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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Thursday, 25 May 2017

Members in attendance: Senators Abetz, Brandis, Burston, Bushby, Chisholm, Dodson, Duniam, Fawcett, Gallagher, Hanson, Hinch, Hume, Kakoschke-Moore, Ludlam, Ian Macdonald, McKim, O'Sullivan, Pratt, Roberts, Siewert, Watt, Wong, Xenophon.
ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Brandis QC, Attorney-General

Attorney-General's Department
  Mr Chris Moraitis PSM, Secretary
  Mr Iain Anderson, Deputy Secretary, Civil Justice and Corporate Group
  Ms Nicole Rose PSM, Deputy Secretary, Criminal Justice Group
  Ms Katherine Jones, Deputy Secretary, National Security and Emergency Management Group

Civil Justice Policy and Programs Division
  Dr Albin Smrdel, Assistant Secretary, Courts, Tribunals and Administrative Law Branch
  Ms Ashleigh Saint, Acting Assistant Secretary, Family Law Branch
  Mr Cameron Gifford, Assistant Secretary, Civil Justice Policy and Programs Branch
  Ms Petra Gartmann, Assistant Secretary, Office of Legal Services Coordination

Civil Law Unit
  Mr Andrew Walter, Assistant Secretary, Civil Law Unit

Criminal Justice Policy and Programs Division
  Mr Owen Lodge, Acting Assistant Secretary, Criminal Law Policy Branch
  Ms Catherine Hawkins, First Assistant Secretary, Criminal Justice Policy and Programs Division
  Mr Daniel Mossop, Acting Assistant Secretary, Transnational Crime Branch

Cyber and Critical Infrastructure Security Division
  Ms Sarah Chidgey, First Assistant Secretary, Cyber and Critical Infrastructure Security Division

Intelligence and Identity Security Division
  Ms Anna Harmer, First Assistant Secretary, Intelligence and Identity Security Executive
  Mr Andrew Rice, Assistant Secretary, National Security Policy Branch
  Ms Anne Sheehan, Assistant Secretary, Communications Security Executive

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

Strategy and Delivery Division
  Ms Alexandra Mathews, Assistant Secretary
  Ms Jamie Lowe, First Assistant Secretary
  Ms Leanne Loan, Acting Assistant Secretary

Administrative Appeals Tribunal
  Ms Sian Leatham, Registrar
  Mr Chris Matthies, Executive Director, Strategy and Policy
Ms Jacqueline Fredman, Executive Director, Corporate Services
Ms Sobet Haddad, Senior Reviewer, Immigration Assessment Authority

**Australian Federal Police**
Mr Andrew Colvin APM OAM, Commissioner
Mr Andrew Wood, Chief Operating Officer
Mr Michael Phelan APM, Deputy Commissioner, National Security
Ms Leanne Close, Deputy Commissioner, Operations
Mr Ramzi Jabbour, Deputy Commissioner, Capability
Mr Peter Gunning, Chief Financial Officer
Mr Ray Johnson, Assistant Commissioner Reform Culture and Standards

**Australian Commission for Law Enforcement Integrity**
Mr Michael Griffin, AM, Integrity Commissioner
Ms Eve Coutts, Chief Financial Officer
Mr Nicholas Sellars, Executive Director Secretariat
Ms Sarah Marshall, Executive Director Operations

**Australian Criminal Intelligence Commission**
Mr Col Blanch, Executive Director, Intelligence
Mr Paul Williams, Acting Executive Director Capability
Mr Chris Dawson APM, Chief Executive Officer and Australian Institute of Criminology Director
Dr Kate Willis, Acting Executive Director Capability
Ms Sabeena Oberoi, Acting Executive Director Technology and Innovation

**Australian Law Reform Commission**
Professor Rosalind Croucher AM, President
Ms Sabina Wynn, Executive Director

**Australian Security Intelligence Organisation**
Mr Duncan Lewis AO DSC CSC, Director-General
Ms Heather Cook, Deputy Director-General

**Australian Transaction Reports and Analysis Centre**
Mr Peter Clark, Acting Chief Executive Officer
Ms Angela Jamieson, Acting Deputy Chief Executive Officer, Operations
Mr Ric Walters, Chief Finance Officer

**Australian Human Rights Commission**
Professor Gillian Triggs, President
Mr Alastair McEwin, Disability Discrimination Commissioner
Mr Darren Dick, Director, Policy and Programs

**Commonwealth Director of Public Prosecutions**
CHAIR (Senator Ian Macdonald): Good morning, everyone. I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the budget estimates for 2017-18. The committee is examining the proposed expenditure for the budget of the Attorney-General's portfolio. I welcome the minister, the Attorney-General; Commissioner Colvin; and Mr Moraitis and his team.

The committee has set Friday, 7 July as the date by which answers to questions on notice are to be returned, and senators have been asked that written questions on notice be provided to the secretariat by Friday, 2 June. All evidence is taken in public session. I think all of the witnesses are aware of these rules, but, if any questions arise, please raise them. Parliamentary privilege applies.

All questions going to the operations or financial positions of departments and agencies which are seeking funds are relevant questions for the purposes of estimates, providing they are actually part of the budget and the estimates. There is no area in connection with the
expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament, unless the parliament has provided otherwise.

Officers are not to be asked to give opinions on matters of policy. They can refer questions to superior officers or to a minister. That does not preclude, of course, questions asking for explanations of policies and factual questions about how and when policies were adopted. We have been through public interest immunity claims; I think everyone is familiar with that. Any claim must be made to the committee, and the committee determines these things. The relevant extract from the Senate standing orders will be incorporated in the *Hansard*.

*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).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

We have agreed to allow the media to film today's proceedings. That permission can be revoked at any time. Filming is not to occur during suspensions or after adjournment proceedings. If any witness objects to the filming, the committee will consider that objection. There is a resolution of the Senate concerning the broadcasting of committee proceedings, and that is available from the secretariat. Minister Brandis or Commissioner Colvin, do you have a brief opening statement?

Senator Brandis: No, I do not.

Senator McKIM: Chair, on a point of order, if I might, before we start.

CHAIR: Yes.

Senator McKIM: This is just to tidy up a matter that arose on Tuesday, when there was an exchange involving you, me and the secretary of the immigration department, Mr Pezzullo, when he asserted that I had used the word 'Brownshirts' in this committee. Mr Pezzullo has withdrawn that and apologised to me. But you said at the time that everyone had heard me use the word 'Brownshirts', and, when I raised it with you, you said you would check the Hansard and respond. I would simply ask you—

CHAIR: Well, I haven't yet. There is no point of order, Senator McKim.

Senator McKIM: Could you please check the Hansard and correct the record, Chair.

CHAIR: I have been fairly busy since then, so I have not checked anything.

Senator McKIM: So have I, but I have had time to do that.

CHAIR: Commissioner Colvin, do you have an opening statement?

Mr Colvin: No, I do not have an opening statement.

Senator PRATT: On a point of order, Chair: can I as deputy chair seek an undertaking from you as to when you will respond to Senator McKim?

CHAIR: When I get around to it. I am sort of busy until 11 o'clock tonight—

Senator McKIM: You do have staff.

CHAIR: doing other things, doing more important things than worrying about what Senator McKim might have said—or, as it is alleged, that it is Senator Carr from the Labor Party said it. Perhaps Senator Carr should come in if that is true—

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LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Senator McKIM: What I am actually talking about is your inaccurate statement, Chair.

CHAIR: If that is true, Senator Carr should come in and apologise to the committee and all of those who he accused of that.

Senator McKIM: You need to apologise to this committee for misleading it.

CHAIR: Senator McKim, we have a lot of business to go through. I know your former leader, Senator Brown, is recorded as saying that if he had been around at the time he would have been a member of Hitler Youth, but we do not need to go into Nazi history and Brownshirts and Hitler Youth.

Senator McKIM: You are the one that did.

CHAIR: We will look at that at the appropriate time and deal with that matter. Now we are here for important matters involving the agencies of the Attorney-General's Department. I will go first to Senator Wong.

Senator WONG: Thank you, Chair. Perhaps, on that matter, it just might be useful, given this is the last day—

CHAIR: Do you have a question?

Senator WONG: I am making a suggestion, Chair, and I am trying to do so courteously and I would ask you to hear me out.

CHAIR: Do you have a question?

Senator WONG: I was not here, but, if there is a suggestion that a matter needs to be corrected, I would ask you to consider doing the courtesy of doing so while the hearing is still on foot.

CHAIR: Senator Wong, I do not need your advice on this—or anything, I have to say. If you have a question, ask it; otherwise, I will go to another senator. And, on that subject, I have not checked this but I think Mr Moraitis said that it was your colleague, your frontbench colleague—

Senator McKIM: Mr Moraitis did not say that.

CHAIR: Senator Carr who said that. I have not checked that.

Senator McKIM: Mr Moraitis did not say that.

CHAIR: But if that is true then perhaps you would speak to Senator Carr—

Senator McKIM: Mr Moraitis did not say that. You are wrong, Chair.

CHAIR: and get him to clarify the matter, so that I will not have to look into it. Senator Carr can come in and do a mea culpa.

Senator McKIM: A point of order, Chair.

Senator WONG: I am happy to proceed with questions. It was a courteous suggestion, if you want to—

CHAIR: Do you have a question, Senator Wong?

Australian Federal Police

[09:09]

Senator WONG: Commissioner, welcome. Can I start, if the chair does not mind, by thanking you and officers and staff at the AFP for all their work. I am sure, particularly at the
moment, given the security situation, there are additional demands upon the agency, so we express our thanks for that.

Mr Colvin: Thank you. I know my members appreciate that support.

CHAIR: And, Commissioner, you would be aware that yesterday I made the same comments, not only to you but also to the ASIS and ASIO people in these difficult times. Along with officers of the department of immigration, you have all done a wonderful job in very difficult circumstances, which have to a degree—although you were not involved—been highlighted by yesterday's coroner's report.

Mr Colvin: Thank you, Chair.

CHAIR: Thank you, Senator Wong, for raising that.

Senator WONG: Commissioner, I have some questions about the PBS and the budget measure. Should I address them to you or to Mr Wood?

Mr Colvin: By and large, they will be answered by my chief operating officer, Mr Wood, but I am happy to hear the questions.

Senator WONG: Budget Paper No. 2 has a measure associated with the Australian Federal Police, at page 68, which identifies $321.4 million over four years from 2017-18. That includes capital funding, doesn't it?

Mr Wood: Yes, it does, and the numbers for that are set out—

Senator WONG: On page 68.

Mr Wood: The capital funding is on page 95 of the PBS—the capital subcomponent of that, $12.6 million in 2017-18.

Senator WONG: There is a line item in BP 2 as well.

Mr Wood: There is too, in italics.

Senator WONG: Remind me what this is on top of. Would you like me to work off BP 2 or the entity resource statement? I will do whichever is easiest for you. It is just that the budget paper has the four years of the forward estimates.

Mr Wood: That is fine.

Senator WONG: With the appropriation in the first line item, could you tell me what the baseline appropriation, to which $49.6 million, $80.1 million, $74.3 million and $73.5 million is added, is?

Mr Wood: Taking all measures that are in the budget off the total appropriation?

Senator WONG: Looking at BP 2 and page 68, which is the additional resourcing measure, I just want to know what number this line is being added to. I just want the departmental appropriation that sits beneath the additional resourcing that has been identified.

Mr Wood: I can work that out in reverse. The departmental operating appropriation, not including capital, is $1.017 billion, so off that comes the $49.6 million.

Senator WONG: I am asking you for the forward estimates, please.

Mr Wood: I will not work that out in my head, but I can get those numbers passed to me in a moment.

Senator WONG: Would you mind? Thank you.
Mr Wood: But basically that is the calculation.

Senator WONG: You understand what I am asking?

Mr Wood: I do. Page 92 has—

Senator WONG: That only has the 2017-18 year. I am asking for the forwards.

Mr Colvin: The CFO is doing the numbers at the moment.

Senator WONG: What was the departmental operating appropriation that you referred me to, which is $1.021 billion—correct? Sorry, let's do the total annual appropriation, which is $1.673 billion.

Mr Wood: For 2016-17, that is the total departmental resourcing, so that includes prior year appropriations, equity injections and a range of things.

Senator WONG: Let's look at the net resourcing. That might be easier. Those figures are $1.686 billion and $1.677 billion, on page 93 of the PBS. The 2016-17 figure is the estimated actual. What was the equivalent budgeted figure? Do you understand the question?

Mr Wood: I do. I do not have the previous PBS with me, but—

Senator WONG: Someone behind you must have it.

Mr Wood: I have the appropriation and the outcome expenses; what I do not have in front of me is the total resourcing.

Senator WONG: Secretariat, is someone able to get us the 2016-17 PBS for the Attorney-General's portfolio? I am just trying to understand the extent to which your actuals have moved around.

Mr Wood: Understood.

Senator WONG: If you look at page 93, in fact the total net resourcing for the Australian Federal Police is reduced between 2016-17 and 2017-18.

Mr Wood: And, as we discussed at last estimates—

Senator WONG: Did I discuss it with you?

Mr Wood: Your colleagues Senator Pratt and Senator Watt did.

Senator WONG: I was not here.

Mr Wood: The committee discussed it with the witnesses here.

Senator WONG: I thought I might have forgotten!

Mr Wood: There are significant reductions going into this new financial year in the funding for Papua New Guinea because of the change of mission and the funding for the Solomon Islands because of the change of mission. Also, in 2016-17 we received a significant injection of money to harden up our buildings as part of keeping the AFP safe. That money, of course, is not repeated in 2017-18, so there are a number of measures that are either re-costed or drop off, such as giving us money to harden up our buildings.

Senator WONG: Fair enough, but there is still a reduction.

Mr Wood: Correct.

Senator WONG: You agree; there is a reduction in how much the AFP gets as between this financial year and the next.
Mr Wood: Correct.

Senator WONG: With the hardening up of buildings, though, where do you say the reduction in that allocation is reflected? Actually, the departmental capital budget increases between 2016-17 and 2017-18.

Mr Wood: What happened for 2017-18 is that in additional estimates we were provided with some capital related to some protective measures for the AFP that related to IT—

Senator WONG: I am not complaining about the increase—

Mr Wood: No, but that is what it was.

Senator WONG: but you said to me that part of the reason you are getting less money than last year is that there was funding that you are no longer getting for buildings.

Mr Wood: Correct.

Senator WONG: I am pointing out that actually there is an increase in your capital budget.

Mr Wood: Because of other new measures.

Senator WONG: The net effect of the capital budget on the total resourcing of the AFP is actually greater next year, so I do not see how that is an explanation for reduction in resourcing.

Mr Wood: It is an example of a $51 million measure that did not roll from one year into the next year. There are other things adding on—there is $321 million added onto the broader budget, which is the measure of which $70-odd million is in that first year.

Senator WONG: With respect, that is a non-responsive answer.

Mr Wood: Apologies if I made a non-responsive answer.

Senator WONG: I always hesitate to say that to the AFP.

Mr Wood: That is all right. There are many ons and offs, and—

Senator WONG: I am aware that budgets are a reflection of a whole range of movements, but I am making the point: if one of the assertions is that the budget is lower because capital expenditure on buildings is lower, that may well be, but you are actually getting more capital expenditure. Correct?

Mr Wood: In a separate measure, that is correct.

Senator WONG: Thank you. I now have the PBS from last year, so you will be able to help me with the 2016-17 figure, which was $1.647 billion.

Mr Wood: Certainly in the additional estimates for 2016-17, we reported $1.647110 billion. So the estimate as at budget 2016-17 for total net resourcing for the entity was $1.647110 billion.

Senator WONG: But you ended up a couple of hundred million dollars up.

Mr Wood: Because of measures in the MYEFO process. There were some election commitments that the government delivered on through the MYEFO process.

Senator WONG: What is the difference—I have not done a calculation—between $1.686128 billion and $1.677779 billion?
Mr Gunning: The movement between 2016-17 actual estimated and 2017-18 in the 2017-18 portfolio budget statement is an $8.3 million reduction.

Senator WONG: So there is an $8.3 million reduction between 2016-17 and 2017-18?

Mr Gunning: In the total resources available?

Senator WONG: Yes.

Mr Gunning: The total resources available also include appropriations of prior years that would be used to finish some capital commitments but also meet liabilities for employee provisions, long service leave and the like.

Senator WONG: Can someone explain to me how an $8.3 million reduction is a $321 million increase?

Mr Wood: The $321 million is $320 million more than we previously had in the forward estimates.

Senator WONG: We would otherwise have received?

Mr Wood: That is also correct. It is another way of expressing the same thing.

Senator WONG: You understand, though? A $321 million boost turns into an $8.3 million reduction net between this year and next year. Anyway, that is probably a political point that I do not need to put to you.

One thing I did want to understand is your ASLs. How we differentiate between uniformed other staff? What is the nomenclature you want me to use?

Mr Wood: We have three streams of staff within the organisation. The way that we describe them when answering questions such as in this conversation is sworn police, sworn protective service officers and professional staff.

Senator WONG: Sworn police, sworn protective—

Mr Wood: Service officers—PSOs—and professional staff. We have previously used the term ‘unsworn’ in relation to professional staff, but the organisation—

Senator WONG: You thought it was better to be positive than negative.

Mr Wood: And the organisation is moving, as part of our future direction, more and more to recognise that when we conduct investigations, intelligence, forensics and other people are bringing a skill set and a professionalism to those investigations and are not sworn police.

Senator WONG: Got it—okay. And protective officers are close personal protection, or are they more than that?

Mr Colvin: For instance, the officers you see mostly around Parliament House will be protective services officers. They have a lot of the training that police officers undergo, but they do not, effectively, have the investigations training.

Senator WONG: Are people who provide protection to high-profile politicians in the sworn?

Mr Colvin: They are sworn police.

Senator WONG: Do your ASLs comprise all three? Do you reflect them as an aggregate?

Mr Wood: The ASL figures do cover all three.

Senator WONG: Do you have a disaggregation?
Mr Wood: I do have a disaggregation by headcount, so the budget—

Senator WONG: So it is not apples and apples.

Mr Wood: What we have been very careful to do for the last 10 years that I can speak to is, whenever we are asked how many police officers and how many people—

Senator WONG: You want to do headcount—

Mr Wood: it will be real people, so I give headcount, and it has been consistent through all estimates.

Senator WONG: I am happy to do that, and let's go through that. But isn't one of the challenges that, to compare it against your budget years, it is a bit hard to disaggregate the ASLs, so you do not do that calculation? It is close, I would have thought, but not identical.

Mr Wood: We do have a number of part-timers or people who have worked for part of the year and then moved to another agency. The headcount is always a couple of hundred more than the ASL figure in the budget.

Senator WONG: The headcount is—

Mr Wood: The number of individuals employed by the organisation is always a couple of hundred more, because of—

Senator WONG: It cannot be the other way around.

Mr Wood: Correct, unless we are behind our recruitment targets and have not achieved what the budgets—

Senator WONG: The actual ASL is always going to be lower than the headcount.

Mr Wood: That is correct.

Senator WONG: Because of time—you indicated to me a range of programs that were reducing or altering, including within the capital budget, which were the underlying movements that are not separately disaggregated in table 1.1—can we get them on notice?

Mr Wood: Certainly—

Senator WONG: You reference RAMSI, the building hardening and PNG, I think.

Mr Wood: We gave an answer to—

Senator WONG: I am sorry.

Mr Wood: It is okay. We gave an answer to some questions from, I think, Senator Pratt from last estimates where we did break down all of the movements in measures—

Senator WONG: Do you want to just update that then? Why don't you just update that question on notice?

Mr Wood: We can update that for the most recent budget.

Senator WONG: Is that okay?

Mr Wood: Yes, we will do that.

Senator WONG: Thank you, I appreciate that. I want to get the three categories. What can you give me?

Mr Wood: As at 20 April—

Senator WONG: Hang on, what have you got?
Mr Wood: I can give you from 28 November 2007 and then every July from that point on.

Senator WONG: Why did you start in November?

Mr Wood: Because that was the first time I was asked the question. And it was also the day before I started with the AFP.

Senator WONG: There you go. Perfect. Chair, it might be useful if I could get that in writing. Then, if you want to go to someone else—because my next set of questions relate to that, it might be quicker if I look at that—

Mr Wood: I can get a photocopy of this page.

Senator WONG: Is that all right?

CHAIR: You only have a minute left.

Senator WONG: Okay. Let's do that. I am happy to do that. The other thing I wanted to check was: what is your attrition rate?

Mr Wood: The attrition rate for the whole organisation is running at 2.93 per cent.

Senator WONG: Okay. What does that mean in nominal terms?

Mr Wood: 216 personnel over a full financial year.

Senator WONG: And, of those, do you disaggregate between the three categories?

Mr Wood: The attrition rate for sworn police officers is 2.10 per cent.

Senator WONG: Which equates to?

Mr Wood: 83 sworn police. For protective service officers, it is 1.94 per cent, which is 19 individuals. And, for professional staff, 4.35 per cent, which is 114 individuals.

Senator WONG: And this is as at—?

Mr Wood: Those figures are the projected attrition for the Federal Police for the financial year 2016-17.

Senator WONG: Do you have historical rates?

Mr Wood: I can get those. I do not have them with me.

Senator WONG: That would be great. Chair, I am happy to switch to someone else.

Mr Colvin: Chair, we can give the senator a fresh copy that has the table you are looking for in terms of numbers.

Senator WONG: That would be great. That might expedite things. Thank you.

CHAIR: Okay. Thanks for that, Senator Wong. I just want to ask about an investigation that your officers did into the 40 apparently serious cases of double-voting in the Herbert electorate at the last federal election. I think you might be aware of this, because it has come up at the electoral matters committee; the electoral matters committee were um-ing and ah-ing about calling you. I indicated to the electoral matters committee that I was only raising it there out of courtesy to them; there seemed to be some hesitation by some members of the committee. So I indicated I would be finding out here. I do not think this will take very long.

Mr Colvin: I am happy with that, Chair.

CHAIR: As I understand it, I think that your report said that 14 officers were sent to Townsville to investigate these 40 or so—of 200—double-voting incidents that the Electoral
Commission were so concerned about that they called in police. I just need you to confirm that. And my question is: what exactly did the investigation involve? I do not need names or places or dates, but I just want to know how you investigate that sort of thing.

Mr Colvin: Thank you. I will ask Deputy Commissioner Close to respond. I can confirm, yes, we did support the Australian Electoral Commission in their investigation. I do not remember the numbers but I am sure we will have those with us.

Ms Close: Yes, we did accept and work with the Australian Electoral Commission referrals, particularly in relation to multiple voting arising from the 2016 federal election. We looked at all of the instances of alleged multiple voting. As a result of that, there were 8,657 potential instances across the whole of all of the electorates.

CHAIR: Across Australia?

Ms Close: That is correct. Of the assessment that we undertook with the Electoral Commission, we accepted 76 cases for investigation. Some of those were in the seat of Herbert. We then did have some actions and activities in Herbert. We had a raft of investigators speaking to all the people we suspected may have undertaken multiple voting. From that, 70 matters have now been finalised and six matters are still be investigated.

CHAIR: Six are still being investigated?

Ms Close: Yes.

CHAIR: Is the Electoral Commission aware of this? Because I am sure that is not their evidence.

Ms Close: I do not know what—

CHAIR: What their evidence is is irrelevant to what your evidence is. Yours, I am sure, would be absolutely accurate.

Ms Close: And I do not know what the Electoral Commissioner referred to there of course, but those six relate to the whole of Australia as well.

CHAIR: Are there any in Herbert?

Ms Close: I would have to take that on notice.

CHAIR: Can I particularly refer to Herbert. I refer to Herbert because it was an election that was determined by 37 votes. As I understand it, there were about 200 cases of multiple voting; approximately 100 of which the Electoral Commission suggested were simply obvious clerical errors and did not look further into. As I recall the evidence, for about 50 per cent of the remaining 100 there was no explanation—or nobody had any idea—my understanding then was that there were about 40 that the Electoral Commission thought were so serious that they asked the Federal Police to investigate. The evidence, as I recall, to the electoral matters committee was that the AFP sent in 14 investigators over a three-day period to look into that. Is that your understanding?

Ms Close: I do not have the exact number of investigators but it was a large number—probably those two teams. That sounds correct. The reason we did send those sorts of numbers into Herbert—into Townsville—was that—because of the statute of limitations and the nature of those multiple voting instances and the outcome in that electorate—we decided it was important to get in as quickly as possible and complete the activities and investigate as quickly as we possibly could.
CHAIR: And that is appropriate. As I understand it, this was done before the poll was declared. That is probably not a matter for you but that was part of the urgency. Unfortunately the Australian Electoral Commission did not tell either candidate of the numbers of multiple voting or of the requests for investigation until after the time for appeal to the Court of Disputed Returns had passed. In fact the AEC did not raise this until they put in a submission to the electoral matters committee, but that is all just by way of background. But what I really wanted to know was how do you investigate these sorts of things? Do you say, 'Well, Ian Macdonald's name has been crossed off three times so we'll go and interview Ian Macdonald and say: "Ian Macdonald, did you vote three times?"' And, Of course—even if I had—I would say, 'No, of course I didn't,' because I know if I said I did I would be setting myself up for a criminal prosecution. So how do you investigate those things?

Ms Close: That is absolutely one of the avenues of inquiry we have. We have to speak to the person whose name has been marked off more than one electoral roll. If we can find staff who were manning the electoral booths that day, we will speak to them. But there is really limited information that we have in respect of how voting is undertaken. So we will go to those individuals.

CHAIR: Okay. That was the nature of my inquiry. I just wonder how—without giving away any trade secrets—do you do it? Is it simply a question of asking people: 'Did you vote twice?' I can guarantee that 100 per cent of the time the answer will be, 'No, I did not', even if I did.

Mr Colvin: Chair, if I may, the AFP has been on the record a number of times about how difficult allegations of double-voting in particular are. Of course, as you would know, there is no need to show identification at the point of casting a vote. There is generally no closed circuit television or any coverage. So we really are reliant on somebody telling us that they have voted multiple times. As you have quite rightly pointed out, the motivation for someone to tell us that is quite limited. We are on the record stating the difficulties with this a number of times.

We do of course find that many people are confused with multiple voting. So in terms of proving their intention to cast more than one vote, we have great challenges with that as well. Sometimes the elderly become uncertain. We have had cases where family members—thinking they were doing the right thing—have picked up their elderly grandmother, and taken them to vote, not realising they have already voted. It is notoriously difficult, which is why we work very closely with the Electoral Commission before they refer matters to us; to explain to them that, unless there is some way we can corroborate or there is some particular avenue of inquiry, on most occasions, the investigations go nowhere.

CHAIR: I appreciate that, but as I understand it—and perhaps this is a question for the Electoral Commission again—they determined that, of the 200 instances of double voting in Herbert, 40 were so serious that they sought the immediate assistance of the police. Perhaps you are struggling with what you can tell me and what you cannot tell me, but can you tell me why these 40 were seen to be more serious than the other 160? My numbers are approximate. There might have been 42 or 45, or 198 rather than 200, but they are in the ballpark.

Ms Close: We worked with the Electoral Commission post the election. We had people in what we would probably term a mini task force assessing all the multiple voting instances. As I mentioned, from the 8,657 instances of voting we then narrowed that down to areas across
Australia where we thought there could be some concerns about the multiple voting by particular individuals. I cannot comment on the numbers in that particular electorate, but we worked with the AEC to determine the ones that were of most concern for us right across Australia.

CHAIR: My inquiry, of course, is confined to Herbert, for obvious reasons. There were 37 votes that could have changed the government of Australia, so it a pretty serious thing, and there are a number of other irregularities. There is evidence of another 60 or so—

Senator CHISHOLM: A point of order: you had the opportunity to take it to the Court of Disputed Returns and you did not. Undermining the credibility of the election is outrageous. You did not take it to court. That was your opportunity—

CHAIR: That is not a point of order. If you were listening, you would understand that the instances of multiple voting were not made known to either candidate until well after the time for return to the court—

Senator CHISHOLM: You had the opportunity to take it to court and you did not. End of story.

CHAIR: I know you were the campaign director for the Labor Party at that election, but can I just reiterate: the idea of 40 multiple voting incidents was not known until after the time for the application to the Court of Disputed Returns was over. If you want to try and throw those hand grenades, be sure of your facts.

Senator McKIM: Have you got a question, Chair?

CHAIR: This information was not available to either candidate until after the court time had finished. Can't you understand what I am saying? It was not available until after the time for appealing to court had passed—and you would be well aware of that, as you were the campaign director for that particular seat.

Senator McKIM: Have you got a question for the AFP, or are you just going to waste everyone's time?

CHAIR: I can understand your sensitivity.

Senator WONG: Is there a question?

Senator McKIM: What a waste of time you are.

Senator WONG: A point of order: is there a question?

Senator McKIM: Have you got a question?

CHAIR: Can I say to both Senator McKim and Senator Wong, who are yelling out 'Is there a question?': this matter has arisen because one of your Labor Senate candidates, who was the campaign director, has indicated in a point of order—that was not a point of order—and I am simply responding to the point of order.

Senator WONG: A point of order. Is there a question?

CHAIR: We will continue where we were before we were interrupted by the campaign director for the other candidate. Could you answer my question, please?

Mr Colvin: Chair, can we just ask that you repeat the question, please?

CHAIR: Sure. I can understand your forgetting it. Do you have any idea why elements of those 40-odd votes were so serious that the AEC asked you to investigate? Are you able to tell
us that? Again, I am conscious that there is fine line between what you can tell us and what you cannot, but can you answer that?

**Ms Close:** I can certainly talk about the 42 alleged multiple instances of voting and give you a breakdown of what we identified from the inquiry.

**CHAIR:** Thank you.

**Ms Close:** Of the 42, 33 we identified as being potentially attributable to polling place anomalies. That essentially means that we think that someone may have incorrectly have marked somebody off the list.

**CHAIR:** Sure.

**Ms Close:** Five of the 42 were potentially attributable to voter confusion. As the commissioner outlined, we often have people who are elderly or may have language barriers or mental health issues. So that was five of them. Of the remaining four, we had no obvious explanation or additional evidence to identify what had occurred in those four instances of the voting. As a result of that, because we had insufficient evidence, we have determined that there did not appear to be any breach to the Commonwealth law and so that investigation, I am advised, is now finalised.

**CHAIR:** That brings me back to my original query. Apart from, simply, interviewing people and asking them if they had double voted, what else can you do? What other ways can the AFP investigate these matters? I appreciate what the commissioner says, that until we have some form of identification for voting this is always going to be a problem, but, unfortunately, we could never get that through the Senate, and perhaps senators might indicate why. Could you tell us what sort of thing they do?

**Ms Close:** Apart from speaking to the people, as I mentioned, we can try and speak to the people who manned polling booths. That is notoriously difficult because of the numbers of people coming through. They are often not going to recollect individual voters. There are limited other inquiries that we can take, in that respect, other than, if we have concerns about a particular individual, we will look at movements on the day and those sorts of things.

**CHAIR:** There were about 200 cases of multiple voting in Herbert but 40 were so serious, according to the AEC, that they referred them. Are you able to tell us, of those that were marked as double voting, whether this occurred within the electorate of Townsville or whether they were declaration votes taken elsewhere?

**Ms Close:** I would have to take that on notice; I cannot answer that.

**Mr Colvin:** I think the question is for the Australian Electoral Commission. They understand and analyse the voting patterns. They refer, to us, instances of concern. We do not, necessarily, have the information that you are looking for.

**CHAIR:** No, I appreciate that. Again, my reason for inquiring of the AFP was just to understand how you looked at those. In the case of Herbert, are you aware that there were about 200 cases but only 42, as you rightly said, appeared to the AEC to be so serious as to warrant police investigation?

**Ms Close:** No; I will take that on notice, though, to understand exactly how many instances are alleged to have occurred.
CHAIR: And if there is anything else that you can tell us about that investigation. Why were 14—you said you would take on notice the number—

Ms Close: It is actually 15.

CHAIR: but my recollection of the AEC evidence was that there were 14 or 16, I think it was, additional AFP officers.

Ms Close: It was actually 15 who were deployed.

CHAIR: Why so many for 42 cases?

Ms Close: We wanted to complete the investigation fairly quickly, as I said. Because of the time-frame limitations on us we just deployed that many people to complete that fairly quickly.

CHAIR: The electoral matters committee make decisions but they may well get you to come and talk about the same things later on, which I wanted them to do but a couple of the members there were a bit reluctant to go into this.

Senator WONG: I want to go to page 97 of the PBS. This is outcome 1, which is 'reduced criminal and security threats to Australia's collective economic and societal interests through cooperative policing services' and program 1.1 is 'federal policing and national security'; then you have 1.2, which is 'international policing assistance'. First, I want to confirm that over the forward estimates for the whole of outcome 1, funding actually reduces over the four years. If you look down the bottom of page 97, 'estimated actuals, 1.255,' in 2016-17 and then the budget and forward estimates are 1.239, 1.227, 1.197 and 1.173. That is actually a fall over the forwards, is that correct?

Mr Wood: That is correct.

Senator WONG: What is the cumulative reduction? Sorry; I wish my mental arithmetic was that quick! What is it approximately—a couple of hundred million, or a bit less?

Mr Gunning: In terms of total expenses through outcome 1, Senator, it is 1.239 in 2017-18 to 1.173, so—

Senator WONG: Plus—sorry—I was including 1.255.

Mr Gunning: It is 82, Senator.

Senator WONG: But the point-in-time reduction from 1.255 to 1.173—why is that reducing? If there has been a boost to the AFP, why is outcome 1—reducing criminal and security threats to Australia's collective economic and societal interests through cooperative policing services—reducing?

Mr Wood: Senator, the detail of the answer to that question is the table we will update, which we took on notice earlier. But certainly, in terms of—

Senator WONG: Can we not look at the line items? I do not understand your answer, given some of these line items. If you look at program 1.1—in fact, that also reduces over the forwards; point in time—that is federal policing and national security, it is up next year and then back down in 2021.

Mr Wood: Senator, it is because there are a range of measures that were, say, three-year measures or four-year measures that we will go back to government and talk about as those years come up. They are measures that terminate within the—
Senator WONG: Is this what Senator Brandis would call a funding cliff?

Mr Wood: I won't put words in Senator Brandis's—

Senator Brandis: No, Senator; you as a former finance minister—please do not interrupt me—are in a better position than anyone in this room—

Senator WONG: To know that your argument about the CLCs is a joke; you are absolutely right.

CHAIR: Senator Wong, if you cannot control yourself and allow witnesses to answer the questions your team have asked them, perhaps you might consider going to another committee. You ask questions, we expect the witnesses to be given the opportunity to answer your questions without interruption.

Senator Brandis: Thank you, Senator Macdonald.

Senator WONG: I am sure that applies to you too, Chair.

Senator Brandis: Excuse me, Senator Wong, please behave with courtesy to other senators.

Senator WONG: I am, actually; others are not.

Senator Brandis: So, Senator Wong, you as a former—

CHAIR: Senator Wong, this is your second warning. If you continue to interrupt, I will ask you to leave. And—as we went through yesterday, and I do not like to do this; this is not the Senate chamber—if you do not leave, then I will suspend the hearing until we have other senators ready to ask questions in the appropriate manner. Please do not interrupt. Senator Brandis?

Senator Brandis: Thank you very much indeed, Mr Chairman. I think it is important to point out to the committee that all program funding is for a period of time and is renewed upon the expiry of that period of time, unless it is ad hoc funding. As a former finance minister, nobody in this room knows that fact better than Senator Wong; therefore, to describe it as a funding cliff is an absurdity. What the line item to which Senator Wong refers does not take account of is the additional new money that the government has provided to the Australian Federal Police for specific programs. Let me run through it. The government has invested $1.5 billion of new money to combat terrorism. Much of it has been devoted—indeed, $410 million of that new money has been allocated to the Australian Federal Police, the break-up being: $77.2 million to enhance the AFP's counter-terrorism capabilities; $180 million to protect AFP offices and buildings; and $153 million to protect Parliament House and high-office holders. As well, in the budget which we are now considering, the government has provided an additional $321.4 million to provide for an extra 100 AFP officers who will be intelligence experts; to provide for a further 100 or more tactical response and covert surveillance operations officers; and, as well, to provide for almost 100 forensics specialists to advance the fight against both crime and terrorism—a total of an additional 300 officers, with those specialist skills, on top of the AFP's existing staffing establishment.

As well, the government has allocated an additional $127.6 million to fund the Serious Financial Crime Taskforce, of which 17.2 million has been provided to the AFP and the balance to other agencies, most of it to the Australian Taxation Office. An additional $116
million to fund the National Anti-Gang Squad; an additional $25 million to expand the AFP's National Forensics Rapid Lab; an additional $21 million to fund the AFP component of the trade union royal commission taskforce; an additional $15 million to support the fraud and anti-corruption centres—all of those figures or, of the figures that I have read, all of those that I have identified as containing an AFP component, are additional funding of the AFP beyond the line item of the PBS that Senator Wong is asking about. What I particularly want to emphasise is the additional investment of 300 new officers with those specialist capabilities; in this budget, an additional allocation of $321.4 million.

**Senator Wong:** Am I allowed to speak, Chair?

**Chair:** Do you have a question, Senator Wong.

**Senator Wong:** Yes, I do; I do have questions—

**Chair:** If you do not, I will pass to another Senator.

**Senator Wong:** You just did not give me the call.

**Chair:** You have the call to ask questions—

**Senator Wong:** Yes, I do have—

**Chair:** not to interrupt.

**Senator Wong:** I am not interrupting; I am being interrupted—

**Chair:** The answer has finished, so it is up to you to ask a question. You do not have to ask me whether you can ask a question; you should be able to work that out yourself.

**Senator Wong:** Thank you for your courtesy, Chair. I am going to respond to one point that the Attorney-General put. He said that I should know better than anybody about programs ending, and about people needing to come back to government. That is precisely what Mr Dreyfus's CLC program was, which the Attorney misleadingly describes as a funding cliff—

**Chair:** Senator, this is questions, please.

**Senator Wong:** Chair, I am entitled to respond to the Attorney—

**Chair:** You are not; you are entitled to ask a question. Please do that.

**Senator Wong:** All right. Can we go back to—

**Senator Brandis:** By the way, I do not want to prolong this, but Senator Wong and I have a difference—

**Senator Wong:** I am happy to go to questions, Chair.

**Senator Brandis:** about this because of the characterisation of this particular program—

**Chair:** Senator Brandis, for the same reason—

**Senator Brandis:** to which Senator Wong refers.

**Chair:** Senator Brandis, that is not a question, and you do not need to comment. And we will get through this—hopefully—by 11 pm tonight, if we can follow the rules, ask questions, and give answers. Senator Wong.

**Senator Wong:** I want to go to 'Federal policing, national security over four years'. I think we have agreed there is a reduction in funding over the forward estimates notwithstanding the ostensible boost. I am not trying to get you involved, Mr Wood or Commissioner Colvin, in a political argument. I understand the response is 'Well, there are
other staff moving.' Fair enough. That is what you should say. I am making a different point, which is the aggregate figure.

Senator Brandis: Senator Wong, the point I was making was about the aggregate figure—

Senator WONG: Chair, can I ask a question? I have not—

Senator Brandis: It is all very well to identify—

Senator WONG: Chair?

CHAIR: Sorry, had you not finished your question?

Senator WONG: I was halfway through a question.

CHAIR: Senator Brandis, please let the question finish.

Senator WONG: Mr Wood, I am going to page 97, which is the 'Federal policing and national security'. This is not international policing. RAMSI and other matters, I assume, is in 1.2.

Mr Wood: That is correct.

Senator WONG: There is a reduction in funding for federal policing and national security over the forward estimates, correct?

Mr Wood: That is correct.

Senator WONG: What is the total reduction and what is driving it?

Mr Wood: There are a number of budget measures within the forward estimates where dates have been set, for them to come back to government for consideration of continuation or not to continue. The national anti-gangs task force, for example, is funded up to 30 June 2019.

Senator WONG: Anti-gangs?

Mr Wood: The national anti-gangs task force in program 1.1, the keeping illegal guns off our streets program that received $60-odd million in additional estimates earlier this year. That funding continues right through to 31 December 2019 but, therefore, does not appear in the fourth column—the last column that we are discussing.

The joint police task force for Registered Organisations Commission is funded up to 30 June 2020.

Senator WONG: The joint?

Mr Wood: Joint police task force for Registered Organisations Commission. Again, as we approach 30 June 2020, there will be a conversation with government about what is required beyond that date. There is a cybercrime program that is funded up to the same date, 30 June 2020. Still staying within 1.1 rather than moving into 1.2, the enhanced protective security arrangements that we discussed, to some extent, earlier on are funded up to 30 June 2020. That is a measure that, depending on the threat status at the time, a conversation will be had with government about forward funding beyond that date, at that time.

Senator WONG: The enhanced security measures? That is personnel not capital, correct?—or both.

Mr Wood: All of the numbers that I am referring to at the moment—

Mr Colvin: The program itself does have capital money in it—
Mr Gunning: The reductions would be the operating costs. There would be people doing various roles and associated costs. The capital elements would have been spent in earlier years.

Senator WONG: Correct. The figures in 1.1 were looking at administered and departmental appropriation not capital expenditure or is that included? It is on page 97.

Mr Gunning: It does not include capital injections. It includes depreciation of items or assets that we already have.

Senator WONG: I should have made it clear. It does not include the accounting thing that means you can get a bit of money back.

Mr Gunning: To the extent it has been changed—

Senator WONG: But it does not include additional capital expenditure.

Mr Gunning: Not the new capital injections.

Senator WONG: The enhanced security measures, I apologise, can you remind me what that comprises? I cannot recall the extent to which this had been traversed previously.

Mr Gunning: That is in relation to the AFP?

Senator WONG: Yes.

Mr Gunning: That is AFP facilities.

Senator WONG: When I said you, I should have said anyone at the table.

Mr Wood: It has three components. The first component relates to personnel to increase visible guarding around our buildings.

Senator WONG: That is not just Parliament House, that is public—

Mr Wood: AFP.

Senator WONG: Yours, yes.

Mr Wood: The second component is the discussion we had earlier about hardening some of our buildings so that they are better resistant to a range of threats. The third component, which was delivered again through the MYEFO process, relates to some technology that would assist the AFP in identifying and warning of threats.

Senator WONG: To the AFP—

Mr Wood: Correct.

Senator WONG: or more broadly?

Senator Brandis: I think it is important, if I may add to—

Senator WONG: Thank you, Chair, my time is up.

Senator Brandis: Mr Chairman, I was just adding to Mr Wood's answer. I think it is important to understand that there is an expectation that, as needed, these programs will continue. If I might explain: Senator Wong points to in the line item that she has isolated from the PBS that, in the end years of the forward estimates, there appears to be a reduction. But, it is important to understand this: that is only because programs within the forward estimates come to an end before the final year of the forward estimates. In respect of each of those programs, there is an expectation that, as needed, those programs will be renewed until they come to the terminating year. Then, plainly, that renewal will not have occurred. That is why
there appears to be a drop-off in the final year of the forward estimates. That is because, as I say, those programs terminate before the final year of the forward estimates but, if, as is expected, they are renewed, then of course those figures would in the ordinary course of events be adjusted upwards. Senator Wong knows that but, nevertheless, that is the case.

CHAIR: I think most of us in this room probably understand all of that and know that. I suspect most outside would not have a clue what we are talking about but, anyhow, thank you for putting that on the record.

Senator HUME: I have questions about the trade union royal corruption task force. Who do I best direct those to?

Mr Colvin: Probably me, and I will ask Commissioner Close to come back to the table.

Senator HUME: Can you please tell me how many matters were referred to police forces for possible criminal prosecutions as a result of the Heydon Royal Commission into Trade Union Governance and Corruption?

Mr Colvin: Yes, I think we have those figures.

Ms Close: We have had 34 referrals that were received following the final report into the trade union royal commission.

Senator HUME: Thank you. You can take this on notice, but do you have those broken down by state?

Ms Close: I can take that on notice.

Senator HUME: I understand that there have been a number of criminal convictions that have been secured in relation to a number of offences: blackmail, fraud, perjury and obstruction of commonwealth officials—is that correct? Do you know how many have been secured?

Ms Close: I do not have the finalisation numbers at court, but I know we still have nine matters before the court.

Senator HUME: So there are nine matters before the court?

Ms Close: Yes.

Senator HUME: My understanding is that there are already seven criminal convictions that have taken place.

Ms Close: Again, I will take that on notice.

Senator HUME: Are there currently other criminal convictions ongoing in relation to the referrals from the royal commission beyond the seven convictions and the nine current proceedings? When you say there are 34 referrals, do I take away seven and take away nine and that is how many we have left?

Ms Close: No, we cannot actually correlate those exactly, because there have been some additional ones since the completion of the trade union royal commission. We are working, obviously, with the states and territories on some of those matters as well.

Senator HUME: That was something I want to ask about. My understanding is that both the Queensland police and the Victoria Police have pulled out of this task force. Is that correct?

Ms Close: That is correct.
Senator HUME: Why is that?
Ms Close: That was a matter for the Queensland police and the Victorian police to determine.

Senator HUME: What have they told you?
Mr Colvin: I am happy to answer that. Obviously, they were initially a part of the task force to deal with the matters that came out of the royal commission. They felt that those matters were, largely, substantially dealt with. They were happy to work with us on any follow-up matters or new matters, but they did not feel that there was a need to continue to put resources into the task force. They were very clear that they will continue to work with us on the investigations but, in terms of the ongoing nature of the task force, they felt that the initial objective had been achieved.

Senator HUME: They were funded, were they not? There was funding available for this task force, so this is just a choice for them.
Mr Colvin: There was funding available, yes.

Senator HUME: I find this extraordinary, because obviously the Heydon royal commission presented evidence of bribery, extortion, kickbacks, blackmail, intimidation and collusion with criminals. The list was endless.

Senator Brandis: Including 11 findings against a current Labor senator, I note.

Senator HUME: Just so, Attorney. I think I am the only Victorian at the table here, but Victoria was the epicentre of this. It was the epicentre of union thuggery and lawless CFMEU activity. It is the home of—

Senator Brandis: Senator Hume, I take exception to that, as a person who lives in Brisbane. I am bound to say that we citizens of Brisbane have also been the victims of that kind of thuggery and criminality.

Senator HUME: That is entirely true, Attorney, although I think Victoria has the dubious honour of being the home state and the power base of Mr John Setka. I will get your opinion on this: is it less likely now that Victorian union officials or employees that were identified by the Heydon royal commission will face charges because Victoria Police have removed themselves from the task force?

Mr Colvin: I will steer clear of opinion, but the Queensland and Victorian police have made a conscious decision based on wanting to remain a part of the task force as it was originally constructed. They have both been very clear that on any new matters or any matters that require further investigation they will work with us—just not in the task force construct as it existed up to this point. We are satisfied that all matters referred to us out of the royal commission have been followed up to the extent that law enforcement can follow them up. Anything new will be dealt with as a new matter.

Senator HUME: Is your understanding that the decision of Victoria Police and the Queensland Police Service to remove themselves from the task force was a decision of the police, or was it a decision of state governments?

Mr Colvin: You would have to ask the police that question.
Senator HUME: Thank you. Would you say that the matters being considered by the task force as a result of the referrals from the royal commission raise serious matters of potential criminality?

Mr Colvin: What I would say is that they raised matters that police and the director of public prosecutions at either state or Commonwealth level saw fit to take to the court. I think it is well documented that there were some serious allegations contained within that.

Senator HUME: Thank you. What has the funding from the Commonwealth government to the joint police task force assisting the royal commission allowed the AFP to do? There has been some additional funding allocated, I know.

Ms Close: That is correct. The government provided $6 million in 2016 to the AFP to continue the trade union police task force. The AFP has allocated 14 people across Queensland, New South Wales, the ACT and Victoria to continue the investigations. In addition to that, the New South Wales police have some funds for four officers to assist us in the New South Wales jurisdiction.

Senator HUME: Excellent. I think I will wind up my questioning there, but can I say, on behalf of all of Victoria, I wish you luck with your activities with this particular task force. It is extraordinarily important for Victoria, as it is for the rest of the country.

Mr Colvin: Thank you, Senator.

CHAIR: I will go to Senator Ludlam, perhaps for 12 minutes.

Senator LUDLAM: Twelve!

CHAIR: And then to Senator Roberts for perhaps 10 minutes, and then we might break.

Senator LUDLAM: I will try to be efficient. Thanks, Chair, and thanks, all.

CHAIR: Sorry, there has been an objection by the Labor Party to two crossbenchers going for—

Senator LUDLAM: Could I get mine out of the way before we hear the objection.

CHAIR: No.

Senator LUDLAM: I have been in here all morning.

Senator WONG: Just leave it. It is just a departure from your usual procedure, but if that is what you want that is fine.

