

The Senate

Legal and Constitutional Affairs
Legislation Committee

Additional estimates 2013–14

March 2014

Commonwealth of Australia

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Membership of the Committee

44th Parliament

Members

Senator the Hon Ian Macdonald (LP, QLD) (Chair)
Senator the Hon Lisa Singh (ALP, TAS) (Deputy Chair)
Senator Sue Boyce (LP, QLD)
Senator Gavin Marshall (ALP, VIC)
Senator Zed Seselja (LP, ACT)
Senator Penny Wright (AG, SA)

Senators in attendance

Senator the Hon Ian Macdonald (Chair)	Senator the Hon Don Farrell
Senator the Hon Lisa Singh (Deputy Chair)	Senator Mark Furner
Senator Sue Boyce	Senator Sarah Hanson-Young
Senator Gavin Marshall	Senator the Hon Bill Heffernan
Senator Zed Seselja	Senator Helen Kroger
Senator Penny Wright	Senator Scott Ludlam
Senator Mark Bishop	Senator the Hon Joe Ludwig
Senator the Hon George Brandis	Senator John Madigan
Senator the Hon Doug Cameron	Senator Christine Milne
Senator the Hon Kim Carr	Senator Stephen Parry
Senator the Hon Michaelia Cash	Senator Lee Rhiannon
Senator the Hon Stephen Conroy	Senator Rachel Siewert
Senator Sam Dastyari	Senator Larissa Waters
Senator Richard Di Natale	Senator Peter Whish-Wilson
Senator Sean Edwards	Senator Nick Xenophon

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PREFACE

On 13 February 2014, the Senate referred to the Senate Legal and Constitutional Affairs Legislation Committee (committee) for examination the estimates of proposed additional expenditure for the financial year 2013–14. The committee is responsible for the examination of the Attorney-General's Portfolio and the Immigration and Border Protection Portfolio. The portfolio additional estimates statements for 2013–14 were tabled on 13 February 2014.¹

Reference of documents

The Senate referred to the committee, for examination and report, the following documents:

- particulars of proposed additional expenditure in respect of the year ending on 30 June 2014 [Appropriation Bill (No. 3) 2013–2014];
- particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2014 [Appropriation Bill (No. 4) 2013–2014];
- final budget outcome 2012–13;
- issues from Advances provided under the annual Appropriation Acts for 2012–13; and
- estimates of proposed additional expenditure for 2013–14 (Portfolio Additional Estimates Statements) relating to the Attorney-General's portfolio and the Immigration and Border Protection portfolio.

The committee was required to report on its consideration of the additional estimates on or before 18 March 2014.

Estimates hearings

The committee met in public session on 24 and 25 February 2014.

Over the course of the two days of hearings, totalling over 22 hours, the committee took evidence from the following departments and agencies:

- Attorney-General's Department
- Australia Council
- Australian Crime Commission
- Australian Customs and Border Protection Service
- Australian Federal Police
- Australian Financial Security Authority
- Australian Government Solicitor
- Australian Human Rights Commission

1 *Journals of the Senate*, No. 14—13 February 2014, pp 484–485.

- Australian Law Reform Commission
- Australian Security Intelligence Organisation
- Australian Transaction Reports and Analysis Centre
- Classification and Classification Review Board
- Creative Partnerships Australia
- Department of Immigration and Border Protection
- Family Court of Australia
- High Court of Australia
- Migration Review Tribunal and Refugee Review Tribunal
- National Archives of Australia
- Office of the Australian Information Commissioner
- Office of the Director of Public Prosecutions
- Officers from the Joint Agency Taskforce for Operation Sovereign Borders
- Screen Australia

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

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

Ministers

On 24 February 2014, the committee heard evidence from Senator the Hon George Brandis, the Attorney-General and Minister for the Arts.

On 25 February 2014, the committee heard evidence from Senator the Hon Michaelia Cash, Minister Assisting the Prime Minister for Women and Assistant Minister for Immigration and Border Protection.

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

Questions on notice

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.

The committee has resolved that the due date for submitting responses to questions on notice from the additional estimates round is 23 April 2014.

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

ATTORNEY-GENERAL'S PORTFOLIO

1.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Attorney-General's portfolio for the 2013–14 financial year.

National Archives of Australia

1.2 The committee questioned representatives from the National Archives of Australia (NAA) on a number of issues including the accumulated backlog of applications for access to records and the steps taken to address the backlog; updates on the agency's accommodation requirements, as well as its current staffing profile.

