

Chapter 1

Immigration and Border Protection portfolio

1.1 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 2014–15 financial year.

1.2 The Secretary of the Department of Immigration and Border Protection (DIBP, the department) and the Commissioner of the Australian Border Force (ABF) provided, at length, opening statements that facilitated senators to ask questions based on the content of those statements. A synopsis of the opening statements is provided below.

1.3 The Secretary informed the committee that the High Court of Australia's ruling on the case known as M68 upholds 'the legal foundations of both turn back and take back maritime operations'.¹ The Secretary stated that any attempt to enter Australia by illegal maritime means would result in vessels either being safely turned around or being 'taken to Papua New Guinea or Nauru for the purposes of being assessed and processed for potential settlement outside Australia or return[ed] to [their] country of origin'.²

1.4 In relation to people that are currently in the regional processing centres (RPCs) or currently in Australia for medical purposes, the Secretary stated:

[T]he department will continue to ensure that adequate medical services are provided to those who require them. Transferees and refugees temporarily in Australia for medical treatment or accompanying those in need of treatment will be returned to Nauru and Papua New Guinea, as the case applies, at the conclusion of their treatment, noting that determinations on this will be made on a case-by-case basis.³

1.5 The amalgamation of DIBP with the Australian Customs and Border Protection Service (ACBPS) was also commented on by the Secretary. As of 1 July 2015, the integrated department with the ABF as the enforcement arm would:

manage our nation's border processes by which we oversee the flow of people and goods to and from our nation...we are Australia's gateway to the world and the world's gateway to Australia. On occasions, we will need to act as gatekeepers and, as necessary, protect the border by all lawful means. However, the daily operating mode of the department will be to act as the open conduit of Australia's engagement with the world around us for the purposes of trade, travel or migration. The amalgamation of immigration and customs has been successfully accomplished.⁴

1 *Estimates Hansard*, 8 February 2016, p. 3.

2 *Estimates Hansard*, 8 February 2016, p. 3.

3 *Estimates Hansard*, 8 February 2016, p. 4.

4 *Estimates Hansard*, 8 February 2016, p. 4.

1.6 However, the Secretary informed the committee that reforms and the integration of staff, financial, legal, infrastructure, technology and organisational policies and processes remain ongoing. It was noted that the amalgamation would save the Commonwealth \$270 million over the forward estimates period.⁵

1.7 Finally, an update was provided to the committee on the ongoing enterprise agreement negotiations. The Secretary said that a reduction of only 184 employees, over the life of the agreement would have been required had employees accepted the previous offer. A larger pay increase would result in more employee reductions.⁶

1.8 The Commissioner for the ABF provided further details on the establishment and activities of the ABF. The Commissioner highlighted the record drug seizure of 7.3 tonnes in 2014–15 and the work of the counter-terrorism unit (CTU) teams at Australia's international airports. CTU officers have assessed almost 110 000 inbound and outbound passengers. These assessments had resulted in 1100 outcomes, including the collection of intelligence and referrals to security and intelligence partners. ABF had detected more than \$3 million in undeclared currency in 2014–15.⁷

1.9 During the Commissioner's opening statement, the committee was informed that the ABF had assumed responsibility for Australia's onshore immigration detention facilities and is now responsible for the 2000 detainees in those facilities. The ABF had 'embarked on a substantial remediation program to improve the security, safety and amenity of these facilities'.⁸ Compulsory training courses had been instituted for ABF officers that incorporated 'input and delivery from NGOs and oversight bodies such as the Australian Human Rights Commission, the Commonwealth Ombudsman, the Minister's Council on Asylum Seekers and Detention, and the Child Protection Panel'.⁹ The operating policies and practices of the detention facilities had been overhauled, with the implementation of new risk assessment tools and community monitoring mechanisms. Service providers to these facilities had also been engaged to improve security, medical and recreational services.¹⁰

1.10 The Commissioner's opening statement provided senators with an update on the ABF's maritime capabilities. It was reported that the new Cape class fleet was fully operational, as was the ABF's berthing facility and marine base in Darwin. The ABF has had operational success relating to illegal maritime people smuggling and other civilian maritime threats, especially illegal foreign fishing within Australia's maritime borders.¹¹

5 *Estimates Hansard*, 8 February 2016, p. 4.

6 *Estimates Hansard*, 8 February 2016, p. 5.

7 *Estimates Hansard*, 8 February 2016, p. 5.

8 *Estimates Hansard*, 8 February 2016, p. 5.

9 *Estimates Hansard*, 8 February 2016, p. 6.

10 *Estimates Hansard*, 8 February 2016, p. 6.

11 *Estimates Hansard*, 8 February 2016, p. 6.

