

The Senate

Legal and Constitutional Affairs
Legislation Committee

Budget estimates 2017–18

June 2017

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Membership of the Committee

45th Parliament

Members

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

Senator Louise Pratt (ALP, WA) (Deputy Chair)

Senator David Fawcett (LP, SA)

Senator Nick McKim (AG, TAS)

Senator Murray Watt (ALP, QLD)

Senator Jane Hume (LP, VIC)

Senators in attendance

Senator the Hon Ian Macdonald

Senator Louise Pratt

Senator David Fawcett

Senator Jane Hume

Senator Nick McKim

Senator Murray Watt

Senator the Hon Eric Abetz

Senator Brian Burston

Senator David Bushby

Senator the Hon Kim Carr

Senator Anthony Chisholm

Senator Richard Di Natale

Senator Patrick Dodson

Senator Jonathon Duniam

Senator Alex Gallacher

Senator Katy Gallagher

Senator Stirling Griff

Senator Pauline Hanson

Senator Derryn Hinch

Senator Skye Kakoschke-Moore

Senator Chris Ketter

Senator Sue Lines

Senator Scott Ludlam

Senator Bridget McKenzie

Senator Barry O'Sullivan

Senator Janet Rice

Senator Malcolm Roberts

Senator Rachel Siewert

Senator the Hon Lisa Singh

Senator Dean Smith

Senator Larissa Waters

Senator the Hon Penny Wong

Senator Nick Xenophon

Secretariat

Ms Toni Matulick

Mr Nicholas Craft

Ms Kathleen McGarry

Ms Jo-Anne Holmes

Committee Secretary

Acting Principal Research Officer

Research Officer

Administration Officer

Suite S1.61

Parliament House

CANBERRA ACT 2600

Telephone: (02) 6277 3560

Fax: (02) 6277 5794

Email: legcon.sen@aph.gov.au

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Abbreviations

AAT	Administrative Appeals Tribunal
ABF	Australian Border Force
AFP	Australian Federal Police
AGD	Attorney-General's Department
AHRC	Australian Human Rights Commission
ANAO	Australian National Audit Office
ANZCTC	Australia-New Zealand Counter Terrorism Committee
ASIO	Australian Security Intelligence Organisation
ATO	Australian Tax Office
CBA	Cost-benefit analysis
CLC	Community legal centre
DIBP	Department of Immigration and Border Protection
FOI	Freedom of Information
ICT	Information and communications technology
MRPC	Manus regional processing centre
NDIS	National Disability Insurance Scheme
OSB	Operation Sovereign Borders
PNG	Papua New Guinea
QoN	Question on notice
RPC	Regional processing centre
UNHCR	UN Refugee Agency (United Nations High Commissioner for Refugees)

Preface

On 9 May 2017 the Senate referred to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for examination the estimates of proposed and certain expenditure for 2017–18.

The committee is responsible for the examination of the Attorney-General's portfolio and the Immigration and Border Protection portfolio.

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 2018;
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2018; and
- Particulars of proposed expenditure in relation to the parliamentary departments in respect of the year ending on 30 June 2018.

The committee is required to report on its consideration of the budget estimates on 20 June 2017.

Estimates hearings

The committee met in public session on 22, 23, 24 and 25 May 2017. Over the course of the four days' hearings, totalling over 45 hours, the committee took evidence from the following departments and agencies:

- Department of Immigration and Border Protection;
- Attorney-General's Department;
- Australian Federal Police;
- Australian Human Rights Commission;
- Administrative Appeals Tribunal; and
- Australian Security Intelligence Organisation.

The following agencies were called by the committee on 25 May 2017 but were dismissed without questions:

- Australian Law Reform Commission;
- Commonwealth Director of Public Prosecutions;
- Australian Transaction Reports and Analysis Centre;
- Office of the Australian Information Commissioner;
- Family Court of Australia;
- Federal Circuit Court of Australia;

- Federal Court of Australia
- Australian Criminal Intelligence Commission;
- Australian Institute of Criminology; and
- Australian Commission for Law Enforcement Integrity.

After the hearings on 22–25 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. At the time of reporting, the committee had not determined a date for this proposed hearing.

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

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

Attendance of Ministers, Assistant Ministers and other witnesses

On 22 and 23 May 2017, the committee heard evidence from Senator the Hon Michaelia Cash, representing the Minister for Immigration and Border Protection. Minister Cash was assisted on 22 and 23 May 2017 by Senator the Hon Zed Seselja, the Assistant Minister for Social Services and Multicultural Affairs, and on 22 May 2017 by Senator the Hon James McGrath, Assistant Minister to the Prime Minister.

On 24 and 25 March 2017, the committee heard evidence from Senator the Hon George Brandis QC, Attorney-General.

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

Questions on notice

The committee resolved that the due date for answers to questions on notice would be 7 July 2017.

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

Structure of this report

This report consists of two chapters:

- Chapter one outlines the issues raised regarding the budget estimates for the Immigration and Border Protection portfolio; and
- Chapter two outlines the issues raised regarding the budget estimates for the Attorney-General's portfolio.

Note on references

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

Chapter 1

Immigration and Border Protection portfolio

1.1 This chapter summarises some of the matters raised during the committee's consideration of the 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'.¹ 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.²

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 2015,³ including the:

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

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';⁴
- 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';⁵
- 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.⁶ 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.

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.⁷

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.⁸

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.⁹

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.¹⁰ 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.¹¹

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.¹²

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 AE17/120,¹³ 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.¹⁴ Members of the committee contended that these were not valid grounds to withhold information in the estimates process.¹⁵

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.¹⁶ 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.¹⁷

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.

