

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Budget estimates 2015–16

August 2015

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Senator Jacinta Collins (ALP, Vic.) (Deputy Chair)

Senator Catryna Bilyk (ALP, Tas.)

Senator Barry O'Sullivan (NATS, Qld.)

Senator Linda Reynolds (LP, WA)

Senator Penny Wright (AG, SA)

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Senator Chris Back (LP, WA)

Senator the Hon Kim Carr (ALP, Vic.)

Senator Sean Edwards (LP, SA)

Senator Sarah Hanson-Young (AG, SA)

Senator Jacqui Lambie (IND, Tas.)

Senator David Leyonhjelm (LDP, NSW)

Senator Jo Lindgren (LP, Qld.)

Senator Scott Ludlam (AG, WA)

Senator the Hon Joe Ludwig (ALP, Qld.)

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Senator the Hon Jan McLucas (ALP, Qld.)

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Senator the Hon Lisa Singh (ALP, Tas.)

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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
AIC	Australian Institute of Criminology
ASIO	Australian Security Intelligence Organisation
CDPP	Commonwealth Director of Public Prosecutions
DART	Defence Abuse Response Taskforce
DIBP	Department of Immigration and Border Protection
FOI	Freedom of Information
IMA	Illegal Maritime Arrivals
JATF	Joint Agency Taskforce
MRT-RRT	Migration Review Tribunal and Refugee Review Tribunal
OSB	Operation Sovereign Borders
OAIC	Office of the Australian Information Commissioner
SHEV	Safe Haven Enterprise Visas





# PREFACE

On 14 May 2015, the Senate referred to the Legal and Constitutional Affairs Legislation Committee (the committee) for examination the estimates of proposed expenditure for the financial year 2015–16. 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.<sup>1</sup>

## 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) 2015–2016];
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2015 [Appropriation Bill (No. 2) 2015–2016];
- Particulars of proposed supplementary expenditure in respect of the year ending on 30 June 2014 [Appropriation Bill (No. 5) 2014–15]; and
- Particulars of certain proposed supplementary expenditure in respect of the year ending on 30 June 2014 [Appropriation Bill (No. 6) 2014–15].

The committee was required to report on its consideration of the budget estimates on 23 June 2015.

## Estimates hearings

The committee met in public session on 25, 26, 27 and 28 May 2015.

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
- Australia Council

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

- Australian Crime Commission
- Australian Federal Police
- Australian Human Rights Commission
- Australian Institute of Criminology
- Australian Security Intelligence Organisation
- CrimTrac
- Commonwealth Director of Public Prosecutions
- Screen Australia
- Office of the Australian Information Commissioner
- Family Court of Australia
- Federal Circuit Court of Australia
- Federal Court of Australia
- National Archives of Australia

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](http://www.aph.gov.au/senate_legalcon).

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

### **Ministers and Parliamentary Secretaries**

On 25 and 26 May 2015, the committee heard evidence from Senator the Hon. Michaelia Cash, the Assistant Minister for Immigration and Border Protection, representing the Minister for Immigration and Border Protection, and on 26 May 2015 from the Senator the Hon. Michael Ronaldson, Minister for Veterans' Affairs and Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State, representing the Minister for Immigration and Border Protection.

On 27 and 28 May 2015, the committee heard evidence from Senator the Hon. George Brandis QC, the Attorney-General and Minister for the Arts, and on 28 May 2015 from the Senator the Hon. Simon Birmingham, Assistant Minister for Education and Training, representing the Attorney-General.

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

## **Answers to questions on notice, tabling date and spill-over hearing**

The committee determined that the due date for submitting responses to questions on notice from the Budget estimates round was 10 July 2015. The tabling date for the committee's Budget estimates 2015–16 report was 23 June 2015.

After the hearings on 25–28 May, the committee received correspondence from three committee members requiring a spill-over hearing pursuant to an Order of the Senate of 25 June 2014. As a result, the tabling date for the committee's report was extended to 12 August 2015. On 6 August 2015, the committee resolved that a spill-over hearing would not be required and that answers to questions on notice from the Attorney-General's Portfolio would be due by 7 August 2015.

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.

The committee notes that five answers to questions taken on notice by the Attorney-General's portfolio during additional estimates 2014–15 remain outstanding.



# 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 2015–16 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 developments in the organisation's operation and the effect of ongoing reforms. In her opening statement, Ms Ransome provided details regarding the ongoing caseload of the tribunals, statutory reforms which have enabled the fast-tracking of claims, the development of the Immigration Assessment Authority and the implications of the *Tribunals Amalgamation Act 2015*.<sup>1</sup> The *Tribunals Amalgamation Act 2015* integrated the MRT-RRT and the Social Security Appeals Tribunal into the Administrative Appeals Tribunal.

