

The Senate

Legal and Constitutional Affairs
Legislation Committee

Budget estimates 2014–15

June 2014

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Members

Senator the Hon Ian Macdonald (LP, QLD) (Chair)

Senator the Hon Lisa Singh (ALP, TAS) (Deputy Chair)

Senator Sue Boyce (LP, QLD)

Senator Gavin Marshall (ALP, VIC)

Senator Zed Seselja (LP, ACT)

Senator Penny Wright (AG, SA)

Senators in attendance

Senator the Hon Ian Macdonald (Chair), Senator the Hon Lisa Singh (Deputy Chair), Senator Sue Boyce, Senator Gavin Marshall, Senator Zed Seselja, Senator Penny Wright, Senator Mark Bishop, Senator the Hon Kim Carr, Senator the Hon Stephen Conroy, Senator Sam Dastyari, Senator Sean Edwards, Senator the Hon John Faulkner, Senator David Fawcett, Senator Mark Furner, Senator Sarah Hanson-Young, Senator the Hon Bill Heffernan, Senator Helen Kroger, Senator Senator Scott Ludlam, Senator the Hon Joe Ludwig, Senator John Madigan, Senator the Hon Jan McLucas, Senator Deborah O'Neill, Senator Nova Peris, Senator Lee Rhiannon, Senator Rachel Siewert, Senator Larissa Waters, Senator Whish-Wilson, Senator Nick Xenophon

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ABBREVIATIONS

ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
ACC	Australian Crime Commission
AFP	Australian Federal Police
AGD	Attorney-General's Department
AHRC	Australian Human Rights Commission
ASIO	Australian Security Intelligence Organisation
DIBP	Department of Immigration and Border Protection
IMA	Illegal Maritime Arrivals
JATF	Joint Agency Taskforce
MRT-RRT	Migration Review Tribunal and Refugee Review Tribunal
OSB	Operation Sovereign Borders
PNG	Papua New Guinea

PREFACE

On 13 May 2014, the Senate referred to the Legal and Constitutional Affairs Legislation Committee (the committee) for examination the estimates of proposed 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. The portfolio budget statements for 2014–15 were tabled on 13 May 2014.¹

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 2015 [**Appropriation Bill (No. 1) 2014–2015**];
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2015 [**Appropriation Bill (No. 2) 2014–2015**];
- Particulars of proposed supplementary expenditure in respect of the year ending on 30 June 2014 [**Appropriation Bill (No. 5) 2013–14**]; and
- Particulars of certain proposed supplementary expenditure in respect of the year ending on 30 June 2014 [**Appropriation Bill (No. 6) 2013–14**].

The committee was required to report on its consideration of the budget estimates on 24 June 2014.

Estimates hearings

The committee met in public session on 26, 27, 28 and 29 May 2014.

Over the course of the four days of hearings, totalling over 36 hours, the committee took evidence from the following departments and agencies:

Immigration and Border Protection Portfolio

- Department of Immigration and Border Protection
- Australian Customs and Border Protection Service
- Migration Review Tribunal and Refugee Review Tribunal

Attorney-General's Portfolio

- Attorney-General's Department
- Australian Crime Commission

¹ *Journals of the Senate*, No. 27, 13 May 2014, p. 778.

- Australian Customs and Border Protection Service
- Australian Federal Police
- Creative Partnerships Australia
- Australia Council
- Screen Australia
- National Film and Sound Archive
- National Gallery of Australia
- National Library of Australia
- National Museum of Australia
- National Portrait Gallery of Australia
- Old Parliament House
- Australian Human Rights Commission
- Australian Financial Security Authority
- Australian Law Reform Commission
- Office of the Australian Information Commissioner
- Federal Circuit Court of Australia
- Family Court of Australia
- National Native Title Tribunal
- Classification Board and Classification Review Board
- Office of Parliamentary Counsel
- National Archives of Australia
- Australian Commission of Law Enforcement Integrity
- Australian Security Intelligence Organisation

A full list of departments and agencies for which the committee has oversight is at Appendix 1.

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

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

Ministers and Parliamentary Secretaries

On 26, 28 and 29 May 2014, the committee heard evidence from Senator the Hon George Brandis QC, the Attorney-General and Minister for the Arts, and representing the Minister for Justice, and Senator the Hon Nigel Scullion, Minister for Indigenous Affairs representing the Attorney-General.

On 26 and 27 May 2014, the committee heard evidence from Senator the Hon Michaelia Cash, Assistant Minister for Immigration and Border Protection, representing the Minister for Immigration and Border Protection, and Senator the Hon George Brandis QC, representing the Minister for Immigration and Border Protection.

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

Questions on notice

The committee determined that the due date for submitting responses to questions on notice from the budget estimates round is 25 July 2014.

