

CHAPTER 1

IMMIGRATION AND CITIZENSHIP PORTFOLIO

1.1 This chapter summarises some of the matters raised during the committee's consideration of the budget 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, updated the committee on the MRT-RRT workload. The committee was advised that lodgements across both tribunals have continued to rise, with a reported increase of 26 per cent for the MRT and an increase of 29 per cent for the RRT, in comparison to the same period in 2009-10. The active cases as at 30 April 2011 for both tribunals is significantly higher than for the same period in 2009-10, with MRT cases increasing by 59 per cent and RRT cases increasing by 46 per cent.¹

1.3 The strategies which have been implemented to deal with the increased workload were outlined for the committee. These include the establishment of task forces to deal with particular cohorts of cases and the batching of similar cases for allocation to members.²

1.4 At the February estimates hearings, the committee was advised that recruitment of 20 new members was planned for the middle of 2011 to address the workload problem. Mr O'Brien indicated that the recruitment process is well advanced, with the selection advisory committee report currently with the government, and the expectation that additional members will commence in July. However, on further questioning, he added that timing is ultimately a matter for cabinet.³ The Minister confirmed that it was expected that appointments would commence on 1 July 2011, and his advice was that five senior members and 22 members are likely to be appointed from this round.⁴ Mr O'Brien advised the committee that he expected the organisation to be well placed to deal with the backlog when the additional members become more experienced.⁵

1 *Committee Hansard*, 23 May 2011, p. 4.

2 *Committee Hansard*, 23 May 2011, p. 4.

3 *Committee Hansard*, 23 May 2011, pp 4 and 8.

4 *Committee Hansard*, 23 May 2011, pp 8-9.

5 *Committee Hansard*, 23 May 2011, p. 9.

Department of Immigration and Citizenship

Enterprise migration agreements and regional migration agreements

1.5 Senators sought details of new migration initiatives: the new enterprise migration agreement (EMA) scheme, which addresses the skill needs of the resource sector; and the new regional migration agreement (RMA) scheme, which addresses local labour needs.

1.6 In relation to EMAs, the committee was advised by Mr Kruno Kukoc:

The initiative has come as the government's response to the National Resources Sector Employment Taskforce recommendations in July 2010, where this idea was raised initially. The government has agreed to implement the enterprise migration agreements to help the national resources sector, and to address the emerging labour needs in this sector. Enterprise migration agreements is a new initiative which is a form of labour agreement that is specifically tailored to the needs of large resource projects. It is custom designed to cover the project-wide recruitment needs of skilled labour rather than going with individual labour agreements for each of the contractors and subcontractors that have contributed to the large project. The eligibility requirements for the enterprise migration agreements will be that it will only be available to so-called megaprojects.⁶

1.7 It was also explained that the definition of a megaproject under the EMA scheme is a requirement of at least \$2 billion worth of capital expenditure and a peak workforce of 1,500 contracted on the project. Mr Kukoc added that it is 'implicitly assumed that the project also needs to be approved by the state government as a project.'⁷ The committee heard that around 13 projects are already approved by the state government authorities and will likely qualify, and a further 21 projects are subject to feasibility studies and may be eligible.⁸

1.8 The committee also questioned officers about RMAs and was advised by Mr Kukoc:

...RMAs will be custom designed geographically based migration arrangements that will set out the occupations and numbers of overseas workers needed in the area. Individual local employers could directly sponsor workers under the terms of RMAs. It will work in similar terms as EMAs, but in relation to the geographically specific area, and predominantly in relation to the permanent migration and RSMS—regional sponsored migration scheme visas. RMAs will be negotiated with a range of stakeholders in that geographical area, including local employers and community representatives. We will also target those regions with the

6 *Committee Hansard*, 23 May 2011, p. 14.

7 *Committee Hansard*, 23 May 2011, p. 27.

8 *Committee Hansard*, 23 May 2011, p. 27

greatest economic need where there are high employment growth rates and where there is a strong case and an evidence-supported case for recruiting overseas workers.