1.3 Agency officials provided statistics that gave context to the current waiting periods for access to documents, followed by the actions taken to address the backlog of applications:

There are 20,000 records awaiting examination so that they can be opened under the Archives Act. Within the broader context of several million applications or requests for access that we receive each year—and five million of those dealt with our material which is already online and digitised, delivered very efficiently through online channels as it should be—over and above that we receive annually about 43,000 applications for files which have not yet been examined for access under the Archives Act. I think that last year, out of those 43,000, we were able to open about 40,000. So the maths is quite simple here: there were 3,000 which were over and above our capacity to respond.

...

We have devoted an area of our website now to provide public scrutiny of how we are doing eroding that backlog. We are making progress. I have diverted for the Archives significant resources in the last several months to set up a task force to focus on that backlog. We are entering into refreshed agreements with all the government agencies we work with to clear that backlog. It is an area of intense activity within the Archive.¹

1.4 The agency updated the committee on its accommodation requirements. The current lease on the facility in Tuggeranong is due to expire in 2017. It was explained that arrangements are being made with the intention to look for a new facility in the ACT region. A tender process at the expression of interest stage is currently underway and its timing is being coordinated to facilitate consolidation of the agency's holdings into the new repository.² Mr Lennard Marsden, Assistant Director-General of the Executive and Information Services Branch of the NAA stated:

1 *Estimates Hansard*, 24 February 2014, p. 16.

2 *Estimates Hansard*, 24 February 2014, p. 17.

We were basically looking to consolidate digital archive for repository holdings from Greenway... The existing Mitchell site is currently out for tender at the moment, and we are looking at 75 shelf kilometres equivalent to basically refurbish... The new site will accommodate the bulk of the holdings, but not all holdings going forward.³

1.5 The agency provided an update on their staffing statistics. As at 30 June 2013 the agency had a total of 450 staff, consisting of 371 ongoing, 32 non-ongoing and 47 casual employees. The full-time equivalent was 411 and the average staffing level was 422. This was compared to the statistics as at 31 December 2013, where a total of 417 staff was reported, consisting of 365 ongoing, 16 non-ongoing, 36 casuals and a full-time equivalent of 385.⁴

Office of the Australian Information Commissioner

1.6 Representatives from the Office of the Australian Information Commissioner (OAIC) were questioned on the progress of Australia's entry to the Open Government Partnership.⁵ The Attorney-General, Senator the Hon George Brandis, provided some information on developments in this area:

Australia announced its intention to join the Open Government Partnership on 22 May last year. There have since been three interagency meetings to discuss progress, including the requirements of an action plan. One of those meetings was held before the elections, on 17 July, and the other two have been held since the election, on 29 October and on 5 November. So the action plan is in development.⁶

1.7 In addition to this, the Information Commissioner addressed the issue of delays in dealing with some of the applications for Information Commissioner (IC) or merit review of Freedom of Information (FOI) decisions, FOI complaints and privacy complaints that were reported in the annual report.⁷ Attention was drawn to the figures published on the web in December, which indicated that the rate of completion of IC review cases has risen to 1.4 cases per day, compared to 0.7 in the previous annual report. Also, the completion of privacy complaints has risen to six per day, compared to 3.79 in the previous annual report. The Information Commissioner stated that 'the office battles gamely to deal with a growing workload'.⁸

Australian Human Rights Commission

1.8 The Australian Human Rights Commission (AHRC) updated the committee on developments at the commission since its last appearance at Senate estimates, which included the announcement of the third national inquiry into children in

3 *Estimates Hansard*, 24 February 2014, p. 17.

4 *Estimates Hansard*, 24 February 2014, p. 18.

5 *Estimates Hansard*, 24 February 2014, p. 75.

6 *Estimates Hansard*, 24 February 2014, p. 75.

7 *Estimates Hansard*, 24 February 2014, p. 76.

8 *Estimates Hansard*, 24 February 2014, p. 76.

immigration detention; the appointment of a seventh commissioner, Mr Tim Wilson, to the AHRC; and the commission's priority over the next year to engage more directly with business, to positively encourage small to medium businesses to meet human rights standards, particularly in regard to anti-discrimination law, but to do so with a minimum of red tape.⁹

1.9 The committee raised issues with the Disability Discrimination Commissioner, Mr Graeme Innes AM, relating to the imprisonment of people with a disability, with a particular focus on Aboriginal and Torres Strait Islander persons.¹⁰ Mr Innes made reference to the recently published access to justice report, which examined the issue of people with disabilities, who are significantly disadvantaged in the justice system, and stated:

I have written to the Attorney-General of the Commonwealth and to the state and territory attorney-general to advocate these issues and to talk to them about my report.¹¹

