

The Senate

Legal and Constitutional Affairs
Legislation Committee

Additional estimates 2010–11

March 2011

Commonwealth of Australia
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Membership of the Committee

Members

Senator Patricia Crossin, **Chair**, ALP, NT
Senator Guy Barnett, **Deputy Chair**, LP, TAS
Senator Mark Furner, ALP, QLD
Senator Scott Ludlam, AG, WA
Senator Stephen Parry, LP, VIC
Senator Louise Pratt, ALP, WA

Senators in attendance

Senator Patricia Crossin, (Chair), Senator Guy Barnett (Deputy Chair), Senator Mark Furner, Senator Scott Ludlam, Senator Stephen Parry, Senator Louise Pratt, Senator the Hon Eric Abetz, Senator Chris Back, Senator Cory Bernardi, Senator Catryna Bilyk, Senator Mark Bishop, Senator the Hon Ron Boswell, Senator Sue Boyce, Senator the Hon George Brandis, Senator Michaelia Cash, Senator Helen Coonan, Senator Steve Fielding, Senator Sarah Hanson-Young, Senator Bill Heffernan, Senator Gary Humphries, Senator Gavin Marshall, Senator Russell Trood, Senator Nick Xenophon

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PREFACE

On 10 February 2011, the Senate referred to the committee for examination the estimates of proposed additional expenditure for the financial year 2010-11. The committee is responsible for the examination of the Attorney-General's Portfolio and the Immigration and Citizenship Portfolio. The portfolio additional estimates statements 2010-11 were tabled on 10 February 2011.

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 2011 [Appropriation Bill (No. 3) 2010-2011];
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2011 [Appropriation Bill (No. 4) 2010-2011];
- Final budget outcome 2009-10; and
- Issues from the advances under the annual Appropriation Acts for 2009-10.

The committee was required to report on its consideration of the additional estimates on or before 22 March 2011.

Estimates hearings

The committee met in public session on 21 and 22 February 2011.

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

- Administrative Appeals Tribunal;
- Attorney-General's Department;
- Australian Customs and Border Protection Service;
- Australian Federal Police;
- Australian Human Rights Commission;
- Australian Law Reform Commission;
- Australian Transaction Reports and Analysis Centre;
- Classification Board;
- Classification Review Board;
- Department of Immigration and Citizenship;
- Family Court of Australia;

- Federal Court of Australia;
- Federal Magistrates Court of Australia;
- Migration Review Tribunal; and
- Refugee Review Tribunal.

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 2 and Appendix 3.

Ministers and parliamentary secretaries

On 21 February 2011, the committee heard evidence from Senator the Hon Kim Carr, Minister for Innovation, Industry, Science and Research, and Senator the Hon Kate Lundy, Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs, representing the Minister for Immigration and Citizenship.

On 22 February 2011, the committee heard evidence from Senator the Hon Joseph Ludwig, Minister for Agriculture, Fisheries and Forestry and Minister Assisting the Attorney-General on Queensland Floods Recovery, and Senator the Hon Jacinta Collins, Parliamentary Secretary for School Education and Workplace Relations, representing the Attorney-General and Minister for Home Affairs.

Officers from both departments and associated agencies also appeared. The committee thanks the ministers, parliamentary secretaries 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 8 April 2011.

CHAPTER 1

IMMIGRATION AND CITIZENSHIP PORTFOLIO

Introduction

1.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Immigration and Citizenship Portfolio for the 2010-11 financial year.

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

1.2 The committee questioned officers on the tribunals' case load and its management. Mr Denis O'Brien, the Principal Member of the MRT and the RRT advised the committee that lodgements for both the MRT and the RRT have increased significantly. However, MRT decisions have decreased in comparison to the previous year.¹ Mr O'Brien explained:

The decrease in MRT decision output, despite the increase in lodgements, is principally due to the substantial increase in our RRT work, to which we must give priority. Our resource difficulties have been exacerbated by the recent loss of a number of experienced RRT team members to the department's Independent Protection Assessment, formerly known as independent merits review, for irregular maritime arrivals. Leave of absence has been taken by eight tribunal members to undertake assessments for Independent Protection Assessment.²

1.3 In particular, the committee was informed that student refusal lodgements were up by 129 per cent, that is, approximately 1,000 more applications were lodged this financial year compared with the same period last year.³ The committee asked about the reasons for this increase:

Senator BARNETT—And what you put it down to are the government changes last year?

