

# CHAPTER 1

## IMMIGRATION AND CITIZENSHIP PORTFOLIO

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 2011-12 financial year.

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

1.2 The Principal Member of the MRT-RRT, Mr Denis O'Brien, advised that lodgements for both tribunals continue to rise, and updated the committee on workload statistics since his last appearance before the committee. He advised that, as at 31 December, there has been an increase of 43 per cent in active cases for the MRT compared to the same period for 2010-11, with the highest rate of lodgements in the areas of student visa refusals and cancellations. MRT lodgements have increased by 21 per cent, and decisions have increased by 28 per cent, compared to the same period in 2010-11. For the RRT, Mr O'Brien advised that there was a 68 per cent increase in active cases as at 31 December compared to the same period in 2010-11, a six per cent increase in lodgements, and nine per cent fewer decisions during this period.<sup>1</sup>

1.3 The committee was also advised that the recent amendment to the *Migration Act 1958*, which inserts complementary protection into the Act, would result in the RRT having jurisdiction in relation to irregular maritime arrivals (IMAs) with members now dealing with complementary protection claims. As a result of this change, Mr O'Brien indicated that he anticipated a further increase in the RRT's case load.<sup>2</sup>

1.4 Mr O'Brien informed the committee that, even though 23 new members were nominally appointed to the tribunals from 1 July 2011, he did not consider the number of members sufficient to carry out the current workload. Accordingly, the committee heard that the Minister had agreed to another recruitment round for new members, which Mr O'Brien anticipated would result in the engagement of approximately 20 full-time-equivalent members.<sup>3</sup>

1.5 The committee was advised that the tribunals were facing significant financial challenges in the current financial year attributed, in particular, to the net increase in active membership and increases in member remuneration.<sup>4</sup>

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1 *Committee Hansard*, 13 February 2012, p. 6.

2 *Committee Hansard*, 13 February 2012, p. 6.

3 *Committee Hansard*, 13 February 2012, p. 8.

4 *Committee Hansard*, 13 February 2012, p. 7.

1.6 Senators asked about the current review of the tribunals conducted by Professor Michael Lavarch. The committee was advised that this review would consider strategies for reducing the tribunals' backlog and management of the transition of the IMA caseload to the RRT's jurisdiction.<sup>5</sup> The committee looks forward to the outcome of the review with interest.

## **Department of Immigration and Citizenship**

### ***Office of the Migration Agents Registration Authority (MARA) (Sub-program 1.1.3)***

1.7 The Office of the MARA provided an update of operations since it last appeared before the committee in relation to statistics on registered agents, application refusals, complaints, and reforms to continuing professional development.<sup>6</sup>

1.8 The committee also heard details of the reforms to the standard ethical framework which was developed for use by migration agents. Officers from MARA advised that it was hoped that the framework would provide better guidance to identify and manage ethical dilemmas and conflicts of interest, and would be supported by a free and confidential counselling service.<sup>7</sup>

1.9 As part of MARA's communications strategy, a translated booklet has been developed to enhance communication with ethnic communities. The committee was advised that the booklet has been made available in 24 languages online and has been well received.<sup>8</sup>

### ***Enterprise migration agreements and regional migration agreements***

1.10 The committee revisited the enterprise migration agreement (EMA) scheme which was introduced in May 2011. While only one submission has been received, there is currently discussion around a number of projects, and the department estimates that between 17 and 37 projects are likely to be eligible for an EMA.<sup>9</sup> Mr Kruno Kukoc elaborated on the reasons why only one submission has been received to date:

...This is a completely new and innovative approach through bringing temporary, skilled migrants into the country and that is the reason a lot of stakeholders expressed initial interest in the process; however, they were seeking more information from the department about the process. As part of the process related to any investment project, once they apply they need to get information documentation to make the application successful. That is in the interests of all project owners who may apply for enterprise migration

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5 *Committee Hansard*, 13 February 2012, p. 10.

6 *Committee Hansard*, 13 February 2012, p. 26.

7 *Committee Hansard*, 13 February 2012, p. 27.

8 *Committee Hansard*, 13 February 2012, p. 27.

