

CHAPTER 1

IMMIGRATION AND CITIZENSHIP PORTFOLIO

Introduction

1.1 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 2010-11 financial year.

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

1.2 The committee questioned officers on the tribunals' case load and its management. Mr Denis O'Brien, the Principal Member of the MRT and the RRT advised the committee that lodgements for both the MRT and the RRT have increased significantly. However, MRT decisions have decreased in comparison to the previous year.¹ Mr O'Brien explained:

The decrease in MRT decision output, despite the increase in lodgements, is principally due to the substantial increase in our RRT work, to which we must give priority. Our resource difficulties have been exacerbated by the recent loss of a number of experienced RRT team members to the department's Independent Protection Assessment, formerly known as independent merits review, for irregular maritime arrivals. Leave of absence has been taken by eight tribunal members to undertake assessments for Independent Protection Assessment.²

1.3 In particular, the committee was informed that student refusal lodgements were up by 129 per cent, that is, approximately 1,000 more applications were lodged this financial year compared with the same period last year.³ The committee asked about the reasons for this increase:

Senator BARNETT—And what you put it down to are the government changes last year?

Mr O'Brien—There have been changes to the student visa program and I think that, as a result of some of those changes, we are seeing greater refusals at the primary level, which, of course, come on to us.

Senator BARNETT—Is that the main reason for the 129 per cent jump?

Mr O'Brien—That is our belief.

...

1 *Committee Hansard*, 21 February 2011, p. 3.

2 *Committee Hansard*, 21 February 2011, p. 4.

3 *Committee Hansard*, 21 February 2011, p. 4.

Senator BARNETT—...When did you see the numbers starting to increase markedly?

Mr O'Brien—I think it was starting during the last financial year, but it has been a continuation of that increase.

Senator BARNETT—But it aligns with the change in the government's legislation?

Mr O'Brien—I believe so.⁴

1.4 The committee heard that, in addition to adopting a number of strategies to deal with the increasing workload, the MRT and the RRT hope to recruit approximately 20 new members by the middle of the year.⁵ The committee will look forward to updates on case load management for the tribunals at future estimates hearings.

1.5 The committee also questioned the MRT and the RRT on a range of other matters, including resources, tribunal membership and recruitment, set-aside rates, and interaction with the newly established Independent Protection Assessment.

Department of Immigration and Citizenship

Processing of 457 visas for workers involved in flood recovery

1.6 The committee continued its ongoing interest in the temporary business (long stay) subclass 457 visa program, where employers can apply to sponsor approved skilled workers to work in Australia on a temporary visa. On this occasion, one aspect of the program in relation to which Senators sought information was the government's recent initiative to fast-track processing of 457 visa applications for reconstruction jobs in flood-affected areas in Queensland, where local labour supply is insufficient to meet the needs of employers. The department advised that the process is also open to flood-affected areas in New South Wales and Victoria, but to date state governments in those states have not approached the department for assistance.⁶

1.7 Mr Kruno Kukoc provided an overview of the initiative for the committee:

In communication and consultation with, for example, the Queensland Department of Employment and Economic Development, when a flood-affected business has been identified and the labour skills needs identified and that business lodges a 457 application, and provided all that information is provided at that time, we have agreed to finalisation within five days...[T]hat is world leading practice. So far we have worked well with the Queensland state government authorities in identifying these needs. The process has just started and the latest information I have from

4 *Committee Hansard*, 21 February 2011, p. 10.

5 *Committee Hansard*, 21 February 2011, pp 4-6.

6 *Committee Hansard*, 21 February 2011, p. 26.

our client service processing area is that just last week we saw four visa applications lodged for some skilled occupations which we turned around in only 48 hours.⁷

1.8 In response to concerns raised about an appropriate monitoring system for this initiative, it was explained that there is a standard monitoring system in place for the 457 visa program, and participants would come under the current requirements and controls. The Secretary of the department, Mr Andrew Metcalfe, explained:

We do not have any reason whatsoever to believe that, where a company goes to the trouble of identifying that it is seeking to respond in this particular way, it would seek to gain an advantage of 11 or 12 processing days by pretending that it had workers coming to work on the floods when it did not. We accept that in good faith, and the vast majority of Australian employers are entirely honest with us in relation to these things. I would not see it as necessary for us to set up a large monitoring program to see why someone had gained an 11 day advantage in relation to the very large costs of bringing someone to Australia.⁸

1.9 However, the committee was further advised by Mr Kukoc:

If we consider that a risky situation is evolving quite rapidly for all sorts of intelligence reasons as we can gather, we may apply a specific monitoring system on this aspect of the program. But, normally, that would come under the standard monitoring practices.⁹

