INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

To search the parliamentary database, go to:
http://parlinfo.aph.gov.au
SENATE
LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Tuesday, 9 February 2016

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Brandis QC, Attorney-General

Attorney-General's Department
Mr Chris Moraitis PSM, Secretary
Mr Greg Manning, Acting Deputy Secretary, Civil Justice and Legal Services Group
Mr Iain Anderson, Acting Deputy Secretary, Strategic Operations and Coordination Group
Ms Katherine Jones, Deputy Secretary, National Security and Criminal Justice Group

Access to Justice Division
Mr Matt Hall PSM, Acting First Assistant Secretary
Dr Albin Smrdel, Assistant Secretary, Courts Tribunal and Justice Policy
Ms Tamsyn Harvey, Assistant Secretary, Family Law
Ms Elizabeth Quinn, Assistant Secretary, Legal Assistance
Ms Kelly Williams, Assistant Secretary, Marriage Law and Celebrants

Australian Government Solicitor
Mr Ian Govey AM, Australian Government Solicitor
Mr Daryl Adam, National Manager, Corporate Support

Civil Law Division
Mr Matt Minogue, First Assistant Secretary
Mr Andrew Walter, Assistant Secretary, Commercial and Administrative Law
Ms Toni Pirani, Assistant Secretary, Commonwealth Representation Royal Commission
Ms Petra Gartmann, Assistant Secretary, Legal Services Policy
Ms Carmen Miragaya, Acting Assistant Secretary, Native Title Unit

Corporate Division
Mr Stephen Lutze, Chief Financial Officer

Criminal Justice Division
Mr Anthony Coles, Acting First Assistant Secretary
Mr Michael Pahlow, Assistant Secretary, AusCheck
Ms Brooke Hartigan, Acting Assistant Secretary, Crime and Justice Policy
Ms Tara Inverarity, Acting Assistant Secretary, Crime and Justice Policy
Ms Margaret Close, Acting Assistant Secretary, Criminal Law and Law Enforcement

Defence Abuse Response Taskforce
Ms Kirsty Windeyer, Acting Executive Director

Emergency Management Australia
Mr Mark Crosweller, First Assistant Secretary
Mr Rob Cameron, Assistant Secretary, Crisis Coordination
Mr Mike Norris, Assistant Secretary, Dignitary and Major Events Security
Mr Aaron Verlin, Assistant Secretary, National Disaster Recovery

Information Division
Mr Matthew Boyley, First Assistant Secretary

International Crime Cooperation Division
Ms Catherine Hawkins, First Assistant Secretary
Ms Samantha Losanno, Assistant Secretary, International Crime Cooperation Central Authority
Ms Elizabeth Brayshaw, Assistant Secretary, International Legal Assistance
Mr Chris Collett, Assistant Secretary, Transnational Crime and Corruption
International Law and Human Rights Division
Mr John Reid, First Assistant Secretary
Mr Bill Campbell QC, General Counsel
Mr John Atwood, Acting Assistant Secretary, Tobacco Litigation Taskforce
Mr Paul Pfitzner, Acting Assistant Secretary, Human Rights Policy
Ms Sue Robertson, Assistant Secretary, International Human Rights Law
Ms Anne Sheehan, Assistant Secretary, International Law, Trade and Security

National Security Law and Policy Division
Ms Jamie Lowe, First Assistant Secretary, National Security Law and Policy Division
Ms Anna Harmer, Assistant Secretary, Electronic Surveillance
Ms Anna Sherburn, Acting Assistant Secretary, Countering Violent Extremism
Mr Cameron Gifford, Assistant Secretary, Counter Terrorism
Ms Julie Taylor, Acting Assistant Secretary, Security and Intelligence Law
Ms Samantha Byng, Acting Assistant Secretary, Policy, Capability and Engagement
Mr Samuel Grunhard, Acting Assistant Secretary, Office of the Communications Access Coordinator

National Security Resilience Policy Division
Dr Carolyn Patteson, Acting First Assistant Secretary
Mr Michael Jerks, Assistant Secretary, Critical Infrastructure and Protective Security Policy
Mr Andrew Rice, Assistant Secretary, Cyber and Identity Security Policy
Mr David Campbell, Acting Assistant Secretary, Cyber Security Operations and Infrastructure Modelling
Ms Wendy Kelly, Acting Assistant Secretary, Emergency Management Policy

Office of Constitutional Law
Ms Helen Daniels PSM, Acting First Assistant Secretary
Mr Steven Marshall, Assistant Secretary, Office of Corporate Counsel
Ms Frances Brown, Director, Freedom of Information
Mr Jeffrey Murphy, Acting Special Adviser

People Strategy Branch
Ms Rachael Jackson, Assistant Secretary

Royal Commission into Institutional Response to Child Sexual Abuse
Mr Philip Reed, Chief Executive Officer

Royal Commission into Trade Union Governance and Corruption
Ms Sue Innes-Brown, Chief Executive Officer
Mr Mark McIntyre APM, Commander, Police Taskforces

Strategy and Delivery Division
Ms Sarah Chidgey, First Assistant Secretary
Ms Ayesha Perry, Assistant Secretary, Strategy and Delivery

Australian Federal Police
Mr Andrew Colvin APM OAM, Commissioner
Mr Andrew Wood, Chief Operating Officer
Mr Ramzi Jabbour APM, Deputy Commissioner, Capability
Mr Michael Phelan APM, Deputy Commissioner, National Security
Ms Leanne Close APM, Deputy Commissioner, Operations

Australian Human Rights Commission
Professor Gillian Triggs, President
Mr Mick Gooda, Aboriginal and Torres Strait Island Social Justice Commissioner
Tuesday, 9 February 2016

The Hon Susan Ryan AO, Age and Disability Discrimination Commissioner
Dr Tim Soutphommasane, Race Discrimination Commissioner
Mr Tim Wilson, Human Rights Commissioner
Ms Megan Mitchell, Children's Commissioner
Ms Julie O'Brien, Director, Legal Services
Ms Padma Raman, Executive Director

Australian Security Intelligence Organisation
Mr Duncan Lewis AO DSC CSC, Director-General
Ms Kerri Hartland, Deputy Director-General

Australian Transaction Reports and Analysis Centre
Mr Paul Jevtovic APM, Chief Executive Officer
Mr Alf Mazzitelli, National Manager, Finance and Infrastructure, Chief Financial Officer
Mr Gavin McCairms, Deputy Chief Executive Officer, Corporate

Commonwealth Director of Public Prosecutions
Mr Robert Bromwich SC, Commonwealth Director of Public Prosecutions
Ms Gaby Medley-Brown, Chief Corporate Officer

Family Court of Australia/Federal Circuit Court of Australia
Mr Richard Foster PSM, Chief Executive Officer
Ms Angela Filippello, Principal Registrar
Mr Adrian Brocklehurst, Executive Director, Corporate and Chief Financial Officer
Mr Steve Agnew, Executive Director, Operations

Federal Court of Australia
Mr Warwick Soden OAM, Registrar and Chief Executive Officer
Mr Mario Torresan, Executive Director, Corporate Services
Mr Peter Bowen, Chief Financial Officer

Office of the Australian Information Commissioner
Mr Timothy Pilgrim PSM, Acting Australian Information Commissioner
Ms Angelene Falk, Assistant Commissioner, Regulation and Strategy
Ms Karen Toohey, Assistant Commissioner, Dispute Resolution
Mr Brenton Attard, Office Manager

Committee met at 09:03

CHAIR (Senator Ian Macdonald): Good morning, ladies and gentlemen. Welcome to the Legal and Constitutional Affairs Legislation Committee's inquiry into additional budget estimates for the 2015-16 financial year. The Senate has referred to the committee particulars of the proposed expenditure for 2015-16. The committee has set Friday, 8 April as the date by which answers to questions on notice are to be returned. We also decided that questions on notice should be provided to the secretariat by close of business, 19 February.

Under standing order 26, the committee must take all evidence in public. This includes answers to questions on notice. Everyone knows that they are protected by parliamentary privilege in giving evidence, and what that involves. It is a contempt to give false or misleading evidence to the committee, and I think everyone knows that. If anyone does require any assistance in relation to the rules of the Senate hearings, they should get advice from the secretariat, who are well versed in these things.

The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates: any questions going to the operations or financial positions of departments and agencies which are seeking funds in estimates are relevant questions for the purposes of estimates hearings. There are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its committees, unless the parliament has expressly otherwise provided.

The Senate has also resolved that an officer of a department shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to
the minister. That resolution prohibits only the asking of opinions on matters of policy and does not preclude questions for explanations of policies or factual questions about when and how policies were adopted.

The Senate resolved in May 2009 that any claim of public interest immunity should be raised at the time. A statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirement of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information or the document. I think that has all been well understood in latter years.

The extract read as follows—

**Public interest immunity claims**

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:
   
   (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
   
   (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer’s statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

I also mention that Auspic has been authorised to take photographs for the *Journals of the Senate*. They will be here at about 10 past nine. They will be moving around, but they are aware they are not allowed to take photos of electronic communication instruments, papers or anything like that. They know that if they take a photo of the Chair, it has to be when he has got his right side to the camera!

**Senator JACINTA COLLINS:** Which side is that?

**CHAIR:** That is a good point.

**Senator O’SULLIVAN:** The right!
CHAIR: I just indicate too that we have a program that we try to keep to, but, under a Senate standing order, whilst any senator has questions on the particular issue, I am obliged to continue dealing with those questions until they are exhausted, which means that on many occasions this agenda, this running order, is very much only a guide. We do the best we can. With that, Attorney-General, did you want to make an opening statement, or do you, Mr Moraitis, in a general sense?

Senator Brandis: No, thank you.

**Australian Human Rights Commission**

[09:08]

CHAIR: Professor Triggs, would you like to make any sort of opening statement?

Prof. Triggs: No, thank you very much.

Senator JACINTA COLLINS: Good morning, Professor Triggs. I do not, unless we end up in that place, intend to return to the matters around the children in detention report that have been canvassed previously, but I do want to address some matters in relation to the overall standing of the Human Rights Commission. The first of those is the ongoing commentary about the position, yet to be filled, of the Sex Discrimination Commissioner. I do not know whether it is up to you or to the minister to please update the committee on that situation.

Senator Brandis: An announcement will be made this week.

Senator JACINTA COLLINS: I think that at our last estimates and on 11 November you said an announcement would be made very soon. Why has it taken until now for you to again be saying that an announcement will be made very soon?

Senator Brandis: I did not say, 'An announcement will be made very soon.' I said, 'An announcement will be made this week.'

Senator JACINTA COLLINS: Then I ask the question again.

Senator Brandis: I am sorry; I do not understand the question. Late last year, I was asked when an announcement would be made, and I said, as was the case, that an announcement would be made soon or very soon, and it has been. It will be made this week.

Senator JACINTA COLLINS: Let us go back through—firstly, late last year, 1 October, you were quoted in *The Sydney Morning Herald* saying that: ... an announcement will be made shortly.

Then you said in the Senate on 11 November:

... I am delighted to be able to tell you that an announcement will be made very soon.

You are now saying that an announcement will be made within the week?

Senator Brandis: No. I am sorry, I do not think it is very hard to comprehend what I am saying. I have said to you, 'An announcement will be made this week.' That is what I have said three times now.

Senator JACINTA COLLINS: That is what you have said three times today. That is not what you have said in the past.

Senator Brandis: I said, as you have quoted me, 'An announcement will be made shortly', 'An announcement will be made very soon' and indeed an announcement will be made this week.

Senator JACINTA COLLINS: I am now asking you, you said on 1 October—which is not 'late last year' in anyone's understanding of time—that an announcement would be made shortly, so why has it taken until now for you to say that an announcement will be made this week?

Senator Brandis: That is because a decision on the identity of the Sex Discrimination Commissioner was made by cabinet yesterday.

Senator JACINTA COLLINS: When was the decision made to establish an advisory panel?

Senator Brandis: That was made late last year. It might help, rather than beat around the bush, if I gave you the background.

Senator JACINTA COLLINS: It would help not to beat around the bush. It might have helped if you had done that in the first instance.

Senator Brandis: Please do not be impertinent. In September last year, I was about to take a name to cabinet. In the middle of September last year, as you know, there was a change of leadership of the Liberal Party, and a new government was sworn in on 21 September. It seemed to me at the time that it was appropriate to raise with the new Prime Minister the name that I had been about to take to cabinet in September. Mr Turnbull and I had a
conversation, the outcome of which was that we decided that an arms-length process of selection should be adopted, and it was. That arms-length process of selection has resulted in the appointment that was decided upon by cabinet yesterday.

Senator JACINTA COLLINS: The discussion with the Prime Minister occurred after the discussion we had had at the last estimates but ahead of your statement to the Senate on 11 November?

Senator Brandis: I am not sure. I will have to check that.

Senator JACINTA COLLINS: That was on 11 November that an announcement would be made very soon.

Senator Brandis: I will have to check that.

Senator JACINTA COLLINS: Could you advise the committee when the decision to establish the advisory panel was made?

Senator Brandis: I will take that on notice. I cannot tell you. It was late last year, as a result of my conversation with Mr Turnbull.

Senator JACINTA COLLINS: You do not know what date that conversation took place?

Senator Brandis: No, I do not. I will check. I may or may not have a note of it. It was obviously after Mr Turnbull had become the Prime Minister, so it was after 21 September and it was obviously before the advisory panel was constituted.

Senator JACINTA COLLINS: It was reported in The Sydney Morning Herald that an advisory panel would be appointed on 11 December. It may be subsequent to 11 November, when you reported to the Senate on this matter.

Senator Brandis: If that is the case, then the conversation occurred some time between 21 September and 11 December.

Senator JACINTA COLLINS: You have taken that on notice, so you will advise. Can you advise us on what this arms-length process involves?

Senator Brandis: It was conducted by Mr Moraitis, so it might be best if the question were directed to him.

Mr Moraitis: It was a four-person panel, consisting of me; Elizabeth Broderick, who is the former Sex Discrimination Commission; Rebecca Cross, who is the deputy secretary in the Department of the Prime Minister and Cabinet representing the Minister for Women; and Mr Sosso, who is a former director-general of the Queensland Department of Justice and Attorney-General.

Senator JACINTA COLLINS: Can you describe the process the panel undertook?

Mr Moraitis: There was a series of discussions in the early stages involving phone conferences with the four members of the panel and the secretariat supporting the process, which was Mr Pfitzner from my department; collation of a long list of possible candidates to consider—

Senator JACINTA COLLINS: How long was that list?

Mr Moraitis: If I recall correctly, initially it would have been about 60 to 70 names.

Senator JACINTA COLLINS: Was a consultant used?

Mr Moraitis: It was based on consultations with a series of stakeholders. If I recall correctly—and Mr Manning or Mr Pfitzner can remind me—it would have involved the Human Rights Commission through Ms Broderick, the Department of the Prime Minister and Cabinet Office for Women, as well as government ministers and other departments.

Senator JACINTA COLLINS: There was no headhunting consultant?

Mr Moraitis: No, there was no formal consultancy process or executive search. That was the initial stage, and there was a series of phone discussions. For the record, I was not at the very first phone discussion; Mr Manning took my role because I was travelling back from overseas at the time. That process of considering the various names continued for about six or so weeks until it was narrowed down. I cannot recall the exact number that were approached for expressions of interest, but quite a few expressed interest. They provided their CVs and a letter of intent to apply. We then narrowed it down to a list for interview, and the panel convened in early February—I think it was 2 February—in Sydney. We asked for interviews for eight names, and one person withdrew on the eve of the interview, so we actually interviewed seven candidates, if I recall correctly. We prepared a report which went to government soon thereafter.

Senator JACINTA COLLINS: That went to cabinet last night?

Mr Moraitis: That is my understanding.
CHAIR: Before you go further, Senator Collins, I understand that the media want to film certain parts of the proceedings. Does the committee have any objection? Minister, do you or Professor Triggs or Mr Moraitis or anyone have any objection to that?

Senator Brandis: No.

CHAIR: It is in order to film and click as you wish—as long as you stay in your allotted pen! It looks like you have come for the long haul.

Senator Brandis: You might be on Talking Pictures if you do not watch out, Chair!

Senator JACINTA COLLINS: I was going to use that reference on a different matter, Chair. Thank you for reminding me. I think I was going back through Mr Moraitis's statement and asking whether he could tell me from how many people an expression of interest was sought.’

Mr Moraitis: If I recall correctly, it was in the range of 23 to 25. I think it was 23.

Senator JACINTA COLLINS: How was it known? By word of mouth?

Mr Moraitis: It was quite well known in the community—or the ecosystem, if you want to use that word that people use in various contexts.

Senator Brandis: Do they?

Mr Moraitis: Yes, they do, in the arts.

Senator JACINTA COLLINS: I do not think Senator Brandis likes that word.

Senator Brandis: I know there is the arts ecosystem—is there a human rights ecosystem? I am sure there are some very interesting creatures in that ecosystem!

Mr Moraitis: It was quite notorious—in the positive sense—that there was a vacancy and a desire to find a commissioner. People in the human rights community are well known to each other, and I imagine it is something that would have attracted a bit of interest. It did and I think eight or nine people did self-nominate.

Senator JACINTA COLLINS: In December, when it was reported in the Sydney Morning Herald that an advisory panel had been established, it became known within the human rights community that, if you wanted to, you should express an interest.

Mr Moraitis: It certainly was the case once it was announced, but I imagine that even before that it would have been known.

Senator JACINTA COLLINS: How many self-nominated expressions of interest were there?

Mr Moraitis: I think there were eight.

Senator JACINTA COLLINS: So, then, from a pool of roughly 31, you selected—

Mr Moraitis: They were part of the original pool of 70 from earlier stages.

Senator JACINTA COLLINS: I understand. So 70 came down to a pool of 23, roughly, plus a further eight self-nominated.

Mr Moraitis: No, they were part of the original pool that was narrowed down to 23. For the purposes of the next phase, it was 23.

Senator JACINTA COLLINS: Fine, and then that was brought down to a shortlist of seven.

Mr Moraitis: If I recall correctly—and correct me if I am wrong—all 23 were approached to express an interest. Quite a few of those—I would say half—declined to express an interest for various reasons, and I think that narrowed it down to about nine, as I said.

Senator JACINTA COLLINS: Sorry, nine? I thought you said seven.

Mr Moraitis: Seven were interviewed in the end.

Senator JACINTA COLLINS: So the final shortlist was—

Mr Moraitis: The final shortlist was eight. We organised interviews for eight, and the eighth person withdrew on the eve of the interviews for personal reasons, I think.

Senator JACINTA COLLINS: Then a report was produced from the advisory panel, which went to Cabinet.
Mr Moraitis: Which went to the Attorney, I think, and to government. I am not sure if the report itself went to Cabinet. I am not privy to that.

Senator JACINTA COLLINS: And we will have an announcement this week. I would like to put into context, Professor Triggs, some of the commentary about yourself not being on the advisory panel. Is that strange, or is it not uncommon?

Prof. Triggs: So far as I am aware, the usual procedure in the past has been to include the president and to consult the president about the appointment.

Senator JACINTA COLLINS: That process that Mr Moraitis went through did not include information as to whether you were consulted or not. Was that not the case?

Prof. Triggs: I am not entirely sure what that question is. Was I consulted?

Senator JACINTA COLLINS: Yes.

Prof. Triggs: I was consulted by the Prime Minister before Christmas about the process, and he explained to me that he was very keen to have a proper process for selection and asked if this would cause any difficulties for the commission if it were to be delayed longer—because it would be if there were to be a proper process. I said that I was happy for the process to take longer in order for it to be a transparent, open and usual process. It was left at that, and I have not subsequently been consulted.

Senator JACINTA COLLINS: Whereas, from your understanding in previous appointments, you would have been consulted about the recommendation of an advisory panel or, indeed, would have been on the panel.

Prof. Triggs: Yes.

Senator JACINTA COLLINS: Did you think to make that point to the Prime Minister when he consulted you about what process should proceed?

Prof. Triggs: Yes, and the Prime Minister at that stage indicated that he would include me on the panel, but he did so as a matter of good faith because he had not been advised by anybody else on that question. When I told him that normally the president would be included, he included my name in the list as he wrote it down, but that would not in any way constrain him, obviously. He was simply responding to what I was telling him, and it was a matter for him in the long term as to whether he wanted me to be continued on a panel.

Senator JACINTA COLLINS: But, at the outset, the Prime Minister indicated you would be on the panel—

Prof. Triggs: He did.

Senator JACINTA COLLINS: and then that changed.

CHAIR: I am not sure that advice—I assume this is advice to Cabinet. Is that something that should be discussed here?

Senator JACINTA COLLINS: This is not advice to Cabinet.

CHAIR: It is advice to the minister, which I thought was not subject to questions at these hearings. I think officers are expected to be able to give advice to cabinet or ministers without having to speak publicly about it.

Senator JACINTA COLLINS: My question was simply, ‘Had Ms Broderick consulted?’ She was seeking to describe the nature of that consultation. I understand the line that you are pointing to, and we will be careful not to go down further that path. Is that my time?

CHAIR: You have a few extra minutes. Finish here.

Senator JACINTA COLLINS: I have finished this set of questions.

CHAIR: We interrupted you. You have another five minutes.

Senator JACINTA COLLINS: President, I will not go further into that issue at this stage. There was another issue that occurred to me at the previous estimates when I asked you questions about the human rights commissioners’ travel. You gave me an outline of the arrangements for travel. I think I need to clarify some further questions about the approval process. Is it up to each commissioner to determine what travel they undertake, including overseas travel, or is that something that is cleared through you?

Prof. Triggs: The short answer is that all of that travel is cleared through me as president. But each commissioner has a budget for travel and it is broadly intended that it should support their national work or a national body, and there is a lot of travel required to meet the demands of the community across Australia. So each commissioner will have a budget, and they will determine for themselves across a year where they want to place that emphasis in spending that budget. But in relation to most of that budget I do clear their travel. There are occasions when there is international work, but generally not, primarily because as president I do most of the
international work. But it might be, for example, that a commissioner were asked to play a role in a China project, and it will be appropriate for them to go to China, and I would always approve that kind of travel.

Senator JACINTA COLLINS: But that approval would occur before the travel occurred, would it?

Prof. Triggs: Yes, in the normal course.

Senator JACINTA COLLINS: It may have been an oversight on the previous occasion. I will give you an opportunity to respond here. When I asked you about commissioners' travel, you outlined a range of that travel, but then Mr Wilson outlined some further travel that he himself had undertaken. Was there a reason you were not incorporating that travel within your own response?

Prof. Triggs: I would really need to know the specifics of that particular matter before I could answer. If I may, I would like to take that on notice. There are occasions—and I am not saying it was in relation to Mr Wilson's travel—when a commissioner will come to me afterwards to get, in a way, ex post facto approval. It happens rarely, but it does on occasion happen. Also, of course, there is a wider opportunity for travel if the travel is not being funded through commission funds. Sometimes a commissioner is funded for international travel from another organisation. If that seems to me to be appropriate to their job, their portfolio, then I would approve their travel. If there were expenses from the commission, I would approve that.

Senator JACINTA COLLINS: If you would not mind looking back over the Hansard at the discussion we had on the last occasion on that. As I said to you, the thought in my mind at the time was, 'Why was Professor Triggs not covering this travel, as indeed she was the rest of the commissioners' travel?' It may be it involved ex post facto. I think the trip itself involved some external sponsorship as well. But I was curious as to why it was not within your broader response. Indeed, to give Mr Wilson credit, he then proffered that there was this further travel that you had not indeed covered.

Prof. Triggs: I will look at that example and get back to you as a matter of taking it on notice, to be precise as to the date on which that travel and additional funds were approved by me.

Senator JACINTA COLLINS: Thank you. Going back to the Sex Discrimination Commissioner position, I am attempting to understand who is covering for Elizabeth Broderick now that she has departed, until such time as we have another commissioner in place.

Prof. Triggs: Again, the short answer is: I am, as president. I have been doing the public speeches and media in the area where it is appropriate. Of course, we have major projects that concern and that will concern the future Sex Discrimination Commissioner. The work of the commission has continued even though Ms Broderick finished her position in late August. The work of the commission in relation to sex discrimination matters has continued without faltering—one major project being of course with the armed forces, and there are many others. I have been taking a leadership role in relation to managing that until a new Sex Discrimination Commissioner is appointed.

Senator CANAVAN: I have some questions following up on last estimates. I asked you about your UPR submission, and in particular about the recommendation that Australia should adopt same-sex marriage laws. I referred to a number of cases that seem to indicate that under our international human rights law obligations we would have no such obligation to change the Marriage Act. In particular—and I will murder these pronunciations—there is Schalk and Kopf v Austria in 2010 and Hamalainen v Finland in 2014. When I put those cases to you, you mentioned that there is other case law, presumably arguing a different position. You said:

… they are decisions of the European Court of Human Rights and the United Nations Human Rights Committee.

and:

I would really like to write to you with each of those cases;

I am just wondering if you have been able to review that case law. Do you have those cases for me today?

Prof. Triggs: My understanding is that we have provided you with a paper setting out all of these cases.

Senator CANAVAN: My office has no record of that correspondence.

Prof. Triggs: Can I then ask for us to be able to resend this material.

Senator CANAVAN: Sure.

Prof. Triggs: We have given you a complete analysis of all of the cases that are relevant to this question. I think it probably does not include the United States Supreme Court decision on marriage equality and the 14th amendment.

Senator CANAVAN: Do you have some of those cases for me now?

Prof. Triggs: We have this now, but I can also add a briefing on the American decision.
Senator CANAVAN: Could you provide some of those cases—the references that you have—to me now?

Prof. Triggs: If you would like, yes. One is the Minister of Home Affairs v Fourie and Another. That is a decision—I will have to give you the citation. I have a citation here—

Senator CANAVAN: These are decisions in the evidence you provided last time.

Prof. Triggs: That is right. There is a whole list of 32 citations to all of those cases in the material—in a paper called Marriage equality in a changing world. All of those cases are there.

Senator CANAVAN: In particular, of course, you are obviously interested in cases that support your recommendation as part of the UPR process. Some of those cases have a different spin, if you like, on our international human rights obligations, do they? The quote I gave to you from Schalk and Kopf v Austria was pretty clear that under the ICCPR we would not seemingly have obligations to change the Marriage Act.

Prof. Triggs: The key position—if I am to sum up the position of law, including in relation to that case—is that international law does not require the recognition of same-sex marriage, but international law increasingly recognises the legal principles that would underpin a decision to give recognition. The United States Supreme Court decision is rather in advance of that, because the position there is that the states must recognise the opportunity to have a marriage for same-sex couples. That is a requirement of the 14th amendment by the United States Supreme Court. But that is, I think—in fairness—probably a step beyond the current jurisprudence globally, where there is a recognition of the permissibility of the law but not the requirement that such laws be passed.

Senator Brandis: I am sure it is the case, Senator Canavan, that mutual recognition within a federation of the respective states' domestic laws is a matter of 'full faith and credit' rather than the principal of international law between states.

Senator CANAVAN: Professor Triggs, to clarify that the commission's position is that international human rights law and our international human rights obligations do not require us to change our Marriage Act to recognise same-sex couples?

Prof. Triggs: The international legal position is that we are not required to do so, but the evolving jurisprudence internationally is increasingly to recognise it. So we are, in a sense, in an evolving situation internationally but, as the Attorney quite correctly points out, there is another question and that is how we view the law in Australia as a matter of, perhaps, common law principles or of evolving jurisprudence within Australian courts and at the political level.

Senator CANAVAN: Have you had an opportunity to review or look at the Parliamentary Joint Committee on Human Rights report on a private member's bill to change the Marriage Act in favour of same-sex marriage?

Prof. Triggs: I have seen that, yes.

Senator CANAVAN: That report, or at least the majority report, of that committee concluded that we did have such an obligation to change our law to recognise same-sex couples. Can I take it that your view is at odds with or different to the conclusion that committee?

Senator Brandis: I think in fairness to Professor Triggs, she is talking about the legal position at international law. I do not know if there were any international lawyers sitting on that parliamentary committee, but I suspect its conclusions are of a political character rather than expressing an educated legal view.

Senator CANAVAN: Minister, that is the case in terms of the committee members themselves, although the committee does take legal advice from an expert here in the field who is explicitly tasked by the parliament to examine whether or not proposed laws are compliant with our international human rights obligations. In this case, the majority of the committee concluded that we did need to change our law to be compliant with those obligations.

I might leave that there. It seems pretty clear that the Human Rights Commissioner has a different view to the committee, and that is perfectly fine. There is no great issue there. I want to return to your recommendations. If—

Prof. Triggs: Senator, excuse me for interrupting, but I wonder if I might—

Senator CANAVAN: Certainly, Professor Triggs.

Prof. Triggs: The head of our legal division at the Human Rights Commission would like to clarify a point as to what our jurisdiction is in relation to international law and our submission in relation to these matters. Excuse me interrupting.

Ms O'Brien: The paper that we sent through the questions on notice process, rather than directly as a letter to you—
Senator CANAVAN: Okay—that is why I missed it.

Ms O'Brien: which may be why it has not come to your direct attention—is the commission's position paper on marriage equality. That position paper is clear that the commission considers that the fundamental human rights principle of equality means that civil marriage should be available to all couples without discrimination, regardless of sexual orientation or gender identity. The paper also deals with the jurisprudence that we have just been speaking about which is some slightly older jurisprudence that indicates that the ICCPR does not require the recognition of same-sex marriage. However, commentators have suggested that the views of the human rights committee may evolve with state practice. At the time of the Joslin decision, that I think you have referred to, there was only one country that recognised same-sex marriage. As we know, there are now many more.

Senator CANAVAN: How many are there, Ms O'Brien?

Ms O'Brien: I do not have the actual figure.

Senator CANAVAN: In our report, it is not that many. Certainly nowhere near a majority.

Ms O'Brien: Mr Wilson has indicated that he thinks it may be 28.

Mr Wilson: No, it is 20.

Ms O'Brien: Twenty?

Mr Wilson: It was 19 [inaudible]

Senator CANAVAN: How many signatories are there to the ICCPR?

Prof. Triggs: To the ICCPR? I would take it on notice but that is one of the leading international human rights treaties. I think there would be something like well over 100 states that have ratified it.

Senator CANAVAN: Ms O'Brien, I want to clarify that in that paper you are saying your position is that same-sex marriage should be legislated to comply with the right to equality, or accord with the right to equality. Is that right?

Ms O'Brien: The principle of equality was not considered in the Joslin decision that we were talking about. They were considering a different article under the ICCPR. The commission's position is that, consistent with the principle of equality and the right to equality, civil marriage without discrimination—

Senator CANAVAN: How do those two positions accord with each other?

Ms O'Brien: I think because the president was responding to a question about the particular case you were talking about, the case of Joslin.

Senator CANAVAN: Maybe Professor Triggs can clarify that, as it was she who answered the question. It was a very generic question. I asked very explicitly, 'Are we required under international human rights laws to—'

Ms O'Brien: I am sorry; that was my misunderstanding.

Senator CANAVAN: Please let me finish, Ms O'Brien, so I can explain my confusion. Earlier, Professor Triggs mentioned—and I had specifically asked her to clarify this—that we had no obligation under international human rights law to legislate for same-sex marriage. What you have just said, Ms O'Brien, is that, under the right to equality provisions of the ICCPR which we are a signatory to, we should legislate same-sex marriage. How do those two positions accord with each other?

Senator CANAVAN: My question was pretty clear. It was not in reference to those cases. It was a generic question.

Ms O'Brien: I am sorry; that was my misunderstanding.

Senator CANAVAN: Maybe Professor Triggs can clarify that, as it was she who answered the question. It was a very generic question. I asked very explicitly, 'Are we required under international human rights laws, our obligations, to change the Marriage Act?' I am happy to review the evidence later, but I believe Professor Triggs said, 'No, we are not required to.'

Senator Brandis: In fairness to the witnesses, I do not think there is confusion. Professor Triggs, who, it should be remembered, is a very distinguished international lawyer, was stating the legal position. Ms O'Brien was stating the commission's position. You inquired how many states are parties to the ICCPR. I am advised that there are 168 states parties to the ICCPR. I believe that the number of states that recognise same-sex marriage at the moment is either 19 or 20.

Senator CANAVAN: The minister has usefully summarised this conundrum. I am interested in knowing what our international human rights obligations are. I had thought that was clarified earlier by Professor Triggs saying that we did not have an obligation to legislate for same-sex marriage. If the commission has a different view or an evolving view about our obligations, that is fine. But I am interested in knowing whether that view of the
commission, the one you have put in that paper, is based on our obligations under international human rights law or whether it a view that you have that we need to do something above and beyond our obligations.

**Prof. Triggs:** We have examined what we believe the principle of equality means for the purposes of Australian law. We have taken the view that, to give effect to that principle of equality, there should be an equal opportunity for marriage for all Australians. That is the position we have recommended. In explaining to you, I noted that the cases you have wanted to discuss have emphasised that there is no binding obligation to introduce such legislation. That was the basis of my answer to you. Just as the United States Supreme Court has emphasised the principle of equality and due process, we also believe that that is an important principle that should be adopted within Australian jurisprudence. This ultimately becomes a matter of political view for the community and for government. We are simply making a proposal based essentially on the idea of equality of the law.

**Senator CANAVAN:** Is your proposal, your recommendation, beyond our obligations under international human rights law?

**Prof. Triggs:** We believe, based on our interpretation of the principle of equality, that the evolving law is now one which would require that a state, a democratic country like Australia, should move towards recognition of equality.

**Senator CANAVAN:** What does that mean, Professor Triggs? I am not a lawyer. Do we or do we not have an obligation right now to change the Marriage Act? Is your recommendation consistent with those obligations or is it beyond those obligations? I am trying to be as clear as I can.

**Prof. Triggs:** My view is that, under the current law, there is an evolving principle of equality—

**Senator CANAVAN:** What does 'evolving principle' mean to a layman like me?

**Prof. Triggs:** International law does evolve. We have evolved from a position where very few states have recognised marriage equality to a position where a growing number of comparable legal jurisdictions—in other words, jurisdictions Australia wants to be compared with—are moving towards recognition of marriage equality. Within that group of states with relatively advanced views of human rights, the principle of equality is an underpinning concept which we think would now be one that would be consistent with our international obligations under the International Covenant on Civil and Political Rights.

**Senator CANAVAN:** I think my time is up.

**CHAIR:** Well it is, but we can come back to you later.

**Senator JACINTA COLLINS:** Just before I move onto another area, whilst we are talking about your role, Professor Triggs, as president, were you consulted on Mr Ruddock's new role?

**Prof. Triggs:** No, I was not.

**Senator JACINTA COLLINS:** This may be unfair, then, in that context, but I am wondering whether you can help elucidate any understanding of what that role involves.

**Senator Brandis:** In fairness to Professor Triggs, Mr Ruddock is an envoy of the government. It might be a question best asked in DFAT estimates.

**Senator JACINTA COLLINS:** Okay. Professor Triggs, former Senator Stott Despoja is an ambassador for women and girls. What are the other positions that relate to Australia's human rights effort?

**Prof. Triggs:** We obviously are and have long been engaged in the United Nations human rights monitoring processes, and they are conducted basically through the Department of Foreign Affairs and Trade with advice and support from the Attorney-General's Department. That engages a surprisingly large number of people, in fact, who go to these meetings and working groups. There is a major working group on the rights of indigenous peoples, for example, and rights in relation to women, children, disabilities and obviously race. On notice I can give you the names of all of those committees and those people who are currently appointed to them. Our ambassadors throughout the world play a role in relation to human rights—

**Senator JACINTA COLLINS:** Okay. Professor Triggs, former Senator Stott Despoja is an ambassador for women and girls. What are the other positions that relate to Australia's human rights effort?

**Prof. Triggs:** We obviously are and have long been engaged in the United Nations human rights monitoring processes, and they are conducted basically through the Department of Foreign Affairs and Trade with advice and support from the Attorney-General's Department. That engages a surprisingly large number of people, in fact, who go to these meetings and working groups. There is a major working group on the rights of indigenous peoples, for example, and rights in relation to women, children, disabilities and obviously race. On notice I can give you the names of all of those committees and those people who are currently appointed to them. Our ambassadors throughout the world play a role in relation to human rights—

**Senator JACINTA COLLINS:** No, I am asking more specifically about specific positions other than an ambassador, such as Senator Stott Despoja, which is why I used her as an example.

**Prof. Triggs:** I think Senator Stott Despoja is a well-known Australian, so she has been able to play a very strong role in that area. We do not otherwise have a sort of roving ambassador, if you like, on human rights matters, and I expect—

**Senator JACINTA COLLINS:** I thought Mr Wilson was the roving ambassador on—

**Prof. Triggs:** Well, for Australia, but you are asking about international areas.

**Senator JACINTA COLLINS:** Sure.
**Prof. Triggs:** And the international field I hope will be one that Mr Ruddock can fill, especially as we hope for a favourable vote for a position on the Human Rights Council. So, it is an important time for us, through the relevant government departments and through envoys of this kind, to help support Australia’s bid.

**Senator Brandis:** It should also be added that I think the largest concentration of personnel in the human rights field in this country is within my department—the International Law and Human Rights Division of the Commonwealth Attorney-General's Department. That and the Human Rights Commission are the two main concentrations of people tasked with human rights issues within the Australian government.

**Senator JACINTA COLLINS:** Indeed. That is why I thought it might be useful to ask this question here, rather than solely at DFAT. And I notice that Mr Moraitis has been nodding his head also—

**Senator Brandis:** Quite. But you were asking some specific questions about Mr Ruddock's role. Now, ambassadors, as you know, are answerable to a different estimates committee. That is the only point I would make.

**Senator JACINTA COLLINS:** Well, Professor Triggs has also indicated that—

**Senator Brandis:** Mr Moraitis might be able to contribute to the conversation.

**Mr Moraitis:** I will just add to the Attorney’s comments about departments that Foreign Affairs and Trade of course have a significant number of people involved in human rights, both overseas—in Geneva and New York—and in their multilateral division, and we work very closely with them. So, they have a significant level of engagement in this space.

**Senator JACINTA COLLINS:** Was the Attorney-General’s Department consulted?

**Mr Moraitis:** I was not aware of it, no—not that I am aware of.

**Senator JACINTA COLLINS:** So, despite the Attorney’s comment that the Attorney-General’s Department and the Human Rights Commission has the highest concentration of people working in the human rights area, neither were consulted about this appointment?

**Mr Moraitis:** Perhaps I may say by way of explanation that the focus of A-G’s human rights effort is essential in the national space, to a large extent—

**Senator JACINTA COLLINS:** Domestic, do you mean?

**Mr Moraitis:** with an international dimension, of course, explained, for example, in the UPR. We lead the process there, but in the international space I would defer to DFAT as having the primary say on international engagement in the human rights sphere.

**Senator Brandis:** And I would not have expected to have been consulted on this appointment as the minister with responsibility for the Attorney-General’s Department. Nor would I expect the Human Rights Commission to have been consulted. Perhaps you could pursue this line of inquiry in DFAT estimates.

**Senator JACINTA COLLINS:** Well, I may indeed do so, but let me understand that, then. I did not ask whether you yourself had been consulted, Minister, but I gather from what you said that the answer is no.

**Senator Brandis:** Well, the point I make, of course, is that the Prime Minister, if he were to consult a department of the government, would consult the minister.

**Senator JACINTA COLLINS:** It depends on what level that consultation occurs at. Let me move on then to—Mr Wilson, I am not sure whether you came to the table because we were talking about the same-sex marriage issue or because you were anticipating my questions.

**Mr Wilson:** Both.

**Senator JACINTA COLLINS:** Very good. Perhaps I can go to the information you provided after our questions on the previous occasion related to your travel between 26 September and 12 October. I have been having trouble adding up figures in terms of the fares that were reimbursed and understanding why Brigham Young University paid that figure of $1,749. What does that relate to?

**Mr Wilson:** I would have to confirm with my office, but it is most likely going to be the cost of the return airfare share to Utah from Sydney.

**Senator JACINTA COLLINS:** What was the understanding when you were invited to make that address or attend that conference?

**Mr Wilson:** The understanding was that I would go and they would cover an economy return airfare to Utah as well as the cost of accommodation while I was in Utah.
Senator JACINTA COLLINS: So, the reason these figures do not add up could be that there has been some sharing of costs between themselves and the Human Rights Commission?

Mr Wilson: It would be some sharing of costs because in addition to going to Utah I went to some other states of the United States for efficiency reasons, to reduce costs to the taxpayer, and held a series of meetings, as we discussed at the last estimates, in other states, including New York, during the General Assembly of the United Nations, as well as Washington DC and Dallas, Texas, and Los Angeles, California. So, there would have been some of those costs incurred as part of my travel. That would have been paid for by the Human Rights Commission.

Senator JACINTA COLLINS: I have here on attachment A the meetings you had in New York City, in Washington, in Dallas—oh, okay, and the UCLA law school in Los Angeles; that was the one I did not notice previously.

Mr Wilson: Yes.

Senator JACINTA COLLINS: There is a comment on attachment C that sets out your travel details against the second line item, which says 'private travel to San Francisco cost recovery paid 21 October'. Is there a reason that was paid the day after we discussed this at last estimates?

Mr Wilson: That was the date I received the invoice from the commission.

Senator JACINTA COLLINS: So, there was a previous arrangement that that is what would occur?

Mr Wilson: It was very clearly previously established that that is what would occur, and I have always said that I would pay for that component of it as an understanding that that was private travel.

Senator JACINTA COLLINS: The difficulty I have with your evidence on the previous occasion is that your answer to me when I asked you whether you combined personal travel was 'only to the extent that I had some weekends which I had to fill in and did some personal commitments or saw friends in that time, but nothing more'. Now, the travel outlined here does not have you 'filling in' a weekend in your travel arrangements.

Mr Wilson: I travelled on the weekend in my private time to go to Los Angeles and then flew up to San Francisco on the weekend. Had I flown on the Monday morning, I would not have been able to make my commitments in New York. So, I did not leave on the Friday; I travelled through my private time. I could have travelled earlier and charged the taxpayer more, but I chose not to do that; I chose to expend my private time in making sure that I travelled.

Senator JACINTA COLLINS: I am sorry—how could you have charged taxpayers more?

Mr Wilson: I was required to be in New York on Monday morning. Therefore—

Senator JACINTA COLLINS: Sorry—go back a step. I want to understand this in relation to your earlier evidence. Your earlier evidence was that you were invited to go to Utah.

Mr Wilson: Correct.

Senator JACINTA COLLINS: And you went to Utah via some other cities.

Mr Wilson: Correct.

Senator JACINTA COLLINS: And established appropriate business in those cities.

Mr Wilson: Yes.

Senator JACINTA COLLINS: But surely it was up to your organisational program as to when you were required to be in any of those cities. The only set requirement was your attendance in Utah.

Mr Wilson: Correct.

Senator JACINTA COLLINS: So, I do not understand how that relates to how you could have saved taxpayers money by travelling at a different time.

Mr Wilson: Because the United Nations General Assembly is held in a fixed week; it does not move around my diary.

Senator JACINTA COLLINS: Right. So, your decision to attend the General Assembly and be there on the Monday morning made—what issues in relation to travel costs?

Mr Wilson: There are series of people I wanted to meet with in Washington DC who were not in Washington DC because they were in the United Nations General Assembly at that time. There were other people in the United Nations in that period—for instance, Ambassador Saperstein, the US Ambassador for Religious Freedom—and I wanted to catch them while they were there. Equally, while I was there I was asked by the Department of Foreign Affairs and Trade to represent Australia at the launch of the Free and Equal campaign. So,
I had a number of commitments that were based around that timetable, and obviously my view is that we should get maximum value from any taxpayer expenditure when I happen to be somewhere like New York and to make sure that the program is as busy as possible—and it was.

**Senator Jacinta Collins:** I understand the value in having a busy program. What I do not understand is the value to taxpayers of breaking your journey in Los Angeles, travelling to San Francisco at the start of your business—not to fill in a weekend—and then charging the taxpayers for the journey from San Francisco, business class, to New York.

**Mr Wilson:** Sorry—I travelled on the weekend, during my private time. If I travelled during a strict nine-to-five schedule, which you could take as a mechanism by which you do it—

**Senator Jacinta Collins:** No, that is not the normal mechanism.'

**Mr Wilson:** Well, the alternative—I still needed time to recover once I arrived in New York.

**Senator Jacinta Collins:** But you did not have time to recover once you arrived in New York; you went straight into business.

**Mr Wilson:** No, because I took the time to recover in San Francisco.

**Senator Bilyk:** At a wedding.

**Mr Wilson:** And I paid all costs incurred associated with attendance at the wedding.

**Senator Jacinta Collins:** Well, 'all costs' is the issue that perhaps, given your earlier evidence, I will pursue further with Professor Triggs, because the impression—and correct me if I am wrong—that you gave was that it was a hands-off arrangement with the Human Rights Commission and that you would meet any invoice that related to your personal business. Is that correct?

**Mr Wilson:** Correct—and I have done so.

**Senator Jacinta Collins:** Well, I think that is a matter of further questions. Professor Triggs, how would the invoice have been calculated in these circumstances?

**Mr Wilson:** I would have to take that on notice. The financial section of the commission will look at the various stages of a trip like that and work out, according to the rules, what days you can have off to recover, and all of those positions—what is personal, what is related to the portfolio responsibility or the invitation—and they will calculate what expenses are due. And within a reasonably fast period they will produce an invoice to have a recovery of any funds that should be returned to the commission. That is pretty much how the process works.

**Senator Jacinta Collins:** And looking at these dates—26 September—the answer to my earlier question may simply be that the travel was so proximate to that last round of estimates that it was not necessarily in your head at that point.

**Prof. Triggs:** I think that is entirely possible, and I would like to have a look at the exact record to see how it happened and when the invoices were created.

**Senator Jacinta Collins:** Yes. Indeed, my question then is: did the last estimates trigger that invoice or was it just in the normal train of events?

**Prof. Triggs:** I will make inquiries as to how and by what normal process that was triggered or whether it was triggered by some request. I can inquire about that and report back to you on notice as soon as I can.

**Senator Jacinta Collins:** Okay. Could you also on notice report back to me the understanding that was reached with Mr Wilson before he travelled?

**Prof. Triggs:** I will.

**Senator Jacinta Collins:** And then the process that occurred in terms of developing the invoice. Both of us and indeed the minister have travelled overseas often enough to know it is not a nine-to-five travel type schema.

**Senator Brandis:** I think Mr Wilson specifically said it was not.

**Senator Jacinta Collins:** He was comparing it. Frankly, at the salary levels that human rights commissioners would be on—what is the salary grade of the Human Rights Commissioner now?

**Senator Brandis:** You are being unfair now.

**Senator Jacinta Collins:** Why am I being unfair?

**Senator Brandis:** He was at pains to say that it was his view that as many functions, meetings and activities as possible should be scheduled to make the best use of the taxpayers' money, and that is what was done.
Senator JACINTA COLLINS: No, I was not asking that. I have no dispute with Mr Wilson that his program during the dates he was on official business was not appropriate. I agree that he had a busy program and it was well occupied in those dates. My questions relate to his personal business ahead of that program.

CHAIR: You might have to follow that up later. Your time has finished.

Senator JACINTA COLLINS: Okay. I will come back to it.

CHAIR: This is an unfortunate line of questioning, and perhaps we should use the same questioning to some of Senator Collins’s colleagues in the travel they undertake overseas.

Senator JACINTA COLLINS: You will need to go to another committee for that!

CHAIR: I am reluctant to do this, but Professor Triggs, I ask if you can give me on notice details for the last 12 months of all international travel taken by you and other commissioners, identifying what parts of that international travel were not taken up with official functions and also what the arrangements were for any travel that was not official functions to be reimbursed—more or less the same questions that Senator Collins has been asking of Mr Wilson but from all commissioners. I must say I am reluctant to do this, because I understand how these things work and that you can grab a headline by asking questions—

Senator JACINTA COLLINS: Is there a question? This is commentary. I do not think it is appropriate that as chair you conduct commentary on my questions. Please behave as the chair.

CHAIR: I am not commenting on your questions; I am just saying—

Senator JACINTA COLLINS: Yes, you were.

CHAIR: I am saying I am reluctant to have to ask the commission for these—

Senator JACINTA COLLINS: Just ask your question.

CHAIR: I am indicating I am reluctant to do it.

Senator JACINTA COLLINS: Then don't. Either way, do it.

CHAIR: We will put the questions on notice that I indicated with some regret.

Senator JACINTA COLLINS: Those questions were last asked in the last round by you.

CHAIR: It just seems an unfortunate waste of our time.

Senator JACINTA COLLINS: Then why did you ask that in the last round?

CHAIR: Mr Moraitis, you or perhaps the minister have indicated that there was the biggest grouping of human rights advocates or activities in your department. I will ask this question to both Professor Triggs and Mr Moraitis. Why do we need a huge area of human rights in your department, in foreign affairs, I am told, and then in the Human Rights Commission? Can you explain?

Mr Moraitis: My opinion? I have served in foreign affairs and trade, and obviously there is a great interest in the international human rights regime from that perspective, so foreign affairs has that dimension to their work. They have a responsibility in negotiating agreements, declarations and protocols in the multilateral context. In fact, I began my career in DFAT as a third secretary in Geneva negotiating such instruments. It is a rite of passage for many officers in that department. They continue through bilateral measures as well with various countries across the world on issues such as the death penalty in particular—that has been an issue—and the rights of women and girls, supplemented by the efforts of Ambassador Dr Stott Despoja in recent years, which has been an ongoing role.

In the case of the Attorney-General's Department, we have responsibility to work with the commission to ensure the finances and arrangements work well and for things like appointments of the commissioners. We also make sure that our international obligations conform with our domestic settings as best we can. As I alluded to, in the universal periodic review process, we are both in a generic sense and also a specific, regime based sense, assisting DFAT and other departments. When we go to the UN and we present reports, we are scrutinised by various countries about our performance in the human rights field. That requires a lot of work. Of course, our international law office provides a lot of international legal advice—certainly in the sphere of human rights and international humanitarian law, which is a large part of our role as well in working with Defence, which is a related area of human rights in the context of armed conflict. For example, we work very closely with the International Committee of the Red Cross. They are in town this week, in fact. We talk to them a lot about IHL issues and human rights issues as they overlap. That is pretty much it unless Paul wants to add any areas that I am not across.

CHAIR: Thank you for that. That was very useful and educating for me, but my real question was: why do we need those, it appears, quite substantial divisions within two government departments and the Human Rights
The role of the Human Rights Commission is quite different. The Human Rights Commission, which was established by its own act of parliament, has the functions given to it by that act of parliament, and those include advocacy. They include preparation of reports on human rights related issues. They include, as Mr Moraitis has said, a complaints conciliation function. None of these are obviously tasks that would be done within the bureaucracy of the Australian government by a department of the Australian government. And there are other functions as well. The Human Rights Commission has a degree of independence in the way that a department of the Public Service does not. It is largely, though not entirely, free of ministerial direction, whereas the department obviously is subject to the ordinary principles of the Public Service Act. So there is quite a difference in the function of the two.

CHAIR: Apart from Ms Stott Despoja and now soon to be Mr Ruddock, are there other people engaged in the field either by the government or by the Human Rights Commission?

Senator Brandis: The Human Rights Commission on occasion employs consultants. Perhaps Professor Triggs or others could elaborate on that. But I think this is a good story, if I may say so. The Australian governments of both sides of politics, I am bound to say, have been very conscious of Australia's very strong reputation as a liberal democracy based on respect for human rights.

CHAIR: I agree, but that was not my question. My question was: are there other people that we are not aware of that are doing similar things?

Mr Moraitis: Of course. Ambassadors to Geneva and New York play a role in the human rights space. Our permanent rep in Geneva has a significant role in the human rights field. Officials in our mission in New York would also work on things like the Third Committee of the UN General Assembly as well as the UN Commission on the Status of Women. There are assigned officials who work in this space.

CHAIR: Okay. I will leave it there. Senator Hanson-Young.

Senator HANSON-YOUNG: Thank you, Chair. Professor Triggs, I have got some questions in relation to the report that was launched by the Human Rights Commission last week, The health and wellbeing of children in immigration detention. I understand that this report was based on visits that the commission has taken to Wickham Point where there is a number of children and families being held who, I understand, have been transferred from Nauru, so they are within that cohort of individuals who are quite publicly being debated at the moment in relation to their return. Could you take us through the key findings of that report? I understand you only released it early last week.

Prof. Triggs: Yes. In fact, most of the children who are vulnerable to being returned to Nauru under government law and policy are held in Wickham Point. The Australian Human Rights Commission conducts monitoring visits to the detention centres, and it has done so for many, many years. In the normal course of our work, we went to Wickham Point late last year and reported those findings to the department, and we have been working with the department in relation to particularly the medical conclusions that were reached by the medical members of the team. The findings were very disturbing, and we preferred, in the first stages, to work the department because we were so shocked by those findings, and we would have continued to do so had there been any movement in relation to these children.

The High Court decision did, indeed, clear the air in terms of the constitutional and domestic law on this question, but it did mean, of course, that the children were now particularly vulnerable to removal. It was at that stage that we decided to announce that medical report and my report as president. The essence of that report really confirms the findings of the Forgotten children report, the Moss report, the Senate inquiry and, of course, the United Nations body's reviews on the condition of these children and their families.
Very briefly, there are particular medical monitoring tools which have international credibility which were used by these medical paediatricians, and they confirmed that 19/20 children have little hope for the future. They are in despair and they are at high levels of trauma—so much so that the medical experts were able to say that they had never seen so many children reaching these high levels in the tests—that demonstrated that they were deeply traumatised, mentally ill in some cases, and certainly needing medical treatment for mental and other conditions. In essence, the consequence of the medical reports, the outcomes, were to confirm all of the findings that have been made over the last two or three years. This was only, sadly, significantly compounded because these children are now traumatised partly by the conditions of their parents—that they will be sent back to conditions that they are very familiar with, so they knew what they will be going back to if they were to be returned.

Senator HANSON-YOUNG: Did you speak to the parents as well?

