

The Senate

Legal and Constitutional
Legislation Committee

Budget estimates 2004–05

June 2004

© Commonwealth of Australia 2004

ISBN 0 642 71396 0

MEMBERS OF THE LEGISLATION COMMITTEE

Members

Senator Marise Payne, **Chair**, LP, NSW
Senator the Hon. Nick Bolkus, **Deputy Chair**, ALP, SA
Senator Brian Greig, AD, WA*
Senator Joseph Ludwig, ALP, QLD+
Senator Brett Mason, LP, QLD
Senator Nigel Scullion, CLP, NT

Substitute Member

* Senator Aden Ridgeway, AD, NSW to replace Senator Brian Greig for matters relating to the Indigenous Affairs portfolio
+ Senator Kerry O'Brien, ALP, TAS to replace Senator Joe Ludwig for matters relating to the Indigenous Affairs portfolio

Participating Members

Senator the Hon. Eric Abetz, LP, TAS	Senator Linda Kirk, ALP, SA
Senator Andrew Bartlett, AD, QLD (for DIMIA)	Senator Susan Knowles, LP, WA
Senator Mark Bishop, ALP, WA	Senator Meg Lees, APA, SA
Senator George Brandis, LP, QLD	Senator Ross Lightfoot, LP, WA
Senator Bob Brown, AG, TAS	Senator Sue McKay, ALP, TAS
Senator Kim Carr, ALP, VIC	Senator Julian McGauran, NPA, VIC
Senator Grant Chapman, LP, SA	Senator Jan McLucas, ALP, QLD
Senator Alan Eggleston, LP, WA	Senator Shayne Murphy, IND, TAS
Senator Christopher Evans, ALP, WA	Senator Kerry Nettle, AG, NSW
Senator the Hon. John Faulkner, ALP, NSW	Senator Robert Ray, ALP, VIC
Senator Alan Ferguson, LP, SA	Senator the Hon. Nick Sherry, ALP, TAS
Senator Jeannie Ferris, LP, SA	Senator Ursula Stephens, ALP, NSW
Senator Brian Harradine, IND, TAS	Senator Natasha Stott Despoja, AD, SA
Senator Leonard Harris, PHON, QLD	Senator Tsebin Tchen, LP, VIC
Senator Gary Humphries, LP, ACT	Senator John Tierney, LP, NSW
	Senator John Watson, LP, TAS

Secretariat

Mr Phillip Bailey	Ag Secretary
Ms Kelly Paxman	Senior Research Officer
Mr Mark Stevenson	Estimates Officer
Ms Marina Seminara	Executive Assistant

Suite S1.61
Parliament House

Telephone: (02) 6277 3560
Fax: (02) 6277 5794
E-mail: legcon.sen@aph.gov.au

TABLE OF CONTENTS

MEMBERS OF THE LEGISLATION COMMITTEE	III
PREFACE	VII
Estimates hearings	vii
Record of proceedings	vii
Minister	vii
Questions on notice	vii
Report	viii
CHAPTER 1	1
ATTORNEY-GENERAL'S PORTFOLIO	1
Introduction	1
Attorney-General's Department	1
Federal Court of Australia	2
Federal Magistrates Court	2
High Court of Australia	2
Family Court of Australia	2
Office of Film and Literature Classification (OFLC)	3
Australian Transaction Reports and Analysis Centre (AUSTRAC)	3
Human Rights and Equal Opportunity Commission (HREOC)	3
Australian Security and Intelligence Organisation (ASIO)	3
Australian Federal Police (AFP)	3
Australian Institute of Criminology and Criminology Research Council	4
CrimTrac Agency	4
Commonwealth Director of Public Prosecutions	4
Office of the Federal Privacy Commissioner	4
Australian Customs Service (ACS)	4
CHAPTER 2	7
IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO	7
Introduction	7
Department of Immigration and Multicultural and Indigenous Affairs (DIMIA)	7
Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT)	8
Aboriginal and Torres Strait Islander Services (ATSIS) and Aboriginal and Torres Strait Islander Commission (ATSIC) and the Office of Aboriginal and Torres Strait Islander Affairs	8
Indigenous Land Corporation (ILC)	8
Torres Strait Regional Authority (TSRA)	9