CHAIR: Senator Wong, as I was just explaining to Senator Ludlam, I try to be scrupulously fair in who gets the call. My practice, if you are not aware—but I will repeat it—is that the two major parties, who have the most senators, get 15 minutes, then 15 minutes, then 15 minutes back to Labor, then 15 minutes to us, and then I go to the crossbench for 15 minutes. But, if there were a lot of crossbenchers here and we gave them all 15 minutes, they would monopolise the time, so I try to cut them down to 10. I was just saying that to Senator Ludlam and saying that I would compromise and give him 12 and Senator Roberts 10. Why? I am just trying to be fair. So Senator Ludlam 12 minutes, then Senator Roberts 10 minutes, and then back to the Labor Party after morning tea.

Senator LUDLAM: Let us try that out, Chair. Commissioner, you are probably not going to be surprised to hear that I want to ask you about the reports on 29 April of the illegal access by the Federal Police of a journalist's call records. I want to get some background on that. I
also want to acknowledge that you tasked one of your senior officers to provide me with a briefing, and I greatly appreciate that. I have no intention of straying into operational stuff this morning, and if I do then feel free to warn me off. When did the actual breach occur?

Mr Colvin: If we are going to go straight to the specifics, I will ask Deputy Commissioner Jabbour to help. We have the dates of the actual breach. Just while we are getting that material together, I will say the investigation is ongoing, so I appreciate that you do not want us to stray into operational detail. As I said on the day of the press release, this error should not have occurred. We found it; we declared it. Obviously we have taken a number of steps to remedy that situation.

Mr Jabbour: I will, for operational reasons if I may, be a little bit circumspect. I will say it was in the very early part of this year when we identified the breach.

Senator LUDLAM: Okay. You do not want to give us the specific day?

Mr Jabbour: The reason for that, to clarify, is that if we were to give the exact date then the basis of the inquiry may become apparent to the journalist concerned and, indeed, to others. That could potentially then stray into the disclosure.

Senator LUDLAM: Yes; I am with you. I do have a certain amount of background, so I do understand. Let us just take that as read.

Mr Jabbour: Thanks.

Senator LUDLAM: What is your process of due diligence for uncovering breaches like this? How certain are you that this is the only one?

Mr Jabbour: In relation to the process, we could step through that if that is helpful.

Senator LUDLAM: I think it would be. I have two process questions for you, so I will just put both of them on the table now.

Mr Jabbour: Certainly.

Senator LUDLAM: The process of due diligence by which you uncovered the fact that there had been a breach in the first place, and whether that uncovered—presumably if it had uncovered other issues of similar sorts, the commissioner would have fronted them in a similar way. I also want to go to your internal processes for signing off, so what the proper processes should have been. I understand there have been some changes made already. Are you happy to just run with that?

Mr Jabbour: Sure. I might combine them, if I may? If we look at the process of due diligence, it actually is part of the internal process that was established. The act enables authorised officers of the rank of superintendent or above to authorise applications to be made for metadata in accordance with section 178 of the Telecommunications (Interception and Access) Act. Where that differs, however, is if the matter pertains to a journalist and if we are attempting to identify the source of information to a journalist. In that event, we must apply for a warrant. That did not occur on this occasion, as the commissioner has made it clear. The process one follows is that we have an electronic application form that one completes outlining the nature of the inquiry, the criminal offence that is being investigated and the rationale for the inquiry.

Senator LUDLAM: If I could just pause you there?

Mr Jabbour: Please.
Senator LUDLAM: As you have done in the past, although this was a couple of years ago, could you table a properly de-identified copy of the request form?

Mr Jabbour: Yes. I have got it with me.

Senator LUDLAM: You do? Just to be aware: the copy that was tabled the last time I asked for one of these a couple of years ago was not redacted. Somebody had just whited out the info, and it ended up compromising another investigation. So take your time if you need to.

Mr Colvin: I recall that, Senator.

Senator LUDLAM: I wasn't trying to rub your noses in it, but if you have got something there—

Mr Jabbour: What may be helpful is there are different requests for different forms of data. There is actually a spreadsheet that I have outlining the process that one follows.

Senator LUDLAM: I love spreadsheets. Maybe in the interests of time, are you able to table that for us?

Mr Jabbour: Yes, absolutely.

Senator LUDLAM: That is great.

Mr Colvin: Senator, just while we are doing that: I think your question was also about the due diligence. This was identified through a routine audit of an investigation. As a matter of all of our investigations, not just these ones, and particularly sensitive ones, senior officers will routinely look over an investigation to say: ‘Should it continue? Should it take a different path? What are we doing well? What aren't we doing well?’ It was a routine investigation where a senior officer identified that data of a journalist had been sought and, when he inquired, the officer had not followed the right process.

Senator LUDLAM: All right, so that is how you picked it up. Do you want to use this opportunity to put on the record whether or not any other breaches of similar kinds were discovered on the way through that audit?

Mr Colvin: Yes, I can. Once we identified this audit, we then went about a further due diligence to check all such similar matters to make sure there had not been any other breaches. To that point, I am satisfied that there have been no further breaches of this particular piece of legislation.

Senator LUDLAM: Okay. That is on its way around. That will be a few minutes. Could you step through the 90-second version: what does an investigating officer need to do if they are following your processes to obtain a journalist information warrant?

Mr Jabbour: With the journalist information warrant, the member still completes the application form. He then submits it to an authorised issuing officer. In the past that was a superintendent; since this breach, we have now raised that to a commander level.

Senator LUDLAM: By how much does that shrink the pool of authorised officers?

Mr Colvin: Probably about one-third of the officers that there were before, if not less.

Senator LUDLAM: Rough numbers now?

Mr Jabbour: There are about 68 commanders, and there are around 300 superintendents. Not all of those—
Senator LUDLAM: Sorry?

Mr Jabbour: There are about 68—there are about 40 sworn commanders in the organisation. There are in excess of 200 sworn superintendents. So it is significantly reduces the number of issuing officers who are able to progress these inquiries.

Senator LUDLAM: Yes; it is about two-thirds. Okay.

Mr Jabbour: When it is identified that the purpose is to identify the source of a journalist, then an affidavit must be prepared by the applicant. That must then be vetted by the authorising officer—in this case a commander. We then must engage the Public Interest Advocacy Centre, and there are a number of those individuals who have been identified. We must provide them the opportunity to make submissions about the matters relevant to the issue of the warrant. We do not contact or alert the journalist or the firm for whom that journalist works. We go via the public interest advocate. The advocate then has the right to make submissions and question us in relation to the progress of such an application. So they are advocating on behalf of the journalist, if you understand me.

Senator LUDLAM: Yes; they are the public interest.

Mr Jabbour: Then the matter is progressed to an authorising officer. Again, there are a number: it can be the Federal Court, the Family Court or a nominated member of the AAT. If the authorising officer is satisfied on the basis of the application made through the affidavit, they will issue a warrant. That warrant is then provided with the application to the service provider, and they will provide us the information, the metadata, on the strength of the warrant and our accompanying application.

Senator LUDLAM: Thank you, I have also got the forms. The other committee members do not have them, but I have got a copy here of the forms. They are actually going to be quite valuable I think. How different is the process if an investigating officer wanted to pull the call records or metadata of one of the senators sitting at this table?

Mr Jabbour: We do not require the public interest advocate or an affidavit to be issued. The only time an affidavit is required and the public interest advocate gets involved is if it pertains to an application to identify the source of a journalist.

Senator LUDLAM: How much of your work is taken up trying to find out who journalists are talking to, and am I the only person in the room who is utterly creeped out by that proposition?

CHAIR: I do not know that the commissioner can answer the second question.

Senator LUDLAM: We could take a show of hands.

Mr Colvin: An absolutely miniscule amount.

Senator LUDLAM: Could we get some quantifiable information about how many?
Mr Colvin: I think we have just said—I am trying to not breach the act here—we have not done it.

Mr Jabbour: I cannot do it any other way. The AFP is not in a position to do it any other way than through an application for metadata.

Senator LUDLAM: Yes, and how often does that happen? I understand we have one breach—

Mr Jabbour: Zero.

Senator LUDLAM: No, it is obviously non-zero, because we are discussing a case now. How many other cases where you have gone through the process of applying for a journalist's information warrant?

Mr Colvin: Zero.

Mr Jabbour: Zero.

Senator LUDLAM: So this is the only time you have had a go at it—

Mr Colvin: That is correct.

Senator LUDLAM: and you buggered it up?

Mr Colvin: There is a great misapprehension that we take an interest in chasing journalists' sources. We do not. This was a particularly egregious breach of operational security that put directly at risk the lives of officers and the public, and we felt we needed to try and ascertain how that breach occurred. I am always surprised, although perhaps less surprised now, at the amount of police material that finds its way into the public arena, particularly through media outlets. We do not chase that material. It is only when there is a particularly egregious concern, and this matter was that.

Senator LUDLAM: Okay. I find that a little surprising. So I guess if a minister or a department makes a referral to the Federal Police—and I know this has happened on behalf of Immigration and Border Protection on any number of occasions—and they are trying to identify who a journalist is talking to, it does not automatically flow that you would seek a warrant to get into their phone or—

Mr Colvin: Senator, thank you, because it gives me an opportunity to also dispel a few other myths.

Senator LUDLAM: Please go ahead.

Mr Colvin: We do not do that, simply because even if we could show the existence of a call—and all it would be is the existence of a call—between an individual and a member of the media—

Senator LUDLAM: Or an email or a text?

Mr Colvin: Well, no, we are talking about metadata, so it could be the existence of—the metadata legislation does not include content. Content is a different regime again.

Senator LUDLAM: I understand that. Senator Brandis and I have been through this over a course of years and years.

Mr Colvin: That is right. Even if we could show that, that is actually evidence of very little, because, unless we can show that there was a transfer of information, that does not take us anywhere near the elements of proof that we need to establish that a leak has occurred. So
we do not do it unless we can absolutely narrow down our lines of inquiry to such a degree that we feel that the existence of the phone call will actually provide evidence, and, as we have just said, we do not do that as a routine matter.

**Senator LUDLAM:** I just heard the bell go off, so I am going to wrap up before the chair closes this down. Will the forms that you have tabled for us cover the process for acquiring call records or metadata from members of the public or politicians, or do they only cover the case of accessing a warrant?

**Mr Colvin:** It is one form for all, but with specific reference to if it is looking for—and it is not if you are doing the metadata of a journalist; it is if you are looking for the source of a journalist's article or information.

**Senator LUDLAM:** Which is why you would be after their call records; I understand that. All right, one form to rule them all.

**Mr Colvin:** Well, I will say that what we are very careful about with this legislation is not to carve out a profession in society and say they are completely free from investigation by police. It was to carve out, particularly, the element of protecting a journalist's source.

**Senator LUDLAM:** I understand. I do not have a fundamental disagreement with that; I think you should require some form of warrant to access these call records on anybody.

**Mr Colvin:** We understand that.

**Senator LUDLAM:** The people at this table, people sitting behind you, diplomats or High Court justices. But we lost that argument. Senator Brandis won that one.

**Mr Colvin:** I understand, Senator.

**Senator LUDLAM:** I will come back later. The chair has been very patient with me. Thank you for your time.

**Senator ROBERTS:** Thank you for appearing today. I certainly value the police, and, since entering the Senate, especially the Australian Federal Police, firsthand.

**Mr Colvin:** Thank you, Senator.

**Senator ROBERTS:** Do you agree, Commissioner, that Senate estimates are all about accountability and transparency for the Australian people?

**Mr Colvin:** I would agree with that, yes.

**Senator ROBERTS:** Could you please tell me, before I start my line of questioning, what your annual remuneration is.

**Mr Colvin:** My annual remuneration? This may seem odd: I will have to go and check that. I am happy to do that.

**Senator ROBERTS:** Thank you.

**Senator Brandis:** It is available on the Remuneration Tribunal website; it is not a public secret.

**Senator ROBERTS:** Thank you, Attorney.

**Mr Colvin:** I am not trying to avoid the question.

**Senator ROBERTS:** No, I understand that.

**Mr Colvin:** It is not something that drives my motivation to be here.
Senator ROBERTS: I guessed that; if you could take that on notice, please. My questions relate to the bombing of the Australian Christian Lobby headquarters in Canberra on the evening of 21 December 2016. In February of this year, I asked the Australian Federal Police in estimates a series of questions on notice regarding this. I assume you would be aware of that.

Mr Colvin: Yes.

Senator ROBERTS: Despite the passage of three months, the Australian Federal Police have failed to reply to my questions. Can you see that this could be seen as a profound disrespect of the public policy process?

Mr Colvin: We have responded. I am not sure why those answers have not been tabled but we always respond to our questions on notice, and I personally have seen the response to your questions.

CHAIR: Were they answers to Senator O'Sullivan or to Senator Roberts?

Mr Colvin: I think it was a combination, Chair.

CHAIR: I was wondering whether that was why Senator Roberts had not seen them.

Mr Wood: If I may, additional estimates question 17/043, Bombing of Australian Christian Lobby offices, from Senator Roberts—we have prepared that response. I do not know, if it has not been tabled yet, why.

Mr Colvin: We submitted our response in early April.

Senator ROBERTS: That makes it my responsibility to chase it up.

Mr Wood: We do take that seriously—given your introduction.

Senator ROBERTS: That is why I was surprised to not get it. Was it question 043?

Mr Colvin: It was AE 17/043.

Senator ROBERTS: Thank you very much.

Senator HINCH: Back in February estimates, you gave me figures that in 2015 800 people on the so-called secret sex offenders register went overseas and of them 340, I think it was, went to South-East Asia—to Myanmar, Cambodia and the Philippines—on what I call 'child rape holidays'. Do you have the figures for the next year, 2016?

Mr Colvin: I will just check—we do not have them at the table, but we can certainly get them for you. I am told we do not have those figures and so we will take it on notice.

Senator HINCH: You would probably be aware that laws are being planned to have passports pulled for sex offenders. I am hoping that will get up in the next few months. That trade has not dropped off, has it?

Mr Colvin: No. I would like to tell you that it has, but it has not. I will say on that we obviously work very closely with our partners. Your point is that they should not be allowed to travel, but at this stage they can and so we work with our partners overseas to stop them entering the countries. There has been good success within the region, particularly with Indonesia, at turning people around at the border and that is a sovereign decision for those countries. So there has been a change with some countries turning these people around but, by and large, yes, the trade still exists.
Senator HINCH: It seems to me that there has been a bit of a shift with the strengthening of the relationship between Australia and Indonesia. Only last week I think two were turned back to Australia from Bali.

Mr Colvin: It is quite regular. I do not know that specific case.

Ms Close: I do not know that specific case either, but we have been working extremely closely, particularly with South-East Asian countries—Indonesia, as you mention—in relation to the travel of child sex offenders. Sharing of that information happens on a regular basis.

Senator HINCH: Commissioner, do you ever get alerts from the states when they find out that a convicted sex offender is about to go overseas? I have heard that sometimes you now intercept them at our borders rather than at their borders.

Mr Colvin: We do. It depends on what information the states have available. They will ring it through to the AFP. It is very difficult for us to stop them travelling. If they have a legitimate passport and a legitimate visa, it is difficult for us to stop them, unless there are some court imposed conditions on them. If we can stop them travelling, we will. Otherwise we will alert the country of destination.

Senator HINCH: Without giving too much away, if you have reason to question a person about to leave the country about committing a crime, I presume you could go through their mobile phone and find child sex images and stuff like that.

Mr Colvin: It would vary along the circumstances, but yes. We would need to have a reasonable cause to do that, of course.

Senator HINCH: I hope that cabinet comes along. I am sure you would appreciate if we could get a passport ban in on these people.

Mr Colvin: There has been good support for the proposals that you put forward. In fact, Deputy Commissioner Close may be able to update you a little more on that.

Senator HINCH: Senator Brandis, do we have your support in cabinet?

Senator Brandis: You are asking me to comment on cabinet business before the cabinet, and you know I cannot do that.

Senator HINCH: Just being cheeky. Thank you.

CHAIR: Senator Chisholm.

Senator WONG: We have got a set of questions from Senator Chisholm and a set of questions from me.

CHAIR: You have 15 minutes.

Senator WONG: I am just informing you.

Senator CHISHOLM: Commissioner, I am only new to the Senate. How long have you been commissioner for?

Mr Colvin: I was appointed in October 2014.

Senator CHISHOLM: I will not ask you your salary, because I understand you do not have it, but do you know if you get a pay rise each year that you have been commissioner?

Mr Colvin: My pay is determined by the Remuneration Tribunal. It is not a pay rise each year. They regularly review. Again, I do not know how often they review.
Mr Wood: They are reviewed in the same time frame as members of parliament and others. In a normal cycle, it would generally be July each year; however, that has not always been the case in the last four or five years.

Senator CHISHOLM: How does the executive team operate in terms of their salaries?

Mr Colvin: The executive team has broad parameters that the Rem Tribunal will set about what, say, an SES band 3 should be entitled to as compared to my salary, but that is set internally by the AFP.

Senator CHISHOLM: Have the executive been getting a pay rise each year?

Mr Colvin: No. In fact—and I know there has been media reporting that is inaccurate—the SES officers of the AFP have not had a broad pay rise for over two years. Of course, people can move through increments until they hit the top increment of the level that they are at, so some may have moved through an increment, but there has been no pay rise applied, almost entirely because we are in a negotiation with the workforce about their pay and conditions and, as a matter of transparency and fairness, I do not think it is right to give the SES a pay rise while we are still in negotiation for our members.

Senator CHISHOLM: Is that negotiation with the members still unresolved?

Mr Colvin: It is unresolved. We have not yet gone to a vote. I am very hopeful that we will be in a position to go to a vote within weeks. We are just in the final stages of seeking authority from the Public Service Commissioner as part of the guideline which we have to bargain within. Once we have got that final approval—which, as I said, I am hopeful we will have within a week—we will be at the point of taking the agreement back out to the negotiation table one more time to go to the organisation for a consultation phase.

Senator CHISHOLM: How long will it have been since officers have had a pay rise?

Mr Wood: The notional expiry of the enterprise agreement that we are referring to was 8 March 2016, but their last pay rise occurred the year prior to that. Unlike Public Service Act agencies, our agreement did not expire as far back in history as Public Service Act agencies. Ours actually ran through to March 2016, and we commenced negotiations just before then. The last pay rise was in 2015, the same as the senior executive service, but the agreement itself did not actually expire till March 2016.

Senator CHISHOLM: So the officers involved in, for instance, the counterterrorism unit would be impacted by this. They would not have had a pay rise since then.

Mr Wood: Again, if they have increments, they would have moved through the increment band range, but in terms of a pay rise, as we are discussing, no staff across the organisation at and below what we call the band 8 level have received a pay rise since the time frame we just mentioned.

Senator CHISHOLM: I imagine that would really impact on morale of the staff given that they have gone so long since they had a pay rise. Is that something that you monitor?

Mr Colvin: We are in a negotiation, so I want to be careful, but of course I think it is in my interest and the organisation's interest that we have our enterprise agreement resolved as quickly as possible so there is certainty. I believe that my organisation has good morale because the staff are doing good work that is in the interests of the Australian community. That is certainly the feeling I have. But is it an irritant that we have not been able to resolve
the enterprise agreement? Yes, it is. I am sure that my members, as much as anybody, want to resolve it and move forward.

Senator CHISHOLM: But is that something you have tried to monitor? Are you aware of morale issues resulting from the impasse?

Mr Colvin: We hear bits and pieces from, for instance, our association about morale. I do not always take that as gospel. But we do try and monitor it. Of course we monitor and keep an eye on morale, not just because of pay and conditions but because of workload and a range of other factors.

Senator CHISHOLM: At the supplementary estimates in February, you said that, assuming you got the enterprise agreement through, you were sure that the members would have an expectation that it would include a pay rise. Then you confirmed that the 2016-17 budget figures did not contain any funding for a pay rise. I think that is correct?

Mr Colvin: That is right. Other than small movements in our budget, the AFP is not funded directly for a pay rise.

Senator CHISHOLM: Has the 2017-18 budget set aside any money to fund a pay rise?

Mr Colvin: Internally, we are obviously preparing our contingencies for what a pay rise might look like, but until such time as an EA has been put to the staff and voted on, we are not locking those figures in. We clearly have to know what it will cost us in real terms.

Senator CHISHOLM: Given the length of time that has expired, would any agreement reached include back pay—going back to when the last agreement expired?

Mr Colvin: Under the bargaining guidelines we are operating under—the government's bargaining guidelines—there is no ability for us to provide back pay.

Senator CHISHOLM: These staff would have gone for that period without getting a pay rise and then, when an agreement is reached, it applies only from that date?

Mr Colvin: From that point forward—that is correct.

Senator CHISHOLM: Minister, do you have any comment on the effect that would have on morale—the fact that these staff have gone through such a long period without a pay rise and that, even when an agreement is finally reached, it will have been more than 18 months since they have had a pay rise?

Senator Brandis: The AFP give outstanding service to the Australian people.

Senator CHISHOLM: Does it concern you that this would impact on morale? What would the average wage be for an AFP officer?

Senator Brandis: I am not going to comment on rates of remuneration, but, as the minister ultimately responsible for the Australian Federal Police, I can assure you that the performance of its officers—from the highest levels, like the officers you see at the table, right through the ranks—is outstanding, and the Australian people should be proud of them.

Senator CHISHOLM: You would think that a government that valued that would provide the opportunity for them to get a pay rise.

Senator Brandis: There is no doubt that the government immensely values the service of every single man and woman in the Australian Federal Police. In every element of the public sector, as in the private sector, there will from time to time be negotiations in relation to
issues of work, remuneration and conditions. I think it is best to allow those negotiations to take their course—and for politicians like you and me not to interfere with them.

Senator CHISHOLM: Commissioner, can you confirm that the fact that there will be no back pay is a result of government policy?

Mr Colvin: We are bargaining within the government framework. If we imagined that the government framework did not prohibit back pay, that would be an issue for the negotiation of the EA. That could then be an issue that may or may not be negotiated into the enterprise agreement.

Senator CHISHOLM: It is government policy that prohibits it?

Mr Colvin: Correct.

Senator CHISHOLM: I understand you have not settled on the pay rise, but once that is done are you required to find savings from elsewhere to offset the pay rise?

Mr Colvin: The pay rise for the organisation?

Senator CHISHOLM: Yes.

Mr Colvin: Yes.

Senator CHISHOLM: Have you identified where those savings will come from?

Mr Colvin: Yes. Part of the bargaining guidelines—and the reason we are now before the Public Service Commissioner for his approval—is that we have to fund any pay rise through productivity gains in the organisation.

Senator CHISHOLM: Can you rule out removing the high-volume operations payment?

Mr Colvin: No, I cannot rule that out.

Senator CHISHOLM: That is still part of the negotiations?

Mr Colvin: That is, yes.

Senator CHISHOLM: For clarity, who does the high-volume operations payment impact on? What type of work do the people do who receive that?

Mr Colvin: For clarity, the AFP is proposing, as part of this agreement, the removal of the 35 per cent allowance that is paid to approximately 280 employees called the high-volume operations composite allowance. That allowance solely compensates for up to an additional 10 hours of work per week. The removal of this allowance will result in employees being paid for the hours they work, rather than being prepaid for those hours. Those 280 employees, if the enterprise agreement is successful—so I need to be very careful—include some members of our close personal protection teams, members of our technical operations and surveillance teams.

Mr Wood: Senator, I know you were distracted for a second: at the moment, it prepurchases those 10 hours overtime. If the overtime is still worked, the proposal is they will be paid overtime instead after making the claim for overtime. The other thing to be aware of is that these officers also receive a 22 per cent composite, which is the operational working pattern for the organisation.

Senator WONG: I will go to the provision of departmental liaison officers to the minister's office.
Mr Colvin: Yes.

Senator WONG: Can I call them DLOs or is there another name?

Mr Colvin: We call them law enforcement liaison officers.

Senator WONG: Okay, I will call them law enforcement liaison officers.

Mr Colvin: It is only because we distinguish them from departmental liaison officers.

Senator WONG: That is fair enough; that is reasonable. How many law enforcement liaison officers are located in the minister's office?

Mr Colvin: One.

Senator WONG: Only one? My recollection is that generally the tenure is about a year?

Mr Colvin: No. The tenure would be more than a year. It is generally 18 months. It could be two years, depending on cycles. I do not like to leave people there too long, because it is a difficult job.

Senator WONG: Sorry, can you say that again?

Mr Colvin: I do not like to leave officers there too long. It is a difficult job.

Senator WONG: Right. What is the norm?

Mr Colvin: The norm would be 18 months, but there is no set period. It is not an 18-month transfer; it is dependent on negotiation.

Senator WONG: How long has— I cannot recall the various reshuffles—Minister Keenan been the relevant minister?

Mr Colvin: Minister Keenan has been the minister for approximately—

Senator Brandis: He has been the relevant minister since the election of the coalition government in 2013.

Senator WONG: How many law enforcement liaison officers have worked in Minister Keenan's office since he became minister?

Mr Colvin: I would have to check and take that on notice. I think we would be on our third at the moment—I was just told it is our fourth.

Mr Wood: The first of those four was in the previous office.

Mr Colvin: In the transition.

Senator WONG: Has the tenure been less than 18 months for most of the three years, post the—shall I just call it the transitional position?

Mr Colvin: On the basis of time, it probably would have been less than 18 months—yes.

Senator WONG: Can you tell us why that is the case.

Mr Colvin: Sometimes, it might be career opportunities. I believe one may have been promoted while they were in the position. We want them to perform other roles within the organisation. There are a range of reasons.

Senator WONG: Can you tell me the tenure of the three? Leaving aside the—

Mr Colvin: We will check that. We will give you the exact details of when each of our liaison officers started and finished—I will take that on notice.

Senator WONG: If you could, thank you. Are you able to get that before the end of the—
Mr Colvin: Yes, we think we can get it quite quickly.

Senator WONG: I appreciate that. Have any of the law enforcement liaison officers who have been posted to the office requested a return to the AFP?

Mr Colvin: I do not think so.

Senator WONG: Have there been any complaints from a law enforcement liaison officer in Minister Keenan's office about work at the minister's office?

Mr Colvin: I am sure all of them would prefer to work fewer hours, because they work very long hours up there. But I am not aware of any specific complaints. I am not sure what you mean.

Senator WONG: So it is a very general question.

Mr Colvin: I am not aware of specific complaints would be my answer.

Senator WONG: Who would they complain to? If they had an issue with a minister, leaving aside the individuals concerned—and I should be really clear: I am not going to ask about anybody's names et cetera. If a law enforcement liaison officer had an issue with conduct, workload—various employment related experiences—what would the protocol be?

Mr Colvin: I think, in the first instance, I am sure the officer would try and resolve any issues within the office with the individual concerned. If they were not satisfied that they had resolved it, then they would bring that complaint to the AFP. It would be a matter that I would then—or the chief of staff or someone senior—raise with, most likely, the minister's chief of staff.

Senator WONG: And have any concerns been raised with the minister's chief of staff?

Mr Wood: We have had conversations about making sure the flow of information works better to make the LELO's role easier and more effective. I am not aware of other forms of complaint. I am not quite sure what you might be alluding to but, certainly,—

Senator WONG: I was taking the commissioner's evidence to its next step. The commissioner gave evidence, I thought, about what the protocol would be, if there were complaints. So, essentially, I was asking: as a result of complaints, have those protocols been followed? Have there been discussions with the minister's chief of staff? I am conscious my time has expired, and you might want the opportunity to get some information and advice. I am happy to pause there, Chair, if you wanted to go to someone else.

CHAIR: Yes, I do. Thank you, Senator Wong. We will break for 15 minutes for morning tea then I will go to Senator Feeney and then to Senator Xenophon. Commissioner, you have a—

Mr Colvin: In answer to Senator Wong's questions, I want to be quite specific: we will take on notice, if there have been any complaints that have been brought to our attention that we have raised with the minister's office

Senator WONG: Yes. I asked you: if there was problem, what would the protocol be. You described it. I then asked, essentially, have any steps in that protocol been—

Mr Colvin: Let me make sure that we are giving you the accurate answer; we will take that on notice.

Senator WONG: Thank you.
CHAIR: We will stand adjourned but we will come back not with Senator Feeney but with Senator Fawcett. We will be back at five past 11.

Committee suspended from 10:47 to 11:09

CHAIR: I call back to order the Senate Legal and Constitutional Affairs Legislation Committee in their inquiry into the 2017-18 budget. It is time to move on to the Human Rights Commission, but senators still have questions of the Australian Federal Police, so we will go until we are finished with them.

Senator FAWCETT: Mr Moraitis, my questions go to organised crime. Before I get to the substantive part, I would like to put one question on notice. In July 2011, the House of Representatives Standing Committee on Social Policy and Legal Affairs issued a report looking at advertising standards. Recommendation 2 of that called for a number of actions by the Attorney-General's Department, including a review of the self-regulatory system and then five-yearly reviews. Could you get back to the committee with an update on what action was taken against recommendation 2 and whether those reviews are in fact ongoing. Thank you.

The Australian Crime Commission made the statement about 12 months ago that organised crime gangs have become a fertile recruiting ground for terrorists and that it is investigating increasing connections between radicalised terror groups and criminals. On that basis, I am interested if you could outline what task forces are currently in place across the states and territories and the cooperation between your department and the AFP with the states on organised crime and gang crime?

Mr Colvin: I will hand to Deputy Commissioner Close in a minute, but I will start. I think you are also talking about the linkage between that and counterterrorism. We have our joint counterterrorism teams that work across every state and territory jurisdiction. We also have, in a number of jurisdictions, joint organised crime groups—working with the state and territory police, the ACIC and the local crime commissions, if they exist, depending on the forum. We also have the National Anti-Gang Squad, where we coordinate the efforts of the states and territories and that is targeting largely organised crime in gang formats. There is a range of initiatives that we have in that place. I am not sure if Deputy Commissioner Close wants to add any detail.

Ms Close: In terms of the National Anti-Gang Squad, I can advise that we have 91 members from the Australian Federal Police, state and territory police, members from the Australian Criminal Intelligence Commission, Border Force, the Department of Immigration and Border Protection, the ATO and Human Services who support that activity. As the commissioner mentioned, we also have the joint organised crime task forces and we work with the state and territory police services as well as AUSTRAC in relation to those sorts of investigations across Australia.

Mr Colvin: We have the Serious Financial Crime Taskforce, which we would say is also targeting organised crime, and there we work with Taxation, AUSTRAC, Australian Border Force and ACIC.

Senator FAWCETT: That is a significant investment of resource. How do you measure success? What is your threshold for outcomes and what have the outcomes been?

Mr Colvin: I might get someone at the table to pull out the key performance indicators. You raise a good point. Our traditional measures of success in this space have been confined
to arrests, prosecutions and drugs seized. I think that is a relevant way to measure our success but of course it does not measure our disruptive effect. We are working very hard on measures that can improve our disruptive effect, but we do have some figures about our key performance indicators to date.

Ms Close: I have some overarching key performance indicator outcomes in terms of drugs seized, assets seized or restrained as well, and I also have some specific statistics around some of those task forces that I can provide to you. Generally in terms of the amount of drugs seized, year to date this financial year is 9.6 tonnes. We also have restrained $44.3 million worth of assets. That is a total across all of the operational work that the Australian Federal Police does in conjunction with these task forces. Specifically in relation to the National Anti-Gang Squad task force and teams around the country, we have arrested more than 1,030 people and that resulted in more than 3,000 charges in relation to those offenders. We have seized more than 5,600 illegal weapons. We have seized $5.8 million in cash and illegal drugs and more methamphetamine as well. In relation to those joint organised crime task forces that I mentioned we have arrested, since July 2016, 58 people, we have laid 28 charges and we have seized $2.7 million in cash and illegal drugs and a significant amount of methamphetamine, cocaine and cannabis.

Senator FAWCETT: You mentioned 3,000 or 3,500 charges over weapons?

Ms Close: Yes, there were more than 3,000 charges. There were 3,170 charges for the people in the National Anti-Gangs Squad investigations.

Senator FAWCETT: Sorry, I thought you mentioned that you had seized a number of weapons.

Ms Close: That is right. A range of weapons have been seized. Just from the National Anti-Gangs Squad itself, more than 5,600 illegal weapons have been seized.

Senator FAWCETT: Can you give us an indication: are they mainly handguns or long arms or automatic weapons?

Ms Close: It includes a variety of receivers, frames and replicas as well. It is 4,683 receivers, frames and replicas in that total amount.

Senator FAWCETT: Given the connection made by the ACIC between organised crime and gangs and terror recruitment, do you see the possession by organised crime and gangs of weapons, and the potential for those to end up in terrorist hands, as a significant risk?

Mr Colvin: Absolutely. We are always very conscious of any information or intelligence we receive where we feel that weapons are finding their way to people of interest for us for terrorism. That is a key line of inquiry for our joint counterterrorism teams, yes.

Senator FAWCETT: How many arrests have you made? Can you give us an idea, in terms of organised crime, of the number of people arrested and the number of people who, having been convicted and perhaps done a sentence, are then arrested for a subsequent crime in those areas?

Mr Colvin: We would probably have to take that on notice. We would certainly have a number of arrests that we have made over certain periods of time, but we would have to break down which of those were for organised crime matters and which of those were for different types of matters. The second part I think we would find very difficult to answer.
Senator FAWCETT: In terms of organised crimes and gangs, how extensive is the incidence of coercion for people who have an association with those gangs? Do you find that coercion of other parties is part of how they work?

Ms Close: It certainly is a part of the way that they tend to operate, their modus operandi. In terms of numbers or statistics in respect of that, I would have to take that on notice, because that is quite specific offence to obtain.

Senator FAWCETT: You might be aware that at the moment the government is trying to close a loophole in the issuing of aviation and maritime security identification cards either for people who have been convicted of serious criminal acts or for organised crime. Do you have concerns that at the moment somebody who has been convicted of a serious organised crime or has an association with an organised criminal outfit is able to access the secure areas of airports?

Mr Colvin: That is a matter of policy that the government is working through at the moment. We are working very closely with the department and the department of infrastructure. I want to be careful. Yes, as law enforcement officials we are concerned about access to firearms and about people who have privileged places where they can facilitate crime. That is why we are working so closely with the relevant departments, to make sure that the policy is as sound as it can be.

Senator FAWCETT: So you would welcome the amendments that the government has put forward to make it a legislative basis to not issue someone access to a secure area airside if they have that organised crime—

Mr Colvin: Yes, and I think we are on the record as supporting that legislation.

Senator XENOPHON: Commissioner Colvin, at last estimates I traversed the topic of mental illness and bullying in the AFP. There have been some changes afoot in this space and you did provide me with a cultural change report implementation snapshot, which was an annexure. Thank you. Specifically, and perhaps on notice, could you give me an update on progress you are making in that area? Because of time constraints—

Mr Colvin: Would you prefer that on notice? We are happy to go through it now.

Senator XENOPHON: I think, given the time constraints, I would, but I will ask some specific questions and you might be able to deal with those then. And please understand it is the time constraint that I am concerned about.

Mr Colvin: Yes, I understand.

Senator XENOPHON: Specifically in relation to officers being deployed overseas, what mental health support services are available to them whilst on deployment and once they return to Australia, and is there any continuity between the two?

Mr Wood: There is pre-screening, as well as screening for mental illness during the deployment itself. The chaplain, or chaplains, and the psychologists do visit the offshore missions from time to time, and as well there is the support of the Employee Assistance Program extending overseas. There is also a welfare officer who has been embedded in the international part of the organisation particularly to work with families back in Australia of members who are currently posted offshore.

Senator XENOPHON: So there is some continuity in support?
Mr Wood: Yes. Having said that, it needs to improve.

Senator XENOPHON: So there is not any continuity at the moment?

Mr Wood: Sorry, there is.

Senator XENOPHON: If somebody is getting help overseas, do they have the same people helping them when they are back here?

Mr Wood: They can come back to the same chaplain and they can come back to the same AFP psychs. If they have established a relationship with a particular psych in, say, the Employee Assistance Program, they can book time for that same person too.

Senator XENOPHON: Can I just go to that issue? The AFP employs 5.6 full-time equivalent psychologists, I think. Is that right?

Mr Wood: Correct.

Senator XENOPHON: They are all based in Canberra. Is that the case?

Mr Wood: That is correct.

Senator XENOPHON: So, all members outside of Canberra who witness traumatic events, or are suffering from PTSD, do not have face-to-face access with those professionals. Is that the case?

Mr Wood: Those professionals will deploy. Two things: they will deploy as a result of a significant incident, and they will also travel around just to establish rapport and a relationship with the officers, so people know who they are.

Senator XENOPHON: But does that mean that there is not necessarily any face-to-face help from a qualified psychologist for any AFP members outside Canberra?

Mr Wood: If they use the Employee Assistance Program, there are 790 registered psychs and social workers as part of that network, and 80 per cent of the contact with the employees—

Senator XENOPHON: Sorry, eight or 80 per cent?

Mr Wood: Eighty per cent of the contact with the Employee Assistance Program is face to face.

Senator XENOPHON: Can you give me some details in terms of the counselling for these matters. How much of the 5.6 FTE psychologists takes place face to face and how much of it is over the phone?

Mr Wood: I will take that on notice, Senator.

Mr Colvin: I think this is important, as well. Those permanently employed clinical psychs that we have are not the principal way that professional support is delivered. The principal way it is delivered is through our Employee Assistance Program with Davidson Trahaire Corpspsych. If I am an officer in Sydney and I register that I want to get some support, then I will go through and get a local contracted medical professional to help me. We have recognised that that model has flaws. It has got strengths but it has also got limitations, and that is why, since we last spoke at estimates, we have engaged Phoenix Australia, who are the national centre for excellence in post-traumatic mental health, to work with us to improve that model.
Senator XENOPHON: I was going to go to the issue of Phoenix Australia. Will this include mechanisms for follow-up support from the AFP once Comcare claims are lodged?

Mr Wood: Yes, Senator. One of the other things that has happened since we last spoke is that the welfare officer network training is under way, so we will have around 40 members right across the country and in the bigger postings offshore. That will be face to face, so they can help people connect to the professional services that are available.

Senator XENOPHON: I might ask you to take on notice: what strategies are in place for debriefing after traumatic events, to the extent that you are able to disclose?

Mr Wood: We could certainly go into that.

Senator XENOPHON: In terms of the recommendations of the Broderick review and their status, whilst the appendix was helpful, could you take on notice a completion date for implementations of all the outstanding recommendations, or at least an approximate date, a range of dates for the implementation of all the recommendations? I also want to go to the issue of you advising that 25 per cent of insurance claims made so far this year were for psychological or psychiatric injury.

Mr Wood: That is right.

Senator XENOPHON: How many claims have been made in total? Are you able to give me those details now?

Mr Wood: It is 94. I will confirm I have got that figure right. Do you mean in total?

Senator XENOPHON: It sounds like a very educated guess.

Mr Wood: My recollection is that there are currently 94 open claims which have been lodged any year, not necessarily lodged this year.

Senator XENOPHON: Right. Can we get from you whether there has been in the last, say, three years there has been an increasing decline of psychological/psychiatric claims as a percentage of overall claims—whether there is some trend of a decline or increase or steady relation to—

Mr Wood: It is an increase. But we can quantify that for you.

Senator XENOPHON: A significant increase?

Mr Colvin: We will have to check that but to be quite frank I would hope and expect that it is an increase because we are trying to destigmatise that it is okay to come forward.

Senator XENOPHON: That is one of the big issues of mental health.

Mr Colvin: Absolutely.

Senator XENOPHON: Right. We have spoken to quite a few people who have had matters—and I think my colleague Senator Kakoschke-Moore has also been involved—where there have been significant delays in the AFP providing relevant information to CommCare. My office has heard from officers who have said that they have had to wait almost a year for the AFP to lodge relevant documents with CommCare in order for their claims to processed. Is there is a standard in place for how long the AFP has to provide necessary documents to CommCare? Can you comment as to the adequacy or otherwise of waiting almost 12 months for a response in order for a claim to be processed?
Mr Wood: Yes, there is a standard, and CommCare have best practice guidelines for all their clients which we would seek to abide by.

Senator XENOPHON: Which is?

Mr Wood: My recollection is it is two weeks for the initial claim but I will need to check that because I am not often involved in the individual lodgements, but I am certainly not aware of complaints of the AFP taking 12 months to do that. I am aware of a couple of recent claims that went in where I know they were lodged in less than two weeks.

Senator XENOPHON: Sure. Can you on notice provide me with details of how many times in the past year this standard has not been met. I also asked about the number of bullying claims, and you advised there were three that were accepted by CommCare. Was that three made or three made and accepted. If you could indicate that?

Mr Wood: I will get the details on notice, but I could not break them down.

Senator XENOPHON: Let me just roll some off on notice because I think that is the fairest way of dealing with them.

Mr Wood: While you find the next question. Certainly the number of psychological injury claims as a percentage of all claims accepted has over a four-year period risen from about 13 per cent to about 21 per cent of accepted AFP claims. Yes, there is an increase; that is the extent of it.

Senator XENOPHON: The Commissioner has made the point that you want to destigmatise mental health issues that might be work related.

Mr Wood: Yes.

Senator XENOPHON: For the bullying claims, if compensation was awarded in those instances, what happened to the person who carried out the bullying in terms of any disciplinary or other action? There are concerns that, when reporting bullying allegations, these reports are being sanitised. What are the mechanisms and safeguards in place to avoid this from happening? How many of the total number of bullying complaints have been directed at senior management? If you could take that on notice.

Mr Wood: We certainly gave some answers aimed at senior—

Senator XENOPHON: You mentioned that—I think on notice—that since 22 August 2016 there had been 97 bullying complaints to Safe Place. Is that because—as I recall it—this is a new arrangement?

Mr Wood: Yes. When you asked about what were the arrangements now a moment ago, that is a critical new arrangement. It is designed to take away the concerns that were raised in the Broderick Report about the way that we had previously handled complaints, including some of the issues you just mentioned, and so as a result there has been an increase in the number of reports of bullying. The Safe Place figures would be even higher again. I am just aware that since we answered the questions that went back to you after the last estimates, there has been some more.

Senator XENOPHON: How many more since then?

Mr Wood: All I know is that I left the office yesterday. The person who runs this area said, 'Look, we could update the figures if the Senate wants something.'
Senator XENOPHON: If you could update those figures. How many of those complaints have been directed at senior management and how are they being addressed? You might want to take that on notice.

Mr Wood: The first of that we will answer. We will update the answer because we have already provided that answer in the questions on notice. We will update that as well. In terms of how they are dealt with, one of the things that Broderick strongly recommended was that the person who is complaining has control over what happens next. Rather than the matter being taken out of their hands and automatically going to professional standards, that the individual can say, ‘I would like to sit down and have a mediated conversation with the person who I believe has been bullying me, or I want it referred to professional standards.’ There is a range of responses to that second part of your question.

Senator XENOPHON: Okay. Will the inquiry that is now being conducted by the National Centre for Excellence in Posttraumatic Mental Health, set to report in November, be made public?

Mr Colvin: We had not actually turned our mind to that.

Senator XENOPHON: It is being conducted now?

Mr Wood: Correct. They have started the work. They have done a literature review. They have started one-on-one interviews with staff right across the organisation.

Senator XENOPHON: Thank you for those responses. On something completely different, I have raised with the AFP issues of matters that Mr Olsen raised about airport security matters. He gave evidence to a Senate committee looking at these issues of airport security and he did so, I think, very much in the spirit of public interest. How has the AFP acted on the submission and further correspondence from Mr Olsen given the concerns he raised about airport perimeter security in particular?

Mr Phelan: As you are aware, that gentleman, I know, has made a number of submissions to parliamentary committees. Those submissions have been made to us as well. He has also made some additional submissions to us. We have spoken on at least two occasions. Some of his concerns, we have had a good look at. We have dealt with both the Sydney Airport Corporation and the Office of Transport Safety. We have implemented and had a really good look at some of the things he brought forward. I do not really want to go into those here for operational reasons but I am more than happy to brief privately on those.

Senator XENOPHON: Can you indicate whether there have been any changes as a result of Mr Olsen's concerns?

Mr Phelan: There have been some but they have been very minor.

Senator XENOPHON: Are you still looking at Mr Olsen's concerns or monitoring them?

Mr Phelan: Mr Olsen's concerns continually come to us so we look at every single one that comes in.

Senator XENOPHON: I think they will continue to come in.

Mr Phelan: We take airport security very seriously. Like any other members of the public, if things are brought to our attention, we do have a really good look at them because security is extremely important to us. We are working with the other partner agencies as well that are in this space.
Senator XENOPHON: We will get a private briefing perhaps.

Senator ROBERTS: Commissioner and Mr Wood, I went back to the office and checked the committee's website and there was no record of any response received so we checked emails and we found a response from the committee yesterday. It was late in the morning.

Mr Wood: That is correct. After you left the committee, I got advice from the secretariat that it had been tabled yesterday and they would make sure it got to you. I have not got an explanation for why, when we drafted a response in April, it was tabled yesterday.

Mr Colvin: I should be clear, we lodged our response in April but there is a process that it goes through that is out of our hands.

Senator ROBERTS: We have not seen it until now.

Mr Colvin: I understand that.

Senator ROBERTS: We can see a number of inconsistencies with what we see as the facts so rather than give cobbled up questions and put everyone on the spot, we think accuracy is very important so we will come back to you in writing after considering the responses.

Mr Colvin: On that, in February, I did put as much information as I felt able, given it was an ongoing matter, on the record. I will say that as a result of the incident—we are of course talking about the arson outside the Australian Christian Lobby headquarters in December. A 36-year-old Deakin man will appear before the ACT Magistrates Court on 7 June to face one charge of arson and one charge of property damage contrary to sections 404 and 403 of the ACT Criminal Code Act. I am going to be very reluctant to put much more detail on the record now that the matter is actively before the court.

Senator ROBERTS: We still have some questions to ask.

Mr Colvin: You can ask them but we may not be able to answer them.

Senator ROBERTS: We also need to make sure that the answers that you provide are consistent with the facts as we see them so we will do some more research there.

Mr Colvin: I am happy with that.

Senator WATT: I have still got a couple of questions about staffing matters but then I have a series of questions about the investigation I have asked you to commence into the activities of Pauline Hanson's One Nation party so it is good that we have got some representatives of that party here while those questions are occurring. First of all, can I just confirm what is contained at pages 92 to 93 of your portfolio budget statements, which set out the estimated actual figures for this year and estimates for next year. Down the bottom of table 1.1, there is an average staffing level number—in 2016-17 it is 6,288; the 2017-18 estimate is 6,137. So it is correct that in the next financial year there will be a reduction of 151 AFP officers?

Mr Wood: That is correct from the point of view of budgeting. We then look at how the use of the budget we are provided might allow us to move money between, for example, supplier and employee. One of the main changes in there is that there is a function in the AFP called criminal-history checking. We are currently in the process of negotiating with ACIC, the Australian Criminal Intelligence Commission, to transfer that function from us to them, so we have already accommodated the movement of—I do not remember the exact figure—40-
something people. Because we will no longer be performing that function, we will no longer have those staff. For budgeting purposes, those are accurate numbers.

As the year progresses, we make decisions about how we use the money we have, given that we do have flexibility to move money between employee and supplier, so what actually happens could be a little different from that. But those are the best estimates that we can put forward at the time the budget is worked through, with the government, over the last couple of months.

**Senator WATT:** So there will be a reduction of about 151 staff over the course of the next financial year.

**Mr Wood:** Under the funding, but we might adjust the funding between employee and supplier, and we might change what actually happens as the year progresses. It is a reduction, yes.

**Senator WATT:** I understand things can change, but, according to the budget papers, there will be a reduction of 151 officers.

**Mr Wood:** That is correct.

**Senator WATT:** I have some questions about your investigation of Pauline Hanson's One Nation party. I do very well understand that there might be some limitations around what you can say, but I think there is a lot of public interest in this. You will be aware that earlier this week I referred some very serious allegations concerning the activities of that party to the Federal Police among other authorities. Can you confirm that you have commenced an investigation into Pauline Hanson's One Nation party?

**Mr Colvin:** I can confirm that we have received the letter. In that letter, you raised allegations of a recent nature that had been in the press. I think you referenced the media article. You also referenced other matters that you said were previous. My understanding is that those matters are being dealt with by other agencies and departments. We are evaluating that matter to ascertain what offences may or may not have been committed and the jurisdiction of those offences. That includes liaising with our other department colleagues at the Commonwealth and Queensland levels. I have spoken directly to the Queensland police commissioner. At the moment, it is under evaluation for us to establish if we are dealing with potential Commonwealth offences or potential Queensland state-based offences. They were very broad allegations that were contained in the media. That does not necessarily mean that an offence has been committed, so, before we process to an investigation, we need to satisfy ourselves that there is a reasonable likelihood an offence has been committed. We are in the earlier stages of an evaluation.