Prof. Triggs: Yes. Thirty-seven children are babies, so in those cases it is obviously the parents that need to be talked to.

Senator HANSON-YOUNG: In conducting your interviews and gathering evidence with those families, was there a strong sense of concern and fear about their possible deportation to Nauru?

Prof. Triggs: I would say that was a primary concern. They were concerned about the conditions in Wickham Point, but the primary cause of anxiety and distress, over and over again, was that they had experienced the conditions in Nauru, and they were fearful that they would be returned to those conditions.

Senator HANSON-YOUNG: Just so that we can have an understanding: you said that you took medical staff with you. What type of expertise or specialists were they?

Prof. Triggs: They were both paediatricians who are very highly regarded in Australia by the profession. One in particular commands international respect for her work, particularly with alcohol symptoms for the foetus and for children.

Senator HANSON-YOUNG: Does the commission have a view on whether these families should be removed from Australia and sent to Nauru?

Prof. Triggs: We have a strong view: the conditions on Nauru are conditions that are dangerous and unsafe. Therefore, in light of our international legal obligations, particularly under the Convention on the Rights of the Child but also under the International Covenant on Civil and Political Rights—both of them are treaties explicitly within our jurisdiction and create the mandate for our assessment as to human rights compliance—we take the view that, due to the conditions and the circumstances of their detention on Nauru, the children and their families should not be returned.

Senator HANSON-YOUNG: Did you hear evidence that detention in general has been harming children, or are there things that are specific to living and being detained on Nauru that compounds the overall negative impact? We heard from the department's chief medical officer—only yesterday in this hearing—saying that detention is not good for children. I am wondering: do you have evidence to show that detention on Nauru is perhaps worse than detention on the mainland?

Prof. Triggs: Perhaps I can take the first part of your question. One of the findings of our own report, the forgotten children report from more than a year ago, is that the fact of prolonged detention on children is demonstrably damaging to those children. That is the first point.

To come to your second question: what is different about Nauru that exacerbates those circumstances? What is different is the fact that they are living in tents; they have little, if any, air conditioning; and they have to walk 100 metres to water or to the lavatories. My understanding, just by way of example, is that, if there is enough water washing machines are available to wash their clothes every two weeks. If there is little water, they might be lucky to have a washing machine or access to one every month. These are the sorts of conditions of daily life which are very poor, coupled with the tropical heat—but of course that is typical for Darwin and Wickham Point, broadly, as it is for the island.

The other element of concern, and we hear this almost unanimously, is that there is a fear of assault and sexual assault. That is one reason why all those we have spoken to and those who approach the commission through the complaints process, or the inquiry process, will say that, although they are technically free to leave the tents in the detention centre, they are very reluctant to do so because they are concerned about the conditions in the wider community. To try to sum up: the living conditions are significantly poorer than they are in Darwin and in other detention centres in Australia—but Wickham Point is the critical one; and the general circumstances are ones of a heightened sense of risk and danger. Regardless of whether the evidence always supports their fears, there is a genuine and deeply held fear for their personal safety on Nauru.
I think there is also a sense of deep despair underlying this. While, in fact, Nauru has been reasonably speedy in assessing their status to refugee categorisation—and that has been commendable—they have no hope for the future, because they cannot be settled anywhere. One of the key principles of the refugee convention is that there ultimately be some form of durable settlement. I think were there speedy, fair, rule-of-law based risk assessment of refugee status and a pathway to permanent settlement for these families who are overwhelmingly determined to be refugees, then we would have a system that would be more acceptable. But the reality is that they are hopelessly stuck without any forward possibilities as things stand at the moment. That is really the challenge in addition to, of course, the conditions in which these families and children are held.

**Senator HANSON-YOUNG:** As the peak human rights watchdog in Australia, do you have international colleagues asking what on earth is going on and why we have a situation where children have been in detention for such prolonged periods of time? Do they question the reports around the alleged sexual assaults and abuse? Is this something that is continuing to come up in international forums?

**Prof. Triggs:** Yes. Perhaps as a precursor to answering that question I should make a point in answer to Senator MacDonald's question. The Australian Human Rights Commission has been elected to the body that governs or provides advice and policy guidance to the 110 national human rights institutions across the world. I represent the commission on that bureau—that is technically what it is called. My point is, in answering your question, I do have a very wide range of understanding of the international community and its concerns, at least in the human rights environment. One that particularly stands in my mind is that our closer neighbours from Indonesia, the Philippines, Vietnam and Malaysia say to me in all good faith that they have always seen Australia as a leader for human rights globally and in the region. Without wanting to attack us, they are genuinely puzzled about a country with such an outstanding human rights record—from the days of Doc Evatt in 1945 and the UN Charter and the Human Rights Declaration, all the way through to the 1990s when we were a major player in relation to the statute that created the International Criminal Court. We have been punching—if I can use that phrase—well above our weight in relation to creating this law and normative behaviour in relation to human rights. They are asking me why we are now adopting an exceptional approach to the prolonged detention of asylum seekers and refugees. Nobody really questions the right to hold children and their families for short periods of time for security, identity and health checks and so on. What they are puzzled by is why we should be complicit in treatment which is seen within the international community as cruel treatment and punishment.

**Senator HANSON-YOUNG:** The summary I have in relation to the report you released last week does reference the torture convention. Are you suggesting that there are elements that we are breaching in terms of the convention against torture with the detention of children who are so mentally unwell?

**Prof. Triggs:** Perhaps I can again begin by saying that that is initially the judgement of the United Nations rapporteur on the convention against torture. That is his view. It has of course raised that question now much more broadly. When you have someone of his credibility, based on evidence, making a judgement of that kind it is a very serious comment.

**Senator HANSON-YOUNG:** That judgement was made late last year?

**Prof. Triggs:** That is right. In fact, it was earlier.

**Senator O'SULLIVAN:** Do you share that view, Professor? Do you share the view that we are torturing these children? Is it a reasonable question in these circumstances.

**Senator HANSON-YOUNG:** Excuse me, Senator O'Sullivan—

**Senator O'SULLIVAN:** Do you share the view, Professor, that we are torturing these children?

**Senator JACINTA COLLINS:** You do not need to answer that, Professor.

**Senator O'SULLIVAN:** She will when my time comes.

**Senator JACINTA COLLINS:** That is right; you need to wait for it.

**Senator BILYK:** It is not your time.

**Senator HANSON-YOUNG:** You can wait to be a pig then!

**Senator O'SULLIVAN:** It is outrageous!

**CHAIR:** It really is. Senator Hanson-Young, you have a minute.

**Senator HANSON-YOUNG:** Thank you. Sorry, Professor Triggs. If you could continue in response to the question.

**Prof. Triggs:** The view has been expressed within the international and legal environment by the United Nations appointed rapporteur on the convention against torture that the treatment constitutes cruel treatment.
CHAIR: Absolutely outrageous!

Prof. Triggs: That is the view of the United Nations rapporteur. We are deeply concerned because, of course, our job under our statute is to consider whether Australia is meeting its international obligations. That is our job. When a major international body makes an observation about the failure of Australia to comply with the convention against torture that is a matter of deep concern to us. We are certainly of the view that the evidence in relation to Nauru in particular, and in relation to children in particular, is certainly coming within an area of concern that it amounts to cruel treatment and punishment. That is, I think, a view that most within this field would support.

CHAIR: I think we should perhaps get the Human Rights Commission to attend the immigration estimates as well so we can get some balance to these quite outrageous claims. Senator Hanson-Young, you have had a good recovery from yesterday's bashing that you got over the five-year-old.

Senator HANSON-Young: Excuse me!

CHAIR: We really do need some balance in this.

Senator HANSON-Young: A comment like that in relation to the abuse and assault of children, Senator Macdonald, is beyond even you. I am sorry, but as the chair—

CHAIR: We had all this yesterday, when you had the relevant department here, and you were proved to be peddling lies—

Senator HANSON-Young: That is not true.

CHAIR: and you are trying to recover and regain your position.

Senator HANSON-Young: I am sorry, Senator Macdonald, but you are the most biased chair in the Senate.

Senator JACINTA COLLINS: I would ask you to withdraw that comment, Chair. You know 'lies' is unparliamentary.

CHAIR: I said peddling—

Senator JACINTA COLLINS: Lies.

CHAIR: Well, peddling mistruths.

Senator McKIM: You said lies.

CHAIR: Well, I said lies. I will take that back.

Senator JACINTA COLLINS: I ask you to withdraw.

CHAIR: I will take it back—peddling mistruths. I am not sure quite what the difference is.

Senator JACINTA COLLINS: Intent.

CHAIR: This was the issue yesterday with the relevant department.

Senator HANSON-Young: And the Human Rights Commission—

CHAIR: You should have taken notice of the relevant department giving factual evidence about conditions and—

Senator HANSON-Young: You are a joke.

CHAIR: I am going to Senator Collins, for which I will start the clock again.

Senator JACINTA COLLINS: I will go back to the matter that I was on previously. Mr Wilson, would you please explain to me how breaking the journey on this occasion led to cost savings. I am not sure how that works.

Mr Wilson: Sure. Had I flown on Sunday night and arrived in New York City on Monday morning, I would have had to fly business class the whole way in order to make sure that I was capable of functioning for the meetings the next day. Had I moved it back to the Saturday, I would have incurred an extra accommodation cost in New York on the Sunday night. If I had flown on the Friday, I would have incurred more costs. No matter which way I did it, it did not make any difference. This allowed me to fly economy on the longest leg, from Sydney to Los Angeles, to then incur privately the cost of accommodation, to go to San Francisco, to then incur the cost of the accommodation in San Francisco and to then fly overnight and arrive in New York and be able to do my job. No matter which way we did it, there was no significant price difference for the taxpayer.

Senator JACINTA COLLINS: The difficulty I have with that explanation is that your return journey was economy all the way through, straight.

Mr Wilson: Correct.

Senator JACINTA COLLINS: So why is business class even a consideration in this?
Mr Wilson: I am not sure if you are aware, but the Remuneration Tribunal has made a determination about what travel class commissioners and the president can travel. The president can travel at a first-class rate; the commissioners can travel at a business-class rate. All I did was exercise the cost according to the standards set out by the Remuneration Tribunal and in order to make sure that I could fully functional in doing my duties as commissioner.

Senator JACINTA COLLINS: But that exercise did not apply to the return journey from Dallas to Sydney.

Mr Wilson: From Dallas to Sydney—because that was only one leg. I did Dallas, broke in Los Angeles and then did one leg from Los Angeles to Sydney; whereas, had I done it the other way continuously, it would have been two legs in succession. I am not sure of the last time you have done that leg, but it is an awfully long way to travel and then function immediately.

Senator JACINTA COLLINS: I understand that. So what you are explaining is that, on your return journey, you exercised restraint. You could have flown business but you flew economy.

Mr Wilson: Correct.

Senator JACINTA COLLINS: But, on the journey over, you also exercised restraint on the journey to Los Angeles.

Mr Wilson: Correct.

Senator JACINTA COLLINS: But, because you wanted to be able to function after your personal business when you arrived in New York, you travelled at the class at which the Remuneration Tribunal would ordinarily allow.

Mr Wilson: Because the alternative was to do it the whole way, or to incur an extra night's accommodation, which would have made up the gap.

Senator JACINTA COLLINS: Let me ask you then this, as an alternative assessment of that criteria—which is why I asked Professor Triggs earlier what process the commission itself undergoes in calculating these matters. Had you continued straight through to New York, where your first business was, the airfare would have been marginally more—I think it is only a couple of hundred dollars extra for the internal leg to Los Angeles—but, because of the way you organised your business and your personal business, it incurred roughly $1,400.

Mr Wilson: I would have to go back and verify that number because I do not have data on what comparable flights were. I know we looked at it at the time. I made a commitment that any additional costs would be incurred by me, and the price difference was no different fundamentally to either an extra night's accommodation or the cost, obviously, if we had have done a business class airfare the whole way. These things are not calculated by me. These things are calculated by bureaucrats within the commission to make sure—

Senator JACINTA COLLINS: Which is why I have asked my earlier question. But I am giving you an opportunity to explain why you organised your business in the way that you did.

Mr Wilson: The answer to that is very straightforward, Senator: I was required to be in New York on Monday. By chance, I received an invitation to a friend's wedding in San Francisco on the Sunday. I made a decision that—and I would not ordinarily have gone to it, but since I was going to be in a neighbouring city—I would incur the costs to travel and go to a friend's wedding, because it happened to perfectly time with my trip to the United States. That is what happened. I incurred all the costs associated with that.

Senator JACINTA COLLINS: But as you said, you were not necessarily in a neighbouring city. That was a change to your arrangements.

Mr Wilson: Yes I was—I was in Los Angeles on the Saturday, I travelled up to San Francisco on the Saturday, I went to the wedding, I then flew on and did activities—my normal business activities—and incurred all additional costs as deemed by the Human Rights Commission to make sure they were not out of pocket for personal activity.

Senator JACINTA COLLINS: But as you said, you did not need to break your journey in Los Angeles

Mr Wilson: Well, if I did not break my journey, then we would have incurred more costs, because in order to make sure that I was functioning in New York, we would have had to incur the full cost of a business class flight continuously—or an extra night's accommodation.

Senator JACINTA COLLINS: Yes. I wait with interest to see the Human Rights Commission response, in terms of how this relates to the guidelines. There are certainly some questions in terms of how our guidelines would apply, and I suspect there are also for the Human Rights Commission. But, with Senator O'Sullivan—
Mr Wilson: Senator, nobody at any point has advised me that there was anything wrong. This went through all the normal processes.

Senator JACINTA COLLINS: Let me go back then to your evidence to us on the last occasion, which is the commencement of all of these concerns. The first of those is that you said, 'I covered the costs associated with that'. Now that is in the past tense. We get the information, and we discover that you covered the costs the day after estimates. There may be a reasonable explanation for that, and that is what I have asked for today.

Mr Wilson: For clarity: at the time, I paid for any costs associated with accommodation. I had covered those. I always indicated to the commission, and it was always an understanding, that I would cover the costs of flights. As you may be aware, Senator, when you travel, sometimes you get given an allowance associated with costs incurred. I did not know whether the cost of the flight had already been removed from that or not. The day after, I received an invoice for the cost. I did not ask for that invoice, though it was always made crystal clear to the commission staff that I would incur that cost. As soon as I received it, I paid it.

Senator JACINTA COLLINS: And then to your evidence on the last occasion—which seems to fail Senator O'Sullivan, given his commentary—'weekends which I had to fill in'. Would you care to revisit that evidence?

CHAIR: Senator, can I just stop the clock there. It is now half past 10. Minister and Mr Moraitis, I think we need to start telling the CDPP and the Australian Federal Police that there is absolutely no chance that they will be called tonight. We have a number of senators wanting to continue on the Human Rights Commission and, under a standing order introduced into the Senate by the Labor Party and the Greens, I am obliged to continue these questions whilst anyone has questions. So for those who might be following the program, I can suggest that you can forget it. I would just ask my Senate colleagues to bear in mind that we do want to try and move on to other areas where senators also have an interest. Repeating questions time and time again ad nauseam does not really help that.

Senator Brandis: Mr Chairman, looking at the program, I dare say you are right that at least the Commonwealth DPP, who is scheduled to appear at 10 pm, is not at this stage likely to be reached. But I think, with respect, it would be a great shame if we did not reach the Australian Federal Police. It is the custom of the commissioner, Commissioner Colvin, to give this committee and, through this committee, the Australian public an update on national security and, in particular, the counter-terrorism measures the Australian Federal Police is engaged in to keep the community safe. It would be a great shame if the public were not given the opportunity to receive that information because of the self-indulgence of some senators in blowing the timetable out in relation to these questions this morning.

Senator JACINTA COLLINS: Chair, rather than respond to Senator Brandis's common insults, I would make the suggestion that, if you are concerned about the program, we reorganise the program and have the AFP appear after ASIO.

CHAIR: At the rate we are going, we are not going to get to ASIO. When is ASIO due?

Senator JACINTA COLLINS: ASIO is a hard break in the program. This gives you exactly what you have just asked for.

CHAIR: I am not sure. I guess we can have a look at that. But my response to Senator Brandis is that, unfortunately, I do not make the rules. The Senate, acting on the majority of Labor and the Greens, made the rules that questions for any agency continue whilst senators have questions. That means, as a matter of common sense, that we are not going to many things at all.

Senator O'SULLIVAN: Can I make a contribution. We have had a suggestion that children have been tortured in custody, and here we are having an hour on the holiday inn incident. Seriously! Can't you put these questions on notice? They will come back in the form that you need, and then you can raise them at the next one.

Senator BILYK: That is exactly what we are doing.

Senator JACINTA COLLINS: I may have to put questions on notice, given the amount of commentary that is occurring in my questioning.

Senator O'SULLIVAN: This is such a political indulgence.

Senator JACINTA COLLINS: Says who, given your history?

Senator O'SULLIVAN: Says me.

Senator JACINTA COLLINS: Did you learn something new over at the UN?

Senator O'SULLIVAN: I did.

Senator JACINTA COLLINS: That is good.
Senator Brandis: Senator Collins, please do not behave like this.

Senator BILYK: Senator Collins is referring to the answers she has received from questions on notice. So thank you for the suggestion, Senator O'Sullivan; that is exactly what she is doing.

CHAIR: All right. Everyone has had their bit now. But I am concerned about the program—and I am concerned about officers sitting around all day.

Senator BILYK: That is what they are paid to do.

CHAIR: No. They are paid to work—

Senator BILYK: Estimates is part of their job.

CHAIR: not sit in here listening to this circus carrying on all day.

Senator JACINTA COLLINS: We were, but—

Senator Brandis: Chairman, we are in the hands of Senator Collins. If her priorities lie as they evidently do, then that is a matter for her.

CHAIR: Mr Moraitis?

Mr Moraitis: Can I take it that the DPP will not appear? The director is based in Sydney and I think might have to fly up, so I can get to him and tell him not to fly.

CHAIR: I would be prepared to make that call. Both the opposition and the Greens had asked for the DPP to be here. They both generously indicated that, in the circumstances, you can tell the CDPP not come down from Sydney tonight because there is little prospect of him being called today. Senator Collins, unfortunately, I messed it up. I think you had about six minutes, but I am giving you another eight minutes to complete your—

Senator O'SULLIVAN: Why are you so generous?

CHAIR: I am just a generous guy.

Senator JACINTA COLLINS: So I have eight minutes remaining of the time that you chose to break to deal with 10 minutes of commentary. Is that right?

CHAIR: That is right.

Senator JACINTA COLLINS: Can I ask that in the future, Chair, you make your commentary in the break between questions.

Senator Brandis: I can see your graciousness is being reciprocated, Senator Macdonald!

Senator JACINTA COLLINS: Just concluding on that last matter—and you may need to take these on notice—the travel costs you gave us included fees for variations. I would like to know what they are.

Mr Wilson: Sure. I do not know what they are either. I will take that on notice.

Senator JACINTA COLLINS: As you have indicated, in some parts the accommodation related to accommodation by a third party. Professor, it made me wonder, in terms of declarations of interest, what applies in relation to yourself and commissioners at the Human Rights Commission in relation to any benefits you receive as commissioners?

Prof. Triggs: We all have to declare any possible either conflict of interest or a gift or opportunity; that has to be properly recorded and reported. We are very careful to make sure that that is met, especially as so many of us do a lot of public speaking. We do get a lot of gifts, so we have to check that very carefully.

Senator JACINTA COLLINS: Where are those reports made?

Prof. Triggs: They are within the commission. I think we report to the Attorney-General's Department, but again I can take that on notice and show you how frequently we report on what might be seen as advantages of one kind or another.

Senator JACINTA COLLINS: Perhaps you could provide me with such reports for the last two years on notice.

Prof. Triggs: Certainly.

Senator JACINTA COLLINS: Unless that is burdensome.

Prof. Triggs: No, not at all. We will be very pleased to do it. It is kept up as a matter of course. We keep full records of anything that might be—I forget the exact amount, but it is $50 or something in that area.

Senator JACINTA COLLINS: Mr Wilson, on the last occasion you advised us that you had resigned from the Liberal Party.
Mr Wilson: That is correct.

Senator JACINTA COLLINS: Can I ask you to explain why you felt that was necessary?

Mr Wilson: Because I was asked by the Attorney-General to do so.

Senator JACINTA COLLINS: The current Attorney-General?

Mr Wilson: Correct.

CHAIR: I am not sure that that is an estimates question.

Senator JACINTA COLLINS: Why?

CHAIR: What has it got to do with—

Senator JACINTA COLLINS: Senator Abetz asks them all the time.

CHAIR: Well, the fact that Senator Abetz asks them does not make them correct. It has little to do with the expenditure of money in this department and in the Human Rights Commission.

Senator JACINTA COLLINS: It has a lot to do—which is obviously why Senator Abetz asked it—with the standing of the Human Rights Commission. Would you agree with that, Professor Triggs?

Prof. Triggs: I am sorry, with what?

Senator JACINTA COLLINS: The Attorney-General's request that Mr Wilson resign his membership from the Liberal Party in relation to matters around the standing of the Human Rights Commission.

Prof. Triggs: I do not really think that is a question I can appropriately answer, frankly. I am sorry, Senator Collins, but I think it is a matter of judgement as to whether or not it is necessary to give up one's political affiliations.

Senator Brandis: With respect, Senator Collins, I do not think it is fair to the committee—or to the witness, for that matter—to ask a question of the witness that invites her to comment on the appropriateness of your questions, which is what you just did.

Senator JACINTA COLLINS: I asked a question related to the standing of the Human Rights Commission. Certainly, Attorney, if you would like to elaborate on why you made that request it might take us a step further.

Senator Brandis: I am in your hands, Mr Chairman. I am prepared to answer the question, but if it is out of order then it is out of order. It is a matter for you.

Senator O'SULLIVAN: It is out of order. The whole thing is out of order.

CHAIR: Can you demonstrate how this is relevant to estimates?

Senator JACINTA COLLINS: Very easily. The way in which this is relevant to estimates is that the Human Rights Commission is starting to look like the holding pen for Liberal Party candidates. First of all, we have Mr Wilson's name being raised for every federal parliamentary vacancy in Victoria, including potential future ones such as Goldstein, despite the fact that he has given up his Liberal Party membership, and then we have stories around Peta Credlin being appointed to the Human Rights Commission.

CHAIR: You just assured me that my ruling that the question is out of order is correct.

Senator BILYK: But then you do not want to hear it.

CHAIR: Ms Ryan has been an exemplary commissioner—

Senator O'SULLIVAN: Hear, hear.

CHAIR: But we all know that she is a former Labor Party politician, and we do not want to go back and ask her which branch meetings she might attend as a guest or otherwise. I do not know their political affiliations, but I am sure other commissioners have done things. We have been through this before. This is turning into witch-hunt, Senator Collins—

Senator JACINTA COLLINS: I take offence at that.

CHAIR: It is not unparliamentary and it has never been ruled to be unparliamentary.
Senator JACINTA COLLINS: Witch-hunt has been ruled to be unparliamentary. I would ask that you take the Clerk's advice on that.

CHAIR: I will take my own advice.

Senator JACINTA COLLINS: No, you should take advice from the Clerk—you are the Chair.

CHAIR: I had stopped the clock. I am going to re-start it. If you have other questions, ask them, otherwise we will move to another senator.

Senator JACINTA COLLINS: I do have other questions.

CHAIR: You have three minutes left—a generous three minutes, I must say.

Senator JACINTA COLLINS: Chair, I suggest we break and have a meeting of the committee around the tea-break to further discuss this matter before I go to further questions. Your behaviour as chair is outrageous, and I asked that we suspend the committee—

CHAIR: If you do not have other questions I will move to Senator O'Sullivan.

Senator JACINTA COLLINS: I do have other questions.

CHAIR: No, I invited you—

Senator JACINTA COLLINS: I have other questions.

CHAIR: I invited you, and you embarked upon an attack on the Chair.

Senator JACINTA COLLINS: I made a point of order.

CHAIR: You did not say 'point of order' and you did not indicate that it was a point of order.

Senator JACINTA COLLINS: For goodness sake, Chair, this is becoming a farce.

CHAIR: Senator O'Sullivan?

Senator BILYK: Senator Collins has requested a private meeting. You cannot just ignore it.

Senator JACINTA COLLINS: You cannot just take the call to ask questions off me in that fashion, Chair.

CHAIR: You were invited to ask questions and did not. I therefore assumed you had no more questions to ask.

Senator JACINTA COLLINS: I raised a point with you in that process—

CHAIR: You did not raise a point of order.

Senator JACINTA COLLINS: You cannot move estimates on in that fashion. Your behaviour is a farce.

CHAIR: Senator Collins, you are entitled to your own opinions, but don't bore this committee with them, thank you. Senator O'Sullivan?

Senator JACINTA COLLINS: It is time for morning tea.

CHAIR: I will come back to you—

Senator JACINTA COLLINS: It is time for the break for the morning tea. It is 10:45, which is the scheduled break time.

CHAIR: On that basis I will suspend the hearing for 15 minutes.

Senator BILYK: Are we having a private meeting?

Senator JACINTA COLLINS: Are we having a private meeting?

CHAIR: No.

Proceedings suspended from 10:47 to 11:10

CHAIR: I welcome everyone back to the Senate Legal and Constitutional Affairs Legislation Committee budget estimates additional hearings. Our apologies; the committee just had a private meeting. Senator Collins, I will go back to you for your final three minutes and then Senator O'Sullivan.

Senator JACINTA COLLINS: Mr Moraitis, was Ms Credlin one of the 70 people from whom an expression of interest was sought?

CHAIR: That is not an appropriate question. We do not normally—

Mr Moraitis: As a general proposition, I would rather not comment on individuals.

Senator Brandis: With respect to my secretary, I would like that question answered—merely to correct an erroneous media report. The answer is no.
Senator JACINTA COLLINS: Attorney, can you please describe for me precisely what was erroneous in the media report.

Senator Brandis: It was reported that she was under consideration and she was not.

Senator JACINTA COLLINS: She was never under consideration?

Senator Brandis: No.

Senator JACINTA COLLINS: Going back to that earlier discussion around Mr Wilson's invidious situation, he has done the right thing in the sense that he responded to Senator Brandis's request that he resign from the Liberal Party. There has been ongoing commentary around whether he may be a candidate for one preselection after another, which may be completely outside his control. I think the circumstances are quite different in relation to the other commissioner who you raised, Senator O'Sullivan, because Senator Ryan is past her political career and it is not an issue of whether she is going to seek future selection. But I would like to ask Mr Wilson—

Senator O'SULLIVAN: I did not raise any issues with Ms Ryan, I promise you. I have the greatest respect for Commissioner Ryan on every level.

Senator JACINTA COLLINS: Maybe it was the chair who raised it.

CHAIR: It was me who raised it.

Senator JACINTA COLLINS: Mr Wilson, have you considered that perhaps your only option here is to completely rule yourself out of any selections whilst you occupy your current role?

CHAIR: That is outrageous.

Mr Wilson: I do not engage in hypotheticals.

Senator JACINTA COLLINS: It is not a hypothetical. I said: 'Had you considered.'

Mr Wilson: Had I considered that option?

Senator JACINTA COLLINS: Yes.

Mr Wilson: No, I had not considered that option.

Senator JACINTA COLLINS: Can I ask you to?

Mr Wilson: No. Well, you may ask me, but I will not engage in hypotheticals about what I would do in the future.

Senator JACINTA COLLINS: It may be the only way for you to avoid ongoing commentary about whether you will be a future political candidate.

CHAIR: I am sorry. I am ruling this—

Mr Wilson: People will write what they will write, even if I said something—

CHAIR: I am ruling the question out of order. That is far beyond the purview of Senate estimates committees. I am sorry. Individual people deciding their own individual future is not a matter for this committee.

Senator JACINTA COLLINS: Appointing people who are ongoing political candidates is a problem for the standing of the Human Rights Commission.

Senator O'SULLIVAN: Jesus! That coming from the Labor Party—that is outrageous.

Senator JACINTA COLLINS: What example are you referring to, Senator O'Sullivan?

Senator O'SULLIVAN: I have hundreds. We do not have time for this.

Senator JACINTA COLLINS: No, of course, because you cannot think of one.

Senator Brandis: Senator Collins, at the time I approached Mr Wilson to consider appointment as the Human Rights Commissioner, which was in late 2013, I do not think it would be accurate to describe him as an ongoing political candidate. He was a member of the Liberal Party at the time. I recommended that were he to accept the appointment he should resign as a member of the Liberal Party. Your characterisation of him as an ongoing political candidate at the time he was appointed is inaccurate.

Senator JACINTA COLLINS: How many selections would it take for him to become one? So far we have had Senator Ronaldson, we have had Dunkley and we have had Goldstein. How many would it take?

Senator Brandis: If you had listened to the answer you just received from Mr Wilson—Mr Wilson has never stood for preselection.

Senator JACINTA COLLINS: I did not say that. I was referring to the commentary and what it does for the standing of the Human Rights Commission.
Senator Brandis: Nobody can be held responsible for commentary that might be written about them. The fact is that Mr Wilson has never been a parliamentary or a preselection candidate for any party, ever.

Senator JACINTA COLLINS: That is why it would assist him to rule himself out very clearly.

CHAIR: It is not an appropriate question and I am not allowing it. Those sorts of things are, in fact, an imposition on people's human rights, I would have thought. I am not allowing it as an estimates question.

Senator O'SULLIVAN: I want to pursue this absolutely outrageous suggestion that somehow these children in detention are being tortured, but before I do so, as I understand it a matter was before the High Court last week in relation to children in detention. Was the court burdened with any question about the circumstances of their confinement?

Senator Brandis: I think you must be referring to the High Court's decision last Wednesday in the M68 case, about which I took a question in the Senate on Wednesday afternoon.

Senator O'SULLIVAN: The M68 case, yes.

Senator Brandis: I think it is probably useful to the committee to point out one important aspect of the court's decision in that case. I listened to Senator Hanson-Young's questions to the President, and I listened to the President's answers and the President's reference, in particular, to a report in December—I think it was by the UN Special Rapporteur. It was not perfectly clear to me, but I gather from some of the questions that Senator Hanson-Young asked that they were an intended reference to the detention of children in the regional processing centre in Nauru. One of the central issues in the M68 case is whether those people—adults and children—being detained in Nauru were being detained by Australia. The High Court resolved that question by a majority of four to three. The High Court decided unequivocally that people being detained in Nauru under a memorandum of understanding between the government of Australia and the government of Nauru are not being detained by Australia. So to the extent to which the report of the UN Special Rapporteur in December may have been premised on the assumption that those people were being detained by Australia—and the law was not resolved at that time, in December—and the extent to which any question or answer is premised on the basis that people being detained on Nauru are being detained by Australia, that may no longer be said.

That was an issue of political contention until last week. It is now beyond contention because as you, Mr Chairman—who, among your other accomplishments, are a lawyer—know, and as many of us at this table who are lawyers know, there is one thing that is absolute in this country. That is that when the High Court decides the law, then that is the law. The High Court has decided as a matter of law by majority that those people were being detained by another sovereign entity in Nauru. One of the central issues in the M68 case is whether those people—adults and children—being detained in Nauru are being detained by Australia. So to the extent to which the report of the UN Special Rapporteur in December may have been premised on the assumption that those people were being detained by Australia—and the law was not resolved at that time, in December—and the extent to which any question or answer is premised on the basis that people being detained on Nauru are being detained by Australia, that may no longer be said.

Senator O'SULLIVAN: Thank you, Attorney. In view of that position articulated by the Attorney, could I ask you, Professor: when you make reference to children in detention, are you referring to children in detention under the powers of Australia, or are you referring to children in detention somewhere else?

Prof. Triggs: Our mandate under the statute of the Australian Human Rights Commission is to assess compliance by Australia with its international legal obligations—in particular, the Convention on the Rights of the Child. When we make our reports we are referring all the facts, evidence, medical evidence back to the standards of, in particular, the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

Senator O'SULLIVAN: But are your references to children who are detained by another sovereign entity in view of the Attorney's comments?

Prof. Triggs: In our report *The forgotten children* we did deal with the complaints that we received from the refugees in Nauru to the commission. We have been attempting to conciliate those complaints and we have reported to parliament accordingly, as you will doubtless know.

Senator O'SULLIVAN: But do you accept the High Court's decision that these children are detained, to use the word, by another sovereign nation?

Prof. Triggs: As the Attorney has quite correctly said, the High Court, in a six to one decision, has made some clear rulings as to Australian law and, of course, I fully respect and accept the views of the High Court on Australian law. But it is not my job to comment on that—although I will, obviously, as a lawyer. My job as President of the Human Rights Commission is to comment on our compliance with international law and our international treaties.
Senator O’SULLIVAN: Are you suggesting that Australia has some burden via some treaty we have signed to impose themselves on the activities of another sovereign nation?

Prof. Triggs: We will be looking at the full implications of jurisdiction when we have had a chance to really go through in fine detail the views of the High Court. But we will always, of course, fully respect the views of that court and interpret our statute accordingly.

Senator Brandis: Senator O’Sullivan, I am a little surprised that the Human Rights Commission has not studied the reasons in full yet. But I can advise you—because I have—that, as Professor Triggs rightly says, it was a six to one decision. But of those justices that comprised the majority—the six—two were of the view that, on the proper construction of the Memoranda of Understanding on the Regional Processing Centre arrangements, Australia was involved in the detention of children on Nauru. But four of the six—in other words, four of the seven members of the court, a majority—decided unequivocally, because the issue was squarely raised in the case, that that was not so—that the children were detained by Nauru, not by Australia.

Senator O’SULLIVAN: Then can I direct my question to you—and I will come back to the professor. Attorney, can you think of a circumstance where the sovereign nation of Australia has an obligation, or an ability even, to impose its will upon another sovereign nation due to a treaty or international arrangement that it may have arrived at itself?

Senator Brandis: Basically, no, but it would depend on the terms of the arrangement or the treaty. There is a memorandum of understanding between Australia and Nauru which undergirds the regional processing centre arrangements. The effect of that memorandum of understanding is that Nauru accepts, in defined circumstances, people claiming to be refugees and processes them on Nauru according to the law applied by that sovereign nation. The people—children or adults—are not detained by Australia. They are detained by Nauru, and they are dealt with by the law of Nauru. That is the position. That is the position that the government has always maintained. I can understand—and Senator Hanson-Young and I disputed this in debate in the chamber last year—that there was a political argument about whether that was a proper characterisation of the arrangements, until the High Court pronounced definitively what the legal character of the arrangements was. But if you look at the relevant passages of the joint judgment of the Chief Justice and Justices Kiefel and Nettle, on the one hand, and the judgment of Justice Keane, on the other hand, they are unequivocal about that point.

Prof. Triggs: I wonder if I could just clarify this for the record: of course the Australian Human Rights Commission, and I personally, have read the judgment, and we have a description of what that judgment is, and our conclusions from it are now publicly available on our website. But we will be looking in the future at what the implications of that judgment might be for jurisdiction over Nauruan matters that we have continued to receive from those who are held there.

Senator O’SULLIVAN: All right. Let me go back to what attracted my interest to this issue. I had asked you the question, and you did not have the opportunity for an answer. Do you believe that in the circumstances in which children have been detained in Nauru, or at any other centre where you believe we may have influence or an arrangement, they are being tortured?

Prof. Triggs: We have never, ever made that assertion.

Senator O’SULLIVAN: You made reference to commentary that it occurred, with an international expert who suggested it was torture. Do you disagree with the position expressed by that individual?

Prof. Triggs: I am afraid you are misstating the view of the United Nations rapporteur. There is a difference between torture and cruel punishment, and his view—and, I understand, the view of others with the UN system at senior levels—is that the treatment of the children, in respect of Nauru in particular, constitutes cruel punishment. That is the view. He has not said that it constitutes torture within the convention; it constitutes cruel and unusual treatment or punishment—also under other conventions which are particular to our jurisdiction, because the torture convention is not part of my jurisdiction. The International Covenant on Civil and Political Rights and the Convention on the Rights of the Child also protect against cruel treatment.

Senator O’SULLIVAN: So do you agree with the position expressed?

Prof. Triggs: I am not answering questions on the run like that. I am not making judgements of that kind. The commission has been very, very clear in our views to parliament—and I hope you have read those reports—that there are instances in which the treatment of some particular children in particular cases has constituted cruel treatment.

Senator O’SULLIVAN: So it was a generalisation. You have been—

Prof. Triggs: Generalisations are not a good idea. We deal with individual complaints and cases.
Senator O'SULLIVAN: Well, it would seem that the comment that we are referring to is a generalisation.

Prof. Triggs: By a UN official, not by me and certainly not by any member of the Australian Human Rights Commission.

Senator O'SULLIVAN: Professor, do you know why these children are still in detention?

Prof. Triggs: They are there in detention because of Australia law.

Senator O'SULLIVAN: But did you happen to listen to the evidence yesterday relating to why these children are still in detention?

Prof. Triggs: Of course I speak and have close working relationships with the department, and we explore these—

Senator O'SULLIVAN: So I come back to my question: what is your understanding of why the children are still in detention?

Prof. Triggs: My job is to comment on the law, not on the policies. My job is to understand why these children are held, and that is because of the law. They are held because they are required to be held.

Senator O'SULLIVAN: But that is what I am probing—why are these children held? I am asking you what your knowledge is as to why they are still held in detention.

Prof. Triggs: They are being held because the legislation requires that they be held.

Senator O'SULLIVAN: No. That is not the evidence that has been before this committee. The evidence before this committee is that, in almost every case, they are held because there is a serious issue with the parent, or a parent or both parents.

Senator HANSON-YOUNG: Actually, the evidence was that that was seven children.

Senator O'SULLIVAN: No, don't you interrupt. You have had a view about that earlier.

Senator HANSON-YOUNG: Seven children out of 90.

Senator O'SULLIVAN: Are you aware with the position that, in most of these cases, the children, if they were to be released, would be separated from the parental environment—their mother and father, their mother or their father.

Prof. Triggs: There is no doubt that the very small number of children that are held because of an ASIO determination in relation to the parent are extremely difficult cases, and we, of course, talk regularly with the department about management of those cases. We, of course, understand that there are reasons why the department would have to be cautious, and certainly would not want to separate the families. But, overwhelmingly, these children are not from families subject to ASIO negative assessments.

Senator Brandis: Can I add to Professor Triggs: of course some of these children are newborn babies, too, who have to be with their mothers. The position of the children is a function of the position of the parent—in that case, the mother. I think, Senator, if I may, context is everything here. At the moment, the number of children, including babies, is fewer than 90. I think Professor Triggs used the expression 'exceptional cases'. To put this into context, during the period in which the policies that allowed the people smugglers to flourish were in place, some 8,000 children were in detention at one time or another. At the peak of that period, in about August of 2013, there were 1,992 children in detention at the same time; and over six years, 8,000 at one time or another. Today, there are fewer than 90 in the exceptional circumstances, of which you have heard.

Senator O'SULLIVAN: Can I have one clarifying question; I know the clock has gone. If there is any possibility, before I return to you again, Professor, would you be able to arrange for one of your staff to just look at the Hansard of yesterday, where the evidence of Mr Pezzullo and Ms Moy, who administers this part for the department, indicated that the majority of the cases had to do with security issues—the majority, not a minority.

Senator Hanson-Young interjecting—

Senator O'SULLIVAN: So if you want to have a look at the Hansard; I will try to have my staff do the same so that we can have the benefit of it, because—

Senator HANSON-YOUNG: As to why? Seven children.

Senator O'SULLIVAN: You withdraw that. You withdraw what.

Senator HANSON-YOUNG: Withdraw what?

Senator O'SULLIVAN: She told me it was a lie—that I am making a lie.

Senator HANSON-YOUNG: That sounds pretty unparliamentary.
Senator O’SULLIVAN: Professor, would you be able to just see if you could do that over the break. If not, I will try to make the arrangement to have a copy of it for you.

CHAIR: I think I will go back to Senator Collins, then Senator Canavan and then Senator Hanson-Young, or someone from the Greens.

Senator HANSON-YOUNG: Senator Siewert, it will be.

Senator JACINTA COLLINS: Attorney, you mentioned that the media reporting in relation to Ms Credlin being a candidate for the position of Sex Discrimination Commissioner was erroneous. Did you discuss with anyone the possibility of appointing Ms Credlin?

Senator Brandis: Yes, I did say that. Ms Credlin was never a candidate. She never sought to be a candidate. She was never under consideration.

Senator JACINTA COLLINS: Did you discuss that possibility with anyone?

Senator Brandis: No.

Senator JACINTA COLLINS: Do you have any knowledge that her candidacy was discussed with the Prime Minister?

Senator Brandis: No.

Senator JACINTA COLLINS: Chair, that concludes my questions for the Human Rights Commission.

Senator CANAVAN: I have just had some advice on the earlier questioning about the question on notice issued in regard to the human rights report, which I now have a copy of. Apparently it was not accepted properly by the committee, and that is why I did not have a copy of it and it was not sent to my office. I have had a look at since. Before I get to the report, Professor Triggs, earlier you mentioned that countries we would like to compare ourselves to have adopted same-sex marriage. What are the countries we would like to compare ourselves to?

Prof. Triggs: Which are the countries we would like to compare ourselves to?

Senator CANAVAN: Yes. That was my—I think you said directly we’d like to—

Prof. Triggs: We are usually quite comfortable—this is my personal view—the countries we are usually happy to be compared with typically are common-law countries, but not always, but ones we would always mention are the United Kingdom, the United States, New Zealand, Ireland, Canada and, in terms of civil-law countries, large parts of Europe. We do not model ourselves necessarily on those jurisdictions, but we always try to get some comparative idea of what the legislation is, what the trends and developments are within those jurisdictions and then we see the extent to which they might apply usefully in Australia.

Senator CANAVAN: None of those countries are Asian countries. Does that mean we would not like to compare ourselves to Asian countries in regards to human rights?

Prof. Triggs: It depends on the area of law. There are some areas of law—for example, Singaporean law—that we would look to on a number of issues. For example, on the death penalty issue we look at the practice of the Asian region, where there is pretty well a de facto moratorium on the death penalty for most of those jurisdictions, and Australia has of course been very interested in using that comparative practice to support Australia's own position in arguing against the death penalty. It is purely an example, but regional practices can sometimes be of importance to Australia in promoting an argument that we would like to make in the international community.

Senator CANAVAN: Those European countries, the UK, the US—I don’t think you mentioned it, but Canada as well—are they sort of like the high bar or the high-water mark for human rights in the world?

Prof. Triggs: Not necessarily. It would depend on the particular issue. As I say, we would usually wants to compare their laws and jurisprudence for interest in seeing whether we measure up to those standards, whether we are further advanced, as we sometimes are, than those jurisdictions or whether we can learn something from them and, particularly, for example, the jurisprudence of the European Court of Human Rights or the United States Supreme Court and other major regional bodies.

Senator CANAVAN: Help me out with this evolving practice, jurisprudence, which you mentioned earlier. I think earlier we established that there are 20 countries that have adopted same-sex—

Prof. Triggs: Approximately.

Senator CANAVAN: Yes, 19 or 20—maximum 20, countries that had adopted same-sex marriage out of 166 signatories to the—

Senator Brandis: 168.
Senator CANAVAN: Sorry, 168 signatories to the ICCPR, which works out at around 12 per cent. How is that an evolving practice? What is the threshold—is it six per cent, eight per cent? 12 per cent seems to me to be a relatively low number. How does that constitute an evolving practice?

Prof. Triggs: We would look at what would be the practice of states whose legal systems we most respect. To the extent that that weighs heavily as a credible position—

Senator CANAVAN: Are you saying that we do not respect the legal systems of our close neighbours in Asia?

Prof. Triggs: Of course we do.

Senator CANAVAN: That does not quite help me then, if we respect all of those legal systems then why would we have some countries that are signatories to the ICCPR in one bucket, which we like to follow, and the countries that we ignore?

Prof. Triggs: One very good reason for that is that a very high number of countries in the Asian region are not parties to the International Covenant on Civil and Political Rights. If we—as we obviously are at the Human Rights Commission—looking at the standards of that covenant, we would want to look at the practice of those states that have ratified that treaty.

Senator CANAVAN: I do not have the full list of the 168 countries that have signed, but I presume it is a relatively large proportion of the total number of countries in the world, so I would have thought that there are many Asian countries—

Prof. Triggs: There are some, but if one were to look at—

Senator CANAVAN: Is Japan a signatory?

Prof. Triggs: Japan has signed that—

Senator CANAVAN: Is South Korea?

Prof. Triggs: I am not sure about South Korea.

Senator CANAVAN: In relation to this Universal Periodic Review process, which we have made a submission on in terms of Australia, my understanding is that we can make submissions on other countries as well—is that correct?

Prof. Triggs: Yes.

Senator CANAVAN: Has the Human Rights Commission made other submissions in regards to other countries before?

Prof. Triggs: We do not have status to make comments about other countries—

Senator CANAVAN: Only governments can—

Prof. Triggs: But the Australian government has status to do that, we do not.

Senator CANAVAN: So you will not be making a submission when Japan is up for review, saying that they should be condemned that they do not have same-sex marriage, even though you believe that is a fundamental human right.

Prof. Triggs: That is a matter for the Australian government and I am certain that the Australian Human Rights Commission does not have a mandate to make observations about other countries.

Senator Brandis: It is clear that the Human Rights Commission does have a view on this issue, that is a policy view. As I understand from Professor Triggs's evidence earlier in the day, that is not a view that the Human Rights Commission takes of international law. As Professor Triggs has talked about the evolution of international law, I must say, I would not have thought that the domestic law of about 19 or 20 of the 168 countries would be enough to constitute a principle, or anything like a principle, of customary international law in relation to any particular issue.

Senator CANAVAN: Thank you minister. I want to ask a little more about what the Universal Periodic Review is, and about your submission to it. On your website you have a section: What human rights issues may be considered in the UPR? You have a list of things including: the Charter of the United Nations, the Universal Declaration of Human Rights, human rights instruments to which a country is party, voluntary pledges and commitments made by countries, and international humanitarian law that applies to the country. You then go on and list the human rights treaties that we are a party to. Earlier you mentioned that we have no obligation under those international treaties to change a marriage act in favour of same-sex marriage; therefore, on what basis have you made that recommendation in your submission—given that on your own website you only mention that the
UPR is a process to assess the extent to which governments are meeting their obligations under these things? If we have no obligation under these things, why would you make a recommendation in that regard?

Prof. Triggs: I am sorry, I really do not understand your question. We have a right to put in a report in relation to—

Senator CANAVAN: I am not disputing that, and if this was a report that you had put out generally—like you did in 2012 with the report you provided to us—but that is not my question, my question goes to the submission you have made to the UPR process. On your own website you say that the UPR process is: 'about assessing the extent to which government's respect human rights, including their obligations as set out in…' and you only list humanitarian law or international treaties. You have said that there is no obligation under those treaties or humanitarian law to change a marriage act, so why would you make a recommendation that goes beyond those obligations in this process?

Prof. Triggs: I would like to hand over to my colleague, Tim Wilson, but, very briefly, firstly, I think the Attorney has accurately stated the customary law position and I fully support his analysis. Secondly, in the UPR process we are commenting only on the Australian position and on our view of the meaning of 'equality' before the law under the International Covenant on Civil and Political Rights. Mr Wilson has a much greater depth of understanding of this field than I do and he is primarily responsible for this within the Australian Human Rights Commission. I would like to pass to him.

Mr Wilson: When it comes down to it, Senator, this is an evolving area of law, because at the time in which the treaties were negotiated there was no particular reference to gay and lesbian or same-sex attract people. They continue to be silent in international treaties because it is still an area of contention within the law. If you go for instance, to a country or a nation in the Asian region—say, Malaysia—you can still be locked up for the crime of consensual sexual activity. Another signatory to the International Covenant on Civil and Political Rights is Iran. They ratified it in 1976. They continue to murder people, as far as I am concerned, on the basis of people's sexual orientation. It is a complex, evolving area of law, but in practice, for countries where it is no longer illegal for people to engage in consensual sexual activity—

Senator CANAVAN: Can I bring you back, Mr Wilson. The chair is very disciplined—and, may I say, one of the most disciplined chairs of any standing committee—and I have limited time. I am not asking about rights of a sexual orientation. I am asking about rights or perceived right to marry. While you are right that the ICCPR appear silent on some of the issues you have just raised, it actually defines the right to marry in terms of a man and a woman explicitly. I think you can understand that, and as we have gone—

Mr Wilson: It says men and women are free to enter into a marriage.

Senator CANAVAN: Yes. As we have gone over before here, the case law has interpreted it in that way. My key question is: if this UPR process—as you have said on your website—is about assessing our obligations under international human rights law and under the treaties we have agreed to be bound by, why would you make a recommendation which, you have admitted earlier, goes beyond our obligations under those treaties? What relevance does that have to the UPR process?

Mr Wilson: The relevance is that, under the provisions of the International Covenant on Civil and Political Rights, we have an obligation to meet equality before the law. This is a civil tradition that we are talking about. We are not talking about a religious tradition.

Senator CANAVAN: Just to be clear for me, that equality under the law has nothing to do with ICCPR that you are referring to just then, has it?

Mr Wilson: No, I am saying that there is an obligation—

Senator CANAVAN: I am getting really confused, because in the paper you have written that I had up earlier and that you provided to this committee you say—

Mr Wilson: I am stating my view, Senator.

Senator CANAVAN: Honestly, with all due respect, Mr Wilson, I am not that interested in your view, because you are here as part of the Australian Human Rights Commission. I am interested in the commission's view, and in particular the view it is putting publicly, assessing our government's record on human rights, and you say, as the Human Rights Commission: The United Nations Human Rights Committee has concluded that the ICCPR does not prevent the recognition of same-sex marriage, rather the ICCPR does not impose a positive obligation on states to do so.

Mr Wilson: Correct.
Senator CANAVAN: I think earlier you agreed to that statement. There is no positive obligation for states to do so. So on what basis have you gone beyond our obligation under the international human rights law to criticise Australian government practice in an international review of our human rights record?

Mr Wilson: In the end, it comes down to an evolving area of law and different interpretations. We know there are different interpretations. That is not in contest.

Senator CANAVAN: Look, we are probably not going to get much further here, but I find that you seem to be stepping into more of an activist role than a judicial role on your own website. Can you hear me out. Professor Triggs, on your own website, you say that you are assessing Australia's performance under the national human rights law and our obligations under the various treaties we are signatories to. You are using lots of legalese to argue that we should actually be criticised internationally for not doing something that we are not actually obliged to do under those instruments.

Prof. Triggs: As the Attorney has pointed out, we have a number of functions under our statute, and one of those functions is to be precise as to the law that Australia is bound by, but another of those functions is advocacy. One of the purposes of the UPR is to talk about where Australia might take more proactive action in the future, and so it is therefore also a place in which one can both state the law and also explain where we believe, as a human rights advocacy body—which we are mandated to do under our statute—we might also include the argument that our interpretation of equality before the law means that all Australians should have access to marriage. That is what we are doing in that report.

Senator Brandis: Senator Canavan—if I may say so—I think this discussion is a very good example of the difference between human rights and human rights law. There are those who say that the two are effectively identical—that what human rights lawyers say are human rights is a definitive question and a legal question. That has never been my view. My view, as I have expressed many times, is that issues about what comprises human rights are essentially questions of political philosophy and values, and it is not, as it were, a lawyers' closed shop or monopoly to decide what human rights are or to choose between them where there are arguably inconsistent human rights. The Australian government does not take legal advice from the Human Rights Commission. It is not constituted as a body to offer views about the law, although its views of the law will sometimes be incidental to its advocacy function. But it is perfectly entitled to, as it does, take a view about certain human rights issues.

The Human Rights Commission does take a view about same-sex marriage. It is a view that is espoused by Mr Wilson, as the Human Rights Commissioner, and I know shared by Professor Triggs, and I think I can say it is the corporate view of the Human Rights Commission. That is not a view about the law. It is not a view about international law. It is a view about the policies that, in the view of the Human Rights Commission, Australia should adopt. In arriving at that conclusion, the Human Rights Commission is entitled to, as it does, have regard to the legal position in other jurisdictions.

Lastly, if I can be helpful, I have just looked at the ICCPR. Among the Asian parties to the ICCPR are Afghanistan, Bangladesh, Cambodia, East Timor, India, Japan, South Korea, Laos, Pakistan, Papua New Guinea, Sri Lanka, Thailand, Vanuatu and Vietnam.

Senator CANAVAN: Thank you for that, Minister. That is certainly my view as well on that distinction. Ms Triggs, you said one aspect of the UPR is—and it has been so long since the answer that I am paraphrasing—to advocate for progress on this area. On your website, though, where you have got a whole page devoted to the Universal Periodic Review on human rights, where does it say that? I have not read every word, but my reading of the relevant sections of that page indicates, as I said earlier, that the UPR is about assessing our compliance with obligations that we have signed up to, not going beyond and progressing human rights in a political philosophy sense as Mr Brandis said. As I ask that question, can I say I have no issue with the fact that you do have a statutory right to advocate on generic human rights issues. My question specifically goes to your submission, to the legal position in other jurisdictions.

Senator CANAVAN: Thank you for that, Minister. That is certainly my view as well on that distinction. Ms Triggs, you said one aspect of the UPR is—and it has been so long since the answer that I am paraphrasing—to advocate for progress on this area. On your website, though, where you have got a whole page devoted to the Universal Periodic Review on human rights, where does it say that? I have not read every word, but my reading of the relevant sections of that page indicates, as I said earlier, that the UPR is about assessing our compliance with obligations that we have signed up to, not going beyond and progressing human rights in a political philosophy sense as Mr Brandis said. As I ask that question, can I say I have no issue with the fact that you do have a statutory right to advocate on generic human rights issues. My question specifically goes to your submission, to what is an international review of our record and one in which you do not seem to indicate has the scope to do what you have recommended in this area.

Prof. Triggs: I will certainly be happy to take your question on notice.

Senator CANAVAN: Thank you.