Mr O'Brien—There have been changes to the student visa program and I think that, as a result of some of those changes, we are seeing greater refusals at the primary level, which, of course, come on to us.

Senator BARNETT—Is that the main reason for the 129 per cent jump?

Mr O'Brien—That is our belief.

...

1 *Committee Hansard*, 21 February 2011, p. 3.

2 *Committee Hansard*, 21 February 2011, p. 4.

3 *Committee Hansard*, 21 February 2011, p. 4.

Senator BARNETT—...When did you see the numbers starting to increase markedly?

Mr O'Brien—I think it was starting during the last financial year, but it has been a continuation of that increase.

Senator BARNETT—But it aligns with the change in the government's legislation?

Mr O'Brien—I believe so.⁴

1.4 The committee heard that, in addition to adopting a number of strategies to deal with the increasing workload, the MRT and the RRT hope to recruit approximately 20 new members by the middle of the year.⁵ The committee will look forward to updates on case load management for the tribunals at future estimates hearings.

1.5 The committee also questioned the MRT and the RRT on a range of other matters, including resources, tribunal membership and recruitment, set-aside rates, and interaction with the newly established Independent Protection Assessment.

Department of Immigration and Citizenship

Processing of 457 visas for workers involved in flood recovery

1.6 The committee continued its ongoing interest in the temporary business (long stay) subclass 457 visa program, where employers can apply to sponsor approved skilled workers to work in Australia on a temporary visa. On this occasion, one aspect of the program in relation to which Senators sought information was the government's recent initiative to fast-track processing of 457 visa applications for reconstruction jobs in flood-affected areas in Queensland, where local labour supply is insufficient to meet the needs of employers. The department advised that the process is also open to flood-affected areas in New South Wales and Victoria, but to date state governments in those states have not approached the department for assistance.⁶

1.7 Mr Kruno Kukoc provided an overview of the initiative for the committee:

In communication and consultation with, for example, the Queensland Department of Employment and Economic Development, when a flood-affected business has been identified and the labour skills needs identified and that business lodges a 457 application, and provided all that information is provided at that time, we have agreed to finalisation within five days...[T]hat is world leading practice. So far we have worked well with the Queensland state government authorities in identifying these needs. The process has just started and the latest information I have from

4 *Committee Hansard*, 21 February 2011, p. 10.

5 *Committee Hansard*, 21 February 2011, pp 4-6.

6 *Committee Hansard*, 21 February 2011, p. 26.

our client service processing area is that just last week we saw four visa applications lodged for some skilled occupations which we turned around in only 48 hours.⁷

1.8 In response to concerns raised about an appropriate monitoring system for this initiative, it was explained that there is a standard monitoring system in place for the 457 visa program, and participants would come under the current requirements and controls. The Secretary of the department, Mr Andrew Metcalfe, explained:

We do not have any reason whatsoever to believe that, where a company goes to the trouble of identifying that it is seeking to respond in this particular way, it would seek to gain an advantage of 11 or 12 processing days by pretending that it had workers coming to work on the floods when it did not. We accept that in good faith, and the vast majority of Australian employers are entirely honest with us in relation to these things. I would not see it as necessary for us to set up a large monitoring program to see why someone had gained an 11 day advantage in relation to the very large costs of bringing someone to Australia.⁸

1.9 However, the committee was further advised by Mr Kukoc:

If we consider that a risky situation is evolving quite rapidly for all sorts of intelligence reasons as we can gather, we may apply a specific monitoring system on this aspect of the program. But, normally, that would come under the standard monitoring practices.⁹

SIEV 221 tragedy off Christmas Island

1.10 The department was questioned about the SIEV 221 tragedy off the coast of Christmas Island on 15 December 2010. The Secretary made some opening remarks in relation to the tragedy:

