

The Senate

Legal and Constitutional Affairs
Legislation Committee

Budget estimates 2011–12

June 2011

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Membership of the Committee

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Senator Guy Barnett, **Deputy Chair**, LP, TAS
Senator Mark Furner, ALP, QLD
Senator Scott Ludlam, AG, WA
Senator Stephen Parry, LP, VIC
Senator Louise Pratt, ALP, WA

Senators in attendance

Senator Patricia Crossin (Chair), Senator Guy Barnett (Deputy Chair), Senator Mark Furner, Senator Scott Ludlam, Senator Stephen Parry, Senator Louise Pratt, Senator the Hon Eric Abetz, Senator Judith Adams, Senator Catryna Bilyk, Senator Sue Boyce, Senator the Hon George Brandis, Senator Bob Brown, Senator Michaelia Cash, Senator Steve Fielding, Senator Mitch Fifield, Senator Sarah Hanson-Young, Senator Gary Humphries, Senator the Hon Brett Mason, Senator the Hon Michael Ronaldson, Senator Rachel Siewert, Senator Russell Trood, Senator John Williams, Senator Nick Xenophon

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PREFACE

On 10 May 2011, the Senate referred to the committee for examination the estimates of proposed expenditure for the financial year 2011-12. The committee is responsible for the examination of the Attorney-General's Portfolio and the Immigration and Citizenship Portfolio. The portfolio budget statements 2011-12 were tabled on 10 May 2011.

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 2012 [Appropriation Bill (No. 1) 2011-2012]; and
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2012 [Appropriation Bill (No. 2) 2011-2012].

The committee was required to report on its consideration of the budget estimates on or before 21 June 2011.

Estimates hearings

The committee met in public session on 23, 24, 25 and 26 May 2011.

Over the course of the four days' hearings, totalling over 43 hours, the committee took evidence from the following departments and agencies:

- 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
- Classification Board and Classification Review Board
- Department of Immigration and Citizenship
- Family Court of Australia
- Federal Court of Australia

- Federal Magistrates Court of Australia
- Insolvency and Trustee Service Australia
- Migration Review Tribunal and Refugee Review Tribunal
- Office of the Director of Public Prosecutions

Copies of the *Hansards* are available on the internet at the following address:
<http://www.aph.gov.au/hansard/index.htm>.

An index of the *Hansard* for each portfolio appears at Appendix 2 and Appendix 3.

Ministers and parliamentary secretary

On 23 and 24 May 2011, the committee heard evidence from Senator the Hon Kim Carr, Minister for Innovation, Industry, Science and Research, and Senator the Hon Kate Lundy, Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs, representing the Minister for Immigration and Citizenship.

On 25 and 26 May 2011, the committee heard evidence from Senator the Hon Joseph Ludwig, Minister for Agriculture, Fisheries and Forestry and Minister Assisting the Attorney-General on Queensland Floods Recovery, representing the Attorney-General and Minister for Home Affairs.

Officers from both departments and associated agencies also appeared. The committee thanks the ministers, parliamentary secretary and officers for their assistance.

Questions on notice

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 following address:
http://www.aph.gov.au/Senate/committee/legcon_ctte/estimates/index.

The committee has resolved that the due date for submitting responses to questions on notice from the budget estimates round is 8 July 2011.

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 2011-12 financial year.

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

1.2 The Principal Member of the MRT-RRT, Mr Denis O'Brien, updated the committee on the MRT-RRT workload. The committee was advised that lodgements across both tribunals have continued to rise, with a reported increase of 26 per cent for the MRT and an increase of 29 per cent for the RRT, in comparison to the same period in 2009-10. The active cases as at 30 April 2011 for both tribunals is significantly higher than for the same period in 2009-10, with MRT cases increasing by 59 per cent and RRT cases increasing by 46 per cent.¹

1.3 The strategies which have been implemented to deal with the increased workload were outlined for the committee. These include the establishment of task forces to deal with particular cohorts of cases and the batching of similar cases for allocation to members.²

1.4 At the February estimates hearings, the committee was advised that recruitment of 20 new members was planned for the middle of 2011 to address the workload problem. Mr O'Brien indicated that the recruitment process is well advanced, with the selection advisory committee report currently with the government, and the expectation that additional members will commence in July. However, on further questioning, he added that timing is ultimately a matter for cabinet.³ The Minister confirmed that it was expected that appointments would commence on 1 July 2011, and his advice was that five senior members and 22 members are likely to be appointed from this round.⁴ Mr O'Brien advised the committee that he expected the organisation to be well placed to deal with the backlog when the additional members become more experienced.⁵

1 *Committee Hansard*, 23 May 2011, p. 4.

2 *Committee Hansard*, 23 May 2011, p. 4.

3 *Committee Hansard*, 23 May 2011, pp 4 and 8.