Further written explanations, and answers to questions on notice, will be tabled as soon as possible after they are received. That information is also available on the committee's internet page at the above address.

CHAPTER 1

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

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

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

1.2 The Principal Member of the MRT-RRT, Ms Kay Ransome, updated the committee on significant developments within the organisation since her last appearance in February. In her opening remarks, she covered the number of cases decided in the financial year, the tribunals' caseloads, the changing makeup of applications, waiting times, and the pending amalgamation of the MRT-RRT with the Administrative Appeals Tribunal, the Social Security Appeals Tribunal and the Classification Review Board.

1.3 The committee heard that there had been a significant increase in the number of cases decided by the tribunal for the financial year, with more 22,000 decisions made so far. This is some 40 per cent more than over the same period for the 2012–13 financial year, and 2.5 times the number decided in the year 2011–12. Over the same period, the active caseload of the tribunals decreased by almost 20 per cent. Ms Ransome advised the committee that it is projected that 24,000 cases will have been decided by the end of the current financial year. Ms Ransome informed the committee of reductions in waiting times for tribunal decisions, despite a continuing trend of increasing lodgements over the financial year. The committee also heard that the composition of the caseload has changed significantly, with increases in partner and protection visa applications, and decreases in skilled and student visa applications.¹

1.4 The committee heard that the MRT-RRT will be amalgamated with the Administrative Appeals Tribunal, the Social Security Appeals Tribunal and the Classification Review Board on 1 July 2015. The committee was informed that the details of the amalgamation are currently under consideration, and that a steering committee has been set up with members of affected tribunals and their respective home departments to oversee the process.² The expected savings from this consolidation (including the dismantling of the Office of the Australian Information Commissioner) have been calculated at \$19.4 million. However, officials were unable

1 *Committee Hansard*, 26 May 2014, p. 36.

2 *Committee Hansard*, 26 May 2014, pp 37–38.

to specify how much of this amount would come specifically from that agency, as the details are still being worked through.³

1.5 Officials were questioned about what consequences the amalgamation of the MRT-RRT with other tribunals would have on rights of access and appeal rights of applicants to the new body. Officials informed the committee that the steering committee set up to oversee the process had met once, and had yet to discuss such questions.⁴

Australian Customs and Border Protection Service (ACBPS)

1.6 In his opening statement, Mr Michael Pezzullo, Chief Executive Officer of the ACBPS, updated the committee on the ongoing reform of the processes of the ACBPS to address corruption issues within the service. Mr Pezzullo further updated the committee on the prosecution of corrupt officers within the ACBPS and related matters. Mr Pezzullo informed the committee of the likelihood of further arrests and prosecutions of those engaged within the service. The committee heard of his ongoing determination to strengthen the integrity and professional standards of the service through a range of measures, including drug and alcohol testing, mandatory reporting of serious misconduct, corrupt or criminal misbehaviours and a new 'declarable associations' policy.⁵

1.7 Mr Pezzullo informed the committee that, along with increased funding announced in the 2014–15 budget, and in addition to measures announced at earlier hearings in February, May and November 2013 and February 2014, the establishment of the Australian Border Force would enable the service to:

tackle in a more holistic way the challenges that confront us at the border, an increasing threat caused by serious and organised crime, more complex cargo supply chains and passenger routes, ageing technology and systems, and increasing trade and passenger volumes.⁶

Operation Sovereign Borders (OSB)

1.8 The budget and operations of OSB, comprising the Department of Immigration and Border Protection (DIBP), the ACBPS and the Joint Agency Taskforce, was the subject of extensive questioning by senators. Topics ranged from the exact human resources cost of the venture and the number and breakdown of those in detention to the cost of new lifeboat acquisitions, their refitting by Customs officers, whether asylum seekers are being held on Customs ships and the legality and safety of boat tow-backs.

1.9 Officials advised that 51 personnel had been seconded to the Joint Agency Taskforce since the commencement of OSB from eight separate government agencies.

3 *Committee Hansard*, 26 May 2014, p. 39.

4 *Committee Hansard*, 26 May 2014, pp 37–38.

5 *Committee Hansard*, 26 May 2014, pp 75–76.

