

## **Prime Minister and Cabinet Portfolio**

The Committee took evidence from the department and agencies of the Prime Minister and Cabinet portfolio on Monday, 14 February 2005.

### **Office of the Official Secretary to the Governor-General**

**3.1** Issues raised by members of the Committee and other senators in attendance included:

- The visit to Australia of the Prince of Wales;
- The engagement of the Prince of Wales and Mrs Parker Bowles; and
- Australia Day 2005 honours.

**3.2** Senator Faulkner questioned the office about its role regarding the official visit to Australia of the Prince of Wales. The Committee heard evidence that the Governor-General will host a dinner on Friday, 4 March. Mr Hazell, Official Secretary to the Governor-General, informed the Committee that apart from hosting this dinner the Office of the Governor-General has a very limited role in the Prince's Australian tour. The Committee was advised that the Department of the Prime Minister and Cabinet have responsibility for the Royal visit.

**3.3** With regard to the wedding announcement concerning the Prince and Mrs Parker Bowles, the Committee heard evidence that Mr Hazell was formally told of the engagement by his 'counterpart at Buckingham Palace'<sup>1</sup> roughly half an hour after the announcement was made in London. Mr Hazell was unable to say whether this was the first official notification to Australia. Nonetheless, he was able to confirm that his notification was the earliest notification as regards to the Governor-General.

**3.4** The Official Secretary was also asked if Australia was going to be represented at the wedding and if any preparations were in train. Mr Hazell stated that he was not aware of any receipt of a formal invitation and that no plans were being made at present in relation to the Governor-General's likely attendance.

**3.5** The Committee discussed the Australia Day 2005 honours and a perceived political bias towards certain honours recipients. While it was not suggested that any of the 2005 recipients were undeserving, several senators were concerned that this year's awards were predominantly cast along coalition government lines. Mr Hazell disagreed with the notion of bias, stating that:

...for people to be successful they must be nominated by somebody. Clearly, we do not ask what their political backgrounds are. It is a matter of statistical record that, of those who we know their public positions and background, much the same number of people from the major political

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1 *Committee Hansard*, 14 February 2005, F&PA 39

parties get awards—and that has been a consistent trend. That has in any event been in toto a very small number of the successful nominations.<sup>2</sup>

**3.6** Mr Hazell went on to say:

The Council for the Order of Australia ... is a body that is independent of government. It considers a vast number of nominations that are put to it and then makes decisions about them, and those decisions are subsequently announced.

...

The important thing is that each of these cases is considered on its merits.<sup>3</sup>

**3.7** Several senators also expressed concern over recent negative publicity about the Australian honours system. Mr Hazell stated that while the Council encourages the media to report on the awards and honours it 'cannot tell the media what to write'.<sup>4</sup>

### **Australian Public Service Commission**

**3.8** On an administrative matter: the Committee received a request from the APSC late in the afternoon of Friday, 11 February 2005 to rearrange the hearing program to accommodate the APSC appearing at an earlier time than scheduled due to conflicting engagements of Ms Briggs, the Australian Public Service Commissioner. As members of the Committee and other senators were dispersing at the end of a sitting week the Committee was unable to consider the request until the morning of the hearing, 14 February.

**3.9** On this occasion, the Committee was able to accommodate the request. Nevertheless, the Committee reminds *all* agencies—not only the APSC—that where timing clashes are anticipated the Committee should be informed at the earliest opportunity. Every effort should be made to do this before the Committee's program is circulated. Scheduled hearing dates are known well in advance and agencies should plan to be available accordingly.

**3.10** Issues raised by members of the Committee and other senators in attendance included:

- Indigenous employment in the Australian Public Service (APS);
- Current and future challenges facing the APS;
- APS code of conduct breaches; and
- The APSC's response to Senator Murray's questions on notice regarding government advertising (mentioned above in paragraph 1.20).

