The Senate

Legal and Constitutional Affairs Legislation Committee

Budget estimates 2012–13

June 2012

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Senator Gary Humphries, **Deputy Chair**, LP, ACT

Senator Sue Boyce, LP, QLD

Senator Mark Furner, ALP, QLD

Senator Louise Pratt, ALP, WA

Senator Penny Wright, AG, SA

Senators in attendance

Senator Patricia Crossin (Chair), Senator Gary Humphries (Deputy Chair), Senator Mark Furner, Senator Louise Pratt, Senator Penny Wright, Senator the Hon Eric Abetz, Senator Cory Bernardi, Senator Simon Birmingham, Senator Mark Bishop, Senator the Hon George Brandis, Senator Michaelia Cash, Senator Richard Di Natale, Senator Mitch Fifield, Senator Sarah Hanson-Young, Senator Scott Ludlam, Senator Barnaby Joyce, Senator Helen Kroger, Senator Stephen Parry, Senator Lee Rhiannon, Senator Rachel Siewert, Senator Dean Smith, Senator Larissa Waters, Senator John Williams, Senator Nick Xenophon

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TABLE OF CONTENTS

Membership of the Committee iii

PREFACE vii

Reference of documents vii

Estimates hearings vii

Ministers and Parliamentary Secretaries viii

Questions on notice viii

CHAPTER 1 1

IMMIGRATION AND CITIZENSHIP PORTFOLIO 1

Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT) 1

Department of Immigration and Citizenship 2

CHAPTER 2 9

ATTORNEY-GENERAL'S PORTFOLIO 9

Family Court of Australia and Federal Magistrates Court of Australia 9

Federal Court of Australia 11

National Native Title Tribunal 13

Office of the Australian Information Commissioner 13

Australian Customs and Border Protection Service 14

Australian Federal Police (AFP) 14

Attorney-General's Department 15

APPENDIX 1 19

DEPARTMENTS AND AGENCIES FOR WHICH THE COMMITTEE HAS OVERSIGHT 19

Attorney-General's Portfolio 19

Immigration and Citizenship Portfolio 20

APPENDIX 2 ..... **21**

INDEX OF PROOF HANSARDS **21**

Immigration and Citizenship Portfolio 21

Attorney-General's Portfolio 22

APPENDIX 3 ..... **23**

TABLED DOCUMENTS **23**

Immigration and Citizenship Portfolio, 21 and 22 May 2012 23

Attorney-General's Portfolio, 23 and 24 May 2012 24

PREFACE

On 9 May 2012, the Senate referred to the committee for examination the estimates of proposed expenditure for the financial year 2012-13. The committee is responsible for the examination of the Attorney-General's Portfolio and the Immigration and Citizenship Portfolio. The portfolio budget statements for 2012-13 were tabled on 9 February 2012.

Reference of documents

The Senate referred to the committee, for examination and report, the following documents:

- Particulars of proposed expenditure in respect of the year ending on 30 June 2013 [Appropriation Bill (No. 3) 2012-2013];
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2013 [Appropriation Bill (No. 4) 2012-2013];
- Particulars of proposed supplementary expenditure in respect of the year ending on 30 June 2012 [Appropriation Bill (No. 5) 2011-12]; and
- Particulars of certain proposed supplementary expenditure in respect of the year ending on 30 June 2012 [Appropriation Bill (No. 6) 2011-12].

The committee was required to report on its consideration of the budget estimates on or before 26 June 2012.

Estimates hearings

The committee met in public session on 21, 22, 23 and 24 May 2012.

Over the course of the four days of hearings, totalling over 40 hours, the committee took evidence from the following departments and agencies:

Immigration and Citizenship Portfolio

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

Attorney-General's Portfolio

- Attorney-General's Department
- Australian Crime Commission
- Australian Customs and Border Protection Service
- Australian Federal Police
- Australian Government Solicitor
- Australian Human Rights Commission

- Australian Law Reform Commission
- Australian Security Intelligence Organisation
- Australian Transaction Reports and Analysis Centre
- CrimTrac Agency
- Family Court of Australia
- Federal Court of Australia
- Federal Magistrates Court of Australia
- Insolvency and Trustee Service Australia
- National Native Title Tribunal
- Office of the Australian Information Commissioner
- Office of the Director of Public Prosecutions

Copies of the transcripts of *Hansard* are available from the committee's internet page at: www.aph.gov.au/senate_legalcon.

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

Ministers and Parliamentary Secretaries

On 21 and 22 May 2012, the committee heard evidence from Senator the Hon Kate Lundy, the Minister for Multicultural Affairs, and Senator the Hon Don Farrell, Parliamentary Secretary for Sustainability and Urban Water, representing the Minister for Immigration and Citizenship.

On 23 and 24 May 2012, the committee heard evidence from Senator the Hon Joseph Ludwig, Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery, and Senator the Hon Jacinta Collins, Parliamentary Secretary for School Education and Workplace Relations, representing the Attorney-General and the 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

The committee determined that the due date for submitting responses to questions on notice from the budget estimates round is 6 July 2012.

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 above address.

CHAPTER 1

IMMIGRATION AND CITIZENSHIP PORTFOLIO

1.1 This chapter summarises some of the matters raised during the committee's consideration of the budget estimates for the Immigration and Citizenship Portfolio for the 2012-13 financial year.

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

1.2 The Principal Member of the MRT-RRT, Mr Denis O'Brien, updated the committee on significant developments within the organisation since his last appearance before the committee. He covered workload statistics and strategies to deal with an increased workload, member recruitment and performance indicators.