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.¹⁸

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.¹⁹

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;²⁰
- 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';²¹
- reduction of staff in visa areas had been offset by productivity gains coming from automation;²²
- use of labour-hire firms to source departmental staff, including the need for contractors to hold security clearances, where necessary;²³
- rationalising of three call centres in London, Ottawa and Sydney into an Australia-based centre;²⁴
- ABF College at Kingsford Smith Airport in Sydney delivering training to frontline ABF officers;²⁵ and
- closure of the Dandenong immigration office.²⁶

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;²⁷
- data breaches of departmental information, including reporting requirements and ongoing litigation;²⁸ and
- departmental efforts to improve cybersecurity, particularly in light of issues raised by the Auditor-General in reports of 2014 and 2017;²⁹

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.³⁰

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

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.³¹

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.³²

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;³³
- Australia's international protection obligations for turn-backs and takebacks;³⁴
- on-water determinations of whether a person on a boat entering Australian waters engages Australia's international protection obligations;³⁵ and
- asylum seekers who do not have identification documents, including those who may have had their papers taken or destroyed by people smuggling operators.³⁶

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.³⁷

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;³⁸
- the implementation of the agreement with the United States to resettle refugees from RPCs;³⁹
- 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;⁴⁰
- transfer of residents of RPCs to Australia for medical treatment;⁴¹
- 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.⁴²

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.⁴³

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

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.⁴⁴

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.⁴⁵

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;⁴⁶ 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).⁴⁷

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.⁴⁸ 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.⁴⁹

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.⁵⁰

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;⁵¹
- expediting Australia's visa processing through improving the department's ICT capability;⁵²
- changes to citizenship requirements and processes, including English language, civics and character testing, as well as processing times;⁵³
- 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;⁵⁴
- visa compliance activities undertaken 'in the field' and cooperation with other agencies including the ATO to identify breaches;⁵⁵
- 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;⁵⁶ and
- the intention of the proposed family violence amendments to the Migration Act currently before parliament.⁵⁷

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

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;⁶²
- new or recently introduced technology expediting border processing, including SmartGate technology at Australian airports, improvements to biometric capability, and visa risk assessment programs;⁶³ and
- free trade agreements, including the potential for overseas workers to be brought into Australia to work on infrastructure projects.⁶⁴

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.

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.

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 2017–18 financial year.

2.2 The Attorney-General's portfolio appeared over two days, with the Attorney-General's Department (AGD, the department) attending on Wednesday, 24 May 2017 and other agencies of the portfolio attending on Thursday, 25 May 2017.

Statement by the Attorney-General on events in Manchester

2.3 At commencement of the day's hearing, Senator the Hon George Brandis QC, Attorney-General, made a brief opening statement about a bombing that had occurred in Manchester, United Kingdom, on the previous day. He stated that he and the Prime Minister, the Hon Malcolm Turnbull MP, had already spoken with their UK counterparts to offer the Australian people's condolences, as well as to express the determination that the two countries should continue to work together to keep our respective countries safe.¹

2.4 The Attorney-General noted that there had been a number of recent attacks in Australia, and that there had also been a number of terrorist attacks that had been thwarted by Australian authorities:

Since September 2014, when the national threat level was raised to its current level, there have been four acts of terrorist violence committed in Australia: at Endeavour Hills, in Melbourne; at Martin Place; in Parramatta; and in Minto. Those acts of terrorist violence have caused the deaths of three innocent Australians. They have also led to the deaths of three terrorism perpetrators. In each case, the person who perpetrated the acts of terrorist violence was either a lone actor or a person acting with the encouragement of a small number of people around them; and, in each case, they were acting on the inspiration of Islamist terrorist messaging.

But, more importantly, since September 2014, our authorities have thwarted 12 imminent terrorist attacks on Australian soil, the most recent being just before Christmas, in Melbourne. Each of those thwarted terrorist attacks was potentially more lethal than the four incidents in which a perpetrator did succeed in committing a violent crime. In particular, the event that was thwarted in Melbourne in the days before Christmas had the hallmarks of a very significant mass-casualty terrorist attack and had been prepared with a high level of sophistication. In every one of those 12 cases, our agencies and our police were able to act and to protect the lives of Australians and, potentially, to save the lives of many Australians because they relied on security intelligence, both domestic and, in some cases, shared with us by our Five Eyes partners. Without that intelligence, those terrorist crimes

1 *Proof Committee Hansard*, 24 May 2017, p. 3.

would not have been stopped—nor, of course, would they have been stopped without the skill and bravery of the Australian Federal Police and the state police who interdicted and prevented them.²

2.5 The Attorney-General assured the committee that the government was focussed on maintaining the integrity of national security legislation and agencies, while respecting the essential principles of our political system and way of life:

We have debates in this committee, as we should in a parliamentary democracy, about the way our laws ought to be written. But may I reassure members of this committee—and, through the committee, the Australian public—that we spare no effort to ensure that our laws are kept constantly under review, that we give the agencies and law enforcement the powers that they need to be in the best possible position to protect our people, whilst always respecting the rule of law and the liberal values, rights and freedoms which are integral to our political system and indeed to our way of life.³

2.6 Finally, the Attorney-General commented that the threat of terrorism would be an ongoing issue faced by Australia:

I want to thank the committee and I want to thank the Senate for agreeing to pass the eight tranches of national security law, which have been developed and introduced into the parliament since the middle of 2014. We will keep those laws constantly under review. The agencies and law enforcement will keep their techniques and operations constantly under review to ensure, at all times consistent with the rule of law, we do what we can and what we must to prevent an event like that which we saw in Manchester, an the event of unspeakable evil, occurring in Australia. But this is not something that is the work of a day or a week or a month or a year; this is a problem that will be with us for the foreseeable future and governments of all political persuasions must, and I am sure do, regard that task as pre-eminent.⁴

Statement by the Attorney-General on the coronial inquest into the Lindt café siege

2.7 On the afternoon of 24 May 2017, the Attorney-General made a statement on the findings of the report of the New South Wales coronial inquest into the Lindt café siege of September 2014, which was handed down that morning.⁵

2.8 The Attorney-General noted that Australia's counter-terrorism environment has changed significantly since the siege at the Lindt café, noting the significant number of planned attacks that had been averted by intelligence and policing agencies:

2 *Proof Committee Hansard*, 24 May 2017, p. 3.