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).....	9
Aboriginal Hostels Limited.....	9
Indigenous Business Australia (IBA).....	9
Office of the Registrar of Aboriginal Corporations	9
APPENDIX 1	11
INDEX OF PROOF HANSARD FOR ATTORNEY-GENERAL’S PORTFOLIO ...	11
Monday 24 May 2004	11
Tuesday 25 May 2004.....	11
APPENDIX 2	13
INDEX OF PROOF HANSARD FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO	13
Wednesday 26 May 2004.....	13
Thursday 27 May 2004	13

PREFACE

On 11 May 2004, the Senate referred to the Committee the examination of estimates of proposed expenditure for the financial year 2004-2005. The Committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Multicultural and Indigenous Affairs portfolio. The portfolio budget statements were tabled in the Senate on 11 May 2004.

The Committee was required to report on its consideration of the budget estimates on or before 17 June 2004.¹

Estimates hearings

The Committee met in public session from 24 May to 27 May 2004 for a total of **37 hours and 13 minutes**.

Record of proceedings

The Hansard of the proceedings records the examination of budget 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.

Minister

The Committee heard evidence from Senator the Hon. Chris Ellison, Minister for Justice and Customs, who represented the Attorney-General and the Hon Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs. The Committee also heard evidence from Senator the Hon. Ian Macdonald, Minister for Fisheries, Forestry and Conservation who represented the Minister for Immigration and Multicultural and Indigenous Affairs for part of the proceedings.

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 recorded that there was only one outstanding question on notice from the Attorney-General's portfolio and that the Multicultural and Indigenous Affairs Portfolio had yet to provide complete answers to two questions from the Additional Estimates round of 2003-2004.

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

1 By order of the Senate 11 December 2002.

submitted by close of business on Friday, 16 July 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 during the four days of hearings. Amongst others, these included:

- The detention of Mr Hicks and Mr Habib by the USA in Guantanamo Bay, Cuba and the conditions in which they are held;
- The request to extradite Mr Roger Hendy and Mr Carl Voight to Hong Kong;
- The media release issued by AFP Commissioner Mr Mick Keelty on March 16, 2004 clarifying comments made on the *Sunday* television program of March 14, 2004;
- Errors in the Attorney-General's Portfolio Budget Statements concerning the Australian Customs Service and the subsequent tabling of a correcting document; and
- Proposed government changes to the delivery of indigenous services and programs resulting from the cessation of ATSIC.

Senator Marise Payne

Chair

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 Budget Estimates of the Attorney-General's portfolio for the financial year 2004-2005.

Attorney-General's Department

1.2 Officers were once again questioned on the physical wellbeing of Mr David Hicks and Mr Mamdouh Habib, Australian citizens detained at Guantanamo Bay, Cuba by the United States Government as "unlawful combatants". The Committee also asked about the conditions in which the two men are being kept and whether such conditions were in breach of the Geneva Convention.

1.3 Members of the Committee sought details of the Department's expenditure on external legal services and the guidelines issued to other government agencies concerning the contracting of legal services including the way in which such expenditure is accounted for.

1.4 The Department was questioned in relation to the selection process and appointment of two examiners to the newly formed Australian Crime Commission.

1.5 The Committee sought information from the Department and the Minister concerning the request to extradite Mr Roger Hendy and Mr Carl Voight to Hong Kong, including the nature of advice given to the government by the Attorney-General's Department. The Committee also inquired into the use of Ministerial discretion to block court ordered extraditions.

1.6 Other issues canvassed by the Committee concerning the Attorney-General's Department included;

- The cost of the refurbishment of the Sydney Law Courts building;
- Costs associated with the provision of the Family Law Online and the Family Law Hotline and the Australian Law and Justice Portal services;
- The future provision of community education on legal issues to Indigenous communities due to the expected abolition of ATSI/ATSIC; and
- Costs associated with the National Security Hotline and issues surrounding technical difficulties experienced by the Hotline;

- The role of officers from the Department involved in advance missions to Athens to consult on security arrangements relating to the upcoming Olympic Games.

