

The Senate

Foreign Affairs, Defence and
Trade Legislation Committee

Budget estimates 2004–05

June 2004

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Senate Foreign Affairs, Defence and Trade Legislation Committee

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Senate Foreign Affairs, Defence and Trade Legislation Committee

Report to the Senate

Introduction

1. On 11 February 2004, the Senate referred to the Committee for examination and report, the following documents:
 - Particulars of proposed budget expenditure for the service of the year ending 30 June 2005; and
 - Particulars of certain proposed budget expenditure for the service of the year ending 30 June 2005 relating to the Defence portfolio and the Foreign Affairs and Trade portfolio.
2. The Committee has considered the proposed budget expenditure for the year ending 30 June 2005, and has received evidence from the Minister for Defence, Minister representing the Minister for Veterans' Affairs, the Minister for Foreign Affairs and the Minister for Trade, and officers of the departments and agencies concerned.
3. The Committee met in public session on 31 May, and 1–3 and 17 June 2004. Further written explanations provided by departments and agencies will be presented separately in volumes of additional information. This information will also be placed on the Committee's internet site (www.apf.gov.au/senate_fadt).

Questions on notice

4. The Committee has resolved that written answers and additional information should be submitted by close of business on Thursday, 22 July 2004.

Overview

5. This year, budget estimates was somewhat unusual in that most of the Committee's time was spent on a single issue across both portfolios: the abuse and mistreatment of prisoners in Iraq.
6. Other than the above matter, questions were asked on some foreign affairs issues, AusAID, trade related issues including Austrade and veterans' affairs.
7. On a procedural matter, the Committee determined that certain evidence given by Mr Frank Lewincamp, Director, Defence Intelligence Organisation reflected adversely on Captain Martin Toohey. The Committee provided Captain Toohey with a right of reply and the Committee has authorised the incorporation of his written response in the *Hansard* record of 1 June 2004.
8. The hearings are summarised in dot point in the respective portfolio overviews.

Defence portfolio

Department of Defence

9. The Committee acknowledges the presence at the hearings, of Mr Ric Smith, AO, Secretary of the Department of Defence, and General Peter Cosgrove, AC, MC, Chief of Defence Force.
10. Matters raised by the Committee included¹:

Portfolio overview and major corporate issues

- **Summary of deployment:** Operations Catalyst in Iraq, Operation Citadel in East Timor, Operation Anode in the Solomon Islands and Operation Relex II for Australia's border protection (31 May, pp. 3–5). Evidence also taken on 17 June 2004 (pp. 8–10, 15–16).²
- Australian personnel on staff in the Coalition Provisional Authority (CPA) in Iraq. (pp. 6–7).
- Australian personnel on staff in the Australian joint task force headquarters (pp. 8–10).
- Relationship between Australian joint task force and the Australian Representative Office (ARO) in Baghdad (pp. 10–11); legal representatives at various organisations (pp. 11–14).
- Role of Staff Judge Advocate General (pp. 15–17).

1 Please note that the page numbers cited in this report are from the *proof Hansard*. Each transcript starts at page 1.

2 Transcript page numbers for the Department of Defence hearings refer to the *Proof Hansard*, 31 May, 1 June and 17 June, 2004. (See the transcript index at back of this report.)