6 Mr Michael Pezzullo, *Committee Hansard*, 26 May 2014, p. 75.

Because of the complexity of involvement of various government bodies and their workforces across sixteen different agencies with some personnel working only for brief periods on OSB as part of their daily workload, officials were not able to advise the exact number of people who had worked on OSB.⁷

1.10 The committee heard that the last successful people smuggling operation to Australia was 19 December 2013, compared to some 20,000 successful arrivals by boat for the entire calendar year of 2013.⁸

1.11 Officials advised the committee that as of Friday, 23 May 2014, 4,258 people were in on-shore detention (mainland Australia and Christmas Island) and 2,406 in off-shore detention (1,162 on Nauru and 1,244 on Manus Island).⁹

1.12 The committee sought details of the \$2.5 billion in projected savings over five years as a result of OSB. Mr Bowles informed the committee:

There are a range of implications of changes to our budget based on what has been happening over the last little while. Before I get to that, we have also seen a reduction in funding of around \$847 million over five years because of the machinery of government changes around settlement and multicultural services, so I want to discount that one for a second. Obviously given the fact that there has not been a successful venture to Australia, we can revise the arrival assumptions of illegal maritime arrivals, and that gives the budget a \$2.5 billion saving over five years. We also have the opportunity because of that reduction to reduce the broader immigration detention network. We have been doing a lot of work on the estate more broadly. The minister announced four closures earlier in the year, and, with the budget, there were another six. That will save the budget \$283 million over five years. There are a range of other activities to manage the legacy case load that will add some cost to the network. But those are the overall parameters of our budget adjustments.¹⁰

Department of Immigration and Border Protection (DIBP)

The investigation into the events of 16–18 February 2014 at the Manus Regional Processing Centre

1.13 In his opening statement, the Secretary of the DIBP, Mr Martin Bowles, informed the committee of the release of Mr Robert Cornall AO's independent review into the events of 16–18 February 2014 at the Manus Regional Processing Centre, and thanked Mr Cornall for his work. The committee heard that there was not one single factor that could have mitigated injuries or damage over the course of these events, nor was it possible to apportion blame for the incidents to any one individual or party. Mr Bowles updated the committee that the department was considering all 13 of the report's recommendations in consultation with relevant parties and the Papua New

7 *Committee Hansard*, 26 May 2014, p. 94.

8 *Committee Hansard*, 26 May 2014, p. 99.

9 *Committee Hansard*, 26 May 2014, pp 101–102.

10 *Committee Hansard*, 26 May 2014, pp 115–116.

Guinean (PNG) government, and expressed his sympathy to the family and friends of Mr Reza Barati, describing his death as a result of the unrest as 'a tragic event'.¹¹

1.14 Mr Bowles advised that, prior to the events of 16–18 February 2014, the department had increased by 130 the number of guards operating at the centre following submissions by G4S and other contractors:

...Yes, there are a whole range of factors that came through from G4S and other providers over a period of time, and action was being taken on a range of these events. In fact, there were 130 additional guards that were brought in in early February. There is some commentary on that, but again, picked up in isolation, it actually gets lost in the context. There were a range of mitigating strategies happening around that time. It was constantly discussed in the context of the JATF—and General Campbell can talk to that—around issues of what the latest intelligence advice from the island was. That is why there was agreement to have those extra 130 guards on the island prior to the events, because that was part of the intelligence that we were seeing and that was part of our reaction. I do know that there was some media reporting that said the department said, 'No'. The department asked for more information and a day later said, 'Absolutely, let's move this forward,' and these people were in place by, I think, 4 February, which was nearly two weeks before these events.¹²

1.15 The committee was told that it remained unclear how the decision was made to allow the PNG police squad into the centre and who made it.¹³

The amalgamation of the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service (Australian Border Force)

1.16 The committee heard that the ACBPS will be merged with the Department of Immigration and Border Protection. Mr Pezzullo informed the committee that some of these processes had already begun, with a complete amalgamation of operations set for 1 July 2015. Mr Pezzullo informed the committee that a new body, the Strategic Border Protection Command, will be established to oversee most ACBPS border operations in the coming year and that this body will form the centrepiece of the agency's new operating model.¹⁴ As part of this, according to Mr Pezzullo, 'the operational border functions of Immigration and Customs, including investigations, compliance and enforcement activities, as well as...the immigration detention network, the offshore processing centres and removals' will be consolidated into the new Australian Border Force (ABF).¹⁵

1.17 The committee questioned the DIBP and the ACBPS on a range of matters dealing with the details of this merger. The specific makeup and operational model of

11 *Committee Hansard*, 26 May 2014, p. 47.

12 *Committee Hansard*, 27 May 2014, p. 12.

13 *Committee Hansard*, 27 May 2014, p. 13.

14 *Committee Hansard*, 26 May 2014, p. 54.

15 Mr Michael Pezzullo, *Committee Hansard*, 26 May 2014, p. 54.

ABF in particular was a key topic of concern, with the committee asking a range of questions relating to the new model. Some topics of note related to the status of its commissioner; the cost of setting up the Strategic Border Command; its maritime vessels and aircraft, including new acquisitions; details of the Trusted Trader System; the new training college, and how the new force will interact with the immigration detention network.¹⁶ Over the course of the questioning, the committee was informed that many of the details about the new force are yet to be finalised and are still under discussion.