1.11 Additional commentary was provided on the work of ABF at Australia's airports, namely the recruitment of front-line officers and the investment and installation of automated smart gates, with an anticipated 90 outbound smart gates being commissioned by the end of this calendar year across the entire airport network.¹² The Commissioner also highlighted the creation of the Trusted Trader program that had 22 participants and is projected to include approximately 1000 traders, representing 30 per cent of Australia's two way trade by 2020.¹³

1.12 The committee proceeded to enquire on matters relating to the opening statements of the Secretary and Commissioner, and the funding and operations of both DIBP and ABF. Key topics raised during the hearings are provided in more detail below.

The High Court's ruling on M68 and subsequent return of asylum seekers to Nauru and Manus Island

1.13 Senators asked questions relating to the planned return of asylum seekers in Australia for medical purposes to offshore RPCs. The Secretary advised the committee that advice would be first sought by medical practitioners to determine whether an individual is able to be returned to the RPCs. Subsequently, the Secretary stated that the department 'will work through those [determinations] in a staged fashion...They will not be, does not need to be and should not be a bulk determination'¹⁴ and '[a]ll persons, when they are fit to travel, will be sent back to Nauru. That is both policy and law. And then, within that, individual determinations will be made on a compassionate and empathetic basis'.¹⁵

1.14 The Secretary highlighted that the High Court ruling on M68 had provided the department with a 'very clear legal footing that it is able to return persons'¹⁶ to Nauru and Manus Island. Additionally:

As [the department] improve[s] the medical facilities on Nauru, with the agreement of the Nauru government and in support of their role as the processing authority, there will be less and less opportunity and requirement to repatriate people to Australia.¹⁷

1.15 The department advised the committee on the number of transferees and refugees that are currently in Australia, particularly those whose return to the RPC on Nauru was delayed due to the M68 case. Details of those numbers are in Table 1.1.¹⁸

12 *Estimates Hansard*, 8 February 2016, p. 6.

13 *Estimates Hansard*, 8 February 2016, p. 7.

14 *Estimates Hansard*, 8 February 2016, p. 14.

15 *Estimates Hansard*, 8 February 2016, p. 40.

16 *Estimates Hansard*, 8 February 2016, p. 14.

17 *Estimates Hansard*, 8 February 2016, p. 14.

18 *Estimates Hansard*, 8 February 2016, p. 19, p. 41.

Table 1.1:

	Transferees¹⁹	Refugees
Individuals in Australia to be returned to the Nauru RPC	280	16
Individuals currently in Nauru RPC	357	840
Individuals in Australia to be returned to the Manus Island RPC	34	2
Individuals currently in Manus Island RPC	472	404

1.16 In total, 267 people would be returned to Nauru as a result of the recent High Court (M68) ruling. Of this number, 37 transferees are babies born in Australia;²⁰ 62 people from Nauru RPC were not subject to the M68.²¹

The welfare of children in detention

1.17 The welfare of children in detention, in particular, children in the open centre on Nauru, was discussed during the hearing.

1.18 In regards to children's education, the department informed senators that DIBP, in partnership with Nauru's Department of Education, had enhanced Nauru's school infrastructure by building eight new classrooms at a value of approximately \$9 million. School counsellors and teachers have been provided through the Brisbane Catholic Education Office. Assistance was also provided through the University of New England's campus on Nauru and the University of the South Pacific.²²

1.19 The department stated that a number of child detainees did not attend school. Approximately 50 per cent of children from the RPC were not attending school, which roughly reflects the number of children that had not engaged with the education facilities in the RPC. Preschool activities are provided to younger children within the centre, and older children are encouraged to go to school. Other services include the children protection unit and a gender violence unit that provide counselling to refugees, transferees and Nauruans.²³

1.20 In regards to the medical conditions of children held in detention, the Chief Medical Officer (CMO) of DIBP informed the committee that his 'general impression of the health services has been very positive—of the skilled clinicians [he] had met. [Clinicians] know their patients and have an interest in their clinical situation and

19 Transferees are individuals that have not yet had their refugee status determined.

20 *Estimates Hansard*, 8 February 2016, p. 40.

21 *Estimates Hansard*, 8 February 2016, p. 42.

22 *Estimates Hansard*, 8 February 2016, p. 15.

