

# 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 2016–17 financial year on 27 February 2017.

1.2 A brief discussion of the portfolio's appearance at the spill-over hearing on 24 March 2017 is at the end of this chapter (paragraph 1.38).

### Opening statement

1.3 The Secretary of the Department of Immigration and Border Protection (DIBP, the department) and the Commissioner of the Australian Border Force (ABF) tabled a written joint opening statement, which they each spoke to at length.<sup>1</sup> A summary of the opening statement is provided below.

1.4 The Secretary, Mr Michael Pezzullo, covered a number of issues concerning the department, particularly in relation to the department's staffing, performance and productivity. He reported that DIBP's funding for the 2016–17 financial year had decreased by \$130 million from previous-year levels and that a further \$400 million in reductions was programmed across forward estimates.<sup>2</sup>

1.5 Since 2013–14, the number of staff employed by DIBP had reduced by more than 300. In an update on the enterprise bargaining process for the department, the Secretary explained that following a third rejection of a proposed enterprise agreement, the Fair Work Commission would now determine employee conditions through arbitration. The workplace determination proposed by the department would require further staff reductions of approximately 656 full-time equivalent positions to meet costs, while the proposed workplace determination from the principal union, the Community and Public Sector Union, would require reductions of more than 1,900 full-time equivalent positions.<sup>3</sup>

1.6 In 2015–16, DIBP processed more than 40 million international air and sea travellers, 35 million air cargo consignments and 3 million sea cargo consignments, and granted almost 8 million temporary visas. The Secretary reported an 11 per cent increase in passenger numbers, 15 per cent increase in visa applications and 14 per cent increase in inbound goods over three years, with forecast increases of 20 per cent, 18 per cent and 26 per cent respectively by 2019–20.

1.7 The Secretary welcomed the new commander of the joint agency taskforce Operation Sovereign Borders (OSB), Air Vice-Marshal Stephen Osborne CSC, and noted the significant role of the taskforce, with more than 900 days having passed since a successful arrival of a people-smuggling vessel in Australia. He also

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1 *Committee Hansard*, 27 February 2017, pp. 3–4.

2 *Committee Hansard*, 27 February 2017, p. 3.

3 *Committee Hansard*, 27 February 2017, p. 3.

welcomed the United States government's commitment to the arrangement regarding the resettlement of refugees from Papua New Guinea and Nauru.<sup>4</sup>

1.8 The Commissioner, Mr Roman Quaadvlieg APM, summarised challenges since the creation of the ABF, including a diversification of criminal activities at the border. He reported that through six major operations with national and international partners, ABF had seized more than 2.3 tonnes of cocaine and more than 350 kilograms of methamphetamine with a combined street value of more than \$900 million.<sup>5</sup>

1.9 The Commissioner provided updates on the work of ABF within the department, including:

- Taskforce Cadena, which targets systemic visa exploitation, detailing 13 operations resulting in 156 unlawful noncitizens being detained and the execution of 36 warrants;<sup>6</sup>
- cooperation with partner agencies in targeting outlaw motorcycle gangs, with six motorcycle gang members having had their visas cancelled as of 6 February 2017, and an additional 130 motorcycle gang members, associates or those involved in organised crime cases having had their visas cancelled or refused as of 31 December 2016;<sup>7</sup>
- the work of the Tobacco Strike team, reporting seizures of 40 tonnes of smuggled tobacco and 95 million smuggled cigarettes since its establishment in October 2015;<sup>8</sup>
- detection and examination of asbestos-contaminated goods, with 6,617 shipments targeted in the 19 months to January 2017, resulting in a total 446 examinations and 22 detections;<sup>9</sup> and
- an overall increase in trade and traveller volumes, with a forecasted growth of 25 per cent in the coming years.<sup>10</sup>

1.10 The committee proceeded to question the department on topics related to cross-portfolio, corporate and general matters related to the Immigration and Border Protection portfolio, and on Outcomes 1 and 2 of the department. Key topics raised during the hearings are provided in more detail below.

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4 *Committee Hansard*, 27 February 2017, p. 4.

