



The Parliament of the Commonwealth of Australia

**SENATE LEGAL AND CONSTITUTIONAL
LEGISLATION COMMITTEE**

BUDGET ESTIMATES 2000-2001

REPORT

June 2000

© Commonwealth of Australia 2000

ISSN 1326-9283

This document was produced from camera-ready copy prepared by the Senate Legal and Constitutional Legislation Committee, and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

MEMBERS OF THE LEGISLATION COMMITTEE

Members

Senator M Payne, New South Wales, *Chair*

Senator J McKiernan, Western Australia, *Deputy Chair*

Senator H Coonan, New South Wales

Senator B Cooney, Victoria

Senator B Mason, Queensland

Senator B Greig, Western Australia

Participating Members

Senator A Bartlett, Queensland

Senator the Hon. N Bolkus, South Australia

Senator K Carr, Victoria

Senator T Crossin, Northern Territory

Senator B Harradine, Tasmania

Senator J Ludwig, Queensland

Senator K Lundy, Australian Capital Territory

Senator S Murphy, Tasmania

Senator the Hon. C Schacht, South Australia

Secretariat

Dr Pauline Moore, Secretary

Mr Paul Harris, Research Officer

The Senate

Parliament House

CANBERRA ACT 2600

Tel: (02) 62773560

Fax: (02) 62775794

TABLE OF CONTENTS

	Page
Members of the Legislation Committee	iii
Preface	vii
Chapter 1	1
Attorney-General's Portfolio	
Chapter 2	5
Immigration and Multicultural Affairs Portfolio	
Appendix 1	7
Index of <i>Hansards</i> for Attorney-General's portfolio, 29 – 30 May 2000	
Appendix 2	8
Index of <i>Hansards</i> for Immigration and Multicultural Affairs portfolio, 30 – 31 May 2000	

PREFACE

BACKGROUND

On 30 November 1999, the Senate referred to the Committee the examination of estimates of proposed expenditure for the financial year 2000-2001. The Committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Multicultural Affairs portfolio, whose portfolio budget statements were agreed to by the Senate on 9 May 2000.

The Committee is required to report on its consideration of the estimates on or before 22 June 2000.

Estimates hearings

The Committee met in public session on 29 - 31 May 2000.

Record of proceedings

The Hansard of the proceedings records the examination of estimates and may be accessed through the Internet at:

<http://www.aph.gov.au/hansard>

The Hansard is also available on the Parliamentary database.

An index of the Hansard for each portfolio appears at Appendix 1 and Appendix 2.

Minister

The Committee heard evidence from the Minister representing the Attorney-General and the Minister representing the Minister for Immigration and Multicultural Affairs, Senator the Hon. Amanda Vanstone, Minister for Justice and Customs. Senator the Hon. John Herron, Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Hon. Nick Minchin, Minister for Industry, Science and Resources, and Senator the Hon. Jocelyn Newman, Minister for Family and Community Services, also represented the Minister for Immigration and Multicultural Affairs. Officers from both departments and associated agencies also appeared, and the Committee thanks them and the Ministers for their assistance.

Questions on notice and Supplementary Budget Estimates hearings

The Committee notes that the Standing Orders require the Committee to set dates for the lodgement of any written answers or additional information and for supplementary hearings. The Committee resolved that written answers and additional information were to be submitted by close of business on Friday, 21 July 2000.

The Committee further notes that supplementary hearings have been scheduled for 29 November – 1 December 2000.

Members of the Committee and other Senators should note that, under the Standing Orders, notice of matters to be raised at the supplementary hearings must be given not less than three working days before the hearing date. Therefore, notice must be lodged with the Secretariat by close of business on Thursday, 24 November 2000.

Report

In this report, the Committee draws the attention of the Senate to issues and concerns raised during the three days of hearings. Amongst others, these include the significant changes involved in the merger of the AAT, SSAT, MRT and RRT into a new Administrative Review Tribunal, and the establishment of the Federal Magistrates Service.

As in previous estimates hearings, members of the Committee questioned officers about the consequences of outsourcing and contracting out. Issues of security and accountability were also raised.

The Committee also wishes to express its concern at the delays experienced in the production of Hansard transcripts from the Budget Estimates hearings. While the Committee had been advised of potential delays, these were much longer than had been expected. The record of proceedings for Wednesday 31 May was not available until Friday 9 June 2000. The Committee expresses its concern at what it considers to be an unsatisfactory service and trusts that it will not be repeated. The cause of the delay on this occasion should be investigated.

Senator Marise Payne

Chair

20 June 2000

CHAPTER 1

ATTORNEY-GENERAL'S PORTFOLIO

Introduction

1.1 The Committee questioned the Minister for Justice and Customs, Senator the Hon. Amanda Vanstone, Minister representing the Attorney-General, and officers of the Department and associated agencies on outcomes and outputs within the portfolio.