4 *Committee Hansard*, 23 May 2011, pp 8-9.

5 *Committee Hansard*, 23 May 2011, p. 9.

Department of Immigration and Citizenship

Enterprise migration agreements and regional migration agreements

1.5 Senators sought details of new migration initiatives: the new enterprise migration agreement (EMA) scheme, which addresses the skill needs of the resource sector; and the new regional migration agreement (RMA) scheme, which addresses local labour needs.

1.6 In relation to EMAs, the committee was advised by Mr Kruno Kukoc:

The initiative has come as the government's response to the National Resources Sector Employment Taskforce recommendations in July 2010, where this idea was raised initially. The government has agreed to implement the enterprise migration agreements to help the national resources sector, and to address the emerging labour needs in this sector. Enterprise migration agreements is a new initiative which is a form of labour agreement that is specifically tailored to the needs of large resource projects. It is custom designed to cover the project-wide recruitment needs of skilled labour rather than going with individual labour agreements for each of the contractors and subcontractors that have contributed to the large project. The eligibility requirements for the enterprise migration agreements will be that it will only be available to so-called megaprojects.⁶

1.7 It was also explained that the definition of a megaproject under the EMA scheme is a requirement of at least \$2 billion worth of capital expenditure and a peak workforce of 1,500 contracted on the project. Mr Kukoc added that it is 'implicitly assumed that the project also needs to be approved by the state government as a project.'⁷ The committee heard that around 13 projects are already approved by the state government authorities and will likely qualify, and a further 21 projects are subject to feasibility studies and may be eligible.⁸

1.8 The committee also questioned officers about RMAs and was advised by Mr Kukoc:

...RMAs will be custom designed geographically based migration arrangements that will set out the occupations and numbers of overseas workers needed in the area. Individual local employers could directly sponsor workers under the terms of RMAs. It will work in similar terms as EMAs, but in relation to the geographically specific area, and predominantly in relation to the permanent migration and RSMS—regional sponsored migration scheme visas. RMAs will be negotiated with a range of stakeholders in that geographical area, including local employers and community representatives. We will also target those regions with the

6 Committee Hansard, 23 May 2011, p. 14.

7 Committee Hansard, 23 May 2011, p. 27.

8 Committee Hansard, 23 May 2011, p. 27

greatest economic need where there are high employment growth rates and where there is a strong case and an evidence-supported case for recruiting overseas workers.

The government indicated in the budget announcement that the first priority is the training and employment of Australian workers, so RMAs will include mandatory training and local employment measures to ensure that all those unemployed and underemployed Australians are provided the opportunity to gain long-term, sustainable employment.⁹

1.9 Senators specifically sought clarification on the definition of 'region' under these agreements and were advised that the agreements will not be tied to a specific definition. The department explained that this would allow flexibility to respond to regional labour market needs.

The way it is envisaged that the agreements would work is that they would be assessed on the basis of job growth in a particular locality and also on the rate of unemployment, as some of the primary criteria. It could be tackled in a number of ways. It could be tackled through negotiations with one of the 55 regional development authorities that currently exist in Australia. It could also be tackled on the basis of discussions with a group of local government areas, if need be, or a single local government area. The government's intention was to try to leave it as open as possible, but to then be able to prioritise the negotiations around a regional migration agreement on the basis of actual need and the availability of work.¹⁰

Streamlined processes for ASIO security clearances

1.10 Australian Security Intelligence Organisation (ASIO) security clearance processes for asylum seeker applicants have been of interest to the committee at recent estimates hearings. While ASIO manages the process, the department was able to provide an update from its perspective on the new streamlined security checking processes which have been developed in cooperation with ASIO. The department advised that the new process is referred to as a risk-managed and intelligence-led referral framework and has resulted in some faster turnaround times, without compromising the integrity of security checking.¹¹

1.11 The committee was assured that under the new framework, all irregular maritime arrivals (IMAs) are still considered by ASIO, but there is now a sequencing of IMAs sent to ASIO. Ms Jackie Wilson elaborated on this point in an exchange with Senator Cash:

Ms Wilson:...I think you are familiar with the phrase '1A met', which means, through the DIAC processes, a person is determined to be a refugee. Previously we were referring to ASIO all clients as they arrived and got to

9 Committee Hansard, 23 May 2011, p. 39.

10 Mr Peter Speldwinde, *Committee Hansard*, 23 May 2011, p. 35

11 Dr Wendy Southern, *Committee Hansard*, 23 May 2011, p. 44.

that point in the process. One of the major changes we achieved as a result of the changes you mentioned was that, when they are assessed as being a refugee, they are referred to ASIO for processing at the '1A met' stage.

Senator CASH: Previously that was not the case and all IMAs were sent off, but under the change only those who have been found to be refugees—

Ms Wilson: There is more of a sequencing. Those are the people who are closest to meeting all the criteria for a visa grant. They are the people who are getting referred to ASIO for ASIO to focus its assessment on.

