

The Senate

Legal and Constitutional Affairs
Legislation Committee

Additional estimates 2014–15

April 2015

Commonwealth of Australia

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Membership of the Committee

44th Parliament

Members

Senator the Hon Ian Macdonald (LP, QLD) (Chair to 19 April)

Senator Jacinta Collins (ALP, VIC) (Deputy Chair)

Senator Catryna Bilyk (ALP, TAS)

Senator Barry O'Sullivan (NATS, QLD) (Chair from 20 April)

Senator Linda Reynolds (LP, WA)

Senator Penny Wright (AG, SA)

Senators in attendance

Senator the Hon Ian Macdonald (Chair)

Senator Gavin Marshall

Senator Jacinta Collins (Deputy Chair)

Senator Christine Milne

Senator Catryna Bilyk

Senator Clair Moore

Senator Barry O'Sullivan

Senator Ricky Muir

Senator Linda Reynolds

Senator Deborah O'Neill

Senator Penny Wright

Senator the Hon Marise Payne

Senator the Hon George Brandis

Senator Helen Polley

Senator David Bushby

Senator the Hon Nigel Scullion

Senator the Hon Kim Carr

Senator Rachel Siewert

Senator the Hon Michaelia Cash

Senator the Hon Lisa Singh

Senator Sam Dastyari

Senator Dean Smith

Senator Alex Gallacher

Senator Glenn Sterle

Senator Sarah Hanson-Young

Senator the Hon Penny Wong

Senator David Leyonhjelm

Senator Penny Wright

Senator John Madigan

Senator Nick Xenophon

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PREFACE

On 9 February 2015, the Senate referred to the Senate Legal and Constitutional Affairs Legislation Committee (committee) for examination the estimates of proposed additional expenditure for the financial year 2014–15. The committee is responsible for the examination of the Attorney-General's Portfolio and the Immigration and Border Protection Portfolio.¹

Reference of documents

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

- Particulars of proposed additional expenditure in respect of the year ending on 30 June 2015 [Appropriation Bill (No. 3) 2014-2015]; and
- Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2015 [Appropriation Bill (No. 4) 2014-2015].²

The committee was required to report on its consideration of the additional estimates by 17 March 2015. An extension was provided on 17 March 2015 requiring the committee to report by 24 April 2015.³ On 5 March 2015 the committee agreed to a spill over hearing to be held on 27 March 2015.

Estimates hearings

The committee met in public session on 23 and 24 February 2015 and 27 March 2015. Over the course of the three days of hearings, totalling over 33 hours, the committee took

from the following departments and agencies:

- Attorney-General's Department
- Australian Human Rights Commissioner
- Australian Federal Police
- Australian Security Intelligence Organisations
- Office of the Director of Public Prosecutions
- Administrative Appeals Tribunal
- Office of the Australian Information Commissioner
- Department of Immigration and Border Protection
- Office of the Migration Agents Registration Authority

1 *Journals of the Senate*, No. 75, 9 February 2015, p. 2116.

2 *Journals of the Senate*, No. 78, 12 February 2015, p. 2178.

3 *Journals of the Senate*, No. 84, 17 March 2015, p. 2298.

- Migration Review Tribunal and Refugee Review Tribunal
- Australian Customs and Border Protection Service

A list of all agencies falling under the Attorney-General's portfolio and Immigration and Border Protections portfolios is located in Appendix 1.

Copies of the *Hansard* transcripts are available from the committee's internet page at: http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/legconctte/estimates/add1415/index

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

An index for all tabled documents and additional information received by the committee appears in Appendix 3.

Ministers

On 23 February 2015, the committee heard evidence from Senator the Hon. Michaelia Cash, Minister Assisting the Prime Minister for Women and Assistant Minister for Immigration and Border Protection.

On 24 February 2015, the committee heard evidence from Senator the Hon. George Brandis QC, the Attorney-General and Minister for the Arts.

On 27 March 2015, the committee heard evidence from Senator the Hon. Nigel Scullion, Minister for Indigenous Affairs, who was representing the Attorney-General.

Officers from both departments and associated agencies also appeared. The committee thanks the Ministers 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 webpage.

The committee has resolved that the due date for submitting responses to questions on notice from the additional estimates round is 17 April 2015 for the Immigration and Border Protection Portfolio and 1 May 2015 for the Attorney-General's Portfolio.

Note on references

References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

CHAPTER 1

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

1.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Immigration and Border Protection portfolio for the 2014-15 financial year.

Department of Immigration and Border Protection

1.2 Questions to the Department of Immigration and Border Protection (DIBP) during the hearing primarily focused on the Australian Human Rights Commission's report on children in immigration detention. Some of the other issues raised with the DIBP included the processing of the asylum legacy case load;¹ migration and the intergenerational report;² and the number of Australian citizens with dual citizenship.³

National inquiry into children in immigration detention report

1.3 The committee questioned the DIBP on matters relating to the Australian Human Rights Commission's *The Forgotten Children: National Inquiry into Children in Immigration Detention* report (the report).

