

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 2012-13 financial year.

Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT)

1.2 The Principal Member of the MRT-RRT, Mr Denis O'Brien, updated the committee on significant developments within the organisation since his last appearance before the committee. He covered workload statistics and strategies to deal with an increased workload, member recruitment and performance indicators.

1.3 The committee heard that for the financial year up to 30 April 2012 lodgements continued to increase for both the MRT and RRT compared to 2010-11, 30 per cent and 11 per cent respectively. Active cases also increased significantly over this period, 47 per cent for the MRT and 59 per cent for the RRT. Mr O'Brien advised the committee that he expected the total number of decisions across both tribunals for 2011-12 would be close to 10,800, which compares to 9,181 for the previous year.¹

1.4 The MRT-RRT was questioned about the impact of the transfer of reviews for irregular maritime arrivals (IMAs) to the RRT following Minister Bowen's announcement in November 2011 that the government would be moving to a single protection visa process for both boat and air arrivals, using the current onshore arrangements for application and independent review through the RRT system.² The Minister announced on 19 March 2012 that '[t]he new system will apply to asylum seekers who arrive in Australia from 24 March as well as those who arrived prior to that date but had not yet had a primary assessment interview'.³

1.5 Mr O'Brien advised that additional funds of \$8.6 million were provided in the 2012-13 budget to fund the increasing workload as a result of the new IMA caseload.⁴ He also noted that there would be a return of some tribunal members from the

1 *Committee Hansard*, 21 May 2012, pp 3-4.

2 Minister for Immigration and Citizenship, 'Bridging visas to be issued for boat arrivals', Media Release, 25 November 2011, <http://www.minister.immi.gov.au/media/cb/2011/cb180599.htm> (accessed 5 June 2012).

3 Minister for Immigration and Citizenship, 'New single protection visa process set to commence', 19 March 2012, <http://www.minister.immi.gov.au/media/cb/2012/cb184344.htm> (accessed 5 June 2012).

4 Mr Martin Bowles PSM, Acting Secretary of the Department of Immigration and Citizenship, confirmed that these funds had been redirected in full from the Independent Protection Assessment Office, see *Committee Hansard*, 21 May 2012, p. 12.

Independent Protection Assessment Office in the coming months as a result of the changed arrangements.⁵ In response to questioning, Mr Colin Plowman, Registrar, elaborated on the arrangements that have been implemented to manage the new caseload:

Mr Plowman:... We have also got in place two working parties within the organisation, one on case load management to ensure we have the appropriate policies and processes in place. We have been liaising with the department around that in terms of making sure we can manage that. Part of that new principal member direction was part of the consideration of that and a few other things. We also have a staffing infrastructure working party within the tribunals to also manage those other matters to do with the new case load.⁶

1.6 On request, Mr O'Brien tabled the Principal Member Direction 2/2012: *Applications for review made by offshore entry persons*, to assist the committee.⁷

1.7 The committee was informed that, at the time of the hearing, five applications from IMAs for review of negative decisions had been received and all had been allocated to members. Mr O'Brien explained that, while detention cases would receive priority, not every IMA application is expected to be a detention case.⁸

1.8 With the expiration of Mr O'Brien's appointment as Principal Member on 30 June 2012, the Minister and the committee acknowledged his service and assistance to the committee, particularly through the estimates process, over the previous five years.⁹

Department of Immigration and Citizenship

Irregular maritime arrivals and budget implications

1.9 Senators again questioned the Department of Immigration and Citizenship and Minister on the budgetary implications of the number of IMAs. The Minister, Senator the Hon Kate Lundy, provided an opening statement to the committee regarding IMAs and the impact on the budget. The Minister outlined the sequence of events since the High Court of Australia's decision on 31 August 2011 in relation to the Malaysia Arrangement. She also provided the details of arrivals since this time and noted that, in 2012, there have been peaks and troughs in the number of arrivals.¹⁰

5 *Committee Hansard*, 21 May 2012, p. 4.

6 *Committee Hansard*, 21 May 2012, p. 11.

