

# CHAPTER 2

## IMMIGRATION AND CITIZENSHIP PORTFOLIO

### Introduction

2.1 This chapter summarises some of the matters raised during the committee's consideration of the Additional Estimates for the Immigration and Citizenship Portfolio for the 2009-10 financial year.

### Department of Immigration and Citizenship

#### *Office of the Migration Agents Registration Authority (MARA)*

2.2 The committee questioned officers on a number of matters concerning MARA. These included the figures on registered migration agents and complaints for the period of 1 July to 31 December 2009, an update on MARA's website, the fidelity fund, staffing levels, and the English language requirement for migration agents.<sup>1</sup>

#### *Staffing*

2.3 The committee sought details on the current staffing levels of the Department. The Secretary advised the committee that, at 31 December 2009, the total staffing was 6,857, a reduction from the figure of 7,027 as at 30 June 2009.<sup>2</sup> In response to questioning about the link between staff reductions and the efficiency dividend, the Secretary explained:

It would not be possible to attribute particular changes to staffing numbers to the efficiency dividend of itself but, as I have said, there certainly have been efforts to reduce the size of the department. We have grown very rapidly over the last four or five years. We went through a program of voluntary redundancies last year and the year before, but that is the net result of a whole series of measures, of which the efficiency dividend is but one.<sup>3</sup>

#### *Skilled migration reforms*

2.4 The Department was questioned in depth on the reforms to the skilled migration program which were announced by the Australian Government on the day before the hearing. The minister provided comprehensive information to the committee about the reasons for the changes.

I understand that there are a lot of changes; it is quite a complex package. Effectively, all students who held a student visa as of yesterday's date have, if you like, some grandfathered entitlements. That has not been widely

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1 *Committee Hansard*, 9 February 2010, pp 3-9.

2 *Committee Hansard*, 9 February 2010, p. 11.

3 *Committee Hansard*, 9 February 2010, p. 11.

reported in many of the press articles, which have focused on the new SOL, as if that was the only way currently enrolled students could get access to a pathway to permanent residency in this country. That is not right. That will apply to future students—students enrolling after yesterday. But there is a set of transitional/grand fathering arrangements...for students who are currently enrolled. It certainly tightens the conditions. It makes them meet a range of conditions that more strongly link them to the labour market, and their capacity to seek permanent residency is very much linked to whether they get skilled labour market outcomes. But they do have a range of conditions which give them the opportunity to pursue permanency if they so wish. I make the key point that if you have applied for a student visa to come to Australia then you come here to study. There is no necessary link between that and permanent residency. I will get the officers to take you through that but it is important. We are dealing with two sets of things: the conditions which apply to students who were enrolled as of yesterday's date, they held student visas, and those that come and enrol after yesterday's date.<sup>4</sup>

2.5 The committee sought details of the review of the Migration Occupations in Demand List (MODL) which had resulted in the list being revoked. The committee heard that the review found that MODL had failed to serve its purpose and was not responsive to changing labour market demands:

When the economic downturn hit Australia, the government had to react quickly to meet the changing labour market needs, and a decision was made at the time that the whole focus of skilled migration should be directed to the employer sponsored, so-called demand driven, skilled migration program, which is better placed to quickly adjust to the changing labour market conditions. That opened up the issue of what to do with MODL and, given that general skilled migration is usually not very well placed to target the immediate labour market needs because of the time lag I explained, the view was taken that general skilled migration needed to target prospective medium- to long-term skill needs and target high-value occupations that would suit the economy in the medium to long term. That reflected pretty much the view of the major stakeholders during the consultation.<sup>5</sup>

2.6 The committee was further advised that a new list will be developed by the independent body, Skills Australia, and will focus on the medium- to long-term labour market needs. The new list will be known as the Skilled Occupations List.<sup>6</sup>

2.7 In addressing questions about the impact of the skilled migration program reforms on current student visa holders, Mr Kukoc from the Department summarised the three groups that are impacted by the changes:

The first group are the people who have already lodged an application for permanent residence onshore. They are all protected; they can use the

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4 *Committee Hansard*, 9 February 2010, pp 23-24.

5 *Committee Hansard*, 9 February 2010, p. 21.

6 *Committee Hansard*, 9 February 2010, p. 22.