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2 *Committee Hansard*, 14 February 2005, F&PA 42

3 *Committee Hansard*, 14 February 2005, F&PA 42-3

4 *Committee Hansard*, 14 February 2005, F&PA 43

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*Indigenous employment in the Australian Public Service (APS)*

**3.11** Based on figures referred in several *State of the Service* reports suggesting that the number of Indigenous employees in the APS has declined since 1999, Senator Carr sought an explanation for this trend. Ms Briggs noted that representation of Indigenous employment was higher in the public sector and 'well above the national average'<sup>5</sup> but there were cultural issues affecting the employment pursuits of many Indigenous persons. Ms Briggs also pointed to structural changes to the APS which have impacted on Indigenous employment, stating that:

In the main, it relates to the significant change that has occurred in the Public Service around the removal of lower level positions at ASO1 and ASO2 levels.<sup>6</sup>

**3.12** Further evidence given by Ms Briggs also revealed a decline in the numbers of Indigenous persons at the SES level. According to the most recent 'official' data at 30 June 2004, 24 Indigenous persons were employed at the SES level (1.3 per cent of the total SES). On the other hand, APSC data indicates that retention rates at the executive level have remained stable over the past two years and that there has been some growth in the APS3-4 levels.<sup>7</sup>

**3.13** The Committee raised questions regarding the shorter retention rates of Indigenous employees generally compared with the wider APS, and the apparent decline of support for Indigenous employees. Ms Briggs pointed to a number of initiatives designed to address recruitment and retention of Indigenous people, including:

- Alternative pathways to employment—service-wide initiatives as well as some pilot programs;
- Development programs to encourage Indigenous employees to remain in the APS;
- Better practice guides for employers;
- Employee networks that provide support for Indigenous employees; and
- A national forum of network chairs that meets with the APS Commissioner to discuss issues.

**3.14** Senator Carr also asked why there had been a decline in number of trainees in the APS. Ms Briggs noted that the staffing profile of the APS has changed significantly over time, with graduates now comprising 60 per cent of new entrants.

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5 *Committee Hansard*, 14 February 2005, F&PA 48

6 *Committee Hansard*, 14 February 2005, F&PA 46

7 *Committee Hansard*, 14 February 2005, F&PA 47-8

She also reiterated what the *State of the Service* reports have been saying for a number of years, namely:

This is a development right across the Public Service, where there are very few people brought in at the base level any more. It used to be, when people as old as me joined the Public Service, that the most common and primary form of entry to the Public Service. These days it is not. These days the average entrant to the Public Service is aged 32 with a university degree and comes in at APS3 and 4.<sup>8</sup>

**3.15** The Committee looks forward to hearing how the APSC progresses these initiatives.

### **Department of the Prime Minister and Cabinet**

**3.16** Issues raised by members of the Committee and other senators in attendance included:

- The Government's response to the Boxing Day tsunami;
- The engagement of the Prince of Wales and Mrs Parker Bowles;
- The Royal visit to Australia by the Prince of Wales;
- Senator Murray's outstanding questions on notice regarding government advertising;
- Consultants and consultancies – changes to the annual reporting guidelines;
- The detention of Ms Cornelia Rau;
- Debt relief for Third World countries;
- The Australian honours system – the Order of Australia and the Australia Day 2005 honours;
- Security works at the Department of the Prime Minister and Cabinet;
- Maintenance work regarding the upkeep of the Lodge and Kirribilli House;
- Outstanding government response to the Finance and Public Administration Reference Committee's 2003 report regarding members of parliament staff (MOPS);
- The Government's response to the Uhrig report;
- Development of the Australian maritime identification zone;
- The conflict in Iraq – statistics regarding civilian deaths; and
- Australia-Indonesia Partnership for Reconstruction and Development.

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*The Government's response to the Boxing Day tsunami*

**3.17** At the Committee's request, the minister and departmental officials provided a detailed account of the official Australian response to the tsunami disaster. In view of the significance of the tragedy to the region and centrality of Australia's role in the international response, the Committee pressed for an overview of the decision making processes and administrative mechanisms put in place to deal with the emergency.

