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Statement to the Legal and Constitutional Affairs Legislation Committee

Estimates Hearing

Monday, 23rd October 2017

Thank you for the opportunity to make some brief remarks. I wish to speak on two matters in these opening remarks: the closure of the Regional Processing Centre on Manus Island, Papua New Guinea, on Tuesday 31st October 2017, and the establishment of the Department of Home Affairs, which I am sure will be of great interest to this Committee, especially in the context of how it might wish to organise its affairs next year.

Closure of the Regional Processing Centre, Manus Island, Papua New Guinea

I should like first to acknowledge the important and successful collaboration that has taken place, and continues to take place, between the governments of Australia and Papua New Guinea in combating people smuggling and ending the flow of illegal maritime arrivals to Australia, which occurred in the five years preceding 2013-14. This

nation owes its gratitude to the government and the people of PNG in assisting us in an hour of need.

As the Committee would be aware, Prime Ministers Turnbull and O'Neill announced earlier this year the closure of the Regional Processing Centre in Manus Province to take effect on 31st October 2017.

Alternative accommodation, meals, medical services and settlement services will be provided to refugees in Manus Province whilst they await resettlement. Residents in the Regional Processing Centre have received notification of their alternative accommodation and service arrangements. Refugees – including those who have expressed an interest in resettlement in the United States – may also volunteer to transfer to Nauru. Some transferees have been found not to be owed protection by the Government of PNG. Those individuals have no lawful basis to remain in PNG and should depart.

The Department continues to support the Government of PNG to decommission the Regional Processing Centre. All service providers and Australian government personnel will leave the centre by 31st October. The site, which is a part of a naval establishment, will be re-occupied by its permanent owner, the PNG Defence Force, from 1st November 2017.

Establishment of the Home Affairs Portfolio

In the time that has passed since the Department's last appearance before this Committee, the Prime Minister has announced (on 18th July 2017) the establishment of the new portfolio of Home Affairs, which will include a new department of state, to be known as the Department of Home Affairs. The Hon Peter Dutton MP has been named as the Minister

(designate) of Home Affairs, and I have been honoured to be named as the Secretary (designate) of Home Affairs.

Subject to the final decision of the Prime Minister, it is probable that we will appear before you at the next Estimates meeting of this Committee as the Department of Home Affairs. The Department of Immigration and Border Protection will be completely incorporated within the new Department, and as such it is quite possible that today we appear before you in that form for the final time.

In addition to the Department of Home Affairs, the portfolio will consist of the following agencies:

- Australian Security Intelligence Organisation
- Australian Federal Police
- Australian Border Force (which will be operationally independent from the Department of Home Affairs)
- Australian Criminal Intelligence Commission and
- Australian Transactions Reports and Analysis Centre (AUSTRAC).

The core functions of the Department will indeed be policy, strategy and planning in relation to domestic security, law enforcement, counter terrorism, the protection of our sovereignty and the resilience of our national infrastructure and systems. The Department will also lead the coordination across relevant agencies of the execution of applicable national strategies; and the assessment of capability development requirements and associated resourcing strategies.

Specifically, the Department will be responsible for the delivery of certain policy and/or programmatic responsibilities, either in the lead, or in support of other agencies, these in the main being:

- immigration and citizenship
- law enforcement and community protection
- customs and border protection
- transport security
- civil maritime security policy and coordination
- identity and biometrics policy and programmes
- emergency management (including crisis management, disaster recovery, and disaster resilience)
- critical infrastructure protection
- cyber security policy and coordination
- counter-terrorism policy and coordination
- countering foreign interference and subversion, and
- countering violent extremism programmes, including working with other departments and agencies regarding programmes concerned with the cohesion of our society, on the basis that it is open, inclusive, multicultural and united.

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Rather predictably, some of the commentary on the establishment of the portfolio has been misplaced and ill-informed. Typically using tropes

such as the 'Behemoth of Home Affairs', this commentary has tended to attempt to mischaracterise the new arrangements as being either a layer of overly bureaucratic oversight of otherwise well-functioning operational arrangements, or a 'sinister' concentration of executive functions which will somehow not be able to be supervised and overseen. Both of these criticisms are wrong, and I will deal with them in turn.

The Department will not engage in the oversight of statutorily independent agencies, which is properly and necessarily vested in parliamentary, judicial and/or statutory processes. These properly established mechanisms – which will be further refined under the Prime Minister's announcement – for the oversight of ASIO, the AFP, the ABF, ACIC and AUSTRAC will not be affected. I can assure this Committee that the Department will not act as an overseeing, overriding, bureaucratic layer, and nor will it be dictating terms to Heads of Agencies in the performance of their statutory functions. Rather, the Department will seek to improve the strategic level of policy development and planning, in support of a Cabinet-level Minister who will for the first time in the modern history of the Commonwealth be charged with addressing security issues as a full-time point of focus and accountability.

I should say parenthetically that the ABF will remain an operationally independent body, led by a statutorily appointed Commissioner, but will have its corporate and enabling services provided by the new Department, and the Secretary will continue to hold budgetary and employment powers, consistent with present arrangements. In this context, the Committee may wish to consider whether to perhaps have the ABF appear before you separately next year, noting that it will be structurally connected to the Department, including in terms of the joint management of immigration status resolution and detention activities.

The Acting Commissioner and I would be pleased to advise the Committee on how these joint arrangements will work in the context of Home Affairs and the Committee could then make informed decisions about its proceedings next year.

Finally, I turn to the trope of the 'sinister Behemoth', which has characterised some of the commentary. All executive power, including that which will be exercised by the Minister and the officers of the Home Affairs portfolio, is subject to the sovereignty of this Parliament and to the supremacy of the law. Executive action must always have prior legal authority, and that authority is ordinarily to be located in the laws passed by this Parliament. In bringing together the security powers, capabilities and capacities of the Commonwealth into a single portfolio, these fundamentals will remain in place – that is, constitutionalism, the sovereignty of Parliament and the supreme rule of law, all of which are crucial attributes of liberty. Power must always be exercised with legitimacy, and never more so than in the performance of the security function of the state. Any contrary suggestion that the establishment of Home Affairs will somehow create an unchecked, extra-judicial apparatus of power is ill-informed (even if predictable, coming from some quarters), fallacious, and unworthy. It is commentary which bears no relationship to the facts or to how our system of government works.

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