1.3 The committee questioned officials from the MRT-RRT about its current caseload, with specific inquiries regarding the types of visa claims heard, the average overturn rate for decisions and the primary reasons for overturning claims.<sup>2</sup> Ms Ransome indicated in her opening statement that the tribunal finalised 19,500 cases to date this year, and is on target to reach its yearly target of 21,000.<sup>3</sup> The MRT-RRT detailed that at the date of the hearing it had 14,000 active cases, this is where an application was lodged but no final determination had yet been made.<sup>4</sup>

1.4 Officials detailed that the bulk of the caseload currently managed by the tribunals stemmed from student visa refusals, partner visa refusals and temporary work visas.<sup>5</sup> Officials further explained that the overturn rate across all categories is approximately 30 percent, which is typical of the rate in previous years.<sup>6</sup>

1.5 The committee sought details about the implications of the *Tribunals Amalgamation Act 2015*, which was passed on 13 May 2015. Ms Ransome indicated that work was being undertaken to ensure the tribunal could 'present to the world as a

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1 *Committee Hansard*, 25 May 2015, pp 5–6.

2 *Committee Hansard*, 25 May 2015, p. 7.

3 *Committee Hansard*, 25 May 2015, p. 5.

4 *Committee Hansard*, 25 May 2015, p. 5.

5 *Committee Hansard*, 25 May 2015, pp 6–7.

6 *Committee Hansard*, 25 May 2015, p. 7.

single organisation' on 1 July 2015.<sup>7</sup> The focus of this effort primarily consists of streamlining 'back office' functions, as well as coordinating the operation of various existing registries, so that they may operate as one organisation.<sup>8</sup> Whilst it was noted that it was unlikely this process would be completed in its entirety by 1 July 2015, the amalgamation was proceeding smoothly.

### **Australian Border Force (ABF)**

1.6 Officials from both the Department of Immigration and Border Protection (DIBP) and the Australian Customs and Border Protection Services (ACBPS) detailed the measures currently being undertaken to establish the Australian Border Force (ABF). The ABF will come into operation on 1 July 2015. The stated purpose of the ABF is to manage the flow of people and goods across Australia's borders in a manner which maximises travel, trade, prosperity and social cohesion, whilst minimising threats to community safety and national security.<sup>9</sup>

1.7 The committee questioned the ACBPS about existing measures and processes which are employed to regulate the movement of several prohibited goods, including asbestos, illegal firearms and illicit substances. The Chief Executive Officer of the ACPBS, Mr Roman Quaedvlieg, detailed that whilst the importation of prohibited goods cannot be prevented in all cases, advanced targeting regimes exist to identify high-risks goods, industries and countries.<sup>10</sup> Mr Quaedvlieg explained that effective customs regulation does not solely rely on greater staffing and funding numbers, but also required the application of better industry engagement, analytics, intelligence queuing and targeted forensic examination.<sup>11</sup> In relation to the detection of illicit firearms and drugs the ACPBS has increased its number of consignment inspections, as a means of implementing its 'tackling-crime initiative'.<sup>12</sup>

1.8 The committee inquired into the new funding arrangements for the establishment of the ABF, with a particular focus on new expenditure assigned for additional equipment and training. Mr Quaedvlieg explained that the additional funding would be directed towards investment in mobile technologies and the skills of employees in utilising these. This is designed to increase the capabilities and judgement making ability of staff operating in the field.<sup>13</sup>

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7 *Committee Hansard*, 25 May 2015, p. 8.

8 *Committee Hansard*, 25 May 2015, p. 8.

9 *Committee Hansard*, 25 May 2015, p. 47.

10 *Committee Hansard*, 25 May 2015, p. 48.

11 *Committee Hansard*, 25 May 2015, p. 49.

12 *Committee Hansard*, 25 May 2015, pp 52–53.

13 *Committee Hansard*, 25 May 2015, p. 68.

1.9 Mr Quaedvlieg also discussed the rollout of new technology such as SmartGates, which have the capacity to collect biometrics through facial imaging.<sup>14</sup> The utilisation of this technology will enhance customs capabilities, allowing the application of analytics to passenger manifests and assisting in the making of real-time risk assessments.<sup>15</sup>

1.10 The committee questioned both officials from the ACBPS and the DIBP on further matters, including incidents within domestic detention centres, the disciplining of staff, the implementation of new measures regarding the disclosure of information, the number of customs officials who are authorised to carry firearms, the regulation of motor vehicle imports and exports, and investigations into matters regarding Ausfreight Global Logistics.<sup>16</sup>

### **Operation Sovereign Borders (OSB)**

1.11 The committee questioned officials from the DIBP, the ACBPS and the Joint Agency Taskforce (JATF) about the budgeting and implementation of Operation Sovereign Borders (OSB). Matters discussed included ongoing measures employed to intercept and turn-back Illegal Maritime Arrivals (IMA), the steps being taken to disrupt international people smuggling rings and the cost of conducting OSB.

1.12 The commander of the JATF, Major General Andrew Bottrell, explained in his opening statement that the primary purpose of OSB remained:

ensuring the continued safe conduct of on-water operations to prevent and deny illegal boat arrivals, the implementation of disruption and deterrence activities through transit and source countries to target people smugglers and inform the vulnerable people they would take advantage of, and support to the governments of Nauru and Papua New Guinea as they administer and control their respective processing centres.<sup>17</sup>

1.13 Major General Bottrell detailed that since 18 September 2013 there have been no successful arrivals in Australia, with 18 successful turn-backs.<sup>18</sup> Since the additional estimates hearing in February 2015, there had been one turn-back and one take-back.<sup>19</sup> A turn-back refers to a case where a vessel has been safely removed from Australian waters, whilst a take-back involves Australia working with a country of departure to see the safe return of passengers and crew.<sup>20</sup>

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14 *Committee Hansard*, 25 May 2015, p. 68.

