

The Senate

Legal and Constitutional Affairs
Committee

Additional estimates 2006–07

March 2007

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Membership of the Committee

Members

Senator Marise Payne, **Chair**, LP, NSW

Senator Patricia Crossin, **Deputy Chair**, ALP, NT

Senator Andrew Bartlett, AD, QLD

Senator Linda Kirk, ALP, SA

Senator Joseph Ludwig, ALP, QLD

Senator the Hon Sandy Macdonald, NATS, NSW

Senator Stephen Parry, LP, TAS

Senator Russell Trood, LP, QLD

Senators in attendance

Senator Andrew Bartlett, Senator Bob Brown, Senator Patricia Crossin (Deputy Chair), Senator Chris Evans, Senator Steve Fielding, Senator Bill Heffernan, Senator Annette Hurley, Senator Linda Kirk, Senator Joseph Ludwig, Senator the Hon. Sandy Macdonald, Senator Kerry Nettle, Senator Stephen Parry, Senator Marise Payne (Chair), Senator Rachel Siewert, Senator Natasha Stott Despoja and Senator Russell Trood.

NOTE: all senators may attend a meeting of a committee in relation to estimates, question witnesses and participate in the deliberation of the committee at such a meeting (see Standing Order 26(8)).

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ABBREVIATIONS

ACS	Australian Customs Service
AFP	Australian Federal Police
AGD	Attorney-General's Department
DIAC	Department of Immigration and Citizenship
DIMA	Department of Immigration and Multicultural Affairs
DVS	Document Verification Service
FOI	Freedom of Information
ICS	Integrated Cargo System
MRT	Migration Review Tribunal
RAMSI	Regional Assistance Mission to Solomon Islands
RRT	Refugee Review Tribunal

PREFACE

On 8 February 2007, the Senate referred to the committee the examination of estimates of proposed additional expenditure for the financial year 2006-07. The committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Citizenship portfolio. The portfolio additional estimates statements were tabled on 8 February 2007.

Reference of proposed expenditures

The Senate referred to the committee, for examination and report, the following documents:

- particulars of proposed additional expenditure in respect of the year ending on 30 June 2007;
- particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2007; and
- statement of savings expected in annual appropriations made by Act No. 66 of 2006 (*Appropriation Act (No. 1) 2006-07*) and Act no 67 of 2006 (*Appropriation Act (No 2) 2006-07*).

The Senate also referred the following documents:

- final budget outcome 2005-06; and
- Advance to the Finance Minister as a final charge for the year ended 30 June 2006.

The committee was required to report on its consideration of the additional estimates on or before 21 March 2007.

Estimates hearings

The committee met in public session from 12 February to 13 February 2007.

Over the course of the two days' hearings, totalling over 22 hours, the committee took evidence from:

- the Department of Immigration and Citizenship (DIAC);
- the Migration Review Tribunal (MRT);
- the Refugee Review Tribunal (RRT);
- the Attorney-General's Department (AGD);
- the Australian Customs Service (ACS); and
- the Australian Federal Police (AFP).

Copies of *Hansard* are available on the internet at the following address:
<http://www.aph.gov.au/hansard/index.htm>.

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

Ministers

The committee heard evidence from Senator the Hon Ian Campbell, Minister for Human Services representing the Minister for Immigration and Citizenship and from Senator the Hon Chris Ellison, Minister for Justice and Customs who represented the Attorney-General.

Officers from both departments and associated agencies also appeared. The committee thanks Ministers and officers for their assistance.

Questions on notice

Further written explanations, and answers to questions on notice, will be tabled as soon as possible after they are received. That information is also available on the committee's internet page at the following address:
http://www.aph.gov.au/Senate/committee/legcon_ctte/estimates/index.

The committee has resolved that the due date for submitting responses to questions on notice from the Additional Estimates round is 30 March 2007.

Report

In this report, the committee draws the attention of the Senate to issues raised in the two days of hearings. These included:

- division of responsibilities in the Immigration and Citizenship portfolio between the new Minister and Parliamentary Secretary;
- the financial position of DIAC;
- temporary business (long stay) visas (subclass 457); and
- the composition of the refugee intake;
- family law issues and other policy making in relation to the Exclusive Brethren;
- Family Relationship Centres (FRCs);
- the National Document Verification Scheme(DVS);
- Mr David Hicks;
- Integrated Cargo System (ICS); and
- AFP investigations regarding the theft of military equipment.