1.4 During the discussions on the report, the DIBP provided an update on the number of children that remain in detention. As of 20 February 2015, there were 126 Illegal Maritime Arrival (IMA) children in detention; below the July 2013 peak of 1992 IMA children.⁴ Of the 126 children:

- 19 had been approved for community placement on bridging visas or in community detention;
- 20 were having their cases progressed;
- 68 were in Australia for medical treatment and will return to Nauru when their medical treatment or that of a family member, is concluded; and
- 19 were from a family 'where there are law enforcement, national security or other issues pertaining to a close adult relative which require immigration resolution', consequently 'preventing their movement from held detention into the community.'⁵

1.5 The committee asked the Secretary for clarification on the DIBP's view of the report. Mr Pezzullo said 'notwithstanding the very best efforts and the very best

1 *Estimates Hansard*, 23 February 2015, pp 21–22 and 79–80.

2 *Estimates Hansard*, 23 February 2015, pp 15–19 and 57–60.

3 *Estimates Hansard*, 23 February 2015, pp 43–45.

4 *Estimates Hansard*, 23 February 2015, p. 6.

5 *Estimates Hansard*, 23 February 2015, p. 6.

intentions of the commission in some cases at least some sections of the report lack rigour'.⁶ He went on to explain that:

...regrettably an opportunity to look at this issue with great objectivity and rigour was not necessarily fully accomplished. But that said...we are concerned to the point of zero tolerance in terms of any concerns about risks to children. Irrespective of what the commission has commended to us as a view, we are undertaking our own assurance checks and our own audit work.⁷

1.6 Specific sections of the report were discussed during the hearing and are summarised separately below.

Use of force against minors in detention

1.7 The committee asked the DIBP to comment on the report's references to the use of force against children in the report. The DIBP informed the committee that the use of force on minors in Christmas Island on 24 March 2014 had occurred during a cyclone warning, and explained:

All persons in detention at Phosphate Hill immigration detention centre were being moved to accommodation at North West Point for their safety. Thirty-five unaccompanied minors refused the request to move to this safer accommodation. The detention service provider sought appropriate approval from the department's Christmas Island regional manager to use force to relocate the unaccompanied minors. Approval was given and Serco emergency response team officers applied the preapproved use of force to 12 unaccompanied minors who were continuing their refusal to move. The remaining unaccompanied minors then agreed to join their colleagues and move.⁸

1.8 Officials then informed the committee that the service provider and the DIBP undertook internal reviews of the incident, as well as a further independent review that was conducted by Verifact. The DIBP added that:

Verifact supported conclusions in the Serco review that trained officers appropriately applied correct use of force techniques to quickly deal with a situation that was deteriorating.⁹

Alleged sexual assaults against minors in detention

1.9 Officials were questioned on reports of alleged sexual assaults in immigration detention facilities against minors. The DIBP informed the committee that there have been 44 alleged sexual assaults in onshore detention facilities that are under investigation, or have been resolved.¹⁰ However, the DIBP clarified that these

6 *Estimates Hansard*, 23 February 2015, p. 61.

7 *Estimates Hansard*, 23 February 2015, p. 61.

8 *Estimates Hansard*, 23 February 2015, p. 114.

9 *Estimates Hansard*, 23 February 2015, p. 114.

10 *Estimates Hansard*, 23 February 2015, p. 8.

44 instances of alleged sexual assault are inclusive of incidents involving a minor or to a minor or occurring in a detention facility in which a minor was accommodated.¹¹ Therefore the cases cited do not necessarily refer to 44 alleged cases of minors being sexually assaulted, rather that minors were in the vicinity of these 44 alleged assaults.¹²

1.10 It was also reported that between 1 July 2013 and 31 January 2015, the DIBP was:

[A]ware of 19 cases of reported sexual assault in detention on Nauru. Of those 19, five allegations relate to minors. Of these five, three allegations relate to reports of adult assaults on children, while two relate to minor against minor assault. All 19 cases have been referred to Nauruan police.¹³

1.11 The committee made references to the AHRC's comments that the sexual assault allegations may come under the terms of reference of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Secretary of the DIBP said in response:

I have asked for an audit to be undertaken not just of the incidents that are reported within the period that Mr Douglas was explaining, which is the terms of reference period for the inquiry, but out of an abundance of caution I have sought information and assurance from my staff that all reportable incidents, on a broadly defined basis, of a sexualised nature or anything involving potential abuse of children is examined going back to 2008... Should that audit reveal any matters that have not been appropriately referred, are not the subject of appropriate treatment by the police or child protection authorities on the basis of our files...I certainly intend to make that information available to any competent authority, including indeed the royal commission.¹⁴

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

1.12 In her opening statement, the Principal Member of the MRT–RRT (the tribunals), Ms Kay Ransome updated the committee on the work of the tribunals. At the time of the hearing, the tribunals had finalised approximately 14 000 cases for the financial year, on track to achieve the final year result of finalising 21 000 cases.¹⁵ The MRT's rulings were highest for student refusals, partner refusals and temporary work categories. The RRT rulings were highest for applicants from China, India and Sri Lanka.¹⁶

11 *Estimates Hansard*, 23 February 2015, p. 47.

12 *Estimates Hansard*, 23 February 2015, p. 47.

13 *Estimates Hansard*, 23 February 2014, p. 114.

14 *Estimates Hansard*, 23 February 2015, p. 49.