On 15 December 2010 Australians were horrified by the shocking scenes of the foundering of the vessel *Janga*, known as SIEV 221, at Rocky Point off the coast of Christmas Island. This tragic event saw the loss of many lives, including children and infants, as well as the rescue of 42 people from the sea. On behalf of the department I would like to formally place on the record my sympathy for the people involved in the tragedy and particularly to extend my and the department's sincere condolences to the families of those who drowned. I pay tribute to the heroism of the Customs and naval personnel who were involved in the dramatic rescue in such violent seas and to the very brave contributions of the Christmas Island community who so selflessly responded to the sinking vessel.

7 *Committee Hansard*, 21 February 2011, p. 26.

8 *Committee Hansard*, 21 February 2011, p. 31.

9 *Committee Hansard*, 21 February 2011, p. 30.

I also take this opportunity to recognise that my own staff who faced some very difficult and harrowing situations in response to this tragedy have done so with great professionalism and dignity.¹⁰

1.11 Senators questioned officers on the processes followed by the department after the SIEV 221 tragedy and requested an update on the status of the investigations into the incident. The committee was advised that there are several investigations in place, including a Western Australian coronial inquest. An inquiry has also been undertaken by the Chief Executive Officer of the Australian Customs and Border Protection Service in relation to the rescue operation (the findings of which are publicly available).¹¹

1.12 The department was questioned about the processes undertaken by the department for the funeral arrangements and burials of deceased persons from the SIEV 221 tragedy. It was explained to the committee that the arrangements for the funerals were primarily a matter for the Australian Federal Police as the people who died had not come into the department's care. However, the department did have some involvement because the funeral arrangements involved family members in detention.¹²

1.13 The committee also sought details on the number of family members attending the funerals; the costs associated with the funerals, including travel costs for family members travelling from Christmas Island and Perth to Sydney; security arrangements; and management of the media.¹³

APEC Business Card Travel Scheme

1.14 The committee also raised with the department the APEC Business Travel Card Scheme, a pre-approved visa facility for countries in the APEC region.¹⁴ In addition to seeking an update on statistics for the issue of the card, Senators asked about recent changes to the criteria for its issue.

1.15 The committee heard that approximately 30 per cent of the card complement was Australian, and that the criteria threshold for card issue was changed in June 2010 following a meeting of the APEC business mobility group.¹⁵ The department further advised that the threshold criteria was increased and will result in a significantly lower card issue rate in Australia. The department advised that the Australian card issue was disproportionately high and that '(t)here was a view in some quarters that the

10 *Committee Hansard*, 21 February 2011, p. 21.

11 *Committee Hansard*, 21 February 2011, p. 71.

12 *Committee Hansard*, 21 February 2011, p. 71.

13 *Committee Hansard*, 21 February 2011, pp 73-79.

14 *Committee Hansard*, 21 February 2011, p. 37.

15 *Committee Hansard*, 21 February 2011, pp 37-39.

Australian threshold was not as high as was appropriate, given the way some of the other countries were dealing with it'.¹⁶

1.16 The changes were described as '...reasonably significant in terms of the level in the company that the applicant has to be at and the sort of volume that the business does'.¹⁷

1.17 In response to concerns expressed about the apparent lack of consultation within the Australian business community, the department confirmed that there was no consultation prior to the change and was not able to explain why but undertook to provide advice to the committee on notice.¹⁸ Mr Garry Fleming conceded:

Ideally, yes it would be good to be able to have these consultations ahead of making changes. It was complicated in this case by the fact that it is not Australia's decision alone [and] the APEC Business Travel Card requires decisions and participation by a number of countries.¹⁹

1.18 The committee was further advised by the department that it was about to move into a consultation process. The Secretary explained:

...the card is not the sole gift of Australia; it is a sort of board comprising all of the APEC economies. ... there clearly was sensitivity that Australia was dominating the use of the card. Having said that, of course the whole idea of the card is to promote travel within the APEC economies and to assist business, so our starting point—and in fact it was an Australian idea to establish the card—is to ensure that business people are able to travel simply and to use fast lanes at airports and that sort of thing.