9 *Committee Hansard*, 13 February 2012, p. 32.

agreements. That is the reason that by the end of last year we had one submission. But, as I said, we expect many more to come along in the coming months.

**Senator CASH:**...When you said that project owners sought information about the process, were you able to then put together something that you have been able to hand out to project owners?

**Mr Kukoc:** Yes. We issued very comprehensive guidelines on how to make a submission under the enterprise migration agreement. That was on 2 September 2011. Those guidelines were informed by a very comprehensive early consultation process in mid 2011, so we knew what information and guidelines project owners might need before we finally put together the guidelines, got them approved by the minister and released them on 2 September 2011. I think the guidelines and a template are on our website and provide very comprehensive information on how to make an application for an enterprise migration agreement.<sup>10</sup>

1.11 Senators indicated that they would follow-up on this initiative at the budget estimates hearings.

1.12 The committee also sought an update on the regional migration agreement (RMA) scheme. The department advised that consultations throughout regional Australia have been conducted, particularly focussing on the Northern Territory and Queensland, and that draft guidelines have been prepared. Senators asked about the definition of 'region' under this scheme:

**Mr Kukoc:** The definition is that the population is less than 150,000, employment growth is very strong, the unemployment rate is very low and the participation rate is very high...

**Senator CASH:** Are there specific figures, though, in relation to 'very low unemployment rate'? What is a 'very low unemployment rate'?

**Mr Kukoc:** Much lower than the national unemployment rate.

**Senator CASH:** Are there any guidelines surrounding what you have just said?

**Mr Metcalfe:** You are trying to ask if there is a particular percentage?

**Senator CASH:** Exactly. I can understand 'a population less than 150,000'; that is obvious. But a 'very low unemployment rate'—is that objective, subjective or at the discretion of the person reviewing the RMA?

**Mr Kukoc:** It is ultimately at the discretion of the minister, but the overall proposal will need to prove that the labour market shortages in that region are arising out of the very strong employment growth and economic growth and out of the fact that this region currently has very low unemployment and high participation. So there are a number of factors that will be taken into account at the time of the decision. There is no prescribed threshold. It

is more a very solid labour market analysis put forward that actually proves the case for the regional migration agreement.<sup>11</sup>

1.13 When asked about the timeframe for the scheme, the department advised that it expected the first RMAs to be finalised this year.<sup>12</sup>

## **Budget**

### *Revised forward estimates*

1.14 Senators questioned the department about the revisions to forward estimates through the Mid Year Economic and Fiscal Outlook (MYEFO) process and the additional estimates, particularly with respect to Program 4.3 – Offshore Asylum Seeker Management. There was robust discussion between some members of the committee, and the Parliamentary Secretary and the Secretary of the department, about the reasons for the substantial increase in funding for the department in the forward estimates. The Chief Financial Officer, Mr Stephen Sheehan, provided the following explanation of the adjustments that were part of the MYEFO process:

...The increase in IMA funding is \$1.296 billion. Then there were a number of adjustments that were made as part of the operating costs for New Guinea—the offshore processing centre that were reduced; the Regional Protection Framework—the net amount for Malaysia; and in addition the return of funding for the humanitarian program, where we had budgeted for an additional 1,000 entrants. So the amount required for the department, after taking into consideration those adjustments, was \$564 million, but in addition there was an amount for the regional cooperation measure of about \$5,228,000, which, in terms of the reconciliation for the DIAC MYEFO adjustment, was \$570.033 million.

...In addition, the announcements as part of MYEFO included an increase in the arrival estimate for 450 per month. There was also a change in the model for the number of clients that we would have in general society as well, which is roughly six per cent for the 2011-12 financial year. In addition, in terms of funding now available for the humanitarian program, the reversal of capital works that was held in the contingency reserve was announced as part of the budget process and the whole-of-government fiscal impact was \$232 million, and including the regional cooperation measure it was \$230,300,000 net...<sup>13</sup>

1.15 Mr Sheehan sought to provide further clarification:

...The difference between additional estimates and the MYEFO numbers in the estimate for the department for program 4.3, including depreciation, is \$179,762,000. That is related to an increase in the arrival estimates because

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11 *Committee Hansard*, 13 February 2012, p. 36.

