

The Senate

Legal and Constitutional
Legislation Committee

Additional estimates 2005-06

March 2006

Commonwealth of Australia 2006

ISBN 0 642 71620 X

This document was printed by the Senate Printing Unit, Department of the Senate,
Parliament House, Canberra.

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ABBREVIATIONS

AAT	Administrative Appeals Tribunal
ACC	Australian Crime Commission
ACS	Australian Customs Service
AFP	Australian Federal Police
AGD	Attorney-General's Department
AGS	Australian Government Solicitor
AIC	Australian Institute of Criminology
ANAO	Australian National Audit Office
ASIO	Australian Security Intelligence Organisation
AUSTRAC	Australian Transaction Reports and Analysis Centre
CRC	Criminology Research Council
DIMA	Department of Immigration and Multicultural Affairs
DPP	Commonwealth Director of Public Prosecutions
HREOC	Human Rights and Equal Opportunity Commission
IHSS	Integrated Humanitarian Settlement Services
MRT	Migration Review Tribunal
OPC	Office of Parliamentary Counsel
UN	United Nations

PREFACE

On 08 February 2006, the Senate referred to the Committee the examination of estimates of proposed additional expenditure for the financial year 2005-2006. The Committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Multicultural Affairs portfolio.

The Committee was required to report on its consideration of the additional budget estimates on or before 29 March 2006.

Estimates hearings

The Committee met in public session on 13, 14, 17 and 27 February 2006 for a total of 29 hours 05 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 Affairs.

Officers from both departments and associated agencies also appeared. The Committee thanks Ministers and officers 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 the deadline for the submission of written answers and additional information by both portfolios would be close of business on Friday, 31 March 2006.

Report

In this report, the Committee draws the attention of the Senate to issues and concerns raised over the four days on which hearings were held. These included:

- Minister Ellison advised the committee that the government had directed officers not to answer questions directed to them concerning the Cole commission of inquiry into certain Australian companies in relation to the United Nations (UN) Oil-for-Food programme, pending the completion of the commission's hearings.
- Both the Attorney-General's Department (AGD) and the Australian Federal Police (AFP) were questioned in relation to documents supplied to them concerning the actions of certain "undisclosed persons." Officers were further questioned as to how, and under what circumstances, section 72 of the Constitution, (pertaining to the removal of Federal Justices) might be activated.
- The committee inquired into the funding arrangements under which the National Community Crime Prevention Program operated. A number of questions were asked, with some taken on notice by officials, specifically concerning an application for grant funding by Hillsong Emerge.
- Both Minister Vanstone and the Secretary of the Department of Immigration and Multicultural Affairs made opening statements to the committee. The statements outlined, amongst a number of other subjects, the department's progress in implementing the recommendations of the Palmer Inquiry. At the conclusion of Mr Metcalfe's opening remarks, a document was tabled for the benefit of the committee, detailing the status of a series of initiatives being implemented as a result of the Palmer inquiry.
- The committee sought information on the initial mental health screening of detainees, the composition and membership of the detention health advisory group and the provision of any necessary follow up mental health care.
- Officers were also extensively questioned concerning the provision of Integrated Humanitarian Settlement Services (IHSS) in the Newcastle area and the death in November 2005, of Richard Niyonsaba, shortly after he and his family arrived in Australia following their acceptance as Burundian refugees from Western Tanzania.

Senator Marise Payne
Committee Chair

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 Budget Estimates of the Attorney-General's portfolio for the 2005-2006 financial year.

Australian Security Intelligence Organisation (ASIO)

1.2 Minister Ellison informed the committee in his opening statement that the government had directed officers not to answer questions concerning matters before the Cole commission of inquiry. The statement advised:

The Government has directed that officials appearing before Senate Legislation Committees should not answer questions directed to them on matters before the Commission of Inquiry being conducted by the Hon Terrence Cole into certain Australian companies in relation to the Oil-for-Food Programme.

While examination of officials by the Committees might be appropriate in the future, the Government considers that Mr Cole should be able to proceed with his inquiry and present his findings without parallel public questioning that would not assist consideration of complex issues.¹

1.3 Members of the committee attempted to ask questions about ASIO's knowledge or involvement in matters relating to the UN Oil-for-Food programme. Minister Ellison reiterated the government position on officers answering such questions. The committee determined that the best course of action was for Senators to give consideration to placing any Oil-for-Food related questions on notice in the hope that they could be answered at the conclusion of the Cole inquiry. Other lines of questioning to ASIO included: its conduct of ammonium nitrate checks, the Organisation's use of its detention and questioning powers, and staff recruitment.²

Attorney-General's Department (AGD)

1.4 Officers and the Minister were asked a series of questions surrounding the operation of Section 72 of the Constitution and whether or not the government had given consideration to the possible creation of a judicial commission to investigate complaints against judicial officers. The committee heard that the necessary 'triggering' of section 72 would be undertaken by the office of the Attorney-General

1 *Proof Committee Hansard*, 14 February 2006, p. 9.