The tendering process for the contract to operate Manus and Nauru regional processing centres

1.18 Officials faced questioning regarding the tendering process that led to Transfield being contracted to operate both Manus Island and Nauru regional processing centres and the exclusion of G4S from this process, following a decision by the DIBP to amalgamate the contracts for the separate centres. Mr Bowles explained the reasoning behind the adoption of a limited tendering process and rejected claims of a conflict of interest between Mr Tony Shepherd's involvement with both Transfield and the Commission of Audit. Mr Bowles explained that the decision to use a limited tender process was consistent with procurement guidelines and was fundamentally an expansion and extension of an existing contract with a company that had a good track record of efficiency and value of service with government. Mr Bowles further explained that the contract had undergone a value-for-money audit by KPMG.¹⁷ The committee learned that G4S was not asked to put a proposal forward regarding its potential operation of the two facilities and that similar limited tendering processes had occurred under the previous government.¹⁸ Mr Bowles took ultimate responsibility for the decision to change contracting arrangements across the two centres.¹⁹ He updated the committee that the department would initiate a full public tender by the end of 2014 for contracts for the operation of the two centres, as current arrangements with Transfield are due to expire on 31 October 2015.²⁰

Changes to family visa applications for 'illegal maritime arrivals'

1.19 The committee heard of changes to the visa processing arrangements for relatives of illegal maritime arrivals (IMAs). Under new arrangements, the status of such applications will be afforded the lowest priority by the government, unless such applicants are relatives of Australian citizens. Furthermore, such arrangements apply to those who have already applied through this program prior to 1 January 2014. Officials explained that this was part of a broader objective of deterring future IMAs to Australia:

16 *Committee Hansard*, 26 May 2014, pp 54–75.

17 *Committee Hansard*, 27 May 2014, pp 4–8.

18 *Committee Hansard*, 27 May 2014, p. 17.

19 *Committee Hansard*, 27 May 2014, pp 17–18.

20 *Committee Hansard*, 27 May 2014, p. 31.

Senator SINGH: This is people who are already here who are trying to bring their families together so they can rebuild their lives.

...

Mr Bowles: That is correct, but if you leave it open others may come and try to use that as a pathway to Australia.²¹

Other matters of interest

1.20 A wide range of other matters were raised over the course of the hearings, including the data breach of asylum seeker applicant details on the DIBP website and its implications;²² the payment of legal costs on behalf of the PNG and Nauru governments for litigation relating to asylum seeker detention centres;²³ international examples of a single agency for immigration and customs and what lessons can be taken from them for Australia;²⁴ ACBPS's gifting of Bay Class and other Customs vessels to Sri Lanka and Malaysia;²⁵ asbestos importation law and examples of its breach;²⁶ and the definition of a 'safe platform' as regards to boat tow backs, among other subjects.²⁷

21 *Committee Hansard*, 27 May 2014, p. 94.

22 *Committee Hansard*, 26 May 2014, pp 53–54.

23 *Committee Hansard*, 27 May 2014, p. 24.

24 *Committee Hansard*, 26 May 2014, pp 62–63.

25 *Committee Hansard*, 26 May 2014, pp 79–80.

26 *Committee Hansard*, 26 May 2014, pp 80–84 and 87.

27 *Committee Hansard*, 26 May 2014, pp 118–119.

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 2014–15 financial year.

Australian Crime Commission (ACC)

Fiscal constraints and staff reductions

2.2 In his opening statement to the committee, the Chief Executive Officer of the ACC, Mr Chris Dawson, emphasised the importance of the commission as 'the backbone of the Australian Criminal Intelligence Network', and suggested that crime in Australia influenced everything from the welfare of communities and the health of individuals to the profitability of legitimate businesses and government revenue.¹ Mr Dawson informed the committee that the work of the commission had never been higher, yet it had to carry out its operations under increasing resource constraints and reduced government funding. The committee heard that, in the face of this new fiscal environment, full-time employees at the commission would drop from their current level of 524 to 450 by 2017–18, yet, in his view, the commission required 600 full-time employees as a minimum workforce to be fully effective.²

2.3 In response to this, the Attorney-General commented that, given the general fiscal environment that the government operated within, the reductions in funding to the ACC were relatively modest compared to most other government agencies. He further drew the committee's attention to the government's new policy of releasing money collected under the Proceeds of Crime Act and placed in the confiscated assets account to the commission for its operations, which would have returned to general revenue under the previous policy.³

2.4 The committee questioned officials as to the effect that staff reductions might have on the activities and core capabilities of the ACC, and how the activities of the commission would be prioritised in light of this:

Senator SINGH: Will this staff reduction have an effect on some of the programs and the activities of the ACC? I spoke last time in depth with Mr Jevtovic about the National Criminal Intelligence Fusion Capability, which I think has been developed over the last two years. Will a staffing reduction have an effect on the delivery of that kind of capability?