Senator SIEWERT: I have questions for Mr Gooda and Ms Ryan. First off, I want to say how much I enjoyed reading your latest report last year. I think you raised some really important issues. I have some questions coming out of that, both for you and for Ms Ryan. I want to go to the issues first of disability and issues that you brought up about Aboriginal people with disabilities. I am wondering, first off, if you have looked at some of the issues around—I am addressing this to both of you—employment of Aboriginal people with disability. We know
we have got poor outcomes in the broader community, and I am wondering if there are some specific points for Aboriginal and Torres Strait Islander peoples.

**Mr Gooda:** I have mentioned before in estimates about how the commission works. It is really intersectional with Commission Ryan carrying out the inquiry into employment for people with disability and aged people. We always ensure that the Aboriginal perspective is taken into account. On several occasions, I will co-convene a consultation process with Commissioner Ryan. We have done that a few times around Australia, just to make sure the issues involving Aboriginal and Torres Strait Islander people are well and truly canvassed in Commissioner Ryan's inquiry. We had a particularly big roll-up at Redfern a few months ago, and it went over time. People were interested in raising it. But, generally, it is one of those issues that fall through the crack with disability in the Aboriginal and Torres Strait Islander community. After discussions with the First Peoples Disability Network, that is why I decided to highlight the plight of Aboriginal and Torres Strait Islander people with disability in my report last year.

**Senator SIEWERT:** I also specifically noted the point you made about the NDIS and the issues that need to be addressed for Aboriginal people. I am particularly asking about employment because of some of the policies that we have seen. I want to get to those in a minute. Commissioner Ryan, I was going to ask for a general update about your inquiries into both older Australians and people with disabilities. Are there any issues that are specifically coming out around employment for Aboriginal and Torres Strait Islander people with disability, as opposed to the broader community of people with disability?

**Ms Ryan:** Yes, there are issues. I am sure you will not be surprised to hear that the challenges facing people with disability in general to get and keep employment are multiplied when there is another factor of prejudice or discrimination, as in the case of Aboriginality. I have been greatly assisted by Commissioner Gooda in who to contact and who to invite to discussions and consultations. As Commissioner Gooda said, he has co-convened some of our major consultations aimed specifically at Indigenous people. Race discrimination, which many Indigenous people still experience when they try to access employment, complicates and adds to disability discrimination.

We are looking more broadly in the inquiry at what our education and training systems offer people with disability in preparing them for the workforce. In school-level education, it is a very uneven picture—as the senators would be aware because there has recently been a Senate inquiry into that very issue. In vocational training, again, it is a very uneven issue. If Indigenous children or young people are living in remote areas, their capacity to access education which will prepare them for employment or vocational training is often more limited than that of city children. So I think it is a compounding of discrimination and a compounding of the lack of preparation for jobs that may be suitable. I have not had the opportunity to give a summary of where I am at to the Attorney yet, but I hope that that will happen very quickly. I expect that what will come out of the report more broadly will be about preparedness, access to training and retraining, and transition from school to employment. Transition from school to employment, particularly for students with disability, is a much more challenging situation.

Yes, on the one hand, Indigenous people with disability suffer greater difficulties. Some of those difficulties specifically relate to where they live; some relate to what sort of educational or vocational training they have been able to access. But, of course, the issue of employer ignorance, prejudice or fears about hiring people with disability can be much greater. On the other hand, I was greatly heartened by some of the evidence given by the First Peoples Disability Network representatives. They have thought about these things for a very long time. They are very informed. I recommend a meeting with that organisation to any senator who wants to hear more about what they are doing to not only put the issues on the agenda but also propose some things that we can do to change the disadvantage.

**Senator SIEWERT:** An announcement was made a couple of weeks ago around the numbers of people with disability under 35 who have been moved off the disability support pension onto Newstart or wherever. Have you looked at those figures and have either of you have done any analysis of the number of Aboriginal and Torres Strait Islander people who were included in that group? If you have, what impact has that had?

**Mr Gooda:** I have not had a chance to look at that yet, but it is something that is on our agenda.

**Senator SIEWERT:** When will you be doing that?

**Mr Gooda:** It is in consultation with the First Peoples Disability Network; they are the people I go to for advice on this. I know it will have a significant impact. By any measure, Aboriginal and Torres Strait Islander people are the most underemployed and unemployed people in the country. Like Commissioner Ryan said, it is a compounding issue when it comes to disability.
Ms Ryan: If I could just add, in one sense, if people are being moved off the disability support pension it should be that they are able to gain employment. If a person can move from the disability support pension to employment, I think we would all welcome that. But I have also not had the chance to get further information. If a person is moved off the disability support pension because they are assessed as capable of getting a job but they still find the doors shut in their face—because of their disability or, in this case, their Aboriginality—that is a most undesirable outcome.

I do not have the actual numbers as to who is affected by that but it is certainly a matter I will be trying to get more data about. We all want to see people getting off Newstart and off disability, into jobs. But they cannot be taken off, in my view, their benefits if they are then going to just encounter such obstacles that they never get a job.

Senator SIEWERT: Has the issue of young people under 35 being moved off disability support been raised with you?

Ms Ryan: What has been raised about people in that younger age cohort is the difficulty of getting started in a job. We have heard a lot of evidence from families, from individuals themselves and from their representative organisations about how difficult it is to get into a job. Sometimes they end up on disability support pension because of the lack of the job prospects. I am hoping we will be able to make some recommendations that might increase the number of jobs available. And, of course, as in the other part of my work I am very concerned about what is happening to people as they get older, we are also very well aware that that transition from school to your first job, which is always critical for every young person, is particularly critical for Indigenous people and people with a disability. That is where the focus has been for the inquiry. I hope there will be some important discussion of it in the report.

Senator SIEWERT: Mr Gooda, has it been raised with you?

Mr Gooda: Yes, it has been raised with me. When the government started a bit of a crackdown on people with disability pensions it was raised with me more generally, not just with young people going off the pension into work. But I agree with Commissioner Ryan that the more people we can make that happen for, if they are suitable for work—but the issue we have is more generally for Aboriginal employment. It is the support they get. They need support to transition if they have been on a disability pension for any length of time. They need a lot of support to get there. While we have providers out there looking for employment, they generally go for the low-hanging fruit—a quick turnover in getting people in and out of jobs. They make Aboriginal people wait for a while, so their unemployment period goes up so there is more money in it to have those people placed. We have some of those perverse things happening within the employment scene. We think that will just be multiplied for people with disability.

Senator SIEWERT: I have some more questions there that I will put them on notice. I did want to get to one more issue before my time runs out. You talked about out-of-home care in your report. I particularly want to ask about Western Australia. Are you aware of the current situation in Western Australia and the review that is going on? I have heard discussion around the traps about changing legislation about requiring children to be kept in out-of-home care until 18. It is speculation, I should say. I am wondering whether you have been involved or looked at that issue?

Mr Gooda: This Friday, I will be over in Perth talking to the family violence legal prevention area. That is certainly an issue that they have raised with me. I am waiting now to see what comes out of it rather than base anything on speculation. I think we have to get it right. I understand they are moving to permanent placements for children in care. The jury is still out as to whether that is a good or a bad thing. I noted Commissioner Ryan in the previous discussion when we were talking about the value of refugee kids being kept with parents in detention areas. I sometimes wish the same consideration was done for our people, that it is for the benefit of the child to be kept with their family and maybe we can get the state bodies to ask for a compelling reason to take the child away. If we look to the best interests of the child, it is in their best interests generally to be kept with their families.

Senator SIEWERT: Thank you. In regard to the CDEP legislation, do you have any comments on the concept of changing social security regulations specifically for particular regions and the approach that has been taken under the CDEP proposals, and the fact that it is predominantly Aboriginal and Torres Strait Islander people who will be affected by that approach?

Mr Gooda: Absolutely, and I have written about it in my report that you mentioned earlier. I have concerns that people in the mainstream Work for the Dole generally work for six months. They are proposing that our
people work for 52 weeks. There is talk about a proposal for the older people working an extra 10 hours every week rather than 15 hours; they would be required to 25 hours.

Senator SIEWERT: There are also different ways of payment. I think the legislation came out after your report.

Mr Gooda: Yes. We put in a submission and we made the point about those differences. I also go to the point in my report in the chapter on welfare, where I talk about both the CDEP and the healthy welfare card, that both of those should be locked-in processes. The problem we have is this: you will recall in 2014 there was a proposal to limit the payment of welfare support to kids generally under 25, I think, to six months of the year—


Mr Gooda: I think the idea of CDEP came from a fairly good place, that we cannot have people under 30 in remote areas getting income support for six months of the year when you see what is available for them six months of the year. This is where this concept of CDEP came in, but that legislation never went through. We do not have those rules and, all of a sudden, we have a perverse result where a program being developed to address a problem of proposed legislation—that is, 52 weeks a year work—and then the proposed legislation does not go through, but we are stuck with the 52 weeks work. I have big concerns about that.

In another life, I actually help implement something like 15 CDEPs in Queensland. In my consultations with those communities, when I sat down and explained everything to them—that they are giving up a right that all Australians have to a payment of a social security benefit for the betterment of their communities—of those 15 I cannot recall any community voting under 80 per cent to accept CDEP. That is why I argue that if you give people the opportunity to opt-in rather than having it just imposed, it is much more powerful because they believe in it, and it will be much more successful because they believe in it.

CHAIR: Thanks, Senator Siewert. We can come back to you if you have further questions. Mr Gooda, when you said you were going to talk about your previous life, I shuddered because I thought you might have been going to talk about your school days with Senator O'Sullivan.

Mr Gooda: We did attend the same school, St Joseph's Christian Brothers' College in Rockhampton.

Senator O'SULLIVAN: Two fine graduates, I might say.

CHAIR: I would have put Mr Gooda in a higher class than you, Senator.

Senator O'SULLIVAN: I would accept that.

CHAIR: Senator Bilyk.

Senator BILYK: I just want to revisit the issue about the selection panel for the new sex discrimination commissioner. Minister, do you think it was appropriate that Professor Triggs was excluded from the selection panel for the sex discrimination commissioner?

Senator Brandis: Excluded is your word, Senator. Professor Triggs was not included.

Senator JACINTA COLLINS: That is right, so she was excluded.

Senator Brandis: I do not know the actual numbers, but I know that it has not always been the case—commonly, but not invariably.

Senator JACINTA COLLINS: More often than not.

Senator Brandis: I do not know the actual numbers, but I know that it has not always been the case—commonly, but not invariably.

Senator JACINTA COLLINS: So it is quite unusual.

Senator Brandis: It is not uncommon for the president not to sit on the panel, but commonly the president has sat on the panel.

Senator JACINTA COLLINS: That is right. I think I can determine that she was excluded.
Senator Brandis: I think we can work out the flavour of what I am trying to tell you.

Senator JACINTA COLLINS: I understand your words clearly, Senator; I understand your words absolutely clearly. Did you have any discussion with Mr Turnbull about the appointment of the sex discrimination commissioner and the process for that appointment?

Senator Brandis: I have already indicated that the Prime Minister and I had a conversation, an outcome of which was the creation of an arms-length panel.

Senator JACINTA COLLINS: Did you argue for or against Professor Triggs being included on the selection panel?

Senator Brandis: I am not going to disclose to you private conversations with my ministerial colleagues.

Senator JACINTA COLLINS: I think that probably answers it.

Senator Brandis: No, Senator Bilyk. Let me challenge your innuendo there. I never disclose private conversations with ministerial colleagues, and you should not draw any inference one way or another from the fact that I adhere to the rule that I do not breach the confidentiality of conversations with ministerial colleagues.

Senator JACINTA COLLINS: Between you and the Prime Minister?

Senator Brandis: No, Senator. Again, you are drawing an inference that is not a necessary or appropriate inference to draw.

Senator JACINTA COLLINS: Between you and whom?

Senator Brandis: I had a conversation with the Prime Minister, an outcome of which was the establishment of an arms-length panel. That is as far as I am prepared to go, because I do not disclose contents of conversations with colleagues.

Senator JACINTA COLLINS: You have said that it is common for the president to be included—

Senator Brandis: Yes, in the past it has been.

Senator JACINTA COLLINS: so I am trying to find out what is different this time.

Senator Brandis: Do you have a question?

Senator JACINTA COLLINS: Yes. The question is: why was Professor Triggs excluded?

Senator Brandis: I have already told you. Professor Triggs was not excluded, she just was not one of the people who was—

Senator JACINTA COLLINS: Well, she was not included. Why was she not included? Seriously.

Senator Brandis: The panel that was assembled, chaired by the secretary of my department, included Elizabeth Broderick, the person who had occupied that position most recently. It also included my representative—

Senator JACINTA COLLINS: Who was your representative?

Senator Brandis: Mr Soso, and it included one other person. The process has been described by Mr Moraitis—

Senator JACINTA COLLINS: Who was the one other person?

Senator Brandis: Rebecca Cross.

Senator JACINTA COLLINS: From the department?

Mr Moraitis: From Prime Minister and Cabinet, representing the Minister for the Office of Women.

Senator Brandis: That was the panel. This is an agency within the Attorney-General's portfolio, so it was appropriate that it be chaired by the secretary of the department. Because of the nature of the office it was appropriate that Minister Cash be represented, as she was; it was appropriate that I be represented, as I was; and it was appropriate that Ms Broderick, the person who had most recently acted in that position—who had been the Sex Discrimination Commissioner and had recently retired—should be included. Those are the names we selected.

Senator BILYK: I just need to confirm what you said earlier with respect to news articles that Peta Credlin was put forward for the role of Sex Discrimination Commissioner. You stated here this morning that Peta Credlin was never considered for the role of Sex Discrimination Commissioner.
Senator Brandis: That is correct.

Senator BILYK: And nor was her name put forward?

Senator Brandis: Correct.

Senator BILYK: And nor were you involved in any discussion with anyone regarding her as a potential candidate for that role?

Senator Brandis: Ms Credlin was never a candidate and her name was never put forward, nor did she propose herself and nor was she proposed by anyone else.

Senator BILYK: And nor were you involved in any discussion with anyone regarding her as a potential candidate for that role?

Senator Brandis: As a potential candidate, no.

Senator O'SULLIVAN: Professor Triggs, I have been advised by the secretariat that neither of us has access to the transcripts of yesterday's Hansard, so we will let that roll over to another time. When it comes to the issue of suggesting that some of these detainees are in cruel and unusual circumstances, you related it to the accommodation and access to amenities such as washing machines and the like. Are you able, to the best of your ability, to list for me what you think are the circumstances that would give rise to being able to form the view that their detention is in cruel and unusual circumstances?

Prof. Triggs: I think the primary criterion is how they have measured on the medical tests, which demonstrate that almost all of them are at the highest level of trauma and mental illness.

Senator O'SULLIVAN: Is it fair to say that some of these people left a country where they were in complete oppression—in fact, that almost all of them were, by their own argument?

Prof. Triggs: A very high number of those who seek Australia's protection have fled discrimination, persecution or internal conflict.

Senator O'SULLIVAN: In many cases, for a long time they have lived with threat to their lives and have come from relatively ordinary circumstances in their own living conditions, and the like?

Prof. Triggs: Again, this is a generalisation, but something like 85 per cent of those who seek Australia's protection meet the definition of 'refugee', and those are conditions of persecution, discrimination and conflict.

Senator O'SULLIVAN: Would you accept that many of them have had very arduous journeys here? Thousands of kilometres, sometimes walking and taking any mode of transport they can.

Prof. Triggs: That is typical for most of them.

Senator O'SULLIVAN: And many of them have not one but many sea journeys in the course of their pathway to Australia.

Prof. Triggs: Again, generally that is true.

Senator O'SULLIVAN: From what I have seen of those sea craft they arrive on, they are dangerous pieces of timber floating around out on the high seas. The boats that they arrive in—it is not as if the QE2 has just dropped one over the side; these are junks and unseaworthy vessels. Is that a fair comment?

Prof. Triggs: It is a comment made by you; it is not a question I can particularly answer. Obviously, what I see in the newspaper suggests the circumstances—

Senator O'SULLIVAN: When you see footage of these arrivals, do you accept that we are dealing with not very glorious ships of the sea?

Prof. Triggs: They are arriving in conditions which are very dangerous. It creates significant risks to all aboard.

Senator O'SULLIVAN: My visual image, from evidence that has been given to this committee, is that they often arrive in a vessel that might accommodate 20, 30 or 40 people comfortably, but would have a couple of hundred on it.

Prof. Triggs: I cannot speak about the numbers. They vary enormously. Some have a very few, just a handful, and others are seriously overloaded and very dangerous.

Senator O'SULLIVAN: Many of them in their journey are exposed to the elements and are trying to attend to children and infants on board.

Prof. Triggs: You are making statements.

Senator O'SULLIVAN: No, I am asking you. I am drawing on the same source.
Prof. Triggs: What is the question? Perhaps you could be clearer.

Senator O'SULLIVAN: I am asking if that is your impression of the circumstances in which they arrive.

Prof. Triggs: I have the same access to information that the public does in relation to that.

Senator O'SULLIVAN: I will take that as a 'yes' because that is where my source is. Many of these individuals you would accept too were involved in very, very traumatic events such as ships sinking at sea, relatives dying, bodies floating around, losing children, brothers and sisters.

Prof. Triggs: Is that a question or a statement?

Senator O'SULLIVAN: I am asking: are you aware that that is part of their journey?

Prof. Triggs: Indeed. From the many interviews that we conduct, they all have a separate and individual story. Most of them are traumatic stories.

Senator O'SULLIVAN: Then they arrive into the custody of a nation where, perhaps, they do not speak the language. Is that a fair observation?

Prof. Triggs: Certainly.

Senator O'SULLIVAN: Where I am going with this is that it comes as absolutely no surprise to me that these people are traumatised, seriously traumatised. Professor Triggs, what I am trying to establish is that pretty well everyone accepts, and it comes as absolutely no surprise, that one or more of these refugees are traumatised within a family unit, such as parents, brothers, sisters or, indeed, children who have been old enough and have had a cognitive experience with this journey. Can we have a minute as this is a fairly important subject? I am distracted by the giggling behind me.

Senator McKIM: The chair has walked out on your questions, that is your problem.

Senator O'SULLIVAN: What I am trying to do now is that, within this cohort of people, I am trying to isolate those who may well have been traumatised as a result of something that happened post their journey. So they have arrived and now they have crossed over, so there is no trauma from the journey and now their trauma visits on them. Do you have any evidence to support the fact that people who were not traumatised are now traumatised as a result of their experience post their arrival either into the custody of Australian officials or in the detention camps? Have you separated that with the data when you have looked at it?

Prof. Triggs: Perhaps I could say that we deal with evidence and we deal with properly developed surveys and evidence with the assistance of our medical advisers. Of course we are making judgements where we have baseline studies. What is the condition of the families and children when they arrive and when they have been in detention for two, three, four, five or more years? How has continued detention affected their mental health.

The key point—and it is a perfectly fair one—is that many of these people arrive traumatised, but there are degrees of trauma. We have very clear evidence, all of which is in our reports that we have reported persistently to parliament, to demonstrate that, the longer the child and the family—the parent, the mother—are held in detention, the greater the level of exacerbation of that condition of trauma and mental illness.

Senator O'SULLIVAN: I accept that. Again, it would surprise me if that were not present. But that is not the burden of my question. Let me come back. For your health professionals to arrive at a determination that someone is suffering from a condition such as stress or trauma, I imagine that they engage with the patient. We will call them a patient for these purposes. They engage with the patient, ask them questions and apply tests to determine the genesis of that trauma. Is that correct?

Prof. Triggs: It certainly is, yes.

Senator O'SULLIVAN: Okay. In doing that, would it be unreasonable to suggest that they would be able to separate this trauma from that trauma in terms of its contribution to their condition?

Prof. Triggs: I did answer your question and fully understand it. Baseline studies are conducted by the medical officers from the International Health and Medical Services so that we know the condition of somebody when they have arrived. Within the first few weeks they are thoroughly examined, including their mental health. We then determine how the continued detention has altered, varied, exacerbated or minimised the conditions with which they arrived. It is for that reason that we are able to say with relative scientific evidence that the fact of prolonged detention has significantly worsened the traumatised conditions with which they arrived.

Senator O'SULLIVAN: I accept all of that, but the burden of my question that I am trying to point out is that you would be able to separate a refugee visitor who was not traumatised at the time that they arrived into the custody of Australian officials. You would be able to go down the list and go, 'No, this individual's trauma started post arrival as opposed to pre-arrival.
Senator O'SULLIVAN: Then we are in fierce agreement that almost all of these people pre-arrival, pre-engagement with any officials within this country were traumatised.

Prof. Triggs: I would like to get the exact figures from the medical services, but my understanding is that a relatively high number of those arriving had some level of trauma but since arriving that level of trauma has significantly increased.

Senator O'SULLIVAN: Do you believe it is a contention that, had we taken these people and located them in the suburb over there and given them some basic support, their trauma would have levelled out? They still have 10 cubits of trauma, but we have them in suburbs. You do not think that the change into a new country, the challenges with language, education, culture, trying to find work and trying to get a start back in life after this terrible incident would not also contribute to their trauma?

Prof. Triggs: We do know from wider studies undertaken not directly by the commission but by other groups within the community that, when people are released, particularly from lengthy detention, and go out into the community—children in schools in a suburban environment, not controlled by guards anymore, not behind the fences—their condition does improve significantly, particularly for the children. The children adjust very quickly into school. They get the language. They are into the school environment and, as you would expect and as happens to lots of traumatised migrants that come to Australia, they can flourish. But we are also getting very significant evidence from medical practitioners that some of these children are now with their families showing up in their surgeries with continued problems. So I accept the fact that, while we do know categorically that children's and their parents' conditions and mental health improve once they are released into the general community, there is still going to be a legacy of need to work with those people because they have a legacy of trauma from a number of causes.

Senator O'SULLIVAN: I agree with you 100 per cent on everything you have said, but again that was not my question. Could you focus on the core of my question. I know some of these refugees. They are in the suburbs in my community. I know them personally. I visit their homes. I talk to them. I am saying to you their trauma often continues to be exacerbated by the fact that they are trying to fit into a new culture. They are still having trouble with language and education, placing the children and all the stresses that come with trying to get a job. They cannot get a driver's licence. So, whether they go left to Nauru or right to Wilsonton—a suburb in my community—I am saying to you the exacerbation of their stress continues. My question is: do you accept that proposition?

Prof. Triggs: No, I do not, because I think that it is entirely inappropriate to compare the trauma of continued detention in the conditions of Nauru to living in a suburb in Australia. That is a significantly different situation.

Senator O'SULLIVAN: Has the Human Rights Commission looked at this question? Have you visited—

Prof. Triggs: We have not done any research—

Senator O'SULLIVAN: Then how are you able to make the statement?

Prof. Triggs: Because I know the difference in the conditions because I live in a suburb myself. You have not been precise as to which one you are describing, but—

Senator O'SULLIVAN: I am sure they are not living in your suburb, Professor Triggs—

Prof. Triggs: I think you might be surprised, as a matter of fact, but I think that is entirely irrelevant to this discussion—

Senator O'SULLIVAN: or your house or your circumstances—

Prof. Triggs: We would be delighted to be funded to do the research to see what is happening to the many thousands of people that are currently in the Australian community on bridging visas without having their claims to refugee status assessed. That is in itself a significant cause of tension and concern. Whether I would describe it as trauma is another matter, but we would love the opportunity to do the research and to answer the question that you would like answered.

Senator O'SULLIVAN: I am going to leave this with a final question, and my question and your answer will speak for themselves: are you telling me that the ones who go to the suburbs in my community are not suffering from any further exacerbation to the trauma for the reasons that I have articulated?
Prof. Triggs: They may very well do, and the things that you have listed as being difficulties for them, I would imagine, are complications. I should think that is a very important question to ask. But they are difficulties of adjustment that are very well known, and we have many support services to assist—

Senator O'SULLIVAN: So why is the commission focused on that and not that at the same time?

Prof. Triggs: Because it is illegal under international law to subject children and their families to the conditions in Nauru. It is not illegal to allow refugees and asylum seekers to settle in our suburbs and to get on with life.

Senator O'SULLIVAN: So your question is about the legality of it, not the human question about whether they continue to be traumatised in the circumstances?

Prof. Triggs: We are always interested in the human question, but our job, my job, is to assess compliance with international law, and I think in terms of settling refugees and asylum seekers in the community Australia has a very high record and we do provide extremely high-quality services, so that is not a matter of priority for the commission at the moment. But in due course, as more and more people do not get permanent residence in Australia, there will be problems down the track, and we think certainly your questions suggest that more funds need to be devoted to research on these issues.

Senator O'SULLIVAN: Well, we will come back to it.

CHAIR: In the circumstances—subject, Minister, to you and Mr Moraitis—we might continue on. We were supposed to break for lunch at 12.30, but we might make it 12.45 or 12.50, and then we can complete the Human Rights Commission. My apologies for my laptop taking control and me not being able to cut it down. It was a report from The Age where the video came on automatically. I just want to vacate my earlier ruling that photographs could be taken. I said to the government photographer that it was only if he took me from the right side. I should have made that qualification for The Age photographer, because he has very flattering photos of both Senator Hanson-Young and Professor Triggs, a very unflattering photo of me and Senator O'Sullivan, and a whimsical photo of Commissioner Wilson.

Mr Wilson: That's not possible!

CHAIR: So we might have to change the ruling for the media to: 'Only if they take flattering photos'! Anyhow, my apologies for that oversight.

Senator BILYK: I just want to go back to something that Senator Brandis said about an hour ago. I was in and out of the room a bit then. I had to go to another estimates for a while, but you were talking about the nature of human rights. I am just wondering: would you say the right to be a bigot is one of those human rights that is political philosophy rather than law?

Senator Brandis: The point I was trying to make is that, in my opinion, too much of the discussion about human rights is dominated by human rights lawyers who sometimes seem to think that human rights issues are exclusively legal issues to be disposed of by courts and tribunals interpreting international instruments. In my view, although human rights law is, of course, a very important part of the human rights discussion, the human rights discussion is not merely about human rights law, and lawyers are not the only people who are entitled to have views about what human rights are. If I could give you an example: there is a very frequent debate in this country about where the right to press freedom stops and the right to individual privacy begins. That is a debate about which different people, in good faith, may have different views. It is not purely a matter for lawyers to decide.

The debate about human rights is fundamentally a debate, in my view, about values and, more particularly, a debate about people's political philosophies. The debate about political philosophy goes back to the pre-Socratics. It is a debate that is in the nature of human beings living together in societies. It is a debate that will never end, and nor should it ever end, for as long as humans live together in societies. And the suggestion that human rights are what specialist human rights lawyers declare them to be is, in my view, an extremely confined notion of what the human rights debate is all about.

Senator BILYK: So you are still saying that people have the right to be a bigot?

Senator Brandis: Well, you are running two concepts together. You started off by saying, 'It's okay'—

Senator BILYK: I asked about, yes, the right to be a bigot—whether it was a human right or a political philosophy.

Senator Brandis: I do not think it is okay, and I never have. But I do believe that—

Senator BILYK: I think you did say that in the Senate chamber.
Senator Brandis: No. I have never said that. But I do believe that people have, in a liberal democracy such as ours, a right to express a variety of views, including unpopular views. I think that Senator Hanson-Young and Senator McKim up there have a right to be Greens and to espouse Green ideology. I would defend to the death their right to espouse Green ideology. That does not mean I agree with it.

CHAIR: I would hope not.

Senator BILYK: I was just checking that nothing has changed with the government's attitude to human rights since you have changed Prime Minister.

Senator McKIM: If the government proceeds with its proposal to remove direct access to permanent residence for asylum seekers, what would be the implications around Australia's international human rights obligations? Specifically, would it contravene any of Australia's international human rights obligations?

CHAIR: Minister, is that a hypothetical?

Senator McKIM: No, the proposal is public.

CHAIR: Is it?

Senator Brandis: Could we have the question again please.

Senator McKIM: The question is: if the government proceeds with its proposal to remove direct access to permanent residence for humanitarian visa holders, would that contravene any of Australia's international human rights obligations? It was a question to Prof. Triggs actually.

CHAIR: As a rule we do not allow hypothetical questions in the Senate or in estimates committees. 'If something happens in the future what might be' is hypothetical.

Senator McKIM: I will rephrase the question to remove the hypothetical element from it if that is your ruling.

CHAIR: That would be good.

Senator McKIM: Would removing direct access to permanent residence for humanitarian visa holders contravene any of Australia's international human rights obligations?

CHAIR: Again, it is hypothetical with 'would'.

Senator Brandis: On a point of order, it is also a question asking the witness to offer a conclusion about the law, which is, I recall from Senate standing orders, not a proper question in the Senate or its committees.

CHAIR: It might also be an opinion.

Senator McKIM: I am happy to argue this on a point of order if it will make it easier. I am quoting from a cabinet document that was obtained and made public last week by at least one media outlet. The department of immigration yesterday confirmed that this document had veracity—that is, that it did exist. So I will rephrase again the question, which, I believe, would put it within your comfort zone around whether or not it is hypothetical. Will removing direct access to permanent residence for humanitarian visa holders contravene any of Australia's international human rights obligations?

CHAIR: First of all, the evidence yesterday—I am not sure if you were here—was that it was not a cabinet document, that it had not gone to cabinet but that it was a draft by someone in the department. I think that is an accurate reporting of it. So it is not a cabinet document. It was a draft of, I gather, a middle-order official. It is a bit difficult to ask witnesses what might happen if this, that and the other will happen because we do not know full proposal.

Senator McKIM: In fact I have removed that element of it. In none of my substantive questions have I referenced a cabinet document. I have simply said: will doing this contravene Australia's international human rights obligations? The Human Rights Commission has an advocacy role here around—

CHAIR: Perhaps if the question were: what are the human rights obligations in relation to whatever the substance is—

Senator HANSON-YOUNG: The current law is that they get permanent residency. If we take that away, does that contravene any international human rights?

Senator McKIM: And there have been hypothetical questions asked this morning already without a ruling from you.

CHAIR: That shows that I am not as good chairman as I thought I was. Anyhow, I think it is inappropriate but it is almost lunchtime. Prof. Triggs, if you can give some sort of an answer.

Prof. Triggs: Thank you for the question. I, if I may, would like to take it on notice because you raise an important legal question and I would like to really examine what the implications of this purported proposal are. I
think it is something that we would need to look at in a little bit more detail. But perhaps I can make a general statement—that is, Australia is a sovereign body and has the right to decide those who would have permanent residence and that is a very important underpinning principle of international law. With that in mind, we would be very pleased to get back to you with a view of what we think the law is.

**Senator McKIM:** Thanks, Prof. Triggs, I really appreciate that. There has been some to-ing and fro-ing this morning around the views of the UN Special Rapporteur regarding children in Nauru and the view of the rapporteur that that could constitute cruel treatment of children. I ask you whether this kind of expression of view compromises Australia's international human rights reputation?

**Prof. Triggs:** It certainly calls into question Australia's hitherto very high regard in the international legal environment for our human rights record. But it is a particularly important point in the context of our bid for the Human Rights Council.

**Senator McKIM:** So does it present extra hurdles in terms of our bid for the Human Rights Council?

**Prof. Triggs:** I think the general question of the transferring of those seeking our protection under the refugee convention to Nauru and to Manus is a matter that is objectively of great concern to members of the Human Rights Council and to the international community generally. I was at the Geneva meeting of the UPR process and I counted well over 60 countries that raised their concerns and asked Australia courteously to review the policies, particularly with regard to children. So this is not a small issue; it is a matter of concern to the overwhelming majority of those states that chose to speak about Australia's human rights record generally.

**CHAIR:** Could you, on notice, list the 60 countries.

**Prof. Triggs:** Yes, I will provide you with that list.

**Senator McKIM:** Did you pass those concerns onto government?

**Prof. Triggs:** I did not need to because they are concerns of sovereign governments and those concerns are relayed to the Australian government as a sovereign government and also relayed through the public proceedings of the UPR process in Geneva. They are on the public record for anybody to see.

**Senator McKIM:** In your judgement, does our policy framework around asylum seekers disadvantage our bid for membership of the Human Rights Council?

**Prof. Triggs:** That really is a question of policy—

**CHAIR:** Are these questions of opinion?

**Senator McKIM:** Chair, while you are taking that advice, on a point of order, I did ask Prof. Triggs only moments ago around the impact on Australia's international human rights reputation of our asylum seeker policy framework and you did not take any issue with that question when I asked it when in fact that was asking Prof. Triggs for a judgement call or an opinion yet you are now, when the questions get a little bit more politically problematic for the government, taking a position that you failed to take last time.

**CHAIR:** I do not see anything politically problematic for the government in anything that has happened.

**Senator McKIM:** Missing out on a chair on the Human Rights Council might be.

**CHAIR:** That is not my role as chairman to work out what is politically problematic. I repeat what I said at the opening of the estimates hearing:

The Senate has resolved—

not me—

that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and should be given reasonable opportunity to refer questions asked to superior officers or to the minister. This resolution prohibits only questions for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how the policies were adopted.

Now, that is read at the beginning of every estimates committee. If your question is not a question about an opinion on policy then I am not sure what an opinion on policy is.

**Senator McKIM:** So you are ruling that out of order?

**CHAIR:** Yes, I am.

**Senator McKIM:** All right. I want to move on and ask whether the commission is aware of the Tasmanian anti-protest laws under which former senator Bob Brown was arrested a few weeks ago. It did generate some media coverage. The law is the Workplaces (Protection from Protesters) Act 2014. Effectively, it criminalises some forms of protest in Tasmania and provides for the courts to impose terms of up to five years imprisonment...
for some protest actions. Does the commission have a view about those laws and their consistency or otherwise with Australia’s international human rights obligations?

Prof. Triggs: We have not received any complaints in relation to that matter and therefore we have not looked specifically at those laws. But there are many other examples where we do consider the balance between the rights to freedom of speech, freedom of assembly, political demonstration and political activity and the needs of a workforce or other national priorities—or, in that case, a state priority.

I would be very happy to refer you to the work that we have already done in this area. As I said, it arises in many contexts. But if it would help you, we are very happy to look at that piece of legislation to see, in our view—and that is all it would be—whether the balance is probably achieved. Or, to put it in more legalese: whether the measure in the legislation is a necessary and proportionate response to achieve a legitimate outcome—

Senator McKIM: Yes.

Prof. Triggs: That is the mantra, if you like, in law—both in international law and in Australian law, as articulated by the High Court. How we fall on that question is, of course, our view that it will only be resolved for the purposes of Australian law by the Federal Court or the High Court.

Senator McKIM: Thank you, Professor. I do appreciate those caveats.

Prof. Triggs: But we would be very happy to get back to you if that would help you.

Senator McKIM: Would you be happy just to take that as a question on notice, or should I write to you—

Prof. Triggs: Very pleased to take it—very happy to do that.

Senator McKIM: Thank you very much, Professor. That is appreciated. Given the Chair’s ruling on some of my previous questions I am going to draw the line there. I may have some further questions on notice, which I will submit through the normal process.

Prof. Triggs: Thank you.

Senator O’SULLIVAN: I have two questions that I was just reminded of by that. Of those 60 countries that talked about our human rights performance, when we get the list will we see whether any of those countries have any human rights challenges themselves? From your memory—you have been able to quantify them, so you were there—are there any that might be challenged in this place themselves?

Prof. Triggs: I would say that every state has aspects of its domestic policy and practice which would raise questions of human rights.

Senator O’SULLIVAN: Did you get an opportunity to respond to them—to speak publicly about Australia?

Prof. Triggs: The Australian government will be responding formally to those matters, I understand in highly positive, collaborative and useful ways, in March. The Australian Human Rights Commission has the status also to make a response. We are talking to the Department of Foreign Affairs and Trade about the nature of that response, and I believe it will be a very helpful one. But that is all I can say at the moment.

Senator O’SULLIVAN: No doubt it will point out that we are down from 1,992 to 90-odd. I am sure that will be the feature piece of our response to their criticisms about children in detention. Thank you.

CHAIR: Thank you to everyone and, again, thanks to Professor Triggs and her fellow commissioners and staff. Thank you very much for being with us yet again.

Proceedings suspended from 12:54 to 14:02

Office of the Australian Information Commissioner

CHAIR: We are now dealing with the Office of the Australian Information Commissioner. I welcome Mr Pilgrim, the Acting Australian Information Commissioner, along with your assistant commissioners. Thank you for joining us. If you would like to make an opening statement, please do so now.

Mr Pilgrim: I would like to make a brief statement outlining the current work of the Office of the Australian Information Commissioner and touch on some of our priority areas. As the committee is aware, the functions of the OAIC fall primarily from our regulatory role under both the Privacy Act and the Freedom of Information Act. I am pleased to be able to report that while our workload and responsibilities under those statutes grow, the office is continuing to manage its responsibilities effectively within the resources available to us.

I will start with some statistics. In the previous financial year, 2014-15, the office received some 18,066 inquiries covering both privacy and FOI matters. In the first six months of the current financial year, to 31 December 2015, we have received approximately 10,266. In terms of our privacy functions, in 2014-15 we
received 2,840 complaints. In the first six months of this financial year we have received 1,076 and we have finalised 1,107 in an average time of five months. We have also received 55 voluntary data breach notifications in the current year to 31 December, having received 117 in the previous financial year. I have opened seven commissioner-initiated investigations, having opened four in the previous financial year. We have undertaken nine assessments, formerly known as audits, of both public and private sector entities up to 31 December 2015. In the previous financial year we undertook 12 in total. We have lodged 19 submissions to various parliamentary committees and government consultation processes dealing with the use of personal information. In the previous financial year we made 36 such submissions.

In 2016 some of our priority areas in privacy will focus on continuing our oversight role in the eHealth sector, particularly with the trials of the opt-in system with the My Health Record. We will work on the extension of our oversight role emanating from the data retention and foreign fighters acts. We will be providing regulatory oversight of the privacy implications arising from the enhanced welfare payment integrity initiative. We will be working with the Attorney-General's Department on the security agenda, including specific issues such as national facial biometric matching capabilities. We will also be working with the Attorney-General's Department on the proposed mandatory data breach notification scheme.

Further, under what I would describe as the broad title of data usage, we are engaging closely with the Department of the Prime Minister and Cabinet on the public sector data management initiative. We will be working on guidance for both the public and private sectors on big data and privacy, as well as data matching and de-identification. We also continue to work with our international counterparts in terms of the globalisation of personal data flows and the need for cross-border cooperation in the regulation of these movements of personal information. We will be taking opportunities to engage with the community on privacy more generally through our education and promotion work, such as during Privacy Awareness Week in May, where this year the newly appointed United Nations Special Rapporteur on privacy, Professor Joseph Cannataci, will be in Australia to speak at our functions.

Turning briefly now to our FOI function, in the 2014-15 financial year we received 373 applications for information commissioner reviews of agency decisions. In the current financial year to 31 December we have received 249 and finalised 236. I am also pleased to advise the committee that our average time taken to close an information commissioner review has reduced from approximately 10 months in 2013, just prior to the announcement of the disbanding of the OAIC, to three months by the end of 2015.

By way of some further breakdown, of the 236 IC review applications are finalised, 31 per cent were conciliated or withdrawn, 24 per cent were finalised as being misconceived, frivolous or vexatious, 18 per cent went to the Commissioner, myself, for decision, 10 per cent were referred to the AAT, 10 per cent were out of jurisdiction, three per cent were substituted with a different decision by the agency, and two per cent are subject to an IC review having reached an agreement between both parties.

I hope this provides with the committee with a useful overview, albeit a brief summary, of the activities of our office. Of course, as I have said to the committee before, we are able to achieve this through a very committed and enthusiastic team of people. Thank you.

CHAIR: Thanks very much, Commissioner.

Senator RHIANNON: Attorney-General, at the Senate Legal and Constitutional Affairs Legislation Committee on 20 October last year, you referred to the current arrangements for the operations of the OAIC as 'transitional'. Pending parliament's decision to abolish that statutory agency, the OAIC, does the government continue to regard as transitional arrangements which have been in place since the May 2014 budget?

Senator Brandis: Yes. The government did announce in that budget that as an economy measure the office would be abolished and its functions consolidated. However, as I am sure you are aware, the opposition parties and your own party have made it very clear that legislation to achieve that economy would not be passed through the Senate. So the government has not presented legislation to give effect to that measure to the Senate. In last year's budget we funded at the OAIC for another 12 months to the sum of $1.7 million. The government's position has not changed. I apprehend that the positions of the opposition and of your party have not changed either. Therefore, the OAIC remains in being, but the government's intention to achieve the economies of which I have spoken remains.

Senator RHIANNON: On the same day that you spoke about transitional arrangements, you also used the word 'imminent', when you said that the statutory repeal of the OAIC is 'imminent'. What is your definition of 'transitional' and 'imminent', considering that it is now 2016?
Senator Brandis: I think this is variable. It depends on the political circumstances. It is not going to happen unless a bill passes the Senate. The government is not going to present a bill—

Senator RHIANNON: That was not the question. The question is just about the definition of those words.

Senator Brandis: I will answer your questions in my own words. I said that the meaning is variable depending on the circumstances and I am going on to describe the circumstances. The circumstances are that the government has an intention, which it has declared, for reasons which it has explained, but that intention cannot be given effect to. So the arrangements continue as they are for the time being.

Senator RHIANNON: Mr Pilgrim, you spoke on 1 September last year. It was a presentation to the Law Society of New South Wales Government Solicitors' conference. In that you spoke about the situation we are discussing with regard to the future of the OAIC. You stated, 'We began to implement some of the changes.' Prior to that, you probably remember that you were speaking about what had happened about the bill passing the House of Representatives but not yet being considered by the Senate. Then you come to the end of that paragraph where it states, 'We began to implement some of the changes.' Considering that this is not law yet—it has not been passed—why did you start to implement the changes?

Mr Pilgrim: The decision taken by myself and the former commissioners who were still in the office at the time was on the basis that the announcement had been made about the proposal to disband the OAIC. In the budget of that year there were steps taken to reduce the budget available to the OAIC to allow it to continue to function with all of those resources. As we have touched on at previous hearings, some of those functions were to go to the AAT and some funding was to go with those to the AAT. Similarly, there were some functions that were transferred back to the Attorney-General's Department and the funding for those functions went as well. To put it simply, there was a decision taken that we could not perform all those functions with the resources available to us. There was an intention that these would be the new arrangements, so we worked to facilitate those changes, making sure that there were certain functions that only the Information Commissioner could continue to do in terms of IC reviews. We continued to undertake that function. However, functions in terms of policy issues around guidance, the guidelines and reporting for example, went to the Attorney-General's Department with the funding, so we facilitated the move of those particular functions.

Similarly, on the basis that there was an intention for the OAIC to be disbanded, and the fact that our resourcing had been changed, we also had to look to the future of our staff. We had a number of staff in the Canberra office here who we wanted to make sure we were able to help to relocate to other agencies and other positions, and I am pleased to say we were able to do that quite successfully in almost all cases. So we wanted to make sure that we were able to look after those staff and make sure they had the opportunity to gain other employment, on the basis that the intention was that the office would not be continuing. It is for those reasons, around functionality and also wanting to look after our people, that we made the decision to start implementing some of those changes.

Senator RHIANNON: The act requires the OAIC to independently review refusals of freedom of information applications and complaints about the handling of those applications. We often read that emphasis is given to the need for the independence. Under the current system, with the new role of the Attorney-General's Department, is that independence still in place?

Mr Pilgrim: It certainly is, Senator. For example, it is only the position of the Australian Information Commissioner that can make Information Commissioner decisions under the act. As I was outlining through some of the statistics, that is primarily the work we have been undertaking over the last 12 to 18 months since the announcement. In terms of complaints, the act allows for the Office of the Australian Information Commissioner or the Ombudsman to undertake the handling of the more administrative complaints under the FOI Act. As part of the arrangements that were being put in place, the proposed arrangements, the complaints process was handed over to the Ombudsman's office, who has been handling those since late 2014. I would add that I do not have the exact numbers of the complaints that the Ombudsman has handled at the moment, but at the time when we were handling them they were not a very large proportion of our work.

Senator RHIANNON: What arrangements are in place for the continued exercise of the Information Commissioner's functions and what additional resources have been provided to the OAIC for the continuing exercise of its FOI functions in 2015-16?

Mr Pilgrim: I think, as Senator Brandis has mentioned, the OAIC received additional funding of $1.7 million to allow us to undertake a streamlined process in terms of our FOI functions, those being primarily the ones around handling Information Commissioner reviews. As I said, it is a particular statutory power that only the commissioner can exercise, and that has been our primary function in terms of our responsibilities under the FOI
Act for the last 12 months. In terms of the broader Information Commissioner powers coming from the Australian Information Commissioner Act, we have not been exercising those powers, and that was a decision the former commissioner and I took in terms of looking at the resources that were available to us and also in terms of the proposal to disband the OAIC.

Senator RHIANNON: So is any Commonwealth entity other than the OAIC currently providing reviews of FOI applications or complaints about the handling of those applications that are independent reviews?

Mr Pilgrim: If I have understood your question correctly, my primary function is to handle Information Commissioner reviews. If I can just go back to the statistics I mentioned in my overview, I will remind you of the numbers we have had. In the year to date—that is, up until 31 December 2015—we have received some 249 applications for Information Commissioner reviews, and we have finalised some 236. We are doing that on a streamlined model, in part to reflect the proposal for disbanding the OAIC. So, in some particular cases, we will close a matter because we believe it can best be dealt with by going through the AAT, for example. As I was mentioning earlier in terms of the proposal and the break-up of funding, the AAT, as part of the decision around the disbanding of the OAIC, received additional funding to allow it to undertake additional amounts of hearings in terms of the FOI Act.

Senator RHIANNON: With this new system, is the new way of doing it a greater cost to an applicant than would be charged were the function in question to be under the OAIC?

Mr Pilgrim: That would be a matter of circumstance for individuals. It depends on the applicant. A number of the applicants we get are coming from organisations, such as journalists, who are applying for access to documents and they have had a decision refused. Certainly there will be situations where it may be an individual. When we do look at exercising the power under the act to close a matter because we believe in the best interests of the administration of the act it could go to the AAT, we certainly do take submissions from the parties to ascertain their willingness for it to go to the AAT and take matters such as their ability to pay into account.

Senator RHIANNON: Aren’t by far the majority of your applicants individuals—they are not journalists, they are not organisations but individuals trying to sort out their circumstances with some government department?

Mr Pilgrim: Certainly the majority of applications that come in under the FOI Act—I am happy to be corrected by my colleagues—do come in from individuals, and a lot of those are individuals seeking access to their personal information under the FOI Act. They are not necessarily, though, the ones we think need to be corrected by my colleagues.

Senator RHIANNON: In terms of when those people are thinking about where their application is going, when they see that they could face a bill of more than $800, they may not know about various possibilities. Surely that could be a deterrent—for ordinary people this is a lot of money.

Mr Pilgrim: It is a lot of money. As I was saying, before we make the final decision about whether we are going to close the matter under the particular provision we seek submissions from the individuals and we would take those sorts of issues into account when we receive those submissions.

Senator RHIANNON: Have you done any assessment of whether this could be a deterrent? Have you made any assessment of the impact the changes are having at various stages on people’s willingness to proceed?

Mr Pilgrim: I do not think we have done any particular study into that but one thing I would suggest is that the number of Information Commissioner reviews that the office is receiving is starting to trend up at the moment, so we are getting more applications coming in under the current circumstances.

Senator JACINTA COLLINS: Thank you for the update in your opening statement—it has probably eliminated many of the questions I would have asked, given previous discussions which I do not propose to revisit. Accepting, as in part Senator Brandis said, the position we are in in relation to the government’s endeavours to use the Office of the Information Commissioner for savings purposes and the will of others not to
cooperate, can I ask you a bit more about your streamlined process and the figures you have provided us with today. You mentioned the 236 finalised matters. How many finalised matters were there in the previous period?

**Mr Pilgrim:** In the 2014-15 financial year we received 373 matters and we finalised 482.

**Senator JACINTA COLLINS:** So the finalised figure in part reflects what has gone on in previous periods per head, although less so now that your response time is down from 10 months to three?

**Mr Pilgrim:** That is correct.

**Senator JACINTA COLLINS:** Some of the decline in the response time was, if I recall, anticipated given the establishment of the office and the process to get processes working. Was that the case?

**Mr Pilgrim:** I believe that may have been some evidence given at previous hearings.

**Senator JACINTA COLLINS:** So it was anticipated quite aside from anything that might pertain to your streamlined process?

**Mr Pilgrim:** We have undertaken over the last 12 months internal reviews to further streamline how we process within the organisation the work, including focusing more on up-front conciliation so that we can try to bring the parties together to work out what is, for want of a better description, the sticking point on an issue rather than try and go through some of the more adversarial processes.

**Senator JACINTA COLLINS:** I think you mentioned a 10 per cent referral to the AAT. How does that compare to previous hearings?

**Mr Pilgrim:** That 10 per cent represented 25 matters that were referred to the AAT out of the 236 that we finalised. In the 2014-15 financial year, where we finalised 482, we closed 61 matters so that they could go to the AAT. I just cannot quickly work out what the percentage might be.

**Senator JACINTA COLLINS:** Sorry; how many was it out of the total?

**Mr Pilgrim:** It was 61 out of 482.

**Senator JACINTA COLLINS:** Okay; slightly higher. Do you have a sense of what FOI matters may not be coming to you because of the streamlining, as opposed to those that you are simply referring?

**Mr Pilgrim:** No, I would not have an idea of what is not coming to us. If an individual or an applicant wants to challenge the decision of an agency under the FOI Act they would need to apply to our office for an Information Commissioner review. As I mentioned, on the figures we have, the matters are slightly going up at the moment. So I do not see that there is any way that I can gauge what people may not be bringing to us.

**Senator JACINTA COLLINS:** Are you dealing with any FOI complaints, or are they now dealt with by the Ombudsman exclusively.

**Mr Pilgrim:** They are being dealt with by the Ombudsman exclusively—since about the end of 2014.

**Senator JACINTA COLLINS:** Have you stopped any of your FOI policy development work, or is that all now being undertaken by the Attorney-General's Department?

**Mr Pilgrim:** We have not undertaken any specific policy development work or done any work on the guidelines. They were functions that were to be transferred, and have been transferred, to the Attorney-General's Department.

**Senator JACINTA COLLINS:** I may ask them some questions about that later. Where are you on staffing?

**Mr Pilgrim:** As at the end of January we had 65.23 full-time equivalent staff.

**Senator JACINTA COLLINS:** How does that compare?

**Mr Pilgrim:** To which periods?

**Senator JACINTA COLLINS:** Previous periods. Let's say the two previous periods.

**Mr Pilgrim:** On 31 January 2015 we had 60.9 full-time equivalent staff and on 13 May 2014 we had 83 full-time equivalent staff.

**Senator JACINTA COLLINS:** When does the funding period of the $1.7 million run out?

**Mr Pilgrim:** That would run out on 30 June this year, the end of the financial year.

**Senator JACINTA COLLINS:** Despite the statement made in the media release of the Department of the Prime Minister and Cabinet on 17 November last year announcing that it would join the Open Government Partnership that the 'government is committed to openness as a basic principle of modern government,' the government, as the Attorney-General just indicated, has not changed its position about an ongoing role for this agency. Is that your understanding?
Mr Pilgrim: My understanding is that the bill is still before the Senate or on the list and that is the status at the moment.

Senator JACINTA COLLINS: So if the next budget does not include further funding then you will be without funds?

Mr Pilgrim: That would be true. If there is no funding for the FOI function then we would not be able to undertake it.

Senator JACINTA COLLINS: That concludes my questions. Thank you, Chair.

Senator RHIANNON: Commissioner, I was interested in the case with the Department of Immigration and Border Control. This was the issue where they said that they would need to consult with 600 employees before releasing documents. Could you provide some brief about that decision and if this is a trend that is coming with departments to argue that they need to consult with large numbers of employees before information can be released?

Mr Pilgrim: Without going through the decision, which was published entirely, I think it is an issue that I would prefer to take on notice because I would like to remind myself of some of the other trends we may be seeing in that area. We do believe that we encourage all agencies to publish all charts as part of their publication scheme to try to reduce the number of issues or inquiries people may have about staffing levels and particular positions within agencies. As to the broader question you are asking, I would like to take that on notice.

Senator RHIANNON: I noticed in some of the findings that it was suggested or reported that some of the departments were overestimating the amount of time it would take for the information to be found and to be released. Is that also a trend?

Mr Pilgrim: Again, I want to be careful of my words and not say it is a particular trend. It is an issue we are seeing, and one of the things we hope to do through the decisions we make is to use them also as an educative process so that they can understand the views of our office in terms of some of the time frames we think should be taken in terms of being able to identify and locate documents.

Senator RHIANNON: Are you just accepting that the departments will make a fair judgement on the time that will be required? Is it just a matter of trust or are there guidelines with regard to this matter? Because it seems as though that becomes quite influential in deciding where some of these cases go.

Mr Pilgrim: We certainly do monitor the IC reviews that are coming through to us to understand what some of the challenges may be for agencies. We try to use some of the decisions we make as the educative tool. Ms Toohey might want to make some observations in terms of sampling.

Ms Toohey: One of the things that we certainly encourage agencies to do is this idea of sampling so they can justify a decision if they are have made a decision—

Senator RHIANNON: You used the word 'sampling'; could you define that.

Ms Toohey: If a matter comes to us and it has been a practical refusal, we generally ask the agency to produce a small sample of the documents so that we can then test their calculation versus our own. The commissioner has made a number of decisions looking at those sorts of processes and has certainly provided guidance in those decisions to the agencies about that approach.

Senator RHIANNON: Is there a trend that there is often considerable disparity between your estimations and other departments' estimations?

Mr Pilgrim: I think what I was saying is that I do not want to try to use the word 'trend' because it can be taken in a way to say that there is a major issue. It is certainly something we are looking at and it is something that I think we can provide more guidance to agencies on, and, as I said, our primary way of doing that is using the IC review process as part of that educative process to let agencies have an understanding about what we think in certain circumstances. Looking at each case individually would be a reasonable period of time.

Senator RHIANNON: So you said you are looking at it in time. Will you be able to share with us what these trends are?

Mr Pilgrim: I can certainly take that back and see whether it is something we can produce any useful information on. I cannot guarantee what we may be able to produce, but I certainly will take it on board.