12 *Committee Hansard*, 13 February 2012, p. 37.

13 *Committee Hansard*, 13 February 2012, pp 73-74.

of the increases that we have had in November and December, and also an increase in our overall occupancy rate.<sup>14</sup>

*Efficiency dividend increase*

1.16 Members of the committee also questioned officers about the 2.5 per cent increase in the efficiency dividend for 2012-13.<sup>15</sup> The committee was advised that the dollar amount impact for the department, including the capital efficiency dividend of approximately \$19 million and the departmental efficiency dividend of approximately \$28 million, is \$47 million a year across the forward estimates.<sup>16</sup> It was further clarified that the capital amount is quarantined from the recurrent amount.<sup>17</sup>

1.17 The Secretary provided a detailed account to the committee of the impact on the department and how it intends to manage the additional impost:

**Mr Metcalfe:** ...Effectively, we are funded for what we spend and if the efficiency dividend does not apply to that, it does not require us to seek efficiencies in contracts, cut services or reduce the number of meals or anything like that—far from it.

The department is also funded on an activity based formula. Essentially, depending on the number of visa applications we receive and are decided and so on, we are funded for those on a widget basis. So it is not just a question of us cutting services and making cutting decisions because in fact we will be cutting our own budget.

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**Mr Metcalfe:** This saving will largely need to come from areas which are not funded in that way. Clearly in relation to capital, we are a large consumer of information technology and we are looking very carefully at our technology spend. In relation to the administered costs we will be going through all of our expenses. We have a large property expense, we have a large staff cost expense, and travel and other areas. So there is not a definitive answer on, 'We will be cutting this,' but effectively will be looking across all of those to ensure that, as we have in recent years, we continue to live within our budget.

**Senator HUMPHRIES:** Are you examining the possibility of staff reductions?

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14 *Committee Hansard*, 13 February 2012, p. 74.

15 On 29 November 2011, the Minister for Finance and Deregulation announced an additional one-off 2.5 per cent efficiency dividend, on top of the existing efficiency dividend of 1.5 per cent: see Minister for Finance and Deregulation, 'Driving Efficiency Savings Within Government', Media Release, PW 253/11, 29 November 2011, [http://www.financeminister.gov.au/media/2011/mr\\_pw25311.html](http://www.financeminister.gov.au/media/2011/mr_pw25311.html) (accessed 6 March 2012). The Migration Review Tribunal and the Refugee Review Tribunal are exempt from the additional efficiency dividend.

16 *Committee Hansard*, 13 February 2012, p. 25.

17 *Committee Hansard*, 13 February 2012, p. 26.

**Mr Metcalfe:** We are. We are certainly not looking at the issue of involuntary redundancies. Like all big organisations there is a significant turnover—we have almost 8,000 staff. And, of course, because of the ongoing nature of activity levels such as irregular maritime arrivals servicing there is always the potential to move staff from an area that is losing funding to an area that has high activity levels. So there is the ability to transfer resources as well. I should properly say that of course we will be looking at staffing budgets and that could impact on some areas...

**Senator HUMPHRIES:** You would surely say, with 8,000 staff and those administered expenses separately quarantined, that it is almost inevitable that you are going to look at some reduction in staffing?

**Mr Metcalfe:** Yes, and that is exactly what we are doing. Exactly where and how we achieve that—most likely through not filling vacancies and therefore slowing down on recruitment...<sup>18</sup>

### ***Community detention program***

1.18 Officers of the department were questioned in detail about the community detention program. The committee was advised that the occupation rate at the time of the additional estimates hearing was 1,576, and the approximate cost of the program for the 2011-12 financial year is \$150 million.<sup>19</sup>

1.19 Senators followed up a response provided to a question on notice from the Supplementary Budget Estimates 2011-12 hearings concerning the average cost per client, which the department advised that an amount could not be provided until the program stabilises. At the additional estimates hearing, the committee was informed that this continues to be the case and this cost cannot be meaningfully derived at present:

**Mr Metcalfe:** I think we will find there is an average cost but in due course there will be a lower average cost because those setup costs of acquiring the property, the bond, the household formation and the furniture cost will be rolled over across multiple clients. So while there is a setup cost, the ongoing costs are going to average out to a lower number.

