

The Parliament of the Commonwealth of Australia

**LEGAL AND CONSTITUTIONAL
LEGISLATION COMMITTEE**

Additional Estimates 2001 – 2002 Report

March 2002

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Secretariat

Mr Noel Gregory, Acting Secretary

Ms Saxon Patience, Senior Research Officer

Ms Carol Evans, Research Officer

Suite S1.108

Parliament House

CANBERRA ACT 2600

Tel (02) 6277 3560; Fax (02) 6277 5794

1 Substitute member to replace Senator McKiernan until close of business 12 April 2002

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PREFACE

On 14 February 2002, 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 and Indigenous Affairs portfolio. The additional portfolio budget statements will be debated in the Senate on 21 March 2002.

The Committee is required to report on its consideration of the additional estimates on or before 13 March 2002. However, on 11 March 2002, the Committee sought and was granted an extension of time to report until 21 March 2002.

Estimates hearings

The Committee met in public session on 18, 19, 22 February and 12 March 2002.

Record of proceedings

The Hansard of the proceedings records the examination of additional 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 and Indigenous Affairs, Senator the Hon. Chris Ellison, Minister for Justice and Customs, officers from both departments and associated agencies also appeared, and the Committee thanks them and the Minister for their assistance.

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 and for supplementary hearings. The Committee resolved that written answers and additional information were to be submitted by close of business on Tuesday, 2 April 2002 for the Attorney-General's and Immigration and Multicultural Affairs Portfolios. For the Indigenous Affairs portfolio, the Committee resolved that written answers and additional information were to be submitted by close of business on Tuesday, 16 April 2002.

Additional areas and agencies for consideration

Following the Administrative Arrangement Orders of 26 November 2001 as amended on 20 December 2001, a number of additional areas and agencies came within the purview of consideration for the Legal and Constitutional Committee during estimates hearings. These are:

- HHH Royal Commission;
- Building Industry Royal Commission;
- Emergency Management Australia; and
- Indigenous Affairs portfolio.

Report

In this report, the Committee draws the attention of the Senate to issues and concerns raised during the four days of hearings. Amongst others, these included the absence from these hearings of some Chief Executive Officers of agencies, without prior notice to the Committee. The Committee is of the view that there is an expectation from the parliament that agencies of the Commonwealth be accountable for the actions taken over a period of time.

Issues dominating proceedings included an examination of the so-called “children overboard” matter and the recent disturbances in detention centres. An examination of these issues is outlined in Chapters 1 and 2 of this report.

Following the recent terrorist attacks in the United States of America and the subsequent military action in Afghanistan, the detention and status of Mr David Hicks, an Australian citizen currently detained in Guantanamo Bay in Cuba, was of particular interest to the Committee, as was the Government’s response to the terrorist attacks on September 11, 2001.

Senator Marise Payne

Chair

CHAPTER 1

ATTORNEY-GENERAL'S PORTFOLIO

Introduction

1.1 The Committee questioned the Minister for Justice and Customs, Senator the Hon Chris Ellison, 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 summarises areas of interest and concern raised during its consideration of the Additional Estimates of the Attorney-General's portfolio for the financial year 2001-2002.

Federal Magistrates Service

1.3 Members of the Committee sought information on the overall staffing profile, location and number of Federal Magistrates, and the schedule of circuits for the current and the next financial years. Members also enquired about the relationship between the Federal Magistrates Service, Federal Court and the Family Court.

Office of the Director of Public Prosecutions

1.4 The Committee questioned officers on the Director of Public Prosecution's investigations into allegations against members of the Parliament, in particular Mr Tuckey and Senator Crane, and the involvement of the Australian Federal Police in these investigations.

1.5 Some members of the Committee made a comparison between the time taken to institute investigations of Ministers and the time taken to lay charges against an ABC journalist following a disturbance at Woomera¹.

National Crime Authority

1.6 Questioning by the Committee focussed on the recently announced review of the National Crime Authority (NCA). The Committee was advised that the review was an across-the-board effort to look at the relationship between the Commonwealth, the States and the Territories in relation to transnational crime and terrorism. Officers of the NCA stated that this was part of an overall review that the government is undertaking in relation to transnational crime and terrorism, and would be discussed at the special Leaders' Summit on Transnational Crime and Terrorism scheduled for April 2002.

1 See, *Transcript of evidence (Proof)*, 18 February 2002, p. 17

Federal Court of Australia

1.7 Members of the Committee questioned officers on the impact of amendments to the Migration Act through the Judicial Review Bill, on the workload of the court. Questioning continued regarding late filing of applications to seek review in the court on the part of applicants in detention centres. The Committee was advised by the Minister that this was a question of policy for the Immigration Department and not one for the Federal Court².