CHAIR: Thank you very much, Commissioner, and your staff. We appreciate you being here.

Family Court of Australia
Federal Court of Australia

[14:33]
We now move on to the Family Court of Australia and the Federal Circuit Court. I welcome the
CEO and the principal registrar and others. Would you like to make an opening statement?

Mr Foster: No, thank you.

Senator JACINTA COLLINS: Mr Foster, there has been commentary recently about a blow-out in wait
times in the courts. Could you update the committee on those issues?

Mr Foster: Yes, I certainly can. In relation to that, perhaps I can give you some filing numbers as well. There
is a relationship, obviously, between filing and delay. Perhaps I could go back over the last five or six years, very
quickly, to give you some indications of the numbers. In 2010-11 the Family Court had 3,249 applications for
final orders. The Federal Circuit Court had 17,515 for a total of 19,426. In 2011-12 it was 3,271 and 17,412 for a
total of 19,326. In 2012-13 it was 2,807 and 17,364 for a total of 18,999. In 2013-14 it was 2,923 and 17,565 for a
total of 19,279. In 2014-15 it was 2,936 and on the Federal Circuit Court 17,685 for a total of 19,480. The
projected 2015-16 figures are 3,200 and 18,000 for a sum of 20,000. So those numbers for applications for final
orders are almost the same as what the courts were experiencing back in 2000.

There was a massive drop in application for final orders when the Family Relationship Centres came in. Since
that time the workload has increased again back to that of nearly 15 years ago. I do not think there is a judge who
works in—and these are family law figures only; not general federal law—this jurisdiction who would not say
that the work has become much more complex than it was. It is much more complex. I think that is one of the
factors that impacts on delays.

The average time from lodgement to first day of trial in the Family Court is currently 15.9 months, and it was
13 months in 2014-15. In the Federal Circuit Court the average time from lodgement to first day of trial is 15
months, and in 2014-15 it was 14.1 months. That average can be affected by a number of significant factors. One
is the complexity which I have mentioned. In many, many cases now there are allegations of family violence. It is
the level of conflict between the parties which has increased significantly that is part of the complexity.
Proceedings in other courts, significantly criminal courts, delay matters in our courts, and obviously the
availability of judicial resources. They are probably the most significant issues.

The courts regularly monitor and review aged cases—those that are over 24 months old—and try and bring
them to some sort of conclusion, to make sure that, one, they are not actually concluded but still on the system.
Some of those aged cases can affect those average times from lodgement to first day of trial. That is basically a
snapshot of where we are up to.

Senator JACINTA COLLINS: The first point you made in terms of your figures is that with the
establishment of Family Relationship Centres there was some significant change, but you have gradually returned
to what the picture was before those centres were established.

Mr Foster: From 1999-2000 to 2007-08 there was a reduction of 21 per cent of applications for final orders in
the courts. That figure has now been seen about an 11 per cent reduction of the figure we had back in 2000. So
the workload has crept up again, but the work is much more complex and difficult than it was a decade ago.

Senator JACINTA COLLINS: But it has not quite returned to what it was at previous times.

Mr Foster: No.

Senator JACINTA COLLINS: But it also makes sense, then, to look at what is occurring within Family
Relationship Centres at the same time, too.

Mr Foster: I would have thought so. But that is a matter for someone else, not for us.

Senator JACINTA COLLINS: No, I understand. I will not ask you about that aspect. Going to the issues
around judicial resources: can you provide me with a snapshot of what has happened in recent years in that
respect?

Mr Foster: At the moment the Family Court currently has 32 judges, including the Chief Justice, with one
vacancy in Brisbane. The Federal Circuit Court has 63 judges, including the Chief Judge, with two vacancies: one
in Sydney and one in Melbourne. So there is a current total of 95 judges and I think 14 or 15 of the judges in the
Federal Circuit Court are dedicated solely to general federal law, so there is still a significant resource dealing
with family law matters in the federal system.

Senator JACINTA COLLINS: Let me understand that: of the 63, there are how many who are limited to—

Mr Foster: Of the 63, there are 15 judges in the Federal Circuit Court dedicated entirely to general federal law
and 47 in family law.

Senator JACINTA COLLINS: Those 47 are dedicated entirely to family law?
Mr Foster: They are.

Senator JACINTA COLLINS: Okay, so there is a clear demarcation there; we do not have any judges doing both.

Mr Foster: There are, but it is at the margin. To be absolutely specific: there are 46.8 FTE in family and 15.2 in general federal law. I just rounded them up for you for simplicity.

Senator Brandis: On that point, Senator Collins, one of the objectives I have had in appointing judges or recommending judges for appointment to the Federal Circuit Court is to broaden its skills base so as to recruit judicial officers who can do both family law and general federal law work. The siloing of the judges into exclusively family law work or exclusively federal law work is not something I want to encourage or perpetuate, and, with that in mind, I have, among other criteria, had regard to the range of professional experience of recruits.

Senator JACINTA COLLINS: I understand that, Senator Brandis, which is why I am surprised that, at this stage, they are being described as entirely dedicated to one or the other.

Senator Brandis: Historically, that has largely been right. I do not disagree with anything Mr Foster has said. It is the case that the vast majority of cases that Federal Circuit Court judges do are family law cases. That is merely a reflection of the case flow and case volumes in that jurisdiction compared to other federal law jurisdictions. But, that said, it has always been my view—this goes back to the days when my party was in opposition and I was in the position you now occupy in this estimates committee—and I put this view on the record quite often, that the Federal Circuit Court should become, is becoming and will continue to become the great trial court of the federal judiciary: so the very large and complex matters in non-family law matters go to the Federal Court of Australia; the large and complex matters and appellate matters in family law go to the Family Court of Australia; and the vast bulk of cases that do not answer the description of 'large and complex' are dealt with by the Federal Circuit Court. That, Senator Collins, is largely similar to the experience of state courts, where the intermediate level courts—the district courts or county courts depending on which state they are in—do most of the trial work and the Supreme Courts only do the large and complex trials and the appellate work.

Senator JACINTA COLLINS: Going back to the total of 95, can you compare that for me over the earlier years? You described the trends in the other figures. What year did you commence with?

Mr Foster: That number of judges—I was talking about currently, Senator; I did not have any historical data.

Senator JACINTA COLLINS: No, I understand that. But I am asking, when you were talking about your case numbers, you went back to what year?

Mr Foster: I went back to 2010 and 2011.

Senator JACINTA COLLINS: Can you start there on the number of the judiciary?

Mr Foster: I do not have those numbers with me. I would need to take that on notice.

Senator JACINTA COLLINS: Is that something that would take long?

Mr Foster: No, it will not take long. We have got information, I just have not got it here.

Senator JACINTA COLLINS: Okay. As there are other senators who have questions to ask too, perhaps we could revisit that later this session? If that is possible; if not, then take it on notice.

Mr Foster: Okay, thank you. I think I can give you the number of Family Court judges, going back. But I have not got the Federal Circuit Court numbers.

Senator JACINTA COLLINS: Why don't you wait until you do, because I would like to be able to compare apples with apples, to the extent it is possible.

Mr Foster: Okay. I probably would need to take that on notice then, Senator, if that is okay.

Senator JACINTA COLLINS: Sure. It is only in the sense that I want to build a picture of the resource constraints, and to have a sense of the trend in that respect.

Mr Foster: Sure, I understand.

Senator JACINTA COLLINS: In terms of judicial appointments, the Attorney-General announced on 2 February this year, Brisbane judge and current visiting Rockhampton circuit judge, Judge Anne Demack, will now sit permanently as a Federal Circuit Court judge based in Rockhampton from 7 March. May I ask what consultations were undertaken with the Queensland government prior, to this announcement, to ascertain whether the Rockhampton courthouse could accommodate the judge and her support staff on a permanent basis?

Senator Brandis: Senator, issues of court management are of course a matter for courts to consult other courts. I am actually familiar with the courthouse, Senator, and I can tell you that there is a vacant courtroom
which will accommodate Judge Demack when she commences to be based in Rockhampton. But it is not appropriate for the Commonwealth to speak to the court in another jurisdiction. That is a matter either between courts or between departments.

Senator JACINTA COLLINS: Let us take this particular case: will any modifications need to be made to the existing Queensland government courthouse to accommodate the judge?

Senator Brandis: I think there will need to be some modest modifications, but there is a vacant courtroom and a vacant visiting judge's chambers which, at the moment, are used primarily by the Federal Circuit Court judge who circuits to Rockhampton from Brisbane. But now that circuit will no longer be required because there will be a Rockhampton-based judge.

Senator JACINTA COLLINS: Mr Foster, has any of that court-to-court consultation occurred?

Mr Foster: Yes. I wrote to the Deputy Director-General of the Department of Justice and to the Attorney-General on 13 November last year, setting out what our requirements would be if and when a permanent judge was appointed to Rockhampton. I received a response on 7 January saying, 'services are limited but basically we do have some capacity; there would need to be some work done', and 'we should start talking about it'. And so I have had one conversation with a member of the department up there since that time. We will now start talking to them in a more serious way. Now that the Attorney has made the announcement, we know certainly that this is going to happen, and we can accommodate it.

Senator Brandis: And I might add, beyond that, I am told by Chief Judge Pascoe that he has also had conversations with the Chief Justice of Queensland at court-to-court level.

Senator JACINTA COLLINS: Who bears the cost of those works?

Senator Brandis: The building is a Queensland government building, but it is a building that already accommodates the federal judiciary in the manner I have indicated. So the arrangement is not entirely dissimilar to the arrangements in Sydney, where there is a building in Phillip Street shared by the Supreme Court of New South Wales and the Federal Court of Australia, and judges from both courts have chambers in that building and they conduct courts in the building. There will, I expect—and I have indicated this—be some cost to the Commonwealth. I expect it to be a modest cost, because I understand that there will be some work required to configure the court but I am told that it is a modest amount of work.

Senator JACINTA COLLINS: Then those costs—from what you are saying, Attorney, similar to New South Wales—would be shared in some negotiated way. Is that correct?

Senator Brandis: I expect so.

Mr Foster: Can I say something?

Senator Brandis: Yes, Mr Foster.

Mr Foster: They are now, Senator. We have been at the Rockhampton courthouse for several years. We have a registry in there with staff in it, and we share their security costs. It is of great benefit both to the Commonwealth and the state in terms of costs. It is similar to the arrangement we have in Darwin, where we now have the resident Federal Circuit Court judge in the Supreme Court building in Darwin, and our registry up there is in the Supreme Court building. We got out of leased premises and saved a significant sum of money, and the Northern Territory converted our premises into a juvenile justice centre. So there were benefits for both state and federal governments. I think it is a really good model—it is one that I think we should explore more and more as far possible to get out of leased premises and into proper facilities that the states provide and we pay a modest amount of money to be there. It is a really good deal, in my view.

Senator Brandis: Do we do this in Launceston?

Mr Foster: In Launceston? No, we do not.

Senator JACINTA COLLINS: I am conscious of time, but I will finish this set simply with some quick questions around replacing Judge Demack in the Brisbane registry. What is happening there?

Senator Brandis: There is not a vacancy in the Federal Circuit Court in Brisbane. Judge Demack will not be replaced in Brisbane. She will be based in Rockhampton, though she will not be sitting exclusively in Rockhampton. She will circuit to centres in Central Queensland, including Mackay, Gladstone and Emerald. She will also, on occasions, undertake work in Brisbane. At the moment, she is in Brisbane circuiting up to Rockhampton, but that will be reversed so that her base, as I say, will be in Rockhampton.

There will be a family court judge appointed in Brisbane, the announcement of which will be made shortly. Lest you want to tackle me after the word shortly as you did this morning, Senator, the name of that particular
new Family Court judge in Brisbane was approved by Cabinet last night, so it is merely a matter of going to ExCo.

Senator JACINTA COLLINS: So that will be an additional Family Court judge for Brisbane—

Senator Brandis: It will be a replacement for Justice Bill, who retired last year.

Senator JACINTA COLLINS: I am coming to that one in a bit, so I am happy to cede to other senators for the moment.

CHAIR: I will pass to Senator Heffernan, but, before I do and as part of his time, I just have a question on the central judge. Minister, is that the first time there has been Federal Court judge in Rockhampton?

Senator Brandis: Federal Circuit Court judge. Yes it is, Senator Macdonald. There has, as you know, always been a central Supreme Court judge—that is Justice McMeekin—and there has for a long time been a resident District Court judge, and that is Judge Burnett, but there has never been a resident Federal Circuit Court judge. Given that we were talking before about how the large share of the work of the Federal Circuit Court is in the family law jurisdiction, that will be a huge benefit to people in Rockhampton because, more often than not, their family law matters have to be dealt with in Brisbane, because the opportunity of judges from Brisbane to circuit to Rockhampton was relatively limited. This will be a great saving of cost and time to people in Central Queensland.

CHAIR: I would have thought the Central Queensland community would have been ecstatic at the announcement.

Senator Brandis: When I made the announcement with the member for Capricornia, Ms Landry, in November of last year, I think it is fair to say that they were delighted, and the Central Queensland Law Association and the Rockhampton bar were particularly happy for understandable reasons.

CHAIR: Surely the Queensland government must be very supportive of this, because having this additional judge in the Central Queensland area is something that, I would assume, the local state members were very supportive of.

Senator Brandis: I had hoped so. I did receive a rather hostile letter from the Queensland Attorney-General, Ms D’Ath, who did not appear to be supportive of what the Commonwealth was doing. I do not understand why, but I do not want to be political about this, Senator Macdonald, because I just want these arrangements to get underway as smoothly as possible as soon as possible.

CHAIR: I understand that you would not, Minister, but it seems incredible to me that the state government would not be bending over backwards to enhance the legal services to Central Queensland.

Senator Brandis: I do think that everyone else is cooperating. The state courts are cooperating. The Central Queensland legal community and the community more broadly are very happy about it. The Federal Circuit Court has of course been very cooperative. The Chief Judge, John Pascoe, has been a collaborator of mine on this project for some little time now, and he is delighted about it. So the only element in this who seems to be uncooperative is the Queensland State Attorney, but I hope she will see the light and understand why people in Central Queensland do need this.

Senator JACINTA COLLINS: Perhaps it is a lack of consultation.

Senator Brandis: You have heard what Mr Foster has said about consultation.

CHAIR: Yes, I did hear that.

Senator JACINTA COLLINS: Not with the government.

CHAIR: Minister, can I just say, congratulations, and I am sure I say that on behalf of Senator Canavan, who is based in Rockhampton, and Michelle Landry, who as you rightly say is the local member. It has been great work from all of you, and congratulations.

Senator O'SULLIVAN: Is Justice Demack related to just the Justice Demack who sat there on the Supreme Court?

Senator Brandis: Judge Anne Demack is the daughter of the great Justice Alan Demack, yes.

Senator O’SULLIVAN: Is Justice Demack related to just the Justice Demack who sat there on the Supreme Court?

Senator Brandis: Judge Anne Demack is the daughter of the great Justice Alan Demack, yes.

CHAIR: And of course Senator O’Sullivan spent a long time in the law system.

Senator O’SULLIVAN: I have a lot of empathy for Justice Demack, I can assure you.

Senator Brandis: Senator O’Sullivan, no doubt in your former career you would have appeared in that old Supreme Court building very often, as did I when I was counsel at the bar!

Senator HEFFERNAN: I want to briefly touch on the Family Court. I obviously want to go to the royal commission and the Attorney-General's Department later. I can confirm, Mr Attorney, that a law firm from...
Parramatta has contacted me in recent days with an urgent plea to support the Family Court situation in the Parramatta district. As you know, I am well-removed from the legal system. There is an inadequacy there—whether it is being met or not. But can I just put in a little plea for Parramatta.

Senator Brandis: I am very well aware of that. Can I tell you what the position is. We appointed another judge to Parramatta, Judge Newbrun, in February of last year. As Mr Foster said, I think just before you came in, there are 65 positions on the Federal Circuit Court. That is a statutory ceiling, so we cannot go above that. There are two current vacancies that were filled last night by cabinet—they have to go to ExCo, so they will be announced very shortly. Those vacancies are in Sydney and Melbourne—and the Sydney Registry at the Lionel Bowen Building, not in Parramatta.

I need to make this point because there has been a lot of public discussion about this in relation to Parramatta, and also I know in relation to Wollongong and elsewhere. The allocation of judges to registries is primarily a matter for the court. It is not something I as the Attorney-General can direct. Judges have to be allocated, obviously, from the existing number of judges. There are shortages here, but there is a limited number of judges. One feature of this court, unfortunately—and I might invite Mr Foster to comment on this if he wishes to—is that an unusually large number of judges are on sick leave, because they have fallen ill. Because they do not get the normal pension arrangements of all other intermediate or superior court judges—in other circumstances, someone like that might decide to leave the court and create a vacancy—but there is an unusually large number of the 65 judges who are on long leave at the moment. I was told by the Chief Judge the other day that it is about eight at the moment. Mr Foster might care to add to my remarks. For a court to have more than 10 per cent of its members not well enough to sit, but still on the establishment of the court, is unusual.

Mr Foster: Can I just add, Attorney, that I think it reflects on the maturing of the court. The court is now nearly 16 years of age, and the workload of the court has been pretty much enormous since day one, and it has grown since then. The pressure on the magistrates and judges and the work that they do, in my view—and I have been in the system and have watched it since 2000, when the Federal Circuit Court commenced—has been enormous. I think the illnesses these people suffer is a reflection on some of the commitment they have had to this particular task.

It is not for me to talk about judges' pensions, but a lot of them are unable to work and would probably move on and would be replaced if there were different arrangements in place for their terms and conditions. As the CEO of the court it is not for me to promote that, Attorney. But I certainly endorse what the Attorney is saying. Around eight are just not capable of working to the full extent and have serious illnesses. I think it is a reflection on the pressure they put themselves under. When judges have 500 or 600 matters in their dockets, that is an intolerable workload.

Senator HEFFERNAN: It is nearly as bad as farming! I realise the difficulty of the Family Court, and the death threats that come with it et cetera. I also appreciate the fact that judges might well have expertise in an area that involves family disputes, but not the expertise in whether the children are or are not being abused, and the use of the law to outsmart the truth, with parents saying one kid is being abused and vice versa—all of that stuff. I want to go to an issue that has been raised with me about a medico legal report writer, Dr Christopher Rikard-Bell, who told ABC National in June 2015 that he has written over 2,000 reports in his 25 year career. These were to assist the court. He said he is often called by the court to assess allegations of physical and sexual abuse. But he then went on to say that he is not specifically trained in child sexual abuse and/or assessments. As I understand it, evidence rules require specialised knowledge by training, skill or experience. His internet public profiles for clinical work do not reflect specialisation in child sexual abuse assessments. Contrary to accepted research, this particular gentleman believes 90 per cent of Family Court child sexual abuse cases are unfounded. This confirmation bias is reflected in his practice of asking a child, in front of the alleged perpetrator, about any worries or fears concerning that parent. I think that is barmy. This is cruel and contrary to accepted clinical practice.

Dr Rikard-Bell nominated Richard Gardner as a role model, and as very relevant. The Family Court publicly decried the parent alienation theory that Gardner invented when he relabelled child sexual abuse symptoms as signs of a mother alienating a father from a child for no good reason. Gardner said:

... the child has to be helped to appreciate that we have in our society an exaggeratedly punitive and moralistic attitude about adult-child sexual encounters.

And:

Older children may be helped to appreciate that sexual encounters between an adult and a child are not universally considered to be reprehensible acts. The child might be told about other societies in which such behavior was and is considered normal.
My God, this reminds me of Justice Garry Neilson. Gardner continues:

The child might be helped to appreciate the wisdom of Shakespeare's Hamlet, who said, "Nothing's either good or bad, but thinking makes it so."

If the Family Court is going to rely on Dr Rikard-Bell's opinion to assess child sexual abuse, and his opinions are not based on specialised knowledge and are clearly out of step with research, how can this be in the child's best interests?

**Ms Filippello:** I am not familiar with the article to which you have referred.

**Senator HEFFERNAN:** You can take it on notice if you like. This is just the tip of a very big iceberg I am about to climb.

**Ms Filippello:** Perhaps if I can address the more general issue that comes out from your question, and that is the role of the expert witness. Dr Rikard-Bell, and any psychiatrist who appears before the court, is appearing provided they meet the criteria as an expert witness. The court, through its rules, tries to minimise the exposure of families to the need to attend on reports and would normally appoint a single expert for the particular family. The rules themselves are very explicit as to the nature of the material that is provided to the expert. The instruction to the expert must be in writing, and the material that the expert has relied upon also needs to be disclosed. The expert's brief is also articulated in that letter. In addition, the expert's qualifications to undertake the work that is required of him or her is also to be disclosed.

**Senator HEFFERNAN:** Thank you very much for that, but in the system, if you have people giving advice—and I appreciate the huge workload in the Family Court—if you have people who think that there is some question mark over what is so bad about sex with children, which is what is in some of this, how in God's name do they get into the system? Rikard-Bell made public his lack of specialisation. His disbelief in sexual child abuse cases is dangerously out of step with research, noting the court must be aware of the radio interview. Are you aware of that Radio National interview?

**Ms Filippello:** No. I apologise. I do not. But I can certainly read the context of that.

**Senator HEFFERNAN:** You cannot cover everything. I appreciate that. But maybe, as a consequence of today, we might familiarise ourselves with some of these circumstances. I appreciate, Mr Attorney, the difficulty of all of this. *In the child's best interests* was the name of the radio interview. The question is: what steps to do something about it will be taken by the Attorney-General or the Chief Justice to give judicial notice or otherwise instruct all Family Court judges to not rely on the unsafe opinion of a person with those views?

**Ms Filippello:** It is probably appropriate that we take that particular question in relation to that particular issue on notice. But, in relation to expert witnesses, they are cross-examined in court by both parties, and the opinion that they express may not necessarily be the opinion accepted by the court.

**Senator Brandis:** Can I add to that—sorry to interrupt, Ms Filippello—that they cannot just be cross-examined about their evidence; they can also be cross-examined about their expertise. So, if a person puts themselves forward as an expert in a particular field, their expertise and their professional credentials as an expert can also be challenged or called into question by cross-examination.

**Senator HEFFERNAN:** I appreciate that. I am wondering whether, as part of today's revelation, it could be confirmed if the cases mentioned in that particular program—*In the child's best interests*, Radio National June 2015—are cases assessed by one Dr Rikard-Bell. It troubles me. This is, at the very best, a very difficult situation for the Family Court. I appreciate the technicality of evidence received. I have got 20 pages here of the technicalities to which you just correctly referred, Mr Attorney. But I have a series of technical questions about what appear to be, to the independent people standing at the back of the room, as it were, miscarriages of justice because of the reliance on expert opinion. I have to say I am disgusted and appalled at part of the mindset. I do not know who Richard Gardner is from a bar of soap, but, if that is his opinion, he fits into the same category as one Justice Garry Neilson, who I reported to the New South Wales Judicial Commission. The commission found that he was at fault. He has been taken away from a certain section of law. He is still a judge. But he was the person who thought, and he said to the judicial commission hearing, 'I'm sorry; I was thinking out aloud' when he said that he did not think it was any big deal—those are my words, not his, but it is there in the transcript, that it was all right for adults to have sex with children as long as it is consensual and there is nothing wrong with this particular person, who was appearing in the court before him on a charge of raping his sister—he thought that was an out-of-date law and should no longer be. It is a disgusting proposition.

So, I just wondered whether this person here has the same mindset. And I could give you the nickname of the other guy in the trade, as it were. But I will leave it there, if I could, Mr Attorney. It has just given us something to think about. I sincerely believe—and later today I will provide evidence of why—we should assist the federal
jurisdiction of the law, the federal court system, with a federal judicial commission. The New South Wales Judicial Commission does some pretty good work.

CHAIR: Senator, is there a question?

Senator HEFFERNAN: My question will be, to give preamble notice—

CHAIR: Perhaps I could just indicate that your time has finished, but I will come back to you later on if you want to question further.

Mr Foster: I would be quite disturbed if there was suggestion by the senator that the behaviour of the judge he mentioned, which is not a Family Court judge, was consistent with any behaviour of any Family Court judge. I would be very concerned. I did not quite understand what you were getting at, Senator.

Senator HEFFERNAN: No, that is not what I am saying—not for one tiny second.

Mr Foster: Okay; fine.

Senator HEFFERNAN: What I am saying is that Mr Gardner appears to have the same view, and Mr Rikard-Bell, who has given 2,000 reports, thinks that is okay. I will leave it there.

Mr Foster: We will certainly need to—that is going to require quite a lot of discussion, with the Chief Justice and others—

Senator HEFFERNAN: I am happy to assist in any way and will appreciate the sensitivity.

Mr Foster: It is going to require quite a lot of discussion, obviously with the Chief Justice and others in the court, to respond properly to those comments and your direct questions. But I would just be really disturbed if anyone thought that you were suggesting that there was a Family Court judge who held these views—

Senator HEFFERNAN: Not for a minute.

Ms Filippello: I would also be concerned about any reflection on Dr Rikard-Bell, without taking that matter any further.

Senator HEFFERNAN: I am just saying, basing it on a radio interview—and I am unqualified; I am bringing it as a matter of my duty of care to constituents—that I am seriously aware of the smart alec use of the law in the Family Court, where a smart lawyer will use the law to avoid the truth.

CHAIR: As I said, your time has finished, but I can come back to you, if you want to wait.

Senator HEFFERNAN: Thank you very much. I just want to make out the case in the—

CHAIR: Well no, you do not make out cases here; you ask questions.

Senator HEFFERNAN: Yes, I ask the questions; righto.

CHAIR: But Ms Filippello, I hear what you say, and, as I also indicate, there is a procedure that can be followed.

Proceedings suspended from 15:14 to 15:33

ACTING CHAIR (Senator Jacinta Collins): For the benefit of the committee: Senator Macdonald has asked me to chair briefly until he returns. I hope you are happy with that, Senator Brandis!

Senator Brandis: [inaudible]

ACTING CHAIR: Well, it is just that you have challenged me on this arrangement in the past, so I just wanted to let you know what Senator Macdonald had asked me to do. Now, I have some further questions going back to appointments. I think earlier, Senator Brandis, you referred to Chief Judge Pascoe's project, in a sense, and you commented that essentially it is the court's decision as to where to allocate judges.

Senator Brandis: Yes.
ACTING CHAIR: Presumably that would also apply despite all the grand hurrah about Rockhampton. You did at least give Chief Judge Pascoe some credit in having a project about such things.

Senator Brandis: Well, this is a good story, so let's not be disobliging here. I have a very close working relationship with Chief Judge Pascoe, as I do with the other three heads of jurisdiction, and we speak very often. He is very often on the phone to me or to Mr Lambie, of my office. We speak about appointments. We speak about matters of, shall we say, domestic concern within the court. We speak about the allocation of judges. It is my practice to follow the advice of the head of jurisdiction about these matters. We did speak about Rockhampton, just as we speak about the allocations across the country. Ultimately I respect the fact that these are his decisions, but I also am grateful for the fact that he will take into account my views as well. So, it is a collaborative dialogue between two branches of government. That is the way it works.

ACTING CHAIR: I think Senator Heffernan raised the issues around Parramatta—

Senator Brandis: Yes.

ACTING CHAIR: and please let me know if my understanding is not accurate. Since early 2014 three judges have left the Parramatta registry of the Federal Circuit Court. One judge was transferred to the Melbourne registry, and two others retired. There has been one replacement—the one you mentioned earlier, Judge Newbrun, who was appointed in February of last year. When will Judge Donald, who retired six months ago, be replaced?

Senator Brandis: Well, there are no vacancies now, because, as I say, the last two vacancies were filled by cabinet last night and they just await the Governor-General's approval at the next meeting of Executive Council, and they will be announced. But there are no vacancies. One of the two people appointed by cabinet last night is a New South Wales appointment—a Sydney appointment, in fact. But it is my understanding from the Chief Judge that he intends that that judge will sit in the Lionel Bowen Building in the CBD, not in Parramatta.

ACTING CHAIR: So, the appointment that goes through cabinet and Ex Co is specific about the location? Or not?

Senator Brandis: No, it is not. I am just telling you what I have been told by the Chief Judge as to his intentions. I should also say that there is some flexibility here. I think the judges who are based in the CBD do go out to Parramatta on occasion, but maybe Mr Foster would know more about this than I do.

Mr Foster: Well, not just Parramatta: the judges in the Circuit Court move around quite a lot from different locations, depending on various workloads. The problem is that Judge Donald is on long leave, so there is a funding issue.

ACTING CHAIR: Oh—so it is not a replacement issue then.

Mr Foster: No. He has to complete his long leave, and he has not as yet resigned from the court either, so there is no capacity to replace him at this stage.

ACTING CHAIR: That is where I was seeking corrections, if they were appropriate, which is that two have not retired.

Senator Brandis: And that goes back to the issue that both Mr Foster and I mentioned before, that this court has more than 12 per cent of its judicial officers on leave for illness. And although there has been some comment in the press about delays in appointment, the overwhelming reason that there are these pressures on the system is that the court is running at about 85 per cent capacity, with now a full establishment of judges.

ACTING CHAIR: So, the other judge that I thought was retired—is there another one who is also on long leave?

Mr Foster: Where?

ACTING CHAIR: In Parramatta.

Mr Foster: No.

ACTING CHAIR: So, one was transferred to the Melbourne registry, and the other two retired. One was filled by Judge Newbrun, I presume.

Senator Brandis: And the other one is the one who is on long leave, Judge Donald, who is not retired.

Mr Foster: There is Judge Dunkley and Judge Harman; they are the other two judges at Parramatta. So, there are Judges Dunkley, Harman and Newbrun, with Judge Donald on long leave.

ACTING CHAIR: Are you aware that family law practitioners report that interim hearings at the Parramatta registry are taking, in some cases, more than a year to be heard?
Senator Brandis: I have seen those reports, and I do not doubt them. There are pressures on the system. I wish I had more judges. I wish the aggregate number of judges on the court was greater, but there are resource implications, of course. I wish I could offer these judges a pension like the pensions that intermediate level state and territory judges receive so as to regularise the arrangements of this court.

ACTING CHAIR: Are you also aware that judges are declining to allocate final hearing dates, as they would be too far into the future, in some cases not until 2018 or 2019?

Mr Foster: Yes.

ACTING CHAIR: The other one you mentioned earlier, in terms of Chief Judge Pascoe's project, is Wollongong. What is occurring in relation to Wollongong

Mr Foster: There is a judge from Sydney, Judge Altobelli, who circuits to Wollongong on an almost full-time basis. We have just made arrangements with the state courts in Wollongong to have access to one of their courts. In our facility in Wollongong, we only have one courtroom. We have made arrangements to use the state court facility in Wollongong, so the Chief Judge will now, from time to time, allocate two judges to Wollongong on a circuit basis. In effect, there will be a full-time judge in Wollongong. There has never been a full-time judge in Wollongong, but there is a significant workload there.

ACTING CHAIR: In effect, there will be one now?

Mr Foster: There will not be a resident judge, but, in effect, there will be a full-time judge in Wollongong because, from time to time, the existing circuit by Judge Altobelli, which is significant, will be topped up by another judge.

Senator Brandis: I think what Mr Foster is trying to convey to you is that there will not be a resident judge, but, because of the two who circuit to Wollongong, there will effectively be, at all times, a judge sitting in Wollongong.

Mr Foster: It will be pretty much full-time, anyway.

ACTING CHAIR: Okay. That is similar to the good news story about Rockhampton?

Mr Foster: I think so.

ACTING CHAIR: So the member for Cunningham and the member for Throsby, who have both been advocating for months in relation to their areas, should equally feel that there has been a response from the government?

CHAIR: And Senator Fierravanti-Wells too, I suggest

Senator JACINTA COLLINS: I have not seen her.

Senator Brandis: The only politician who has raised the matter of Wollongong with me is, in fact, Senator Fierravanti-Wells.

Senator JACINTA COLLINS: I am not necessarily sure what raising it directly with the Attorney means, given we were told by the Attorney that it is actually the courts that determine such matters.

Senator Brandis: It is the courts that have the ultimate say, but, as I said to you, I always have discussions with the Chief Judge. This is a collaborative exercise between him and me, with me always respecting that, in the end, it is his call.

Senator JACINTA COLLINS: Indeed, he has made a call for Wollongong as well. Attorney, your office has continued to say that the government is injecting $22.5 million into the courts, despite the lack of progress around court fee matters. Is that money coming from elsewhere now?

Senator Brandis: I think Mr Moraitis or, perhaps, Mr Manning is best placed to respond to that.

Mr Manning: The money is coming from consolidated revenue.

Senator JACINTA COLLINS: Despite the court fee issue not progressing, the money has come forward from consolidated revenue?

Mr Manning: That is right.

Senator JACINTA COLLINS: Okay.

Senator O'SULLIVAN: Attorney, are you able to tell us the number of judges appointed under this term of government and to which courts they have been appointed? I am not sure the information will be readily available, but can you talk about the gender balance of those appointments as well?

Senator Brandis: Yes, I can. Including the appointments agreed to by cabinet last night, which are yet to be announced, this government—that is, the coalition government elected in 2013—has appointed 22 judges to the
federal judiciary: two judges to the High Court, seven to the Federal Court, two to the Family Court and 11 to the Federal Circuit Court. Of those 22 judges, seven were drawn from the ranks of Queen's Counsel, two were solicitors, three were recruited from other courts—Justice Gordon of the High Court who was recruited from the Federal Court of Australia, Justice Nettle of the High Court who was recruited from the Victorian Court of Appeal, and Justice Edelman of the Federal Court who was recruited from the Supreme Court of Western Australia. The balance, whatever that adds up to, was recruited from junior barristers. In regard to the gender balance of the 22, there have been seven women and 15 men, so approximately 32 per cent of the judges appointed by this government have been women, which is a somewhat higher percentage than the representation of women at the middle and upper levels of the bar, and 68 per cent have been men.

Senator JACINTA COLLINS: Almost all of them will be women, the ones we get to hear about that have been before cabinet.

Senator Brandis: There were some women appointed last year.

Senator JACINTA COLLINS: Some women. A significant number of women from past figures.

CHAIR: We are not embarking on—

Senator JACINTA COLLINS: We were encouraged to.

CHAIR: We are not going there.

Senator O'SULLIVAN: Let me say, you should be congratulated on that gender balance with those appointments, Attorney. Thank you, Chair.

CHAIR: Thank you, Senator O'Sullivan. Senator McKim.

Senator McKIM: Attorney, I was going to lead with issues around resourcing and delays in the Family Court and in the Federal Circuit Court. I have listened really closely to your comments today and also to the comments of Mr Foster. I wanted to put something to you and invite you to respond. Haven't both you and Mr Foster actually made compelling arguments for an increase in the statutory ceiling of 65 Federal Circuit Court judges on a change in the pension arrangements pertaining to Federal Circuit Court judges? Wouldn't you agree that addressing and changing those two matters, which I think you have rightfully raised as some of the blockages that need clearing, would release more potential to clear the backlog of cases that is currently at shameful levels?

Senator Brandis: Senator McKim, there is a lot one would like to do. I have said many times that, in my view, the pension arrangements of Federal Circuit Court judges ought to be regularised. They are the only intermediate level judges in Australia who do not have a pension. They are participants in a kind of public-service-like superannuation scheme. It presents problems in recruiting judges to that court. It presents problems in keeping judges on that court. There have been cases where Federal Circuit Court judges have gone to state courts where they have pension arrangements. And, as I said in my observations earlier in the afternoon, it is really the main source of pressure in the system because you have a situation where judges fall ill. If those judges had a pension, it may well be that they would choose to retire, but because they do not, some of them are not in a position to do so. It is a problem at many levels.

Unfortunately, Senator McKim, when the government was elected we found ourselves in a very difficult budget position so we promulgated some budget rules, and foremost among those budget rules is no new spending without offsets from within the portfolio. There is basically not a lot of money in the Attorney-General's portfolio. By comparison with other departments of state it is a relatively small portfolio, and we have found economies. You heard about the economies that we sought to find in the Office of the Information Commissioner. We have had to find economies in the legal assistance budget, which I did not want to have to do, frankly, but it was necessary to do that to contribute to the task of budget repair. At the moment for that simple prosaic, but overwhelming, financial reason there is just not the money in the portfolio to make that possible.

Senator McKIM: So your evidence to the committee is that it is your own government's rules that are preventing you from addressing this crisis.

Senator Brandis: Well, Senator, any responsible government has budget rules and, as I said, pre-eminent and foremost among the budget rules is no new spending without offsets.

Senator McKIM: Thank you, Attorney. Is it still government policy to increase Family Court fees?

Senator Brandis: The government's policy has not changed.

Senator McKIM: Okay. So that remains your policy, your intent to reintroduce the necessary legislative instruments prior to the next election?

Senator Brandis: That is our current intention.
Senator McKIM: That is your current intention, so you will try again to stick another $350 on family courts.

Senator Brandis: That is our current intention for the same reasons, in effect, as I explained in answer to your previous question. The money has to come from somewhere, Senator.

Senator McKIM: I want to ask you about the rules around the cross-examination by the alleged perpetrators of domestic violence victims in the Family Court. Attorney, you would be aware that the Productivity Commission recommended in December 2014 that the law be changed and that you have not yet responded to that report. You would also be aware that rules to prevent alleged perpetrators of domestic violence from cross-examining their victims in court do exist in every state and territory but not yet in the Family Court. Do you intend to take any action on that issue during this term of government?

Senator Brandis: Well, this term in government does not have very long to run, Senator, and no legislation to that effect is proposed between now and the end of this term of parliament. Can I say that this is a very difficult issue, Senator, because one has intention to very important values. One is, obviously, the Senate considerations that you refer to, in the need to protect the complainant from the trauma of being cross-examined by a perpetrator. The other value though is what has always been acknowledged by the common law as one of the basic rules of natural justice and that is the right of an accused person to confront their accuser and to question their accuser. So there are these two very important principles intention.

The cross-examination of vulnerable people is an extremely delicate thing. I say that from my own experience. Years and years ago, when I was at the bar, I actually had to cross examine a young child when I was acting for an accused person. It is a very, very difficult thing to do and requires very fine judgement as to how one goes about it. From a policy development point of view it may be that the officers of my department, who deal with this matter, may wish to comment but the government in their remaining days, because there are literary days left in this parliamentary term, are not proposing to introduce a bill dealing with that topic. That is not to say that it is not under careful consideration.

Senator McKIM: I am not sure whether the officers of the department wish to add anything to the Attorney's response.

Mr Hall: As the Attorney points out, the government and the department are very well aware of the complexity and sensitivity around cross-examining vulnerable witnesses. Of course one of the challenges in family law is that, unlike a criminal proceeding where the person being cross-examined is vulnerable as a witness and often a party, it raises issues around the way evidence should be adduced in a situation like that which creates a complexity.

I should say a couple of things. Firstly, in terms of policy development, a family violence bench book is being developed. This will assist both the Family Court and state and territory courts with information to give them additional expertise about how to deal with vulnerable witnesses and family violence cases. In addition, the Attorney has asked the department to consult with stakeholders around possible options for how cross-examination of witnesses in this situation could deal with in a new and improved way. We are putting together a round table of experts, including members of the Family Law Council, the Chief Justice of the Family Court and others in the coming weeks, where those various options and ideas will be canvassed, and we will be able to report back to the Attorney-General about that.

I should also point out that the Family Court and the family law act does have a number of provisions that enable judges to protect vulnerable witnesses. Without perhaps going through those in detail, there is the opportunity to provide evidence via video link. There is also the less adversarial trial process, which enables judges in, I guess, a more inquisitorial less adversarial way to manage the proceedings in a way that protects vulnerable witnesses. These are the sorts of things, of course, which could be addressed in the bench book in terms of how judges exercise those provisions. That is a brief summary.

Senator McKIM: Thanks, Mr Hall. I will just follow up on that. If the Attorney thinks it is more appropriately directed to him, I am sure he will jump in. In the round table process that you have just been through, I am not sure if there are terms of reference or something like that; perhaps I could rephrase the question like this: is the round table able to consider implementing a regime which would prevent perpetrators of domestic violence from cross-examining their victims or is it simply confined to consideration about how that might be governed, if you like, by the courts to make it a less stressful process for the victim?

Mr Hall: I think all of those options are on the table. The round table has not been held yet and the members have not convened yet. There is, of course, quite a lot of work happening at the moment through the Family Law Council's current terms of references and recent information from the Australian Institute of Family Studies,
which need to inform this whole area. No option has been shut off. There are not so much a terms of reference as, at this point, an opportunity to gather ideas together.

Senator McKIM: Thanks, I appreciate that. This one is for the Attorney. Is it your intention that the government respond to the Productivity Commission's 2014 report on access to justice during this term of government?

Senator Brandis: We would expect to. There are a number of reports and studies in relation to family law matters, some of them that have been commissioned by me from the Family Law Council, and you have referred to the Productivity Commission. The Australia Law Reform Commission has examined matters in the recent past as well. So there is a range of advice and views for law reform coming to government from different agencies or law reform entities which the government is considering and all are responded to, or will be responded to, in due course.

Senator McKIM: I think you said it is your intention to respond during this term.

Senator Brandis: Yes.

Senator McKIM: Perhaps this one is for Mr Hall because I think this is a technical question. I am not allowed to ask hypothetical questions, as I found out this morning. Would a decision to prevent perpetrators of domestic violence from cross-examining victims in court require legislative change or might it be able to be achieved simply through changes to the court rules?

Mr Hall: It is probably not appropriate for me to provide, I guess, what would be legal advice, although, as a general proposition, a significant change is likely to require some kind of legislation.

Senator McKIM: Thank you. I would like to move onto a separate issue now. I am asking these questions on behalf of my colleague Senator Waters, who is not able to be here today. Women's Legal Services Australia have identified a trend around clients experiencing family violence not always feeling as though they are listened to by Family Court writers and their sense on occasion of feeling traumatised and humiliated by the assessment process.

Senator Brandis: What do you mean by 'Family Court writers'?

Senator McKIM: People who write reports, as I understand it.

Senator Brandis: Expert reports?

Senator McKIM: Yes. And their feelings around that. The Family Court, as I understand it, at previous Senate estimates have said that they were not aware of that issue. Presumably you are now aware of the issue. I just wanted to, firstly, ask whether anything has been done about that or if there has been any consideration given to that since Senator Waters raised that with you last time.

Ms Filippello: I am not sure whether, when that question was taken on the last occasion, the committee was informed of the Family violence best practice principles. That is a document that provides guidance for the practitioners and court staff. It is a guide for the judiciary and members of the public in dealing with matters which involve family violence. We have also developed a plan which is in implementation, 2014-16, and that addresses issues of that nature as well. But, in particular, in relation to the family consultants, their background and training is such that they are either psychologists or social workers with tertiary qualifications, and they have studied extensively at a postgraduate level—and some have doctorate degrees. Part of their induction program with the court is that they have clinical induction with us as well as having had clinical training in excess of five years prior to appointment.

One of the key areas that the court gives consideration to is family violence. The court has set up Australian Standards of Practice for Family Assessments and Reporting, with particular reference to family violence. When a family consultant prepares a report, before that report is released it is referred to the senior family consultant within the court, who ensures that the relevant issues have been properly addressed before it is released for publication to the parties and to the court. That report is normally released upon an order of the court.

Senator McKIM: Sorry to interrupt. Did you mention Professional Directions for Family Consultants?

Ms Filippello: Yes, that is correct. Australian standards of practice.

Senator McKIM: Are they publicly available?

Ms Filippello: They are available, yes.

Senator McKIM: On your website?

Ms Filippello: Yes, they are. It is available on the Family Court website.

Senator McKIM: Thank you very much. Do they apply only to internally employed staff, or do they also apply to external consultants?
Ms Filippello: All of our consultants who are psychologists are registered psychologists. Anyone who is employed by the court for the purpose of preparing a report is bound by those guidelines.

Senator McKIM: Whether they are employees or consultants?

Ms Filippello: That is right. They are referred to as regulation 7 family consultants. They may be persons who are in private practice who are retained by the court for the purpose of preparing a family report for the court. They, too, would be bound by those reporting guidelines.

Senator McKIM: Thank you. I appreciate that response. Did you mention the Australian Standards of Practice for Family Assessment and Reporting?

Ms Filippello: Yes, that is the title of those guidelines.

Senator McKIM: I see. So that is the title, and you are shorthanding that to 'professional directions', are you?

Ms Filippello: Yes.

Senator McKIM: So it is the same thing.

Ms Filippello: The same document.

Senator McKIM: Thank you.

CHAIR: Your time has finished for the moment, Senator McKim, unless you are almost finished.

Senator McKIM: I will come back, but I may not need a full 15 minutes.

CHAIR: I will pass to Senator Madigan, but on the way Senator Collins has a couple of brief questions.

Senator JACINTA COLLINS: Thank you, Chair. In fact, on that point I also had another question about the family violence standards. Sorry, were they family assessment standards or family violence standards?

Ms Filippello: Is that in relation to the family consultants?

Senator JACINTA COLLINS: No, the standards you were just referring Senator McKim to.

Ms Filippello: Yes, they are for family consultants.

Senator JACINTA COLLINS: They are not specifically for family violence?

Ms Filippello: They include family violence.

Senator JACINTA COLLINS: And who developed them?

Ms Filippello: The Family Court, in consultation with other experts.

Senator JACINTA COLLINS: Can you take on notice who those experts were.

Ms Filippello: Yes, certainly.

Senator JACINTA COLLINS: It may be available online, but I was interested in that point as well. Now, just very briefly, since Senator O'Sullivan raised the judicial appointments issue, it might save me coming back to this if I ask a further question. Attorney, you mentioned federal appointments that cabinet dealt with. How many appointments were there?

Senator Brandis: Five.

Senator JACINTA COLLINS: Is it true for the figures ahead of these five appointments that you have appointed as many men who attended Magdalen College—your college at Oxford—as you have appointed women overall? Would that be correct?

Senator Brandis: I do not know, Senator.

Senator JACINTA COLLINS: Perhaps you could take it on notice for me.

Senator Brandis: Okay.

Senator JACINTA COLLINS: Thank you.

Senator Brandis: I do try to appoint the cream of the bar to the judiciary.

Senator JACINTA COLLINS: Does Magdalen College take girls?

Senator Brandis: Yes, Senator.

Senator JACINTA COLLINS: Very good.

Senator MADIGAN: How many children were involved in or affected by Family Court judgements in the 2010-15 period?

Mr Foster: I will have to take that on notice; I have no idea. I am not even sure that we can provide an answer easily. I am just imagining the complexities of trying to extract that data from our database; it might be extremely
difficult. That period of time is a long period of time to find the number of children affected. And they are affected in a number of ways—there are interim orders, of which there are about 25,000 a year; there are applications for final orders, of which there are about 20,000; and there are other sorts of orders that impact upon children across the board. It is a very wide question. We deal with about 200,000 individuals in a year, excluding children, so it will be a very large number. I have no idea how we will find that number out, but we will do the best we can.

CHAIR: Senator Madigan, you obviously have a purpose for asking the question, but is there any way you could perhaps confine or narrow the thing? From what the CEO says, they are going to spend the rest of their days trying to work this out.

Mr Foster: There are 14,000 divorce orders as well as about 13,000 consent orders, so we are talking about huge numbers of applications.

CHAIR: Anyhow, it stands that it has been taken on notice, but I cannot imagine—

Mr Foster: I am not sure that we can actually answer the question, but we will take it on notice.

CHAIR: Neither do I. That is why I am suggesting you might want to try to confine your question to a more manageable thing that might get you an answer, Senator Madigan. It is up to you, of course, but I am trying to be helpful.

Senator MADIGAN: My questions pertain to whether the Family Court keeps statistics on the effects of the court on children.

Mr Foster: That is more of a research project, I think, Senator. The court makes an order, but like any other court in the land judges get no report back about the impact of their order. In the criminal jurisdiction and in family law they make an order and unless that matter is brought back before the court they will have nothing further to do with that particular matter. In terms of whether it has a positive or negative outcome they will probably never know.

Senator MADIGAN: So I would be right in assuming that you would have no statistics about how many of these children do not have substantial ongoing contact with one parent according to court orders?

Mr Foster: They also vary so much. There can be an interim order made for children who are two or three years old, and five years down the track when they become eight or nine years old, there is another order made. Those orders are changed with different contact time rules. So no, we do not have specific data on how much time individual children would spend with different parents.

Senator MADIGAN: Does the Family Court have any information, if court orders were adhered to, on the welfare of those children consequent to court decisions? Do you do any follow-up to see what is happening?

Ms Filippello: In some matters, the court does make an order that the family consultant meet with the children to explain the orders and the reasons that the judge made those orders. But, unless the judge has made an order either requiring the family consultant to continue to maintain their relationship with the family or ensuring that the independent children's lawyer continues for a period of time rather than being discharged on the order, the court has very little further to do with that family unless there has been noncompliance with an order.

Senator MADIGAN: So there are no figures on whether court orders were adhered to?

Ms Filippello: We would have details in relation to applications for enforcement if those applications are brought. We certainly would have that detail.

Senator MADIGAN: Would you be able to supply that to the committee on notice?

Mr Foster: We can do that.

Ms Filippello: Yes, we can take it no notice.

Senator MADIGAN: Does the department or the court have any data, or have you collected any data, on the numbers of children that have attempted self-harm or suicide or experienced serious mental health disorders or conditions subsequent to Family Court interventions?

Mr Foster: No. These are probably matters, I think, that would be subjects of some sort of significant research project. I do not know that it is a role of the court to do this sort of research. These questions that you are asking have significant resource implications to try to provide an answer. We do not have a database that would tell us that. It would be a manual examination of files and following up with the particular families in some way. So it would be a significant research project, I would think.

Senator MADIGAN: So the department has no interest in the effects of its intervention?
Mr Foster: No, the court obviously hopes that the orders that it makes are effective and work. But, with the amount of work that the courts do, there is no capacity for them to call the families back and say, 'How are you going?' So, once the order has been made, the judge would have no more relationships or contact with that family, and nor does the administration of the court.

Senator MADIGAN: Thank you.

Ms Filippello: Just in relation to the previous question raised by Senator McKim, the chief justice has written to Cathy McGowan—and I have a copy of that letter—in relation to the issue of cross-examination of a witness by abusers.

Senator McKIM: Are we able to have that tabled, Chair?

Senator Brandis: We will tender this—sorry, it is in the wrong forum! We will table this.

Senator McKIM: We will mark that as exhibit A.

Senator Brandis: We will table the letter.

CHAIR: It is a letter from?

Senator Brandis: It is to Ms Cathy McGowan, the member from Indi, from the Chief Justice of the Family Court, the Hon. Diana Bryant.

CHAIR: There is nothing private or confidential in it?

Ms Filippello: No.

CHAIR: Okay. Thanks for that, Ms Filippello.

Senator McKIM: Thank you for that, Attorney—ultimately. I appreciate that very much. Can I just go back to the other matter I was raising, which was around the report writers, as I think I inaccurately classified them. You have talked about the guidelines.

Ms Filippello: Yes.

Senator McKIM: I am shorthanding them there. When were those guidelines brought into effect, if I might ask?

Ms Filippello: I would have to say that the most recent ones were 2003, from recollection—sorry, 2013. But there has been a version of that document around for some time.

Senator McKIM: So 2013 is the latest version.

Ms Filippello: Yes.

Senator McKIM: So they were already in place, if you like, when Senator Waters raised her concerns at previous estimates. So has the court done anything at all subsequent to Senator Waters raising these matters, which were concerns conveyed to her, whilst these guidelines were actually in place?

Ms Filippello: Could I just clarify: although the guidelines are in place, they are revisited. If there are particular areas within the guidelines that need to be reconsidered given the more recent practice evidence that is available, then the relevant principle of—family consultants would actually revisit those guidelines and update them.

Senator McKIM: Can I ask whether there are any training programs associated with the guidelines?

Ms Filippello: Yes. There is quite extensive training. Perhaps we could provide that to you on notice.

Senator McKIM: I am happy for you to take that on notice.

Ms Filippello: Yes. But I can indicate to you that, in addition to the guidelines that are in place, there is regular training conducted through the court by regular seminars—they have monthly internal seminars and they deal with various topics, including, more recently, the forensic examination of violence in a family law context, post-separation arrangements and high-conflict families, men's behaviour change programs—do they work and what should we do? It is certainly that type of training that occurs quite frequently. In 2014-2015, there was a series of three family violence clinical training modules that were delivered to all clinical staff. These modules focused primarily on personal and professional biases that can impact on clinical practice, in particular with an emphasis on balanced, robust and thorough examination, and reporting of family violence.

Senator McKIM: Thank you. Can I ask whether the court has any plans to implement a complaints process to enable someone to register a complaint in relation to family consultants?
Mr Foster: We have for very many, many years had a very transparent client feedback and complaint process, the details of which are on our website. They are easily accessible. But, if you would like, I can send you a copy of—

Senator McKIM: No. That is fine, Mr Foster. I appreciate that, but we are happy to have a look at that off the website.

Mr Foster: We have, basically, a retired registrar, who works with the deputy chief justice, that deals with complaints about the judiciary. We also have an officer who deals with complaints of a non-judicial nature on a full-time basis. Both courts—the Federal Circuit Court and the Family Court—have well-regulated, well-planned, transparent complaint procedures. Every time we come to estimates we bring a report on what the complaints had been. This is the first time we have been asked this question for some time.

Senator McKIM: Perhaps, then, I could follow up, Mr Foster. Are you able to provide figures around the number of complaints, particularly relating to, what I think are called, family consultants—the report writers.

Mr Foster: Yes, we can. I can give to you—on notice, I will send it to you—the number of complaints for a particular period of time, the nature of those complaints and what happened to them.

Senator McKIM: Are they broken down into categories of—

Mr Foster: Administrative, procedural, privacy, security, transcripts—there is a range of different categories.

Senator McKIM: Thank you, I appreciate that. So you will provide that on notice?

Mr Foster: We can provide that on notice for both courts.

Senator McKIM: Thank you. Can I confirm: with the complaints process that you have just taken us through in broad terms, are external consultants—so people who are in private practice but are consulting to the court in terms of report writing—able to be complained against within your process, or is it limited to employees of the courts?