1.2 In the following sections of this report, the Committee records several areas of interest and concern raised during its consideration of the estimates of the Attorney-General's portfolio for the financial year 2000-2001.

Department

1.3 The Committee welcomed Mr Ian Govey, General Manager, Legal Services, and Mr Ian Carnell, General Manager, Justice Services, to the estimates hearings in their new roles with the department.

1.4 The Committee questioned officers of the department on all areas of activity and expenditure. The following paragraphs deal with broad issues that were discussed in some detail.

1.5 There was detailed examination of the progress of the establishment of a combined Administrative Review Tribunal (see para. 1.13).

1.6 The Committee questioned the department extensively on the operation and costs of native title litigation, and developments in that field.

1.7 The establishment of the Federal Magistrates Service, which affects many sections of the portfolio, was also discussed. The Committee was told that the service was to begin operation in July, with the Chief Federal Magistrate and the Chief Executive Officer having been appointed. Questions were asked relating to the arrangements still to be made and the implications of the establishment of a magistrates service on other areas and bodies.

1.8 Officers from both the department and affected agencies outlined the impact of the High Court's *Re Wakim* decision on the portfolio.

1.9 The Committee questioned officers about the new Legal Aid agreements, which the department aims to have finalised with the States and Territories by 30 June 2000.

1.10 The question of the changeover from an "X" classification to the proposed "NVE" classification was also discussed. This had been the subject of a separate inquiry by the Committee, into the Classification (Publications, Films and Computer Games) Amendment Bill (No.2) 1999. The Attorney-General issued a press statement on the day of the hearing (30 May 2000) stating that the old "X" category was to be retained, but with tighter limitations on content.

1.11 The Committee sought information on the status of the agreement between the Federal Government and the Northern Territory Government in regards to mandatory sentencing and diversionary programs for juvenile offenders. This had also been the subject of a separate inquiry, by the Senate Legal and Constitutional References Committee, which handed down its report on 13 March 2000. Members of the Committee expressed their concern at the lack of information about the negotiations available to the Committee and the apparent lack of consultation entered into by either government.

1.12 The Australian Protective Service was also questioned about its role in consular and diplomatic protection and its ongoing negotiations with workers and industrial action.

Administrative Appeals Tribunal

1.13 Members of the Committee questioned officers of the AAT and officers of the department about the move to a new Administrative Review Tribunal, incorporating the Administrative Appeals Tribunal along with the Social Security Appeals Tribunal, Migration Review Tribunal and Refugee Review Tribunal. The Committee examined the proposed changes in service delivery and financial management, and was told that the new merged tribunal was to begin operation on 1 February 2001.

Federal Court of Australia

1.14 The Committee questioned officers from the Federal Court about the changes to the court system taking place with the establishment of the Federal Magistrates Service. Officers were also questioned about the significance of changes to the court's jurisdiction stemming from the High Court's *Re Wakim* decision. The Committee was told that the decision had resulted in major changes to the kinds of cases before the Federal Court, with a loss of corporations law matters and an increase in human rights litigation.

Human Rights and Equal Opportunity Commission

1.15 The Committee welcomed Mr Graeme Innes, Deputy Commissioner, Disability Discrimination, to his first estimates hearing.

1.16 The Committee discussed in detail with officers of HREOC the changes occurring with the separation of the office of the Privacy Commissioner, to take place by 1 July 2000. The Privacy Commissioner was questioned about the increased resourcing and increased responsibilities resulting from the move, and also about the new private sector scheme which is under development. The Committee raised significant issues in regard to the enforcement of privacy standards in the private sector and the information campaign being developed by the Commissioner.

1.17 The Committee also questioned HREOC about the issues before the UN Human Rights Committees, including the mandatory detention of unauthorised arrivals to Australia, and mandatory sentencing.

Office of Film and Literature Classification

1.18 The Committee welcomed Mr Des Clark as the new Director of the OFLC.

1.19 Members of the Committee questioned officers of the OFLC about the changes in the classification scheme proposed with the move from the “X” rating to a new “NVE” rating (see para. 1.10). The issue of the viewing of material classified by “X” and “NVE” by Members in the Parliament House precinct was also raised. The Committee was advised that such a viewing had been referred to the police for investigation.

Office of the Director of Public Prosecution

1.20 The Committee welcomed Mr Damian Bugg to his first estimates hearings as the new Director.

Australian Customs Service

1.21 Officers of the ACS were questioned extensively by the Committee about changes to their systems made necessary by the implementation of the GST, the collection of tax and the outsourcing of IT services.

1.22 The Committee sought information about arrangements being made for the Olympics, including arrangements for visiting dignitaries.

1.23 The Committee also questioned Rear Admiral Shalders about the involvement and jurisdiction of Coastwatch in the management of unauthorised arrivals.