3 *Proof Committee Hansard*, 24 May 2017, p. 3.

4 *Proof Committee Hansard*, 24 May 2017, p. 3.

5 *Proof Committee Hansard*, 24 May 2017, p. 3.

The national terrorism threat level remains at 'Probable', reflecting credible intelligence that individuals or groups have developed both an intent and capability to conduct a terrorist attack in Australia. The Lindt Cafe siege is one of four terror-related attacks Australia has experienced since September 2014. But it is important to emphasise that in that time, there have been 12 major counter-terrorism disruptions of attack planning in Australia. Due to the skill and expertise of our intelligence and policing agencies, 12 terrorist attacks on Australian soil have been averted since September 2014 and we should be profoundly grateful for the skill and expertise and courage of the men and women of ASIO, the Australian Federal Police, the state and territory police and others who were able to save an unknown number of Australian lives.⁶

2.9 The Attorney-General stated that the Commonwealth would carefully study the coroner's report and respond to its 45 recommendations appropriately. The Attorney noted that his statement should not be regarded as a Commonwealth response, which would be delivered after due consideration, but as an indication of what steps the Commonwealth had already taken.⁷

2.10 Senator Brandis did note that the Commonwealth had already taken steps to address a number of recommendations made by the NSW coroner's report for consideration by the Attorney-General and other Commonwealth agencies. In particular, he noted the following measures:

- as part of its responsibility for overseeing operational counter-terrorism arrangements between Australian law enforcement and intelligence agencies, the Australia-New Zealand Counter Terrorism Committee (ANZCTC) continually considers and facilitates the effectiveness of information sharing between those agencies. In particular, the ANZCTC has already facilitated the implementation of a classified national computer network to communicate sensitive counter-terrorism information securely and effectively (recommendation 39 of the coroner's report);⁸
- AGD reviewed its correspondence handling procedures in cases where correspondence might raise national security concerns, and implemented those changes in 2015. The consequence of those changes is that such correspondence is now routinely referred to the Australian Security Intelligence Organisation (ASIO) (recommendation 40 of the coroner's report);⁹ and that
- the Commonwealth Counter-Terrorism Coordinator with relevant agencies, including ASIO, has already engaged with the Australian Psychological Society and other stakeholders in the mental health sector on this issue. An

6 *Proof Committee Hansard*, 24 May 2017, p. 69.

7 *Proof Committee Hansard*, 24 May 2017, p. 69.

8 *Proof Committee Hansard*, 24 May 2017, pp. 68–69.

9 *Proof Committee Hansard*, 24 May 2017, p. 69.

outcome of that engagement has been an agreement that further work be done to improve information sharing to identify at-risk or radicalised individuals.¹⁰

2.11 The Attorney-General stated that he would ask the committee whether any further improvements may be required on any of these matters, in light of the coroner's recommendations.¹¹

2.12 Moreover, the Attorney-General noted a number of other ways that the department had recently made improvements to its capabilities and relevant legislation, including:

- implementing 11 of the recommendations of the Joint Review into the Lindt café siege undertaken collaboratively by the Commonwealth and the NSW governments;¹²
- actively reviewing Commonwealth counter-terrorism arrangements, including through the Review of Australia's Counter-Terrorism Machinery in 2015, the current L'Estrange inquiry reviewing our national intelligence community, and an ongoing review of Defence support for national counter-terrorism arrangements;¹³
- a program of eight tranches of national security legislation reform to ensure Commonwealth agencies have the necessary powers to respond to the threat of terrorism;¹⁴
- commitment to a national strategy for crowded places led by ANZCTC, involving all jurisdictions, local governments, owners and operators of open spaces;¹⁵
- working on measures to ensure harmonisation across jurisdictions, including operational doctrine, training courses, and equipment;¹⁶ and
- ensuring relevant agencies are appropriately funded for the challenges they face in responding to and combatting terrorism.¹⁷

2.13 The Attorney-General noted that:

Australia faces national security challenges that continue to evolve. Even as ISIL suffers territorial losses in Syria and Iraq, we do not expect the threat to diminish in the foreseeable future. Our response to this has included our work to encourage increased cooperation on counter-terrorism throughout

10 *Proof Committee Hansard*, 24 May 2017, p. 69.

11 *Proof Committee Hansard*, 24 May 2017, pp. 68–69.

12 *Proof Committee Hansard*, 24 May 2017, p. 69.

13 *Proof Committee Hansard*, 24 May 2017, p. 70.

14 *Proof Committee Hansard*, 24 May 2017, p. 70.

15 *Proof Committee Hansard*, 24 May 2017, p. 70.

16 *Proof Committee Hansard*, 24 May 2017, p. 70.