Mr Foster: They can be, but it would depend on the nature of the complaint. If there is an issue with a family report, that is really a matter for the court to make some determination about whether they are happy about it or not.

Senator McKIM: I understand that. I was more considering an issue of the behaviour.

Mr Foster: No, we would investigate that.

Senator McKIM: Even if it was not—

Mr Foster: Even if it were reg. 7. There are a number of reg. 7s where we have terminated our arrangements with them for various reasons, and we review the reg. 7 appointments on a regular basis because there are many of them.

Senator McKIM: Thank you. Are you familiar with reporting last year in The Monthly and the ABC’s Background Briefing which called into question the practices of some prominent Family Court report writers that are operating in private practice?

Mr Foster: No.

Senator McKIM: There was some reporting done by The Monthly and Background Briefing. Perhaps I could ask you to take on notice this question. Are you satisfied that the concerns raised in those reports have been adequately addressed?

Mr Foster: Was that an article in The Monthly in November or October?

Senator McKIM: Yes, I believe so.

Mr Foster: I have seen that. What is your specific question?

Senator McKIM: Are you satisfied that the concerns raised in those reports have been satisfactorily addressed?

Mr Foster: I think we can always improve, but we can only do as much as we possibly can. We have good protocols in place. We have good recruitment processes. We have good supervision. We are a court that is very easy to complain about. People come to us with a fixed view.

Senator McKIM: A bit like parliament, perhaps!

Mr Foster: I'm not sure about parliament; no one would complain about parliament! But we are a court that is very easy to complain about, and people do have a certain amount of baggage to their complaints. But we take
every complaint seriously and deal with it in an appropriate way. Sometimes you only get one side of the story as well, obviously.

Senator McKIM: I accept that. Would you take on notice the question and provide a brief response to the committee around that article in *The Monthly* and ABC's *Background Briefing* and whether or not you believe they have been satisfactorily addressed?

Mr Foster: We will do that.

Senator McKIM: Thank you. The Women's Legal Services have raised with us some of the issues that I have raised today. Do you have a relationship with the Women's Legal Services and other stakeholders in this area that allows them to feed directly into you in terms of the consultation process to allow you to satisfy yourself that their concerns are being heard and addressed?

Mr Foster: Yes. The Chief Justice chairs a stakeholder committee which involves Women's Legal Services, legal aid and a whole range of non-government organisations. The Chief Judge is also a member of that group, and they meet on about a quarterly basis. Presentations are made. Child support are there. Anybody who has got an interest in the broader context of family law has representation there. We also have lots and lots of contact and meetings with all sorts of different groups. Our registry managers as part of their role meet regularly with relationship centres et cetera. So there is quite a significant network of contact with the broader family law community.

Senator McKIM: Thanks. I should clarify something I said. I have made an assumption there. I am asking these questions on behalf of Senator Waters, as I said, and the brief does not say the Women's Legal Services raised them with us; it simply says that they have been raised by Women's Legal Services. I wanted to clarify that for the record.

CHAIR: If you have finished, I think that completes our inquiry into the Family Court and the Federal Circuit Court. Thank you very much.

**Australian Transaction Reports and Analysis Centre**

[16:24]

CHAIR: Welcome. I ask you to tell us something about Vanuatu and the extent of any surveillance or interaction you might have with that country, which I understand is a sort of open economy. Of course I do not want you to tell me anything that may in any way prejudice any work you are doing, but I wonder if you could generally indicate to me any interaction you have with that and perhaps with other countries in the South Pacific as well.

Mr Jevtovic: Thank you. AUSTRAC obviously monitors a range of countries not only in our region but globally. We are one of only a few countries that monitor all international fund transfers both in and out of Australia, so that would put a number of countries, in the term you used, under our surveillance. In relation to our region in particular we do a lot of work through the Asia-Pacific Group on money laundering—not just in monitoring transactions but in helping build the capabilities of the financial intelligence units of countries in our immediate region and around the world. We engage at a number of levels. We are a founding member of the Egmont Group, which is 155-odd countries around the world. We represent Australia on that group. The group is broken up into regions around the world. We have again Asia-Pacific. We are a key contributor to the development of capabilities within our region. So we have both a monitoring role of financial transactions within the region as it affects Australia and a development role.

CHAIR: When you monitor transactions in other countries, do you need to have access to facilities or records in other countries? If so, how is that arranged?

Mr Jevtovic: We can monitor transactions that come in and out of our jurisdiction.

CHAIR: Your jurisdiction being Australia.

Mr Jevtovic: Yes. Having said that, we have over 77 memorandums of understanding with countries around the world. This enables us to exchange intelligence and information with those countries, and we do no a regular basis. It is through that mechanism that we can share and request information.

CHAIR: Again, do not tell me anything that would cause other countries to be less cooperative than they are now, but do you have good relationships with the authorities in Vanuatu?

Mr Jevtovic: We have productive relationships throughout the region, and Vanuatu is one of those countries.

CHAIR: I used to have some idea of how you worked from a previous committee I was involved in. Can you monitor transactions that really do not involve Australia?
Mr Jevtovic: No, we cannot. Our jurisdiction obviously relates to Australia. That does not mean that we cannot work in a global operation with a number of countries whereby transactions not necessarily coming into Australia may have an impact. As we know, organised crime is a global network, so we might be in partnership with two or three other countries on a particular investigation or intelligence operation where the transactions of themselves may not necessarily come in and out of Australia but the impact of their activities may well have an impact on Australia.

CHAIR: I think Vanuatu is a 'tax haven'. Is that correct?

Mr Jevtovic: I am probably not in a position to confirm whether it is a tax haven as such, but, like a number of countries, it too has challenges around money laundering and terrorism financing. Australia has done a lot of work to help build Vanuatu's capabilities over the years—I know from a law enforcement perspective as well. So, whether it is a tax haven, I think there are probably others more qualified than me to answer that.

CHAIR: The suggestion from that is that large amounts of money come and go to that country because of what are colloquially referred to as tax haven starters.

Mr Jevtovic: All over the world and in our own region there are large money flows, and some countries are more attractive for investment than others. Vanuatu may well be one of those countries.

CHAIR: Do we have any permanent operatives in Vanuatu from your agency?

Mr Jevtovic: Not from my agency, no. This might be something to check, but we may have an AFP presence in Vanuatu. I have not had to put my mind to that for a number of years. We do have Australian embassy representation there. As to any operatives, law enforcement officers, I could not confirm that now.

CHAIR: Do you need people on the ground in a place like Vanuatu to properly get the records, build relationships, or can that all be done from afar?

Mr Jevtovic: I think it is case by case. There are benefits in some instances in having feet on the ground to help build the relationship, to help train countries. For example, we have people on the ground in Indonesia and we have had for over 12 years now. That has resulted in an extremely productive partnership with Indonesia. We help develop their capabilities; we conduct joint operations into terrorism financing. Only in November last year, for example, we held a combined terrorism financing summit here in Australia—the first of its kind. That just goes to show that sometimes it is worth having people on the ground to help enhance the relationships. But it is not always necessary. We can engage with partners in other ways as well, but sometimes it is beneficial to have people on the ground.

CHAIR: If money were coming into Vanuatu from other areas that you may or may not be aware of and then were going from there into Australia, you would have fairly precise abilities to know what was going on?

Mr Jevtovic: There are two parts to that. The first is that, if money were coming through the legitimate financial sector, we would be aware of it. However, as we know, if criminal elements are at play, they may avoid the legitimate financial sector. They may smuggle the money or use other means.

CHAIR: So in that event it is difficult for you to know what is happening?

Mr Jevtovic: Absolutely. One of the challenges in trying to fight organised crime and terrorism financing is that they do not always use the legitimate financial sector, which we can monitor. They will use criminal enterprises, they will use other forms of money laundering—hawala, cash smuggling, for example—and obviously that places us at a disadvantage. Going back to your earlier question, that is where strong law enforcement partnerships are really important, because that is where we can exchange intelligence, share information and experiences and hopefully minimise the opportunities for criminals to use the black market money channels.

CHAIR: I cannot recall who it was, and I do not have any detail, so I should not really be raising this, but someone suggested to me that things were happening through Vanuatu that AUSTRAC should have been more closely involved in but were not. As I say, that is not something you can answer because it is so vague, but that was the reason for my question. I am wondering if there is any emphasis on that and other South Pacific nations that could benefit from greater activity from AUSTRAC.

Mr Jevtovic: We work very closely with a range of countries in the region. In fact, at the Counter-Terrorism Financing Summit last year, which was very much regionally focused, some 22 countries were represented, predominantly from South-East Asia. Also representing the Pacific was the Asia/Pacific Group on Money Laundering. So the engagement is strong. But of course our abilities to help all our counterparts everywhere is stretched so we focus on priorities, we focus on where the intelligence leads us. We are an intelligence led organisation and we respond to where the greatest risks and threats are.
CHAIR: I will leave it there. Thank you for the work that you and your people do. I am conscious of a number of very significant actions that have been taken by your organisation that have had very good results, so keep up the good work. Thank you for coming along.

Australian Security Intelligence Organisation

[16:38]

CHAIR: Welcome, Mr Lewis and Ms Hartland. Thank you for joining us. Do you wish to make an opening statement?

Mr Lewis: Can I begin by thanking you, Chair, and the secretariat and members of the committee for indulging us with this time adjustment today. I recognise the difficulty of finessing the program of this committee, and I do appreciate it. We have not appeared before the committee since May of last year, and much has happened since then. Terrorism continues to be the most obvious and the most immediate challenge for our organisation. The broader security environment remains challenging, in respect of both international conflict and the international terrorist threat—and in fact the domestic terrorist threat. I note that the threat of terrorist attack here in Australia stands as probable.

Since September 2014 there have been three attacks and six major CT disruption operations in response to imminent attack planning here in Australia. Each of the—

Senator JACINTA COLLINS: Sorry, Mr Lewis. I am having difficulty hearing you. And the acronym you just used—CT?

Mr Lewis: CT is 'counter-terrorism'—I beg your pardon.

Senator JACINTA COLLINS: Okay. Thank you.

Mr Lewis: Each of the six major disrupted terrorist plots was initially identified and investigated by ASIO and our police and law enforcement partners. Then, as we normally do, we pass the action to be taken upon discovery of those plots to law enforcement. We have a very tried-and-tested process now for passing from intelligence to law enforcement.

The conflict in Syria and Iraq continues to resonate here in Australia. There remains a small number of Australians that are influenced by the twisted rhetoric espoused by groups such as ISIL. I can give you something of a snapshot—and I have made a practice of doing this at each of these hearings—of where we currently are. There are approximately 110 Australians that are currently fighting or engaged with terrorist groups in Syria or Iraq. This is a minor decrease on the last time I spoke to you, but the figures are regularly changing and it does not represent an overall decrease in interest shown by individuals travelling to join the conflict. In fact, at least 45 Australians are confirmed killed in the conflict, and it could be anywhere up to 49 Australians.

Untrained and naive young Australians have been drawn into the conflict and found themselves in what I would describe as highly expendable and highly dangerous positions of low importance amid the ISIL effort. There are about 190 people here in Australia that are actively supporting the extremist group in Syria and Iraq, and they are doing that through fundraising, and in many cases seeking to travel to join these groups. There are about 40 Australians that have returned from the Syria and Iraq conflicts and the majority of those were involved in the earlier Syrian civil war, prior to the advent of ISIL.

In concert with other Australian agencies, we are working to identity the issues each of these individuals who have returned might present. We are actively working to ensure that they are managed effectively and according to our law, and counter-terrorism investigations continue to remain an absolute priority for ASIO.

While foreign fighters and the conflict in Syria and Iraq remain a significant focus of our effort, our counter-terrorism investigations are conducted in relation to a range of potential threats and politically motivated violence. The exact number of high-interest counter-terrorism investigations ASIO has underway at any time fluctuates as investigations are closed or as new ones are identified, so it is a dynamic figure. The level of priority given to any particular investigation can change markedly as new information comes to hand.

It is true to say that in the past 18 months there has been a period of heightened tempo with more counter-terrorism investigations underway than at any time in the preceding decade. To date, ASIO has issued adverse security assessments recommending the cancellation or refusal of 156 passports for Australians linked to extremist groups that are involved in the conflict in Syria and Iraq. ASIO remains committed to preventing travel by would-be fighters as the best outcome for Australia and our security needs.

As recently as two weeks ago ASIO was involved in coordinating searches of premises of individuals here in Australia. These individuals are of security interest. The nature of this threat requires continuous focus by ASIO,
and this was particularly true over the Australian summer period; the summer holiday season saw officers continue to apply pressure and vigilance to our terrorist targets around the country.

Internationally we have seen numerous terrorist attacks on soft targets. The jihadists undertook multiple attacks—as you all know—across Paris under the banner of ISIL on 13 November last year. Those attacks killed 130 innocent people. Jakarta was targeted on 14 January this year, resulting in the deaths of at least eight people, four of whom were the perpetrators of the attack. ISIL also claimed responsibility for that attack.

The Syrian and Iraq conflicts have and continue to generate significant humanitarian concerns, as we are very aware. The increase in refugees fleeing the region continues to be widely reported, and the Australian government has committed to accept 12,000 Syrian refugees. From our point of view regarding ASIO's responsibility, we will progress the security assessment of this particular group with our established risk management and intelligence processes.

I would like to conclude with a few remarks about espionage. With such a strong emphasis on counter-terrorism we need to be careful not to overlook the espionage threat. I am sure the members of this committee will appreciate that we do not generally provide detail about the enduring espionage threat, due to a range of sensitivities that it obviously excites. It is important to be clear that this lack of exposure does not mean in any way that the espionage threat to Australia or our interests is any less significant.

What I can say is that espionage poses an insidious threat and it continues to pose a challenge to ASIO. The perpetrators of espionage are utilising a range of trade craft and capabilities to target strategically important Australian interests. ASIO is and will continue working closely across government and with industry to ensure that we remain alert to this threat and that we have the infrastructure and systems to combat it.

Chair, thank you for the opportunity to make those opening remarks and, again, I thank you for accommodating our timing request.

CHAIR: Thanks very much, Mr Lewis. I might just ask you a couple of brief questions. To compete in a modern world with organisations that have much more money than you could ever hope to have, or dream of having, do you find that you are not disadvantaged in the latest technological aids and equipment that you can get? Are you constrained—by money—in getting some enhancements that might otherwise help in the very important and crucial task that you and your people undertake?

Mr Lewis: I think it is very true to say that the cost of our business is increasing, and part of that increase is driven by the acceleration in technology. We are not of course the only sector to be impacted by that. I think we do very well with the resource that we have in terms of combatting the technology of what I would describe as Australia's adversaries, if you like, those people who have an adversarial point of view to our security interests. We are spending a good deal of time, money and human resources on developing our capability. They have advanced significantly over the last decade. Your question related, I presume, to some of our international partners who do indeed have significantly more resources, and I am pleased to say that we are engaged very closely with those partners in order to make sure we are a bit like boats rising on a tide, all able to rise together.

CHAIR: I was more saying 'the bad guys'.

Mr Lewis: Yes, well it is true.

CHAIR: Money that you could only dream of having.

Mr Lewis: It is true that technology is principle-neutral in that sense. It provides a positive and useful platform for people who would wish us harm in the same way as it provides a platform for us as we try to counter those threats to the community. It is neutral in that sense.

I think we are travelling reasonably well. You could always spend more money and do more, but I think, when compared to the threat that we face, we are travelling reasonably well in that area. I am not complacent in any way about this, because it is a daily grind to make sure that you are staying one step in front of the people that you are targeting. It is a constant process.

CHAIR: Of the 190 Australians who you believe are supporting ISIL, and who you have got your eye on, are you able to tell me how many were not born in Australia but have Australian citizenship?

Mr Lewis: I cannot give you a precise figure, but I can assure you that the overwhelming majority of those people were born in Australia and would have Australian citizenship. I do not have the precise numbers, but a distinct majority are Australian citizens and born here.

CHAIR: Of course you will not tell me anything that would help those against whom you are forever vigilant, but of that 190—just using that group—is there an age cohort? Are most of them between 20 and 30, or is that not a statistically useful figure for you to have?
Mr Lewis: Perhaps I can assist with that question. Rather than just looking at the 190 Australians, if we also include the 110 people who are currently overseas—essentially those Australians who are either in the Middle East or supporting those in the Middle East—it would be true to say that the demographic is young. If I was talking to you a couple of years ago typically we would have been talking about people in their late 20s, early 30s. If I was speaking to you a year ago, that had dropped down to early 20s. By the start of the middle of last year we were, as you are probably aware from press coverage, down to the teens. What is distressing is when we see the very young age of some of the people. If you asked me for a median, without being precise, I would say it is in the early 20s but the trend is down, and at the bottom end of that spectrum we do have some people of astonishingly young ages.

CHAIR: Mr Lewis, I assume that because you say there are 190 Australian supporting ISIL they have either not committed an offence or you do not have the evidence to support any prosecutions and that is why, I assume, they are at large but are known to be supporting ISIL. How does that all work?

Mr Lewis: Some of those of course, are facing prosecution.

CHAIR: I see.

Mr Lewis: There is another group, obviously, for whom we do not have sufficient information at this stage to precede to prosecution, but there is a big difference in ASIO's role between going to prosecution and pursuing a security intelligence investigation.

Senator Brandis: If I may add to the director-general's remarks, it may well be that those people have committed an offence but there is not a prosecution brief in a position to initiate a prosecution against them. What ASIO does, as a security intelligence organisation, is different from what the police do, of course, in assembling evidence that is admissible in court. In all these offences under the Criminal Code, the standard of proof is still the criminal standard beyond a reasonable doubt. So one should not infer from the fact that they have not been arrested that they may not have committed a crime. They may have but the evidence may not be there to mount a prosecution.

CHAIR: Finally from me, with the 156 passports that you recommended cancellation of, again, are they mainly for Australian-born passport holders? Again, I do not want specific details.

Mr Lewis: They are Australian passports, of course. It is true to say that the overall majority would be Australian born. There would be some that were not, but the overwhelming majority would be Australian born. The figure 156 I think is a week or two old. It may well be 158 by today. There is a fairly constant turnover of this figure. Almost every day it is ticking up by one or two.

CHAIR: And the impact of the cancellation is that if those people are overseas they cannot get back; or, if they are in Australia, they cannot go overseas.

Mr Lewis: They break down into two categories. About 100 of 150—the last figure I saw was 99—are Australians that are here that are now prevented from departing. The other 50-some are Australians that are overseas who are not prevented from returning home; it just means that, should they try to return to Australia—or, as importantly, if they try to move from wherever they are now to some other place where there is a passport control—they would not be able to do so without special arrangements.

CHAIR: Special arrangements being?

Mr Lewis: Through the Department of Foreign Affairs. They would need to get the necessary documentation to return to Australia without a passport. That is technically possible, but there is an administrative hurdle, if you like, over which an individual must get in order to re-enter Australia or in fact to move around between any second and third country.

CHAIR: The decision to cancel a passport is made on recommendations. By whom are they made? And are there appeal provisions?

Mr Lewis: Yes. Because we are in the security intelligence business, we provide a security assessment on the individual, and that assessment might go to what we judge to be the individual's likely actions immediately or into the future. That security assessment is then passed to the foreign minister. It is the foreign minister's authority under which the passport is cancelled. The foreign minister cancels the passports. There is, indeed, the ability for of review. The individual can seek review, and we do have cases that are under review currently.

CHAIR: Thanks very much.

Senator JACINTA COLLINS: Mr Lewis, thank you indeed for your request that we ensure that you are accommodated within the program. I was conscious that we had not had a detailed report since May 2015. I could not hear all of your opening statement, unfortunately, because of some cross-conversation at the time. You
mentioned at the commencement of your statement that since September 2014 there have been three attacks. Then you referred to counter-terrorism. But I missed what you said around it.

Mr Lewis: Since September of 2014 there have been three attacks that have actually been launched. They are well documented. The young man Haider in Victoria, Monis in the Lindt Cafe, and more recently the shooting in Parramatta of Mr Cheng. On top of that, there have been six thwarted attempts. That is, with the intelligence that we have provided and working in conjunction with our police colleagues we have been able to disrupt six other attacks that were in the final stages of planning and execution.

Senator JACINTA COLLINS: I am conscious—as was Senator Macdonald—not to seek from you information that might compromise any element of our national security. But—please, to the extent that you think it is appropriate—I will ask you to answer these questions. When you say that there were six thwarted attacks, is there a way you can describe for us the nature of those attacks?

Mr Lewis: They are fairly consistent with the attacks that were actually launched. I have made this point in previous hearings of this committee. We are talking about low-tech. That is, they are not particularly sophisticated. It is typically the notion of acquiring a weapon with a blade—a knife, for instance—and attacking people at random. There is always the attempt to try to assemble some explosive devices, but it is fairly unsophisticated and not of the sort of magnitude that you might imagine with large, vehicle-born incendiary devices or explosive devices and so on—so fairly low tech. To go to Senator Macdonald's earlier question with regard to the age: the age of these people who are involved in the planning is very young.

Senator JACINTA COLLINS: You said 'low tech'. I have just returned from Kabul, where you can do an enormous amount of damage even with a low-tech device. I am looking for some description of the potential magnitude of what we have successfully interfered with.

Mr Lewis: I think when I spoke on 7.30 a couple of months ago, I made the comment that it was not assessed by us that a Paris like attack—that is, one of enormous sophistication and coordination—was likely here in Australia. The nature of the attacks that we have seen have all been of this rather unsophisticated, rather quickly put together planning.

Senator JACINTA COLLINS: And likely to impact on a small number or an individual?

Mr Lewis: Yes. That is how we would assess it, rather than being a mass-casualty attack. Having said that, you can never discount, quite obviously, something happening here, but I think I made it very plain to the Australian people at that time—we were obviously coming off the back of a Paris attack—to say that an attack of that nature was not expected here in Australia. I mentioned the terrorist alert level currently is that an attack in Australia is probable.

Senator JACINTA COLLINS: Or, indeed, the potential for attack of Australians in Indonesia is now heightened.

Mr Lewis: Indeed. I think that the issue of the security in the archipelago to our north is an enduring one.

Senator JACINTA COLLINS: Would you describe that as going beyond Indonesia?

Mr Lewis: Yes. It is probably more extensive than that through the archipelago. Indonesia, of course, has been the scene of our most tragic experiences nationally. There is a particular problem with returning fighters into South-East Asia. Their problem is not dissimilar to ours except that the scale is bigger. That, together with the circumstances on the ground there, and I mentioned the attack in Jakarta on 14 January, have meant that we anticipate that further attacks in the archipelago are most likely.

Senator JACINTA COLLINS: When you are talking about the characteristics of, say, the 300-odd people, apart from age, are there other characteristics you would highlight?

Mr Lewis: Predominantly male—

Senator JACINTA COLLINS: Has that changed or is it much the same still?

Mr Lewis: No, it is much the same. You might recall at a former hearing of this committee where I mentioned that the numbers of females appeared to be increasing quite significantly—about 18 months ago. It was not long after I took over this appointment.

Senator JACINTA COLLINS: I recall.

Mr Lewis: That has actually plateaued. That is not the case anymore. They are still predominantly male, young males.

Senator JACINTA COLLINS: Is there any explanation as to why you believe that it has plateaued? Are we succeeding in some area, in counter-terrorism?
Mr Lewis: That is true of not just the female population. It is true of the entire demographic that we are talking about here. Why that is the case is very difficult to quantify. Part of it is that there is only, of course, a certain number of young people who would be attracted to what I describe as criminal lunacy in the first place. It might be that we are starting to get towards not saturation point; we have probably taken up the obvious candidates.

Senator Jacinta Collins: Which may also be an explanation for why it is moving down age.

Mr Lewis: It may well be, although I must say that the descent in age appears to be a very deliberate move on the part of those in the Middle East who are targeting our young people and trying to recruit them. Again, I have said in front of this committee before that the demographic we are talking about, because of their age, are enormously connected in a social media sense; they are therefore vulnerable to being preyed upon through the social media vector.

Senator Jacinta Collins: And indeed the potential for success with young men in that younger group, before they have other established non-familial networks, may be more likely.

Mr Lewis: It is possible.

Senator Jacinta Collins: You also mentioned searches of premises. I was interested if you could quantify that in any way.

Mr Lewis: The two I mentioned were specific cases. As you know, I am not really in a position to speak about the specific cases that we face. We do, on a fairly regular basis, conduct searches of premises if there is sound reason to believe that there is something there that is of security interest. This is a longstanding part of ASIO's function really.

Senator Jacinta Collins: I am not interested in the cases. I am more interested in how much activity has occurred in that area and what success has been born.

Mr Lewis: Very successful.

Senator Jacinta Collins: Are searches of premises assisting us in prevention?

Mr Lewis: Yes.

Senator Jacinta Collins: So it is helping prevent people from travelling overseas?

Mr Lewis: Yes.

Senator Jacinta Collins: I am just asking if you are able to quantify any of that for me.

Mr Lewis: No, I cannot really quantify it, but all of those things it assists in prosecution. It assists in a range of what I would describe as measures to counter the security threat that our community faces.

Senator Jacinta Collins: I would also like to go to your comments about espionage. How important is it for senior office holders of the government—ministers, senior public servants—to comply with security protocols when they are dealing with sensitive or secret information across electronic communications such as the telephone or the email? Is this a real risk to us?

Mr Lewis: Oh yes. There is no question. It is not just senior office holders; it is the Australian community at large. We were talking about social media, but in this day of electronic connectivity, where we are obviously operating on electronic systems, you have an increasing number of pieces of official information that are on electronic databases around the place that can be retrieved through cyberespionage or other forms of espionage. So it is something which we as a community need to be alive to.

Senator Jacinta Collins: I am particularly interested in that issue of official information, or Australian government information, that we might want to keep secure. To the extent that you are able, could you provide us with a description of what should be the basic protocols for communication of sensitive or secret materials across electronic networks?

Mr Lewis: I am probably not the best person to speak technically about that. I might commend that that question be directed to the Australian Signals Directorate, which has formal responsibility for setting the standards and setting the various parameters around how we protect our electronic information.

Senator Jacinta Collins: I will do that, but, from what you were saying earlier, I gather that there is a significant risk that would arise from communication of secret information across non-secure networks in breach of our established protocols. I will get that information from the directorate.

Mr Lewis: Of course, if you communicate secure—that is, classified—information over an insecure line, that is a breach. That is a breach in every sense.
Senator JACINTA COLLINS: But I am relating it to your earlier comments about the real risk of espionage that we should not take for granted.

Mr Lewis: No. It is very real and alive.

Senator McKIM: Could you run the committee through the role that ASIO plays in screening humanitarian entrants? I am specifically asking in relation to the 12,000 Syrian humanitarian entrants that we are going to accept or are in the process of accepting into our country?

Mr Lewis: Let me begin by saying that the 12,000 which is the point of your question are no exception, and now let me go to the general proposition. People that come to this country in the humanitarian caseload will be screened by the department of immigration, and where that department expresses or has any concern with regard to security of the individuals those individuals will be referred to ASIO for screening. We will then conduct the screening and an assessment will be made, which will go back to the department of immigration, where they will then continue with whatever departmental decision-making processes they have. Our role in this is purely to do the security assessment on those cases that are referred to us. With respect to the 12,000 Syrians, coming back to where I started, that particular group will be treated in exactly the same way as anybody else coming into the country.

Senator McKIM: Do you have any historic data around what percentage of humanitarian entrants are referred to you by the department? And of those how many are refused entry on the basis of the department's decision based on the information you provide?

Mr Lewis: I do not think I could usefully give you a figure, not that I am trying to avoid it in anyway. It is just that each case load will be different, depending on their background and where they have come from and what the circumstances of their arrival are and so on, so the figure would not be in any way uniform.

Senator McKIM: Are you currently in the process of assessing any of the Syrian humanitarian entrants?

Mr Lewis: Yes we are. I cannot give you a precise figure, but the process is underway and we have cases we are examining now.

Senator McKIM: Could you take on notice the figure in terms of how many of those 12,000 the department has asked you to assess?

Mr Lewis: I would like to speak with the department of immigration first.

Senator McKIM: I appreciate that.

Mr Lewis: But assuming that there is no impediment to that then perhaps I can come back to you with a figure.

Senator McKIM: I will place the question on notice and you can respond subsequent to your—

Mr Lewis: It might be that the department of immigration is in a better position because they have control over which ones they are bringing forward to us. There are other considerations which that department can and does take which are beyond ASIO's competence and so the figures may be a little skewed as a result of that, but I understand the point you are making.

Ms Hartland: It is also a process where we are working continuously with the department of immigration as well, so we have deployed staff in working with them. So in terms of numbers and where they are at, as the director-general said, it will depend on whether they have actually been alerted through the system when they come to us. So whether there has actually been any that have come through in that way, we will need to take that on notice.

Senator McKIM: I appreciate that. And perhaps you could pick a date around about now, because I understand that more may be referred on any given day and you will obviously complete some assessments and put that back to the department. So if you could pick a date, maybe even today's date, just for ease of picking a date. Is there an average length of time that it would take ASIO to assess humanitarian entrants? Are you able to provide a rough figure?

Mr Lewis: Again, it is very hard to give you a figure because, and of course you will appreciate this immediately, who the individual is and what their background is will determine precisely how long it takes.

Senator McKIM: That is why I asked for an average and whether you have that information.

Mr Lewis: Not a useful figure that I could produce. Some are very quick, because they are immediately traceable, they have all the documentation that one would require, and they are able to be identified and traced quickly. Others are more complex. It is not necessarily any fault of theirs. It might just be the circumstances.
Senator McKIM: Just to be clear, ASIO is not a decision-making body here. It is the department that makes the decision. ASIO provides information that informs the decision.

Mr Lewis: We provide the security the security assessment on the individual. The department then makes the decision on what administrative action may or may not be taken as a result of that.

Senator McKIM: Based on your previous answers, I acknowledge that some of my next series of questions you would need to answer on notice, if you were able to answer them. I will place that on the record first. I am interested in how many screenings have been completed. I think I asked that earlier, but if I did not, I ask that.

Mr Lewis: Are we talking about the 12,000?

Senator McKIM: I am specifically asking about 12,000. Certainly in my state of Tasmania there is a general expectation in the community that they are about to arrive. They have not. I am trying to explore what some of the delays might be. I am certainly not suggesting that you should not be conducting your work diligently. I encourage you to do so, not that you need my encouragement. I am wondering whether there are any blockages—perhaps blockages is not the right word—any reasons for the delay in this process. How many screenings have been completed, in relation to the 12,000? How many, if any, have been cleared? Okay, that is not your role.

Mr Lewis: We understand the questions you are asking. We will try to provide answers. Most of this lies with the Department of Immigration. For example, the answer may be affected dramatically by the way in which the immigration department is presenting the cases to us in terms of the degree of concern that they may or may not have about them. For instance, are they taking people about whom there is absolutely no concern and who appear to be very simple cases first? If that were the case, our figure would be correspondingly low. I am not sure that it is a useful figure for you. It will have a whole lot of conditionality around it.

Senator McKIM: I appreciate that.

Mr Lewis: The department is actually the authority for making most of those decisions.

Senator McKIM: Does ASIO simply provide an assessment of a security risk—perhaps high, medium or low, although I am sure it is more sophisticated than that—or do you actually provide advice in terms of, 'Yes, this person is okay' or 'No, don't let this person in.' What is the level of your communication with the department on that?

Mr Lewis: We only have one bar height. That is whether the individual presents as a risk to the security of Australia—whether they are security risk.

Senator McKIM: So you will advise the department that in your opinion either yes they do or no they do not.

Mr Lewis: If we find that they are security risk to Australia, we will provide that advice to the department.

Senator McKIM: And likewise, if you find that they are not a security risk you will provide that advice?

Ms Hartland: As I said earlier, we are working with the Department of Immigration on a constant basis and sharing data holdings. So if there is information there it might have already been put through to the Department of Immigration, where that would raise a flag that then would come to us to do an assessment. It is a pretty seamless process. It is hard to give a point in time number because it is a constant, rolling process.

Senator McKIM: I appreciate that. I am happy for you to take this on notice: I am interested in how many, if any, there are of the 12,000 of the Syrian cohort that you have advised do present a risk to national security, as of today, for example?

Mr Lewis: I understand the question. We will see what we can provide.

Senator McKIM: I asked about the average time to complete an assessment. You have responded in broad terms around that. Thank you for your response to those questions. I want to turn to another topic now. The Attorney is not there.

Senator Brandis: Yes, I am.

Senator McKIM: This question lies somewhere between you and Mr Lewis. It is a specific question around the organisation that claimed responsibility for the Peshawar school shooting, that terrible shooting in Pakistan in December 2014, the Tehrik-i-Taliban. Why are they not a listed terrorist organisation given that they have been listed in New Zealand and in the United States?

Senator Brandis: That is a question for the Director-General. The practice of the government is to rely upon the advice of ASIO. I list terrorist organisations under the Criminal Code but invariably I rely on the advice of the professional officers in making that decision so perhaps the Director-General can assist you.

Mr Lewis: Just bear with me for one moment.
Senator McKIM: They are known as the TTP.

Mr Lewis: Could I ask you to repeat that organisation that you mentioned that either did or is asserted to have conducted that attack.

Senator McKIM: What I said, Mr Lewis, was that they claimed responsibility for that shooting. I obviously have no knowledge of whether or not it was them. They are the Tehrik-i-Taliban, known as the TTP.

Mr Lewis: They are not on the list of prescribed organisations.

Senator McKIM: I understand that. My advice is that they are listed in both New Zealand and the United States.

Senator Brandis: We will look into that.

Senator McKIM: So you will provide a response?

Senator Brandis: I think we have given you a response, really, but thank you for drawing that to my attention and we will look into it.

Senator McKIM: I am sorry to push the point but the response from ASIO was that it is not listed. I know that it is not listed; that is why I am asking the question. Could I ask you to communicate with me or the committee in some way, if it is possible to do so without compromising national security—

Mr Lewis: It is a matter for me and my organisation, in that sense, to make recommendations. I will have a look at it and I will speak with the attorney. I understand the point of your question.

Senator McKIM: Could I ask Mr Lewis whether ASIO organisationally found the 2010 counter-terrorism useful?

Senator Brandis: 2010?

Senator McKIM: There was a counter-terrorism white paper.

CHAIR: I think that might come within the category of asking for an opinion on a matter of government policy.

Senator McKIM: I am not sure about that. I am asking whether organisationally—so I am not asking Mr Lewis for his personal opinion—ASIO found it useful.

CHAIR: You are really asking the officer if he thought the government's white paper was any good, which is not a very fair question to put to an officer.

Senator Brandis: The hesitancy I have, first of all, is we are talking about a 2010 document, which was years ago and under a previous government, so it does not immediately relate to the estimates. I do not want to avoid the question at all but it is not, as I am advised, a document that was prepared by my department. I believe it was prepared by PM&C.

Senator McKIM: That is my understanding also but my presumption is that Australia's intelligence agencies would have been consulted by PM&C as part of that process.

Senator Brandis: I am sure that is true. I just wonder if we could focus on something a little more recent; it might be more useful.

Senator McKIM: Okay, I will bring that question up to date then. Isn't it time for another counter-terrorism white paper so that we can strategically assess the human and civil rights that I am sure most of us would accept we are trading away and whether or not that is making us any safer as a community, and have a strategic assessment about all of the legislative changes that have been made since 2010, including potential legislative changes that you have flagged may be made into the future which will further reduce the human and civil rights that many of our ancestors fought and died to protect in world wars and other conflicts. The intent of my first question was to explore whether or not that was a useful process and then follow with a supplementary as to whether or not it is time for another one, or an update of the previous one.

Senator Brandis: Indeed. Another reason for my hesitancy about the 2010 document is that it was the document of a previous government. Ordinarily a successor government does not necessarily adopt or endorse the views of a previous government. I recall there was one white paper published by the previous government that observed, erroneously, that a decade after the twin towers attacks in New York—I cannot remember whether this is the one you were referring to or not—domestic terrorism threats were of less significance in the security environment, or words to that effect. That was of course quite wrong. I can tell you though, Senator McKim, that in July of last year the Council of Australian Governments endorsed and released a more contemporary document,
obviously—*Australia’s Counter-Terrorism Strategy*. I suggest that one would look to that as the most recent expression of the views of all Australian governments, federal, state and territory, in relation to counter-terrorism.

**Senator McKIM:** Were security agencies including ASIO consulted in the development of that strategy?

**Senator Brandis:** Yes they were.

**Senator McKIM:** I will have a look at that, Attorney. I appreciate that.

**Senator LAMBIE:** Mr Lewis, royal commissioner Heydon said he had discovered grave threats to the power and authority of the Australian state. Have you been made aware of those threats by the royal commissioner?

**Mr Lewis:** I am aware of the royal commission. I have had no contact with the commissioner at all. The matters that I understand were addressed were in the area of the law, and they are really law enforcement issues—they are not issues that impact on ASIO.

**Senator Brandis:** The Heydon royal commission, as the Director-General rightly says, was about law enforcement, or what we might broadly call rule of law issues. The inquiry was quite specific to matters within its terms of reference, and those terms of reference did not advert to the two principal activities for which ASIO was responsible, namely counter-terrorism and counter espionage.

**Senator LAMBIE:** So given that the power and authority of the Australian state is under threat from a number of different sources, do you expect to have access to the secret volumes of the Heydon royal commission, Mr Lewis?

**Mr Lewis:** No. I could get them, I guess, but I do not intend to—

**Senator LAMBIE:** I am just a little concerned about the grave threat to the power and authority of the Australian state. I would have thought that ASIO, since it was such a grave threat, would be involved.

**Senator Brandis:** Threats to the state can also take the form of threats to the rule of law by systemic criminality, which is what Mr Heydon found in aspects of Australia’s workplaces and industrial practice. That is not the subject matter that ASIO was created to deal with.

**Senator LAMBIE:** No, but it would be there to deal with a grave threat to the power and authority of the Australian state—those words are quite outstanding.

**Senator Brandis:** Not necessarily, because ASIO is not a criminal law enforcement body. It deals with terrorism or other aspects of national security, and it deals with espionage by foreign actors. What Mr Heydon’s royal commission was looking at was domestic criminality, which is not ordinarily what we would consider to be an issue of national security. What Mr Heydon—who, of course, is a very eminent jurist—rightly observes is that—

**Senator LAMBIE:** So it is not a grave threat to the power and authority of the Australian state? Is it is or is it not a grave threat to the power and authority of the state?

**CHAIR:** Senator Lambie, you have asked a question. You must leave the minister to answer the question.

**Senator Brandis:** If I may say so, systemic criminality can also be, and is, a threat to the state, just as organised crime is a threat to the state. But ASIO does not deal with organised crime; that is a matter for the police.

**Senator LAMBIE:** Okay, so it is not a grave threat.

**Senator Brandis:** No, it is a grave threat, but it is not a grave threat of the kind that ASIO was established to deal with, because it is neither terrorism nor espionage.

**Senator LAMBIE:** But Heydon did not say, ‘I find a grave threat from systematic criminality,’ though, did he, Attorney-General?

**Senator Brandis:** I think if you look at the report—even just the public volumes of the report, which are the vast bulk of it—that is precisely what he found.

**Senator LAMBIE:** Mr Lewis, does your agency have concerns about the legitimacy of the money coming from mainland China?

**Mr Lewis:** I am sorry, Senator. I cannot comment. What money?

**Senator LAMBIE:** Media reports say that the amount of illicit funds estimated to be flowing out of China is mind boggling, and Global Financial Integrity puts the figure at approximately US$139 billion. Is that illicit money a threat to Australia’s national interests, especially when the Chinese Communist Party says Australia is in the top three destinations for corrupt Chinese money? Is that on ASIO’s radar at all?
Mr Lewis: The issue of money—illicit money—flowing in is something that really would have been better directed to one of your previous witnesses here, in AUSTRAC. It is again—I am sorry to repeat myself here—largely a matter of criminality, as opposed to the issues for which ASIO is responsible and which it pays attention to. We are, of course, interested in any foreign influence in Australia, from wherever it comes, and to that extent, yes, we do pay attention. But, specifically, your question is something that I just cannot answer. It is not in my domain.

Senator Brandis: AUSTRAC, the Australian Transaction Reports and Analysis Centre, is the agency that is specifically set up to deal with those issues. It is a shame you were not here a moment ago, when they were at the table. The agencies do cooperate, of course. There is a financial dimension to counter-terrorism too, because the financing of terrorist activities is something, of course, which ASIO takes an interest in. But primarily these cash flows, if they are unlawful cash flows, are in the arena of organised crime and money laundering.

Senator LAMBIE: So ASIO does not cooperate with the Australian Transaction—

Senator Brandis: No, I just said it did. I said that agencies cooperate.

Senator LAMBIE: You mentioned that you are monitoring 190 Islamic State supporters in Australia. Can you describe their behaviour which led you to label them as supporters. Can you characterise that.

Mr Lewis: I think I said in my opening remarks that the characterisation of these people is through their activity of raising funds, recruiting, exhorting young people to join the cause and espousing the virtues of the ISIL message.

Senator Brandis: And facilitating.

Mr Lewis: And facilitating. Yes, I think I mentioned most of that in my opening remarks.

Senator LAMBIE: Are there any terrorists that you are aware of who are not Islamic?

Mr Lewis: There are many terrorists around the world through history that have not been Islamic.

Senator LAMBIE: No, I am asking you about now, in Australia. Are you aware that any of the terrorists that you are monitoring are not Islamic? What is the percentage of them that are Islamic?

Mr Lewis: The majority are. I think that, if I look back over recent history, we certainly have had terrorists in this country that are not Islamic, recently.

Senator LAMBIE: What is the ratio there? How many are Islamic? How many are not?

Mr Lewis: I cannot be specific on percentages. I do not know. The overwhelming issue currently, of course, is about the violent Islamic extremism that is driving the terrorists—ISIL in particular.

Senator LAMBIE: How much does it cost to monitor or keep under surveillance 190 Australian terrorist supporters?

Mr Lewis: I cannot answer that question, because we are not the only people, obviously, that are involved. There are law enforcement agencies, federal and state. There are other Commonwealth agencies that are involved. So I could not put a precise figure on it.

Senator LAMBIE: Do you know the precise figure, or a roundabout figure, Attorney-General?

Senator Brandis: I cannot really add anything to the director-general's answer. He is in charge of operational activities. The resources that are deployed by ASIO, or by state or territory police, or the Australian Federal Police, or other agencies, will depend on the circumstances of the particular case.

Senator LAMBIE: Would I be able to put that on notice, please, so I can have a costing for that.

Mr Lewis: No, I would not be able to give you a precise answer on that, because we would be one component part of the whole. In our own organisation, I am not prepared to break down publicly where we are spending our money in terms of the specific missions.

Senator LAMBIE: To you, Attorney-General, I just want an overall rounded figure for what it is costing—

Senator Brandis: Senator Lambie, ASIO produces an annual report which is tabled in parliament, and that annual report has annexed to it ASIO's financial statements—and also a breakdown, by the way, of its staffing establishment and other relevant financial data. So those financial statements will give you an overall sense of the magnitude and the cost of the work that ASIO does. But you asked about particular cases and, as the director-general and I have pointed out to you, it is really not possible or indeed appropriate to give that information. So we will not take the question on notice, because we have nothing more to say in answer to you.

Senator LAMBIE: So you cannot give me a roundabout costing—

Senator Brandis: I have pointed you to the annual report.
Senator LAMBIE: of what it is costing you for 190 suspects. How incompetent is that, Attorney-General, on your part?

Senator Brandis: No, it is not.

Senator LAMBIE: It is taxpayers' money. They would like to know how much it is costing them to monitor these 190 suspects, and I think that is a fair question.

Senator Brandis: Senator Lambie, there are three things I would say to you. First of all, you can get an idea of the cost of ASIO to the taxpayer from the annual report. Secondly, in relation to particular cases, it is not possible to generalise, because every case depends on its own particular facts and circumstances, and the requirement of resources will vary from one case to another. Thirdly, as the director-general has pointed out, there are actually security reasons why it would not be appropriate to break down those figures and place them in the public domain in any event.

Senator LAMBIE: Nobody asked you to break them down. I just want an overall figure.

Senator Brandis: Then I point you to the annual report.

Senator LAMBIE: I would like it on notice. I am putting it on notice, please, and I would like an answer.

Senator Brandis: I have given you the answer. I am not taking anything on notice. The annual report will tell you the cost of ASIO, the size of its staff establishment and so on. All those figures are available to you.

Senator LAMBIE: Can you give me a breakdown state by state of the number of traitors and terrorist supporters?

Mr Lewis: No, I would not be prepared to give you that.

Senator LAMBIE: Can you confirm there are 12 currently in Tasmania?

Mr Lewis: I said I would not be prepared to confirm where these cases lie.

Senator LAMBIE: Which state has the most terrorist suspects or supporters?

Mr Lewis: You are asking me the same question.

Senator LAMBIE: No, I asked you which state has the most terrorist suspects or supporters.

Mr Lewis: I am not prepared to comment on that.

Senator LAMBIE: I have no further questions, thanks.

CHAIR: Thank you very much, Mr Lewis and Ms Hartland.

CHAIR: Thank you very much, ladies and gentlemen, and thank you again for accommodating our time request.

CHAIR: It is the least we can do.

Attorney-General's Department

[17:39]

CHAIR: We now move on to the department cross-portfolio, general and corporate, which includes the Defence Abuse Response Taskforce and the three royal commissions. I will take questions from anywhere in that group.

Senator SIMMS: Chair, my questions relate not to the royal commissions but are of a more general nature. Is now an appropriate time to ask those?

CHAIR: Yes, cross-portfolio and corporate.

Senator SIMMS: Thank you.

CHAIR: But you are not getting the call just yet.

Senator SIMMS: I thought I was trying my luck then. No worries.

CHAIR: We will come to you, but I will start with the opposition and Senator Collins.

Senator JACINTA COLLINS: I would like to commence with questions around Mr Dreyfus's FOI request in relation to the Attorney's diary. Attorney, your colleague the foreign minister released her ministerial diary under FOI without fuss. What makes you different here? What is the issue at stake?

Senator Brandis: This is a matter that is now before the Federal Court on appeal. I really do not think it is appropriate for me to be commenting on a matter that is currently before the courts.
Senator JACINTA COLLINS: If you do not want to indicate what the issue at stake is here, because—

Senator Brandis: Senator, your premise attributes something to me which is wrong. I did not say I do not want to comment; I said it is not appropriate for me to comment. But, if you want to acquaint yourself with the issues in the case, then you are perfectly free to read the judgement of Justice Jagot, which is under appeal.

Senator JACINTA COLLINS: What I was about to continue with was the statement that it is before the Federal Court. I also have questions with respect to costs, which I believe would be appropriate for you address at this stage.

Senator Brandis: The cost issue is a live issue before the court too.

Senator JACINTA COLLINS: Some of them may not be, so let's see how far we can get. How much did the Commonwealth spend on the diaries matter before the AAT?

Senator Brandis: I do not know that those costs have been tabulated. It may be, depending on what costs order is ultimately made, that the costs will be coming from Mr Dreyfus. I will take the question on notice and see if we can provide something to you.

Senator JACINTA COLLINS: How many staff from the AGD worked on the matter and for how long?

Senator Brandis: I will take the question on notice.

Senator JACINTA COLLINS: What was the charge to the Commonwealth from the AGS?

Senator Brandis: We will take the question on notice.

Senator JACINTA COLLINS: And what dispersements were required?

Senator Brandis: We will take the question on notice.

Senator JACINTA COLLINS: You have referred me to the matter. Will that provide the reason for your appeal?

Senator Brandis: The re has been a notice of appeal filed, so it will be available for inspection on the court file, which I believe is accessible electronically.

Senator JACINTA COLLINS: But will that notice provide your reasons?

Senator Brandis: The grounds of appeal, yes.

CHAIR: I hope it would.

Senator Brandis: I know you are not a lawyer, Senator, but a notice of appeal does contain the grounds of appeal.

Senator JACINTA COLLINS: Thank you. Are there important reasons of law here?

Senator Brandis: Yes.

Senator JACINTA COLLINS: But obviously not as far as Ms Bishop is concerned.

Senator Brandis: No, that is not an appropriate observational conclusion. I am unaware of the circumstances of Ms Bishop's disclosure of her diary. A request was made in relation to some eight months of my diary, which was refused on stated grounds, which were originally upheld, then overturned, and that is now the subject of an appeal on legal grounds which are set out in the notice of appeal.

Senator JACINTA COLLINS: What negative consequences would there be for the FOI system if the AAT decision is allowed to stand?

Senator Brandis: I think that is one of the very issues of which the full court or the federal court will be seeing, so it would not be appropriate for me to comment.

Senator JACINTA COLLINS: Does the Commonwealth have an estimate on how much is likely to be spent on its appeal to the federal court?

Senator Brandis: I will take that on notice.

Senator JACINTA COLLINS: The Commonwealth would ordinarily brief senior and junior counsel for an appeal before the full court or the federal court, wouldn't it?

Senator Brandis: I am sorry, say that again.

Senator JACINTA COLLINS: I said that the Commonwealth would ordinarily brief senior and junior counsel for an appeal before the full court or the federal court, wouldn't it.

Senator Brandis: Yes.

Senator JACINTA COLLINS: How much would that ordinarily cost?
Senator Brandis: It all depends on their fees.

Senator JACINTA COLLINS: I am asking for a ballpark. You are very experienced in this field, Senator Brandis.

Senator Brandis: I cannot give you a ballpark. I do not know what fee has been negotiated with that counsel, but I will take that on notice.

Senator JACINTA COLLINS: If you do not succeed in the full court, will you go to the High Court?

Senator Brandis: That is a decision to be made depending on the outcome.

Senator JACINTA COLLINS: I will wait for your answers on notice on further costs. I will defer the remainder of my time at this stage, because the remainder of my questions move on to the royal commissions. Senator Gallagher has questions at the cross-portfolio level.

CHAIR: Senator Gallagher, you have got a little under 10 minutes.

Senator GALLAGHER: Attorney, I have some questions around the proposed equal marriage plebiscite. To begin with, can I confirm that, as the Attorney, you are responsible within the Cabinet for the carriage of the proposed plebiscite on marriage equality?

Senator Brandis: Not quite. It is a little bit more complicated than that. As the Attorney-General, I have responsibility for the Marriage Act, which would be the statute to be amended were the proposal to succeed. I also have responsibility, as you know, for antidiscrimination law, but the acting Special Minister of State, Senator Cormann, has responsibility for electoral matters, which would include the conduct of a plebiscite. I think it is correct to say that I have overall carriage of the issue, but, on the specific matter of what we might call the mechanics of the plebiscite, Senator Cormann as acting Special Minister of State has an involvement as well.

Senator GALLAGHER: So, in a sense, you have got overall responsibility, but the matters that would perhaps lead up to legislation before the parliament through the electoral matters would be Minister Cormann and should be asked through him then.

Senator Brandis: Yes. I do not want to be unhelpful—this is a bundled up issue in a sense, because the government has said there will be a plebiscite and, depending on the outcome of the plebiscite, that there would be a proposal to amend the Marriage Act. As I said, I have got the overall carriage of the issue at large, but I cannot do better than what I said before. The mechanics of the plebiscite are also a matter for Senator Cormann.

Senator GALLAGHER: It would require legislation at some point, though, wouldn't it?

Senator Brandis: Are you talking about the plebiscite or the amendments to the Marriage Act?

Senator GALLAGHER: Both.

Senator Brandis: In the event that there were to be amendments to the Marriage Act, that would be the responsibility of the Attorney-General. In relation to the plebiscite, Senator Cormann is the minister, as acting Special Minister of State, who administers the Electoral Act. There would need to be a special plebiscite act—that is a special act of the parliament to constitute the plebiscite. No decision has been made whether the carriage of that would lie with Senator Cormann or me.

Senator GALLAGHER: Presumably that would be a decision that would need to be made fairly soon.

Senator Brandis: Yes.

Senator GALLAGHER: Is there disagreement over that?

Senator Brandis: No.

Senator GALLAGHER: So it is just a decision that has not been taken.

Senator Brandis: Yes.

Senator GALLAGHER: Are you aware of what options are being considered for a plebiscite, such as a non-binding plebiscite or a self-executing plebiscite?

Senator Brandis: There are a number of different options that are the subject of discussion—public discussion, discussion between government and stakeholders. They include matters of the kind to which you have referred.

Senator GALLAGHER: When will we be aware of those options?
Senator Brandis: The government will arrive at a landing so that there will be a proposal brought forward when I take a submission to cabinet, which I expect to do in coming months.

Senator GALLAGHER: Before the election?

Senator Brandis: Yes.

Senator GALLAGHER: I have a range of questions around the plebiscite, but what you are saying is: none of those decisions have been taken yet.

Senator Brandis: I have not taken a submission to cabinet. As I say, I am the minister with the carriage of the matter. I have not taken a submission to cabinet yet to, as it were, set this up. The former Prime Minister Mr Abbott in, I think, August of last year announced that there would be a public vote on the issue. There was a little equivocation as to whether that would be a referendum or a plebiscite, but I do not think there is any doubt any longer that it is a plebiscite. So we can put that issue behind us. It will be a plebiscite and it will be conducted at some time after the election.

Senator GALLAGHER: In terms of the work that has been progressed around this under your leadership overall, was that work that commenced under the former Prime Minister or under the current Prime Minister?

Senator Brandis: It was work that commenced under the former Prime Minister.

Senator GALLAGHER: When did the Attorney-General's Department commence work on legislation, if they have?

Mr Manning: As the issue has developed, we as the department assisting the Attorney to administer the Marriage Act have considered the various options being discussed. It is difficult to pinpoint an exact date, if you like, in the sense that there have been a number of private members' bills and other bills in relation to same-sex marriage generally. So we sort of considered how the issue could play out and what we would need to do to implement policy once it is decided, over a while now. But, as the Attorney indicated, we have been thinking about the government's current approach ever since the government announced that approach—

Senator GALLAGHER: In August.