1.3 The committee heard that for the financial year up to 30 April 2012 lodgements continued to increase for both the MRT and RRT compared to 2010-11, 30 per cent and 11 per cent respectively. Active cases also increased significantly over this period, 47 per cent for the MRT and 59 per cent for the RRT. Mr O'Brien advised the committee that he expected the total number of decisions across both tribunals for 2011-12 would be close to 10,800, which compares to 9,181 for the previous year. [1]

1.4 The MRT-RRT was questioned about the impact of the transfer of reviews for irregular maritime arrivals (IMAs) to the RRT following Minister Bowen's announcement in November 2011 that the government would be moving to a single protection visa process for both boat and air arrivals, using the current onshore arrangements for application and independent review through the RRT system.[2] The Minister announced on 19 March 2012 that '[t]he new system will apply to asylum seekers who arrive in Australia from 24 March as well as those who arrived prior to that date but had not yet had a primary assessment interview'.[3]

1.5 Mr O'Brien advised that additional funds of $8.6 million were provided in the 2012-13 budget to fund the increasing workload as a result of the new IMA caseload.[4] He also noted that there would be a return of some tribunal members from the

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1 *Committee Hansard*, 21 May 2012, pp 3-4.

2 Minister for Immigration and Citizenship, 'Bridging visas to be issued for boat arrivals', Media Release, 25 November 2011, http://www.minister.immi.gov.au/media/cb/2011/cb180599.htm (accessed 5 June 2012).

3 Minister for Immigration and Citizenship, 'New single protection visa process set to commence', 19 March 2012, http://www.minister.immi.gov.au/media/cb/2012/cb184344.htm (accessed 5 June 2012).

4 Mr Martin Bowles PSM, Acting Secretary of the Department of Immigration and Citizenship, confirmed that these funds had been redirected in full from the Independent Protection Assessment Office, see *Committee Hansard*, 21 May 2012, p. 12.

Independent Protection Assessment Office in the coming months as a result of the changed arrangements.[5] In response to questioning, Mr Colin Plowman, Registrar, elaborated on the arrangements that have been implemented to manage the new caseload:

> **Mr Plowman:**…We have also got in place two working parties within the organisation, one on case load management to ensure we have the appropriate policies and processes in place. We have been liaising with the department around that in terms of making sure we can manage that. Part of that new principal member direction was part of the consideration of that and a few other things. We also have a staffing infrastructure working party within the tribunals to also manage those other matters to do with the new case load.[6]

1.6 On request, Mr O'Brien tabled the Principal Member Direction 2/2012: *Applications for review made by offshore entry persons*, to assist the committee.[7]

1.7 The committee was informed that, at the time of the hearing, five applications from IMAs for review of negative decisions had been received and all had been allocated to members. Mr O'Brien explained that, while detention cases would receive priority, not every IMA application is expected to be a detention case.[8]

1.8 With the expiration of Mr O'Brien's appointment as Principal Member on 30 June 2012, the Minister and the committee acknowledged his service and assistance to the committee, particularly through the estimates process, over the previous five years.[9]

Department of Immigration and Citizenship

Irregular maritime arrivals and budget implications

1.9 Senators again questioned the Department of Immigration and Citizenship and Minister on the budgetary implications of the number of IMAs. The Minister, Senator the Hon Kate Lundy, provided an opening statement to the committee regarding IMAs and the impact on the budget. The Minister outlined the sequence of events since the High Court of Australia's decision on 31 August 2011 in relation to the Malaysia Arrangement. She also provided the details of arrivals since this time and noted that, in 2012, there have been peaks and troughs in the number of arrivals.[10]

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5 *Committee Hansard*, 21 May 2012, p. 4.

6 *Committee Hansard*, 21 May 2012, p. 11.

7 *Committee Hansard*, 21 May 2012, p. 6.

8 *Committee Hansard*, 21 May 2012, p. 6.

9 *Committee Hansard*, 21 May 2012, pp 5 and 14.

10 *Committee Hansard*, 21 May 2012, pp 14-15.

1.10 Senators sought an explanation of the revised budget figure of approximately $840 million over the forward estimates for offshore asylum seeker management since the additional estimates process. The Acting Secretary, Mr Martin Bowles PSM, informed the committee:

> If you have a look at the arrival numbers late last year, they were very high. Then we had some quite low numbers in January and March. Things were bouncing around quite a bit. We take every opportunity that arises in the budget-setting process to look at our numbers and to feed in the latest numbers and policy positions. The first opportunity, really, to get into the 2012-13 PBS is in the May budget, obviously. We have to factor in a range of those issues. At the additional estimates process—the MYEFO process—we had got so far. We now have another opportunity, nearly, what is it, 4½ or five months past the additional estimates and MYEFO processes.[11]

1.11 Officers confirmed that the 2012-13 budget figure is based on a rate of 450 IMAs a month as a budget projection, but noted that this is only one component.

> **Senator CASH**: Can you then take me through from February to May? What constitutes the [$839.9] million? Can you take me through where the increases have actually been, given that the increase in IMAs is only part of that?
>
> **Mr Bowles:** It is an exceptionally complex formula that we work out with the Department of Finance and Deregulation.
>
> **…**
>
> **Senator CASH:** All I am interested in is the 840-odd million. What is encapsulated in that? How can we get a breakdown of what is encapsulated in that? Where have the increases been?
>
> **Mr Bowles:** It tries to factor in the cohorts of people we have—their nationality, whether they are family groups, whether they are accompanied or unaccompanied children, whether they are single adult males and where they actually are. It is cheaper to have them in certain places than other places, no doubt, through the system—
>
> **Senator CASH:** More expensive, based on this figure.
>
> **Mr Bowles:** As I said, we have adjusted for the change in policy and we have progressively done that from MYEFO to the PBS of 2012. Factoring all of those things in—
>
> **Senator CASH:** Except the IMAs, because the IMAs have not changed. That has to be put to one side because you state that that remains at 450.
>
> **Mr Bowles:** That is correct.[12]

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11 *Committee Hansard*, 21 May 2012, p. 18.

