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**LEGAL AND CONSTITUTIONAL
LEGISLATION COMMITTEE**

Budget Estimates 2001 – 2002 Report

June 2001

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Dr Pauline Moore, Secretary

Mr Noel Gregory, Principal Research Officer

Ms Saxon Patience, Senior Research Officer

Ms Sonia Hailes, Research Officer

Suite S1.108

Parliament House

CANBERRA ACT 2600

Tel: (02) 6277 3560

Fax: (02) 6277 5794

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PREFACE

On 22 May 2001, the Senate referred to the Committee the examination of estimates of proposed expenditure for the financial year 2001-2002. The Committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Multicultural Affairs portfolio.

The Committee is required to report on its consideration of the budget estimates on or before 20 June 2001.

Estimates hearings

The Committee met in public session on 28 – 30 May 2001.

Record of proceedings

The Hansard of the proceedings records the examination of budget 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 Senator the Hon. Chris Ellison, Minister for Justice and Customs and Minister representing the Attorney-General, and Senator the Hon. Eric Abetz 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.

Responses to Questions on notice

The Committee notes that the Standing Orders require the Committee to set dates for the lodgement of any written answers or additional information. The Committee resolved that written answers and additional information were to be submitted by close of business on Monday, 9 July 2001.

Report

In this report, the Committee draws the attention of the Senate to issues and concerns raised during the three days of hearings. The Committee notes that there has been a dramatic improvement in the timeliness of the Attorney-General's Department responses to questions on notice. The Committee appreciates the effort of the Department in this regard. Issues raised include the delayed commencement date of the Administrative Review Tribunal, the costs of the Public Affairs Unit in the Attorney-General's Department, appointments to the Human Rights and Equal Opportunity Commission, and the Federal Magistrates Service.

As in previous estimates hearings, members of the Committee questioned officers from the Department of Immigration and Multicultural Affairs about disturbances at detention centres

by detainees, the management of detention centres and issues relating to Australian citizenship.

Senator Marise Payne

Chair

CHAPTER 1

ATTORNEY-GENERAL'S PORTFOLIO

Introduction

1.1 The Committee questioned Senator the Hon. Chris Ellison, Minister for Justice and Customs, Minister representing the Attorney-General, and officers of the Department and associated agencies on outcomes and outputs within the portfolio on the budget estimates for the financial year 2001-2002.

1.2 In the following sections of this report, the Committee records several areas of interest and concern raised during these hearings.

Department – General Questions and Issues

1.3 The Committee acknowledged and expressed gratitude to the officers of the Department and the Minister for the 'dramatic' improvement in providing responses to questions on notice to the Committee from the February Additional Estimates. The earlier response times assisted the Committee, particularly in its preparation for the Budget Estimates.

1.4 Members of the Committee sought information on general issues. These included:

- the deferrals for output expenses (outputs 1.1, 2.1, 2.2) that are expected to be incurred in 2001-02 instead of 2000-01;^{1&2}
- the costs of the Public Affairs Unit;³
- the size of contracts in the Department;⁴
- the amount of funding paid to legal aid commissions in each state;⁵
- an update of the proposed community legal centres and reviews;⁶
- the staffing arrangements of the Human Rights Branch;⁷

1 Portfolio Budget Statements 2001-02, p.65

2 *Transcript of evidence (Proof)*, 28 May 2001, p.113

3 *Transcript of evidence (Proof)*, 29 May 2001, p.126

4 *Transcript of evidence (Proof)*, 29 May 2001, p.132

5 *Transcript of evidence (Proof)*, 29 May 2001, p.134

6 *Transcript of evidence (Proof)*, 29 May 2001, p.144

- the details of consultations in assessing needs for the ‘Law by Telecommunications’ initiative;⁸
- the details of funding relating to the establishment of community based juvenile diversionary programs;⁹
- the details of the decision not to employ Australian Protective Service in Immigration and Multicultural Affairs detention centres;¹⁰
- an update of the events of the Port Hedland incident by Australian Protective Service;¹¹
- the details of \$5 million for the implementation of the National Crime Prevention Program;¹² and,
- an update of the Classification Guidelines Review¹³

