

# 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 2017-18 financial year.

1.2 The Department of Immigration and Border Protection (DIBP, the department) appeared over two days of hearings, Monday, 22 May 2017 and Tuesday, 23 May 2017.

### Opening statements

1.3 The Secretary of the DIBP and the Commissioner of the Australian Border Force (ABF) both made brief opening statements to the committee.

1.4 In his opening statement the Secretary, Mr Michael Pezzullo, noted that the department and its enforcement arm, the ABF, continued to face significant growth in activity across all trade, travel and migration categories, often 'at double-digit rates'.<sup>1</sup> He described the pressures that came from these increased activities and savings measures contained in the 2017–18 Budget:

In the most recent budget, the government made it clear that it expects the department to find over the budget and forward estimates years—that is, 2017-18 through to 2020-21—just under \$1 billion in cumulative productivity measures, efficiencies and cost-containment measures. The only way in which this will be able to be achieved is through a significant program of business transformation and automation; the concurrent retraining and upskilling of our workforce; and the adaptation of that workforce to very high-end, technologically advanced, working environments and systems. The clerical administrative model of the last century, which saw public servants working largely on paper files, will be replaced by a digital model where case and other tactical information is held in shared data repositories, including cloud-based systems where artificial intelligence, or AI, enhanced programs will prompt cases and other specific information to human analysts and decision-makers.<sup>2</sup>

1.5 The Commissioner, Mr Roman Quaedvlieg, commenced his opening statement by noting that the ABF would shortly mark its second anniversary. He provided an overview of the ABF's successes since its foundation in 2015,<sup>3</sup> including the:

- detection of significant importations of illicit drugs in cooperation with national and international partners;

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1 *Proof Committee Hansard*, 22 May 2017, p. 3.

2 *Proof Committee Hansard*, 22 May 2017, p. 3.

3 *Proof Committee Hansard*, 22 May 2017, pp. 3–4.

- improvements to the detection of asbestos in shipments to Australia, including through the use of 'intelligence systems, risk profiles and alerts that identify and target those high-risk shipments, goods, countries of origin, suppliers and imports that are of concern';<sup>4</sup>
- contribution it makes to reducing people smuggling across the region through Operation Sovereign Borders, noting it was more than '1,000 days since the last successful people smuggler ventured to Australia and over three years since the last known death at sea in our maritime corridors as a result of people smuggling';<sup>5</sup>
- protection of Australia's maritime environmental resources, including in apprehending foreign vessels engaged in illegal fishing;
- enhancement of Australia's border organisation, including introducing biometric capability to enhance border automation and the effectiveness of Australia's visa system; and
- building the agencies' technological capabilities, whilst nurturing the skills and abilities of the ABF workforce.

1.6 The committee then proceeded to question the department on topics related to the budget estimates for the Immigration and Border Protection portfolio, including departmental administration and general corporate matters, and Outcomes 1, 2 and 3 of the department. Matters discussed by the committee and department are summarised below.

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

1.7 The committee asked the department about a number of administrative and corporate matters.

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

1.8 Senators followed up on questions placed on notice at the previous estimates hearing in February 2017 about the costs of refit and rent for new offices for the department.<sup>6</sup> Mr Ben Wright, First Assistant Secretary, Corporate Services Division, gave the committee information about this that was already in the public domain:

The overall cost of the project is \$255 million. The overall cost of the actual fit-out is \$181 million, and that is spread over four buildings: one at the airport and three buildings in Belconnen.

...In terms of rent for the building, overall the proposed rent over a 25-year period is \$1.745 billion. That is across four buildings. That compares with our current rent of \$1.933 billion, so the project will save approximately \$188 million in rent over the life of the project.

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4 *Proof Committee Hansard*, 22 May 2017, p. 4.

5 *Proof Committee Hansard*, 22 May 2017, p. 4.

6 *Proof Committee Hansard*, 22 May 2017, p. 5.