1.10 The committee also inquired into the progress of the report on pregnancy and return to work: the commission advised that the headline prevalence data will be available by the beginning of April and the full report will become available in June.¹² The commission advised that the report would be looking at all sizes of companies across all sectors, which will facilitate the identification of potential trends in the size of a company compared to the prevalence of discrimination.¹³

1.11 The President of the AHRC, Professor Gillian Triggs advised that the new inquiry into children in immigration detention had just started and is scheduled for completion by September–October this year, with a view to report to government within that time frame.¹⁴ The inquiry is in response to the high numbers of children in closed immigration detention that were recorded in 2013, with 1,600 recorded on 30 April 2013 and 2,000 recorded in July 2013.¹⁵ Professor Triggs reported that this number has decreased recently, with the number of children currently in detention at approximately 1,000.¹⁶

Attorney-General's Department

1.12 A number of issues were raised with the Attorney-General's Department (AGD) including: developments in considering reforms to the *Racial Discrimination Act 1975* (Racial Discrimination Act); the review into the efficiency and

9 *Estimates Hansard*, 24 February 2014, pp 55–56.

10 *Estimates Hansard*, 24 February 2014, p. 63.

11 *Estimates Hansard*, 24 February 2014, p. 63.

12 *Estimates Hansard*, 24 February 2014, p. 66.

13 *Estimates Hansard*, 24 February 2014, p. 66.

14 *Estimates Hansard*, 24 February 2014, p. 55.

15 *Estimates Hansard*, 24 February 2014, p. 55.

16 *Estimates Hansard*, 24 February 2014, p. 55.

cost-effectiveness of government-funded legal assistance programs; and administrative issues relating to the Royal Commission into the Home Insulation Program.

Racial Discrimination Act

1.13 The Attorney-General updated the committee on the government's consideration of reforms to the Racial Discrimination Act. The Attorney-General advised:

...There will be significant amendments to remove, from the Racial Discrimination Act, language which, in the view of the government, unreasonably penalises freedom of speech. There has been absolutely no change to the government's declared intention to reform the Racial Discrimination Act so as to protect freedom of speech.¹⁷

1.14 Further to this, the Attorney-General added:

That will involve repealing from section 18C some of the language, but the government has not yet decided on how extensive that legislative amendment will be. That is a matter of current discussion within the government...we are carefully, steadily and methodically going about giving effect to that which we undertook to do.

Thirdly, surely you will appreciate that this is an issue that does provoke very strong feelings on both sides of the question...What I have made it my business to do throughout the summer, starting in November and throughout the summer until as recently as last week, was to hold extensive discussions. They were careful, far-reaching and sometimes very long discussions with the number of individual community leaders—most particularly, from the ethnic community.¹⁸

1.15 The committee questioned the Attorney-General as to whether any formal consultation or community engagement process had been sought in considering the legislation. The Attorney-General advised the committee of the government's intention to introduce legislation in the first half of 2014, and expected to be subject to the Senate committee process.¹⁹

Efficiency and cost-effectiveness of government funded legal assistance programs

1.16 The AGD was asked to provide information relating to the review into the efficiency and cost-effectiveness of four Australian government-funded legal assistance programs. Officers reported the review was currently in draft form and although it had not been publicly released, it is known to the government and it is under consideration.²⁰ The Deputy Secretary of the Civil Justice and Legal Services

17 *Estimates Hansard*, 24 February 2014, p. 31.

18 *Estimates Hansard*, 24 February 2014, p. 31.

19 *Estimates Hansard*, 24 February 2014, p. 32.

20 *Estimates Hansard*, 24 February 2014, pp 33–34.

Group of the AGD, Mr David Fredericks provided more information on the conduct, scope and potential applications of the review:

The report is prepared as a consequence of the national partnership agreement [NPA] on legal assistance. That agreement provided that an independent review needed to be conducted before the expiration of the agreement. So it is under the rubric of that national partnership agreement. The review has been conducted by ACIL Allen Consulting.

...

The review will deal with a number of issues. Firstly, the review will include a framework for evaluating all four Commonwealth funding legal assistance programs—that is, legal aid commissions, community legal centres, Aboriginal and Torres Strait Island legal services and family violence prevention legal services for Indigenous Australians. Secondly, the report will include an evaluation of the quality, efficiency and cost-effectiveness of those four programs. Thirdly, there will be a review of the state legal aid commissions against the performance indicators that are set in the NPA and the benchmarks that are set in the NPA. Fourthly, the review will include a market analysis of the legal services sector. It will be quite comprehensive.