**3.18** Like most Australians, officials became aware of the Asian tsunami through media reports as the devastation unfolded. Immediately, 'standing arrangements' were automatically set in motion with various resources tasked in intelligence gathering and response planning. Following Australia's experience in dealing with the Bali bombings and its subsequent post-mortem, operational channels of communication were opened and the Interdepartmental Emergency Task Force (IDETF) convened.<sup>9</sup>

**3.19** Articulating the composition and mandate of the IDETF, Mr Andrew Metcalfe, Deputy Secretary, stated:

When there is any matter that requires a coordinated response by Australian government agencies, the thing called the interdepartmental emergency task force is convened, chaired by the Department of Foreign Affairs and Trade and involving the agencies that will usually have a role to play.

...

This particular task force is chaired by the Acting Secretary of the Department of Foreign Affairs and Trade and attended at a very senior level by a range of agencies. Attendees include the Chief of the Defence Force—or the vice chief—the relevant national manager in the Australian Federal Police, usually the head or deputy head of AusAID, and the list goes on.<sup>10</sup>

**3.20** Mr Metcalfe went on to discuss the critical stages of Australia's response when news of the disaster first arrived:

[W]ithin the first 24 hours there was obviously all possible information being gathered because of the multistranded issues that were associated with that—concern for the safety and welfare of Australians abroad, which very quickly moved into work particularly in Thailand; the consular response more broadly, assisting Australians who may have been affected; and consideration of the humanitarian concerns in the various countries concerned. It is obviously a matter of record as to the decisions taken by the government to very quickly provide humanitarian assistance, firstly through the Royal Australian Air Force and the Australian Defence Force and then, more broadly, through a range of agencies.<sup>11</sup>

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9 *Committee Hansard*, 14 February 2005, F&PA 56-9

10 *Committee Hansard*, 14 February 2005, F&PA 56

11 *Committee Hansard*, 14 February 2005, F&PA 57

**3.21** Mr Metcalfe informed the Committee that, on this occasion, while the task force was the primary coordination mechanism between government agencies, there were 'subsidiary groupings of officials working on particular matters'. One in particular, called the Tsunami Domestic Recovery Task Force, was responsible for dealing with the impact on Australian nationals—assisting their return home and responding to relatives' needs and enquiries.<sup>12</sup> Notwithstanding these arrangements, later involvement by Cabinet and its security committee, the Committee heard that existing process were used during the period of crisis.

**3.22** Mr Ian Kermish, First Assistant Secretary, International Division, told the Committee that after each crisis response the standing arrangements are reviewed in detail and if necessary, amended. Mr Kermish stated, for example, that:

... a real focus of the post Bali review work was the development of systems across agencies to ensure that resources—particularly staffing resources—were able to be deployed quickly and in a coordinated way to the scene of the disaster.<sup>13</sup>

**3.23** The Committee is aware, not only by the evidence given but more obviously by the time of year, that many staff across the Commonwealth had to forgo their family holidays in order to be available to respond to this disaster. The Committee is grateful for each individual's contribution during these most difficult of times.

**3.24** Senator Evans questioned whether, following the initial response, decisions to send troops to Aceh and the approval of aid packages were made by cabinet and if not, how the process worked. Mr Metcalfe said that the Prime Minister had had discussions and briefings with senior colleagues and that decisions were not made in the formal sense of cabinet convening. The relevant ministers, however, were involved in the consultation and advice process.<sup>14</sup>

**3.25** The Committee heard evidence that in formulating its decision to send troops the Government had received advice from personnel overseas and that there had also been discussion at the ministerial level with foreign counterparts:

Senator Hill—The first deployment was pretty obvious, but there was some preliminary work that we did. Our defence attache and his staff in Indonesia were very helpful, as was Ambassador Ritchie. They very quickly formed the view that assistance would be welcome. Then I had General Cosgrove phone General Sutarto, who confirmed that. I then telephoned Minister Sudarsono to ensure that the civilian authority was properly in line with the TNI's aspiration. He indicated that any assistance that we could give would be appreciated. He talked a bit about Aceh and I told him that in the first instance we proposed to send C130s with aid. From then on it grew.

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12 *Committee Hansard*, 14 February 2005, F&PA 57

13 *Committee Hansard*, 14 February 2005, F&PA 58

14 *Committee Hansard*, 14 February 2005, F&PA 59-60

Senator CHRIS EVANS—Is it fair to say that the first deployment was not actually specifically at the request of the Indonesians then? Was it a suggestion from us as to what we could send quickly?

