

# CHAPTER 1

## IMMIGRATION AND CITIZENSHIP PORTFOLIO

1.1 This chapter summarises some of the matters raised during the committee's consideration of the budget estimates for the Immigration and Citizenship Portfolio for the 2013-14 financial year.

### **Migration Review Tribunal and Refugee Review Tribunal**

1.2 The Principal Member of the Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT) updated the committee on significant developments within the agencies since February 2013. The Principal Member described current workload statistics, and the development and implementation of certain strategies to manage the increased workload.<sup>1</sup>

1.3 Senators asked the MRT-RRT about the incidence of cases involving Irregular Maritime Arrivals (IMAs) in the financial year to 30 April 2013. The committee heard that the MRT-RRT has received 1,510 cases<sup>2</sup> but that the tribunals have not dealt with any 'arrivals post 13 August 2012'.<sup>3</sup>

1.4 In relation to the funding of cases for post 13 August 2012 IMA arrivals, the MRT-RRT explained that its budget for 2013-14 has been 'rebased', to increase funding from a base of 9,065 cases to 18,000 cases (totalling \$65.7 million), with a marginal cost of \$2,091 for any extra cases under 2,000 and \$2,972 per case above that number.<sup>4</sup>

### **Department of Immigration and Citizenship**

1.5 The Secretary of the Department of Immigration and Citizenship (DIAC), Mr Martin Bowles PSM, provided the committee with an update on significant developments within the portfolio since his appearance before the committee at Additional Estimates 2013. The Secretary canvassed, for example, statistical information on the migration and humanitarian programs, current activities to enhance the provision of services and to strengthen program integrity, implementation of the recommendations of the Expert Panel on Asylum Seekers, and management of the immigration detention network.<sup>5</sup>

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1 *Budget Estimates Hansard*, 27 May 2013, p. 4.

2 *Budget Estimates Hansard*, 27 May 2013, p. 5.

3 *Budget Estimates Hansard*, 27 May 2013, p. 9.

4 *Budget Estimates Hansard*, 27 May 2013, p. 11.

5 *Budget Estimates Hansard*, 27 May 2013, pp 17-20.

### ***Irregular maritime arrivals and budget implications***

1.6 The committee questioned DIAC on the number of Irregular Maritime Arrivals (IMAs) provided for in the 2013-14 Budget. Specifically, the committee sought an explanation as to how the budgeted item takes into account IMAs who arrived in Australia after 13 August 2012 and who are therefore subject to the 'no advantage principle' which commenced on that date.

1.7 The Secretary acknowledged that the 2013-14 Budget allows for 13,200 IMAs, notwithstanding that 22,265 IMAs have arrived in the financial year to 24 May 2013 and for whom processing has not yet commenced.<sup>6</sup> The Secretary explained that the projected figure of 13,200 arrivals was formulated in conjunction with the Australian Customs and Border Protection Service, taking into account a significant shift in the Sri Lankan caseload in late 2012:

**Mr Bowles:**...In relation to how that then translates into the budget, we are working with the Department of Finance and Deregulation at the moment around the funding model that we will go forward with. That will take into account the various nuances that I have talked about [regarding] how we manage a particular network. We are trying to drive efficiencies in the way that we manage the network....[T]he numbers are increasing and therefore the total dollars are increasing. But it is the way that we manage the network that will allow us to keep those costs to [as] small an amount as possible, given the arrival numbers.<sup>7</sup>

1.8 With respect to the 22,265 IMAs who have already arrived in Australia, the Secretary confirmed that the process of refugee status determination will commence 'shortly', possibly before the end of the current financial year but, if not, definitely in the financial year commencing 1 July 2013.<sup>8</sup> The Secretary advised that the processing and associated costs have been addressed in Outcome 4 of the 2013-14 Budget; however, since DIAC uses a 'demand model', it is not possible to specify a funding year.<sup>9</sup>

### ***Offshore processing centres***

1.9 The committee sought details of the budgeted cost of transferring IMAs to Manus Island, Papua New Guinea and Nauru over the 2013-14 financial year. The committee heard that, in the financial year to 30 April 2013, \$7.4 million has been spent in this regard.<sup>10</sup> For 2013-14, DIAC explained that the amount likely to be expended is covered in the 'larger pool' in the forward estimates and has not been itemised:

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6 *Budget Estimates Hansard*, 27 May 2013, pp 9 and 29.

7 *Budget Estimates Hansard*, 27 May 2013, p. 30.

8 *Budget Estimates Hansard*, 27 May 2013, pp 9 and 40.

9 *Budget Estimates Hansard*, 27 May 2013, p. 39.

