

The Senate

---

Legal and Constitutional  
Legislation Committee

---

Additional Estimates 2002–03

March 2003

© Commonwealth of Australia 2003

ISBN 0 642 71237 9

This document was printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

# MEMBERS OF THE LEGISLATION COMMITTEE

## Members

Senator Marise Payne, New South Wales, *Chair*  
 Senator Nick Bolkus, South Australia, *Deputy Chair*  
 Senator Brian Greig, Western Australia  
 Senator Joseph Ludwig, Queensland  
 Senator Brett Mason, Queensland  
 Senator Nigel Scullion, Northern Territory

## Participating Members

Senator The Hon Eric Abetz, LP, TAS	Senator Susan Knowles, LP, WA
Senator Bartlett, AD, QLD (for DIMIA)	Senator Meg Lees, IND, SA
Senator George Brandis, LP, QLD	Senator Ross Lightfoot, LP, WA
Senator Bob Brown, AG, TAS	Senator Julian McGauran, NPA, VIC
Senator Kim Carr, ALP, VIC	Senator Jan McLucas, ALP, QLD
Senator Grant Chapman, LP, SA	Senator Shayne Murphy, IND, TAS
Senator Alan Eggleston, LP, WA	Senator Kerry Nettle, AG, NSW
Senator Christopher Evans, ALP, WA	Senator Robert Ray, ALP, VIC
Senator The Hon John Faulkner, ALP, NSW	Senator The Hon Nick Sherry, ALP, TAS
Senator Alan Ferguson, LP, SA	Senator Ursula Stephens, ALP, NSW
Senator Jeannie Ferris, LP, SA	Senator Natasha Stott Despoja, AD, SA
Senator Brian Harradine, IND, TAS	Senator Tsebin Tchen, LP, VIC
Senator Leonard Harris, PHON, QLD	Senator John Tierney, LP, NSW
Senator Linda Kirk, ALP, SA	Senator John Watson, LP, TAS

## Secretariat

Mr Peter Hallahan, Secretary  
 Ms Louise Gell, Principal Research Officer  
 Mr Mark Stevenson, Research Officer  
 Ms Kelly Paxman, Research Officer  
 Ms Judith Wuest, Executive Assistant

Suite S1.61  
 Parliament House  
 CANBERRA ACT 2600  
 Tel (02) 6277 3560; Fax (02) 6277 5794



# TABLE OF CONTENTS

<b>MEMBERS OF THE LEGISLATION COMMITTEE .....</b>	<b>iii</b>
<b>TABLE OF CONTENTS .....</b>	<b>v</b>
<b>PREFACE.....</b>	<b>vii</b>
Estimates hearings .....	vii
Record of proceedings .....	vii
Minister.....	vii
Questions on notice .....	vii
Report .....	viii
<b>CHAPTER 1 .....</b>	<b>1</b>
<b>ATTORNEY-GENERAL’S PORTFOLIO.....</b>	<b>1</b>
Introduction .....	1
High Court of Australia .....	1
Federal Magistrates Service .....	1
Royal Commission into the Building and Construction Industry .....	2
Office of the Privacy Commissioner .....	2
Federal Court of Australia .....	2
Australian Crime Commission .....	2
Family Court of Australia.....	2
Australian Government Solicitor.....	3
Australian Customs Service .....	3
Australian Federal Police .....	3
HIH Royal Commission .....	4
Attorney-General’s Department .....	4
<b>CHAPTER 2 .....</b>	<b>5</b>
<b>IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS     PORTFOLIO .....</b>	<b>5</b>
Introduction .....	5
Aboriginal and Torres Strait Islander Commission.....	5
Migration Agents Registration Authority (MARA).....	5
Department – Issues and Concerns.....	5

<b>APPENDIX 1 .....</b>	<b>7</b>
<b>INDEX OF HANSARD FOR ATTORNEY-GENERAL'S     PORTFOLIO .....</b>	<b>7</b>
<b>APPENDIX 2 .....</b>	<b>9</b>
<b>INDEX OF HANSARD FOR IMMIGRATION AND     MULTICULTURAL AND INDIGENOUS     AFFAIRS PORTFOLIO .....</b>	<b>9</b>

## **PREFACE**

On 12 December 2002, the Senate referred to the Committee the examination of additional estimates of proposed expenditure for the financial year 2002-2003. The Committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Multicultural and Indigenous Affairs portfolio. The portfolio additional estimates statements were tabled in the Senate on 12 December 2002. On 6 February 2003 the Senate also referred the issues from the Advance to the Finance Minister for consideration as part of this additional estimates process.