1.8 The Committee looks forward to receiving advice on notice from the Federal Court of Australia on the inability of the court to grant extensions of time.

Administrative Appeals Tribunal

1.9 The Committee sought statistics regarding the Administrative Appeals Tribunal's staffing profile and periods of appointment of new personnel. In addition, the Committee sought current information on the dramatic increase in the number of taxation matters going to the tribunal.

Office of Film and Literature Classification

1.10 Senator Greig questioned officers of the Office of Film and Literature Classification (OFLC) in relation to the extent of community consultation in terms of classifications relating to 'R' and 'X'. The OFLC advised that the current process in relation to the guidelines review is wide open to all classification levels, including 'R' and 'X' but that the OFLC indicated that in their view "there is a need for greater communication to the community about the meaning of all the classification ratings".³

1.11 In addition, Senator Harradine questioned officers about the classification guidelines of 'R' and 'X' ratings, with particular reference to computer interactive games.

Royal Commissions into the Building and Construction Industry and the HIH Insurance Group

1.12 The Committee welcomed the Secretaries of both Commissions to their first appearance before the Legal and Constitutional Committee.

1.13 Both Commissions were questioned extensively on the differences in funding between the two Commissions – the areas of advertising/media relations, transcripts, and secondment of personnel from Federal agencies were highlighted.

1.14 The Committee questioned both commissions on the matter of salary rates for QCs, barristers and counsel assisting, and these figures were requested to be provided to the Committee.

1.15 Officers of the Building and Construction Industry Royal Commission were also questioned on the issue of paid informants and the nature and definition of out-of-pocket expenses.

2 See, *Transcript of evidence (Proof)*, 18 February 2002, pp.28-29

3 See, *Transcript of evidence (Proof)*, 18 February 2002, pp 52-53

Human Rights and Equal Opportunity Commission

1.16 Following clarification of complaints statistics in the Human Rights and Equal Opportunity Commission's Annual Report, the Committee's questioning centred mainly on children in detention, particularly unaccompanied minors. Issues raised included:

- numbers of unaccompanied minors;
- access to children by investigators;
- the commission's observations regarding self-harming behaviour among children; and
- medical treatment and education of children.

1.17 The Committee also questioned officers on religious discrimination guidelines and the length of stay at detention centres in general.

Australian Government Solicitor

1.18 The question of legal advice provided by the Australian Government Solicitor to the HIH Royal Commission was raised by the Committee. The AGS was constrained in their response stating only that "the commission sought provision of solicitors with appropriate experience that would assist the commission in carrying out their role" and that "this was a matter for the Royal Commissions".⁴

Australian Federal Police

1.19 The Committee welcomed Deputy Commissioner Davies to Estimates for the first time.

1.20 The Committee commenced questioning of the Australian Federal Police (AFP) with clarification of annual report and Portfolio Additional Estimates Statements data.

1.21 Extensive questioning followed on people-smuggling activities, in particular in relation to the recent disclosure of Mr Enniss being paid as an informant of the AFP.⁵

1.22 The Committee questioned officers in regard to discussions with Indonesian authorities regarding people-smuggling activities. The Commissioner explained that "people-smuggling is not a crime in Indonesia and that the 3,000 persons suspected of intending to enter Australia illegally have been arrested in Indonesia for offences that the Indonesian authorities have deemed it appropriate for them to be arrested for, but there is no dual criminality. If they have been arrested because of visa violations or if they have been arrested for other matters, it is a matter for the Indonesians".⁶

4 See, *Transcript of evidence (Proof)*, 18 February 2002, pp. 118-119

5 See, *Transcript of evidence (Proof)*, 19 February 2002, p. 133

6 See, *Transcript of evidence (Proof)*, 19 February 2002, p. 135

1.23 Members of the Committee also extensively questioned officers of the AFP in relation to the vessel SIEV4 and the involvement of the AFP following the events of last October where asylum seekers were accused of throwing children overboard.⁷

1.24 The AFP advised that it conducted an investigation into the crew of the SIEV4 and indicated that four persons were charged with offences under section 232(a) of the Migration Act.⁸

1.25 On 20 February, following the appearance of the AFP before the Committee, Commissioner Keelty supplied the following clarification of evidence:⁹

... I have been made aware of a report broadcast on the "AM" Program today alleging that I have stated that it was the crew who sabotaged the SIEV 4 and not the asylum seekers. The "AM" Program has relied on a single response to a question from Senator Cooney which was preceded by a hypothetical question.

From reading the transcript the impression might be given that in answering Senator Cooney's question I was asserting that it was a crew member who sabotaged the vessel commonly referred to as SIEV 4.