The review that is now underway does provide an opportunity, albeit after the fact, to see whether we can go back with substantive information to the other economies. I am interested to hear that there is a lot of disquiet in the business community. I do not recall having received a single phone call or representation about this matter myself, and people are usually very ready to get in touch with me if they have an issue with something. I certainly know the heads of the major lobby groups and business groups. Having said that, I accept that there is concern, and clearly the tightening up of the criteria has impacted on people who previously would have had access to the card.²⁰

16 *Committee Hansard*, 21 February 2011, pp 37-38.

17 *Committee Hansard*, 21 February 2011, p. 39.

18 *Committee Hansard*, 21 February 2011, p. 39.

19 *Committee Hansard*, 21 February 2011, p. 39.

20 *Committee Hansard*, 21 February 2011, p. 40.

Memorandum of understanding with the Islamic Republic of Afghanistan and United Nations High Commissioner for Refugees

1.19 The department was questioned about the memorandum of understanding (MOU) between the Australian Government, the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR) on migration and humanitarian cooperation.

1.20 In particular, questions focussed on clause 9 of the MOU which states:

The Government of the Islamic Republic of Afghanistan, noting that voluntary return is always preferable, will readmit its nationals who are in Australia, as well as foreigners who are immediate family members of such nationals, who:

- a) elect, on the basis of their freely expressed wish, to return to Afghanistan; or
- b) are found not to be in need of international protection and not entitled to remain in Australia.

1.21 Senators sought confirmation that the Australian Government's position on this section of the MOU does allow for the forced or involuntary return of unsuccessful Afghani asylum seekers. The Secretary advised the committee:

It quite clearly allows for the return to Afghanistan of Afghans and immediate family members not to be owed protection by Australia. It talks about people wishing to do so and it talks about people who do not wish to do so.²¹

1.22 Senators referred to recent media reports suggesting that the Australian and Afghani governments were not in agreement over whether or not the MOU covered forced returns. The Secretary assured the committee that both governments were in agreement over the meaning of this section of the MOU:

The agreement does a lot of things, but both governments agree in relation to that aspect. That was confirmed in meetings subsequent to that media report.²²

1.23 The Secretary further confirmed that there has been no consideration by any of the parties to the MOU to amend the wording of clause 9.²³

1.24 Other areas of interest concerning the MOU included the consultation processes leading up to the signing of the agreement and the process for determining that it is safe to return failed asylum seekers to Afghanistan.²⁴

21 *Committee Hansard*, 21 February 2011, p. 49.

22 *Committee Hansard*, 21 February 2011, p. 50.

23 *Committee Hansard*, 21 February 2011, p. 51.

24 *Committee Hansard*, 21 February 2011, pp 51-53.

Oceanic Viking asylum seekers held in the Romanian Transit Centre

1.25 The committee sought an update on the 17 asylum seekers from the *Oceanic Viking* who were transited through the Emergency Transit Centre in Romania and who had been refused settlement in the United States and Canada.

1.26 The department advised that seven of these asylum seekers had met all visa requirements and had been resettled in Australia. The remaining 10 did not meet visa requirements and remain in the transit centre while the UNHCR pursues other possible settlement options. The committee was assured that the seven who had been resettled in Australia had been issued non-prejudicial security assessments by the Australian Security Intelligence Organisation.²⁵

1.27 Evidence to the committee at the previous estimates hearings indicated that there was an expectation that this group would leave the transit centre by the end of 2010.²⁶ The Secretary advised the committee that the Romanian Government is satisfied with the 10 asylum seekers remaining in the transit centre while resettlement efforts continue and there is no deadline on the resolution of this issue at present.²⁷

1.28 The committee also questioned officers about the future of the 10 asylum seekers in the event that they are not resettled in another country:

Mr Metcalfe—In terms of the range of options, were there to be no other country that would take them, there is a view—and this has been confirmed—that they are in fact in need of protection by the international community and Australia would give effect to it consistent with our own national interest associated with their security assessment.

