

The Senate

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Legal and Constitutional Affairs  
Committee

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Additional estimates 2007–08

March 2008

Commonwealth of Australia  
ISBN 978-0-642-71896-9

This document was prepared by the Senate Legal and Constitutional Affairs Committee and printed by the Senate Printing Unit, Parliament House, Canberra.

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## Membership of the Committee

### Members

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

Senator Guy Barnett, **Deputy Chair**, LP, TAS

Senator Andrew Bartlett, AD, QLD

Senator Mary Jo Fisher, LP, SA

Senator Linda Kirk, ALP, SA

Senator the Hon. Jan McLucas, ALP, QLD

Senator Gavin Marshall, ALP, VIC

Senator Russell Trood, LP, QLD

### Senators who attended

Senator Patricia Crossin (Chair), Senator Guy Barnett (Deputy Chair), Senator Andrew Bartlett, Senator Mary Jo Fisher, Senator Linda Kirk, Senator the Hon. Jan McLucas, Senator Gavin Marshall, Senator Russel Trood, Senator the Hon. Eric Abetz, Senator Lyn Allison, Senator Mark Bishop, Senator the Hon. George Brandis, Senator Bob Brown, Senator George Campbell, Senator the Hon. Christopher Ellison, Senator the Hon. Bill Heffernan, Senator the Hon. David Johnston, Senator Barnaby Joyce, Senator the Hon. Ian Macdonald, Senator Fiona Nash, Senator Kerry Nettle, Senator Stephen Parry, Senator Marise Payne, Senator the Hon. Nigel Scullion, Senator Rachel Siewert, Senator Ruth Webber.

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)).

### Secretariat

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# ABBREVIATIONS

|         |   |
|---------|---|
| ACS     | Australian Customs Service                          |
| AFP     | Australian Federal Police                           |
| AUSTRAC | Australian Transaction Reports and Analysis Centre  |
| AGD     | Attorney-General's Department                       |
| DIAC    | Department of Immigration and Citizenship           |
| MRT     | Migration Review Tribunal                           |
| RRT     | Refugee Review Tribunal                             |
| ASIO    | Australian Security Intelligence Organisation       |
| AAT     | Administrative Appeals Tribunal                     |
| ACLEI   | Australian Commission for Law Enforcement Integrity |
| AGS     | Australian Government Solicitor                     |
| HREOC   | Human Rights and Equal Opportunity Commission       |
| NNTT    | National Native Title Tribunal                      |
| IDG     | International Deployment Group                      |





# PREFACE

On 13 February 2008, the Senate referred to the committee the examination of estimates of proposed additional expenditure for the financial year 2007-08. 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 13 February 2008.

## Reference of documents

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 2008 (relating to Appropriation Bill (No. 3) 2007-08);
- Particulars of proposed certain additional expenditure in respect of the year ending on 30 June 2008 (relating to Appropriation Bill (No. 4) 2007-08);
- Issues from the Advance to the Finance Minister as a final charge for the year ending on 30 June 2008; and
- Final budget outcome 2006-07 – Report by the Treasurer (Mr Costello) and the Minister for Finance and Administration (Senator Minchin), September 2007.<sup>1</sup>

The committee was required to report on its consideration of the Additional Estimates on or before 18 March 2008.

## Estimates hearings

The committee met in public session on 18 February and 19 February 2008.

Over the course of the four days' hearings, totalling over 21 hours, the committee took evidence from the following departments and agencies:

- Aboriginal and Torres Strait Islander Social Justice Commissioner;
- Attorney-General's Department (AGD);
- Australian Crime Commission;
- Australian Commission for Law Enforcement Integrity (ACLEI);

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1 Appropriation bills are introduced to Parliament in pairs, as the Constitution imposes different requirements on expenditure that relates to the ordinary annual services of government and expenditure that does not relate to ordinary annual services. 'Proposed additional expenditure' relates to the ordinary annual services of government while 'certain proposed additional expenditure' relates to all other expenditure.

- Australian Customs Service (ACS);
- Australian Government Solicitor (AGS);
- Australian Federal Police (AFP);
- Australian Security Intelligence Organisation (ASIO);
- Australian Transaction Reports and Analysis Centre (AUSTRAC);
- Department of Immigration and Citizenship (DIAC);
- Family Court of Australia;
- Federal Magistrates Court;
- Human Rights and Equal Opportunity Commission (HREOC);
- Migration Review Tribunal (MRT); and
- Refugee Review Tribunal (RRT).

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 3 and Appendix 4.