17 *Proof Committee Hansard*, 24 May 2017, p. 70.

the South-East Asian region, in particular, through fora of the kind that I described this morning. We continue, of course, to engage closely, crucially, with our Five Eyes¹⁸ partners and with other nations as well.¹⁹

2.14 In closing, Senator Brandis reaffirmed the Commonwealth's commitment to consider the coroner's report closely, to learn lessons from its findings, and to act upon those recommendations in collaboration with the states and territories.²⁰

2.15 In response to questions from the committee, the Attorney-General gave further information on this matter regarding:

- improvements to how letters are handled by the AGD and other Commonwealth agencies, in light of Mr Man Haron Monis' letter of October 2014;²¹ and
- how the AGD has engaged with other Commonwealth agencies regarding recommendations made by the committee's report into Mr Monis' letter.²²

Attorney-General's Department

Corporate matters

2.16 The committee asked questions about a number of corporate and staffing issues. The secretary of AGD, Mr Chris Moraitis PSM, outlined the recent changes to the staffing profile of the AGD to the committee:

The department is about 1,050 to 1,100 core staff in the traditional department of the Attorney-General's. In the last year or so there has been the addition of the Australian Government Solicitor, which is about 560 to 600 staff, including staff all around the country in Australian Government Solicitor offices. We also have staff that we technically engage for the purpose of royal commissions. We have two royal commissions happening at the moment: the Northern Territory royal commission and the sexual abuse of children royal commission, which is coming to an end later this year...

It can get up to 2,000 if you add in what I call the traditional enterprise AGD, the Australian Government Solicitor, added on since July 2015, and the various staff who are brought on for the purpose of supporting royal commissions, which have a finite period...²³

18 Five Eyes is the intelligence alliance comprising Australia, Canada, New Zealand, the United Kingdom and the United States.

19 *Proof Committee Hansard*, 24 May 2017, p. 70.

20 *Proof Committee Hansard*, 24 May 2017, p. 70.

21 *Proof Committee Hansard*, 24 May 2017, pp. 70–72 and 76–77.

22 *Proof Committee Hansard*, 24 May 2017, pp. 74–75.

23 *Proof Committee Hansard*, 24 May 2017, pp. 19–20.

2.17 This level of staffing, Mr Moraitis suggested, indicated a reduction in staffing levels over the last two years, coming from both machinery-of-government changes and efficiency dividends:

The answer is that the department has not expanded. It has actually contracted. Just as I alluded to the fact that there was an arts ministry, after a MOG in 2015 those numbers declined quite significantly, by a couple of hundred. There have been ups and downs but, at the moment, historically over a 10-year period we are at staffing levels that are probably 2007 levels. We have been declining, historically. The numbers go up and down in small ways. For example, as I said we get staff for these various royal commissions, but for core staff—for example, we are doing some recruitment in the cyberspace, following the cybersecurity review. So we are ramping up numbers—not in significant ways. There is an on and an off ramp, as you can imagine, but the overall trend has been not to increase. On the contrary it has actually stabilised and somewhat decreased. That is reflecting efficiency dividends and other matters that have been part of our budget reality for several years now.²⁴

2.18 The committee also sought information on a range of other corporate matters, including:

- the use of labour hire companies by the department for temporary staffing, including the provision of training and security clearances for these staff;²⁵
- the rollout of the Australian Government Guidelines on the Recognition of Sex and Gender regarding Commonwealth departments;²⁶
- the Australian Government Solicitor's merging into the AGD, and its representation of the Attorney-General and his chief of staff in Administrative Appeals Tribunal (AAT) and Federal Court proceedings;²⁷
- the costs of the royal commissions into the Northern Territory and child sexual abuse;²⁸ and
- ongoing Freedom of Information (FOI) matters, including the Australian Government Solicitor's involvement in Federal Court case concerning the FOI application for the Attorney-General's diary.²⁹

Funding for legal services and the Family Court in the 2017–18 Budget

2.19 The committee was interested in the additional funding of \$55.7 million for legal services in the 2017–18 Budget. The Attorney-General stated that this consisted

24 *Proof Committee Hansard*, 24 May 2017, p. 20.

25 *Proof Committee Hansard*, 24 May 2017, p. 28 and 30.

26 *Proof Committee Hansard*, 24 May 2017, p. 38.

27 *Proof Committee Hansard*, 24 May 2017, pp. 98–99.

28 *Proof Committee Hansard*, 24 May 2017, p. 20.

29 *Proof Committee Hansard*, 24 May 2017, p. 32.

of \$39 million additional funding for community legal centres (CLCs) and a \$16.7 million boost for Aboriginal and Torres Strait Islander legal services.³⁰ He commented that:

...in relation to the community legal centres—or CLCs, to use the acronym that people use—the \$39 million was directed explicitly to family law and family violence services...

[Additionally] the \$16.7 million part of the parcel was additional funding for Aboriginal and Torres Strait Islander legal services. If I may say so, this is a small part of the Commonwealth's expenditure, because the Commonwealth's contribution to community legal services, legal aid commissions and Aboriginal and Torres Strait Islander legal services over the five-year period expiring in the middle of 2020 will be \$1.7 billion.³¹

2.20 On the funding model for this increase, the department commented that:

... as a starting point, we allocated to ensure that no state or territory would have a reduction in their funding, as against this financial year, and the remainder of the funding was allocated in accordance with the funding allocation model that is used for allocating funding under the national partnership agreement generally.³²

2.21 A number of other issues around legal services were also raised by the committee:

- the pilot program of specialist domestic violence units, which will be evaluated next year to inform the government of future policy options;³³
- funding in the 2017–18 Budget for additional family consultants in the Family Court system,³⁴ and
- the intention of the government to undertake a review of the *Family Law Act 1975* and the family law system more generally, conducted by the Australian Law Reform Commission.³⁵

National security

2.22 The Attorney-General informed the committee of the engagement he had undertaken with national security officials during his recent visit to the United States.³⁶ Senator Brandis also noted that he would travel to Ottawa in June for the annual meeting of the Five Eyes community.³⁷

30 *Proof Committee Hansard*, 24 May 2017, p. 34.