5 *Committee Hansard*, 27 February 2017, p. 4.

6 *Committee Hansard*, 27 February 2017, p. 4.

7 *Committee Hansard*, 27 February 2017, p. 4.

8 *Committee Hansard*, 27 February 2017, p. 4.

9 *Committee Hansard*, 27 February 2017, p. 5.

10 *Committee Hansard*, 27 February 2017, p. 5.

1.11 Following a private meeting of the committee during the afternoon tea break, officers from Outcome 3 were excused from the hearing due to questions in cross-portfolio, corporate and general matters running overtime.

### **Departmental administration and other corporate matters**

1.12 The committee made a number of inquiries about administration and corporate matters throughout the hearing, in particular on issues relating to departmental properties, facilities and office locations; freedom of information practices; and enterprise bargaining.

#### ***Properties, office locations and other departmental facilities***

1.13 The committee asked questions regarding the new headquarters for DIBP in response to the tabled opening statement, which quoted a total budget for the project of \$255.3 million.<sup>11</sup> The department clarified that the project would see the consolidation of a number of sites in Canberra into two: one in Belconnen, accommodating around 4,000 staff, and an operational headquarters based near the Canberra airport, with around 2,000 staff.<sup>12</sup> The proposed changes would result in a reduction in accommodation footprint of around 13,000 square metres and reduce the department's properties from 12 to five.<sup>13</sup>

1.14 The matter of management of conflict of interest was raised in relation to leases for new departmental properties<sup>14</sup> and a de-identified copy of the headquarters project Deed of Confidentiality Register was tabled to assist the committee with their questions.<sup>15</sup> The department undertook to check on notice the completeness of the table.<sup>16</sup>

1.15 The committee also asked about the department's involvement in the construction of an immigration transit facility in Papua New Guinea (PNG). The department confirmed that it was assisting with the facility in Port Moresby, but was unable to confirm whether the PNG government's intended purpose for the facility is to accommodate people who are subject to unsuccessful refugee determinations and refuse voluntary deportation.<sup>17</sup>

#### ***Freedom of information***

1.16 The committee inquired about the freedom of information (FOI) processes of the department, which reported 14,714 FOI requests in 2013–14, 21,400 requests in 2014–15, 23,800 requests in 2015–16, and 12,600 in the first half of 2016–17 (1 July

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11 *Committee Hansard*, 27 February 2017, p. 39; Department of Immigration and Border Protection, *Opening Statement*, p. 2 (tabled 27 February 2017).

12 *Committee Hansard*, 27 February 2017, pp. 39, 41.

13 *Committee Hansard*, 27 February 2017, p. 40.

14 *Committee Hansard*, 27 February 2017, p. 49.

15 *Committee Hansard*, 27 February 2017, p. 68.

16 *Committee Hansard*, 27 February 2017, p. 71.

17 *Committee Hansard*, 27 February 2017, p. 24.

to 31 December 2016).<sup>18</sup> The department estimated that it was responsible for around 60 per cent of Commonwealth FOI.<sup>19</sup>

1.17 The department provided information about an email, inadvertently sent to *The Guardian* instead of to a staff member, regarding the caseload of FOI requests in the department during 2016:

Senator KIM CARR: It has been put in an article in the *Guardian* that he made a mistake in sending an email to the *Guardian*, in which he alleged that there was a 'freeze' on release of documents for asylum seekers in offshore detention centres and so on and so forth. Is that correct?

Mr Wright: It was an incorrect use of terminology.

Senator KIM CARR: By who?

Mr Wright: By the FOI officer.

...

[Mr Wright:] ... at the time, his supervisor was named Paul Farrell, the same as the *Guardian* reporter Paul Farrell. The use of the terminology 'freeze' was not correctly done. There was no freeze on FOI requests and the officer was doing internal consultation with the area that the FOI related to. And I would say it was a poor use of terminology by the officer involved.

Senator KIM CARR: That would be illegal, wouldn't it—to freeze an FOI request?

Mr Wright: Correct. We process all our FOI requests as per the FOI legislation and definitely there is no freeze on FOI requests.