The Committee was required to report on its consideration of the budget estimates on or before 19 March 2003.

### **Estimates hearings**

The Committee met in public session from 10 February 2003 to 11 February 2003 for a total of 21 hours 53 minutes.

### **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 who represented the Attorney-General and the Minister for Immigration and Multicultural and Indigenous Affairs.

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 Wednesday, 19 March 2003 for the Attorney-General's and Immigration and Multicultural and Indigenous Affairs Portfolios.

## **Report**

In this report, the Committee draws the attention of the Senate to issues and concerns raised during the two days of hearings. Amongst others, these included:

- Issues relating to the Building and Construction Industry Royal Commission, including the cost of legal representation, security of information at the Commission, and the use by the Commission of information gathered through telephone intercepts;
- Concerns over the level of resources being provided to the Federal Court, the Family Court, and the Federal Magistrates Service;
- Conditions at detention centres, including access of detainees to telephones and visitors, and alleged sexual assaults, allegations of prostitution, and alleged violations of religious freedoms at centres;

**Senator Marise Payne**

**Chair**

# Chapter 1

## ATTORNEY-GENERAL'S PORTFOLIO

### Introduction

1.1 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 2002-2003.

### High Court of Australia

1.2 The Committee congratulated Mr Bill Campbell, an official of the Attorney-General's Department, on his appointment as a Commonwealth Queen's Counsel, only the sixth such appointment since federation.

1.3 The Committee inquired about the large number of immigration matters before the High Court, especially in relation to the decision of the Court in *Plaintiff S157/2002 v The Commonwealth of Australia*.<sup>1</sup> Officers from the Court tabled documents detailing the number of immigration matters filed in the Court from 1997/98 to 2001/02. Later questioning of officials of the Federal Magistrates Service and the Federal Court continued to explore the resources implications of the decision on those courts.

1.4 The Committee also inquired about assistance provided by the Court to self-represented litigants, and about the newly-established Judicial College.<sup>2</sup>

1.5 The Committee sought information regarding activities planned for the celebration of the centenary of the High Court. Officers advised that as well as a special sitting of the Court in Melbourne, a conference would be held in Canberra in October, which would be attended by foreign chief justices as well as law students from around Australia.<sup>3</sup>

### Federal Magistrates Service

1.6 The Committee sought information about the impact of the migration-related High Court decision (referred to above) on the workload of the Federal Magistrates Court. Officials advised that federal magistrates have experienced an increased workload, and noted that there is difficulty meeting the demand for court dates, for family court matters as well as migration matters.

---

<sup>1</sup> *Proof Committee Hansard*, 10 February 2003, p. 4.

<sup>2</sup> *Proof Committee Hansard*, 10 February 2003, p. 6.

<sup>3</sup> *Proof Committee Hansard*, 10 February 2003, p. 7.

## **Royal Commission into the Building and Construction Industry**

1.7 Members of the Committee continued to pursue matters relating to the Royal Commission into the Building and Construction Industry. Officers were questioned about the cost of legal representation, the security of information at the Commission, and the use by the Commission of information gathered through telephone intercepts.<sup>4</sup>

## **Office of the Privacy Commissioner**

1.8 Questioning focused on the increased workload experienced as a result of the new private sector privacy law which came into place on 21 December 2001. Officers advised that staff had been shifted from the policy/audit area to the complaints-handling area, to handle the increased volume of complaints. Considerably fewer audits would be carried out by the Office as a result.<sup>5</sup> Funding for additional staffing resources was being sought as part of the budget process. Also discussed were activities undertaken to increase small business' awareness of their obligations under the new privacy law, and the budget for these activities.