15 *Committee Hansard*, 25 May 2015, p. 68.

16 *Committee Hansard*, 25 May 2015, pp 12, 25, 27, 32, 73.

17 *Committee Hansard*, 25 May 2015, p. 74.

18 *Committee Hansard*, 25 May 2015, p. 75.

19 *Committee Hansard*, 25 May 2015, pp 75–76.

20 *Committee Hansard*, 25 May 2015, p. 76.

1.14 The committee questioned officials about whether they had any requests from or engagements with European authorities on the methods employed in OSB, considering recent developments in the Mediterranean. The secretary of the DIBP, Mr Michael Pezzullo, indicated that there had been interest in the methods of deterrence, disruption and multi-agency cooperation which have been utilised in the Australian experience. It was explained that certain commonalities exist in the motivations and operation of international people smuggling syndicates.<sup>21</sup>

1.15 Further questions were raised about the ongoing funding of OSB. It was detailed that portions of OSB funding had been earmarked for measures including investment in enhancing *Ocean Shield's* operational capacity, funding for an anti-people smuggling strategic communications campaign and the provision of return assistance packages.<sup>22</sup>

## **Department of Immigration and Border Protection (DIBP)**

### ***Cross-Portfolio, Corporate and General Matters***

1.16 The DIBP provided the committee with details regarding cross-portfolio management of the department. Matters discussed included the measures being adopted by the DIBP to ensure the efficient delivery of its services, issues concerning internal management and the steps being taken to invest in new technology.

1.17 The committee questioned the DIBP about how it was to achieve the scheduled savings of \$270.1 million over the next four years<sup>23</sup> Mr Pezzullo indicated that such savings would primarily derive from the consolidation of functions such as IT, legal services, financial services and property arrangements, as well through the efficiencies arising from the greater use of technology.<sup>24</sup> It was explained that the consolidation of these functions would be due in large part to the integration of the DIBP and the ACBPS.

1.18 The committee also inquired into matters regarding the department's internal management. This included questions concerning the number of Senior Executive Service (SES) who have left the DIBP and the implications of a new dress code.<sup>25</sup> Mr Pezzullo explained that whilst some SES had departed, recruitment processes were ongoing.<sup>26</sup> In regards to the departmental dress code, the committee was assured that this was only intended to apply to ordinary professional work wear.<sup>27</sup>

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21 *Committee Hansard*, 25 May 2015, p. 80.

22 *Committee Hansard*, 25 May 2015, pp 51, 86–87, 93.

23 *Committee Hansard*, 25 May 2015, p. 19.

24 *Committee Hansard*, 25 May 2015, pp 19–20.

25 *Committee Hansard*, 25 May 2015, pp 22, 24–25.

26 *Committee Hansard*, 25 May 2015, p. 23

27 *Committee Hansard*, 25 May 2015, p. 25.



1.19 The DIBP was also questioned about further internal matters, including the current amount of funding assigned to its litigation caseload, the introduction of new ICT platforms, enhancement of airport security, the development of e-passports, the rollout of eGates and the enhancement of Townsville airport as an international airport.<sup>28</sup>

### ***Border Enforcement and Management***

1.20 The committee questioned the DIBP on matters relating to its border enforcement policies, including the operation of its onshore and offshore detention facilities. The issues covered included the flow of correspondence to detention centres, allegations regarding sexual abuse, the number of and conditions for children in detention, the numbers of those still currently in detention and the forms of legal assistance available to those IMA's currently being processed.

1.21 The DIBP was questioned about the treatment of correspondence sent by Mr Julian Burnside QC to detainees on Nauru.<sup>29</sup> The DIBP explained that these could not be delivered for a number of reasons, including that detainees were no longer located at the centre, a number chose not to receive the correspondence and in some cases the recipient could not be clearly identified.<sup>30</sup> The standard process for delivering correspondence is handled by the centre service provider, letters are not directly distributed to the addressee but they are provided an opportunity to come forward and collect any mail.<sup>31</sup>

1.22 The committee questioned DIBP officials about several allegations regarding incidents in detention centres. This included allegations regarding the production of crystal metamphetamine in the Maribyrnong detention facility.<sup>32</sup> It was explained that vulnerabilities exist in any system and that measures were being taken to reduce the potential inflow of contraband.<sup>33</sup> Questions were also raised regarding allegations that have arisen from the Royal Commission into Institutional Child Sexual Abuse. Mr Pezzullo indicated that where situation reports are issued these matters are investigated.<sup>34</sup> The DIBP also stated that officials were cooperating in relation to historical allegations raised by the royal commission.<sup>35</sup>

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28 *Committee Hansard*, 25 May 2015, pp 35, 36, 37, 38, 39–40.

29 *Committee Hansard*, 26 May 2015, pp 5-11.