It will be of great utility in a number of ways. Firstly, because the review is being conducted under the rubric of the NPA, it will ultimately be considered by the Standing Council on Federal Financial Relations. It will also be provided to the now Law, Crime and Community Safety Council, so it is an important report for the states as well and will be shared with them in that way. Secondly, the report will also be useful input to the Productivity Commission review... So both organisations have ensured that they have been in contact in that regard. Thirdly, it will ultimately be useful in assisting the government to determine its position on legal assistance services, both under the NPA and generally moving forward.²¹

1.17 The total cost of the contract for the review was reported at \$815,366 with the states and territories contributing \$167,341 to meeting that cost.²²

1.18 The committee questioned the department on the December 2013 Mid-year Economic and Fiscal Outlook (MYEFO) which indicated a redirection of legal policy reform and advocacy funding to the amount of \$43.1 million, over four years, by removing funding support to policy reform and advocacy activities provided to four legal assistance programs (the legal aid program; the Indigenous legal assistance program; the community legal services program; and the family violence prevention legal services program (now residing with the Department of the Prime Minister and Cabinet))²³.

21 *Estimates Hansard*, 24 February 2014, p. 33.

22 *Estimates Hansard*, 24 February 2014, p. 34.

23 *Estimates Hansard*, 24 February 2014, pp 34–35.

1.19 The Attorney-General highlighted the Productivity Commission's review into the access to justice issue, which is due to report at the end of 2014 and will be available at that time.²⁴

Royal Commission into the Home Insulation Program

1.20 In response to questions relating to the Royal Commission into the Home Insulation Program, AGD representatives provided details of the department's engagement with administrative matters relating to the Royal Commission.

1.21 Departmental officials explained the budget allocation for the Royal Commission into the Home Insulation Program. The total cost allocated to the Royal Commission to date was \$20 million. This consisted of the monetary amount that was allocated to the commission itself, which was \$12.2 million and the additional costs for Commonwealth representation and support for witnesses.²⁵

1.22 Included in the \$20 million appropriated to the Royal Commission was the cost of eleven staff from the Attorney-General's Department allocated to provide administrative support to the commission.²⁶

1.23 The committee examined the Attorney-General's Department extensively on issues pertaining to summonses for the production of documents, including cabinet documents. The Attorney-General tabled a letter that outlined the approach the government would take in the event of a summons being issued by the Royal Commission for the production of cabinet documents.²⁷ The Attorney-General read from a letter to the former Attorney-General the Hon Mark Dreyfus, during the hearing:

This is the letter from me to Mr Dreyfus in response to his request that I indicate on behalf of the government what attitude the government would take.

And this is what I said: "To ensure a proper approach to dealing with issues of cabinet confidentiality while not frustrating the process of the royal commission, the government has decided that in response to the summons directed to the Commonwealth, the documents the Commonwealth will produce for the commission to examine and consider will include documents over which a claim for public interest immunity might be made, such as cabinet documents. However, in providing such documents to the commission, the government will indicate that it does not waive its right to claim the immunity. Accordingly, should the commission wish to publish

24 *Estimates Hansard*, 24 February 2014, pp 32.

25 *Estimates Hansard*, 24 February 2014, p. 25.

26 *Estimates Hansard*, 24 February 2014, p. 26.

27 Attorney-General, Senator the Hon George Brandis, Attorney-General's Department, *Response to summons to produce cabinet documents in relation to the Royal Commission into the Home Insulation Program*, tabled on 24 February 2014:

http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/add_1314/AGD/AG_4.as_hx

any of the cabinet documents or use them in such a manner that the contents might become public, the Commonwealth requests that it be notified so that it can consider whether it is necessary to make submissions in relation to such documents or uses or whether it should seek other protective orders. Whether the Commonwealth makes such submissions or application will be a matter for the Commonwealth at the relevant time".²⁸

Other matters of interest

1.24 Other matters canvassed with the Attorney-General's portfolio by the committee included:

- an update of issues relating to the Organisation for Economic Cooperation and Development's (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;²⁹
- questions relating to the department's interception capability plans which outline how nominated carriers and carriage service providers can help law enforcement agencies with lawful interception of telecommunication services;³⁰
- Creative Partnerships Australia's engagement with business and its offices in regional areas;³¹
- vacancies on the Screen Australia Board;³²
- matters regarding data retention by the Attorney-General's Department following the election;³³
- progress on the Australian Security Intelligence Organisation's new building;³⁴
- the Australian Federal Police's (AFP's) execution of a search warrant on Channel 7's offices in relation to alleged negotiations to interview Chappelle Corby;³⁵ and
- parliamentary security and the implications of possible savings measures relating to the AFP's perimeter security for Parliament House.³⁶

28 *Estimates Hansard*, 24 February 2014, pp 20–21.