Senator Hill—I have heard that it was suggested both ways. Our people in Jakarta were excellent and they immediately made contact. Who telephoned who first, I am not sure, but they were in very early communication with the relevant Indonesian authorities and all of that worked extraordinarily well. After that, as the days were going by, we were obviously assessing the areas of need in which the ADF could fill a gap. With the original C130s, we sent in the first medical teams and we also took in the United Nations assessment team. We fairly quickly decided that they could use our helicopters. We agreed to a deployment of four Iroquois helicopters. Then the engineering need was becoming obvious and so that led to the ultimate deployment of Kanimbla with 150 engineers and a further two Sea King helicopters. During this time we were establishing bases to sustain the force and Indonesia was very good in relation to Medan and Malaysia was very helpful in relation to Butterworth. It really worked very well and I think it was a great credit to Defence—not just those out front but those behind who played a very significant part. As I have said before—but as the issues have been raised I will mention it again—I thought the whole of the Public Service performed superbly in this instance. The fact that senior public servants did not wait to be called in I think is really of great credit to them.<sup>15</sup>

**3.26** With regard to the announced aid packages, Senator Evans sought clarification as to whether the task force was involved in formulating the response. Officials were not able to give a definitive answer, suggesting that while they were aware of the announcements being made they were unclear as to the extent that the issue was handled within the task force.

Senator CHRIS EVANS—To get back to the development of the response: the initial decision on aid was taken by the Prime Minister and the foreign affairs minister. Did the task force make recommendations on that or were you dealing pretty much with the emergency responses?

Mr Metcalfe—Those issues were discussed in the task force. Certainly the initial tranches of humanitarian assistance were essentially within the remit of the Minister for Foreign Affairs and Trade, who was discussing these issues with the Prime Minister. The development of the \$1 billion package which was announced by the Prime Minister when he was in Jakarta on 6 January—as I said earlier—was the subject of work at a very high level between Foreign Affairs, PM&C, AusAID and the Treasury and discussions the Prime Minister had with the relevant ministers.

Senator CHRIS EVANS—I will come to matters of detail now. Essentially the task force dealt with the emergency response—the humanitarian response and Australians who might have been affected. Did you deal with

the initial aid response issues as well or was that dealt with separately by the minister? Did you discuss the sort of aid?

Mr Metcalfe—I personally was not in the meetings in the first couple of days, but the sense I had was that we had a view from the Prime Minister that our response should be swift and generous. There were initial announcements of humanitarian assistance—essentially from within existing AusAID budgets. I would have to check the records to check the extent that that was discussed within the task force, but it was certainly something that was part of the work that was being done between agencies.<sup>16</sup>

**3.27** The Committee awaits further advice on notice from the department as to the extent the task force was involved in formulating the aid package.

*Consultants and consultancies – changes to the annual reporting guidelines*

**3.28** Senator Faulkner raised concerns that recent changes to the guidelines for preparing annual reports have resulted in a net loss for the transparency of reporting on consultants and consultancies.

**3.29** Senator Faulkner referred to the following extract related to the new guidelines:

Am I correct now in understanding that the requirements that apply are this:

... if a consultancy contract is let in May 2004, and the contract expires in September 2004 and expenditure under the contract is \$10,000 per month, the annual report for the 2003-04 financial year should record one consultancy contract and \$20,000 expenditure in relation to that contract. The annual report for the 2004-05 financial year should record only \$30,000 expenditure—the letting of the consultancy contract should not be included again in the number of consultancy contracts let during the 2004-05 financial year.<sup>17</sup>

**3.30** In response, Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch, stated:

... the paragraph that you just read out is trying to explain to departments that if you let a contract for a consultancy service in one financial year and you spend, say, \$20,000 out of a budgeted \$100,000 in that financial year, then in that year's annual report you would indicate that you had let one contract and spent \$20,000. In the following year's annual report you would not indicate that you had let any contract in relation to that particular consultancy service but that you had spent \$80,000.<sup>18</sup>

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16 *Committee Hansard*, 14 February 2005, F&PA 61

17 *Committee Hansard*, 14 February 2005, F&PA 70

18 *Committee Hansard*, 14 February 2005, F&PA 70-1



**3.31** The reason for these changes, according to PM&C officials, was to overcome confusion with how consultancies let are recorded, as many consultants are engaged across financial years. In other words, a consultancy may be *let* during one reporting period yet total *expenditure* may go across several financial years. This, according to officials, posed a risk of double counting the actual consultancies let and the expenditure outlay for any one financial year.