**Senator WATT:** In referring those allegations to you, the thing that occurred to me was that, if some form of profiteering had occurred by Pauline Hanson's One Nation party during the federal election, potentially, that might amount to electoral fraud. Obviously, an investigation has to occur, but is that the type of offence that would, potentially, be raised by those allegations?

**Mr Colvin:** Essentially, yes. But there are differences between the Australian Electoral Commission and Electoral Commission Queensland and whether the offences would be Queensland state offences or whether they would be Commonwealth offences.
Senator WATT: You have had discussions already with your Queensland counterparts about this.

Mr Colvin: Yes, that is correct.

Senator WATT: And with the Australian Electoral Commission?

Mr Colvin: Yes.

Senator WATT: And the Electoral Commission Queensland?

Ms Close: Yes.

Senator WATT: Are there any other authorities that you have had discussions with, already, concerning these allegations?

Ms Close: Not to my knowledge.

Senator WATT: What would be the normal process for this investigation? I am aware from past experience that there is some preliminary work undertaken, including looking at documents and recordings, perhaps, before interviews are conducted. What would normally be the steps in the chain of this investigation?

Mr Colvin: It depends on the nature of the allegations, of course. These are allegations that were contained in the media, and, at this stage, they are allegations about what may have occurred, so we need to establish whether there is anything that was consistent with what is contained in the media that actually took place. Then, once we can establish where we believe the jurisdiction of those offences may have occurred, that will determine the lead agency. If, for instance, the offences are Queensland based offences then Queensland police will take the lead. If they are Commonwealth offences then the AFP will take the lead. But invariably, with these matters, it crosses over many agencies and many jurisdictions, and we generally work together on it.

Senator WATT: Have you undertaken any interviews with anyone under this investigation so far.

Mr Colvin: No.

Senator WATT: Has any member of the government referred this matter to the AFP for investigation?

Mr Colvin: No, we have just received your referral, Senator.

Senator WATT: Mine is the only referral?

Mr Colvin: Yes.

Senator WATT: Has the Prime Minister, or anyone else in the government, sought the advice of the AFP about these matters?

Mr Colvin: We have had no discussions, and I have had no discussions with anyone in the government about these matters.

Senator WATT: The reason I ask is that the Prime Minister, I think, advised parliament, and certainly publicly said, that he would be seeking the AFP's advice about these matters. So that request for advice has not yet been made?

Mr Colvin: From the Prime Minister, no. What I would say, in answering that we have not had discussions, is that we have certainly advised the minister's office that we have
received a referral and it will be under evaluation, but we do not discuss the nature. So it may be that the minister has advised the Prime Minister that the AFP has already received a referral. I do not know.

Senator WATT: Okay, but again there has not been any referral from anyone within the government?

Mr Colvin: No.

Senator WATT: Have you provided any advice to government about this matter?

Mr Colvin: As a matter of course, we would advise the minister that we have this matter, that there has been a referral to us and that we are evaluating, but we do not discuss the nature of the evaluation.

Senator WATT: Senator Brandis, are you aware of any minister who has sought advice from the AFP about this matter.

Senator Brandis: I do not discuss advice that ministers may seek from the AFP.

Senator WATT: There have been many other instances in this committee where we have already today talked about matters that have been referred—

Senator Brandis: Do you have a question?

Senator WATT: Why is this one different?

Senator Brandis: It is no different. I am just telling you what my practice is.

Senator WATT: There has been a practice, as long as I have been here, when at times—

Senator Brandis: You have not been here very long, so I will not be taking your advice very seriously. I would rather be guided by the Father of the Senate.

Senator WATT: Even in my short experience here, there have been many instances where you have revealed to the committee matters that you have sought advice from the AFP on.

CHAIR: Senator Watt, do you have a question?

Senator Brandis: I think that even you, Senator Watt, would understand the police are in a slightly different position from other agencies.

Senator WATT: I agree, but I am just wondering why your policy is not consistent—why there are times when you do advise the committee but not about Senator Hanson.

Senator Brandis: As I said, even you—perhaps not, but even you—should be able to understand that the Australian Federal Police are in a somewhat different position from other agencies.

Senator WATT: Should I remind you of that next time you do reveal to the committee something that you have asked the AFP to look at?

Senator Brandis: Well, you are asking about advice.

Senator WATT: All I am doing is following up on what the Prime Minister told parliament the other day, which was that he would be seeking advice from the AFP, and it does not sound like that has happened.

CHAIR: Please, is there a question in that?

Senator WATT: Why has that not happened?
CHAIR: I think Senator Brandis has answered that three times already.

Senator McKIM: It has not been asked three times.

Senator WATT: No, I have not asked him why the Prime Minister has not requested advice from the AFP, despite telling parliament that he would.

Senator Brandis: This is not PM&C estimates. You could have asked that question then, and you did not.

Senator WATT: Why haven't you asked for advice from the AFP about these allegations?

Senator Brandis: I have already told you what my position is. I am not going to repeat myself.

Senator WATT: Yesterday, in your own department’s estimates—I am trying to remember exactly what it was that you said—

CHAIR: Is this a question?

Senator WATT: I am coming to it.

Senator Brandis: Are you quoting from the Hansard, Senator? I have learned, through the brief time you are here, that you are not a person who can be trusted to give an accurate recitation of evidence. So, unless you can refer me to the Hansard, I will not be accepting on trust your paraphrase of my evidence.

Senator WATT: So the serial lying champion is giving me your advice about trust.

Senator Brandis: That must be withdrawn, Mr Chairman.

CHAIR: Yes, that will be withdrawn.

Senator WATT: The man who misleads the Senate chamber on a regular basis.

CHAIR: No, no, no, sorry. You will withdraw that.

Senator WATT: What? Why do I have to withdraw—

CHAIR: The serial lying allegation.

Senator WATT: Okay. I withdrew it.

CHAIR: Sorry—you have withdrawn?

Senator WATT: I withdraw. I withdraw.

CHAIR: Wait a second until I finish—

Senator WATT: I withdraw.

CHAIR: You withdraw? Thank you, Senator Watt. You have a point of order, Senator Wong?

Senator WONG: Point of order. If you require Senator Watt to withdraw that, which I think is not unreasonable given precedent, you ought to require the Attorney-General to withdraw what he said about Senator Watt, which is essentially that he is a serial liar.

Senator Brandis: Well I did not say that—

CHAIR: Senator Brandis, please. There is no point of order. I listened carefully to what Senator Brandis has said and he said he does not accept, through long experience, things that Senator Watt said. If he produces the Hansard, then Senator Brandis will answer. It is very clear, very factual. It is not an allegation of lying. We will move on.
Senator WONG: Not an allegation of lying?
CHAIR: Yes.
Senator WONG: He has learnt to not trust what the senator—
CHAIR: Yes.
Senator WONG: That is not an allegation of lying?
CHAIR: No.
Senator WONG: I invite anyone watching to consider the merit—
CHAIR: Senator Wong, do have another point of order?
Senator WONG: No—no need.
CHAIR: Senator Watt.
Senator WATT: I have pulled up the Hansard from yesterday where we asked you about this. What you said is—
Senator Brandis: No, not that. No paraphrasing please. Just read me the Hansard—
Senator WATT: I am.
Senator Brandis: word for word—
Senator WONG: Just let him read it.
Senator Brandis: without adding words, as you did yesterday when we went through this exercise.
Senator WATT: Would you like me to gesture the inverted commas as well? You said:
What I am expecting is a formal request to me, which I have yet to receive.
Senator Brandis: I remember saying that—yes. What is your point?
Senator WATT: You have not received a formal request. The Prime Minister said to parliament that he would be requesting advice from you. Yesterday you told us:
What I am expecting is a formal request to me, which I have yet to receive.
Senator Brandis: That is correct.
Senator WATT: So you have not yet received a formal request for advice from the Prime Minister?
Senator Brandis: Not that I am aware. Of course, I have spent, like you, most of my waking hours in this room. It may be that that has come into the office, but I have not seen it.
Senator WATT: What we have found out today is that the AFP has also not received a request for advice from the Prime Minister. So neither of those things that the Prime Minister said the other day were true or have been actioned?
Senator Brandis: I do not see how you could possibly imagine that that follows. I think the Prime Minister said that in question time a couple of days ago.
Senator WATT: If the Prime Minister considered these serious allegations a priority, wouldn't he have acted on them some time over the last three days?
Senator Brandis: Senator Watt, I am not going to speculate. The Prime Minister said what he said, as you have quoted. I said what I said, as you have quoted, and I expect that events will take their ordinary course.
**Senator WATT:** Mr Colvin, you have already advised the committee that you have discussed these latest allegations concerning Senator Hanson's party with the Australian Electoral Commission. You would be aware that I have also referred allegations concerning the plane that Senator Hanson uses to the Australian Electoral Commission. Have you had any discussions or any contact with the Australian Electoral Commission about those allegations?

**Mr Colvin:** Senator, in your initial letter to us, you referenced those other matters, so, as a matter of course, in order for us to action that letter, we need to satisfy ourselves about what is happening with those other aspects. They may have nothing to do with the AFP and there may be no matters that are relevant to the AFP, but yes, we are talking to the Electoral Commission about them.

**Senator WATT:** Okay. When did you first speak to the Electoral Commission about the allegations regarding the campaign plane?

**Mr Rogers:** I think we received your letter earlier this week and would have done it within a couple of days after that, so it is within the last few days. We have only had your referral two or three days.

**Senator WATT:** You are not conducting a separate investigation at this point about Senator Hanson's campaign plane?

**Mr Colvin:** No, we are not.

**Senator WATT:** Is the AFP conducting any other investigations into Pauline Hanson's One Nation party, without disclosing what the nature of those are?

**Mr Colvin:** As a matter of practice, we do not confirm or deny investigations that we may or may not have.

**Senator WATT:** I am not asking about the nature of those investigations. You cannot reveal whether you are conducting any other investigations into the party?

**Mr Colvin:** Senator, you asked me a very specific question about the plane and I am comfortable to answer that. I am not comfortable to say whether we have any broader investigations into the party or members of the party. It is not something that we would normally do.

**Senator WATT:** Are you conducting any investigations regarding matters of fraud concerning the party, senators or their staff?

**CHAIR:** Or any political party, including the Labor Party.

**Senator WATT:** You can ask that question when you come to it.

**Mr Colvin:** That is a fairly broad question. I am not comfortable. We do not, as a matter of course, alert publicly if we are conducting an investigation or not. No inference should be drawn by me saying that that we are; it is just that, as a matter of course, we do our best not to, especially—

**Senator WATT:** Senator Hanson might have some questions about the investigation, I suppose, as well when it comes to her time.

**Senator HANSON:** No, I will leave it—
CHAIR: Senator Hanson and Senator Watt, I am chairing this, not you, and Senator Hanson is not on the list at the moment, I might say, for this section, but she might be later if she wants to be. My colleagues have said they will forfeit their questions and perhaps put them on notice. I now go to the Greens for 12 minutes——

Senator HINCH: Excuse me, Chair, I have one question on the same matter.

CHAIR: Well, I am sorry, Senator Hinch. I have tried to accommodate you——

Senator HINCH: It will take two minutes—one question.

CHAIR: but it is becoming a practice. I will come back to you later. The Greens next, then Senator Xenophon next and then Senator Hinch next——

Senator WONG: And then back to the Labor Party.

CHAIR: for 12, 10 and 10 minutes, and then back to Labor.

Senator WONG: Yes. We should be able to tie up ours reasonably quickly, Chair.

CHAIR: Thank you, Senator Wong. I just remind everyone that it is now 10 to 12. At 11 o'clock we were supposed to move to the Australian Human Rights Commission, but, under the standing orders of the Senate, I am obliged to continue on this section as long as senators have questions. I do remind senators that we have a lot to do before 11 o'clock tonight——

Senator Brandis: Chair, I note that ASIO is not being brought on till 10 o'clock. Is that still the case?

CHAIR: Sorry?

Senator Brandis: I note that ASIO is not being brought on till 10 o'clock tonight. Is that still the case?

CHAIR: We will have to review that as we go.

Senator Brandis: As we are running almost an hour behind at this stage, it seems unlikely we would reach ASIO. If I may respectfully suggest to members of the committee, the Australian people would be a little more interested in hearing from the Director-General of Security than from some of the intermediate witnesses perhaps.

Senator Watt: It is certainly our intention to have time with ASIO later tonight.

CHAIR: Senator Brandis, thank you. I am very conscious of that. I am very conscious of the fact that, if we are not going to get to agencies, we will send them home so that they do not sit around twiddling their thumbs, but that is a matter for the discipline of the committee. I cannot do more than follow the standing orders, which are that, as long as anyone has questions on AFP, we stay on them. When we are finished there, we will go to the Human Rights Commission. Everyone knows the rules—a silly standing order, but that is the one I am going by.

Senator Wong: Chair, can I——

CHAIR: Do you have a point of order, Senator Wong?

Senator Wong: I was not aware—obviously, the agenda is set by the committee—that ASIO was so late. I am sure we are open to discussions about reordering, from the opposition’s perspective, if that is the way the government wishes to proceed.
CHAIR: Well, thank you, Senator Wong, but the deputy chair is a member of your party and I rely on her to indicate what her party wants to do with the agenda.

Senator WONG: Just being courteous.

CHAIR: This is an agenda—

Senator WONG: I am just being courteous.

CHAIR: I repeat: this is an agenda—

Senator WONG: I am just doing you the courtesy—

CHAIR: which it is my practice to allow the opposition parties to more or less set, and I do that religiously in fairness to opposition parties, for whom estimates are usually the best opportunity to get information. So we can talk about different changes, but I will be guided by the deputy chair. Now, can we go on to the Greens.

Senator McKIM: Good morning, Commissioner, thanks to you and your officers for coming in. I just wanted to ask a few questions about the Papua New Guinea-Australia policing partnership that the AFP is engaged in. Are you able to break down the costs—or the outgoings, I guess, in dollar terms—of that program since its inception, into, say, 12-month blocks?

Mr Colvin: The current program ends on 30 June, and we have just recently been re-funded—

Senator McKIM: For another two years, yes.

Mr Colvin: for another two years, largely in terms of support to RPNGC for APEC 2018. We would be able to break it down into how that funding is appropriated year by year, yes.

Senator McKIM: Do you have that now, or will you need—

Mr Colvin: I do not think we have that with us.

Ms Close: No, sorry, Senator. We will have to take that on notice.

Senator McKIM: Okay. No worries. I would appreciate it if you would do that. Do you have information today about the number of officers deployed in the course of that program, perhaps broken down into whatever period you are able to?

Mr Colvin: I think we would, yes.

Ms Close: Certainly. I have the headcount as at 20 April this year, which is 55. But to go back further I will take that on notice.

Senator McKIM: And that is at a point in time?

Ms Close: That is right.

Senator McKIM: I would appreciate it if you would take that on notice. Also, Commissioner, you have just said, and I do understand, that you have received funding for another two years. Do you have a plan in terms of the deployment numbers for the ongoing two years of the program?

Mr Colvin: Yes, we do, and that plan will largely be around what capabilities we are delivering to RPNGC or supporting them with, so it will fluctuate. We may have major event organised planners in at one point, and replace them with close personal protection specialists at a different point. We would have that out to APEC at least, I would imagine.
Ms Close: Yes.

Senator McKIM: That is 2019. Is that right?

Mr Colvin: 2018.

Senator McKIM: 2018. When in 2018 is APEC?

Mr Colvin: September, from memory.

Senator McKIM: Late in the year, okay. If you are able to provide any details about the planning in terms of headcount—obviously, I understand you may not want to—

Mr Colvin: Senator, just so I understand: you are looking for the flow of individuals in and out? The numbers will largely stay similar to around 70—

Ms Close: Seventy-three.

Mr Colvin: 73, but the make up of that number—

Senator McKIM: Sorry, what is the 73, Commissioner?

Mr Colvin: Seventy-three is what we have funded for officers for the PNG-APP program.

Senator McKIM: I am happy to take that as a response, thank you. I was in PNG recently, and I want to ask a few questions. I was in Lorengau on Manus Island, and I was told—and I am just checking to see whether this is correct—that AFP is funding the construction of the new police station there.

Mr Colvin: I do not believe that is correct. We have very little to do with the Manus Island police, but we can take that on notice.

Senator McKIM: They are part of the Royal PNG Constabulary. They are not a separate—

Mr Colvin: They absolutely are, but I do not think that is right.

Senator McKIM: That is fine. Perhaps if what I am told is right, and if what you said is not, you could correct that on notice.

Mr Colvin: We certainly have infrastructure development projects with the RPNGC. Most of those have been completed.

Senator McKIM: Thank you, Commissioner. I was going to ask that as my next question. Do you have a list of the infrastructure projects that have been funded by AFP through that program?

Mr Colvin: We certainly do, but we do not have them with us.

Senator McKIM: Could you please provide that on notice.

Mr Colvin: Yes.

Senator McKIM: One of them was a swimming pool at the Bomana RPNGC police college.

Mr Colvin: I believe we paid for the refurbishment of the RPNGC mess, which included an outdoor area and refurbishment of a swimming pool.

Senator McKIM: Do you have the cost of the swimming pool and the broader project?

Mr Colvin: We would have the cost of the broader project, absolutely.

Senator McKIM: Do you have that here?
Ms Close: We will take that on notice.

Senator McKIM: Just for clarity, what I am asking for is a breakdown of all the infrastructure projects that have been funded by AFP through that project, and, specifically, in relation to the college at Bomana, as a sub-line item if you like, the cost of the swimming pool.

Mr Colvin: There has been quite a bit of refurbishment of the college of Bomana. We can certainly do that.

Senator McKIM: In broad terms, do you think the partnership has been successful in meeting its objectives?

Mr Colvin: In broad terms, yes I do.

Senator McKIM: I am sure you are aware of some of the reporting that has been done over the last couple of years mainly in News Corp outlets that has raised certain allegations, and, in fact, the AFP has responded publicly to some of those allegations over time. Was this program an initiative of the AFP or was it an initiative of government?

Mr Colvin: These programs are initiatives of government, and there is quite a long history of Australian governments wanting to work with RPNGC to improve their capabilities and capacity. There have been various challenges over the time in terms of the form and nature of that program, but it is an initiative of government.

Senator McKIM: You were given extra money specifically to fund this program?

Mr Colvin: That is correct, yes.

Senator McKIM: Can you remind me when it started? I am not after an exact date.

Mr Colvin: The PNG-APP started around 2009, but there was an earlier iteration that was overturned by a constitutional decision in PNG that was around 2005. I will take on notice the date of the current iteration. I thought it was 2009, but I have just been told by my colleagues 2008, so it is around that time.

Senator McKIM: That was in regard to when the program started, but if possible could you also on notice provide the date on which government directed the AFP to commence this program, because obviously there would be a lag between the direction and the implementation—I presume.

Mr Colvin: Yes. What we would have to do is check the decisions of government, and there have been various decisions. I recall that after we pulled out of PNG in the mid-2000s, as a result of the constitutional decision we went back in with a small number to start with, and that number eventually increased and the number fluctuates. It will be a complicated answer, but I think I understand what you are trying to achieve.

Senator McKIM: I appreciate you may have not have the date that the government made the decision, but I presume you would have the date that the AFP was notified.

Mr Colvin: Absolutely, yes.

Senator McKIM: I am not asking you to reveal internal machinations of cabinet. In some of the reporting I have reviewed, there have been allegations made that reports that were delivered up the chain in PNG did not make it back to the AFP in Australia. Was that investigated by you or any of your officers or predecessors?
Mr Colvin: It was. It has been fully investigated. We dispute some of the matters that have been in the paper, and that is still an ongoing matter, I believe.

Senator McKIM: Sorry, what was the last thing you said?

Mr Colvin: It is still an ongoing resolution with the officer who was making those allegations.

Senator McKIM: But the investigation is not ongoing?

Mr Colvin: No.

Senator McKIM: That is completed?

Mr Colvin: That is concluded.

Senator McKIM: Are you satisfied that there was no censoring of reports made by more senior officers, in PNG, that prevented those reports from flowing through senior officers in PNG back to you or any of your senior officers?

Mr Colvin: I am satisfied that there were no efforts by senior AFP officers to stymie a report or not bring a report through to senior management of the AFP.

Senator McKIM: Was that specific matter part of an investigation or the entirety of an investigation that the AFP conducted?

Mr Colvin: The allegations that were made were serious allegations—

Senator McKIM: They were.

Mr Colvin: so we needed to satisfy ourselves of two things. Firstly, was there any substance to the allegations? Secondly, was there any substance to the further allegation that this had been reported but had, at some level, been washed under the carpet? On both grounds, I think we have satisfied ourselves that we do not believe that the substance of the allegations was substantiated and that we do not believe that there was any effort by AFP officers to not bring attention to those matters.

Senator McKIM: Did you uncover any evidence that supported either of those claims during the course of those investigations?

Ms Close: The Royal Papua New Guinea Constabulary itself has acknowledged human rights abuses by their police officers and the police commissioner in Papua New Guinea, Commissioner Barkey, declared 2017 ‘the year of discipline’. Part of the role of the Australian Federal Police in Papua New Guinea is in providing that advisory support for training, leadership, investigations management—including working with the RPNGC Internal Affairs Directorate.

Senator McKIM: The question was: the investigation that the commissioner has confirmed occurred, did that uncover any evidence that supported either of the two claims? What I am trying to differentiate between here is the commissioner has been very clear that, ultimately, he is satisfied that neither of the claims were able to be substantiated—please correct me if I am wrong, Commissioner; I am paraphrasing here and I accept that. What I am trying to discover is whether that was a matter of judgement by the investigators when weighing different evidence or whether there was simply no evidence there to weigh?

Mr Colvin: Let us take that on notice so we can be very clear and specific in our answer.
Senator McKIM: Thank you, Commissioner, I appreciate that very much. In the short time remaining to me, I want to ask a couple of questions about how we deal with international police jurisdictions that have the death penalty in place. I have raised this with you at previous estimates.

Mr Colvin: Yes.

Senator McKIM: It has been reported that in the five years between 2009 and 2014 the AFP reported more than 370 people to authorities in death penalty jurisdictions. Is that an accurate number?

Mr Colvin: I do recall the report. I do not recall whether we thought it was accurate or not. We do put these matters on the record. Deputy Commissioner Close has them in front of her.

Senator McKIM: Thank you.

Ms Close: Sorry, Senator, can you please repeat the time frame?

Senator McKIM: The report was between 2009 and 2014; the AFP reported more than 370 people to authorities in death penalty jurisdictions.

Ms Close: I have figures back to 2013 in front of me.

Senator McKIM: If you could read them out that would be much appreciated.

Ms Close: Certainly. Since that point in time, in total, up to 2017 at this point, we have had 267 requests that have been approved, in relation to providing assistance for potential death penalty situations.

Senator McKIM: That is approved requests?

Ms Close: That is correct.

Senator McKIM: They are ones where AFP has shared information that may lead to a death penalty?

Mr Colvin: Yes. They are internal approvals as opposed to the guideline which also requires ministerial approval.

Senator McKIM: Sorry, I find it hard to hear over the alarm. Perhaps you could repeat that.

Mr Colvin: That is internal approval by AFP officers as distinct from the guideline which also, in certain situations, requires a ministerial approval.

Senator McKIM: Okay. So that is the internal approvals.

Mr Colvin: Yes.

Senator McKIM: Do you have figures on how many episodes of information sharing actually did occur with death penalty jurisdictions?

Ms Close: With ministerial approval, again, since 2013 we have had 24—

Mr Colvin: We have got 24 requests.

Senator McKIM: Does every provision of information need to go to ministerial approval?

Mr Colvin: No. The guideline basically—and I will paraphrase, because it is a complicated guideline—draws a distinction. When somebody has been detained or is in custody or has been charged with an offence that is likely to attract the death penalty and the
information is in relation to an individual who is in that situation, that must go to the minister. If the information is in relation to an ongoing investigation or a transfer of information for a matter that may involve the death penalty, but it is not specific to an individual and no individual has been charged, detained or is in custody, then that is an internal process for us. It is an internal, risk-based process that we consider.

Senator KAKOSCHKE-MOORE: My questions will be centred around the issue of trafficking. In the recent budget, $321 million over four years has been set aside in order to help boost the AFP's efforts in the anti-terrorism and anti-trafficking space. I want to clarify: when the word 'trafficking' is used, is that in reference to human trafficking, drug trafficking, weapons trafficking, illicit tobacco trafficking or cybersex trafficking—what is the trafficking that this money is for?

Mr Colvin: The $321 million that was recently announced in the budget is actually to enable the AFP to recruit specialist capabilities. It is not specifically for trafficking. I am not sure where you are referencing that from, because the measure is not for that. I will say that there is a lot of intelligence capability built into that measure, and that intelligence capability will be used across a range of crime types, which would include trafficking—mostly from a human trafficking perspective, because the AFP is principally interested in narcotic trafficking that is about importations, not trafficking in the general sense, which would be more a state and territory matter.

Senator KAKOSCHKE-MOORE: Do you have specific funding set aside for those categories of trafficking that I just mentioned?

Mr Colvin: I do not believe we have any current funding program measures specific to human trafficking, no.

Senator KAKOSCHKE-MOORE: Is there any current funding set aside for cybersex trafficking?

Mr Colvin: Not in a specific way, I would not suggest, no.

Ms Close: No, in the AFP, under our crime operations division, we investigate these crimes as they are referred to us as a matter of course. So, no specific funding—there are a range of investigators focussed on various crime types.

Mr Colvin: So there is a base appropriation that we make decisions about priorities—about what we should and should not investigate.

Senator KAKOSCHKE-MOORE: Would it be possible, on notice, to provide a breakdown of your efforts in each of those spaces and the funding that was used in order to help you investigate cases of trafficking?

Mr Colvin: Certainly, we can provide you with the number of referrals, number of investigations and number of prosecutions.

Senator KAKOSCHKE-MOORE: That would be fantastic, thank you. Just staying on the subject of human trafficking: when people think of human trafficking, often they imagine it to be involved in or related to the sex industry. Is it the AFP's experience with human trafficking in Australia that it is limited to the sex industry, or are you seeing it in other industries now?
Mr Colvin: Senator, you are right in saying that that is what people assume but, of course, it is not just sexual servitude; it is also indentured labour, for instance. There is a range of trafficking matters, and they all broadly fall under trafficking offences in the Criminal Code Act. We are not restricted to just sexual servitude matters.

Senator KAKOSCHKE-MOORE: Have you seen people being exploited, in the human trafficking sense, once they arrive in Australia being tricked into working under conditions that they did not anticipate? Have you had experience with people who have come to Australia—maybe their visa has expired—and then they have found that they are being forced to work, despite the fact that they have no current visa and no way out?

Mr Colvin: I think the answer, in general terms, is yes. We see all of that. We see people who come here, as well, who willingly put themselves into situations that, under Australian law, of course, are not consistent with our expectations. There is a range: there are people who are willing participants and there are people who are tricked into it.

Senator KAKOSCHKE-MOORE: I understand that there is a task force—and my apologies if I get the pronunciation wrong—Taskforce Cadena. It is a joint agency initiative between the Department of Immigration and Border Protection, the AFP and the Fair Work Ombudsman. It is specifically looking at disrupting criminals who are engaged in organising visa fraud, illegal work and the exploitation of foreign workers. Are you able to speak to me a little about the AFP’s involvement in that particular task force?

Mr Colvin: Personally, no. I am hoping that my deputy commissioner may.

Ms Close: I am certainly aware of the task force but, in terms of some of the specifics, I would have to take on notice the focus and numbers of investigators attached to Taskforce Cadena.

Senator KAKOSCHKE-MOORE: Sure, perhaps on notice—and I might provide some written questions with the type of information that I am seeking there. Just turning to cybersex trafficking and to explain the way that I am imagining this: it has been brought to my attention that Australians are becoming more and more involved in the commissioning of sexual abuse of children in another country, and that sexual abuse is then broadcast across the internet for the perpetrator to watch and then pass on or save, if they so wish. To your knowledge, are there any provisions within our current Criminal Code that would capture the commissioning of child sexual abuse overseas?

Mr Colvin: Our travelling sex offender legislation certainly captures Australians who travel to other countries and engage in sex with minors.

Senator KAKOSCHKE-MOORE: But, in terms of people here in Australia requesting that sexual abuse occur of a child in a different country so that they can watch it on the internet?

Mr Colvin: Yes, there are offences for that.

Senator KAKOSCHKE-MOORE: Which offences are they?

Mr Colvin: They would be in our child exploitation and online child exploitation offences.
Senator KAKOSCHKE-MOORE: Do those sections require the person who has commissioned the abuse to physically be in the presence of the child in order for that conduct to be captured by that offence?

Mr Colvin: I would think not—no.

Senator KAKOSCHKE-MOORE: If you could take that on notice to get a definite answer.

Mr Colvin: I am quite confident that no, it would not require them to be.

Ms Close: That is correct. It does not require that, and there are a raft of offences that we can certainly outline for you on notice.

Mr Colvin: Senator, I am trying to understand the example, but an Australian who does not travel but asks someone online to have a child abused in front of them while they watch on a peer-to-peer sharing network absolutely, is an offence in this country.

Senator KAKOSCHKE-MOORE: Can you tell me how many investigations the AFP has conducted into this type of behaviour?

Ms Close: In the period 1 May 2016 to 30 April 2017, we have investigated 63 people for a raft of offences under division 474 of the Criminal Code 1995. That includes offences like using a carriage service for child pornography material, using a carriage service to transmit pornography material—

Senator KAKOSCHKE-MOORE: But does it include the commissioning, the actual requesting that the abuse take place?

Ms Close: using a carriage service to groom persons under 16 years of age. There are a raft of offences there that we have investigated. Again, I can probably provide some specifics if you provide the questions on notice to us. That would be really helpful.

Senator KAKOSCHKE-MOORE: Sure. That would be helpful, thank you. How many referrals per month does the AFP make to international agencies in respect of cybersex trafficking?

Ms Close: I would have to take that on notice in terms of how many per month. It is a significant number.

Senator KAKOSCHKE-MOORE: When you say 'significant', could you give me a ballpark figure?

Ms Close: I can turn it around to the other way and say that in 2016 we in the Australian Federal Police have received a total of 8,600 reports of alleged child pornography. In terms of how many we make offshore, I will take that on notice.

Senator KAKOSCHKE-MOORE: The reports in relation to child pornography could include still images, material that had not necessarily been commissioned recently by a person?

Mr Colvin: Absolutely, yes.

Senator KAKOSCHKE-MOORE: Would it be possible to get a breakdown of those reports, to see just how many of those reports related to the commissioning of child sexual abuse overseas to then be viewed on the internet?

Ms Close: I will certainly take that on notice.
Senator KAKOSCHKE-MOORE: Staying on the issue of trafficking, but looking at the trafficking of illicit tobacco and of molasses tobacco, also known as 'shisha' commonly, we have seen that, due to changes in the way that molasses tobacco has been taxed on import, there has been a significant drop in the reported imports of molasses tobacco, but we are still seeing it on the streets in cities all across the country. In the AFP's view, do you think the majority of the molasses tobacco that we are seeing in Australia at the moment has been imported illegally?

Mr Colvin: We are probably not the right agency to ask that question of. The Australian Border Force deals with those matters. We will get involved if the importation of it is part of a broader organised crime network. So I am not sure that we are equipped to answer that.

Senator KAKOSCHKE-MOORE: Okay. When I asked the Australian Border Force similar questions earlier this week, they said that they were focused on disrupting the criminal activity behind the importation of this tobacco. Is that more the AFP's role—to be going behind the scenes and trying to disrupt the criminal activity? How do we ensure that we are tackling it in a holistic way?

Mr Colvin: Good question. Border Force certainly have a role in that, and historically tobacco has been dealt with as an excise matter, a taxation matter, which is why it has been largely managed by Customs and the Australian Border Force. We get involved if there is broader criminality, and I would say anecdotally we are seeing that that is becoming the case. It is more now broader organised crime involving themselves because it is a profitable market. So, yes, we do work very close with the Border Force on those matters.

Senator KAKOSCHKE-MOORE: Whose role is it to detect molasses tobacco when it is being imported into Australia?

Mr Colvin: Border Force have the responsibility of enforcement at the border, interdicting it at the border, but of course the Australian Federal Police, the Australian Criminal Intelligence Commission and state and territory police all have a role to make sure that, if we have intelligence of that, we are passing it on to the Border Force.

Senator KAKOSCHKE-MOORE: Have you conducted any investigations into the importation of molasses tobacco over the past few years?

Mr Colvin: I think we would have to take that on notice. It certainly does not come to mind as something that we have done recently.

Senator KAKOSCHKE-MOORE: Okay, thank you.

Senator HINCH: Commissioner Colvin, it may be a bit early for this question, but—following upon Senator Watt—have you initiated any meetings with James Ashby or Senator Hanson or the two other people who were at that meeting when the 'Rip off your candidates, the taxpayer and the Electoral Commissioner' plan was canvassed?

Mr Colvin: It is a little early for us at this stage. We are still evaluating and in a fact-finding mission. We would not be talking to anybody until we have got a few more facts established.

Senator HINCH: Will you?

Mr Colvin: That will depend on what we establish are the facts.
Senator WONG: Very quickly, Mr Wood, thank you for providing me with some of the past material, which will truncate this greatly. First, can I confirm that the ASL—that is the average staffing level—figure in the PBS on page 93 shows a staffing reduction of 151 as between the estimated 2016-17 figure and the 2017-18 figure?

Mr Wood: Yes, Senator Watt and I confirmed that is correct.

Senator WONG: Can I also confirm—I think you said this previously, but I want to make sure I have understood it—that one of the terminating measures that you described is the measure relating to addressing gang violence—National Anti-Gang Taskforce, Australian Gangs Intelligence Coordination Centre and Criminal Assets Confiscation Taskforce? I think you said that when I was asking you about outcome 1.

Mr Wood: I will just make sure that was on the list, but I do believe that is correct. The National Anti-Gang Taskforce is currently funded to 30 June 2019, and that is the time frame within which we would go back to government.

Senator WONG: Right. So when you and I were discussing the reduction over the out years—

Mr Wood: Correct.

Senator WONG: I think that was one of the measures that you identified as terminating and you would have to go back to government on that.

Mr Wood: It is one of five measures that I listed this year. That is correct.

Senator WONG: Thank you. The next was—to truncate this—that I think the table that you referred me to is a table attached to both AE17/029 and AE17/030. I think they are identical tables—is that right? It is a disaggregation of the departmental appropriation funding?

Mr Wood: Is that about the answers to questions on notice?

Senator WONG: Yes.

Mr Wood: I think I referred to it. We did not actually talk about the answers themselves.

Senator WONG: You referred to it, yes.

Mr Wood: We undertook to update it.

Senator WONG: Rather than me going through this, I think the best way—and it seems to me they are identical tables—

Mr Wood: They are. I can confirm that.

Senator WONG: Yes. Can you just update those.

Mr Wood: We undertook to update it in the light of the new PBS.

Senator WONG: Thank you. In relation to the ministerial DLOs we were discussing before the break, I will just put these on notice. You have taken one thing on notice. You were giving me the periods of time.

Mr Wood: We are just confirming. We may be very close to having the periods of time. We have actually spoken to three of the four law enforcement liaison officers who have worked in Minister Keenan's office, and they have all confirmed that they have not made any complaints in their time as the liaison.
**Senator WONG:** And you will, on notice, give me the time frames and whether or not any Comcare claims have been lodged? Comcare is the relevant insurer for you, isn't it?

**Mr Wood:** The workers comp insurer, yes.

**Senator WONG:** I think I am done.

**Senator WATT:** Commissioner, I asked a few questions the other day in Immigration estimates about resourcing in the Torres Strait, which is obviously an area where there is a lot of illegal fishing, people smuggling, drug trafficking et cetera.

**Mr Colvin:** Yes.

**Senator WATT:** What is the current number of AFP personnel based within the Torres Strait region?

**Mr Colvin:** We have two officers in Thursday Island.

**Senator WATT:** I am just trying to remember. Are there any on Badu Island?

**Mr Colvin:** No.

**Senator WATT:** No. That might be Immigration staff, I think.

**Mr Colvin:** Certainly Immigration and Border Protection have more staff in the Torres Strait than we do.

**Senator WATT:** So you have two AFP officers on Thursday Island.

**Mr Colvin:** Yes, we have a police officer and a locally engaged special constable, effectively.

**Senator WATT:** And their responsibility is across the Torres Strait in general?

**Mr Colvin:** That is right, and they work with our Queensland office to surge resources as necessary, but it is largely an intelligence post to try to understand the flow of illicit goods through the region.

**Senator WATT:** Are you satisfied with that level of resourcing to deal with the various threats that exist in the Torres Strait region?

**Mr Colvin:** I am. In fact, we have recently reconsidered it. We are comfortable, and we can surge if there is intelligence or information that says that we need to do more.

**Senator WATT:** You did recently reconsider that?

**Mr Colvin:** Yes.

**Senator WATT:** Roughly, how long ago would that have been?

**Mr Colvin:** It would be in the last six months.

**Mr Wood:** This calendar year.

**Senator WATT:** That number, two, has been the case for some time now has it?

**Mr Colvin:** It has been quite consistent.

**Mr Wood:** I was up on Thursday Island about five years ago. It was two then.

**Senator WATT:** Right. Thank you.

**Senator McKIM:** During my last line of questioning—this is back onto the death penalty issue, Commissioner. I think Deputy Commissioner Close—in fact she did provide how many requests had been granted in both of the two categories: the ones that are dealt with internally
and also the ones that went up to the minister. Do you also have figures on how many were refused?

Mr Colvin: Leanne may just check the records but, in terms of matters that we have put to the minister for his approval since 2013: four requests in 2013, four were approved; nine in 2014, nine were approved; 11 in 2015, 11 were approved; and there have been none in 2016 and none in 2017.

Senator McKIM: Okay, but I am asking about refusals—where it was put up, and the minister has knocked it back?

Mr Colvin: They have all been approved.

Senator McKIM: They have all been approved? And what about the internal ones?

Ms Close: I do not have that figure with me, so I can take that on notice for you.

Senator McKIM: Specifically, the question is when a request has been made and has not been granted. Thank you, I appreciate that. Thank you for providing the internal guidelines last time. They are a little bit acronym-heavy for me, but I am sure that is okay for your internal processes. I think I understand the general gist of it. It is more of a process guide in my view than a decision-making guide. It goes through a list of things that the officer must give consideration to. I wanted to ask you about the weighting of it. How do you weight the potential downside of providing information that might lead in some cases to an Australian citizen to be sentenced to death in another jurisdiction? How do you weight that against the other matters that you have asked or that you require that those guidelines require the officer to give consideration to?

Mr Colvin: That is why it is a senior officer internally that makes those judgements—it is a judgement call. There are things that we are asked to consider such as the age of the individual, the nature of the crime, the country, and our understanding of the country's legal systems. I guess it will vary depending on what we are talking about within those considerations. It is a judgement though, I absolutely accept, and one that is made by a senior officer.

Senator McKIM: It is a very weighty and onerous responsibility, Commissioner, isn't it?

Mr Colvin: It is. We only have a very small number—I think it is one—with, principally, a back-up person in case that person is not available. It is a lot for that individual.

Senator McKIM: So there is one person who makes those judgements?

Mr Colvin: Yes.

Senator McKIM: What rank—I do not want the identity, obviously.

Mr Colvin: They are a commander, so an SES1 officer. There is a mechanism for it to be elevated higher, if they think the risk is particularly high or they want to seek guidance. It troubles me that it is one officer who has to make all of those decisions, but the alternative, of course, is that we may get inconsistency in the decisions because there is an added degree of subjectivity to it.

Senator McKIM: Does the AFP attempt in all cases to limit the possibility of an Australian citizen being sentenced to death in another jurisdiction as a result of information provided by the AFP to the greatest extent possible?

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Mr Colvin: We are very conscious of the fact that the Australian government has a longstanding objection to the death penalty, and that is the AFP's position as well. The guidelines are drafted in such a way as to represent the policy position of the organisation but also balance that with the law enforcement needs of our partners and us. We have the guideline to help direct those decisions.

Senator McKIM: I understand that, but the guidelines really, Commissioner, are they not, a list of matters that the officer—the commander—must consider in making the decision? They do not weight them in any way, do they?

Mr Colvin: No, that is right.

Senator McKIM: So they do not really offer guidance in terms of the weighting of the different criteria; they just simply say the officer must have consideration to those criteria.

Mr Colvin: That is correct.

Senator McKIM: Senator Brandis, this is a policy question, so it would not be reasonable to put it to the commissioner. Would the government consider the appointment of an independent monitor, for example, to oversee these decisions—or potentially even an independent person—and them in line with a publicly available set of criteria with weightings?

Senator Brandis: The government is satisfied with the oversight arrangements that currently exist—

Senator McKIM: What are those oversight arrangements?

Senator Brandis: I was about to tell you. The Australian Federal Police are subject to the jurisdiction of ACLEI, the Australian Commission for Law Enforcement Integrity, which is their analogue to IGIS, the Inspector-General of Intelligence and Security, to which the intelligence agencies are subject. I think that deals with part of your question. I do not consider that decisions like this should be made by a person who does not have expertise in operational matters and, therefore, I think they are questions that naturally lend themselves to being made within the AFP. But, of course, as the commissioner has emphasised, strictly observant of both the guidelines and the overall policy position of both the Australia government and the AFP itself of opposition to the death penalty, the guidelines are applied in the context of opposition to the death penalty and an acceptance, and indeed an endorsement, of the policy position of the importance of not exposing Australians to risk of the death penalty.

Senator McKIM: With respect, the guidelines do not reflect that.

CHAIR: Thank you, Senator Brandis, the time has finished. Senator McKim, is it possible to put the rest of your questions on notice?

Senator McKIM: Yes, it is.

CHAIR: Senator Xenophon, on the basis you said you needed a couple of minutes.

Senator XENOPHON: Yes, about 60 seconds—starting now. Commissioner, the Telecommunications (Interception and Access) Act annual report lists a number of reports that the AFP made application for. I think the 2014-15 report refers to 856 warrants. You concede that that does not in any way compromise the integrity of operations or any privacy issues simply by giving those number of warrants?
Mr Colvin: No. We are required to report that.

Senator XENOPHON: That is right, and many would see it as a useful oversight tool. You may want to take this on notice: have you seen the UK Interception of Communications Commissioner's annual report where the commissioner has given detailed information on journalist warrant equivalents? Do you intend to have journalist information warrant numbers published in the TIA annual report?

Mr Colvin: I think the intention is they are. I will take it on notice.

Senator XENOPHON: You got me excited then. You said 'the intention is'.

Mr Colvin: I think there is a separate mechanism particularly for reporting of these matters and they will be reported in those annual reports.

Senator XENOPHON: So we will know how many journalist information warrants?

Mr Colvin: Yes.

Senator XENOPHON: Thank you.

Mr Jabbour: That is correct.

CHAIR: I thank the Federal Police for their attendance this morning. As always, we very much appreciate your assistance here and the work that you do in the field.

Mr Colvin: Thank you, Chair, and thank you to the committee.

CHAIR: I now call the disability commissioner before we start with the Human Rights Commission.

Australian Human Rights Commission

[12:33]

CHAIR: Welcome, Mr McEwin.

Senator WATT: Thank you, Mr McEwin, for coming along today. I have a couple of questions about the Disability Discrimination Act. It may be that some of these questions are best directed to you; alternatively, it may be that they are better directed to the department. We can work out where they go, depending on who is responsible for what. For the purposes of the Disability Discrimination Act, is drug dependence, in some circumstances, considered to be a disability?

Mr McEwen: I will have to take that on notice. However, the DDA deals with medical disabilities, which would include a dependency on drugs. But I am happy to take that on notice and give you a more detailed response.

Senator WATT: Sure. Is there anyone within the department who might be able to advise on that?

Mr Moraitis: We will have to take that on notice too, Senator.

Senator WATT: Is there no-one here who knows? Mr Walter?

CHAIR: If there were, could I suggest we might come back to them later.

Senator WATT: It helps with the flow of the questions, if we can have that clarified.

Mr Walter: My answer would be pretty much identical to the commissioner—that we would have to have a look at it but, yes, medical conditions—
Senator WATT: Medical conditions, okay. I accept you are taking it on notice, but—potentially—drug dependence might constitute a disability for the purposes of the act.

Mr Walter: Yes, we will look at that.

Senator WATT: Under the act, what restrictions are placed on the provision of services? Let us start with that. It is unlawful, is it not, to discriminate against someone by withholding services if they have a disability? Or for reason of having a disability?

Mr McEwin: That is correct.

Senator WATT: I understand there are also some prohibitions within the Disability Discrimination Act against government administering programs in a way that discriminates on the basis of a disability. Is that correct?

Mr McEwin: That is correct.

Senator WATT: Is it conceivable that the government's proposal in this year's federal budget—

Senator Brandis: On a point of order, Mr Chairman: Mr McEwin cannot be asked to comment on a political matter.

Senator WONG: You have not even let him finish the question.

Senator WATT: Has any—

Senator Brandis: He is being asked about his opinion about the budget.

CHAIR: Asking for an opinion is not allowable, in any case.

Senator WONG: How do you know what he was going to ask, Senator Brandis? You interrupted him before he finished his question.

CHAIR: Senator Watt, could you complete your question?

Senator WATT: Is your concern because you think this does breach the act, Senator Brandis?

Senator Brandis: Senator Watt, you come here to ask questions of witnesses, not to make cheap political points—something which, hopefully, in time, you will learn.

Senator WATT: It was a question; thank you—

Senator WONG: If we could set aside the patronising, you were asked a question, Senator Brandis.

Senator WATT: Yes; I think you have only patronised me three times today, Senator Brandis: you have a quota of five.

CHAIR: Senator Watt, if you have a question, please ask it. Otherwise we will move to senators who do have a question.

Senator WONG: He has asked it: is the Attorney going to—

Senator WATT: I thought you only patronised women, Senator Brandis, but clearly it is broader than that.

Senator WONG: No, I think it is ecumenical.

Senator WATT: Has the commissioner undertaken any analysis of the government's announcement to drug-test Centrelink recipients, and whether that would potentially breach the Disability Discrimination Act?
Mr McEwin: I am not aware of any such inquiry, and I might ask the department to also respond.

Senator WATT: Has the department been asked to provide advice on whether that proposal potentially breaches the act?

Mr Walter: We would not be asked for advice, in that sense, in terms of a legal opinion. We were aware of the proposal and there has been some consultation on the proposal.

Senator WATT: Why would you not be asked for advice on whether a government proposal was legal?

Mr Walter: In that case, you would either go to your internal legal adviser—my area, which is a policy area—

Senator WATT: You are the policy area.

Mr Walter: We are the policy area; we have not been asked for our legal opinion. We have been consulted on the proposal.

Senator WATT: When did that occur?

Mr Walter: We would have seen the proposal through the normal processes that go on for any decision related to government—say, cabinet processes. Also, I think we had some consultation on in the last few weeks. I would have to check the exact dates.

Senator WATT: Can you take that on notice and advise us exactly of the dates that you were consulted?

Senator WONG: Post the budget as well.

Senator WATT: Was it prior to the announcement being made in the budget?

Mr Walter: I think we would have been consulted prior to it—I would have to double check that—through the normal budget processes, and also subsequent to the announcement as well, in terms of the implementation.

Senator WATT: What caused the consultation after the announcement?

Mr Walter: Obviously, we are still in a cabinet context in relation to implementation, so I cannot answer specifically what we were asked about. But there were discussions about the implementation of that proposal, and that is what we were asked about.

Senator WATT: Just to narrow it down again, have you been consulted specifically? You are saying you have not been consulted about the legality of this proposal.

Mr Walter: No, we have not been asked for, nor provided, a legal opinion.

Mr Anderson: For the balance of caution, we should note that it is possible that another part of a department of the Australian government has been asked for legal advice.

Senator WATT: So neither the secretary nor the deputy secretary are aware of any request for advice as to the legality of this proposal having been made?

Mr Anderson: I am not aware of it.

Senator WATT: I know you are not. That does not mean it has not happened.

Mr Walter: We are not aware of it.

Mr Anderson: Not that we are aware.
Senator WATT: Senator Brandis, are you aware of whether a request for advice has been made as to the legality of this proposal?

Senator Brandis: I have no reason to believe that it has.

Senator WONG: Mr Walter, it is unusual. I understand the answer about consultation as part of the normal budget preparation processes, but I think your evidence in response to Senator Watt is that you have been consulted post the announcement of this budget measure. What has precipitated that?

Mr Walter: It is essentially about how it will be implemented. How would the budget decision be given effect? There could be a whole range of things that might need to happen in any of these situations, which might be whether legislation is required or how it is going to be practically implemented and whether there are issues associated with that. There is a whole range of contexts where we might be consulted.

Senator WONG: What legislation might require amendment?

Mr Walter: I am just saying there is a whole range of circumstances where we are consulted about implementation where it might have human rights implications. That is an example.