29 *Estimates Hansard*, 24 February 2014, pp 54, 116, 120–121 and 133.

30 *Estimates Hansard*, 24 February 2014, pp 50–51.

31 *Estimates Hansard*, 24 February 2014, pp 7–11.

32 *Estimates Hansard*, 24 February 2014, pp 13–14.

33 *Estimates Hansard*, 24 February 2014, pp 22, 47, 52 and 113.

34 *Estimates Hansard*, 24 February 2014, pp 107–110.

35 *Estimates Hansard*, 24 February 2014, pp 115–116, 118–120, 122–130 and 132.

36 *Estimates Hansard*, 24 February 2014, pp 117–118.

CHAPTER 2

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

2.1 This chapter summarises some of the matters raised during the committee's consideration of the additional estimates for the Immigration and Border Protection portfolio for the 2013–14 financial year.

Migration Review Tribunal – Refugee Review Tribunal (MRT–RRT)

2.2 The Principal Member of the MRT–RRT, Ms Kay Ransome (Principal Member), highlighted developments within the organisation since its last appearance before the committee at Supplementary Budget Estimates in November 2013. Ms Ransome informed the committee of workload statistics and mechanisms to reduce the number of active cases and return to target processing times, including: 'the refinement of specialist member teams, which were first introduced in 2012; integration of hearing lists into standard procedures for suitable caseloads; and the introduction of the first phase of the tribunal's online application service, which occurred last month'.¹

2.3 Ms Ransome advised that there was a large increase in cases decided by the MRT–RRT this financial year, with close to 14,000 cases decided up to 31 January 2014 (an increase of more than 50 per cent, from the number of decisions made in the previous year, during the same period). The tribunals are continuing to see a decline in their active case loads.²

2.4 The tribunals reported that the overall number of application lodgements to date in the current 2013–14 financial year was at similar levels to 2012–13, breaking the trend of increasing lodgements that spanned over the last three years. For example, in 2012–13 lodgements with the RRT increased from the previous year by 32 per cent.³

2.5 Additionally, the tribunals observed a change in the nature of caseloads, with lodgements in relation to partner visas and protection visas increasing, and lodgements in relation to skilled and student visa classes decreasing.⁴

2.6 In relation to the complementary protection criterion, the committee sought an explanation of the regard given to Australia's international obligations when considering cases against the criterion. Ms Ransome stated:

The complementary protection criterion is based on the Australia's international obligations but what the tribunal applies is the statutory

1 *Estimates Hansard*, 25 February 2014, p. 4.

2 *Estimates Hansard*, 25 February 2014, p. 4.

3 *Estimates Hansard*, 25 February 2014, pp 4 and 10.

4 *Estimates Hansard*, 25 February 2014, p. 4.

criteria as set out in the Migration Act in relation to complementary protection.

...

The statutory requirements in the act are a statutory embodiment of Australia's obligations.⁵

Australian Customs and Border Protection Service

2.7 The Australian Customs and Border Protection Service updated the committee on the issue of corruption within the service, following on from information provided during the estimates hearings in November 2013 regarding this issue. The Chief Executive Officer Mr Michael Pezzullo provided a detailed brief on prosecution action against Customs and Border Protection officers who are or have been the subject of anticorruption operations.⁶

2.8 The service also discussed the initiative 'Task Force Pharos' which was announced in November 2013, in response to corruption in the service. In relation to the task force, Mr Pezzullo stated:

Governance and legal foundations for the task force have been settled, along with interagency collaborative arrangements with ACLEI—the Australian Commission for Law Enforcement Integrity—the Australian Federal Police and the Australian Crime Commission. The task force has multiple lines of inquiry underway.⁷

2.9 Mr Pezzullo further advised the committee of the service's intention to launch the 'new operating model and reformed workforce practices',⁸ on 1 July 2014, to ameliorate, in part, issues of corruption and infiltration.⁹ Mr Pezzullo explained that: 'officers will be rotated...and field officers will be formed into a new vocational category known as the Border Force'.¹⁰

Operation Sovereign Borders

2.10 The Joint Agency Taskforce comprising officers from the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service, appeared before the committee to answer questions pertaining to Operation Sovereign Borders (OSB). Some of the matters raised by the committee included: the time line of events that occurred on Manus Island from 16 to 18 February 2014; the flow of information following those events on Manus Island; the independent review that has been commissioned to inquire into those events; the activities of the special envoy for OSB; and the OSB framework.

5 *Estimates Hansard*, 11 February 2013, p. 7.