Mr Manning: so that we are ready to respond if and when government makes a decision about what it wants to do.

Senator Brandis: There has been a great deal of stakeholder consultation with representatives of both the 'yes' case and the 'no' case, led by my office.

Senator GALLAGHER: By your personal staff?

Senator Brandis: Yes.

Senator GALLAGHER: Is that around—

Senator Brandis: That has been underway for some time.

Senator GALLAGHER: Since August?

Senator Brandis: It has been underway for some time.

Senator GALLAGHER: Is there a reason why the department is not involved in that?

Senator Brandis: The department is involved as well. There are many layers of involvement. We have the department. We have my office. The Australian Human Rights Commission has taken an interest in the matter. Particularly, the Human Rights Commissioner, Mr Wilson, has been very actively engaged in stakeholder engagement from his position as the Australian Human Rights Commissioner, who takes a very strong interest in the issue. So there have been a number of, as it were, points of connection between government and various community groups representing both the 'yes' and the 'no' point of view.

Senator GALLAGHER: One of the options that I have had discussions with stakeholders around is the idea of a self-executing plebiscite, which would automatically legalise equal marriage if the plebiscite succeeded. Has advice been provided to you on that proposal?

Senator Brandis: It is a possibility that has been addressed. Let me take that on notice. I have taken a deal of legal advice from various sources on this. Whether there is specific legal advice on a self-executing plebiscite? I had better take that on notice rather than mislead you.

Senator GALLAGHER: Thank you. And, further, whether that could be constitutionally valid and how that—

Senator Brandis: There is a constitutional issue about this—about that model.
Senator GALLAGHER: It would be excellent if you could take that on notice. In terms of the work that has been done across government, is the Department of the Prime Minister and Cabinet involved?

Senator Brandis: Certainly, the Prime Minister is involved and has taken a close interest. I have had a number of meetings with him, so I assume—and I see Mr Moraitis nodding—PM&C are involved as well.

Mr Manning: Certainly we have had a discussion with PM&C in relation to the various issues.

Senator GALLAGHER: So that is a yes?

Mr Manning: Yes.

Senator GALLAGHER: They have a role. They are involved. They are part of this.

Mr Manning: They are, of course. Yes.

Senator GALLAGHER: Thank you. In a general sense, is the referendum machinery legislation the relevant legislation for a plebiscite?

Senator Brandis: It is certainly relevant but it is not as simple as that, because, as I think we have agreed, one would have to constitute the plebiscite by, as it were, a stand-alone act of parliament. Where appropriate, one would draw from the electoral machinery provided in standing acts of parliament.

Senator GALLAGHER: Is the thinking around the funding for the yes and no cases that they would both be publicly funded?

Senator Brandis: That is one of the decisions about the structure of this exercise, which would form part of whatever submission I take to cabinet.

Senator GALLAGHER: Have any drafting instructions been given to the Office of Parliamentary Counsel?

Senator Brandis: Not by my office, no. Mr Manning tells me that the department has had conversations with the Office of Parliamentary Counsel.

Mr Manning: As I said earlier, as the department assisting the Attorney to administer the legislation for which he is responsible, of course there are discussions about things. We are positioning ourselves, if you like, to be able to respond once the government determines what its policy is.

Senator GALLAGHER: So you are gearing up but not specifically drafting instructions. Is that what you are telling me?

Mr Manning: We are gearing up and, as part of that, we have been working with OPC, who have done some draft provisions, yes—should they be needed.

Senator GALLAGHER: So there are drafting instructions, but they do not have, necessarily, the final approval of how that—

Mr Manning: Of course, because we do not know what the final model is.

Senator GALLAGHER: Attorney, I think you answered one of my questions when you said the proposal would go to cabinet in coming months and prior to the election. Is that right?

Senator Brandis: Yes.

Senator GALLAGHER: Will an exposure draft be released for consultation? Is that part of the thinking?

Senator Brandis: That is one of the options on which cabinet will decide. I think I can say that my disposition is to publish the proposed amendments to the Marriage Act so that people voting in the plebiscite would know what the shape of the legislation would be, were they to vote yes or no—that people who vote in the plebiscite would know what the legislative amendment would look like in the event the plebiscite were passed.

Senator GALLAGHER: So as much information available as could be made available?

Senator Brandis: What has usually happened with constitutional referenda is that the terms of the proposed constitutional amendment are passed by the parliament, and they are obviously a public document, and the referendum question is usually, as I recall, 'Do you approve the proposed law?' So the precedent of publishing the proposed amendment and then asking, as the question, 'Do you approve it?' is well established.

Senator GALLAGHER: In terms of the plebiscite legislation, when would you envisage having that before the parliament?

Senator Brandis: It is impossible to say.

Senator GALLAGHER: Regarding the cost, is it the figures we have seen: $160 million—

Senator Brandis: I have seen those figures. I do not know how reliable those figures are. I have not, myself, asked for a costing.
Senator GALLAGHER: You have not asked for a costing?
Senator Brandis: No.
Senator GALLAGHER: So where would that figure have come from?
Senator Brandis: I honestly do not know.
Senator GALLAGHER: Does anybody know where that figure—
Mr Hall: I believe that at a Senate committee inquiry into one of the previous private members' bills the Electoral Commission provided some evidence about that.
Senator GALLAGHER: Okay, but in terms of the option that you will be taking to cabinet—that has not been costed?
Senator Brandis: The usual cabinet procedure would be to include indicative costings.
Senator GALLAGHER: Has Finance been asked to cost a plebiscite?
Mr Manning: No.
Senator GALLAGHER: Therefore, I presume it has not been budgeted for?
Senator Brandis: We have not had the 2016-17 budget yet.
Senator GALLAGHER: No, but a decision to conduct a plebiscite was taken before the MYEFO, for example. So perhaps there should have been a contingency?
Senator Brandis: I think that is a question for the Minister for Finance.
Senator GALLAGHER: From your point of view, you are not aware of whether a contingency has been allocated for this in the budget?
Senator Brandis: You are asking me to comment on the MYEFO, and I think that is a question for the Minister for Finance.

Senator HEFFERNAN: In the October estimates I raised a question regarding some material that I have in my possession. If you recall, regarding the Wood royal commission I mentioned that I had had a discussion with Wood, the royal commissioner, and asked him when he was actually going to revisit who the judges and lawyers were that used to frequent Castello's, the boy brothel in Kellett Street, Kings Cross. The royal commission's own documents—which I have here—clearly set out that the police were being paid to give notice when they were going to come and visit it.

CHAIR: Senator Heffernan, is there a question with this?

Senator HEFFERNAN: My question is going to be about what the case is against having a federal judicial commission. I just want to set up the dilemma that the institution of the law has, and the fact that Mr Wood did not recall the document that I read from that included intelligence reports on 28 people—many of them judges and lawyers, and a former Prime Minister—signed off by Gary Crooke QC, who made no comment. Mr Wood, to his credit, said that he did not recall the document, even though it was a royal commission document and it was sent to the police, and that he did everything within the terms of reference.

I have a dilemma, Mr Attorney-General. I am not too sure how you deal with this because, as you may or may not be aware, I got an order to produce documents for the fine work being done by the McClellan royal commission. I cannot commended it highly enough for the work it has done in the most difficult areas, which has been most distressing for a lot of people and unbelievable to a lot of people. I have documents that I should not have, probably, but I have kept them in close protection for a long while. I think some of these documents are documents that the Wood royal commission said they were concerned about—that files against high-profile people were mismanaged and the contents were lost. That is in the transcript of the royal commission.

I suspect I have some of the lost documents. Upon putting it to the royal commission—and, once again, I cannot speak highly enough of them or, by the way, the Judicial Commission of New South Wales, which I think does a fantastic job—I was asked to 'justify', shall I say, the case to include in the terms of reference of the McClellan royal commission the institution of the law. In fact, this is the bunch of documents that I took there. The dilemma I have is that the decision of the commissioner and his people was that these documents are outside the terms of reference of the royal commission. During that, which I was most appreciative of the interview—

CHAIR: Senator Heffernan, I do not want to distract you on what is a very important issue, but these are Senate estimates and I insist on all senators asking questions, not making statements.

Senator HEFFERNAN: There is a question! Upon the examination of one of these documents, which names a whole lot of people, it was conveyed to me that this was outside the terms of reference of the royal commission.
But one of the most stunning things I have ever heard in my life was said to me. Looking me in the eye, I was told that of the list of names, 'There is only one name on this list that surprises me.' I will not say who said that, but it was a very high person.

'There is only one name of this list that surprises me.' I said, 'But what are you going to do about it?' The reply was, 'Nothing, because it is outside our terms of reference.' Given that, and given the sensitivity of the Wood royal commission, which said that some of the reason it failed in this case was a serious compromise at high levels—to the point where one person in these documents, who used to frequent and pick-up in the toilets oppose Marcellin College Randwick, in Sydney, sat in judgement on a case and gave someone a sentence to the rising of the court, finding him guilty of an offence matter of a sexual nature: that particular judge is in these documents—I am concerned that maybe the best way to fix this up is to draw a line under the past and look to the future, because I do not think there is any way to deal with this under the present system.

Some years ago I actually arranged for the police commissioner of New South Wales and the operations head of Strike Force Corry to visit a chief justice in the federal jurisdiction to report on someone they had under surveillance. When I inquired as to how that meeting went, I was told by the chief justice that there was nothing he could do in the matter because all he could do was counsel his honour. I can back all this up.

I am wondering what—and I am trying to be very careful here; having learnt from experience—the best way is to deal with this? I have been to the New South Wales judicial commission on several matters, and they do an excellent job—besides the fact that they give advice on sentencing and schooling to judges who are coming into the system. I mentioned this morning the serious inadequacies of the federal Family Court: the overburdened work they have and the lack of expertise. And, by the way, I have found out since this morning that Mr Gardner suicided—I was not aware of that. He was the person who made those outrageous recommendations.

So my question is: is there an inadequate situation in the federal jurisdiction of the law? How can it be that these people are beyond the reach of the law under the present arrangements? And wouldn't the solution be a federal judicial commission?

CHAIR: Can we leave it there. There is a question that has been asked—at long last.

Senator Brandis: Senator Heffernan, as I said to you during the last estimates when you raised this matter, these are very serious matters that you raise. What you are saying is that certain individuals, among them at least one federal judge, have committed crimes. What ought to happen is that if you have evidence that crimes have been committed, then that evidence should be given to the police. Judges have no more immunity from police investigation or prosecution than any other citizen. It is a good thing that you showed that material to Justice McClelland. No doubt he was right in saying that, as a royal commissioner, he is limited to his terms of reference, which would not deal with sexual abuse of children by institutions—by people within institutions rather than by—

Senator HEFFERNAN: Institutional treatment—

Senator Brandis: individuals, whatever walk of life they belong to. So, Senator Heffernan, this is a police matter.

In relation to federal judges, under the Constitution federal judges can only be removed by this parliament in the case of proved misbehaviour or incapacity. But, undoubtedly, if a judge has committed a crime, then that would be a ground for their removal. But before we got to that stage, the judge concerned would need to be charged, prosecuted and convicted. That has not happened yet. So these are allegations. I am sure they are made in good faith. As I say, if you have that material it should be given to the police.

Senator HEFFERNAN: Police have the material.

Senator Brandis: Well, then it is in their hands.

Senator HEFFERNAN: Can I just go further. This is a letter from the New South Wales police to me. It regarded a person who is in this list and is a lawyer. He represented a person—it happened to be Philip Bell, a notorious person who died in jail—under the false name of Philip Hill knowingly. He knowingly represented him under the name of Philip Hill. I complained to the police and said, 'Why hasn't he been charged?' They wrote back and said, 'Matters of this nature are serious and require careful examination in which proceedings can be commenced. In such matters, the prosecution must establish an intention to pervert the course of justice.' It was dead set right. He represented him under a false name. 'On the material provided by yourself, the only evidence that supports the allegation is a finding by the royal commission to that effect.' How much more proof do you need? 'I am advised that the prosecution always retains a discretionary power not to proceed with indictment, notwithstanding there may be a reasonable prospect of conviction.' That is what the police think.

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
CHAIR: Senator Heffernan, this is a very important issue. I have allowed some indulgence that I have not allowed to other senators.

Senator HEFFERNAN: For which I am most grateful.

CHAIR: If there is a question that you want to put to the Attorney-General on Mr Moraitis, now is the opportunity to do it. I think your question was: what are the reasons why there is not a judicial—

Senator HEFFERNAN: Senator Brandis, I am not aware of what is wrong with the prospect of having a federal judicial commission. What is wrong with that?

CHAIR: There is a question.

Senator Brandis: Senator Heffernan, although you point to—I think you mentioned one federal judicial officer; perhaps you have more than one in mind, but at least—

Senator HEFFERNAN: Mr Attorney, I have a police document here which was the request to put a judge under surveillance—which was acceded to; it is here in these documents. But there is no way of dealing with it.

Senator Brandis: Is that a federal judge to whom you refer?

Senator HEFFERNAN: It certainly is.

Senator Brandis: Okay. Ordinarily, I think it is fair to say that the reputation of the Australian judiciary—certainly the federal judiciary—has been very high, and there have been very, very few examples of criminality by federal judges. I am not aware of any examples of corruption—I know you are not talking about corruption, but there have been very few examples. There was the prosecution of Mr Justice Murphy in the 1980s. I think there may have been one or two others historically. But you establish a judicial commission where there is evidence of a sufficiently systematic or widespread problem, but the ordinary reach of the criminal law does not seem to be working—

Senator HEFFERNAN: So are we saying there is long-term—the words you just used—problem in New South Wales because they have a judicial commission? That is an admission of a method of people being able to do something about it quietly. I have had some dealings with the New South Wales Judicial Commission as recently as my good friend Justice Garry Neilson—all those dreadful things that he said and then said he was thinking out aloud—my God, he thinks it is all right for adults to have sex with kids as long as it is consensual. He sat on the bench hearing a case against someone who was raping his sister and he said that it was 'an out-of-date law' and it should no longer be a criminal offence. For God's sake! Haven't we got enough guts to say there ought to be a speed camera in the federal judicial system? I have people crying to me on the phone about what happens to them in the Family Court.

CHAIR: Senator Heffernan, I think the minister was answering the question, which is what estimates—

Senator HEFFERNAN: Sorry. I am trying to be careful.

CHAIR: It just makes it very difficult to run the estimates and for me as chairman to maintain discipline if there are not questions asked and answers given. The matter you raise is a very important one, but this is estimates.

Senator Heffernan interjecting—

Senator Brandis: Senator Heffernan, I think what I should say to you is that, in Australian history, there have been hardly any cases. I can actually only think of one—of federal judges being prosecuted for crimes.

Senator HEFFERNAN: I am not saying there are, but if it is good for New South Wales, are you saying that that is not—

CHAIR: No, Senator Heffernan. As I understand it, he is giving an answer as to why there should not be a judicial commission.

Senator Brandis: I guess my answer is that there is no demonstrated need for one, because there have been hardly any—I can think of only one—instances of serious allegations of criminality or corruption against members of the federal judiciary.

Senator HEFFERNAN: I am not disputing what you are saying, but if that is the excuse not to have a federal judicial commission—

Senator Brandis: It is not an excuse. It is just that—

Senator HEFFERNAN: Well, if that is the reason—not the excuse—does that mean that New South Wales does have an endemic problem, because they have a federal judicial commission?

Senator Brandis: Well, I am not a New South Wales politician, Senator Heffernan, and I would not—
Senator HEFFERNAN: All right. I will give you another demonstration.

Senator Brandis: and I would not wish to comment on New South Wales state matters.

Senator HEFFERNAN: But, when a person at a royal commission says to you, 'Yes, read this. There is only one name on this list that surprises me'. I think we have a problem. Can I just give you one instance: every Attorney-General, from Philip Ruddock until now—you know of these documents; you were on that committee in Melbourne that day where they said I could not table it because it would derail the hearing we were having—has looked at these documents. One of the attorneys-general that I gave these documents to, three days after I gave the documents to the Attorney-General, I got a phone call from a minister of the Crown saying, 'You're not coming after me, are you, Bill?' And I said, 'No, mate, but I did tell you you would come under observation if you moved from where you were to where you've gone.' So I am not saying where. Several days later he announced his resignation from parliament. I think there is a compromise out there and, as I said in October, the compromise is caused by people—not the secret—keeping the secret which then envelops a whole lot of people. I would not go to demonstrate to you, which I can, the compromise at work in the courts and attorneys-general and DPP officers, but it is real. You may, and other people in Australia may, decide that I am M-A-D. Sadly, I have the documents.

I got a call in Sydney from some very concerned people in the policing agencies, and they directed me, by phone, to the botanic gardens to a bench. On that bench there was a box of documents, about the size of two beer cartons, including transcripts, video surveillance and so on, because they were concerned of the cover-up to protect the institution. I note that Justice Wood did not deny that he said to me, 'We are not going to revisit that because the public would lose confidence in the judiciary', which he said he would deny if I ever said it. I rest my case, but I absolutely believe that whoever is in government should have the guts to have a process where people who have got a complaint can legitimately lodge it. I have got to be careful, I do not want to identify people, but when you are told—

CHAIR: Senator Heffernan, you are now five minutes over the allotted time.

Senator HEFFERNAN: I will continue at another time.

CHAIR: You are entitled to come back this evening—

Senator HEFFERNAN: I am most grateful for the opportunity. I could not have more praise for the royal commission run by Mr McClelland. Obviously, he is delving into areas that no-one though was possible. I have full praise for the New South Wales Judicial Commission. I am mystified at the failings in the past. I was at Aussie's here the other day and I was told—

CHAIR: Senator Heffernan, I am sorry, I must move on.

Senator HEFFERNAN: Okay. It was confirmed to me—

CHAIR: If you do have other questions you can come back later and ask them, but I do have other senators who have also been very generous.

Senator HEFFERNAN: Okay, thank you.

CHAIR: Senator Simms.

Senator SIMMS: I do not think I will take the full 15 minutes because Senator Gallagher covered some of the territory that I was going to explore. My questions relate more generally to the Attorney General's Department, in particular, dealing with the issue of the plebiscite. You mentioned before, Mr Acting Deputy Secretary, that some work of the department had been devoted to exploring this plebiscite and liaising with other departments and ministerial offices, can you give me a bit of a sense of how much time has been devoted to this project in terms of staff time?

Mr Manning: Not off the top of my head, sorry, Senator. I would have to take that on notice.

Senator SIMMS: That would be good if you could.

Senator Brandis: Senator Simms, I know that this is impressionistic, but I do have a sense that there has been a lot of work by the department on this and a lot of attention devoted to it since the latter part of last year.

Senator SIMMS: A lot of time. Can I ask what kind of staff would be devoting time to this? Is it senior level staff or—

Mr Moraitis: I would say it is about four or five staff that have been on this for a while, Senator. Mr Hall can explain what levels they are at.

Mr Hall: Thank you, Senator. The levels range from Executive Level 2 down to APS 5-6 level.

Senator SIMMS: I am very new, so you might have to tell me salary ranges.
Mr Manning: If you like, Senator, if you have APS 5-6 and an EL1 they would be doing the sort of day-to-day work that would be under direction of an EL2 and, of course, people at the table—Ms Williams is responsible for the branch, administers the Marriage Act, Mr Hall is responsible for the division which that is in, and I am responsible for the groups it in. So, we dedicate time to it as required as well.

Senator SIMMS: Just so I am clear, four or five quite senior staff—

Mr Manning: Four or five in addition to us.

Senator SIMMS: What salary level or what increment? You do not have to tell me the actual figure. Could you take me through the classifications again?

Mr Hall: EL2 down to APS6. We can certainly take it on notice and give you a table that tells you what that equates to for salary purposes.

Senator SIMMS: Yes, that would be great, and a sense of the staff time as well that has been devoted to the project. Could I also ask, as it was certainly apparent to me, Attorney, in the response that you were giving that this is certainly quite a complex endeavour involving liaising with a range of different arms of the government. It is also the first time that a government has approached a legislative question in this way. We have not had a plebiscite since, I think, the 1950s, if I am correct, or even earlier.

Senator Brandis: There have actually been three, Senator. There were the two conscription plebiscites in 1916 and 1917, and there was the national song plebiscite in 1977.

Senator SIMMS: The last one was about conscription, I think, wasn't it?

Senator Brandis: There was the national song plebiscite in 1977.

Senator SIMMS: Strange that people getting married could be compared to sending people to war. In terms of the staff time that has been attributed to this, has there also been a commissioning of high-level legal advice to deal with some of the complexities? I imagine your department would be in a position to provide that as well.

Senator Brandis: Yes.

Senator SIMMS: Can you give me a sense: is that in addition to the four or five staff that have been managing the project?

Mr Manning: Yes.

Senator SIMMS: Can you give me a sense of how many staff in addition have been working on this?

Mr Manning: Again, we will have to take that on notice. As I indicated, in response to Senator Gallagher's questions earlier, as issues are discussed as options, we are trying to position ourselves so that we can respond to them should they be chosen as the policy of the government. In doing that provisions are drafted from time to time, and in doing that issues come up and you might go off to the Australian Government Solicitor and get some advice, but there is not a dedicated team of lawyers in the department sitting around working on this issue.

Senator SIMMS: No, of course, I understand that. In terms of these legal officers that are providing this advice, can you give me a sense of, again, what kind of level they would be employed at within the department?

Mr Manning: The ones used so far would work primarily at the Australian Government Solicitor. I would have to take that on notice as I do not have the details.

Senator SIMMS: If you could, and also the amount of staff time that has been allocated to providing that advice to the government as well.

Mr Manning: Sure. They cost their time so we will be able to do that.

Senator SIMMS: Yes, that would be great. Do they charge per hour?

Mr Hall: I think they charge in six-minute units.

Senator SIMMS: Six-minute units?

Mr Hall: Yes.

Senator SIMMS: Wow, it is certainly a costly endeavour on top of the $60 million we also have for senior legal counsel providing advice.

Mr Hall: That is the usual way in which legal advice time, whether private or public, is provided. It is just a matter of convention.

Senator SIMMS: Sure. Do you have a sense of how much a free vote in the parliament would cost, Attorney?

Senator Brandis: Well, Senator, I think people have done studies as to how much per day it costs to run this place. If the point you are making, Senator, is that this could be put before the parliament more cheaply after a
plebiscite, that is self-evidently true, but that is not the purpose of a plebiscite. The purpose of a plebiscite, as the former Prime Minister, Mr Abbott, indicated, was on an issue, which I think we would all accept is an issue of very great sensitivity, in which there are very strong feelings on both sides of the question to enable the choice to be made by the Australian people in a democratic exercise.

Senator SIMMS: With respect, Minister, I might ask you a few questions about the implications of this plebiscite formula. Is the government also considering, as part of its approach to this, potentially rolling out the plebiscite model to other social issues? Is that part of your thinking?

Senator Brandis: No.

Senator SIMMS: Why, precisely, has this particular issue been singled out then?

Senator Brandis: I think it is an issue of unique sensitivity, Senator.

Senator SIMMS: How so?

Senator Brandis: I cannot elaborate. My view, and I think it is the view of the government party room which discussed the issue last August, is that there are unique sensitivities about this issue. People are very emotionally engaged in it on both sides of the question. It does involve a very important social change, were it to succeed, because it would redefine marriage which most people, I think, regard as a very fundamental social institution.

Senator SIMMS: The government is not considering looking at this model for other complex social issues. The one that has been put to me is the issue of euthanasia, for instance. You would not be considering having a broad public poll?

Senator Brandis: Not at the moment.

Senator SIMMS: Not at the moment? Are you saying it is something you might look at down the track?

Senator Brandis: My own view is that the more democracy we have the better. This is the ultimate democratic resolution of a sensitive social issue. But at the moment the government is not considering the use of a plebiscite for the resolution of other social questions.

Senator SIMMS: The majority of the public support it. Can I summarise so that I ensure we have captured the things I am wanting to get costed. I am wanting to get information on the amount of staff time within the minister's department, and the professional classifications of those. But in addition I am wanting to get information on the senior legal advice that is being provided, and in particular at what rate that has been charged with the six-month increments—

Senator Brandis: We will get all of that information to you.

Senator SIMMS: I am just wanting to assist you, Attorney, in summarising the information I am after.

Senator Brandis: That is fine. But I think it is not controversial that having a plebiscite will cost a lot more money than dealing with the matter in the parliament. I do not think anybody is disputing that. But what you have to factor in is the value of having this issue resolved by the Australian people in a thoroughly democratic manner, and I do not think it is very easy to put a financial price on the benefit of doing that.

Senator SIMMS: I do not want to engage in a debate over it. Now is not the appropriate format for that. I guess what I was trying to tease out is the cost associated with this hugely complex and elaborate scheme that the government is investigating, given we have not embarked on something like this in the past. Certainly the advice I have been given demonstrates that this is a hugely costly and complex endeavour for your department to deal with. We have a huge number of senior staff that have been dealing with it—senior legal counsel as well.

Senator SIMMS: I do not want to engage in a debate over it. Now is not the appropriate format for that. I guess what I was trying to tease out is the cost associated with this hugely complex and elaborate scheme that the government is investigating, given we have not embarked on something like this in the past. Certainly the advice I have been given demonstrates that this is a hugely costly and complex endeavour for your department to deal with. We have a huge number of senior staff that have been dealing with it—senior legal counsel as well.

Senator Brandis: With respect—although it is a plebiscite, not a referendum—we have embarked on many occasions of national public choice. In our history there have been more than 40 constitutional referenda. There have been 44 general elections. There have been three plebiscites. There have been a few half-Senate elections. So this is not something that is unusual for Australia to do. It is a large exercise, but it would be wrong to say that a plebiscite has unique complexities that a constitutional referendum, let alone an election, lacks.
Senator SIMMS: Yes, but I guess the point is that the plebiscite is being undertaken in circumstances where it is not necessary to undertake a plebiscite. The parliament has the authority to make the change. You do concede that, don't you?

Senator Brandis: I do not. From a strictly—

Senator SIMMS: You do not concede that the parliament has the authority to make a decision on this matter?

Senator Brandis: From a strictly legal point of view you are right. But of course this is not being done in order to meet some constitutional test. It is being done to engage the Australian public in the resolution of what I continue to say is a uniquely sensitive and important social issue.

Senator SIMMS: With respect, that was not the question I asked. I asked you whether the parliament has the authority to make the decision.

Senator Brandis: The parliament can and ultimately would, because if there—

Senator SIMMS: But the parliament could just amend the Marriage Act, couldn't it?

Senator Brandis: Yes.

Senator SIMMS: Yes. Thank you. I do not have any further questions on this.

Senator LAMBIE: Could I just ask a question on that while you are doing costings. Would I be able to be provided a costing of what it would cost to run that plebiscite on the day of the next election? I have been told that would be about one fifth of what it would cost if you did it stand-alone.

Senator Brandis: I will take that on notice.

Senator LAMBIE: Thank you.

Mr Manning: Can I just clarify one thing in response to the senator's comments. When we spoke about those staff, of course there is the plebiscite issue and there is the issue of amending the Marriage Act. Those same people are working on both. That work has to occur regardless. I just want to clarify that we are unable to break it down to that level. But that work would have to occur because there is the issue of amending the act and any consequential amendments that might arise. I just wanted to clarify that point.

Senator SIMMS: I accept that. Thank you.

CHAIR: Thanks for that clarification.

Proceedings suspended from 18:35 to 19:36

Australian Federal Police

CHAIR: I welcome Commissioner Colvin and his team to the table. Commissioner, do you have an opening statement that you want to make?

Mr Colvin: Thank you. I would not normally make an opening statement, but, on this occasion, given that we have not been before the committee for some time and noting the comments of the Attorney-General earlier this morning about the role that the AFP is playing in the counter-terrorism space, there are few things I would like to say. We would then be happy to take any questions the committee might have.

It is fair to say, and it would be no surprise, that certainly over the last 12 months but up to the last 18 months, the AFP's work has been characterised by a very steep increase in operational tempo. You would see that from a range of reporting by our organisation, but particularly in our annual report. Again, it is no surprise that this has been particularly prevalent and evident in the national security and counter-terrorism space. We have seen a significant surge of our operational investigative capacity go across to counter-terrorism in particular. Of course, while we deal with the terrorist threat, and national security more broadly, we continue to respond to incidents such as MH17, serious and organised crime more broadly, illicit drugs in this country, fraud and anticorruption. Our performance against those particular crimes continues to be strong. But it is CT where much of the interest lies. Along with our partner agencies—you have already heard from ASIO this evening—I would like to make a few key comments. We have already spoken many times about the threat level in Australia having been raised to high or probable in September 2014 under the new threat advisory system. Importantly for police, it is just on 12 months now that the threat level specifically against police was raised to high or probable under the new scheme.

The counter-terrorism environment, as I am sure you have heard, is dominated by the conflicts in Iraq and Syria, and they continue to dominate the Australian context. It is also important we note that this environment that we are facing here in Australia continues to evolve and change. The environment that the Australian Federal Police and our partners are dealing with today, in February 2016, is quite different to what it was even 12 months ago and certainly very different to what it was a few years ago. Without wanting to labour the point, small,
unpredictable attacks are of great concern to us and to our partner agencies, as is the age or relative youth of people who are coming up on our radar as being of concern.

Of course, while we focus very much on the domestic threat here in Australia, we cannot ignore the regional threat as well. We saw the very tragic attack on January 14 in downtown Jakarta that killed eight people. In terms of pure statistics, since December 2013, which really mirrors the escalation of the threat out of Syria and Iraq, the AFP, along with partner policing agencies, have charged 36 people in the 13 different operations in relation to counter-terrorism matters. All of those matters, interestingly enough, are ongoing and I would describe as being complex. So even though people have been charged, it does not necessarily mean that the matter is closed. Two people are currently subject to control orders and there are 11 Australians offshore that are subject to first-instance arrest warrants for matters relating to counter-terrorism.

The Director-General of Security may have mentioned this earlier this evening, but since September 2014 there have been three successful attacks in Australia in different measure. We would assess that there have been at least six major disruptions, but as our operations are ongoing it is always difficult for us to be specific and exact about what matters we are disrupting. The operations continue. You read about them in the papers quite a lot. They continue to attract a great deal of attention and, of course, they continue to be the primary purpose of the AFP. We are happy to take questions.

CHAIR: Commissioner, before we pass on, can you remind me what a control order is and what it encompasses?

Mr Colvin: Certainly. A control order is an order of the court that will be issued on application by a police officer. The easiest way to describe a control order is akin to bail conditions. It is an order that would restrict the behaviours of an individual who we have concerns about.

CHAIR: To they normally last for a specified period, or forever?

Mr Colvin: There are different phases. There can be an interim control order and then a confirmed control order. They last for a 12-month period.

Senator Brandis: They are renewable on application.

CHAIR: How many have been issued?

Mr Colvin: There are two currently in operation.

Senator BILYK: In responses to questions on notice from the October 2015 estimates, the AFP stated

The AFP’s capacity to respond to increased volumes of activities and threat means that resources are stretched. Despite the government highlighting national security spending in this year's budget, why did the AFP not receive any boost from the $1.2 billion allocated for new counter-terrorism efforts?

Mr Colvin: I cannot comment specifically about why we may or may not have been given money at certain times. Those are matters for government. We were answering very specific questions from Senator Collins that were quite particular about moments in time, concerning whether we were given funding from the $1.2 billion national security allocation.

It is always a little dangerous for us to comment about moments in time with our budget. Our budget moves according to measures as they terminate or new measures as they come on. In the same time, or around the same time, the AFP has been provided additional funding for our foreign fighter effort. That was $77 million in the forward estimates. You would be aware of Parliament House security. As well, we have been provided funding for general protection arrangements around Australia. So it can be misleading to look at any one particular moment in time. Yes, we were not provided funding out of that $1.2 billion envelope, but that is not to say that the AFP has not been funded for national security operations.

Senator Brandis: I can provide some additional information as well. In the last 12 months, the government has provided funding of $630 million to boost the capacity of our national security and law enforcement agencies. As part of that commitment, we have provided the AFP with, as the commissioner has said, $77.2 million over four years, announced in the 2014-15 MYEFO, for an additional 80 staff to address the foreign fighter threat, and $158.7 million over four years, announced in the MYEFO, for 229 additional staff to enhance parliamentary security arrangements.

By comparison—as I am fond of saying, context is everything—during the period of the government of which you were a member, Senator Bilyk, $128 million was cut from the AFP between the 2010-11 and the 2013-14 financial years, as well as $30 million and 88 staff cut from the Australian Crime Commission and $27 million and 56 staff cut from AUSTRAC, 750 staff cut from Customs, 97 staff cut from the AFP, $1.2 million of budget...
cuts from the Australian Commission for Law Enforcement Integrity, 35 staff cut from AUSTRAC and $8.7 million in budget cuts to CrimTrac.

So across the entire range of law enforcement agencies, the government of which you were a member cut funds and staff. Across the entire range of law enforcement and security agencies this government has increased funding and staff.

Senator BILYK: So—

Senator Brandis: So?

Senator BILYK: Are you right there, Senator Brandis?

Senator Brandis: Yes.

Senator BILYK: As my father always said, education does not buy manners. He was absolutely correct. How are the stretched resources affecting the overall operating capacity of the AFP?

Mr Colvin: As I said in my opening statement, we have a number of priorities. At any given time there is always going to be more crime than what the police can investigate. We have seen a significant surge in our need to move resources to the most pressing need, which at the moment is the terrorism threat and more broadly the national security arrangements that we are part of. That does mean that we face pressures in relation to other crimes, but that is a normal part of what a commissioner and a senior executive of a police force have to do—prioritise across a range of crime types. I see nothing unusual about the fact that our resources should be under pressure and should be stretched and we should be asked to make decisions about priorities.

Senator BILYK: Have you made a case for additional resources and funds to the Minister for Justice?

Mr Colvin: We are in constant discussion with the government about the AFP's policy position and funding position. I do not think it would be right for me here in estimates to talk about specifics of cases that we may or may not be making to a minister.

Senator BILYK: I am not asking you to talk about a case. I am asking about whether you have made a case for additional resources and funding to the Minister for Justice.

Mr Colvin: Yes we did, and we have been provided money for foreign fighters; we have been provided money for the parliamentary security operations and our protection operations. These are ongoing discussions that you would expect we would be having with the minister.

Senator BILYK: Can you give me any more details of those conversations?

Mr Colvin: No, I do not think that is appropriate.

Senator BILYK: Have you raised concerns with the Minister for Justice or departmental representatives about the consequences of operating underresourced?

Mr Colvin: Implicit in your question is that we are underresourced. I am saying that our resources are our resources and we have to make judgements about priorities. Every police commissioner has to do that.

Senator BILYK: I completely accept that, but I am sure that if you were able to get more money you would appreciate it.

Senator Brandis: Senator Bilyk, there is no point in just reading out these questions that have been written for you. The fact is that the reductions occurred during the Labor government and the increase in staff in funding have occurred under the coalition government. I have given you the figures, and they have been verified by the Commissioner.

Senator BILYK: Senator Brandis, I can ask whatever questions I like and I am sure the Commissioner can answer those questions in his own way.

Senator Brandis: I suppose that is right—

Senator Brandis: It is. It is absolutely correct.

Senator Brandis: but the point I am making to you is that your questions are completely at variance from the answers you have just been given by the Commissioner. They make no sense. You have just been told about the increased funding that the AFP has received.

CHAIR: Perhaps she is confusing it with three or four years ago under the previous government.

Senator BILYK: Thank you, chair, I do not need your little support for the minister to help with his argument.

CHAIR: They are very interesting statistics.
Senator BILYK: I am entitled to ask any questions I want, and I am sure the Commissioner is quite able to answer the questions.

CHAIR: Well, keep asking.

Senator BILYK: Has the AFP raised concerns with the Minister of Justice? Were they raised in writing, in person or both?

Mr Colvin: I do not think it is appropriate for me to share with you in estimates of my discussions with the minister that may or may not lead to funding or policy outcomes for the organisation. The minister provides me with a ministerial direction which gives me his parameters of what he would like the organisation to focus on. That is a continual discussion about where we are placing our effort.

Senator BILYK: Can you tell me how you determine which activities and operations are prioritised?

Mr Colvin: They are decisions that, rightly, the government leaves to the AFP, within a policy framework. We make those decisions based on where we believe the greatest impact for the community is. As I have said, national security and counter-terrorism is a priority for us, and will always be a priority, but amongst the broad remit of operations that we have we take them on an individual, case-by-case basis.

Senator BILYK: Are you able to tell me anything about what processes are in place to ensure that important AFP duties are not neglected, bearing in mind that you do have to prioritise?

Mr Colvin: Absolutely. We operate under what we call the case categorisation and prioritisation model, which is a public document, which gives some guidance to people who would refer matters to us about how they should refer matters to us, and also give us guidance on what the AFP will take into account in deciding whether to investigate or not. It includes such considerations as do we think an offence has occurred; what is the impact of that offence on the community; and whether we think it is within our capability to elicit evidence of that offence. There are a whole range of factors that we will take into account.

Senator BILYK: Given the conflicts in Iraqi and Syria, is it correct that in the long term it is anticipated that the work of the AFP will continue to grow?

Mr Colvin: I certainly see nothing in the immediate future that says that our operational tempo will be anything but intense.

Senator BILYK: How does the AFP expect to meet the security demands of the nation, with your funding concerns?

Mr Colvin: I think we are meeting the security demands of the nation quite well at the moment. We have been very successful in our operations. No police commissioner, I am sure, would say that they can address every matter that is referred to them, but operational experience allows us to make judgements on what we should or should not do. I believe that the AFP is performing the role that the community expects of us.

Senator BILYK: I am presuming you are hoping that there will not be any further reduction in your annual operating budget.

Mr Colvin: I am sure every agency chief that sits here would say that they do not want their budget to be reduced.

Senator Brandis: Senator Bilyk, I think you must have been not listening when I told you that the budget has actually been increased by $77.2 million in relation to the foreign fighter threat with an additional 80 staff, $158.7 million with an additional 229 staff in relation to parliamentary security, by comparison with the $128 million and 97 staff cut from the AFP budget by the previous Labor government. I am sorry, but if you keep asking your questions on a dishonest premise, I will correct the record.

Senator JACINTA COLLINS: Since Senator Bilyk was raising the moments in time concerns, of course, the exception to the comments you were making earlier about priorities is when the AFP are given new areas of responsibility, one of those being the security around Parliament House.

Mr Colvin: It was not necessarily a new area, but it was certainly enhanced and increased.

Senator JACINTA COLLINS: Significantly.

Mr Colvin: Yes.

Senator JACINTA COLLINS: Can you describe for me how significant that work is, of course without compromising our security arrangements?

Mr Colvin: There will be limits to what I can say. I might ask Deputy Commissioner Phelan to come to the table. We are but one part of the security apparatus that operates here at Parliament House. For us, it involved an increase in our personnel here at Parliament House. In some ways, that was a restoration of numbers that we have
here at Parliament House, but more importantly for the organisation, it also led to a change in the operating environment and the way that our protective service officers were used. You would probably recall that prior to these changes, our protective service officers were confined to being outside Parliament House only. Outside the doors of Parliament House was our responsibility and inside the doors was the responsibility of departmental security officials.

That changed, and that was a significant change for us. Obviously it also led to changes in our patterns of security—our patrolling patterns and numbers. I do not want to go into details of what those changes are, but I think most people can see that there is a greater presence of AFP protective service officers inside and outside this building.

Senator JACINTA COLLINS: Mr Colvin, you will be aware of the discussion that occurred in the Finance and Public Administration Committee yesterday when the Department of Parliamentary Services was appearing?

Mr Colvin: No, I am not.

Senator JACINTA COLLINS: Can I then ask you this on notice: a number of security incidents were canvassed, so I want to give the AFP the opportunity to respond to those issues as well given your role with the parliament.

Mr Colvin: I am happy to take that on notice, but if you can give us some context of the security incidents we may know something of them.

Senator JACINTA COLLINS: I think there were three particular cases canvassed. There was one about someone gaining access without a pass, there was one about someone riding shotgun of the back of another car into the building, and I cannot quite recall the third case. But as I said, given the AFP's role in the security in the building, I thought it was appropriate you have an opportunity to address those matters.

Mr Colvin: They do not ring a bell to me. We will take them on notice. As I said, there is a security framework that includes a security committee that has different agencies concerned. Things such as access without a pass may or may not be reported to us. It may just be dealt with by the Department of Parliamentary Services, but we can have a look at it.

Senator JACINTA COLLINS: In part, the reason that I raise this with you and encourage you to have a look at the Hansard when it is available is that part of that discussion was about the role of the security board, how effectively it may be functioning and how effectively advice might be getting to the Presiding Officers on particular incidents. I thought that would be relevant to bring to your attention.

Mr Colvin: That is relevant, and we will have a look at what was said.

Senator JACINTA COLLINS: It may well be that, on looking at it, you feel there are some further recommendations to progress about how the security board is functioning.

Mr Colvin: Absolutely. We will look at that.

Senator WANG: I thank the police force for its excellent work. My questions are around the Fraud and Anti-Corruption Centre. Can you just, for the benefit of the Hansard, tell me when the centre was established.

Ms L Close: The Fraud and Anti-Corruption Centre has been established for the past three years, since 2013.

Senator WANG: Within the three years, how many investigations has the centre undertaken and how many are still ongoing?

Ms L Close: That would be extensive. I would have to take that on notice—

Senator WANG: Yes, please.

Ms L Close: because there have been quite a number of investigations.

Senator WANG: I also note that the referrals page on your website it states that a federal government department or agency is able to refer matters in which there has been a 'serious breach of federal legislation'. Since the centre commenced operation, how many referrals have been received by the centre?

Ms L Close: Again, that would be something that I will take on notice.

Mr Colvin: Just on that, it is worth noting as well that the Fraud and Anti-Corruption Centre has other departments embedded with it, so there would be matters that they would have brought as part of their secondment to the centre, as well as matters that the department has formally referred. It would be extensive, so we will take that on notice.

Senator WANG: Do you put your investigations into different categories or types of offences?
Mr Colvin: Yes, we do.

Senator WANG: Would you put that on notice and give me a breakdown of the types of offences.

Mr Colvin: We may aggregate some together, because within fraud there are many sorts of fraud: fraud against the Commonwealth. We will look at how we can best inform the committee, but we can do that, yes.

Senator WANG: This is probably not a statistical question: generally, has there been any increase in reporting of allegations of corruption and misconduct compared to the period before the centre was set up?

Mr Colvin: We will take it on notice and give you an exact answer. My inclination is to say yes. We know that we have far more foreign bribery allegations now than we would have had four years ago—that is a simple measure. But we will see if we can get you very specific figures on that.

Senator WANG: Am I correct to assume that there were referrals that the centre received but would not be able to progress or investigate due to resourcing restraints?

Ms L Close: Resourcing constraints amongst other matters, yes.

Senator WANG: Could you tell me the names of the departments and agencies you are working with.

Ms L Close: Yes. We also have the Australian Taxation Office; the Australian Crime Commission; the Australian Border Force; the Department of Immigration and Border Protection; the Australian Securities and Investments Commission; the Department of Defence; the Australian Transaction Reports and Analysis Centre, AUSTRAC; the Department of Human Services; and the Department of Foreign Affairs and Trade.

Senator WANG: Thank you.

Senator LAMBIE: Could I just ask a question related to that, just while they are putting questions on notice. I just want to know how many charges have been laid since the establishment. If you would like to put that on notice, I would just like to know how many charges have actually been laid.

Mr Colvin: Since the establishment of the Fraud and Anti-Corruption Centre?

Senator LAMBIE: Yes, please.

Mr Colvin: Yes, we should be able to find that.

Senator JACINTA COLLINS: I would like to ask some questions about the status of the AFP investigation into the theft of the official diary of the former Speaker of the House of Representatives. I appreciate the sensitivity of the matter, as the investigation obviously remains on foot, so I will be attempting to ask some fairly factual questions, but please let me know if you think it is inappropriate, given that the investigation is on foot. It has been reported publicly that the AFP raided the homes of Mr Brough, Mr Ashby and Karen Doane, looking for evidence in relation to the theft of the former Speaker's diary. Are those reports accurate?

Mr Colvin: The way that you have characterised them, Senator, I guess is relevant to the investigation. We are making an investigation into the unauthorised disclosure of and access to the diary. I just want to be very careful about what we say.

Senator JACINTA COLLINS: That is fine.

Mr Colvin: In relation to matters that we have or have not done, some aspects of this investigation are already in the public arena, and I am happy to confirm matters that are in the public arena. But, to the extent that matters are not, it is not our normal course, as you would appreciate, to talk about what we may be doing. Deputy Commissioner Close has the details.
Ms Close: Senator, I can confirm that the search warrants were executed on premises for the three people that you have just mentioned.

Senator COLLINS: Are there any other search warrants that are fitting in with Mr Colvin's point and that are a matter of the public record?

Ms Close: No, there are none on the public record.

Senator COLLINS: Am I correct in concluding that you do not want to discuss any that may have occurred but are not on the public record?

Ms Close: That is correct.

Senator COLLINS: Okay. What is the current status of the investigation into Mr Brough's conduct?

Ms Close: The investigation continues. As you can understand, we are relying heavily on electronic records, which we have obtained from various entities. Because of the complex nature of this matter we have also had to obtain legal opinion in respect of search warrants and other avenues of inquiry. Just to demonstrate, some of the investigation time frames are quite lengthy, because we have recovered, to date, in excess of 7,600 emails, 141,000 documents, 116,000-plus images and thousands of email attachments. That just highlights for you the extent of the investigation we are undertaking.

Senator COLLINS: Are you able to tell me when you expect to be able to finalise the investigation?

Ms Close: No.

Senator COLLINS: Does all that material you just referred to cover the book *Ashbygate*?

Ms Close: No.

Mr Colvin: No.

Senator COLLINS: What are the possible outcomes of the investigation? What will happen when you conclude all of that work?

Ms Close: We then make an assessment as to whether we believe there is sufficient evidence beyond reasonable doubt to have a prima facie case to put to the Commonwealth Director of Public Prosecutions. The Commonwealth DPP will then make a determination of whether there are any charges to be laid in respect of any people.

Senator COLLINS: And at this point in time you are not able to advise me of the time frame on which you think you will conclude your review of the material?

Ms Close: Not at this point, no.

Mr Colvin: Further to that, there are aspects of all investigations, and this one is no different, that are out of the control of the organisation. We are in the hands of processes, and sometimes individuals, that mean that we cannot give you a time frame with any degree of certainty.

Senator COLLINS: Mr Brough has remarked that he is willing to be interviewed by the AFP in relation to the criminal accusations that have been made against him. Has that interview occurred?

Ms Close: We have spoken to Mr Brough, and that is on public record.

Senator COLLINS: When was that, and where did the interview occur?

Mr Colvin: I think in fairness to Mr Brough, if he wishes to make some of that material public then he may do that. We have not said that publicly and I do not think it is appropriate. We would not normally make that public. That is a matter for Mr Brough, if he wishes to.

Senator COLLINS: When you say, though, that you have spoken to Mr Brough, is that what would be regarded as an interview? Or have you a need for further interview?

Ms Close: It really will depend on the analysis of all the material that I outlined to you earlier as to whether we need another interview or not.

Senator JACINTA COLLINS: Okay, but in terms of you looking at all the material before you, it was not just simply a preliminary discussion.

Ms Close: We have had preliminary discussions—

Senator O'SULLIVAN: Chair, could I just raise a point of order? I am struggling to see the relevance of this in the context of estimates. I would understand if the senator were pursuing details about the cost of these investigations, the volume of resources and the like. But we have quite literally hundreds of investigations underway at the moment that would have a political interest, and the trade movement and the like. We could
spend the next week here examining the AFP’s involvement. I just do not understand the relevance, and I would like you just to consider it and perhaps rule on it.

CHAIR: It is relevant to the expenditure on wages and equipment.

Senator O’SULLIVAN: Well, if the questions were that, I would understand that, but that is not—

CHAIR: Well, that is not how they are being used, I guess, but I would allow it at this time.

Senator Brandis: I think the point is that Mr Colvin and Deputy Commissioner Close have made it clear that they cannot go beyond that which is on the public record, and that which is on the public record is already on the public record. So, I just wonder what it profits us to ask questions to which we already know the answer, since only matters to which we do already know the answers are appropriate objects of inquiry.

CHAIR: It is really up to the senator to use her time in whatever way she seems fit. As you say, even if the information is already there, if the senator wants to keep asking the same questions and gets the same answer, that is really up to her.

Senator JACINTA COLLINS: Thank you.

Mr Colvin: In answer to your question: I do not wish to discuss investigational strategies. Whether we decide to re-speak to Mr Brough in a formal or informal capacity, they are all matters that my investigators will make a judgement on depending on where the investigation takes them, and it is not something I wish to discuss openly.

Senator JACINTA COLLINS: No, and that was not really the point of my question. I was simply seeking to establish whether we were both talking about an interview, which is what Mr Brough had referred to, as opposed to some preliminary conversation to establish.

Mr Colvin: I will leave that for Mr Brough to talk about, not us.

Senator JACINTA COLLINS: It has been reported that Mr Ashby has offered to provide the AFP with a copy of the document which he says proves that Wyatt Roy instructed him to steal the former Speaker’s official diary. For example on 1 December—

Senator O’SULLIVAN: That is an emotively embedded question when the commissioner has made it very clear to you that there is no investigation on foot regarding theft. At least keep your language in accordance with the fact that have been presented to you in the evidence.

Senator JACINTA COLLINS: I suggest you go back to the buffet.

CHAIR: You have made your point of order on that one.

Senator Brandis: Mr Chairman, on the same point, if I may—and I know Senator Collins is a serial offender here—but if words are to be attributed to someone then the precise words they use, not a paraphrase of them, has to be put to the witness. On numerous occasions, in this forum and in the chamber, it has been discovered after Senator Collins has put a paraphrase of words to a senator or a witness that what she has put to the senator or the witness was not an accurate rendering of what they said.

Senator JACINTA COLLINS: That is simply untrue.

Senator Brandis: On numerous occasions I have caught you out doing this.

Senator JACINTA COLLINS: No, that is untrue. On numerous occasions you have practised malapropism, because you do not know how to apply words that you think are big and attractive.

Senator Brandis: If you are going to attribute words which bear a very, very important insinuation against somebody's reputation then in fairness both to the witness and to the person whom you are trying to smear—

Senator JACINTA COLLINS: 'Smear' now? Stop imputing improper motives.

Senator Brandis: please put the direct speech to the witness or not at all.

Senator JACINTA COLLINS: Your behaviour is outrageous. I really do not know how Mr Turnbull puts up with you.

CHAIR: A point of order was raised and I am ruling on it. There is no point of order—

Senator JACINTA COLLINS: No, there is not. That is right.

CHAIR: but I am sure Commissioner Colvin will take the warning and will, himself, be cautious in how he answers the questions, as he always is, of course.

Senator BILYK: It is all very draining now.
Senator JACINTA COLLINS: I mentioned that it had been reported and I was about, if I had been given one extra moment of oxygen, to quote that report. If Senator Brandis wants to take issue with the quotation he is encouraged to take issue with the ABC.

Senator Brandis: Then you will be kind enough to provide us with the source from which you are quoting.

CHAIR: The ABC.

Senator JACINTA COLLINS: Certainly, which I just did.

CHAIR: That is a reliable source. We can all rest assured now that this will be accurate.

Senator JACINTA COLLINS: On 1 December last year the ABC reported that:

Mr Ashby has also claimed today that Assistant Minister for Innovation Wyatt Roy advised him to copy Mr Slipper's diary.

CHAIR: And the question is?

Senator JACINTA COLLINS: No, I am going to go through the full quote, because I do not want to—

Senator Brandis: Are you reading from the report or are you reading from words attributed in direct speech to Mr Ashby?

Senator JACINTA COLLINS: I am about to go to words directly attributed to Mr Ashby now, in The Australian newspaper.

Senator Brandis: In direct speech?

Senator JACINTA COLLINS: Yes.

Senator O'SULLIVAN: Chair, can we have a copy of this while this is happening so we can keep it in context and so we can follow the senator's efforts here?

Senator JACINTA COLLINS: Sure. In quotation of Mr Ashby:

"Wyatt said he didn't really know how to advise me and said he wanted to speak with Christopher Pyne;",

Mr Ashby told The Australian newspaper. Again in quotation of Mr Ashby:

"He then called me back and I went and saw him in his office and he presented me a sheet of paper with instructions of what I should do, and one of the first steps was to get a copy of the office diary."

Still in quotation:

'That is how I came to be printing off a copy of the digital diary. It was evidence in my case.'

That is the end of the quote. This is still from the ABC, though:

Mr Ashby confirmed the quotes on Macquarie Radio this morning and said the sheet of paper would have Mr Roy's fingerprints on it.

Finally, referring to Mr Ashby:

'And Wyatt's never denied giving me any assistance in the beginning,' he said.

Following that public reporting, has Mr Ashby provided a copy of this set of written instructions to the AFP?

**Mr Colvin:** I am not aware of that particular report. I know it is not necessarily relevant to your question, I just think it would be very unwise for me to give an indication to the committee while this matter is still ongoing. That is directly relevant to the ongoing nature of the investigation, and it is just not something I am prepared to talk about publicly.

Senator O'SULLIVAN: Hear, hear.

Senator JACINTA COLLINS: I appreciate that. Senator O'Sullivan, maybe you were still down at the King O when I started these questions—

Senator O'SULLIVAN: You do not know where I was, and your comments are offensive and you should keep them to yourself.

Senator JACINTA COLLINS: We do know where you were.

CHAIR: Senator Collins, that is an offensive comment on a Senate colleague. I will not ask you to withdraw—

Senator O'SULLIVAN: For the record, I was not at the Kingston Hotel.

CHAIR: You do not have to say where you were.

Senator O'SULLIVAN: No, but I am just sick of this.