Senator CASH—You said that these 10 have received an adverse security assessment.

Mr Metcalfe—That is correct. That is why they have not come to Australia at this stage.

Senator CASH—For my own benefit, in the event that the Christmas Island option does become the option because we cannot find them resettlement in a third country and they have received an adverse security assessment, what then does their status become if they are brought to Christmas Island? Is it indefinite detention?

Mr Metcalfe—Yes, it would be detention.

Mr Fleming—...I should clarify that with the 10 cases in Romania there are eight adults with adverse security assessments and that also affects two children.²⁸

25 *Committee Hansard*, 21 February 2011, p. 54.

26 *Committee Hansard*, 19 October 2010, p. 72.

27 *Committee Hansard*, 21 February 2011, p. 55.

28 *Committee Hansard*, 21 February 2011, p. 56.

CHAPTER 2

ATTORNEY-GENERAL'S PORTFOLIO

2.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Attorney-General's Portfolio for the 2010-11 financial year.

Federal Court of Australia

2.2 The committee questioned the Federal Court of Australia about proposals for the restructure of the federal judiciary, particularly in relation to military justice. The Registrar and Chief Executive of the court confirmed that there had been consultation with the Attorney-General's Department concerning the administration and governance structure under the new arrangements.¹

2.3 The Registrar confirmed the court's view as to its role in a restructured federal judiciary:

Mr Soden—...I do not know whether our view has ever been expressed publicly, but I think I can summarise it by saying it is a similar view to the one we expressed about how we would be involved with the Federal Magistrates Court. Typically, I think we have said that a military court should be a chapter III court. It should be a self-administering court, but the Federal Court is happy to administer it.

Senator BRANDIS—So it is the Federal Court's view that when there is a new military court it should be a standalone court and not a division of the Federal Court?

Mr Soden—Yes, that has been our view.²

2.4 Other areas of interest to Senators in relation to the Federal Court included: the workload involving long-running commercial litigation cases; initiatives by the court following amendments to the *Native Title Act 1993* which came into effect in 2009 and gave the court the central role in managing native title claims; and the access and fairness survey.³

1 *Committee Hansard*, 22 February 2011, p. 60.

2 *Committee Hansard*, 22 February 2011, p. 60.

3 *Committee Hansard*, 22 February 2011, pp 61-62.

Attorney-General's Department

Provision of legal aid for persons being prosecuted for people smuggling

2.5 Senators sought details on the allocation of \$17.6 million in the additional estimates for legal aid to support those who are involved in criminal prosecution, including in relation to drugs, terrorism and people smuggling. The committee was informed that the additional estimates for further expenditure was arrived at through consultation with legal aid commissions in relation to the Commonwealth criminal law matters they are dealing with throughout that year, and goes into the Expensive Commonwealth Criminal Cases Fund.⁴

2.6 The committee was advised on how the fund operates:

Ms Jones—...When the legal aid commissions have incurred the costs associated with expensive Commonwealth criminal matters, they can apply to the department for reimbursement. It is a matter of once the applications come in, we assess them against the guidelines for the fund and then reimburse the commissions for those costs. The fund was initially established to ensure that legal aid commissions did not have a significant impact on their budget for other Commonwealth law matters because of these expensive Commonwealth criminal cases.⁵

...

BRANDIS—And there is no ceiling to the amount by which you reimburse them?

Ms Jones—There is no specific ceiling but in relation to the guidelines for the Expensive Commonwealth Criminal Cases Fund there are obligations on the legal aid commissions to take all steps they can to contain costs and manage them as effectively and efficiently as possible.⁶

2.7 In particular, the committee sought further information on the allocation of legal aid funding for those being prosecuted for people smuggling offences. The Secretary advised that there are 280 crew currently being prosecuted for people-smuggling offences.⁷

4 *Committee Hansard*, 22 February 2011, p. 74.

5 *Committee Hansard*, 22 February 2011, p. 74.

6 *Committee Hansard*, 22 February 2011, p. 76.

7 *Committee Hansard*, 22 February 2011, p. 76.