Australian Transaction Reports and Analysis Centre

1.5 The Committee sought information on the level of intelligence provided by AUSTRAC to both revenue and law enforcement agencies. The Committee heard that in the first six months of this financial year, AUSTRAC has assisted in over 300 ‘significant’ cases of law enforcement.¹⁴

1.6 The Committee noted that the regulation review of the FTR Act was completed in June 2001. This review recommends a number of changes to the legislation covering AUSTRAC. These recommendations are currently being considered by the Department and AUSTRAC.

Administrative Appeals Tribunal

1.7 The Committee sought an explanation on the efficiencies that would deliver the savings of half a million dollars, as stated in the 2001-02 appropriations.

The decision to impose savings on the AAT as well as the three other tribunals that were to form the administrative review tribunal is a fairly recent decision. Our understanding is that those savings and efficiencies are to be gained through

7 *Transcript of evidence (Proof)*, 29 May 2001, p.147

8 *Transcript of evidence (Proof)*, 29 May 2001, p.159

9 *Transcript of evidence (Proof)*, 29 May 2001, p.166

10 *Transcript of evidence (Proof)*, 29 May 2001, p.171

11 *Transcript of evidence (Proof)*, 29 May 2001, p.184

12 *Transcript of evidence (Proof)*, 29 May 2001, p.174

13 *Transcript of evidence (Proof)*, 29 May 2001, p.182

14 *Transcript of evidence (Proof)*, 28 May 2001, p.4

cooperative measures among the four tribunals: for example, co-location of premises and some sharing of administrative resources or information technology infrastructure. Our understanding is that the Attorney-General's Department will be establishing a working party comprising the four tribunals and the relevant agencies, along with the DOFA, to examine how the savings can be achieved.¹⁵

1.8 The Committee noted that the Portfolio Budget Statements for the Immigration and Multicultural Affairs Portfolio refers to the establishment of the Administrative Review Tribunal.

The establishment of the Administrative Review Tribunal (ART) has been delayed beyond the planned 1 July 2001 commencement date due to the Senate not passing the necessary enabling legislation. The Attorney-General is pursuing discussions with interested parties with a view to securing passage of the legislation...¹⁶

1.9 The Committee heard that preliminary discussions are taking place with the Law Council and that there are plans to have further discussions with other interested groups in the welfare sector.

1.10 In response to concerns raised by members of the Committee that forward estimates for 2004-05 for the Administrative Appeals Tribunal are not included in the portfolio budget statements 2001-02, and concerns regarding the proposed funding arrangements for the Administrative Review Tribunal, the Committee heard that:

There is no legal authority to put the funding to the ART at this time because the legislation is yet to be passed, so therefore the funds have been appropriated or parked, if you like, within the Department. In the event that the legislation is not passed, then the AAT continues. Those funds will then be allocated to the AAT, as Ms Ransome said, in accordance with normal processes. It is an administrative process. Because the ART does not have any legal status at this stage, as the legislation is yet to be passed, funds are set aside as part of the forward estimates process. They are clearly identified there as being funds held, if you like, by the department for the ART. As Ms Ransome indicated, if the legislation is not passed, then the funding for the AAT would continue in the normal manner.¹⁷

Australian Law Reform Commission

1.11 The Committee heard that the ALRC has three current terms of reference and these are: a review of the Commonwealth Judiciary Act due for reporting by 30 June 2001; a review of the civil and administrative penalties in the federal regulatory system due for reporting in March 2002; and, a joint reference with the Australian Health Ethics Committee of the NHMRC due for reporting by 30 June 2002.

