. So that is one of a whole range of tools that we have to manage these sorts of immigration risks.¹⁷

15 *Committee Hansard*, 27 May 2010, pp 39-41.

16 *Committee Hansard*, 26 May 2010, pp 104-105.

17 *Committee Hansard*, 26 May 2010, p. 105.

2.19 The committee also took evidence from the Department on a range of other issues over the two days of hearings, including immigration detention centres, staffing levels, FOI processes, revenue from visa applications, 457 visa changes, VETASSESS practical assessment tests, and international student visas.

Senator Trish Crossin
Chair

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 Institute of Criminology and Criminology Research Council;
- 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;
- Family Court of Australia;
- Family Law Council;
- Federal Court of Australia;
- Federal Magistrates Court of Australia;
- High Court of Australia;
- Insolvency and Trustee Service Australia;
- National Capital Authority;
- National Native Title Tribunal; and
- Office of Parliamentary Counsel.

Immigration and Citizenship Portfolio

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

APPENDIX 2

INDEX OF PROOF HANSARD AND TABLED DOCUMENTS FOR THE ATTORNEY-GENERAL'S PORTFOLIO

Monday, 24 May 2010	Pages
• Attorney-General's Department (cross portfolio questions)	6-16
• Administrative Appeals Tribunal	16-18
• Australian Human Rights Commission	18-29
• Australian Law Reform Commission	29-36
• Australian Transaction Reports and Analysis Centre	36-51
• Classification Board and Classification Review Board	51-70
• High Court of Australia	70-72
• Family Court of Australia	72-89
• Federal Magistrates Court	89
• Federal Court of Australia	89-93
• National Native Title Tribunal	93-104
• Australian Security Intelligence Organisation	104-120
• Attorney-General's Department	120-132
Tuesday, 25 May 2010	
• Australian Commission for Law Enforcement Integrity	7-11
• Australian Crime Commission	11-20
• Australian Customs and Border Protection Service	20-60
• Australian Federal Police	60-102
• Australian Institute of Criminology and Criminology Research Council	102-105
• CrimTrac Agency	105-106
• National Capital Authority	107-110
• Attorney-General's Department	110-127

TABLED DOCUMENTS
Monday, 24 May 2010

Item no	Tabled by:	Topic
1	Senator Barnett	Correspondence from the Law Society of Tasmania to Senator Barnett, 21 May 2010, regarding national legal profession reform
2	Senator Barnett	Correspondence from the President of the Judicial Conference of Australia to Senator Barnett, 31 March 2010, with attached reports concerning the issue of procedures for determining complaints against judicial officers
3	Attorney-General's Department	Secretary's opening statement
4	Attorney-General's Department	Report of the Review of Commonwealth Legal Services Procurement
5	Attorney-General's Department	Joint Media Release – Attorney-General and Minister for Defence, 24 May 2010, entitled Establishment of the Military Court of Australia
6	Family Court of Australia	Family Law Workload Trend
7	Senator Crossin	Advice from the Clerk of the Senate – Estimates Hearings – Questions about Provisions of Bills

Tuesday, 25 May 2010

Item no	Tabled by:	Topic
8	Senator Humphries	Media Release - Australian Customs and Border Protection Service, 19 May 2010, entitled Vessel Intercepted by Border Protection Command
9	Attorney-General's Department	Finance Circular No. 2009-09 – Discretionary Compensation and Waiver of Debt Mechanisms
10	Senator Parry	Correspondence from the Minister for Home Affairs to Senator Parry, 23 November 2009 and correspondence to the Attorney-General from Senator Parry, 10 September 2009 concerning a government funded and managed television program targeting specific crime and missing persons cases

APPENDIX 3

INDEX OF PROOF HANSARD AND TABLED DOCUMENTS FOR THE IMMIGRATION AND CITIZENSHIP PORTFOLIO

Wednesday, 26 May 2010	Pages
<ul style="list-style-type: none"> • Migration Review Tribunal and Refugee Review Tribunal • Department of Immigration and Citizenship 	<p style="margin: 0;">3-25</p> <p style="margin: 0;">25-114</p>

Thursday, 27 May 2010	
<ul style="list-style-type: none"> • Department of Immigration and Citizenship 	3-86