Recent natural disasters and the Commonwealth's role in response and recovery operations

Role of Emergency Management Australia

2.8 There was considerable interest from Senators in relation to the Commonwealth's role in responding to recent natural disasters across Australia. The Director-General of Emergency Management Australia (EMA), Mr Campbell Darby, DSC AM, was scheduled to attend the hearing but was urgently called away on the day of the hearing to deal with the earthquake crisis in Christchurch, New Zealand.

2.9 The minister began this part of the program by making a statement in relation to emergency management and the role of the Australian Government in recent natural disasters.⁸ The minister praised the efforts of all government agencies involved in the response and recovery operations, and noted the efforts of officers of the Attorney-General's Department, particularly the Public Affairs Branch and the EMA:

EMA has led and coordinated the response of the Australian government to natural disasters and a range of other threats through its Crisis Coordination Centre, which operated 24 hours a day.

The staff of EMA have provided the point of contact for the states and territories to access Commonwealth assistance, coordinated inter-jurisdictional and international offers of assistance, deployed numerous liaison officers to state disaster coordination centres, supported the Australian government and helped key decision makers be fully informed about the unfolding disaster events and actions required. Importantly, they have also worked tirelessly to enact arrangements that allow the delivery of financial assistance via a suite of measures like the Australian government disaster recovery payment and the natural disaster relief and recovery arrangements to ensure that those in need can quickly access financial support.⁹

2.10 During subsequent questioning of the department, Senators sought further clarification on EMA's role in the floods crisis. When it was suggested by one Senator that 'EMA was not actually managing the crisis so much as coordinating assistance at the Commonwealth level to agencies at the state level which were actually managing the crisis', the Secretary, Mr Roger Wilkins AO, responded by confirming that this was 'a fair characterisation'.¹⁰

2.11 While a departmental review of EMA's role in the Queensland floods crisis has not yet taken place, the Secretary advised the committee that the feedback from the leading state agencies and offices, such as the Queensland Commissioner of Police, the relevant Queensland Minister and the head of Emergency Management

8 *Committee Hansard*, 22 February 2011, pp 79-80.

9 *Committee Hansard*, 22 February 2011, p. 80.

10 *Committee Hansard*, 22 February 2011, p. 86.

Queensland, was positive, and indicated that the command and control coordination systems had worked well.¹¹ He further advised that the role that the EMA played with respect to the floods crisis may potentially be examined by the commission of inquiry into the flood disaster which has been established by the Queensland Government.¹²

Activation of the Australian Government Disaster Recovery Payment (AGDRP)

2.12 The committee sought details on the decision processes involved in the activation of the AGDRP for residents in the Gascoyne region in Western Australia (WA) which was subject to major flooding in early December. The Prime Minister and the Attorney-General announced on 11 February 2011 that AGDRP payments would be made to people affected by both the WA bushfires and the Carnarvon floods, which includes people in the Upper Gascoyne region.¹³

2.13 Concern was expressed by some Senators about what appeared to be a delay in the decision to grant assistance to people impacted by the flooding in the Gascoyne region, when, it was suggested, the Prime Minister had earlier indicated support for this payment.¹⁴ A comparison was drawn by some Senators with the apparent speed of activating the AGDRP in two instances in Queensland following the floods and Cyclone Yasi.¹⁵

2.14 The minister explained that the government had clarified the activation and eligibility criteria for the AGDRP to encourage greater consistency and rigour in how the payment is made:

...the government decided activation of the AGDRP would be more closely aligned with the NDRRA [Natural Disaster Relief and Recovery Arrangements] category C activations, as category C activations have tended to be an accurate indicator of the severity of an event. To put it in context, the states and territories are the first responders to deal with natural disasters. They advise the Commonwealth of their requests. With this, you then saw it being activated.

...

There has been a change where, in order to clarify it, it has followed the activation of category C. A state would normally declare an area a natural disaster. That would activate A and B—that is the way that it would generally work. It does not necessarily mean that the AGDPR will follow. Usually what happens is that the state would seek the activation of C, which is a higher level. That indicates that there is significant damage or the

11 *Committee Hansard*, 22 February 2011, p. 86.