31 *Proof Committee Hansard*, 24 May 2017, p. 34 and 50.

32 *Proof Committee Hansard*, 24 May 2017, p. 41.

33 *Proof Committee Hansard*, 24 May 2017, p. 43.

34 *Proof Committee Hansard*, 24 May 2017, pp. 36 and 58–59.

35 *Proof Committee Hansard*, 24 May 2017, pp. 48–49.

36 *Proof Committee Hansard*, 24 May 2017, p. 9.

37 *Proof Committee Hansard*, 24 May 2017, p. 9.

2.23 The Attorney-General also outlined a number of other ways he has actively engaged regional partners on security issues, including achieving an in-principle agreement with Indonesia to lead a regional multilateral counter-terrorism framework operating at ministerial level. The first meeting of this forum will be in August this year, with the focus being on returning foreign fighters.³⁸

2.24 The committee were interested in number of other matters relevant to national security, including:

- the independent review of the Australian intelligence community being undertaken by Mr Michael L'Estrange, including the ways in which the AGD has informed and assisted in the review;³⁹
- information and intelligence-sharing between Australian security agencies,⁴⁰ and
- funding for countering violent extremism, including work with state and territory governments, and international partners.⁴¹

Other matters

2.25 The committee had questions relating to several other aspects of the AGD, including:

- the timeframes for the royal commissions into the Northern Territory and sexual abuse of children, as well as the ways in which records would be transferred to the relevant Commonwealth departments and ultimately to the National Archives;⁴²
- the intervention of the Attorney-General in previous or ongoing native title cases;⁴³
- aspects of international extradition treaties that Australia is party to;⁴⁴
- the department's oversight of policy addressing slavery or slavery-like conditions in Australia, including human trafficking;⁴⁵
- the alignment of Australian law with international criminal law;⁴⁶

38 *Proof Committee Hansard*, 24 May 2017, pp. 9–10.

39 *Proof Committee Hansard*, 24 May 2017, p. 18 and 26.

40 *Proof Committee Hansard*, 24 May 2017, p. 19.

41 *Proof Committee Hansard*, 24 May 2017, pp.106–108 and 110–111.

42 *Proof Committee Hansard*, 24 May 2017, pp. 64–65.

43 *Proof Committee Hansard*, 24 May 2017, pp. 50–52 and 57.

44 *Proof Committee Hansard*, 24 May 2017, p. 66.

45 *Proof Committee Hansard*, 24 May 2017, pp. 80–83.

46 *Proof Committee Hansard*, 24 May 2017, pp. 88–89.

- the new national firearms agreement agreed in February 2017 and the progress of jurisdictions in developing legislation;⁴⁷ and
- progress of the \$40 million Safer Communities Fund program announced in the 2016-17 Budget.⁴⁸

Australian Federal Police

2.26 The committee sought information from the Australian Federal Police (AFP) on a number of issues, including:

- changes to the AFP's funding made in the Budget, including some reductions for overseas activities in Papua New Guinea and the Solomon Islands, and changes to capital works funding;⁴⁹
- staffing levels, including attrition rates;⁵⁰
- prosecution of cases of multiple voting in the 2016 Federal Election;⁵¹
- funding for programs that are to be evaluated and then considered for extension by the government, including the anti-gangs task force, the keeping illegal guns off our streets program and Registered Organisations Commission;⁵²
- referrals to and convictions arising from the trade union corruption taskforce;⁵³
- accessing a journalist's call records by an AFP officer, and steps taken by the AFP to identify breaches and audit investigations with due diligence;⁵⁴
- international travel undertaken by sex offenders to South-East Asia and cybersex human trafficking;⁵⁵
- remuneration of AFP staff, including SES officers, and the status of enterprise agreement bargaining;⁵⁶
- law enforcement liaison officers in the Minister's office;⁵⁷

47 *Proof Committee Hansard*, 24 May 2017, p. 91.

48 *Proof Committee Hansard*, 24 May 2017, pp. 94–95.

49 *Proof Committee Hansard*, 25 May 2017, pp. 5–6, 8, 31–32 and 37–38.

50 *Proof Committee Hansard*, 25 May 2017, p. 9.

51 *Proof Committee Hansard*, 25 May 2017, pp. 9–12.

52 *Proof Committee Hansard*, 25 May 2017, pp. 14–15.

53 *Proof Committee Hansard*, 25 May 2017, pp. 16–17.

54 *Proof Committee Hansard*, 25 May 2017, pp. 18–19.

55 *Proof Committee Hansard*, 25 May 2017, pp. 22 and 41–43.

56 *Proof Committee Hansard*, 25 May 2017, pp. 23–24.

57 *Proof Committee Hansard*, 25 May 2017, pp. 25–26.