Senator CASH: Is there any truth in the statement that there are applications from people from various areas, regions, countries, or however you may define it, that are considered to be low risk and therefore are not being forwarded to ASIO for assessment?

Ms Wilson: As I said, they are all being considered under the same framework.¹²

1.12 The committee subsequently pursued further questioning on the new streamlined security processes for IMAs during ASIO's appearance under the Attorney-General's Portfolio.

Regional Cooperation Framework

1.13 The department was closely questioned about proposals to deal with the problem of people smuggling.

Arrangement with Malaysia

1.14 The Secretary of the department, Mr Andrew Metcalfe, referred to and tabled a Joint Statement by the Prime Minister of Australia and the Prime Minister of Malaysia, dated 7 May 2011, announcing a commitment to enter into a new bilateral arrangement as part of the Regional Cooperation Framework agreed to at the Bali Process Ministerial Conference on 30 March 2011.

1.15 The Joint Statement advised:

The Malaysian and Australian Governments have today announced a commitment to enter into a groundbreaking new arrangement to help tackle people smuggling and irregular migration in the Asia-Pacific region.

...

The bilateral arrangement will take the form of a cooperative transfer agreement that will see asylum seekers arriving by sea in Australia transferred to Malaysia. In exchange, Australia will expand its humanitarian program and take on a great burden-sharing responsibility for resettling refugees currently residing in Malaysia.

12 Committee Hansard, 23 May 2011, p. 45.

Prime Ministers Najib and Gillard have agreed that core elements of this bilateral arrangement will include:

- 800 irregular maritime arrivals, who arrive in Australia after the date of effect of the arrangement, will be transferred to Malaysia for refugee status determination;
- in return, over four years, Australia will resettle 4000 refugees already currently residing in Malaysia...¹³

1.16 The committee pursued a number of issues associated with the proposed Malaysian arrangement, including timing, the makeup of the possible 800 IMAs who will be transferred, legal challenges, costs, arrangements for transferees' transportation to Malaysia, and living conditions. As the final detailed agreement was, at the time of hearing, yet to be confirmed, the department was unable to provide many details to the committee.

1.17 Senators sought an explanation in relation to what will happen to the 110 IMAs who had arrived in Australia since the announcement on 7 May 2011 and, in particular, whether they will form part of the possible 800 IMAs who will be transferred to Malaysia. Mr Metcalfe addressed this issue:

Mr Metcalfe: ...Let me try to provide a concise statement. The government has made it clear and the minister has made announcements on several occasions that the persons who have arrived since 7 May will not be processed in Australia, that they will be removed pursuant to migration law to another country, that any issues they have in relation to asylum claims will be dealt with there, and that Australia will not in any way refool those persons to a place of persecution. So that is very clear. In relation to the agreement with Malaysia, it will be operative from the date of effect of the arrangement. That date could either be prospective or date back to an earlier time.

Senator CASH: So, it could be retrospective?

Mr Metcalfe: It could be tied to the timing of the announcement, for example.

1.18 Senators also spent considerable time seeking clarification on the wording of the Joint Statement in regard to the transfer to Malaysia of the 800 IMAs who arrive in Australia after the date of effect of the arrangement, and the resettlement in Australia over four years of 4,000 refugees already residing in Malaysia. It was explained that the arrangement includes the resettlement of the 4000 refugees over four years as an expansion of Australia's humanitarian program, and that up to 800 IMAs may be transferred to Malaysia:

13 Joint Statement by the Prime Minister of Australia and the Prime Minister of Malaysia, 7 May 2011.

Mr Metcalfe: Let me explain. If 800 people come then 800 people will be transferred. If 800 people do not come, fewer than 800 people will be transferred.

Senator CASH: However, we will still get 4,000.

Mr Metcalfe: However, we have made it clear that Malaysia has agreed to take up to 800, and we have agreed to take an additional 4,000.

Senator CASH: Is that up to 4,000 for Australia's part of the deal or is it 4,000?

Mr Metcalfe: No. We have made it likely that we will expand the humanitarian program by 4,000 places over four years, to 14,750 places per year.

Senator CASH: Will the department give consideration to amending what is on its website to include the words 'up to', which have so painfully been gone through today?

Mr Metcalfe: The words on our website are taken from the joint statement, and that is authoritative, but it is quite clear that the Malaysians have agreed to take 800.

Senator CASH: Up to 800.