**3.32** The Committee appreciates that the apparent motive for the changes is to simplify the reporting requirements and avoid confusion. However, the Committee believes that these changes have the potential to reduce transparency. Although these changes have not caused a net reduction in the disclosure of information, the concern is that individual annual reports may no longer provide an accurate indication of the total number of consultancies *in existence* during any given reporting period. To obtain an accurate assessment, second source material must be referred to; for example, previous annual reports or an agency's internet homepage.

**3.33** The Committee notes, however, that the requirements stipulate the following:

Further, more detailed, information on consultancy services is also required, either as an appendix to the report, or on request or through the Internet, as set out in Attachment C to these Requirements. This additional information requires departments to list each consultancy contract let to the value of \$10 000 or more and the total value of each of those contracts over the life of each contract. In other words, this additional information is not concerned with expenditure in the reporting year, but estimated expenditure over the life of each contract that is reported.<sup>19</sup>

**3.34** The Committee has serious concerns with the statement that 'more detailed, information on consultancy services is also required, *either as an appendix to the report, or on request or through the Internet...*' This sentence implies that further detailed information only needs to be accessible on request and not a specific requirement for appendices to annual reports.

**3.35** The Committee believes that the issue should be resolved by *requiring* annual reports to list, separately, all new consultancies let and all ongoing consultancies, with expenditure reported against each accordingly. That is, the *total* value reported when a consultancy is let, as well as the expended total of that consultancy in any given reporting period.

**3.36** Moreover, the Committee believes that all expenditure needs to be reported against its intended outcome, otherwise, the parliament's ability to scrutinise changes to the terms of any consultancy may be reduced.

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<sup>19</sup> PM&C, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act bodies*, June 2004, p.12

*Outstanding government response*

**3.37** During evidence given by the APSC, the Committee was told that the APSC had provided information to PM&C, which is the department responsible for coordinating the Government's response to the Reference Committee's 2003 report regarding members of parliament staff (MOPS). He noted that it is particularly relevant to the current inquiry into the Regional Partnerships Program:

The reason I think this needs a hurry-up is that these issues have been raised again recently with the instance of Mr Hallet and his email. That is again on the topic of how an adviser acts where there is an in executive decision or where he is the intermediary either between the minister and the bureaucracy or between the minister and whoever is spending the money. It is very much an issue raised in that report.<sup>20</sup>

**3.38** Ms Barbara Belcher, First Assistant Secretary, Government Division, stated in reply that:

There has already been action to implement some of the recommendations. But you are quite right: the response is outstanding. ...I will see if that response can be sped up so you can see it soon.<sup>21</sup>

**3.39** The Committee reminds officials that the Senate has resolved that responses should be received within a three-month period after a committee report has been tabled.

**Office of the Inspector-General of Intelligence and Security**

**3.40** Issues raised by members of the Committee and other senators in attendance included the:

- Inspector-General's opening statement covering issues of note and current activities: resourcing, current work, and warrants under the ASIO Act;
- Impact of the Flood recommendations; and
- Inquiry into the matters arising from Lieutenant Colonel Collins' redress of grievance.

**3.41** As is customary, Mr Ian Carnell, Inspector-General, opened the examination with a statement outlining significant matters relating to, or currently before, the agency. On this occasion, Mr Carnell identified three issues, the first of which went to additional resources related to:

- Funding for two new positions; and
- Investment in IT capital.

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20 *Committee Hansard*, 14 February 2005, F&PA 85

21 *Committee Hansard*, 14 February 2005, F&PA 85

**3.42** The new positions are a result of the increased workload of the agency—namely, its inspection program—and from the implementation of recommendations from the Flood review. The funding for IT is to replace depreciated office inventory.