12 *Committee Hansard*, 21 May 2012, p. 23.

Community Placement Network (Homestay)

1.12 The new Community Placement Network, which commenced on 26 March 2012, was the subject of extensive questioning. The program will provide accommodation for clients released from detention on bridging visas and will be delivered through the Australian Homestay Network. The department advised the committee that, at the time of the hearings, 1400 potential hosts had registered for the program, eight clients had been placed with a host family, with a further 12 clients to be placed that day, and a group of 20 clients to be placed by 5 June 2012.[13]

1.13 One area of questioning concerned the risk of placing a potentially vulnerable client into a homestay arrangement. Officers explained to the committee that, although people at risk are eligible for the homestay program, more vulnerable people would be placed in community detention rather than on bridging visas. Mr John Moorhouse, Deputy Secretary, provided further context on the client group accessing homestay:

> There is probably some other contextual information that is useful to take into account as well, and that is that the people who are going on to bridging visas in recent times are people who are not as institutionalised from being in detention for an extended period of time. Some of the early bridging visa releases were people who had been in detention for two or three years. Now the people who are coming out and are likely to flow into the Homestay Network are people who have only been in detention for a relatively short period of time—five or six months.[14]

1.14 The committee also explored a number of other aspects of the program, including the timeline for the development of the program, departmental liability, host insurance, screening processes, training for hosts, income support for clients on the program and media coverage.[15]

Enterprise Migration Agreements and Regional Migration Agreements

1.15 Senators requested an update on the Enterprise Migration Agreements (EMA) scheme which had been announced in the previous budget. The department advised that, at the time of the hearing, one application was before the Minister for consideration and three other applications had been received by the department but had not yet been submitted to the Minister. Officers estimated that another 20 projects may be eligible. While acknowledging that commercial-in-confidence considerations are not grounds for a claim of public interest immunity, Mr Kruno Kukoc was reluctant to provide detailed information on the final application before the Minister and senators did not pursue that line of questioning. He did advise in more general terms that EMAs could include multiyear projects, spanning the lifetime of the

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13 *Committee Hansard*, 21 May 2012, pp 98-99.

14 *Committee Hansard*, 21 May 2012, p. 110.

15 *Committee Hansard*, 21 May 2012, pp 100-112.

project, and there would be provision within each agreement for regular review of arrangements every six to 12 months. [16]

1.16 In response to questions on the issue of workplace rights for EMA employees, the committee was informed that foreign workers under the scheme would be employed under the 457 visa program, and would therefore have all the rights and obligations extended to them under that program. It was also noted the English language requirement would be that of the 457 visa program, but may be subject to some concessions if there are alternative risk mitigation strategies in place to ensure workers have information about their rights.[17]

1.17 Another area of interest to senators concerned the monitoring of sponsor compliance with regards to conditions and salaries. The committee was assured that the current sponsor monitoring program for the 457 visa program will be fully extended to EMAs. When the issue of whether there were sufficient resources to adequately extend the monitoring program to projects under the EMA scheme, Mr Kukoc advised:

> …There is no issue about the level of resources. I think the issue is about the intelligent use of resources. We are implementing the risk management strategy. We have developed the risk management strategy in the 457 sponsor regime, where we clearly identify the sponsors or employees, the characteristics and who may be of high risk and we target our sponsorship activities to the high rick areas.
>
> **Senator WATERS:** Does that mean that low-risk projects are not monitored?
>
> **Mr Kukoc:** They are monitored but, like with any risk-management strategy, you have more resources devoted to high-risk areas.
>
> **Senator WATERS:** Will the EMAs be considered high risk or low risk?
>
> **Mr Kukoc:** It all depends on the employers and the type of employees they employ under the EMA. So every EMA will be different—because a EMA is just a deed of agreement that covers the project on a range of employers under that deed of agreement. So all these employers will have a separate labour agreement and will enter into sponsorship obligations with the government under those labour agreements. So it will vary from employer to employer or the type of employees they bring onshore.[18]

1.18 The committee was advised that the March 2012 release of the Regional Migration Agreement (RMA) submission guidelines had been delayed due to an extended consultative period with the states and territories, and were now expected to be released in June 2012. Despite the delay in publication of the guidelines, Mr Kukoc

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16 *Committee Hansard*, 22 May 2012, p. 46.

17 *Committee Hansard*, 22 May 2012, p. 47.