Mr Metcalfe: They have agreed to take 800, but whether we need to send them 800 we will have to wait and see.¹⁴

1.19 The Secretary confirmed that the Minister for Immigration and Citizenship had indicated that the government was anticipating potential legal challenges to this 'very decisive' and 'contested' area of public policy, and had sought legal advice in that regard. However, the Secretary declined to be more specific on the types of expected challenges as he did not want to 'coach' people:

I think he [the Minister] wanted to be open and clear with the Australian public that this would be a contested issue and that the government was committed to pursuing its policy objectives notwithstanding the fact that there may be legal challenges, there may be protests or there may be issues. The government took a very well informed decision and the minister was being quite open with people.¹⁵

Papua New Guinea

1.20 The committee also spent some time discussing the possible establishment of an assessment centre in Papua New Guinea (PNG). The Secretary advised the committee that PNG had raised the issue with the Australian Government and that the location of a centre will ultimately be a matter for PNG. However, indications are that the Manus Island facility is the most likely place to be identified.¹⁶

14 *Committee Hansard*, 23 May 2011, p. 75.

15 *Committee Hansard*, 23 May 2011, p. 86.

16 *Committee Hansard*, 23 May 2011, p. 100.

1.21 Questioning focussed on the funding in relation to the possible reopening of the detention centre on Manus Island, and, in particular, why it was not listed as a new measure in Budget Paper No. 2. The department pointed out that the figure of \$129.971 million was deemed to be an estimates variation by the Department of Finance and Deregulation for a possible processing centre as part of broader processing costs, and does not include any capital expenditure. Mr Metcalfe expanded on this issue for the committee:

As I understand it, it is treated as an estimates variation because we would have the obligation to do that in any event. This would be a case load that would otherwise be being processed in Australia were it not for other arrangements with other countries, as we have been discussing all afternoon. As Mr Sheehan has indicated, because we are still waiting for advice from PNG as to whether they wish to proceed with the issue, it has not been possible to calculate a capital cost. That would involve us looking at the facilities, whether it is Manus or somewhere else, and the condition of the facilities. Clearly, if the matter does proceed there will need to be a detailed assessment as to the capital cost and appropriate funding sought.¹⁷

East Timor

1.22 Senators also questioned the department about the status of the proposal to establish a regional processing centre in East Timor, an issue that has been covered in some detail in recent estimates hearings of the committee. The Secretary advised that, in light of the announcement on 7 May 2011:

...East Timor was advised that Australia was no longer going to pursue discussions with East Timor as a first priority, but obviously as part of the regional cooperation framework we continue to look forward to working very closely with East Timor on these and related issues...¹⁸

1.23 When asked for clarification, the Secretary did not rule out the proposal all together, only that it was no longer being treated as a priority by the government.¹⁹ The committee sought on notice a breakdown of the total costs expended in pursuing the regional processing centre in East Timor.²⁰

APEC Business Card Travel Scheme

1.24 The department updated the committee on the review and consultation with the Australian business community that was foreshadowed at the last estimates hearings concerning changes to the APEC Business Card Travel Scheme. Concerns were raised at the last hearing about the lack of consultation prior to a change in the criteria for the issue of APEC business cards.

17 *Committee Hansard*, 23 May 2011, p. 103.

18 *Committee Hansard*, 23 May 2011, p. 48.

19 *Committee Hansard*, 23 May 2011, p. 49

20 *Committee Hansard*, 23 May 2011, p. 49.

1.25 It was confirmed that the review is close to completion and that 23 organisations have now been consulted, including peak business bodies, business council and chambers of commerce. It was further advised that, as a result of this process, possible further changes to the criteria were being evaluated. The committee was pleased to note that the department had committed to a program of annual consultation with business representatives in the future.²¹

Onshore and offshore detention centre management

1.26 The committee spent considerable time examining Outcome 4 of the department, which includes programs dealing with the onshore detention network and the management of offshore asylum seekers.

1.27 The committee sought details about the contract with the service provider, Serco, in relation to the management of detention centres. Senators requested details on the number of breaches of the contract in relation to management and service provision. They were advised that the contract structure does not record breaches per incident, but has a series of abatements that apply to performance metrics.²² The department further advised that parts of the contract are publicly available, but certain parts, including the abatement regime is not, as it indicates a degree of commercial performance.²³ It was explained that the department formally measures performance of the contract every month, but this information is not publicly disclosed. In response to concerns about the transparency of this process, the committee was advised that 'we do have an extensive program of internal and external auditors who provide advice on our management of the contract'.²⁴

1.28 Some members of the committee also raised the issue of the delay in the establishment of the temporary detention centre planned for Pontville in Tasmania. The department explained that a number of regulatory requirements concerning heritage and environmental issues have delayed the project and, until all of these are resolved, an estimated opening date for the centre could not be provided.²⁵ When pressed as to whether the centre will be required if other facilities are completed during this period, the department confirmed that this will be a decision for the Minister:

Senator BARNETT: But, clearly, you do not have an Aboriginal heritage officer to be involved in that field audit in Tasmania, which, with respect, we have known for many weeks and probably months because it has been on the public record in Tassie. You are aware of that now. The question is: what are you going to do?