30 *Committee Hansard*, 26 May 2015, p. 5.

31 *Committee Hansard*, 26 May 2015, p. 5.

32 *Committee Hansard*, 25 May 2015, p. 59.

33 *Committee Hansard*, 26 May 2015, pp 59–60.

34 *Committee Hansard*, 25 May 2015, p. 12.

35 *Committee Hansard*, 26 May 2015, p. 14.

1.23 The DIBP explained the measures taken with regard to children in detention, stating in relation to cases of extreme risk that:

Obviously, there is a significant amount of work that goes into monitoring and managing the welfare of children, particularly children who are determined to be at risk which involves, obviously, healthcare professionals being brought in to manage and help plan in relation to how we manage those risks in the detention environment. Our intention always is to get children out of detention, if we can. That is what we want to do, is get the children out of detention, particularly children at risk. In cases where we are unable to do that because one of the family members is being held due to an adverse security assessment, for example, and the family do not want to be split up then we have got to manage that within the detention environment.<sup>36</sup>

1.24 The committee pursued questions regarding measures being implemented to fast-track the legacy caseload of IMA's. Officials explained that fast-tracked procedures apply where an applicant is requested to provide the DIBP with further information or a response to adverse information. It was explained that:

Essentially, if a fast-track applicant is found not to engage Australia's protection obligations, departmental decision makers will apply additional factors to determine if the applicant is an excluded fast-track review applicant. Subsection 5(1) of the Migration Act defines who is an excluded fast-track review applicant. It includes, among other things, persons who have made manifestly unfounded claims for asylum; persons who have presented bogus documents, without a reasonable explanation; and persons who have previously had an application for protection refused in a third country. If found to be an excluded fast-track review applicant, the fast-track applicants case will be finalised and they will not have access to merits review.<sup>37</sup>

1.25 Officials faced questioning about the numbers of those still currently held in detention facilities. The legacy caseload of those in detention at the time of this hearing was 30,448.<sup>38</sup> Mr Pezullo explained that whilst the total number of people in detention had reduced, the average time for processing had increased. It was detailed that:

...the earlier number was smaller because there was a larger group, just in mathematical terms, that was being put through the permanent protection process, and now we are to a group that has more complications associated with it. So the number in detention is smaller, but the average length is increasing.<sup>39</sup>

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36 *Committee Hansard*, 26 May 2015, p. 75.

37 *Committee Hansard*, 26 May 2015, p. 15.

38 *Committee Hansard*, 26 May 2015, p. 31.

39 *Committee Hansard*, 26 May 2015, p. 24.

1.26 Questions were also raised regarding the level of legal assistance afforded to people whose claims are being processed. It was explained that the most assistance comes through the Primary Application Assistance Scheme, which is applicable only in cases of particular vulnerability.<sup>40</sup> It was explained that:

Last year, on 14 March 2014, the former minister for immigration removed access to the Immigration Advice and Application Assistance Scheme for illegal arrivals. At around the same time the minister also approved the formation of the primary application information services case to assist the most vulnerable illegal arrivals to apply for a protection visa. The service is provided under the pace to vulnerable cases. Essentially they are typically provided by a registered migration agent or lawyer and include that they meet the applicant to explain the agent-client relationship, explain the protection claims process, get claims and documentation to support an application for a protection visa—all the immigration and legal assistance to these vulnerable cases in the IMA legacy caseload.<sup>41</sup>

1.27 Further matters which were discussed with the committee included the training standards required for Serco guards, the budget funding allocated for offshore resettlement programs, the number of legal settlement claims made by the DIBP and the circumstances and conditions in which departmental staff operate.<sup>42</sup> Questions were also raised about regional processing on Nauru; however, this line of questioning was limited by the standing orders, which stipulate a committee shall take care not to inquire into any matters which are being examined by a select committee of the Senate appointed to inquire into such matters.<sup>43</sup>

### *Visas and Citizenship Programmes*

1.28 The committee raised questions in relation to outcome 2, which seeks to 'support a prosperous and inclusive society through the effective management of the visa and citizenship programmes.'<sup>44</sup> Matters discussed included newly proposed citizenship laws, the implementation of new visa arrangements, the management of existing working, student and humanitarian visas, and the oversight of visa fraud cases.

1.29 Questions were raised about the government's proposal regarding the revocation of an individual's citizenship in relation to terrorist activities. Departmental officials detailed the existing legal framework regulating the revocation of citizenship, noting that a person's Australian citizenship automatically ceases by operation of law if they are the citizen of another country and serve on the armed forces of a country at

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40 *Committee Hansard*, 26 May 2015, p. 36.

41 *Committee Hansard*, 26 May 2015, p. 30.

42 *Committee Hansard*, 26 May 2015, pp 41, 42–43.

43 *Committee Hansard*, 26 May 2015, p. 13.