12 *Committee Hansard*, 22 February 2011, p. 86

13 See Prime Minister of Australia, media release, 'Further Commonwealth assistance for victims of WA bushfires', 11 February 2011.

14 *Committee Hansard*, 22 February 2011, p. 82.

15 *Committee Hansard*, 22 February 2011, p. 84.

flooding event has created individual concerns and distress. In this instance—and correct me if I am wrong—the Western Australian government did not ask for an activation of category C.¹⁶

2.15 He further clarified:

Some of the criteria that they would use would be whether category C was activated or not, but it is not the sole determinant; it would also depend on the information flow from the Western Australian government.¹⁷

2.16 The minister undertook to provide on notice to the committee whether 'category C' under the NDRRA was activated in this instance, and also the information that the Attorney-General had received that led to the activation of the AGDRP.¹⁸

Attorney-General's Department and Australian Federal Police

Mr Julian Assange and WikiLeaks

2.17 The committee questioned the department about its involvement in an investigative unit established by the Prime Minister in relation to the conduct of Mr Julian Assange and the posting of classified material on the WikiLeaks website. The department indicated that it was not aware of its officers being involved in an investigative unit or in providing advice to the government with respect to the legality of the conduct of Mr Assange.¹⁹

2.18 Following the hearing, the committee received additional information from the Secretary of the department regarding the evidence given at the hearing in relation to this matter. The Secretary advised:

In an exchange about whether the Department had given any advice to government about the legality or otherwise of the conduct of Mr Assange or Wikileaks, I answered that I did not know of any such advice being given to anyone on legality and said that I was happy to make further inquiries of my officers...

Having undertaken those further inquiries, I can confirm that the Department has not provided advice on whether an offence had been committed. As we stated during the hearing...advice on that issue is quite properly a matter for the Australian Federal Police. As part of the Department's normal role in administering secrecy provisions, however, we have provided general briefings on the nature of these laws and on the range of potential offences.²⁰

16 *Committee Hansard*, 22 February 2011, p. 83.

17 *Committee Hansard*, 22 February 2011, p. 88.

18 *Committee Hansard*, 22 February 2011, pp 83-84.

19 *Committee Hansard*, 22 February 2011, pp 103-104.

20 Letter from the Secretary of the Attorney-General's Department to the committee dated 9 March 2011.

2.19 The committee also took evidence at the hearing from the Australian Federal Police (AFP) regarding its work in assessing material on the WikiLeaks website. Officers advised that an assessment was commenced following a referral from the department to identify any breaches of Australian law. Commissioner Tony Negus APM clarified the referral procedure in his response:

We do receive referrals from a range of agencies. We sometimes would initiate them ourselves but more often than not the AFP would respond to a referral from another department or another agency.²¹

2.20 The committee heard that the AFP provided advice to the department on 17 December 2010. A media release was issued in relation to the AFP's findings, which were summarised by Deputy Commissioner Peter Drennan APM at the hearing:

Our findings were that we did not identify any criminal offence where Australia would have jurisdiction.²²

Mr David Hicks's autobiography and proceeds of crime

2.21 The committee sought details of the department's involvement in the consideration of whether an application under the *Proceeds of Crime Act 2002* should be brought against Mr David Hicks in relation to his book, *Guantanamo: My Journey*.

2.22 The Department advised that, following the publication of Mr Hicks's book, it partook in an initial discussion with officers of the AFP and the Office of the Commonwealth Director of Public Prosecutions.²³ The committee directed further questions on the matter to the AFP, and was provided with background information by Commissioner Negus:

Perhaps I should go back just a few months before that meeting took place. On 24 September there were a range of media articles which articulated the fact that Mr Hicks would be releasing a book. The AFP became aware of those and again was interested in the context of the legislation and what might be applied at a future date. On 27 September the AFP actually generated an internal referral to start an investigation to see whether that would be appropriate and whether Mr Hicks's autobiography would actually fall within the Proceeds of Crime Act and literary proceeds laws. The meeting you talk about was on 13 October, I am advised. It was attended by the AFP, by the Commonwealth DPP and the Attorney-General's Department at the request of the AFP, to discuss the legislation and how it might be applied.²⁴

21 *Committee Hansard*, 22 February 2011, p. 129.