21 *Committee Hansard*, 23 May 2011, p. 124.

22 *Committee Hansard*, 24 May 2011, p. 21.

23 *Committee Hansard*, 24 May 2011, p. 23.

24 Ms Fiona Lynch-Magor, *Committee Hansard*, 24 May 2011, p. 23.

25 *Committee Hansard*, 24 May 2011, pp 23-24 and p. 111.

Mr Metcalfe: We are going to carefully consider our position as to how we take this forward.

Senator BARNETT: If we get to a position where you no longer need the temporary detention centre, because your developments in Northern Australia are nearly ready, I presume you will not proceed with the detention centre development.

Mr Moorhouse: That would be a decision for the minister.²⁶

1.29 Senators also asked a range of questions regarding operations and procedures in a number of onshore and offshore detention centres, particularly in relation to recent events of public disorder at the Villawood detention centre and the detention centre on Christmas Island. These questions focused on issues such as the notification of incidents to the department, the obligations of Serco in operating detention centres, assaults on Serco and other staff, procedures regarding authorisation of the use of 'reasonable force', the suitability of the Villawood facility as a detention centre, the points system used with detainees, costs estimates of recent damage to detention facilities, charter flights to detention centres, and procedures for the age assessment of detainees.

Answers to questions on notice

1.30 The committee notes that all 355 answers to questions on notice for the Immigration and Citizenship Portfolio from the additional estimates 2010-11 hearings in February 2011 were provided to the committee after the due date of 8 April 2011. This is the second successive estimates round where this has occurred. The Secretary pointed out to the committee that half of the responses had been lodged by 29 April 2011 and that all answers were provided before the hearings.²⁷ The committee notes that 87 responses were provided on Wednesday, 18 May 2011, and the final batch of 18 responses were provided after close of business on Friday, 20 May 2011 (and distributed to the committee that evening).²⁸

1.31 Mr Metcalfe noted the vast number of questions on notice the department had received in recent rounds of estimates and conceded the difficulties this presented to the department:

The department has received significant numbers of questions, particularly in recent times. I think I indicated earlier that, when you include subparts of the February 2011 additional estimates hearings, we received 742 questions requiring a response. The number of questions asked in October 2010 was 445; May 2010, 136; February 2010, 143; 20 October 2009, 123.

...

26 *Committee Hansard*, 24 May 2011, p. 98.

27 *Committee Hansard*, 24 May 2011, p. 111.

28 The date the answers were provided to the Minister's office was taken on notice by the department at the hearing.

The department has struggled over the years, I am sorry to say, with meeting the committee deadline...[S]ometimes that is because we are reliant on third parties for provision of information. So it has been unusual for us to meet the committee deadline but we certainly endeavour to do so in relation to all questions. However, we have a very good record in answering questions before the committee hearing.²⁹

1.32 The Secretary also advised that '[w]e endeavour to ensure that we provide [answers to questions on notice] before the hearings and we seek to comply with the requirements of the Senate. We have sought to do that over many years'.³⁰ However, the committee notes that providing answers on the last business day before the hearings (in this case after close of business) does not assist members of the committee in the timely consideration of the content of those answers.

1.33 In this context, the committee also notes that, on 12 May 2011, pursuant to Senate Standing Order 74, Senator Barnett asked the Minister (Senator the Hon Kim Carr) representing the Minister for Immigration and Citizenship for an explanation of outstanding answers not provided to questions placed on notice during the additional estimates 2010-11 hearings. The Minister was not present and an explanation was not provided. The Senate noted the Minister's failure to provide both the answers and an explanation for the delay.³¹

29 *Committee Hansard*, 24 May 2011, p. 115.

30 *Committee Hansard*, 24 May 2011, p. 111.

31 *Journals of the Senate No. 30*, 12 May 2011, p. 920.

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 2011-12 financial year.

Australian Human Rights Commission

2.2 The committee sought the Commission's view of the proposed arrangement to send asylum seekers in Australia to Malaysia for processing. The President, the Hon Catherine Branson QC, informed the committee that her concerns on the proposed arrangements were already on the public record through the issue of a press release. However, she articulated them at the request of the committee, advising that as Malaysia is not a signatory to the Refugee Convention, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the International Covenant on Civil and Political Rights, there is a risk in sending people there if adequate protections are not negotiated. Ms Branson also noted that Australia's international human rights obligations may also be breached.¹

2.3 Another matter that was raised with the Commission was the decision of the United Nations Human Rights Council in Geneva to replace the condemnation of religious defamation with a resolution underlining the rights of individuals to freedom of belief. On notice, the committee sought the Commission's view on the implications for Australia of that decision.²

2.4 The Commission indicated to the committee that it had not considered the decision and, as such, was reluctant to provide a response on notice. However, after considerable discussion around the requirements to provide a response, the Chair advised the President to review the *Hansard* and the Commission agreed to provide responses to all questions asked by Senators in this regard.³

2.5 Other issues raised during the examination of the Commission, included the imprisonment of persons with cognitive or intellectual disabilities, employment of people with disabilities in the public sector, the community education program as part of the Human Rights Framework, the appointment and resourcing of the Age Discrimination Commissioner, and the Sex Discrimination Commissioner's chairing of the review of the treatment of women at the Australian Defence Force Academy and in Australian Defence Force policies.