1.12 The Committee heard that the Pro Bono Taskforce is due to report to the Attorney-General by 30 June 2001. While it was too early for the ALRC to comment on the

15 *Transcript of evidence (Proof)*, 28 May 2001, p.16

16 2001-02, p.5

17 *Transcript of evidence (Proof)*, 28 May 2001, p.24

recommendations made by the Taskforce, the Committee were advised that the objective for the new coordination body is to:

.....essentially to provide a coordinating role for national pro bono activity to tender out some research projects-for example, the ascertainment of client needs in the pro bono area, to provide a billboard and web site for information sharing.¹⁸

National Native Title Tribunal

1.13 Members of the Committee sought advice on whether the National Native Title Tribunal was consulted on the amount of additional funding it will receive - \$36 million over four years.¹⁹ The National Native Title Tribunal told the Committee that it had been involved in this process and that this additional funding is derived from applying a direct formula that is based on projections of activities.

Federal Magistrates Service

1.14 The Committee heard that of the 16 magistrates to be appointed, there is still one remaining appointment to be made in Melbourne. It is expected that this appointment will be made soon.

1.15 Members of the Committee questioned the Federal Magistrates Service on when it would be possible to provide a breakdown of gross figures on the costs of service provided by the Family Court and the Federal Court to the Federal Magistrates Service. Officers of the Federal Magistrates Service agreed to provide the Committee with this information, or at least an indication of when this information will be available.

Office of Film and Literature Classification

1.16 Members of the Committee sought an explanation for the reason that reporting on all classifications except for the "X" classification, were included in the Annual Report 1999-2000. A response will be provided on notice.

Office of the Privacy Commissioner

1.17 The Committee heard that the Office of the Privacy Commissioner will implement the new privacy legislation in accordance with the strategic planning process that has been designed for it. The Committee was also told that it was difficult to anticipate estimates on the cost of the Senate amendments to the legislation and that these figures will be clearer once the legislation comes into effect.

18 *Transcript of evidence (Proof)*, 28 May 2001, p.27

19 *Transcript of evidence (Proof)*, 28 May 2001, p.30

Federal Court of Australia

1.18 The Committee heard that the increase in funding of \$5.5M to the Federal Court of Australia is almost exclusively for additional Native Title work.

1.19 The Committee also heard that a Native Title Unit will be set up in Darwin. The functions of this unit would be:

.....supporting the work of the judges in managing the native title cases. That supportive work is, obviously, a lot of the registry related work in terms of filing and accepting documents, but a large proportion of the work, particularly of the registrar, will be actually dealing with aspects of matters on behalf of the judge-clarifying party issues and clarifying issues in relation to overlapping claims²⁰

National Crime Authority

1.20 The Committee sought information on the reason for the National Crime Authority receiving additional funding. Officers of the National Crime Authority advised they would be receiving an additional \$5 million - to investigate complex national organised crime. These funds would allow the National Crime Authority to employ specialised people and to acquire special infrastructure to allow them to be more pro-active in this area of crime.

Human Rights and Equal Opportunity Commission

1.21 The Committee welcomed Dr Sev Ozdowski, the new Human Rights Commissioner to his first appearance before the Committee.

1.22 Members of the Committee sought an indication of when the positions of Sex Discrimination Commissioner (currently the President is acting in this role) and Disability Discrimination Commissioner (currently the Human Rights Commissioner is acting in this role) would be appointed. The Committee heard that there is currently a recruitment process to fill the position of Sex Discrimination Commissioner, and that the acting arrangements for the position of Disability Discrimination Commissioner would continue.

Director of Public Prosecutions

1.23 Members of the Committee questioned Officers of the Director of Public Prosecutions on the reason that the process of deciding not to prosecute former Senator Colson 'had taken longer than anticipated'.²¹ The delay was due to the unavailability of one of the medical experts (to examine former Senator Colston and the available material on him, and then submit their report). The first medical report was received on 13 December 2000, and the second, 9 February 2001.