## **Ministers**

The committee heard evidence from Senator the Hon Joseph Ludwig, Minister for Human Services representing the Attorney-General and Minister for Home Affairs, and from Senator the Hon Chris Evans, Minister for Immigration and Citizenship.

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](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 2 April 2008.

## **Report**

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

### ***Australian Federal Police***

- number of Australian Federal Police (AFP) officers deployed overseas;

- strength of the International Deployment Group (IDG); and
- the AFP investigation into Dr Mohammad Haneef.

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

- the impact on specific programs resulting from an increase in the efficiency dividend to 2% (pro-rated) for the 2007-08 financial year; and
- security clearances for newly appointed ministerial staff.

#### ***Procedural issues arising during consideration of the Attorney-General's portfolio***

- legal advice to the government regarding possible compensation for the Stolen Generation; and
- legal advice regarding the sitting of parliamentary chambers with quorum rules suspended.

#### ***Department of Immigration and Citizenship***

- the impact on specific programs resulting from an increase in the efficiency dividend to 2% (pro-rated) for the 2007-08 financial year;
- skilled migration;
- the citizenship test;
- Ministerial powers under the Migration Act; and
- Ms Cornelia Rau.



# 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 Additional Estimates for the Attorney-General's portfolio for the 2007-08 financial year.

### Australian Federal Police (AFP)

1.2 The committee questioned officers on the total number of AFP officers currently deployed overseas.<sup>1</sup> The committee heard that as of 9 January 2008<sup>2</sup> there were 393 officers deployed to international missions, with 70 officers being deployed to East Timor in the week preceding the estimates hearings.<sup>3</sup> Officers told the committee that in addition to officers deployed to international missions, there were 87 staff posted to 28 countries as liaison officers.<sup>4</sup>

1.3 Continuing its examination of the AFP, the committee sought an update on the current strength of the International Deployment Group (IDG). Officers told the committee that the IDG had 944 staff, with the AFP aiming to increase the size of the IDG to 1200 personnel by 30 June 2008.<sup>5</sup> Officers told the committee they were confident of meeting the target.<sup>6</sup>

1.4 The committee sought information on the investigation regarding Dr Mohammad Haneef and related matters.<sup>7</sup> Officers told the committee:

...there were in excess of 300 witness statements obtained; a total of 16 telephone intercept and six surveillance device warrants issued; a total of 22 search warrants executed on residential premises, work premises and vehicles; a total of 623 gigabytes of data seized from various computers and portable media devices; and a total of 349 forensic samples collected.<sup>8</sup>

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1 *Committee Hansard*, 18 February 2008, p. 8.

2 See Letter of Correction dated 4 March 2008

3 *Committee Hansard*, 18 February 2008, pp. 8-9.

4 *Committee Hansard*, 18 February 2008, p. 9.

5 *Committee Hansard*, 18 February 2008, p. 9.

6 *Committee Hansard*, 18 February 2008, p. 9.

7 *Committee Hansard*, 18 February 2008, pp. 24-25.

8 *Committee Hansard*, 18 February 2008, p. 24.

1.5 The committee heard that, at its peak, the investigation involved 601 personnel, and as of December 2007, had cost in excess of \$7.5 million.<sup>9</sup> Officers told the committee that investigations are ongoing.<sup>10</sup>

### **Attorney-General's Department (AGD)**

1.6 Changes in the output/outcome structure for AGD are outlined in appendix 5.

1.7 The committee sought information on the increase in the efficiency dividend for the 2007-08 financial year.<sup>11</sup> In particular, the committee questioned officers on the effect that the increase would have on AGD. Officers told the committee that:

The implications for this year are a reduction of \$940,000; and for next year, \$4,258,000. That has to be considered in the light of a total budget of over \$200 million. It is 0.46 per cent of our total budget, so it is not a huge amount in terms of the current financial year.<sup>12</sup>

1.8 Committee members questioned officers on whether any particular programs would be affected by the application of the increased efficiency dividend.<sup>13</sup> Officers told the committee that they did not expect there to be 'a dramatic impact on any particular program.'<sup>14</sup>

### ***Security Clearances for Ministerial Staff***

1.9 The committee questioned officers on the granting of security clearances to newly appointed ministerial staff.<sup>15</sup> Specifically, the committee questioned officers on interim arrangements for the handling of classified material in ministerial offices while staff were undergoing security clearances.<sup>16</sup> Officers told the committee that in certain circumstances a provisional clearance could be provided allowing staff to access some classified material.<sup>17</sup> Officers also told the committee that new staff are given a comprehensive briefing on the requirements of the *Protective Security Manual* prior to handling any classified material.<sup>18</sup>

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9 *Committee Hansard*, 18 February 2008, p. 24.