...It is a 30-year project, so the leases are for 25 years. It is 15 years with a 10-year option. It is a five-year implementation period, so the buildings are being phased in over a period of five years, which gives us a total project of 30 years.<sup>7</sup>

1.9 On questioning from senators, Mr Wright gave a breakdown of where the projected savings would be found over the long-term:

The total cost of the actual project is around \$3.258 billion. That is the whole-of-life cost for the project if we stay doing what we are doing. The proposal is \$3.022 billion, so that is where the savings of \$236 million were. When they did the CBA, they looked at, 'Okay, what would happen to the cost-benefit analysis if we stayed with the status quo?' If we stayed with the status quo, it would cost the department \$3.258 billion over the 30-year period. Under the new proposal, the whole-of-life costs are estimated at \$3.022 billion, which gives savings of \$236 million over the life of the project.<sup>8</sup>

1.10 Mr Pezzullo also commented on some of the unique needs of the department regarding its offices:

...the operational functions that will be performed at our principal headquarters location, which will be the airport, will require the commissioner and I to have 24/7 access through our watch teams to information rated up to and beyond top secret. That has particular requirements that go to physical security, personnel security and building management. Even within that auspice, you then have to have particular zones—that I cannot really talk about in public too readily—that are further locked down, which have got particular identity-management and access-control arrangements. It also goes to the nature of the servers that you have and the like, which I do not want to particularise. The thought that this is a nine-to-five public service office refurbishment is, frankly, wrong.<sup>9</sup>

1.11 Officers of the department confirmed that this project was undertaken based on a cost-benefit analysis conducted by an independent consultant, and that these findings have been cleared through the Department of Finance.<sup>10</sup> Moreover, the department noted that the costings had been done in accordance with the stipulations of the manual of the Parliamentary Standing Committee on Public Works.<sup>11</sup>

1.12 The department noted that the cost-benefit analysis that informed the project has been provided in private to the Parliamentary Standing Committee on Public Works.<sup>12</sup>

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7 *Proof Committee Hansard*, 22 May 2017, p. 7.

8 *Proof Committee Hansard*, 22 May 2017, p. 8.

9 *Proof Committee Hansard*, 22 May 2017, p. 33.

10 *Proof Committee Hansard*, 22 May 2017, pp. 7–9.

11 *Proof Committee Hansard*, 22 May 2017, p. 9.

12 *Proof Committee Hansard*, 22 May 2017, p. 8.

1.13 Committee members raised concerns about the nature of responses from DIBP to questions on notice (QoNs) taken at additional estimates in February 2017 relating to this subject.

1.14 In the response to QoN AE17/120,<sup>13</sup> relating to the costs of the rent and refit of new buildings for DIBP, the department stated:

Pursuant to the operation of section 23 of the Public Works Act 1969, the Department is not compelled to provide this information for the purposes of Additional Estimates, as it has been provided to the Parliamentary Standing Committee on Public Works in private.

1.15 When asked to clarify this response, the department confirmed that information had previously been provided to the Parliamentary Standing Committee on Public Works in confidence because the content was commercial-in-confidence, and that therefore the information could not be provided.<sup>14</sup> Members of the committee contended that these were not valid grounds to withhold information in the estimates process.<sup>15</sup>

1.16 It was noted that the department's response to QoN AE17/121, also relating to the immigration office upgrades, did not provide details due to information being considered commercial-in-confidence.<sup>16</sup> The DIBP response to QoN AE17/121 stated:

The tender evaluation report associated with this process contains the information requested, but is considered Commercial in Confidence. As negotiations with the successful tenderers are still to be finalised it therefore, cannot be provided.

1.17 Procedural Order of Continuing Effect 11 sets out the requirements of any claims for commercial confidentiality:

The Senate and Senate committees shall not entertain any claim to withhold information from the Senate or a committee on the grounds that it is commercial-in-confidence, unless the claim is made by a minister and is accompanied by a statement setting out the basis for the claim, including a statement of any commercial harm that may result from the disclosure of the information.