Federal Court of Australia

1.7 The Committee asked for information and statistics on s 157 remittals as well as the *Muin* and *Lie* remittals.

1.8 Officers of the Court were also questioned about the Court's estimated net cash deficit for the 2004-2005 financial year as well as budget arrangements for the continued migration of data from FEDCAMs to the new Casetrack IT system.

Federal Magistrates Court

1.9 The Committee questioned officers concerning the appointment of a further eight magistrates to the Court and asked about the expected workload that would be assigned to the new magistrates.

1.10 The Committee inquired as to what processes and procedures were being put into place to deal with the Court's increasing workload, specifically in relation to family law matters.

1.11 The Committee also sought information on the Court's responses to a number of recommendations contained in Australian National Audit Office Audit Report No. 46, 2003-04.

High Court of Australia

1.12 Officers from the High Court were again questioned on the progress of the judicial complaints protocol and when the protocol would be completed.

1.13 The Committee inquired into the numbers of unrepresented litigants before the Court and whether *Muin* and *Lie* and s 157 related matters continued to generate further cases for the Court.

1.14 Other issues raised included the possible future remittal of migration and family law matters to either the Federal Court or the Federal Magistrates service and the costs associated with proposed new security measures for the Court.

Family Court of Australia

1.15 Officers from the Court informed the Committee of the Court's responses to recommendations made by the Auditor-General in Australian National Audit Office Audit Report No. 46, 2003-04. Officials advised the Committee that the Court had already made progress in implementing a number of the Auditor-General's recommendations.

Office of Film and Literature Classification (OFLC)

1.16 The Committee questioned officers concerning the OFLC's decision to award the film *Irreversible* an R rating and a G rating to the film *The Cat in the Hat*.

1.17 The Committee asked for clarification of the application of the *Guidelines for the Classification of Films and Computer Games* when assessing the content and impact of films and computer games.

Australian Transaction Reports and Analysis Centre (AUSTRAC)

1.18 The Committee inquired about AUSTRAC's plans for a cost recovery model which had been raised at the previous estimates round. Officers advised that given the current funding increase, it was no longer considering pursuing the cost recovery model.

1.19 The Committee asked for details on the funding of AUSTRAC's financial intelligence units and how such funding would be spent.

1.20 Officers from the Centre were also questioned about AUSTRAC's role in the tracking of terrorist finances and the numbers of staff employed in that area.

Human Rights and Equal Opportunity Commission (HREOC)

1.21 HREOC officers answered a number of questions in relation to its report *A last resort* concerning children in immigration detention and the length of time taken to produce the report.

1.22 Other issues raised by the Committee included upcoming plans for the celebration of the 20th anniversary of the Commonwealth Sex Discrimination Act and the Commission's work in the areas of maternity leave and family work balance.

Australian Security and Intelligence Organisation (ASIO)

1.23 The Committee sought information from Mr Richardson, (ASIO Director-General) concerning any consultations between ASIO and the Department of Foreign Affairs and Trade, (DFAT) regarding DFAT travel advisories to Athens and the threat level assigned to the Athens Olympic Games.

1.24 The Committee also canvassed with Mr Richardson a number of other issues, which included, the installation and maintenance of a perspex viewing port in the cabinet room; consultations regarding the terrorism white paper and media reports of the arrest in New Zealand of two persons for passport fraud.

Australian Federal Police (AFP)

1.25 The Committee inquired into events surrounding the release of a media statement by AFP Commissioner Mick Keelty clarifying views expressed on the

Sunday program on 14 March. Senators also questioned officers concerning the possible involvement of officers from the Department of Prime Minister and Cabinet in the drafting of the release.

1.26 The Committee questioned officers regarding the funding levels for the Air Security Officer Program including such matters as the number of officers and media reports about pay rises and employment conditions for officers.

1.27 AFP officers were questioned concerning events leading to the arrest of a man in Perth after an in-flight incident on a Thai Airways flight to Australia.

1.28 The Committee sought information on the capabilities of five vessels given over to the Indonesian Police for use throughout the Indonesian archipelago.