20 *Transcript of evidence (Proof)*, 28 May 2001, p.56

21 *Transcript of evidence (Proof)*, 28 May 2001, p.70

High Court of Australia

1.24 The Committee heard that the Centenary of the High Court will take place in 2003. The Chief Justice had recently received a response from the Prime Minister to his request that funding be available for celebrations to mark this occasion. The Prime Minister supported the principle of celebrating the centenary of the Court and indicated he would refer the request to the Attorney-General.

Australian Institute of Criminology and Criminology Research Council

1.25 Members of the Committee sought an explanation on the distinction of roles between the Australian Institute of Criminology, and the Criminology Research Council. The Director explained:

The Australian Institute of Criminology is a research agency and the Criminology Research Council is a body that under the same piece of legislation represents the Commonwealth and the states and sets priorities for the funding of research. As such, we as the Australian Institute of Criminology do work that is within our work program and the Criminology Research Council sets its priorities and then puts these out to tender or also seeks submissions from researchers to undertake pieces of work that it thinks are important.²²

Australian Government Solicitor

1.26 Members of the Committee sought advice on the current relationship of the Australian Government Solicitor and the Attorney-General's Department. The Committee was told that the two principal objectives of the Australian Government Solicitor are: financial return to the Commonwealth and to ensure the availability of high quality legal services in support of Commonwealth clients, including the first law officer (the Attorney-General).

Australian Customs Service

1.27 Members of the Committee questioned officers of the Australian Customs Service in regard to the increase to the Passenger Movement Charge by 27 per cent. Officers of the Australian Customs Service advised the Committee that the increase represented the assessed costs for Customs and AQIS to handle foot and mouth disease at airports.

Australian Federal Police

1.28 The Committee congratulated Mr Mick Keelty on his appointment as Commissioner.

22 *Transcript of evidence (Proof)*, 28 May 2001, p.78

1.29 The Committee noted that \$110 million had been allocated to the Australian Federal Police in budget measures to continue the reform program. Officers of the Australian Federal Police advised the Committee that the priorities of the reform program were: the recruitment of staff, the learning and development strategy, funding of the certified agreement, equipment upgrades and some mobility costs.

Australian Security Intelligence Organisation

1.30 The Committee heard that the Australian Security Intelligence Organisation had received additional funding for the protection purposes of CHOGM, which will take place in October 2001.

Office of the Parliamentary Counsel

1.31 The Committee congratulated Ms Hilary Penfold on her appointment to the Queens Counsel.

Insolvency and Trustee Service Australia

1.32 Members of the Committee sought information on the status of the Bankruptcy Legislation Amendment Bill 2001. The Committee was advised that this Bill is in an advanced stage of drafting.

Family Court of Australia

1.33 The Committee sought information on the workload shift from the Family Court to the Federal Magistrates Service. The Family Court reported that for the period 2000 to 31 March 2001:

- 36,006 divorce applications filed, of which 52.3 percent were filed in the Federal Magistrates Service
- 17,463 form 7s (final orders), of which 15.6 per cent were filed in the Federal Magistrates Service
- 17,259 form 8s (interim orders), of which 14.4 per cent were filed in the Federal Magistrates Service
- 4,621 matters of a general nature, of which 16 per cent were filed in the Federal Magistrates' Service.

CHAPTER 2

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

Introduction

2.1 Members of the Committee questioned Senator the Hon. Chris Ellison, Minister for Justice and Customs and the Minister representing the Minister for Immigration and Multicultural Affairs, 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 2001-2002.