CHAPTER 1

IMMIGRATION AND CITIZENSHIP

PORTFOLIO

Introduction

1.1 This chapter summarises areas of interest and concern raised during the committee's consideration of the Additional Estimates of the Immigration and Citizenship portfolio for the 2006-07 financial year.

Department of Immigration and Citizenship

1.2 On 31 January 2007 the Department of Immigration and Multicultural Affairs (DIMA) was renamed the Department of Immigration and Citizenship (DIAC). The Honourable Kevin Andrews MP was appointed Minister for Immigration and Citizenship, and the Honourable Teresa Gambaro MP was appointed Parliamentary Secretary to the Minister for Immigration and Citizenship. The committee notes the considerable contribution of Senator the Honourable Amanda Vanstone and the Honourable Andrew Robb MP to the portfolio.

1.3 In relation to the changes to the portfolio, committee members sought details on the division of responsibilities between the new Minister and Parliamentary Secretary. Officers provided the committee with a brief overview, stating that the Minister would be responsible for most immigration and citizenship issues while the Parliamentary Secretary would have responsibility for multicultural affairs, language and settlement services. Officers also told the committee the specifics had not been finalised and agreed to provide the committee with the final arrangements on notice.¹

1.4 The committee questioned DIAC on its financial position; in particular the DIAC's overspend. Officers told the committee that the Department's overspend for the 2006-07 period would be between \$50 million to \$60 million, a significant increase on the original estimated overspend of \$14 million. Officers told the committee that the increase was as a result of a range of projects relating to the Palmer inquiry together with increases in activity across the department.²

1.5 As with previous estimates rounds, Senators questioned officers on a range of issues surrounding the temporary business (long stay) visas (subclass 457 visas). The committee heard that in the first six months of 2006-07, the number of primary applicants granted a 457 visa, excluding independent executives, was 21,464. Officers

¹ *Committee Hansard*, 12 February 2007, p. 4.

² *Committee Hansard*, 12 February 2007, pp 4-9.

told the committee that this represented an increase of 17 per cent when compared to the first six months of 2005-06.³

1.6 The committee was concerned about compliance with requirements such as minimum salary levels which apply to 457 visas. DIAC advised that 300 employer sponsors are currently under investigation for non-compliance with their sponsorship obligations and 20 have been sanctioned for breaches in the last seven months. DIAC also outlined additional resources being directed at monitoring and compliance activities.⁴

1.7 Senators examined the decision to change the composition of Australia's refugee intake for 2006-07, in particular the decision to decrease the proportion of refugees from Africa from 55% to 50% of the total refugee intake. Officers cited a number of factors influencing the decision, including advice from United Nations High Commission for Refugees (UNHCR) and the Refugee Council of Australia. Officers also told the committee that the total allocated intake of refugees for the 2006-07 period is 6,000, a 50 percent increase from three years ago.⁵

1.8 Committee members sought information on inactive detention centres, in particular the cost of maintaining the centres and future plans for use of the centres. The committee heard that Port Hedland is the only remaining inactive detention centre, costing \$60,000 a month to maintain as a contingency facility. Officers also told the committee that the Woomera and Singleton centres are in the process of being returned to the Department of Defence.⁶

1.9 The committee questioned officers at length on the proposed citizenship test for new migrants. Officers provided the committee with an outline of the proposed computer based test:

There will be 25-30 multiple choice questions drawn from a bank of about 200 or more questions. They will be randomly generated through the software so that you could have two people sitting in a room doing the test and they may not get exactly the same questions.⁷

1.10 Officers told the committee that the proposed test is still under development and numerous aspects had yet to be finalised.⁸

³ *Committee Hansard*, 12 February 2007, p. 26.

⁴ *Committee Hansard*, 12 February 2007, pp 36-40.

⁵ *Committee Hansard*, 12 February 2007, pp 53-56.

⁶ *Committee Hansard*, 12 February 2007, pp 62-64.

⁷ *Committee Hansard*, 12 February 2007, p. 93.

⁸ *Committee Hansard*, 12 February 2007, p. 93.