SIEV 221 tragedy off Christmas Island

1.10 The department was questioned about the SIEV 221 tragedy off the coast of Christmas Island on 15 December 2010. The Secretary made some opening remarks in relation to the tragedy:

On 15 December 2010 Australians were horrified by the shocking scenes of the foundering of the vessel *Janga*, known as SIEV 221, at Rocky Point off the coast of Christmas Island. This tragic event saw the loss of many lives, including children and infants, as well as the rescue of 42 people from the sea. On behalf of the department I would like to formally place on the record my sympathy for the people involved in the tragedy and particularly to extend my and the department's sincere condolences to the families of those who drowned. I pay tribute to the heroism of the Customs and naval personnel who were involved in the dramatic rescue in such violent seas and to the very brave contributions of the Christmas Island community who so selflessly responded to the sinking vessel.

7 *Committee Hansard*, 21 February 2011, p. 26.

8 *Committee Hansard*, 21 February 2011, p. 31.

9 *Committee Hansard*, 21 February 2011, p. 30.

I also take this opportunity to recognise that my own staff who faced some very difficult and harrowing situations in response to this tragedy have done so with great professionalism and dignity.¹⁰

1.11 Senators questioned officers on the processes followed by the department after the SIEV 221 tragedy and requested an update on the status of the investigations into the incident. The committee was advised that there are several investigations in place, including a Western Australian coronial inquest. An inquiry has also been undertaken by the Chief Executive Officer of the Australian Customs and Border Protection Service in relation to the rescue operation (the findings of which are publicly available).¹¹

1.12 The department was questioned about the processes undertaken by the department for the funeral arrangements and burials of deceased persons from the SIEV 221 tragedy. It was explained to the committee that the arrangements for the funerals were primarily a matter for the Australian Federal Police as the people who died had not come into the department's care. However, the department did have some involvement because the funeral arrangements involved family members in detention.¹²

1.13 The committee also sought details on the number of family members attending the funerals; the costs associated with the funerals, including travel costs for family members travelling from Christmas Island and Perth to Sydney; security arrangements; and management of the media.¹³

APEC Business Card Travel Scheme

1.14 The committee also raised with the department the APEC Business Travel Card Scheme, a pre-approved visa facility for countries in the APEC region.¹⁴ In addition to seeking an update on statistics for the issue of the card, Senators asked about recent changes to the criteria for its issue.

1.15 The committee heard that approximately 30 per cent of the card complement was Australian, and that the criteria threshold for card issue was changed in June 2010 following a meeting of the APEC business mobility group.¹⁵ The department further advised that the threshold criteria was increased and will result in a significantly lower card issue rate in Australia. The department advised that the Australian card issue was disproportionately high and that '(t)here was a view in some quarters that the

10 *Committee Hansard*, 21 February 2011, p. 21.

11 *Committee Hansard*, 21 February 2011, p. 71.

12 *Committee Hansard*, 21 February 2011, p. 71.

13 *Committee Hansard*, 21 February 2011, pp 73-79.

14 *Committee Hansard*, 21 February 2011, p. 37.

15 *Committee Hansard*, 21 February 2011, pp 37-39.

Australian threshold was not as high as was appropriate, given the way some of the other countries were dealing with it'.¹⁶

1.16 The changes were described as '...reasonably significant in terms of the level in the company that the applicant has to be at and the sort of volume that the business does'.¹⁷

1.17 In response to concerns expressed about the apparent lack of consultation within the Australian business community, the department confirmed that there was no consultation prior to the change and was not able to explain why but undertook to provide advice to the committee on notice.¹⁸ Mr Garry Fleming conceded:

Ideally, yes it would be good to be able to have these consultations ahead of making changes. It was complicated in this case by the fact that it is not Australia's decision alone [and] the APEC Business Travel Card requires decisions and participation by a number of countries.¹⁹

1.18 The committee was further advised by the department that it was about to move into a consultation process. The Secretary explained:

...the card is not the sole gift of Australia; it is a sort of board comprising all of the APEC economies. ... there clearly was sensitivity that Australia was dominating the use of the card. Having said that, of course the whole idea of the card is to promote travel within the APEC economies and to assist business, so our starting point—and in fact it was an Australian idea to establish the card—is to ensure that business people are able to travel simply and to use fast lanes at airports and that sort of thing.