Mr Dawson: We will have to make an assessment of the totality of our capabilities. Fusion is a very important part of the commission's work. I cannot state with certainty that no staff in the fusion area will be reduced. We have a number of different capabilities, whether they be in physical

1 *Committee Hansard*, 26 May 2014, pp 6–7.

2 *Committee Hansard*, 26 May 2014, p. 7.

3 *Committee Hansard*, 26 May 2014, p. 9.

surveillance or whether they be investigators or analysts et cetera. The fusion capability of course is one of the very important elements of the work that we do. With a declining FTE we will proportionately decrease staff across specific areas.

Senator SINGH: Is this where you have to prioritise where you want to see staff lost from? Presumably there are important components, such as fusion capability, that need a certain quota of staff within them to make them run effectively. Surely it is a priority of the ACC to ensure that kind of fusion capability continues. Obviously, with natural attrition, you are going to have people offering voluntary redundancy, but you may not want job losses in those areas. What are you going to do as far as prioritising the most important areas for staff to remain in?

Mr Dawson: I will be ensuring that the core capabilities—and fusion is one of those core capabilities—are maintained so that we can continue to deliver the outputs required. If there are areas which are of a lower priority—and there are some that are lower priority than the fusion—of course we would look at those areas before we look at key priority areas.

Senator SINGH: That is good to hear.⁴

Australian Federal Police (AFP)

2.5 The new security measures being trialled at Parliament House to speed up members' access to the building was cause for concern for some senators. Officials were questioned as to whether the new arrangements, which allow certain pass holders to move through security gates without having their belongings scanned, could pose a significant risk to building security. In particular, it was suggested that certain of these pass holders may be 'compromised' and forced to engage in criminal activity. Mr Tony Negus, Commissioner of the AFP, agreed that the new arrangements did pose a risk and were subject to ongoing consideration by his agency, along with other measures.⁵ Mr Negus indicated that he had expressed his concerns to the Department of Finance about what effect the reductions in funding to the Department of Parliamentary Services might have on the security of Parliament House and that discussions with relevant parties were ongoing.⁶

2.6 The committee questioned the AFP on a range of other matters, including the security of Hobart airport following the proposed removal of all AFP officers; the Prime Minister's transitional accommodation arrangements at the AFP training college in Canberra and associated costs; metadata surveillance of members of parliament; the AFP raid on Seven West Media and associated legal costs; and AFP investigations into breaches of the Commonwealth Electoral Act.

4 *Committee Hansard*, 26 May 2014, p. 10.

5 *Committee Hansard*, 26 May 2014, pp 14–15.

6 *Committee Hansard*, 26 May 2014, p. 15.

Attorney-General's Department (AGD)

2.7 Officials from the AGD faced a range of questions, on topics including funding arrangements for royal commissions, possible amendments to the *Racial Discrimination Act 1975* and funding arrangements for community legal centres.

Funding arrangements for Royal Commissions into Institutional Responses to Child Sexual Abuse and the Home Insulation Program

2.8 The committee gave particular attention to the funding arrangements for the Royal Commissions into Institutional Responses to Child Sexual Abuse and the Home Insulation Program. Responding to statements made by the Shadow Attorney-General, the secretary of the AGD, Mr Roger Wilkins AO, made a statement to clarify funding arrangements. He informed the committee that funding had been reduced from the Royal Commission into Institutional Responses to Child Sexual Abuse, but that this royal commission did not require that funding.⁷ Some \$4 million in savings had come from the commission's 'capital fit-out works', which had come in under budget.⁸ He confirmed that this money, along with an additional \$2.7 million in savings due to the Commonwealth not incurring budgeted costs for appearing at the commission, were used to fund the Royal Commission into the Home Insulation Program to the amount of \$6.7 million, though he emphasised that this \$6.7 million would have otherwise returned to consolidated revenue and the reductions in funding would not affect the operations of the Royal Commission into Institutional Responses to Child Sexual Abuse.⁹

2.9 The secretary was asked a series of questions relating to these funding arrangements. In particular, he was asked to clarify an apparent contradiction in the department's answer to a question on notice (number 16 from 2014–15 additional estimates) and his own statement to the committee. In the question on notice, it was indicated that \$2.7 in savings were 'redirected from funding provided to the department and not required for 2013–14 for financial assistance for legal costs and related expenses for witnesses'.¹⁰ However, in his statement regarding where those savings were to be made, Mr Wilkins had informed the committee that savings were from:

moneys not required for financial and legal costs that we expect to be incurred by the Commonwealth as a party to the royal commission. It did not impact on funding for other witnesses before the royal commission or the royal commission itself.¹¹

7 *Committee Hansard*, 28 May 2014, p. 37.