10 Mr Ken Douglas, Department of Immigration and Citizenship (DIAC), *Budget Estimates Hansard*, 28 May 2013, p. 30.

**Mr Douglas:**...[T]he expenditure is a function of the number of people who will be located and the rate at which the infrastructure is finished and therefore the rate at which people might come into the centre or leave the centre...[W]e have estimated the forward value of the contracts over the life of those contracts. To estimate the value into the future years beyond what we have in those contracts would be subject to a procurement process, which is yet to be undertaken.<sup>11</sup>

1.10 DIAC informed the committee that Manus Island and Nauru are expected to operate at capacity in the 2013-14 financial year, with the construction of facilities on Manus Island commencing in July and for which a limited tender process will be utilised at an approximate total cost of \$171.7 million. Completion is expected at the end of January 2014, 'depending on climate and the degree of construction difficulty'.<sup>12</sup>

### ***Family migration program***

1.11 The committee examined the increase in the family stream of the migration program for 2013-14. DIAC confirmed that there will be a 'small adjustment [of 700 places]...to meet the demand in the family program[,] particularly in the partner category that is demand driven'.<sup>13</sup> The committee understands that this will increase the number of placements from 60,185 (2012-13) to 60,885 (2013-14) and will correspondingly decrease the number of placements in the General Skilled Migration program (also known as the Professional and Other Skilled Migrants program), which caters to skilled migrants who are not sponsored by an employer.<sup>14</sup>

### ***Enterprise Migration Agreements, Regional Migration Agreements and Significant Investor Visas***

1.12 DIAC updated the committee in relation to Enterprise Migration Agreements (EMAs), Regional Migration Agreements (RMAs) and significant investor visas. The committee was advised that:

- thirty-three EMA submissions have been received, with one EMA approved in-principle subject to the negotiation of a deed of agreement (for the Roy Hill Project) and three submissions currently being assessed;<sup>15</sup>
- one RMA application has been received from the Northern Territory Government, which is currently under assessment;<sup>16</sup> and
- in relation to the significant investor visa category, 435 expressions of interest have been lodged for subclass 188 and subclass 888 visas of which

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11 *Budget Estimates Hansard*, 28 May 2013, p. 29.

12 Mr Ken Douglas, DIAC, *Budget Estimates Hansard*, 28 May 2013, p. 30.

13 Mr Kruno Kukoc, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 61.

14 *Budget Estimates Hansard*, 27 May 2013, p. 61.

15 Mr Kruno Kukoc, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 65.

16 Mr Kruno Kukoc, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 66.

279 applicants were invited to apply.<sup>17</sup> An applicant must hold a 188 provisional visa for four years before becoming eligible to apply for a 888 visa: as such there have as yet been no applications for the subclass 888 visa, which was introduced in November 2012.<sup>18</sup>

1.13 The department was asked to explain how it determines whether a significant investor visa applicant has the capacity to invest \$5 million minimum into particular investments, which is a requirement of the new visa. The Secretary advised that there are a range of checks regarding the legitimacy of the funds, including with AUSTRAC.<sup>19</sup> Following in-principle approval of the application, the applicant is invited to lodge funds into an approved investment before the application can be finalised.<sup>20</sup>

### ***Security arrangements within the immigration detention network***

1.14 The committee asked DIAC about security arrangements within the immigration detention network. Specifically, senators sought further details in relation to the management of persons who might pose a risk to the Australian community.

1.15 While a number of cases and circumstances were discussed, the Secretary assured the committee that, upon entry to Australia, DIAC determines a person's identity or claimed identity, including through reference to the Movement Alert List.<sup>21</sup> Where a confirmed identity raises concerns, the person would not be released into the community or would be re-detained.<sup>22</sup>

1.16 The Secretary explained that, if DIAC was not able to confirm a person's identity, that person might be released on a bridging visa or into community detention. Equally, if DIAC has concerns regarding a person's identity, 'we would definitely not release them'.<sup>23</sup>

1.17 Throughout this line of questioning, DIAC emphasised that it manages people in 'appropriate forms of detention',<sup>24</sup> with the service provider, Serco, placing persons within detention centres following the conduct of a risk assessment.<sup>25</sup>

### ***Enhanced screening process***

1.18 The committee requested details of the enhanced screening process, which commenced on 27 October 2012 in relation to the Sri Lankan cohort of IMAs.

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17 Mr Martin Bowles PSM, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 67.

18 Mr Kruno Kukoc, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 67.

19 *Budget Estimates Hansard*, 27 May 2013, p. 67.

20 Mr Jim Williams, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 68.

21 *Budget Estimates Hansard*, 27 May 2013, p. 98.

22 *Budget Estimates Hansard*, 27 May 2013, p. 96.

23 *Budget Estimates Hansard*, 27 May 2013, p. 96.

24 *Budget Estimates Hansard*, 27 May 2013, p. 100.

25 *Budget Estimates Hansard*, 27 May 2013, p. 96.

