

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT

**Output 2.1**

**Question No. 58**

**Senator Ludwig asked the following question at the hearing on 31 October 2005:**

- a) How much of the funding provided for the International Criminal Court Contribution has been expended?
- b) Has all funding been expended?
- (i) If not, how much funding has yet to be expended?
- c) Was there any variation to the stated budget for this program?
- (i) If so, what was the variation?
- (ii) Was additional funding provided, or did the program lose funding?
- (iii) If the program lost funding, where was the funding transferred, and why?
- (iv) Were any stop-gap measures put in place to 'ensure the continued operation of this program despite the variations?'
- d) What was the stated outcome of the program at the time the funding commenced?
- (i) Did the program meet its stated outcome?
- (ii) If not, in which areas did it not meet its stated outcome?
- (iii) Were any other measures or additional funding required to meet the stated outcome of the program?
- e) Has a review been conducted of the program?
- (i) If so, could you provide a copy?
- (ii) If not, why not?
- (iii) Is one being conducted, or will one be conducted?
- (iv) Are there any interim reports available?
- (v) Are there any plans to produce any interim reports?

**The answer to the honourable senator's question is as follows:**

a) and b)

<u>Financial Year</u>	<u>Budget (\$million)</u>	<u>Expended (\$million)</u>	<u>Unspent (\$million)</u>
2003/04	3.346	3.062	0.284
2004/05	3.862	3.727	0.135
2005/06	3.881		

c) Variations from the original 2003/04 Budget occurred at 2003/04 Additional Estimates, 2004/05 Budget, 2005/06 Budget, and 2005/06 Additional Estimates.

(i) Variations from the original 2003/04 Budget occurred as follows:

- 2003/04 Additional Estimates - \$1.585 million
- 2004/05 Budget – increase to contribution of \$6.70 million over 4 years
- 2005/06 Budget – increase to contribution of \$3.545 million over 4 years
- 2005/06 Additional Estimates – \$0.876 million

(ii) Additional funding was provided to meet an increase in the Court's operating costs. The Court's budget has increased significantly in the last two years and is expected to increase by a further 23% in 2006.

(iii) No funding was carried over into 2004/05 and 2005/06. The unspent funds lapsed on both occasions.

(iv) The program is a membership payment.

d) As a party to the *Rome Statute of the International Criminal Court*, Australia is obliged to provide assessed contributions towards the ICC's expenses.

(i) Yes, Australia has paid its assessed contributions.

(ii) Not applicable.

(iii) See answer c) above.

e) Yes. Section 189 of the *International Criminal Court Act 2002* (Cth) (the ICC Act) includes an annual reporting requirement. Section 189 provides that the Department must publish each year, as an appendix to the Department's annual report for that year, a report on the operations of the ICC Act, the operations of the International Criminal Court (ICC), and the impact of the operations of the ICC on Australia's legal system. The purpose of these reports is to enable Parliament to ensure that, in light of the operation and jurisprudential developments of the ICC, it continues to be in Australia's national interest to remain a Party to the ICC Statute.

The Department provided reports under section 189 of the ICC Act in its 2003-04 and 2004-05 Annual Reports.

The website address for the ICC Appendix in the 2003-04 Annual Report is:

<http://agnet.ag.gov.au/agd/WWW/agdhome.nsf/Page/RWP54B0758DA32C3FDCCA256F46001D358C#a11>

The website address for the ICC Appendix in the 2004-05 Annual Report is:

[http://agnet.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)~ssAppendix+6-11.pdf/\\$file/ssAppendix+6-11.pdf](http://agnet.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~ssAppendix+6-11.pdf/$file/ssAppendix+6-11.pdf)

(i) Copy attached.

(ii) Not applicable.

(iii) Not applicable.

(iv) Not applicable.

(v) Not applicable.

## Appendix II: The *International Criminal Court Act 2002*

### The *International Criminal Court Act 2002*

The *International Criminal Court Act 2002* (the ICC Act) entered into force on 28 June 2002.

The ICC Act includes an annual reporting requirement under section 189, which adopts recommendation 6 of the Joint Standing Committee on Treaties' Report 45 on the ratification of the Rome Statute of the International Criminal Court (the ICC Statute). Section 189 provides that the Department must publish each year, as an appendix to the Department's annual report for that year, a report on the operation of this Act, the operations of the International Criminal Court (the ICC), and the impact of the operations of the ICC on Australia's legal system.

The purpose of these reports is to enable Parliament to ensure that, in light of the operation and jurisprudential developments of the ICC, it continues to be in Australia's national interest to remain a Party to the ICC Statute.

### Operation of the *International Criminal Court Act 2002*

The ICC Act establishes mechanisms to permit Australia to comply with its international obligations under the ICC Statute. It also contains provisions to implement the terms of a declaration that Australia lodged with its ratification. The declaration indicates how Australia will practically give effect to the Statute while fully adhering to its obligations.

The declaration protects Australian sovereignty by:

- reaffirming the primacy of Australian criminal jurisdiction in relation to crimes within the ICC's jurisdiction
- declaring that no person can be arrested on a warrant issued by the ICC or surrendered to the ICC without the consent of the Attorney-General, and
- declaring Australia's understanding that offences under the Statute will be interpreted and applied in a way that accords with the way they are implemented in Australian law.