23 *Estimates Hansard*, 8 February 2016, p. 15.

care'.²⁴ The CMO commented that 'the government and the department's concerted efforts to remove children from detention' has meant that there are fewer children in detention,²⁵ however, the CMO acknowledged that '[t]he scientific evidence is that detention affects the mental state of children. It is deleterious and for that reason wherever possible children should not be in detention'.²⁶

1.21 The Secretary of DIBP, in response to the CMO's comments, reminded the committee that:

it is the government's policy that it will do whatever possible within the ambit of the policy to get children out of detention. Those who are repatriated to Nauru do not go back to detention; it is an open centre. The handful that are left in Australia... We are working as carefully as we can with relevant families to try to come up with arrangements where, even if one or both parents have to be held in detention for security concerns, which the department is well briefed about as is the minister, accommodative arrangements are put in place so that the children are outside of detention.²⁷

1.22 A concern was raised regarding developmental delays of children in detention. In response to this concern, the CMO advised the committee that it was for this reason he highlighted the importance of children having access to a multidisciplinary team of medical experts that included psychologists, psychiatrists, occupational therapists and speech pathologists.²⁸

Allegations of the sexual abuse of a minor on Nauru

1.23 The committee queried the department on reports of the alleged rape of a five year old child at the Nauru RPC. The committee heard that the department had contacted a paediatrician from the Royal Children's Hospital in Sydney and were advised that the child was not five years old and the allegations of sexual assault are against an older child from within the facility. The department stated that this was not an allegation of rape and that it was in fact 'physical skin to skin contact'.²⁹

1.24 Furthermore, the allegations had already been brought to the attention of the department and had been investigated by the child protection panel; the incident was also considered in the Moss report. The child protection panel determined that the department's actions were correct and the department ensured support services were provided including medical, welfare and counselling. Within one month of the

24 *Estimates Hansard*, 8 February 2016, p. 20.

25 *Estimates Hansard*, 8 February 2016, p. 21.

26 *Estimates Hansard*, 8 February 2016, p. 21.

27 *Estimates Hansard*, 8 February 2016, p. 21.

28 *Estimates Hansard*, 8 February 2016, p. 30.

29 *Estimates Hansard*, 8 February 2016, p. 16.

incident, the child was moved to Australia for further counselling and was living in the community with his family.³⁰

1.25 The incident and the allegations of sexual assault were, at the time of the hearing, under investigation by Nauruan police.³¹

Enterprise Agreement negotiations

1.26 The Commissioner of the ABF and the Secretary of DIBP were questioned by the committee on matters relating to ongoing wage negotiations. The Secretary advised the committee that the department was currently preparing for a second offer after the first offer was rejected by 91 per cent of employees. The Secretary said the 'offer that we are putting is as reasonable and as generous as we can craft within the government's parameters'.³²

1.27 The amalgamation of the ACBPS and DIBP had resulted in some tension during the wage negotiation process. The Secretary informed the committee the one tension has been reconciling the two different pay scales of ACBPS and DIBP employees. Some of the difficulties confronted by the department were:

How you reconcile those scales over time; how you trade-off giving workers a general pay increase but also deal with anomalous situations...in some cases with quite ancient allowances that have not been reviewed for many, many years and that in some cases are not at all connected with contemporary work practices; and how you, at the same time as blending a workforce, preserve traditional benefits that have arisen through two different streams, as it were, of entitlements is very complicated.³³

1.28 The Secretary denied that the department's proposal was based on 'a legacy Customs pay offer and a legacy immigration pay offer'; instead, the department was proposing 'one set of pay outcomes [for its] staff'.³⁴ Furthermore:

[employees] cannot be doing the same job prima facie, insofar as a former Customs officer—former—who brings a different set of skills to the job that is currently being done certainly should not be docked salary and go backwards; so they are going to retain that salary. For a former Immigration officer who is asked to come up to, say, the standard of being an investigator or to operate in the new arrangements that we have and who brings, potentially, a lower salary, in terms of local management, consideration will have to be given to additional training for that officer and to supporting them to operate at the level that is expected.³⁵

30 *Estimates Hansard*, 8 February 2016, p. 16.

31 *Estimates Hansard*, 8 February 2016, p. 47.

32 *Estimates Hansard*, 8 February 2016, p. 50.

33 *Estimates Hansard*, 8 February 2016, p. 51.

34 *Estimates Hansard*, 8 February 2016, p. 51.

35 *Estimates Hansard*, 8 February 2016, p. 52.