6 *Estimates Hansard*, 25 February 2014, p. 28.

7 *Estimates Hansard*, 25 February 2014, p. 29.

8 *Estimates Hansard*, 25 February 2014, p. 29.

9 *Estimates Hansard*, 25 February 2014, p. 32.

10 *Estimates Hansard*, 25 February 2014, p. 32.

2.11 The Secretary of the Department of Immigration and Border Protection, Mr Martin Bowles PSM, provided details on the review that has been commissioned to inquire into the disturbances on Manus Island:

All of these issues are clearly now in the domain of the independent review which I have commissioned. I have asked Mr Cornall, who is a former Secretary of the Attorney-General's Department and someone who I had used to do an earlier review on Manus [Island], to conduct this independent review because of his knowledge of Manus [Island] and how it operated. I have met with him and discussed the terms of reference, which I hope to have finalised after talking with PNG [Papua New Guinea] ... We are now putting all of the commentary, all of the reports that we have received, into the independent review.

...

I have asked Mr Cornall to report to me regularly through his review. I have asked for an interim assessment by the end of March and hopefully within another month or thereabouts we can have a final assessment.¹¹

2.12 Additionally, officials provided information on the OSB framework. Mr Pezzullo explained that the Australian Customs and Border Protection Service provides a range of resources to Lieutenant General Angus Campbell DSC, AM, Commander of the Joint Agency Task Force, and his headquarters.¹²

2.13 The committee was advised of a number of task groups within the OSB governance and control framework. The committee was informed that the task groups are variously charged with preventative work and offshore disruption and are led by the Australian Federal Police.¹³ The Offshore Detention and Returns Task Group is a resource provided through the Department of Immigration and Border Protection and its staff. The task group for on-water operations known as Border Protection Command (BPC) is headed by Admiral Noonan, of the Australian Navy, who is seconded to the Customs and Border Protection Service and is empowered to head BPC.¹⁴ Admiral Noonan works directly to Lieutenant General Campbell and takes guidance from the general in terms of on-water operations.¹⁵

Department of Immigration and Border Protection

2.14 Mr Bowles gave an overview of developments in the department since Supplementary Budget Estimates in November 2013. Mr Bowles provided an update of statistics in relation to various migration programs; efforts the department is undertaking to identify opportunities for increased efficiency; an incident involving a report published by the department inadvertently permitting access to some personal

11 *Estimates Hansard*, 25 February 2014, p. 41.

12 *Estimates Hansard*, 25 February 2014, p. 58.

13 *Estimates Hansard*, 25 February 2014, p. 58.

14 *Estimates Hansard*, 25 February 2014, p. 58.

15 *Estimates Hansard*, 25 February 2014, p. 58.

details of people in the immigration system; and the closure of four sites across the immigration detention network that are expected to bring significant financial savings to the department.¹⁶

Age determination process

2.15 The committee sought an explanation of the age determination process for Irregular Maritime Arrivals (IMAs) and the factors that are taken into consideration when conducting an age assessment. Specifically, the committee sought an explanation of the processes that follow on from an unaccompanied minor being sent to Manus Island due to incorrect processing as an adult.¹⁷

2.16 Mr Bowles explained that it is not the practice or custom of the department to send unaccompanied minors to Manus Island, but that it occurs inadvertently from time to time, at which time the unaccompanied minor is re-engaged with the age determination process.¹⁸

2.17 The First Assistant Secretary of the Community Programs and Children Division of the Department of Immigration and Border Protection, Ms Kate Pope PSM, provided a comprehensive summary of the age determination process:

The arrangements that sit around age determination have been reviewed quite extensively over the last few years and the process that we have reached, with the endorsement of both the Ombudsman's office and the Human Rights Commission, is one of a detailed interview. It looks at a whole range of factors that somebody might bring to bear in discussing their age. They would respond to questions about their family composition, their education, the age of their parents and their siblings, where they fit in the family and so on. They provide any documentary evidence they might have of their age. It could be a birth certificate, a passport, a school document and so on.

We would assess those documents for veracity and make a determination as to whether we are satisfied those documents are genuine. We make observations about the demeanour and behaviour of the person and have an extensive look at all the circumstances which might go to age, and come to a view on balance and give the benefit of the doubt to the person being assessed. We would find that they are, most likely, over 18 or under 18.

In some cases that process is carried out in advance of transfer to an offshore processing centre, if someone claims to be a minor and we are not satisfied that they are or, conversely, they claim to be an adult and we are not satisfied that they are, given how important it is that we limit as much as possible the risk that we transfer somebody who is under 18 to a centre that is not designed for people under the age of 18.¹⁹

16 *Estimates Hansard*, 25 February 2014, pp 14–15.