Australian Federal Police

1.24 The Committee questioned officers of the AFP about United Nations recognition for service in East Timor, computer crime and drug enforcement. Members of the Committee discussed with the AFP ways to measure spending and performance under the new streamlined outcome/output structure.

CHAPTER 2

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

Introduction

2.1 Members of the Committee questioned the Minister representing the Minister for Immigration and Multicultural Affairs, Senator the Hon. Amanda Vanstone, and officers of the department and associated agencies on outcomes and outputs within the portfolio.

2.2 In the following sections of this report, the Committee records matters of interest and concerns raised during its consideration of the budget estimates of the Immigration and Multicultural Affairs portfolio for the financial year 2000-2001.

Department

2.3 The Committee questioned officers of the department on all areas of activity and expenditure. The following paragraphs deal with broad issues that were discussed in some detail.

2.4 The Committee examined the new visa class for sponsored migration, including the health cover fee for sponsored parents and the proposal for optional security bonds. The Committee questioned the department about the review of the Regional Sponsored Migration Scheme.

2.5 The Committee also discussed the review of working holiday-makers and the plans for employer penalties.

2.6 There was extensive questioning of the department on the areas of temporary protection visas and detention facilities for unauthorised arrivals. Questions were asked about health and counselling services for detainees in the light of reports of threats of self-harm. The Committee also requested details of the refurbishment of the Villawood detention centre and the plans for new facilities in Darwin and Brisbane.

Migration Review Tribunal

2.7 The Committee acknowledged the receipt of the combined annual report of the MRT and old Immigration Review Tribunal, after the concern that had been expressed at previous estimates hearings about delays and a lack of accountability. The Committee also noted that the MRT would soon be changing again with the establishment of a combined Administrative Review Tribunal, comprising the MRT, RRT, AAT and SSAT. These changes were discussed in detail.

Refugee Review Tribunal

2.8 The Committee examined the impact of the proposed move to the ART on the Refugee Review Tribunal, while also questioning officers about the impact on the tribunal of the recent influx of large numbers of boat people.

Migration Agents Registration Authority (MARA)

2.9 The Committee welcomed officers of the MARA to estimates hearings for the first time. (On 23 March 1998 the Minister appointed the Migration Institute of Australia as the Migration Agents Registration Authority to administer the relevant provisions of the Migration Act 1958 and to undertake the role of regulator of the migration advice industry).

2.10 The Committee questioned the MARA about their role and operations, based on their annual report for 1999 (to June 1999).

2.11 The Committee also discussed with the MARA the matter of advertisements containing possible breaches of the Migration Act or the MARA's code of conduct. The Committee notes that this matter was also raised with the MARA in a hearing on 30 May 2000 as part of the Joint Standing Committee on Migration's inquiry into the Migration Amendment Bill (No.2) 2000. Members of the Committee expressed concern that the MARA claimed it was not aware of the specific advertisements dealing with class actions, and that the department did not seem to routinely notify the MARA of advertisements which may be in breach of the code. When questioned, officers of the department stated that the MARA had been informed of the advertisements. In correspondence to the Committee dated 6 June 2000, the Chairman of the MARA, Mr Ray Brown, attached a copy of a letter of 6 June sent to the Secretary of the Joint Standing Committee on Migration. This letter admitted that the advertisements had in fact been referred to them by the department. Mr Brown apologised to the Committee for any "misunderstanding" as to whether the MARA had this information.

APPENDIX 1

INDEX OF HANSARD FOR ATTORNEY-GENERAL'S PORTFOLIO

Agency/Output Group	Page
Administrative Appeals Tribunal	7
Australian Transaction Reports and Analysis Centre	17
Australian Law Reform Commission	18
Federal Court of Australia	20
Human Rights and Equal Opportunity Commission	24
Family Court of Australia	50
National Crime Authority	57
Office of Film and Literature Classification	59
Office of the Director of Public Prosecutions	77
Australian Government Solicitor	78
Australian Institute of Criminology/Criminology Research Council	83
Australian Customs Service	85
Office of Parliamentary Counsel	125
Australian Federal Police	127
Department Output 1.3 – Native Title	154
Department Output 1.1	165
Department Output 1.2	175
Department Output 1.1	186
Department – Mandatory Sentencing	191
Department Output 2.3 – APS	211

APPENDIX 2

INDEX OF HANSARD FOR IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

Agency/Output Group	Page
Department – General questions	220
Migration Review Tribunal	230
Department Output 1.1 – Non humanitarian entry and stay	237
Department Output 1.2 – Refugee and humanitarian entry and stay	254
Refugee Review Tribunal	266
Migration Agents Registration Authority	269
Department Output 1.2 – Refugee and humanitarian entry and stay	280
Department Output 1.3 – Enforcement of immigration law	286
Department Output 2.1 – Settlement services	297
Department Output 2.3 – Australian citizenship	298