CHAIR: You should desist from that, though, because otherwise people will say you are always permanently drunk, Senator Collins, and that does not get us anywhere.
Senator JACINTA COLLINS: They are welcome to say that. It would not have much credibility.
CHAIR: Well what you are saying about Senate colleagues does not have much credibility either.
Senator JACINTA COLLINS: The issue is that I said at the outset of this discussion, and Mr Colvin remembers that because of the response he just made—
CHAIR: You made a snide comment to another senator, which should not happen. Go on with your question.
Senator JACINTA COLLINS: If you defended me as adequately as you are now him, obviously people would not feel encouraged to respond to poor behaviour. I understand that Mr Colvin does not want to respond to that question, and I accept his explanation of that. My next question—
Senator Brandis: I think Mr Colvin said it would not be appropriate to respond.
Senator JACINTA COLLINS: Yes, and I said that I accept that.
Senator Brandis: You said that he said he did not want to respond.
Senator JACINTA COLLINS: Will you stop being such a pedant? Seriously.
Senator Brandis: I think there is a difference.
Senator JACINTA COLLINS: It is very late at night, and your behaviour is very draining.
Senator Brandis: There is no reluctance on the part of these witnesses to respond to questions to which they feel they can respond appropriately. When the commissioner of the Australian Federal Police says that it is not a question to which he can appropriately respond, then that is the ground on which the question has not been answered—not because he does not want to provide the committee with all the information he appropriately can.
Senator JACINTA COLLINS: Senator Brandis, no one implying any differently. You are just making this tedious.
CHAIR: Let us move on. Your time has finished, but we can come back to you, Senator Collins. I will go to Senator O'Sullivan, but, before I do, as part of Senator O'Sullivan's time, could I just ask if the offence being considered or investigated is unauthorised disclosure? Is that right?
Mr Colvin: The circumstances that we are investigating is the unauthorised disclosure of the former speaker's diary. The offence that we may end up considering as the most appropriate—if we even get to that point—is still to be determined.
CHAIR: What is?
Mr Colvin: It is still to be determined. We have a range of—
CHAIR: There is no technical offence of unauthorised disclosure, is there? That is not a criminal offence.
Mr Colvin: There are offences of unauthorised disclosure.
CHAIR: Where do they rate in the scale of offences? Are they like murder? Terrorism? Rape? Robbery?
Mr Colvin: Chair, that is very difficult for me to answer, because it depends upon the circumstances—for example, are there aggravating circumstances. All offences have penalties that the court can impose, and, clearly, unauthorised disclosure has a very different penalty to what a terrorism offence would.
CHAIR: There was a lot of discussion earlier about the cost and your resources and all this, and I was absolutely gobsmacked to hear Ms Close say that you have investigated thousands and thousands of emails and documents. I can well appreciate the questions on the use of your resources, when you are clearly involved in a huge amount of effort. Is someone, or are several people, going through every one of those emails, every one of those documents, with a magnifying glass, considering each aspect?
Ms L Close: Yes, we have investigators looking at every document that we have seized in relation to this matter.
CHAIR: That would be a very time-consuming exercise, I take it.
Ms L Close: Yes.
CHAIR: For something that I would have thought—and you can tell me I am wrong—in the course of criminal activities that the AFP look at would rank pretty low: unauthorised disclosure.
Mr Colvin: There are a few things there to consider. One is: the court will make determinations in terms of penalty of what gravity of offence the court may consider if somebody is convicted. But there are broader considerations for the AFP than just the penalty of the offence. It is the circumstances and the public interest in the matter. I am probably better off just leaving it at that.
Senator Brandis: I think, if I do not misunderstand what is being said, that it is actually not the offence of unauthorised disclosure; it is the offence of procuring another person to have unauthorised access. I do not think it is being suggested that Mr Brough himself had unauthorised access. I think it is being suggested by some that Mr Brough encouraged somebody else to have unauthorised access.

CHAIR: That would take it to being an even lesser matter, but I take Commissioner Colvin's point and will not pursue that. I hesitate to ask for this on notice, but can someone tell me the penalties that have been imposed on the last successful convictions for procuring someone to have unauthorised disclosure?

Senator McKim interjecting—

CHAIR: It is wasting resources, is my point, when we are dealing with criminals, thugs, rapists, murderers, and we have the AFP looking through hundreds of thousands of documents and emails for an offence which, even on conviction, I guess would get a good behaviour bond or something. That would be my experience of how lenient the courts are these days. How difficult would it be to get me some examples of the last time someone was convicted for procuring someone else to make an unauthorised disclosure? Would that be difficult to find?

Ms L Close: I am not aware of the last matter where a person was convicted, so we will have to take that on notice and do some research.

CHAIR: I do not want you to do too much research, because I for one appreciate that you have far more important things to do. But if it is easy to get the last couple of times there were convictions—if there have ever been any in the history of the Criminal Code of the Commonwealth—I would be interested to see when they were, what the penalty was and how many there were. With that, I will pass to Senator O'Sullivan.

Senator O'SULLIVAN: Commissioner, has your department been involved either directly or indirectly in relation to the royal commission into corruption within the trade union movement?

Mr Colvin: The trade union royal commission? Yes, we have.

Senator O'SULLIVAN: I do not want to leave you with anything on notice, so your best shot is a good enough shot for me. What sorts of resources do you have devoted to that exercise and how long have they been devoted to that exercise?

Mr Colvin: There have been various iterations of our involvement with the trade union royal commission. We have numbers of how many people are involved and we can also give you a sense of what our involvement will be going forward.

Ms L Close: Up to 31 December 2015, the AFP contributed 30 staff to the trade union royal commission. As well as that, we had some state police representatives from New South Wales, Queensland and Victoria and some technical specialists assisting.

Senator O'SULLIVAN: That is a reference to what period of time?

Ms L Close: That was from 13 March 2014 until the royal commission concluded on 31 December 2015.

Senator O'SULLIVAN: I imagine that there is a cost centre for a project of that nature that you have. Do you have any sense of how much has had to be invested in the investigation of these serious allegations of organised corruption across the trade union movement?

Ms L Close: Up to 31 December 2015 the Australian Federal Police costs for our involvement in the trade union royal commission investigations was $5.5 million.

Senator O'SULLIVAN: Do you have any sense of how many live investigations you are involved in?

Ms L Close: There are currently 11 defendants charged before court with various state or Commonwealth offences. We had an additional charge against one person in the ACT that did not proceed. And there is one matter currently with a state DPP for consideration.

Senator O'SULLIVAN: So, these are multiple offences on some of these occasions?

Ms L Close: In some instances.

Senator O'SULLIVAN: Does it include serious offences?

Ms L Close: Yes.

Senator O'SULLIVAN: Has the investigation—at least your contributions to it—been exhausted?

Ms L Close: From 1 January the AFP received funding of $6 million to continue working with the state and territory police services in relation to finalising the investigations that arose during the royal commission and also to assess any arising from the final report of the royal commissioner.
**Senator O'SULLIVAN:** If that were an adequate allocation of funds, that would take it to around $12 million, dedicated through your service, to your activities?

**Ms L Close:** For the Australian Federal Police and the states, yes.

**Senator O'SULLIVAN:** At a state level, for example, if there were investigations to be conducted—for example, in my home state of Queensland—would it be done by that contingent of officers? Or might the resources of the state police be called upon to assist in your normal cooperative sort of arrangements?

**Ms L Close:** Going forward for these next 12 months, as an example, in Queensland we would have four state police officers working with three Australian Federal Police officers to continue the investigations.

**Senator O'SULLIVAN:** And you will rebate the Queensland police service for those officers?

**Ms L Close:** Yes.

**Senator O'SULLIVAN:** What about extraneous assistance that you might get from time to time from the state services, be it cursory inquiries for them to provide information or documents? Is it compensated to the state? Or is that a cost that the state might incur on the normal, everyday relationship they have with the AFP?

**Ms L Close:** In respect of this, the officers attached would generally undertake those day-to-day inquiries, but we do have some additional funding available if there is technical support required. So, it will depend on the nature of the support that we are looking for.

**Senator O'SULLIVAN:** So, it is not unreasonable to make the point that the cost for the conduct of the law enforcement side of this is greater than $12 million. It is a bit hard to work out what the additional cost may be across the country.

**Ms L Close:** Yes.

**Senator O'SULLIVAN:** Does this take into account the time that your officers, when the cohort of officers are disbanded from their current direct functions, will devote to pursuing their briefs of evidence, going through the processes in the courts, giving evidence—the time taken for them to dedicate to those sorts of duties?

**Ms L Close:** We have the funding for the next 12 months, so that is what we will be endeavouring to do to complete those investigations.

**Senator O'SULLIVAN:** So, you are assuming that perhaps these prosecutions will be completed in that time.

**Ms L Close:** It is difficult to say how long any court processes may take. We actually do have a couple of days of planning in the next two days, with state and territory agencies, to understand exactly what they may look like.

**Senator O'SULLIVAN:** Sure. Is it typical for the AFP to provide the law enforcement resource for a royal commission? Is that a typical thing?

**Mr Colvin:** I do not know that I would describe it as typical. There are royal commissions into all various manner of questions. Sometimes if there is a requirement for an investigative arm of the royal commission then the AFP might be asked to give up resources, such as with institutional child abuse, where you have resources working to the royal commission. But there will be other royal commissions that we have no involvement with whatsoever. It really depends on the royal commission.

**Senator O'SULLIVAN:** In the near-term history of, say, the last decade, has your service found itself having to put such a large cohort of investigators and support staff and to expend such a large budget on any other focus group? In this case it is the trade union movement and their allied activities. And I am not talking about the establishment of a drug squad or a major crime commission; I am talking about a focus on a cohort of people. Do you remember, in the last decade, where that much resource has been applied with that many personnel dedicated for that period of time just on a specific target group?

**Mr Colvin:** That is difficult for me to answer. In terms of initiatives by a government to set up a royal commission, this is a large contribution from the AFP, but it is not unusual for the AFP to contribute resources of that size, and I guess potentially larger, to new areas of crime or new priority focuses for us. Our resources are very flexible. We move them around. We do not get involved in every royal commission, as I have said. In terms of royal commissions, it is a sizeable contingent that we have committed to it.

**Senator O'SULLIVAN:** Deputy Commissioner Close, to the extent that you are able to answer this, the modus operandi of your group—did they process as if it was an organised crime investigation? That is to say that links in their mind across borders were between organisations in this sort of class of people, these trade union executives?

**Ms L Close:** That is a difficult question to answer, because you have to look at every single case.
Senator O'SULLIVAN: Well, let me ask the question another way, to release you from the burden of that question. Was there evidence of cross-border relationships here between individuals who may well now be prosecuted? For example, within their organisation someone in Brisbane is involved in an investigation, as is someone in New South Wales, and then Victoria.

Ms L Close: Well, the nature of some of the unions that we are looking at do have cross-border representation. So, there may well be some aspects of that in the investigations, yes.

Mr Colvin: If I may add to that, we do not want to be difficult in not answering that, but the investigations were conducted under the auspices of the trade union royal commission, not under the auspices of the Australian Federal Police. The royal commissioner has made his report based on those investigations. I am not sure of the entirety of what is in that report, but he would have had findings if that was the case. Going forward, the investigations will be under the purview of individual agencies to work together, but, up to this point, they have been conducted by the royal commission.

Senator O'SULLIVAN: So, it means that your resource, your personnel, were at the disposal of the royal commission in that they were given their leads, for want of a better term?

Mr Colvin: That is correct. In fact, the investigational component of that was managed by an AFP commander, an SES 1 officer, answering to the royal commission and the royal commissioner. As they saw the need they would refer matters to police jurisdictions or work with police jurisdictions, but the task force was a reasonably all-encompassing task force working to the royal commissioner.

Senator O'SULLIVAN: I have one final question. Do you in your memory, Commissioner, in law enforcement, now over decades, remember so many prosecutions coming out of a royal commission directed at just the one cohort of individuals, in this case trade union members?

Senator LAMBIE: [inaudible]

Senator O'SULLIVAN: A cohort is a group of people who bear a relationship to each other, Senator.

Mr Colvin: I think that is a very difficult question for me to answer.

Senator O'SULLIVAN: Well, it is a simple question. Just based on your general history and knowledge, do you—I have laboured my mind to it, and it has not been since the royal commission in Queensland that I would say that there had been—

Mr Colvin: I do not want to say no, because I could not think of every circumstance in which there have been cohorts of individuals involved in crime of a not similar nature but of a similar size. Thinking of my own experience I think is not a helpful way to inform the committee.

Senator O'SULLIVAN: There was an attempt. Thank you.

Senator McKIM: What proportion of the national security advertising campaign budget came from AFP?

Mr Colvin: There was an offset. I do not know that we have the exact figure, but we can certainly get it for you.

Mr Wood: I am pretty sure it was $7 million. If I hear it corrected from behind me in a moment then I will put that on the record.

Senator McKIM: Thank you. We will take that as an initial response. So, it was a $10 million campaign, and $7 million came from the AFP. What was the process around—

Mr Wood: I can confirm the figure, Senator.

Senator McKIM: Thank you. So, what was the process around the AFP determining that it would provide that $7 million? Was that a direction or an instruction to AFP? Or was there an internal process within AFP to evaluate whether the objectives of the advertising campaign met the AFP's organisational objectives and strategy?

Mr Colvin: This is a policy position of the government. The funding needed to be found and agencies, as is not unusual, were asked to contribute. As to the actual machinations of how $7 million was arrived at, I think it related to another offset that we were able to put forward. But this is a normal part of the process of our appropriation.

Senator McKIM: Yes, I understand that; thanks. Did the AFP go through any evaluation of the kind that I have just referred to? In other words, did you look at the objectives of the campaign and assess whether or not they were in line with your organisational objectives?

Mr Colvin: Well, the campaign was managed by the Attorney-General's Department, and I am sure that we would have been consulted, but it was not incumbent on us to make those decisions.
Senator McKIM: So, to your knowledge, there was no process undergone within the AFP around assessing the strategic objectives of the campaign, compared with your organisation's objectives?

Mr Colvin: No, we would have commented on the development of the proposal for the national security awareness campaign, but it would not have been a trade-off for us to say how much we think it is worth to come out of AFP appropriations.

Senator McKIM: Are the objectives of the advertising campaign in line with the AFP's objectives?

Mr Colvin: Absolutely. The objective of the campaign is to bring information to agencies' notice that may be of a security concern, and anything that gets the public involved in providing information to police about national security matters is squarely something that we support.

Senator McKIM: Is there any particular reason this campaign should be funded now and not a year ago or next year? Is there any particular reason that the AFP is aware of that this campaign is being run in an election year?

Mr Colvin: It has been run on and off for quite some time. In terms of it being an election year I have no comment on that. We are always looking for information from the public, and if the assessment is that the awareness campaign is timely, to remind the public of how to give information to police, then we support that.

Senator Brandis: And Senator McKim, I note the political barb in your question there. It is not right to say that this campaign has begun at this time, because it is a continuation of a campaign that began not long after the national threat alert level was raised, in the old language, to high, which meant that a terrorist event was assessed to be likely. Now, I think, if my memory serves me correctly, that was done on 11 September 2014. I took a submission to the relevant cabinet subcommittee for an awareness campaign to be run over the summer of 2014-15—in other words, a little over a year ago—and that was done. That campaign ran over the summer; I cannot tell you the exact dates. But in one form or another this public awareness campaign owes its genesis to the decision of ASIO to lift the national threat alert level to high in September 2014.

Senator McKIM: I will raise that again when we get back to your department's estimates around—

Senator Brandis: For completeness, let me make it clear that the campaign has not been continuous since the summer of 2014-15, but it had its genesis then.

Senator McKIM: I understand, but it is recommencing, I guess, to use your framework, in an election year. I will raise that later if we have got time, in relation to some of the other contributions, but I wanted to ask the AFP about its counter-terrorism investigative function. Firstly, now that the Australian Border Force has bedded down a bit, to use lay terms, are you able to provide the committee with an assessment of what proportion of the functions of AFP's previous counter-terrorism investigative workload are now conducted by Border Force?

Mr Colvin: The answer to that is zero. The role of the Border Force is very specific to the border and, as has been well documented and, I think, spoken about in this forum, the Border Force have done a very good job of increasing their presence and awareness at the border and their ability to stop people leaving the country to go to conflict zones and people coming into the country that the Border Force assess as someone that should not be allowed in. That does not mitigate or take away any of our responsibilities in terms of the investigation. Nor, might I add, does it change the fact that the Border Force will refer many of those matters to the police for investigation.

Senator McKIM: If they come across, in the course of their duties, something within your jurisdiction, that is just a referral to you?

Mr Colvin: Yes. Border Force does not have the responsibility for investigating matters of counter-terrorism.

Senator McKIM: All of those that you previously had you maintain now?

Mr Colvin: That is correct—ourselves, our state police, ASIO. It is a combination.

Senator McKIM: I want to ask now about the AFP's community engagement efforts. Are you able to quickly break down for the committee how much of your budget—perhaps we could do it in dollar terms—is spent on community engagement as opposed to your other functions?

Mr Colvin: I believe we can. Whether we can give you an exact figure—we can certainly give you a sense of the rate of effort that we have on community engagement, which is very important. I might pass to Deputy Commissioner, National Security, Mike Phelan. He will give you more detail.

Mr Phelan: Our community engagement component of the AFP works across all the jurisdictions, and we work very closely with the National Disruption Group, which is within the AFP, which was set up under the foreign fighters new policy proposal, the $77 million. The amount of people we actually have in our community engagement component is very have in our community

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
liaison teams is 12. The jurisdictional breakdown is: four in Sydney, four in Melbourne, two in Brisbane, one in Perth and one in Adelaide. That is our community engagement teams. Their main role is to, obviously, engage with community, build community support, build rapport between the police service and the community. The people that we have in those particular teams throughout the jurisdictions work very closely with community members. They work with youth, they work with community leaders, they set up meetings etcetera. They work with the community when we do major operations. When we do major operations with the state police as part of the Joint Counter Terrorism Teams, then they are the first to go out to talk to the community, to explain to the community leaders exactly what is happening—what is happening around the warrants, what is happening around the investigation—before they read about it in the paper or see it on Sky News or ABC 24, so that we can get to them and explain the situation, because community engagement is important. We want to make sure the right messages get out, and for the right reasons, before things get a head of steam and get out of control in terms of wrong messages, people sending the wrong things. That is where the community engagement teams, in particular, are extremely important.

Senator McKIM: I completely agree with your comments around the importance of community engagement. Firstly, there are none in my home state of Tasmania?

Mr Colvin: Senator, I was just about to—

Senator McKIM: Sorry to get all parochial on you, Commissioner, but—

Mr Colvin: There may be another senator up there as well who—

Senator Brandis: You are a senator, Senator McKim. We are meant to represent the states. Never apologise for that.

Senator McKIM: Exactly right. Thank you, Attorney.

Mr Colvin: The numbers that Deputy Commissioner Phelan has given you are the dedicated officers to that function. We also have AFP officers in locations such as Darwin and Hobart who also perform that role amongst other matters that they are taking care of. It is not that the community in the Northern Territory or Tasmania is of any less importance, but we manage our resources according to the need.

Senator McKIM: I will address this to the Attorney, to be fair, because it does cross over into politics, but I would be interested if the AFP has a view: there has been some political commentary around statements that have been made by some politicians that demonise Islam as a religion. I will put on the record that Tony Abbott is one of those politicians, from my point of view; there are others. But, if you take the personalities aside, I would like to ask the AFP—because of their interactions on the ground with communities, including potentially with people who are at risk of becoming radicalised—what sort of impact those comments have on the AFP's attempts to engage with the community and hopefully prevent people from becoming radicalised.

Senator Brandis: Well, Senator McKim, before Commissioner Colvin responds, can I just say that I think that is a very unfair characterisation of anything Mr Abbott has said. For all the time that he was Prime Minister I was at Mr Abbott's side, as it were, as the Attorney-General in dealing with these matters, and I have never once heard him, in a private or public statement, say anything that I think could be fairly characterised as demonising Islam. That is a grossly unfair characterisation.

Senator McKIM: Well, we can agree to disagree on that.

Senator Brandis: You have not pointed to anything that Mr Abbott has said. With that objection, as it were, perhaps Commissioner Colvin might care to address the substance of your question.

Senator McKIM: Thank you.

Mr Colvin: I do not wish to participate in an analysis of political commentary, I am sure you can understand that.

Senator McKIM: I am sure you do not.

Mr Colvin: Community relations are important to us. We spend a lot of time working with the community at grassroots level—all communities. Communities react in different ways to us. They react in different ways to our state police partners. What we focus on is trying to get a level of consistency in the relationship, and we focus on our relationship with the community. What others say—and there is a lot of commentary about communities in Australia that you hear—is really irrelevant, because what we do is build up trust between the community and the police.

Senator McKIM: Thank you, Commissioner. I just want to follow that up, but just to be fair to you I will put this through the Attorney: we have had allegations made that the current Prime Minister's office has become involved in leaning on outspoken conservative MPs in a bid to get them to tone down their rhetoric. I think that
this is a legitimate matter to explore with the AFP. Perhaps if I rephrase the question slightly that might address some concerns. Is there a danger that some of the political language in this country can be taken by some, who may be at danger of becoming radicalised, as demonising Islam or being unfairly critical of Islam, and therefore leading them to have an increased risk of become radicalised?

CHAIR: I am not sure that is a very—

Senator Brandis: Is that to me or to Commissioner Colvin?

Senator McKIM: I said I would put it through you, Attorney, to be fair to the commissioner, because the AFP has experience in this area—

Senator Brandis: No, I understand. It is a very general question. I agree with what Commissioner Colvin said in response to your last question. We do have to be careful with our language because, as Mr Abbott has said and I have said and Mr Turnbull has said, the Islamic community are our necessary partners in dealing with an evil that moves within Islamic communities: Islamist terrorist recruiters acting on behalf of ISIL.

Senator McKIM: There is evil in all communities, if you want to use that word.

Senator Brandis: Particularly that community, because the young men in particular, the young men and women who are being recruited—and you have heard what the Director-General of Security said earlier in the afternoon—are being recruited from that community. As I have said quite often in public statements and media interviews, that community in particular is a victim of the people who do the work of ISIL and other Islamist terrorist organisations. Therefore, it is essential that we maintain a good relationship with that community and work with them in order to deal with the problem that is threatening to Australia at large and to that community in particular.

Senator McKIM: That is the point of my question. Do some of the comments that are made in the public debate place that policy aim at risk? That is a very simple question.

Senator Brandis: I do not think it is possible to answer a question as generic as that. If you can point me to a particular remark, then perhaps we can comment on it. I think it is enough to say that we need to be careful with our language. It is very important that we do not demonise the Islamic community. I do not believe we have done that. We need to work with them, because they are particularly threatened—as we are all threatened, as Australians—by people who move among that community and seek to recruit vulnerable young people from within that community.

Senator McKIM: Commissioner, I note from your annual report that you have officers deployed now at new deployments in Ankara, Amman and The Hague in liaison positions. Have those deployments affected deployments in other parts of the world, such as in South and South-East Asia, and how are we ensuring that we are not taking our eye of some of the real hotspots of the world by sacrificing potential resources in those areas?

Mr Colvin: We are constantly evaluating and re-evaluating our international footprint. On any given day, we have between 85 and 100 officers offshore, around the globe, in dedicated international liaison positions. That is not counting our officers in, say, the Solomon Islands or PNG on a different peace and stabilisation mission. Those officers in Amman, Jordan and in The Hague were additional officers to our network. At the same time, we are constantly assessing whether we need to increase or decrease. It was new money that we were provided, which the Attorney-General talked about earlier—funding for the foreign fighter challenge that we are facing. I guess I would say that we consider those to be hotspots, which is why we have put officers there.

Senator McKIM: So they are in relation to your counter-terrorism operations?

Mr Colvin: Absolutely—they are predominantly for counter-terrorism matters.

Senator LAMBIE: Commissioner, I refer you to the speech I made in parliament last week, where I raised, under privilege, the concerns and allegations made by SAS trooper Evan Donaldson and former Army officer Marcus Saltmarsh. You will recall that they both made allegations which include official corruption and cover-up at a high level, serious assaults and the abuse of office by senior members of the Australian military. After writing to you, asking for your office to visit my Senate office and take the statements of these two young men—and after a delay and some confusions—two AFP officers politely showed up, and the Australian Federal Police began the process of deciding whether they want to investigate these very serious matters or refer the matters back to Defence so that Defence can investigate the matters in-house. Do you think that is a fair description of the course of events that happened in my office last week?

Mr Colvin: Yes, except to say that those initial discussions with Mr Donaldson and Mr Saltmarsh were to ascertain whether they wished to make a referral to the AFP. We have advised them how they should go about referring. At this stage, they have not come forward and made those allegations or referred anything to the AFP—
on this occasion. One of those gentlemen has previously referred matters to the AFP, which have been dealt with, but, in terms of the current matters that you spoke about in parliament, both of those gentlemen are free to make those allegations to us and bring us information to assist us in assessing them.

Senator LAMBIE: I do not believe a time or anything has been made for that, and, actually, we are waiting for you and the Australian Federal Police to get back to us. One of those allegations has actually been presented to you on a couple of occasions before.

Mr Colvin: That is correct. One of the allegations I think has been presented at least twice—if not, on three occasions. I want to be careful. Until such time as either of these gentlemen bring that information to us—and we have given them the options to do that; and I think arrangements may even have been made to meet with them in their home state—I am not in a position to make a judgement about what they have said to us. On the previous occasions we have dealt with the information that one of the gentlemen has referred, and my understanding is that he is satisfied with the course of action we took.

Senator LAMBIE: When you dealt with the previous matter did you contact the Chief of the Defence Force, Air Chief Marshal Binskin, or any other senior military officers about this matter? Have you actually spoken to the side of the military?

Mr Colvin: I would have to look at what the AFP did at the time of those referrals. Personally, no, I have not spoken to the Chief of the Defence Force about those referrals.

Senator LAMBIE: I would like to know when that contact was made, if it was made et cetera. So if I could have that. Air Chief Marshal Binskin has written to me saying: ‘There are serious allegations that require thorough investigation.’ It is a comment that I agree on. Do you?

Mr Colvin: I can only go on what your statement was in parliament.

Senator LAMBIE: I am happy to supply it.

CHAIR: Please let the witness finish his answer.

Mr Colvin: I can say that I am sure all police would be the same. We need to hear the matter from the people who are making the allegations. When they have done that we will be in a position to assess that information.

Senator LAMBIE: Okay. I am happy to table the letter from Air Chief Marshal Binskin that says there are serious allegations that require thorough investigation. Commissioner, the only problem I have is that Air Chief Marshal Binskin appears to think that his military can deliver a thorough investigation. Given the number of senior military members, including defence investigators accused of corruption and misconduct, do you think that the military can impartially and independently investigate the matters of Evan Donaldson and Marcus Saltmarsh?

CHAIR: I am not sure that is a fair question.

Mr Colvin: That is not a matter for me to comment on. Until such time as I actually see the allegations that Mr Donaldson and Mr Saltmarsh wish to make to the AFP, I am in no position to give you an assessment of its seriousness, the right agency to investigate it or what the appropriate course of action is.

Senator LAMBIE: How many members of the Australian Defence Force have approached the Australian Federal Police in the last 10 years wanting to make statements alleging they were victims of crime or misconduct committed by other members of the Australian Defence Force? Do you keep these stats? If you do, I would like to get the answer on that question.

Mr Colvin: We would have to take that on notice to see how many matters have been referred to us by former or serving members of the Defence Force.

Senator LAMBIE: How many potentially criminal matters have you referred back to the Australian Defence Force for investigation?

Mr Colvin: I will take that on notice.

Senator LAMBIE: When you are given statements from military personnel and you take those statements, who makes the decision on whether or not you refer them back to the Australian Defence Force?

Mr Colvin: The AFP would make that decision.

Senator LAMBIE: What rank in the AFP makes that decision?

Mr Colvin: It would really depend on what the allegation is, the conduct being alleged, the circumstances of the matter. As I explained to Senator Bilyk earlier, we have a very well tried and tested case categorisation prioritisation model that works through a number of factors in terms of whether we are the right agency to
investigate, whether there is a more appropriate agency to investigate, whether it is a priority matter for us that we would actually take on.

Senator LAMBIE: Are any AFP officers taken into account? Are they made to disclose any conflicts of interest, for example? Does any officer involved in the decision-making process have family or other links with the members of the Australian Defence Force?

Mr Colvin: All senior executive members of the Australian Federal Police make a conflict of interest declaration. However, I think implicit in your question is that there would be some bias in the way that that judgement is made. I have certainly never seen any evidence of that. I see no reason why we should be presuming that an AFP officer would have a prejudice or bias in terms of making an assessment of a matter.

Senator LAMBIE: Is an undisclosed conflict of interest just another name for official corruption?

Senator Brandis: No. It could be, but not necessarily.

Senator LAMBIE: It is no? It could be? Which one is it, Attorney-General? No? It could be? I am just trying to appreciate.

Senator Brandis: Your question is: is it another name for official corruption? The answer to that question is no. It could be, but it isn't necessarily. The concept of an undisclosed conflict of interest and the concept of official corruption are different concepts.

Senator LAMBIE: So if no conflicts of interest exist with the ADF investigators and judge advocates, do you believe that the Australian Defence Force has the capacity to conduct an independent, unbiased investigation of Donaldson and Saltmarsh on criminal and corruption allegations?

Mr Colvin: I am not in a position to make a judgement about the Australian Defence Force's investigation ability, especially on matters that have not been referred to the AFP and of which I do not know the significance or circumstances of.

Senator LAMBIE: I look very forward to seeing what allegations you have received in the last 10 years and what has been done about those allegations, and how many of them have gone back to the Australian Defence Force. Thank you very much.

Mr Colvin: We have those records. We will share them.

Senator LAMBIE: That would be great.

CHAIR: Are you finished, Senator Lambie?

Senator LAMBIE: I have. Thank you, Chair. I will go to Senator Madigan.

Senator MADIGAN: Last week, around 70 police were deployed to the Port of Newcastle to break up industrial action taken by the crew of the ship CSL Melbourne who had been sacked to enable their employer, Canada Steamship Lines, to replace them with foreign crew. Of the 70 police who arrived at the scene, I believe 15 boarded the ship and escorted the five crew from the ship. What was the involvement of the AFP in this operation?

Mr Colvin: No involvement.

Senator MADIGAN: None at all? Right. So there was no involvement in the planning and execution phases of this operation?

Mr Colvin: No.

Senator MADIGAN: Was the AFP informed that the operation would be taking place prior to it occurring?

Mr Colvin: No. I read about it in the media, like many others. No, we were not advised.

Senator MADIGAN: Did the minister have any knowledge or involvement of the operation?

Mr Colvin: I cannot answer on behalf of the minister. Certainly not from the AFP, though, because we were not aware of it.

Senator MADIGAN: Thank you, Chair.

CHAIR: Thanks, Senator Madigan, that was—

Senator Lambie interjecting—

CHAIR: I can come back to you, Senator Lambie. I am trying to do this as fairly as possible. You don't have any AFP—

Senator BILYK: We have no more on AFP. Senator Ludlam.
Senator LUDLAM: It should not take too long. Thanks for being here. I am going to refer a bit to some questions—or one of them—for which we had the answers returned to the Senate late last week. They were tabled by Senator Brandis. And there are a couple that have not come back yet. One was with reference to question on notice 266, regarding the AFP funding of Sri Lankan CID units—Criminal Investigation Department. We have some answers back. Thank you very much for providing those. I am not sure whether to direct these questions through Senator Brandis or you, Commissioner, so I am happy for whoever wants to take them on.

Mr Colvin: If I can answer them, I will.

Senator LUDLAM: All right. Let’s go then. For the response to question 2, I had asked whether you were aware of the credible allegations of human rights abuses, including physical, sexual, torture, as well as forced extrajudicial incarcerations and killings, committed by the CID—this Criminal Investigation Department. The response that came back was: ‘The department is aware of allegations of human rights abuses.’ That is all we have. So they are speaking on behalf of the AFP. The AFP is aware of those allegations?

Mr Colvin: Was that a question to the department that the department answered? I am just trying to get a copy of the question on notice. Is this one that we answered?

Senator LUDLAM: It was to the Attorney-General’s office, but it referred directly to the AFP.

Mr Colvin: We are just trying to find if we have a copy. It is not in the questions on notice that I have with me today.

Senator LUDLAM: I can table it, if that would help.

Mr Colvin: If you could, that would be fantastic.

Senator LUDLAM: I might just need some assistance from the secretary in making a copy for the commissioner. I will keep it general until you have a copy in front of you, if you like, Commissioner. What is your understanding of the situation regarding human rights as far as the Sri Lankan CID is concerned? Obviously, the AFP has been providing assistance for a couple of years.

Mr Colvin: Clearly, there have been media reports in the past of allegations of human rights abuses in Sri Lanka, including the Sri Lankan police CID. From an AFP perspective, we have very clear guidelines, if that is to be observed and what we do with it. I am not aware of any reports from our officers of having observed human rights abuses.

Senator LUDLAM: You have not observed?

Mr Colvin: I am not aware of any reports from our officers having observed human rights abuses. I am aware that the media have reported those allegations.

Senator LUDLAM: We can come to some of the media reports of that later. Was the AFP aware, presumably, under your predecessor, of these allegations and reports prior to providing the material assistance that we have been doing for a couple of years?

Mr Colvin: I believe the answer to that would have to be yes because the allegations have been around for some time.

Senator LUDLAM: They have, indeed. Again, you go into a little detail in the question on notice, but if you are happy to proceed without direct reference to it, you indicate that there is a risk assessment process that you go through not just in Sri Lanka, obviously, but anywhere we are providing direct assistance—to police units, military, paramilitaries. There is a risk assessment process that you go through. Tell us a little about that, please?

Mr Colvin: First of all, we do not provide assistance to militaries and we are very careful about that. With the assistance we do provide to police, we necessarily have to make judgements about what assistance that is. For instance, the AFP does not involve itself in training of a tactical nature. We predominantly limit ourselves to providing assistance at training and support in relation to investigations, the conduct of investigations and how intelligence is used. Implicit in our training is a human rights subtext because we train on the basis of the way that we operate.

Senator LUDLAM: Sorry, what was that last bit?

Mr Colvin: We train on the basis of the way that we operate.

Senator LUDLAM: Okay. So what happens when the units or departments that you are training do not operate according to those principles, repeatedly, over and over again over a period of years?

Mr Colvin: In partnership with departments such as the Department of Foreign Affairs and Trade, we would have to make judgements about the utility of providing that support. There is an element of wanting to improve the conduct of some of these police forces. But this is a constant and ongoing assessment that we make.
Senator LUDLAM: I am trusting that you have the document in front of you.

Mr Colvin: We do now. It does not ring a bell as one of ours, but I accept that it talks about the AFP.

Senator LUDLAM: Well, it would have gone through the department, the A-GD, but obviously it refers to you guys directly. In answer to question 3, you have pointed out you conduct an initial feasibility study before the establishment of any liaison post. Again, I am happy for this to be forwarded through the department if you would prefer. What criteria do you look for before deciding whether to start shifting equipment, training, capacity building into a particular place?

Mr Colvin: There are a few things in that. You also referred to when we conduct feasibility studies, which I note now is in the actual question on notice.

Senator LUDLAM: Yes, answer No. 3.

Mr Colvin: I would want to go back to the feasibility study that we did for Sri Lanka to find exactly what the assessment criteria was and what we looked at. Perhaps Deputy Commissioner Close has some more information.

Ms L Close: Yes. As well as the areas you are outlining, we also have a memorandum of understanding between the Australian Federal Police and the Sri Lankan police. That sets out the aspects in relation to what equipment, training et cetera that we will provide to them.

Senator LUDLAM: A formal MoU?

Ms L Close: Yes.

Senator LUDLAM: When was that signed?

Ms L Close: I will have to take that on notice.

Mr Colvin: It is a while ago.

Senator LUDLAM: 2009 is—

Mr Colvin: I think that was the initial one and it may well have been updated since it.

Senator LUDLAM: Could you table a copy of that, whatever is the current standing iteration of that document?

Mr Colvin: Could we table that?

Senator LUDLAM: Yes.

Mr Colvin: I do not believe we can table MoUs because they are agreements between ourselves and another country. I think we have dealt with this issue before and the advice has always been that we are not able to table MoUs.

Senator LUDLAM: Senator Brandis, is that your understanding?

Senator Brandis: I do not immediately know the answer to that question, so I will take it on notice.

Senator LUDLAM: It is worth asking then. If you are able to take that on notice, I am interested in the specifics but also in the general government policy. In answer—

Senator Brandis: Obviously, I would have to acquaint myself with the document to which you refer to seek advice as to whether it is the kind of document that might be tabled.

Senator LUDLAM: Yes, that is understood. In your response to question number 4, you said: 'The AFP has not received any reports from its own officers regarding allegations of abuses involving the Sri Lankan police service.' That is obviously a bit bigger than just the CID. You referenced the entire Sri Lanka Police Service. You pointed out that, in 2010, you were made aware of some specific allegations. There is very careful language there: the AFP has not received any reports from its own officers regarding allegations of abuses. With one Google search, in about eight seconds, I discovered a Human Rights Watch report titled Sri Lanka: routine police torture devastates families. Human Rights Watch is a credible organisation that has global reach and is of good standing. Do you take into account that kind of open source material, or do you just wait to hear from your own officers?
Mr Colvin: No. As I said before, we are aware of the allegations. We are aware that there has been significant reporting of these allegations, including from organisations that you have just mentioned. In specific reference to the question, as I have said before, our officers, who have very tight guidelines around what they should or should not report if they become aware of abuse by our partners, have not reported any that they themselves have witnessed.

Senator LUDLAM: Unless you specifically witness somebody being tortured, everything is hunky-dory?

Mr Colvin: No, not at all. It is quite the opposite. That is not what I said before. I said that we take a range of things into account. I did say to you that I did not want to comment on the initial feasibility study until I was able to refresh my memory of it and know what was taken into account.

Senator LUDLAM: What about day-to-day conduct, the sort of activity that is reported by Human Rights Watch?

Mr Colvin: I am not sure what the question is.

Senator LUDLAM: You have referenced a document that we believe was signed off in about 2009. You have undertaken to take that on notice. The initial feasibility study was long before you took up the role that you are in now; I understand that. We are not just interested in the assessment you did in 2009. My question to you is: what about the assessments you do from day to day? Does it cause any sort of stir, for example, when Human Rights Watch publishes this sort of document?

Mr Colvin: We do not operate in a vacuum. Our officers work in a number of countries around the world where there are allegations of misconduct.

Senator LUDLAM: Why are we supporting and providing equipment, training, surveillance gear, computer equipment and white vans—which I will get to in a second—to a police unit that is regularly accused of committing horrific human rights abuses? Why do we do that?

Mr Colvin: We have a vast international network, in which we work with our partners in a range of countries, particularly within the region to our near north. We work with them because it is in Australia's law enforcement interests to try to take the battle against crime offshore and, where we can, defeat it at the source. We work with them because the effects of transnational crime require us to take that approach. If we did not then we would be far less effective at our work. We do that, very conscious of the expectations of the Australian government and the Australian community about the way police should conduct themselves. As I have said, we are aware of these allegations, but they do not necessarily mean that we should not continue to work with trusted partners.

Senator LUDLAM: That is breathtaking. When you say that they are trusted partners, they are accused in this document—again, I found this in less than 10 seconds—of routinely using torture methods, including severe beatings, electric shocks and suspension from ropes in painful positions, against criminal suspects. We would not tolerate this kind of behaviour from a domestic law enforcement agency.

Senator Brandis: There is a policy issue here.

Senator LUDLAM: Tell me what that is, Senator Brandis. Enlighten us.

Senator Brandis: First of all, you seem to be assuming that, because an allegation is made, it ought to be accepted as established. I do not think that that is very sensible, and I do not think that is the way any police law enforcement organisation can operate. Secondly, and I am sure Commissioner Colvin will elaborate on my remarks, it is very important that the Australian Federal Police have collaborative and cooperative relationships with other national police forces—including the Sri Lankan police—across a whole range of areas of important mutual interest, including combating transnational crime, people smuggling, terrorism, child sexual exploitation and a range of other serious matters. Surely you are not suggesting that, because an NGO has made allegations that you assert to be credible against another national police agency, we should have no cooperation with that police agency?

Senator LUDLAM: Senator Brandis, you imply that I just assume that they are credible. Are you assuming that those allegations are not credible? What I am trying to find out here is what happens—

Senator Brandis: No, I am not assuming the allegations are not credible.

Senator LUDLAM: What was done to validate them or otherwise?

Senator Brandis: The boot is on the other foot. You are saying that we should take a decision which would have a very significant blow on international crime cooperation merely because allegations of torture—

Senator LUDLAM: That you say—
Senator Brandis: The subject of the allegations is hardly to the point. The question is whether the allegation—

Senator LUDLAM: It is precisely to the point, or I would not be wasting your time.

Senator Brandis: The credibility of the allegations is a different issue from the gravity of that which is alleged.

Senator LUDLAM: Alright. Let's pick a specific example from this report that I have cited a couple of times: 'Sri Lanka routine police torture devastates families'—Human Rights Watch, 23 October 2015. What did the AFP or the ATD do when that report was published to either validate, verify or otherwise the claims that it contains?

Mr Colvin: First and foremost, it is not the AFP's job to attempt to validate or otherwise allegations against an individual of a foreign police service.

Senator LUDLAM: Whose job is it, then, if we are providing them with materiel support, training and capacity building?

Mr Colvin: Our job is to make sure that the support that we provide is used in accordance with our expectations, and we do that routinely. I know you will ask me about the white van, and I am sure we will talk about that as well.

Senator LUDLAM: Let's go there, since you have brought it up.

Mr Colvin: The question has been raised with us before. Yes, we provided a vehicle to the Sri Lankan police service in furtherance of our objectives; I believe it was around people smuggling in particular. I know there have been links drawn to white vans in Sri Lanka participating in human rights abuses. There are many white vans in Sri Lanka, I am sure, and I find it quite difficult to try and draw any link between the vehicle that we may have given and some allegation that a white van has been used in some inappropriate way.

Senator LUDLAM: It is not about white vans. It is about white vans used by this very specific CID—this very specific unit of the Sri Lankan police force—to abduct people who were then extrajudicially tortured or murdered.

Senator Brandis: But all these statements you make are claims. They are allegations.

Senator LUDLAM: I am interested to know what the government does to verify the allegations. Or do you just hope for the best?

Senator Brandis: They are allegations. No government alters its policy merely because some unspecified unknown person might make an allegation. Allegations are made all the time.

Senator LUDLAM: It is groups like Human Rights Watch and Amnesty International. They are credible organisations.

Senator Brandis: I am not particularly familiar with Human Rights Watch. I am familiar with Amnesty International, but over the years I have seen a number of claims made by Amnesty International which were demonstrably false.

CHAIR: Absolutely!

Senator LUDLAM: Have you done anything at all to verify the claims in this document in particular? Otherwise it looks as though it is kind of a don’t-ask-don't-tell policy.

Senator Brandis: I am not even familiar with the document of which you speak.

Senator LUDLAM: Okay. I will come back to this a little bit later.

CHAIR: Your time has finished.

Senator LUDLAM: Can I put one or two more on notice?

CHAIR: We can come back to you if you want to do it that way. Senator Lambie had some questions; when she is finished I can come back to you, if you want to.

Senator LAMBIE: Commissioner, I want to clear up a question that we had before in reference to Trooper Donaldson and Marcus Saltmarsh. I want to make it quite clear that, when they were in my office last week, your AFP members made it quite clear to me that they will not take statements until they are given the order. You have not given them that order, and they have not contacted my two men. They are waiting by the phone. I am happy to ring them and they can say that straight to your face, or you can retract the statement that you made in misleading me. Which one is it?

CHAIR: I will not have you accusing officers and witnesses before this committee—
Senator LAMBIE: It is not accusing, it is a fact, and he knows it, don't you Commissioner?

CHAIR: Senator Lambie, you will apologise or you will be excluded from this hearing. I will not have you or anyone else making accusations like that against distinguished serving officers—

Senator LAMBIE: They are not allegations, they are the truth. You are telling me I have two ex-soldiers lying to me. My goodness me, Chair!

CHAIR: Does anyone else have any questions, or do we move on? I will not be calling Senator Lambie again until she apologises, and I would rather you did not respond—

Senator LAMBIE: Maybe he could apologise for misleading.

CHAIR: Do you have any more questions, Senator Ludlam?

Senator JACINTA COLLINS: On a point of order, if Mr Colvin feels that he needs to respond he should be able to.

Senator LUDLAM: I do have some questions, but I am happy if the commissioner wants to respond. He was about to offer a response.

CHAIR: I have made a ruling. Unless Senator Lambie apologises I am not going to pursue that any further. I am sorry, Commissioner.

Senator LAMBIE: So you want me to apologise so that I can get my answer. Okay, if that is what it is going to take to get my answer then I will apologise. So if I could have my answer please.

CHAIR: Commissioner, Senator Lambie has apologised and retracted that statement she made about you, so on that basis you may like to respond.

Mr Colvin: Thank you, Chair. Thank you, Senator. I do take great offence at the inference, but I accept the apology. I am not sure what those officers said or why they would have said that, but I can categorically state that an officer does not require a direction from me to take a statement. As I advised, we have spoken to Mr Donaldson and Mr Saltmarsh. We have advised them of what they need to do and how to go about reporting these crimes to us. The officers here in Parliament House are not the appropriate officers to report them to, but I accept that they were the officers here on the day. I believe Brisbane office is dealing with the matter. I am sure that we will talk to them and take their statement when they are ready.

Senator LAMBIE: Who spoke to them, and when do they do that?

Mr Colvin: I take that back. It was suggested that they speak to the Brisbane office—they must be from Queensland, I do not know. No-one needs a direction from me to take a statement.

Senator LAMBIE: So you want me to apologise so that I can get my answer. Okay, if that is what it is going to take to get my answer then I will apologise. So if I could have my answer please.

CHAIR: Commissioner, Senator Lambie has apologised and retracted that statement she made about you, so on that basis you may like to respond.

Mr Colvin: Thank you, Chair. Thank you, Senator. I do take great offence at the inference, but I accept the apology. I am not sure what those officers said or why they would have said that, but I can categorically state that an officer does not require a direction from me to take a statement. As I advised, we have spoken to Mr Donaldson and Mr Saltmarsh. We have advised them of what they need to do and how to go about reporting these crimes to us. The officers here in Parliament House are not the appropriate officers to report them to, but I accept that they were the officers here on the day. I believe Brisbane office is dealing with the matter. I am sure that we will talk to them and take their statement when they are ready.

Senator LAMBIE: So far they have waited a week. They tried to give their allegations on that day. Now I am waiting on your people to give them a time and date.

Mr Colvin: I am not sure what more you want me to say. That version of events is inconsistent with what I have been told, but we will rectify it, if the two gentlemen are waiting to talk to us. I certainly have no interest in having the matter aired in Senate estimates. I would be very keen to talk to them so that we can hear their allegations direct.

Senator LAMBIE: Thank you. That would be wonderful. I am sure they will be looking forward to that. I have a couple of questions on the shipping incident that happened last week, Attorney-General, because I know this has nothing to do with the Federal Police. Is it true that 70 civilian police showed up to remove eight men
from a ship? Can you clarify that for me, and who gave the order to use 70 civilian police to remove six or eight personnel from a ship?

**Senator Brandis:** I do not know. I will take that on notice.

**Senator LAMBIE:** And when you have done that could you please also take on notice whether you found any arms or drugs or anything on that ship? And how long were those civilian police—

**Senator Brandis:** I think I know the incident to which you are referring, but could you be a little specific, please?

**Senator LAMBIE:** I am talking about the ship that last week that was at the CSL.

**CHAIR:** Were Federal Police involved?

**Senator LAMBIE:** No, it was the civilian police.

**Mr Colvin:** It was the New South Wales Police. I stand to be corrected, but I am not sure—

**CHAIR:** If it is not a matter for this estimates committee—

**Senator Brandis:** Senator Lambie, I am not familiar with the incident, but if Commissioner Colvin is aware of that to which you are apparently referring and he tells us that it had nothing to do with the Australian Federal Police there is really nothing this committee—

**Senator LAMBIE:** I know that. I am just trying to see if the order has come from parliament.

**CHAIR:** It is not a matter for this estimates committee if it does not relate to—

**Senator LAMBIE:** It is if the order has come from either the Attorney-General or the immigration—

**Senator Brandis:** No order of the kind of which you describe came from me.

**CHAIR:** And it certainly did not—

**Senator LAMBIE:** Any other minister?

**Senator Brandis:** I would not expect so, because if the law enforcement officers involved were from New South Wales Police it is highly unlikely they would have been acting on the orders of a federal minister.

**Senator LAMBIE:** Could I find out which minister ordered that at the state level?

**Senator Brandis:** My point is that I did not and I think it is very unlikely that any federal minister ordered it.

**CHAIR:** If it is not this minister it is not a matter for this estimates. You will have to go somewhere else and ask.

**Senator LUDLAM:** I have a couple of follow-up questions. These refer to question on notice No. 2794, which remains unanswered—I think it is about 40 days overdue. Specifically, it is in regard to the AFP's support, or otherwise, to Detachment 88, which is a counter-terrorism unit within the Indonesian National Police. I have asked your predecessor questions about this in years past, but I do not think we have had this discussion before. So, in the absence of a response to the question that I put on notice can you tell us whether the AFP, financially or otherwise—training, capacity building, mentoring, equipment—provides assistance to the Detachment 88 unit specifically, or indirectly through INP?

**Mr Colvin:** I will ask Deputy Commissioner Phelan to come to the table. In terms of the unanswered question on notice, we have answered all of our questions on notice. I am not sure if perhaps it was a question to the department—

**Senator LUDLAM:** It might be held up a bit further up the line, but the parliament does not have an answer yet.

**Mr Colvin:** I understand that. I know we have put material on the record before. Yes, we still continue to work with Detachment 88, the counter-terrorism arm of the Indonesian National Police, in a range of matters.

**CHAIR:** I am told by the secretariat that you are referring to a question on notice in the Senate and not a question on notice through the estimates process.

**Senator LUDLAM:** Yes, that is correct.

**Mr Wood:** Which is why we do not have it with us.

**Senator LUDLAM:** In the absence of a response, though, do you want to just sketch very briefly—because we obviously are expecting a more detailed written answer down the track—in what capacity we assist this unit?

**Mr Colvin:** We will say what we can, and we will check the status of that question. I will hand over to Deputy Commissioner Phelan.
Mr Phelan: I think I have answered this question before this committee in the past in this place—almost exactly. I will try to remember the details. Over the years, effectively since the Bali bombings, we have provided consistent training on and off to Detachment 88. The question specifically put to us before was whether we had been involved in tactical training to their tactical alarm. The answer to that is no. But Detachment 88 has an investigative component as well. We work very closely with their investigative component. We work with them in relation to cybercrime exploitation. We work with them with investigative training. They have a hand in forensic investigations, as well, and we work very closely with them on that. We have provided them with training both in Indonesia, primarily at the Jakarta Centre for Law Enforcement Cooperation, in Semarang, which is a joint Australian and donor-funded training facility in Indonesia. That is the extent of our training with Detachment 88, and it ebbs and flows. Over some years we have given a large amount of equipment and so on, and in some years it is next to nothing.

Senator LUDLAM: We have asked on notice for a bit of detail about what kind of equipment, so I will not hold us up tonight on that. I think Detachment 88 has in past times played a very important role in counter-terrorism work, so it is obviously in Australia's interests that they are well-trained and supported.

Mr Phelan: They do. They are one of our key partners in Indonesia. There is no doubt about that.

Senator LUDLAM: How does it work when the same unit—and this is going to start sounding grimly familiar, I am afraid—is then implicated in gross human rights violations in West Papua; same guys, same unit, same training, same equipment, different mission?

Mr Phelan: We certainly do not get involved in their operations in West Papua, and—

Senator LUDLAM: We do not get involved in their operations, but we have helped build their capacity and their training.

Mr Phelan: Not the capacity in terms of the tactical capacity we are talking about. We do talk about their investigative capacity, forensics and social media exploitation, which is relatively new.

Senator LUDLAM: I am presuming we are not then simply washing our hands if these very same individuals, and this very same unit, are then implicated in some kind of terrifying conduct in West Papua.

Mr Phelan: A very similar answer to what the commissioner gave: we do not wash our hands of anything. We do not get involved in their operations, but we have helped build their capacity and supported.

Senator LUDLAM: Are you able to engage in any kind of vetting process for members of the Indonesian police, or specifically Det 88, given that they are in receipt of Australian public funding, or is that out of scope?

Mr Colvin: To the extent that we can, yes, we are tailoring our efforts and our capacity building to those members and those areas we feel are operating in Australia's interest.

Senator LUDLAM: Is there anybody, for example, that we have simply refused to train, on the basis of their record?

Mr Colvin: I might take that on notice, because I want to give the committee a proper answer to these questions. They are very serious allegations and they are proper questions for us. I need to be very careful about the way we answer them. I want to try and give the committee the confidence that the AFP is not acting rashly in the way that we cooperate with these units.
Senator LUDLAM: Rashly?

Mr Colvin: Yes. I am trying to give you confidence that we are not acting rashly.

Senator LUDLAM: The last question is equally applicable to those that I put to you not that long ago about the Sri Lankan CID. There are these due diligence processes that you engage in when you are first establishing a mission in another part of the world. I am interested to know how that process is iterated over time and, if there are particular allegations of human rights abuses, whether anything happens or whether, unless AFP individuals directly witness this kind of conduct, it just goes through to the keeper?

Mr Colvin: It does not just go through to the keeper. If we witness that kind of conduct, there is a very strict guideline, protocol, that we must work through with the Department of Foreign Affairs and Trade about that activity. At the same time, if our presence in a country—in my mind or in my senior officers' minds—became untenable because of allegations of misconduct or because of a lack of trust in officers that we were working with, then we would have to reconsider, but we are not in that situation.

Senator LUDLAM: How bad does it have to get in West Papua before we would reconsider? What are your threshold questions?

Mr Colvin: We are not operating in West Papua—

Senator LUDLAM: But the people that we are training are operating there, Commissioner, with respect.