## **Federal Court of Australia**

1.9 As with representatives from the Federal Magistrates Service (FMS) and the High Court, officers of the Federal Court were questioned about the resource implications of the recent changes in migration legislation.<sup>6</sup> A document detailing statistics concerning migration cases was tabled. The issue of filling the vacancy on the Court left by the retirement of Justice Katz was also raised.

## **Australian Crime Commission**

1.10 The Committee questioned officers of the newly-established Australian Crime Commission (formerly the National Crime Authority) about the capacity of staff levels to meet operational requirements. The Secretary of the Attorney-General's Department indicated that staff levels of the NCA had increased in the 18 months before the establishment of the new Commission.<sup>7</sup> Questions were also raised about the timing of the appointment of a new Chief Executive Officer.

## **Family Court of Australia**

1.11 The Committee sought information about the filling of two judicial vacancies, and the workload of the other judges, including the retiring Chief Justice. Also discussed was the effect on the Family Court of the establishment of the Federal Magistrates Service. Officials advised that the impact of the FMS on the Family Court

---

<sup>4</sup> *Proof Committee Hansard*, 10 February 2003, pp. 15-29.

<sup>5</sup> *Proof Committee Hansard*, 10 February 2003, p. 32.

<sup>6</sup> *Proof Committee Hansard*, 10 February 2003, pp. 40-41.

<sup>7</sup> *Proof Committee Hansard*, 10 February 2003, p. 43.

has not decreased pressure on the Family Court as expected, as there has been a general increase in family law work.<sup>8</sup>

1.12 Members of the Committee expressed general concern over the level of resources being provided to the Federal Court, the Family Court and the Magistrates Service, where delays are being experienced due to judicial vacancies and increased workloads. Senator Ludwig asked that his concerns be conveyed to the Attorney-General, and indicated he would take up the matter again at the Budget Estimates hearings in May.<sup>9</sup>

### **Australian Government Solicitor**

1.13 Members of the Committee sought updated information about the costs of AGS services provided to the HIH and Building Industry royal commissions. Officials tabled a document giving details, and took on notice the Committee's request for further details of any services provided by AGS to other commissions, tribunals and courts.<sup>10</sup>

### **Australian Customs Service**

1.14 Officials of the Australian Customs Service were questioned concerning the Service's ability to deal with radiological, chemical and biological threats at ports of entry. The Committee was advised that Customs is assessing equipment such as spectrometers and gas chromatographs as potential tools, as well as x-ray and hand-held radiation detector devices.<sup>11</sup>

1.15 The Committee also sought information about the Smartgate facial recognition system, that is being trialled at Sydney Airport, and implications for staffing if the system is extended. Officials undertook to provide information when it became available.<sup>12</sup>

### **Australian Federal Police**

1.16 Minister Ellison was questioned about the extradition from Indonesia and potential prosecution of Abu Qusey.<sup>13</sup>

1.17 Questions to AFP representatives centred on a DFAT cable regarding the possibility that persons on board SIEVX were in contact with persons by radio, and whether authorities had any awareness of the location of the sinking vessel.<sup>14</sup> The questioning followed on from matters raised by the Certain Maritime Incident inquiry,

---

<sup>8</sup> *Proof Committee Hansard*, 10 February 2003, p. 70.

<sup>9</sup> *Proof Committee Hansard*, 10 February 2003, p. 73.

<sup>10</sup> *Proof Committee Hansard*, 10 February 2003, p. 77.

<sup>11</sup> *Proof Committee Hansard*, 10 February 2003, pp. 83-85.

<sup>12</sup> *Proof Committee Hansard*, 10 February 2003, p. 86.

<sup>13</sup> *Proof Committee Hansard*, 10 February 2003, pp. 98-102.

<sup>14</sup> *Proof Committee Hansard*, 10 February 2003, pp. 102-104.

and illustrates how estimates hearings can provide an opportunity to pursue issues emerging from a select committee.