### ***Enterprise bargaining***

1.18 Seeking further information following the secretary's opening statement, the committee asked about salary increases in the proposed enterprise agreement for the department. Mr Pezzullo explained that the range of 6.4 to 10.7 per cent for salary increases over three years was related to the amalgamation of the Australian Customs and Border Protection Service (ACBPS) into DIBP, and therefore two 'legacy workforces' which did not have aligned agreements. The proposed agreements would align salary scales across the department and accommodate a two per cent per annum pay increase in line with the Government's bargaining framework.<sup>20</sup>

### **Australian National Audit Office reports**

1.19 The committee spent a significant amount of time across the day's hearing asking questions relating to three Australian National Audit Office (ANAO) reports about the operations of the department:

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18 *Committee Hansard*, 27 February 2017, p. 62.

19 *Committee Hansard*, 27 February 2017, p. 62.

20 *Committee Hansard*, 27 February 2017, pp.18-19.

- Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services (ANAO Report No. 16 of 2016–17, published 13 September 2016);
- Offshore Processing Centres in Nauru and Papua New Guinea: Contract Management of Garrison Support and Welfare Services (ANAO Report No. 32 of 2016–17, published 17 January 2017); and
- The Australian Border Force's Use of Statutory Powers (ANAO Report No. 39 of 2016–17, published 27 February 2017).

### ***Reports on garrison support and welfare services***

1.20 A series of questions were asked relating to the feedback and commentary process undertaken by ANAO and the department in relation to the report published 17 January 2017.<sup>21</sup> Officers confirmed that they had received a draft of the report on 15 November 2016 for commentary, and an embargoed copy of the final report on 13 January 2017.<sup>22</sup> On notice, the department also undertook to provide details of the officers involved in the review process.<sup>23</sup>

1.21 In responses throughout the day's hearing, the Secretary made clear to the committee that while he agreed with a number of the recommendations made in the ANAO reports on garrison support and welfare services,<sup>24</sup> he disagreed 'with some of the analysis',<sup>25</sup> particularly in relation to representations of the departmental processes for appropriation and expenditure of money, and record-keeping.<sup>26</sup>

1.22 These comments notwithstanding, the Secretary assured the committee that the department had 'engaged in a process over the last couple of years of significant remediation' in order to improve record-keeping practices.<sup>27</sup> The Chief Operating Officer and Deputy Secretary, Corporate, Ms Jenet Connell, explained:

... There was a range of activities that were underway before the audit. There are activities that were underway while the fieldwork was in place, and there may be a number of items that were a direct result of insights from the ANAO, in terms of our contract management and our record keeping staff and our staff training. You mentioned before the garrison support and welfare contract. There was a complete health check, and we use our internal auditors to provide additional assurance. We conducted a complete health check of our current and planned procurement for garrison and welfare health and settlement services undertaken. And, indeed, we put in a garrison and welfare contract management plan, which is endorsed and

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21 *Committee Hansard*, 27 February 2017, pp. 5-9, 14, 15, 24-9.

22 *Committee Hansard*, 27 February 2017, p. 14.

23 *Committee Hansard*, 27 February 2017, p. 15.

24 *Committee Hansard*, 27 February 2017, pp. 10, 12, 17.

25 *Committee Hansard*, 27 February 2017, pp. 15-16.

26 *Committee Hansard*, 27 February 2017, pp. 12-14.

27 *Committee Hansard*, 27 February 2017, pp. 36-7.

is now in effect. There is a range of activities that go to our systems. The upgrading of our records management systems has been completed, hand in hand with ensuring that our staff are very well equipped. We are conducting mandatory training so that everyone understands the nature of record keeping. Those improvements have been underway over the last few years, and our internal audit was used as a check to see how those improvements are going and whether they are delivering the control mechanisms we have identified.<sup>28</sup>