2 *Proof Committee Hansard*, 14 February 2006, pp 6-13.

and that in relation to a judicial commission, the Attorney-General in consultation with the courts, are examining proposals to carry the matter forward.³

1.5 The committee inquired into the operation of the National Community Crime Prevention Program. The committee sought information on the circumstances surrounding grant applications made by the Hillsong Emerge group. Officers took on notice a series of questions seeking details of the department's handling of the grant applications.⁴

Family Court of Australia

1.6 Officers from the Family Court agreed to provide the committee with information on the productivity outputs of the Court's Judges.⁵

Administrative Appeals Tribunal (AAT)

1.7 The committee raised a number of issues with officers from the AAT. These included a recent rise in the number of taxation related cases and whether such a rise is generating any staffing difficulties for the Tribunal. Issues surrounding the professional development of Tribunal members were also discussed, particularly with regard to ensuring the procedural fairness of hearings.⁶

Human Rights and Equal Opportunity Commission (HREOC)

1.8 Officers were questioned concerning the work of the Commission since the release of the Ismae report regarding the elimination of discrimination against Arab and Muslim Australians. The committee heard that, amongst other things, HREOC remained in contact with Muslim organisations around Australia and had maintained dialogue with the Australasian Police Multicultural Advisory Bureau concerning racial descriptors.⁷

Australian Transaction Reports and Analysis Centre (AUSTRAC)

1.9 The committee sought information on what access AUSTRAC has to databases operated by the Australian Customs Service in order to access information to assist in money laundering investigations. Officers advised the committee that AUSTRAC has access to some Customs databases but their analysts are also able to access a number of other law enforcement databases.⁸

3 *Proof Committee Hansard*, 14 February 2006, pp 23-26.

4 *Proof Committee Hansard*, 14 February 2006, pp 66-76.

5 *Proof Committee Hansard*, 14 February 2006, p. 49.

6 *Proof Committee Hansard*, 14 February 2006, pp 77-80.

7 *Proof Committee Hansard*, 14 February 2006, p. 80.

8 *Proof Committee Hansard*, 14 February 2006, p. 85.

1.10 Senators also questioned officers concerning the number of AUSTRAC staff on secondment to other agencies and the type of work undertaken by seconded staff at other agencies. The committee heard that officers are 'placed' in other agencies rather than 'seconded', and officers are still working for AUSTRAC. One of the primary roles of officers placed with other agencies is to assist those agencies to access and analyse AUSTRAC data.⁹

1.11 The committee again attempted to inquire into any possible AUSTRAC involvement in matters before the Cole inquiry. The Minister reiterated the government's position relating to such questions and suggested that they be placed on notice as officials would not be precluded from answering questions once the Cole commission had concluded its inquiry.¹⁰

Federal Court of Australia

1.12 Officers from the Court were asked to respond to a number of questions concerning a report by the Productivity Commissioner. The report indicated that there had been a significant rise in the Federal Court's expenditure per case finalised for the 2004-05 financial year. The committee heard that a number of factors influenced the cost of cases, including the mix of the types of cases remitted to the court. Officers tabled documents outlining the cost variations associated with finalising the range of cases heard by the Court.¹¹

1.13 The committee also questioned officers concerning a drop in the number of cases heard over the 2004-05 year and the Court's case clearance rate.¹²

Office of Parliamentary Counsel (OPC)

1.14 The committee sought information from officers regarding Bills which had been introduced to the Parliament and subsequently found to be not legally effective. The committee heard that approximately one or two per cent of the several hundred Bills introduced each year have been found, either by the OPC or the instructing department, to have a problem with a particular provision of a Bill, although not necessarily of sufficient seriousness to render the entire Bill legally ineffective. Officials undertook to provide the committee with a list of Bills which had been found to be not legally effective.¹³

9 *Proof Committee Hansard*, 14 February 2006, pp 87-88.

10 *Proof Committee Hansard*, 14 February 2006, pp 88-89.

11 *Proof Committee Hansard*, 14 February 2006, pp 90-91.