Australian Institute of Criminology and Criminology Research Council

1.29 The Committee questioned officers concerning the new National Community Crime Prevention Program (NCCPP) and whether the Australian Institute of Criminology would be able to apply for funding for new research projects within the NCCPP.

CrimTrac Agency

1.30 The Committee inquired into some discrepancies in staffing levels as noted in Budget Paper No 1 and the Attorney-General's Portfolio Budget Statement, particularly in relation to IT staffing.

Commonwealth Director of Public Prosecutions

1.31 The Committee sought information on the application of the *Proceeds of Crime Act 2002* and an indication of how much of the \$80 million currently under restraint might be expected to be recovered.

Office of the Federal Privacy Commissioner

1.32 The Committee inquired into the number of complaints received by the Office, the length of time taken to resolve complaints and whether the numbers of complaints have been trending up or down over the past years.

1.33 The Committee also sought information on when the Federal Privacy Commissioner's position would be filled; the likelihood of a review of the credit code of conduct and budget adjustments made as a result of Comcare payments.

Australian Customs Service (ACS)

1.34 The CEO of the ACS (Mr Lionel Woodward) drew the Committee's attention to a number of errors in the Portfolio Budget Statements (PBS). Mr Woodward tabled a document outlining the errors and amending the PBS figures.

1.35 Officers were questioned on the Service's neutron scanner program and the expected benefits of using neutron radiography as opposed to current X-ray and/or gamma-ray technologies for inspecting cargo.

1.36 The Committee sought updated information on the Cargo Management Re-engineering project particularly in relation to current and additional funding requirements. Officers were questioned on aspects of both the import and export modules of the program and the progress of industry testing and training for industry users.

1.37 The Committee also inquired into a range of other ACS issues including:

- The provision of consultancy advice as a result of the Department of Finance and Administration inquiry into the ACS budget;
- The SmartGate automated biometric border processing system;
- The number of times the ACS had been referred to the Ombudsman;
- The possibility of the ACS participating in a 'Reality Customs' television series, in conjunction with a commercial network, that deals with everyday Customs activities;
- The numbers of deserters from foreign vessels in Australian ports; and
- The current status of tenders for the new Coastwatch contracts.

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 Budget Estimates of the Immigration and Multicultural and Indigenous Affairs portfolio for the financial year 2004-2005.

Department of Immigration and Multicultural and Indigenous Affairs (DIMIA)

2.2 The Committee sought information on the breakdown of the cost of legal services provided to DIMIA by the Australian Government Solicitor for the provision of litigation services.

2.3 Officers were questioned concerning the increase in the number of places in the refugee and humanitarian offshore program from 12,000 to 13,000 places. Officers were also questioned concerning the refugee component of the program and asked to explain where the government gets advice on the regions from which refugees will be accepted.

2.4 The Committee questioned officers on the closure of the Maribyrnong Immigration Detention Centre, the funding allocated for building of a replacement facility and the location and cost of land acquired for the new centre.

2.5 The Committee questioned officers concerning the presence of staff from the *Daily Telegraph* at a number of DIMIA compliance activities at Sydney restaurants. The Committee inquired as to the number of illegal warning notices issued by the Department as a result of compliance activities and the number of employers charged under the Criminal Code for employing illegal foreign workers.

2.6 Members of the Committee inquired into the amount of additional funding allocated to settlement services and asked officers for a breakdown of how, and on which programs the money is to be expended.

2.7 Other issues canvassed by the Committee included,

- Media access to asylum seekers;
- Qualification and skills assessment of class 136 and 861 visa applicants;

- The 'Mothballing' of the Port Hedland detention centre and housing project; and
- The ACM and DIMIA responses to the Human Rights and Equal Opportunity Commission report titled *A last resort*.

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

2.8 The Committee again asked officers to provide a range of statistics concerning the workload of the tribunals and were questioned on the purchasing agreements currently in place with the Department of Finance and Administration.

2.9 Officers were also questioned regarding the difficulties faced by the RRT in accurately identifying the country of origin of some refugees, particularly those claiming to be either Afghani or Pakistani.