10 *Committee Hansard*, 18 February 2008, p. 24.

11 *Committee Hansard*, 18 February 2008, p. 83.

12 *Committee Hansard*, 18 February 2008, p. 83.

13 *Committee Hansard*, 18 February 2008, p. 83.

14 *Committee Hansard*, 18 February 2008, p. 83.

15 *Committee Hansard*, 18 February 2008, pp. 102-106.

16 *Committee Hansard*, 18 February 2008, pp. 104-105.

17 *Committee Hansard*, 18 February 2008, pp. 104-105.

18 *Committee Hansard*, 18 February 2008, p. 105.

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## Procedural Issues

1.10 During the hearings senators also questioned officers on legal advice provided to the government regarding possible compensation to the 'stolen generation'<sup>19</sup> as well as advice regarding the constitutionality of parliamentary chambers sitting with quorum rules suspended.<sup>20</sup> Officers were reluctant to provide information, citing a 'convention' that legal advice and information about whether such advice had been sought or given was not provided to committees:

... we understand that the established practice is that we do not disclose either advice or whether we have been asked to give advice.<sup>21</sup>

1.11 Following a request from the committee, written advice was provided by the Clerk of the Senate which stated:

There is nothing in the rules of the Senate which prevents a senator requesting, or a committee or the Senate itself requiring, the production of legal advice to government...if ministers do not wish to produce advice, or any other information, they are expected to raise a public interest ground for the consideration of the committee or the Senate.

1.12 The Clerk's advice was also tabled during the hearings<sup>22</sup> (Appendix 1).

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19 *Committee Hansard*, 18 February 2008, pp. 68-73.

20 *Committee Hansard*, 18 February 2008, p. 73-74.

21 *Committee Hansard*, 18 February 2008, p. 67.

22 *Committee Hansard*, 19 February 2008, p. 24.





# CHAPTER 2

## IMMIGRATION AND CITIZENSHIP

### PORTFOLIO

#### **Introduction**

2.1 This chapter summarises areas of interest and concern raised during the committee's consideration of the additional estimates for the Immigration and Citizenship portfolio for the 2007-08 financial year.

#### **Department of Immigration and Citizenship (DIAC)**

2.2 The committee sought information from officers on the increased Commonwealth efficiency dividend.<sup>1</sup> Specifically, the committee questioned officers on how DIAC and its programs would be affected by the increase. Officers told the committee that DIAC was still to decide on how to meet the increased efficiency dividend and could not yet identify specific programs that may be affected.<sup>2</sup> In relation to DIAC's finances, officers told the committee that DIAC was undertaking a financial 'health check' in conjunction with the Department of Finance and Deregulation to examine overall funding arrangements for DIAC.<sup>3</sup> Officers explained that:

The previous government decided that the resource agreement was not working satisfactorily and agreed that there should be an agency health check and financial health check of the departments (DIAC's) funding...The concluded work of that agency health check will be contained in the budget itself later this year.<sup>4</sup>

2.3 The committee continued its long standing interest in the subclass 457 visa program and skilled migration more generally. The Minister advised the committee that a reference group had been established to:

...examine how we can make the temporary skilled visa program, the subclass 457 program, work more effectively to meet the skilled needs of the resource, construction and infrastructure sectors.<sup>5</sup>

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1 *Committee Hansard*, 19 February 2008, p. 12.

2 *Committee Hansard*, 19 February 2008, p. 12.

3 *Committee Hansard*, 19 February 2008, pp. 10-11.

4 *Committee Hansard*, 19 February 2008, p. 10-11.

5 *Committee Hansard*, 19 February 2008, p. 3.

2.4 The Minister advised the committee that the government had allocated an extra 6,000 permanent skilled visas for the current financial year together with an expansion of the working holiday maker scheme.<sup>6</sup> The committee also questioned officers on how processing times could be improved for skilled migrant applicants. Officers advised the committee that the government was considering an accreditation system whereby applications could be fast tracked from '...employers and sponsors who have impeccable credentials and a sound track record of compliance with immigration regulations...'.<sup>7</sup>

### ***Citizenship Test***

2.5 As with previous hearings the committee questioned officers on the citizenship test (the test). The Minister told the committee that a review of the test would be undertaken.<sup>8</sup> The committee questioned officers on pass rates for various cohorts undertaking the test. Officers told the committee that pass rates for the test on the first or subsequent attempts were as follows<sup>9</sup>:

| <b>Entrant Group</b> | <b>Skilled Entrants</b> | <b>Family Entrants</b> | <b>Humanitarian Entrants</b> |
|----------------------|-------------------------|------------------------|------------------------------|
| <b>Pass Rate (%)</b> | 97                      | 90                     | 80                           |

2.6 The committee notes that the pass rate for Humanitarian Entrants is lower than other migrant cohorts. The committee also notes that during its inquiry into the *Australian Citizenship Testing Amendment (Citizenship Testing) Bill 2007 [Provisions]* concerns were raised about the potential impact of the test on specific groups seeking to gain citizenship, in particular refugee and humanitarian entrants. The committee continues to be mindful of these concerns and awaits with interest the outcome of the review announced by the Minister.

