

The Senate

Legal and Constitutional
Legislation Committee

Budget Estimates 2005-06

June 2005

Commonwealth of Australia 2005

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ABBREVIATIONS

| | |
|---------|---|
| AAT | Administrative Appeals Tribunal |
| ACC | Australian Crime Commission |
| ACID | Australian Criminal Intelligence Database |
| ACS | Australian Customs Service |
| AFP | Australian Federal Police |
| AGD | Attorney-General's Department |
| AGS | Australian Government Solicitor |
| ASIO | Australian Security Intelligence Organisation |
| ALEIN | Australian Law Enforcement Intelligence Net |
| AUSTRAC | Australian Transaction Reports and Analysis Centre |
| CPRS | CrimTrac Police Reference System |
| DIMIA | Department of Immigration and Multicultural and Indigenous Affairs |
| DPP | Director of Public Prosecutions |
| FaCS | Family and Community Services |
| HREOC | Human Rights and Equal Opportunity Commission |
| ITSA | Insolvency and Trustee Service Australia |
| MARA | Migration Agents Registration Authority |
| MRT | Migration Review Tribunal |
| NNTT | National Native Title Tribunal |
| OIPC | Office of Indigenous Policy Coordination |
| OFLC | Office of Film and Literature Classification |
| PNG | Papua New Guinea |
| RRT | Refugee Review Tribunal |
| TSRA | Torres Strait Regional Authority |

PREFACE

On 10 May 2005, the Senate referred to the Committee the examination of estimates of proposed expenditure for the financial year 2005-2006. The Committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Multicultural and Indigenous Affairs portfolio. The portfolio budget statements were tabled in the Senate on 10 May 2005.

The Committee was required to report on its consideration of the budget estimates on or before 20 June 2004.

Estimates hearings

The Committee met in public session from 23 May to 27 May 2005 for a total of 56 hours 27 minutes.

Recording 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.

Ministers

The Committee heard evidence from Senator the Hon Chris Ellison, Minister for Justice and Customs who represented the Attorney-General and from Senator the Hon Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs.

Officers from both departments and associated agencies also appeared. The Committee thanks Ministers and officers 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 the deadline for the submission of written answers and additional information by both portfolios would be close of business on Friday, 15 July 2005.

Report

In this report, the Committee draws the attention of the Senate to issues and concerns raised in the five days of hearings. These included:

The Committee inquired into the costs associated with security arrangements in a number of courts including the NNTT, Family, Federal and High Courts, the Administrative Appeals Tribunal and the Federal Magistrates Court. The Committee was interested to hear not only the cost associated with any upgrade but also the type of security and related equipment being considered.

The APF was questioned regarding investigations into the unauthorised disclosure of government documents/information. Concerns were also raised by the Committee regarding the potential impact on the overseas deployment of AFP officers of a PNG Supreme Court ruling. The ruling effectively removed prosecutorial immunity from AFP officers serving in PNG.

The Committee questioned officers from DIMIA extensively on a number of issues including the conduct and expected duration of the Palmer inquiry and the deportation of an Australian citizen from Australia to the Philippines. Both Minister Ellison and Minister Vanstone undertook on notice to provide the Committee with advice concerning the authority by which the Palmer inquiry can receive documents classified as 'law-enforcement-in-confidence.'

Officers from DIMIA were also questioned on the role of the newly appointed National Indigenous Council and costs associated with the Council's operation.

CHAPTER 1

ATTORNEY-GENERAL'S PORTFOLIO

Introduction

1.1 This chapter summarises areas of interest and concern raised during the committee's consideration of the Budget Estimates of the Attorney-General's portfolio for the 2005-2006 financial year.