12 *Proof Committee Hansard*, 14 February 2006, pp 91-93.

13 *Proof Committee Hansard*, 14 February 2006, pp 93-94.

1.15 Officers were also asked a series of questions relating to salary expenses, staffing levels and workload.¹⁴

Australian Crime Commission (ACC)

1.16 The committee sought details of those aspects of Operation Wickenby that could be made publicly available, given that the operation is ongoing. Officers advised that the range of offences, allegedly committed by persons under investigation included defrauding the Commonwealth, obtaining financial advantage by deception, knowingly dealing with the proceeds of crime and money-laundering offences. The penalties for such offences, if convicted, range from 10 to 20 years imprisonment.¹⁵

1.17 Officers advised that the estimated value of the revenue at risk through the types of schemes under investigation in Operation Wickenby could be as high as \$300 million.¹⁶

1.18 Other matters raised by the committee included:

- intelligence sharing between Commonwealth, state and territory partners;
- staffing levels;
- penalties for non-cooperation and numbers of persons who failed to cooperate with the ACC; and
- the number of times the ACC has used its coercive powers.

Australian Government Solicitor (AGS)

1.19 Senators questioned officials regarding current trends in work volume, contract numbers and revenue growth for the AGS. Officers also undertook to provide the committee with updated statistics on the outcomes of the Tongue report. The undertaking was given with the caveat that the AGS would not be in a position to disclose market share or other such information, given that it was commercially sensitive information within a competitive market.¹⁷

14 *Proof Committee Hansard*, 14 February 2006, pp 94-95.

15 *Proof Committee Hansard*, 14 February 2006, pp 96-97.

16 *Proof Committee Hansard*, 14 February 2006, pp 96-97.

17 *Proof Committee Hansard*, 14 February 2006, pp 106-109.

Australian Institute of Criminology and the Criminology Research Council

1.20 Officers were questioned concerning a number of budget related matters including the way in which the total budget figure in the Portfolio Budget Statements is calculated and the effect of the number of tender applications on that figure.¹⁸

1.21 The committee also sought information on IT related expenditure and the number of specialist researchers employed.¹⁹

CrimTrac

1.22 The committee questioned officers regarding the implementation of a number of the recommendations contained in the Australian National Audit Office (ANAO) report (No. 53 of 2003-04) pertaining to the operation of CrimTrac.²⁰

1.23 The committee also sought further information on the provision, cost and contract details of IT related services provided by the electronics firm Sagem.²¹

Commonwealth Director of Public Prosecutions (DPP)

1.24 The committee asked a series of questions stemming from a newspaper article alleging that the DPP was reluctant to prosecute crimes by individuals working for corporations. Officers informed the committee that the article overlooked a number of issues. This included the fact that the DPP is not an investigative agency and that the article drew erroneous conclusions from raw statistical data and did not look at the amount of resources expended on cases.²²

1.25 Officers were also asked to provide a breakdown of the budget spend for the DPP and provided an overview of communications between the DPP and Centrelink concerning prosecutions.²³

Australian Customs Service (ACS)

1.26 The committee questioned officials on the number of sightings of fishing vessels by Coastwatch assets over previous years and sought information on the way in which those assets were being deployed in response to the rise in the number of vessels sighted.²⁴

18 *Proof Committee Hansard*, 14 February 2006, pp 110-112.

19 *Proof Committee Hansard*, 14 February 2006, pp 112-113.

20 *Proof Committee Hansard*, 14 February 2006, pp 114-117.

21 *Proof Committee Hansard*, 14 February 2006, pp 117-121.

22 *Proof Committee Hansard*, 14 February 2006, pp 121-122.

23 *Proof Committee Hansard*, 14 February 2006, pp 124-126.

24 *Proof Committee Hansard*, 17 February 2006, pp 3-9.

1.27 The committee also sought information relating to the apprehension and detention of illegal fishers. The committee heard that illegal fishers could be apprehended by vessels from either the ACS or the Royal Australian Navy and brought to the Australian mainland. Following their apprehension, illegal fishers are detained by ACS officers under Australian Fisheries Management Authority legislation and placed in immigration detention.²⁵

1.28 Other issues canvassed by the committee included:

- The budget, operation and testing of the Cargo Management Re-engineering project;²⁶ and
- The SmartGate facial recognition project.²⁷

Australian Federal Police (AFP)

1.29 The committee questioned officers at length concerning information passed to the Indonesian National Police regarding the 'Bali 9' and the role of the AFP in events preceding their arrest. Commissioner Keelty explained to the committee that the AFP had acted both legally and ethically in respect to its handling of the case. The Commissioner further advised that Australia, as a signatory to certain UN conventions, was required to co-operate internationally in the fight against transnational crime.²⁸

1.30 Other issues canvassed with the AFP included:

- possible reasons for the government to consider the creation of a commission to oversight judicial behaviour;²⁹
- the Cole commission;³⁰ and
- AFP staffing levels and recruitment practices.³¹

25 *Proof Committee Hansard*, 17 February 2006, pp 9-13.

