

The Senate

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Legal and Constitutional  
Legislation Committee

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Additional estimates 2003-04

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- \*\* Senator Kerry O'Brien, ALP, TAS to replace Senator Joseph Ludwig for matters relating to the Indigenous Affairs portfolio

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## **PREFACE**

On 3 December 2003, the Senate referred to the Committee the examination of additional estimates of proposed expenditure for the financial year 2003-2004. The Committee is responsible for the examination of the Attorney-General's and the Immigration and Multicultural and Indigenous Affairs portfolios. The portfolio additional estimates statements were tabled in the Senate on 11 December 2003 for the Immigration and Multicultural and Indigenous Affairs portfolio and on 12 December 2003 for the Attorney-General's portfolio. On 11 February the Senate also referred the issues from the Advance to the Finance Minister for consideration as part of this additional estimates process.

The Committee was required to report on its consideration of the additional estimates on or before 24 March 2004.

### **Estimates hearings**

The Committee met in public session from 16 February 2004 to 17 February 2004 for a total of 23 hours 16 minutes.

### **Recording of proceedings**

The Hansard of the proceedings records the examination of estimates and may be accessed through the internet at:

<http://www.aph.gov.au/hansard>

The Hansard is also available on the Parliamentary database.

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

### **Ministers**

The Committee heard evidence from Senator the Hon Chris Ellison, Minister for Justice and Customs who represented the Attorney-General and from Senator the Hon Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs.

Officers from both departments and associated agencies also appeared, and the Committee thanks them and the Ministers for their assistance.

### **Questions on Notice**

The Committee notes that the Standing Orders require the Committee to set dates for the lodgement of any written answers or additional information and for supplementary hearings. The Committee resolved that written answers and additional information were to be submitted by close of business on Friday, 2 April 2004 for the Attorney-General's and Immigration and Multicultural and Indigenous Affairs Portfolios.

## **Report**

In this report, the Committee draws the attention of the Senate to issues and concerns raised in the two days of hearings. Amongst others, these included:

Issues regarding the nature of the advice given to government departments by the Office of Legal Services Coordination within the Attorney-General's Department regarding the outsourcing of legal services, related costs for those services and the use of alternative dispute resolution;

Concerns over the length of time taken for the Australian Crime Commission to table its first annual report as a result of the Commission being required to ensure that the report is signed off by States and Territories before being made public. Minister Ellison advised the Committee that he would raise at COAG the possibility of giving advance information about the report to the Committee. The annual report was tabled on 9 March 2004;

The cost to government of the ATSIC (Aboriginal and Torres Strait Islander Commission) review and allegations of a possible conflict of interest between one of the review panel members and a company used to provide methodology services to the review process.

**Senator Marise Payne**

**Chair**



## **ABBREVIATIONS**

ACC	Australian Crime Commission
ACS	Australian Customs Service
AFP	Australian Federal Police
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ASIO	Australian Security Intelligence Organisation
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIS	Aboriginal and Torres Strait Islander Services
COAG	Council of Australian Governments
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
FOI	Freedom of Information
HREOC	Human Rights and Equal Opportunity Commission
IBA	Indigenous Business Australia
IDG	International Deployment Group
MRT	Migration Review Tribunal
OFPC	Office of the Federal Privacy Commissioner
RRT	Refugee Review Tribunal
TPV	Temporary Protection Visa
TSRA	Torres Strait Regional Authority
US	United States



# Chapter 1

## ATTORNEY-GENERAL'S PORTFOLIO

### Introduction

1.1 In the following sections of this report, the Committee summarises areas of interest and concern raised during its consideration of the Additional Estimates of the Attorney-General's portfolio for the 2003-2004 financial year.