Attorney-General's Department (AGD)

1.2 Initial questioning by the committee focused on the increased level of funding allocated to the department over the coming year and the way in which this funding would be distributed over the two main departmental outcomes. Officers took on notice a number of questions relating to areas where \$10 million in savings had been made by the department as required by the Department of Finance.¹

1.3 Officers were asked a series of questions relating to the operation of Family Relationship Centres. The committee was interested to discover how the centres would be administered as funding was available from both the Attorney-General's Department and the Department of Family and Community Services (FaCS). The committee was informed that the AGD has responsibility for funding and policy and for establishing the centres, while FaCS has responsibility for day to day contract and program administration and would also manage data collection.²

1.4 The committee sought information on the implications of a Papua New Guinea (PNG) Supreme Court ruling. The court's ruling effectively removed prosecutorial immunity from AFP officers serving in PNG. The court also found that the AFP have no legal authority to exercise police powers in PNG, nor the right to carry firearms. The committee heard that since the ruling, many AFP officers had been recalled to Australia. Officers not performing front line duties however, had remained. As a consequence of the court's decision, officers are now limited to providing support and advice to PNG officials.³

1 *Proof Committee Hansard*, 23 May 2005, pp.4-5.

2 *Proof Committee Hansard*, 23 May 2005, pp.7-18.

3 *Proof Committee Hansard*, 23 May 2005, pp.94-101.

National Native Title Tribunal (NNTT)

1.5 Officers were asked a series of questions relating to the NNTT's role within the native title consultative forums. The committee heard that the NNTT was one of a number of government bodies which attend the forums. Officers advised that the forums provided agencies with the opportunity to make themselves aware of any shifts in approach within the industry and to keep up to date with current events in the native title representative community in general.⁴

1.6 The NNTT was also questioned regarding the impact of reduced funding on its operations over the next four years of the funding cycle. Other questions included the NNTT's contribution to the cost of security upgrades to the Federal Court building in Western Australia, in which the NNTT is a subtenant.⁵

Australian Federal Police (AFP)

1.7 The AFP was questioned extensively concerning investigations into unauthorised disclosure of information from within the public service. The committee was particularly interested in the events surrounding the execution of a search warrant on the *National Indigenous Times* newspaper in an attempt to locate a government document which was believed to be in the possession of the newspaper.⁶

1.8 In response to these questions, Commissioner Keelty tabled a document indicating that there were currently 37 ongoing investigations into unauthorised disclosures. Officers advised the committee that, notwithstanding that other newspapers had published articles covering the unauthorised disclosure, given the known facts that existed at the time, a search warrant was sought only for the *National Indigenous Times*.⁷

1.9 Other areas canvassed by the committee included:

- the surveillance of baggage handling areas at Australian international airports;
- comments by Commissioner Keelty concerning the court case in Indonesia of Schapelle Corby;
- the structure and operation of AFP Regional Rapid Deployment teams;
- the allocation of resources of the National Missing Persons Unit; and

4 *Proof Committee Hansard*, 23 May 2005, pp.80-82.

5 *Proof Committee Hansard*, 23 May 2005, pp.80-82.

6 *Proof Committee Hansard*, 24 May 2005, pp.9-11, 24-30.

7 *Proof Committee Hansard*, 24 May 2005, pp.9-11, 24-30.

- the request by Hungarian authorities for the extradition of Charles Zentai for alleged war crimes.

Australian Crime Commission (ACC)

1.10 Officers from the ACC were questioned on the operation of several criminal intelligence database systems and the ability of other agencies to access these systems. The committee heard that Australian law enforcement agencies were able to communicate with each other in a highly protected environment known as ALEIN, (Australian Law Enforcement Intelligence Net). Officers advised that ALEIN also allows those agencies with access to interrogate the Australian Criminal Intelligence Database (ACID). ACID is maintained by the ACC and is a central repository of criminal intelligence for the whole of Australia.⁸

Australian Security Intelligence Organisation (ASIO)

1.11 The Director-General of ASIO was asked by the committee to explain the way in which additional funding for the 2005-06 financial year would be allocated. The committee heard that the money would primarily be allocated to the analytical, technical and collection divisions within ASIO. It is expected that the allocation will provide for an additional 60 or 70 personnel over the following 3 to 6 months.⁹

