

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Budget estimates 2013–14

June 2013

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Senator Patricia Crossin, **Chair**, ALP, NT

Senator Gary Humphries, **Deputy Chair**, LP, ACT

Senator Sue Boyce, LP, QLD

Senator Mark Furner, ALP, QLD

Senator Louise Pratt, ALP, WA

Senator Penny Wright, AG, SA

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Senator Patricia Crossin (Chair), Senator Gary Humphries (Deputy Chair), Senator Sue Boyce, Senator Mark Furner, Senator Louise Pratt, Senator Penny Wright, Senator the Hon Eric Abetz, Senator Catryna Bilyk, Senator Simon Birmingham, Senator Mark Bishop, Senator the Hon George Brandis QC, Senator the Hon Kim Carr, Senator Michaelia Cash, Senator the Hon Richard Colbeck, Senator the Hon John Faulkner, Senator Mitch Fifield, Senator Sarah Hanson-Young, Senator the Hon Bill Heffernan, Senator Scott Ludlam, Senator Helen Kroger, Senator Bridget McKenzie, Senator John Madigan, Senator Gavin Marshall, Senator Stephen Parry, Senator Lee Rhiannon, Senator Rachel Siewert, Senator John Williams, Senator Nick Xenophon

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# PREFACE

On 14 May 2013, the Senate referred to the Senate Legal and Constitutional Affairs Legislation Committee (committee) for examination the estimates of proposed expenditure for the financial year 2013-14. The committee is responsible for the examination of the Attorney-General's Portfolio and the Immigration and Citizenship Portfolio. The portfolio budget statements for 2013-14 were tabled on 14 May 2013.<sup>1</sup>

## Reference of documents

The Senate referred to the committee, for examination and report, the following documents:

- particulars of proposed expenditure in respect of the year ending on 30 June 2014 [Appropriation Bill (No. 1) 2013-2014]; and
- particulars of certain proposed expenditure in respect of the year ending on 30 June 2014 [Appropriation Bill (No. 2) 2013-2014].

The committee was required to report on its consideration of the budget estimates on or before 25 June 2013.

## Estimates hearings

The committee met in public session on 27, 28, 29 and 30 May 2013.

Over the course of the four days of hearings, totalling over 40 hours, the committee took evidence from the following departments and agencies:

### *Immigration and Citizenship Portfolio*

- Department of Immigration and Citizenship (including the Office of the Migration Agents Registration Authority)
- Migration Review Tribunal and Refugee Review Tribunal

### *Attorney-General's Portfolio*

- Attorney-General's Department
- Australian Commission for Law Enforcement Integrity
- Australian Crime Commission
- Australian Customs and Border Protection Service
- Australian Federal Police
- Australian Government Solicitor
- Australian Human Rights Commission
- Australian Law Reform Commission

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1 Senate, *Journals of the Senate*, No. 144-14 May 2013, p. 3915.

- Australian Security Intelligence Organisation
- Classification Board
- CrimTrac Agency
- Family Court of Australia
- Federal Court of Australia
- Insolvency and Trustee Service Australia
- Office of the Australian Information Commissioner
- Office of the Director of Public Prosecutions

Copies of the transcripts of *Hansard* are available on the committee's website at: [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon).

An index of the *Hansard* for each portfolio appears at Appendix 2.

### **Ministers and Parliamentary Secretary**

On 27 and 28 May 2013, the committee heard evidence from Senator the Hon. Kate Lundy, Minister for Sport, Minister for Multicultural Affairs and Minister Assisting for Industry and Innovation; and Senator the Hon. Matt Thistlethwaite, Parliamentary Secretary for Pacific Island Affairs and Parliamentary Secretary for Multicultural Affairs, representing the Minister for Immigration and Citizenship.

On 29 and 30 May 2013, the committee heard evidence from Senator the Hon. Joseph Ludwig, Minister for Agriculture, Fisheries and Forestry, and Minister Assisting the Attorney-General on Queensland Floods Recovery, representing the Attorney-General and the Minister for Justice and Home Affairs.

Officers from both departments and associated agencies also appeared. The committee thanks the Ministers, Parliamentary Secretary and officers for their assistance.

### **Questions on notice**

The committee determined that the due date for submitting responses to questions on notice from the Budget Estimates round is 12 July 2013.

Further written explanations, and answers to questions on notice, will be tabled as soon as possible after they are received, and are available on the committee's website.

### **Note on references**

References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.