### ***Ministerial Powers***

2.7 During the course of the hearings, the committee also questioned the Minister on the use of ministerial powers and discretion in relation to the Migration Act. The minister told the committee that:

On coming to government I sought to review all ministerial powers...the act is unlike any act I have seen in terms of the power given to the minister

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6 *Committee Hansard*, 19 February 2008, p. 3.

7 *Committee Hansard*, 19 February 2008, p. 29.

8 *Committee Hansard*, 19 February 2008, p. 3.

9 *Committee Hansard*, 19 February 2008, p. 105.

to make decisions about individual cases. I am uncomfortable with that not just because of a concern about playing God but also because of the lack of transparency and accountability for those ministerial decisions, the lack in some cases of any appeal rights against those decisions and the fact that what I thought was to be a power that was to be used in rare cases has become very much the norm.<sup>10</sup>

2.8 The minister also told the committee that figures indicated there had been a substantial increase in the use of ministerial powers.<sup>11</sup> The committee notes that these concerns have also been raised during several previous Senate committee inquiries most notably the Senate Select Committee on Ministerial Discretion in Migration Matters and the Senate Legal & Constitutional References Committee's inquiry: *Administration and operation of the Migration Act 1958*. The committee is encouraged by the Minister's decision to review ministerial powers and awaits the outcome with interest.

### ***Ms Cornelia Rau***

2.9 The committee sought an update on the case of Ms Cornelia Rau. Officers told the committee that Ms Rau's lawyers had accepted an offer of compensation from the Government, but that the terms of settlement had yet to be finalised.<sup>12</sup> Committee members sought details on the total legal costs to the Commonwealth in relation to Ms Rau's case. Officers undertook to provide the information on notice.<sup>13</sup>

## **Senator Trish Crossin**

### **Committee Chair**

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10 *Committee Hansard*, 19 February 2008, p. 22.

11 *Committee Hansard*, 19 February 2008, p. 22.

12 *Committee Hansard*, 19 February 2008, p. 24.

13 *Committee Hansard*, 19 February 2008, p. 19.



# APPENDIX 1

## ADVICE PROVIDED BY THE CLERK OF THE SENATE



AUSTRALIAN SENATE

CLERK OF THE SENATE

PARLIAMENT HOUSE  
CANBERRA A.C.T. 2600  
TEL: (02) 6277 3350  
FAX: (02) 6277 3199  
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hl.let.15804

19 February 2008

Mr Peter Hallahan  
Secretary  
Senate Legal and Constitutional Affairs Committee  
Parliament House  
CANBERRA ACT 2600

Dear Mr Hallahan

### DISCLOSURE OF LEGAL ADVICE

The committee requested at its estimates hearing yesterday, and in your subsequent email, advice on the claim by the Secretary of the Attorney-General's Department, Mr Robert Cornall, that there is an "established practice that we do not disclose either advice or whether we have been asked to give advice". Earlier Mr Cornall stated: "We do not normally disclose details of advice that we give to the Attorney-General". There is a great difference between the statement that advice is not "normally" disclosed and the statement that it is an "established practice" that neither advice nor whether it has been given is disclosed. Also, it is not clear to whom Mr Cornall referred as "we". If he means his department, rather than government collectively, it is not his decision whether to disclose advice; any decision on disclosure should be made by his minister.

Leaving aside that contradiction and ambiguity, as was pointed out by senators during the hearing, Mr Cornall's claim is refuted by the number of occasions on which not only the fact that advice has been given but the advice itself has been disclosed. As was pointed out, the question whether advice has been given has often been asked and answered in estimates hearings, and government has disclosed the content of advice on numerous occasions. It is clear that government discloses advice whenever it chooses to do so. A recent leading example was the disclosure in the Senate by the previous government, in advance of any known request, of its advice on the legality of the sale of Medibank Private.