44 *Committee Hansard*, 26 May 2015, p. 2.

war with Australia. The committee was informed that specific details regarding the current proposal were still under consideration.<sup>45</sup>

1.30 The DIBP also explained the reform measures being implemented to streamline the visa processing system. Information was provided regarding the introduction of the new class of Safe Haven Enterprise Visa (SHEV). This class of visa is a means of granting IMA's a pathway to permanent residency if they commit to living, learning or earning in a regional area of Australia for over three and a half years out of a five year period. Officials detailed that the SHEV scheme was designed to assist with the processing of the IMA legacy caseload.<sup>46</sup>

1.31 The committee inquired into which categories of visa applications were expected to rise. Mr Pezzullo indicated that the DIBP was planning to issue a record five million visas for visitor and temporary residency purposes this year.<sup>47</sup> The DIBP further elaborated that there had been significant growth in the number of tourist, visitor and student visas.<sup>48</sup> With the increase in the number of visa's granted, the department's focus had been on monitoring breaches of visa conditions which are also expected to increase as a matter of scale.<sup>49</sup>

1.32 Further questions were asked about the steps being taken by the DIBP in relation to the management of existing working, student and humanitarian visa programmes. The DIBP elaborated on the conditions and oversight applied to 457 working visas, the level of Australia's current humanitarian intake and the measures in place to ensure the integrity of certified education providers under the student visa program.<sup>50</sup> Specific questions were put to the DIBP about cases where visas were denied due to circumstances of fraud. Departmental officials clarified that in the case of student visas, 771 applications had been refused on the grounds of fraud at the time of the hearing. This was out of a total of 250,000 grants.<sup>51</sup>

1.33 Other matters discussed included the amount of funding allocated to combatting human trafficking, the compliance oversight of labour hire organisations, the continued management of settlement programs and the methods of appointment to and operation of the Ministers Council on Asylum Seekers and Detention.<sup>52</sup>

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45 *Committee Hansard*, 26 May 2015, p. 65.

46 *Committee Hansard*, 25 May 2015, p. 21.

47 *Committee Hansard*, 25 May 2015, p. 9.

48 *Committee Hansard*, 25 May 2015, p. 26.

49 *Committee Hansard*, 25 May 2015, p. 10.

50 *Committee Hansard*, 26 May 2015, p. 66.

51 *Committee Hansard*, 26 May 2015, p. 67.

52 *Committee Hansard*, 25 May 2015, pp 16, 27, 44–45, 71.

## 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 2015–16 financial year.

#### **Attorney-General's Department (AGD)**

##### *Arts Portfolio*

2.2 The committee questioned officials from the Attorney-General's Department (AGD), the Australia Council and Screen Australia, in relation to outcome 2 of the Attorney-General's portfolio. This covers the participation in and access to Australia's arts and culture through developing and supporting cultural expression. The committee questioned officials about the operation of the Australia Council, with a particular focus on the allocation and distribution of funds.

2.3 Questions were posed regarding the implementation of the National Program for Excellence in the Arts and its impact on the work of the Australia Council. The Attorney-General explained that the allocation of arts grants would operate on an arms-length basis from government, through a peer reviewed process overseen by the Australia Council.<sup>1</sup> The Attorney-General explained the justification for greater contestability:

....we are talking about values, we are talking about an approach to governance. And, the approach to governance, for the reasons that I have already outlined—and I do not want to be tedious or delay the committee, so I will not repeat them—is the desirability of having contestability, diversity, making arts funding available to a broader variety of organisations, festivals, individuals, groups than are able to fit within the Australia Council's current guidelines. This is, I think, when you say what evidence is there, a decision based on a philosophy of governance and a philosophy of the way in which arts funding ought to be administered.<sup>2</sup>

2.4 The Attorney-General also detailed specific funding initiatives, including support for Bell Shakespeare and the establishment of the Regional Artist Development Fellowships Program, which is designed to foster and support the experience and professional development of artists in regional centres.<sup>3</sup>

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1 *Committee Hansard*, 27 May 2015, p. 12.

2 *Committee Hansard*, 27 May 2015, p. 21.

3 *Committee Hansard*, 27 May 2015, pp 13, 28.

2.5 Other matters discussed included the management of the Australian International Cultural Council, the process of appointments to the governing bodies of arts and cultural institutions, the proposed Book Council and the ongoing funding for national cultural institutions.<sup>4</sup>

### ***Civil Justice and Legal Services Division***

2.6 The committee questioned officials from the AGD on matters falling under the Civil Justice and Legal Services Group, including the funding of legal aid commissions and community legal centres, the oversight of royal commissions and measures being taken to combat domestic abuse.

2.7 The committee pursued questions in relation to the funding allocated to legal aid bodies. The Attorney-General detailed the process of distributing legal aid funding, explaining that:

We are applying a neutral formula which seeks to adjust the aggregate pool of Commonwealth funding fairly between the various states and territories.

Secondly, within the aggregate amount of Commonwealth funding we are indicating our priorities in various ways. For example, as Mr Manning I think it was said before, we are identifying the priority client groups—that is, the most vulnerable people—and requiring that the Commonwealth's contribution be spent in priority on those most vulnerable client groups. That is a condition of the funding arrangements.