1.23 One matter raised by the ANAO reports was the insurance of buildings in offshore detention centres, following the destruction of a facility in Nauru, valued at \$75 million, by fire during a riot. As the facility was under construction at the time, it was not on the department's asset register and was therefore not covered by the department's insurance (Comcover), but rather by the builder's insurance, which did not cover riot risk.<sup>29</sup> There was some confusion among officers during the hearing as to whether or not the builder was out-of-pocket for the costs related to the destruction of the facility,<sup>30</sup> however the department clarified in a letter to the committee dated 8 March 2017 that:

The contracted builder was not out of pocket. There was no contractual dispute with the builder. The costs of the destroyed facility were funded by a Commonwealth budget allocation.<sup>31</sup>

1.24 The department explained that it is required to update its Comcover asset register on an annual basis and took on notice to confirm that all Australian government assets on Manus Island and Nauru are currently listed and insured.<sup>32</sup>

### ***Report on use of statutory powers in ABF***

1.25 In relation to the report on the use of statutory powers in ABF, published on 27 February 2017, the Secretary once again stated his disagreement with the analysis by the ANAO:

Senator PRATT: So you dispute the practices of the ANAO?

Mr Pezzullo: I certainly dispute the analysis. We have factually laid out three times now—and we are on the third of these—where we have disagreed with the diagnosis or the analysis. We have stated that civilly, professionally and without rancour. When there is a conclusion that the Audit Office has reached where, as a management response, we can see common ground we have taken that as constructive input and we have agreed to those recommendations, but on many occasions—and this is

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28 *Committee Hansard*, 27 February 2017, p. 37.

29 *Committee Hansard*, 27 February 2017, pp. 34-5.

30 *Committee Hansard*, 27 February 2017, pp. 35-6.

31 Jenet Connell, Chief Operating Officer and Deputy Secretary, Corporate, Department of Immigration and Border Protection, correspondence dated 8 March 2017 and received 6 April 2017.

32 *Committee Hansard*, 27 February 2017, p. 36.

going to be another instance—we think that the terms that are used and in some cases the analysis that is brought to bear are unworldly.

Senator McKIM: Is what?

Mr Pezzullo: Unworldly.

Senator McKIM: Unworldly?

Mr Pezzullo: Yes, not rooted in any reality that we experience or anything that the commissioner, in this case, does day-to-day.<sup>33</sup>

1.26 The Commissioner agreed with the Secretary, stating that while ABF did not have 'any great exception to the recommendations of the report',<sup>34</sup> he also held concerns about the analysis conducted by the ANAO:

... I do think that the analysis of the ANAO officers was a little bit flawed—for example, in relation to the findings where powers had been exercised, apparently, in breach of statute. I do not disagree that that occurred but I disagree with the general characterisation that these things are endemic and that they are deliberate.

Senator McKIM: Sorry, Commissioner. Did you say you do not disagree that they occurred?

Mr Quaedvlieg: I do not agree with that assessment. I put them in the category of inadvertent or maladministration, rather than an intentional use of powers by officers in flagrant breach of their authorisations.<sup>35</sup>

1.27 Of particular concern to both the Secretary and Commissioner was the ANAO's assessment of instruction and guidance for officers involved in OSB boat turn-backs as being inadequate.<sup>36</sup> Responding to a number of questions from the committee, both officials characterised training for OSB as not only adequate, but of a higher standard than other coercive powers training for ABF officers:

Senator McKIM: The audit office's finding is that the department has not provided adequate instructions or guidance for officers exercising coercive powers. Are you disputing that?

Mr Pezzullo: As I said, across all of these findings the analysis is not always accepted. But to the extent that the audit office then provides quite a minimalist, moderated and quite bland recommendation, they are quite easy to agree to. In terms of the Maritime Powers Act, as a matter of logic, your conflation of the two propositions cannot stand because the commissioner and I do not have any independent discretion in relation to giving directions about the turning back of boats. That is a government decision in each and every case. They are not exercising any independent discretion.

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33 *Committee Hansard*, 27 February 2017, p. 79.

34 *Committee Hansard*, 27 February 2017, p. 79.

35 *Committee Hansard*, 27 February 2017, pp. 79-80.

36 *Committee Hansard*, 27 February 2017, pp. 80-2.