1 *Committee Hansard*, 25 May 2011, p. 19.

2 *Committee Hansard*, 25 May 2011, p. 20.

3 *Committee Hansard*, 25 May 2011, p. 26.

Australian Transaction Reports and Analysis Centre (AUSTRAC)

2.6 Further information on the savings measures of \$12.1 million over four years from operational efficiencies, which were identified in Budget 2011-12, was sought by members of the committee. It was explained that AUSTRAC is currently considering a number of options to deliver services under the budget allocation, including reviewing discretionary expenditure, such as travel, and the restructure of internal business units.⁴ The committee was assured by AUSTRAC that its current workload would be maintained despite the reduced budget.⁵

2.7 Industry concerns about AUSTRAC's cost recovery model were canvassed, and further information was sought on its response to the impact on small business. AUSTRAC summarised amendments to the model intended to address certain concerns. These include the exemption of affiliates of remitter networks to the levy; non-employing entities and microbusinesses will not be subject to the base component of the levy, and most would not be subject to any levy; and small gaming venues (entities with an entitlement to 15 or fewer gaming machines) would be exempt from the levy.⁶

Australian Security Intelligence Organisation (ASIO)

2.8 The committee asked a range of questions concerning the construction of ASIO's new building, including an update on its progress. The project is running within the current budget and is expected to be completed in the middle of next year. When asked about the \$69 million increase from the 2010-11 capital outlays, ASIO advised that this accounted for \$19.2 million for the replacement of existing assets and \$41.5 million for equity injection for the new building.⁷ ASIO also advised the committee that, at the time of the hearings, it had not been successful in finding a tenant to occupy 4,000 square metres of space in the building, following withdrawal of the Office of National Assessments as a prospective tenant.

2.9 Another area of interest to the committee was security on site as a result of an incident of unauthorised entry. It was advised that this incident led to a review of security arrangements. The Director-General of ASIO, Mr David Irvine AO, advised the committee that '[m]y advice is that comprehensive security procedures have been developed with the managing contractor for the design and construction phases that are commensurate with the level of risk for this project'.⁸

4 *Committee Hansard*, 25 May 2011, p. 29.

5 *Committee Hansard*, 25 May 2011, p. 30.

6 *Committee Hansard*, 25 May 2011, p. 31.

7 *Committee Hansard*, 25 May 2011, p. 71.

8 *Committee Hansard*, 25 May 2011, p. 73.

2.10 Following the discussion on security checks for IMAs during the earlier examination of the Department of Immigration and Citizenship, Mr Irvine provided a helpful summary of the new streamlining processes which were introduced around late February:

The criteria under which that referral process takes place have been determined by ASIO. It is an ASIO managed process right across the board. It is an intelligence led process, it is a risk managed process and it involves close cooperation with DIAC.

...

...the nature of the security checking is on a case-by-case basis. It is not determined solely by nationality, by ethnic origins or by religious or other reasons. The checking that we carry out varies according to the purpose for which we have been asked to make the check...We make two types of assessment in respect of IMAs...The first one is to determine suitability for community based detention and the second one is to determine the suitability for an individual to reside permanently in Australia. The level of checking that we undertake is commensurate ultimately with the level of risk we assess the individual to have.

This referral process has been developed in consultation with DIAC. What it has done, particularly recently, is enable us to streamline security checking for what I will call non-complex cases and that is commensurate with the level of risk that they present. What it does is allow us to focus our most intensive security investigation effort into the groups or individuals of most security concern. The result is, I believe, particularly in recent times, that our security checking has become more thorough and more effective. In fact, this is evidenced in the number of adverse security assessments, which have increased as a result of our ability to focus on these complex cases.