18 *Committee Hansard*, 22 May 2012, p. 48.

confirmed that one RMA was currently being negotiated with the Northern Territory Government. [19]

Security assessment processes for bridging visas

1.19 Senators sought details of the processes for the grant of bridging visas, which at the time of the hearing, totalled 1780 visas, with 190 moved to permanent residency. The committee heard that bridging visas had been granted to persons at various stages of processing, with priority given to those who had been in detention the longest or considered most vulnerable. The department indicated that the criteria included people who had been assessed as '1A met' status (a positive refugee status assessment) but had not completed the remainder of their processing, including the final Australian Security Intelligence Organisation security check. It was also confirmed that the grant of bridging visas may include persons who had not attained '1A met' status:

> **Senator CASH:** Does that mean that there are some people on bridging visas who may not have received a positive assessment—they might be either pending an assessment or on a negative RSA assessment?
>
> **Mr Kelly:** There certainly are people who as the processing continues—so those people who may have been released, who were not through the initial process and who have subsequently been found not to be a refugee either at the primary stage or at the review stage—would still be in the community on bridging visas. So, yes, that is absolutely the case.[20]

1.20 The department addressed concerns raised about the identity and security checks of persons on bridging visas released into the community:

> **Senator CASH:** The question that I think arises is: these individuals are not subject to surveillance whilst they are in the community on bridging visas; why is there a lower bar for people on bridging visas that are all out in the community than, say, for people who are on a protection visa?
>
> **Mr McCairns:** A protection visa is a permanent visa, so we would want to be much more sure of the facts, if I can put it that way, before the grant of a permanent visa.
>
> **Senator CASH:** But these people are still out in the community.
>
> **Mr Bowles:** Bridging visa holders have to report in, so they are not like a permanent protection visa holder.
>
> **Senator CASH:** At the discretion of the minister, though. The minister, under the bridging visa conditions—
>
> **Mr Bowles:** Under the bridging visa arrangements we have in place, bridging visa holders report.
>
> …

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19 *Committee Hansard*, 22 May 2012, p. 65.

20 *Committee Hansard*, 21 May 2012, p. 89.

> **Mr Bowles:** …We are not talking about identity as a singular issue. We are talking about identity. We are getting an initial assessment from ASIO and we have already done at least that first part of our entry interview process and well into, probably, the second part of that particular stage. So there are a whole series of things that we go to, not just one particular issue.
>
> **Senator CASH:** I think what we have established at the moment is that, in terms of the identity checks, we know who they claim to be but we do not know who they are when we are releasing them into the community.
>
> **Mr Bowles:** In some cases that could be correct, but we still go very quickly into the detailed checking. As I said, we are not just going by one single thing being an identity check. There are a series of these checks—the security assessment and others.[21]

Other matters of interest

1.21 The committee also questioned the department about a wide range of other matters, including costs of international charter flights, details of an irregular entry vessel off the Cocos (Keeling Islands), visa arrangements for overseas-based flight crews, incidents of self-harm in immigration detention centres, alleged fraud in the migration program raised by the ABC program *7.30*, the migration program for 2012-13, costs of Northam Immigration Detention Centre and Pontville Immigration Detention Centre, the Adult Migrant English Program, the cap on the Humanitarian Settlement Services, and the funding decrease for the National Accreditation Authority for Translators and Interpreters.

Answers to questions on notice

1.22 The committee acknowledges a slight improvement in the timeliness of the provision of some of the answers to questions on notice for the Immigration and Citizenship Portfolio for the additional estimates 2011-12 round. The committee set 30 March 2012 as the due date for answers to questions on notice and received 214 answers in response to a total of 519[22] questions by that date. As noted by the committee in its previous report on estimates, no answers to questions on notice have been provided by the due date over the five previous estimates rounds for the Immigration and Citizenship Portfolio.[23]

1.23 The Acting Secretary in his opening statement remarked on the large volume of questions on notice in recent estimates rounds, as well as the burden placed upon

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21 *Committee Hansard*, 21 May 2012, p. 92.

22 One question on notice out of the total of 519 was transferred to the Australian Federal Police for response.

23 Legal and Constitutional Affairs Legislation Committee, *Additional estimates 2011-12*, March 2012, p.7, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add_1112/index.htm.

the department by its participation in other parliamentary committee inquiries, most notably the recent Joint Select Committee on Australia's Immigration Detention Network, which tabled its final report on 30 March 2012:

> …This was a very extensive inquiry into what is a complex and challenging area of public policy and administration. Throughout the inquiry, the department worked with the committee in an open and transparent manner. To this end, the department answered over 1,300 questions, provided 4,000 pages of written material, responded to 306 questions on notice, provided 16 supplementary responses, facilitated site visits across the immigration detention network and appeared before the committee on 10 occasions.
>
> …
>
> The department continues to respond productively, openly and transparently to the various reviews, oversight bodies and a number of other parliamentary committees. Many questions to the department seek detailed information on a range of complex and sensitive issues. All responses are carefully checked to ensure that all information provided is accurate, current and addresses the matters raised. This takes time.
>
> This also carries with it a significant workload. For instance, in the budget estimates hearing in May 2011, 794 questions were taken on notice. This compares with only 136 questions on notice being asked at the 2010 budget estimates hearing. At the additional estimates hearing in February this year, the department received 519 questions on notice. It is also a challenge for us to deal with the many questions between estimates hearings. However, I want to stress that we try our best given the level of complexity we are working with.[24]

1.24 While the committee is encouraged by the recent improvement in providing at least some answers by the due date, it notes that the majority of answers remained outstanding as at this date. The committee hopes to see a continuing improvement in the timeliness of answers in future estimates rounds.

24 *Committee Hansard*, 21 May 2012, p. 17.

CHAPTER 2

ATTORNEY-GENERAL'S PORTFOLIO

2.1 This chapter summarises some of the matters raised during the committee's consideration of the budget estimates for the Attorney-General's Portfolio for the 2012-13 financial year.

Family Court of Australia and Federal Magistrates Court of Australia

2.2 The committee questioned officers on the processes leading to the discovery and correction of the proclamation error concerning legislation which transferred jurisdiction for de facto property and maintenance matters from the states and territories (except Western Australia) to the Commonwealth.

