

# CHAPTER 1

## IMMIGRATION AND BORDER PROTECTION PORTFOLIO

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

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

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

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

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

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

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

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

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

### **Australian Customs and Border Protection Service (ACBPS)**

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

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

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

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

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

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

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

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

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

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

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

1.10 The committee heard that the last successful people smuggling operation to Australia was 19 December 2013, compared to some 20,000 successful arrivals by boat for the entire calendar year of 2013.<sup>8</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.18 Officials faced questioning regarding the tendering process that led to Transfield being contracted to operate both Manus Island and Nauru regional processing centres and the exclusion of G4S from this process, following a decision by the DIBP to amalgamate the contracts for the separate centres. Mr Bowles explained the reasoning behind the adoption of a limited tendering process and rejected claims of a conflict of interest between Mr Tony Shepherd's involvement with both Transfield and the Commission of Audit. Mr Bowles explained that the decision to use a limited tender process was consistent with procurement guidelines and was fundamentally an expansion and extension of an existing contract with a company that had a good track record of efficiency and value of service with government. Mr Bowles further explained that the contract had undergone a value-for-money audit by KPMG.<sup>17</sup> The committee learned that G4S was not asked to put a proposal forward regarding its potential operation of the two facilities and that similar limited tendering processes had occurred under the previous government.<sup>18</sup> Mr Bowles took ultimate responsibility for the decision to change contracting arrangements across the two centres.<sup>19</sup> He updated the committee that the department would initiate a full public tender by the end of 2014 for contracts for the operation of the two centres, as current arrangements with Transfield are due to expire on 31 October 2015.<sup>20</sup>

### ***Changes to family visa applications for 'illegal maritime arrivals'***

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

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

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

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

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

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

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

...

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

### *Other matters of interest*

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

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

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

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

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

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

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

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