7 *Committee Hansard*, 21 May 2012, p. 6.

8 *Committee Hansard*, 21 May 2012, p. 6.

9 *Committee Hansard*, 21 May 2012, pp 5 and 14.

10 *Committee Hansard*, 21 May 2012, pp 14-15.

1.10 Senators sought an explanation of the revised budget figure of approximately \$840 million over the forward estimates for offshore asylum seeker management since the additional estimates process. The Acting Secretary, Mr Martin Bowles PSM, informed the committee:

If you have a look at the arrival numbers late last year, they were very high. Then we had some quite low numbers in January and March. Things were bouncing around quite a bit. We take every opportunity that arises in the budget-setting process to look at our numbers and to feed in the latest numbers and policy positions. The first opportunity, really, to get into the 2012-13 PBS is in the May budget, obviously. We have to factor in a range of those issues. At the additional estimates process—the MYEFO process—we had got so far. We now have another opportunity, nearly, what is it, 4½ or five months past the additional estimates and MYEFO processes.¹¹

1.11 Officers confirmed that the 2012-13 budget figure is based on a rate of 450 IMAs a month as a budget projection, but noted that this is only one component.

Senator CASH: Can you then take me through from February to May? What constitutes the [\$839.9] million? Can you take me through where the increases have actually been, given that the increase in IMAs is only part of that?

Mr Bowles: It is an exceptionally complex formula that we work out with the Department of Finance and Deregulation.

...

Senator CASH: All I am interested in is the 840-odd million. What is encapsulated in that? How can we get a breakdown of what is encapsulated in that? Where have the increases been?

Mr Bowles: It tries to factor in the cohorts of people we have—their nationality, whether they are family groups, whether they are accompanied or unaccompanied children, whether they are single adult males and where they actually are. It is cheaper to have them in certain places than other places, no doubt, through the system—

Senator CASH: More expensive, based on this figure.

Mr Bowles: As I said, we have adjusted for the change in policy and we have progressively done that from MYEFO to the PBS of 2012. Factoring all of those things in—

Senator CASH: Except the IMAs, because the IMAs have not changed. That has to be put to one side because you state that that remains at 450.

Mr Bowles: That is correct.¹²

11 *Committee Hansard*, 21 May 2012, p. 18.

12 *Committee Hansard*, 21 May 2012, p. 23.

Community Placement Network (Homestay)

1.12 The new Community Placement Network, which commenced on 26 March 2012, was the subject of extensive questioning. The program will provide accommodation for clients released from detention on bridging visas and will be delivered through the Australian Homestay Network. The department advised the committee that, at the time of the hearings, 1400 potential hosts had registered for the program, eight clients had been placed with a host family, with a further 12 clients to be placed that day, and a group of 20 clients to be placed by 5 June 2012.¹³

1.13 One area of questioning concerned the risk of placing a potentially vulnerable client into a homestay arrangement. Officers explained to the committee that, although people at risk are eligible for the homestay program, more vulnerable people would be placed in community detention rather than on bridging visas. Mr John Moorhouse, Deputy Secretary, provided further context on the client group accessing homestay:

There is probably some other contextual information that is useful to take into account as well, and that is that the people who are going on to bridging visas in recent times are people who are not as institutionalised from being in detention for an extended period of time. Some of the early bridging visa releases were people who had been in detention for two or three years. Now the people who are coming out and are likely to flow into the Homestay Network are people who have only been in detention for a relatively short period of time—five or six months.¹⁴

1.14 The committee also explored a number of other aspects of the program, including the timeline for the development of the program, departmental liability, host insurance, screening processes, training for hosts, income support for clients on the program and media coverage.¹⁵

Enterprise Migration Agreements and Regional Migration Agreements

1.15 Senators requested an update on the Enterprise Migration Agreements (EMA) scheme which had been announced in the previous budget. The department advised that, at the time of the hearing, one application was before the Minister for consideration and three other applications had been received by the department but had not yet been submitted to the Minister. Officers estimated that another 20 projects may be eligible. While acknowledging that commercial-in-confidence considerations are not grounds for a claim of public interest immunity, Mr Kruno Kukoc was reluctant to provide detailed information on the final application before the Minister and senators did not pursue that line of questioning. He did advise in more general terms that EMAs could include multiyear projects, spanning the lifetime of the

13 *Committee Hansard*, 21 May 2012, pp 98-99.