Migration Review Tribunal and Refugee Review Tribunal

1.11 Committee members sought information from the Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT) on current workloads in comparison to previous years. Officers told the committee that the workload of the RRT had reduced significantly and as a result, resources had been transferred to the MRT.⁹ The committee also questioned officers on staffing levels at the MRT and RRT, with officers telling the committee that due to declining workloads, 73 of the 96 members are now classified as part-time.¹⁰

⁹ *Committee Hansard*, 12 February 2007, pp. 111-113.

¹⁰ *Committee Hansard*, 12 February 2007, p.112.

CHAPTER 2

ATTORNEY GENERAL'S

PORTFOLIO

Introduction

2.1 This chapter summarises areas of interest and concern raised during the committee's consideration of the additional estimates for the Attorney-General's portfolio for the 2006-2007 financial year.

Attorney General's Department

2.2 The committee sought information regarding consultation between the Attorney General's (AGD), the Minister, or the Attorney-General, and the Exclusive Brethren in relation to the family law reforms and exemptions from anti-discrimination legislation or the *Family Law Act 1975*.¹ The committee notes that AGD has subsequently provided the committee with a response on issues which were unable to be answered at the hearings.

2.3 The committee examined the rollout of Family Relationship Centres (FRCs) by the Department. The committee heard that there are currently 15 FRCs in operation in various locations around the country and that 25 more are due to commence operation by 2 July 2007.² Committee members also questioned officers on staffing levels, locations of FRCs, and services provided.

2.4 During the hearings, officers raised concerns about providing information on the grounds that the same information was not provided pursuant to a Freedom of Information (FOI) request.³ In 1999 the Senate adopted the following test of relevance for questions in estimates hearings:

Any questions going to the operations or financial position of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings.

2.5 To this end, information provided to the committee during estimates is different to that which would be provided under a FOI request. While there may be some areas of overlap between FOI exemptions and the public interest grounds that the committee recognises as a basis for not providing information during estimates hearings, the committee can choose to request any information within the boundaries of the test adopted by the senate. The committee would therefore be concerned if FOI

¹ *Committee Hansard*, 13 February 2007, p. 14-19.

² *Committee Hansard*, 13 February 2007, pp 22-23.

³ *Committee Hansard*, 13 February 2007, p. 25.

restrictions were adopted by agencies as the standard for evidence provided through the committee to the Parliament.

2.6 The committee received an update on the implementation of the national Document Verification Service (DVS). Officers provided the committee with a copy of the evaluation of the prototype document verification service. The committee also heard that the national DVS would not be ready by the time the proposed government 'access card' was due to begin operation.⁴

2.7 Senators were interested in the budget allocations for legal aid, in particular allocations for Indigenous legal aid. Officers told the committee that the budget for 2006-07 is just over \$155 million, an increase from just over \$148 million in the 2005-06 period.⁵

2.8 Committee members sought information about Mr David Hicks. Issues raised included:

- the conditions of his detention;
- time frame for laying charges against Mr Hicks;
- time frame for the commencement of court hearings; and
- the frequency and purpose of consular visits.⁶

2.9 During the hearings, some officers were asked questions relating to bills before Senate committees for examination. The Chair reminded senators and officers that the Clerk had advised that while questions at estimates had a very wide ambit:

Where a bill is before a Senate committee, this means that the Senate has given that committee the task of conducting an inquiry specifically into that bill. This indicates that an intention that any inquiry into the provisions of the bill be conducted at hearings and meetings of the committee specifically designated for that inquiry, and not pursued at estimates hearings which interested senators might not be able to attend and for which there is usually no notification of such specific subject matters of inquiries.⁷

2.10 The committee agreed to direct its questions to the relevant inquiry.

Australian Customs Service

2.11 The committee examined the Australian Customs Service (ACS), at length, on the implementation of the Integrated Cargo System (ICS). In particular, Senators

⁴ *Committee Hansard*, 13 February 2007, p. 66.

⁵ *Committee Hansard*, 13 February 2007, p. 57-58.

⁶ *Committee Hansard*, 13 February 2007, pp 70-88.