The final point to make is that, prior to this year, it was government policy that all irregular maritime arrivals be subject to the full ASIO investigative process. In other words, every one was treated as a complex investigation. This was proving particularly difficult for everybody, partly because of the complexity of the investigations themselves and because of the numbers involved. Therefore, at the end of last year, the government agreed on two significant decisions. The first was that ASIO would refer to us for complex security checking, while it would security-check only those people who had already been accorded refugee status. In the jargon it is known as '1A met'; in other words, their refugee claims could be accepted. Prior to that, we had been conducting full investigations on every IMA, even on those people who were unlikely to be or ultimately not accepted. So we were wasting a lot of effort on that. That decision has relieved the pressure to some extent. The second decision was to streamline the process, use greater risk management and align the process much more closely with the process that we apply to every other visa applicant.⁹

2.11 The Director-General also provided the committee with a review of the role of the new multi-agency Counter Terrorism Control Centre (CTCC):

Mr Irvine: The purpose of the control centre is to ensure that the government's counterterrorism effort both at home and overseas is properly coordinated between the various agencies who conduct Australia's counterterrorism effort—between the collectors of intelligence and between the consumers. It is responsible not simply for assisting in the coordination of the federal government effort but also for ensuring that the cooperation and coordination in the flow of intelligence backwards and forwards between federal and state authorities is optimal. One of the big problems in intelligence, particularly in relation to counterterrorism, is ensuring that the right piece of information gets to the right person at the right time; that is part of its job.

The other key element of the work of the CTCC is to establish the priorities for our counterterrorism effort, both at a strategic level and at what I will call a granular level in terms of individual investigations and so on. It is designed to ensure that the collectors of intelligence are collecting according to the right priorities, that we are coordinating the collection and that the collectors can look at those priorities and plan their resource dispositions accordingly. It also performs a role in evaluating the quite granular intelligence that comes in to ensure that the collectors are in fact meeting real, genuine requirements.

Senator LUDLAM: Thanks very much. I think that is probably the most expansive statement that we have heard on that to date, so I appreciate that.¹⁰

2.12 ASIO was also questioned on whether it had investigated the Wikileaks organisation; and its involvement in the IGIS inquiry into the actions of relevant Australian agencies in relation to the arrest and detention overseas of Mr Mamdouh Habib from 2001 to 2005.

Australian Federal Police (AFP)

2.13 The AFP was questioned extensively on a range of issues. Of particular interest to the committee was the AFP's involvement in recent incidents of public disorder at the Christmas Island Detention Centre and the Villawood Detention Centre.

2.14 The committee sought information on a range of issues associated with the March 2011 riots at the Christmas Island Detention Centre, including when the AFP first became aware of the high-level risk of the public disorder, the interactivity between the AFP and the detention centre's contracted provider, Serco, the circumstances in which the AFP takes control of the detention centre over Serco, the number of AFP officers involved in returning the detention centre to order, and the prosecutions arising out of the riots.

10 Committee Hansard, 25 May 2011, p. 91.

2.15 Questioning along similar lines continued with respect to the riots at the Villawood Detention Centre in April 2011. Senators were advised that at present no formal memorandum of understanding exists between the AFP and the NSW Police in response to incidents at Villawood. However, work is currently underway to formulate one. The committee heard details of the AFP's involvement in the response to the incident in April and also sought details on the subsequent investigation and prosecutions arising from the riot.

2.16 Another area of questioning concerned the new Channel Nine reality television program *AFP*, based on the work of real AFP officers. Concerns were raised about the involvement of officers in the program who are undercover officers. The Commissioner advised that participation was voluntary and that the officers had a choice to reveal their faces and identities and, if they chose not to, would have their faces pixelated through the series.¹¹

2.17 The Commissioner revealed that staff of the production company were cleared to the appropriate level.¹² Mr Andrew Wood, Chief Operating Officer, explained further:

There are a number of layers to the management of the information for which the security clearance is important to establish a base level of trustworthiness. But there are of course protocols that continue to reiterate briefing them in terms of levels of classification of the information they have access to, and there are also clauses within the contract that enable us to ensure that they continue to meet their obligations in relation to the commitments they have made.¹³

2.18 The Commissioner informed the committee of the objectives and benefits of participating in the program, and addressed the issue of risks associated with the program:

Understanding what the AFP does and being involved in the fight against organised crime is what we are all about and we want to publicise some of that, particularly in relation to the amount and quality of intelligence provided to law enforcement and how people can assist in that regard. It will inform and educate the public about how they may be affected by crime and put preventative measures in place so that people can see how crimes are committed, because not all of them have the opportunity to go and sit in a court room.

There has been a research survey done in 2009 to establish a benchmark of public attitudes and awareness of the AFP, and after the show has been aired we will do that again and make sure we take account of what that tells us. The AFP did not receive any financial benefit from this program from the production company and the television series. However, we were able

11 *Committee Hansard*, 26 May 2011, p. 28.

12 *Committee Hansard*, 26 May 2011, p. 31.