Mr Cornall asked that I be referred to the 2004 report of the Commission chaired by Lord Butler into the intelligence leading to the Iraq war. Lord Butler stated in that report: "There is a long-standing convention ... that neither the fact that the Law Officers have been consulted in relation to a particular matter nor the substance of any advice they may have given is disclosed outside Government." Unfortunately, Lord Butler, a former Cabinet Secretary, was in the same position of stubborn denial as Mr Cornall. He was dealing with a case in which the Attorney-General's advice on the

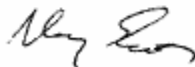
legality of the Iraq war had effectively already been disclosed. His report refers to other notorious cases of government malfunction in which advice was disclosed. It is very doubtful whether British governments in the future will attempt to uphold Lord Butler's "long-standing convention". In any event, even if it were a convention of the British government, it is certainly not a convention of Australian governments, unless conventions are established by frequent departure from them.

There is nothing in the rules of the Senate which prevents a senator requesting, or a committee or the Senate itself requiring, the production of legal advice to government. The Senate, like other comparable legislatures, has never accepted the claim that legal advice should not be disclosed as a sufficient basis for not disclosing it in particular cases. Past resolutions of the Senate make it clear that, if ministers do not wish to produce advice, or any other information, they are expected to raise a public interest ground for the consideration of the committee or the Senate. As the advice quoted to the committee indicates, public interest grounds which have been regarded in the past as having some validity include prejudice to legal proceedings, disclosure of Cabinet deliberations or prejudice to the Commonwealth's position in negotiations. If such a ground is raised it is for the committee in the first instance and the Senate ultimately to consider whether the ground is made out. It is for ministers, not public servants, to raise such a ground, as the government's own guidelines for public service witnesses make clear.

It is open to the committee to require that the unanswered question be referred to the Attorney-General, and subsequently to insist on an answer, and, if the refusal is maintained, to report the matter to the Senate.

Please let me know if I can be of any further assistance to the committee.

Yours sincerely



(Harry Evans)

## **APPENDIX 2**

# **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 Commission for Law Enforcement Integrity;
- 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;
- Copyright Agency Ltd;
- 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 Capital Authority;

- National Native Title Tribunal;
- Office of Film and Literature Classification Board and Classification Review Board;
- Office of Parliamentary Counsel;
- Australasian Police Minister's Council; and
- Audio-Visual Copyright Society Limited (Screenrights).



## **APPENDIX 3**

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### **TABLED DOCUMENTS**

*Documents tabled at Hearing*

#### **18 February 2008**

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- Advice from the Clerk of the Senate
- Current DIAC arrangements with Indonesia
- Departmental Stakeholders Map



## **APPENDIX 4**

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| Human Rights and Equal Opportunity Commission       | 109-118      |
| Australian Government Solicitor                     | 118-123      |
| Federal Magistrates Court                           | 123-125      |
| Family Court of Australia                           | 125-128      |
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## TABLED DOCUMENTS

### *Documents tabled at Hearing*

#### **18 February 2008**

- Answers to questions on notice regarding efficiency dividend
- Family Court budget diagram
- Federal Magistrates Court judicial appointments and retirements
- Australian Federal Police correction to evidence
- Australian Labor Party savings estimates
- Attorney-General's Department recovery of costs guidance note
- National Security Hotline statistics
- Correspondence between Attorney-General's Department and New South Wales Judicial Commission
- Correspondence between New South Wales Judicial Commission and Attorney-General's Department
- Transcript of radio interview with Attorney-General, the Hon Robert McClelland MP
- Advice from Clerk of the Senate

### *Letters of Correction tabled after hearings*

- Australian Federal Police
- National Capital Authority
- Australian Commission for Law Enforcement Integrity
- Australian Federal Police

**APPENDIX 5**  
**CHANGES TO OUTCOME/OUTPUT STRUCTURE**  
**ATTORNEY-GENERAL'S DEPARTMENT**

| <b>Outcome/Output</b> | <b>Previous Wording</b> | <b>Current Wording</b>                                     |
|-----------------------|-------------------------|--|
| Outcome 3             | -                       | Assisting regions to manage their own futures              |
| Output 3.1            | -                       | Services to territories and advice on their administration |
| Output 3.2            | -                       | Natural disaster relief and mitigation                     |



## APPENDIX 6

### CHANGES TO OUTCOME/OUTPUT STRUCTURE

#### DEPARTMENT OF IMMIGRATION AND CITIZENSHIP

| <b>Outcome/Output</b> | <b>Previous Wording</b>   | <b>Current Wording</b>   |
|-----------------------|---|--|
| Outcome 2             | A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably | A society which values Australian citizenship and social cohesion, and enables migrants and refugees to participate equitably. |