Thirdly, I have, as a result of a decision I made some time ago now, decided that we would not fund advocacy—for example, EDOs—not because there is anything wrong with advocacy and not because advocacy might not be useful but because, given that resources are finite, I adopted a policy that we might describe as cases before causes; in other words, actual clients with actual needs in a particular case seemed to me to be a more compelling claim on the Commonwealth's legal assistance dollar than people who wanted to use it to promote political, philosophical, environmental or ideological causes.<sup>5</sup>

2.8 Questions were raised about the role of the AGD in relation to the Royal Commission into Institutional Child Sex Abuse and the Defence Abuse Response Taskforce (DART). The Attorney-General clarified that whilst the AGD administers royal commissions, these operate and reach conclusions independently.<sup>6</sup> In relation to the DART, it was detailed that three matters have been referred to the police by the taskforce but no referrals in relation to the 'ADFA 24' have been made.<sup>7</sup>

2.9 The Attorney-General also provided details to the committee about steps being taken to combat domestic abuse. It was explained that this has been elevated as a priority for the Council of Australian Governments, with initiatives being

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4 *Committee Hansard*, 27 May 2015, pp 33, 35, 44, 50.

5 *Committee Hansard*, 27 May 2015, p. 103.

6 *Committee Hansard*, 27 May 2015, p. 68.

7 *Committee Hansard*, 27 May 2015, p. 98.

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implemented to develop a model national framework.<sup>8</sup> Reforms to advance this issue have included amendments to the *Family Law Act 1975*, funding for the development of online resources for judges and judicial practitioners and funding to legal aid centres which directly assist those suffering from family violence.<sup>9</sup>

### ***National Security and Criminal Justice Group***

2.10 The committee questioned AGD officials from the National Security and Criminal Justice group. The committee was updated on the status of a number of matters including measures to counter violent extremism, the administration of government disaster financial support payments and the operation of proposed new citizenship laws.

2.11 Departmental officials detailed the allocation of funds and measures being adopted to counter violent extremism. In particular, details were provided about the government's Living Safe Together initiative, which provides funding to support community led prevention projects.<sup>10</sup> The AGD explained that these grants were designed to identify the range of community organisations who could be partnered with in order to assist those on the trajectory of radicalisation.<sup>11</sup>

2.12 The AGD was questioned about variations in the operation of the government's disaster financial support payments, particularly in relation to greater investment in mitigation.<sup>12</sup> This investment is designed to pre-empt and prevent damage by natural disasters, rather than developing a payment system that focusses solely on recovery and reconstruction.<sup>13</sup>

2.13 Questions were raised in regards to the operation of proposed new citizenship and anti-terrorism laws. The Attorney-General explained that this remained a matter before the government and that a discussion paper would be released shortly.<sup>14</sup> It was detailed that any such measures would see interdepartmental cooperation regarding the development and oversight of anti-terror laws.

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8 *Committee Hansard*, 27 May 2015, p. 75.

9 *Committee Hansard*, 27 May 2015, p. 75.

10 *Committee Hansard*, 27 May 2015, p. 118.

11 *Committee Hansard*, 27 May 2015, p. 118.

12 *Committee Hansard*, 27 May 2015, p. 116.

13 *Committee Hansard*, 27 May 2015, p. 116.

14 *Committee Hansard*, 27 May 2015, p. 119.

## **Australian Human Rights Commission (AHRC)**

2.14 The committee questioned the AHRC on a range of matters including the celebrations organised for the *Racial Discriminations Act's* 40<sup>th</sup> anniversary, the current functions performed by the Human Rights Commissioner Mr Tim Wilson and the status of the current inquiry into age discrimination.

2.15 President of Australian Human Rights Commission, Professor Gillian Triggs, commenced her opening statement by making public interest immunity claims in relation to previous questions on notice regarding MG, Mr Basikbasik and Mr Charlie.<sup>15</sup> The committee deferred making a determination on this matter until a later date.<sup>16</sup>

2.16 The committee questioned Race Discrimination Commissioner, Dr Tim Soutphommasane, about the plans for the celebration of the 40<sup>th</sup> anniversary of the *Racial Discrimination Act 1975*.<sup>17</sup> Dr Soutphommasane explained this would include public consultations and lectures to reflect on the operation of the act.<sup>18</sup>

2.17 Mr Tim Wilson was questioned about his current focus and primary duties as the Australian Human Rights Commissioner. Mr Wilson explained the breadth of this role under the *Australian Human Rights Commission Act 1986* and detailed his specific focus on several topics, including LGBTI rights, indigenous property rights, the need to modernise the *Copyright Act*, the enduring relevance of religious freedom and issues regarding the protection of free speech.<sup>19</sup>

2.18 The committee also sought details from the Age and Disability Discrimination Commissioner, the Honourable Susan Ryan AO, regarding the current inquiry being conducted into age discrimination. Ms Ryan explained that research was being undertaken in order to collect data regarding cases of age discrimination and that policy proposals were being crafted to redress and avoid cases of long term unemployment.<sup>20</sup>

## **Federal Court, Federal Circuit Court and Family Court**

2.19 The committee questioned officials from the Federal Court, Federal Circuit Court and the Family Court, regarding the courts' current workload, delays in proceedings, the implementation of new fee structures, the expenditure of additional revenue received and the operation of different concessional fee arrangements.