- Rules of engagement and the **Geneva conventions** (pp. 15–17, 62, 66–68, 73, 90, 102–104, 113–114). Also evidence taken on 1 June 2004 (pp. 14–15, 24, 35, 51) and 17 June (p. 53).
- **Role of legal officer liaising** with the International Committee of the Red Cross (**ICRC**) (pp. 22–29). Also evidence taken on 1 June 2004 (pp. 5–6).
- **Conduct and outcome of survey of personnel** who had dealt with, and could have witnessed abuse of, prisoners of war and detainees (pp. 30–31, 34–35, 37–41, 59–60, 82–83, 88–89). Evidence also taken on 17 June (p. 36).
- **October 2003 and February 2004 ICRC reports** relating to prisoner abuse in Iraq (pp. 33–34, 44, 55–57, 62–64, 69–72, 78, 80, 99–100, 104–105). Also evidence taken on 1 June 2004 (pp. 15, 47–49) and 17 June (pp. 54–59).
- **Situation reports** from Australian national headquarters dated 4 December 2003 (pp. 36–37, 45). Further situation reports (pp. 53–55, 59–61, 86–88, 91–95). Also evidence taken on 1 June 2004 (pp. 10–11, 51–55) and 17 June 2004 (pp. 23–29, 37–38, 52–53, 55–57).
- **Future action** on situation reports (17 June 2004, pp. 20–21).
- **Visits by legal officers** and others to Abu Ghraib prison (pp. 39–44, 47, 62, 70). Also evidence taken on 1 June 2004 (pp. 5–9, 12, 22–23, 30).
- Draft response to **ICRC report** drafted by an Australian legal officer (p. 43–45, 74–77, 90). Also evidence taken on 1 June 2004 (pp. 28–29, 32–34, 36, 47–49, 57), and 17 June 2004 (pp. 4–6, 47–48).
- **Amnesty International report** on alleged abuse and torture in Iraq (pp. 45–47, 90). Also evidence taken on 1 June 2004 (p. 15), and 17 June (pp. 11–13, 42–43, 61).
- **Timeline of visits and reports** by an Australian legal officer on the treatment of prisoners of war in Iraq (pp. 44–50, 80–81, 105–107). Also evidence taken on 1 June 2004 (pp. 26–27, 36–39). Various roles of the Australian legal officer (p. 50–54, 106–113). Also evidence taken on 1 June 2004 (pp. 31–32). Evidence also taken on 3 June (pp. 37–47).
- **Roles and locations of various legal officers** in Iraq (pp. 81–87). Also evidence taken on 1 June 2004 (pp. 3–7, 60), and 17 June (pp. 13–14, 22–26).
- **HMAS Kanimbla's** involvement in detaining prisoners (1 June, p. 16).
- **Amnesty International** report: women detainees (1 June, pp. 17–18).
- **Australian government's knowledge** of the alleged abuses; a timeline (1 June, pp. 8, 20–21). Evidence also taken on 17 June 2004 (pp. 11–14).
- **Statements by Secretary and Chief of the Defence Force** correcting and clarifying evidence given on the situation in Iraq and the alleged abuse of prisoners (1 June, pp. 38–45). Evidence also taken on 17 June 2004, (pp. 4–7).
- 'Battle at Fallujah': Australian operations in Iraq (1 June, pp. 58–59).

- **Chronology of events** relating to senior officials in Department of Defence receiving information on reports of abuse in Iraq (17 June, pp. 4–7, 41, 43–45, 48).
- **Legal basis** for the arrangement with the United States about the detention of prisoners; CDF directive (17 June, pp. 7–10, 15).
- **Printed material and images** appearing on the Internet and in the press (17 June, pp. 16–19, 47, 60–61).
- **Minister's fact-finding team** role and function; fact-finding team report to the Minister (17 June, pp. 8, 19–24–41, 48–52).
- **Statement by the Minister** regarding messages about Amnesty International reports/statements on prisoner treatment (17 June, pp 41–42).
- **E-mail contact** by Australian group captain legal officer (working in the CPA), with a US major general in Iraq (17 June, pp. 43–45, 47).

Outcome 6

- Protocols for the use of photographs of ADF personnel (1 June, pp. 62–63).
- Appropriate use of ADF personnel in political events (1 June, pp. 64–65).
- Colonel Collins redress of grievance (1 June, pp. 61–88).

Department of Veterans' Affairs

11. The Committee acknowledges the presence at the hearings of Dr Neil Johnston, Secretary, and officers of the Department of Veterans' Affairs.