Department – Issues and Concerns

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

- The number of student visas offered during this financial year and the number of breaches of the student visa class;¹
- The proposed increase in the Department's representation in Brasilia;²
- The rate of applications made and approved within the new sponsored visa category;³
- The processing times for protection visas onshore by unauthorised arrivals and offshore;⁴
- The arrest of 22 detainees at Port Hedland detention centre on 26 May 2001;⁵
- The performance of Australian Correctional Management (ACM) in its contract with the Department;⁶
- The disturbances that have been occurring in detention centres and the number of convictions as a result of these disturbances, together with explanations of the use

1 *Transcript of evidence (Proof)*, 29 May 2001, pp. 199-209

2 *Transcript of evidence (Proof)*, 29 May 2001, pp. 204, 217

3 *Transcript of evidence (Proof)*, 29 May 2001, pp. 219-227

4 *Transcript of evidence (Proof)*, 29 May 2001, pp. 228-237

5 *Transcript of evidence (Proof)*, 30 May 2001, pp. 250-253

6 *Transcript of evidence (Proof)*, 30 May 2001, pp. 253-262

of agents such as tear gas and capsicum spray to control detainees in detention centres;⁷

- The proposed trial to release women and children from detention in Woomera to be accommodated in a small cluster of houses in the Woomera township;⁸
- The rate and country of origin of ‘overstayers’;⁹
- The safe-haven program;¹⁰ and
- Consultancies and advertising in response to recommendation 17 of the Australian Citizenship Council.¹¹

2.4 Members of the Committee sought a response from officers of the Department regarding a weekend newspaper article¹² that described the initiative of referring some migration matters from the High Court of Australia to the Federal Magistrates Service. The Secretary of the Department explained:

...the Minister has had a discussion with the Attorney-General and he has asked us to provide some advice to him on this matter. We are really right at the beginning of this issue from the point of view of this portfolio. We have not provided advice to the Minister yet, but we will be consulting the Attorney-General’s portfolio and within our own portfolio on this issue....¹³

2.5 The Committee expressed interest in this proposal, particularly operational aspects including the potential workload that could shift from the High Court to the Federal Magistrates Service.

Migration Review Tribunal

2.6 The Committee welcomed Mr Steve Karas in his first appearance before the Committee as Acting Principal Member¹⁴ of the Migration Review Tribunal (MRT).

2.7 The MRT stated that it expected to achieve an approximate increase of 60 per cent in the number of case finalisations this financial year, bringing the total number of finalised cases close to 6,500 compared with 4,144 cases finalised last financial year.¹⁵ The MRT

7 *Transcript of evidence (Proof)*, 30 May 2001, pp. 273-280

8 *Transcript of evidence (Proof)*, 30 May 2001, pp. 280-282

9 *Transcript of evidence (Proof)*, 30 May 2001, pp. 285-290, 295-298

10 *Transcript of evidence (Proof)*, 30 May 2001, pp. 299-302

11 *Transcript of evidence (Proof)*, 30 May 2001, pp. 308-320

12 ‘*Help for High Court*’, *The Weekend Australian*, 26-27 May 2001

13 *Transcript of evidence (Proof)*, 29 May 2001, p.238

14 On 13 June 2001, the Minister for Immigration and Multicultural Affairs announced the appointment of Mr Steve Karas OAM as Principal Member of both the Migration Review Tribunal and the Refugee Review Tribunal

15 *Transcript of evidence (Proof)*, 29 May 2001, p. 191

stated that this was due, in part, to the increase in the number of staff and members, staff becoming more familiar with the case load, and ‘a range of initiatives to increase the efficiency of the organisation’.¹⁶

2.8 The MRT noted that whilst the number of cases finalised has increased, the number of new applications has also increased with changes occurring in the application rates in different areas:

... There has been a 46 per cent increase in the number of student visas – refusal and cancellation – which in part reflects the growth in the size of the overseas student program. It has also occurred because of an apparent increased activity in this area on the part of the department. There has been an eight per cent increase in the number of partner visas, a six per cent growth in the number of business visa related cases, a 37 per cent reduction in the number of skilled Australian link cases as the number of these cases at overseas posts is reduced and a 19 per cent reduction in the number of visitor visa cases, in part due to the increased use of the ‘no further stay’ conditions by delegates of the minister and as a result of the growing use of the sponsored visitor visa at overseas posts.¹⁷