2.3 De facto property and maintenance matters were transferred to the Commonwealth following the passage of the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008*. Due to a departmental oversight, a proclamation was not made at the time to set a date from which the Family Court of Australia can exercise the de facto property jurisdiction, resulting in uncertainty around the status of certain family law court orders. The *Family Law Amendment (Validation of Certain Orders and Other Measures) Act 2012* received Royal Assent on 10 April 2012 and retrospectively validates affected orders.[1]

2.4 The committee sought details on the timeline of events which led to the discovery of the error and invited officers from the Attorney-General's Department to assist in providing a response. It was explained that the matter was first identified by the department in the first week of December, following a due diligence exercise. This exercise was undertaken after the notification of a similar issue concerning some appeals from Family Law Magistrates in Western Australia affecting orders made by the federal family courts between 1 July 2006 and 20 October 2011, as a result of the *Jurisdiction of Courts (Family Law) Act 2006*.[2] The Secretary of the department, Mr Roger Wilkins AO, explained to the committee:

> **Mr Wilkins:** It is a very unusual type of provision. You would not necessarily expect to find it in an act of parliament, actually. It is a provision that says the functions of the court are those which are prescribed, essentially—which is something that we no longer do and no longer have. So, yes, there should be due diligence, and there is due diligence—and that does occur in the department. I am satisfied that, in 99.9 per cent of cases there is not a problem; this one was a slip-up.

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1 Attorney-General's Department, *Status of various family court orders*, http://www.ag.gov.au/Families/Currentissuesinthefamilylawsystem/Pages/Status-of-various-family-court-orders.aspx (accessed 12 June 2012).

2 *Committee Hansard*, 23 May 2012, p. 38.

…

> **Senator BRANDIS:** So the officer responsible simply through oversight, omitted to have the matter placed on the Executive Council agenda back in 2009 and that oversight was never noticed until the first week of December last year?
>
> **Mr Wilkins:** It was not about the commencement of the provision—that was not the problem. The problem was that there needed to be an extra bit conferring jurisdiction formally on the court, and there is a provision in the legislation prescribing that—which, as I say, is unusual and which recent legislation, as you know, which has come before the House has actually altered to get rid of, on the advice of parliamentary counsel that we should not have that in the legislation.[3]

2.5 The committee was advised that the Chief Justice of the Family Court was notified about the issue by the department on 22 December 2011. The evidence indicated that the Attorney-General was notified of the issue on 9 January 2012; however, the Minister undertook on notice to confirm that date.[4]

2.6 In reply to a question about the number of affected orders, officers of the Family Court indicated that it would be a 'significant number' and undertook to provide details to the committee on notice.

Budget

2.7 The committee heard that the Federal Magistrates Court (FMC) has run a deficit for the last five years. To turn around this budgetary shortfall, the FMC expected to take steps that may result in the reduction of services and staff numbers. Mr Richard Foster PSM, Acting Chief Executive Officer of the FMC, indicated that the provision of some regional services would also be reviewed.[5] He conceded that inevitably there would be some reduction in court services and potential for greater delays in the system.[6]

2.8 Mr Foster further advised that the number of filings within the FMC has increased steadily in recent years and resourcing levels have not been adequate to cover services:

> **Mr R Foster:** The Chief Justice has authorised me to say, as she was the Chief Federal Magistrate when the court was established, that quite frankly the court was never resourced properly from day one. It was her view that there was to be a review of the court's resourcing four or five years after the court commenced, and that has never occurred. So the Federal Magistrates Court has had to live on the goodwill and cooperation of the Family Court

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3 *Committee Hansard*, 23 May 2012, p. 39.

4 *Committee Hansard*, 23 May 2012, p. 41.

5 *Committee Hansard*, 23 May 2012, pp 45-46.

6 *Committee Hansard*, 23 May 2012, pp 45-46.

> of Australia and to a lesser extent the Federal Court of Australia, and it has grown to such an extent that there has never been sufficient funding to cover the court. That is consequently why we are running at such significant deficits.
>
> **Senator BRANDIS:** And since 2008 until April of this year—for four years, effectively—under the shadow of uncertainty as to its very future?
>
> **Mr R Foster:** Yes, that is right.
>
> **Senator BRANDIS:** You have told me in previous estimates that at the time that had a terrible effect on the morale of the federal magistrates.
>
> **Mr R Foster:** That is unquestionable.[7]

2.9 Like the FMC, the Family Court is exempt from the additional efficiency dividend; however, the committee sought the agency's response to the impact of the existing 1.5 per cent dividend which applies for the 2011-12 and 2012-13 financial years. Mr Foster, as Chief Executive Officer of the Family Court, outlined a number of areas which are being considered to meet the efficiency dividend and to bring the budget back into surplus. He advised that there will be a reduction in travel, use of consultants, supply costs and a reduction in leased premises in rural and regional areas. He also indicated that there will be a significant reduction in staff.[8]

Federal Court of Australia

2.10 The committee questioned officers about the budget measure which involves the transfer of the National Native Title Tribunal functions of native title claims mediations to the Federal Court, with the aim of increasing efficiencies within the tribunal. The Chief Executive Officer/Registrar, Mr Warwick Soden, clarified the current arrangements following the 2009 amendments to the *Native Title Act 1993*, which removed the requirement for all matters to be referred from the Federal Court to the tribunal for mediation:

> …since that time, as a result of those amendments, there has been a much greater clarity of the responsibility of all of the proceedings. In essence, it shifted from the tribunal to the Federal Court, keeping in mind they were always proceedings in the court. There has been an increase in the case management and related mediation activity and probably ILUA [Indigenous land use agreements] oversight activity by the court in relation to matters that had previously been the responsibility of the tribunal. In one sense…there is a transfer of mediation and related ILUA responsibility from the tribunal to the court, but I would like to make that qualification that it is not happening in an environment where the court has not been involved increasingly in the last couple of years.[9]

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7 *Committee Hansard*, 23 May 2012, p. 47.