The government indicated in the budget announcement that the first priority is the training and employment of Australian workers, so RMAs will include mandatory training and local employment measures to ensure that all those unemployed and underemployed Australians are provided the opportunity to gain long-term, sustainable employment.⁹

1.9 Senators specifically sought clarification on the definition of 'region' under these agreements and were advised that the agreements will not be tied to a specific definition. The department explained that this would allow flexibility to respond to regional labour market needs.

The way it is envisaged that the agreements would work is that they would be assessed on the basis of job growth in a particular locality and also on the rate of unemployment, as some of the primary criteria. It could be tackled in a number of ways. It could be tackled through negotiations with one of the 55 regional development authorities that currently exist in Australia. It could also be tackled on the basis of discussions with a group of local government areas, if need be, or a single local government area. The government's intention was to try to leave it as open as possible, but to then be able to prioritise the negotiations around a regional migration agreement on the basis of actual need and the availability of work.¹⁰

Streamlined processes for ASIO security clearances

1.10 Australian Security Intelligence Organisation (ASIO) security clearance processes for asylum seeker applicants have been of interest to the committee at recent estimates hearings. While ASIO manages the process, the department was able to provide an update from its perspective on the new streamlined security checking processes which have been developed in cooperation with ASIO. The department advised that the new process is referred to as a risk-managed and intelligence-led referral framework and has resulted in some faster turnaround times, without compromising the integrity of security checking.¹¹

1.11 The committee was assured that under the new framework, all irregular maritime arrivals (IMAs) are still considered by ASIO, but there is now a sequencing of IMAs sent to ASIO. Ms Jackie Wilson elaborated on this point in an exchange with Senator Cash:

Ms Wilson:...I think you are familiar with the phrase '1A met', which means, through the DIAC processes, a person is determined to be a refugee. Previously we were referring to ASIO all clients as they arrived and got to

9 *Committee Hansard*, 23 May 2011, p. 39.

10 Mr Peter Speldwinde, *Committee Hansard*, 23 May 2011, p. 35

11 Dr Wendy Southern, *Committee Hansard*, 23 May 2011, p. 44.

that point in the process. One of the major changes we achieved as a result of the changes you mentioned was that, when they are assessed as being a refugee, they are referred to ASIO for processing at the '1A met' stage.

Senator CASH: Previously that was not the case and all IMAs were sent off, but under the change only those who have been found to be refugees—

Ms Wilson: There is more of a sequencing. Those are the people who are closest to meeting all the criteria for a visa grant. They are the people who are getting referred to ASIO for ASIO to focus its assessment on.

Senator CASH: Is there any truth in the statement that there are applications from people from various areas, regions, countries, or however you may define it, that are considered to be low risk and therefore are not being forwarded to ASIO for assessment?

Ms Wilson: As I said, they are all being considered under the same framework.¹²

1.12 The committee subsequently pursued further questioning on the new streamlined security processes for IMAs during ASIO's appearance under the Attorney-General's Portfolio.

Regional Cooperation Framework

1.13 The department was closely questioned about proposals to deal with the problem of people smuggling.

Arrangement with Malaysia

1.14 The Secretary of the department, Mr Andrew Metcalfe, referred to and tabled a Joint Statement by the Prime Minister of Australia and the Prime Minister of Malaysia, dated 7 May 2011, announcing a commitment to enter into a new bilateral arrangement as part of the Regional Cooperation Framework agreed to at the Bali Process Ministerial Conference on 30 March 2011.

1.15 The Joint Statement advised:

The Malaysian and Australian Governments have today announced a commitment to enter into a groundbreaking new arrangement to help tackle people smuggling and irregular migration in the Asia-Pacific region.

...

The bilateral arrangement will take the form of a cooperative transfer agreement that will see asylum seekers arriving by sea in Australia transferred to Malaysia. In exchange, Australia will expand its humanitarian program and take on a great burden-sharing responsibility for resettling refugees currently residing in Malaysia.

12 *Committee Hansard*, 23 May 2011, p. 45.