MODL points as previously and nothing will change for them. There is a second group: all people who are currently holders of 485 or have applied for 485, which is a temporary skilled graduate visa for 18 months. They are also protected and they can use the MODL points. All current students who have not applied for 485 or are not former students on 485 or have not applied for permanent residence—so we are talking about students who still have not had a chance to apply for 485 or permanent residence—will still be eligible to apply for 485 under the old list, get 18 months work experience in Australia, try to find an employer sponsorship or state sponsorship and have that pathway to permanent residence. And that grandfathering will continue until the end of 2012.<sup>7</sup>

### ***Permanent residency for certain retirees***

2.8 The committee was updated on progress with the proposal to 'provide retirees with a pathway to permanent residency'.<sup>8</sup> The minister explained that he was sympathetic to the circumstances of a group of 410 relevant visa holders, but was constrained by budgetary considerations. He indicated that the Australian Government has brought in interim changes, including increased work rights and a 10-year visa and that this 'was the best [he] could do'. He further advised:

The hurdle for them is the cost of moving to permanent residency. They are an older group and when you talk to Treasury about the costing of their moving though to permanent residency there are issues of potential access to health care and social security benefits. The numbers are quite high. I have indicated a policy desire to make some progress. I brought in those interim changes. I have always been clear with them that it is a budgetary consideration. I have been frank with them that in the current budgetary context we are unlikely to be able to do anything.<sup>9</sup>

### ***Oceanic Viking***

2.9 The committee heard detailed evidence on the Department's involvement in October 2009 with the Sri Lankan asylum seekers aboard the *Oceanic Viking*. This included the Department's involvement in the discussions leading to the decision by the asylum seekers to disembark, and their subsequent processing in Indonesia.

2.10 The Minister advised that the Border Protection Committee (BPC) of Cabinet had provided the 'authority' of the government's agreement with Indonesia in managing the *Oceanic Viking* incident.<sup>10</sup> The minister subsequently declined to provide information about meetings of the BPC, including dates, venues and the people present, and indicated that it was his understanding that the government does not reveal details about meetings of cabinet committees:

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7 *Committee Hansard*, 9 February 2010, p. 24.

8 Answer to Question on Notice No. 84, Budget Estimates 2009-10.

9 *Committee Hansard*, 9 February 2010, p. 39.

10 *Committee Hansard*, 9 February 2010, p. 49.

...I am happy to be as helpful as I can, but we do not, as I understand it—this is over many years—reveal information about the meetings, the times, the agendas or the attendees of cabinet committees. It is a longstanding practice. What I have said to you, though, is that the BPC met and authorised the key factors involved in the incident and that a working group of ministers and officials worked through the issues and managed the issues. They varied from ensuring that there was fresh water made available on the boat to the negotiations with the Indonesians.<sup>11</sup>

2.11 Senator Barnett later advised the committee that he had requested and obtained advice from the Clerk of the Senate in relation to:

1. the entitlement (or otherwise) of the Immigration Minister to refuse to disclose the meeting dates of the Border Protection Committee of Cabinet (which he Chairs); and
2. the entitlement (or otherwise) of the Secretary of the Department to refuse to disclose the dates of the meetings (at which he was in attendance).<sup>12</sup>

2.12 The Clerk's advice stated that:

I understand that the minister has stated the ground for refusing to provide this information, as required by the order of the Senate of 13 May 2009. I also understand that the stated ground is that the information is cabinet-in-confidence, although I have not yet had the opportunity to consult a transcript of the proceedings and am therefore not certain of the extent to which the minister has explained the nature of the harm to the public interest that could result from the disclosure of the information about the date of the meetings in question. By the order of the Senator of 13 May 2009, the minister is also required to indicate whether the harm to the public interest that could result from the disclosure of the information could result only from the publication of the information, or whether it could also result, equally or in part, from the disclosure of the information to the committee as in camera evidence.

...

In summary, if you do not consider that the claim has been sufficiently justified, your options are to explore the possibility of the information being provided in camera at another time, to encourage the committee to pursue the matter in accordance with the order of 13 May [2009], or to pursue the matter yourself in the Senate by, for example, giving notice of a motion ordering the production of the information.<sup>13</sup>

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11 *Committee Hansard*, 9 February 2010, p. 52.

12 Tabled document number 3: Letter from the Clerk of the Senate to Senator Barnett dated 9 February 2010, regarding claims of public interest immunity (cabinet deliberations); *Committee Hansard*, 9 February 2010, p. 76.

13 Tabled document number 3: Letter from the Clerk of the Senate to Senator Barnett dated 9 February 2010, regarding claims of public interest immunity (cabinet deliberations).

2.13 After the Clerk's advice was tabled (see Appendix 1), the minister and the Secretary of the Department indicated that they would take the matter on notice in order to seek further advice.<sup>14</sup>

***Christmas Island Immigration Detention Centre***

2.14 The committee also questioned officers on a range of matters concerning the Christmas Island Immigration Detention Centre. Areas of interest included additional funding and the estimated increase in the number of arrivals, accommodation capacity and contingency planning, length of detention and processing times, mental health issues, security arrangements, and the impact of the detention centre on local services and infrastructure.

**Senator Trish Crossin**

**Chair**

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14 *Committee Hansard*, 9 February 2010, p. 76.