The Parliament enacted amendments to the *Criminal Code Act 1995* in the *International Criminal Court (Consequential Amendments) Act 2002* (the ICC (CA) Act) to ensure that all crimes set out in the ICC Statute are also crimes in Australian domestic law. The ICC has jurisdiction only if national courts are unwilling or unable to genuinely investigate or prosecute a case. The ICC (CA) Act ensures that Australia will always be able to investigate or prosecute ICC crimes if necessary, thereby guaranteeing that Australia will retain primary jurisdiction over all such crimes committed on Australian territory or by Australian citizens.

In conjunction with the *Defence Force Discipline Act 1982*, the ICC Act and the ICC (CA) Act have had a significant positive impact on Australia's overseas military operations during the reporting year. By defining with greater certainty individual criminal responsibility of Australian Defence Force members and others for crimes under

the ICC Statute in Australian domestic law, the legislation has lent greater certainty to these operations. More broadly, the legislation will perform an important role in upholding the rule of law and punishing those guilty of the most serious crimes of international concern.

### **Operation of the International Criminal Court**

The ICC Statute was adopted and opened for signature and ratification on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. The Statute entered into force generally on 1 July 2002. As of 1 July 2005, there are 99 Parties and 139 signatories to the ICC Statute. Australia signed the Statute on 9 December 1998 and ratified the Statute on 1 July 2002. The Statute entered into force for Australia on 1 September 2002.

The entry into force of the ICC Statute established the first permanent international court capable of investigating and prosecuting the most serious crimes of international concern. The ICC fills a legal vacuum that could otherwise prevent the prosecution of egregious crimes due to a lack of judicial infrastructure or political will. The ICC is physically established in The Hague, the Netherlands.

The ICC jurisdiction is limited to the crimes of genocide, crimes against humanity and war crimes. The ICC jurisdiction is further limited to crimes committed after the ICC Statute's entry into force on 1 July 2002. All crimes over which the ICC has jurisdiction are strictly defined in the ICC Statute. The definitions reflect international law that predates the Court's existence.

No new crime can be added to the ICC's jurisdiction until seven years after the Statute's entry into force (1 July 2009).

Importantly, no new crime will apply to acts done in the territory of, or by citizens of, a State Party that has not ratified that crime. The only new crime currently being contemplated is the crime of aggression.

A Working Group of States Parties has been discussing possible definitions and other aspects of this crime. An intersessional meeting of the Special Working Group on the Crime of Aggression was held at the Liechtenstein Institute on Self Determination at Princeton University from 13 to 15 June 2005.

Since the entry into force of the ICC Statute, Australia has actively participated in the Assembly of States Parties. Each State Party has one vote in the Assembly. The Assembly's responsibilities include electing officers of the ICC and providing management oversight of the administration of the Court.

Australia participated in the Third Assembly of States Parties from 6 to 10 September 2004.

Key achievements of the Third Assembly of States Parties included:

- approving the text of a 'Relationship Agreement' with the United Nations regarding cooperation between the two bodies, particularly with respect to the exchange of information, judicial assistance and administrative and technical cooperation. The agreement was signed in New York by United Nations Secretary-General Kofi Annan and ICC President Philippe Kirsch on 4 October 2004, and entered into force upon signature
- the election of a second Deputy Prosecutor, Fatou Bensouda (The Gambia), who was sworn in during an open session of the ICC on 1 November 2004

- the election of six members of the Committee on Budget and Finance and the election of a future President of the Assembly of States Parties, Ambassador Bruno Stagno (Costa Rica), whose term of office will commence on the first day of the Fourth Session of the Assembly of States Parties
- the adoption of consolidated and partially revised Rules for the Nomination and Election of Judges
- the establishment of a Secretariat for the Victims Trust Fund, and
- the approval of a 67 million euro budget for the third financial year, and the establishment of a 10 million euro contingency fund.

The Committee on Budget and Finance appointed David Dutton of Australia as Rapporteur for the fourth session of the Committee, held from 4 to 6 April 2005.

The Fourth Assembly of States Parties will take place from 28 November to 3 December 2005 in The Hague.

The ICC is investigating three situations, one in Uganda at the request of the Ugandan Government (the activities of the Lord's Resistance Army), one in the Democratic Republic of Congo (DRC) at the request of the President of the DRC, and one in the Darfur region of Sudan at the request of the United Nations Security Council (referred on 31 March 2005). For further information about the ICC, see generally <<http://www.icc-cpi.int/>>.

The ICC has also received a referral of the general situation in the Central African Republic (CAR) from the CAR Government, and the Prosecutor will carry out an analysis in order to determine whether to initiate an investigation.

### **Impact of the operations of the ICC on Australia's legal system**

As no cases have yet been tried by the ICC, its operation has had no discernible impact upon Australia's legal system. The future impact of ICC operations is expected to depend on how many active prosecutions and investigations the ICC undertakes and the number and nature of requests for assistance received by Australia.