Prime Ministers Najib and Gillard have agreed that core elements of this bilateral arrangement will include:

- 800 irregular maritime arrivals, who arrive in Australia after the date of effect of the arrangement, will be transferred to Malaysia for refugee status determination;
- in return, over four years, Australia will resettle 4000 refugees already currently residing in Malaysia...¹³

1.16 The committee pursued a number of issues associated with the proposed Malaysian arrangement, including timing, the makeup of the possible 800 IMAs who will be transferred, legal challenges, costs, arrangements for transferees' transportation to Malaysia, and living conditions. As the final detailed agreement was, at the time of hearing, yet to be confirmed, the department was unable to provide many details to the committee.

1.17 Senators sought an explanation in relation to what will happen to the 110 IMAs who had arrived in Australia since the announcement on 7 May 2011 and, in particular, whether they will form part of the possible 800 IMAs who will be transferred to Malaysia. Mr Metcalfe addressed this issue:

Mr Metcalfe: ...Let me try to provide a concise statement. The government has made it clear and the minister has made announcements on several occasions that the persons who have arrived since 7 May will not be processed in Australia, that they will be removed pursuant to migration law to another country, that any issues they have in relation to asylum claims will be dealt with there, and that Australia will not in any way refool those persons to a place of persecution. So that is very clear. In relation to the agreement with Malaysia, it will be operative from the date of effect of the arrangement. That date could either be prospective or date back to an earlier time.

Senator CASH: So, it could be retrospective?

Mr Metcalfe: It could be tied to the timing of the announcement, for example.

1.18 Senators also spent considerable time seeking clarification on the wording of the Joint Statement in regard to the transfer to Malaysia of the 800 IMAs who arrive in Australia after the date of effect of the arrangement, and the resettlement in Australia over four years of 4,000 refugees already residing in Malaysia. It was explained that the arrangement includes the resettlement of the 4000 refugees over four years as an expansion of Australia's humanitarian program, and that up to 800 IMAs may be transferred to Malaysia:

13 Joint Statement by the Prime Minister of Australia and the Prime Minister of Malaysia, 7 May 2011.

Mr Metcalfe: Let me explain. If 800 people come then 800 people will be transferred. If 800 people do not come, fewer than 800 people will be transferred.

Senator CASH: However, we will still get 4,000.

Mr Metcalfe: However, we have made it clear that Malaysia has agreed to take up to 800, and we have agreed to take an additional 4,000.

Senator CASH: Is that up to 4,000 for Australia's part of the deal or is it 4,000?

Mr Metcalfe: No. We have made it likely that we will expand the humanitarian program by 4,000 places over four years, to 14,750 places per year.

Senator CASH: Will the department give consideration to amending what is on its website to include the words 'up to', which have so painfully been gone through today?

Mr Metcalfe: The words on our website are taken from the joint statement, and that is authoritative, but it is quite clear that the Malaysians have agreed to take 800.

Senator CASH: Up to 800.

Mr Metcalfe: They have agreed to take 800, but whether we need to send them 800 we will have to wait and see.¹⁴

1.19 The Secretary confirmed that the Minister for Immigration and Citizenship had indicated that the government was anticipating potential legal challenges to this 'very decisive' and 'contested' area of public policy, and had sought legal advice in that regard. However, the Secretary declined to be more specific on the types of expected challenges as he did not want to 'coach' people:

I think he [the Minister] wanted to be open and clear with the Australian public that this would be a contested issue and that the government was committed to pursuing its policy objectives notwithstanding the fact that there may be legal challenges, there may be protests or there may be issues. The government took a very well informed decision and the minister was being quite open with people.¹⁵

Papua New Guinea

1.20 The committee also spent some time discussing the possible establishment of an assessment centre in Papua New Guinea (PNG). The Secretary advised the committee that PNG had raised the issue with the Australian Government and that the location of a centre will ultimately be a matter for PNG. However, indications are that the Manus Island facility is the most likely place to be identified.¹⁶

14 *Committee Hansard*, 23 May 2011, p. 75.