Australian Institute of Criminology and the Criminology Research Council

1.12 The committee asked officers to outline their work in monitoring the national heroin trade. Officers informed the committee that the extent of the Australian heroin trade was monitored by the Drug Use Monitoring Project. The project consisted of seven sites throughout Australia at which persons who had been arrested by police were interviewed. Those who agreed underwent testing for a range of drugs including heroin. Data from the project is compiled into quarterly reports from which trend data can be extracted.¹⁰

Australian Transaction Reports and Analysis Centre (AUSTRAC)

1.13 The committee questioned officers concerning AUSTRAC's role in Taskforce Gordian, which was established by the ACC to combat money laundering and tax fraud. Officers informed the committee that AUSTRAC was not formally represented on the task force. It would, however, provide analytical and data support as well as intelligence information.

8 *Proof Committee Hansard*, 24 May 2005, pp.47-49.

9 *Proof Committee Hansard*, 24 May 2005, pp.50-51.

10 *Proof Committee Hansard*, 24 May 2005, p.55.

1.14 Officers also responded to questions concerning countries in the Asia-Pacific region in which AUSTRAC had provided training, seminars and other technical assistance.¹¹

Office of the Privacy Commissioner

1.15 Officers were asked a number of questions in relation to the review of the *Privacy Act 1988 (Cwth)*. The committee heard that \$100,000 had been allocated for the conduct of the review. Terms of reference were given to the Office on 13 August 2004 and the report was completed on 31 March 2005. The review made 85 recommendations to government. The Commissioner advised that one of the key recommendations was for the review of the meaning of personal information and the need for two sets of privacy principles, one to cover the government sector and another for the private sector.¹²

Australian Government Solicitor (AGS)

1.16 The committee sought information on the fee structure used by the AGS and the rate of staff turnover in comparison with the industry standard. Officers advised that the fee structure used was set by the AGS and dictated to some degree by market forces, although costs may vary depending on the type of work undertaken. In the area of staffing, officers indicated that staff turnover was in the region of 15% per year, which was considered significantly lower than that of comparable firms.¹³

CrimTrac

1.17 The committee asked officers for an update on the implementation of the CrimTrac Police Reference System (CPRS). Officers advised that the CPRS had commenced a capability trial on 10 March 2005 which was expected to operate for 90 days. The trial operation between the New South Wales and Victorian Police forces demonstrates a new way of sharing information between jurisdictions. Under current arrangements, it is expected that the system would be fully established in all jurisdictions by September 2006.¹⁴

1.18 During the questioning of CrimTrac, officers indicated that information classified as 'law-enforcement-in-confidence' had been passed to the Palmer inquiry as part of its investigations into the detention of Cornelia Rau. This led to a number of questions concerning the authority of the Palmer inquiry to receive such documents.

11 *Proof Committee Hansard*, 24 May 2005, pp.56-59.

12 *Proof Committee Hansard*, 24 May 2005, pp.60-64.

13 *Proof Committee Hansard*, 24 May 2005, p.65.

14 *Proof Committee Hansard*, 24 May 2005, pp.66-69.

Minister Ellison undertook to provide the committee with information on the nature of the authority exercised by the Palmer inquiry.¹⁵

Commonwealth Director of Public Prosecutions (DPP)

1.19 Officers were asked to update the committee on a number of prosecutions relating to people trafficking and whether, to date, there had been any convictions recorded. The committee heard that there were currently 10 persons being prosecuted, some of whom were presently before the courts and officers were therefore unable to discuss the specifics of those cases. Officers were able to inform the committee that there were 4 defendants listed to commence trial in Sydney on 14 June, a further 2 matters were listed for committal in Sydney later in the year and one matter listed for committal in Melbourne in September. One additional trial, concerning slavery as opposed to the sexual servitude cases noted above, was coming to an end in Melbourne.¹⁶