1.29 The current proposal, with a wage increase of two per cent, was being negotiated at the time of the hearing and the department informed the committee it meant a reduction of 680 employees. Further productivity savings would also be needed.³⁶

Riot on Christmas Island

1.30 Another matter raised with ABF was the issue of the riot that occurred at the Christmas Island detention centre on 9 November 2015. The Commissioner informed the committee that the investigation was being conducted by the Australian Federal Police (AFP) in relation to the conduct of any alleged criminal acts during the riot. An internal review, conducted by the service provider Serco, and the department's Integrity, Security and Assurance Division, had proposed recommendations in relation to intelligence, better governance arrangements and hardening of the facilities, and were in the process of being implemented by ABF.³⁷

1.31 The cost of repairs to the facility came to \$10 million, with \$3.4 million expended on rectification, and an estimated amount of \$7.6 million would go towards full recovery of the facility.³⁸ These improvements would include:

Installation of security gates over a range of roller doors; some more heavy-duty furniture and the attachment of the furniture; other shutters, particularly around medical facilities; security screening; fencing; an upgrade of the inner perimeter fence.³⁹

1.32 The committee was informed that the facility is now fully operational, however not all detainees have been, and potentially would not be, returned to the facility.⁴⁰ At the time of the riot, there were 'around 200 detainees'⁴¹ and approximately 180 of those people participated, 50 of which were New Zealand citizens.⁴² One detainee managed to escape⁴³ during the riot and the committee heard that Serco had conducted a review on the convergence of circumstances that led to the detainees escape.⁴⁴

Operation Sovereign Borders

1.33 Major General Bottrell of Operation Sovereign Borders (OSB) informed the committee in his opening statement that during the last two years of OSB operations, they had 'seen the successful return of 23 boats and more than 680 people to their

36 *Estimates Hansard*, 8 February 2016, p. 56.

37 *Estimates Hansard*, 8 February 2016, p. 59.

38 *Estimates Hansard*, 8 February 2016, p. 59.

39 *Estimates Hansard*, 8 February 2016, p. 59.

40 *Estimates Hansard*, 8 February 2016, p. 60.

41 *Estimates Hansard*, 8 February 2016, p. 60.

42 *Estimates Hansard*, 8 February 2016, p. 60.

43 The detainee was subsequently recaptured.

44 *Estimates Hansard*, 8 February 2016, p. 61.

country of departure'.⁴⁵ For more than 560 days, no boat has successfully entered into Australia's migration zone.⁴⁶

1.34 During the hearing it was discussed that since the October 2015 round of estimates hearings, there had been two turn-backs in November 2015, one of which came close to Christmas Island. There were 17 people on one boat, and three on the other. Both boats had departed from Indonesia.⁴⁷

1.35 Questions were asked in relation to UNHCR registered refugees residing in Indonesia. The Secretary advised the committee that:

[The department's] preference is to take such persons from the Middle East and other places. Now that we have defeated the boats, the next pull factor becomes getting to Indonesia because there is another way to, if you like, queue yourself into Australia so the policy position remains one of assisting Indonesia. We work with Indonesian authorities. We work with the [International Organisation on Migration] to make sure that people in Indonesia are as comfortable as circumstances can be and that they are given durable options to apply for settlement places in the appropriate manner. But our focus at the moment is really to focus on refugees from the Middle East and elsewhere but not those who have travelled to Indonesia for the conscious purpose of getting on a boat to come to Australia, which is a path that is now blocked.⁴⁸

1.36 When asked about how OSB communicates its policy position regarding Australia's border control operations to deter illegal maritime arrivals, Major General Bottrell said that OSB strategic communication is based on fact and focused on four key messages:

- highlighting the hazardous nature of the journey;
- the financial risk taken to engage with people smugglers;
- the deception and lies of people smugglers; and
- the consequences of illegal migration to Australia.⁴⁹

1.37 This communication strategy was delivered across 13 countries and in 18 different languages via television, radio, press, online and social media, billboards, transit advertising, roadshows, leaflets, stickers and community workshops.⁵⁰

45 *Estimates Hansard*, 8 February 2016, p. 77.

46 *Estimates Hansard*, 8 February 2016, p. 77.

47 *Estimates Hansard*, 8 February 2016, pp 77–78.

48 *Estimates Hansard*, 8 February 2016, pp 80–81.

49 *Estimates Hansard*, 8 February 2016, pp 81–82.

50 *Estimates Hansard*, 8 February 2016, p. 82.

Other matters of interest

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

- the Doogan review relating to the dismissal of Save the Children staff;⁵¹
- the reduction of incidents of self-harm in onshore and offshore detention facilities;⁵²
- the status of the resettlement of 12 000 Syrian refugees;⁵³
- \$9.864 million spent on ABF rebadging;⁵⁴
- the cancellation of visas based on character assessments (section 501 of the *Migration Act 1958*);⁵⁵ and
- an update on the visa status of the 30 000 legacy caseload.⁵⁶

51 *Estimates Hansard*, 8 February 2016, pp 22–24.

52 *Estimates Hansard*, 8 February 2016, pp 25–27.

53 *Estimates Hansard*, 8 February 2016, pp 32–36.

54 *Estimates Hansard*, 8 February 2016, pp 56–57.

55 *Estimates Hansard*, 8 February 2016, pp 61–68.

56 *Estimates Hansard*, 8 February 2016, pp 83–86.