### Attorney-General's Department

1.2 The Committee questioned officials on the cost of Australia's contribution to the International Criminal Court. The Committee heard that Australia's contribution was set at 3.37% of the Court's Euro55,089,000 budget which equates to approximately AU\$2,072,000.<sup>1</sup>

1.3 Officers were also questioned regarding audit and review processes in place concerning information released via Freedom Of Information (FOI) applications. Departmental staff informed the Committee that the Attorney-General's Department compiles statistical information on FOI applications but does not review the action taken by departments as such requests are subject to review by the Administrative Appeals Tribunal.<sup>2</sup>

1.4 The Committee inquired about the last visit of Australian officials to Australian detainees David Hicks and Mamdouh Habib in Guantanamo Bay, Cuba and what assessment had been made about their health. Officers reported that officials from the Australian embassy in Washington DC had visited both men in early February 2004 and had found them to be in apparent good health.<sup>3</sup>

### Australian Security Intelligence Organisation (ASIO)

1.5 The Director-General was questioned about details of the receipt by ASIO of information from French authorities concerning Mr Willie Brigitte. The Director-General advised the Committee that ASIO first received the information on Monday, 22 September 2003 and undertook to provide answers to a number of related questions on notice.<sup>4</sup>

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1 *Proof Committee Hansard*, 16 February 2004, p. 42.

2 *Proof Committee Hansard*, 16 February 2004, pp. 77-78.

3 *Proof Committee Hansard*, 16 February 2004, pp.46-47.

4 *Proof Committee Hansard*, 16 February 2004, pp. 4-12.

1.6 The Committee asked about the movements into and out of Australia of Mr Omar Abdi Mohamed. Mr Mohamed was arrested in the United States in January 2004 on issues relating to immigration fraud and it is reported that he is suspected of having links with terrorist organisations.<sup>5</sup>

### **Australian Federal Police (AFP)**

1.7 The Committee took the opportunity to congratulate Ms Audrey Fagan and other serving officers who received awards in the Australia Day Honours List.<sup>6</sup>

1.8 Minister Ellison was questioned by the Committee concerning the air security officer program and whether any foreign international air carriers were considering the use of their own air security officers on flights into and out of Australia. The Committee also inquired into the legal ramifications of offences committed on foreign flagged aircraft in international and/or Australian airspace.<sup>7</sup>

1.9 The Committee inquired into the structure and purpose of the International Deployment Group (IDG). The AFP commissioner, Mr Keelty advised that the purpose of the IDG was to structure more formally the previously ad-hoc deployment of AFP and Australian Protective Service officers to United Nations and other international operations.<sup>8</sup>

1.10 Officers were questioned about the AFP's response to recent reports of "sex tourism" by Australian citizens in Bali. The Committee was informed that the AFP had recently established the Transnational Sexual Exploitation and Trafficking Team and are also working on the issue with the Indonesian National Police.<sup>9</sup>

### **Australian Crime Commission (ACC)**

1.11 The Committee sought information on the seizure by the ACC, in conjunction with NSW police, of a large number of firearms in a series of raids in Sydney on 15 November. Officers from the ACC were able to confirm that 812 .32 calibre key ring firearms and a number of other guns along with ammunition, drugs, drug manufacturing equipment, passports and suspected stolen property were recovered. In addition, sufficient component parts were discovered for the manufacture of a further 2,500 key ring firearms.<sup>10</sup>

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5 *Proof Committee Hansard*, 16 February 2004, p. 13.

6 *Proof Committee Hansard*, 16 February 2004, p. 21.

7 *Proof Committee Hansard*, 16 February 2004, pp. 34-38.

8 *Proof Committee Hansard*, 16 February 2004, p. 21.

9 *Proof Committee Hansard*, 16 February 2004, p. 30.

10 *Proof Committee Hansard*, 16 February 2004, pp. 40-41.