- AFP programs looking at organised crime, and potential connections between organised crime gangs and terrorist recruitment;⁵⁸
- mental illness and bullying in the AFP, including what support services are available for officers;⁵⁹ and
- AFP investigation of Pauline Hanson's One Nation party.⁶⁰

Australian Human Rights Commission

2.27 The committee asked the Australian Human Rights Commission (AHRC) about a number of matters, including:

- the 2017-18 Budget measures regarding the drug testing of Newstart recipients, particularly whether drug addiction could be regarded as a disability and, if so, whether there was potential for the new legislation to breach the *Disability Discrimination Act 1992*.⁶¹
- the Queensland University of Technology case regarding section 18C of the *Racial Discrimination Act 1975*;
- changes to procedure of the AHRC resulting from legislative amendments;⁶²
- changes to the AHRC's budget and resourcing;⁶³
- the disclosure of travel undertaken by AHRC officials, including for particular events;⁶⁴ and
- potential candidates for the replacement of the President upon her retirement.⁶⁵

Administrative Appeals Tribunal

2.28 Ms Sian Leathem, Registrar, AAT, made a statement to the committee about recent media coverage concerning the AAT:

In an article dated 9 May 2017, the *Herald Sun* reported that the tribunal overturned the minister's visa decisions 4,389 times. I wish to make it clear that these matters relate to general migration visa decisions. They represent approximately 39 per cent of all general migration applications finalised in the period from 1 July 2016 to 30 April 2017. The partner, student, visitor and work visa categories make up the highest number of set-aside decisions. Importantly, those figures do not relate to protection matters.

58 *Proof Committee Hansard*, 25 May 2017, pp. 27–28.

59 *Proof Committee Hansard*, 25 May 2017, pp. 28–30.

60 *Proof Committee Hansard*, 25 May 2017, pp. 32–34 and 43.

61 *Proof Committee Hansard*, 25 May 2017, pp. 47–51 and 52.

62 *Proof Committee Hansard*, 25 May 2017, pp. 54–55 and 73–74

63 *Proof Committee Hansard*, 25 May 2017, pp. 56–57, 61 and 63.

64 *Proof Committee Hansard*, 25 May 2017, pp. 57–58 and 59–60.

65 *Proof Committee Hansard*, 25 May 2017, pp. 70–71.

The subject of recent media interest is two types of decisions—firstly, those relating to the cancellation of protection visas and, secondly, those made on character grounds. The cases referred to in the article in the *Herald Sun* dated 16 May 2017 appear to relate to decisions made by a delegate of the minister to cancel protection visas on the basis of incorrect information said to have been provided to the department. Visas may be cancelled under section 109 of the Migration Act where incorrect information is provided at the time of application. Cancellation is not automatic, and the decision-maker, including the tribunal, must consider whether there was noncompliance by the visa holder and, if so, whether the visa should be cancelled, having regard to the factors set out in the migration regulations and departmental policy.⁶⁶

2.29 Ms Leathem stated that AAT decisions relating to applicants from Iran have not been published since 2011, following a request made by the Department of Foreign Affairs and Trade, but observed this relates to less than 1 per cent of AAT decisions.

2.30 She also stated that another article in the *Herald Sun* of 22 May 2017 concerned character-related decisions, and outlined the nature of these decisions, as well as the number of such decisions made by the AAT:

Between 1 July 2014 and 30 April 2017, the AAT finalised 156 applications for review of these types of decisions. The tribunal set aside the decision in 35 of those cases.⁶⁷

2.31 Ms Leathem drew the committee's attention to the availability of judicial review for AAT findings, both for applicants and decision-makers:

The only part of the statement [provided to the committee but not read out in full] that I would like to draw the attention of the committee to is that, of course, an applicant or a decision-maker who believes a decision made by the tribunal is wrong in law can appeal that decision to either the Federal Court or the Federal Circuit Court, depending on what type of decision it is. In addition to the availability of judicial review, for decisions relating to visas, the Minister for Immigration and Border Protection has the power to personally substitute a more favourable decision or to set aside certain decisions of the tribunal.⁶⁸

2.32 On questioning by the committee, the AAT provided information on a number of issues, including:

- the procedure for publication of AAT findings, including where decisions are not published or only published following the de-identification of information;⁶⁹

66 *Proof Committee Hansard*, 25 May 2017, p. 77.

67 *Proof Committee Hansard*, 25 May 2017, p. 78.

68 *Proof Committee Hansard*, 25 May 2017, p. 78.

69 *Proof Committee Hansard*, 25 May 2017, pp. 78–80.

- the amalgamation of several former independent tribunals into the AAT, including migration and refugee review tribunals, as well as the Social Security Appeals Tribunal;⁷⁰
- the AAT's processes and protocols for the publication of findings, including claims made by media articles about the AAT and comments made by the Minister for Immigration and Border Protection, the Hon Peter Dutton MP;⁷¹
- the structure of the AAT, including how caseloads are administered, new appointments are managed, and the competency framework for members making decisions;⁷² and
- updated statistics on findings relating to appeals of Disability Support Pension decisions.⁷³

Australian Security and Intelligence Organisation

2.33 The Director-General of ASIO, Mr Duncan Lewis AO DCS CSC, gave an opening statement, advising the committee on:

- assistance offered to the UK intelligence community following the terrorist bombing in Manchester;
- the national terrorism threat advisory level in Australia, which has remained at 'probable' since September 2014 and would not change in response to the events in the UK;
- the role of ASIO in the NSW coronial inquest into the Lindt café siege and organisational improvements in counter-terrorism following the siege; and
- ASIO's core focus areas: countering terrorism and the promotion of communal violence; countering espionage, foreign interference and malicious insiders; countering serious threats to Australia's border integrity; providing protective security advice; and collecting foreign intelligence in Australia on the request of the Ministers for Defence and for Foreign Affairs.⁷⁴

2.34 Mr Lewis also provided a specific update on the counter-terrorism activities of ASIO, giving information on:

- four terror attacks and 12 disrupted terror operations since 2014, including one disruption related to a right-wing extremist;
- Australians fighting in, or seeking to fight in, Syria and Iraq;
- the threat of Islamist extremist ideology; and

70 *Proof Committee Hansard*, 25 May 2017, pp. 78–79 and 128–129.