Senator McKIM: But that is not the question I am referring to. I am simply asking questions about the how and what is happening on the ground—or water I should say in this case—and whether or not the coercive powers conferred on the ABF under the Maritime Powers Act are being exercised lawfully. The audit office has found that the department has not provided adequate instructions or guidance for officers exercising coercive powers. Further, they find that there is no single source of instructions or guidance material for border force officers and that much of the guidance material available is inaccurate. That is a finding of the audit office. Again, I will ask the question: how can you have such a high level of confidence that turn-backs are being done lawfully?

Mr Pezzullo: You will have to go back to the source document and see how precise the language has been. But, absent the sort of caveats we have commended upon the audit office, it is not within our responsibility if they have created that mistaken impression that OSB is somehow caught within that general analysis you have just conveyed through your question. Frankly, they need to write more precisely.

Mr Quaedvlieg: I am fairly confident that the ANAO did not examine the governance of the application of powers within the Maritime Border Command. I am fairly confident that the parameters of those ANAO efforts were in relation to other activities like field compliance et cetera. So, there is a distinction here where I am drawing out a very professional unit sitting within the auspice of the Australian Border Force, which is the Maritime Border Command, which I would rate very, very highly compared with some of those other areas, where I absolutely concede that there is a deficiency in the way instruction, guidance, training and delegations are recorded and managed over time.

Senator McKIM: Perhaps I could just try to summarise. Is what you are saying that the guidance and instruction given to those parts of the ABF that are involved in turn backs is of a different quality to the instructions and guidance given to other parts of the ABF—

Mr Quaedvlieg: That is correct. It is comprehensive, explicit and exceptionally well documented, yes. That is an accurate summary.<sup>37</sup>

1.28 As with the ANAO reports on garrison support and welfare services, the department confirmed that work had begun on implementing the recommendations of the report, particularly in relation to updating training materials and policy documents.<sup>38</sup>

### **Refugees in onshore and offshore detention centres**

1.29 The committee asked a number of questions relating to refugees in both onshore and offshore detention centres, including:

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37 *Committee Hansard*, 27 February 2017, pp. 81-2.

38 *Committee Hansard*, 27 February 2017, p. 85.



- the operations of OSB, with the department confirming that 29 vessels with a total of 740 people have been turned back or taken back since September 2013;<sup>39</sup>
- the process for refugee status determinations relating to detainees in offshore detention centres, including appeals;<sup>40</sup>
- the legality of deporting individuals whose applications for refugee status are unsuccessful back to their country of origin;<sup>41</sup>
- implementation of the agreement made with the US government to resettle refugees from regional processing centres;<sup>42</sup> and
- detainees' access to mobile phones in onshore immigration detention centres.<sup>43</sup>

## Visas

1.30 The committee inquired into reports of exploitation of temporary workers under various visa programs, including 416, 417, 457 and 462 visas. The department explained how Taskforce Cadena has expanded to combat exploitation:

That task force was originally set up to deal with exploitation of 417 workers—working holidaymakers—but has since been expanded to include other forms of exploitation or exploitation of people in other visa categories. It is a task force we conduct in conjunction with the Fair Work Ombudsman's office and it is what I call a lead generation capability, which in essence means it does a lot of work with intelligence functions with our own organisation, with other criminal intelligence agencies and certainly with enforcement partners to identify instances where there is exploitation of workers which is organised or syndicated, by syndicates with footprints either onshore or offshore. We apply a whole range of modern law enforcement techniques to investigate those offences of exploitation, including intelligence analysis, investigation and surveillance, both electronic and physical; and certainly the more traditional investigative techniques in terms of interviews and prosecutions form a very big part of that. So, where there is work falling out of the Migrant Workers' Taskforce which is of a criminal or a regulatory nature under the Migration Act, that is where the Border Force gets involved and undertakes all of those activities.<sup>44</sup>

1.31 There was further discussion regarding the number of temporary working visa holders under various categories. While the department was able to provide some

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39 *Committee Hansard*, 27 February 2017, p. 11.