Senator WONG: As I understand Mr McEwin's evidence, as yet the commission has not been consulted about the sorts of issues, such as human rights implications, which you have just averred.

Senator Brandis: I think that is not what Mr McEwin said. I think what McEwin said was that he was not aware of any analysis having been conducted. He was not, I think, asked about consultation.

Senator WONG: I am happy to ask the question directly of him. I thought that was the evidence, but, if the commissioner has a different response, I am happy to listen.

Mr McEwin: That is a matter for the government. If, of course, the commissioner goes to consider that issue, we would do so.

Senator WONG: I was just clarifying. Mr Walter has, I think, said that there has been some engagement with the department in relation to a range of matters associated with implementation, one of which includes a question of human rights implications. My question simply is to confirm that, as yet, you, as the Disability Discrimination Commissioner, have not yet been consulted.

Mr McEwin: As far as I know, no. The commission did not have conversations on that point.

Senator Brandis: I think it is important to understand the way the act operates. The minister might ask the commissioner to look at something or the commissioner, of his own initiative, may decide to look at something or there might be a complaint made to the Human Rights Commission by any citizen with a grievance, but there is no process whereby, for example, a part of the bureaucracy would seek the advice of the Human Rights Commission or, to use your word, 'consult' the Human Rights Commission or the Human Rights Commissioner about an issue.

Senator WATT: Senator Brandis, given that you have not been able to confirm to the committee that legal advice has been sought as to the legality of this proposal—
Senator Brandis: Senator Watt, I think we need to play it straight here. What I said is that I have no reason to believe that legal advice has been sought. I am not aware of it and I have no reason to believe that it has been.

Senator WATT: Can you assure the committee that this proposal from the government is legal and does comply with Australian law?

Senator Brandis: I am sure it is.

Senator WATT: How can you be sure if you are not sure whether legal advice has been obtained?

CHAIR: Senator Watt, your time has finished.

Senator WATT: I am just about to wrap up.

CHAIR: You can ask this again, but you know that we have limited time with the commissioner. Senator Siewert.

Senator SIEWERT: This is the issue that I want to start on as well. I want to go to the issue of addiction. My understanding of the act is, and certainly your website says: The Act does not exclude disability that has been caused by a drug addiction. My question is: is addiction classed as a disability, when you as a commission, and you as the commissioner, are assessing complaints and providing advice?

Mr McEwin: I will need to take that on notice, but I will say for now that medical disabilities do come under the Disability Discrimination Act.

Senator SIEWERT: Perhaps President Triggs may also need to jump in here, if she knows anything. Has anybody in the government, whether it be the Attorney-General, Minister Porter or Minister Tudge, sought your advice or the commission's advice either on the proposal to drug test applicants for income support or for the change to the impairment tables as they relate to disability caused by substance abuse?

Mr McEwin: I will have to take that on notice.

Senator Brandis: I can partly answer your question, since it in part referred to me. I have not done so, but can I point out again that the way this works is that the government does not go to the Human Rights Commission for legal advice. That is not the Human Rights Commission's role.

Senator SIEWERT: I asked for or sought advice. I did not necessarily use the words 'legal advice'.

Senator Brandis: The government generally does not go to the Human Rights Commission for advice. That is not the Human Rights Commission's role either.

Senator SIEWERT: It does not preclude me from asking a question.

Senator Brandis: Of course it does not, but I am giving you the answer.

Senator SIEWERT: Sorry, you are wasting my very valuable seven minutes. Mr McEwin, have you or the commission looked at either the drug testing proposals or the proposal to change the impairment tables?

Mr McEwin: We have not looked at it in detail. I will say that I have some concerns about the potential for human rights; however, I will have to take that on notice.
Senator SIEWERT: I want to ask you about that. I am aware of other jurisdictions around the world where they have found that in fact addiction is a disability and drug testing is discriminatory. If you have looked at it already, I would ask you to expand on the comment you just made and on what your considerations have been to date.

Mr McEwin: It is early days. I will take that on notice. I am happy to give you a detailed response on notice.

Senator SIEWERT: Thank you. Given that we are, I suspect, going to be considering this legislation in the parliament shortly, I would ask that that be fairly expeditious advice on this matter. In terms of the issues around addiction, could you expand—and I will say briefly, as much as I want to hear it in depth, because I have got limited time—on what some of the international literature, if you are across it, says around the issues around addiction and disability?

Mr McEwin: I have not had a chance to consider that in detail, so again I will take that on notice.

Senator SIEWERT: Thank you. Has your advice been sought on other measures that the government may be contemplating or have announced and then sought your advice on? I realise that you have not been in the job for an extended period of time, but in your experience.

Mr McEwin: No, I have not had conversations about the most recent budget measures with the department.

Senator SIEWERT: What about others? MYEFO, for example?

Senator Brandis: What are you talking about, Senator?

Senator SIEWERT: I am asking: in general, has the commission been asked to provide advice in the past?

Senator Brandis: About MYEFO?

Senator SIEWERT: Not necessarily MYEFO; I using that as an example of where the government may have sought advice from the commission in the past.

Senator Brandis: As I said to you a moment ago, ordinarily, the government does not seek advice from the Human Rights Commission. It may be that, if a particular human rights related issue arises, I might, in an informal way, as I have done on occasions, or other members of the government are at liberty to, have a conversation with the Human Rights Commission. The Human Rights Commission is not, basically, an advisory body. It is a complaints handling body and a body that writes reports, usually at its own motion, but sometimes at the request of the Attorney-General.

Senator SIEWERT: You have just outlined yourself—and I do not want to get into an argument with you, because you are using up my valuable time—

Senator Brandis: I am just pointing out your question is based on an incorrect understanding of the—

Senator SIEWERT: You just said that you sought informal advice. You just said, yourself, that you seek informal advice. So can I ask again, Mr McEwin: are you aware of any informal advice or formal advice that has been requested or sought?
Mr McEwin: On what matter are you referring to?

Senator SIEWERT: On any matter.

Mr McEwin: As you are aware, if I have any concerns about any potential breaches under the Disability Discrimination Act, my role is to engage with the department and the Attorney's office. I can give you a number of examples, but that is my role—to provide advice.

Senator SIEWERT: Could you take that on notice then, please? I do have a couple of other matters. Given our limited time, can I ask about the NDIS. You may or may not be aware that there is an inquiry ongoing into the NDIS as it relates to psychosocial disability. During that inquiry, a matter came up about the NDIS and the legislation having clear links to the Convention on the Rights of Persons with Disabilities. They raised the issue of clause 24 of the NDIS Act and how it omits and does not adequately address the issue around psychosocial disabilities. A point was made that it falls short of enabling Australia to meet its obligations under the convention. Has this issue been raised with you and/or have you had a look at that particular matter as it relates specifically to psychosocial disability?

Mr McEwin: That matter did come up in my consultations. I am taking that up with the relevant department in the department of social security through the NDIA and having conversations about that. But, yes, that issue had come up frequently in my consultations and in my conversations with people with disability. It is a matter for the government and I have made that issue known.

Senator SIEWERT: Is that the consultation process that you undertook when you first started in the role?

Mr McEwin: Can you repeat that question, sorry?

Senator SIEWERT: I beg your pardon, sorry. You said that it has come up—in your consultations. Is that in the extensive process you undertook when you started your role?

Mr McEwin: Yes, it is.

Senator SIEWERT: What has been the response when you have gone back to the department?

Mr McEwin: It is an ongoing conversation. We are still in dialogue and there is no clear response yet.

Senator SIEWERT: What was the nature of the concerns that were raised with you around psychosocial disabilities as they relate to the NDIS?

Mr McEwin: I think, firstly, I would say the National Disability Insurance Scheme is a brand-new scheme—three to four years—so it is still evolving. We need to ensure that Commonwealth, state and territory governments commit to ensuring that no-one is disadvantaged under the NDIS, and that is an ongoing dialogue.

Senator SIEWERT: So were issues raised that people thought that they were being disadvantaged, particularly as the NDIS relates to psychosocial disabilities?

Mr McEwin: Yes; they were. My role is to work constructively with the government and the NDIA to ensure that these issues are addressed.

Senator SIEWERT: What were the reasons people were saying they were feeling disadvantaged in terms of their particular disability?
Mr McEwin: It is a relatively new scheme, and I think the concerns were mainly around certainty of eligibility. That is an ongoing dialogue, as I said.

Senator SIEWERT: I understand that. I am trying to get to the nature of where we go from here with the issue. The point that people raised, and why I am particularly raising it here, is that it is undermining our obligations under the convention and, further, that they think the act needs amending. I am wondering if those issues came up in your consultations and, in fact, if that is the nature of the discussions you have been having with the department about the extent of change that is needed.

Mr McEwin: That would ultimately be a matter for the government.

Senator SIEWERT: I understand that. But in terms of what has been raised with you—

Mr McEwin: Yes; it certainly has been raised. I am the disability discrimination commissioner, so people with disabilities come to me all the time to raise issues. Some fall directly under my portfolio, and others, such as the administration of the NDIS, do not. My role is to ensure that there is an ongoing dialogue between all parties involved.

Senator SIEWERT: I understand what you are saying in that respect. We will have a long time with the department next week when, I am sure, a number of us will be pursuing this issue. But I am particularly interested in the issues as they relate to the convention and our obligations.

Mr McEwin: Certainly. Firstly I would say that I welcome the fact that we have the NDIS to ensure that people with disability can live independently in the community. I understand also that with a new scheme we need to ensure that we learn as we go. I am working with the NDIA on learning lessons—and on feedback that is raised with me during my consultation.

Senator SIEWERT: Are you going to be doing anything more publicly around that particular issue? I understand that you are engaged in dialogue with the DSS. But, in terms of the issues that have been raised, is there something that you are going to be doing more publicly, perhaps in a report or something like that?

Mr McEwin: Yes; I will. One of my priority areas is to see the NDIS implemented within a human rights framework, and as part of that I am committed to ongoing dialogue with the NDIA and with the Department of Social Services.

Senator SIEWERT: In answers to several of my questions on notice you said that, in terms of hearing, there had been no complaints about access under the NDIS. Could I ask you on notice to update the figures in question AE17/003, about complaints about access to hearing services under the NDIS, and in AE17/002, about the number of complaints you have received about the NDIA. Could you provide us with updated figures on those, please.

Mr McEwin: Yes. In regard to your question about hearing impairment, I can say that from the period July to December 2016, there were 29 complaints from people who have a hearing impairment—

Senator SIEWERT: Yes; I saw that. I am now asking for you to update that for this year.

Mr McEwin: I do not have any further information, other than that.

Senator SIEWERT: Do you also not have anything to add to the figures that you provided in relation to complaints about the NDIA? Will I have to wait till next estimates?

Mr McEwin: Yes; that is correct. I will take that on notice.
Senator SIEWERT: Can I go back to the issue of testing. Would it be normal for you to look at the measures that were introduced—both the drug testing issue and the impairment tables—regardless of whether you were asked to or not?

Mr McEwin: That is correct. My role is to ensure that under the Disability Discrimination Act there is no form of discrimination against people with disability in Australia. I will take that on notice and look into that.

CHAIR: Commissioner, thank you very much for your attendance. We very much appreciate your assistance and thank you for coming along.

Mr McEwin: Thank you, Chair, for your flexibility.

Proceedings suspended from 13:00 to 14:04

CHAIR: I welcome everyone back to the Legal and Constitutional Affairs Legislation Committee's inquiry into the budget estimates for 2017-18. We are now continuing with the Human Rights Commission. Having had Mr McEwin before lunch, I welcome Professor Triggs. Professor, did you have any opening statement that you would like to give us?

Prof. Triggs: No. Thank you, Senator. I do not have a formal opening statement. But just for the record, and to assist, my reference to the questions asked in the previous session of the Disability Discrimination Commissioner, is a Federal Court decision. Marsden's case, in the year 2000, found that opiates do fall within the disability provisions of the Disability Discrimination Act. We will provide a full brief to this committee on the issues that were raised by the senator. She is not here, I notice.

CHAIR: I think that was both Senator Siewert and Senator Watt.

Prof. Triggs: But there is jurisprudence in Australian law in relation to opiates of particular kinds. Her question may be broader than that. But we will provide a research based answer to her question, which hopefully will inform the bill when it is introduced.

CHAIR: That is very helpful for those who were questioning on that subject. Professor, I might start. I will not be terribly long. In a question labelled AE17/012, I asked about the complaint made by Ms Cindy Prior to the commission. You took it on notice. Your written response says, 'We thought it was filed with her application to the court, but it is not, as such, a public document.' You approached Ms Prior saying, 'Can you release it?' She said no for the reasons she has given. You finish by saying, 'Given that the request for the copy of the complaint followed a quick question about whether it was a public document, the commission has assumed that the chair only sought a copy of the claim if it was a document that was already public.' If it is not a document that is already public, can I still ask for a copy of it? It is the way the question is answered that encourages me to ask. If it is not already public, can I still ask, as part of this committee, for it to be made public?

Prof. Triggs: Thank you for the question. I think, as you will be aware, that when complaints come to us, they are confidential unless the parties choose themselves to take the matter into the media. If the complainant was asked by us if they would agree to information being released and the complainant said no, I believe that we will be controlled by our statute, which requires us to exercise confidentiality in relation to that complaint. So I think the answer is that were it not already in the public arena and the complainant requested that it be kept confidential, we would be required to honour that request. I can check the legality of that and come back to you to clarify the points and take it on notice.
CHAIR: It is incontestable that this is a very public issue. I was keen to find out exactly what Ms Prior had complained about, because my previous questions related to the time she had taken to make the complaint to the commission. Can you just reiterate—you did last time we went through it—that she did not make the complaint to the commission until one day shy of 12 months, although I think you said then that she had complained to the university before that?

Prof. Triggs: Yes. That is correct.

CHAIR: My question at that time was: did the fact that it took her 12 months to complain to the Human Rights Commission not suggest to the Human Rights Commission that this was not a terribly serious complaint and one that perhaps the commission should have dismissed at an earlier stage?

Prof. Triggs: No. I do not think so, Senator Macdonald, the point being that one of the primary purposes of the commission is to encourage the parties to conciliate or resolve a matter. If the matter can be resolved—in this case, between Ms Prior and the university—we would obviously encourage that as a first step. She came to us within a day of the normal rule that the complaint would need to be made within a year. Again, we accepted that in good faith it was an attempt to resolve the matter with the university. When she came to the view herself that she was not able to resolve the matter with the university, she took advantage, if you like—and I mean that in a neutral way—of the one-year rule and just got the complaint in in time. We could look at the ethics or the good faith of that, but, on the face of it, it was a properly drafted written complaint that fell within our statutory obligations and we accepted it at that stage.

CHAIR: But the fact is that she was trying to conciliate her claim with the university, which quite frankly had nothing to do with it. Six students were effectively the respondents. If there was any good faith, she would have gone to the students and said, 'Well, do you want to apologise?' or 'Do you want to pay me some money?' or 'What do you want to do?' But she did not approach them, and neither did the commission, for 18 months. They are the 'perpetrators' of the alleged offence. And that did not suggest to the commission that this was not a ridgy-didge complaint?

Prof. Triggs: No. The point is that the party very clearly named in her complaint was the university.

CHAIR: But what did the university have to do with it? They did nothing.

Prof. Triggs: Well, that is a question of her view of the situation. But she maintained initially in her complaint that the university was the primary respondent, the primary entity, against which she wished to complain. You can construct the argument that they had a duty of care to her as an employee. I do not need to make the argument on her behalf. But there were various arguments, I understand, that she made to the university to hold them responsible for the situation in which she found herself. We would not challenge that. If she could manage a resolution with the university—and I understand the university tried very hard to resolve the matter—we would not gainsay that or challenge it.

Senator Brandis: Senator Macdonald, I think it is analogous to those negligence cases in which employees allege failure to provide a safe place of work. As I understand Ms Prior's complaint, she was saying against the university, 'Well, you didn't, as my employer,
sufficient steps to ensure that I was able to work in an environment in which I would be free of or reasonably protected from the kind of conduct of which she complained. I suspect the real reason she sued the university is that it had deeper pockets than the students. But you could construct a legal argument.

CHAIR: Well, this is the Human Rights Commission. Thanks, Attorney. The university has provided a place for her to work, as they had done, I assume, for the previous 20 years. It had not changed. All that changed was that some students, who were told to leave a particular room, tweeted something. I cannot quite understand how—

Senator Brandis: I do not think anyone is saying it was a strong case. At least I am certainly not. You are asking about the legal basis.

CHAIR: My question, though, is to the Human Rights Commission. I wonder whether the Human Rights Commission would have looked at that and said, 'Well, things have not changed. The university did nothing. The university did what they've always been doing.' Here are some students who, in my view, quite appropriately sent a tweet asking a question about something that seemed quite amazing, I might say, but had nothing to do with the university. I am just curious why the Human Rights Commission did not take one look at this and say, 'This is simply about trying to get some money out of the university. It's not a genuine human rights complaint.'

Prof. Triggs: Well, as I think I have explained—and I believe this is fully on the Hansard record—the complaint as drafted by, I understand, Ms Prior's solicitor made very powerful allegations of discriminatory comments based on race that met—

CHAIR: But not by the university.

Prof. Triggs: That met the statutory requirement—that is, it must be a complaint in writing alleging unlawful discrimination. That is the basis of our jurisdiction, and we must at least make a preliminary investigation as to whether there is any substance to it. On its face and on the facts as we understood them at the commission, there was a proper matter before the commission, and we embarked on an attempt to both investigate and to conciliate. That was required under our statute.

CHAIR: But the comment, which I assume is in her complaint that we are not able to see, was, 'Trying to cure discrimination with discrimination' or something along those words. I cannot see what is discriminatory or racist or anything about that.

Prof. Triggs: I think you are well aware that there were at least six other comments, one or two of which were, on their face, racially derogatory. It is not for me at this moment to be making a judgement about that. It is not my role. And nor is it of the conciliators at the commission. On its face, the six statements that were allegedly made by the students formed the basis of a proper complaint before the commission, and we handled it accordingly. If I may say so, there were comments significantly more derogatory than the one that you have referred to—in other words, they varied in their content and they varied in the extent to which they would engage the Racial Discrimination Act.

CHAIR: I understand what you are saying. Perhaps you could tell us, if we cannot see her complaint, whether the complaint relied upon the comment I have badly paraphrased—curing discrimination with discrimination—or whether it related mainly to the other comments,
which I understand a court has found were either not made or not made by the alleged perpetrators.

Prof. Triggs: As a matter of fact, that was determined by the court. Of course, we fully respect and accept that. The aspects of the complaint that I read out to this committee are in *Hansard*; I can send that document to you again. Each of those matters was articulated by Ms Prior in her complaint as drafted by a solicitor. As I say, it was a well-drafted complaint. But I believe, if my memory serves me correctly, that the reference you have made to the point about resolving discrimination with discrimination or segregation with segregation was one of those six comments that was made.

CHAIR: Look, I will leave that there. Thank you, Professor. You have taken on notice whether we can get a copy of the complaint, notwithstanding that it is not a—

Prof. Triggs: Yes. We will respond to that. It is an important point. We will be very happy to come back to you.

CHAIR: Thank you very much.

Senator WONG: I do not have any questions. I did have some budget questions. I do not know if you have a CFO.

Prof. Triggs: Unfortunately we do not today, although I could try to answer them myself. But the executive director of the commission is in China on a mission to develop a project there.

CHAIR: We did indicate to the commission who the committee wanted to call. It was simply Professor Triggs and the disability commissioner. So that is why the CFO is not here.

Senator WONG: Okay. Can we flick to someone else and I will look at whether we can—

Senator PRATT: I am familiar with, Professor Triggs, your submission to the parliamentary inquiry into freedom of speech in December last year. In your submission, you noted that the commission had previously proposed and supported a number of statutory improvements to your enabling legislation to assist it and the courts in dealing with unmeritorious complaints. As we are all well aware, a number of those changes were accepted by the government and incorporated into its human rights legislation, which the Senate passed parts of earlier this year. I note that, importantly, the Senate did not pass the protections contained in 18C to weaken racial hate protections for Senator Brandis's sought right to be bigots. However, schedule 2 of the bill—

Senator HUME: I raise a point of order, Chair.

Senator PRATT: Are you satisfied with the changes that will—

CHAIR: Senator Pratt, hang on. What is your point of order?

Senator HUME: I really do not think that was the intent of the changes to 18C's wording at all.

Senator PRATT: Okay.

CHAIR: Thank you for withdrawing, Senator Pratt.

Senator PRATT: Schedule 2 of the bill gave effect to many of your recommendations for changes to the commission's procedures. I want to ask if you are satisfied with the changes
that will now be the commission's new procedures. What advantages do you see from those procedural changes? Are there any particular problems arising from the new changes?

Prof. Triggs: You are correct in making the general point that many of the changes to procedures of the commission were ones that we had proposed ourselves. We were very pleased indeed to see them taken up by the Attorney and the department and ultimately included in the legislation which passed. So on the positive side, one of the most important is to give the president a much greater power discretionary power to decline to embark on any investigation in relation to a matter that is brought where the matter is not warranted. Now, that is a very wide discretionary power. It may prove to be helpful. It may prove to be the reverse. In other words, it is probably a decision that will be potentially subject to judicial review. We may find ourselves having to deal with litigation before we can get very far with a particular matter.

But there were other elements that were helpful. One is that the complaint must set out as fully as practicable the details of the alleged acts, omissions or practices. There was also a very useful point that the complaint needs to be more than a mere allegation but must include some level of detail that would enable a proper judgement to be made by the president. So, very briefly, then, those are some of the things that we feel were precisely consistent with what we wanted, and we were grateful that those additional powers have been added.

However, there is one matter that I spoke to the Attorney about. We simply had a different view, and ultimately, obviously, it was a matter for the Attorney. One thing we are concerned about is that all persons who are subject to an adverse allegation must be notified. Now we understand, of course, that that arose because of the QUT case. It reflects the concern that people were not advised or thought to be advised as soon as they should have been. The difficulty—and this is of particular concern to parliamentarians, if I may say so—is that we receive many, many thousands of complaints every year that have a sort of shotgun approach. They go for all employees in the factory or every member of parliament that might ever have been involved or have responsibility for the matter. We generally try to make sure that they are not unduly disturbed by being told about these allegations. I am sure you appreciate that this is very common. now that we have to advise every person subject to an adverse allegation, it adds significantly to the procedural burdens of the commission.

Senator PRATT: So that is an allegation even if a complaint does not proceed?

Prof. Triggs: Exactly. If they are not a party. In other words, there is a difference between being the entity complained against and various other people mentioned in the complaint but where the complainant has not necessarily brought it against those individuals. So the wide range of people often referred to in these complaints will now have to be advised. And the difficulty is that it is not clear what their legal rights are.

Senator PRATT: Surely this might also cause difficulties for the complainant if you are bringing a case against an employer but you have to, in order to establish the facts, name a whole range of other people. It means that if you are having a particular experience of discrimination at work that is quite sensitive, you are suddenly drawing a whole range of other people into it, which might make you reluctant to make the complaint at all. Do you see that also as a potential problem?
Prof. Triggs: I had not seen that particularly. I think our main concern is that we would need to deal individually with every one of the members of the medical profession, the legal profession, the Australian police forces, all the kinds of people that are mentioned. They would then presumably want to go to their lawyers and defend themselves and yet they are not named as a respondent in the complaint.

Senator Pratt: By way of example, if it were a workplace discrimination case and in order to give you a history they name particular interactions with staff who are not involved in the complaint itself but may or may not have been witnesses or may be just named just because they are named—they may have been inadvertently named and not even substantive—you would be undermining the privacy of the person trying to resolve the issue with the complainant directly. I had a person in my office just last week talking about discrimination in their workplace. She was transgender. The whole office might not necessarily know that she is transgender, but she may be nevertheless naming them in a complaint. All those persons seemingly would need to be notified by this. That seems egregious.

Prof. Triggs: Perhaps, Senator Pratt, I can say that there is a safety clause in the legislation—it is a very helpful one—that, one, the person subject to an adverse allegation need not be notified if it would prejudice their safety. That, I think, would cover the case you are referring to. There is another wide range of discretion for the president if it is not practicable to do so—in other words, if hundreds of people are named, the president would simply make a judgement as to what is practicable. But one of the problems is going to be that that may very well be challenged as well, so we are going to have to see. This is very much at an early stage in trying to see how this legislation is going to work.

Senator Pratt: And you are concerned about the impact on resources?

Senator Brandis: Senator Pratt, I am going to add to the answer, if you do not mind.

Senator Pratt: Yes. Thank you, Senator Brandis.

Senator Brandis: The last provision to which Professor Triggs has referred is the most important one. So there are the concerns that you apprehend are relieved by the fact that there is an overarching discretion of not relieving the president of the obligation where it is not practicable to do so. Let us say, for argument's sake, there was an allegation—this is an example Professor Triggs and I discussed—at large against a large class of people so that if you were to take one view, every member of that class would be affected. If it is not practicable to notify every member of that class of persons, there is not an obligation to do so.

Senator Pratt: Yes. I understand that.

Senator Brandis: So that is the first point. That is designed, if you look at the EM, specifically to meet that concern. So it is not a concern that I think needs to be very problematic. But there is another consideration. In the exchange between you and Professor Triggs, the term 'named in a complaint' has loosely been used. That is not the test.

Senator Pratt: Okay.

Senator Brandis: The test is whether a person is the subject of an adverse allegation in the complaint. And the allegation has to be an allegation of unlawful discrimination. So it is not merely the fact that somebody may see their name appear in a complaint because they were, as it were, on the edge of an event or a series of events. There has to be a specific
allegation against a person or an identifiable person that they themselves have engaged in discrimination.

**Senator PRATT:** And that is important to the next question I want to ask, which is: will that notification take place even if that complaint is withdrawn? Clearly, it might also cause harm to the complainant if ultimately they decide, for example, they need to put in another round of effort to reconcile with their employer before they pursue a formal complaint and they decide at that point to withdraw it. But if the employer is notified prior to that point in time, it might irrevocably break down the employment situation anyway. How will this new provision deal with that?

**Prof. Triggs:** Senator Pratt, we at the commission are concerned about questions of privacy. We have to see how this is going to work in practice. But to precisely answer your question, if a complaint were to be withdrawn, we would accordingly advise all those who fall within what the Attorney has quite correctly said is subject to an adverse allegation of discrimination. So wherever we have notified a party under that provision, we would immediately come back to them to say, 'The complaint has been withdrawn and that's the end of the matter.' But, as you say, of course, in a process of complaints, there will be a lot of people whose privacy could be threatened. But we have yet to see how this is going to work out.

**Senator PRATT:** I share your concerns and I look forward to further advice from the commission.

**Senator WONG:** I have three minutes. Professor Triggs, I want to, first, confirm the state of your budget. There were some cuts in MYEFO. There were some cuts in the 2014-15 budget. Has there been a further reduction in this budget?

**Prof. Triggs:** There is a slight decrease in our budget for this year, 2016-17, and it is an efficiency dividend.

**Senator WONG:** Right.

**Senator Brandis:** Just in case people who may be listening to this broadcast do not quite get that, though, of course, Senator Wong, you understand this—

**Senator WONG:** Is there a question I could ask without you answering it?

**Senator Brandis:** I am sorry.

**Senator WONG:** I am just trying to ask—

**Senator Brandis:** Senator Wong.

**Senator WONG:** This is my three minutes. I was moving on.

**Senator Brandis:** Senator Wong, I am going to add to the professor's answer.

**Senator WONG:** You always do whenever I am asking questions.

**Senator Brandis:** As I am entitled to. Let us be very clear that with the exception of a very small number of exempted agencies, every Commonwealth agency and department is subject to the efficiency dividend. So if a reduction is represented entirely by an efficiency dividend, as is the case here, that is no different treatment than any other agency of the Commonwealth.

**Senator WONG:** It is a higher efficiency dividend than has been imposed for some time.
**Senator Brandis:** That is a debate about the efficiency dividend, not a debate about the treatment of the Australian Human Rights Commission.

**Senator WONG:** Can I ask a question? May I ask a question? Thank you. Professor Triggs, can you just remind me what the budget appropriation for the 2016-17 year is?

**Prof. Triggs:** For 2016-17—

**Senator WONG:** Sorry, 2017-18.

**Prof. Triggs:** So 2017-18 is $20.85 million, which is a decrease of $0.27 million.

**Senator WONG:** And the reduction in MYEFO, was it $1.7 million for 2016-17 and $1.6 million for 2017-18?

**Prof. Triggs:** I am sorry, Senator. Could you repeat that question?

**Senator WONG:** The past reductions; there have been past cuts—is that right?

**Prof. Triggs:** There have, yes.

**Senator WONG:** Are you able to detail them, or would you like me to put them on notice?

**Prof. Triggs:** If I may, I would like to answer them on notice. But to answer your question, at the moment, we have been subject to the efficiency dividends. We lost a significant sum of money that went to the royal commission on institutional child sex abuse. We have had appointments for new commissioners made without funding for them.

**Senator WONG:** So that is the eighth full-time commissioner?

**Prof. Triggs:** The seventh.

**Senator WONG:** Seventh, sorry.

**Prof. Triggs:** Yes. We have seven commissioners.

**Senator WONG:** Sorry, seven. My brief says eight, which is wrong.

**Prof. Triggs:** So the outcome has been that over the last few years we have had consistent significant reductions in our budget. And that has left us with what is now an approved operating loss of $1.5 million approximately that we are now taking from reserves. If this situation is to continue, we will simply be unable to operate.

**Senator ABETZ:** Does the commission have a register of interests for officials to declare gifts?
Prof. Triggs: We do.

Senator ABETZ: And this requires a declaration of sponsored travel and accommodation?

Prof. Triggs: No. I do not believe it does.

Senator ABETZ: And is this register to declare gifts publicly available?

Prof. Triggs: It is, yes.

Senator ABETZ: But sponsored travel and accommodation does not have to be declared or disclosed?

CHAIR: Did we not go through this with Commissioner Wilson? He was required to indicate his sponsored travel. Can anyone help me on that?

Senator Brandis: Well, I remember the discussion. I cannot remember if he was required to, but I do recall him describing a practice that was in place with the commission whereby he did do so. What the source of that obligation upon him was or whether it was a self-assumed obligation, I do not remember. But he certainly did indicate that he felt under the arrangements he had with the commission he had to disclose his travel, and he did.

CHAIR: I think we are up to Senator Abetz.

Senator ABETZ: Can I assume, because time is of the essence—

Senator WATT: That was before he was endorsed as a Liberal Party candidate.

Senator Brandis: No, it was not. No. That is not the case.

CHAIR: It was the case long before that. You were not here.

Senator Brandis: You are showing your ignorance, Senator Watts. Before Mr Wilson was endorsed as a Liberal Party candidate, he stood aside as a member of the Human Rights Commission. He was not obliged to do so, by the way, but he did. The practice that he gave evidence to this committee about was a practice that he had observed for as long as he was the Human Rights Commissioner.

CHAIR: I will stop the clock. Can I just say in response to what I take as a point of order that, as I recall with Mr Wilson, we had simply hours of questions and carry-on from the Labor Party about his travel. It was before Senator Watt was here. Senator Wong and Senator Pratt will well remember that. Again, I am sorry for interrupting, Senator Abetz. Your clock starts again.

Senator ABETZ: Professor Triggs, there is therefore no public disclosure of any payments that may have been made by the Bob Brown Foundation to fly you to Hobart and back and for the accommodation that they provided?

Senator McKIM: A point of order.

Prof. Triggs: All the travel expenses—

CHAIR: What is the point of order?

Senator McKIM: The point of order is that Senator Abetz's questions are out of order as they do not relate to the expenditure that this committee is tasked with investigating.

CHAIR: There is no point of order. They do relate to the operations of the Human Rights Commission.
Senator ABETZ: Very sensitive.

Senator McKIM: I know what grubby stuff you are up to. I know about that.

Senator ABETZ: So there is no public disclosure of that amount?

Prof. Triggs: Yes. All of our accounts are publicly available. We make them available whenever this committee asks a question, as they have done in relation to—

Senator ABETZ: Yes. But it is not your account, with great respect. This was largesse offered to you to fly to Hobart. Accommodation was provided to you, as I understand the answer on notice, by the Bob Brown Foundation. I just want to know how the public finds out about these things if you do not disclose them publicly on the register. I think your evidence is that you do not.

Prof. Triggs: My answer to your question about the register is that we do not place them on a gift register. We do not see them in those terms. I and the commissioners are invited all over Australia. In one week, we might do two or three of these in various parts of Australia. If possible, we will ask the person or the entity that has invited us to speak to meet the costs of the travel, accommodation and taxi fares. That is standard across the commission, and we all do it on that basis.

Senator ABETZ: But do you disclose it?

Prof. Triggs: Well, I do not think we put them on our website. But if we are ever asked about it, we would of course be totally transparent about the expenses in relation to any of these speeches or launches and so on that we attend. It is all totally available for anybody who cares to ask about it.

Senator ABETZ: So when the foundation books your flights for you, you would be aware that some expenditure had been incurred on your behalf?

Prof. Triggs: Well, indeed. Because of our very difficult financial position, I would not be able to attend these kinds of events across Australia unless I had a commitment beforehand to pay for the flights and accommodation in the other place—in other words, we cannot afford to pay for these from the commission budget, and we typically do not.

Senator Brandis: Senator Abetz, I think in fairness to Professor Triggs, it should be pointed out that it depends on the nature of the travel. If Professor Triggs were on official business—

Senator WONG: This was a fundraiser.

Senator Brandis: If Professor Triggs were on—

Senator ABETZ: This is the Bob Brown Foundation.

Senator Brandis: official business—

Senator McKIM: Were on a Liberal Party fundraiser.

CHAIR: Order!

Senator Brandis: then that would be—

CHAIR: Order! Senator Brandis.

Senator Brandis: That would be a private matter.

Senator Wong interjecting—
CHAIR: Senator Wong, I have warned you before about interrupting.
Senator WONG: I will not.
CHAIR: Please do not. Thank you.
Senator WONG: No worries. As long as you do not interrupt. The goose and the gander.
CHAIR: I beg your pardon.
Senator WONG: What is good for the goose and what is good for the gander. If you are prepared not to interrupt, I will not interrupt.
CHAIR: I am talking and you are doing just what I am asking you not to do—
Senator WONG: I see.
CHAIR: which is interrupting other people when they are talking.
Senator WONG: So who is the gander? Who is the goose?
CHAIR: And you are doing it again. I repeat the warning, Senator Wong. If you cannot—
Senator Brandis: Have respect for the Senate.
Senator WONG: I have no respect for this chair.
CHAIR: If you cannot control yourself—
Senator WONG: I am very controlled, thank you.
CHAIR: I will ask you to leave. Your illmanners are something amazing. You get away with it in the Senate chamber.
Senator McKIM: Oh, please! That is the pot calling the kettle black.
CHAIR: You will not get away with it in this committee hearing.
Senator Watt interjecting—
CHAIR: And Senator Watt, the same goes for you as well.
Senator WONG: This is the most courteous person you will ever meet!
Senator ABETZ: I will continue with my questions, if I may.
CHAIR: The committee is going to be suspended for five minutes while Senator Wong and Senator Watt control themselves and learn some manners. I hope their parents would have told them something about manners. I have warned them both on any number of occasions. I warned them yesterday. We went through this yesterday. I regret having to do this as I know there are many senators who want to ask questions and get them answered without continuous interruptions from Senator Wong and Senator Watt. I will now suspend the hearings for five minutes.

Proceedings suspended from 14.42 to 14.46 pm

CHAIR: I call the committee back to order. We have a lot to do before 11 o'clock. I hope that after the five-minute break those senators who have been unable to control themselves have calmed down and are able now to deal with the committee in a proper way as they are obliged to and as good manners should teach them to. Senator Abetz, I apologise. You have had an interrupted 50 minutes. You have about 13 minutes left.

Senator ABETZ: Thank you. Let us try and get through this quickly. I refer to question on notice No. 416. When were the two meetings referred to in the answer set up? I assume
that you will need to take that on notice. I invite you to take that on notice given that an answer is not yet—

**Prof. Triggs:** Thank you, Senator Abetz. I will take that on notice.

**Senator ABETZ:** The freedom of information request would suggest that the invitation to address the Bob Brown Foundation lecture was accepted in December 2016—is that correct?

**Prof. Triggs:** I do not recall when the invitation was received. I would have to take that on notice.

**Senator ABETZ:** Take on notice when it was received and when it was accepted. The freedom of information schedule of documents suggests, albeit highly redacted et cetera—we are working through a process—that the speech you delivered as president may have been written not only by the president. Would that be correct? Staff were involved in its creation?

**Prof. Triggs:** You are referring to the speech I gave—

**Senator ABETZ:** At the Bob Brown Foundation.

**Prof. Triggs:** At the Hobart oration?

**Senator ABETZ:** That is right.

**Prof. Triggs:** Yes. I would have to, again, check the records. I think I wrote that speech myself.

**Senator ABETZ:** All right. So you take personal responsibility for the immortal and, if I might say, very concerning line, where you said, 'Sadly, you can say what you like around the kitchen table at home.' So you wrote that line? That is your belief? That is your view?

**Prof. Triggs:** I did not write that line, as a matter of fact, but I did say that line.

**Senator ABETZ:** All right. So you produced that line. Is that the official view of the Australian Human Rights Commission—that it would be beneficial if we could control what is said around the kitchen table?

**Prof. Triggs:** That is not what I said and it is taken out of context. It was my reference to the very worrying extent to which we at the commission see racial abuse in the public arena. That, of course, underlies a primary provision of the Racial Discrimination Act.

**Senator ABETZ:** Sorry, you said, 'Sadly, you can say what you like around the kitchen table at home.'

**Prof. Triggs:** And what I was referring to is that racist attitudes that emerge in the public arena often arise at home. The metaphor was the kitchen table. Obviously it is a metaphor.

**Senator ABETZ:** And how would the Human Rights Commission seek to control that?

**Prof. Triggs:** It does not. There was no intent whatever to suggest that it controlled. It was merely an observation that racial attitudes, and particularly racial abuse, are very likely to be learned at home.

**Senator PRATT:** A completely fair observation.

**CHAIR:** Senator Pratt, you were not asked the question.

**Senator ABETZ:** Well, it is a very concerning comment, if I might say—

**Senator PRATT:** A very fair observation.
Senator ABETZ: that a public institution would seek to control that which may or may not be said—

Prof. Triggs: Well, we do not seek to control. That is a totally—

Senator ABETZ: around the kitchen table.

Prof. Triggs: I am afraid that is an inaccurate observation.

Senator PRATT: It might be all right around your kitchen table, Senator Abetz.

Senator ABETZ: Does the commission provide any resources to investigate the scourge of human trafficking and campaign against human trafficking?

Prof. Triggs: The commission has over many years taken part in anti-slavery and trafficking working groups, working with government and other bodies. We are currently engaged in meetings with, I think next week, for example, the United Kingdom's anti-slavery commissioner. I think I am giving a short speech in the New South Wales parliament on the subject. But if your question is about resources, we have not—

Senator ABETZ: No. It is not. It is a matter of priorities and allocation of priorities.

Prof. Triggs: Yes.

Senator ABETZ: Did the commission ever say that the commission does not have specialist expertise in the areas covered by the inquiry terms of reference—this is for the joint parliamentary committee on law enforcement—and has not made a submission to the inquiry on that basis? The terms of reference refer to the prevalence of human trafficking in Australia and the role and effectiveness of Commonwealth law and enforcement agencies et cetera. You were not able to make available any thoughts or comments to that committee?

Prof. Triggs: Well, this is an area that we would very much like to devote resources to. But each year, as you may know from our planning process, we agree on projects that are manageable or doable within our very limited budget. Those projects are largely driven by the suggestions of particular commissioners and, of course, the president. We would very much like to be more engaged in the anti-slavery issue, especially now that there is an inquiry. But at the moment we do not have staff with specialist skills in this area; that is true.

Senator ABETZ: Apart from the actual deprivation of life itself, it is pretty hard to think of a more gross form of deprivation of one's human right than being trafficked. You talk about resources. I point you to what happened to Mr Leak—there were resources for that—and to the QUT students; there were resources for that.

Prof. Triggs: They are statutory obligations. We have no choice about those matters. They are obligations.

Senator ABETZ: But it was how you dealt with them and pursued them.

Senator McKIM: In line with the act.

Senator ABETZ: If it was in line with the act, the commissioner would not have encouraged a complaint against Bill Leak.

Prof. Triggs: No such encouragement was made.

Senator ABETZ: Well, the public record stands for itself.

Senator McKIM: Just keep making it up, Senator Abetz. Just keep making it up.
CHAIR: Senator Abetz, I encourage you to ignore the interjections.
Senator ABETZ: I will.
CHAIR: If they continue from my colleagues, I will again take appropriate action. I also ask the witnesses not to interrupt until the question is asked. Then the questioner will have full opportunity to respond.
Senator ABETZ: Thank you. The commission does not seem to have the resources to write one word in relation to the issue of human trafficking but is able to produce a 21-page document in the matter of Ince v Commonwealth of Australia, where somebody—
Senator McKIM: Is this a question?
Senator ABETZ: Yes—where somebody shot and killed a man. You came up with a decision, Madam President, that compensation of $450,000 ought to be paid to the perpetrator. And so there are the cases of Charlie, a 35-page decision—
Senator McKIM: What is the question here, Chair?
Senator ABETZ: The allocation of resources and priorities within the commission by the president.
Senator McKIM: This is not a question, Chair.
Senator ABETZ: If you stop interrupting, I will be able to ask why that is a priority for the commission as opposed to the undoubted scourge of human trafficking.
Prof. Triggs: Well, we are, of course, deeply concerned about human trafficking. We are doing, and have been doing for some time, work with the business community on supply chains, particularly in the fresh food area, where we are concerned about the treatment of workers. So we are definitely doing work in that area. But we are not able to make submissions to every inquiry that occurs across government. We have to make choices about resources. For example—
Senator ABETZ: Absolutely right.
Prof. Triggs: The freedom of speech inquiry took over that period an enormous amount of our resources. I must also reiterate that, with regard to the particular cases you have raised, we are bound by statute to deal with those matters, so we have no option. What we have to do is to find resources in addition to meeting our statutory obligations to deal with other issues. One of those has been the freedom of speech inquiry and other work that we are doing in the commission. But we are certainly doing work with the major business community in the fresh food industry to consider the treatment of workers, particularly imported workers.
Senator ABETZ: It is a matter of priorities. In relation to section 18C, you put in a 96-page submission, but you do not write one word about human trafficking. We have pages and pages of decisions asserting that compensation in the hundreds of thousands of dollars ought to be paid to perpetrators of crime when the actual victims of those crimes, under state legislation, like in New South Wales, can only be paid $50,000 under the victims of crime legislation. So the family of the person who gets killed can claim $50,000. In one case, you said that the perpetrator should get $350,000. That is what the commission is spending its time on.
Senator McKIM: This is not a question.
Senator ABETZ: It is these bizarre decisions, as opposed to what I would have thought we could all agree on in this committee, and that is human trafficking. It should be one of the top priorities to ensure that that scourge is stamped out. I am inquiring why section 18C, Bill Leak, QUT students and people who kill others are given priority, time and resources but, with human trafficking, not one word can be written to a parliamentary committee. If I might say, it is a sad reflection on our priorities.

Senator McKIM: Well, these are not questions, Chair.

Senator ABETZ: Can I move on?

CHAIR: Sorry, Senator Abetz. Allow the witness to answer the question.

Prof. Triggs: Well, I am not quite sure if that was a question or a rather misconceived comment. It was really a misconceived comment.

Senator McKIM: There is one rule for the Liberals and one rule for everyone else in here.

Senator ABETZ: I am asking you—

CHAIR: Excuse me. You are constantly interjecting.

Senator McKIM: No. No, I will not.

CHAIR: Your ill-mannered approach is just amazing.

Senator McKIM: One rule for the Liberals and one rule for everyone else.

CHAIR: No wonder they threw you out of the Tasmanian parliament.

Senator McKIM: No. I will not leave.

CHAIR: Senator McKim, would you please leave.

Senator McKIM: No.

CHAIR: I will not be calling on you to ask any questions henceforth.

Senator WATT: Chair, he has actually been very quiet.

CHAIR: He has been consistently interjecting through the last—

Senator McKIM: You cannot make me leave, mate. I am not going. What are you going to do about it?

CHAIR: Well, you will not be called to ask any questions.

Senator McKIM: I will not be going.

CHAIR: So you can stay.

Senator McKIM: Oh, I can stay now. Thank you, mate.

CHAIR: But, as far as I am concerned, you will not be asked questions. You continuously interjected during the last hearing. I know you have a particular penchant for these sort of things, Senator McKim, but you will no longer for the rest of today be called to ask any questions. I have warned you.

Senator WATT: A point of order. I move dissent from your ruling. I move dissent from your ruling.

CHAIR: Can I also say—

Senator WATT: Chair, a point of order. I move dissent from your ruling.
CHAIR: Can I also say, Senator Watt and Senator Wong, you have been warned. If you persist—

Senator WATT: You are a tyrant.

Senator McKIM: You are a tyrant.

CHAIR: It will be a blow to you.

Senator WATT: I dissent from your ruling, Chair. I am not going anywhere.

CHAIR: Senator Watt, you will withdraw that or the same ruling will apply to you. Please withdraw.

Senator WATT: So anyone who—

CHAIR: Please withdraw.

Senator WATT: Chair, there was a point of order before you.

CHAIR: Please withdraw.

Senator PRATT: It is a procedural right to dissent from the chair.

Senator WATT: Chair, there was a point of order before you.

CHAIR: Please withdraw.

Senator WATT: I withdraw.

Senator McKIM: A point of order.

CHAIR: Thank you. Senator McKim, you have a point of order?

Senator McKIM: Yes. I move dissent from that ruling.

CHAIR: Okay. The committee will suspend into private session. Let me say again that it is in everyone's interests—that of senators who want to ask questions and that of witnesses who come here to give answers—to be able to ask questions and give answers without continuously being interrupted by the likes of Senator McKim, Senator Watt and Senator Wong. I will not allow this in the committee that I chair—

Senator McKIM: You are an embarrassment.

CHAIR: That ruling will apply to everybody. We have a lot to get through.

Senator WATT: It does not happen in any other committee.

CHAIR: Senator Watt, just because other committees are not properly run—

Senator WATT: And can work in a civil manner.

CHAIR: And you are continually proving the point I make. The chair is speaking and you continually try to shout me down.

Senator WATT: Just because other committees can work civilly. You cannot.

CHAIR: Now that demonstrates the difficulty that we as senators have in trying to ask questions and get answers.

Senator WATT: Only on this committee.

CHAIR: We are suspending for, say, 10 minutes. We will have a private meeting to deal with Senator McKim's motion. The committee is suspended.

Proceedings suspended from 15:01 to 15:24
CHAIR: I declare back in session the Senate Legal and Constitutional Affairs Legislation Committee dealing with budget estimates 2017-18. I apologise to witnesses about this delay and the unruly activities and continuous interruptions. We have had a meeting. The motion moved by Senator McKim has been withdrawn. I have been advised by the Clerk that I do not have power to evict anyone or to prevent anyone from asking questions. We do have an undertaking by all committee members that in future they will not interrupt questioners or answers and that they will show some respect, not to me—I do not need that—but to other senators asking questions and to witnesses. With that, we will move on. Senator Abetz, I think you have about three minutes left.

Senator ABETZ: All right. That should finish my line of questioning.

CHAIR: But you can come back later.

Senator ABETZ: Professor Triggs, before the suspension my question to you, in relation to all the matters I have put before you, concerned prioritising the resources available to the Human Rights Commission. Why has the issue of human trafficking not received greater resources, even from the limited resources that you say you have in the commission? Why has human trafficking not excited more interest and more resources from the commission?

Prof. Triggs: I will pass to my colleague, Mr Dick. We have done work in this area for many years. I would be very happy to send you a list of the work that we are currently engaged on in that area. I will now pass, if I may, to Mr Dick.

Mr Dick: The commission has been engaged in processes around human trafficking and slavery for probably six or seven years now. Most of those processes are sort of in-government processes—various working groups and the Attorney's department, and Foreign Affairs as well. We are working with other agencies like the Fair Work Ombudsman, which is directly investigating supply chains and these types of things.

Senator ABETZ: I am aware of that, yes.

Mr Dick: So it has really been that agencies such as Fair Work have more of an investigative role that sits with their functions much better.

Senator ABETZ: Can you take on notice for me, please, how many speeches on human trafficking have been undertaken and how many education campaigns and things of that matter? I will turn to one quick final issue. The president of the Human Rights Commission is quoted in The Australian on Thursday, 11 May as having said about Ms Abdel-Magied's deeply offensive Facebook post that it was a 'relatively minor incident'. I wonder whether the president was reported correctly and whether that is actually her view.