15 *Estimates Hansard*, 23 February 2015, p. 23.

16 *Estimates Hansard*, 23 February 2015, p. 23.

1.13 Ms Ransome discussed legislation that will impact on the tribunals. The passing of the *Migration Amendment (Protection and Other Measures) Bill 2014* has enabled the MRT-RRT to dismiss an applicant for review in instances where the applicant fails to appear for a hearing. The tribunals are also able 'to give oral statements of reasons without the need for written reasons, except when requested'.¹⁷

1.14 The Tribunals Amalgamations Bill 2014 will merge the tribunals with the Administrative Appeals Tribunal and the Social Security Appeals Tribunal; resulting in a single administrative body established under the *Administrative Appeals Tribunal Act 1975*. The tribunals will in this arrangement become a division of the new administrative body and known as the migration and refugee division. Ms Ransome said 'the Migration Act will remain as the legislation setting out the process of that division, including the code of procedures'.¹⁸

1.15 The committee requested further statistics on the tribunals' caseloads. Ms Ransome informed the committee that over the past 12 months the MRT's partner stream has increased by 48 per cent; student refusals have increased by 7 per cent; and temporary work visas (subclass 457 visas) have decreased by 15 per cent. Overall the MRT has had a decrease in decisions by 4 per cent.¹⁹ The average time it has taken to make a decision has reduced from 364 days to 310 days.²⁰

1.16 The RRT's has seen a decline of 24 per cent, due to the decline in irregular IMA caseloads.²¹ The average time the tribunal has taken to make a decision has decreased from 237 days last year, to 200 days.²²

1.17 Further information was provided on the impact of the amalgamation of the tribunals;²³ changes to the writing of decisions and its subsequent reduction in the allocation of time to that process;²⁴ and the dismissal of an application if an applicant does not appear before the tribunals.²⁵

Office of the Migration Agents Registration Authority

1.18 Ms Dora Tin-Chan, Chief Executive Officer of the Office of the Migration Agents Registration Authority (OMARA) told the committee that the number of registered migration agents with OMARA has increased to 5493 on 31 January 2015, up from 5118 in the previous year. The growth of the number of agents continues at just below 6 per cent per annum, with 18 per cent of agents in their first year of

17 *Estimates Hansard*, 23 February 2015, p. 23.

18 *Estimates Hansard*, 23 February 2015, pp 23–24.

19 *Estimates Hansard*, 23 February 2015, p. 25.

20 *Estimates Hansard*, 23 February 2015, p. 25.

21 *Estimates Hansard*, 23 February 2015, p. 25.

22 *Estimates Hansard*, 23 February 2015, p. 25.

23 *Estimates Hansard*, 23 February 2015, pp 25–26.

24 *Estimates Hansard*, 23 February 2015, p. 27.

25 *Estimates Hansard*, 23 February 2015, pp 32–33.

practice. Ms Tin-Chan added that agents' workloads are 'most active in the lodgement of 457 temporary work visas and in employer sponsored business skills and protection visas.'²⁶

1.19 The CEO informed the committee that in this financial year, OMARA has refused 9 applications to become a migration agent; 20 applications have been withdrawn. As of 31 January 2015, 308 complaints are on hand and 339 have been finalised. A further three migration agents have had their registration cancelled for up to five years.²⁷

1.20 Through the questioning of OMARA, the committee enquired about the complaint management process and monitoring activities;²⁸ and the independent review of OMARA's operation.²⁹

Australian Customs and Border Protection Service

1.21 The Australian Customs and Border Protection Service (ACBPS or the service) updated the committee on the service's counter terrorism capacity after the Prime Minister's announcement to provide \$154 million in additional funding.³⁰ Mr Roman Quaedvlieg, Chief Executive Officer said:

The measures will assist us to identify and stop Australians who seek to travel overseas to participate in terrorist activities and assist authorities to manage those seeking to return to Australia from foreign conflicts.³¹

1.22 Mr Quaedvlieg added that as of 22 August 2014, the service deployed counter-terrorism unit teams to airports 'to combat the threat of home-grown terrorism. These teams are now operational at the eight major airports.'³²

1.23 The CEO's opening statement also provided another update on the integration of the ACBPS with the DIBP; the prosecution of corrupt officials within the service; and the seizure of illicit drugs, in particular the seizure that 'was estimated to have a street value of up to \$1.5 billion and is the second largest seizure of illicit drugs in Australian history.'³³

1.24 The committee asked further questions on the seizure of illicit materials. Illicit tobacco³⁴ and hard drug types, such as heroin, cocaine, methamphetamine and methylenedioxy-methamphetamine (MDMA) were discussed. Mr Quaedvlieg

26 *Estimates Hansard*, 23 February 2015, p. 34.

27 *Estimates Hansard*, 23 February 2015, p. 34.

28 *Estimates Hansard*, 23 February 2015, pp 35–37.

29 *Estimates Hansard*, 23 February 2015, p. 38.

30 *Estimates Hansard*, 23 February 2015, p. 82.

31 *Estimates Hansard*, 23 February 2015, p. 82.

32 *Estimates Hansard*, 23 February 2015, p. 82.

33 *Estimates Hansard*, 23 February 2015, p. 83.