TABLED DOCUMENTS

Wednesday, 26 May 2010

Item no	Tabled by:	Topic
1	DIAC	MRT-RRT Member Recruitment– Interview Questions and Process for Appointment
2	DIAC	PBS Estimates for Administered Revenue through Visa Application Charges (VAC) and Sponsorship Fees
3	DIAC	FOI Requests

Thursday, 27 May 2010

Item no	Tabled by:	Topic
4	DIAC	Update to the answer provided to QON 49 from Additional Estimates 2009-10 – Irregular Maritime Arrivals from 1 July 2008 to 18 May 2010
5	DIAC	Update to the answer provided to QON 59 from Additional Estimates 2009-10 – Charter Aircrafts
6	DIAC	Illegal Workers Located by Industry – 1 July 2009 to 31 March 2010

APPENDIX 4

CHANGES TO THE OUTCOME/PROGRAM STRUCTURE FOR THE ATTORNEY-GENERAL'S DEPARTMENT

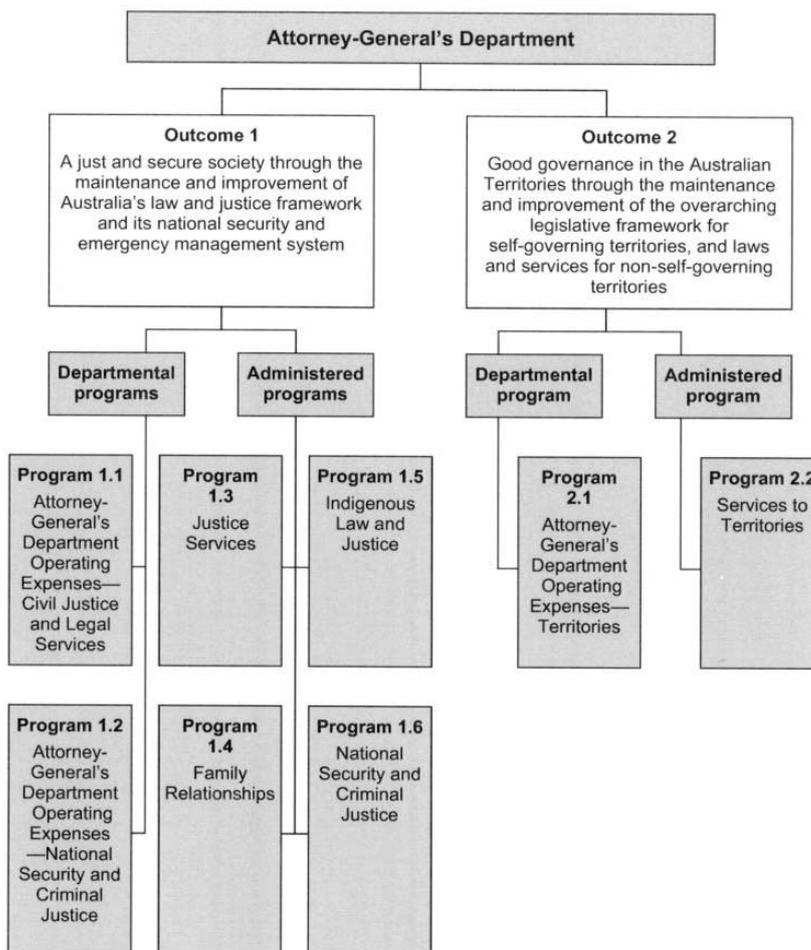
(Source: provided by the Attorney-General's Department, 19 May 2010)

Attorney-General's Department

Changes in agency outcomes and programs

For 2010–11, the Department has amalgamated the previous Outcomes 1 and 2 into one outcome—Outcome 1—and the previous Outcome 3 is now Outcome 2. In addition, the Department's program structure has been revised to more clearly separate departmental and administered programs. The Department's new outcome and program structure is set below.