8 *Committee Hansard*, 28 May 2014, p. 37.

9 *Committee Hansard*, 28 May 2014, p. 37.

10 *Committee Hansard*, 28 May 2014, p. 44.

11 Mr Roger Wilkins, *Committee Hansard*, 28 May 2014, p. 44.

2.10 In response to this, officials conceded that the answer provided to the question on notice did not sufficiently clarify from where the savings had come.¹² Officials confirmed that the \$2.7 million in savings had come entirely from funding for the Commonwealth's appearances as a party to the commission and had not come from funding for witnesses.¹³

2.11 The Attorney-General faced further questions regarding the model for funding witnesses at the Royal Commission into Institutional Responses to Child Sexual Abuse, and whether such funding could be guaranteed into the future:

Senator KIM CARR: Minister, can you agree that all the survivors of child sexual abuse who wish to give evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse will receive the financial assistance they require?

Senator Brandis: The government has always been fully supportive of the work of the royal commission. It has provided for legal assistance to witnesses who require it. As Ms Dines has said, a lot of them do not because of the circumstances in which they have come before the commission. As far as I can foresee, that will continue.¹⁴

Exposure draft amendments to section 18C of the Racial Discrimination Act

2.12 Of particular interest to the committee was the exposure draft of amendments to section 18C of the *Racial Discrimination Act 1975*. Officials faced a range of questions regarding public opinion on these amendments, their final form and the effect they would have on public discussion in Australia if adopted. The Attorney-General informed the committee that the form of changes to section 18C were yet to be finalised and told the committee that, in the government's opinion, changes were necessary as the current act is 'way too restrictive of freedom of discussion' and 'does not provide effective protection against racial vilification'.¹⁵

2.13 The exposure draft amendments were released for public consultation on 25 March 2014. The AGD received 5,557 related public submissions, which, according to the Attorney-General, represented a wide variety of views regarding the draft. The committee heard that these submissions would not be published by the department, nor would a breakdown of views be made public. This was a cause of consternation for some senators, but the Attorney-General explained:

This was not an opinion poll. This was to solicit views of the community about what was the best way to deal with this matter. We did not embark upon an opinion-polling exercise. What we did was ask the community to tell us their ideas. The government went to the election with the announced policy of reforming section 18C or, as I sometimes put it, repealing section 18C in its current form. That is our policy; that is what we are going to do.

12 *Committee Hansard*, 28 May 2014, p. 45.

13 *Committee Hansard*, 28 May 2014, pp 45–46.

14 *Committee Hansard*, 28 May 2014, pp 46–47.

15 Senator the Hon George Brandis QC, *Committee Hansard*, 28 May 2014, pp 57–58.

For that reason our policy was not to leave section 18C unamended, nor was it our policy to repeal section 18C entirely, as a lot of people would like to see us do. What I am particularly interested in are those people who have good ideas about ways in which the section can be improved. That is what I am looking for; I am looking for ideas. If I can put it this way, this is a qualitative, not a quantitative, exercise.¹⁶

2.14 The effect amendments to the Racial Discrimination Act might have more broadly upon Australian society was also explored. In particular, one senator questioned the Attorney-General on the possible risk that changes to the Act might create a perception overseas that Australia is a country tolerant of racism and the effect this might have on Australia's standing as a major education provider to the international market.¹⁷ In response, the Attorney-General stated his opinion that, while Australia was not a racist country, there were pockets of the community that were, and that it was best to expose such racism head on. He informed the committee that he believed changes to the Racial Discrimination Act would help achieve this.¹⁸

Cuts to legal services advocacy funding for community legal centres

2.15 As part of new funding arrangements announced in the May 2014 budget, community legal centres were informed that they could no longer access funding from the Commonwealth for advocacy and law reform work. The committee sought details about the rationale behind this decision. The Attorney-General indicated that the ultimate shape of the policy would be informed by a number of things, including the Productivity Commission's final report into access to justice services, which is due for release by the end of the year.¹⁹ He indicated that a decision had been made to prioritise what he described as 'the most important work' of providing front-line services for those most in need in the community, given a budget-constrained environment and finite resources.²⁰ According to the Attorney-General:

My view is that where people are missing out on legal representation and legal advice, then that is a bad thing. If they miss out because there are not enough resources in the system, then an injustice is done. Whereas, the kind of advocacy work or law reform work of which you are speaking can still be done by those very access to justice providers in a voluntary way, rather than funded through government, and often they do. The many witnesses before this very committee over the years, who have come and commented on various pieces of legislation, very often do so in a voluntary capacity. It is not an either/or question. If the unrepresented litigate misses out on their day in court, they will never get that day in court back again. But if money is not provided for advocacy services, it does not mean that the legal aid provider cannot be an advocate anyway by volunteering their services in

16 *Committee Hansard*, 28 May 2014, pp 56–57.