34 *Estimates Hansard*, 23 February 2015, p. 84.

informed the committee that as of '31 December 2014 [ACBPS] officers have intercepted 8200 individual detections of drugs for a combined weight of 5.2 tonnes.³⁵

1.25 Mr Quaadvlieg explained that the reasons for the increase in detection are due to an increase in the amount of illicit material entering Australia, as well as the increase in detection activities. For example, since early 2014 there has been an increase in the x-ray inspection and examination of sea cargo containers from 100 000 to 101 500 and an increase in the physical examination of containers from 14 000 to 15 500.³⁶ Furthermore, Mr Quaadvlieg said:

We also had a commitment to increase our air cargo parcel inspections from 1.5 million to 2 million and our international mail inspections from 40 million to 50 million. I am pleased to say that not only are we on track half year to hit those figures but we are actually exceeding our commitments to increase those detections; for example, in the international mail we are 10 per cent over that target of increasing the 50 million for this year to date.³⁷

1.26 The service has also seen an increase in the detection of illicit firearms and firearm parts. The half yearly results have thus far shown an increase in rifles, shotguns, firearm parts and magazines, and in some cases almost reaching last year's annual results.³⁸

Operation Sovereign Borders

1.27 Lieutenant General Angus Campbell DSC AM, the Commander of the Joint Agency Task Force, Operation Sovereign Border (OSB), informed the committee on the nature of the 15 asylum seeker boats returned since 19 December 2013. The committee asked for clarification on the meaning of a 'turn-back' and a 'take-back'.

1.28 Lieutenant Campbell informed the committee that '[a] turn-back is where a vessel is removed from Australian waters and returned to just outside the territorial seas of the location from which it departed'. A take-back 'involves the at-sea transfer from a vessel or the control of a people-smuggling vessel at sea transferring from one sovereign authority to another.'³⁹ Of the 15 vessels returned since 19 December 2013, twelve were turned back, two were take-backs and one was 'assistance to a vessel that was in a circumstance of no longer being able to safely function at sea.'⁴⁰

35 *Estimates Hansard*, 23 February 2015, pp 84–85.

36 *Estimates Hansard*, 23 February 2015, p. 85.

37 *Estimates Hansard*, 23 February 2015, p. 85.

38 *Estimates Hansard*, 23 February 2015, p. 86.

39 *Estimates Hansard*, 23 February 2015, p. 95.

40 *Estimates Hansard*, 23 February 2015, p. 95.

1.29 The committee asked questions on the enhanced screening of Sri Lankan nationals. The committee was advised that:

The purpose of the enhanced screening process is to determine that a person potentially engages Australia's law enforcement obligations, so when a person makes an implausible or lacking in substance claim, a manifestly unfounded claim, they are removed from Australia as soon as is reasonably practicable because it is considered that that does not engage our non-refoulement obligations.⁴¹

1.30 The Cambodian agreement was also discussed during the session with OSB. The DIBP informed the committee it has provided information to asylum seekers and refugees on Nauru that resettlement in Cambodia is voluntary and further advice will be provided depending on how arrangements proceed in Cambodia.⁴² The Secretary of DIBP added that the department will assist:

[T]he Kingdom of Cambodia in its preparatory work to, in effect, set up a resettlement program...The other party that has made public comment on this is the International Organization for Migration, or IOM, which has got a role to play...I am sure that everyone on the island is aware of the general detail: it is no secret that it is voluntary, that the details are being fully formed and implemented as we speak. Beyond that, as to who will set up...some sort of a booth or some kind of inquiry process to say: 'Okay, we are now ready to engage with you about your interest,' we will facilitate that, we will assist all the parties, but we are not the agency or indeed the jurisdiction that is managing the resettlement.⁴³

1.31 The committee asked for further advice on the cost of the program, in addition to the \$40 million that the government has already paid to the Cambodian government. The DIBP informed the committee that a figure has not been determined yet.⁴⁴ However, the committee was told that, should the government of Cambodia contract with the IOM to deliver the resettlement services, then the Australian government will pay the cost of that contract.⁴⁵

1.32 Further information was provided, detailing regional cooperation to fight people smugglers;⁴⁶ the anti-people smuggling strategic communications campaign;⁴⁷ and the funding for the repurpose and ownership of Ocean Shield to OSB.⁴⁸

41 *Estimates Hansard*, 23 February 2015, p. 96.

42 *Estimates Hansard*, 23 February 2015, p. 100.

43 *Estimates Hansard*, 23 February 2015, p. 101.

44 *Estimates Hansard*, 23 February 2015, p. 102.

45 *Estimates Hansard*, 23 February 2015, p. 102.

46 *Estimates Hansard*, 23 February 2015, p. 106.

47 *Estimates Hansard*, 23 February 2015, p. 107.

48 *Estimates Hansard*, 23 February 2015, pp 107–109.

CHAPTER 2

ATTORNEY-GENERAL'S PORTFOLIO

2.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Attorney-General's portfolio for the 2014-15 financial year.

Attorney-General's Department

2.2 A number of issues were raised with the officers of the Attorney-General's Department (AGD or the department) including the cancellation of welfare payments on security grounds; community engagement programs in response to the threat of Islamic extremism; the High Court's *Williams No. 2* case; funding of community legal services; the Commonwealth's legal costs for the Royal Commission into Trade Union Governance and Corruption; and the operation of the Schools Security Program.