2.20 The AGD detailed reforms currently being undertaken in regards to variation of the fee structure applicable in the different courts. Whilst it was explained that the amending regulation was still under consideration, certain fees, specifically those in

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15 *Committee Hansard*, 28 May 2015, pp 7–8.

16 *Committee Hansard*, 28 May 2015, p. 30.

17 *Committee Hansard*, 28 May 2015, p. 14.

18 *Committee Hansard*, 28 May 2015, p. 14.

19 *Committee Hansard*, 28 May 2015, pp 15, 16, 18, 20, 28.

20 *Committee Hansard*, 28 May 2015, p. 31.



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relation to insolvency applications, were scheduled for reduction.<sup>21</sup> Whilst certain fees would increase, in relation to divorce applications and consent orders, it was explained that the Family Court operates according to a two-tier fee system. This system applies concessional fee rates where certain needs-based criteria are met.<sup>22</sup>

### **Office of the Australian Information Commissioner (OAIC)**

2.21 The committee heard from the Office of the Australian Information Commissioner (OAIC), with specific focus on its role in streamlining Freedom of Information (FOI) matters and its ongoing administrative arrangements.

2.22 The Australian Information Commissioner, Professor John McMillan AO, explained that the OAIC has continued to discharge a streamlined FOI review and oversight function.<sup>23</sup> It was further detailed that the office has been working to the fulfilment of its statutory function and that steps were being taken to resolve the backlog of FOI claims.<sup>24</sup> The status of the OAIC's budgetary, staffing and office arrangements were also detailed.

### **National Archives of Australia**

2.23 The committee questioned the National Archives of Australia in relation to its processes for the declassification of documents, the release of documents to the public, the determination of exempt documents and the costs associated with handling applications.

2.24 The Director-General, Mr David Fricker, explained that the National Archives':

statutory role is to collect, preserve and make accessible the records of the Commonwealth. To make accessible the records of the Commonwealth, I feel, brings with it an obligation for us to do everything we can within our powers and within our resources to release those records to the public.<sup>25</sup>

### **Criminal justice portfolio agencies**

2.25 The committee heard from a number of portfolio agencies including the Australian Crime Commission (ACC), the Australian Institute of Criminology (AIC) and the Commonwealth Director of Public Prosecutions (CDPP).

2.26 Details were provided to the committee concerning the ongoing activities of the ACC in disrupting, understanding and responding to serious and organised crime threats.<sup>26</sup> The work of the ACC over the last year has included a report on crystal

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21 *Committee Hansard*, 28 May 2015, p. 52.

22 *Committee Hansard*, 28 May 2015, p. 53.

23 *Committee Hansard*, 28 May 2015, p. 33.

24 *Committee Hansard*, 28 May 2015, p. 33.

25 *Committee Hansard*, 28 May 2015, p. 45.

26 *Committee Hansard*, 27 May 2015, p. 52.

metamphetamine, conducting operations against organised crime syndicates and continued investigations into international and national money-laundering schemes.<sup>27</sup>

2.27 The committee pursued questioning about a potential merger of the ACC and the AIC. It was explained that the government had made no formal decision to proceed with a merger, but the matter was under consideration due to overlaps in the functions of the agencies.<sup>28</sup>

2.28 The CDPP was questioned about the establishment of the Serious Financial Crime Taskforce, which is designed to foster cooperation and information sharing between participating agencies in the prosecution of organised financial crime.<sup>29</sup> This taskforce will build on the prior work of Project Wickenby, which focussed on reviewing offshore arrangements in the pursuit of trusts and superannuation fraud.<sup>30</sup>

### **Australian Federal Police (AFP)**

2.29 The Australian Federal Police (AFP) was questioned on matters including the events leading up to the arrests of Mr Andrew Chan and Mr Myuran Sukumaran, the development of a national facial recognition database, the number of cases relating to unauthorised disclosures by Commonwealth officials, and investigations into electoral fraud allegations in the federal seat of Indi.

2.30 Officials from the AFP were questioned about the organisation's role in sharing information with Indonesian police about Mr Chan and Mr Sukumaran prior to their arrest.<sup>31</sup> AFP officials detailed why they had not requested that Mr Chan and Mr Sukumaran be allowed to pass through Indonesian security and into Australia, explaining that:

A decision was made at the time that that request would be an unfeasible and unreasonable request to make of the Indonesians because that is just not how it is done. Those sorts of requests to allow the narcotics to run in an uncontrolled situation do not occur. We do not make them in Australian either. The whole issue around a controlled operation is to have control. If you do not have control, you must take whatever action you deem necessary at the time to stop narcotics or other illicit drugs getting on the street. We knew full well, though, that if the Indonesians, through surveillance activity, which we had requested in the first instance, believed there were any drugs or saw drugs that they would interdict them themselves. This is exactly the same as we would do and the same as would happen in any other country throughout the world. So that was the basis of that original request that went to the Indonesians.<sup>32</sup>

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27 *Committee Hansard*, 27 May 2015, p. 52.

28 *Committee Hansard*, 27 May 2015, p. 53.

29 *Committee Hansard*, 28 May 2015, p. 59.