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Prof. Triggs: I will have to take that on notice and see exactly what was said. I certainly would not trust the reporting in that newspaper for being accurate. I think it may be the gist of what I was saying, if not precise. The point was—

Senator ABETZ: One hopes they do not have a tape, Professor Triggs.

Prof. Triggs: Well, as I say, it is certainly the gist of what I said. So, whether it was accurately reported, I would have to examine. The key point I was making is that the comment was unfortunately made on Anzac Day. It was rapidly apologised for. I think the response in relation to it has been seriously out of proportion to the mistake that was admittedly made. My concern has been the rising level of discrimination against Muslims in
Australia and, sadly, in particular, Muslim women wearing the hijab. So that is the context in which these remarks were made.

Senator ABETZ: But you would agree that, irrespective of one's religion, one's gender or one's headwear, it was a deeply offensive thing to have said?

Prof. Triggs: I agree that it was a most inappropriate thing to have said in the context, and she apologised very quickly for it.

Senator ABETZ: So people might criticise it irrespective of the person who said it because of the deeply offensive nature of it?

Prof. Triggs: They are free to criticise it.

Senator ABETZ: Yes.

Prof. Triggs: And if it raises into the public arena the issues behind the comment, that is in the interests of good public debate.

Senator ABETZ: Thank you. Thank you, Chair.

CHAIR: I will go now to Senator Pratt, Senator Wong and Senator Watt. Before that, I will confirm with the Australian Law Reform Commission that only the Greens political party have indicated they have questions. Does anyone else have questions? Can those questions be placed on notice? If not, the Australian Law Reform Commission will stay, but they will have to rearrange flights back to Sydney.

Senator WONG: I think we can just do it on notice. If you give me two minutes to confirm that, I will do so—

CHAIR: Okay.

Senator WONG: because Senator Pratt is out of the room. So we will need to do that.

CHAIR: With the Australian Law Reform Commission?

Senator WONG: Yes. You just asked—

CHAIR: The Labor Party was not shown as having an interest, but that may not have been—

Senator WONG: Well, you just asked if other senators wanted to ask questions or could put them on notice. I have some questions in this pack. I think they look like they can go on notice. If you give me the opportunity, I will check that.

CHAIR: Okay. And from the Greens?

Senator McKIM: For the Law Reform Commission?

CHAIR: Yes.

Senator McKIM: No. Thank you.

Senator WONG: You have no questions?

Senator McKIM: I beg your pardon?

Senator HINCH: Chair, I have questions.

CHAIR: Of the Australian Law Reform Commission?

Senator HINCH: No. Sorry.
CHAIR: The Australian Law Reform Commission are here to give evidence because they were called by the Greens.

Senator McKIM: Oh, really?

CHAIR: If we want to continue with questions for them that cannot be put on notice, we will tell them and they will rearrange their flights back to Sydney. If we do not need them, they can go back to Sydney on the flights they were on.

Senator McKIM: Senator Macdonald, if I can attempt to assist, I will make inquiries. I do not believe that came from my office, but I will make some inquiries as to that and I will notify you as soon as possible.

CHAIR: I am waiting for advice from the Labor Party and the Greens if they have requests for the Australian Law Reform Commission.

Senator McKIM: I will notify them.

CHAIR: I am not quite sure what their flight arrangements are, but we will get back to you as soon as we can. I will interrupt the proceedings just to let you know in case that happens.

Senator McKIM: In an attempt to assist, I have just been contacted by Senator Waters, who does have questions for the Law Reform Commission. I will see how soon she is able to attend.

Senator WONG: Chair, we can place ours on notice.

CHAIR: Thank you, Senator Wong. You will place yours on notice. If Senator Waters wants to ask questions, I am afraid the Australian Law Reform Commission, wherever you are, will have to rearrange your flight schedules because we are still going on the Human Rights Commission, although we are now two hours overdue. We then have the AAT—my impression is that there will be quite a number of questions about it—and then the Australian Law Reform Commission. Perhaps with the agreement of the committee, we might rearrange the order to have the Law Reform Commission before the Australian Administrative Appeals Tribunal. Senator Waters can then ask her questions and they can be finished with. My impression is that the AAT will take some time.

Senator McKIM: Chair, I am not sure if this is possible. But if Senator Waters could be here immediately and if the committee were prepared—

Senator WONG: We are almost finished on human rights, are we not?

Senator McKIM: We have not started.

Senator WONG: I am sorry; you have not.

CHAIR: Okay. I think we have done as much as we can. I think a change of flights might be the most appropriate. Senator Wong?

Senator WONG: I said I had no more questions of the Human Rights Commission.

Senator WATT: I have a couple of quick ones. My questions follow on from previous questions in other sessions of estimates. Professor Triggs, I presume you are aware that membership of the Human Rights Commission is listed on the Department of Finance's AusGovBoards website?

Prof. Triggs: I believe so, yes.
Senator WATT: Who in the commission is responsible for providing information for the listing to the Department of Finance?

Prof. Triggs: I believe the head of our financial unit. I can give you a precise answer to that, but I believe the head of the financial component of the commission would keep an eye on that. Possibly any correspondence would go through legal before it would go out as information.

Senator WATT: You probably recall that we have previously raised the fact that on 20 March 2017 the member for Goldstein, Mr Wilson, was still listed on AusGovBoards as a member of the Human Rights Commission despite having resigned in February 2016. I notice that in answer to question on notice No. 417, which asked why the AusGovBoards website still listed Mr Wilson as a commissioner, Senator Brandis, your answer was that the Department of Finance maintains that website. You referred the question to the Department of Finance. Do you remember answering that question?

Senator Brandis: I am aware of that, and that is the case. These are questions to the Department of Finance.

Senator WATT: Are you aware that last night in estimates the Department of Finance was asked about this and gave evidence that their role was maintaining the system and that agencies were responsible for providing the information?

Senator Brandis: I am not aware of that evidence. But assuming you have stated it correctly, it does not change my view that questions about a website maintained by a particular department are questions to that department whatever the arrangements for the recording of entries on the website may be.

Senator WATT: Again, what finance advised last night was that, while they admit responsibility for maintaining the system overall, agencies are responsible for providing the information that is displayed in that website. So surely that means that it is an agency under your responsibility.

CHAIR: Just before you answer, Senator Brandis, I can now say to the Australian Law Reform Commission thank you for attending but we do not need you any more. The questions that were going to be put to you will now be placed on notice. If you can get your planes, good luck and travel safe.

Senator Brandis: I wonder if the Greens will take responsibility for the cost to the taxpayer of all the airfares.

Senator McKIM: I raise a point of order: that was quite unnecessary.

CHAIR: Senator Brandis.

Senator WATT: I raise a point of order. Point of order, Chair.

CHAIR: Let me just finish. Thank you for attending, Australian Law Reform Commission. You will get questions on notice from senators who have agreed to put their questions on notice so as not to disrupt too much your flying.

Senator WATT: A point of order, Chair.

CHAIR: The point of order?
Senator WATT: My point of order, Chair, is that you will remember in the private meeting the committee had outside that there was an agreement reached that all committee members, yourself included, would treat each other respectfully. I think it would help if witnesses, particularly Senator Brandis, followed in the same spirit and did not make cheap shots at committee members. That would help keep the temperature down in here and we could get through the program. So you might like to provide some direction, as chair, to Senator Brandis.

Senator McKIM: On that point of order—

Senator Brandis: Mr Chairman, I am not making a cheap shot. I am making a serious point about the cost to the taxpayers of bringing these very busy people all the way to Canberra at taxpayers' expense and just wasting their time for a whole day and not to mention them.

CHAIR: Thank you, Senator Brandis. Still on Senator Watt's point of order?

Senator McKIM: Yes. Thank you, Chair. As I indicated, it was Senator Waters who indicated that she had questions for the Law Reform Commission. When it became apparent that there was an issue with flights, I communicated by text with Senator Waters. I am going to read out, if I might; it is very brief. She has texted me: 'I don't want them to miss their flights. They might have kids. I will put my questions on notice.' She is doing this to try to assist the parliament, the committee and the Law Reform Commission. And, for a generous gesture like that, to be subjected to what we just heard from the Attorney says more about him than it does about Senator Waters or the Greens.

CHAIR: There is a point of order raised. There is actually no point of order. It does not help to have these sorts of interludes. Senator Watt, you have questions?

Senator WATT: Yes. Before I was interrupted, I was reminding Senator Brandis that while the Department of Finance did give evidence that their role is to maintain the system overall, it is agencies that are responsible for providing information. So is it not the case that it was the responsibility of his agency to provide that information?

Senator Brandis: Well, assuming that is right—and I will assume that it is—I suppose it all depends what the question is about. If the question is about the website, it is a question to the Department of Finance. If it is a question about what information an agency in my department provided to the Department of Finance for the purposes of the website, it is obviously a question for the Human Rights Commission.

Senator WATT: So whose responsibility is it to provide correct information to the Department of Finance?

Prof. Triggs: Well, I would imagine it is our responsibility, so I will certainly go back to the office and find out exactly what information we gave them or what the timing was. If we failed to get that information with regard to Mr Wilson's appointment to them in a timely way, I will report back to you as a question on notice and apologise. But I do not know that that is the case at all. I need to go back to the office and find out what happened.

Senator WATT: Sure. Thank you.

Senator HINCH: Professor Triggs, I am wondering in retrospect if you now feel that you were wrong to accept Liberty Victoria's Voltaire award?
**Prof. Triggs:** I was very honoured to receive that award. Thank you.

**Senator HINCH:** Even though on Sky News Bill Leak's son Johannes said:

You’ve got somebody being heralded as a champion of free speech: nobody's done more over the last few years to quash freedom of speech in this country … and my father wore it along with the QUT students and we all know what happened.

That sort of thing does not perturb you?

**Prof. Triggs:** I am very concerned about the impact of these complaints on the families and all concerned in both the QUT and the Leak matters. We are very concerned at the commission about the impact and anxiety that is caused by these kinds of complaints. I do not think that has anything at all to do with my work on freedom of speech. I have given many, many speeches on this matter and will continue to do so supporting the right to freedom of speech as a fundamental right in Australia.

**Senator HINCH:** Another reaction to it on 2GB was former Prime Minister Tony Abbott. He said, and I quote:

She’s been the enemy of free speech, the absolute arch enemy of free speech in the country … And I can only assume that someone with a warped sense of humour came up with this award.

That doesn't perturb you?

**Prof. Triggs:** Well, I cannot imagine that it is very pleasant for anyone to be criticised by a former Prime Minister. That is most unfortunate. I certainly regret that the statements were made. And they are completely inaccurate. I have been a very strong supporter of freedom of speech for my entire 50-year career. If you took the time to read my speeches, chapters of books and books that I have written on the subject, you would know that I am one of the strongest supporters of freedom of speech in the country.

**Senator HINCH:** I want to follow up from Senator Abetz on another issue. You said that you would take this on notice, and maybe you still will. He referred to the Anzac Day comments of Yassmin Abdel-Magied. You said it was a relatively minor incident. The statement you made—and I think it was at your Melbourne Town Hall speech—was:

Despite a speedy apology from her, to what she said was a disrespectful comment on this important day of remembrance, this relatively minor incident has been used to demand the removal of Abdel-Magied from the Council for Australia-Arab Relations.

Do you still think it was a relatively minor incident?

**Prof. Triggs:** I think it has been blown very significantly out of proportion and, sadly, is a reflection of the general abuse that many in the Muslim community receive. I think that this incident is illustrative of that broader point and is a matter of great concern to the commission.

**Senator HINCH:** But if it had been said by a Caucasian male pacifist, that would have got the same reaction from Australians all over the country.

**Prof. Triggs:** Well, again, I think it was a mistake, as I have said. It was followed rapidly by an apology. I think it should have been left at that stage, instead of which it has been used as a sort of lightning rod for attacks that I believe are significantly out of proportion to the error that was made.
Senator HINCH: In that same speech, you said you were worried about a rise in nationalist rhetoric from political leaders and about proposed changes to the citizenship test. Can you name me the political leaders who are guilty of this nationalistic rhetoric?

Prof. Triggs: I am more than happy to respond to you with some detail, but quite obviously in that speech I was not going to mention the political leaders. I think the people at that speech would think through for themselves who they would like to suggest.

Senator HINCH: Well, I could make it easy for you. Is Prime Minister Turnbull guilty of nationalistic rhetoric?

Prof. Triggs: I am absolutely not responding to that question. That is hypothetical.

CHAIR: Hang on. That is not a fair question.

Senator HINCH: I was going to say Bill Shorten next.

CHAIR: It does not matter who it is. It is not a fair question to the witness. I ask you not to pursue it.

Senator HINCH: Mr Chairman, if Professor Triggs says that she is worried about a rise in nationalist rhetoric from political leaders, I think it is fair for us to know which political leaders she finds the most guilty of it.

CHAIR: Again, that is a question asking for an opinion, which is not allowed in this hearing. As well as that, it is not fair to ask public servants that sort of question for reasons that are obvious.

Senator HINCH: I was going to mention Bill Shorten next.

CHAIR: No, not even Bill Shorten.

Senator HINCH: I have one final question, Professor Triggs. You said originally: I'm coming to the view that they have been able to say things about me, and attack me, in a way that never would have happened to a man. And I'm sorry to say that, but it's true. Do you really believe that?

Prof. Triggs: I have had a legal career now for 50 years. For most of those 50 years, I have never ever felt that I was in any way hampered by being a woman in Australia. I have ridden the crest of a wave of opportunities for women of my generation in education and in work, and I have always benefitted from that. But I think it is fair to say—and I say it as I said at that time in answer to a question, again I think in the Melbourne Town Hall—that sadly in the last few years there has been clear evidence that women in senior positions or women in the media are being attacked. I think that is very unfortunate for Australian democracy and for enlightened and liberal debate in this country.

Senator HINCH: I presume in the context, to be fair, you were saying this in your position as Human Rights Commissioner—is that right?

Prof. Triggs: Well, that is where—

Senator HINCH: When you were in the legal profession, it did not happen to you?

Prof. Triggs: I am trying to speak about matters of law, about human rights, about the protection of human rights within Australia and our international legal obligations. I am a public international lawyer. I have written many books and hundreds of articles. That attracted almost no attention. However, being president of the Human Rights Commission,
saying almost exactly the same things, has attracted a great deal of attention. And that simply is a function of the role, and it is an honour to be in that role. But it does attract a certain level of controversy.

Senator HINCH: In fairness, as you said, it was an answer to a question on the night—correct?

Prof. Triggs: It was in answer to a question.

Senator HINCH: It was not part of a speech?

Prof. Triggs: No.

Senator HINCH: Would you concede it is a touch hyperbolic? It sounds to me a bit like President Trump the other day saying, 'No president in history has ever been attacked or criticised as much' as he has.

Prof. Triggs: I find it extraordinary to be referred to in the same sentence as Mr Trump. I am not sure that it is a very flattering association, nonetheless I do not understand your question at all.

Senator HINCH: I assume you think it is a bit over the top, my saying this. If you were a man, you would not have been attacked like that. But I am sure the men in this room have been attacked like that.

Prof. Triggs: No, I do not think it is over the top. I will in fact do some more research on this, but I think the evidence is mounting in Australia that in the last few years there have been growing attacks on women in any public position, whether it is the head of a company, in the Public Service, this business, in education and in my statutory role. I think there is a lot of evidence to support it and I think it is something that women in Australia really need to articulate and to provide the factual evidence for. I say this with great sorrow, because I grew up and went to university in the 1960s, at a time of enormous optimism and great opportunities for women. But the last few years have seen a serious regression. I think you might know that women in Australia are No. 1 in the World Economic Forum's global index for women and gender equality. Australia is No. 1 for educational attainment, 43rd for economic engagement and, I think, 50-something for various other elements of pay equality and so on. We are very aware of the gender pay gap and other elements of gender segregation in the workforce and the very high percentage of women unpaid for much of the work they do. So I think that we have seen a regressive position in Australia over the last few years. I think it is something women need to talk about, but not in this context, I assure you, in the Senate inquiry, which I think is meant to be about the economic management of the commission.

Senator HINCH: This is my final point. In the midst of all these what you call sexist, misogynist attacks on you because you are a female, did you ever consider resigning early?

Prof. Triggs: No, because this is a statutory position. I am very honoured to hold it and I will see it to the end.

Senator HINCH: I have no more questions.

Senator WATT: I do have one quick question, but I am happy to wait.

CHAIR: I will go to the major parties and then to the crossbench, which I have just done. We will have yours, Senator Watt.
Senator WATT: It will be very quick, Senator McKim. It is actually a question for Mr McEwin, if he is still available for questions. Thanks for returning to the table. It will be very quick. You would be aware that the government has recently made announcements about school funding policies. Have you provided any input into government policy on students with disabilities?

Mr McEwin: Not directly yet. I have a meeting with Minister Birmingham in a few weeks and I will be raising that issue with him.

Senator WATT: You will be raising the issues around the government's funding proposals insofar as they affect students with disabilities?

Mr McEwin: Matters of funding are for government. But I will be raising it in the context of making sure that students with disabilities can get an inclusive education.

Senator WATT: Who instigated that meeting with Senator Birmingham?

Mr McEwin: I requested the meeting.

Senator WATT: What prompted you to request the meeting?

Mr McEwin: Well, in my consultations, and as somebody with a disability myself, I know that education is a very significant issue. We are finding that students with disabilities are being denied access to mainstream education settings. So it is a significant issue and it is one of my priority areas.

Senator WATT: You mentioned that you requested it as a result of your consultations. Who were those consultations with?

Mr McEwin: I ran consultations from October until March this year, and I met with over 1,000 people and organisations and the disability community all around Australia. Education consistently came up as a significant issue. As you would know, my role is to work with the government on particular issues of discrimination, so my meeting with Minister Birmingham is one example of a lot of the work that I do.

Senator WATT: It sounds like you have quite a number of issues that you intend to raise with Senator Birmingham in the educational sphere.

Mr McEwin: I do not want to pre-empt specific agenda items, but certainly the alarming fact that students with disabilities are not getting inclusive education will be the driver for the meeting.

Senator WATT: And do you intend to raise with the minister any issues concerning the government's proposed funding package for schools?

Mr McEwin: Funding will be part of the conversation. It is a matter for the government to make the ultimate decisions about funding. But the concerns that were raised with me in consultations were that some schools do not appear possibly to have been providing access to students with disabilities when they should be.

Senator WATT: Just to be clear, then, have concerns been raised with you about the impact of the government's new education funding package on students with disabilities?

Mr McEwin: Not specifically in terms of the most recent decision, but there has been a concern for many years that there is inadequate funding for students with disabilities. I should
also say that of complaints that we receive, while education is not at the top of the categories, there is quite a significant number of them.

**Senator WATT:** Thank you. I wish you well with your meeting.

**Mr McEwin:** Thank you, Senator.

**CHAIR:** Thanks, again, Commissioner.

**Senator McKIM:** Good afternoon, Professor Triggs. Thanks for coming. Could you just remind me of the date on which your term expires?

**Prof. Triggs:** It expires on 31 July.

**Senator McKIM:** So, all other things being equal, this will be your last appearance before Senate estimates?

**Prof. Triggs:** I sincerely hope so.

**Senator McKIM:** Well, on behalf of the Australian Greens and with the indulgence of the committee, I thank you for the dignified and courageous way that you have presented yourself in your role as president of the Human Rights Commission and for the way you have championed human rights and freedom of speech in that role and through your professional career. Thank you.

**Prof. Triggs:** Thank you, Senator McKim. I very much appreciate your comments.

**Senator WONG:** This might be an opportune moment. I have no further questions. On behalf of the Labor Party, I want to make a similar comment. You have shown courage and dignity under fire. That is the kind of service that democracy needs from our statutory officers.

**Prof. Triggs:** Thank you, Senator Wong. I very much appreciate your taking the time to make those comments.

**Senator McKIM:** To be clear, Professor Triggs, did you notify the government of your intention not to seek a further term? The announcement, I guess, or a confirmation was made by the Prime Minister on 16 November last year that you would not be reappointed. Had you previously notified the government that you would not be seeking a further term or made any public comment to that effect prior to 16 November last year?

**Prof. Triggs:** I do not think I made any public comment, but I certainly advised the Attorney and department that I would not be seeking any extension at all to my term.

**Senator McKIM:** And that was prior to 16 November?

**Prof. Triggs:** Yes, it was.

**Senator McKIM:** Do you recall the date on which you advised them?

**Prof. Triggs:** I do not. But it was also common knowledge within the commission and of any official where the matter came up that I was honoured to be in the position. It has been a wonderful position for the last five years to act nationally. I am proud of the work the commission does. I leave it in very safe hands with seven mainly new commissioners. I really wish them well. But I made it very clear—I could not have been clearer—that it is time that I finish my appointment on the due date, and I will do that.

**Senator Brandis:** Senator McKim, I remember Professor Triggs saying to me during one of our many meetings that she was not proposing, or had no intention of asking for, another
term. I do not remember when that was, but my recollection of it was that the meeting occurred in the office I used to occupy as deputy leader of the government. So that must have been more than two years ago.

Senator McKIM: Thank you, Attorney. So, Attorney, on what date did you commence the process that is currently underway to replace Professor Triggs?

Senator Brandis: I approved the process on 19 April.

Senator McKIM: This year?

Senator Brandis: Yes.

Senator McKIM: Are you confident that you will have a replacement in place on the day that Professor Triggs's term ends?

Senator Brandis: By 31 July? I expect so, yes.

Senator McKIM: You expect so. Thank you. Applications closed on 5 May, as I understand it, Attorney—is that correct?

Senator Brandis: Correct.

Senator McKIM: I am obviously not asking you to name names, but are you able to offer any kind of reassurance to the committee as to the quality of applicant or the quantity of applicants?

Senator Brandis: Well, there was an advertisement placed in the national press on 22 and 29 April which described the credentials and qualities that the government is looking for. A significant number of applications were received. I am sure that we will find a suitable person.

Senator McKIM: Thank you. Could you step the committee through the process that presumably is now underway to filter the applications and ultimately choose a successor to Professor Triggs?

Senator Brandis: Yes, I can. So the position was advertised, as I said, on 22 and 29 April in the press, on the Attorney-General's website and by the Attorney-General's Department and the Human Rights Commission on social media from 21 April. As you have said, applications closed on 5 May. A selection panel comprising the secretary of my department, the Public Service Commissioner, Mr Lloyd, and the secretary of the Department of Human Services, Ms Campbell, was constituted. They shortlisted candidates.

Senator McKIM: Was that past tense or present tense, Attorney? They did or they are?

Senator Brandis: They have.

Senator McKIM: They have. Thank you.

Senator Brandis: They have shortlisted candidates and provided a report to me.

Senator McKIM: That is not quite the end of the process, though, Attorney, obviously.

Senator Brandis: Well, obviously the process will end when His Excellency the Governor-General appoints the new president.

Senator McKIM: No doubt that it will. But there is a step in between the shortlisting and His Excellency's appointment, and that is the determination of who His Excellency will be advised to appoint.
Senator Brandis: Correct.
Senator McKIM: Could you please step us through that?
Senator Brandis: I will take a name to cabinet with the recommendations.
Senator McKIM: So how is the short list distilled down into a name?
Senator Brandis: From the short list, having regard to the comments made by the selection panel, that name will be chosen by me in consultation with the Prime Minister and, ultimately, in discussion with the cabinet.
Senator McKIM: Have you asked the panel to provide you with a recommendation of a person to replace Professor Triggs?
Senator Brandis: Well, that is not the way it works.
Senator McKIM: Well, it can work however you want it to, Attorney.
Senator Brandis: Correct. The panel has provided a short list with comments. The government will be guided by those comments.
Senator McKIM: Did you ask the panel to provide you with a short list or a recommendation?
Senator Brandis: A short list of recommended candidates.
Senator McKIM: 'Candidates' plural?
Senator Brandis: Yes, plural.
Senator McKIM: Why did you not ask the panel to make a recommendation of a replacement as opposed to a short list?
Senator Brandis: Because it is the government of the day that chooses senior statutory office holders. But, in doing so, the government consults and draws upon the expertise of the Public Service in particular to identify the most suitable among the applicants. That is the way the Public Service merit and transparency guidelines work.
Senator McKIM: Well, it is ultimately the government's choice.
Senator Brandis: It is.
Senator McKIM: As you have just acknowledged now twice.
Senator Brandis: Of course.
Senator McKIM: So, given that we have agreed it is the government's choice about how the process works, why did the government ask the panel to recommend a short list as opposed to recommending a person?
Senator HUME: I raise a point of order, Chair.
Senator McKIM: It is not a hard question.
Senator HUME: I do not understand this line of questioning. This is a very common practice in executive search in the corporate arena. I think that it is perfectly reasonable that it is implemented.
Senator Brandis: Well, I do not think—
CHAIR: Hang on.
Senator Brandis: I do not think Senator McKim thinks so. He seems not to understand it.
CHAIR: Hang on. Senator Brandis.

Senator McKIM: No. I understand it full well.

CHAIR: Senator McKim. There is a point of order raised which I will rule on. There is no point of order.

Senator McKIM: Thank you.

CHAIR: Senator McKim, have you finished your question?

Senator McKIM: Yes, I have. I will probably have another one.

CHAIR: Senator Brandis.

Senator McKIM: But I will offer the opportunity to the Attorney.

Senator Brandis: Well, I think I have answered it.

CHAIR: Okay. Thank you.

Senator McKIM: Well, then, I have a further question. Attorney, you made a comment during the point of order that you do not think I understand. I served in the Tasmanian cabinet for nearly four years, Attorney.

CHAIR: Senator McKim, please. Is this a question?

Senator McKIM: I have made numerous appointments as a minister, so I understand full—

CHAIR: Senator McKim, please.

Senator McKIM: Attorney, the question that you have not answered is: why did you ask the panel to recommend a short list as opposed to a single person? It is a very simple question.

Senator Brandis: To assist the government's consideration by, as it were, eliminating those candidates who were not deemed by it. There were a large number of applications.

Senator McKIM: No, of course not. That is not the point I am making here. I think you understand the point I am making.

Senator Brandis: Primarily to filter out the candidates who are not considered suitable for appointment so that, when the government came to make its decision from among the applicants, it would choose from people who independently had been assessed to be suitable. It is not the role of the selection committee to choose the president of the Human Rights Commission. That is the role of the government.

Senator McKIM: But it is the role of the selection committee to assist in that process in the manner in which I have indicated.

Senator Brandis: Well, no. It is the role of the selection committee, is it not—and this is the question—to assist in the way you ask it to. So you have asked it to provide a short list as opposed to a recommendation. Of course it is not the committee's job to make the
appointment. We all understand how the appointment is made—ultimately by His Excellency, as we have both agreed. Attorney, the more you refuse to answer, the more suspicious I get.

**Senator Brandis:** I do not even understand what your point of difference is.

**Senator McKIM:** The point of difference, Attorney, is this: it would have been very simple, would it not, for you to have asked the committee either to recommend one person or to recommend a short list with rankings: 'This would, in the committee's view, be the most suitable candidate, and this, in the panel's view, would be the second most suitable candidate.' Yet it does not appear that you have done that. You have asked the committee to provide a short list. How many on the short list?

**Senator Brandis:** This is a private process and I am not going to go into that.

**Senator McKIM:** Why not?

**Senator Brandis:** Because it is a matter for government.

**Senator McKIM:** Are you making a public interest immunity claim?

**Senator Brandis:** Well—

**CHAIR:** Senator McKim, please let the witness complete the answer. We have had a long discussion today about interrupting witnesses. Please abide by the rules and do not interrupt the witnesses. When they have finished, you can ask another question.

**Senator Brandis:** Senator McKim, you say to me, 'Why did you ask for a short list rather than a recommendation?' I asked for both. I asked for recommendations for a short list, and that is what I received.

**Senator McKIM:** When you say you asked for a recommendation—

**Senator Brandis:** So you seem to be suggesting—

**Senator McKIM:** No. Sorry, it works both ways here. You do not interrupt me either, Attorney.

**Senator Brandis:** I have not finished my answer.

**Senator McKIM:** Well, yes, you have.

**Senator Brandis:** No, I had not, actually.

**Senator McKIM:** Well, you have not.

**Senator Brandis:** You seem to be saying, Senator McKim, that the only way in which this could have been done is to ask the committee to recommend only one person.

**Senator McKIM:** No.

**Senator Brandis:** And that would have left the government with no choice, when this is, as you acknowledge, the government's decision.

**Senator McKIM:** It is. Attorney, that is not at all what I am saying.

**CHAIR:** Do you have a final question?

**Senator McKIM:** Yes, I do. Thank you, Chair. That is not at all what I am saying. I think you are being deliberately obtuse here.

**CHAIR:** A question, please, and then the answer.
Senator McKIM: I need to establish a bit of context, Chair, if you would provide me with that courtesy. Attorney, we all understand the appointment is not made by the committee. The appointment is made by His Excellency on the advice of the government.

Senator Brandis: Correct.
Senator McKIM: I think we can agree on that.
Senator Brandis: Yes, we can.
Senator McKIM: So whatever the committee does is, in effect, a recommendation to the government. Correct? Can we agree on that?

CHAIR: Can you ask your question, please, Senator McKim.

Senator McKIM: Can we agree on that?
Senator Brandis: The committee can make whatever type of recommendation to the government that the committee wants to make. But the purpose of the committee is to assist the government in identifying the best candidates—plural, not singular—from among whom the government can choose.

Senator McKIM: Attorney, I will try to cut this short because I know that the commission has been here a long time, and they probably have flights to catch too. I am watching the government's moves here very closely.

CHAIR: Do you have a question?
Senator McKIM: To be honest, if you get someone half as good as Professor Triggs—
CHAIR: Do you have a question?
Senator McKIM: you will have been doing very well.
Senator Watt: Chair, we did agree to not interrupt.
Senator McKIM: Yes, we did.
CHAIR: Senator Watt, we agreed that senators would ask questions, not give commentaries or political speeches.
Senator Watt: I think Senator McKim is trying to do that, Chair.

CHAIR: Can we have a question? Any senator can frame a question in a way that gives the background and the point without giving a three-minute political speech. Senator McKim, if you have a question, please ask it. If not, your time is finished, by the way.
Senator McKIM: I still have further questions.
CHAIR: I was giving you the courtesy of a final question. Do you have a final question?
Senator McKIM: I have at least a final question and maybe more, Chair, depending on the response. The question is as I have asked it.

CHAIR: In that case, your time has finished. I will go to another senator and come back. I was hopeful that we would finish with the Human Rights Commission before afternoon tea so that you could go on your merry way. But I will now pass to Senator Hume, who has just a couple of questions. Then we will break for afternoon tea.

Senator McKIM: I might be able to help here. I really believe I can resolve this in 60 seconds or less.
CHAIR: Well, I will come back to you after Senator Hume. We will delay afternoon tea a little longer in the hope that we can say farewell to the Human Rights Commission.

Senator HUME: Thank you, Chair. I will be very quick. I have two questions. They are not controversial at all. I am hoping that the Attorney can outline for senators here what consultation was undertaken with the commission regarding the Human Rights Legislation Amendment Bill 2017.

Senator Brandis: I have said this in the debate in the chamber, but let me go through it. There was quite extensive consultation, in my view. I publicly acknowledge and I want in this forum to acknowledge and thank both Professor Triggs and her senior officials, especially Padma Raman, her CEO, for their input. This was the sequence. I had a long meeting with Professor Triggs and her officials and officers of my department and my own staff on 3 March in which we discussed the government's proposed amendments to, as it were, run it by the president and her senior officers. During the course of that meeting, the president herself raised a number of additional amendments that she had previously suggested to me some time ago, in fact, and which I agreed to consider, and most of which we ultimately included in the bill. We had a discussion about the government's proposed amendments. We agreed on, I think I may say, most of them. Professor Triggs had objections or misgivings about some of them, which I agreed to consider. After that meeting, I considered, as I promised to do, Professor Triggs's misgivings. In some cases—I think most, actually—I conceded the point, not in all cases, though, because these, as Professor Triggs acknowledged, were ultimately matters of policy. On 6 March, I wrote to Professor Triggs regarding the additional proposals. Drafting instructions were given to finalise the bill. On 21 March, I spoke to Professor Triggs again. On 22 March, I spoke to Professor Triggs again. On both occasions, it was at some length to discuss a number of outstanding issues and to seek agreement, where agreement was possible, on the final shape of the bill. That was largely, though not entirely, achieved. And then the bill was introduced.

Senator HUME: Thank you, Attorney. Professor, can you advise the committee what steps have been taken since the passage of the Human Rights Legislation Amendment Bill to implement the changes that were outlined in that bill?

Prof. Triggs: Thank you, Senator Hume. A great deal of work has been undertaken by the staff to implement these amendments. The way the Attorney has described the discussions is entirely correct. Many, if not most, of the suggestions and the reasoning behind them were accepted by the Attorney. So we wanted them and we are now incorporating them. It means that, for example, form letters have to be redrafted. Some of the processes have to be thought through because the president has much greater discretion as to matters that will be accepted and those that will be rejected. There are various other elements, particularly in relation, ultimately, to the complainant having access to a court. So, for the first couple of weeks after the amendments came into effect, there was a great deal of work done by the commission to get up to speed. We are now, I believe, in a small number of cases, already implementing those procedures. But you will understand that we did in fact have a backlog, so it is taking us a while to get to the new ones that will raise the new procedures. But we are working well on that, and my understanding is that the investigation and conciliation team are learning to work with the new processes and trying to sort out where we need adjustments.
Senator Brandis: I think I am right in saying that in the end there were only a couple of provisions that Professor Triggs and I did not agree about and the government persisted with, and I think they were both knocked out in the Senate. It is not the bill Professor Triggs would have written herself, I am sure, but of course agencies do not write their own legislation, and nor should they. I do not think there is anything in the bill in the form in which it ultimately passed the parliament that ultimately Professor Triggs fundamentally objected to.

Prof. Triggs: The only issue is the one I raised this morning. It has exceptions, and that is the practicable one and the safe one. I am reasonably confident that we can make it work as well as possible in our own interests in terms of practicality but also in terms of those people who might otherwise be notified. So I am very optimistic that these amendments will be to the great advantage of the Australian public in the longer term.

Senator HUME: Thank you, Professor. Thank you, Attorney.

CHAIR: On the basis that—

Senator WONG: I want to ask one question.

CHAIR: Senator Wong, I am actually speaking. On the basis that Senator McKim indicated he had just a couple of questions that could hopefully finish with the Human Rights Commission, I will go to you. Senator Wong, how long are your questions?

Senator WONG: As I just said, I have one question.

CHAIR: Senator McKim.

Senator McKIM: I will cede to Senator Siewert in the interests of time, Chair. If you are amenable to that, I will just pass to Senator Siewert.

Senator WONG: Do you mind if I ask one question?

Senator SIEWERT: I do not mind.

CHAIR: I am coming back to you, Senator Wong.

Senator WONG: It is on the topic. I am happy to wait.

CHAIR: Senator McKim, do you have a question?

Senator WONG: He is ceding to Senator Siewert.

CHAIR: Senator Siewert, do you have a question?

Senator SIEWERT: Yes, I do.

CHAIR: Well, please ask it.

Senator SIEWERT: I want to follow up comments you made earlier about opiates when I was in another committee. I have read what you said. You were specifically referring to opiates, I think, were you not?

Prof. Triggs: Yes. Methadone and heroin.

Senator SIEWERT: The other drugs that are in scope are methamphetamine, ecstasy and marijuana. I am wondering, in your opinion, whether the case you referred to covers those drugs.

Prof. Triggs: Thank you, Senator Siewert. I am sorry that I raised that point not realising that you were not here. We will follow up with my colleagues. We will do a proper brief for you on this. You are raising a very important question, so we will do the background research.
and work on it. To answer your question, with regard to Marsden's case, I think it is more than
arguable that opioids—methadone and heroin—clearly are within the act. I think there is a
fairly good argument to say that the other drugs you have mentioned would also come within
the act. But these things really do have to be tested before the courts, and probably will be. I
think the likelihood is that the Federal Court would consider them to come within the concept
of unlawfulness to discriminate on the basis of having an addiction to those additional drugs.
But we will give you a proper briefing on this as soon as we can.

Senator SIEWERT: That would be appreciated. I asked earlier about advice. I was
hoping you would come to the table then, but obviously you could not. I did notice you were
shaking your head. I want to confirm that your advice was not sought.

Prof. Triggs: I do not believe it was, but I did want to make the point, Senator Siewert,
that while, the Attorney, of course, is quite right in saying he does not come to the
commission to ask advice in any formal way, the reality, certainly for my five years and I
believe for my predecessor, is that a great deal of work is done collaboratively with officials
of the Attorney-General's Department and with the commission on matters where we have
specific skills. That has been a very fruitful relationship over very many years. So it is not
formal advice, but there is no doubt that we communicate on a lot of issues—but I do believe
not on this one.

Senator SIEWERT: On the true issues—

Senator Brandis: I will just add to that, please, because I do not want to be
misunderstood. When I said that the commission's role was not ordinarily to provide advice in
the sense in which the discussion was then being conducted, what I was referring to, as the
context will show, is the government going to the commission for advice on particular policy
matters, especially in the context of the earlier questions and the context of preparing budget
measures. That is not to say—Professor Triggs is quite right—that we do not very often seek
advice in an informal way. I have just given you an example, where Professor Triggs's advice
and input were sought on the legislation. Now, in a sense, all agencies advise their ministers
in an informal way. At the moment, the director-general of the National Archives is
informally advising me about some amendments to the Archives Act, for example. So there is
always that informal relationship in which advice is sought and given. And I would not want
to be thought to say that that is not a very important part of the relationship. But there is not
advice in the sense of the formal governmental step.

Senator SIEWERT: Thank you for that clarification. Professor Triggs, was your advice
sought in the more informal manner that has just been discussed on these two measures—the
impairment tables and the drug testing?

Prof. Triggs: Senator Siewert, I believe not. But I will need to take it on notice to be
absolutely certain that that answer is correct. I believe that is the correct answer.

Senator SIEWERT: Thank you.

Senator WONG: In relation to the selection panel and the process of selection that
Senator McKim was asking about, are there any women on the short list?

Senator Brandis: Yes.

Senator WONG: Thank you. That was it.
CHAIR: Thank you, Senator Wong. No other questions of the Human Rights Commission? We will break for 15 minutes. I thank the Human Rights Commission for attending—the two commissioners and Mr Dick. We very much appreciate it. Professor Triggs, all the best for your future.

Prof. Triggs: Thank you very much, Chair.

Proceedings suspended from 16:20 to 16:38

CHAIR: I call the committee back to order. I have just advised the secretary that the committee has decided that no longer does it require the Australian Law Reform Commission. I hope the commissioner did not change his plans particularly for our meeting. He will be pleased that he can go to bed early tonight. We are keeping the program under review as we move towards 11.00 pm. ASIO are the last people to be called. We now call the Administrative Appeals Tribunal representatives, all of whom are here. Before we do that, Mr Moraitis wants to clarify an answer given.

Mr Moraitis: I want to respond to a question from Senator Watt about the issue of AusGov. During the break and before the break, we sought some clarifications about responsibility. It may assist you in understanding the process. I will throw to Mr Anderson.

Mr Anderson: Question 417 was about why the website would still list Mr Wilson as commissioner. The answer was that it is a matter for the Department of Finance. That was asked on 20 March 2017. It is the department's responsibility to give information to finance.

Senator WONG: Which department?

Mr Anderson: The Attorney-General's Department's responsibility.

Senator WONG: Because you just went from Department of Finance to department.

Mr Anderson: I am sorry. It is the responsibility of the Attorney-General's Department to update the information. We provided updated information to the Department of Finance on 23 November 2016. So the answer to that question on notice that it was a matter for the Department of Finance was because we had provided them with updated information that they had not updated.

Mr Moraitis: So we will obviously consult with the commission about the need to follow up. They need to follow up anyway.

Mr Anderson: They had taken this question on notice. We will let them know.

Senator WONG: Are you able to provide a copy of the provision of that November 2016 information, please, however it was sent, such as by email?

Mr Anderson: I have been advised 23 November 2016 is the date. We will take on notice the form.

Senator WONG: That would be great.

CHAIR: Thank you, Mr Moraitis. I will make a correction. It is the Australian Commission for Law Enforcement Integrity that we do not need later tonight. The commissioner may go and have an early night. I hope we did not rearrange his overseas travel.

Senator WONG: I have a question about the dates that were part of the evidence. This just occurred to me. Can you explain, Mr Anderson, why—
CHAIR: No.

Senator WONG: Just in terms of that clarification. That is reasonable, Chair. That is a courtesy that has been extended regularly in past committees.

CHAIR: Is this something that can be done on notice?

Senator WONG: No.

CHAIR: I am asking Mr Anderson.

Senator WONG: He does not know what my question is, so how can he possibly know if it can be done on notice? He just responded to a question Senator Watt asked prior to the break. I am now asking him a question about his answer. That is a normal process of these estimates, Chair.

CHAIR: If we are going back into the Human Rights Commission—

Senator WONG: It is not the Human Rights Commission. It is a question asked of the department. Frankly, it is easier for departments to provide information where they can rather than have a question on notice answered. They have provided that information. I am asking a follow-up question. I would have asked it in this time. If I could just be permitted to ask a question.

CHAIR: About which program is it?

Senator WONG: It is about the evidence that Mr Anderson just gave at your request coming back—

CHAIR: About?

Senator WONG: Aus.Gov.Board, or whatever the acronym is.

Mr Moraitis: It is a question on notice provided from the government.

CHAIR: Sorry?

Mr Moraitis: It is a question on notice—

Senator WONG: We could have dealt with it by now.

Senator WATT: There was a question I asked the Human Rights Commission.

Senator WONG: We could have dealt with it by now.

Senator WATT: We required some clarification from the Attorney-General's Department, which may mean that we no longer need the Human Rights Commission to take that on notice. Senator Wong is just attempting to get some further clarification from the answer that is being provided by the department.

Senator WONG: Correct.

CHAIR: Well, we will return to the Human Rights Commission, even though the commissioner has gone.

Senator WONG: It is actually just the department. Mr Anderson, could you explain either now or on notice why the advice you have just given evidence about—that Mr Wilson was no longer a commissioner—was provided some months after he was actually elected? I think you said, 'We provided that advice to finance on 23 November 2016.'

Mr Anderson: That is correct.

Senator WONG: He was elected. Obviously, the election was July.
Mr Anderson: September.

Senator WONG: The election—whatever the election date was.

CHAIR: Senator Wong is giving you the option of answering or taking it on notice.

Senator WONG: I have not actually finished my question.

CHAIR: I am sorry. I thought you had.

Senator WONG: Can you explain the delay? Are you able to do that now or do you need to take that question on notice?

Mr Anderson: I do not have that information now. I will take it on notice.

Senator WONG: Thank you.

CHAIR: Thank you. Take it on notice because I am keen to finish the program.

Administrative Appeals Tribunal

[16:44]

CHAIR: Welcome. Do any of the officers wish to make an opening statement? Did you want to—

Ms Leatham: I would not mind speaking to it briefly. Thank you, Chair.

CHAIR: Ms Leatham, thank you for giving us forewarning. It is five pages.

Ms Leatham: Yes. I would not object—

CHAIR: Is there any way you could summarise it?

Ms Leatham: Indeed. I will turn to page 4, which is probably of interest to some senators here today, particularly to focus on some recent media coverage. Before I do that, I might clarify that the president is the head of the tribunal but is also a judge of the Federal Court. It is customary for judges not to appear before committees, which is why I am here on behalf of the tribunal.

In an article dated 9 May 2017, the Herald Sun reported that the tribunal overturned the minister's visa decisions 4,389 times. I wish to make it clear that these figures relate to general migration visa decisions. They represent approximately 39 per cent of all general migration applications finalised in the period from 1 July 2016 to 30 April 2017. The partner, student, visitor and work visa categories make up the highest number of set-aside decisions. Importantly, those figures do not relate to protection matters.

The subjects of recent media interest were two types of decisions—firstly, those relating to the cancellation of protection visas and, secondly, those made on character grounds. The cases referred to in the article in the Herald Sun dated 16 May 2017 appear to relate to decisions made by a delegate of the minister to cancel protection visas on the basis of incorrect information said to have been provided to the department. Visas may be cancelled under section 109 of the Migration Act where incorrect information is provided at the time of application. Cancellation is not automatic, and the decision-maker, including the tribunal, must consider whether there was noncompliance by the visa holder and, if so, whether the visa should be cancelled, having regard to the factors set out in the migration regulations and departmental policy.
Tribunal decisions about protection matters involving applicants from Iran are not published and are not publicly available. This practice has been in place since at least 2011, following a request made to the former Migration and Refugee Review Tribunals by the Department of Foreign Affairs and Trade not to publish information relating to Iran that may jeopardise bilateral and other government interests. While the tribunal has not published any protection visa cancellation decisions relating to Iran since 2011, it does publish a selection of decisions on AustLII that relate to other countries, including decisions to both affirm and set aside visa cancellations. These decisions set out the relevant law, findings and the reasoning process followed by the tribunal in those cases. Information available from the tribunal's databases indicates that since 1 July 2014 the Migration and Refugee Division of the tribunal has set aside a total of 60 decisions to cancel visas of protection or refugee visa holders. This represents less than one per cent of the total number of protection visa applications that have been finalised in the same period.

The cases referred to in a further article in the Herald Sun of 22 May are character related decisions. The visa may be refused or cancelled under section 501 of the Migration Act on the basis that a person does not pass the character test. Since 23 December 2014, a visa must be cancelled in certain circumstances. A person can then apply to have this decision revoked under section 501CA. A decision of a delegate of the minister either to refuse or cancel a visa or not to revoke a mandatory visa cancellation can be reviewed by the tribunal. In reviewing these decisions, the tribunal is required to apply the direction made by the minister under section 499 of the Migration Act. It sets out the primary considerations and other considerations to be taken into account, where relevant, and assigns the relevant weight to be given to those considerations. Tribunal decisions in these types of cases setting out the relevant law, findings and reasoning process are generally published on AustLII. Between 1 July 2014 and 30 April 2017, the AAT finalised 156 applications for review of these types of decisions. The tribunal set aside the decision in 35 of those cases.

The only part of the statement that I would like to draw the attention of the committee to is that, of course, an applicant or a decision-maker who believes a decision made by the tribunal is wrong in law can appeal that decision to either the Federal Court or the Federal Circuit Court, depending on what type of decision it is. In addition to the availability of judicial review, for decisions relating to visas, the Minister for Immigration and Border Protection has the power to personally substitute a more favourable decision or to set aside certain decisions of the tribunal. I am happy to take questions.

CHAIR: Thank you very much for that. As you are probably aware, this was the subject of some questioning and discussion at the estimates two days ago with the Department of Immigration and Border Protection.

Senator O'SULLIVAN: Thank you, Ms Leathem. I might direct my questions to you, and you can direct them to other officials if you need to. I have been taking a continued interest in some of the published decisions of the tribunal. You would be aware that there has been considerable press coverage over a long period of time now with respect to decisions. I am really interested to understand how the tribunal functions. What is the proper term—members or commissioners?

Ms Leathem: Members.
**Senator O’SULLIVAN:** How do members find their way into the tribunal and what is the process? No doubt you would be well aware of the article in the *Herald Sun* today about the publication of a decision and a request, it would seem, by a member to have that decision removed, where it is no longer available to the public. Could you start by explaining to me the policy. My keen ear is listening for notes about transparency in the operation of the tribunal and allowing people to evaluate your decisions. Can you tell me how it is decided which decisions are put up, how long they are to remain there and what circumstances there might be to bring them down?

**Ms Leathem:** Sure. It is important to understand that the tribunal went through a major amalgamation almost two years ago, in July 2015. Prior to that time, there were effectively separate tribunals. There was the former Administrative Appeals Tribunal. It has been the practice of that tribunal for a very long time to publish all its decisions except for those that might be subject to what we call a section 35 order, where a member decides that there are reasons that certain material should not be published and is subject to a confidentiality order. So the types of decisions relating to, for example, cancellations on character grounds are part of what was the former AAT, which is now known as the General Division. They are generally subject to being published on AustLII.

The former SSAT, or Social Security Appeals Tribunal, conducts its hearings for the most part in private and has not had a practice of publishing decisions, although since amalgamation there has been a small number of deidentified decisions published to be instructive to people so that they understand the types of considerations that members would make in that jurisdiction. In the former Migration Review Tribunal and Refugee Review Tribunal, there was a practice of selectively publishing decisions simply because of the huge volumes of matters that they deal with. It often becomes a hindrance rather than a help if there are literally thousands of decisions published. People find it very difficult to identify what they might be looking for, so it has been the practice in those former tribunals, and now in the Migration and Refugee Division, to publish selected cases. If you bear with me, there is a guideline; there is a procedure.