12. Issues that were discussed included:

Portfolio overview

- Defence force income support allowance (DFISA) (pp. 91–98).³
- Long Tan bursaries (pp. 98–101).
- Widows pension (pp. 102–103).
- Cost to DVA of external legal advice (pp. 103–104).
- Review of cases by a delegate (pp. 104–105). Complaint about decisions; ANAO audit recommendation (p 105).
- Decisions made by the Military Compensation and Rehabilitation Scheme (pp. 106–108). Equivalent practice under the Veterans' Entitlement Act (pp. 108–109).

3 Transcript page numbers for the Department of Veterans' Affairs hearings refer to the *Proof Hansard*, 1 June, 2004. (See the transcript index at back of this report.)

- Allegations of phoney medical discharges (p. 109).
- Veterans' Children Education Scheme (VCES) (p. 110).
- F111 fuel tank de–seal and re–seal (pp. 110–112).

Outcome 2

- Consultation with specialists who treat veterans prior to a budget announcement (pp. 112–113).
- General practitioners who have resigned from the LMO scheme (p. 114).
- Repatriation hospital at Daw Park, South Australia (pp. 114–115).
- Hearing services in Tasmania (pp. 115–116).
- Home care program for veterans and the Home and Community Care program (pp. 116–117).
- Aids and appliances for veterans (p. 118).
- VVCS: review of the program; psychological and counselling services; Heidelberg facility; veterans in distress in Ballarat (pp. 119–121).
- DVA Brisbane office (pp. 121–122).

Outcome 3

- Defence personnel missing in action (pp. 122–123).
- Names missing of the nominal roll for World War II veterans (pp. 123–124).
- POW memorial in Ballarat (p. 124).
- Australians at War Film Archive (pp. 124–126).
- Anzac Day at Gallipoli (pp. 126–127).
- War graves of Australians in Iraq (p. 127).
- War graves of Australians in South Africa (p. 127).
- D–Day 2004 commemorations (pp. 128–129).

Foreign Affairs and Trade portfolio

Department of Foreign Affairs and Trade

13. The Committee acknowledges the presence at the hearings, of Mr Doug Chester, Deputy Secretary, and officers of the Department of Foreign Affairs and Trade.

14. Matters raised by the Committee included:

Portfolio overview

- Interaction the department had with the International Committee of the Red Cross (ICRC), Amnesty International and Human Right Watch (2 June, pp. 12–14, 21, 26–27, 68).⁴
- Transitional legal officers (pp. 14–16, 22–23, 37–38, 75–77).
- The ICRC reports on the abuse and mistreatment of prisoners in Abu Ghraib prison (pp. 44–46, 51–52, 54–58, 71–76, 81).
- Situation reports (pp. 17–18, 30–31, 37, 40–41, 44–45, 50, 53–61, 72–73, 79).
- The reporting stream relating to the abuse or mistreatment of Iraqi prisoners (pp. 18–25, 28–35, 41, 46).
- Amnesty International press conference (pp. 25–26). Amnesty International report (pp. 82–83).
- Action taken on reports received by the department (pp. 24, 34–36, 42).
- Australian Representative Office (ARO) and Coalition Provisional Authority (CPA) contact with Iraqi officials (pp. 31–35, 40, 64). Role of the ARO (pp. 75–78).
- Visits to the Abu Ghraib prison (pp. 38–39).
- Legal watch group and task force activity (pp. 42–44, 49–50, 60–61).
- Report by General Taguba on prisoner abuses in Iraq (pp. 45, 47, 50, 68–69).
- Geneva conventions and rules of engagement (pp. 48, 64, 85–86, 89–96). Evidence also taken on 3 June (p. 44–47).
- Defence survey of personnel who visited Abu Ghraib regarding their knowledge of prisoner abuse (p. 60).
- Minister's concerns about human rights abuse (p. 63).
- Risk to Australian personnel in Iraq (pp. 66–67).
- Future trial of Saddam Hussein (pp. 69–70).
- Civilian casualties (pp. 70–71).

4 Transcript page numbers for the Department of Foreign Affairs and Trade hearings refer to the *Proof Hansards* of 2 and 3 June 2004. (See the transcript index at back of this report.)