Mr Colvin: I do not know that that is the case. Det 88 is a very large organisation, and I have not seen any evidence to suggest that somebody that we have provided training to has been directly implicated in allegations. As I said before, you need to ask some of these questions to the Department of Foreign Affairs and Trade.

Senator LUDLAM: I do intend to do so, if there is any of those individuals in the room. I do intend to do so; they are likely though to refer me right back to you because you have the people on the ground, actually providing the training.

Mr Colvin: I am in no position to make a comment about allegations of human rights abuses in West Papua.

Senator LUDLAM: It is the people that we train, and the capacity that we are building, and the equipment we are providing, that I am trying to understand how we can possibly do ongoing due diligence and track those people or that gear.

Mr Colvin: Senator, we work and train with a fairly small, select group of individuals. Can I categorically say that I always know where those individuals are, deployed across the archipelago of Indonesia, and what duties they are involved in? No, I cannot, but our officers are very conscious of making sure we work with people who serve in the interests of Australia.

Senator LUDLAM: You have taken a fair number of matters on notice so I might leave it there. I am just going to put one—it is probably going to seem a bit left field—on another matter and then I will let you go. Could confirm for us, whether or not you have received a complaint in relation to a Mr Nick Ross, former employee, tech journalist with the ABC, regarding the recording of a conversation without disclosing it to the other participant of the conversation, which has hit the media over the last couple of weeks.

Mr Colvin: Senator, the allegation does not ring any bells with me. Looking back, none of my officers—

Senator LUDLAM: Are looking genuinely mystified. Do you want to take that one on notice and if you can just confirm either way.

Mr Colvin: We will check. Was the name Nick Ross, did you say?

Senator LUDLAM: Nick Ross. R-O-S-S. Thanks for your time. Thanks Chair.

CHAIR: Thank you, Senator Ludlam. Commissioner, I think that completes the questioning for the Australian Federal Police. Again, our thanks to you and your colleagues for attending the hearing, and also again, on behalf of the people of Australia, and I think I can say that, thanks very much for the work you and your guys do that help keep us all safe. We really do appreciate it. It is not easy work, so thank you.

Mr Colvin: Thank you, Chair. I appreciate it. Thank you to the Committee.

CHAIR: We are back to Group 1. This is; corporate, cross portfolio, general, Defence, abuse reports, taskforce of the two or three royal commissions. Senator Collins.

Senator JACINTA COLLINS: Thank you, Chair. If it helps officers, I have questions in relation to the trade union royal commission.

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Looks like we are settled. Now I understand that there are two confidential volumes in relation to the trade union royal commission—one in relation to the interim report and one in relation to the final report. Is that correct?

Ms Innes-Brown: Yes.

Senator JACINTA COLLINS: The former Royal Commissioner Dyson Heydon QC, made a nondisclosure order in the relation to the confidential volume in the interim report, can you direct me to where that is available?

Ms Innes-Brown: He has made two changes to that original non-publication direction. One he did on 11 December 2014 and then it was further amended on 16 December 2014, and recently, as early as 28 December 2015, on the same interim report he has varied the non-publication direction to enable the report to be shown to people with restrictions.

Senator JACINTA COLLINS: Okay, sorry, let me understand that. The nondisclosure order was first made on 11 December 2014, or was that the first amendment?

Ms Innes-Brown: The non-publication order was made when the interim report was released that directed that any of the-

Senator JACINTA COLLINS: Sorry, what date was that?

Ms Innes-Brown: The eleventh of December 2014.

Senator JACINTA COLLINS: Yes.

Ms Innes-Brown: That any information in the confidential that might enable a person who has given evidence before the Commission to be identified shall not be published or disclosed, including any manner that discloses the evidence given.

Senator JACINTA COLLINS: Yes.

Ms Innes-Brown: Then to, sort of, reduce a bit of the restriction he varied it on 16 December 2014 indicating that ‘it is varied by adding the following sub-paragraphs in paragraph 2’. That is set out in a disclosed document.

Senator JACINTA COLLINS: I am wondering, if you have those, could you table them for the committee’s benefit?

Ms Innes-Brown: They are not published but I can give you copies of them.

Senator JACINTA COLLINS: If you could please. In part, the reason I am asking is that other non-disclosure orders you can find fairly easily on the website, but I have not been able to find these.

Ms Innes-Brown: Absolutely. I can send you copies of them. Then it has been further varied as recently as 28 December 2015.

Senator JACINTA COLLINS: And the nature of that variation?

Ms Innes-Brown: Just to enable the Prime Minister and cabinet to provide supervised access to the confidential volume in circumstances where the person given access may only inspect the volume in the presence of an officer of the department.

Senator JACINTA COLLINS: Which department?

Ms Innes-Brown: It just says ‘of the department’.

Senator JACINTA COLLINS: Okay.

Ms Innes-Brown: And shall not take notes or copies of the material contained in the volume.

Senator JACINTA COLLINS: So at this point though we are referring to the interim report.

Ms Innes-Brown: Yes, the interim report. There was no non-direction non-publication order on the final report. The only statement that the commissioner added was that it was recommended that this volume not be published and be kept confidential. Any particular decision to publish should take into account the fact that the safety of some witnesses and sources of information may be imperilled by publication. So there was not a non-publication order for the final report, but it was to remain confidential and he recommended it on those terms.

Senator JACINTA COLLINS: So the recommendation you were just reading, is that available?

Ms Innes-Brown: Yes, it would be.

Senator JACINTA COLLINS: Okay. Can you direct me to where it is available or provide me with a copy?

Ms Innes-Brown: I can get those. It is actually within the confidential report within paragraph 4.

Senator JACINTA COLLINS: Okay. Is there a reason the same approach was not followed with the final report as opposed to the interim report?
Ms Innes-Brown: I think, when it was originally done, it was quite restrictive and it PM&C then had issues in relation to who actually could view the report. Then the commissioner amended it to have restricted access to the people that they deemed were able to see the report.

Senator JACINTA COLLINS: We are talking now about the final report?

Ms Innes-Brown: We are talking about the interim or the final.

Senator JACINTA COLLINS: Sorry, my question was: is there a reason the approach taken with respect to the final report was different from the approach taken with the interim report. In the interim report we have an original—you are using a different word to me—non-disclosure order and then it was varied. Why with the final report was the same approach not taken?

Ms Innes-Brown: I could not answer that. It was something that the commissioner decided at the time that he would not put a non-publication order on it.

Senator JACINTA COLLINS: This is where I am trying to understand, because a moment ago you were talking about changes in the approach from the department, so I want to be very clear which report we are talking about and the approach.

Senator Brandis: Senator Collins, it was Ms Innes-Brown who said that this was the commissioner’s decision, and I am not sure that Ms Innes-Brown can, unless she happens to know, which apparently she does not, acquaint us with the commissioner’s thinking.

Senator JACINTA COLLINS: No, and indeed she may not know, but equally she might. We have, in relation to the interim report, a clear indication of nondisclosure varied as the commissioner deemed appropriate, but we have no disclosure in relation to his intentions in relation to the confidential report other than from, if I understand Ms Innes-Brown correctly now, some commentary within the confidential report itself. Is that correct?

Ms Innes-Brown: The is a paragraph within the confidential report that actually states that the volume should not be published and to be kept confidential, but he did not put a non-publication direction on like he did for the interim report, which he has subsequently amended to give restricted access.

Senator JACINTA COLLINS: Then in paragraph 4 of the final confidential report does the commissioner discuss conditions for access?

Ms Innes-Brown: What I previously read, it was on the basis that he recommends that it remains confidential and not be published. In particular any decision to publish it should take into account the fact that the safety of some witnesses and sources of information may be imperilled by publication.

Senator JACINTA COLLINS: I would like to refer to the copy of the letter from Senator Cash, dated 28 January 2016, which was written to Senator Lambie and also published on The Age website which says:

This letter is in response to your request for access to the confidential volumes of the reports of the Royal Commission—

That is the two volumes. It goes on to say:

The confidential volumes contain information on—

And it goes through to say what is in the general terms of volumes, but is still referring to the two volumes. Then it says:

The confidential volume—

We are no longer in the plural now in the letter—

of the interim report is subject to a non-publication direction—

So now we are back to just the interim report. The letter goes on to say that:

A person who contravenes a direction made by the Commissioner under section 6D of the Act is guilty of an offence punishable by a fine not exceeding $2000 or imprisonment for a period not exceeding 12 months.

It seems from that letter that the threat of imprisonment made in the letter could only relate to the confidential volume associated with the interim report. Is that correct?

Ms Innes-Brown: I have not read the letter.

Senator Brandis: We do not have the letter in front of us at the moment.

Senator JACINTA COLLINS: I will give you a copy of the letter then, and we will move on and I will come back to it.

CHAIR: While we are doing this, could these confidential volumes be made available to Senator Collins which could obviate a lot of these questions?
Senator Brandis: Senator, I can tell you what happened and I think this does appear in the body of Senator Cash's letter to Senator Lambie. It certainly appears in the letter that I wrote to Mr Dreyfus which took essentially the same position. It offered an opportunity to read the confidential volumes subject to certain conditions, fairly strict conditions, as recommended by the commissioner, and with the redaction of the names of people to protect them and also, I might say, to protect the reader so that if anything were to happen to those people it could not be suggested that it had anything to do with the fact that they were shown to members of parliament.

Senator JACINTA COLLINS: Thank you for that, Attorney, because I have also seen a copy of the letter you wrote to Mr Dreyfus and that letter makes no reference to the consequences of breaching 6D. So why is Minister Cash raising that in her correspondence to Senator Lambie but you make no such reference in yours?

Senator Brandis: I do not know the answer. You would have to Senator Cash. Perhaps I assumed that Mr Dreyfus being a Queen's Counsel would be familiar with the law.

Senator JACINTA COLLINS: Well, it is not solely an issue of being familiar with the law because it seems we have inconsistent behaviour in relation to the application of the law in relation to the two reports.

Senator Brandis: I think the question is, if I may venture to say so, whether the terms on which Mr Dreyfus, Senator Lambie and other members of parliament were offered the opportunity to inspect confidential volumes were the same or substantially similar, and I am reasonably sure that they were.

Senator JACINTA COLLINS: The terms may have been similar.

Senator Brandis: That was the point, Senator.

Senator JACINTA COLLINS: No. My point is that the correspondence from Senator Cash is the one that alludes to the threat of breaching section 6D of the act.

Senator Brandis: These really are questions for Senator Cash, but it may be that Senator Cash took the view that, in order to protect Senators Lambie, she should draw to her attention relevant offence provisions.

Senator LAMBIE: I do not think those offences were attached to that secret report. That is the problem that we are having. Is Senator Cash trying to intimidate me? I guess that could be her game.

Senator Brandis: Senator Lambie, I am sure Senator Cash is a very nice person and would be the last person in the world to want to intimidate anyone. I did not draft the letter that Senator Cash wrote. I do not know why she put that provision in the letter. It seems quite innocuous to me as a matter of fact.

CHAIR: Helpful I would have thought.

Senator Brandis: If anything, helpful. In any event, if we want to do what was in Senator Cash's mind perhaps we should be asking these questions of Senator Cash.

Senator LAMBIE: It is not helpful if what she is saying she is making up when there was no disclosure about that in that secret report to say that. There was nothing put on that in the report.

CHAIR: We cannot go into what Senator Cash may or may not have thought. I would assume that Mr Dreyfus might not need the same level of advice on the law.

Senator Brandis: The reference by the way to the offence provision is a reference to section 6D of the Royal Commissions Act.

Senator JACINTA COLLINS: For a report with nondisclosure provisions.

Senator Brandis: I would be very, very confident that Mr Dreyfus would be familiar with the provisions of the Royal Commissions Act, therefore I would have thought it gratuitous to direct his attention to that provision. Senator Lambie, I do not know whether you are familiar with the provisions of section 6D of the Royal Commissions Act, but Senator Cash's letter goes to some trouble to ensure that you are acquainted with them.

Senator JACINTA COLLINS: But they only apply to the interim report. There was no nondisclosure—

Senator LAMBIE: That is right.

Senator JACINTA COLLINS: order for the final report.

Senator Brandis: We are going around in circles. I think that is something you would have to Senator Cash in the appropriate committee.

CHAIR: Besides which we have run out of time. We are due to have a 15-minute break now so will resume at 10 past 10 at which time we come back to Emergency Management Australia for Senator McKim. Mr Moraitis.

Mr Moraitis: Chair, could the rest of the department be excused for the last segment?

CHAIR: No.
**Senator JACINTA COLLINS**: I still have further questions.

**Mr Moraitis**: I see, I am sorry.

**Senator LAMBIE**: I have some too.

**Senator Brandis**: Mr Chairman, I thought it had been agreed earlier in the day that Emergency Management Australia would happen now, and that was a hard deadline.

**Senator JACINTA COLLINS**: Then we go back to the earlier matter.

**Senator Brandis**: I see. You are assuming they have will not take the full 50 minutes.

**Senator JACINTA COLLINS**: That is right. Senator McKim indicated to me earlier that he believes he has about 20 minutes.

**CHAIR**: Mr Moraitis, I am not sure how the department is organised but, if we do Emergency Management Australia and then back to group 1 and the royal commissions, I am just wondering if there are people further down the list that you could take the chance on, for example, in group 3.

**Mr Moraitis**: It is okay. It is in 10 past 10 and it is only another 50 minutes.

**CHAIR**: The hearing is suspended until 10 past 10.

**Proceedings suspended from 21:55 to 22:10**

**CHAIR**: In accordance with a decision made earlier by the committee we now move over to program 1.2, specifically Emergency Management Australia.

**Senator McKIM**: I would like to ask a range of questions about the response to the current fires burning in Tasmania. What is your advice on how many fires are currently burning in Tasmania and how many of those fires have human and or mechanical resources attending?

**Mr Crosweller**: As of this afternoon we understand that Tasmania has 73 active fires. Of these 26 are currently 'going'—uncontrolled or uncontained—and 47 are currently in 'patrol'. We have a number of advices on those fires. There are no emergency warnings or other alerts. We know that there are approximately 110,000 hectares burnt with a perimeter of approximately 815 kilometres. There are currently 32 aircraft operating throughout the state, most of those from interstate. We understand that there are personnel and vehicles from Queensland, the ACT, New South Wales, Victoria, South Australia and New Zealand. We do not have the exact numbers on the fire ground. I do know that on some days there are in excess of 400 firefighters on the fire ground. I am not sure currently how many firefighters are operating as of today.

**Senator McKIM**: I understand that would change from day to day due to weather conditions and safety issues and so forth?

**Mr Crosweller**: That is correct.

**Senator McKIM**: Are you aware of how many of those 73 active fires are currently actively being fought or contained or are being attempted to be contained?

**Mr Crosweller**: The vast majority have been worked on. Some are considered non-threatening and are burning in areas where rate of progress or rate of spread is very low, and compared to some of the other more sensitive and high-value areas those areas have been prioritised for resourcing. It was difficult as I understand it for the local jurisdiction to map many of these fires because of the weather conditions and terrain. I understand that most of that, if not all that, has now been done, so they have a total picture of situational awareness and what it is that they are dealing with. I have spoken with the chief officer of Tasmania on numerous occasions about strategic priorities and resourcing and how the Commonwealth may be able to assist in that regard.

**Senator McKIM**: Has the chief officer in Tasmania requested Commonwealth assistance?

**Mr Crosweller**: No, he has not. What we have been able to do for him is to coordinate the interstate response from the rest of Australia. He was more interested in direct frontline firefighting resources and particularly interested in arduous firefighting personnel. They are personnel that generally are rappelled in by helicopter—

**Senator McKIM**: Do you mean remote area?

**Mr Crosweller**: Remote area firefighters. I know that New South Wales have supplied on a rotating basis in excess of 100 of those firefighters, and New Zealand I think around 50. The entire complement in New South Wales of that level of firefighting is only 300, so New South Wales committed one-third of its resource to Tasmania on that task alone. It is probably the biggest single mobilisation of firefighting resources to Tasmania that I am aware of in 30 years in the industry, and it happened quite rapidly, facilitated by Commonwealth coordination through EMA.
Senator McKIM: I will ask about that in a minute, but I just want to place on record my appreciation, and I am sure that of all senators, for the fantastic work that all of the volunteer and professional firefighters are doing.

Senator O'SULLIVAN: Hear, hear!

Senator McKIM: Do you know when the first request for assistance was made by the Tasmanian government or any Tasmanian agency?

Mr Crosweller: Yes. I know that on Thursday 21 January we were contacted by the chief officer of the Tasmania Fire Service, who asked the Commonwealth if it would coordinate interstate assistance more holistically to Tasmania. I am aware that Victoria had responded earlier than that. In fact, as I understand it, Victoria and possibly South Australia—we might have to check that for the record—responded in a matter of days after 16 January. So it is my understanding it was a line of storms that moved through on the 16th—

Senator McKIM: It was the 13th actually.

Mr Crosweller: Sorry, I stand corrected. So not long after that there was some interstate assistance almost immediately. It was then stepped up to a more national response soon thereafter.

Senator McKIM: Perhaps you could assist me to understand. In a situation like this, does a state government request general assistance or do they put in requests for certain types of assistance?

Mr Crosweller: There are two ways of requesting assistance. One is directly to the Commonwealth for Commonwealth assistance for physical or nonphysical assistance. If that is the case—and it has not been the case at this stage for Tasmania—then the COMDISPLAN, the Commonwealth disaster plan, would be activated through EMA and then they would send EMA a specific tasking request.

Senator McKIM: But that has not happened?

Mr Crosweller: No, and it has not happened because they have not required it. I have been in dialogue with the chief in relation to this matter, and he has been more than satisfied that the state and territory resource that has been supplied by states and territories has been sufficient for the purpose. He is satisfied that there is nothing that the Commonwealth could offer that would be advantageous in this theatre of fire. We did brief Tasmania extensively in September as part of our round-the-country briefings that we do with all jurisdictions and with heads of services and first minister departments. We talked extensively about the climate outlook and El Nino and their potential effects, particularly in Tasmania. And we saw very early the potential for quite severe fire activity across much of the state of Tasmania and the southern part of Australia. We outlined the Commonwealth assistance in its capability in regard to that potential hazard space.

Senator McKIM: So the first request from Tasmania was on 21 January?

Mr Crosweller: It was the first request to come to the national level.

Senator McKIM: Are you aware of how many fires are currently burning within the Tasmanian Wilderness World Heritage Area?

Mr Crosweller: Not specifically in the wilderness area. I do not think we have that information available tonight, but we can certainly obtain that with a simple phone call to Tasmania tomorrow morning and come back to you on that question if that is helpful.

Senator McKIM: It would be helpful, and would you also ask how many of those fires are currently actively being managed?

Mr Crosweller: Yes.

Senator McKIM: Because I am trying to paint a picture, and I have to say, with the greatest of respect to everyone involved, that the information flow to the public has not been great around the remote area fires. I am referring specifically here to the fires that are not threatening built assets and private property. It is those wilderness fires, specifically those inside the Tasmanian Wilderness World Heritage Area, that I am asking about.

Mr Crosweller: We can certainly get more specific information for you. I am aware that there is significant effort being put into those fires in the wilderness area, and I am aware of the sensitivities of the biodiversity. I know for example, from the last statistics I saw, which are probably four or five days old now, that only about two per cent of the wilderness area was in fact impacted by fire.

Senator McKIM: Yes, that is a number that has been made public. Of course, the issue is that there are non-fire-adapted ecological systems that exist nowhere else in the world, except in those very small parts of Tasmania.

Mr Crosweller: Yes.

Senator McKIM: We have already lost some of them.
**Mr Crosweller:** Yes, that is right.

**Senator McKIM:** I have not seen official numbers on how many hectares we have lost but I have seen photos and I am going to do some more exploration of that myself next week. But could you provide any further information to the committee as soon as possible?

**Mr Crosweller:** We will have this confirmed for you, but we understand that between 14,000 and 17,000 hectares of sensitive biodiversity has been impacted by fire out of a total of 30,000 hectares in the wilderness area. The remainder of that 30,000 hectares is, as I understand it, considered non-endangered for the purposes of the fire regime.

**Senator McKIM:** It was put to me during the Department of the Environment's estimates yesterday, and you have repeated a similar set of words today that you have had reassurances—I will paraphrase here and please correct me if I am misquoting or not attributing these words to you correctly—that all the resources that are necessary are there and there is no need for more resources. What is the capacity constraint in Tasmania that would prevent further resources being allocated to remote area fires?

**Mr Crosweller:** I should highlight the point also that the Tasmanian Fire Service has been working in conjunction with the land management agencies, particularly the Tasmania Parks and Wildlife Service, since day one. In Tasmania, the Parks and Wildlife Service have been determining the operational priorities in conjunction with the fire service. So, to answer to your question in relation to the wilderness area: I have every confidence that the priorities and the resources are being attached for that purpose through the land management agency involvement. In terms of the Tasmanian Fire Service resources, and, in fact, interstate resources, on the fire ground, there are a number of operational limitations—one is the remoteness of where the fires have occurred. The biggest impact has probably been the weather, particularly regarding low cloud in relation to humidity and moisture, and they are unable to get firefighters in or out—the term used is 'socked in'. Once an area is socked in, aircraft cannot operate and it is impossible to get people in and out. Some of those firefighters were bedded in for 72 hours to simply work through the night, and take rests where they could, in order to do as best they could, but they were extracted after three days. They have had some rain on the fire ground but unless it is more than 50 millimetres, it is actually a nuisance and it is not helpful. It has turned many of fire trials into quagmires and quite dangerous conditions for firefighters. It has laid the fire down, it has not put it out. It has actually hidden the fire in some areas and it will not re-present until the conditions dry out, the sun shines and the wind starts to blow. So they are dealing with all those conditions, and some fires take four hours to reach.

**Senator McKIM:** I have spent a fair bit of time in that terrain, so I am aware of it.

**Mr Crosweller:** There was a suggestion that the Australian Defence Force could offer assistance in this regard, and the Chief Officer rang me and expressly said, 'No.' That it was inappropriate to do so, that he had more than enough firefighters and that he could not deploy what he had. The Australian Defence Force has been clear in the preseason briefs that they are not skilled for arduous, direct firefighting in this region.

**Senator McKIM:** I was going to come to that later, because there are jurisdictions, very similar to Australia, around the world where elements of their defence forces are actually trained in remote area firefighting, but I will just park that for a minute, if that is okay right. The thing that I am struggling to understand here—I will be clear—is that from all that we can discover, there are many fires burning in wilderness areas in Tasmania. The Sentinel website has just popped another one up today—it looks like a fresh fire but I do not know how it started or whether it is a fresh observation of a fire by the Sentinel system. But it appears that there are many fires burning in remote areas that basically have not been attempted to be even touched by human response or by mechanical response. I want to stress that I understand that remote-area firefighting is a very difficult thing to do. I understand that, ideally, it would be a combination of aerial assets and human assets, people, on the ground. I get that it is difficult. I am struggling to understand the capacities constraints. You have mentioned the weather, but surely if the local weather is the capacity constraint, then why do you not have the resources on standby in Tasmania so you can scramble them in when the weather improves rather than having to pull them in from around the country and taking two or three days to brief them up and transport them to Tasmania. I am still not satisfied as to exactly what the capacity constraints are here and why more resources are not on the ground right now in Tasmania to assist in fighting these fires.

**Mr Crosweller:** We are unable to answer that specific question because it is an operational decision of the jurisdiction. What I can say, because we helped coordinate it, was that firefighters were deployed in advance and staged in anticipation in base camps to mobilise into the fire grounds once the conditions were conducive to that deployment. That also included firefighting appliances from Victoria and South Australia, which were ferried across on the Spirit of Tasmania, that were forward-staged in anticipation of being able to mobilise and also in anticipation of those fires breaking containment lines and moving towards property. I think we have been very
fortunate that much fire is on the landscape, much of it driven by highly-volatile fuel and influenced by drought and terrain, and we have not had severe-to-catastrophic fire weather influencing those fire grounds.

Senator McKIM: I agree, but the fire season is only one-third to halfway through in Tasmania, as we sit here today. Can I just ask whether you accept the premise that, if you want to minimise the damage caused by wilderness fires in particular—it may apply to all fires; it probably does—ideally you would hit them as hard as you can as early as you can and get them while they are still one, five, 10, 20 hectare fires, before they turn into the sort of 30,000 hectare monsters that we currently have burning inside the World Heritage area.

Mr Crosweller: Yes—provided we can do that safely.

Senator McKIM: Of course.

Mr Crosweller: At the Commonwealth and state levels safety is a key consideration about the insertion of people into these areas. The industry has significantly improved its performance in this regard. Over the course of my career I have seen many firefighters perish in similar circumstances, where decisions were made to insert early on the basis of keeping fires small, but the conditions were such that those fires rapidly escalated and caused entrapment and killed firefighters.

Senator McKIM: I absolutely accept what you are saying.

Mr Crosweller: That is the tension that exists for all of us in this space, from EMA down, when looking at resourcing and assistance and the capacity for the fireground to take those resources. It is high on the consideration of all of those who offer assistance and all of those who are in charge of such operations.

Senator McKIM: I absolutely accept and agree with what you are saying about safety. I guess it is a presumed caveat around everything that we are discussing here that safety needs to be an absolute priority.

Mr Crosweller: I know that the chief is very frustrated at the complexity of the fireground and not being able to get more resources in. He is also frustrated by not being able to, for example, scan fires for location, based on the weather condition and the socked-in nature of the atmosphere. It was very frustrating for him. We looked at Commonwealth capacity to assist him in that regard, and there was more than enough civilian capacity to assist him once weather conditions cleared. The key to this was weather. There was no failure in the provision of technology to scan fires to determine locations and size and rates of spread; he was constrained by the atmospheric conditions.

CHAIR: Thanks, Senator McKim. I have a few follow-up questions. Who bears the cost of the Commonwealth's involvement?

Mr Crosweller: At this stage there is no Commonwealth involvement. However, Tasmania has contacted the Commonwealth in relation to its forecast assistance under the Natural Disaster Relief and Recovery Arrangements. They are working through their costs. They are working through the criteria of those arrangements, and we have been maintaining a dialogue with Tasmania to assist them with their interpretation and with some of those programs that may come forward. We would expect them to start bringing those requests forward from next week.

CHAIR: So Tasmania pays the first so much?

Mr Crosweller: It depends on what it is they are seeking. If it is around essential public assets, there are thresholds in relation to the activation for what is called category B. We suspect that it will be counterdisaster operations, so the first threshold to hit for that is $240,000. But that is only if it relates to the protection of life and property directly.

CHAIR: Are there lives at risk in most of the fires?

Mr Crosweller: Indirectly at this stage. Most of the direct impact has been averted through the strategies deployed for the purpose.

CHAIR: Do you know how much the territory where the fires are was previously logged?

Mr Crosweller: No, I do not.

CHAIR: Was it much, do you think?

Mr Crosweller: I think it probably varies. We would not be in possession of that knowledge without seeking it.

CHAIR: I am just wondering if there are former logging tracks through the area that can help with access to fight these fires.

Mr Crosweller: Sometimes, yes. But not in the wilderness area, as we understand it.
CHAIR: Is this all wilderness area that you are talking about?

Mr Crosweller: No, it is not. The fires are across private land, crown land, public lands more broadly, parks and wildlife land, as well as wilderness area.

CHAIR: Are there any statistics on the number of trees that have been lost and comparing that with the number of trees that would have been lost had logging continued in Tasmania?

Mr Crosweller: I am not aware of that, no.

CHAIR: In years gone by, the people working in the forestry industry were well trained in fighting forest fires and were always on hand. That resource is no longer available, I take it?

Mr Crosweller: I cannot speak specifically for Tasmania. I do know the industry holds a capability of 250,000 volunteers and about 25,000 career staff in fire and emergency services. The vast majority are available and accessible for deployment across the country. That is a substantial—

CHAIR: Across Tasmania or Australia?

Mr Crosweller: Across Australia—across the country.

CHAIR: But, in Tasmania, in the old days, when there was a viable, sustainable logging industry down there—

Senator McKIM: There never was.

CHAIR: all the people involved in the logging industry were well trained in firefighting. They have tracks through there, so they could get to the source of the fires immediately—

Senator McKIM: These are not forested areas in the main.

CHAIR: and were then able to save these trees. Are you aware whether that is still available or not?

Mr Crosweller: Not specifically for Tasmania. The industry has been aware, for a number of years, of the shifting in that space between forestry and land management. The national parks challenges are complex issues, which are taken into account operationally. But the Commonwealth is silent on that issue insofar as our role is to assist with resourcing, to assist with funding through these standing arrangements and to provide coordination across jurisdictions when asked to do so.

CHAIR: Just going back to your earlier answer: there are no lives directly at risk; I think you said 'indirectly', didn't you?

Mr Crosweller: Whilst ever fires are present on the landscape and uncontained, there is always the potentiality for impact on life and property. We have been constantly monitoring the weather for Tasmania five to seven days out, pretty much from 13 January, to try to get a sense of whether we thought there would be any critical days of fire behaviour where the Commonwealth may be called to assist. We will continue to do five- to seven-day outlooks. For the whole course of this fire that weather has not manifested.

CHAIR: I will leave that there. Can someone quickly tell me where we are up to with the consultation regarding changes to the EMA arrangements, particularly with local governments around Australia.

Mr Crosweller: My colleague Aaron Verlin and I are meeting all states and territories tomorrow in Melbourne to commence consultation in relation to reforms in the central public assets space of the National Disaster Relief and Recovery Arrangements towards up-front assessments of assets to give local governments and state governments, ultimately, greater flexibility and, hopefully, less process in relation to accessing those arrangements.

The Australia-New Zealand Emergency Management Committee is considering the Productivity Commission recommendations outside of those considerations. The department is currently looking to the states and territories on anything to do, specifically, with the funding arrangements, and the national committee is looking at the remainder of those recommendations.

CHAIR: What I am asking is: has a decision been made yet to adopt the Productivity Commission's recommendations?

Mr Crosweller: No. We are in the process of consulting and considering the recommendations in order to formulate a response.

Senator WANG: My question is around a national anticorruption plan that was done for the former government in 2013.

Senator Brandis: Mr Chairman, is that all for EMA?

CHAIR: Senator Wang, your question is not related to emergency management, is it?
Senator WANG: No.

CHAIR: Sorry, Senator Wang. The decision was made to come back to Emergency Management Australia, but now, having done that, we go back to where we were.

Senator JACINTA COLLINS: Which is back to me.

CHAIR: Which is back to you, Senator Collins, on program 1.9, Royal Commissions.

Senator Brandis: Mr Chairman, just to clarify: Emergency Management Australia can be excused.

CHAIR: It is finished, yes.

Senator Brandis: Thank you.

CHAIR: Thanks very much for your attendance.

[22:33]

Senator JACINTA COLLINS: I am still in continuation on questions regarding the trade union royal commission. Attorney, perhaps while the officers come forward, you may be able to answer why it was yourself who wrote the letter to the shadow Attorney-General when all the other correspondence relating to the confidential volumes up until that point in time had been written by Senator Cash?

Senator Brandis: Because I am the Attorney-General. Senator Cash wrote to Independent or minor party members of parliament, specifically their Senate crossbenchers, and I, as the Attorney-General, thought it would be appropriate protocol to write to the shadow Attorney-General.

Senator JACINTA COLLINS: Senator Cash also wrote to Brendan O'Connor on 29 January declining his request for access. Then you wrote to the shadow Attorney with a difference response on 1 February—which I think was the day of the cabinet meeting. What changed?

Senator Brandis: A view was arrived at that the matter should be handled so far as concerned the opposition by offering the opportunity to Mr Dreyfus to inspect the confidential volumes in the terms set out in the letter. The view that the government took was, having offered the opportunity to inspect the confidential volumes to crossbench members of the Senate, it would appropriate to offer the opportunity to a senior person on behalf of the opposition, and it was decided to offer the opportunity to Mr Dreyfus because he was the shadow Attorney-General. For that reason, a judgement was made that he was the most appropriate person to make the offer.

Senator JACINTA COLLINS: I go back to my earlier comment that it is officers of the Department of the Prime Minister and Cabinet who proposed supervised access to this report. But in this case you have chosen the shadow Attorney to be relevant person from the opposition, not officers of the Attorney-General's Department. That does not seem odd to you?

Senator Brandis: No.

Senator JACINTA COLLINS: Just going back to the issue of the consequences of breaching confidentiality restrictions, given that there is no nondisclosure order in relation to the final report, there are no consequences for breaching the restrictions, are there?

Senator Brandis: Are you referring to Senator Cash's letter?

Senator JACINTA COLLINS: Yes.

Senator Brandis: As I said to you before, Senator, you really have to ask Senator Cash why she put those words in the letter that she wrote to Senator Lambie.

Senator JACINTA COLLINS: I suppose I am seeking confirmation that the provisions in section 6D of the Royal Commissions Act do not apply to the final report. But in this case you have chosen the shadow Attorney to be relevant person from the opposition, not officers of the Attorney-General's Department. That does not seem odd to you?

Senator Brandis: No.

Senator JACINTA COLLINS: Just going back to the issue of the consequences of breaching confidentiality restrictions, given that there is no nondisclosure order in relation to the final report, there are no consequences for breaching the restrictions, are there?

Senator Brandis: Are you referring to Senator Cash's letter?

Senator JACINTA COLLINS: Yes.

Senator Brandis: As I said to you before, Senator, you really have to ask Senator Cash why she put those words in the letter that she wrote to Senator Lambie.

Senator JACINTA COLLINS: I suppose I am seeking confirmation that the provisions in section 6D of the Royal Commissions Act do not apply to the final report.

Senator Brandis: I would have to have a look at that. So I will take that on notice.

Senator JACINTA COLLINS: Thank you, Ms Innes-Brown. I now have a handwritten version of, I think, paragraph 4 of the report. Is that correct?

Ms Innes-Brown: Within the confidential volume.

Senator JACINTA COLLINS: So you have simply handwritten the words that are in paragraph 4?

Ms Innes-Brown: The words I read out before, yes.

Senator JACINTA COLLINS: Is there anything else in paragraph 4?

Ms Innes-Brown: I am not aware of anything, because I have not read the confidential report.

Senator JACINTA COLLINS: Is there any other reference in the confidential report, to your knowledge, that relates to who should have access or confidentially recommendations?
Ms Innes-Brown: Not that I am aware of.

Senator Brandis: The witness has said that she has not read the report.

Senator JACINTA COLLINS: It depends on what the basis is of her being provided this handwritten paragraph. I do not know the answer to that, but she has come forward with that as an indication—

Senator Brandis: Sorry, but that is not the point I was making. Ms Innes-Brown was saying, as we know, that she has not read the confidential volume. I thought you were asking her whether there was anything in the confidential volume that answered the description of your question, and obviously she cannot speak to that, not having read it.

Senator JACINTA COLLINS: As I said, Attorney, it depends on what basis this information we have been provided with was provided to her, which is why I am asking the question. So if this information—

Senator Brandis: Well, why don't you ask that question?

Senator JACINTA COLLINS: This information was originally provided to us as the comments that Commissioner Haydon made in relation to confidentiality. I am asking Ms Innes-Brown: is she aware of whether this paragraph is exhaustive on that point?

Ms Innes-Brown: I understand that, as there was no direction made—as there was in the interim report—but as the commissioner did include this paragraph, basically stipulating that it is recommended that the volume not be published and be kept confidential. That is all I am aware of.

Senator JACINTA COLLINS: Okay, so you are not aware of whether there were any further conditions he commented on—

Ms Innes-Brown: That is correct.

Senator JACINTA COLLINS: Thank you, Ms Innes-Brown. Attorney, maybe you can assist us there. Are the specific limitations proposed by the government based on any recommendations by the commissioner? Or are they issues that the government has come to?

Senator Brandis: I will have to refresh my memory about that, Senator. The limitations did have a provenance, and I am just trying to recall what it was. So I will take that on notice.

Senator JACINTA COLLINS: Okay. Looking now at the issue of the presence of an officer of PM&C, was that a recommendation of the commissioner, to your recollection?

Senator Brandis: Look, just to be on the safe side, I will take that on notice.

Senator JACINTA COLLINS: Do you know whether the state and territory governments who view the report will need to do so in the presence of an officer of Prime Minister and Cabinet?

Senator Brandis: I do not. Whatever limitations the commissioner prescribed would apply, mutatis mutandis I imagine, to the state and territory governments—or at least to those states that issued complementary letters patent. You see, because the states issued complementary letters patent, this is a report not just to the Commonwealth but to each of those governments. Now, as to whether the territory governments issued letters patent—they did not, I am told. But all of the state governments did issue complementary letters patent. So the report, as I say, is a report to seven governments, not to one.

Senator JACINTA COLLINS: Attorney, in your letter to Mr Dreyfus you indicated that the government will impose one further restriction on your inspection of the volumes—that is, the names of individuals or entities that may identify individuals will be redacted from the copy of the reports made available for inspection. 'This is to protect not only those individuals but also to protect you.' The letters to the senators did not include that condition, so am I correct in inferring that means that if the senators avail themselves of access to the report, they will not have redactions?

Senator Brandis: I think that is a question you will need to ask Senator Cash. The reason that I put that stipulation in my letter to Mr Dreyfus, as you have just read out aloud, Senator, is to protect those individuals and also to protect Mr Dreyfus. The reason the two volumes were to remain confidential, as we know, is that there was concern for the physical safety of the named witnesses, given the violent criminality of some of those involved in certain unions, which was disclosed by the public volumes of the report. The commissioner had a fear that those people could be physically harmed, which is why the reports were made confidential. So the redaction of the names of the individuals seems to me to be an appropriate measure not only to protect those individuals; also, in the unhappy event that something did happen to one of them, so it could never be suggested that the source of the person who identified that witness was a member of parliament who had been given access to the report.
Senator JACINTA COLLINS: So redaction would indeed be something that you would recommend to all who will access the report?

Senator Brandis: Yes.

Senator JACINTA COLLINS: But you are not aware whether Senator Cash has changed—

Senator Brandis: As I say, Senator Cash wrote to the crossbenchers. I wrote to Mr Dreyfus. I did show Senator Cash a copy of my letter to Mr Dreyfus in draft and she was happy with it. It was not sent to him until it had been cleared by her office as well.

Senator JACINTA COLLINS: You have taken on notice what providence there might be from the commissioner in relation to the conditions that the government has applied. Can I ask whether—

Senator Brandis: I think they did come from the commissioner, but I am just not 100 per cent sure which is why I am taking it on notice.

Senator JACINTA COLLINS: Yes. So I have further questions in relation to that issue that you might take on notice, please.

Senator Brandis: Sure.

Senator JACINTA COLLINS: Does the royal commissioner say anything about it only going to one member of the opposition?

Senator Brandis: I am not sure. I will take that on notice.

Senator JACINTA COLLINS: Or that it should not be taken to shadow cabinet?

Senator Brandis: No, he does not say that. What I am about to say is based on my recollection of reading the report, so it is not even a paraphrase, and please do not take it as such. The royal commissioner handed the report to the government with certain recommendations about confidentiality—

Senator JACINTA COLLINS: Over and beyond what was in paragraph 4?

Senator Brandis: No, I am not saying that—but, essentially, left it to the government to make decisions about the further disclosure or dissemination of the report. But, as I say, we took the view that having decided to show the report to those Senate crossbenchers who had requested and were willing to inspect it, it would be an anomalous thing not to offer it to the opposition as well.

Senator JACINTA COLLINS: Well, there is potentially a few anomalies here. My next question is about it being shown to the Leader of the Opposition or it being shown to the parliamentary committee considering the bill, or indeed to other individual senators.

Senator Brandis: The view the government took was that the opportunity to inspect the report on the terms stipulated should be offered to each, as it were, element of the parliament—so individual crossbenchers or members of minor parties and the opposition; not to show it to every member of parliament but to every, as it were, element or interest in the parliament.

Senator JACINTA COLLINS: The concern there on the current conditions is, of course, if you refer to the opposition, you cannot say showing one member of the opposition adequately addresses that issue if that member of the opposition is denied the capacity to take it to their leader and/or the shadow cabinet.

Senator Brandis: I think you are misunderstanding the purpose for which the report was being provided. The purpose for which the report was being provided was so that the members of parliament who reviewed it on the stipulated terms would have a sense of the nature of the findings so that whatever decisions that they subsequently made would be informed by an awareness of the nature of the findings.

CHAIR: We might have to leave it there.

Senator JACINTA COLLINS: Sorry, can I just close one point there—

CHAIR: I have got 10 minutes and three senators—okay, go ahead. You have had 50 minutes. The next three senators are going to have three minutes each.

Senator JACINTA COLLINS: That is fine. To the same extent that it is relevant for this matter to go before cabinet, it is relevant for it to go before the shadow cabinet.

CHAIR: I am not sure that is a question.

Senator Brandis: The confidential volumes did not go to cabinet.

Senator JACINTA COLLINS: No, but material related to them did.
Senator Brandis: The confidential volumes did not go to cabinet. They were not made generally available to members of cabinet—

Senator JACINTA COLLINS: No, but material related to them did.

Senator Brandis: as they were not generally made available to members of the shadow cabinet.

Senator JACINTA COLLINS: Material related to them did.

CHAIR: That will do there. We will move on.

Senator JACINTA COLLINS: And that is the limitation I was seeking to apply.

CHAIR: I have two very quick questions: Senator Brandis, when am I going to see the confidential volumes? Why are Mr Dreyfus and the crossbenchers being treated differently to me?

Senator Brandis: Because, Senator Macdonald, you are a member of the coalition parties. Senator Cash has seen the confidential volumes and on that same principle we offered the opportunity to a designated person from the opposition to inspect them on behalf of the opposition. Senator Cash, I understand, as the relevant minister within the government, has read the confidential volumes.

CHAIR: But neither you nor Senator Cash are going to tell me what is in them, and I assume the same would apply in Mr Dreyfus's case. I assume Mr Dreyfus has had a look—

Senator JACINTA COLLINS: That is a condition: not to say anything to the shadow cabinet.

CHAIR: Hang on. Senator Brandis and Senator Cash are not saying anything to me either—not that I am in cabinet.

Senator Brandis: But, Senator Macdonald, the whole premise of this discussion is that these are confidential volumes.

CHAIR: The question is rhetorical. The other question is that with all the hoo-ha about not seeing it, I assume Mr Dreyfus has actually seen the—

Senator JACINTA COLLINS: No, he declined to inspect it.

CHAIR: Okay.

Senator Brandis: I will make one other point very quickly. Of course this is not a report to the parliament.

CHAIR: No.

Senator Brandis: It is not a report to the parliament. It is a report—strictly speaking, to the Governor-General—to the executive government. Strictly speaking, there is no reason why confidential volumes of a report to the executive government would not remain confidential to the executive government. But because certain recommendations are made in the public volumes of the report for the case for the reform of industrial relations, including, in particular, the ABCC, one can infer that the case made in the public volumes of the report is augmented by that which is to be found in the private volumes of the report in relation to the kind of conduct that demonstrates the necessity for having an ABCC. Given that there are certain legislators who will determine the fate of that reform, including the Senate crossbenchers, it seemed prudent to the government to show the Senate crossbenchers the confidential volumes on the terms we have discussed. That decision having been made, it then seemed to the Prime Minister and me an odd thing not to show the report to a designated representative of the opposition.

CHAIR: I will close that session by commenting that my vote also counts in the Senate. Now, what I am going to do is to give five minutes to Senator Siewert and five minutes to Senator Lambie and then we will call it a night.

Senator SIEWERT: I want to ask about the announcement, responding to the royal commission report, about the national approach for a scheme of redress for survivors of institutional child sexual abuse. Firstly, I would like to ask about the time frame. I think the statement said it was starting soon. Could you outline the time frame for that process please?

Ms Pirani: We have not finally settled our timetable for those next steps. Essentially, it is dependent on the availability of officials in the states and territories to be available to speak with us. We are in the process of trying to make those arrangements. We are keen to do it as soon as scheduling can be sorted out and we are in the process of doing that now.

Senator SIEWERT: Have you got a date by which you are aiming to complete that process?
Ms Pirani: You would be aware that the Law, Crime and Community Safety Council has indicated that it would want to consider this matter in detail at its next meeting, which I believe is at the end of April. So we are trying to advance it as much as we can prior to that, obviously.

Senator SIEWERT: The initial process, you mean? Or to report to that meeting—is that what you mean? Or are you trying to wrap it all up by then?

Ms Pirani: No, to be able to prepare for that meeting.

Senator SIEWERT: I thought that was a massive, massive undertaking. Even though I want to see it done as soon as possible, I did not think that would be possible. So the idea is to take a framework for the approach to that meeting—is that correct?

Ms Pirani: Hopefully.

Senator SIEWERT: Have you got a date in mind for resolving and coming to an agreement on this?

Ms Pirani: That would be matter for government, ultimately.

Senator Brandis: That is right. And it will be highly relevant what the next Council on Law, Crime and Community Safety decides. What the Commonwealth has decided to do—and Mr Porter, the social services minister, and I announced this in a joint press release late last year—is to take leadership to try and shape a nationally consistent approach to redress. This is for the obvious reasons that it is a Commonwealth royal commission and we are the lead jurisdiction. On the other hand, we do not have responsibility for most—in fact, for hardly any—of the institutions that are subject to the review, so the Commonwealth sees its role as taking the lead in creating the architecture, as it were, of a nationally consistent approach to redress.

Senator SIEWERT: Have you already got the agreement of the states and the territories to engage in this process, or is the initial step to seek their agreement to engage in the process?

Senator Brandis: I wrote to the states and territories at the end of last year—and I had better take on notice how many replies I have received from them so far. Obviously, where one is talking about a very large amount of money that will be paid by way of redress payments to the victims, there is, as there always is in a federation, a back-and-forth, as it were, between the states and the Commonwealth about financial obligations. For the moment the Commonwealth has said that it will take the leadership in creating the architecture, but we have not made any commitments in relation to the assumption of financial obligations. I am sorry—I am corrected. The letters that went to the state and territory ministers went out at the end of last month, not at the end of last year.

Senator SIEWERT: Around the time the announcement was made—on 29 January, is that correct?

Senator Brandis: Yes.

Senator SIEWERT: So you have not had time for a response yet?

Senator Brandis: Yes.

Senator SIEWERT: In your statement you and Mr Porter are silent on any contribution the Commonwealth may make in terms of what I call top-up.

Senator Brandis: You would not have to be Nostradamus to expect that this is a matter that the states and territories may raise at the next Law, Crime and Community Safety Council meeting.

Senator SIEWERT: My question is: is it completely off the table, or is that an issue that you are still discussing?

Senator Brandis: The Commonwealth's position is as outlined in my letter.

Senator SIEWERT: In your letter, or in your statement? Your statement is silent on it.

Senator Brandis: As is the letter. The Commonwealth's position is as outlined in the statement and the letter.

Senator SIEWERT: So that means, no, you are not going to consider it?

Senator Brandis: It means the Commonwealth's position is as outlined in the statement and the letter.

Senator SIEWERT: So it is off the table?

Senator Brandis: I have nothing to add to my earlier answer.

Senator SIEWERT: I understand that at the moment there is not an anticipated date for the finalisation of this process. Is that correct?

Senator Brandis: Senator Siewert, remember that this royal commission is not due to deliver its final report until 30 June 2017.
Senator SIEWERT: I am not being critical; I am asking: do you have an end date in mind that you are aiming for?

Senator Brandis: For what? For an agreement with the states and territories?

Senator SIEWERT: For trying to finalise this process.

Senator Brandis: We have not put, as it were, a drop-dead date on it, but naturally we would like the nationally consistent framework to be agreed to as soon as practicable. I do not see that happening before the April council meeting, but it would be highly desirable if it could be agreed to by the conclusion of that meeting.

Senator SIEWERT: So you anticipate getting—sorry, I thought we just had a discussion along the lines of 'by the conclusion of the meeting there will be agreement on the framework for it to proceed with reaching that agreement'.

Senator Brandis: I am not being prescriptive here. The sooner we get an agreement the better. I do not anticipate an agreement being reached before the council meeting, but if it could be reached at the council meeting, as one of the outcomes of that meeting, that would be desirable.

Senator LAMBIE: It is my intention today to find out why Justice Peter McClellan AM from the Royal Commission into Institutional Responses to Child Sex Abuse failed to properly answer all three questions I put to him in a letter sent on 5 June 2015. Does the representative from the royal commission agree that I sent a letter to them on 5 June 2015, and Justice Peter McClellan AM from the royal commission replied to me on the same day—yes or no? We are on a time limit here; I am happy to table copies of the letter I sent and I received.

Senator Brandis: Just hold your horses, Senator; Mr Reed is going to answer your question.

Mr Reed: You wrote a letter to Justice Peter McClellan on 5 June 2015, and he responded to you on 5 June 2015.

Senator LAMBIE: In response to my question 'Do the commissioners intend to take action on said child sex abuse in the military', Justice Peter McClellan AM from the commission admitted and wrote: The Royal Commission is required by its Letters Patent to investigate, consider and report on issues relating to the sexual abuse of children in an institutional context. Military establishments, which included children, are relevant institutions. However, Justice Peter McClellan AM from the royal commission, as you will no doubt acknowledge after reading his reply, was not as forthcoming about my other two questions, which I would like answered today. What kind of action do the commissioners intend to undertake in relation to the said child sexual abuse in the Australian military? Has the royal commission requested a copy of the DLA Piper volume 2 report, which, Chair, is the roomful of secret volumes of defence abuse? I would like to have the two questions answered, because I am actually offended by Justice Peter McClellan AM and his official attempt at avoiding those two important questions. Firstly, what kind of action do the commissioners intend to undertake in relation to said child sexual abuse in the Australian military? Secondly, has the royal commission requested a copy of the DLA Piper volume 2, which is the roomful of secret volumes of defence abuse?

Mr Reed: The royal commission does not comment on its investigations, and does not confirm details of public hearings until they are formally announced. Hearings are usually announced around four weeks before the commencement date. That is the public position of the royal commission.

Senator LAMBIE: So given the high number of children who have served in our military, is it likely that there were or still are paedophiles that have served in our military and have never been brought to justice for their sex crimes and assaults—yes or no?

Mr Reed: I do not think I can add anything to the answer I just gave.

Senator LAMBIE: You cannot tell me whether there are still paedophiles serving in our Defence Force? That is what I am asking you, Mr Reed.

Senator Brandis: Mr Reed is the CEO of this royal commission. He is the administrator of it. How would you expect Mr Reed, the man who is the CEO—even if he were at liberty to answer, which he is not—to know the answer to that question? It is not his job.

CHAIR: Isn't it a matter for the military police?

Senator LAMBIE: Please do not go there. It is a matter for the Attorney-General; he can answer it. Would you agree that should your royal commission—

Senator Brandis: Senator Lambie, I do not know.

CHAIR: I thought you were in the military police, Senator?
Senator LAMBIE: Would you agree that should your royal commission fail to conduct hearings into institutional child sex abuse in our military between 1948 and 1993, that failure—given that Justice Peter McClellan AM has admitted in writing to me 'military establishments, which included children, are relevant institutions'—could in itself be viewed by ordinary Australians is either gross dysfunction or evidence of high-level cover-up of child sexual abuse or corruption?

Senator Brandis: I do not agree with that one little bit, Senator. The McClellan royal commission is doing a very, very demanding job very well, in my respectful opinion. Justice McClellan is limited by his terms of his letters patent. If there are relevant matters falling within his letters patent, no doubt he and the other commissioners will pursue them, and if they are without the letters patent, then he will not be at liberty to pursue them.

Senator LAMBIE: Has the royal commission made inquiries to the defence department about their apprenticeships scheme, where children aged between 14 and 17 years old were employed and trained by the Australian military?

Mr Reed: I have nothing further to add to the answer I gave earlier.

Senator LAMBIE: Is the royal commission aware of the fact that a defence apprenticeships scheme was conducted from 1948 to 1993?

Mr Reed: I am not personally aware.

Senator LAMBIE: I estimate that up to 30,000 Australian children served and were trained as apprentices in our military over the 45 years between 1948 and 1993. Do you disagree with my calculations?

Senator Brandis: I do not have a view about your calculations.

Senator LAMBIE: Does the royal commission think that the safety of 30,000 children who were in the care of the Australian military institution is just as important as the tens of thousands of children in the care of the Roman Catholic church, Scouts Australia, the Salvation Army and the Uniting Church? Surely you can answer that?

Mr Reed: All children who were in the care of institutions that fall within our terms of reference have relevance to the royal commission. We are just not in a position—I am not in a position—to talk about the investigations the royal commission is undertaking.

Senator LAMBIE: Has the royal commission been made aware of allegations of institutional child sexual abuse in our Defence Force?

Mr Reed: Certainly we are aware of the reports of the Defence Abuse Response Taskforce.

Senator LAMBIE: I would like a list that shows the total amount of communication—broken down into letters, emails and phone calls—between the royal commission and the defence department and the military. I will put that on notice.

Mr Reed: I am not going to be in a position to be able to answer that on notice.

Senator Brandis: I do not think, given the nature of the inquiries that this royal commission is undertaking, it would be appropriate to disclose that.

Senator LAMBIE: I would like a list that shows the total amount of communication—broken down into letters, emails and phone calls—between the royal commission and the Department of Veterans' Affairs.

Senator Brandis: I will refer to my previous answer.

Senator LAMBIE: Does the royal commission have independent powers of prosecution or will it rely on either the federal or state Attorneys-General to prosecute alleged offenders?

Senator Brandis: It does not have powers of prosecution because it is a royal commission, and attorneys-general do not prosecute. Directors of prosecutions, or their equivalent body however so called in the states, is the body that decides on prosecutions. What ordinarily occurs, as has occurred, for example, in the Heydon royal commission, is that where there are findings of criminal behaviour, in appropriate cases they are referred to the police for investigation, who may refer them to the director of prosecutions.

Mr Reed: I would add that we are publicly on the record saying that we have referred more than 900 matters to the appropriate law enforcement agencies around the states and territories.

CHAIR: We will have to leave it there. I thank you, Mr Reed, for that. Minister, Mr Moraitis and all of your team: I thank you for helping us out today so efficiently and professionally, as you have always done. I thank Hansard, the secretariat and my colleagues. We look forward to the next estimates happenings.
Committee adjourned at 23:09