**Senator O’SULLIVAN:** I need to get my head inside it. In this amalgam, the one that currently exists, I am looking for the policy settings. It might help if you are able to tell me whether the particular event that is the subject of the current publicity was a decision taken in the current amalgam.

**Ms Leathem:** It did.

**Ms Leathem:** I understand it was a decision of the Migration and Refugee Division, which is post amalgamation organisation.

**Senator O’SULLIVAN:** I am interested in the policy for the post amalgamation organisation.

**Ms Leathem:** The difficulty is that there is not a single procedure because there are very different legislative rules and requirements that apply to the different jurisdictions within the tribunal. So those three divisions that I identified—the Social Services and Child Support Division—do not have a habit of publishing decisions.

**Senator O’SULLIVAN:** But this decision had been published, so it obviously operated under some form of policy setting—

**Ms Leathem:** It did.
Senator O'SULLIVAN: That called for it to be published. That is the policy setting that I am interested in.

Ms Leathem: There is a guideline that was originally developed under the Migration and Refugee Review Tribunals which has continued as a practice in that division. It is to select decisions of particular interest based on an assessment of their value in providing insight into the jurisdiction of the tribunals, the procedure for the conduct of those reviews and how the tribunals interpret and apply the law and policy. In 2015-16, for example, 2,009 decisions were published from the Migration and Refugee Division.

Senator O'SULLIVAN: Can you tell me, Ms Leathem, whether you or any of the other officers have spoken to the parties involved in the exchange of correspondence? I imagine that it was an email.

Ms Leathem: If you are referring to the matter today—

Senator O'SULLIVAN: Yes.

Ms Leathem: I can clarify that since we became aware of that issue, we have sought information to find out what, in fact, occurred.

Senator O'SULLIVAN: And how have you done that? Have you personally spoken to either of the parties—there may be more than that—who received the correspondence or generated the correspondence?

Ms Leathem: We have spoken with the manager of what is called the publications team, who is responsible for that.

Senator O'SULLIVAN: Is there is someone who has created and despatched a communication and is there somebody who received it, according to the article? Have you spoken to either of those people?

Ms Leathem: Perhaps you could identify the people you are talking about. I am still not clear what the question is.

Senator O'SULLIVAN: Well, I imagine you have read and understand the article.

Ms Leathem: Yes.

Senator O'SULLIVAN: Did you have an interest in who generated the request and who—

Ms Leathem: Yes, of course.

Senator O'SULLIVAN: Subject to that, who generated the request?

Ms Leathem: There was, as I understand it, an initial email from a member sent to the deputy division head of the division.

Senator O'SULLIVAN: And what is the identity of the member?

Ms Leathem: The member concerned?

Senator O'SULLIVAN: Yes.

Ms Leathem: Miriam Holmes.

Senator O'SULLIVAN: And the department head?

Ms Leathem: The deputy division head is Irene O'Connell.
Senator O'SULLIVAN: Have you yourself spoken to either Ms O'Connell or Ms Holmes consequent to this?

Ms Leathem: I have not personally spoken with them.

Senator O'SULLIVAN: Have any of your colleagues spoken to them?

Mr Matthies: No.

Ms Fredman: No. I have not.

Senator O'SULLIVAN: You talked to somebody to talk to them, so a third party?

Ms Leathem: Perhaps I could explain. We have a division head, Jan Redfern, who is the head of the Migration and Refugee Division. She holds statutory office and is responsible for managing members and assisting the president. She spoke with those two individuals.

Senator O'SULLIVAN: And then reported back to you?

Ms Leathem: She spoke with me and gave me the information.

Senator O'SULLIVAN: I would like you to keep it concise because I am happy to drill down. What was the burden of the request and the reasons for it to remove this decision?

Ms Leathem: There was an indication from the member that there was an identified error in the decision. I can give you details about the error that was identified. It was a misdescription. Instead of calling something a clause, she called it a public interest consideration. So it was a misdescription of the instrument. On that basis, she sought clarification as to what the procedure was for having that decision removed. That email, as I understand, was forwarded to our publications team, who made the error of thinking it was an instruction to remove the decision. So that was a breakdown in our process, and it should not have been removed.

Senator O'SULLIVAN: So it should not have been removed?

Ms Leathem: I can let the committee know that it has already been restored to AustLII.

Senator O'SULLIVAN: Okay.

Ms Leathem: The correct procedure should have been for a corrigendum to be issued to correct the error. That has been done. It has obviously revealed a fall down in our policy which we are addressing.

Senator O'SULLIVAN: So what would support an argument to remove a decision that had been published?

Ms Leathem: It is a rare occurrence that a decision would be removed from publication. It would usually be on the request of one of the parties, possibly because there were some concerns about a threat to somebody's safety or some disclosure of unnecessarily private information. That would then need to be considered. Depending on which division it was, there may be a need for an actual hearing. Generally speaking, it would be considered by the member to determine whether it was appropriate to remove that decision.

Senator O'SULLIVAN: So in the event that, for example—we are not talking about specifically this case—a member's decision, after being published, attracted adverse comment, would that be grounds to remove that decision?

Ms Leathem: No. It would not.
Senator O'SULLIVAN: If it drew adverse comment against the tribunal because of the decision, would that be grounds?

Ms Leathem: No. It should not be grounds for that to be removed.

Senator O'SULLIVAN: Think about any individual who felt sensitive about this and felt that their reputation may have been damaged by a decision they made; that would certainly not be grounds to remove the publication?

Ms Leathem: That is not the ordinary course of how a matter would be dealt with.

Senator O'SULLIVAN: So a member might make an application to you and say: 'There has been some adverse comment. I'm concerned about my reputation. I'm concerned about the reputation of the tribunal. In those circumstances, would you please remove it?' What decision would you take in that case?

Ms Leathem: Well, it would not be my decision. It would in all likelihood be one of the division heads. But that would not be a consideration for the removal of a decision.

Senator O'SULLIVAN: Are you aware of the contents of the email and whether there has been any reference to that? Have you sighted the email?

Ms Leathem: Yes. I have.

Senator O'SULLIVAN: Is there any reference to that?

Ms Leathem: I believe there was.

Senator O'SULLIVAN: So that went to the supervisor?

Ms Leathem: They are not supervised because they are members. They are independent statutory officers.

Senator O'SULLIVAN: So what is Ms O'Connell's position?

Ms Leathem: She is a deputy division head.

Senator O'SULLIVAN: So it went to a deputy division head. Can you tell us what Ms O'Connell did with that information?

Ms Leathem: I understand that she forwarded it to an executive officer for advice about the procedure.

Senator O'SULLIVAN: I ask you to take on notice to supply us with the correspondence between her and the executive officer.

Ms Leathem: Yes.

Senator O'SULLIVAN: What did the executive officer do with that information?

Ms Leathem: I believe she provided an email to the publications team, which was the point at which they mistook that email to be an instruction to remove the decision, which is where the error occurred.

Senator O'SULLIVAN: Have you reviewed that email?

Ms Leathem: I have read the email.

Senator O'SULLIVAN: When you looked at it with an eye to see whether someone could misinterpret that, did you form the view that they could?

Ms Leathem: I formed the view that it was not consistent with the process that should be followed. I spoke with the manager of that unit, who agreed that it was an error.
Senator O’SULLIVAN: That is not the burden of my question. What troubles me is the fact that the executive officer has communicated with the people who maintain the publications. This would suggest there was some intent to draw them into the decision about the process. Otherwise, why would there be a need? If the executive officer decided, ‘We’re not going to withdraw this,’ which would have been a decision you supported, why would that not be the end of it? Why would they not go back down and notify Ms Holmes that it is not going to be withdrawn?

Ms Leathem: Well, I think the difficulty is the executive officer referred the matter to the publications office as she was looking for information about the procedure. And they—

Senator O’SULLIVAN: What procedure? To remove it?

Ms Leathem: What the process would be for that removal.

Senator O’SULLIVAN: Does that not speak volumes that the executive officer had in their mind that this would be removed?

Ms Leathem: I do not know what they had in their mind, I am sorry. I can only tell you what I understand.

Senator O’SULLIVAN: Let us do this.

Senator WONG: Let her finish her evidence before you start.

Senator O’SULLIVAN: Of course. Are you finished? Do you have something else to say on that?

Ms Leathem: I would like to concede that it was clearly an error. It was not consistent with our process. The decision has been restored to AustLII. We clearly need to tighten up procedure.

Senator O’SULLIVAN: Would you be kind enough to, on notice, provide this committee with all the correspondence that relates to this—that is, the upward mails and the downward mails—so that we can ourselves make a determination of what is in them? Can you take that on notice?

Ms Leathem: Yes.

Senator O’SULLIVAN: Thank you. I looked at the number of members. How are members appointed to this tribunal?

CHAIR: That is a matter for Senator Brandis.

Senator Brandis: They are appointed by His Excellency the Governor-General on the advice of the cabinet.

Senator O’SULLIVAN: Before I go to that, I want to outline the foundation of my interests. I try to avoid using newspaper articles as any basis for questions, but the Herald Sun on 22 May published an absolutely litany of cases. If the reporting is accurate, it would have, I think, people shaking their heads. Are you familiar with the Herald Sun article of 22 May?

Ms Leathem: Yes.

Senator O’SULLIVAN: And you have read the precis of case decisions?

Ms Leathem: Each of those decisions is published on AustLII. The best way for the committee to satisfy themselves about the reasons for those decisions would be to read the decisions.
Senator O'SULLIVAN: And I will do that, given time. You have read them. Did anything jump out at you indicating that this reporting was inaccurate, having regard to the circumstances of each case? One character had 62 convictions, including rape, robbery, violence, theft, resisting police, domestic violence and so on. The tribunal overturned a decision to ask that person to leave Australia. I will come back to Senator Brandis about how these tribunal members are appointed. I would be immediately asking that that process be reviewed. Whatever the process is at the moment is clearly not working. Did anything jump out at you or any of your people as you read through this to suggest that the report on the 22nd was misleading?

Ms Leathem: I would simply say that, because it is a newspaper article, it obviously has only very selective comments about the decisions. Each of those decisions is very extensive—

Senator O'SULLIVAN: I appreciate that.

Ms Leathem: and has lengthy explanations for the law, the evidence and the findings. They are—

Senator O'SULLIVAN: Ms Leathem, even though they are selective sections—

Senator WONG: She is entitled to answer.

Senator O'SULLIVAN: You know I have limited time, Senator Wong. I am going to put it to you—

Senator WONG: Do not interrupt her when she is answering the question.

Senator O'SULLIVAN: that where the elements that have been reduced to—

Senator WONG: She is entitled to answer.

CHAIR: Senator O'Sullivan, I will stop you there. Senator Wong—

Senator WONG: Point of order.

CHAIR: You are not chairing this committee. If you have a question—

Senator WONG: I have a point of order.

CHAIR: about other senators, please raise the point of order with me.

Senator WONG: I have a point of order.

CHAIR: And, if appropriate, I will advise or chastise or encourage the senator involved. Now, do you have a point of order?

Senator WONG: I do. The witness is entitled to finish her answer before the senator puts another question. We have seen this mode of behaviour from Senator O'Sullivan before with Professor Triggs. I would ask you to protect the witness.

CHAIR: Senator Wong, that is more than the point of order. You are starting to attack another senator about things you have been very guilty of this morning—

Senator WONG: Here we go.

CHAIR: and which we have had a private meeting about.

Senator CASH: We have a mutual responsibility.
Senator WONG: Here we go.

CHAIR: So let me stop there.

Senator WONG: Here we go.

CHAIR: Senator O'Sullivan, you have another one minute to finish your question. If you have other questions, we will come back to you in due course. Your question and answer were interrupted. Senator Wong makes a valid point, but I have been half listening. I think you are asking questions. Please, for all senators, this is a case where you must ask questions, not make statements.

Senator O'SULLIVAN: Let me apologise to Ms Leathem if that has occurred. My interventions often happen when the answers become non-responsive to the burden of the question. So one more time: as you perused the synopsis of decisions in the Herald Sun article of 22 May, did you see, or did any of your people bring to your attention, that there were factual errors? I know they are out of context; I understand that, and that is a valid point. But did anybody bring to your attention, for example, that the Scottish career criminal with 62 convictions did not have 62 convictions? That is what I am trying to determine.

Ms Leathem: That is not the role we took. Our statement of reasons is comprehensive, and that is really the best way to answer the question. We are obviously concerned whenever there is coverage that might undermine confidence in the tribunal, but we welcome scrutiny and we understand that that is part of the process. Obviously, when you have a newspaper article, it extracts certain considerations that the member may have taken into account. But it did not go into anything like the detail that would be necessary to have a true appreciation and understanding of all the factors that need to be looked at in these character matters.

Senator O'SULLIVAN: I will come back, Chair.

CHAIR: Thanks very much, Senator O’Sullivan. I have listed Greens, Hinch, Xenophon and O’Sullivan. I assume the Labor Party has questions.

Senator WONG: Yes, we do. Thank you.

CHAIR: I shall go to the Labor Party next.

Senator WONG: Thank you very much.

CHAIR: Before I do that, are there others besides that?

Senator HINCH: Over here, Chair. I do.

CHAIR: I said Hinch, Xenophon, O’Sullivan and Greens.

Senator HANSON: And me.

CHAIR: And Hanson as well.

Senator WONG: Thank you very much for your opening statement. Ms Leathem, do I understand that you are telling us that, after you have interrogated your database, the tribunal has set aside less than one per cent of the total number of protection visa applications since 2014?

Ms Leathem: It is actually one per cent of the total number of protection visa applications, so the cancellations are a much smaller subset.
Senator WONG: I will come to that. I thought I made that clear. There were 60 decisions to cancel visa protection or refugee visa holders. I am reading, I thought, precisely the sentence—

Ms Leathem: Yes.

Senator WONG: that that is one per cent of the total number of protection visa applications that have been finalised in the same period.

Ms Leathem: Yes.

Senator WONG: So that is a long way from 39 per cent, which is in the newspaper?

Ms Leathem: Yes. That is right.

Senator WONG: In addition, there are the character related decisions. I cannot find the article, I am afraid, but I am sure people are looking for it. The article's 39 per cent referenced both protection visas and decisions on character grounds. Is that right?

Ms Leathem: Correct.

Senator WONG: So, in relation to the second category, it was—

Ms Leathem: Sorry, Senator—

Mr Matthies: Just to clarify, 39 per cent of applications finalised in the current financial year to the end of 30 April 2017 related to general migration.

Senator WONG: I understood that. I did not ask that question.

Mr Matthies: Sorry.

Senator WONG: I am saying that the article itself, from what I understood your evidence to be, states that it is 39 per cent. Rather than doing this without the article, let us start again. The evidence you have given us is that the total percentage of protection visa applications that have been essentially set aside is one per cent for the period 2014 to date?

Ms Leathem: There have been 60 decisions to cancel visas of protection or refugee visas. That represents less than one per cent of the total protection visa case load.

Senator WONG: Similarly, is this a subset—the 156 applications for review under character related decisions?

Ms Leathem: No. They are actually done in a different division.

Senator WONG: I thought so. Actually, the tribunal has only set aside one per cent of the case load. In relation to the character related decisions, you have set aside the decision in 35 out of 156 applications for review.

Ms Leathem: Since 1 July 2014.

Senator WONG: So neither of those figures equals 39 per cent.

Ms Leathem: The 39 per cent does not apply to either of those types of case loads at all.

Senator WONG: The 39 per cent relates to general migration visa decisions, of which partner, student, visitor and work visas—that is, non-protection visas—

Ms Leathem: Correct.

Senator WONG: make up the highest number of decisions set aside?

Ms Leathem: Yes.
Senator WONG: I will come back to it if and when somebody gives me the article. Senator Brandis, do you recall that on 28 February you made, frankly, quite positive comments about Justice Kerr? You said:
Justice Kerr, as president … achieved, with remarkable smoothness and harmony, a major piece of reform in fusing these, what were hitherto quite separate merits review tribunals—
'hitherto' is very you, George—
into an organic body … It is the most important reform to administrative law in Australia in 40 years.
Do you recall saying that?
Senator Brandis: Well, that is my view. I said that or words to that effect on several occasions.
Senator WONG: Sure.
 Senator Brandis: I think that Justice Kerr's work, particularly in presiding over the amalgamation of these different merits review tribunals, has been a great piece of public service.
Senator WONG: And you have described Justice Kerr as 'a ready, competent and cooperative collaborator'?
Senator Brandis: I have a very high regard for Justice Kerr.
Senator WONG: 'Thank you. Therefore, you would agree with Senator Macdonald, who described him as, I quote, 'a good appointment and a fine man'?
Senator Brandis: Well, at the time Justice Kerr was appointed by the former Labor government, and I was the shadow Attorney-General, I put out a press release praising the appointment and making the point that, because Justice Kerr had served in parliament, there was no reason why he should not be considered a suitable person to lead the Administrative Appeals Tribunal. As I recall, I made the point that a period of public service should be regarded as an adornment to a person's career.
Senator WONG: 'Adornment' is an interesting word.
Senator Brandis: Or words to that effect.
Senator WONG: Fair enough. Mr Dutton has made some comments about the AAT. I want to go first to an article that appeared in The Australian. I will be really clear about what appears as a direct quote and what appears as an indirect quote, which is not my decision but obviously how Mr Kelly wrote it:
Mr Dutton expressed frustration this week with the tribunal—he is talking about the AAT—
which has overturned more than 4300 visa decisions made by him or his delegate in the past year. He noted that Justice Kerr, a former Labor MP, was appointed by former Prime Minister Julia Gillard and said his term would not be renewed when it ended this week.
He then went on to say:
'It's always interesting to go back to have a look at the appointment of the particular Labor government of the day … It's a frustration we live with.'
The last part was the direct quote part as per the article. When did you first become aware of Mr Dutton's comments?
Senator Brandis: I read about them, I think, or they were drawn to my attention. But I became aware of them within a day or so.

Senator WONG: At any point have you had a discussion with Mr Dutton about his comments?

Senator Brandis: As I said in a completely different context yesterday and, indeed, the day before, it is not my practice to disclose private conversations with cabinet colleagues.

Senator WONG: I think Ms McLeod is the president of the Law Council currently. Is that correct?

Senator Brandis: Correct.

Senator WONG: So the president of the Law Council, Ms Fiona McLeod, is referenced in the article as saying:

... the comment could undermine the standing and independence of the tribunal.

She goes on to say:

'Any suggestion by government that Australian jurists are not acting with independence is dangerous and erosive to our justice system ... It undermines the public perception of the legitimate role of the judiciary and weakens the rule of law.'

Do you agree with Ms McLeod?

Senator Brandis: I do not. Certainly I do not agree that her remarks were an appropriate response to what Mr Dutton said. I wonder if you might ask me about this.

Senator WONG: You invariably use my time!

Senator Brandis: I want to explain —

CHAIR: You want to make a statement about this?

Senator Brandis: Effectively, I want to explain in some detail the reasons for the answer I have just given to Senator Wong.

CHAIR: Okay. I will allow you to make a statement. I do not think anyone on the committee will object to that. I will stop the time.

Senator WONG: Thank you.

Senator Brandis: Good. Thank you very much. I thank the committee. This raises the whole issue of the legitimacy of the criticism of judges or, in this case, tribunal members. I look at Senator Hinch. It is something that I know that members of this committee have engaged in from time to time in their previous lives. The Administrative Appeals Tribunal is not a court. It is not part of the judicial branch of government at all. It is a merits review
tribunal that sits within the executive government. Nevertheless, there are certain analogies between the Administrative Appeals Tribunal and a court, and protection of its independence is one of them.

I think the point at which to begin is with the AAT’s act, which provides by section 63(2) the protection of the Administrative Appeals Tribunal against inappropriate adverse comment. The act provides that a person commits an offence if they engage in conduct which would, if the tribunal were a court of record, constitute a contempt of court. So the test really is whether anything Mr Dutton said, had it been said about a court, would have been a contempt of court.

In preparation for what I thought I might be asked, I dusted off my old copy of Borrie and Lowe's *Law of contempt*, which I hasten to add is not the current edition but nevertheless is the authoritative exposition of the law. The starting point is an observation of Lord Atkin, the great English law lord of the early 20th century, when he pointed out:

Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny … of ordinary men.

Borrie and Lowe, the definitive authors on this subject, go on to say:

It is prima facie, therefore, legitimate to criticise a judge's conduct in a particular case or the decision that is given by the courts. The freedom to criticise is not confined to comments on points of law, nor is it restricted to academic journals. It is equally permissible for a mass circulation daily newspaper to criticise, for example, a decision as being against the overall policy of the law or contrary to the spirit of the legislation or being out of tune with present day needs.

There are countless examples of such criticisms. Not very long ago, Michael Kirby, the former High Court judge, collated some recent examples of criticisms of the High Court. He said:

Recent High Court decisions, the Court and the justices were labelled 'bogus', 'pusillanimous and evasive', guilty of 'plunging Australia into the abyss', a 'pathetic… self-appointed [group of] Kings and Queens', a group of 'basket-weavers', 'gripped … in a mania for progressivism', purveyors of 'intellectual dishonesty', unaware of 'its place', 'adventurous', needing a 'good behaviour bond', needing, on the contrary, a sentence to 'life on the streets', an 'unfaithful servant of the Constitution', 'undermining democracy', a body 'packed with feral judges', 'a professional labor cartel'.

Some of those statements were made by senior politicians, including a former Father of the Senate, Senator Boswell; a former state Premier, Mr Borbidge; and two former Prime Ministers, Sir John Gorton and Mr Malcolm Fraser. None of them were regarded as constituting a contempt of the court or other than an exercise of free speech. Probably the leading judicial authority on this—

CHAIR: Senator Brandis, I do not want to curtail you, but we have a lot to go through tonight. We have a lot of government departments waiting. There are a lot of agencies, and a lot of senators want to ask questions on this. Could you do this as quickly as possible?

Senator Brandis: I will abridge my remarks as much as I can.

CHAIR: Thank you.

Senator Brandis: But given that a criticism is being made of a minister of the Crown for remarks that he has made, I want to put on the record why it appears to me as a matter of law and practice that what he has said is entirely within bounds.

CHAIR: Of course.
Senator Brandis: So let me read on to the record what was regarded as the leading decision.

Senator WONG: Can we table that?

Senator Brandis: The passage is not very long. It is a case of the English Court of Appeal called R v Commissioner of Police, Ex parte Blackburn No. 2. It concerned an article written in *Punch* magazine by the very distinguished British lawyer Quintin Hogg, later Lord Hailsham, the Lord Chancellor, in which he had ridiculed savagely decisions of the court. He was the subject of a private prosecution by Mr Blackburn for contempt of court, which was dismissed. Lord Denning, another of the great English judges of the 20th century, in dismissing the case and upholding Quintin Hogg's right to attack the courts by way of commentary, said this:

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous …

Mr Quintin Hogg has criticised the court, but in doing so he is exercising his undoubted right. The article contains an error, no doubt, but errors do not make it a contempt of court. We must uphold his right to the uttermost.

CHAIR: Thank you, Senator Brandis.

Senator Brandis: The man about whom that was said was a former member of the British cabinet.

CHAIR: Yes. You have said that.

Senator Brandis: And a future Lord Chancellor.

CHAIR: Thank you.

Senator Brandis: The point I make in response to what has been put to me by Senator Wong—and I have taken the trouble of looking up the authorities so as to give a considered answer based on the law and not just a political answer—is that it is as plain as anything can be that what Mr Dutton said is well within the bounds of the very kind of public criticism of the courts, including by senior politicians, in the exercise of freedom of speech and a free democracy, which the courts themselves have repeatedly upheld and defended.

CHAIR: Thank you, Senator Brandis.

Senator WONG: I appreciate that, Chair. That is all very interesting, but I have just one question: do you agree with Mr Dutton?

Senator Brandis: I agree with Mr Dutton's right to make the observation.

Senator WONG: No. Do you agree with the substance of what he said?

Senator Brandis: Senator, I have read a media report of what he had to say. I will choose my own words.

CHAIR: It is asking for your opinion on something.
Senator WONG: Well, you can ask the minister for the opinion. It is only officers you cannot, Chair. That is in the standing orders.

Senator Brandis: Senator Wong, I will express my own opinions in my own words.

CHAIR: I am not quite sure how this relates to the budget estimates.

Senator Brandis: I will express my own opinions in my own words, not the words of others.

Senator WONG: Sure.

Senator Brandis: But the point I would make to you, because I have seen criticism of Mr Dutton for what he has said and I have gone to the trouble, as you can see, of looking at this properly, is that nothing that Mr Dutton said was beyond the bounds themselves, acknowledged and protected by the courts.

Senator WONG: Sure. But we are not sitting as a court to determine whether there has been a contempt of court, as interesting as your legal argument may have been to many people. I am asking you as the minister that is responsible for this tribunal whether you are going to publicly defend it against the criticism that your cabinet colleague has made, which goes directly to bias.

Senator Brandis: Senator Wong, I do not accept your characterisation of Mr Dutton's remarks. That is why I say that what it seems Mr Dutton has said is well within the bounds. Now, if there were an attack upon the integrity of the courts, that may be a different thing. But, as I read the remarks attributed to Mr Dutton, it is merely a criticism of the way in which certain matters have been handled, which is perfectly open to anyone to make.

Senator WONG: Can I put to you that others in the profession have a different view. I would like you to respond to this. The President of the Judicial Conference, Justice Robert Beech-Jones, who, as you would know, is a member of the Supreme Court of New South Wales, said the minister's comments were a clear insinuation about Justice Kerr and that the comments 'were unfair and unwarranted'. He went on to say—and I am advised that this is a direct quote:

The suggestion that Justice Kerr's performance as President of the AAT was affected or influenced by some association with the Labor party or the former Labor government has no foundation. Do you agree with Justice Beech-Jones?

Senator Brandis: I do not agree with that characterisation of Mr Dutton's remarks. For a start, I do not think that he was referring to Justice Kerr. I think he was referring to individual decisions of the AAT, not decisions of Justice Kerr. I have told you my own views about Justice Kerr. I do not need to repeat them.

Senator WONG: I had not understood that fine distinction. So it is your view that, if—and I appreciate it is an 'if'—Mr Dutton's comments suggested in any way that Justice Kerr's performance as AAT president was affected or influenced by some association with the Labor Party, you would not agree with that view?

Senator Brandis: This is the line to be drawn. On the one hand, it is not appropriate to attack the integrity of a court or a tribunal. That may be contempt of court. On the other hand, it is perfectly within bounds to criticise its decisions and, indeed, to criticise the judges or tribunal members who give those decisions. And that distinction is well and long recognised.
by the courts both in Australia and in other jurisdictions. In my view, properly understood, Mr Dutton’s remarks fall clearly in the second, not the first, category.

Senator WONG: The Herald Sun stated that they sourced statistics revealing that, of the 11,323 ministerial visa decisions reviewed in the 12 months to April, 39 per cent had been rejected. I think Ms Leathem has given evidence which clarifies that the overwhelming majority of them do not relate to visas cancelled on character grounds or to protection visa applications. Were you or your office aware that those statistics were being provided to the Herald Sun prior to the publication of the article?

Senator Brandis: Well, I certainly did not provide them. Nor did I know anything about their provision. I would be most surprised if anyone in my office did.

Senator WONG: Were you aware, or are you only now aware, that those statistics are, for the reasons that evidence has been given today, somewhat misleading?

Senator Brandis: I have heard the evidence. I have seen the report, though I must confess I have not studied it as closely as you obviously have, Senator Wong.

Senator WONG: I only just looked at it.

Senator Brandis: The statistics are the statistics. I am not going to be a commentator on arithmetic.

Senator WONG: No. I am asking you to be the Attorney-General and defend a tribunal which has been essentially criticised on the basis of statistics which, on the basis of today’s evidence, are misleading.

Senator Brandis: Well, you are not asking me to do that.

Senator WONG: That is what I am telling you I am asking.

Senator Brandis: No. You are not asking me to do that.

Senator WONG: Well, I am telling you I am asking.

Senator Brandis: Because I—

Senator WONG: I can tell you what I am asking. That is one thing you cannot tell me.

Senator O’Sullivan interjecting—

Senator WONG: Well, he cannot actually tell me what I am asking.

Senator Brandis: I have told you, Senator Wong, that the remarks attributed to Mr Dutton, are, in my view, plainly on the right side of the boundary between legitimate public criticism of a court—

Senator WONG: I am asking a different question.

Senator Brandis: and contempt of court.

Senator WONG: A completely different question.

Senator Brandis: So that is the point I make. Now, as to the statistics, the statistics are merely an exercise in arithmetic.

Senator WONG: Look, I understand that is your view. Finally, looking at your website—and we might not have calculated them all—in 2016 alone, you made 120 appointments and reappointments to the AAT. And 122 of current members of the AAT, at least—I think there
are substantially more—are your appointments. Was Mr Dutton aware of that when he made his comments criticising the tribunal?

Senator Brandis: Well, as I said in answer to someone before—it might have been Senator Watt—appointments to the AAT are made by His Excellency the Governor-General on the advice of the cabinet. They go through the normal cabinet process, whereby the names of appointees are circulated in cabinet. Therefore, Mr Dutton, as a member of the cabinet, would have known of the fact of each of those appointments. I should say, by the way, that the majority of those 122 appointments were reappointments on Justice Kerr’s recommendation. Although it seems a large number, the AAT is a very large tribunal. Most of its members are part-time members not full-time members. There is something of the order of 400 or so members usually appointed for terms of either three, five or sometimes seven years. So, in any given year, 100 or so people’s terms expire.

Senator WONG: Chair, can I ask one more question, and then I will finish up? Then it will be the end of my questions.

CHAIR: No. Senator O’Sullivan.

Senator WONG: I have to leave, Chair. I ask for some courtesy. I have to leave. Chair, please. I have to leave Canberra for personal reasons. I ask for some courtesy.

CHAIR: Can you give your question to someone else? If we keep doing this—

Senator WONG: I have one question.

CHAIR: I have made the ruling.

Senator WONG: I cannot believe this.

CHAIR: I have given you two minutes longer than your time allowed.

Senator WONG: The lack of courtesy—

CHAIR: Plus I stopped the clock for about 10 minutes.

Senator WONG: The lack of courtesy is extraordinary.

CHAIR: Senator O’Sullivan.

Senator WONG: I have one question. Can you please let me ask one more question because for personal reasons I have to leave to go back to Adelaide? Seriously?

Senator O’SULLIVAN: In extension of my earlier question, I want to go back to—

Senator Brandis: Before you do, Senator O’Sullivan—

Senator WONG: It is just extraordinary.

Senator Brandis: may I correct the answer I gave Senator Wong?

Senator WONG: It was one question.

Senator Brandis: There are 322 members of the Administrative Appeals Tribunal—94 full-time members and 228 part-time members. Last year, the terms of 122 of them expired.

CHAIR: Thank you, Senator Brandis. Senator O’Sullivan.

Senator WONG: Chair, I have one question.

Senator O’SULLIVAN: Thank you. Ms Leathem, I want to go back to the line of questioning with respect to the decision having been removed from the website. I imagine that when you were—
Senator Wong interjecting—

Senator O'SULLIVAN: I can hardly hear myself speak.

Senator WONG: I would like to finish with one question.

CHAIR: Please. A lot of senators have a lot of questions to ask. You have had more than a fair go. I have called upon Senator O'Sullivan. I am not having you run this, Senator Wong, to suit your convenience. This is a matter of convenience of all senators. I have called Senator O'Sullivan. You can give your question on notice or pass it to one of your colleagues to ask later. Senator O'Sullivan.

Senator O'SULLIVAN: Thank you, Chair. Ms Leathem, going back to the question of the email, prior to you becoming aware of the circumstances with respect to this particular email, had you or any of your colleagues in the executive administration had any knowledge of other events where members had attempted to have decisions removed for whatever reasons? We can explore that later.

Ms Leathem: I certainly have no knowledge of that. I might say, Senator, though, that my role does not involve the publication of decisions.

Senator O'SULLIVAN: So the section that puts the publications up within the tribunal, would it be involved for certain if a decision had to be taken down?

Ms Leathem: I might defer to Mr Matthies here, who manages the information section.

Mr Matthies: Any request to remove a decision will be dealt with by that area.

Senator O'SULLIVAN: And that is your area, Mr Matthies?

Mr Matthies: That falls within my area.

Senator O'SULLIVAN: When Ms O'Connell referred Ms Holmes's request in the email to Ms Redfern, did she correspond to someone within the section that you control?

Mr Matthies: Well, my understanding—and I need to confirm this—is that an email was sent to the decision publication area.

Senator O'SULLIVAN: That is the area that you control. How many personnel are in that area?

Mr Matthies: I will have to take that on notice. I do not have those figures to hand.

Senator O'SULLIVAN: You can give me a general number. You are the head of the department. Do you know how many staff work for you?

Mr Matthies: I would say in that area it would be in the vicinity of six to seven people. But I would like to confirm that on notice.

Senator O'SULLIVAN: Of course. I am more than happy for you to do that. Are you in control of that section?

Mr Matthies: That falls within my area of responsibility.

Senator O'SULLIVAN: Can you tell me, first of all—let us put this aside, if we can—when Ms Redfern corresponded to that section, did that correspondence come to you?

Mr Matthies: As far as I am aware, that did not come to me.

Senator O'SULLIVAN: Would that be the hierarchical channel, if you have a member of the executive who wants something done in another section? Would correspondence not go
from executive to executive? Is it unusual, for example, in this case, for Ms Redfern to send that to a subordinate of yours in that area?

**Ms Leatham:** Ms Redfern was not involved in the email correspondence at all.

**Senator O'SULLIVAN:** Can you tell me where Ms Redfern fitted in?

**Ms Leatham:** She is the division head. When we became aware of this issue, she was the one who spoke with the member concerned.

**Senator O'SULLIVAN:** So, as I understand your evidence, Ms O'Connell wrote to Ms Holmes with a request. Is it Ms Holmes who then sent that over to Mr Matthies's section?

**Ms Leatham:** I understand we have taken on notice to provide you the full emails. That is probably the most sensible way of managing it.

**Senator O'SULLIVAN:** That is true. But you did speak with some authority on this earlier, Ms Leatham. You said you have spoken to people this morning.

**Ms Leatham:** Yes.

**Senator O'SULLIVAN:** I am asking within the scope of your knowledge—and if it is not, we will take it on notice—whether you know who corresponded to Mr Matthies's section. We do not know the content of the correspondence.

**Ms Leatham:** The executive officer I mentioned before was the one who forwarded the email.

**Senator O'SULLIVAN:** And who was the executive officer?

**Ms Leatham:** Anna Piwonski.

**Senator O'SULLIVAN:** I am afraid her name has never been mentioned.

**Ms Leatham:** Well, that is the email correspondence.

**Senator O'SULLIVAN:** Are you looking at the email trail there, Ms Leatham?

**Ms Leatham:** Yes.

**Senator O'SULLIVAN:** Are you able to provide that to the committee so that I can have a look at it? It might guide my questions.

**Ms Leatham:** It may not be a complete record, which is why I would much prefer to—
**Senator O'SULLIVAN:** I will be very cautious. I am asking you whether you would table those documents, please. You have just removed a document. What is the document that you removed?

**Ms Leathem:** Well, that is not related to that email correspondence.

**Senator O'SULLIVAN:** It is absolutely unrelated to the line of questioning that I have asked you, Ms Leathem?

**Ms Leathem:** No. It is related. It is another extract from publications.

**Senator O'SULLIVAN:** Okay. So could we have those documents tabled? It might help guide and inform me on the questions that I am asking.

**Ms Leathem:** Sure.

**CHAIR:** Senator O'Sullivan, you have asked me a question. I am afraid that I do not know the answer to it. I think the tabling of documents is really a matter for the person whose documents they are rather than the committee or the Senate. But I will try to get some advice.

**Senator O'SULLIVAN:** I will change my request. Ms Leathem, would you be prepared to give me those documents so that I can look at them and guide my questioning?

**Ms Leathem:** I would much prefer to be able to provide you with a response on notice so that you have a sensible piece of information and a complete set of the emails rather than what I have here, which I think will only confuse matters more.

**Senator O'SULLIVAN:** We might be the judge of that. My request to you, Chair, is formal. The documents are in Ms Leathem's possession. Asking for them on notice would require her to go away, take the documents and bring them back to me at some later time. I am asking her to give me the documents so that I can inform my questions.

**CHAIR:** I note your request of the witness. I doubt that the Senate has any power to order a witness to table documents, but I will try to get some advice. For the moment, you have made a request to Ms Leathem. It is up to her as this stage whether she accedes to your request or refuses.

**Senator O'SULLIVAN:** Well, I will make my request differently. Ms Leathem, in whatever order you like, would you commence to read the documents in your possession—each word, each line?

**Ms Leathem:** There is a document that is an extract from a procedures manual.

**Senator O'SULLIVAN:** No, I am interested for you to read the words on the page.

**Ms Leathem:** It states:

**Amending or Removing a Published Decision**

There may be circumstances where a published decision needs to be removed from the AustLII website. Removing a decision from AustLII does not necessarily indicate any error by the tribunals. A decision must be removed if it is determined that the publication was contrary to a direction issued under section 378 or 440 of the act. A decision may also be removed where:

- management considers it is no longer of any significant value
- a decision is no longer of value and
- it is considered that some degree of harm, distress or prejudice to the applicant or another person involved in the case may result from continued publication on the AustLII website.

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**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**
Examples may include, but are not limited to, cases involving children at risk, family violence, mental health issues and sensitive medical conditions.

If the request is received from an applicant or an interested party to remove a published decision from the AustLII website, the request should be referred to the knowledge management email address aat.gov.au. The request is actioned by the senior publications officer, who considers the reasons, makes the initial assessment after reading the decision and discusses it with the team leader for approval.

If the request has been approved, the senior publication officer emails Data_Management_Team@aat.gov.au in Technology Services requesting the removal of the decision from AustLII and indicates the reason using the following list:

- Remove - corrigendum issued
- Remove - decision reversal
- Remove - finalised in error
- Remove - identifiers
- Remove - other
- Remove - sensitive details.

If the request has not been approved, the senior publications officer emails the applicant with an appropriate response.

Officers must ensure any requests and responses are recorded in Case Mate case notes for future reference. If the applicant has a legitimate reason to request the removal of the decision but it is okay for publication on the condition that identifiers are removed, liaise with the member's case office to see if the member will issue a section 378 certificate to facilitate this. If the member declines to issue a section 378 to request removal of the decision, please let me know if there is anything else you require.

Regards

Jonathon.

Jonathan Willoughby-Thomas
Director, Information Management
Administrative Appeals Tribunal.

Senator O'SULLIVAN: Is there anything on the other side of that document?

Ms Leathem: Then there is the email trail.

Senator O'SULLIVAN: Start in whatever order you like. I am happy for you to do it in the layout of typical emails—from, sent, to, CCs, subjects—if you can, please.

CHAIR: Again, if you are going to do this, Ms Leathem, and you are happily going to read them out in answer to the question, it would save a lot of time if we could get a photocopy of it.

Ms Leathem: I would prefer not to read it out.

CHAIR: Could we get a photocopy?

Senator O'SULLIVAN: Of all the documents.

Ms Leathem: It is just an email.

Senator McKIM: I raise a point of order, if I might.

CHAIR: A point of order.
Senator McKIM: Ms Leathem has been abundantly clear that she would prefer to take this on notice.

Ms Leathem: Yes.

Senator McKIM: I think that, given that she has made that view very clear, it would, above all else, be a matter of courtesy for this committee to allow Ms Leathem the opportunity to respond to Senator O'Sullivan's questions on notice. Ms Leathem is very clear on that.

CHAIR: I will take the point of order. I think I can deal with it. Senator O'Sullivan asked her to read out everything, which Ms Leathem was going to do and appeared happy to do. I simply intervened and said that it would save us all a lot of time, rather than reading it out verbatim, if we just got a copy of it. But it is a matter for Ms Leathem.

Senator O'SULLIVAN: It is.

CHAIR: If she does not want to photocopy it, we will read it out, which she seems happy to do.

Senator Brandis: Mr Chairman, I think consistent with the opening statement you made, a public interest immunity claim would have to be made to withhold this document from the committee. That claim can only be made by me. I do not make it. Therefore, I am happy for the document to be tabled before the committee.

Senator O'SULLIVAN: Attorney, there were at least three documents in the batch to which—

Senator Brandis: Well, I have read the document. There is no basis—

Senator O'SULLIVAN: Documents plural.

Senator Brandis: I can see no possible basis for a public interest immunity claim for this document. Therefore, I do not make a public interest immunity claim. I am happy for the document to be tabled.

Senator O'SULLIVAN: While it is happening, Ms Leathem, and just going on the parts that you read out, are the procedures with this document that you have just tabled?

Ms Leathem: As I have conceded, Senator, there was clearly an error in the process.

Senator O'SULLIVAN: Of the procedures?

Ms Leathem: Yes.

Senator O'SULLIVAN: Okay. Do we not have just two propositions? Either the procedures were followed—
Ms Leathem: No. The procedures clearly were not followed.

Senator O'SULLIVAN: That is right. That is the point I was making. I will now question you, Mr Matthies. Somebody has had direct communication with one of your subordinates. I accept what Ms Leathem says, until we see the email trail—that the subordinate was confused and, as a result, did something that the communique to him or her did not ask for or justify. How would that happen? From your investigations and briefings this morning, Ms Leathem, did you identify who it was that referred the matter? Was it Ms Jan Redfern?

Ms Leathem: No. Ms Redfern is the division head who assisted me in speaking with some of the people concerned.

Senator O'SULLIVAN: Sorry. Ms Piwonski. I am sorry.

Ms Leathem: She is the executive officer, yes.

Senator O'SULLIVAN: Who sent a further communique—

Ms Leathem: To the publications team.

Senator O'SULLIVAN: to Mr Matthies’s section. Was the communique to Mr Matthies?

Ms Leathem: No.

Senator O'SULLIVAN: It was not. So it was to one of his subordinates?

Ms Leathem: Mr Matthies manages many teams, of which that section is just one.

Senator O'SULLIVAN: So is that section led by a team leader in the hierarchy of things?

Mr Matthies: Yes. That section is led by an assistant director.

Senator O'SULLIVAN: And the assistant director’s name is?

Mr Matthies: It is on an acting basis. It is Sunitha Paalpare.

Senator O'SULLIVAN: Well, relative to the date of this, 21 October 2016. Who would have been the assistant director on 21 October 2016?

Mr Matthies: I would need to confirm, but I understand it would be Sandra Kerr.

Senator O'SULLIVAN: Sandra Kerr. So can I ask you, sir, would this be the proper protocol if there had been a decision taken? Let us assume that the processes were followed. We know they have not been. But if it went to Ms Kerr, would that be the proper line for that to happen? It would not come via you to remove a decision?

Mr Matthies: No.

Senator O'SULLIVAN: But that is not what the protocols call for. So it would go to the section head? Correct?

Ms Leathem: Well, you have taken my only copy of the procedure manual.

Senator O'SULLIVAN: Well, we are going to get you a copy of it back at the same time that I get it. Mr Matthies, in the scope of your knowledge here today—I am going to ask you to take this question on notice notwithstanding—when you have team meetings and team workshops and team arrangements, has the subject of removing decisions off the site ever been discussed amongst your team with you present?

Mr Matthies: Not to my knowledge, no.

Senator O'SULLIVAN: I imagine it would follow that you could not tell me of any other requests or a trend on volume of requests for decisions to be removed from the site?
Mr Matthies: No. I would need to take that on notice.

Senator O'SULLIVAN: Could you do that for me specifically? Let us use, so it does not become too burdensome at this stage, the last 30 months as the time frame. There would be records kept of that, Mr Matthies, if your team were to remove it, because the procedures allow for that?

Mr Matthies: Yes.

Senator O'SULLIVAN: Have you ever personally been asked for or burdened with a request to remove—you said this before, but I want to put this in a slightly different context—any decision, even if it comes via the proper protocols?

Mr Matthies: It may be that a matter would be referred to me if there was a question in relation to it.

Senator O'SULLIVAN: Do you have any memory, within your scope of memory, of receiving such requests?

Mr Matthies: I expect, yes, I have.

Senator O'SULLIVAN: I will wait.

CHAIR: You can finish the question.

Senator O'SULLIVAN: No. I am happy to wait. I am a patient person, Mr Chairman. I am happy to wait until my turn comes around again.

CHAIR: Thank you, Senator O'Sullivan. Just for information, Senator Wong did not ask another question at the end of her time. She was wanting to interrogate the secretary, who was giving some more information about an answer he had given at the end. It is my consistent practice that I allow senators to finish their question and perhaps ask one more question, which I have done in the case of Senator Wong, and allow time for a response. That is just in case you want to know.

Senator Gallagher interjecting—

CHAIR: I will ignore that interjection. Senator Pratt, over to you.

Senator PRATT: We had one further question this evening. Senator Wong had wanted to note that, according to the current list of members of the AAT, just two of more than 160 members with responsibility in the migration division are legacy appointments by the former Labor government. The remainder were appointed by the Abbott Turnbull governments. Can you confirm whether that is correct?

Senator Brandis: No. I do not know what the figures are.

Senator PRATT: Ms Leathem, are you able to say?

Ms Leathem: No. I am sorry. I do not know.

Senator PRATT: Perhaps take it on notice. You might use as a reference the Crikey article from Monday, 22 May.

Senator Brandis: Do you have any serious source, Senator?

Senator PRATT: No. The facts will speak for themselves.

Senator Brandis: Numbers are numbers.
Senator PRATT: The facts will speak for themselves. The numbers will be the numbers. Either *Crikey* is wrong or right. You need not denigrate the source or me.

Senator Brandis: People's terms expired, so they did.

Senator PRATT: The facts will be the facts, and you have taken that on notice. Thank you.

CHAIR: Is that your only question to the AAT?

Senator PRATT: Yes.

Senator HANSON: I need further explanation.

CHAIR: I am sorry to interrupt you. Because there are, as I understand it, a number of crossbenchers who want to ask questions, I am going to restrict crossbenchers to 10 minutes. So you have 10 minutes starting now. Of course, you can come back later if you do not finish.

Senator HANSON: Thank you very much. Can you tell me your budget for the year?

Ms Leathem: I will defer to Ms Fredman on that.

Ms Fredman: Do you mean for this current financial year or for 2017-18?

CHAIR: Excuse me. I will start your time again. I am sorry to keep interrupting. I appreciate that the party who had called the Australian Criminal Intelligence Commission and the Australian Institute of Criminology has now agreed, in view of the late hour, that those questions will be placed on notice. So the commission and the institute are excused from further attendance. If you are here, thank you for your attendance. Sorry to mess you around, but we are going to be struggling to finish. I appreciate the Labor Party's concession in allowing them to leave. Senator Hanson, my apologies again. I will start your 10 minutes now.

Senator Brandis: What time are we taking the evening suspension? I have an appointment.

CHAIR: The program says at six o'clock. But I had called Senator Hanson, so we will break after Senator Hanson has finished.

Senator HANSON: Yes, the budget?

Ms Fredman: I am sorry, Senator. I had forgotten in that—

Senator HANSON: Well, 2016-17 and 2017-18.

Ms Fredman: So in the current financial year, 2016-17, the departmental appropriation for the tribunal is $142.156 million. We are anticipating a modest operating surplus of around $1.3 million.

Senator HANSON: And you have approximately 465 full-time and part-time members and 322 full-time members, or 322 members?

Ms Leathem: It is 322 members.

Ms Fredman: Would you like a breakdown of full-time and part-time?

Senator HANSON: No. It is fine. The wages are between $208,000 and $235,000—would that be correct?

Ms Fredman: I do not have that figure to hand. I do not have a breakdown.
Senator HANSON: We will just move on. I am interested in the migration and refugee program. That is basically the biggest one out of the whole department—is that correct? You have the most members on that one?

Ms Fredman: Yes. It is the largest caseload.

Senator HANSON: Senator Dutton commented on cases being overturned. Explain to me how many people are on the board listening to a case presented to them? Is it one person or a number of people?

Ms Fredman: It is generally one person.

Senator HANSON: One person?

Ms Fredman: Yes, most tribunal members sit alone.

Senator HANSON: And are they judges? I know there are judges who are part of this. Are they usually judges?

Ms Fredman: There are judges who sit in the General Division. Tribunal members in the Migration and Refugee Division have a range of backgrounds. Some are lawyers; some are not.

Ms Leathem: They are statutory appointees rather than judges.

Senator HANSON: Do they actually interact with the immigration department and Mr Dutton's office in coming to their decisions?

Ms Leathem: Perhaps I will explain a bit about the process for how they would arrive at a decision.

Senator HANSON: Yes, please.

Ms Leathem: The whole scheme in which the tribunal operates, which is set out under the act, is that we actually stand in the shoes of the original decision-maker. So what happens is that the Department of Immigration and Border Protection would provide documents. Usually it is a file relating to any of the material relevant to the decision that they have made. We also in the tribunal conduct a hearing. In addition to the applicant being able to make submissions, there is usually an opportunity for a hearing to be heard as well.