17 *Estimates Hansard*, 25 February 2014, p. 82.

18 *Estimates Hansard*, 25 February 2014, p. 83.

19 *Estimates Hansard*, 25 February 2014, p. 83.

2.18 Further, the committee asked officials to explain the decision making process that led to a determination that a transferee was required to undertake the formal age determination process.²⁰ Ms Pope explained:

Ms Pope: Where someone is demonstrably an adult and does not raise issues of the age to us, and we have no reason to raise it with them, and they are transferred as an adult and that issue does not arise prior to transfer, there is no reason to conduct an age determination. The instances ... referred to have, for the most part, been where people have transferred as adults and then later claimed to be minors after arriving on Manus

...

Senator SINGH: What is the criteria by which you are not satisfied? Just by going on the look of someone?

Ms Pope: Yes, the look of someone; whether they have a document that evidences that age, their behaviour and so on. It is most often where someone is claiming to be a minor but appears to be an adult. That is the usual circumstance. But we have had instances where people have claimed to be adults, for example, because they want to smoke, when in fact they are under 18. So we have to look at both sides of the coin. It is not just in the context of transfer to Manus [Island] or Nauru, it is also in the context of placement within the detention network and in appropriate accommodation.²¹

Response to Amnesty International report

2.19 The committee referred to a recent report from Amnesty International *This is breaking people – Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea*, that detailed a range of concerns in relation to the Manus Island detention centre. The committee asked whether any of the recommendations in the report had been implemented.²² The Deputy Secretary of the Immigration Status Resolution Group of the Department of Immigration and Border Protection, Mr Mark Cormack replied:

We have reviewed the report and attended to some of the immediate issues and will be having a look at other issues that can be addressed in the context of further infrastructure development. Also, as we discussed, there has been a change in service provider, which gives us an opportunity to look at the overall amenity and level of service provided on Manus [Island]. The Amnesty International report is just one of the sources of information we could use to improve service delivery.²³

2.20 The committee specifically sought an explanation about the illegality of homosexuality under sections 210 and 212 of the Papua New Guinea penal code and

20 *Estimates Hansard*, 25 February 2014, p. 83.

21 *Estimates Hansard*, 25 February 2014, p. 83.

22 *Estimates Hansard*, 25 February 2014, p. 53.

23 *Estimates Hansard*, 25 February 2014, p. 99.

the impact on lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers. Mr Bowles responded:

Mr Bowles: I am not going into the laws of PNG. They are what they are and it is their sovereign right to make decisions around issues that they see as fit for their country. In relation to whether our processes lead to these people being handed over to anybody, that is not the way we operate at all.

Senator SINGH: Are you aware of some asylum seekers changing their claims in an attempt to hide their sexuality?

Mr Bowles: I personally am not, but I am sure that that would happen in a range of cases. People do change their claims for a range of reasons through the process. We have found that over many, many different cohorts of years.

Senator SINGH: So you recognise that these issues faced by LGBTI refugees affect the processing of applications.

Mr Bowles: All issues will be taken into account when assessing people's claims. We have to also understand that this is a process under PNG law; it is their sovereign right, because it is their country. We will assist PNG wherever we can, and we do, but PNG are responsible for dealing with the assessment of refugee claims in that case, and Nauru is for Nauru claims.²⁴

2.21 The Minister representing the Minister for Immigration and Border Protection, Senator the Hon Michaelia Cash further added:

I want to make it very clear to the committee that a number of the findings by Amnesty International were found to be untrue by the department. I just want to take the committee through them. The first is: it was reported that drinking water was restricted to 500ml of water per day...and I want to confirm for the committee...that that was never the case. At all times transferees have had unrestricted access to water...There were also reports of inadequate soap in the toilet facilities, inadequate supply of shoes available for transferees, and outbreaks of illnesses and gastroenteritis. In relation to those reports I advised the Senate...that toiletries, clothing and shoes supplied for each transferee are replenished as required. In relation to additional hygiene items, transferees have access to those items, through the canteen and through the points system...In relation to the allegations surrounding gastroenteritis, in the event a transferee displays symptoms of gastroenteritis, the person is immediately isolated and receives ongoing treatment and monitoring by IHMS [International Health and Medical Services]—and more severe cases are admitted to hospital. IHMS also conducts health education activities on various health matters, including hygiene.²⁵

24 *Estimates Hansard*, 25 February 2014, p. 21.

25 *Estimates Hansard*, 25 February 2014, p. 100.