Cancellation of welfare payments on security grounds

2.3 The committee questioned the department on the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* and specifically the provisions allowing for the cancellation of welfare payments on national security grounds. The department provided a description of the mechanisms in place to determine whether a cancellation should occur:

The Attorney receives a notice from either the Minister for Foreign Affairs or the Minister for Immigration and Border Protection, depending on whether it is a cancellation of a passport or a visa. Following receipt of that notice, the Attorney will obtain some advice from the department, which relates to whether or not the person is receiving welfare payments. The Attorney-General's Department gets that advice from the Department of Social Security. Once that advice is received, then some information is given to the Attorney as to whether he should issue a security notice and provide that [to] the Minister for Social Services.¹

2.4 The department added that to date, it has 'received notice in relation to four persons', and is 'currently in the process of receiving advice from the Department of Social Services to inform advice to the Attorney-General about whether a cancellation should be recommended'.² However, under the current provisions, to date AGD has not cancelled the welfare payments of any individual.³

Community engagement programs

2.5 The department also provided information about the government's announcement of the \$13.4 million counterterrorism package for 'community

1 *Estimates Hansard*, 24 February 2015, p. 86.

2 *Estimates Hansard*, 24 February 2015, p. 86.

3 *Estimates Hansard*, 24 February 2015, p. 87.

engagement programs in Australia with an emphasis on preventing young Australians from becoming involved with extremist groups'.⁴

2.6 Of the \$13.4 million, the department reported that \$1 million will be allocated to the Living Safe Together Grants Program. The focus of this funding is assist community organisations to build on their capabilities to participate in the program in the future.⁵ An amount of \$10 million will go towards countering violent extremism intervention services at a Commonwealth, state and local level⁶ to 'draw together an understanding of all those services, what they have to offer, where they are located and what they do'.⁷ This initiative is:

...developing an intervention framework. This is having a coordinated model, like a case model, for individuals who come to our attention who are at risk, whether that is because their family or community members have raised concerns and contacted authorities or whether the authorities themselves have become aware of the circumstances of the individual... We will take a holistic approach so that we can look at getting them involved in mentoring programs, employment training and perhaps community programs so that those who have been alienated can perhaps be given a bit of a pathway to become more engaged.⁸

2.7 A further \$1.78 million will 'go towards community engagement, education and awareness training and \$0.6 million for developing the Report Online Extremism tool'.⁹

Williams No. 2 case

2.8 The committee questioned AGD about the High Court's decision in the case of *Williams v Commonwealth of Australia* in June 2014 (*Williams No. 2*) and the case's impact on any AGD programs and their funding. The department informed the committee that 'generally speaking', programs have been identified and:

...it is always the case that the government of the day will continue to have regard in terms of the development and consideration of its programs, against the background of constitutional case law as it develops... So it may be in future that governments take that particular constitutional development into account in formulating a policy, but that is generally the position following a case and consideration of the implications.¹⁰

2.9 Furthermore, the department informed the committee that prior to the *Williams No. 2* case 'it had not been generally understood that legislation in addition to

4 *Estimates Hansard*, 24 February 2015, p. 88.

5 *Estimates Hansard*, 24 February 2015, p. 96.

6 *Estimates Hansard*, 24 February 2015, p. 96.

7 *Estimates Hansard*, 24 February 2015, p. 88.

8 *Estimates Hansard*, 24 February 2015, p. 88.

9 *Estimates Hansard*, 24 February 2015, p. 96.

10 *Estimates Hansard*, 24 February 2015, p. 91.

an appropriation was necessary to support spending.¹¹ However, since the decision of the High Court, the Commonwealth will now require, in some cases, additional legislation to provide money to a particular program.¹²

Funding of community legal services

2.10 The committee questioned AGD about the amount of funding to be provided to community legal centres. The department indicated that the cuts previously announced were to take place over the forward estimates and that, with the exception of the Environmental Defenders Office, there had been no cuts to the funding received by service providers.¹³ Consequently, officials confirmed that the quantum for the funding of these services will now remain the same.¹⁴ The department explained the funding process by noting that previous funding arrangements:

...focused in on uncommitted funds to look at phasing in the bulk of the savings at the same time as it was reconsidering its approach to legal assistance arrangements generally. The net effect of that was that the majority of them were meant to come on board in 2015-16 and 2016-17 and, as a result of the announcement yesterday, they are not.¹⁵

Legal costs for the Royal Commission

2.11 The department was questioned about the legal costs associated with the Royal Commission into Trade Union Governance and Corruption. The department indicated that amounts paid to legal counsel were commercial-in-confidence and could not be publicly disclosed.¹⁶ The Minister representing the Attorney-General claimed public interest immunity on the grounds that the disclosure could expose the Commonwealth to litigation and that retaining the confidentiality of this information is essential for the government when negotiating legal fees.¹⁷

Schools Security Programme

2.12 The department was questioned about the operation of the Schools Security Programme.¹⁸ The department stated that a grant-assessment process exists to provide security funding to schools based on a range of factors, be it the location of the school, nature of the school or composition of the student bodies.¹⁹

11 *Estimates Hansard*, 24 February 2015, p. 92

12 *Estimates Hansard*, 24 February 2015, p. 92.