1.18 The committee reiterated that a PII claim would be required should responses not be provided to QoNs AE17/120 and AE17/121 on the grounds of commercial confidentiality, and that a response to the Parliamentary Standing Committee on Public Works did not constitute a response to the estimates committee.<sup>17</sup>

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13 Responses to additional estimates QoNs from DIBP are available on the committee website at [http://www.aph.gov.au/Parliamentary\\_Business/Senate\\_Estimates/legconctte/estimates/add1617/DIBP/index](http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/legconctte/estimates/add1617/DIBP/index).

14 *Proof Committee Hansard*, 22 May 2017, p. 6.

15 *Proof Committee Hansard*, 22 May 2017, p. 6.

16 *Proof Committee Hansard*, 22 May 2017, p. 5.

17 *Proof Committee Hansard*, 22 May 2017, p. 6.

1.19 In relation to this matter, Senator Gallacher stated advice he had received on this matter from the Clerk of the Senate:

... there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The underlying principle is that the Senate has an overarching right to obtain information—a right supported by the inquiry powers it possesses under section 49 of the Constitution. We have the right to ask the questions, and you either need to answer them or claim public interest immunity.<sup>18</sup>

1.20 Mr Pezzullo informed the committee that he would refer the matter to the minister to determine if a claim for PII would be made.<sup>19</sup>

### ***Workforce and staffing matters***

1.21 The committee discussed a number of issues relating to departmental workforce and staffing, including the:

- 'reprofiling and recomposition' of departmental staffing, designed to find operational efficiencies and productivity gains by locating relevant parts of the department together;<sup>20</sup>
- small staffing decline of around 245 positions between 2016–17 and 2017–18, mainly from corporate areas of the department, achieved mainly by attrition and some 'targeted voluntary redundancies at various levels';<sup>21</sup>
- reduction of staff in visa areas had been offset by productivity gains coming from automation;<sup>22</sup>
- use of labour-hire firms to source departmental staff, including the need for contractors to hold security clearances, where necessary;<sup>23</sup>
- rationalising of three call centres in London, Ottawa and Sydney into an Australia-based centre;<sup>24</sup>
- ABF College at Kingsford Smith Airport in Sydney delivering training to frontline ABF officers;<sup>25</sup> and
- closure of the Dandenong immigration office.<sup>26</sup>

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18 *Proof Committee Hansard*, 22 May 2017, pp. 6–7.

19 *Proof Committee Hansard*, 22 May 2017, p. 7.

20 *Proof Committee Hansard*, 22 May 2017, p. 43; *Proof Committee Hansard*, 23 May 2017, p. 86.

21 *Proof Committee Hansard*, 22 May 2017, p. 47.

22 *Proof Committee Hansard*, 22 May 2017, p. 48.

23 *Proof Committee Hansard*, 22 May 2017, p. 57.

24 *Proof Committee Hansard*, 22 May 2017, p. 60 and 61.

25 *Proof Committee Hansard*, 22 May 2017, p. 60.

### **Security and cybersecurity**

1.22 The committee took evidence on a number of issues relating to security and cybersecurity, including:

- confirming the department had provided information to the independent review of the Australian intelligence community being undertaken by Mr Michael L'Estrange;<sup>27</sup>
- data breaches of departmental information, including reporting requirements and ongoing litigation;<sup>28</sup> and
- departmental efforts to improve cybersecurity, particularly in light of issues raised by the Auditor-General in reports of 2014 and 2017;<sup>29</sup>

### **Operation Sovereign Borders**

1.23 Air Vice-Marshal Stephen Osborne CSC, Commander, Operation Sovereign Borders Joint Agency Task Force, gave the committee an update on Operation Sovereign Borders:

As the commissioner has already indicated—and, Senator Hume, as you have already mentioned—it has now been more than 1,000 days since the last people-smuggling venture reached Australia and more than three years since the last known death at sea en route to Australia as a result of people smuggling. Our ability to detect, intercept and turn back people smuggling boats is stronger than ever. We have a committed and highly capable civil maritime surveillance and border security response fleet with access to the combined resources of the Australian Border Force and the Australian Defence Force.