This response is clearly out of context and at odds with the answers that I have provided and the detailed explanation given to both Senator Scullion and Senator McKiernan (pages 28 and 29 Hansard transcript) that the AFP's position is that SIEV 4 was sabotaged by asylum seekers and not crew.

In light of the above I would like to confirm with the Committee that it is the AFP's position that it was the asylum seekers and not the crew who sabotaged the SIEV 4.

The answer provided to Senator Cooney has been selectively quoted by the media, and is not in context with the bulk of my evidence on this issue. ...

1.26 Several issues were raised by the Committee in relation to AFP involvement following the incident, including:¹⁰

- AFP representation and involvement on the coordinating taskforce set up with PM&C;
- Date copies of the video and photos were made available to the AFP officer in Perth;
- Date they were made available to AFP headquarters in Canberra;
- Who carried out the liaison with the Department of Defence on the material made available to AFP headquarters;
- AFP's interpretation of the contents of the video; and

7 See, *Transcript of evidence (Proof)*, 19 February 2002, p. 146

8 See, *Transcript of evidence (Proof)*, 19 February 2002, p. 146-7

9 Letter dated 20 February 2002 to Senator Payne from M J Keelty

10 See, *Transcript of evidence (Proof)*, 19 February 2002, pp. 147-150

- “Investigation into Advice provided to Ministers on SIEV4” authored by Ms Bryant on behalf of the People Smuggling Taskforce.

1.27 The Committee was also interested in:

- Costs associated with security preparations for the second CHOGM;
- The amalgamation of the AFP and the APS, particularly staffing and career opportunities; and
- The investigation into Senator Crane.

Australian Customs Service

1.28 Members of the Committee questioned officers from the Australian Customs Service (ACS) on issues relating to the use of ACS resources with regard to the *Tampa* and the so-called ‘Pacific solution’. The ACS advised that since the ‘*Tampa* issue’, ACS focus has been on the north-west and Torres Strait.¹¹

1.29 Other issues of particular interest to the Committee included:

- Additional funding of \$23.6 million in 2001-2002 for increased border protection which includes extra staffing and vessels;
- The base locations of Coastwatch vessels and helicopters; and
- Recruitment process and the Saville and Holdsworth tender.

Department – General Questions and Issues

1.30 Officers were questioned regarding Mr David Hicks, an Australian citizen currently detained in Guantanamo Bay, Cuba. The Committee queried the attention given to Mr Hicks’ situation by the department, his state of health and whether his human rights were being adequately protected.¹²

1.31 Officers of the Department were questioned on their annual report. Issues covered included:

- The principal executive officer structure and the restructuring of the operational lines of the department; and
- Policy surrounding the pro bono work and the pro bono services in the *Tampa* case.

11 See, *Transcript of evidence (Proof)*, 19 February 2002, p. 173

12 See, *Transcript of evidence (Proof)*, 19 February 2002, p. 195

CHAPTER 2

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

Introduction

2.1 Members of the Committee questioned the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, Senator the Hon. Chris Ellison, 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 summarises matters of interest and concerns raised during its consideration of the Additional Estimates of the Immigration and Multicultural and Indigenous Affairs portfolio for the financial year 2001-2002.

Migration Review Tribunal

2.3 Mr Karas was welcomed as Principal Member of both the Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT).

2.4 Some Committee members expressed concern about the time of the Principal Member that is available to the MRT, taking into consideration the processing of applications before the MRT, and the waiting times of persons who have applications before the tribunal.¹

2.5 Concerns were expressed about the MRT's Annual Report² and the allocation of resources to identifying inefficiencies between the Administrative Appeals Tribunal (AAT), the Social Security Appeals Tribunal (SSAT), the RRT and the MRT. There was concern from some Committee members that resources may be misdirected given the decision of the parliament to reject the proposal for the Administrative Review Tribunal.³

2.6 The MRT assured the Committee that the MRT's main focus is on the work of the MRT and that the "hugest part" of the MRT's resources go towards that.⁴

2.7 Officers were questioned on the efficiency rate of the MRT, in particular on:

- The percentage of cases that are either remitted or set aside in areas such as visitor visa refusal, student visa refusals and temporary business, permanent business visa refusals, skill link visa refusals, and partner visa refusals; and
- The average mean time for finalising decisions.

1 See, *Transcript of evidence (Proof)*, 19 February 2002, p. 227

2 See *Transcript of evidence (Proof)*, 19 February 2002, p. 228

3 See *Transcript of evidence (Proof)*, 19 February 2002, pp. 227-228. See also, *Transcript of evidence (Proof)*, 19 February 2002, p. 237

4 *Transcript of evidence (Proof)*, 19 February 2002, p. 228

2.8 The Committee also raised concerns about the MRT's rejection of the Commonwealth disability strategy.

Refugee Review Tribunal

2.9 Concerns were raised with the Minister in relation to the parliament's decision to reject the amalgamation of the four tribunals. The Minister advised the Committee that the amalgamation of these tribunals "is still very much on the government's agenda".⁵

2.10 Other issues raised with the RRT included:

- The readability of correspondence sent by the RRT;
- The terms of the various members of the tribunal; and
- The number of cases completed within the tribunal standard of 70 days.