8 *Committee Hansard*, 23 May 2012, p. 62.

9 *Committee Hansard*, 23 May 2012, p. 52.

2.11 In response to concerns that this budget measure would result in the removal of mediation of native title disputes from a specialist tribunal to a court with limited specialist experience in the development of Indigenous land use agreements, Mr Soden advised:

> **…**there is a great depth of experience in the Federal Court amongst those judges who have taken a special interest and become, I believe, highly specialised in the native title jurisdiction. And it does not only go to issues concerning the trial; those judges manage the cases from beginning to end and those cases were commenced before the tribunal undertook mediation or work concerning ILUAs associated with a consent determination. So the judges managing those cases had to understand and be on top of what was happening with the case. In that sense, I think they all would have a very deep understanding of the relationship between the case and the ILUA and the issues involved. It was the judges in more recent times with the ability to take control to a greater extent, after the 2009 amendments, that have been able to focus upon the issues in an active case management sense, including, most probably, issues relating to what might need to be done in the ILUA environment, which has led, I believe, to that great acceleration in the consent determinations, which…often involve an ILUA.[10]
>
> …
>
> I cannot speak for policy matters, but I can certainly make a comment from my perspective on what has happened in recent times…I think that a decade or so ago there was a clear policy view that the mediation should be separate from the court and undertaken in an environment that was outside of the court. However, I believe in the last decade there has been a shift in a phenomenon that I would describe as being the realisation that a very effective mediation can take place under the auspices of a judge managing the case, where the judge manages the case and makes orders in relation to the kind of mediation, the timeframe for things to be done and the issues that might be dealt with in the mediation.[11]

2.12 Mr Wilkins added:

> …I think this is a move in the right direction as a matter of public policy. Forget about the efficiency aspects of this—which are not unimportant in terms of public policy—if you want a system that actually delivers, as you say, in a more timely and proficient way, consent determinations underpinned by ILUAs, I think this is the right way to go…[S]ome of those functions from the Native Title Tribunal are not just going to disappear; they will be incorporated into the native title functions in relation to ILUA negotiations not related to native title claims mediation. The arbitral functions regarding future acts will stay; they will come across and remain badged under this concept of a National Native Title Tribunal.[12]

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10 *Committee Hansard*, 23 May 2012, p. 55.

11 *Committee Hansard*, 23 May 2012, p. 66.

12 *Committee Hansard*, 23 May 2012, p. 55.

National Native Title Tribunal

2.13 The committee pursued this line of questioning during examination of the National Native Title Tribunal. The Registrar, Ms Stephanie Fryer-Smith, described the mediation role as a core function of the tribunal to which it has 'devoted considerable care and time and resources to developing…a multidisciplinary approach'.[13] Ms Fryer-Smith elaborated on the difference in the mediation model of the two bodies:

> Obviously my observation of the Federal Court's mediation practice is very much an external one. It is well known that the court has its own priority list of matters—that is, native title cases which are seen as being well within a point of being determined—and the tribunal has quite a number of those matters currently in mediation with it. Many of the cases on the priority list are, I understand, mediated by a deputy district-registrar. Sometimes I understand the court uses external consultants. The court also engages in case management of cases in a way that would certainly not be the same as the tribunal's.
>
> [T]he tribunal has adopted a multi-disciplinary approach to dealing with native title mediations. We have a number of Indigenous employees who are involved in the mediation process. There is a high degree of awareness of the complexity of native title claims and proceedings. There are often very many parties. Their interests and priorities are not necessarily aligned. Over the years we think that the practice we have developed is one that is well suited to determining native title proceedings in a way in which typically there will be Indigenous land use agreements forming part of a packaged settlement of a particular determination. So, in a sense, all the parties' interests can be satisfied in the one outcome. So, it would appear that they are different styles.[14]

2.14 Of interest to the committee was the amount of consultation and the tribunal's position on this budget measure. Ms Fryer-Smith advised that the tribunal was informed of the proposed changes on 27 March 2012 and subsequently had a series of meetings with the department. Mr Fryer-Smith also confirmed that the tribunal had participated in the Skehill review from August until December 2011.[15]

Office of the Australian Information Commissioner

2.15 This is the second occasion that the Office of the Australian Information Commissioner has appeared before the committee for examination of estimates since that office's transfer from the Prime Minister and Cabinet Portfolio on 19 October 2011.

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13 *Committee Hansard*, 23 May 2012, p. 72.

14 *Committee Hansard*, 23 May 2012, p. 74.

15 *Committee Hansard*, 23 May 2012, p. 73.

2.16 One area of interest to the committee was the implementation of a disclosure log under section 11C of the reformed *Freedom of Information Act 1982* which requires an agency to publish online the details of information that has been released under the Act (subject to exemptions for some personal and business privacy reasons).[16]

2.17 The committee examined a range of other topics with the office, including the power to investigate systemic problems relating to FOI processing within agencies; monitoring of compliance of the Information Publication Scheme; and the *Review of charges under the Freedom of Information Act 1982*, in particular, the recommendation that an agency or minister would have the discretion to refuse to process an FOI request for personal or non-personal information that it estimates to take more than 40 hours.