Since Operation Sovereign Borders commenced in 2013, we have intercepted and returned 30 people-smuggling boats and more than 765 people who attempted to reach Australia illegally. Despite the success of Operation Sovereign Borders, we know that the threat of people smuggling across our region remains. Criminal people smugglers continue to peddle false promises to uninformed and vulnerable people, taking their money and putting them on unsafe boats. Operation Sovereign Borders remains resolute in the effort to stamp out people smuggling across the region.<sup>30</sup>

1.24 Air Vice-Marshal Osborne noted the ways that Australia's international partners had contributed to reduce people smuggling in the region:

In March this year, Australian authorities worked with the government of Sri Lanka to return 25 Sri Lankan nationals who attempted to reach

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26 *Proof Committee Hansard*, 22 May 2017, p. 74.

27 *Proof Committee Hansard*, 22 May 2017, p. 63.

28 *Proof Committee Hansard*, 22 May 2017, p. 65.

29 *Proof Committee Hansard*, 22 May 2017, pp. 77–78.

30 *Proof Committee Hansard*, 22 May 2017, p. 44.

Australia illegally by boat. In Indonesia, the Indonesian National Police have recently made a number of significant arrests of people smugglers operating in their country. We place great importance on our relationship with these and other partners in our region, and we will continue to work with them to disrupt and dismantle the people-smuggling trade.<sup>31</sup>

1.25 He noted that disruption and deterrence activities under Operation Sovereign Borders were undertaken with 11 countries in the region:

There are strategic communications of various sorts filling people in on what the risks are and on Australian government policy and so forth. It extends beyond simply that sort of education. It also extends to cooperation under such processes as the Bali Process, where we work with like-minded countries in our region to defeat people smuggling. It might be sharing information or it could be on techniques using law enforcement, border management—a range of activities. As I mentioned, in many cases we find regional countries share the same concerns as we do. They want to control their borders, they want to defeat the people smugglers and they want to stop people unnecessarily putting their lives at risk, so they take a lot of these actions themselves.<sup>32</sup>

1.26 The committee sought information on a number of other aspects of Operation Sovereign Borders, including:

- boat turn backs and airfield take-backs conducted under Operation Sovereign Borders, including the information collected as part of these processes;<sup>33</sup>
- Australia's international protection obligations for turn-backs and takebacks;<sup>34</sup>
- on-water determinations of whether a person on a boat entering Australian waters engages Australia's international protection obligations;<sup>35</sup> and
- asylum seekers who do not have identification documents, including those who may have had their papers taken or destroyed by people smuggling operators.<sup>36</sup>

## Regional Processing Centres

1.27 Mr Pezzullo confirmed to the committee that the Commonwealth and the government of Papua New Guinea (PNG) have agreed to close the Manus Regional Processing Centre (Manus RPC) on 31 October 2017. The department also confirmed that the Nauru RPC will continue to operate, as per the agreements made in 2012 and 2013 with the government of Nauru.<sup>37</sup>

31 *Proof Committee Hansard*, 22 May 2017, p. 44.

32 *Proof Committee Hansard*, 22 May 2017, p. 45.

33 *Proof Committee Hansard*, 22 May 2017, pp. 84–85 and 102.

34 *Proof Committee Hansard*, 22 May 2017, p. 86–87.

35 *Proof Committee Hansard*, 22 May 2017, p. 98.

36 *Proof Committee Hansard*, 23 May 2017, p. 67.

37 *Proof Committee Hansard*, 22 May 2017, p. 18.