Department – Issues and Concerns in relation to Immigration and Multicultural Affairs

2.11 The Committee questioned officers of the Department on all areas of activity and expenditure. The following paragraphs deal with issues that were discussed in some detail, in particular the discussion of the so-called "children overboard" incident, including:

- The Secretary's recollections of the sequence of events from initial contact with Mr Ruddock;
- Departmental involvement in the issue;
- "Investigation into Advice provided to Ministers on SIEV4" authored by Ms Bryant on behalf of the People Smuggling Taskforce;
- Departmental communication with the Department of the Prime Minister and Cabinet and the Department of Defence; and
- Videotape and photographic evidence of the children in the water.

2.12 Following extensive general questioning, the Committee also sought information on outcomes and outputs within the department. Issues raised included:

- HREOC investigations into children in detention;
- The interview process used by HREOC investigators;
- Health and hygiene issues at Woomera;
- Department's duty-of-care to detainees;
- Parents and reunification of families;
- Funding for self-regulation of migration agents;
- Numbers and length of time to process applications in the humanitarian program from overseas posts;

5 *Transcript of evidence (Proof)*, 19 February 2002, p. 238

- Five-year temporary visas;
- Case officer resourcing for processing detainee visas;
- The number of persons involved in judicial review; and
- The temporary and proposed detention facilities in Darwin.

2.13 The Committee questioned officers of the department in relation to the recently publicised disturbances at detention centres which included some detainees participating in hunger strikes, sewing their lips together and health issues surrounding these incidents.

2.14 In relation to children and services provided to them, the Department advised that “Health Services workers run life skills classes where they discuss hygiene in the Centre, requirements of Australian law, and expectations in relation to children and women.”⁶

2.15 In reply to further Committee questioning on the life skills classes, the Department added that “the centre had a fairly proactive process of talking to detainees and talking to detainee representative committees, but we have since supplemented that with individual scheduled interviews on a regular basis with each of the detainees - adults and unaccompanied minors - because that seemed to be one of the issues that came out of that particular incident.”⁷

2.16 Officers were also questioned on the security process for granting refugee status.⁸

Department – Issues and Concerns in relation to Indigenous Affairs

2.17 Members of the Committee questioned officers of the Department on a range of issues, which included:

- An update on the use and misuse of cash cards in outback areas;
- An explanation of the removal of the Office of Indigenous Policy from PM&C, with PM&C retaining a small number of staff to support the Prime Minister on Indigenous matters, and the Department now with the support role for Minister Ruddock;
- The Department’s staffing policy which included indigenous employment opportunities;
- Statistics were requested on ATSIC litigation against the Commonwealth; and
- ANAO’s audit program for the forthcoming year particularly in relation to their recommendation requiring the northern and central land councils to undertake performance audits.

6 See, *Transcript of evidence (Proof)*, 22 February 2002, p. 302

7 See, *Transcript of evidence (Proof)*, 22 February 2002, p. 302

8 See, *Transcript of evidence (Proof)*, 19 February 2002, p. 242

Aboriginal and Torres Strait Islander Commission

2.18 Officers of the Commission were questioned on issues relating to Outcome 3. These issues included:

- Allocation of the additional funding of \$75 million over 4 years for community housing and infrastructure;
- Allocation of \$31.5 million funding over 4 years to provide capacity building in remote communities;
- As a follow-up from the Budget Estimates, an update on the progress and funding of the Community Development Employment Project was requested; and
- The decrease in funds to ATSIC of \$3.2 million was explained as agreed to in the output pricing process as part of an identified efficiency process.

2.19 ATSIC's differing approach from that of the Ministerial Council of Aboriginal and Torres Strait Islander Affairs' to the national strategy on indigenous family violence was addressed⁹:

MCATSIA is a ministerial forum which tries to provide some priority and guidance nationally on what issues are facing indigenous communities and people. In 1999 the issue of family violence came to the fore, but it is not an issue that is new. It is one ATSIC has been trying to deal with since its inception. The record is there. Since 1990 we have been raising the issue, with little impact. I think the press getting hold of the issue and deciding it was going to be an issue for them in 1990 provided an impetus. That is how it came to be on the MCATSIA agenda and for a concerted drive and effort that way. Since that time, ATSIC has established a series of forums with men's groups and women's groups to develop positive strategies about addressing the issues. It is not an issue that can be addressed by one level of government or one agency alone.

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