Insolvency and Trustee Service Australia (ITSA)

1.20 The committee questioned officers concerning an internal fraud matter by a former ITSA employee which covered a 4 year period from 1996 to 2000. The committee was given a breakdown of the cost of the fraud which totalled approximately \$500,000. Officers were questioned about the adequacy of current fraud measures and took on notice to provide the committee with details of the measures implemented to improve ITSA's fraud control procedures.¹⁷

Administrative Appeals Tribunal (AAT)

1.21 The committee canvassed a range of issues with the AAT including the number of applications before the Tribunal, court security arrangements, telecommunication interception warrants and the concurrent evidence pilot program. Officers provided the committee with an update of the concurrent evidence pilot program and advised that, as of March 2005, the AAT had run 44 cases using the concurrent evidence method. Officers expected to be able to provide a completed evaluation of the project at the next estimates round. Several documents were tabled, one outlining the Tribunal's workload and the other being a copy of the Tribunal's user feedback survey form.¹⁸

Family Court of Australia

1.22 The issue of court security was raised with officers. The committee sought information on the process by which the Court had received \$8.3 million over four

15 *Proof Committee Hansard*, 24 May 2005, pp.71-72.

16 *Proof Committee Hansard*, 24 May 2005, p.74.

17 *Proof Committee Hansard*, 24 May 2005, pp.77-78.

18 *Proof Committee Hansard*, 24 May 2005, pp.83-84.

years for security upgrades. Officers informed the committee that a risk management audit into court security had been commissioned by the AGD in 2003 which identified a range of security related issues. Following discussions between the Court and the AGD, the government agreed to provide the additional funding.¹⁹

Family Law Council

1.23 The committee enquired into the Council's involvement in the development of the government's recently announced family law reforms. Officers indicated that the Council had put in a number of submissions to the House of Representatives Standing committee on Family and Community Affairs in relation to the *Every picture tells a story* report and also in relation to the discussion paper on the reforms released by the government. The committee heard that the Council is also providing advice regarding possible legislative changes that may be required as a result of the reforms.²⁰

Federal Court of Australia

1.24 The committee followed up questions from previous estimates rounds concerning progress on the new Casetrack IT system. Officers informed the committee that the system was now operational in all registries. Some modifications of the system would still be required, due in part, to the large numbers of parties involved in some Federal Court cases. The project was implemented within budget and further enhancements to the system would be funded from current Court resources.²¹

1.25 The committee also questioned officers regarding court security costs and upgrades. In response, officers provided information on the annual cost to the Court for increased security measures and which court buildings would be the primary beneficiaries of the increases.²²

Federal Magistrates Court

1.26 Officers from the Court were questioned concerning the recent appointment of 8 new magistrates and the impact of those appointments on the backlog of migration cases in particular. The committee heard that as more migration matters were being filed directly with the Court, there had been 'no shortage of work for the new appointees to deal with.' The 2004-05 year is expected to see a clearance of approximately 2,300 cases, constituting a reduction to the backlog of 220 cases. The backlog is expected to reduce further over the coming months and years.²³

19 *Proof Committee Hansard*, 24 May 2005, p.86.

20 *Proof Committee Hansard*, 24 May 2005, p.88.

21 *Proof Committee Hansard*, 24 May 2005, p.92.

22 *Proof Committee Hansard*, 24 May 2005, pp.91-92.

23 *Proof Committee Hansard*, 24 May 2005, pp.92-93.