# 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 2013-14 financial year.

### **Migration Review Tribunal and Refugee Review Tribunal**

1.2 The Principal Member of the Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT) updated the committee on significant developments within the agencies since February 2013. The Principal Member described current workload statistics, and the development and implementation of certain strategies to manage the increased workload.<sup>1</sup>

1.3 Senators asked the MRT-RRT about the incidence of cases involving Irregular Maritime Arrivals (IMAs) in the financial year to 30 April 2013. The committee heard that the MRT-RRT has received 1,510 cases<sup>2</sup> but that the tribunals have not dealt with any 'arrivals post 13 August 2012'.<sup>3</sup>

1.4 In relation to the funding of cases for post 13 August 2012 IMA arrivals, the MRT-RRT explained that its budget for 2013-14 has been 'rebased', to increase funding from a base of 9,065 cases to 18,000 cases (totalling \$65.7 million), with a marginal cost of \$2,091 for any extra cases under 2,000 and \$2,972 per case above that number.<sup>4</sup>

### **Department of Immigration and Citizenship**

1.5 The Secretary of the Department of Immigration and Citizenship (DIAC), Mr Martin Bowles PSM, provided the committee with an update on significant developments within the portfolio since his appearance before the committee at Additional Estimates 2013. The Secretary canvassed, for example, statistical information on the migration and humanitarian programs, current activities to enhance the provision of services and to strengthen program integrity, implementation of the recommendations of the Expert Panel on Asylum Seekers, and management of the immigration detention network.<sup>5</sup>

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1 *Budget Estimates Hansard*, 27 May 2013, p. 4.

2 *Budget Estimates Hansard*, 27 May 2013, p. 5.

3 *Budget Estimates Hansard*, 27 May 2013, p. 9.

4 *Budget Estimates Hansard*, 27 May 2013, p. 11.

5 *Budget Estimates Hansard*, 27 May 2013, pp 17-20.

### ***Irregular maritime arrivals and budget implications***

1.6 The committee questioned DIAC on the number of Irregular Maritime Arrivals (IMAs) provided for in the 2013-14 Budget. Specifically, the committee sought an explanation as to how the budgeted item takes into account IMAs who arrived in Australia after 13 August 2012 and who are therefore subject to the 'no advantage principle' which commenced on that date.

1.7 The Secretary acknowledged that the 2013-14 Budget allows for 13,200 IMAs, notwithstanding that 22,265 IMAs have arrived in the financial year to 24 May 2013 and for whom processing has not yet commenced.<sup>6</sup> The Secretary explained that the projected figure of 13,200 arrivals was formulated in conjunction with the Australian Customs and Border Protection Service, taking into account a significant shift in the Sri Lankan caseload in late 2012:

**Mr Bowles:**...In relation to how that then translates into the budget, we are working with the Department of Finance and Deregulation at the moment around the funding model that we will go forward with. That will take into account the various nuances that I have talked about [regarding] how we manage a particular network. We are trying to drive efficiencies in the way that we manage the network....[T]he numbers are increasing and therefore the total dollars are increasing. But it is the way that we manage the network that will allow us to keep those costs to [as] small an amount as possible, given the arrival numbers.<sup>7</sup>

1.8 With respect to the 22,265 IMAs who have already arrived in Australia, the Secretary confirmed that the process of refugee status determination will commence 'shortly', possibly before the end of the current financial year but, if not, definitely in the financial year commencing 1 July 2013.<sup>8</sup> The Secretary advised that the processing and associated costs have been addressed in Outcome 4 of the 2013-14 Budget; however, since DIAC uses a 'demand model', it is not possible to specify a funding year.<sup>9</sup>

### ***Offshore processing centres***

1.9 The committee sought details of the budgeted cost of transferring IMAs to Manus Island, Papua New Guinea and Nauru over the 2013-14 financial year. The committee heard that, in the financial year to 30 April 2013, \$7.4 million has been spent in this regard.<sup>10</sup> For 2013-14, DIAC explained that the amount likely to be expended is covered in the 'larger pool' in the forward estimates and has not been itemised:

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6 *Budget Estimates Hansard*, 27 May 2013, pp 9 and 29.

7 *Budget Estimates Hansard*, 27 May 2013, p. 30.

8 *Budget Estimates Hansard*, 27 May 2013, pp 9 and 40.

9 *Budget Estimates Hansard*, 27 May 2013, p. 39.

10 Mr Ken Douglas, Department of Immigration and Citizenship (DIAC), *Budget Estimates Hansard*, 28 May 2013, p. 30.

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**Mr Douglas:**...[T]he expenditure is a function of the number of people who will be located and the rate at which the infrastructure is finished and therefore the rate at which people might come into the centre or leave the centre...[W]e have estimated the forward value of the contracts over the life of those contracts. To estimate the value into the future years beyond what we have in those contracts would be subject to a procurement process, which is yet to be undertaken.<sup>11</sup>

1.10 DIAC informed the committee that Manus Island and Nauru are expected to operate at capacity in the 2013-14 financial year, with the construction of facilities on Manus Island commencing in July and for which a limited tender process will be utilised at an approximate total cost of \$171.7 million. Completion is expected at the end of January 2014, 'depending on climate and the degree of construction difficulty'.<sup>12</sup>