Australian Customs and Border Protection Service

2.18 Committee members spent considerable time questioning officials from Customs about the impact of budget cuts and additional efficiency dividend on operations in a range of areas within the agency. For example, details were sought on the impact of the budget cut of $7.2 million from civil maritime surveillance and response, the reduction of $10.4 million for passenger facilitation and the redirection of capital works totalling $19.5 million over the forward estimates to other border protection initiatives.

2.19 While still in the process of finalising budgeting decisions, the Chief Executive Officer of Customs, Mr Michael Carmody, assured the committee that the areas of the passenger clearance, border security, air and waterfront control, people smuggling, vessel clearance and offshore maritime response would not be subject to any staffing reductions as a result of the additional efficiency dividend. The agency would also be looking at achieving efficiencies in supplier expenses, including licensing arrangements and legal expenses.[17]

Australian Federal Police (AFP)

2.20 The committee pursued detailed questioning on the AFP's budgetary position and the impact of cuts. It heard that the AFP's operating appropriation is reduced by $67 million for the next financial year, which includes $24.54 million as a result of the additional efficiency dividend. The committee was advised that the resulting impact in terms of staffing numbers was expected to be a net reduction in staff of 10 across the organisation.[18] Mr Andrew Wood, Chief Operating Officer, elaborated on the issue of the efficiency dividend:

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16 *Committee Hansard*, 23 May 2012, p. 77.

17 *Committee Hansard*, 24 May 2012, pp 7-8.

18 *Committee Hansard*, 24 May 2012, pp 48-49.

> …as an executive team we then take the available resources and look at the priorities of the organisation for the coming financial year. We look at where within the organisation we can pursue efficiencies, reduce duplication, ensure that we are leveraging as best we can off whole-of-government initiatives around ICT purchasing and those sorts of things, so as to minimise the effect on ASL numbers.
>
> So, whilst the PBS does reflect that those resourcing changes—if there is no intervention from the executive of the organisation—would result in a reduction of 10. That is not necessarily the trajectory we intend following once we have an opportunity to look at the budget in the light of our priorities in 1213 and assign it accordingly. So each estimates we tend to, in response to questions, give you an update on just what our staffing numbers are. That will give you a true indication, as estimates processes progress through the year, of the actual staffing levels we are achieving—and then comparing those to the performance of the organisation.[19]

2.21 The AFP was also questioned on a range of issues, including the National Open Source Intelligence Centre (NOSIC) contract, complaints about AFP personnel overseas, the AFP's role in training Indonesian security forces, AFP involvement in the interception of an illegal entry vessel off Cocos (Keeling) Islands, recent seizures of illicit drugs, the closure of the Robina facility, and the new forensics facility announced in the 2012-13 budget.

Attorney-General's Department

2.22 The department updated the committee on its response to the increased efficiency dividend, particularly in terms of staff reductions. The committee heard that a business planning process has begun which will determine the workforce structure, and officers reported that almost half of the additional efficiency dividend will be achieved by reductions in supplier expenditure and the remainder in staff reductions (through natural attrition, discontinuance of non-ongoing contracts and voluntary redundancies). The department reported finding savings through reductions in supplier expenses, use of consultants, travel expenses, printing and publication costs, and legal expenses.[20]

2.23 The committee also questioned officers about the 2012-13 budget expense measure which will defer payments from the Confiscated Assets Account made under section 298 of the *Proceeds of Crime Act 2002*. Budget paper No. 2 indicates that this measure will achieve savings of $13.5 million in 2012-13 and $58.3 million over the forward estimates, and will be redirected to support other government priorities.[21] Concerns were raised about the impact of this measure on the programs of expenditure

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19 *Committee Hansard*, 24 May 2012, p. 49.

20 *Committee Hansard*, 23 May 2012, p. 83.

21 *Budget measures: Budget paper no. 2 2012-13*, pp 83-84.

under the Act relating to crime prevention activities which are managed by the department.

2.24 It was explained to the committee that the amounts identified are actually a quarantine of the funds, and that they will remain in the account and become available in later years. Mr Iain Anderson advised that a number of programs will continue to run over the coming years:

> There are currently over 200 community based projects funded through the proceeds of crime account that will be running for a period of approximately 18 months to two years, I believe. The government has recently committed to projects that involve funding for women's refuges, for example, to assist them to incorporate new security measures. There is a suite of projects which involve police citizens youth clubs and youth diversionary projects. The terms of an agreement are being negotiated with Neighbourhood Watch for a three-year package of funding for them. So there will still continue to be a considerable body of projects over the next few years.[22]

2.25 Given the department's advice that the funds concerned are quarantined, the committee queried the statement in Budget Paper No. 2 in relation to this measure which indicates that savings will be redirected to support other government priorities:

> **Senator WRIGHT:**…Can you provide details about what those priorities and programs will be, or is that at odds with what you are saying, which is that it will actually be remaining quarantined in the fund?
>
> **Mr Wilkins:** There are no identifiable hypothecated things that we can point to, if that is what you are after.
>
> **Senator WRIGHT:** If that was what was stated to be the objective of having that amount as a saving, it is a bit dissonant with what I am hearing now, which is that in fact it is to sit there and be quarantined and not directed to priorities.
>
> **Mr Wilkins:** No, it has the effect of coming off the bottom line of the budget. In accounting terms, it is a saving.
>
> **Senator WRIGHT:** Yes, I understand that. So essentially that might be the priority that was being referred to.
>
> **Mr Wilkins:** You may like to think of it this way: it frees up the capacity to use funds out of the consolidated fund. It offsets, if you like, it going to the bottom line of the budget. So, indirectly, it does allow the government to spend or redirect that funding, if you like, but it is done through the artifice of holding this money and not expending it.[23]

2.26 Other areas of interest to the committee during examination of the department included: progress in the consolidation review of anti-discrimination legislation; the

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22 *Committee Hansard*, 24 May 2012, p. 106.