Aboriginal and Torres Strait Islander Services (ATSIS) and Aboriginal and Torres Strait Islander Commission (ATSIC) and the Office of Aboriginal and Torres Strait Islander Affairs

2.10 The Committee sought information on the final costs associated with the now completed ATSIC review and inquired into the nature of the different payment rates made to the members of the review panel.

2.11 Committee members questioned officers concerning the continuation of funding to various Indigenous organisations and projects following the abolition of ATSIC and ATSIS on 30 June 2004.

2.12 Officers were questioned with regard to current staff numbers within both ATSIC and ATSIS and inquired as to the number of staff to be employed in the newly created Office of Indigenous Policy Coordination.

2.13 Other issues raised by the Committee included:

- The cancellation of the National Indigenous Women's Conference;
- Aboriginal and Torres Strait Islander Legal Services (ATSILS) tendering processes; and
- Legal and administrative costs associated with the suspension of Mr Geoff Clark as Chair of ATSIC.

Indigenous Land Corporation (ILC)

2.14 The Committee sought information on the nature of changes made to the National Indigenous Land Strategy 2001/06 and details surrounding the disposal of a number of ILC owned properties including Mount Dare Station in South Australia and Wittenburra-Turn Turn in Queensland.

Torres Strait Regional Authority (TSRA)

2.15 The Committee questioned Mr Fordham, (TSRA General Manager) concerning appointments made to the TSRA board as a result of local council elections and the effectiveness of a whole of government response to an outbreak of dengue fever in the Torres Strait.

2.16 Mr Fordham was also questioned concerning the cost of the Gab Titui Cultural Centre project and costs associated with the centre's opening ceremony.

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

2.17 AIATSIS officers were asked to update the Committee on the progress of the Institute's digitisation project and whether the drop in staffing levels was as a result of staffing changes to the digitisation project.

Aboriginal Hostels Limited

2.18 Questioning by the Committee centred on a joint venture between the Aboriginal Hostels Limited and the Western Australian government to provide a dialysis hostel in Broome, Western Australia.

Indigenous Business Australia (IBA)

2.19 The Committee inquired into the perceived consequences for the IBA arising from the government plan to abolish ATSIC and ATSI in respect of departmental responsibility for the IBA and the mainstreaming of its functions.

Office of the Registrar of Aboriginal Corporations

2.20 The Committee sought information on staffing levels in the Registrar's office and the impact the abolition of ATSIC and the mainstreaming of Indigenous services would have on operations.

Appendix 1

Index of Proof Hansard for Attorney-General's Portfolio

Monday 24 May 2004

Agency/Output Group	Page
Attorney-General; General questions/Outcome 1	5-25 74-108
Federal Court of Australia	25-30
Federal Magistrates Service	30-39
High Court of Australia	39-47
Family Court of Australia	47-53
Office of Film and Literature Classification	53-59
Australian Transaction Reports and Analysis Centre	59-65
Human Rights and Equal Opportunity Commission	65-74
Attorney-General; Outcome 2	108-145

Tuesday 25 May 2004

Agency/Output Group	Page
Australian Security and Intelligence Organisation	5-14
Australian Federal Police	14-31
Australian Institute of Criminology	31-34
CrimTrac	34-35
Commonwealth Director of Public Prosecutions	35-37
Insolvency and Trustee Service Australia	37-38
Office of the Federal Privacy Commissioner	38-41
Australian Customs Service	41-77

Appendix 2

Index of Proof Hansard for Immigration and Multicultural and Indigenous Affairs Portfolio

Wednesday 26 May 2004

Agency/Output Group	Page
DIMIA; General questions and Output 1	3-79
Output 2	79-103

Thursday 27 May 2004

Agency/Output Group	Page
Migration Review Tribunal /Refugee Review Tribunal	4-18
Output 3 (Office of Aboriginal and Torres Strait Islander Affairs)/ Aboriginal and Torres Strait Islander Commission/Aboriginal and Torres Strait Islander Services	18-76
Indigenous Land Corporation	76-91
Australian Institute of Aboriginal and Torres Strait Islander Studies	91-93
Aboriginal Hostels Ltd	93-94
Indigenous Business Australia	94-96
Office of the Registrar of Aboriginal Corporations	96-97