15 *Committee Hansard*, 23 May 2011, p. 86.

16 *Committee Hansard*, 23 May 2011, p. 100.

1.21 Questioning focussed on the funding in relation to the possible reopening of the detention centre on Manus Island, and, in particular, why it was not listed as a new measure in Budget Paper No. 2. The department pointed out that the figure of \$129.971 million was deemed to be an estimates variation by the Department of Finance and Deregulation for a possible processing centre as part of broader processing costs, and does not include any capital expenditure. Mr Metcalfe expanded on this issue for the committee:

As I understand it, it is treated as an estimates variation because we would have the obligation to do that in any event. This would be a case load that would otherwise be being processed in Australia were it not for other arrangements with other countries, as we have been discussing all afternoon. As Mr Sheehan has indicated, because we are still waiting for advice from PNG as to whether they wish to proceed with the issue, it has not been possible to calculate a capital cost. That would involve us looking at the facilities, whether it is Manus or somewhere else, and the condition of the facilities. Clearly, if the matter does proceed there will need to be a detailed assessment as to the capital cost and appropriate funding sought.¹⁷

East Timor

1.22 Senators also questioned the department about the status of the proposal to establish a regional processing centre in East Timor, an issue that has been covered in some detail in recent estimates hearings of the committee. The Secretary advised that, in light of the announcement on 7 May 2011:

...East Timor was advised that Australia was no longer going to pursue discussions with East Timor as a first priority, but obviously as part of the regional cooperation framework we continue to look forward to working very closely with East Timor on these and related issues...¹⁸

1.23 When asked for clarification, the Secretary did not rule out the proposal all together, only that it was no longer being treated as a priority by the government.¹⁹ The committee sought on notice a breakdown of the total costs expended in pursuing the regional processing centre in East Timor.²⁰

APEC Business Card Travel Scheme

1.24 The department updated the committee on the review and consultation with the Australian business community that was foreshadowed at the last estimates hearings concerning changes to the APEC Business Card Travel Scheme. Concerns were raised at the last hearing about the lack of consultation prior to a change in the criteria for the issue of APEC business cards.

17 *Committee Hansard*, 23 May 2011, p. 103.

18 *Committee Hansard*, 23 May 2011, p. 48.

19 *Committee Hansard*, 23 May 2011, p. 49

20 *Committee Hansard*, 23 May 2011, p. 49.

1.25 It was confirmed that the review is close to completion and that 23 organisations have now been consulted, including peak business bodies, business council and chambers of commerce. It was further advised that, as a result of this process, possible further changes to the criteria were being evaluated. The committee was pleased to note that the department had committed to a program of annual consultation with business representatives in the future.²¹

Onshore and offshore detention centre management

1.26 The committee spent considerable time examining Outcome 4 of the department, which includes programs dealing with the onshore detention network and the management of offshore asylum seekers.

1.27 The committee sought details about the contract with the service provider, Serco, in relation to the management of detention centres. Senators requested details on the number of breaches of the contract in relation to management and service provision. They were advised that the contract structure does not record breaches per incident, but has a series of abatements that apply to performance metrics.²² The department further advised that parts of the contract are publicly available, but certain parts, including the abatement regime is not, as it indicates a degree of commercial performance.²³ It was explained that the department formally measures performance of the contract every month, but this information is not publicly disclosed. In response to concerns about the transparency of this process, the committee was advised that 'we do have an extensive program of internal and external auditors who provide advice on our management of the contract'.²⁴

1.28 Some members of the committee also raised the issue of the delay in the establishment of the temporary detention centre planned for Pontville in Tasmania. The department explained that a number of regulatory requirements concerning heritage and environmental issues have delayed the project and, until all of these are resolved, an estimated opening date for the centre could not be provided.²⁵ When pressed as to whether the centre will be required if other facilities are completed during this period, the department confirmed that this will be a decision for the Minister:

Senator BARNETT: But, clearly, you do not have an Aboriginal heritage officer to be involved in that field audit in Tasmania, which, with respect, we have known for many weeks and probably months because it has been on the public record in Tassie. You are aware of that now. The question is: what are you going to do?