23 *Committee Hansard*, 24 May 2012, p. 107.

Review of the National Partnership Agreement on Legal Assistance Services and Legal Aid; court fee increases; meetings with the Indonesian government in relation to the release of Indonesian minors held in Australian prisons; the intercountry adoption program between Australia and Ethiopia and termination of a contract with the Tesfa/Abdi Waq orphanage; Australian contract law reform; a federal charter of victims' rights; the United States-Australia Joint Statement on Countering Transnational Crime, Terrorism and Violent Extremism; the updated alert location system; the DisasterWatch phone app; and the Crisis Coordination Centre.

Senator Trish Crossin
Chair

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 and Classification Review Board;
- CrimTrac;
- 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;
- Office of the Australian Information Commissioner;
- Office of the Commonwealth Director of Public Prosecutions; and
- Office of Parliamentary Counsel.

Immigration and Citizenship Portfolio

- Department of Immigration and Citizenship (including the Office of the Migration Agents Registration Authority); and
- Migration Review Tribunal and Refugee Review Tribunal.

APPENDIX 2

INDEX OF PROOF HANSARDS

Immigration and Citizenship Portfolio

21 May 2012	**Pages**
Migration Review Tribunal – Refugee Review Tribunal	3-14
Department of Immigration and Citizenship	
Cross portfolio/corporate/general	14-34
Outcome 2	34-45
Outcome 3	45-57
Outcome 4	57-122
22 May 2012	
Department of Immigration and Citizenship (*in continuation*)	
Outcome 4 (*in continuation*)	3-30
Office of Migration Agents Registration Authority (sub-program 1.1.3)	30-35
Outcome 1	35-72
Outcome 4 (*in continuation*)	72-84
Outcome 5	85-99
Outcome 6	99-103

Attorney-General's Portfolio

23 May 2012	**Pages**
Australian Human Rights Commission	6-30
Australian Law Reform Commission	30-35
Australian Transaction Reports and Analysis Centre	35-37
Family Court of Australia and Federal Magistrates Court of Australia	37-51
Federal Court of Australia	51-57
Attorney-General's Department	57-62
Family Court of Australia and Federal Magistrates Court of Australia (*in continuation*)	62-65
Federal Court of Australia (*in continuation*)	65-68
National Native Title Tribunal	69-75
Office of Australian Information Commissioner	75-82
Attorney-General's Department (*in continuation*)	82-111
24 May 2012	
Australian Customs and Border Protection Service	6-36
Australian Federal Police	36-67
Australian Security Intelligence Organisation	67-78
Australian Government Solicitor	78-83
Australian Crime Commission	83-85
Insolvency and Trustee Service Australia	85-89
CrimTrac Agency	89-93
Office of the Commonwealth Director of Public Prosecutions	93-96
Attorney-General's Department (*in continuation*)	97-121

APPENDIX 3

TABLED DOCUMENTS

Immigration and Citizenship Portfolio, 21 and 22 May 2012

No.	Date	Tabled by:	Topic
1	21 May 2012	Mr Denis O'Brien, Principal Member, Migration Review Tribunal and Refugee Review Tribunal	Opening statement
2	21 May 2012	Mr Denis O'Brien, Principal Member, Migration Review Tribunal and Refugee Review Tribunal	Principal Member Direction 2/2012 – Applications for review made by offshore entry persons
3	21 May 2012	Mr Martin Bowles PSM, Acting Secretary, Department of Immigration and Citizenship	Opening statement
4	21 May 2012	Senator the Hon Kate Lundy, Minister for Multicultural Affairs	Opening statement
5	21 May 2012	Senator Michaelia Cash	Legal and Constitutional Affairs Legislation Committee *Hansard*, 24 May 2011, pp 47-54
6	22 May 2012	Ms Christine Sykes, Chief Executive Officer, Office of the Migration Agents Registration Authority	Opening statement
7	22 May 2012	Mr Peter Vardos PSM, Deputy Secretary, Department of Immigration and Citizenship	Visa subclasses with benchmarked base VAC increase/decrease

Attorney-General's Portfolio, 23 and 24 May 2012

No.	Date	Tabled by:	Topic
1	23 May 2012	Senator the Hon George Brandis SC	Australian Human Rights Commission publication – *Effectively preventing and responding to sexual harassment: A Quick Guide*
2	23 May 2012	Mr David Fredericks, Deputy Secretary, Civil Justice and Legal Services, Attorney-General's Department	Attorney-General's speech to Federal Magistrates Plenary – *Australia's essential trial court: How the Federal Magistrates Court can fulfil its potential*
3	24 May 2012	Mr Andrew Wood, Chief Operating Officer, Australian Federal Police	Australian Federal Police Security Initiatives
4	24 May 2012	Senator the Hon George Brandis SC	Correspondence concerning the NSW Coronial recommendations following the inquest into the death of Ms Dianne Brimble
5	24 May 2012	Ms Jamie Lowe, Assistant Secretary, National Security Policy and Programs Branch, Attorney-General's Department	US-Australia Joint Statement on Countering Transnational Crime, Terrorism and Violent Extremism