2.9 Officers from the MRT were questioned on how they might achieve a saving of approximately \$125,000. The MRT stated that these savings were likely to occur through working more cooperatively with other tribunals:

We operate our major registries, which we operate ourselves, in Canberra, Sydney and Melbourne. We have a memorandum of understanding with the AAT to provide accommodation and support to the tribunal for our members in Adelaide, Perth and Brisbane. Obviously there were savings in that at the time we set up the MRT. That is why we went that way. What we will need to look at with the other tribunals is what is achievable in the other states—in the three states where we operate our prime registries.¹⁸

2.10 Officers from the MRT were questioned on how the proposed Administrative Review Tribunal has affected the work of the MRT and its appointment of members. The MRT stated that whilst the appointment of all members presently on the Tribunal is due to expire on 30 June 2001, a process of reappointment is currently underway and despite the distraction, ‘the tribunal staff and members did remain focussed in relation to their objective’.¹⁹

Migration Agents Registration Authority

2.11 The Committee welcomed Ms Laurette Chao, Chair of the Migration Agents Registration Authority (MARA) in her first appearance before the Committee.

16 *Transcript of evidence (Proof)*, 29 May 2001, p. 191

17 *Transcript of evidence (Proof)*, 29 May 2001, p. 192

18 *Transcript of evidence (Proof)*, 29 May 2001, p. 193

19 *Transcript of evidence (Proof)*, 29 May 2001, pp. 194-195

2.12 Officers from MARA were questioned on the number of new complaints against migration agents. MARA stated that the number of new complaints had decreased in this financial year.²⁰ In response to the issue raised by Senator McKiernan, that approximately one third of all complaints last financial year were complaints against legally qualified persons, MARA did not consider this to be of concern, as approximately 42 per cent of all migration agents are legally qualified.²¹

2.13 MARA stated that following the ‘Barlow issue’, MARA made recommendations for changes to legislation, due to come before Parliament, that would give MARA the power to investigate agents who have become deregistered:

The legislation proposed gives MARA the power to investigate agents who have become deregistered. I expect the effect of that would be that, if an investigation revealed that this person should otherwise have their registration cancelled, despite the fact that they deregistered themselves, sanctions could nevertheless be taken against that person re-entering the industry. So, for example, they might face a five-year bar on re-entry to the migration agent industry.²²

Refugee Review Tribunal

2.14 Officers from the Refugee Review Tribunal (RRT) were questioned on where the saving of \$175,000, identified by the Department of Finance and Administration might be achieved. The RRT stated that nothing had been identified as yet, but as is the case with the MRT, ‘there has been an expectation that there will be savings that can be achieved as a result of sharing of services between tribunals’.²³

2.15 Officers from the RRT were questioned on why, during this financial year, the RRT has not been able to reach its target. The RRT stated that there were a number of reasons for not reaching its target, including:

- The increased difficulty of the cases that the RRT is currently considering;
- Uncertainty about the future of the RRT (due to the proposed ART); and
- A reduction in the number of members.²⁴

2.16 In relation to the latter two points the RRT stated that the appointment and reappointment of members is in progress and it is hoping for 10 new members.²⁵

2.17 In addition, the RRT stated that 72 per cent of applications from persons in detention are processed within the target of 70 days.²⁶

20 *Transcript of evidence (Proof)*, 29 May 2001, pp. 212-213

21 *Transcript of evidence (Proof)*, 29 May 2001, p. 213

22 *Transcript of evidence (Proof)*, 29 May 2001, pp. 215-216

23 *Transcript of evidence (Proof)*, 30 May 2001, p. 243

24 *Transcript of evidence (Proof)*, 30 May 2001, p. 244

25 *Transcript of evidence (Proof)*, 30 May 2001, p. 244

26 *Transcript of evidence (Proof)*, 30 May 2001, p. 244

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