71 *Proof Committee Hansard*, 25 May 2017, pp. 82–87.

72 *Proof Committee Hansard*, 25 May 2017, pp. 84 and 118–119.

73 *Proof Committee Hansard*, 25 May 2017, p. 108.

74 *Proof Committee Hansard*, 25 May 2017, pp. 128–9.

- the ongoing task for the Australian intelligence community in countering violent extremism and terrorism.⁷⁵
- 2.35 The committee asked ASIO about a number of topics, including:
- the role of ASIO in security assessments in immigration matters;⁷⁶
 - the legal consequences for Australian citizen foreign fighters, and their families, who wish to return to Australia;⁷⁷
 - journalist information warrants and the obligations of ASIO under the *Telecommunications (Interception and Access) Act 1979*;⁷⁸
 - connections between Islamist extremist ideology and refugees, for which Mr Lewis suggested there was no evidence;⁷⁹ and
 - the relationship between US and Australian intelligence services following the election of President Trump.⁸⁰

Questions on Notice

2.36 During the week of budget estimates 2017–18, a number of responses to questions on notice were received from the Attorney-General's portfolio, including:

- 85 responses for additional estimates 2016–17;
- eight responses for supplementary budget estimates 2016–17; and
- nine responses for additional estimates 2015–16.

2.37 During the hearing of 24 May 2017, committee members voiced concern that late receipt of responses meant senators did not have sufficient time to scrutinise answers before the portfolio appeared for questioning and that matters may be concluded before senators had time to read related responses.⁸¹ The Chair clarified that he would 'allow some leniency in going back where those answers do relate to matters that we have already passed on from this committee' and would not prevent a senator from asking such a question.⁸²

2.38 It is the view of the committee that, where possible, answers to questions on notice should be tabled in advance of estimates hearings to provide sufficient time for scrutiny.

75 *Proof Committee Hansard*, 25 May 2017, p. 129.

76 *Proof Committee Hansard*, 25 May 2017, p. 130.

77 *Proof Committee Hansard*, 25 May 2017, pp. 131–2.

78 *Proof Committee Hansard*, 25 May 2017, p. 134.

79 *Proof Committee Hansard*, 25 May 2017, p. 135.

80 *Proof Committee Hansard*, 25 May 2017, pp. 135–6.

81 *Proof Committee Hansard*, 24 May 2017, pp. 6–8.

82 *Proof Committee Hansard*, 24 May 2017, p. 8.

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

Senator the Hon Ian Macdonald
Chair

Additional Comments – Australian Greens

1.1 The Australian Greens wish to express concern about the nature of responses from the Department of Immigration and Border Protection (DIBP, the department) in relation to questions about refugees and the Manus and Nauru regional processing centres (RPCs) during the estimates process.

1.2 Estimates hearings provide an opportunity for all senators to scrutinise taxpayer-funded expenditure by government departments.

1.3 While questions are asked by individual senators, responses provided assist the committee and the Senate to carry out their important scrutiny function.

1.4 Throughout the course of the budget estimates hearings, as well as in responses to questions on notice, DIBP have refused to answer a number of questions placed by Australian Greens senators and have frequently relied on previous claims of public interest immunity (PII).

Shooting at Manus on Good Friday

1.5 Over the course of budget estimates, the department was asked many questions about the events that took place on Manus Island on Good Friday this year (14 April 2017). The Australian Greens consider the answers provided are incomplete evidence concerning these events.

1.6 Regarding this incident, the department put a number of facts on the record during the estimates hearing of 22 May 2017, including that 'quite a number' of shots were fired laterally into the RPC and that nine people were injured. As Mr Pezzullo told the committee:

I think, based on what is now known-as opposed to what might have been known in the first hour or two of the incident-it appears as though, and I say that with a very strong caveat, dependent on the inquiries that are currently on foot and what they turn up, the number of weapons employed was greater than one.

...Again, subject to relying on PNG inquiries to establish that as a matter of fact, it appears as though, in light of the information that subsequently has become available, as opposed to what might have been available in the first hour or two, some shots, quite a number it seems, were fired laterally into the compound-yes...¹

1.7 Regarding the number of injuries sustained, the department stated that:

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

1 Mr Michael Pezzullo, Secretary, *Proof Committee Hansard*, 22 May 2017, p. 19.

was an Immigration and Citizenship Service Authority officer and two were residents from within the MRPC.²

1.8 On 14 April 2017, immediately following the incident, the department released information to Fairfax, which now appears to be inaccurate, and played down the seriousness of the shootings:

There are reports PNG military personnel discharged a weapon into the air during the incident. No-one was injured.³

1.9 The Australian Greens are concerned that, as at the budget estimates hearing of 22 May 2017, the information provided to Fairfax on 14 April 2017 had still had not been corrected on the department's website page 'Correcting the Record', more than one month after the incident took place. Furthermore, it seems as if Minister Dutton has not acknowledged the seriousness of the attack, including that a significant number of staff or residents of the MRPC were injured.⁴

1.10 The Australian Greens are concerned that the department and Minister have allowed innuendo and insinuation to persist regarding the behaviour of RPC residents. It seems the department indicated to the Minister that the trigger for the shooting was an incident in which a young local boy was guided into the centre by some residents, which the Minister later cited publicly.⁵

1.11 The Australian Greens note that the local police have been clear—both publicly and privately—that this incident had 'nothing at all to do with the Good Friday shootings'.⁶

1.12 It is therefore of some concern that the Minister and his department have not corrected this information, which has allowed innuendo and insinuation to persist about the behaviour of some RPC residents in this incident.