Senator HANSON: Does that include witnesses?

Ms Leathem: It can include witnesses, but a lot of the time it is on the basis of material. Some of them are represented by migration agents. Some of them represent themselves. It is important to understand that the tribunal is not confined to the information that was before the department and the delegate that made the decision. They are also able to receive any additional information that might be available. Often there is a gap in time between when the department made the decision and when the tribunal makes its decision. So it is looking at all of the information afresh. It is applying the law. It is also conducting a hearing to be able to obtain information through that process. It then tries to reach the correct or preferable decision based on all the information before it. So that is often in a different state of evidence than it may have been when it was before the department's delegate.

Senator HANSON: I will go back to this case that was in the newspaper. The fellow apparently had 62 convictions, and one of them was for rape—is that correct? The tribunal overturned that decision for him to be deported.
Ms Leathem: Which article are you referring to, Senator?

Senator HANSON: The article in the *Courier-Mail* entitled 'Dutton hits out at AAT decisions'. It is about the refugee. It was a Turkish drug dealer convicted five times, including for peddling commercial quantities of heroin, ice, ecstasy, cannabis. He was allowed to remain in Australia after the tribunal quashed a decision to have him deported.

Ms Leathem: That is a published decision, so you would be able to read all of the reasons—the law, the evidence—as to why the tribunal member reached that decision. That would be the best way of satisfying yourself about the circumstances relating to that decision.

Senator HANSON: That may be the case, but I am asking you. It has been published. Did you work with the department with regard to this in coming to this decision? I think the public would be very concerned about you overturning a decision to keep someone in the country with these convictions against them. I do not believe it would pass the pub test. I want to hear your explanation why they are allowed to stay in the country.

Ms Leathem: Well, the members have a very specific statutory task, and that is prescribed in the legislation they are required to apply. They are also required to apply ministerial directions, including a range of factors. That might take into account things such as criminal history and a range of other factors that they need to balance. I could not possibly do justice to explaining the reasons in that decision, but they are published and they are available for everybody. They expose the reasoning and the conclusions that were reached in that case.

Senator Brandis: I think, Senator Hanson, you are really inquiring as to whether the applicant in that case was the person with the various criminal convictions you have mentioned.

Senator HANSON: There is—

Ms Leathem: Senator Hanson, it might assist you to know that the department is represented in those matters. So they actually appear and make submissions before the tribunal.

Senator HANSON: I would like to move on. The number of cases coming before the tribunal is growing rapidly. There is a lot of representation by people from Malaysia—is that correct? They are applying for refugee status.

Ms Leathem: There has been a large increase in the caseload from Malaysian applicants, yes.

Senator HANSON: Is it correct to say that Malaysia is the only Asian country from which people can apply for a visa online to come to Australia?

Ms Leathem: You would have to direct that to the department of immigration. We do not actually deal with the visa applications themselves.

Senator HANSON: I believe it is the case. Correct me if I am wrong, but the number of Malaysians who were non-authorised maritime arrivals that came before the tribunal is 3,552. That is 53 per cent who have actually arrived in this country illegally. Is it true that they are only in the country approximately three months before they apply to stay in the country as a refugee?
Ms Leathem: That would need to be a question directed to the department. We certainly can confirm that we have received a very large increase in applications for review in that jurisdiction.

Senator HANSON: Are migration lodgements up 31 per cent this year compared to last year and refugee lodgements up 89 per cent?

Ms Leathem: We have had a 47 per cent increase, I believe.

Senator HANSON: Refugee lodgements are up—

Ms Leathem: It is 31 per cent in migration.

Senator HANSON: And up 89 per cent this year from last year for refugees?

Ms Leathem: Correct. There has been a very large increase in lodgements.

Senator HANSON: How many have you actually denied to stay in Australia as refugees?

Ms Leathem: We have outcome data which would confirm whether or not the decision of the department was affirmed or whether it was set aside or varied. So we could give you some outcome data. If you're interested in a range of different countries and outcomes, it might be best for us to take that on notice. We could give you a comprehensive table of the different outcome data for each of those countries. To date, we finalised 3,816 of those refugee matters. There have been 2,829 affirming the decision of the department. There have been 239 that have been withdrawn, 304 that have been finalised by some other outcome and 444 that have been set aside of those 3,816.

CHAIR: One more question.

Senator HANSON: Is it true that it takes an average of 386 days for a refugee to get a determination?

Ms Leathem: Bear with me; I will look at our median timeliness.

Senator HANSON: For migration, it is 284 days.

Ms Leathem: I can tell you the timeliness in weeks. A refugee matter is a median of 53 weeks to finalisation and migration is 38 weeks.

Senator HANSON: That is approximately that time. If they are claiming refugee status and waiting for a decision, they would go for a bridging visa with the government. Waiting a long time for decisions would be at a cost to the taxpayer—would that be correct?

Ms Leathem: I could not comment on their income support situation.

Senator HANSON: Thank you.

CHAIR: We might have to leave it there, Senator Hanson. You know you are entitled to come back and ask more questions later.

Proceedings suspended from 18:09 to 19:12

CHAIR: I welcome everyone back to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the 2017-18 budget estimates. We are dealing with the Administrative Appeals Tribunal.

Senator HINCH: Senator Brandis, in your dissertation this afternoon, you made the very strong point that the tribunal is not a court.

Senator Brandis: That is correct.
Senator HINCH: But under section 63(2) it takes on court status when it comes to contempt of court and abuse from outside of the tribunal.

Senator Brandis: That is right. It has the protections of a court in relation to its processes.

Senator HINCH: I was going to say, until I heard what you spelled out, that I have criticised decisions by the court.

Senator Brandis: Sure.

Senator HINCH: I have in the past criticised sentences, and lack of sentences sometimes. But from what you were quoting this afternoon—even Lord Hailsham—it would seem it must be very hard to be in contempt of this tribunal, and I think probably Mr Dutton was quite safe in his comments.

Senator Brandis: I think it is true, as a general proposition, that the law of contempt is more liberal these days than it used to be. A century ago, comments that would be unremarkable today might have been regarded as being in contempt, and that, I think, reflects the fact that people understand that, in a free society, all public institutions, including courts, are appropriately the subject of public discussion and criticism. But it does remain the case that to attack the integrity of a court or tribunal in such a way as to undermine public confidence in it can still be contempt.

The point I was making to Senator Wong was that, on any fair reading, I think Mr Dutton's remarks can only be regarded as an exercise of his right of free speech, just like yours as a politician and in your previous career as a broadcaster, to criticise the way in which courts or tribunals go about their work. It is particularly important, if I may say so, in relation to an administrative appeals tribunal because what the Administrative Appeals Tribunal undertakes is merits review. It is not a court, and it certainly is not a body bound by strict legal principles or rules of evidence, and the expectation of such a body when it reviews ministerial decisions on the merits is that, like the original decision-maker, it has an appreciation of community standards.

Senator HINCH: Ms Leathem, we had a lot of these questions at the immigration and border security hearing earlier in the week, and I think maybe some of us were left with a bit of a misconception. We know that 39 per cent of the immigration minister's decisions have been overturned, concerning more than 4,000 people, but these are all the decisions; they are not all about deportations by any means, are they?

Ms Leathem: In fact, the deportation ones are not included in that figure at all. They are in a completely separate caseload. That 39 per cent relates to our migration determinations, and that is the number of set-aside decisions. It is important to understand that a lot of those set-aside decisions are because the information that is before the tribunal is quite different in substance to what was before the original decision-maker or there has been a change in circumstances, or there has been some other reason why they decide it needs to be set aside. So that 39 per cent is certainly not relevant to those particular types of cancellation matters that were the subject of that reporting.

Senator HINCH: Several times the Attorney-General has referred to the AAT as being a merit review tribunal. Does that mean that the immigration decisions by Minister Dutton and his staff that have been overturned are without merit?
**Ms Leathem:** It is probably incorrect to think of them as being overturned because we stand in the shoes of the decision-maker. We are effectively starting over and looking at the law, the evidence and all of the information before us. We also have different processes to the department of immigration. The delegates do not conduct hearings. They may have an interview with somebody. In some cases, they are just determining matters on the paper. So, when it comes to the tribunal, we have a different process whereby we receive all of the material that was relevant and the department provides us, but the applicant can also provide us with further information or evidence. We also conduct a hearing where there might be different information. They can also simply be a change in circumstance because it might be a period of some time from that original decision to when the tribunal makes the decision.

**Senator HINCH:** Does the tribunal have a standard—‘philosophy’ is the wrong word—about the deportation of criminals after they have completed their sentences? We know that after 12 months you can be deported, but do you have a policy about deporting people?

**Ms Leathem:** We do not have a policy. The legislation and the policy are set by the Department of Immigration and Border Protection and our members are bound to apply that legislation, as well as any ministerial direction or departmental policy that might be relevant. They often specify the considerations, including things like a criminal history as well as a range of other considerations that the tribunal member has to weigh up in determining whether or not they should affirm or set aside a decision.

**Senator HINCH:** You said earlier today—I am paraphrasing you—that you do not like reading media stories that might undermine confidence in the tribunal. How can confidence in the tribunal not be undermined when you have cases like this? A man was jailed for 17 years after being convicted of killing a Melbourne man by shooting him in the head with a sawn-off rifle because the murdered man's wife paid him $2,000. He was a Scottish hitman. His deportation was overturned. Why wouldn't that bring the tribunal into disrepute?

**Ms Leathem:** I would say it is not my role to defend decisions. I think the statements of reasons that are produced by the members are in fact the best explanation of why a particular decision might have been reached. It is really not for me to make comment on the correctness or otherwise of the decisions. They stand for themselves, and, of course, they are subject to the supervision of the courts.

**Senator HINCH:** Can you understand why the public may hold your tribunal in disrepute when you get a case like one I am sure you are aware of, where a killer refugee from Iraq took several knives with him to confront his brother-in-law following an argument and stabbed him many times, including in the heart, and he died? He got, I think, 13 years jail and, when he was meant to be deported after that, it was overturned. The tribunal decided he could stay.

**Ms Leathem:** Again, I would think it would be important that there be an understanding there is a whole range of factors and legislation that specify that the task has to be undertaken by the member.

**Senator HINCH:** Forgetting about the ones who have done time and then not been deported, you also mentioned in your opening statement that protection matters, saying the tribunal must consider whether there is noncompliance by the visa holder and whether or not the visa should be cancelled.
We had the case recently—I am sure you are aware of it—of six Iranians who arrived in Australia, said that their lives were at risk if they were to return to their country of origin yet they were spotted having a holiday back in Iran. The minister decided they should be deported because they had obviously lied about whether they were going to be in danger going home and the AAT allowed them to stay. How do you explain that?

**Ms Leatham:** The first thing I would say is they are not decisions of the minister. The tribunal does not have the power to review cancellation decisions made by the minister personally. In practice, these are made by delegates of the minister. I think that was an important distinction to make there. There is a range of factors that need to be considered when looking at these matters. I would say too that we are not entirely clear in the tribunal about which six cases are being referred to. We think we may have identified cases that appear to match those. The difficulty that we have is, because they are not published and are not publicly available, I cannot simply say, 'Go to the decision record and satisfy yourself,' which would be the most appropriate thing to do, because, as I explained at the opening statement, we have been asked by the Department of Foreign Affairs and Trade not to publish decisions that have content relating to Iran so that is an added awkwardness in relation to these particular decisions.

But I can at least tell you there are some specific legislative requirements that govern these types of matters. First of all, there needs to be a ground for cancelling the visa and that can be that the person gave incorrect information—

**Senator HINCH:** Like their lives were at risk?

**Ms Leatham:** or they gave a bogus document to the minister or the department or the tribunal, or the person did not notify a change in circumstances which caused information in their visa application card to be incorrect. Any of those grounds would be grounds for cancelling the visa. The first task the tribunal has to do is to consider whether or not there are grounds for that to happen. If there are, there is a number of mandatory considerations. The tribunal must take into account: what the correct informational content of the genuine document was; whether a visa was granted based on incorrect information; the circumstances in which the person gave the incorrect information and how long it has been since that time; any breaches of the law since that time and the seriousness of those breaches; the person's subsequent behaviour in regards to their obligations to provide correct information and any other known instances of giving incorrect information; and the person's present circumstances and any contribution they have made to the community.

The regulations require that those mandatory considerations be taken into account as well as further considerations under policy. So the member must also look at: whether any related visa holder's visas would be cancelled as a consequence of the first cancellation; the degree of hardship to the person or family members; Australia's international obligations including the rights of the child or any non-refoulment obligations; and any legal mandatory consequences such as indefinite detention or whether the person would be barred from applying for other visas. Those particular factors and considerations are all specified in the Migration Act, the regulations and then in policy, and the members are bound to apply those. If they do not or they take into account inappropriate factors then there would arguably be jurisdictional error, and the decision would be capable of being overturned in the court.
Senator HINCH: I do not want to go to over the area again—I have not got time—but Senator O'Sullivan covered the issue about AustLII and the removal of that post. Can you reiterate to me that you would never—you said it was an error in the chain of command—remove a post just because of, say, personal insults to a member?

Ms Leathem: I think what this has revealed is that the policy and the procedures around the decisions in the Migration and Refugee Division need to be more rigorous. It would never condone removing a decision because there is an error contained in it. There should be clear procedures for a corrigendum to correct any such error rather than removing the decision, and we will be looking to make sure that those procedures are tightened up so that cannot happen.

Senator HINCH: Forget the errors. If it was just insults to a member, if they became death threats and things like that, obviously you would refer that straight to the AFP, as any court would?

Ms Leathem: Yes, absolutely.

CHAIR: Just before I pass to Senator Siewert, I must say I am confused. You rightly say that you are not here to explain the decisions of the individual members, and I think you said what you need to do is go to the statement of reasons. But is a statement of reasons available for every decision except those on Iranians?

Ms Leathem: No, Senator. We do publish all the reasons in the General Division, which does the character deport matters. They are published as a matter of course, except if there has been a specific order made under section 35, prohibiting publication. In the Migration and Refugee Division, because the volume of decisions is so enormous—they finalised 18,000 matters last year—it is not feasible or helpful to anybody to publish all of those decisions. So there has been a policy of selecting ones that are instructive, that give people an understanding of the role of the tribunal, rather than simply publishing everything. We also have the added complication, with Iranian matters, of that DFAT directive.

CHAIR: Yes, I understand that. But I think Senator Hinch referred to the six from Iraq, which is not Iran.

Senator HUME: No.

CHAIR: No? I thought he said Iraq.

Senator HUME: No, Iran.

CHAIR: It is Iran, is it? That is why they are not there—because they are about Iran.

Ms Leathem: They may not have been published, but we have a policy at the moment not to publish decisions relating to Iran because of that DFAT directive.

CHAIR: I hear that. Okay. Senator Brandis, could I ask you, please, if you would refer this to the Minister for Foreign Affairs and see if the request for not publishing Iranian matters—which was made six years ago, I think?

Ms Leathem: We did confirm it recently. So, periodically, it is checked with the department, and as recently as only last week they confirmed that was still their position.

CHAIR: Okay. They makes me assume you are talking to the department.

Ms Leathem: Correct.
CHAIR: I am asking the minister to ask the foreign minister, perhaps on notice, so he can tell the committee if that is still the direction of the foreign minister, or the government; and, if it is possible, why. I am not quite sure—

Senator Brandis: Obviously, I will take that on notice and I will make that inquiry of the foreign minister.

CHAIR: Okay. Thank you. Senator Siewert or Senator McKim?

Senator McKIM: Attorney, you have been asked a few times recently—and you and I had an exchange earlier—about Minister Dutton's comments in regard to the AAT, and I put to you previously the comments of the president of the Law Council of Australia, who characterised Minister Dutton's comments as an attack on the independence of the tribunal. Having heard the discussion today, do you have any reason to revise your opposition or your complete difference of opinion to the opinion of the president of the Law Council of Australia in regard to Mr Dutton's comments?

Senator Brandis: None whatsoever. And the reason I took the trouble and prevailed upon the patience of the committee to make quite a long statement is that, unlike others who have commented on this matter, I wanted to base my observations on a sound legal basis, based on the relevant legal precedents, which I have done and put on the record. I do not think anyone else who has been a commentator on Mr Dutton's remarks has done that. I am sure they have not. So, for the reasons I explained, which I am sure you would not wish me to repeat, my conclusion is as I have expressed it.

Senator McKIM: Are you aware of the entirety of Ms McLeod's comments?

Senator Brandis: I have only seen what has been reported in the media, but I assume that the burden of them is as has been quoted.

Senator McKIM: Yes. Certainly, as I have just referred to, her comments do indicate that she believes that the minister's comments attacked the independence of the tribunal, and you have responded to that now—I accept that. She also said that the minister's comments had the potential to undermine the standing of the tribunal, which is a different matter, I am sure you would agree. Would you agree with those comments?

Senator Brandis: No, I do not. Having studied this very closely—not just recently but in my prior life—and having written about the matter in academic publications, I essentially believe that an attack on the standing of a court or a tribunal and an attack on the independence of a court or tribunal are effectively opposite sides of the same coin. That is my view.

Senator McKIM: Really?

Senator Brandis: Yes.

Senator McKIM: Does not the standing go to the perception or reputation of the tribunal?

Senator Brandis: It may, and I appreciate that there is a degree of difference. But you are really talking about the same thing: what I have described as the integrity of the tribunal—that is, the public's confidence in the tribunal. The public's confidence in the tribunal is in part a function of its reputation for independence, and the public's confidence in a court or tribunal is in part a function of the esteem in which it is held by the public. But it essentially goes to the same thing. I do not think Mr Dutton's comments went anywhere near that. In fact the
stronger the reputation of a court or tribunal, the more readily it can withstand criticism—irrespective of by whom the criticism is made.

**Senator McKIM:** I would not argue with that last thing you said, but you did, about halfway through that answer, say words to the effect that Mr Dutton's comments did not go anywhere near undermining the independence—I think that was the word you used—

**Senator Brandis:** Or public confidence.

**Senator McKIM:** But Mr Dutton made a decision to raise the appointment of a particular Labor government. You do not have to be a rocket scientist to figure out who he is referring to there, do you?

**Senator Brandis:** As a matter of fact, that is not the way I read his comments. I did not understand him to be attacking Justice Kerr at all. I thought, perhaps wrongly, that he may have been referring to appointees to the tribunal by previous Labor governments.

**Senator McKIM:** He refers to 'appointment'—singular, not plural.

**Senator Brandis:** Perhaps you are right.

**Senator McKIM:** Ms McLeod clearly thought he was referring to Justice Kerr, because she defended him in her statement.

**Senator Brandis:** Did she?

**Senator McKIM:** Yes, she did. She said:

Justice Duncan Kerr is a highly respected Federal Court judge who has provided excellent service to the Commonwealth during his time as AAT President.

**CHAIR:** Is there a question?

**Senator McKIM:** Yes. The question is: does that not indicate that Ms McLeod believed that Mr Dutton's comments in regard to a Labor appointment—singular—were directed at Justice Kerr?

**Senator Brandis:** I do not agree with that. I have a high regard for Duncan Kerr, with whom, as I have said before, I have worked. But I point out that he has never sat as a Federal Court judge. He was appointed to the Federal Court at the time he was appointed President of the AAT, and there is nothing wrong with that. But his entire experience as a Federal Court judge has been as President of the AAT, which is a different task from the task that judges perform.

**Senator McKIM:** It is, but that is not what I asked.

**Senator Brandis:** I have just been corrected. Justice Kerr has sat on a very small number of Federal Court cases.

**Senator McKIM:** He has.

**Senator Brandis:** So he has had some limited experience as a judge but not much. Mr Dutton said:

When you look at some of the judgements that are made, the sentences that are handed down, it's always interesting to go back to have a look at the appointment of the particular Labor government of the day. Anyway, it is a frustration we live with.

What that—it is a matter of grammar—means to me is that, according to Mr Dutton, you look at the appointment of whoever the decision maker was. As you probably know, the AAT does
not hand down sentences. It does not have any criminal jurisdiction of course. So plainly Mr Dutton was speaking more generally about decision making by courts or tribunals rather than talking about any individual. So, having looked again at his words, I adhere to my original view. I think you are wrong.

Senator McKIM: Well, Attorney, I think you are wrong.

Senator Brandis: You are perfectly at liberty to your views.

Senator McKIM: Thank you very much.

CHAIR: But not here. Could you ask the question?

Senator McKIM: I will move on shortly, but I want to put this to you, Attorney: Mr Dutton's comments were clearly made in the context of the AAT. Do you accept that?

Senator Brandis: Well, I think they were. I do not have the whole transcript here; I just have the passage that has been quoted. It has been my understanding that they were, but then he has plainly elaborated upon his comments by referring not only to judgements that are made but to sentences that are handed down. Mr Dutton has a very long association with the criminal justice system as a former and, I might say, very distinguished police officer, and I think his views probably reflect a broader familiarity with the judiciary, and particularly the criminal justice system, than merely being directed to a criticism of individual decisions of the AAT.

Senator McKIM: Attorney, I accept that Minister Dutton's comments pluralised the word 'judgement'—'judgements'—and they pluralised the word 'sentence'—'sentences'—and so clearly part of the context of what he was talking about was more than one judgement and more than one sentence, even though I agree with you that the AAT does not sentence anybody. 'Judgements', I guess, is a more reasonable word, but I do not want to debate that with you. He then goes on:

"When you look at some of the judgements that are made, the sentences that are handed down it's always interesting to go back to have a look at the appointment—

'the appointment', singular—

"of the particular Labor government of the day".

He is talking about Justice Kerr, isn't he?

Senator Brandis: I do not agree with that. I find this discussion tedious because—

Senator McKIM: So do I because—

Senator Brandis: You are the one who is asking the question.

Senator McKIM: the ordinary English language meaning of words you do not accept.

Senator Brandis: You are assuming the accuracy of the transcript that he said 'appointment', not 'appointments'. But, as a matter of grammar, I think my interpretation of these words is correct. You may disagree with me, but I will back myself on that.

Senator McKIM: This is shades of the Bell affair, if I may say so.

Senator Brandis: It sure is, in which you disregarded all the meanings but one in the Oxford English Dictionary—a politically tendentious conclusion unsupported by anybody but yourself. I am not prepared to entertain a further debate with you about grammar, Senator.

CHAIR: Might I just say—
Senator McKIM: You are tendentious in the extreme!

CHAIR: Please, Senator McKim! Debate requires two sides. If you would desist from taking the bait—

Senator Brandis: I hope I am not doing that.

CHAIR: They are not questions from Senator McKim; they are just statements.

Senator Brandis: Perhaps, Senator McKim—

CHAIR: You have wasted 10 minutes. I will give him the chance to ask one more question.

Senator McKIM: I was actually going to move to Ms Leathem to ask a question in another area.

Senator HUME: Most of my questions have been asked and answered, but I have one question. I understand the AAT can overrule deportation after consideration of criminal convictions and other matters, but can you tell me, Ms Leathem, is there any way that any of the people, for whom the AAT have overruled deporting, are potentially on terror watch lists?

Ms Leathem: I could not make any statement about that at all.

Senator HUME: That is not one of the considerations that comes into play?

Ms Leathem: I do not believe that is part of 109, no.

Senator HUME: So there is no way of checking before you decide to overrule a decision?

Ms Leathem: I think it is important to understand that the minister has the ability—if he has concerns, for example, on security grounds—to set aside a decision by the tribunal. So they could have their visa revoked in any event.

Senator HUME: So we can rest assured those decisions which you have overruled, there will be no-one on a terror watch list that is—

Ms Leathem: They can be set aside by the minister. That is correct, isn't it? We do not have the information. We are not provided with information about terror watch.

Senator HUME: Do you think that would be a pretty important piece of information before you made a decision about overruling?

Ms Leathem: It may be, but we are not provided with it by the authorities so that is not part of our function to make that decision.

Senator HUME: Would it not be something that you would consider seeking potentially?

Ms Leathem: We are only provided with the information that the authorities would give us. There is a separate process for security appeals, which is dealt with in a different area to the migration review decisions. My understanding is that if there was something of that nature, the minister is likely to cancel that visa, in which case we cannot review that decision. That would be the end of it.

Senator HUME: And that would come up in front of the minister before it would come to you?

Ms Leathem: If the minister personally makes the revocation, we do not have the power to review that decision.
Senator HUME: So are we certain that all of those cases will come before the minister, or would they—

Ms Leathem: I could not answer that question because we only get the appeals that come to us. I do not know what the first instance decisions are. But we do not have the power—if the minister has made a decision personally to revoke a visa, it is not within our jurisdiction to review it.

Senator HUME: So potentially there is a slim chance that somebody could fall through the cracks, could have their deportation decision overruled, and they could potentially be on a terror watch list. Is that what you are saying?

Ms Leathem: We would not know whether they were on that list. That is not the information—

Senator HUME: Yes, you have said that, but there is a chance that that could occur?

Ms Leathem: I would imagine, and you would have to speak to other authorities, there would be a completely different process for dealing with people of that nature.

Senator O'SULLIVAN: Coming back to you, Mr Matthies, have you seen the documents that have been tabled? Can you look at a copy of that? Do not mention any names for the moment, because I do not think that is significant. If I do want to refer to someone by name, rather than title, I will give them a false name. Could you look at the number of people there and tell me how many of them fall into your team?

Mr Matthies: One.

Senator O'SULLIVAN: Only one. And that would be the publication team leader?

Mr Matthies: Correct.

Senator O'SULLIVAN: But if you read the publication team leader's email, it says, 'I have sent an email requesting it be removed', which would suggest that in this case the team leader has sent it to give effect to the removal of the decision. So there is another person involved, I imagine; maybe someone who is a technician or an administrative assistant. Is that a fair comment?

Mr Matthies: I would need to take that on notice, in terms of having sent an email, as to whether that was directly to AustLII or to another part of the AAT to then forward onto AustLII. I expect that the email would just be sent directly to AustLII.

Senator O'SULLIVAN: AustLII being?

Mr Matthies: The Australasian Legal Information Institute, which publishes court and tribunal decisions and legislation.

Senator O'SULLIVAN: You just need to qualify that for me a little bit. Isn't this the division that is established to deal with the publication and removal of decisions?

Mr Matthies: This area of the tribunal processes those decision publications. The decisions are actually published on the AustLII website, which is a separate third-party website. That is not a website that is part of the tribunal's systems.

Senator O'SULLIVAN: Okay. I want to divest, for a moment, over to the protocols that are on the front page. I have to imagine, given you are the team leader in the space of publications, that you know these protocols and procedures backwards.
Ms Leathem: I must clarify: Mr Matthies has a very large remit. The publications team is just a section in one of many units, so he really does not have detailed knowledge of these processes.

Senator O'SULLIVAN: Ms Leathem, thank you for that, but my question is to Mr Matthies. He is in charge of this section. It has a very distinct name. It is called 'publication section'. You are the executive administrator of the publication section that makes publications, and, indeed, removes them. As the executive leader, is it fair to ask you: are you completely au fait with the AAT’s protocols and procedures in relation to the publication and removal of publications from the website?

Mr Matthies: I would say I am generally familiar with them.

Senator O'SULLIVAN: You are generally familiar. Are you familiar enough then to answer this question? There are at least five people in this email trail. We have already established from Ms Leathem that the protocols were not followed. The decision is flawed and should never have been made on the grounds presented by Ms Holmes. Would you agree that there are at least five people who have, either through ignorance or deliberately, ignored the protocols published on the first page?

Mr Matthies: It would seem to be four people involved in that email exchange.

Senator O'SULLIVAN: But the external service provider is involved. Someone there eventually has to push the button.

Mr Matthies: AustLII would just act on the request coming from the tribunal.

Senator O'SULLIVAN: They would not be aware of the protocols—there would be nothing there for them to validate or verify that this should happen?

Mr Matthies: Not if they have received an email from the tribunal.

Senator O'SULLIVAN: Can we agree that, on the material before us, we do not have a conspiracy happening? It is not as if a mate is running to a mate and meeting them in the basement to get this done. This has been out in the open. Would you agree with that proposition?

Mr Matthies: Yes, that seems to be in the ordinary course.

Senator O'SULLIVAN: Ms Leathem, you can join in here. We have four separate personnel—the only four personnel from the Administrative Appeals Tribunal, and two or possibly three of them in quite senior positions—who have all either ignored or flouted the procedures and protocols. That has been established. We do not need the debate whether they have or have not. They have—four separate people.

Ms Leathem: The initial email is raising a query about what the process is and then there is a further one clarifying feasibility protocols and any advice on that. They both seem to be clarifying what the process is. Where the misunderstanding of that request has come from is the final participant, who says they have sent an email requesting it to be removed.

Senator O'SULLIVAN: The publication team leader, probably the most important person in the chain.

Ms Leathem: They certainly are not the most senior person in the chain.
Senator O'SULLIVAN: That wasn't what I said. They are probably the most important person in the chain in the sense that this is the port of last resort.

Ms Leathem: There is no question—we clearly need to have a more rigorous process around that.

Senator O'SULLIVAN: I will not labour on this, because I have a number of other things I want to pursue, but you would have to tell me how the person who is, it would seem, the team leader of publications has absolutely no knowledge or has flouted these significantly important protocols that have been established by the Administrative Appeals Tribunal.

Ms Leathem: I am simply not in a position to do that. I have not yet had an opportunity to speak with the person to gather the information and make the full inquiries that I need to to be able to make an assessment about what went wrong. We literally have just been provided some basic information. I have conceded there has been an error in the process. We have restored the decision to AustLII, and I fully accept that we need to make sure that we improve those procedures.

Senator O'SULLIVAN: I do not want to interrupt you, but that was not the burden of my question. You did expand an opinion earlier when you said there was a misunderstanding. I am assuming you meant that the publication team leader formed a misunderstanding from the letter that came from Ms Piwonski.

Ms Leathem: Again, I have not had an opportunity to speak with either of those officers about this.

Senator O'SULLIVAN: Ms Leathem, please listen carefully to my question. You proffered this opinion to me earlier. You said that, as a result of your investigations, it had been established that a person had misunderstood what another person had said to them.

Ms Leathem: That was my interpretation of reading the email, rather than my formal conclusion.

Senator O'SULLIVAN: All right. So let us go to the middle email. We will not read the whole thing. Let's go to the punchline, the essential line: 'Is there feasibility/protocols around removing decisions from AustLII?' Could you proffer how someone could be confused about the burden of that question when they received that email?

Senator McKIM: Point of order, Chair.

CHAIR: What is the point of order?

Senator McKIM: The senator is asking Ms Leathem for an opinion. That is clearly out of order and you have determined that many times during your chairmanship of this committee.

CHAIR: I have indeed, but—

Senator O'SULLIVAN: I am asking Ms Leathem to defend the opinion she expressed earlier in evidence. That is what I am asking her.

Senator McKIM: As the senator has just confirmed, he is asking Ms Leathem for an opinion. That is not only unfair; it is contrary to the standing orders.

Senator O'SULLIVAN: Let me rephrase it to assist you, Senator. Earlier, you expressed to me that there had been a misunderstanding—

Ms Leathem: I said my interpretation was that there had been a misunderstanding, yes.
Senator O’SULLIVAN: All right. Can you elaborate on that? What do you think was—

Ms Leathem: I have only read the plain words that you see in front of you and I am concluding at the end—I have sent an email requesting it to be removed. I do not know why that conclusion has been reached. I would need to speak to the officers involved and find out what their recollections of the events were and any other information that might be relevant to that. I am simply not in a position to venture an opinion as to what they thought or what they thought they were being instructed to do.

Senator O’SULLIVAN: Let me globalise my concerns. First I want to refresh a thing you said you would take on notice. I want the actual email document exchanges, because this does not provide me with who has been—

Ms Leathem: Yes, Senator.

Senator O’SULLIVAN: No, I just want you to know this does not satisfy that request because it does not indicate material 'cc's and 'bcc's and the like. And if there is a bcc—it does not appear obviously on the face of the email—I would like to know who was in the bcc. Can I just put this to you, Ms Leathem: I am having a moment of crisis. I have the—

Senator McKim interjecting—

Senator O’SULLIVAN: You think this is hilarious? Well, I am afraid I do not. I have the person who is in executive control of the publications section who has indicated that he only has a cursory understanding of the protocols that administer this. I have senior people who clearly do not know what those protocols are. They are not aware of them, otherwise they would not have to seek the information. And I have the most important person, the fire warden, who just goes ahead and gets it done, ignoring every one of the guidelines. I had asked you earlier whether you could supply me with information about the number of requests to have this done.

Ms Leathem: Yes.

Senator O’SULLIVAN: But you would have to agree now: you will never be able to supply me with that. This stuff is—you could have, had they followed protocols, because I imagine there is a register. If there is a decision taken, there is a decision published. But if there are more of these—one more, 10 more, 100 more, 200 more—you and I can never discover the volume of what appears to be a catastrophic failure of internal protocols within the Administrative Appeals Tribunal.

CHAIR: Is there a question in that?

Senator O’SULLIVAN: Yes. Do you agree?

Ms Leathem: No, I do not agree.

Senator O’SULLIVAN: Okay. Will you now explain to me how it is you are going to flesh out more events like this. I am assuming—

Ms Leathem: We do have a 'Casemates' system which records all such events. And also we would be able to check with AustLII to determine whether there were any decisions that had been published that were not published, so I think there are several lines of inquiry that we can make to satisfy ourselves about any events that may have happened of this nature.

Senator O’SULLIVAN: Okay. So—
CHAIR: This will have to be the last question.

Senator O'SULLIVAN: I am sorry. I will wait.

CHAIR: We can come back to you.

Senator O'SULLIVAN: I will take my time.

CHAIR: Thank you. Senator Hanson?

Senator HANSON: Thank you. I have to say I find it very disturbing when I hear that the AAT has overturned 4,389 visa decisions made by Mr Dutton or his delegates, which is 39 per cent of the 11,323 ministerial visa decisions. As I have stated before, refugee lodgements have increased 89 per cent compared to the same time last year. Now, can you define to me what the meaning 'refugee' is?

Ms Leathem: It is set out in the legislation.

Senator HANSON: No, can you define it—your definition of refugee?

Ms Leathem: I am not a decision maker or the policymaker. That is the government that sets the definition of refugee.

Senator McKIM: That is right.

Senator HANSON: It is under your tribunal. If people are coming before the tribunal claiming refugee status, you must have a definition of a refugee or how you define a person as a refugee.

Ms Leathem: Yes, but it is not set by the tribunal. It is set by the government of the day and it is reflected in the legislation, and the tribunal has no control over that legislation.

Senator HANSON: How do you come down with your decisions? If they are standing before you and they are saying, 'I'm a refugee and I want to stay in this country based on this reason', how do you determine whether they are or not? Not based on the legislation. I understand my understanding of a refugee. I have an understanding. I am asking you: what is the tribunal's understanding of what a refugee is?

Senator WATT: It seems to me that these questions might have been better directed to the Department of Immigration who we were here on Monday and Tuesday. But unfortunately Senator Hanson was not here on Monday or Tuesday—

Senator HANSON: I am sorry. I disagree with that. It is a chance decision with this because—

Senator WATT: There were other questions that I asked when I showed up to work on Monday and Tuesday and I was referred to other committees—

CHAIR: That is not a point of order, Senator Watt, as you know. And you are being provocative to other senators.

Senator WATT: But, on Monday and Tuesday, I was referred to other committees.

CHAIR: That is not a point of order. Senator Hanson, can I just point out that these people before you do not make the decisions. None of you are sitting members of the AAT, are you?

Ms Leathem: No.
CHAIR: These are simply executive people who look after, I assume, the members of the AAT. I just point that out.

Senator HANSON: Thank you, Chair.

CHAIR: Perhaps, Mr Moraitis, would you be able to indicate what the statutory definition of refugee is?

Mr Moraitis: My recollection is that it is based on the refugee convention.

Senator WATT: Senator Hanson has indicated that she knows what the meaning is, so it is a little unclear why—

Ms Leathem: Ms Haddad could probably provide some clarification.

Mr Moraitis: I can take that on notice, Senator Hanson.

CHAIR: Who could?

Ms Leathem: Ms Haddad.

CHAIR: Okay. Perhaps you could help.

Ms Haddad: The current definition of refugee is in section 5H of the Migration Act. It is a 'person who has a well-founded fear of persecution.' What a well-founded fear is, and what persecution is, is further defined in the Migration Act. It is quite lengthy. It goes on for several pages. That is the definition that the tribunal has to apply when deciding whether to grant a protection visa.

Senator HANSON: Therefore, when you have over 53 per cent that come before the tribunal that are Malaysians, that is 3,552; and you have 1,050, that is 16 per cent, coming from China—and they are claiming refugee status or immigration, yet they have come from a country, they have applied with visas to come out to Australia—and then can turn around and apply for a refugee status before the tribunal. I will move on to the next question. To actually become a refugee—whether you know this or not—you actually first apply to the immigration department, and it costs you $35. Then you can go on and, if you are denied that, you can go to the tribunal and it costs you absolutely nothing if you claim refugee status. Is that correct?

Ms Haddad: That is correct.

Senator HANSON: If the tribunal finds you unsuccessful, do they have to pay their costs back?

Ms Haddad: There is a post-decision fee if you are not found to be a refugee.

Senator HANSON: As we determined earlier, it takes as a refugee 386 days. In the meantime they can get a bridging visa, which actually gives them the opportunity to work in the country. Therefore, how many would actually stay and wait for the decision—or do many of them abscond back to their country after earning quite considerable amounts of money and taking jobs from Australians?

Senator McKIM: Point of order, Chair. I honestly do not believe these are questions for the AAT. The number of refugees that stay or go would clearly be a matter that ought to be raised with the immigration department. And, if Senator Hanson had bothered showing up, she could have asked the questions then.

CHAIR: There is no point of order, as you know, Senator McKim. The witnesses can say if it is their problem or not theirs.
Senator WATT: Point of order, chair.

CHAIR: Yes?

Senator WATT: As we all know, we are very—

CHAIR: What is your point of order?

Senator WATT: Can I have more than two seconds to make it?

Senator McKIM: No, not in this committee you can't.

CHAIR: What is your point of order?

Senator WATT: As we all know time is short tonight. These are questions that have been, and could have been, canvassed on Monday and Tuesday. Senator Hanson did not attend. She cannot try and make up for that by coming and asking them now.

CHAIR: There is no point of order, and Senator McKim has just spent 10 minutes asking the same questions he asked before. So if you are talking about wasting time, why didn't you take the point of order then? There is no point of order, anyhow.

Senator HANSON: Because Senator McKim's name is not Pauline Hanson.

CHAIR: I am sorry; I should have stopped the clock. I will give you an extra minute for that interruption, so you have five minutes 30 left.

Senator HANSON: Thank you very much, Chair. As I was saying, they are actually allowed to stay in the country for an extra 386 days on average until a decision is made, earning money or on a bridging visa and sending money back. Can you tell me, from the ones that are unsuccessful, how much money is recovered on behalf of the taxpayer, and how do you get this money from them?

Ms Leathem: That is a matter for the Department of Immigration and Border Protection. The tribunal does not have responsibility for recovering debts from visa claims.

Senator HANSON: Do you believe that there could be a scam going on here?

Ms Leathem: That is venturing an opinion, I think.

Senator WATT: You are asking about scams!

Senator HANSON: I am of the belief that from the tribunal they can then go on to the courts if the decision is negative?

Ms Leathem: There is a right of appeal on a question of law to the courts.

Senator HANSON: How many of those would actually go on to the courts?

Ms Leathem: I have some figures. In the 2015-16 financial year, there were, in the migration—in the refugee matters—is that what you are asking about?

Senator HANSON: Yes, please.

Ms Leathem: There were 1,629 appeals were lodged.

Senator HANSON: To the courts?

Ms Leathem: Yes.

Senator HANSON: I want to cover this again: when they are before the tribunal, do they have legal representation?
Ms Leathem: Some of them are legally represented and some have migration agents, and—

Senator HANSON: Is that covered under Legal Aid or is it at their cost?

Ms Leathem: It is not the tribunal's responsibility to provide the legal representation. I think there are some organisations that might provide pro bono assistance.

Senator HANSON: I asked you before, do you investigate and ask them to present documentation, or do they have witnesses or is there—

Ms Leathem: We are not an investigative body, but we do invite submissions or evidence from applicants if they wish to present it to the tribunal.

Senator HANSON: When I go back to this article, we have a paedophile of 18 child pornography offences. We have another fellow here for 62 convictions of rape, robbery and violence. We have drug dealers, we have perverts and we have an attempted incest of a 12-year-old step daughter and rape his wife—and these have been overturned. I cannot believe it. I just feel that many Australians listening to this would be incensed by the tribunal. That is what I am trying to find out: how do you come to overturn these decisions for these people to actually stay in the country?

Ms Leathem: Again, there are statements of reasons in relation to those which are published. They do disclose all of the information and the evidence and the legal basis upon which those decisions have been made.

CHAIR: But only if their published. In many instances—

Ms Leathem: I understand that the character deportation ones are all published.

CHAIR: Thank you.

Senator HANSON: The ones who are going to be deported, are they published?

Ms Leathem: The people who are character deportations—the cancellation on character grounds—they are all published as a matter of course.

Senator HANSON: But you said under section 35 and, correct me if I am wrong—

Ms Leathem: You can make a confidentiality order.

Senator HANSON: That is right. You said you do not publish that on their character?

Ms Leathem: No, only if there is a specific order made under section 35 would we not be publishing, but that is very specific occurrence. The routine is to publish those decisions.

Senator HANSON: Can you give me an example of why it would not be published?

Ms Leathem: A member can be requested to make an order under section 35. It might be because there is some concern about endangering another person. That might be a basis upon which they make a section 35 order, but it is quite an unusual circumstance.

Senator HANSON: One last question: if the minister wants to deport a person and you overturn the decision—against the minister's decision or the department's decision—is there a further appeal process?

Ms Leathem: Yes, there is.

Senator HANSON: So the immigration minister's department can—
Ms Leathem: The applicant or the minister or the department, yes. The respondent can appeal to the courts, yes.

CHAIR: But you cannot overturn the minister's decision? I do not mean you; I mean the AAT.

Ms Leathem: The tribunal cannot, if it is made personally by the minister. That is correct.

Senator SIEWERT: I will try not to take up too much time. I am basically after some updated stats on some of the matters you have been dealing with associated with, for a start, DSP, the disability support pension. If you recall, I have asked around this issue before in terms of looking at the numbers, to see if there are more people appealing decisions, given the change in approach.

Mr Matthies: In 2015-16, which are the figures we discussed on the last occasion, there were 6,525 applications for first review of DSP decisions. In the current financial year, to 30 April 2017, the figure is 5,529, which is a small increase of about three per cent greater than for the same period in the previous year.

Senator SIEWERT: That is how many have been completed?

Mr Matthies: No. That is how many have been lodged.

Senator SIEWERT: How many have been completed?

Mr Matthies: In the current financial year, to 30 April 2017, 5,503.

Senator SIEWERT: So most of them have been?

Mr Matthies: Yes. The clearance ratio is close to 100 per cent.

Senator SIEWERT: When you say 'three per cent', that is compared to that same time frame, to 30 April?

Mr Matthies: In 2015-16, correct.

Senator SIEWERT: How many appeals have you had come through on the online compliance system to date?

Mr Matthies: Our case management system records information about whether it is an application about debt, but that is the extent of the information that is available on the case management system.

Senator SIEWERT: In that case, could you give me that information on Centrelink debt?

Mr Matthies: In the current financial year, to 30 April 2017, the number of applications relating to debt is 4,354.

Senator SIEWERT: Is it possible to give me a comparison to the previous financial year?

Mr Matthies: In 2015-16, for the full financial year, there were 3,387.

Senator SIEWERT: That is for the whole of the financial year?

Mr Matthies: That is correct.

Senator SIEWERT: There has been a significant increase, in that case, if this is for the first three quarters of the year.

Mr Matthies: Yes.

Senator SIEWERT: You may need to take this on notice, but are you able to give me a breakdown of those figures by the month, over the 2016-17 financial year?
Mr Matthies: We would have to take that on notice.

Senator SIEWERT: If you could, that would be appreciated, and perhaps if you could then give it—if it is fairly easy to pull out—by the month for the previous financial year, so I can see if there has been an increase. Also, I want to compare that to the previous financial year, because there may be particular months that there is an increase for anyway.

Mr Matthies: Yes.

Senator SIEWERT: Thank you. In terms of the complexity of the cases for DSP, I have been told that there are a lot of people who are struggling with DSP and they need more advocacy support. Have you noticed that? Do you record that sort of information?

Mr Matthies: We record information about representation but—

Senator SIEWERT: How many of those had representation present? I am going to the DSP.

Mr Matthies: I think we only have figures for the 2015-16 financial year.

Senator SIEWERT: Do you have them so you could take it on notice for the current financial year?

Mr Matthies: We can do that.

Senator SIEWERT: That would be appreciated. So how many for 2015-16?

Mr Matthies: For first review in 2015-16, 77 per cent of applicants were self-represented in DSP cases.

Senator SIEWERT: That is for DSP. What about in the debt scenario?

Mr Matthies: We do not have those figures to hand.

Senator SIEWERT: Why is that? You do not record that information for debt?

Mr Matthies: We do, but we would have to take on notice.

Senator SIEWERT: If you could take that on notice that would be much appreciated.

Senator McKIM: Chair, is it okay if I fill out the 10 minutes' allocation for the Greens?

CHAIR: Yes.

Senator McKIM: Thank you. I have some questions about the fast-track legacy case load under the Migration Act and specifically in regard to the Immigration Assessment Authority. Who can take that?

Ms Leathem: Ms Haddad.

Senator McKIM: Thank you. Firstly, do you keep figures by the financial year?

Ms Haddad: I can give you both.

Senator McKIM: Okay. So if we can work in financial years and obviously year to date for the current year. How many reviews under section 473D of the act for the current year and for the previous year?

Ms Haddad: For the current year to 30 April 2017, it is 2,184 and the previous year I can tell you the total since we started, which is 2,448. So it is about 300—

Senator McKIM: Can you remind me when you started?
Ms Haddad: We were officially created in April 2015, but we did not receive our first cases until October of that year.

Senator McKIM: Do you keep data about how many interviews have been conducted as a part of those reviews?

Ms Haddad: We do. I do not have it with me.

Senator McKIM: Maybe I could put some questions to you and you can take them on notice.

Ms Haddad: It would be a small number.

Senator McKIM: That is the first question; then for the previous year and year to date. I am very happy to take them on financial years. Do you also breakdown whether the interviews are conducted over the phone or in person?

Ms Haddad: Yes, we do.

Senator McKIM: If you could provide the breakdown as well. Do you have figures on how many people have sought judicial review for those periods?

Ms Haddad: Yes, I do. I can give it to you in a percentage. I have to find the actual numbers. Since the beginning, 66 per cent of IAA decisions have been appealed to the Federal Circuit Court.

Senator McKIM: Could you take on notice to break those down?

Ms Haddad: Certainly.

Senator McKIM: Do you have monthly figures?

Ms Haddad: I do.

Senator McKIM: For the ones you take on notice, would you be able to provide the monthly breakdown?

Ms Haddad: I can do that.

Senator McKIM: Do you keep a track of the outcomes of judicial appeals?

Ms Haddad: We do.

Senator McKIM: Do you have a global percentage with you?

Ms Haddad: A very small number have been resolved. There are only 37 that have been resolved so far.

Senator McKIM: How many of them were successful?

Ms Haddad: Seventeen—I would have to check that, though.

Senator McKIM: I am happy for you to take that on notice. Can you provide the outcomes of all the decisions, in the context that we are speaking about, made by the IAA broken down by nationality? Is that something that would be able to do?

Ms Haddad: Yes, we can do.

Senator McKIM: I am happy for you to take that on notice. Do you keep records around the number of people who receive legal assistance? I realise it is not your job to provide that.
Ms Haddad: We record if someone has nominated another person to represent them, if you like. We record if they have nominated another person to be what is called their authorised recipient—to receive correspondence and do nothing more on their behalf.

Senator McKIM: But not necessarily whether they have received any form of legal assistance?

Ms Haddad: That is right. It is apparent sometimes from documents that we receive from applicants that they have had assistance in preparing those documents, but they have not formally nominated anyone to represent them. We can provide statistics but they will only take you so far.

Senator McKIM: If you could provide those statistics, that would be great. What is the number of decisions since the commencement—I think you said your first referral was in October 2015—where the IAA has requested new information under section 473D? Do you have those figures?

Ms Haddad: Where we have actually requested information from an applicant or a third party?

Senator McKIM: Yes.

Ms Haddad: No, I do not have that information.

Senator McKIM: Do you keep it?

Ms Haddad: We do keep it, yes.