30 *Committee Hansard*, 28 May 2015, p. 59.

31 *Committee Hansard*, 28 May 2015, p. 61.

32 *Committee Hansard*, 28 May 2015, p. 61.

2.31 The committee pursued questioning in relation to the establishment of a national facial recognition database. Information was provided to the committee about the steps being taken to develop the capability to share and compare facial biometric information held by other agencies, in order to ensure an enhanced level of accuracy in identification.<sup>33</sup>

2.32 The committee raised questions about the number of investigations instigated in relation to section 70 of the *Crimes Act 1914*, which prohibits the disclosure of information by Commonwealth officials.<sup>34</sup> The AFP detailed that at the time of the hearing 17 matters were under investigation.<sup>35</sup>

2.33 AFP officials provided the committee with further details regarding the investigation into possible incidences of electoral fraud in the federal division of Indi. The committee was informed that 28 alleged fraudulent enrolments were referred to the AFP, and that 27 of these had been investigated.<sup>36</sup> Of the 27 referrals investigated, 4 briefs had been provided to the CDPP.<sup>37</sup>

### **Australian Security Intelligence Organisation (ASIO)**

2.34 The committee questioned the Australian Security Intelligence Organisation (ASIO) about programs to counter terrorism, the number of Australians participating in conflicts in Syria and Iraq, the operation of the National Terrorism Public Alert System and the use of the term 'Islamic State.'

2.35 ASIO officials explained that the success of measures to combat terrorism requires a combination of security measures in unison with community cohesion policies.<sup>38</sup> In response to questions about the number of Australians fighting in Syria and Iraq, the committee was informed that there are a little over 100 Australians currently participating and that 115 passports had been cancelled.<sup>39</sup>

2.36 The committee questioned ASIO officials about the operation of the National Terrorism Public Alert System. ASIO officials explained that a new five tiered warning system was currently being proposed.<sup>40</sup> The range of this warning system would extend from 'not expected' to, 'possible', 'probable,' 'expected' and 'certain.' It was clarified that once the national security level is raised, the whole-of-government response is coordinated by the AGD.<sup>41</sup>

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33 *Committee Hansard*, 28 May 2015, pp 69–70.

34 *Committee Hansard*, 28 May 2015, p. 77.

35 *Committee Hansard*, 28 May 2015, p. 77.

36 *Committee Hansard*, 28 May 2015, p. 76.

37 *Committee Hansard*, 28 May 2015, p. 76.

38 *Committee Hansard*, 28 May 2015, p. 78.

39 *Committee Hansard*, 28 May 2015, p. 79.

40 *Committee Hansard*, 28 May 2015, p. 81.

41 *Committee Hansard*, 28 May 2015, p. 82.

2.37 The committee also questioned ASIO officials about the inception of the term 'Islamic State' and its use in security briefings. The Attorney-General explained that a number of names have been attached to Islamic State and briefly summarised its intentions in seeking to establish a theocratic caliphate.<sup>42</sup>

**Senator the Hon Ian Macdonald  
Chair**

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42 *Committee Hansard*, 28 May 2015, pp 85–86.

# **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
- Office of the Director of Public Prosecutions

### ***Criminal intelligence and information***

- Australian Institute of Criminology
- Australian Transactional Reports and Analysis Centre
- CrimTrac Agency

### ***Legal services***

- Australian Government Solicitor
- Commonwealth Director of Public Prosecutions
- Office of Parliamentary Council

### ***Courts and tribunals***

- Administrative Appeals Tribunal
- Family Court of Australia
- Federal Circuit Court of Australia
- Federal Court of Australia
- High Court of Australia

### ***Regulation and reform***

- Australian Financial Security Authority
- Australian Human Rights Commission
- Australian Law Reform Commission

### ***Management of government records***

- National Archives of Australia

***Cultural affairs***

- Australian Council
- Australian Film, Television and Radio School
- Australian National Maritime Museum
- Bundanon Trust
- Creative Partnerships Australia
- Museum of Australian Democracy at 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
- 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

## APPENDIX 2

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## APPENDIX 3

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#### Immigration and Border Protection Portfolio, 25 and 26 May 2015

No.	Date	Tabled by:	Topic
1	25.05.15	Migration Review Tribunal- Refugee Review Tribunal	Opening Statement
2	25.05.15	Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection	Opening Statement
3	25.05.15	Senator the Honourable Kim Carr	Articles
4	26.05.15	Senator Catryna Bilyk	Correspondence
5	26.05.15	Senator Sarah Hanson-Young	Best Interest Assessment Form
6	26.05.15	Senator the Honourable Michaelia Cash, Assistant Minister for Immigration and Border Protection	Press Release
7	26.05.15	Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection	Student Visa Programme

#### Attorney-General's Portfolio, 27 and 28 May 2015

No.	Date	Tabled by:	Topic
1	27.05.15	Senator the Hon. George Brandis QC, Attorney-General and Minister for the Arts	Correspondence
2	28.05.15	Senator the Hon. George Brandis QC, Attorney-General and Minister for the Arts	Government Guidelines for Official Witnesses
3	27.05.15	Senator Catryna Bilyk	Press Release and Articles