**3.43** The second issue covered the current work of the agency. Mr Carnell stated that the 2003-04 annual report listed nine matters outstanding as of 30 June 2004. Of these, seven have been completed and the other two are close to completion. Since 1 July 2004, 20 new matters have been put before the agency; 14 of these have been finalised, with six ongoing. Mr Carnell stated that roughly half these new matters relate to 'ASIO and security checks for visa applications'.<sup>22</sup>

**3.44** Finally, the third issue went to warrants under the ASIO Act. Mr Carnell noted that as reported in the 2003-04 annual report, there were no concerns with how warrants were executed. He was pleased to inform the Committee that warrants executed post 2003-04 financial year have also been undertaken with a high level of professionalism and, as a result, he had no concerns.

*Inquiry into the matters arising from Lieutenant Colonel Collins' redress of grievance*

**3.45** The Committee questioned Mr Carnell about the lead up to, and the major issues that warranted, the re-examination of his predecessor's inquiry into concerns raised by Lieutenant Colonel Collins about intelligence matters.

**3.46** Mr Carnell told the Committee that on 15 April 2004, he received a letter from the Chief of the Defence Force together with a copy of Captain Toohey's report and related papers. On 3 May 2004, Mr Carnell wrote to the Minister for Defence with the view that the matter be re-examined. Then on 6 May 2004, the Minister made a formal request for IGIS to conduct an inquiry into a particular incident where the ADF intelligence officers attached to the INTERFET force in Dili lost access to a particular database.

**3.47** Mr Carnell stated that the main grounds for re-examination were to interview three people that had not been interviewed in the earlier inquiry and to undertake certain IT forensic work. Mr Carnell said that:

The initial interest was, I thought, to be comprehensive. There were three people who had had some involvement with the events who ought to be interviewed.

...

I did those three interviews, and I then thought the best thing I could do was to get some IT forensic work done, because the three interviews made the situation less clear. So there was then a process of getting some IT forensic work done, and I needed some expert assistance with that and was able to get help from some officers of the Defence Security Authority.

...

I thought that if we were to maintain the hypothesis that it was a result of technical failures then that would be evident somewhere in the system. That work commenced on 1 June and ran through until late August. At that point it was clear that in fact there were deliberate transactions in the system that had deprived that group of users of access.<sup>23</sup>

**3.48** Senator Evans asked Mr Carnell how he became aware of the three 'new' people. The Committee heard that the three persons had been referred to in the previous inquiry but had not been interviewed.

**3.49** Following the usual procedure under section 21 of the IGIS Act, Mr Carnell forwarded a copy of his draft report to the director of the Defence Intelligence Organisation (DIO). Responding to Senator Evans' concern regarding suggested amendments to the report from the Director of DIO—given the unusual situation where a person being affected by the report is also reviewing it in its draft form—Mr Carnell stated that:

He made some valid points and I took them into account. If you are sitting there concerned that I rolled over and was softer on him, no, I was not.<sup>24</sup>

**3.50** On 29 November 2004, Mr Carnell met with the minister to discuss the report. On the following day, with no changes arising from the meeting the day before, Mr Carnell gave his final report to the minister.

### **Office of National Assessments**

**3.51** Issues raised by members of the Committee and other senators in attendance included:

- ONA's response to the Committee regarding its recommendation that ONA prepare and table a declassified annual report; and
- The conflict in Iraq – statistics regarding civilian deaths

**3.52** ONA was asked about an overdue response to the Committee's recommendation, in its last report on the scrutiny of annual reports, that it prepare and table an unclassified version of its annual report in the parliament. ONA indicated that the Joint Committee on ASIO, ASIS and DSD had made a similar recommendation. Mr Peter Varghese, Director-General, stated that the matter was 'under consideration' but noted that it would be difficult to produce a 'meaningful unclassified' report for tabling as its annual report to the Prime Minister contains information on its activities and the 'performance' of foreign intelligence agencies.