22 *Committee Hansard*, 22 February 2011, p. 130.

23 *Committee Hansard*, 22 February 2011, pp 105-106.

24 *Committee Hansard*, 22 February 2011, p. 125.

2.23 Commissioner Negus confirmed that the investigation by the AFP into the matter is still under way.²⁵

Departmental program structure

2.24 As a final point, the committee notes that the department's outcome and program structure presented some difficulties for Senators in determining the appropriate place to direct questions during the hearing.

2.25 The current program structure is divided into departmental and administered programs to reflect the type of appropriation they are funded under. Programs 1.1 and 1.2 are departmental programs and Programs 1.3-1.6 are administered programs. This means that a subject area for examination can potentially fall under multiple programs, depending on the specific area of interest and the nature of the questions.

2.26 The committee appreciates the assistance provided by officers of the department in providing guidance during the hearing, but would encourage the department to consider inclusion of greater detail in the program structure in the future.

**Senator Trish Crossin
Chair**

25 *Committee Hansard*, 22 February 2011, p. P. 125.

APPENDIX 1

DEPARTMENTS AND AGENCIES FOR WHICH THE COMMITTEE HAS OVERSIGHT

Attorney-General's Portfolio

- Attorney General's Department;
- Administrative Appeals Tribunal;
- Australian Federal Police;
- Australian Customs and Border Protection Service;
- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;
- Australian Government Solicitor;
- Australian Human Rights Commission;
- Australian Institute of Criminology and Criminology Research Council;
- Australian Law Reform Commission;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- Classification Board;
- Classification Review Board;
- CrimTrac;
- Commonwealth Director of Public Prosecutions;
- Family Court of Australia;
- Family Law Council;
- Federal Court of Australia;
- Federal Magistrates Court of Australia;
- High Court of Australia;
- Insolvency and Trustee Service Australia;
- National Native Title Tribunal; and
- Office of Parliamentary Counsel.

Immigration and Citizenship Portfolio

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

APPENDIX 2

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TABLED DOCUMENTS

Monday, 21 February 2011

No.	Tabled by: Dept/agency/officer	Topic
1	Mr Denis O'Brien, Principal Member, Migration Review Tribunal-Refugee Review Tribunal	Opening statement by Mr O'Brien
2	Ms Christine Sykes, CEO, Office of the Migration Agents Registration Authority	Opening statement by Ms Sykes
3	Mr Andrew Metcalfe, Secretary, Department of Immigration and Citizenship	Opening statement by Mr Metcalfe
4	Senator Barnett	Two letters from Senator Barnett to the Hon Chris Bowen MP, Minister for Immigration and Citizenship, concerning the status of bibles as gifts under the Australian Citizenship Ceremonies Code

APPENDIX 3

INDEX OF PROOF HANSARD FOR THE ATTORNEY-GENERAL'S PORTFOLIO

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TABLED DOCUMENTS

Tuesday, 22 February 2011

No.	Tabled by:	Topic
1	Mr Roger Wilkins AO, Secretary, Attorney- General's Department	<i>Draft report of the Working Group on the Universal Periodic Review – Australia – Human Rights Council, United Nations General Assembly</i>
2	Mr Roger Wilkins AO, Secretary, Attorney- General's Department	Statement by Senator the Hon Joe Ludwig on recent natural disasters and the Commonwealth's role in response and recovery operations
3	Mr Roger Wilkins AO, Secretary, Attorney- General's Department	Letter from Attorney-General to the President of the Australian Law Reform Commission regarding the appointment of a full-time commissioner to assist with the conduct of the proposed inquiry into classification, dated 21 February 2011
4	Mr Roger Wilkins AO, Secretary, Attorney- General's Department	Table of claims for the Australian Government Disaster Recovery Payments by state