⁷ *Committee Hansard*, 13 February 2007, p. 51.

questioned officers on issues arising out of the Australian National Audit Office's (ANAO) report into the ICS such as:

- the approval process;
- how the ICS project was managed;
- details of variations to the initial contract; and
- compensation paid to businesses adversely affected by the disruption of cargo movements which resulted from failings of the ICS.⁸

2.12 Officers told the committee that all the ANAO report's recommendations had been accepted and ACS was implementing a number of changes, such as the appointment a new deputy chief executive officer, in response to the ANAO report.⁹

2.13 The committee also sought details on the ACS Coastwatch program. Officers provided the committee with details of the air surveillance program, in particular allocated flying hours. The committee heard that there can be discrepancies between the planned number of flying hours and the actual number of hours flown based on factors such as staff and aircraft availability, weather conditions, and seasonal workloads.¹⁰

Australian Federal Police

2.14 Senators sought clarification from the Australian Federal Police (AFP) on a number of allegations made in the media relating to the theft of military equipment. The AFP gave the committee an update on the background, progress, and number of investigations related to the allegations.¹¹

2.15 The committee also questioned officers on:

- costs of an AFP deployment to Afghanistan;¹²
- the AFP's role in the implementation and use of the proposed government 'access' card;¹³

8 Australian National Audit Office (ANAO), *Customs' Cargo Management Re-engineering Project*, Audit Report No. 42, 2006-07.

⁹ *Committee Hansard*, 13 February 2007, p. 90.

¹⁰ *Committee Hansard*, 13 February 2007, pp 116-117.

¹¹ *Committee Hansard*, 13 February 2007, pp 123-130.

¹² *Committee Hansard*, 13 February 2007, p. 131.

¹³ *Committee Hansard*, 13 February 2007, pp 132-133.

- assistance given to the Vanuatu police to search the vessel Retriever 1 (the crew of this vessel allegedly assisted Mr Peter Foster to enter Vanuatu without a visa);¹⁴ and
- the current status of the Regional Assistance Mission to Solomon Islands (RAMSI) mission including the loss of the Fijian police contingent.¹⁵

Senator Marise Payne

Committee Chair

¹⁴ *Committee Hansard*, 13 February 2007, pp 133-134.

¹⁵ *Committee Hansard*, 13 February 2007, p. 133-134.

Appendix 1

Departments and agencies under the two portfolios for which the Committee has oversight

Immigration and Citizenship

- Department of Immigration and Citizenship;
- Migration Agents Registration Authority;
- Migration Review Tribunal; and
- Refugee Review Tribunal.

Attorney General

- Attorney General's Department;
- Australian Federal Police;
- Australian Customs Service;
- Australian Security Intelligence Organisation;
- Australian Crime Commission;
- Australian Government Solicitor;
- Australian Law Reform Commission;
- Australian Transaction Reports and Analysis Centre;
- CrimTrac;
- Commonwealth Director of Public Prosecutions;
- Family Court of Australia;
- Family Law Council;
- Federal Court of Australia;
- Federal Magistrates Court;
- High Court of Australia;
- Human Rights and Equal Opportunity Commission;
- Insolvency and Trustee Service Australia;
- National Native Title Tribunal;
- Office of Film and Literature Classification Board and Classification Review Board;

- Office of Parliamentary Counsel;
- Office of the Privacy Commissioner;
- Australasian Police Minister's Council; and
- Audio-Visual Copyright Society Limited (Screenrights);

APPENDIX 2

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Documents tabled at Hearing

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- Opening Statement (Mr Andrew Metcalfe, Secretary)

Letters of Correction tabled after hearings

- Department of Immigration and Citizenship

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Documents tabled at Hearing

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- Family Relationship Centres-Performance Data
- Attorney-General's press release 24 January 2007 (Expansion of Family Relationship Services)
- List of operators for Family Relationship Centres
- Family Relationship Centres Taskforce terms of reference
- Family Relationship Centres: Key Performance Indicators
- Guidelines for referrals to legal advice by staff in Family Relationship Centres
- Long Form Funding Agreement – Family Relationship Centres
- Newspaper articles – Exclusive Brethren

- Evaluation of the prototype document verification service
- Corrigendum to the Attorney-General's 2006-07 Portfolio Additional Statements
- ABC online article – Government request for mental health assessment of Mr David Hicks
- News article – Mr David Hicks
- Sydney Morning Herald newspaper article – Mr Lhodi
- Attorney-General's press release: Mr David Hicks

Letters of Correction tabled after hearings

- Department of Immigration and Multicultural Affairs
- Migration Agents Registry Authority (MARA)