40 *Committee Hansard*, 27 February 2017, pp. 24, 33, 44-5, 55, 93-94.

41 *Committee Hansard*, 27 February 2017, pp. 24, 34, 44-7, 92-4.

42 *Committee Hansard*, 27 February 2017, pp. 20-2, 31-4.

43 *Committee Hansard*, 27 February 2017, pp. 88-92.

44 *Committee Hansard*, 27 February 2017, p. 130

statistics on 417 visas, officers agreed to provide on notice comprehensive details of how many 417 and 462 visas are currently issued, by country, and the nature of any visa exchange arrangements.<sup>45</sup>

1.32 Another topic regarding visas that was of interest to the committee was sponsored parent visas.<sup>46</sup> The department reported that there were 'four or five' different categories of parent visas across two broad categories: contributory parent, which requires a 'significant financial requirement' to 'help offset the costs of the parent during their time [in Australia]', and standard parent, which requires no such obligation.<sup>47</sup> The department reported that the current waiting times for those two categories are 30 months and 30 years respectively.<sup>48</sup>

1.33 The committee asked about the types of statistics gathered about permanent migrants, with a particular focus on risk assessment in relation to religious extremism.<sup>49</sup> When asked about whether data on an applicant's religion is collected by the department, officers confirmed that Australia's immigration policy is non-discriminatory in regards to religion and that data of that nature is only collected in refugee cases where religion is 'pertinent to the nature of [a] protection claim', not for skilled or family visas.<sup>50</sup> In relation to this topic, the department reiterated that while it did not collect data on religion:

... visa risk assessment capabilities are applicable to all visa applicants of any race, creed, religion, sexual orientation and so on and so forth. The risk assessment attaches to the person. If the person who is making the application in the permanent program has tendencies [towards crime], that there is reason to believe they might be associated with Islamist terrorism or the like, then they will not get a visa.<sup>51</sup>

1.34 The department provided an update on its new visa risk assessment digital capability, an analytics intelligence program that uses 'predictive analytics, parameters, profiling [and] algorithms' to consolidate and analyse data in order to assess risk across entire visa classes. At a cost of \$100 million, it is anticipated that the program will be rolled out in a pilot form this year to assess risks against selected visa categories.<sup>52</sup>

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45 *Committee Hansard*, 27 February 2017, p. 133

46 *Committee Hansard*, 27 February 2017, pp. 117-8.

47 *Committee Hansard*, 27 February 2017, p. 117

48 *Committee Hansard*, 27 February 2017, p. 118

49 *Committee Hansard*, 27 February 2017, p. 119.

50 *Committee Hansard*, 27 February 2017, p. 119.

51 *Committee Hansard*, 27 February 2017, p. 120.

52 *Committee Hansard*, 27 February 2017, pp. 118-9.

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## Spill-over hearing

1.35 The committee held a spill-over hearing on the afternoon of 24 March 2017. The Immigration and Border Protection portfolio appeared between 4:00 pm and 5:30 pm, with the committee recalling Outcomes 2 and 3 of the department.

1.36 The committee asked a number of questions in relation to visas and border protection. Topics included:

- industry labour agreements for 457 visa holders, in particular fast food and fine dining agreements;<sup>53</sup>
- Operation Sovereign Borders and boat turn-backs;<sup>54</sup>
- the detection and interception of asbestos-containing materials at the border;<sup>55</sup> and
- a number of matters relating to citizenship, including the process for a permanent resident or other visa holder to become an Australian citizen; application numbers; and citizenship ceremonies.<sup>56</sup>

## Questions on Notice

1.37 A total of 299 questions were taken on notice by the portfolio across the February and March hearings. A full index is available at the committee's website.

1.38 At the date of reporting, the committee had received a total of 194 responses.

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53 *Committee Hansard*, 24 March 2017, pp. 32-8.

54 *Committee Hansard*, 24 March 2017, p. 38.

55 *Committee Hansard*, 24 March 2017, pp. 39-40.

56 *Committee Hansard*, 24 March 2017, pp. 41-9.