1.28 The committee asked a number of other questions concerning the RPCs, including:

- the notification of residents on Manus of the closure of the RPC, as well as the support and options open to them in the future;<sup>38</sup>
- the implementation of the agreement with the United States to resettle refugees from RPCs;<sup>39</sup>
- Australia's track record of working with other countries bilaterally to resettle refugees, as well as with international organisations such as the UNHCR and the International Organization for Migration;<sup>40</sup>
- transfer of residents of RPCs to Australia for medical treatment;<sup>41</sup>
- efforts to relocate stateless people in detention;
- the reduction of the number of children in detention to zero, noting that the department had taken one 17-year-old child into detention the day before the hearing; and
- the increase in the number of persons in detention with criminal histories of significance.<sup>42</sup>

#### ***Events at the Manus RPC on Good Friday 2017***

1.29 The committee also discussed events that occurred at the Manus Island RPC on Good Friday, 14 April 2017, in which a number of gunshots were fired into the compound. Mr Pezzullo advised the committee that the PNG defence and police forces were inquiring into this matter:

In the circumstances, given the seriousness of the matter, the best course of action, and one that I thoroughly endorse, is to then await the conclusion of the two relevant inquiries—one is a military justice inquiry and the other is a criminal justice inquiry in the civil jurisdiction—and, then, if we have got more to say at that point, we will say more at that point.<sup>43</sup>

1.30 On the number of injuries sustained in these events, Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, told the committee:

The advice that I have to hand at the moment is that nine personnel were injured. None of those were serious injuries, as I understand. Five of those were service provider personnel, one was a PNG Defence Force officer, one

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38 *Proof Committee Hansard*, 22 May 2017, p. 18 and 53.

39 *Proof Committee Hansard*, 22 May 2017, pp. 10–11.

40 *Proof Committee Hansard*, 22 May 2017, p. 12.

41 *Proof Committee Hansard*, 22 May 2017, pp. 118–19.

42 *Proof Committee Hansard*, 22 May 2017, p. 120.

43 *Proof Committee Hansard*, 22 May 2017, p. 21.

was an Immigration and Citizenship Service Authority officer and two were residents from within the MRPC.<sup>44</sup>

1.31 Mr Quaedvlieg confirmed that the department notified Comcare of this matter on 18 April 2017, and subsequently officially referred it to them on 30 April 2017, in accordance with the strict duty of care arrangements for departmental staff and contractors.<sup>45</sup>

## **Immigration matters in the Administrative Appeals Tribunal**

1.32 The committee discussed a number of issues relating to the department's dealings with the Administrative Appeals Tribunal (AAT), including:

- the processes by which the AAT notifies the department of its decisions, and the ability of the Minister to request a review of decisions to be undertaken by the Federal Circuit Court or the Federal Court;<sup>46</sup> and
- information that is on the public record about certain cases before the AAT, including the department's compliance with the Privacy Act and relevant parts of the *Migration Act 1958* (Migration Act).<sup>47</sup>

## **Intake of refugees from Syria**

1.33 The committee received evidence about Australia's current refugee intake, including the special program for refugees from Syria announced in September 2015.

1.34 The department told the committee that the program granting places to 12,000 Syrian refugees had been granted in full.<sup>48</sup> The department stated that most of these refugees are families (99 per cent), that the program grants Permanent Protection visas, and that refugees are supported by a range of services through the Department of Social Services and, in some cases, by family members and/or local communities in Australia.<sup>49</sup>

## **Visas**

1.35 The committee was interested in a range of issues for a range of visa programs. This included seeking information on changes to the 457 visa system, including what consultation or labour market testing was undertaken by the department with other Commonwealth departments, as well as the potential impact of 457 visas in higher education and research, the meat industry, the arts sector, and for horse racing.<sup>50</sup>

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44 *Proof Committee Hansard*, 22 May 2017, pp. 19–20.

45 *Proof Committee Hansard*, 22 May 2017, p. 51.