- Reaction from Islamic countries to reports of abuse of prisoners in Iraq (p. 80).
- Diplomatic impact of the prisoner mistreatment allegations (pp. 83–84).
- UN Security Council and resolution 1483 (pp. 85–88).
- Role of the detaining power and the *HMAS Kanimbla* (pp. 93–98, 100–103). Also evidence taken on 3 June (pp. 37, 42).
- Capture and detention of Iraqis by the United States (3 June, pp. 37–38).
- Statement by the Defence Minister to clarify matters in relation to Australian contact with Iraqi prisoners (pp. 38–39).
- Correspondence from US General Tommy Franks (pp. 40–42).
- Directives from CDF (pp. 42–43).

Output 1.1.1 and output 1.1.7

- Extradition from Hong Kong of Australia citizens (3 June, pp. 12–15).

Output 1.1.2

- Timor Sea Treaty: maritime boundaries negotiations and aid to East Timor (2 June, pp. 111–118).
- Australia's military contingent in Afghanistan and the International Security Assistance Force (ISAF) (p. 120).
- Expulsion of the International Crisis Group Representative in Indonesia (pp. 122–123).

Output 1.1.5 and output 1.1.6

- WTO: status of the Doha negotiations (3 June, p. 23). Singapore issues (p. 23). Cairns group activity (pp. 23–24). Australian Wheat Board and the Canadian Wheat Board (pp. 25–26). Agriculture negotiations (pp. 26–28). Using the APEC meeting to progress Doha negotiations (pp. 28–29).
- Vietnam's WTO accession negotiations with Australia (pp. 29–31).
- Australia–New Zealand CER (pp. 31–37, 57–62).
- US–FTA: concern about article 11(16) of the agreement, relating to an investor–state dispute mechanism (pp. 62–64). WTO dispute processes (pp. 63–64).
- US–FTA: Intellectual property; the copyright legislation and the Digital Millennium Copyright Act (pp. 66–67).
- US–FTA: Free trade agreement enabling legislation (p. 68).
- US–FTA: interactive audio and/or video services (pp. 68–72).
- Examples of tariffs used to impose safeguards or to create preferential trading arrangements (pp. 72–73).

Output 1.1.8

- Terrorism white paper (2 June, pp. 103–111).

Output 2.1

- Status report on the welfare and treatment of Guantanamo Bay detainees Mr Hicks and Mr Habib (3 June, pp. 15–17, 20–22). Role of ICRC in monitoring the prisoners in Guantanamo Bay (p. 21).

AusAID (evidence heard on 2 June 2004)

- Summary of the aid budget for the next financial year (p. 3). Component likely to be spent on salaries for Australian bureaucrats or consultants providing advice and other services in developing countries (pp. 4–5).
- Papua New Guinea Enhanced Cooperation Program (pp. 5–6).
- Sustainability of the East Timor economy (pp. 6–7).
- Human rights in Burma (pp. 7–8).
- Development assistance to Nauru (p. 9).
- HIV/AIDS: global fund contribution; Asia Pacific Leadership Forum (pp. 9–12).

Austrade (evidence heard on 3 June 2004)

15. Matters raised by the Committee included:

- Austrade's budget for the next financial year; allocation of specific funds for the New Opportunities—New Exporters program (pp. 47–51).
- Role of export advisers (p. 52).
- Program of seminars and events to inform and educate about the free trade agreement and other trade issues (pp. 52–53).
- Australia–Thailand FTA (pp. 54–55).
- Export Market Development Grant Scheme (EMDG): processing of applications (pp. 55–57).

Acknowledgements

16. The Committee expresses its appreciation of the assistance given during its hearings by Senator the Hon Robert Hill, Minister for Defence, and Senator the Hon Nick Minchin, Minister for Finance and Administration. The Committee also acknowledges the attendance and cooperation of departmental and agency officers and the services of various parliamentary staff involved in the estimates process.

A handwritten signature in black ink, appearing to read 'Sandy Macdonald', written in a cursive style.

Sandy Macdonald

Chair

**Foreign Affairs, Defence and Trade
Legislation Committee**

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