17 *Committee Hansard*, 28 May 2014, p. 96.

18 *Committee Hansard*, 28 May 2014, pp 96–97.

19 *Committee Hansard*, 28 May 2014, pp 65–66.

20 *Committee Hansard*, 28 May 2014, pp 65 and 67.

writing papers, appearing before parliamentary committee or all the other range of activity comprehended by that term.²¹

Changes to the Australian Human Rights Commission (AHRC)

2.16 At the request of the committee, Professor Gillian Triggs, President, Mr Graeme Innes AM, Disability Discrimination Commissioner, Dr Tim Soutphommasane, Race Discrimination Commissioner, and Mr Tim Wilson, Human Rights Commissioner, appeared on behalf of the Australian Human Rights Commission. Professor Triggs informed the committee that the commission was currently in a period of transition to manage budgetary constraints. The committee heard that the AHRC was in the process of finalising its strategic plan for the next four years, which will see it prioritise engagement with the business sector on human rights, violence, harassment and bullying, and the general human rights education program.²²

2.17 The committee heard that Mr Innes' term as Disability Discrimination Commissioner would soon conclude²³ and asked questions regarding this role following Mr Innes' departure from the AHRC.²⁴

2.18 Mr Wilson further advised the committee of his intention to fund some of the AHRC's activities, such as a planned symposium on free speech, with private sector support and sponsorship, to reduce or eliminate public expenditure on such initiatives.²⁵ When asked what arrangements were in place to ensure transparency around the sponsorship of such initiatives, Mr Wilson indicated that sponsorship of the AHRC's activities had precedent in the commission's history, and that the commission had guidelines regarding transparency and accountability to ensure the AHRC was not unduly influenced by such sponsorship.²⁶

Australian Security Intelligence Organisation (ASIO)

2.19 Mr David Irvine, the Director General of Security, advised the committee that there exist two mechanisms by which reviews of adverse security assessments of asylum seekers occur. According to Mr Irvine, ASIO itself has been reviewing the adverse assessments it has given over the previous 'three or four years'.²⁷ Reviews are also conducted independently by former judge Margaret Stone, acting in her role as Independent Reviewer of Adverse Security Assessments:

Mr Irvine: ...She mostly interviews the people concerned and she then provides advice to me on whether she believes our original assessment was

21 *Committee Hansard*, 28 May 2014, p. 66.

22 *Committee Hansard*, 29 May 2014, p. 7.

23 *Committee Hansard*, 29 May 2014, p. 7.

24 *Committee Hansard*, 29 May 2014, pp 8–9, 16–17.

25 *Committee Hansard*, 29 May 2014, p. 11.

26 *Committee Hansard*, 29 May 2014, p. 12.

27 Mr David Irvine, *Committee Hansard*, 29 May 2014, p. 62.

warranted or not. So far, of about 45 or 50 left, she has completed 22 such reviews.

Senator XENOPHON: How many has she changed?

Mr Irvine: Of that 22 she has agreed that ASIO's assessment was justified in 18 cases. In three cases she felt that our assessment was not appropriate and she asked me and my organisation to reassess those people.

Senator XENOPHON: Yes.

Mr Irvine: In two cases she thought the assessment was wrong and we looked at it and agreed that we would issue a non-prejudicial assessment.

Senator XENOPHON: In two cases?

Mr Irvine: In two cases, yes. In one case she argued that we should have issued a qualified assessment, and we agreed with that. On the basis of new information which she drew to our attention we actually changed an assessment to a qualified assessment of the fourth person. So, that is four out of 22.

Senator XENOPHON: So, there is a check and balance in the system through former Judge Stone.

Mr Irvine: There is.²⁸

2.20 Mr Irvine was questioned about the involvement of Australian nationals in the conflict in Syria and ASIO's interventions to limit that involvement. The committee was informed that ASIO is currently investigating approximately 150 people:

both onshore in Australia who are supporting, facilitating, helping organise, providing material or indeed seeking to recruit or be recruited into the foreign fighters in Syria, as well as the foreign fighters in Syria itself.²⁹

2.21 For security reasons, Mr Irvine could not detail the exact breakdown of the group.³⁰

2.22 One of the principle mechanisms for nullifying illegal participation of Australian nationals in the conflict is through the cancellation of passports. Mr Irvine outlined the process by which ASIO can seek to effect such cancellations, in collaboration with the Department of Foreign Affairs and Trade and the Minister for Foreign Affairs. He suggested that, while he was comfortable with current arrangements, in certain circumstances it would be useful, in situations of particular urgency, for there to be a more direct way for ASIO to cancel passports itself, which would be automatically subject to a review within a set period.³¹

28 *Committee Hansard*, 29 May 2014, p. 62.