14 *Committee Hansard*, 21 May 2012, p. 110.

15 *Committee Hansard*, 21 May 2012, pp 100-112.

project, and there would be provision within each agreement for regular review of arrangements every six to 12 months.¹⁶

1.16 In response to questions on the issue of workplace rights for EMA employees, the committee was informed that foreign workers under the scheme would be employed under the 457 visa program, and would therefore have all the rights and obligations extended to them under that program. It was also noted the English language requirement would be that of the 457 visa program, but may be subject to some concessions if there are alternative risk mitigation strategies in place to ensure workers have information about their rights.¹⁷

1.17 Another area of interest to senators concerned the monitoring of sponsor compliance with regards to conditions and salaries. The committee was assured that the current sponsor monitoring program for the 457 visa program will be fully extended to EMAs. When the issue of whether there were sufficient resources to adequately extend the monitoring program to projects under the EMA scheme, Mr Kukoc advised:

...There is no issue about the level of resources. I think the issue is about the intelligent use of resources. We are implementing the risk management strategy. We have developed the risk management strategy in the 457 sponsor regime, where we clearly identify the sponsors or employees, the characteristics and who may be of high risk and we target our sponsorship activities to the high risk areas.

Senator WATERS: Does that mean that low-risk projects are not monitored?

Mr Kukoc: They are monitored but, like with any risk-management strategy, you have more resources devoted to high-risk areas.

Senator WATERS: Will the EMAs be considered high risk or low risk?

Mr Kukoc: It all depends on the employers and the type of employees they employ under the EMA. So every EMA will be different—because a EMA is just a deed of agreement that covers the project on a range of employers under that deed of agreement. So all these employers will have a separate labour agreement and will enter into sponsorship obligations with the government under those labour agreements. So it will vary from employer to employer or the type of employees they bring onshore.¹⁸

1.18 The committee was advised that the March 2012 release of the Regional Migration Agreement (RMA) submission guidelines had been delayed due to an extended consultative period with the states and territories, and were now expected to be released in June 2012. Despite the delay in publication of the guidelines, Mr Kukoc

16 *Committee Hansard*, 22 May 2012, p. 46.

17 *Committee Hansard*, 22 May 2012, p. 47.

18 *Committee Hansard*, 22 May 2012, p. 48.

confirmed that one RMA was currently being negotiated with the Northern Territory Government.¹⁹

Security assessment processes for bridging visas

1.19 Senators sought details of the processes for the grant of bridging visas, which at the time of the hearing, totalled 1780 visas, with 190 moved to permanent residency. The committee heard that bridging visas had been granted to persons at various stages of processing, with priority given to those who had been in detention the longest or considered most vulnerable. The department indicated that the criteria included people who had been assessed as '1A met' status (a positive refugee status assessment) but had not completed the remainder of their processing, including the final Australian Security Intelligence Organisation security check. It was also confirmed that the grant of bridging visas may include persons who had not attained '1A met' status:

Senator CASH: Does that mean that there are some people on bridging visas who may not have received a positive assessment—they might be either pending an assessment or on a negative RSA assessment?

Mr Kelly: There certainly are people who as the processing continues—so those people who may have been released, who were not through the initial process and who have subsequently been found not to be a refugee either at the primary stage or at the review stage—would still be in the community on bridging visas. So, yes, that is absolutely the case.²⁰

1.20 The department addressed concerns raised about the identity and security checks of persons on bridging visas released into the community:

Senator CASH: The question that I think arises is: these individuals are not subject to surveillance whilst they are in the community on bridging visas; why is there a lower bar for people on bridging visas that are all out in the community than, say, for people who are on a protection visa?

Mr McCairns: A protection visa is a permanent visa, so we would want to be much more sure of the facts, if I can put it that way, before the grant of a permanent visa.