### **HHH Royal Commission**

1.18 Questions were raised about whether ministerial staff provided evidence to the Royal Commission. Representatives of the Royal Commission advised later in writing that there had been no direct communication between the Commission and the Treasurer or the Treasurer's office in the course of the inquiry. It was also advised that former members of staff of the then Minister for Financial Services and Regulation had been contacted.<sup>15</sup>

### **Attorney-General's Department**

1.19 The Committee questioned officials about Australian citizens Mr David Hicks and Mr Mamdouh Habib, being held in detention by the United States government at Guantanamo Bay. Officials advised that officers of ASIO, as well as Red Cross personnel, had visited the men. Senator Ellison advised that future release from detention was a matter for the US government, and not a matter over which the Australian Government had jurisdiction.<sup>16</sup>

---

<sup>15</sup> *Proof Committee Hansard*, 11 February 2003, pp. 131-133.

<sup>16</sup> *Proof Committee Hansard*, 10 February 2003, p. 10-13.

## Chapter 2

# IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### Introduction

2.1 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 2002-2003.

### Aboriginal and Torres Strait Islander Commission

2.2 Questions were asked about funding of the indigenous language and interpreter service, and any link between the preservation of indigenous languages and a reduction in juvenile detention.<sup>1</sup>

### Migration Agents Registration Authority (MARA)

2.3 Discussion centred on the report of the review of statutory self-regulation of the migration advice industry (the Spicer report), and criticisms made in the report of MARA administrative procedures. MARA representatives acknowledged the criticisms and indicated where improvements were being made.<sup>2</sup>

### Department – Issues and Concerns

2.4 Members of the Committee questioned officials about various issues regarding detention centres, including:

- safety at the Port Hedland detention centre, and whether concerns raised about fire safety had been addressed;
- phone access in and out of detention centres, and limitations placed on detainees;
- rules concerning the ability of visitors to detention centres to take in pens, notepaper and documentation;
- rules about which visitors were allowed to visit, and strip searches of visitors;
- alleged sexual assaults at detention centres;
- prostitution in detention centres;
- allegations of violations of religious freedoms in centres.<sup>3</sup>

---

<sup>1</sup> *Proof Committee Hansard*, 10 February 2003, p. 49.

<sup>2</sup> *Proof Committee Hansard*, 11 February 2003, pp. 219-227.

<sup>3</sup> *Proof Committee Hansard*, 11 February 2003, pp. 139-167.

2.5 Issues surrounding Temporary Protection Visas (TPVs) were the subject of extended questioning.<sup>4</sup> Officials were questioned about staffing resources to process applications, exclusion provisions used by departmental officers to determine eligibility, whether asylum-seekers from Iraq would be granted TPVs, and procedures as some TPVs come up for expiry.

2.6 Also raised in questioning was:

- the process involved in issuing of sub-class 456 and 457 visas at embassies outside Australia;
- whether asylum seekers denied refugee status were monitored for their safety, once they left Australia;
- arrangements at Nauru and Manus, and construction of a new facility on Christmas Island;
- a consultancy to evaluate the Integrated Humanitarian Settlement Strategy;
- withdrawal of funding for three migrant resource centres;
- citizenship application and renunciations, and departmental record-keeping of details.

---

<sup>4</sup> *Proof Committee Hansard*, 11 February 2003, pp. 169-183.

# Appendix 1

## Index of Hansard for Attorney-General's Portfolio

<b>Agency/Output Group</b>	<b>Page</b>
High Court of Australia	4-6
Department – General Questions and Issues	7-13
Federal Magistrates Service	13-15
Royal Commission into the Building and Construction Industry	15-29
Office of Film and Literature Classification	29-31
Office of the Privacy Commissioner	31-38
Federal Court of Australia	38-41
Australian Crime Commission	41-44, 58-63
Human Rights and Equal Opportunity Commission	63-68
Family Court of Australia	68-73
Office of the Director of Public Prosecutions	74-76
Australian Government Solicitor	76-81
Australian Customs Service	81-91
Office of Parliamentary Counsel	91-93
Australian Federal Police	93-111
Output 1	111-119
Output 2	119-123
Royal Commission into the failure of HIH	127-137



## **Appendix 2**

### **Index of Hansard for Immigration and Multicultural and Indigenous Affairs Portfolio**

<b>Agency/Output Group</b>	<b>Page</b>
Outcome 1	139-198
Outcome 2	198-219
Outcome 3	46-48
Aboriginal and Torres Strait Islander Commission	48-55
Migration Agents Registration Authority	219-227