26 *Proof Committee Hansard*, 17 February 2006, pp 14.26

27 *Proof Committee Hansard*, 17 February 2006, pp 27-30.

28 *Proof Committee Hansard*, 17 February 2006, pp 37-43.

29 *Proof Committee Hansard*, 17 February 2006, pp 31-36.

30 *Proof Committee Hansard*, 17 February 2006, pp 36-37.

31 *Proof Committee Hansard*, 17 February 2006, pp 43-51.

CHAPTER 2

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

Introduction

2.1 This chapter summarises areas of interest and concern raised during the Committee's consideration of the Additional Budget Estimates of the Immigration and Multicultural Affairs portfolio for the 2005-2006 financial year.

Department of Immigration and Multicultural Affairs (DIMA)

2.2 Both the Minister and the Secretary of DIMA took the opportunity to make opening statements to the committee in order to provide an update on the department's progress in implementing a variety of changes following the Comrie and Palmer investigations.¹

2.3 The Secretary of DIMA, Mr Andrew Metcalfe, advised of progress in a number of areas including:

- the development of a holistic case management framework for the case management of clients with exceptional circumstances;
- the ongoing review of cases involving a decision to detain a person;
- improved staff training and accountability measures; and
- the appointment of a national training manager to develop and lead department-wide training programs in leadership, values, standards and management skills.²

2.4 The committee questioned officers concerning DIMA's response to the arrival at Cape York, on 18 January 2006, of 43 Indonesians from West Papua. Officers advised the committee that the group was transferred to Weipa on the same day that they arrived. The group underwent medical checks in Weipa which were conducted by Queensland health authorities and was cleared to be flown to Christmas Island. A number of further follow up questions were asked regarding the subsequent health of the group and the costs associated with the air evacuation of two of the group from Christmas Island to Perth with suspected tuberculosis.³

1 *Proof Committee Hansard*, 13 February 2006, pp 3-7.

2 *Proof Committee Hansard*, 13 February 2006, p. 6.

3 *Proof Committee Hansard*, 13 February 2006, pp 22-29.

2.5 The committee sought a range of information on the Integrated Humanitarian Settlement Services (IHSS) scheme in the Newcastle area. The committee questioned officers regarding the staffing levels of service providers, tender processes, the ACL Pty Ltd/DIMA complaints handling system and a number of specific cases, including that of Richard Niyonsaba, a Burundian child who died shortly after his arrival in Australia from Africa.⁴

2.6 Other issues canvassed by the committee included:

- the responsibilities of employers who sponsor employees under the 457 visa category;⁵
- consular visits by Indonesian officials to West Papuans detained on Christmas Island;⁶
- the detention of illegal fishers;⁷ and
- an update on the progress of the 220 immigration cases referred to the Commonwealth Ombudsman following the Palmer report.⁸

Migration Review Tribunal (MRT)

2.7 Officers were asked whether the MRT gave specific training to members regarding the issues of natural justice and procedural fairness. Officers advised that there was ongoing training for Tribunal members in these areas and in a variety of forms. Officers advised that the training is reinforced by principal member directions as issued from time to time and that court decisions were also used for guidance in relation to the training of members.⁹

2.8 Officers were also questioned regarding the use of expert evidence and the credibility of evidence provided to the Tribunal. The committee heard that the Tribunal is moving towards a set of credibility guidelines which it plans to make widely available. The Tribunal expects that the guidelines will be enthusiastically adopted by members and will be of great assistance when assessing credibility issues.¹⁰

4 *Proof Committee Hansard*, 13 February 2006, pp 73-95 & 99-103.

5 *Proof Committee Hansard*, 13 February 2006, pp 31-36.

6 *Proof Committee Hansard*, 13 February 2006, pp 38-40.

7 *Proof Committee Hansard*, 13 February 2006, p. 46.

8 *Proof Committee Hansard*, 13 February 2006, pp 49-53.

9 *Proof Committee Hansard*, 13 February 2006, pp 96-97.

10 *Proof Committee Hansard*, 13 February 2006, p. 97.

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