Senator CASH: But these people are still out in the community.

Mr Bowles: Bridging visa holders have to report in, so they are not like a permanent protection visa holder.

Senator CASH: At the discretion of the minister, though. The minister, under the bridging visa conditions—

Mr Bowles: Under the bridging visa arrangements we have in place, bridging visa holders report.

...

19 *Committee Hansard*, 22 May 2012, p. 65.

20 *Committee Hansard*, 21 May 2012, p. 89.

Mr Bowles: ... We are not talking about identity as a singular issue. We are talking about identity. We are getting an initial assessment from ASIO and we have already done at least that first part of our entry interview process and well into, probably, the second part of that particular stage. So there are a whole series of things that we go to, not just one particular issue.

Senator CASH: I think what we have established at the moment is that, in terms of the identity checks, we know who they claim to be but we do not know who they are when we are releasing them into the community.

Mr Bowles: In some cases that could be correct, but we still go very quickly into the detailed checking. As I said, we are not just going by one single thing being an identity check. There are a series of these checks—the security assessment and others.²¹

Other matters of interest

1.21 The committee also questioned the department about a wide range of other matters, including costs of international charter flights, details of an irregular entry vessel off the Cocos (Keeling Islands), visa arrangements for overseas-based flight crews, incidents of self-harm in immigration detention centres, alleged fraud in the migration program raised by the ABC program 7.30, the migration program for 2012-13, costs of Northam Immigration Detention Centre and Pontville Immigration Detention Centre, the Adult Migrant English Program, the cap on the Humanitarian Settlement Services, and the funding decrease for the National Accreditation Authority for Translators and Interpreters.

Answers to questions on notice

1.22 The committee acknowledges a slight improvement in the timeliness of the provision of some of the answers to questions on notice for the Immigration and Citizenship Portfolio for the additional estimates 2011-12 round. The committee set 30 March 2012 as the due date for answers to questions on notice and received 214 answers in response to a total of 519²² questions by that date. As noted by the committee in its previous report on estimates, no answers to questions on notice have been provided by the due date over the five previous estimates rounds for the Immigration and Citizenship Portfolio.²³

1.23 The Acting Secretary in his opening statement remarked on the large volume of questions on notice in recent estimates rounds, as well as the burden placed upon

21 *Committee Hansard*, 21 May 2012, p. 92.

22 One question on notice out of the total of 519 was transferred to the Australian Federal Police for response.

23 Legal and Constitutional Affairs Legislation Committee, *Additional estimates 2011-12*, March 2012, p.7, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add_1112/index.htm.

the department by its participation in other parliamentary committee inquiries, most notably the recent Joint Select Committee on Australia's Immigration Detention Network, which tabled its final report on 30 March 2012:

...This was a very extensive inquiry into what is a complex and challenging area of public policy and administration. Throughout the inquiry, the department worked with the committee in an open and transparent manner. To this end, the department answered over 1,300 questions, provided 4,000 pages of written material, responded to 306 questions on notice, provided 16 supplementary responses, facilitated site visits across the immigration detention network and appeared before the committee on 10 occasions.

...

The department continues to respond productively, openly and transparently to the various reviews, oversight bodies and a number of other parliamentary committees. Many questions to the department seek detailed information on a range of complex and sensitive issues. All responses are carefully checked to ensure that all information provided is accurate, current and addresses the matters raised. This takes time.

This also carries with it a significant workload. For instance, in the budget estimates hearing in May 2011, 794 questions were taken on notice. This compares with only 136 questions on notice being asked at the 2010 budget estimates hearing. At the additional estimates hearing in February this year, the department received 519 questions on notice. It is also a challenge for us to deal with the many questions between estimates hearings. However, I want to stress that we try our best given the level of complexity we are working with.²⁴

1.24 While the committee is encouraged by the recent improvement in providing at least some answers by the due date, it notes that the majority of answers remained outstanding as at this date. The committee hopes to see a continuing improvement in the timeliness of answers in future estimates rounds.