1.27 The committee again raised with officers the issue of court security and associated cost of the provision of security services.²⁴

Federal Police Disciplinary Tribunal

1.28 The committee sought information on the last time a referral was made to the Tribunal and if it had been consulted in respect of the establishment of the new Integrity Commission. The committee heard that the last referral to the Tribunal was in 1999 and that the Fisher review team had spoken to the president and deputy president of the Tribunal concerning the formation of an Integrity Commission.²⁵

High Court of Australia

1.29 Officers from the Court were asked to provide an outline of the way in which funding for security and associated costs would be expended. Officers informed the committee that with regard to the Canberra premises, capital item purchases would include x-ray equipment and both walk through and hand held metal detectors; while recurrent funding would cover the expected increase in the cost of providing security in the Canberra building.²⁶

1.30 The committee, following on from previous estimates rounds, again raised the issue of self-represented litigants. Officers advised that in an effort to reduce the number of unmeritorious cases coming before the Court, changes to the rules of court were introduced on 1 January 2005. Under the new rules litigants must, in the first instance, provide a written case for examination. Should the written case disclose any merit, the rules then allow for the serving of the other side and the usual process would continue. The committee indicated that it would pursue this issue at the next estimates round.²⁷

Human Rights and Equal Opportunity Commission (HREOC)

1.31 The committee asked a series of questions relating to HREOC's current financial position. Officers informed the committee that HREOC was budgeting for an operating loss in the region of \$500,000. Officers further advised that in order to find savings, funding reductions had been made in a range of areas including the library, Indigenous social justice, corporate services and from public affairs and public education.²⁸

24 *Proof Committee Hansard*, 24 May 2005, p.93.

25 *Proof Committee Hansard*, 24 May 2005, pp.94-95.

26 *Proof Committee Hansard*, 24 May 2005, p.97.

27 *Proof Committee Hansard*, 24 May 2005, p.98.

28 *Proof Committee Hansard*, 24 May 2005, pp.99-102.

Office of Film and Literature Classification (OFLC)

1.32 Officers were questioned by the committee on the way in which the OFLC determines the classification of films in the R, X and RC categories, particularly with regard to the recent classifications of the films *Irreversible* and *9Songs*. Officers advised that there were a range of matters which must be considered before a decision on classification can be made. Such matters might include the content and duration of any sexually explicit scenes, whether or not such scenes were real or simulated as well as current community views and attitudes.²⁹

Australian Customs Service (ACS)

1.33 The committee questioned officers regarding the examination of priority 1 shipping containers at ACS cargo examination facilities. The committee heard that the ACS was confident that any container designated as priority 1 was reasonably likely to contain items that would be of interest to the ACS. Officers advised that the priority 1 designation indicated only that a container was of high risk and was not an indicator of what might be found in the container.³⁰

1.34 ACS officers were asked a number of questions pertaining to the rules of engagement for those ACS vessels equipped with deck mounted machine guns. Officers informed the committee that the rules of engagement for ACS vessels were effectively the same as those for the Royal Australian Navy. ACS vessels would not however have the ability to fire aggressively in order to stop or disable another vessel, other than in self-defence, without approval from the Minister.³¹

29 *Proof Committee Hansard*, 24 May 2005, pp.105-114.

30 *Proof Committee Hansard*, 24 May 2005, pp.120-122.

31 *Proof Committee Hansard*, 24 May 2005, pp.124-126.

CHAPTER 2

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

Introduction

2.1 This chapter summarises areas of interest and concern raised during the Committee's consideration of the Budget Estimates of the Immigration and Multicultural and Indigenous Affairs portfolio for the 2005-2006 financial year.

Department of Immigration and Multicultural and Indigenous Affairs (DIMIA)

2.2 The Committee questioned officers from DIMIA concerning a number of aspects relating to the Palmer inquiry which was initially set up to investigate the circumstances surrounding the detention of Cornelia Rau. In response to questions, the Committee heard that DIMIA had nominated two officers to act as contact points for the inquiry. It was explained that the officers were not part of Mr Palmer's staff, who are accommodated within the Department of Transport and Regional Services, but would remain within DIMIA and not be directly involved in the conduct of the inquiry.¹