Structure of Attorney-General's Department's outcomes and programs



Outcome 1: A just and secure society through the maintenance and improvement of Australia's law and justice framework and its national security and emergency management system

Program 1.1: Attorney-General's Department Operating Expenses—Civil Justice and Legal Services

Maps to 2009-10 programs:

All programs in Outcome 1 – departmental funding only

Program 1.2: Attorney-General's Department Operating Expenses—National Security and Criminal Justice

Maps to 2009-10 programs:

All programs in Outcome 2 – departmental funding only

Program 1.3: Justice Services

Maps to 2009-10 programs:

1.1.1 Access to justice:

Payments for Services Under Family law Act 1975 and the Child Support Scheme Legislation

Payments for membership to International Bodies

High Court Justices (Long Leave Payments) Act (special approp)

Payments for grants to Australian Organisations - outcome 1

1.1.2 Social Inclusion

Payments for the provision of legal aid - Legal Aid commissions

Payments for the provision of community legal services

Financial Assistance towards legal costs and related expenses

National consultation into human rights and responsibilities

1.2.1 Civil Law

Parliamentary Entitlements Act 1990

Personal Property Securities - public awareness campaign

Law Officers Act 1964

1.2.3 Legislative drafting and publishing

Publications of Acts and select legislative instruments

Program 1.4: Family Relationships

Maps to 2009-10 programs:

1.1.1 Access to justice:

Family Relationships Services Program

Program 1.5: Indigenous Law and Justice

Maps to 2009-10 programs:

1.1.2 Social Inclusion

Indigenous Legal Aid and Policy Reform Program (*Payments for the Provision of legal aid for indigenous Australians and Payments for the Provision of law and justice advocacy services for Indigenous Australians*)

Payments for the provision of preventative, diversion, rehabilitation and restorative justice services for Indigenous Australians

Payments for the provision of family violence prevention legal services for Indigenous Australians

Payments for Indigenous interpreter services in the Northern Territory

NTER Law and Order measures

Native Title System

Program 1.6: National Security and Criminal Justice

Maps to 2009-10 programs:

2.1.2 Emergency management

Emergency Management Australia - Volunteers support fund

2.1.3 National security capability development

National Counter-terrorism committee - special fund and operating expenses

Counter-terrorism exercises

National Security public information campaign

National Crisis Coordination Capability (parliament House)

Disaster Resilience Australia - Early Warning System

Disaster Resilience Australia Package

National Aerial Firefighting

2.2.1 Criminal justice

National Community Crime Prevention program

Payments for membership of international bodies – FATF

Payments for grants to Australian Organisations Crime Stoppers

Schools Security Program

Safer Suburbs

National Handgun Buyback Act 2003 (special approp)

National Firearms Programs Implementation Act 1996

2.2.2 International crime cooperation

Australia's contribution to the International Criminal Court

Anti-money laundering and counter-terrorism financing - information and public awareness campaign

Pacific Police Development

Outcome 2: Good governance in the Australian Territories through the maintenance and improvement of the overarching legislative framework for self-governing territories, and laws and services for non-self-governing territories

Maps to 2009-10 Outcome 3

APPENDIX 5

TABLED DOCUMENT NO. 7 – ADVICE FROM THE CLERK OF THE SENATE REGARDING QUESTIONS ABOUT PROVISIONS OF BILLS AT ESTIMATES HEARINGS

This is the advice provided by the former Clerk.

ESTIMATES HEARINGS – QUESTIONS ABOUT PROVISIONS OF BILLS

It might be useful to set down the substance of the advice I gave yesterday on whether questions could be asked at estimates hearings about the provisions of a bill which is before a Senate committee.

Under a resolution passed by the Senate in 1999 (adopting a report of the Procedure Committee), the Senate delineated the scope of questions at estimates hearings as “any questions going to the operations or financial positions of departments and agencies”. While this is a very wide ambit, I do not think that it extends to questions about provisions of bills, for example, questions about the meaning, purpose, intention or effect of clauses in bills. Questions about departmental operations connected with bills would be relevant, for example, whether a department engaged consultants to assist in the preparation of a bill, at what cost it was prepared, and how it is to be administered.

Where a bill is before a Senate committee, this means that the Senate has given that committee the task of conducting an inquiry specifically into that bill. This indicates an intention that any inquiry into the provisions of the bill be conducted at hearings and meetings of the committee specifically designated for that inquiry, and not pursued at estimates hearings which interested senators might not be able to attend and for which there is usually no notification of such specific subject matters of inquiries.

Please let me know if I can be of any further assistance.

Rosemary Laing
Clerk of the Senate