13 *Estimates Hansard*, 27 March 2015, p. 5.

14 *Estimates Hansard*, 27 March 2015, p. 5.

15 *Estimates Hansard*, 27 March 2015, p. 8.

16 *Estimates Hansard*, 27 March 2015, pp. 33–34.

17 *Estimates Hansard*, 27 March 2015, pp. 34–35.

18 *Estimates Hansard*, 27 March 2015, p. 32.

19 *Estimates Hansard*, 27 March 2015, p. 32.

Australian Human Rights Commission

2.13 The committee questioned representatives from the Australian Human Rights Commission (AHRC) on a number of issues including:

- the *Forgotten Children: National Inquiry into Children in Immigration Detention* report and its content; and
- the number of children that remain in detention.

2.14 The President's opening statement outlined the commission's statutory functions and its reasoning for conducting a national inquiry into children in immigration detention. Professor Gillian Triggs stated:

[T]he inquiry was called in response to mounting concern about the health impacts of prolonged detention and the significant numbers [of children] that remained in detention...to conduct an in-depth assessment of the medical and developmental impacts on children of lengthy immigration detention.²⁰

2.15 Professor Triggs added that after October 2013, 'the numbers of children being released stagnated [and] by February 2014, about the same number of children remained in detention as at the [September 2013] election'.²¹ Furthermore:

[T]he period of time for which children were being held was lengthening as each week and month went by. These evolving factors led to the decision by the commission on 12 December [2013] that the long-planned 10-year review would be a full inquiry with powers to compel the production of evidence. The Attorney and the Department of Immigration were advised accordingly on 22 January 2014.²²

2.16 Professor Triggs explained that the commission welcomed 'the release by the government of about 700 children over the last few months',²³ but raised concerns for those children that remain in detention.²⁴

2.17 The Attorney-General, Senator the Hon George Brandis, took this opportunity to update the committee on the number of children held in immigration detention:

The number of illegal maritime arrival children held in detention in Australia at the moment is 126. The number of children in detention on Christmas Island is zero. The number of children transferred from Christmas Island since December [2014] who remain in detention on the mainland is three, two of whom will be transferred into the community in the next several days...116 children [are] currently in detention in regional processing centres on Nauru. And the number of children in detention in regional processing centres on Manus Island is zero... [T]he total number

20 *Estimates Hansard*, 24 February 2015, p. 6.

21 *Estimates Hansard*, 24 February 2015, p. 7.

22 *Estimates Hansard*, 24 February 2015, p. 7.

23 *Estimates Hansard*, 24 February 2015, p. 6.

24 *Estimates Hansard*, 24 February 2015, p. 6.

of illegal maritime arrival children in detention in the system is 245... 129 are in detention on the Australian mainland... 28 children in detention in the system who are not illegal maritime arrivals.²⁵

2.18 The committee continued to question the AHRC about the timing of *The Forgotten Children* report, which was originally discussed during the Supplementary Budget Estimates in October 2014.²⁶ In addition, the committee asked about the decision to make the children in immigration detention project an inquiry rather than a review, as specified by documents received on notice from the last round of estimates.²⁷

2.19 At a spill-over hearing on 27 March 2015, the committee questioned the AHRC about a number of issues including the recommendations regarding the immigration detention of Mr John Basikbasik; the work of the Children's Commissioner; and the on-going role of the AHRC in administering the *Racial Discrimination Act 1975*.

2.20 Professor Triggs explained the AHRC's recommendations in relation to Mr Basikbasik's detention. The AHRC recommended that Mr Basikbasik should receive \$350 000 in compensation for the period of his detention.²⁸ Professor Triggs justified this by stating that in order for compliance with the International Covenant on Civil and Political Rights to be met, the executive power to detain must be exercised in a manner which is necessary and proportionate to achieve a legitimate aim.²⁹ Professor Triggs argued that the AHRC consequently found that consistent, fair and impartial review at appropriate periods of time was required for compliance with international standards regarding arbitrary detention.³⁰

2.21 The AHRC was questioned further regarding the circumstances surrounding Mr Basikbasik's original charge for manslaughter of his de facto spouse, a charge for which he was convicted of in 2000. The AHRC indicated that the findings in its report related to the circumstances surrounding Mr Basikbasik's immigration detention and not to his prior criminal history.³¹ Professor Triggs restated that the commission's primary concern was the absence of a process for regular review, to determine whether alternative and less restrictive methods existed through which Mr Basikbasik could be monitored.³² Many of the committee's questions in this regard were taken on notice.

25 *Estimates Hansard*, 24 February 2015, p. 8.

26 *Estimates Hansard*, 24 February 2015, pp 7–8 and 76–77.

27 *Estimates Hansard*, 24 February 2015, pp 18–20.

28 *Estimates Hansard*, 27 March 2015, pp 7–8.

29 *Estimates Hansard*, 27 March 2015, p. 8.

30 *Estimates Hansard*, 27 March 2015, p. 8.

31 *Estimates Hansard*, 27 March 2015, p. 9.

32 *Estimates Hansard*, 27 March 2015, p. 8.