The review that is now underway does provide an opportunity, albeit after the fact, to see whether we can go back with substantive information to the other economies. I am interested to hear that there is a lot of disquiet in the business community. I do not recall having received a single phone call or representation about this matter myself, and people are usually very ready to get in touch with me if they have an issue with something. I certainly know the heads of the major lobby groups and business groups. Having said that, I accept that there is concern, and clearly the tightening up of the criteria has impacted on people who previously would have had access to the card.²⁰

16 *Committee Hansard*, 21 February 2011, pp 37-38.

17 *Committee Hansard*, 21 February 2011, p. 39.

18 *Committee Hansard*, 21 February 2011, p. 39.

19 *Committee Hansard*, 21 February 2011, p. 39.

20 *Committee Hansard*, 21 February 2011, p. 40.

Memorandum of understanding with the Islamic Republic of Afghanistan and United Nations High Commissioner for Refugees

1.19 The department was questioned about the memorandum of understanding (MOU) between the Australian Government, the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR) on migration and humanitarian cooperation.

1.20 In particular, questions focussed on clause 9 of the MOU which states:

The Government of the Islamic Republic of Afghanistan, noting that voluntary return is always preferable, will readmit its nationals who are in Australia, as well as foreigners who are immediate family members of such nationals, who:

- a) elect, on the basis of their freely expressed wish, to return to Afghanistan; or
- b) are found not to be in need of international protection and not entitled to remain in Australia.

1.21 Senators sought confirmation that the Australian Government's position on this section of the MOU does allow for the forced or involuntary return of unsuccessful Afghani asylum seekers. The Secretary advised the committee:

It quite clearly allows for the return to Afghanistan of Afghans and immediate family members not to be owed protection by Australia. It talks about people wishing to do so and it talks about people who do not wish to do so.²¹

1.22 Senators referred to recent media reports suggesting that the Australian and Afghani governments were not in agreement over whether or not the MOU covered forced returns. The Secretary assured the committee that both governments were in agreement over the meaning of this section of the MOU:

The agreement does a lot of things, but both governments agree in relation to that aspect. That was confirmed in meetings subsequent to that media report.²²

1.23 The Secretary further confirmed that there has been no consideration by any of the parties to the MOU to amend the wording of clause 9.²³

1.24 Other areas of interest concerning the MOU included the consultation processes leading up to the signing of the agreement and the process for determining that it is safe to return failed asylum seekers to Afghanistan.²⁴

21 *Committee Hansard*, 21 February 2011, p. 49.

22 *Committee Hansard*, 21 February 2011, p. 50.

23 *Committee Hansard*, 21 February 2011, p. 51.

24 *Committee Hansard*, 21 February 2011, pp 51-53.

Oceanic Viking asylum seekers held in the Romanian Transit Centre

1.25 The committee sought an update on the 17 asylum seekers from the *Oceanic Viking* who were transited through the Emergency Transit Centre in Romania and who had been refused settlement in the United States and Canada.

1.26 The department advised that seven of these asylum seekers had met all visa requirements and had been resettled in Australia. The remaining 10 did not meet visa requirements and remain in the transit centre while the UNHCR pursues other possible settlement options. The committee was assured that the seven who had been resettled in Australia had been issued non-prejudicial security assessments by the Australian Security Intelligence Organisation.²⁵

1.27 Evidence to the committee at the previous estimates hearings indicated that there was an expectation that this group would leave the transit centre by the end of 2010.²⁶ The Secretary advised the committee that the Romanian Government is satisfied with the 10 asylum seekers remaining in the transit centre while resettlement efforts continue and there is no deadline on the resolution of this issue at present.²⁷

1.28 The committee also questioned officers about the future of the 10 asylum seekers in the event that they are not resettled in another country:

Mr Metcalfe—In terms of the range of options, were there to be no other country that would take them, there is a view—and this has been confirmed—that they are in fact in need of protection by the international community and Australia would give effect to it consistent with our own national interest associated with their security assessment.

Senator CASH—You said that these 10 have received an adverse security assessment.

Mr Metcalfe—That is correct. That is why they have not come to Australia at this stage.

Senator CASH—For my own benefit, in the event that the Christmas Island option does become the option because we cannot find them resettlement in a third country and they have received an adverse security assessment, what then does their status become if they are brought to Christmas Island? Is it indefinite detention?

Mr Metcalfe—Yes, it would be detention.

Mr Fleming—...I should clarify that with the 10 cases in Romania there are eight adults with adverse security assessments and that also affects two children.²⁸

25 *Committee Hansard*, 21 February 2011, p. 54.

26 *Committee Hansard*, 19 October 2010, p. 72.

27 *Committee Hansard*, 21 February 2011, p. 55.

28 *Committee Hansard*, 21 February 2011, p. 56.