21 *Committee Hansard*, 23 May 2011, p. 124.

22 *Committee Hansard*, 24 May 2011, p. 21.

23 *Committee Hansard*, 24 May 2011, p. 23.

24 Ms Fiona Lynch-Magor, *Committee Hansard*, 24 May 2011, p. 23.

25 *Committee Hansard*, 24 May 2011, pp 23-24 and p. 111.

Mr Metcalfe: We are going to carefully consider our position as to how we take this forward.

Senator BARNETT: If we get to a position where you no longer need the temporary detention centre, because your developments in Northern Australia are nearly ready, I presume you will not proceed with the detention centre development.

Mr Moorhouse: That would be a decision for the minister.²⁶

1.29 Senators also asked a range of questions regarding operations and procedures in a number of onshore and offshore detention centres, particularly in relation to recent events of public disorder at the Villawood detention centre and the detention centre on Christmas Island. These questions focused on issues such as the notification of incidents to the department, the obligations of Serco in operating detention centres, assaults on Serco and other staff, procedures regarding authorisation of the use of 'reasonable force', the suitability of the Villawood facility as a detention centre, the points system used with detainees, costs estimates of recent damage to detention facilities, charter flights to detention centres, and procedures for the age assessment of detainees.

Answers to questions on notice

1.30 The committee notes that all 355 answers to questions on notice for the Immigration and Citizenship Portfolio from the additional estimates 2010-11 hearings in February 2011 were provided to the committee after the due date of 8 April 2011. This is the second successive estimates round where this has occurred. The Secretary pointed out to the committee that half of the responses had been lodged by 29 April 2011 and that all answers were provided before the hearings.²⁷ The committee notes that 87 responses were provided on Wednesday, 18 May 2011, and the final batch of 18 responses were provided after close of business on Friday, 20 May 2011 (and distributed to the committee that evening).²⁸

1.31 Mr Metcalfe noted the vast number of questions on notice the department had received in recent rounds of estimates and conceded the difficulties this presented to the department:

The department has received significant numbers of questions, particularly in recent times. I think I indicated earlier that, when you include subparts of the February 2011 additional estimates hearings, we received 742 questions requiring a response. The number of questions asked in October 2010 was 445; May 2010, 136; February 2010, 143; 20 October 2009, 123.

...

26 *Committee Hansard*, 24 May 2011, p. 98.

27 *Committee Hansard*, 24 May 2011, p. 111.

28 The date the answers were provided to the Minister's office was taken on notice by the department at the hearing.

The department has struggled over the years, I am sorry to say, with meeting the committee deadline...[S]ometimes that is because we are reliant on third parties for provision of information. So it has been unusual for us to meet the committee deadline but we certainly endeavour to do so in relation to all questions. However, we have a very good record in answering questions before the committee hearing.²⁹

1.32 The Secretary also advised that '[w]e endeavour to ensure that we provide [answers to questions on notice] before the hearings and we seek to comply with the requirements of the Senate. We have sought to do that over many years'.³⁰ However, the committee notes that providing answers on the last business day before the hearings (in this case after close of business) does not assist members of the committee in the timely consideration of the content of those answers.

1.33 In this context, the committee also notes that, on 12 May 2011, pursuant to Senate Standing Order 74, Senator Barnett asked the Minister (Senator the Hon Kim Carr) representing the Minister for Immigration and Citizenship for an explanation of outstanding answers not provided to questions placed on notice during the additional estimates 2010-11 hearings. The Minister was not present and an explanation was not provided. The Senate noted the Minister's failure to provide both the answers and an explanation for the delay.³¹

29 *Committee Hansard*, 24 May 2011, p. 115.

30 *Committee Hansard*, 24 May 2011, p. 111.

31 *Journals of the Senate No. 30*, 12 May 2011, p. 920.