### ***Family migration program***

1.11 The committee examined the increase in the family stream of the migration program for 2013-14. DIAC confirmed that there will be a 'small adjustment [of 700 places]...to meet the demand in the family program[,] particularly in the partner category that is demand driven'.<sup>13</sup> The committee understands that this will increase the number of placements from 60,185 (2012-13) to 60,885 (2013-14) and will correspondingly decrease the number of placements in the General Skilled Migration program (also known as the Professional and Other Skilled Migrants program), which caters to skilled migrants who are not sponsored by an employer.<sup>14</sup>

### ***Enterprise Migration Agreements, Regional Migration Agreements and Significant Investor Visas***

1.12 DIAC updated the committee in relation to Enterprise Migration Agreements (EMAs), Regional Migration Agreements (RMAs) and significant investor visas. The committee was advised that:

- thirty-three EMA submissions have been received, with one EMA approved in-principle subject to the negotiation of a deed of agreement (for the Roy Hill Project) and three submissions currently being assessed;<sup>15</sup>
- one RMA application has been received from the Northern Territory Government, which is currently under assessment;<sup>16</sup> and
- in relation to the significant investor visa category, 435 expressions of interest have been lodged for subclass 188 and subclass 888 visas of which

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11 *Budget Estimates Hansard*, 28 May 2013, p. 29.

12 Mr Ken Douglas, DIAC, *Budget Estimates Hansard*, 28 May 2013, p. 30.

13 Mr Kruno Kukoc, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 61.

14 *Budget Estimates Hansard*, 27 May 2013, p. 61.

15 Mr Kruno Kukoc, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 65.

16 Mr Kruno Kukoc, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 66.

279 applicants were invited to apply.<sup>17</sup> An applicant must hold a 188 provisional visa for four years before becoming eligible to apply for a 888 visa: as such there have as yet been no applications for the subclass 888 visa, which was introduced in November 2012.<sup>18</sup>

1.13 The department was asked to explain how it determines whether a significant investor visa applicant has the capacity to invest \$5 million minimum into particular investments, which is a requirement of the new visa. The Secretary advised that there are a range of checks regarding the legitimacy of the funds, including with AUSTRAC.<sup>19</sup> Following in-principle approval of the application, the applicant is invited to lodge funds into an approved investment before the application can be finalised.<sup>20</sup>

### ***Security arrangements within the immigration detention network***

1.14 The committee asked DIAC about security arrangements within the immigration detention network. Specifically, senators sought further details in relation to the management of persons who might pose a risk to the Australian community.

1.15 While a number of cases and circumstances were discussed, the Secretary assured the committee that, upon entry to Australia, DIAC determines a person's identity or claimed identity, including through reference to the Movement Alert List.<sup>21</sup> Where a confirmed identity raises concerns, the person would not be released into the community or would be re-detained.<sup>22</sup>

1.16 The Secretary explained that, if DIAC was not able to confirm a person's identity, that person might be released on a bridging visa or into community detention. Equally, if DIAC has concerns regarding a person's identity, 'we would definitely not release them'.<sup>23</sup>

1.17 Throughout this line of questioning, DIAC emphasised that it manages people in 'appropriate forms of detention',<sup>24</sup> with the service provider, Serco, placing persons within detention centres following the conduct of a risk assessment.<sup>25</sup>

### ***Enhanced screening process***

1.18 The committee requested details of the enhanced screening process, which commenced on 27 October 2012 in relation to the Sri Lankan cohort of IMAs.

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17 Mr Martin Bowles PSM, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 67.

18 Mr Kruno Kukoc, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 67.

19 *Budget Estimates Hansard*, 27 May 2013, p. 67.

20 Mr Jim Williams, DIAC, *Budget Estimates Hansard*, 27 May 2013, p. 68.

21 *Budget Estimates Hansard*, 27 May 2013, p. 98.

22 *Budget Estimates Hansard*, 27 May 2013, p. 96.

23 *Budget Estimates Hansard*, 27 May 2013, p. 96.

24 *Budget Estimates Hansard*, 27 May 2013, p. 100.

25 *Budget Estimates Hansard*, 27 May 2013, p. 96.

The committee heard that, under the new process, 2,596 interviews have taken place, with 965 people having been removed from Australia as a consequence.<sup>26</sup> DIAC advised that people who are awaiting removal from Australia can request and be provided with access to legal assistance.<sup>27</sup> To date, three persons have sought such assistance and have been taken off the removals list.<sup>28</sup>

### ***Official Development Assistance***

1.19 The committee examined a budgeted item of \$375 million, which has been allocated as official development assistance (ODA) within DIAC's budget. Specifically, DIAC was asked how these funds are expended and what oversight is in place to ensure that any such expenditure complies with ODA guidelines. The Secretary responded:

The money...identified as ODA within the asylum seekers area...relates to people who are in the community either on a bridging visa or under a residence determination...It relates to the first 12 month[s] that they are in Australia. If they spend time in detention, that time in detention does not go to the ODA component. If they spend six months in detention and six months in the community, the six months in the community would count within the ODA. This is a rigorous process that sits under the OECD Development Assistance Committee's reporting directives...[The money] is for sustenance, care, shelter, basic English language training and things like that.<sup>29</sup>

1.20 The Secretary explained that ODA funds are administered through DIAC's normal payment schemes (Community Assistance Scheme and Asylum Seeker Assistance Scheme). Accordingly, DIAC knows how long a person has been in the system and whether the person has been in detention or in the community. This enables DIAC to 'track' compliance with ODA guidelines. The Secretary observed that 'DIAC is responsible for ensuring efficient and effective expenditure and appropriate reporting of its ODA funding [to AusAID]'.<sup>30</sup>

### ***Other matters of interest***

1.21 The committee also questioned DIAC in relation to a range of other matters, including:

- further information on DIAC's initiatives to improve its internal communications throughout Australia and overseas following a capability review;<sup>31</sup>

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26 *Budget Estimates Hansard*, 28 May 2013, p. 37.

27 *Budget Estimates Hansard*, 28 May 2013, p. 43.

28 *Budget Estimates Hansard*, 28 May 2013, p. 45.

29 *Budget Estimates Hansard*, 28 May 2013, pp 19-21.

30 *Budget Estimates Hansard*, 28 May 2013, p. 21.

31 *Budget Estimates Hansard*, 27 May 2013, pp 42-43.

- arrangements with the Fair Work Commission, to enable Fair Work inspectors to investigate non-compliance with certain requirements of the 457 visa program;<sup>32</sup>
- reasons for the delayed processing of claims for refugee status on Nauru and Manus Island;<sup>33</sup>
- introduction of a new polymer card as a form of identification for humanitarian visa holders and IMAs;<sup>34</sup>
- repatriation arrangements involving transit through third countries;<sup>35</sup> and
- reform of employer sanctions for businesses which employ unlawful non-citizens.<sup>36</sup>

### ***Answers to questions on notice***

1.22 The committee again notes the delay in the provision of answers to questions on notice for the Immigration and Citizenship Portfolio for Additional Estimates 2012-13. The committee set 2 April 2013 as the return date for answers but did not receive any responses by that date. Instead, a total of 393 answers to questions on notice were received on the Saturday before the commencement of Budget Estimates—less than two days prior to DIAC's appearance before the committee.<sup>37</sup> Of the responses received, 333 of those were in response to a total of 509 questions from the Additional Estimates round (in February 2013) and 160 responses received for the Supplementary Estimates hearings (in October 2012). At the date of this report's tabling, there are 176 answers to questions on notice outstanding for Additional Estimates 2012-13 and 136 answers to questions on notice outstanding from 647 questions for Supplementary Estimates 2012-13.

1.23 As previously noted by the committee, no answers to questions on notice have been provided by the due date over several successive estimates rounds for the Immigration and Citizenship Portfolio.<sup>38</sup> The late provision of answers does not allow members of the committee reasonable time to consider those answers prior to the hearings, and impedes the role of the committee in examining proposed expenditure by Commonwealth departments and agencies.

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32 *Budget Estimates Hansard*, 27 May 2013, pp 54-57, 59-60, 62-63 and 72.

33 *Budget Estimates Hansard*, 27 May 2013, pp 73-74.

34 *Budget Estimates Hansard*, 27 May 2013, pp 107-109.

35 *Budget Estimates Hansard*, 28 May 2013, pp 23-25.

36 *Budget Estimates Hansard*, 28 May 2013, pp 26-28.

37 *Budget Estimates Hansard*, 27 May 2013, p. 40.

38 Senate Legal and Constitutional Affairs Legislation Committee, *Budget estimates 2012-13*, June 2012, p. 7; Senate Legal and Constitutional Affairs Legislation Committee, *Additional estimates 2012-13*, March 2013, p. 5. The one exception was the Additional Estimates 2011-12 round, where the committee noted a slight improvement in the provision of answers to questions on notice.

1.24 The committee questioned DIAC about its process of answering questions on notice and key performance indicators (KPIs) related to that process.<sup>39</sup> The Secretary acknowledged that DIAC is not presently meeting 'a lot of' the KPIs in relation to the provision of answers to questions on notice and advised that a new process for answering questions on notice has been instituted, which involves a restructure of the ministerial and executive support areas. The Secretary indicated his expectation that the new process would be effective as from this estimates round.<sup>40</sup>

1.25 The committee will continue to closely monitor DIAC's performance in the provision of answers to questions on notice, particularly in light of the new process advised by the Secretary. It is simply not acceptable for answers to be provided weeks after the due date set by the committee, and for answers to be provided in huge numbers within hours of the commencement of estimates hearings.