**3.53** The Committee notes that ONA and ASIO share a similar mandate for the for intelligence assessment of security issues. However, ONA's responsibility is *only* external to Australia, 'to provide a broad... contextual analysis of terrorism and its

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23 *Committee Hansard*, 14 February 2005, F&PA 93

24 *Committee Hansard*, 14 February 2005, F&PA 96

impact on other countries and regions',<sup>25</sup> whereas ASIO's responsibility is both internal and external. Nonetheless, the Committee believes that ONA should be able to prepare a meaningful declassified annual report, and hopes that further meaningful consideration is given to this issue and that a formal response is provided detailing its outcome.

*The conflict in Iraq – statistics regarding civilian deaths*

**3.54** ONA was questioned about the number of civilian deaths in relation to the Iraq war and the ensuing conflict. After a lengthy discussion the Committee was able to ascertain that ONA does not possess any statistics regarding the numbers of civilian casualties, ONA is not aware of any foreign source that has such information and it appears that no such information has been sought by ONA, the Government or any of its other agencies.

### **Australian National Audit Office**

**3.55** Issues raised by members of the Committee and other senators in attendance included:

- The appointment process pending Mr Barrett's (Auditor-General) retirement;
- Issues arising from Audit Report No.21. 2004-05—*Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2004*, in particular:
  - Increased numbers of qualified financial statements, and
  - Breaches of section 83 of the Constitution and related Acts;
- Issues arising from Audit Report No.15. 2004-05—*Financial Management of Special Appropriations*, in particular:
  - Control mechanisms for drawing upon special appropriations,
  - Financial management arrangements regarding special appropriations, and
  - Breaches of section 81 of the Constitution and related legislation; and
- Issues arising from Audit Report No.22. 2004-05—*Investment of Public Funds*.

**3.56** Referring to findings contained in Audit Report No.21 2004-05, Senator Sherry sought an explanation for why there had been a markedly high increase in the numbers of qualified reports from the 2002-03 to 2003-04 financial years. The Committee heard that the issues were 'basically management related' and not an underlying issue of accrual accounting. For one reason or another, poor management

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25 Gyngell, A. & Wesley, M. (2003) *Making Australian Foreign Policy*, Cambridge University Press, Cambridge, p.165

has led to a 'growth in systems deteriorations and books and records in a number of major departments'.<sup>26</sup>

**3.57** Of equal concern to the Committee were the Audit Office's findings that six agencies had breached section 83 of the Constitution and related Acts, by spending money that was not appropriated by the Parliament. Mr Ian Goodwin, Group Executive Director, Assurance Audit, stated that each case related to the management of special appropriations. In essence, '[a]n appropriation would be made available and agencies would draw down against that appropriation. If they draw down in excess of the appropriation made available then in effect they breach section 83 of the Constitution'.<sup>27</sup>

**3.58** Furthermore, Mr Brian Boyd, Executive Director, Performance Audit Services Group, stated that:

Section 83 in common terms essentially has two limbs. Appropriations always have a purpose—that is a requirement. You can breach section 83 of the Constitution when you spend other than in accord with the purpose of the appropriation. Some appropriations also have a financial limit or a limit by time. You can also breach section 83 when you spend other than in accordance with those limits. Those requirements are reflected in finance ministers orders. Section 2.3 essentially requires agencies to ensure that they do not spend other than in accordance with the purpose of an appropriation or outside the limit of an appropriation.<sup>28</sup>

**3.59** Senators Sherry and Murray questioned the ANAO about available sanctions and whether overspent monies had been recovered in the instances where breaches were made. On the latter, Mr Boyd stated that in each of the six cases the overspent monies had been returned to the Commonwealth. With regard to the former, Mr Warren Cochrane, Group Executive Director, Performance Audit, told the Committee that the ANAO's duty was to audit entities and not impose penalties for failings. Mr Cochrane stated:

[The ANAO's] job is basically to look at how the department is working and whether the department is complying with the law, and [to] report on that basis. Holding a minister to account [and applying sanctions] is a matter for the parliament.<sup>29</sup>

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26 *Committee Hansard*, 14 February 2005, F&PA 114-5

27 *Committee Hansard*, 14 February 2005, F&PA 116

28 *Committee Hansard*, 14 February 2005, F&PA 117

29 *Committee Hansard*, 14 February 2005, F&PA 117