2.22 The committee questioned Ms Megan Mitchell, Children's Commissioner, about her report into self-harm and suicide amongst children. Ms Mitchell detailed the difficulties of locating accurate data in relation to self-harm and suicide statistics for young children.³³ Ms Mitchell also discussed measures being taken to coordinate and provide access to data and research³⁴ and provided details about existing mental health and wellbeing programs.³⁵

2.23 The committee proceeded to question the AHRC in relation to its roles and responsibilities administering the Racial Discrimination Act, noting that it is the 40th anniversary since its inception. Professor Triggs explained that the commission manages complaints under the Act, pursuing investigation and conciliation as well as engaging in programs of awareness-raising.³⁶

2.24 The committee also briefly questioned the AHRC on its access to data from the Department of Immigration and Border Protection, its international travel expenditure, Professor Triggs' interaction with the Administrative Review Council and the matter of *MG v Commonwealth*.³⁷

Australian Federal Police

2.25 The committee first directed questions to the Australian Federal Police (AFP) on whether the Prime Minister sought permission from the AFP before making reference to the alleged terrorist plot and subsequent arrests of Mr Omar Al-Kutobi and Mr Mohammad Kiad. The AFP Commissioner Andrew Colvin said:

On the morning of 12 February the Prime Minister, the Attorney-General and the Minister for Justice were provided with a classified briefing. During the discussion of that classified briefing a range of material was given to the Prime Minister, some of which he asked if it would be available to be mentioned in parliament that afternoon. Subsequent to that, the Prime Minister's office did bring to the AFP's attention the words and statement the Prime Minister wished to use in question time that day, and we gave approval for that.³⁸

2.26 The Commissioner confirmed that he did not believe the Prime Minister's comments would compromise the proceedings of the case and that it was solely the AFP's decision to approve the Prime Minister's comments.³⁹ Mr Colvin added:

The media team within the AFP take guidance and instruction from the investigation team and obviously senior officers who will be doing the press conference... Generally speaking, it will be about what information

33 *Estimates Hansard*, 27 March 2015, p. 14.

34 *Estimates Hansard*, 27 March 2015, p. 14.

35 *Estimates Hansard*, 27 March 2015, pp 18–21.

36 *Estimates Hansard*, 27 March 2015, p. 27.

37 *Estimates Hansard*, 27 March 2015, pp 25, 28 and 29.

38 *Estimates Hansard*, 24 February 2015, p. 97.

39 *Estimates Hansard*, 24 February 2015, p. 98.

we feel is appropriate to release into the public domain, what information has already been or will be made available to the court in a public sense. One of the things that weighs heavily on our mind, particularly with counter-terrorism matters, as everyone would appreciate, is that there is a great deal of public interest in these matters. Conversely, as we have said many times, we would not be able to be as successful as I believe we have been with counter-terrorism investigations if we did not take the public into our trust and, in turn, asked for them to come forward with information. We have to find a very careful balance between prejudicing matters before court and making sure that the information is publicly available and that the public understands the seriousness and the desire for us to ask them to work with us.⁴⁰

2.27 The committee also raised questions about the increase of funding to the AFP's fraud and anticorruption team, in particular, foreign bribery matters;⁴¹ section 70 of the Crime Act, relating to reasonable grounds to suspect⁴² and journalists publishing information;⁴³ and the Australian Electoral Commission's investigations into the federal seat of Indi.⁴⁴

Australian Security Intelligence Organisation

2.28 Mr Duncan Lewis AO DSC CSC, Director-General of the Australian Security Intelligence Organisation (ASIO) began with an opening statement conveying his sympathy to the victims and their families of the Martin Place siege. Mr Lewis took the opportunity to assure the community 'that ASIO and its intelligence and law-enforcement partners are doing all that [they] can to protect our fellow Australians.'⁴⁵ He provided an update on the general security environment, listing a number of attacks abroad and the situation with ISIL in Syria and Iraq.⁴⁶ Mr Lewis added that these attacks:

...demonstrate that the tensions from the conflict in Syria and Iraq are reverberating across the world, including here in Australia... [T]here are more Australians involved with groups fighting in Syria and Iraq than in any previous conflict involving non-state actors. We can expect that the consequences for Australia will be commensurately greater than previously seen with, say, those Australian foreign fighters who returned from Afghanistan.⁴⁷

40 *Estimates Hansard*, 24 February 2015, p. 104.

41 *Estimates Hansard*, 24 February 2015, p. 99.

42 *Estimates Hansard*, 24 February 2015, p. 102.

43 *Estimates Hansard*, 24 February 2015, p. 103.

44 *Estimates Hansard*, 24 February 2015, pp 105–107.

45 *Estimates Hansard*, 24 February 2015, p. 107.

46 *Estimates Hansard*, 24 February 2015, p. 107.

47 *Estimates Hansard*, 24 February 2015, p. 108.

