

## **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'.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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

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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.

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

### **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.<sup>6</sup>

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.<sup>7</sup>

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

### **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.

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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.

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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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> Admiral Noonan works directly to Lieutenant General Campbell and takes guidance from the general in terms of on-water operations.<sup>15</sup>

### **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

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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.<sup>16</sup>

### *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.<sup>17</sup>

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.<sup>18</sup>

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.<sup>19</sup>

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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.<sup>20</sup> 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

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**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.<sup>21</sup>

### ***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.<sup>22</sup> 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.<sup>23</sup>

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

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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.<sup>24</sup>

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.<sup>25</sup>

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

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

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### ***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.<sup>26</sup> 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'.<sup>27</sup>

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.<sup>28</sup>

### ***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;<sup>29</sup>
- Australian Customs and Border Protection Service's involvement in monitoring Japanese whaling ships;<sup>30</sup>
- opium output from Afghanistan and the subsequent implications for the Australian Customs and Border Protection Service;<sup>31</sup>

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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;<sup>32</sup> and
- statistics relating to pregnant women in detention and hospital facilities in Nauru.<sup>33</sup>

**Senator the Hon Ian Macdonald**

**Chair**

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

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