**Mr Sheehan:** There is another complicating factor. It depends on the different client mix—whether we have small families, large families, or singles. There is a range of other complicating factors that we need to work our way through as well.<sup>20</sup>

1.20 The committee learnt that the Red Cross administers the rental program and housing package for community detention, which currently comprises approximately 550 rental properties across all states and territories, excluding the Northern

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18 *Committee Hansard*, 13 February 2012, p. 25.

19 *Committee Hansard*, 13 February 2012, p. 79.

20 *Committee Hansard*, 13 February 2012, p. 86.

Territory.<sup>21</sup> The committee was assisted with its examination of this topic by the tabling of two documents: Location of Community Detention Properties and the Household Goods Formation Package List.

1.21 Senators also sought clarification of other costs associated with the community detention program, including health, pharmaceuticals, dental, transportation and education costs.<sup>22</sup>

***Answers to questions on notice***

1.22 The committee notes that all answers to questions on notice from the Supplementary Budget Estimates 2011-12 hearings for the Immigration and Citizenship Portfolio were provided after the due date of 2 December 2011. This is the fifth successive estimates round where that has occurred. The first batch of answers was provided to the committee on 20 January 2012, and a significant number of answers were provided on the weekend before the additional estimates hearings, and also during the hearing on 13 February. Such late provision of answers clearly does not allow members of the committee reasonable time to consider those answers prior to the hearings.

1.23 On 9 February 2012, pursuant to Senate standing order 74(5), Senator Cash asked the Minister representing the Minister for Immigration and Citizenship (Senator the Hon Joseph Ludwig) for an explanation of answers not provided to questions placed on notice during the Supplementary Budget Estimates 2011-12 hearings.<sup>23</sup>

1.24 Senator Ludwig provided an explanation:

...the number of questions asked of the department at Senate estimates hearings has increased significantly over recent years, but the department has put significant effort into ensuring that all questions on notice have been answered prior to the next committee hearing.

At the supplementary hearing in October last year, the Department of Immigration and Citizenship received 423 questions on notice, including those taken on notice during the hearing and additional questions provided subsequently in writing. The department remains fully committed to providing responses to the questions on notice as soon as possible. All endeavours will continue to be made in this regard. However, many of the questions do seek detailed information on a number of complex and sensitive issues. Providing responses to all of these questions is also extremely resource-intensive and places a significant burden on the department.

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21 *Committee Hansard*, 13 February 2012, p. 80.

22 *Committee Hansard*, 13 February 2012, pp 87-88 and 101.

23 *Journals of the Senate No. 75*, 9 February 2012, p. 2088.

The department has already provided the committee with responses to most of the 423 questions, which does demonstrate the commitment of the department to answering all questions on notice as quickly as possible.<sup>24</sup>

1.25 The Senate noted the Minister's explanation.<sup>25</sup>

*Other matters of interest*

1.26 Other areas of interest to Senators during examination of the department included the department's new media access policy, the new visa pricing regime, prospective marriage visas subclass 300, minors charged with people smuggling who are currently held in detention facilities, status of discussions with Papua New Guinea on the establishment of a processing centre, the inspection and infrastructure report on re-opening offshore processing centres on Nauru, the provision of services to people with a disability in detention centres, and the closing of the Pontville Immigration Detention Centre in Tasmania.

1.27 The Secretary of the department, Mr Andrew Metcalfe AO, advised the committee that he would be taking extended leave over the coming year and that Mr Martin Bowles PSM will act as Secretary in his absence.<sup>26</sup> The committee and the Parliamentary Secretary also acknowledged Mr Metcalfe's recent appointment as an Officer of the Order of Australia in the 2012 Australia Day Honours List, in recognition of his distinguished service to public sector leadership through, among other things, his contributions to public policy development in the areas of immigration, citizenship and cultural diversity.<sup>27</sup>

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24 *Senate Hansard*, 9 February 2012, p. 53.

25 *Journals of the Senate No. 75*, 9 February 2012, p. 2088.

26 *Committee Hansard*, 13 February 2012, p. 5.

27 *Committee Hansard*, 13 February 2012, pp 3 and 119