13 *Committee Hansard*, 26 May 2011, p. 33.

to negotiate free community messaging with Channel 9 to the value of \$500,000 in advertising value. So there will be advertising, there will be community messaging around important issues like missing persons and online child protection put forward by Channel 9 at no expense to the Commonwealth but because of the participation of the AFP in this program. And when the contract was negotiated and spoken about four years ago, almost, those issues were seen to outweigh the risks, and for any risks that were identified there were appropriate mitigation strategies put in place with the production company, of which they have lived up to those strategies.¹⁴

2.19 The Commissioner was asked about the re-shooting of scenes to include the new Prime Minister, the Hon Julia Gillard MP, to replace previously shot scenes with the Hon Kevin Rudd MP. The AFP confirmed that this was done at the request of the production company after that request was put to Ms Gillard, and that the cost to the AFP of this exercise was 'very moderate'.¹⁵

2.20 The AFP was also questioned about its involvement in the examination of the Wikileaks organisation following the publication of classified material in 2010. It confirmed that it had received a referral from the Attorney-General's Department on 30 November 2010 in relation to potential criminality, and on 17 December 2010 advised the department that the evaluation was complete and that it had not identified any criminal offences.¹⁶

2.21 The AFP pointed out that this initial referral was not an 'investigation' but an evaluation of material to assess if there were sufficient grounds to commence an investigation:

We were evaluating the material before us to see whether there was sufficient material to commence an investigation. It is a subtle distinction, but it is actually about looking at the material which is on hand. One of the primary areas of focus there is to establish whether or not there would be criminal offences and whether we would have jurisdiction. If those two issues were established then we would progress to a formal investigations. The threshold was not met for either of those two things.¹⁷

2.22 The committee sought further details of this evaluation and the AFP advised that it did not believe anyone was interviewed in regard to the matter as 'the thresholds were not met for a criminal offence being identified for which we had jurisdiction, so therefore there was no requirement to go forward to interview any persons outside of examining those documents'.¹⁸

14 *Committee Hansard*, 26 May 2011, p. 35.

15 *Committee Hansard*, 26 May 2011, pp 38-39.

16 *Committee Hansard*, 26 May 2011, p. 43.

17 *Committee Hansard*, 26 May 2011, p. 43.

18 *Committee Hansard*, 26 May 2011, p. 44.

2.23 The AFP further advised that it provided two people to be involved in a whole-of-government taskforce which commenced on 29 November 2010 to assess the implications of the release of the cables. Their involvement was for a short period and then continued on an as-needs basis as further cables were released, and there is no ongoing involvement at the present time.¹⁹

2.24 Other areas of interest to the committee during examination of the AFP included: AFP deployment in Afghanistan; the increase in the number of AFP sworn officers; AFP involvement in the independent review of the intelligence community; policing and security at airports; complaints about the behaviour of AFP officers on the Solomon Islands; and the Alan Kessing case.

Attorney-General's Department

2.25 The Attorney-General's Department was questioned on a range of matters, including the provision of legal advice in relation to plain packaging for tobacco products, a legal aid agreement with Norfolk Island, legal aid for people smugglers, inter-country adoption, reduction in funding for family relationship centres, funding for safer suburbs initiatives, delays in the provision of funding to assist flood-affected areas in the Gascoyne region of Western Australia, and security implications of people changing their names.

Senator Trish Crossin
Chair

¹⁹ Committee Hansard, 26 May 2011, p. 43.

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

Immigration and Citizenship Portfolio

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

APPENDIX 2

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2	Mr Denis O'Brien, Principal Member, Migration Review Tribunal and Refugee Review Tribunal	Statistics on MRT and RRT decision outcomes
3	Mr Andrew Metcalfe, Secretary, Department of Immigration and Citizenship	Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, Indonesia, 29-30 March 2011, Co-chairs' Statement
4	Mr Andrew Metcalfe, Secretary, Department of Immigration and Citizenship	Opening statement by Mr Metcalfe
5	Mr Andrew Metcalfe, Secretary, Department of Immigration and Citizenship	Joint Statement by the Prime Minister of Australia and the Prime Minister of Malaysia, dated 7 May 2011

Tuesday, 24 May 2011

No.	Tabled by:	Topic
6	Mr John Moorhouse, Deputy Secretary, Department of Immigration and Citizenship	Community Reference Group Terms of Reference

APPENDIX 3

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2	Mr Richard Foster PSM, CEO, Family Court of Australia, and Acting CEO, Federal Magistrates Court of Australia	Instrument of appointment of Acting Chief Executive Officer of the Federal Magistrates Court of Australia
3	Senator Brandis	Commonwealth Director of Public Prosecutions - Director's message – Important developments for our practice in light of Government budget decisions – 11 May 2011

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4	Senator Brandis	Extract of correspondence from the Commonwealth Director of Public Prosecutions to heads of agencies concerning the Federal Budget
5	Senator Ronaldson	Transcript of the Prime Minister's interview with Laurie Oakes, <i>Weekend Today</i> , 27 June 2010
6	Senator Barnett	Article from the <i>Australian Financial Review</i> entitled 'Big tobacco horrified by case costs', 20 May 2011