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39 *Budget Estimates Hansard*, 27 May 2013, pp 40-41.

40 *Budget Estimates Hansard*, 27 May 2013, p. 40.





## CHAPTER 2

### ATTORNEY-GENERAL'S PORTFOLIO

2.1 This chapter summarises some of the matters raised during the committee's consideration of the budget estimates for the Attorney-General's Portfolio for the 2013-14 financial year.

#### **Australian Customs and Border Protection Service**

2.2 The Australian Customs and Border Protection Service (Customs) updated the committee on reform within the agency, as announced by the government in December 2012.<sup>1</sup> One of the reforms referred to by the recently appointed Chief Executive Officer, Mr Michael Pezzullo, in his opening statement was Customs' new drug and alcohol testing program, which commenced on 13 March 2013. The committee heard that 551 officers have been tested under the program, with no breaches of the alcohol-free policy detected and one confirmed positive result for a cannabis metabolite.<sup>2</sup>

2.3 The Chief Executive Officer indicated that, at the current rate, Customs expects to 'cycle through' its 5,600 strong workforce every 24-36 months. However, testing is in a pilot phase (concluding at the end of May or June 2013), after which the results will be reviewed to determine how often employees need to be tested in order to obtain the desired deterrent and integrity intelligence effect.<sup>3</sup>

#### **Family Court of Australia**

2.4 The committee examined the budgetary outlook for the Family Court of Australia (Family Court), where Table 3.2.1 of the Portfolio Budget Statements shows deficits for 2012-13 (\$8.4 million), 2013-14 (\$8.5 million) and nearly \$9 million in each of the out years. Specifically, the committee asked for an explanation of the claim that the court will achieve a balanced budget in the current and upcoming financial years.<sup>4</sup> The Executive Director of Corporate responded:

**Mr Harriott:**...[U]nder Operation Sunlight the funding in our appropriations for depreciation was removed and we get it separately as an equity injection through our balance sheet. So, in the absence of any other changes, the first thing that would happen is that you would make a technical loss in each of those financial years because of the impact of the depreciation. If you look at the table further down, it talks about the impact of net cash appropriation arrangements. Essentially, in terms of our performance, in terms of a true underlying loss or not, you would add back

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1 *Budget Estimates Hansard*, 29 May 2013, pp 9-12.

2 *Budget Estimates Hansard*, 29 May 2013, pp 14 and 16.

3 *Budget Estimates Hansard*, 29 May 2013, p. 14.

4 Family Court of Australia and Federal Magistrates Court of Australia, 2012 – *the Year in Review: Chief Executive Officer's Report*, October 2012, p. v.

depreciation. If you look at the 2012-13 figure, which is an \$8,424,000 loss, you would add back on the depreciation expense. If you look under 'Expenses' up at the top, under 'Depreciation/amortisation', if you add back the \$8,424,000 you end up with zero; essentially, you break even. We were representing it as required, but it is a technical loss...So that is the change that came about through Operation Sunlight. Essentially, but for the depreciation impact, we are budgeting to break even over the forward years.<sup>5</sup>

2.5 The Family Court conceded that the financial statements that appear in the annual report are more comprehensive than the budget documents;<sup>6</sup> however, Mr Harriott, advised the committee 'I do not get a sense, over the time I have been involved, that the notes we have in there now are any less or any more than we have had in the past'.<sup>7</sup>

### **Federal Court of Australia**

2.6 The committee questioned the Federal Court of Australia (Federal Court) about the budget provision for the appointment of three additional judges in Melbourne, Sydney and Brisbane. The Federal Court clarified that it had not specifically requested these appointments and suggested the government had made its decisions based on numerous expressions of concern made by the Federal Court in relation to the increasing workload in those cities.<sup>8</sup>

2.7 The committee also asked the Federal Court about a forecasted operating surplus in the 2012-13 Budget, given that there is a predicted deficit in the forward estimates, including 2012-13. A question was put in relation to how it is possible to have an operating surplus and a significant deficit of \$3.2 million in the same year. The Chief Finance Officer, Mr Bowen, provided the committee with an accounting explanation. He advised the committee that, due to a change in the accounting policies two years ago when depreciation funding was removed from all of the entities, the Federal Court will always have a deficit as a result of depreciation that has to be charged against the Federal Court's financial statements. This deficit is then rebalanced by an increase in the Federal Court's equity increase from the department's annual capital budget.<sup>9</sup>

2.8 Mr Bowen acknowledged:

[The information in the Portfolio Budget Statements] probably should have had a caveat that this is the figure before taking into account depreciation.<sup>10</sup>

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5 *Budget Estimates Hansard*, 29 May 2013, p. 67.

6 *Budget Estimates Hansard*, 29 May 2013, pp 67-68.

7 *Budget Estimates Hansard*, 29 May 2013, p. 68.

8 *Budget Estimates Hansard*, 29 May 2013, pp 58-59.