29 Mr David Irvine, *Committee Hansard*, 29 May 2014, p. 66.

30 *Committee Hansard*, 29 May 2014, p. 66.

31 *Committee Hansard*, 29 May 2014, p. 66.

Other matters of interest

2.23 Other areas of interest to the committee during examination of the department and portfolio agencies included: cuts to funding for the arts;³² cabinet confidentiality and former Prime Minister Kevin Rudd's statement to the Royal Commission into the Home Insulation Program;³³ funding levels for Aboriginal and Torres Strait Islander Legal Services;³⁴ the proposed amalgamation of the MRT, Refugee Review Tribunal, Administrative Appeals Tribunal and the Classification Review Board;³⁵ funding arrangements and payments under the National Disaster Relief and Recovery Arrangements;³⁶ the new ASIO building;³⁷ and the legality of US drone strikes that killed two Australians in Yemen, among other subjects.³⁸

Senator the Hon Ian Macdonald
Chair

32 *Committee Hansard*, 28 May 2014, pp 6–14.

33 *Committee Hansard*, 28 May 2014, pp 50–53.

34 *Committee Hansard*, 28 May 2014, pp 79–82.

35 *Committee Hansard*, 28 May 2014, pp 77–79.

36 *Committee Hansard*, 28 May 2014, pp 100–102.

37 *Committee Hansard*, 29 May 2014, pp 64–65.

38 *Committee Hansard*, 29 May 2014, pp 72–74.

APPENDIX 1

DEPARTMENTS AND AGENCIES FOR WHICH THE COMMITTEE HAS OVERSIGHT

Attorney-General's Portfolio

- Administrative Appeals Tribunal
- Attorney General's Department
- Audio-Visual Copyright Society Limited (Screenrights)
- Australian Commission for Law Enforcement Integrity
- Australian Ballet School
- Australia Council
- Australian Crime Commission
- Australian Federal Police
- Australian Film, Television and Radio School
- Australian Financial Security Authority
- Australian Government Solicitor
- Australian Human Rights Commission
- Australian Institute of Criminology
- Australian Law Reform Commission
- Australian National Academy of Music
- Australian National Maritime Museum
- Australian Security Intelligence Organisation
- Australian Transaction Reports and Analysis Centre
- Australian Youth Orchestra
- Bundanon Trust
- Classification Board and Classification Review Board
- Commonwealth Director of Public Prosecutions
- Copyright Agency Limited
- Creative Partnerships Australia
- CrimTrac Agency
- Family Court of Australia
- Family Law Council

- Federal Circuit Court of Australia
- Federal Court of Australia
- Flying Fruit Fly Circus
- High Court of Australia
- National Aboriginal and Islander Skills Development Association Dance College
- National Archives of Australia
- National Film and Sound Archive of Australia
- National Gallery of Australia
- National Institute of Circus Arts
- National Institute of Dramatic Art
- National Library of Australia
- National Museum of Australia
- National Portrait Gallery of Australia
- Office of Parliamentary Counsel
- Office of the Australian Information Commissioner
- Office of the Commonwealth Director of Public Prosecutions
- Old Parliament House
- Screen Australia

Immigration and Border Protection Portfolio

- Australian Customs and Border Protection Service
- Department of Immigration and Border Protection
- Migration Review Tribunal and Refugee Review Tribunal
- Office of the Migration Agents Registration Authority

APPENDIX 2

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APPENDIX 3

TABLED DOCUMENTS

Immigration and Border Protection Portfolio, 26 and 27 May 2014

No.	Date	Tabled by:	Topic
1	26 May 2014	Mr Michael Pezzullo, Chief Executive Officer, Australian Customs and Border Protection Service	'Regarding ACBPS Reform and the Australian Border Force'
2	26 May 2014	Mr Michael Pezzullo, Chief Executive Officer, Australian Customs and Border Protection Service	Statement
3	26 May 2014	Senator the Hon Kim Carr	SMH article: 'Australian navy turns back asylum seeker boat to Indonesia after loading three extra people'
4	26 May 2014	Senator the Hon Stephen Conroy	A map of part of the southern coast of Java (Indonesia)

Attorney-General's Portfolio, 26, 28 and 29 May 2014

No.	Date	Tabled by:	Topic
1	26 May 2014	Mr Chris Dawson, Chief Executive Officer, Australian Crime Commission	Opening Statement
2	28 May 2014	Senator the Hon George Brandis QC, Attorney-General and Minister for the Arts	A record of funding applications by Castlemaine State Festival
3	28 May 2014	Mr Roger Wilkins AO, Secretary, Attorney-General's Department	'Royal Commission in Child Sexual Abuse – funding'