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1.12 As noted on page vi of this report, the Committee expressed its concern over the timeliness of the ACC annual report.<sup>11</sup>

### **High Court of Australia**

1.13 The Committee again inquired into the current workload of the Court with particular focus on the number of applications for constitutional writs which concerned immigration matters. Court officials advised that over the past couple of years the number of constitutional writs filed had increased from 300 to 2,131 and that there were currently 348 migration matters in the High Court.<sup>12</sup>

1.14 Officers were asked about the percentage of self-represented litigants appearing before the Court. Officers advised that in 2003, self-represented litigants accounted for 42% of special leave applications and that to date in 2004, it had risen to 46%.<sup>13</sup>

### **Family Court of Australia**

1.15 Officials of the Court were questioned about a new pilot project designed to encourage parties to take a less adversarial approach to matters brought before the Court. It was explained that the project will be voluntary and attempt to have parties reach decision by consensus, while allowing judges to play a much greater role in the system.<sup>14</sup>

1.16 Officers were questioned about the number of self-represented litigants appearing before the Court. The Committee heard that in 40% of matters, at least one party is self-represented at some stage during proceedings.<sup>15</sup>

### **Human Rights and Equal Opportunity Commission (HREOC)**

1.17 The Committee sought information on the expected release date of the delayed report on Children in Immigration Detention. The Committee was advised that HREOC had incorporated final comments from DIMIA and Australasian Correctional Management into the report, that the report was now complete and had been sent for professional layout. It was expected that the report would be transmitted to the Attorney-General during the third week in March 2004.<sup>16</sup>

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11 *Proof Committee Hansard*, 16 February 2004, pp. 39-40.

12 *Proof Committee Hansard*, 16 February 2004, p. 55.

13 *Proof Committee Hansard*, 16 February 2004, pp. 57-58.

14 *Proof Committee Hansard*, 16 February 2004, p. 61.

15 *Proof Committee Hansard*, 16 February 2004, pp. 60-61.

16 *Proof Committee Hansard*, 16 February 2004, p. 64.

## **Office of the Federal Privacy Commissioner (OFPC)**

1.18 The Committee inquired about the way in which the Commission handled credit related complaints and the timeframes in which all complaints to the Commission were dealt with. Officers advised that almost three quarters of the complaints it handled were dealt with in less than 90 days and that this was a slight improvement over previous years.<sup>17</sup>

## **Australian Customs Service (ACS)**

1.19 The Committee questioned officers concerning cost recovery strategies for ACS container x-ray facilities. Officers informed the Committee that the facilities were as yet not fully cost recovered and that there was a projected shortfall of around \$6-7 million for a full year.<sup>18</sup>

1.20 The Committee inquired into aspects of the Free Trade Agreement recently negotiated with the United States. Minister Ellison advised the Committee that the ACS officers could only answer questions relating to areas in which the ACS had been involved. The two areas in which the ACS were involved concerned rules of origin and intellectual property.<sup>19</sup>

1.21 The Committee questioned officials about evaluations of the SmartGate visual recognition system and its error rate. Officials advised that the error rate for the system was one percent.<sup>20</sup>

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17 *Proof Committee Hansard*, 16 February 2004, pp. 66-67.

18 *Proof Committee Hansard*, 16 February 2004, pp. 88-91.

19 *Proof Committee Hansard*, 16 February 2004, pp. 94-98, 104.

20 *Proof Committee Hansard*, 16 February 2004, pp. 105-106.

1.22 The Committee sought information on the reasons for the Department of Defence's revision of costs associated with the provision of patrol boats and P3 Orion aircraft for surveillance purposes. Officers advised that they would take the matter up with Defence but stressed that the ACS was not expecting any significant reduction in the amount of patrol boat or aircraft activity.<sup>21</sup>

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21 *Proof Committee Hansard*, 16 February 2004, p. 91-94.





## Chapter 2

# IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### Introduction

2.1 In the following sections of this report, the Committee summarises areas of interest and concern raised during its consideration of the Additional Estimates of the Immigration and Multicultural and Indigenous Affairs portfolio for the 2003-2004 financial year.