9 *Budget Estimates Hansard*, 29 May 2013, p. 60.

10 *Budget Estimates Hansard*, 29 May 2013, p. 60.

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## Australian Commission for Law Enforcement Integrity

2.9 The committee questioned the Australian Commission for Law Enforcement Integrity (ACLEI) about its budget for 2013-14, staffing levels and the Integrity Commissioner's role in matters involving alleged corruption.

2.10 The Integrity Commissioner advised that there will be an increase of \$0.725 million in ACLEI's 2013-14 budget, but funding for the surveillance capability enhancement project will cease on 31 December 2013.<sup>11</sup> This pilot project is currently funded from the proceeds of crime and, in the view of the Integrity Commissioner, 'has proven its worth, particularly in the context of recent investigations conducted jointly with the [Australian Federal Police and Customs]. It has helped the investigation to be efficient and it has produced strong criminal briefs'.<sup>12</sup> A review of the project's effectiveness is underway and the committee heard that it is likely that the project will continue.<sup>13</sup>

2.11 The Integrity Commissioner explained that ACLEI accesses the project's surveillance capability by arrangement with the Australian Crime Commission (ACC), which manages the surveillance team. ACLEI has first call on this capability and utilises it in cases where physical surveillance is required in an investigation.<sup>14</sup> If funding for the project were discontinued, the committee heard that ACLEI would not be able to access surveillance capability for its investigations.<sup>15</sup>

## Australian Crime Commission

2.12 The committee asked the Australian Crime Commission (ACC) about the impact of its reduced budget, from \$104.867 million in 2012-13 to \$101.787 million in 2013-14, on work projects and staffing levels. The Chief Executive Officer, Mr John Lawler AM APM, advised that the ACC's response has been to reduce its supply costs in order to maintain staff, and to develop efficiencies to manage the budget.<sup>16</sup>

2.13 The committee also questioned officers about the *Illicit drug data report 2011-12*, which was released on 7 February 2013. The Chief Executive Officer confirmed that there have been a record number of seizures (at 23 tonnes), but stated that it is difficult to attribute supply to increased street quantity.<sup>17</sup> Based on figures provided by the World Bank and the United Nations Office on Drugs and Crime, the Chief Executive Officer estimated the conservative worth of the illicit drug market in

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11 *Budget Estimates Hansard*, 30 May 2013, p. 7.

12 *Budget Estimates Hansard*, 30 May 2013, p. 8.

13 *Budget Estimates Hansard*, 30 May 2013, p. 8.

14 *Budget Estimates Hansard*, 30 May 2013, p. 8.

15 *Budget Estimates Hansard*, 30 May 2013, p. 8.

16 *Budget Estimates Hansard*, 30 May 2013, p. 15.

17 *Budget Estimates Hansard*, 30 May 2013, p. 17.

Australia at about \$6 billion (or two per cent of Australia's \$1.3 trillion gross domestic product).<sup>18</sup>

### **Australian Federal Police**

2.14 The committee questioned the Australian Federal Police (AFP) about its use of section 313 of the *Telecommunications Act 1997* (Telecommunications Act). The AFP acknowledged that the provision was previously used to block malicious software emanating from a particular server. However, section 313 of the Telecommunications Act is now used for a broader purpose:

**Mr Phelan:** Section 313 is not limited to blocking websites. It is a requirement that content service providers, ISPs or telecommunications carriers do everything in their power to assist law enforcement and stop offence[s] against the criminal law. It is not only about blocking websites. The Australian Federal Police do use that section for other requirements that we do have that are not related at all to blocking websites—that, as a matter of fact have nothing to do with websites. They are about carriers assisting the AFP in lawful duties under warrant et cetera.<sup>19</sup>

2.15 The committee heard that the AFP revised its approach upon discovering that it is much more useful, and far more valuable, to work with the host companies offshore and block material at its source, rather than attempt to manage the problem from within Australia.<sup>20</sup>

2.16 In a similar vein, the committee pursued a line of questioning in relation to the AFP's access of non-content data under sections 178-180 of the *Telecommunications (Interception and Access) Act 1979*. The AFP Commissioner confirmed that, in the last two financial years, over 93,000 requests were made for such access: 50,841 in 2010-11 and 43,362 in 2011-12.<sup>21</sup> The committee heard that these requests did not include access to content on overseas servers for which mutual assistance requests are normally required.<sup>22</sup>

2.17 The committee also questioned AFP officers extensively on Interpol red notices and their application in relation to the assessment of particular individuals, including an IMA individual currently in detention who has been convicted of serious crimes 'in absentia' by a military tribunal in Egypt.<sup>23</sup>

2.18 The committee was informed that all law enforcement agencies have access to Interpol information which is normally facilitated through the AFP. Mr Colvin emphasised that a red notice is not an arrest warrant and has no legal basis in Australia:

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18 *Budget Estimates Hansard*, 30 May 2013, p. 17.