1.13 Lastly, the Australian Greens are concerned that Mr Pezzullo suggested to the committee that the Papua New Guinean defence and police forces were inquiring into this matter, and so it was not a matter for investigation for the Commonwealth:

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.⁷

2 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, *Proof Committee Hansard*, 22 May 2017, p. 19.

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

4 *Proof Committee Hansard*, 22 May 2017, p. 20.

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

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

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

1.14 The Australian Greens consider that the Minister and department have abrogated Australian responsibility in this matter, both in allowing incorrect and misleading information to persist, and by not investigating the incident sufficiently. This is especially considering the injuries sustained by employees and contractors working to sustain the Commonwealth's immigration policies, as well as several victims of these policies who are resident in the Manus RPC.

Relying on previous claims of public interest immunity

1.15 The Legal and Constitutional Affairs Legislation Committee has received only one PII claim from the Minister for Immigration and Border Protection in relation to estimates during the 45th Parliament. This claim was received by the committee on 21 October 2016 and related to a question from Senator Nick McKim at the supplementary budget estimates hearing on 17 October 2016, regarding the third-country resettlement of refugees in RPCs.

1.16 Throughout the budget estimates hearing on 22 May 2017, DIBP referred to that previous PII claim often when matters concerning Operation Sovereign Borders were raised.⁸

1.17 At one point during the hearing, officers chose not to answer questions on boat turn-backs and made reference to that previous PII claim.⁹

1.18 The secretary of the department stated that he was making a PII claim and that it was his view that the matter did not need to be referred the minister, as the minister had made a previous claim in relation to Operation Sovereign Borders maritime activities.¹⁰ The question was not pursued by the committee at the hearing or taken on notice by the department.

1.19 Under Procedural Order of Continuing Effect 10, an officer must refer a question to the minister on the request of the committee or a senator, and that is a matter for the minister to provide grounds to the committee.

1.20 While that claim included a general statement that 'the government does not believe it is in the public interest to release information that may compromise Operation Sovereign Borders and foreign relations', it did not set out a specific claim relating to questions on boat turn-backs and was related only to third-country resettlements.

1.21 Therefore, the Australian Greens do not consider that this previous claim has any relevance to the questions posed in relation to boat turn-backs.

Relying on a claim made to another committee

1.22 The Australian Greens also wish to note two responses to DIBP questions on notice from additional estimates received by the committee.

8 *Proof Committee Hansard*, 22 May 2017, pp. 26, 81, 98, 101–2 and 108–9.

9 *Proof Committee Hansard*, 22 May 2017, pp. 98 and 101.

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

1.23 Responses to questions on notice AE17/220 and AE17/221, questions from Senator McKim related to the resettlement of refugees in RPCs, did not provide answers and relied on a PII claim made to another committee. The responses both stated that the department would not:

... disclose details of confidential discussions with other governments as it would disclose information captured by the public interest immunity claim made by the Minister for Immigration and Border Protection on 7 January 2017.¹¹

1.24 The Australian Greens note that the claim made by the Minister for Immigration and Border Protection on 7 January 2017 was made to the Legal and Constitutional Affairs References Committee, in relation to that committee's inquiry into regional processing centres in Papua New Guinea and Nauru.

1.25 It is the view of the Australian Greens that a PII claim made to another committee should not be referred to for the purpose of estimates and that any such claim must be stated to the relevant estimates committee.

Conclusion

1.26 While the Australian Greens note that answers to questions taken on notice during the budget estimates hearings are not due until 7 July 2017, the department is reminded that the Senate has on several occasions resolved that there are no areas of expenditure of public funds by statutory authorities which are not open to scrutiny.

1.27 If the department is unable to provide Senators with answers to their questions for reasons of public interest immunity, a claim for this immunity should follow from the minister, in accordance with the requirements of Procedural Order of Continuing Effect 10.

Senator Nick McKim
Australian Greens

11 Department of Immigration and Border Protection, answers to written questions on notice AE17/220 and AE17/221, received 28 April 2017.

Appendix 1

Departments and agencies for which the committee has oversight

Attorney-General's Portfolio

- Attorney General's Department;
- Administrative Appeals Tribunal;
- Australian Federal Police;
- Australian Financial Security Authority;
- Australian Commission for Law Enforcement Integrity;
- Australian Criminal Intelligence Commission;
- Australian Human Rights Commission;
- Australian Institute of Criminology;
- Australian Law Reform Commission;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- Family Court of Australia;
- Family Law Council;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- High Court of Australia;
- National Archives of Australia;
- Office of the Australian Information Commissioner;
- Office of the Director of Public Prosecutions; and
- Office of Parliamentary Counsel.

Immigration and Border Protection Portfolio

- Department of Immigration and Border Protection (inclusive of Australian Border Force).

Appendix 2

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Appendix 3

Tabled documents

Immigration and Border Protection portfolio

Monday, 22 May 2017

No.	Tabled by:	Topic
1	Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, and Mr Roman Quaedvlieg APM, Commissioner, Australian Border Force	Opening Statement

Attorney-General's portfolio

Thursday, 25 May 2017

No.	Tabled by:	Topic
1	Australian Federal Police	AFP staff attrition rates
2	Australian Federal Police	<i>Telecommunications (Interception and Access) Act 1979</i> – Examples of documentation
3	Ms Sian Leathem, Registrar, Administrative Appeals Tribunal	Opening statement
4	Ms Sian Leathem, Registrar, Administrative Appeals Tribunal	Briefing notes on publication decisions