The committee heard that, under the new process, 2,596 interviews have taken place, with 965 people having been removed from Australia as a consequence.<sup>26</sup> DIAC advised that people who are awaiting removal from Australia can request and be provided with access to legal assistance.<sup>27</sup> To date, three persons have sought such assistance and have been taken off the removals list.<sup>28</sup>

### ***Official Development Assistance***

1.19 The committee examined a budgeted item of \$375 million, which has been allocated as official development assistance (ODA) within DIAC's budget. Specifically, DIAC was asked how these funds are expended and what oversight is in place to ensure that any such expenditure complies with ODA guidelines. The Secretary responded:

The money...identified as ODA within the asylum seekers area...relates to people who are in the community either on a bridging visa or under a residence determination...It relates to the first 12 month[s] that they are in Australia. If they spend time in detention, that time in detention does not go to the ODA component. If they spend six months in detention and six months in the community, the six months in the community would count within the ODA. This is a rigorous process that sits under the OECD Development Assistance Committee's reporting directives...[The money] is for sustenance, care, shelter, basic English language training and things like that.<sup>29</sup>

1.20 The Secretary explained that ODA funds are administered through DIAC's normal payment schemes (Community Assistance Scheme and Asylum Seeker Assistance Scheme). Accordingly, DIAC knows how long a person has been in the system and whether the person has been in detention or in the community. This enables DIAC to 'track' compliance with ODA guidelines. The Secretary observed that 'DIAC is responsible for ensuring efficient and effective expenditure and appropriate reporting of its ODA funding [to AusAID]'.<sup>30</sup>

### ***Other matters of interest***

1.21 The committee also questioned DIAC in relation to a range of other matters, including:

- further information on DIAC's initiatives to improve its internal communications throughout Australia and overseas following a capability review;<sup>31</sup>

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26 *Budget Estimates Hansard*, 28 May 2013, p. 37.

27 *Budget Estimates Hansard*, 28 May 2013, p. 43.

28 *Budget Estimates Hansard*, 28 May 2013, p. 45.

29 *Budget Estimates Hansard*, 28 May 2013, pp 19-21.

30 *Budget Estimates Hansard*, 28 May 2013, p. 21.

31 *Budget Estimates Hansard*, 27 May 2013, pp 42-43.

- arrangements with the Fair Work Commission, to enable Fair Work inspectors to investigate non-compliance with certain requirements of the 457 visa program;<sup>32</sup>
- reasons for the delayed processing of claims for refugee status on Nauru and Manus Island;<sup>33</sup>
- introduction of a new polymer card as a form of identification for humanitarian visa holders and IMAs;<sup>34</sup>
- repatriation arrangements involving transit through third countries;<sup>35</sup> and
- reform of employer sanctions for businesses which employ unlawful non-citizens.<sup>36</sup>

### ***Answers to questions on notice***

1.22 The committee again notes the delay in the provision of answers to questions on notice for the Immigration and Citizenship Portfolio for Additional Estimates 2012-13. The committee set 2 April 2013 as the return date for answers but did not receive any responses by that date. Instead, a total of 393 answers to questions on notice were received on the Saturday before the commencement of Budget Estimates—less than two days prior to DIAC's appearance before the committee.<sup>37</sup> Of the responses received, 333 of those were in response to a total of 509 questions from the Additional Estimates round (in February 2013) and 160 responses received for the Supplementary Estimates hearings (in October 2012). At the date of this report's tabling, there are 176 answers to questions on notice outstanding for Additional Estimates 2012-13 and 136 answers to questions on notice outstanding from 647 questions for Supplementary Estimates 2012-13.

1.23 As previously noted by the committee, no answers to questions on notice have been provided by the due date over several successive estimates rounds for the Immigration and Citizenship Portfolio.<sup>38</sup> The late provision of answers does not allow members of the committee reasonable time to consider those answers prior to the hearings, and impedes the role of the committee in examining proposed expenditure by Commonwealth departments and agencies.

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32 *Budget Estimates Hansard*, 27 May 2013, pp 54-57, 59-60, 62-63 and 72.

33 *Budget Estimates Hansard*, 27 May 2013, pp 73-74.

34 *Budget Estimates Hansard*, 27 May 2013, pp 107-109.

35 *Budget Estimates Hansard*, 28 May 2013, pp 23-25.

36 *Budget Estimates Hansard*, 28 May 2013, pp 26-28.

37 *Budget Estimates Hansard*, 27 May 2013, p. 40.

38 Senate Legal and Constitutional Affairs Legislation Committee, *Budget estimates 2012-13*, June 2012, p. 7; Senate Legal and Constitutional Affairs Legislation Committee, *Additional estimates 2012-13*, March 2013, p. 5. The one exception was the Additional Estimates 2011-12 round, where the committee noted a slight improvement in the provision of answers to questions on notice.

1.24 The committee questioned DIAC about its process of answering questions on notice and key performance indicators (KPIs) related to that process.<sup>39</sup> The Secretary acknowledged that DIAC is not presently meeting 'a lot of' the KPIs in relation to the provision of answers to questions on notice and advised that a new process for answering questions on notice has been instituted, which involves a restructure of the ministerial and executive support areas. The Secretary indicated his expectation that the new process would be effective as from this estimates round.<sup>40</sup>

1.25 The committee will continue to closely monitor DIAC's performance in the provision of answers to questions on notice, particularly in light of the new process advised by the Secretary. It is simply not acceptable for answers to be provided weeks after the due date set by the committee, and for answers to be provided in huge numbers within hours of the commencement of estimates hearings.

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39 *Budget Estimates Hansard*, 27 May 2013, pp 40-41.

40 *Budget Estimates Hansard*, 27 May 2013, p. 40.