19 *Budget Estimates Hansard*, 30 May 2013, p. 30.

20 *Budget Estimates Hansard*, 30 May 2013, p. 31.

21 *Budget Estimates Hansard*, 30 May 2013, p. 25.

22 *Budget Estimates Hansard*, 30 May 2013, p. 26.

23 *Budget Estimates Hansard*, 30 May 2013, p. 58.

[It] is a flag so [the AFP] can go back to the country that has asked Interpol to create this red notice if [the AFP] need[s] to establish certain things which include [the requesting country's] preparedness to seek extradition and [that country's] ability to meet the Australian [extradition] threshold... [The extradition process] is a process that is managed by the Attorney-General's Department.<sup>24</sup>

## **Attorney-General's Department**

### ***Emergency Management Australia***

2.19 The committee questioned the Attorney-General's Department (AGD) on the work undertaken in relation to the \$12 million committed to the National Risk Information Project, which arose from the Natural Disaster Insurance Review. The committee sought information about the ongoing mapping of flood-prone areas and how much information would be collected and made accessible.<sup>25</sup>

2.20 The Secretary, Mr Roger Wilkins AO, advised that although there is reasonable knowledge of past and current flood-prone areas, the issue in relation to the project's difficulty, is more related to 'the quality of the data than the extent of the data', and the use of different methodologies in different areas.<sup>26</sup> The department's contribution to the project is to develop common guidelines for a framework that will ensure 'existing data [is made] more easily available and accessible through a single web portal' and 'work with jurisdictions to improve standards'.<sup>27</sup>

2.21 In relation to a question about how much of the \$12 million funding has already been spent, a departmental officer advised that Geoscience Australia, the agency building the portal, manages all of the funding allocated to the project.<sup>28</sup>

### ***National Plan to Reduce Violence Against Women and their Children***

2.22 The committee requested an update on how the National Plan to Reduce Violence Against Women and their Children has progressed via the Standing Council on Law and Justice since the last estimates hearings.

2.23 The committee heard that of the 186 recommendations in the Australian Law Reform Commission's *Family violence—a national legal response* report, the department is 'halfway through' those components where it has responsibility to contribute to a national response, via the Standing Council on Law and Justice, and where the department is responsible for a Commonwealth-specific response.<sup>29</sup> The 24 recommendations that the Commonwealth and the states and territories have jointly

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24 *Budget Estimates Hansard*, 30 May 2013, p. 57.

25 *Budget Estimates Hansard*, 29 May 2013, pp 79 and 80.

26 *Budget Estimates Hansard*, 29 May 2013, p. 80.

27 *Budget Estimates Hansard*, 29 May 2013, p. 80.

28 *Budget Estimates Hansard*, 29 May 2013, p. 81.

29 *Budget Estimates Hansard*, 29 May 2013, p. 93.

responded to are publicly available on the Standing Council on Law and Justice's website.<sup>30</sup>

2.24 The recommendations that have already been progressed by the Commonwealth, and are publicly available, include: changes to the *Family Law Act 1975* in relation to family violence and definitions of family violence; a greater focus on training packages around family violence, which resulted in the release of the AVERT Family Violence training package to assist professionals to better understand the subject matter; and preparation of the DOORS (Detection Of Overall Risk Screen) package, which assists lawyers in their interactions with clients to identify issues of family violence.<sup>31</sup>

### ***Federal judicial appointments***

2.25 The committee pursued an extensive line of questioning in relation to the advertisement and appointment of three new Federal Court judges in Melbourne, Sydney and Brisbane. The AGD explained that an existing process to fill vacancies in Melbourne and Sydney was used to shortlist applicants for the new positions in those cities,<sup>32</sup> with the Brisbane appointment advertised on 10 May 2013.<sup>33</sup> The AGD informed the committee that the Attorney-General's office had requested that expressions of interest be advertised on 10 May 2013. The positions were advertised prior to the announcement of the vacancies in the Budget on 14 May 2013, because 'the Treasurer had in a sense given his permission for a measure that was to be announced in the budget to be announced effectively before the budget'.<sup>34</sup>

### **Other matters of interest**

2.26 The committee questioned the department and its agencies about a range of other matters, including:

- the arrival of 66 Sri Lankan asylum seekers at Geraldton, Western Australia on 9 April 2013;<sup>35</sup>
- the amount, and application, of revenue to be collected by federal courts in 2013-14;<sup>36</sup>
- the current status of the Open Government Partnership Agreement;<sup>37</sup>
- an update on the ratification of the Optional Protocol to the Convention against Torture;<sup>38</sup>

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30 *Budget Estimates Hansard*, 29 May 2013, p. 92.

31 *Budget Estimates Hansard*, 29 May 2013, p. 93.

32 *Budget Estimates Hansard*, 29 May 2013, pp 108 and 111.