Review of The 457 visa program

2.22 The committee asked a range of questions surrounding the announcement that a review into the 457 visa program would be conducted by an independent panel. The committee asked for details of the review including the arrangements, the length of time it will take and who the members of the independent panel will be.²⁶ The minister indicated that the review would particularly focus on recent changes to the 457 program, with an aim to 'provide recommendations on how to maintain the integrity of the 457 visa program whilst not placing unnecessary burdens on businesses'.²⁷

2.23 The committee further inquired into the selection process for the members of the independent panel. The committee was advised that appointment to the panel would be subject to ministerial discretion. The reporting date for the review is scheduled for mid-2014.²⁸

Other matters of interest

2.24 A wide range of other matters were also canvassed. These included:

- a public interest immunity claim and related documents cited by the Assistant Minister for Immigration and Border Protection;²⁹
- Australian Customs and Border Protection Service's involvement in monitoring Japanese whaling ships;³⁰
- opium output from Afghanistan and the subsequent implications for the Australian Customs and Border Protection Service;³¹

26 *Estimates Hansard*, 25 February 2014, p. 116.

27 *Estimates Hansard*, 25 February 2014, p. 116.

28 *Estimates Hansard*, 25 February 2014, p. 119.

29 *Estimates Hansard*, 25 February 2014, pp 16–17, 21–22, 24–27, 49–50, 59.

30 *Estimates Hansard*, 25 February 2014, pp 36–37.

31 *Estimates Hansard*, 25 February 2014, pp 38–39.

- comparisons between Operation Sovereign Borders and embedded media in the defence forces;³² and
- statistics relating to pregnant women in detention and hospital facilities in Nauru.³³

Senator the Hon Ian Macdonald

Chair

32 *Estimates Hansard*, 25 February 2014, pp 50–51, 64–68.

33 *Estimates Hansard*, 25 February 2014, pp 106–109.

APPENDIX 1

DEPARTMENTS AND AGENCIES FOR WHICH THE COMMITTEE HAS OVERSIGHT

Attorney-General's Portfolio

- Attorney General's Department;
- Administrative Appeals Tribunal;
- Administrative Review Council;
- Audio-Visual Copyright Society Limited (Screenrights);
- Australia Council;
- Australian Federal Police;
- Australian Financial Security Authority;
- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;
- Australian Film, Television and Radio School;
- Australian Government Solicitor;
- Australian Human Rights Commission;
- Australian Institute of Criminology;
- Australian Law Reform Commission;
- Australian National Maritime Museum;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- Bundanon Trust;
- Classification Board and Classification Review Board;
- Copyright Agency Limited;
- Creative Partnerships Australia;
- CrimTrac Agency;
- Family Court of Australia;
- Family Law Council;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- High Court of Australia;
- National Archives of Australia;

- National Film and Sound Archive of Australia;
- National Gallery of Australia;
- National Library of Australia;
- National Museum of Australia;
- National Portrait Gallery of Australia;
- Office of the Australian Information Commissioner;
- Office of the Commonwealth Director of Public Prosecutions;
- Office of Parliamentary Counsel;
- Old Parliament House; and
- Screen Australia;

Immigration and Border Protection Portfolio

- Department of Immigration and Citizenship (including the Office of the Migration Agents Registration Authority);
- Australian Customs and Border Protection Service; and
- Migration Review Tribunal and Refugee Review Tribunal.

APPENDIX 2

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APPENDIX 3

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1	Mr Roger Wilkins AO, Secretary, Attorney-General's Department	Correspondence in relation to the Royal Commission into the Home Insulation Program
2	Mr Richard Foster PSM, Chief Executive Officer, Family Court of Australia	Family Court Filings & Performance
3	Attorney-General, Senator the Hon. George Brandis	Correspondence from the Prime Minister to the High Court of Australia, in relation to the efficiency dividend
4	Attorney-General, Senator the Hon. George Brandis	Response to summons to produce cabinet documents in relation to the Royal Commission into the Home Insulation Program
5	Attorney-General, Senator the Hon. George Brandis	Office of the Director of Public Prosecutions, Attorney-General's Direction 2012

Immigration and Border Protection Portfolio, Tuesday, 25 February 2014

No.	Tabled by:	Topic
1	Mr Martin Bowles PSM, Secretary, Department of Immigration and Border Protection	Opening statement
2	Mr Michael Pezzullo, Chief Executive Officer, Australian Customs and Border Protection Service	Opening statement
3	Senator the Hon. Kim Carr	Media article: Manus Island guards let residents into centre as extra manpower; says G4S witness
4	Senator the Hon. Stephen Conroy	Map