2.3 Officers informed the Committee that over 200 additional cases concerning persons who may have been unlawfully detained had been referred to the Palmer inquiry. The inquiry now comprises Mr Palmer, Mr Comrie and 5 other staff, not including the two DIMIA liaison officers. The Committee heard that, as at May 26, the cost of the inquiry totalled \$450,622.²

2.4 The Committee again raised the issue of the authority by which the Palmer inquiry is able to receipt documents classified as 'law-enforcement-in-confidence.' Minister Vanstone took on notice to provide the Committee with an answer.³

2.5 Officers from DIMIA were asked a range of questions regarding the case of Ms Vivian Alvarez, an Australian citizen who was deported to the Philippines. Officers undertook to provide on notice, information including file notes from interviews with Ms Alvarez, the grant of a bridging visa, accommodation

¹ *Proof Committee Hansard*, 26 May 2005, p.27.

² *Proof Committee Hansard*, 26 May 2005, pp.38-41.

³ *Proof Committee Hansard*, 25 May 2005, p.58.

arrangements and the reason why Ms Alvarez was unable to sign a transcript of an interview with DIMIA officers at Southport, Queensland.⁴

2.6 The Committee inquired as to the status of the skilled portion of the migration program. Officers advised that the total skilled migrant intake for the current 2004-05 year was expected to be in the order of 77,500 places and would expand by approximately 20,000 places for 2005-06.⁵

2.7 Officers were asked to provide the Committee with details concerning the role, functions and costs associated with the National Indigenous Council. The Committee was advised that the primary role of the Council is to advise government on Indigenous related issues. It reports the outcomes of each of its meetings to the Minister and meets at least twice yearly with the ministerial task force. Officers were unable to breakdown the cost of the secretariat support functions supplied by DIMIA to the Council, as these costs were contained within the general corporate resources of the Office of Indigenous Policy Coordination. Officers advised that the cost per meeting of the Council was in the order of \$30,000.⁶

2.8 Other issues canvassed by the Committee included:

- the recent release of Ms Virginia Leong from immigration detention;
- mental health facilities available to persons in immigration detention;
- the HREOC report into children in immigration detention;
- student visa cancellations;
- the cost of recent additional facilities at the Christmas Island processing centre; and
- the purpose and use of the 'Red One' compound at the Baxter immigration detention centre.

Migration Agents Registration Authority (MARA)

2.9 Officers were questioned on the role that MARA has in monitoring the code of conduct for migration agents and what action may be taken should the code be breached. The Committee heard that the MARA continually reviews the code and makes recommendations concerning its operation directly to the Minister. Officers advised that breaches of the code could be handled in a number of ways depending

⁴ *Proof Committee Hansard*, 25 May 2005, p.73 & pp.82-83.

⁵ *Proof Committee Hansard*, 26 May 2005, pp.42-43.

⁶ *Proof Committee Hansard*, 27 May 2005, pp.15-24.

upon the seriousness of the breach. Action taken could include a warning, a letter of caution, the suspension or even cancellation of an agent's registration.⁷

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

2.10 The Committee asked officers to provide an update of the amalgamation of the MRT and RRT joint case management system which had been discussed at previous hearings. The Committee was informed that workshops were currently being undertaken to develop the system and that the system would also have the capacity to share data with DIMIA.⁸

Torres Strait Regional Authority (TSRA)

2.11 The Committee asked officers for an update on the progress of the infrastructure development program and for an outline of the different stages of the program. The Committee heard that approximately 85% of stage two was now complete. Stage one of the project was an upgrade of the Torres Strait region water supply. Stage two encompasses improvements to sewerage, drainage and subdivisions while stage three will see additional improvements to water and sewerage supplies.⁹

Senator Nigel Scullion
Acting Chair

⁷ *Proof Committee Hansard*, 26 May 2005, pp.12-13.

⁸ *Proof Committee Hansard*, 26 May 2005, pp.20-21.

⁹ *Proof Committee Hansard*, 26 May 2005, p.6.

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