46 *Proof Committee Hansard*, 22 May 2017, pp. 13–16; *Proof Committee Hansard*, 23 May 2017, pp. 6–7; See chapter 2 for the committee's discussions with the AAT, which falls within the portfolio of the Attorney-General.

47 *Proof Committee Hansard*, 22 May 2017, pp. 25–26 and 37.

48 *Proof Committee Hansard*, 23 May 2017, p. 45.

49 *Proof Committee Hansard*, 23 May 2017, pp. 45–46.

50 *Proof Committee Hansard*, 23 May 2017, pp. 3, 12–13, 17, 27–28, 47 and 95.

1.36 The committee also sought information on a number of other issues, including:

- cancellation of visas under the Migration Act, including for members of motorcycle gangs;<sup>51</sup>
- expediting Australia's visa processing through improving the department's ICT capability;<sup>52</sup>
- changes to citizenship requirements and processes, including English language, civics and character testing, as well as processing times;<sup>53</sup>
- new and proposed integrity measures for visas, including obtaining police checks from an applicant's country of origin or countries where they have lived, the publication of sponsors' details, and the sharing of tax file numbers between the Australian Tax Office (ATO) and the department;<sup>54</sup>
- visa compliance activities undertaken 'in the field' and cooperation with other agencies including the ATO to identify breaches;<sup>55</sup>
- the issue of 'legacy caseloads' of individuals who are in Australia and yet to apply for protection visas, given the deadline announced for applications to be lodged by 1 October 2017;<sup>56</sup> and
- the intention of the proposed family violence amendments to the Migration Act currently before parliament.<sup>57</sup>

## Other matters

1.37 The committee inquired into a number of other matters overseen by the department, including:

- forecast visitor numbers to Australia over the forward estimates;<sup>58</sup>
- the monitoring of the border in the Torres Strait, including departmental officers and the engagement of local communities;<sup>59</sup>
- work to limit and reduce the illicit tobacco market in Australia,<sup>60</sup> and the department's increased focus on the detection of imported products containing asbestos;<sup>61</sup>

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51 *Proof Committee Hansard*, 22 May 2017, pp. 26 and 120.

52 *Proof Committee Hansard*, 22 May 2017, pp. 55–56.

53 *Proof Committee Hansard*, 23 May 2017, pp. 8–9, 30, 45 and 73–74.

54 Note the two latter measures are subject to legislative amendment. See *Proof Committee Hansard*, 23 May 2017, pp. 35–36.

55 *Proof Committee Hansard*, 23 May 2017, p. 19.

56 *Proof Committee Hansard*, 23 May 2017, 20, pp. 99–100.

57 *Proof Committee Hansard*, 23 May 2017, p. 63.

58 *Proof Committee Hansard*, 22 May 2017, p. 101.

59 *Proof Committee Hansard*, 22 May 2017, pp. 91–92 and 103–104.

- seizures of illicit drugs entering Australia including methamphetamine, ephedrine and cocaine;<sup>62</sup>
- new or recently introduced technology expediting border processing, including SmartGate technology at Australian airports, improvements to biometric capability, and visa risk assessment programs;<sup>63</sup> and
- free trade agreements, including the potential for overseas workers to be brought into Australia to work on infrastructure projects.<sup>64</sup>

### **Questions on Notice**

1.38 A full index of questions taken on notice during the budget estimates hearings will be made available on the committee's website and responses will be published as they are received.

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60 *Proof Committee Hansard*, 22 May 2017, pp. 95–96; *Proof Committee Hansard*, 23 May 2017, p. 102.

61 *Proof Committee Hansard*, 23 May 2017, p. 111.

62 *Proof Committee Hansard*, 22 May 2017, p. 105.

63 *Proof Committee Hansard*, 22 May 2017, p. 4; *Proof Committee Hansard*, 23 May 2017, pp. 68–69.

64 *Proof Committee Hansard*, 23 May 2017, p. 92.