33 *Budget Estimates Hansard*, 29 May 2013, p. 113.

34 *Budget Estimates Hansard*, 29 May 2013, p. 114.

35 *Budget Estimates Hansard*, 29 May 2013, pp 18-20.

36 *Budget Estimates Hansard*, 29 May 2013, pp 61-65 and 68-70.

37 *Budget Estimates Hansard*, 29 May 2013, pp 75-77.

- funding arrangements in relation to support provided by the AFP to the Department of Immigration and Citizenship;<sup>39</sup> and
- the Australian Security and Intelligence Organisation's new security assessment process for Irregular Maritime Arrivals.<sup>40</sup>

***Answers to questions on notice***

2.27 The committee commented on the late provision of the CrimTrac Agency's (CrimTrac) answers to questions on notice for Additional Estimates 2012-13. The committee had set 2 April 2013 as the return date for answers but did not receive CrimTrac's responses until approximately three hours prior to their appearance before the committee.<sup>41</sup>

2.28 The committee reiterated its view that it is not acceptable for responses to be provided weeks after the due date. The late provision of answers does not allow committee members sufficient time to consider them before the hearings, and impedes the role of the committee in examining proposed expenditure by Commonwealth departments and agencies.

**Senator Trish Crossin**  
**Chair**

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38 *Budget Estimates Hansard*, 29 May 2013, pp 97-99 and 103-105.

39 *Budget Estimates Hansard*, 30 May 2013, p. 55.

40 *Budget Estimates Hansard*, 30 May 2013, p. 67.

41 *Estimates Hansard*, 30 May 2013, p. 80.





# **APPENDIX 1**

## **DEPARTMENTS AND AGENCIES FOR WHICH THE COMMITTEE HAS OVERSIGHT**

### **Attorney-General's Portfolio**

- Attorney General's Department;
- Administrative Appeals Tribunal;
- Australian Federal Police;
- Australian Customs and Border Protection Service;
- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;
- Australian Government Solicitor;
- Australian Human Rights Commission;
- Australian Institute of Criminology;
- Australian Law Reform Commission;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- Classification Board and Classification Review Board;
- CrimTrac Agency;
- Family Court of Australia;
- Family Law Council;
- Federal Court of Australia;
- Federal Circuit Court of Australia;
- High Court of Australia;
- Insolvency and Trustee Service Australia;
- National Native Title Tribunal;
- Office of the Australian Information Commissioner;
- Office of the Commonwealth Director of Public Prosecutions; and
- Office of Parliamentary Counsel.

### **Immigration and Citizenship Portfolio**

- Department of Immigration and Citizenship (including the Office of the Migration Agents Registration Authority); and
- Migration Review Tribunal and Refugee Review Tribunal.

# **APPENDIX 2**

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## APPENDIX 3

### TABLED DOCUMENTS

#### Immigration and Citizenship Portfolio, 27 and 28 May 2013

No.	Date	Tabled by:	Topic
1	27 May 2013	Ms Kay Ransome, Principal Member, Migration Review Tribunal – Refugee Review Tribunal	Opening statement
2	27 May 2013	Mr Stephen Wood, Chief Executive Officer, Office of the Migration Agents Registration Authority	Opening statement
3	27 May 2013	Mr Martin Bowles PSM, Secretary, Department of Immigration and Citizenship	Opening statement
4	27 May 2013	Mr Kruno Kukoc, First Assistant Secretary, Department of Immigration and Citizenship	Subclass 457 State/Territory summary report
5	28 May 2013	Dr Wendy Southern PSM, Deputy Secretary, Department of Immigration and Citizenship	Interview Preamble for Offshore Entry Persons (OEPs) and non-OEPs
6	28 May 2013	Mr Christopher Callanan, First Assistant Secretary, Department of Immigration and Citizenship	Community Assistance Scheme (CAS) Operation Framework Transitional Accommodation Policy Addendum
7	28 May 2013	Mr Christopher Callanan, First Assistant Secretary, Department of Immigration and Citizenship	Bridging visas–Information for people who arrived by boat

**Attorney-General's Portfolio, 29 and 30 May 2013**

<b>No.</b>	<b>Date</b>	<b>Tabled by:</b>	<b>Topic</b>
1	29 May 2013	Mr Michael Pezzullo, Chief Executive Officer, Australian Customs and Border Protection Service	Opening statement
2	29 May 2013	Professor Gillian Triggs, President, Australian Human Rights Commission	Right to freedom of information, opinion and expression
3	29 May 2013	Professor Gillian Triggs, President, Australian Human Rights Commission	Media Reform Bills Package
4	29 May 2013	The Hon. Susan Ryan AO, Age Discrimination Commissioner, Australian Human Rights Commission	Back pocket brief-age stereotyping project
5	29 May 2013	Senator Hanson-Young	Interview Preamble for Offshore Entry Persons (OEPs) and non-OEPs