2.29 The Director-General advised that in Syria and Iraq there are currently around 90 Australians fighting or providing support to groups such as ISIL, and that the conflict has killed at least 20 Australians and 30 have returned to Australia.⁴⁸ He added that although public attention has focused primarily on the threat of these returnees, there is also a threat:

...from anyone with a grudge who wishes to react under the banner or the name of terrorism. The lone actor can operate independently, may have no contact with other extremists but may be inspired by an ideology promulgated by others.⁴⁹

2.30 Mr Lewis concluded his opening statement by iterating the importance for ASIO keeping 'abreast of changing technology' and the organisation's contribution to the Parliamentary Joint Committee on Intelligence and Security's inquiry into the Telecommunications (Interception and Access) Amendment (Data Retention) Bill.⁵⁰

2.31 The committee questioned ASIO further on Australians fighting abroad and was informed that the number of known foreign fighters has increased in recent months. Mr Lewis attributed this increase to ASIO's better understanding and discovery of further Australians fighting, identification of Australians moving from third countries into Syria and Iraq and finally the number of women or 'jihadi brides' that have gone to join the conflict.⁵¹ As stated earlier, so far just over 20 Australians have been killed fighting with terrorist organisations in Iraq and Syria.⁵²

2.32 In addition to foreign fighters, the committee asked questions about ASIO's policy on using security information if it was obtained by torture,⁵³ and the process of data retention.⁵⁴

Senator Barry O'Sullivan Chair

48 *Estimates Hansard*, 24 February 2015, p. 108.

49 *Estimates Hansard*, 24 February 2015, p. 108.

50 *Estimates Hansard*, 24 February 2015, p. 108.

51 *Estimates Hansard*, 24 February 2015, p. 109.

52 *Estimates Hansard*, 24 February 2015, p. 112.

53 *Estimates Hansard*, 24 February 2015, pp 112–113.

54 *Estimates Hansard*, 24 February 2015, pp 114–118.

APPENDIX 1

DEPARTMENTS AND AGENCIES FOR WHICH THE COMMITTEE HAS OVERSIGHT

Attorney-General's Portfolio

- Attorney General's Department.

National Security and law enforcement

- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;
- Australian Federal Police;
- Australian Security Intelligence Organisation; and
- Office of the Director of Public Prosecutions.

Criminal intelligence and information

- Australian Institute of Criminology;
- Australian Transactional Reports and Analysis Centre; and
- CrimTrac.

Legal services

- Australian Government Solicitor; and
- Office of Parliamentary Counsel.

Courts and tribunals

- Administrative Appeals Tribunal;
- Family Court of Australia;
- Federal Circuit Court of Australia;
- Federal Court of Australia; and
- High Court of Australia.

Regulation and reform

- Australian Human Rights Commission;
- Australian Financial Security Authority;
- Australian Law Reform Commission; and
- Office of the Australian Information Commission.

Management of government records

- National Archives of Australia

Cultural affairs

- Australia Council
- Australian Film, Television and Radio School;
- Australian National Maritime Museum;
- Bundanon Trust;
- Creative Partnerships Australia;
- Museum of Australian Democracy of Old Parliament House;
- National Film and Sound Archive of Australia;
- National Gallery of Australia;
- National Library of Australia;
- National Museum of Australia;
- National Portrait Gallery of Australia; and
- Screen Australia.

Immigration and Border Protection Portfolio

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

APPENDIX 2

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APPENDIX 3

TABLED DOCUMENTS

Attorney-General's Portfolio, Tuesday, 24 February 2015

No.	Tabled by:	Topic
1	Professor Gillian Triggs, President, Australian Human Rights Commission	Opening statement
2	Professor Gillian Triggs, President, Australian Human Rights Commission	Timeline
3	Professor Gillian Triggs, President, Australian Human Rights Commission	Number of children in detention graph
4	Professor Gillian Triggs, President, Australian Human Rights Commission	Asylum seekers, refugees and human rights - Snapshot Report
5	Senator the Hon George Brandis QC, Attorney-General	Tabling statement
6.	Mr Duncan Lewis AO DSC CSC, Director-General, Australian Security Intelligence Organisation	Opening statement

Friday, 27 March 2015

No.	Tabled by:	Topic
1	Professor Gillian Triggs, President, Australian Human Rights Commission	Answers to questions on notice asked on 24 February 2015

Immigration and Border Protection Portfolio, Monday, 23 February 2015

No.	Tabled by:	Topic
1	Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection	Opening statement
2	Ms Kay Ransome, Principal Member, Migration Review Tribunal & Refugee Review Tribunal	Opening statement
3	Ms Dora Chin-Tan, Acting CEO, Office of the Migration Agents Registration Authority	Opening statement
4	Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection	Outcome 3 Expenditure and Forecast Outlook
5.	Mr Roman Quaedvlieg APM, CEO, Australian Customs and Border Protection Service	Opening statement

ADDITIONAL INFORMATION

Attorney-General's Portfolio

No.	Tabled by:	Topic
1	Professor Gillian Triggs, President, Australian Human Rights Commission	Letter to Mr Martin Bowles PSM, former Secretary, Department of Immigration and Border Protection
2	Mr Martin Bowles PSM, former Secretary, Department of Immigration and Border Protection	Letter to Professor Gillian Triggs, President, Australian Human Rights Commission

Immigration and Border Protection Portfolio

No.	Provided by:	Topic
1	Mr Roman Quaedvlieg APM, Chief Executive Officer, Australian Customs and Border Protection Service	Corrected opening statement