### Department of Immigration and Multicultural and Indigenous Affairs (DIMIA)

2.2 The Committee sought information from officers regarding the entry into Australia of Mr Omar Abdi Mohamed, including the number of occasions he has entered the country, on what visa class and from which country his visa applications had been made. The Committee also questioned officers about whether US authorities had asked the Australian Government for information concerning Mr Mohamed.<sup>1</sup>

2.3 The Committee inquired into the forward estimates for offshore asylum seeker management. Officers advised the Committee that DIMIA had been granted an appropriation of \$45.6 million for the operation of Nauru, Manus and Christmas Islands.<sup>2</sup>

2.4 The Committee questioned officers on the number of children in detention centres. Officers informed the Committee that there were presently 127 children in detention including 17 in residential housing projects in Port Augusta and Port Headland.<sup>3</sup>

2.5 The Committee asked for the number of Temporary Protection Visas (TPV) that had been issued since November 1999 and the number of Iraqis that had been granted such visas over the corresponding period. Officials informed the Committee that there had been 8,912 TPVs granted and that 4,269 had been granted to Iraqis.<sup>4</sup>

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1 *Proof Committee Hansard*, 17 February 2004, pp. 17-22.

2 *Proof Committee Hansard*, 17 February 2004, p. 12.

3 *Proof Committee Hansard*, 17 February 2004, pp. 40-41.

4 *Proof Committee Hansard*, 17 February 2004, pp. 29-30.

### **Migration Review Tribunal (MRT)**

2.6 The Committee questioned officials about the number of MRT decisions which had been the subject of judicial review, by either the Federal Court or the High Court during the current financial year. Officials advised that from the period 1 July 2003 to 31 January 2004, some 365 applications for judicial review had been lodged with 183 having been finalised.<sup>5</sup>

### **Refugee Review Tribunal (RRT)**

2.7 Officials were questioned regarding the payment of fees on those applications which are unsuccessfully reviewed by the RRT. The Committee was advised that the fee has been raised to \$1,400, in line with that charged by the MRT. Officials also informed the Committee that the non-payment rate of the fee is in the order of 70 to 80%.<sup>6</sup>

### **Indigenous Business Australia (IBA)**

2.8 The Committee inquired into the current equity level of the IBA and asked officials to explain how further growth would be realised. Officials informed the Committee that the IBA had a current consolidated equity of approximately \$79-80 million and that further growth would come from investment returns and the revaluation of some existing investments.<sup>7</sup>

### **Torres Strait Regional Authority (TSRA)**

2.9 The Committee inquired about the current state of the major infrastructure program being carried out in the region. The Committee was informed that funding for stage 2 will cease at the end of the 2003-2004 financial year and that the TSRA was presently in negotiations with the Queensland and Commonwealth governments concerning funding arrangements for stage 3 of the project.<sup>8</sup>

### **Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)**

2.10 The Committee sought information from AIATSIS officers concerning a \$300,000 grant from the Aboriginal and Torres Strait Islander Services for a digitisation project. Officers informed the Committee that the project was for the

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5 *Proof Committee Hansard*, 17 February 2004, pp. 5-6

6 *Proof Committee Hansard*, 17 February 2004, pp. 8-9.

7 *Proof Committee Hansard*, 17 February 2004, p. 88.

8 *Proof Committee Hansard*, 17 February 2004, pp. 95-96.

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conversion of archival material into CD-Rom format for preservation and conservation purposes and that the project currently employed nine staff.<sup>9</sup>

### **Aboriginal and Torres Strait Islander Commission (ATSIC)**

2.11 The Committee questioned officials and Minister Vanstone about the cost to government of legal advice to defend Mr Clark's action in the Federal Court. (Mr Clark is currently under suspension as ATSIC Chair and is contesting the suspension in the courts.) The Committee was advised that the cost to date, excluding any outstanding invoices (as the matter is ongoing) was \$42,698.<sup>10</sup>

### **Aboriginal and Torres Strait Islander Services (ATSIS)**

2.12 The Committee sought information about the funding and expenditure to date of the \$6 million flexible funding pool administered by ATSIS. Officers advised the Committee that funding for the pool had been sourced via a number of Commonwealth departments and that to date \$1.4 million had been committed. Of that amount, approximately \$0.5 million had already been expended.<sup>11</sup>

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9 *Proof Committee Hansard*, 17 February 2004, pp. 98-99.

10 *Proof Committee Hansard*, 17 February 2004, pp. 117-118.

11 *Proof Committee Hansard*, 17 February 2004, p. 101.



## **Appendix 1**

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