Senator McKIM: I would like that taken on notice and the answer broken down, if possible, by method of invitation: whether it was in writing, verbally requested at an interview or through the proceedings of the IAA. Also, if you could break that down by nationality, that would be helpful as well.

Ms Haddad: We can probably do that. It is not something we normally keep statistics on, but I think we could probably interrogate.

Senator McKIM: I do not want to create unnecessary burden. If it is a reasonable request, fulfil it; if not, please let us know.

Senator O'SULLIVAN: I know that we had an exchange earlier, but my notes are not comprehensive enough for me to rely upon them, so I would like to methodically go through it one more time. How many cases, if we can call them that—is using the term 'case' an appropriate word?

Ms Leathem: Yes.

Senator O'SULLIVAN: How many cases would the members deal with in a given year?

Ms Leathem: That entirely depends on whether they are full time or part time. We have different work patterns. Some people might only work two days a week or three days—

Senator O'SULLIVAN: No, the number of cases; not the number of members.

Ms Leathem: The entire case load?

Senator O'SULLIVAN: Yes. Pick a year. It does not matter which year; it is just to put me in the zone.

Ms Leathem: You want to look at what we received in total for all of the tribunal?
Senator O'SULLIVAN: Yes, please.

Ms Leathem: This financial year to date, we have received 42,743.

Senator O'SULLIVAN: We will work with that; I think that is a fair figure—42,000 to date?

Ms Leathem: 42,743 up until the end—

Senator O'SULLIVAN: Let's make it 43,000 amongst mates for before the end of the year. This might need some tolerances, but can you tell me how many cases in an average year are uploaded onto the website so that people can review the decisions?

Ms Leathem: I think we have statistics or some figures on last year. In the Migration and Refugee Division in 2015-16, there were 2,009 decisions that were published, which is 12½ per cent of all their written decisions.

Senator O'SULLIVAN: Okay. Can we keep going?

Ms Leathem: I would have to take the rest on notice. That is the only data I have specifically for decision numbers, but we could certainly break it down by other—

Senator O'SULLIVAN: You have a report there on decisions from the migration section that are published, but not for the balance of 43,000 cases? You do not know how many of them have been uploaded?

Ms Leathem: As I mentioned before, in the Social Services & Child Support Division, they generally do not publish decisions because they are conducted in private. I think they have published a sample of a very small number of decisions.

Senator O'SULLIVAN: We do not need to spend a lot of time on each—I will drill down if I need further information—but would you be kind enough to tell me what the thinking is in social services? Can you break the 43,000 down any further for me?

Ms Leathem: Yes. If you look at the major areas of work in the Social Services & Child Support Division, there was a total of 14,714.

Senator O'SULLIVAN: Are they combined or—

Ms Leathem: That is all of the matters in that division.

Senator O'SULLIVAN: So that is a combined division—social services and child support?

Ms Leathem: Yes, 14,714. In the Migration and Refugee Division combined, there were 21,996; in the General Division, 4,738; in the Freedom of Information Division, 34; in the National Disability Insurance Scheme Division, 126; in the Security Division, nine; in the Taxation and Commercial Division, 835; and in the Veterans' Appeals Division, 291.

Senator O'SULLIVAN: Before we go door-to-door here, if 12½ per cent of the cases leave 88 per cent not published, or some 17,000 or 18,000 cases, what is the process that occurs within the organisation to determine what will be published and what will not be published? How is that worked?

Ms Leathem: There is no statutory obligation to publish decisions.

Senator O'SULLIVAN: I appreciate that, but the most fundamental one is the one you publish in the aims of the organisation, which says:

We aim to provide a review process that:

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LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
• promotes public trust and confidence in the decision-making of the Tribunal.

That can only be achieved if an observer has the capacity to determine and develop their own confidence in the decision-making of the tribunal. That cannot happen without transparency. Here we have some 40,000 cases—and we are going to go door-to-door—that are not uplifted and published. I will be keenly interested in why that is so, but most interested in why only 12½ per cent. Ms Leatham, let us, because we will all be here at midnight otherwise—I will make my—

CHAIR: No, we will not. We will be going to 11.

Senator O'SULLIVAN: My questions will be very precise and very surgical. My question was: of the other 88 or 87.5 per cent of cases that are not published in the Migration and Refugee section, what is the process when that decision is taken? We have a case file, it is completed and a decision is being determined. What happens to it? Does it go to a boardroom where there is a group of people? Do you have a section within the tribunal that specialises in doing this work? How is that decision made: 'We will publish this one, but not that one, that one, that one or that one'?

Ms Leatham: I would have to say that it is much less formal than that, Senator. There was a guideline that was developed in the former Migration and Refugee Review Tribunal that indicated that they should publish cases based on particular interest, the criteria being: if they provide information or insight into the jurisdictions of the tribunals, the procedures for the conduct of reviews or how the tribunals interpret and apply the law and policy.

Senator O'SULLIVAN: Who is that? Is that the member who has just made the decision? Do they apply the determination of those guidelines?

Mr Matthies: As I understand it, the member may make a recommendation that a decision be published, but in the decisions publication area they also look at the decisions to be published.

Senator O'SULLIVAN: That is not the area with the publications team leader here, is it?

Mr Matthies: That is correct.

Senator O'SULLIVAN: The same team leader, who has ignored the guidelines set down for the removal, is the sole determiner of whether it is published or not, but I pick up: only if it is referred by the decision maker.

Mr Matthies: Not necessarily. That team—

Senator O'SULLIVAN: So that person sees 42,000 files, studies them, understands—I see you shaking your head, Ms Leatham. Let's go back to you.

Ms Leatham: I just wanted to clarify that many of those decisions are straightforward decisions—for example, remitting a matter back to the department because there may have been information gathered. There is a question, with the sheer volume of numbers, as to how helpful it would be to publish all of those decisions when there are so many each year.

Senator O'SULLIVAN: That is very useful, but my surgical, precise question to you is this. A case file is finished. Barry O'Sullivan is a member of the tribunal. I have completed my case file. It is now going to archives. Who makes the decision whether it goes over to our
team leader—who, it could be argued, has a somewhat liberal view of this? Who makes the decision as to whether it goes to archives or it goes over to the team leader in publications?

Ms Leathem: I could not answer that. I would have to take that on notice.

Senator O'SULLIVAN: I beg your pardon, ma'am?

Mr Matthies: We would need to take that on notice, Senator, to give you those kinds of—

Ms Leathem: Accurate information about the micromanagement.

Mr Matthies: And the level of detail.

Senator O'SULLIVAN: Do you have any understanding at your level as the registrar of this tribunal as to how a decision is made to publish decisions of members of the tribunal—any at all? I will forgive you if it is completely wrong, but I find it astonishing that, as the registrar, you cannot give me an indication as to how that starts its journey to be published or starts its journey to the archives. Or any of your senior members there—anyone. I am happy to take it from them. Do you have other people here?

Ms Leathem: No, we do not.

Senator O'SULLIVAN: Any—I am happy. Can any of you at all tell me what the process is to make a decision as to whether one of these case file decisions is published or goes to archives? Mr Matthies?

CHAIR: We will just see if anyone has an answer.

Mr Matthies: Senator, I want to clarify the precise nature of the details. I understand that the member who has made the decision may make a recommendation that this is a decision that could be published—

Senator O'SULLIVAN: And if they do not?

Mr Matthies: That is the aspect that I would want to clarify: the process then within the decisions publication area for looking at decisions that would then be selected for publication.

Senator O'SULLIVAN: Let us pretend, then. I find that astonishing. But, if you have a member, for example, who may well be a bit sensitive and thinks that the decision may attract negative attention to themselves or to the tribunal, as was the case here—this is a member who has written to us to tell us that she had sensitivities about the criticism—you are telling me that they make the decision on their decision as to whether the rest of the world will see this so that we can have the confidence in the tribunal in their decision-making process? This is directed to you, Mr Matthies, given your response to that. That is what happens?

Mr Matthies: That is what I would need to clarify.

Senator O'SULLIVAN: But that is your understanding? You are in charge of publications, sir. With the greatest respect to you, are you the executive within the AAT who is responsible for the publications team?

Mr Matthies: Yes, Senator.

Senator O'SULLIVAN: And you are telling me that you do not know, as a matter of course, what the protocols are to determine what is published and what is not? Is that what you are saying, sir?

Mr Matthies: Not in that level of detail, Senator, no.
Senator O'SULLIVAN: Not in that level of detail. Not only did you not know the guidelines around removing publications; you cannot help me with the guidelines about the decision-making process to make publications.

Mr Matthies: I am sorry, no, Senator.

Senator O'SULLIVAN: All of my questions are going to be directed to you now. There is apparently a deliberate decision not to publish the results of general decisions. You are in charge of publications. There is a decision by the organisation not publish them—4,738 of them in the year to date. What is the foundation to make that decision? Why are they not published?

Ms Leathem: In the General Division—

Senator O'SULLIVAN: Please, ma'am, I am directing them to the person in charge of the division. I am asking you. The evidence that has been given by Ms Leathem is that decisions in the general section of decisions by members are not published. There is no discretion here about left or right, archives or off for publication. I am asking you, sir, why that blanket decision is taken over the decisions by the tribunal in the general category. No, Ms Leathem. Listen. If this gentleman, who is the executive director of this division—

CHAIR: Settle down.

Senator McKIM: You are not in a police interview room now, mate.

CHAIR: Senator McKim, it is none of your business. If you have anything to say, you will do it as a point of order through me. But, Senator O'Sullivan, you asked a question—

Senator O'SULLIVAN: Ms Leathem was whispering after I had—

CHAIR: Senator O'Sullivan, they come as a team.

Senator O'SULLIVAN: Well, they do, but one—

CHAIR: We always make the qualification that—

Senator O'SULLIVAN: If the manager of the division directly in charge—

CHAIR: Senator O'Sullivan, please. We always make the qualification that officers can seek advice of senior officers or the minister. The registrar, I assume, is the senior officer and is assisting. That is perfectly in order and really should not warrant comment.

Senator O'SULLIVAN: I am really pleased that you take the time to tell the head of publications what the decision—

CHAIR: Now, Senator O'Sullivan, please proceed with a question.

Mr Matthies: In all of the divisions other than the Migration & Refugee Division and the Social Services & Child Support Division, decisions are generally published.

Senator O'SULLIVAN: Are generally published?

Mr Matthies: Yes. So the only exception would be if an order is made, as Ms Leathem indicated previously.

Senator O'SULLIVAN: I appreciate that. So, with the exception of the Migration & Refugee Division?

Mr Matthies: Yes. The Migration & Refugee Division has particular practices, and that is where a selection of decisions is published. And, in the Social Services & Child Support...
Division, only a very small selection of child support decisions are published. In all of the
tribunal's other divisions, decisions are published as a matter of routine.

Senator O'SULLIVAN: Can I assume—no, I will not assume. In Social Services & Child
Support, what are the reasons for not publishing the decisions?

Mr Matthies: Those matters are heard in private, and really the practice has continued the
practices that were in existence in the Social Security Appeals Tribunal, which also did not
publish its decisions.

Senator O'SULLIVAN: No, I am more interested in the genesis of the decision, not the
history of it. What is the logic in not publishing those decisions? Do you know?

Mr Matthies: It really is a practice that has continued from the previous tribunal.

Senator O'SULLIVAN: Mr Matthies, I accept that it is a practice that has continued, and
you can say no to my question. You are in charge of publications. Do you know the logic
behind why they are not published?

Mr Matthies: Those matters are all heard in private, so I expect that that is part of the
rationale, but obviously I was not part of that previous tribunal to understand the full rationale
behind that.

Senator O'SULLIVAN: All right. I will ask you to take that on notice. Coming back to
the migration and refugee matters: as the person in charge of publications, do you know what
the logic is in not publishing the other 88 per cent?

Mr Matthies: It is that a selection of decisions that show a representative sample of the
different kinds of decisions is selected for publication, based on those criteria that were
indicated before—the extent of the value of particular decisions in providing information
about the jurisdiction of the tribunal procedures and how the tribunal interprets and applies
the policy.

Senator O'SULLIVAN: Chair, I will wait for my turn again.

CHAIR: Thank you, Senator O'Sullivan. We can come back to you. I think Senator
McKim has some questions.

Senator McKIM: Just a couple, and then I will be done with the AAT. I thank Ms
Leatham and her team very much for their forbearance.

CHAIR: Just before you start, Senator McKim, can I just check whether there has been
any advance on which the priorities are, bearing in mind that we have 2½ hours left? Is there
any advance on that?

Senator McKIM: I think there are ongoing discussions happening.

Senator DODSON: I have not heard anything back, but I presume it is the Family Court
and ASIO.

CHAIR: Again I make my position clear: I am ambivalent. When we finish with the
AAT, we will go on to any one that is there, but it is up to others to indicate which they would
like to be heard tonight as a matter of priority. So I will await advice from others.

Senator McKIM: Ms Haddad, I think I am back to you. This is the same cohort and
decisions that we were speaking about before. Section 473DD provides, as I understand it,
that the IAA must not consider new information unless satisfied that there are exceptional
circumstances to justify that consideration. I am sorry; I may have asked you this during my last tranche of questions. Firstly, can you provide the number of decisions made since commencement that have considered new information—either on notice or now would be fine.

Ms Haddad: I will have to see if we keep that data, partly because the question of what new information is is part of the decision process, so it may only appear in the reasons for decision.

Senator McKIM: Could I ask you to take that on notice, please, and if possible to break that down by nationality, but obviously if you cannot provide the global figure you will not be able to do that. Thank you for that. My understanding is that in the AAT the affirm rate—is that the terminology for decisions that are upheld, effectively?

Ms Haddad: Yes.

Senator McKIM: The AAT overall affirm rate for unauthorised maritime arrivals is 68 per cent—that is my understanding, or my advice—while the IAA overall affirm rate for unauthorised maritime arrivals is 82 per cent. Are those figures right?

Ms Haddad: The 82 per cent is correct. I would have to check the other one.

Senator McKIM: Do you have it with you? Just while you are looking, Ms Haddad, refresh my memory: did you say the 82 per cent was the correct figure?

Ms Haddad: That is correct for the IAA.

Senator McKIM: At the IAA; that is right. And the AAT overall rate, if you have it?

Ms Haddad: I do not have the overall rate for UMA. I have the overall rate for UMA and non-UMA together.

Senator McKIM: Okay, what is that?

Ms Haddad: That is 12 per cent—sorry, the affirm rate?

Senator McKIM: The affirm rate. So that would be 88, would it?

Ms Haddad: 88 per cent, yes.

Senator McKIM: Could you take on notice the AAT rate for UMAs?

Ms Haddad: Yes, I think we can probably find it.

Senator McKIM: Maybe this is not one for you, Ms Haddad; maybe it is for Ms Leathem or maybe even for the Attorney. Actually, I cannot really ask that until I have the figures, so I will withdraw that. I guess, Attorney, you understand the differentiation between the fast-track and—I do not know what you call the rest—the standard cohort. You know what I am referring to when I say the fast-track cohort, Attorney?

Senator Brandis: Not with any great depth of understanding. I assume you are referring to some cases that are fast-tracked and some cases that are in the normal queue.

Senator McKIM: That is right. The IAA was basically created to deal with the fast-track cohort. Ms Leathem, could you help us there? Is that a reasonable statement from me?

Ms Leathem: That the IAA was created for that purpose?

Senator McKIM: To deal with the fast-track cohort.

Ms Haddad: That is correct.
Senator McKIM: Attorney, given that it is a fast-track process and it varies because—perhaps I should ask Ms Leathem or Ms Haddad. Is it true, firstly, that the fast-track process results in applicants not being able to appear before the IAA and, secondly, that the review is only conducted on the papers? Is that correct?

Ms Haddad: Unlike the rest of the AAT, there is no right to a hearing under statute.

Senator McKIM: No right to appear—and it is conducted on the papers?

Ms Haddad: It is generally conducted on the papers. We do have the power to interview persons to obtain new information. That is not the same as a hearing, though, where you present your case.

Senator McKIM: How many of the fast-track cohort have you interviewed?

Ms Haddad: I think earlier I said that I will take it on notice.

Senator McKIM: That is right. Thank you. Attorney, as a matter of principle then, wouldn't you think that the AAT outcomes ought to be largely similar to the IAA outcomes?

Senator Brandis: I do not really have an opinion about that, Senator, and I actually do not know enough about the practices of the respective tribunals to have an informed opinion about it. There may be reasons why there are different outcomes with which neither you nor I are familiar.

Senator McKIM: Ms Haddad, in case I have not asked for it—sorry, I have just asked for a lot of things—can I ask for this, please. Can I have the statistics on decision outcomes for the IAA on the one hand and the rest of the section 473D reviews in the AAT on the other hand—so the fast-track versus the standard cohort, if I can put it that way.

Ms Haddad: So other protection visa cases?

Senator McKIM: Yes, and the affirm rate for each, broken down by nationality if possible.

Ms Haddad: I should point out or clarify that, earlier, the 88 per cent for the AAT affirm rate also includes cases where the applicant has withdrawn their application for review or where the tribunal has found there is no jurisdiction to conduct the review.

Senator McKIM: So they are classified as affirms?

Ms Haddad: Well, the figures I had were the set-asides, if you like—the 12 per cent. Everything else is not necessarily in affirm.

Senator McKIM: Thank you. I appreciate that. I am happy to take the figures as set-asides if that would make it easier or more useful for us all.

Ms Haddad: It is probably simpler.

Senator McKIM: Thanks very much. I thank Ms Leathem and the team for their forbearance this evening.

CHAIR: Can I just understand the hierarchy of the AAT? Clearly, the president is the head of both the organisation and the members—

Ms Leathem: The decision-makers—yes.

CHAIR: Under that, where do we go?
Ms Leathem: He is assisted by a number of division heads who are deputy presidents of the tribunal. There are also a number of what we call executive deputy presidents in each of the registries. They are also the senior decision-makers who assist the president. The division heads, in particular, assist in the organisation of the business in each of the divisions.

CHAIR: Do any of the 'sitting members'—that is perhaps not good terminology—

Ms Leathem: They do hear matters.

CHAIR: Perhaps we should have asked this right at the beginning, but where do the executive directors, senior reviewers and registrars sit in the hierarchy?

Ms Leathem: The registrar is a statutory appointment that assists the president in running the administration of the tribunal. I am the accountable authority under the PGPA Act, for example, and I am assisted by a team of senior executive officers who have responsibility for the operations of the tribunal, but we do not make the decisions. By contrast, Ms Haddad is a senior reviewer as part of the IAA and so she does make—

CHAIR: Sorry, IAA?

Ms Leathem: The Immigration Assessment Authority, which is a specific statutory office that has been set up within the AAT to do those fast-track matters. She manages both that IAA unit and the reviewers who undertake that work.

CHAIR: Are there other executive directors besides Mr Matthies and Ms Fredman?

Ms Leathem: There are two other executive directors: one of our registry operations and one of review support.

CHAIR: Okay. I think I know a little better. At Mr Matthies' next estimates you should send some of your other colleagues along.

Senator O'SULLIVAN: Mr Matthies, going back, you said to me that you think—and you have taken it on notice and I will wait for the detail—that part of the consideration about what is published and what is not published is to ensure that there is a cross-section of work undertaken, in this case by the Migration and Refugee Division, that goes up on the website. Let me just ask a sidebar question and we will come back to that. Are you familiar with the litany of cases that were published in the Herald Sun?

Mr Matthies: Is that the article of 22 May?

Senator O'SULLIVAN: Yes. Have you read that article?

Mr Matthies: Yes.

Senator O'SULLIVAN: You know that they have published dozens and dozens of cases, but, prima facie, people who do not have any further detail find it horrific. How would they have got that information?

Mr Matthies: Those decisions are on the AustLII website.

Senator O'SULLIVAN: Okay. These are in the 12½ per cent?

Ms Leathem: No.

Mr Matthies: Character related decisions are decided in the AAT's General Division rather than in the Migration and Refugee Division.

Senator O'SULLIVAN: And all General Division is published?
Mr Matthies: Correct.

Senator O'SULLIVAN: Can you tell me what section the matter of Ms Holmes was?

Mr Matthies: That was a Migration and Refugee Division.

Senator O'SULLIVAN: So that is migration and refugees. Put aside the failures of the process. There is obviously, at least with this particular member of the tribunal, a sensitivity to criticism. That is reflected in the initial email. 'I have noted that this has been the subject of adverse comment on a Migration website and personal comment has been made about me, and I would prefer that this decision is removed.' So there is a sensitivity on the part of at least—

CHAIR: What is the question?

Senator O'SULLIVAN: I am asking if you agree there is sensitivity on the part of the member?

Ms Leathem: I cannot venture an opinion.

CHAIR: That is not in order.

Senator O'SULLIVAN: Then let me say this. Of the 88 per cent of decisions taken by the decision-making member themselves that are not uploaded, do you think any of them take into account whether the decision might attract adverse and personal comment on the website and that they would prefer the decision was not published as a result of that sensitivity?

Ms Leathem: I agree with you that that should not be a valid basis. The division head of the Migration and Refugee Division has already indicated a desire to take up the publication policy with the incoming president because it is clear that we need to have an objective criteria by which we determine which decisions are published and which ones are not. That should not be a factor in determining—

Senator O'SULLIVAN: Rather than having someone, particularly the decision-maker themselves, make a subjective decision as to whether this fits a cross-section—and it is still a mystery how individual members would be able to know how many they need to put into the cross-section—what would be wrong with publishing 100 per cent of the decisions unless there were some legislative impediments?

Mr Matthies: There is a very significant number of decisions. In all of the protection visa decisions the tribunal is under a statutory obligation prohibiting us from publishing the name or any identifying details about the applicant.

Senator O'SULLIVAN: I understand that.

Mr Matthies: So there is quite a bit of work involved in actually preparing those decisions for publication.

Senator O'SULLIVAN: Am I to understand you that this is purely a resource problem?

Mr Matthies: There is a resourcing element to that.

Senator O'SULLIVAN: What other elements are there?

Mr Matthies: There is a question about the policy of ensuring what kinds of decisions should be published—the number and the spread of them—which is reflected in the previous practice to try to identify ones that are of particular interest.
Senator O'SULLIVAN: I do not understand that. If you come back to your charter that you are going to operate, one of your aims is to promote public trust and confidence in the decision-making. How can that occur? How can a lay person in this nation or me as a member of this parliament, if I choose on a quiet Sunday afternoon—and don't bear any risk; I will never do that. How is it that you give me the opportunity through transparency to be able to make a decision and promote confidence if I cannot access the details of decisions? I get that one of the reasons is it is a resource issue, and that is a matter for you people to take up with whoever pays the cheques, but your second one is that earlier we had a decision that it was a part of an inherited culture or policy that came from another time and place. Are there any other reasons?

Mr Matthies: No.

Senator O'SULLIVAN: Just those two reasons. I come back to you, Ms Leathem. What does being a registrar mean? The registrar is someone who controls and manages the movement of the organisation with respect to caseload allocation?

Ms Leathem: The statutory role is to assist the president in the management of the administrative affairs of the tribunal, so that obviously is a very broad range that takes in everything from our budget to our accommodation to our operations. It is a very—

Senator O'SULLIVAN: A chief of staff role in our world or something to that effect, I imagine. But it is a statutory role.

Ms Leathem: Yes, it is a statutory role.

Senator O'SULLIVAN: You have obligations in law to do certain things at certain times.

Ms Leathem: And I am the accountable authority under the PGPA Act.

Senator O'SULLIVAN: I understand that. What is your view in relation to this test of transparency in not publishing so many of these cases? You have seen the reaction to these snippets—

CHAIR: Senator O'Sullivan, I have not—correctly, I believe—been allowing questions that ask public servants for their view, their opinion, on issues.

Senator O'SULLIVAN: I will rephrase it.

CHAIR: As I heard Ms Leathem before, I think she has conceded there are problems. I think she said she would talk to the new president to address the problem which you have so carefully identified in the last hour or so. I am not sure that Ms Leathem can take it much further than that.

Senator O'SULLIVAN: I will change course after another question. Would you accept, Ms Leathem, that this is a whole-of-organisation problem with respect to the question of transparency—that there is a better place to be?

Ms Leathem: I do believe that the practice in the general and other divisions—outside of the SSCSD and MRD—is sounder on a transparency basis. That is where we would like to be able to position the tribunal in the future.

Senator O'SULLIVAN: Thank you for that. I want to change course now. It is more the case of Ms Holmes, on the one hand—a member—and the publication team leader on the other. There seems to be, in one case, a cultural problem with Ms Holmes in relation to her request to have a decision taken down because of the adverse publicity. Is there any way to
identify how many like Ms Holmes there are in the organisation? Do you have any idea whether this is a cultural problem across the tribunal—people being sensitive about their decisions?

Ms Leathem: I could not venture an opinion about that, but certainly we will take steps to identify whether there has been a practice of removing decisions. That will be part of responding to your question on notice.

Senator O'SULLIVAN: How are people appointed? I know about the cabinet decision and the Attorney. I am asking about the process. Are they appointed for a term, a period of time?

Ms Leathem: Yes, they are.

Senator O'SULLIVAN: It is a contractual arrangement? It is an employer-employee arrangement?

Ms Leathem: It is a statutory appointment.

Senator O'SULLIVAN: When they come to the end of that appointment, if one or more of them decide that they want to serve further, is there a process for them to indicate that?

Ms Leathem: There is a protocol, but I believe the Attorney is probably better placed to talk about it.

Senator O'SULLIVAN: No, the Attorney cannot help me. I am trying to get inside the head of the organisation. I want to get your understanding of what that arrangement is. Let us say Ms Holmes comes to the end of her contract, she is due to finish at five o'clock on Friday, and she would like to serve further. Does she write an application to you? Does she notify you or the Chief Justice?

Ms Leathem: No, the appointments are a matter for government. If a term is expiring, it is a matter for government whether they wish to re-appoint people or make fresh appointments.

Senator O'SULLIVAN: But how is it communicated? I do not want to use the example of Ms Holmes anymore. It is really a side issue to this. If an individual decides they want to be considered for further appointment, you are saying that, with nothing to do with the organisation, they write a letter off to the government?

Ms Leathem: No, recommendations would be made by the president to the Attorney.

Senator O'SULLIVAN: I have walked out of my office—I am a member—and I want to walk down the hallway and find the appropriate person to tell that I am interested in continuing to serve the organisation. Whom do I go to? Do I come to you or the head of human resources or—

Ms Leathem: Normally what would happen is that the president would consult with the division heads, who would then liaise with members to sound out who was interested in re-appointment or not.

CHAIR: And then what do you do?

Ms Leathem: That is only part of the process.

CHAIR: You consult and then you would do what?
Ms Leathem: There is also an appraisal process whereby those division heads would make an evaluation about whether or not there should be a recommendation that the member be re-appointed.

CHAIR: And then?

Ms Leathem: Then there would be a letter, usually, or a communication from the president to the Attorney.

CHAIR: The division head reports to you?

Ms Leathem: No, to the president. I am not involved in the appointment side of things.

CHAIR: The member's division head—

Ms Leathem: The deputy president.

CHAIR: then writes or talks to the president?

Ms Leathem: Yes, it would be a communication between the president and the division heads.

CHAIR: Well, that was the question. Does he write or just have a chat to him?

Ms Leathem: I am not sure. I am not part of that communication.

CHAIR: Okay, that is fine. And nobody else could help Senator O'Sullivan with that?

Senator O'SULLIVAN: All right. So tell me about these cohorts where you have this leader who consults with the members to see or to test whether they want to reapply. What size are these sections?

Ms Leathem: The divisions have different numbers of members.

Senator O'SULLIVAN: Would these be the divisions? Child safety and child support?

Ms Leathem: Yes. The members are assigned to particular divisions. Some of them sit across more than one division.

Senator O'SULLIVAN: Relative to the number of cases, would that tell me about a cohort size, roughly?

Ms Leathem: All of the statutory appointments are on our website. There are 322 members.

Senator O'SULLIVAN: Yes. But, if I took 42,000 or 43,000 cases and divided it by that, through that mathematics could I determine how many members were concentrating in a particular area?

Ms Leathem: No, because the work is of such a variety.

Senator O'SULLIVAN: Okay, so some cases take longer, are more complex and so on?

Ms Leathem: Exactly.

Senator O'SULLIVAN: Okay, I understand that. Let's take what appears to be your biggest division, the Migration and Refugee Division. Do you have any sense of how many members there may be, equal to full-time equivalent work in a given year?

Ms Leathem: I do not know if we have the member figures broken down by division. Let me just see. In the Migration and Refugee Division, there are 13 full-time senior members, five part-time senior members, 52 full-time members and 81 part-time members—a total of 151.
Senator O'SULLIVAN: Thank you for that. Can I just move on to another area now, about how you assess the performance of a member. Is there a contractual arrangement where there are KPIs against which they are measured, whether it is on volume, performance or decisions?

Ms Leathem: There is a competency framework for members. There is a comprehensive professional development framework, and that, for example, talks about the principal competencies that are expected of members. There is knowledge and technical skills; fair treatment and communication; conduct of hearings; decision-making and decision writing; alternative dispute resolution; efficiency; professionalism and integrity; and leadership and management.

Senator O'SULLIVAN: All right. Do you have KPIs against them? Are they evaluated against those principles?

Ms Leathem: They are. There is an appraisal process, and each member at some point in the term of their appointment will go through that appraisal process, which involves a range of things, such as observing hearings, reading decisions and then providing feedback and observations on those competencies.

Senator O'SULLIVAN: All right. I will come back to that. Thank you, Chair.

CHAIR: Senator O'Sullivan, I do not think there is anyone else asking questions in this area, so, just to help with the management, do you have any concept of how much longer you might be? You are entitled to go until 11 o'clock if you want to, as you know.

Senator O'SULLIVAN: I have indicated to you that I can go for an awfully long time on this, and I have a body of work that I want to try to get through.

Senator Brandis: Mr Chairman, could I make what I hope is a helpful suggestion. Could the committee, perhaps, indicate—plainly, we are not going to get through all of those other agencies by 11 o'clock. It may be that Senator O'Sullivan will not go until 11 o'clock on this agency. We will have to wait and see. Could there be some indication of priority between the other agencies—in other words, so that at least some of them can be allowed to go home.

CHAIR: Senator Brandis, I do not have any other questions, personally. I have been talking to Senator Watt, Senator Xenophon, Senator Kakoschke-Moore and Senator Siewert to ask them to try and prioritise that, if there is limited time, who do they want to be sure of and who can they leave. Those discussions are still being held, so I appreciate your suggestion. It is a suggestion—

Senator Brandis: It just occurs to me—and it is a matter for the committee of course. I should have thought that at least the opportunity for the Director-General of security to appear
before the committee and make a statement on the national security situation between now and 11 o'clock would be desirable.

Senator SIEWERT: Maybe you should explain that to Senator O'Sullivan.

CHAIR: Senator Brandis, I am conscious that there are many senators who would like to hear from ASIO, and so I would think ASIO would certainly be called. It is a question of which of the others would not be. Look—

Senator O'SULLIVAN: Can I make a contribution: in light of the Attorney's statement, given that the representatives of the tribunal are handcuffed to my intentions, perhaps we could interpose that agency, if you wanted to, to at least get that done and then we can all come back together. We are going to be here anyway.

Senator Brandis: Can I contribute to that. My concern, as the minister with responsibility for national security, is that I know the Director-General has the custom of reading a statement to this committee, updating the committee on the national security situation. The three times a year at which he appears is the only scheduled occasion when he apprises the parliament of his views of the national security situation. In view of events this week, I think it would be very odd, if Director-General Lewis did not at least have that opportunity—whether there is time or not for questions is probably less important. However, for the Director-General to be afforded the opportunity to speak, as it were, to the nation, through this committee, about the national security situation—even if he were to come on at half past 10, so as not to put any pressure on Senator O'Sullivan, and other agencies could then be told that they were at liberty to go. Perhaps that could be done.

CHAIR: Senator Brandis, very sensible suggestions, but they are suggestions that we already have in play. I am afraid I am powerless. I am bound by a standing order of the Senate that, as long as anyone has a question—and that then applies to all of the others too. Whilst I agree with you on security, we are breaking in 10 minutes for the evening break.

Senator Brandis: Perhaps it could be sorted out over the evening adjournment.

CHAIR: I think Senator Dodson has indicated to me that Senator Watt is in charge of the Labor Party. I know Senator Xenophon has been here. I believe that Senator Watt and Senator Xenophon are talking as we speak. I would like to say that at 10 30 at the latest we go to ASIO, but that then means other senators who have indicated they want to ask questions of other agencies in the meantime have a difficulty.

Senator Brandis: With all due respect, Mr Chairman—and through you to members of the committee—important though these other agencies are, surely, there is nothing more important at the moment than hearing from ASIO.

CHAIR: I agree, but I cannot speak for other members of the committee—

Senator SIEWERT: Or one of your colleagues.

CHAIR: and other senators who have indicated they want to hear from ASIO. I think all we can do is continue on this path. I will try and track down Senator Watt and Senator Xenophon over the break and we will see if we can resolve this later. I am sure that, if we let Senator O'Sullivan get on with his questions, we will get a more precise idea of how to proceed.

Senator Brandis: I do not want to put any pressure on Senator O'Sullivan.
CHAIR: And neither am I.

Senator SIEWERT: No, you are putting it on the rest of us.

Senator Brandis: This is a very well developed line of questioning which is very illuminating, but—

CHAIR: I am also conscious that we have officials from the Family Court and the Federal Court all sitting around, and, if they do not have to be, I would like to send them home.

Senator Brandis: I am sure they would be delighted to go home.

CHAIR: Let's continue. Hopefully, we will be able to give some better indication after the break.

Senator KAKOSCHKE-MOORE: Can I clarify: if the other agencies do not appear tonight, will there be a spillover hearing?

CHAIR: That is, again, up to senators to put a request to the chair. If a request is made, there has to be a spillover hearing. I indicate to you that it will not be in June, because I am fully committed for the whole of June. It will be in July.

Senator Brandis: I am pretty much committed for the whole of July and early August.

CHAIR: So there will be a spillover—

Senator Brandis: It probably could not be for several months, I suspect.

CHAIR: Senator Kakoschke-Moore, I said to you privately—I am not making a political point here—that I am bound by a standing order of the Senate that, for so long as any senator wants to ask a question on the program as set, I am powerless. The sooner that standing order is changed and I am control this a little better, the better. It is up to the people who put that standing order in place.

Senator O'SULLIVAN: Coming back to the appraisal process, firstly, going against the points that you have indicated are the objectives for the performance of a member, how do you physically measure against each of those points, if that is possible? Perhaps there are more. You can go point by point if you choose. In fact, that might be useful.

Ms Leathem: There is a professional development framework which includes an appraisal form. That is actually completed by the member conducting the appraisal. There are, as I understand it, criteria in relation to each of those competencies that are part of the appraisal process.

Senator O'SULLIVAN: So the appraiser would take them into account. They have that checklist. They have an appraisal framework that they follow and, if I were to independently sit quietly in a room with the finished appraisal, I would see that we have held the performance of the member up against the seven or eight ideals that you mentioned in the first instance.

Ms Leathem: The competencies.

Senator O'SULLIVAN: Who conducts the appraisal of the member? I am looking at where they sit in the hierarchy of things.

Ms Leathem: Generally speaking, the division heads are responsible for coordinating the appraisal process for members in their division. They may be assisted by a deputy division
head and they may also engage an independent person, such as an experienced former tribunal member, to assist.

Senator O'SULLIVAN: Someone from outside the organisation?

Ms Leatham: Correct; there are a lot of members and that is a lot of appraisals to conduct.

Senator O'SULLIVAN: Sure, I can see that. Is it possible that a division head may eventually make a recommendation to the chief for a reinstatement, let's say, where the division head may not have been involved at any level in the appraisal process?

Ms Leatham: I just want to make sure I understand your question.

Senator O'SULLIVAN: So I could say: 'For this physical appraisal, we're going to meet in the boardroom at nine o'clock on Tuesday. I'm going to ask you some questions. I'm going to go and have a look at some records. I'm going to fill out my appraisal.' It is done by me, but you are the chief. Is it possible that I will walk in with that completed appraisal and say: 'Chief, I've done the appraisal on employee X. Here it is.' That is to say that my question was: the chief has not been involved in the appraisal?

Ms Leatham: The division head?

Senator O'SULLIVAN: The division head, I should say.

Ms Leatham: The division head would always be consulted about the outcome of an appraisal if it was conducted by, say, a deputy division head.

Senator O'SULLIVAN: I just want to knock this out of the park. It may be that the division head did not physically engage—

Ms Leatham: Personally.

Senator O'SULLIVAN: in any of the mechanical steps of the appraisal.

Ms Leatham: For every member.

Senator O'SULLIVAN: So they have appointed a former judge to come in on Tuesday and do the job. On that day, the division head is actually up in Karratha on holidays. That is the point I am making. It could well be that they will receive a file from the independent assessor, the deputy or whoever else has been appointed—

Ms Leatham: Yes, that is possible.

Senator O'SULLIVAN: and the job is done. Is it possible, in the bigger divisions, that the division head may have absolutely no knowledge of the employee who has been appraised?

Ms Leatham: You are asking me to venture an opinion about somebody else's state of knowledge. My observations about the way the division functions is that the division heads have a very good understanding of their cohort of members, read a lot of decisions and engage regularly in professional development seminars with their membership.

Senator O'SULLIVAN: Which would be the biggest division?

Ms Leatham: In terms of numbers of members, I think the Migration and Refugee Division is, closely followed by the Social Services and Child Support Division.

Senator O'SULLIVAN: How many would that be? Members and support staff who support them in the—
Ms Leathem: The MRD has 151 members. There are 111 members in the Social Services and Child Support Division. There are 85 in the General Division. We have five other divisions, but most of the members have been cross-assigned from those three primary divisions into the others.

Senator O'SULLIVAN: What is your full-time staff equivalent at the tribunal?

Ms Fredman: It is currently 538.9 staff.

Senator O'SULLIVAN: So we have 262—

Ms Leathem: We have 322 members in total.

Senator O'SULLIVAN: So there are another 200 staff members?

Ms Fredman: On top of that. We have 538.9 staff in total.

Senator O'SULLIVAN: That is right. These are all sorts of people. These are drivers, these are administrative support—

Ms Fredman: For example, I run the Corporate Services Branch—that is IT and HR—and they are not involved directly—

Senator O'SULLIVAN: Are you regarded as another entire division or a number of divisions? For example, is the division head of migration only responsible for the 151 staff or will there be administrative support staff who join them?

Ms Fredman: Perhaps I can take that one. The division head is responsible for the membership of his or her division. The staff come under another executive director. Just to explain, perhaps to go back to—

Senator O'SULLIVAN: So members do not have any personal staff—

Ms Fredman: They have some. There is a small executive that supports the division head, but the members do not have an associate or someone directly assigned to them. They work in—

Senator O'SULLIVAN: What if they need administrative work done?

Ms Fredman: If I can perhaps clarify, the easiest way to understand the way the staff are organised is that there is a registry, who are the frontline staff who serve applicants at the counter and who do the in-hearing support. Then there is what we call the Principal Registry, and they are divided into two branches that Mr Matthies and I are responsible for. They are more the back-of-house support. Members do work closely with registry staff who help them with case support, with casework, in hearings and the like, so some staff are working solely within a division. Some staff support members across divisions, and then there is the back-of-house staff who we look after.

Senator O'SULLIVAN: Then it brings it back to you. There are 151 members busy doing their caseload. Are they full time or are there some part-time members in there?

Ms Leathem: There are 52 plus 13, so 65, full-time members in the MRD and there are 86 part-timers.

Senator O'SULLIVAN: Yes, which gives us the 151. What about in the Social Services and Child Support Division?

Ms Leathem: They have got 16 full-timers and 95 part-timers.
Senator O'SULLIVAN: And in the General Division?

Ms Leathem: They have got 21 full-timers and 64 part-timers.

Senator O'SULLIVAN: In the Migration and Refugee Division there are 90-odd part-timers, 65 full-timers and then a smattering of staff. The division head, I imagine, has other responsibilities—engaging with other division heads and with corporate executives—they are away and so on. I want to follow the line down to find out just who it is, and at what level, that has decided the contents of an appraisal? I would find it difficult for a division head with 151 people in their cohort, some of them coming and going as part-timers, with all the duties and responsibilities that I would expect that they would have, to have an intimate knowledge of all of the members. We can apply our own personal experiences in life. There is published advice that a person can effectively supervise and control only seven people.

CHAIR: Senator O'Sullivan—

Senator O'SULLIVAN: No, I am trying to assist. The question is: is there a possibility that the division head will receive a file on their table with an appraisal made by some other person where the division head has literally had little or nothing to do with the person who is the subject of the appraisal?

CHAIR: That is the question. We will get the answer and then we will break for 15 minutes.

Ms Leathem: As I am not a division head, I can give only my observations about the role that they perform, which is that they do take an interest in their membership broadly, so they travel around the country, they do engage in appraisals, they read decisions—

Senator O'SULLIVAN: What? Some of these people aren't in the same place even?

Ms Leathem: No, we have registries all around Australia.

Senator O'SULLIVAN: Let us come back afterwards. I will need to break that down to the registries right around the country, because that will help me determine how much a division head might have personal knowledge about one of the people in a branch.

Proceedings suspended from 21:18 to 21:42

CHAIR: I declare resumed the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the budget estimates for 2017-18. We go back to the AAT and to Senator O'Sullivan.

Senator O'SULLIVAN: Can we try to break this down a bit further, Ms Leathem? I will draw myself a little map of Australia and see whether I can put some dots on the page. Let us start, if we can, with the 151 personnel of the Migration and Refugee Division. Can I put dots on the page as to where they are located under this one divisional director, please?

Ms Leathem: In New South Wales there are 70 members of the MRD.

Senator O'SULLIVAN: When you say 'New South Wales', are they all based in metro Sydney?

Ms Leathem: Yes. We only have the one office.

Senator O'SULLIVAN: How are they made up between full time and part time?
Ms Leathem: I have not got a breakdown of that. I know the full-time and part-time senior member numbers, the member classification nationally and numbers by state but I can take on notice and give you that breakdown.

Senator O'SULLIVAN: Let's do that. What is Sydney? Do you want to go up the coast or down the coast?

Ms Leathem: In Victoria there are 47 members.

Senator O'SULLIVAN: Are they all in Melbourne?

Ms Leathem: Yes. There are 12 in Queensland, all in Brisbane; 10 in South Australia, all in Adelaide; and 10 in Perth and two in Hobart.

Senator O'SULLIVAN: Are there none in the Territory?

Ms Leathem: There are none in the Territory for the Migration and Refugee Division.

Senator O'SULLIVAN: If there was a matter related to a resident of the Northern Territory, would that be channelled to anywhere in particular or do they get to choose where they register their action?

Ms Leathem: I believe the Northern Territory applicants are managed out of the Victorian office, if I am not mistaken. There can be videoconferencing; video hearings are offered.

Senator O'SULLIVAN: This may be a question for Ms Fredman. How are they supported in these satellite offices? I am now talking about if we have 12 people in Brisbane, do they then have some administrative support?

Ms Fredman: Yes they do. There is registry staff located with the members. There is also a small amount of non-registry staff. Some support can be provided remotely.

Senator O'SULLIVAN: Did you have any of those numbers? Because I imagine it is a bit more of an intimate relationship in a smaller office—they are all located together with a shared tea room.

Ms Fredman: In Brisbane, we have two offices so, for the Migration and Refugee Division and the General Division, those members and staff are in the Commonwealth law courts.

Senator O'SULLIVAN: So these are not the numbers for the other division, which we will come to if we need to. I really do want to understand the appraisal process. Ms Leathem, I am trying to get my head across it. Where is the divisional head based?

Ms Leathem: The Deputy President is based in Sydney.

Senator O'SULLIVAN: If the deputy is involved in deputy type interaction with other deputies, where does that take place? Does it vary?

Ms Leathem: There is only one deputy division head in the Migration and Refugee Division.

Senator O'SULLIVAN: I appreciate that. But do we often have a circumstance where the divisional head of social services and child support, and the head of migration and refugees meet to caucus on some sort of management structure?

Ms Leathem: There is a member leadership group that is convened; they do discuss issues.
Senator O'SULLIVAN: Where does that take place?

Ms Leathem: On the last occasion, it was in Sydney, I believe.

Senator O'SULLIVAN: So it goes to different places?

Ms Leathem: It can. They usually only hold them a couple of times a year.

Senator O'SULLIVAN: This is where I am trying to go with these appraisals. We have got a division head who, we have already agreed, can receive an appraisal on their desk on the advice of their deputy—

Ms Leathem: Or the independent appraiser.

Senator O'SULLIVAN: How do we describe the deputy's position? Is it a deputy deputy?

Ms Leathem: It is the deputy division head.

Senator O'SULLIVAN: When you said the deputy is located in Sydney—

Ms Leathem: They are also a deputy president. That may have caused the confusion. They are a division head but their classification or membership level is deputy president and then there is the deputy division head.

Senator O'SULLIVAN: Okay I get that. Do they only have one deputy each?

Ms Leathem: There are two deputy division heads in the Social Services and Child Support Division.

Senator O'SULLIVAN: And then the hierarchical structure under that?

Ms Leathem: Then there are senior members.

Senator O'SULLIVAN: Do the senior members have junior members or members who are less senior underneath them?

Ms Leathem: It is not a management relationship. Members are independent decision makers. While some are more senior than others, it is not a line reporting arrangement.

Senator O'SULLIVAN: For example, if I am deciding to go on holidays, I do not make an application to a senior member or to the deputy; do I make it to the division head?

Ms Leathem: Again, this is because the different divisions organise their work in different ways. In the General Division, for example, there is an executive deputy present in each location and they would, generally, be consulted and approve a leave period.

Senator O'SULLIVAN: But in a normal hierarchy we have this shape, of course, where we have one boss—

Ms Leathem: We do, but it is not a normal hierarchy. It is a tribunal as opposed to a corporate office.

Senator O'SULLIVAN: If I am a member down the chain a bit and I am seeking some pastoral care for some circumstances in my life, where do I go?

Ms Leathem: Deputy division heads and division heads perform that sort of role.

Senator O'SULLIVAN: Good work. When I go to Brisbane I do not have another deputy there, given there are only two in that division. There is not a deputy in charge in Brisbane.

Ms Leathem: That is correct. In the migration refugee division there is no deputy division head.
Senator O'SULLIVAN: Nor Melbourne, perhaps.

Ms Leathem: Nowhere else except Sydney.

Senator O'SULLIVAN: So when I go into the Melbourne office, which has 47 staff, what sort of hierarchy am I seeing there? Who do I go to there for my pastoral care?

Ms Leathem: Members or staff?

Senator O'SULLIVAN: Members.

Ms Leathem: There are senior members on the ground in Melbourne. They are available, where appropriate, to assist other members.

Senator O'SULLIVAN: That is the point I was making before. It is not a compulsory line, but I could go to a senior member for pastoral care or to say, 'I want some advice,' or 'I'm thinking about resigning,' or 'I'm thinking about reapplying.' That is where I would go. In a normal organisation I would go to my head of section and sit down, and they would go to their supervisor, who would go to the next in line. But you do not have that.

Ms Leathem: No.

Senator O'SULLIVAN: Melbourne is a good example because of the critical mass of staff there, 47 of them. I would go to a senior member.

Ms Leathem: I think they also talk regularly by telephone. They have videoconferencing regularly too. So the division head is in contact with all of the registries.

Senator O'SULLIVAN: I find this flat hierarchy—if I go into the tea room where there are 10 seniors who are all equal in status and there is some decision to be made, how does that work? Is there someone who leads?

Ms Leathem: What sort of decision are you talking about?

Senator O'SULLIVAN: The general decisions that come when you have 47 people in the one place. Someone has to make a decision about, 'We'll close early tomorrow, it's Easter,' or—

Ms Fredman: Those types of decisions would be made by senior staff. If it were about operational matters, such as if there were an event in the city and there had to be a decision made—

Senator O'SULLIVAN: Yes, senior staff as opposed to senior members. This is this support staff—

Ms Fredman: Yes, the running of the office and that kind of thing.

Senator O'SULLIVAN: Coming back to my original point, how many times would the division head make his or her way into Perth each year, for example?

Ms Leathem: I would have to take that on notice. I could not give you a firm answer.

Senator O'SULLIVAN: No sense of it? Let me put the question another way. Do they make a weekly or monthly visit?

Ms Leathem: No. The division head would have a program of visits over a period of time.

Senator O'SULLIVAN: My point is, do you think it would be more than half a dozen visits a year to Perth?

Ms Leathem: No, I do not think it would be more than that.
Senator O'SULLIVAN: Effectively, once every two months I go to Perth for, I imagine, a day or two days or whatever the requirement is. How do they get across the personalities and the performances of 10 people? I would understand that if there were a hierarchy there because they would ask whoever the chief pigeon was what they thought of the other nine. But given there are 10 equals in life, virtual equals—I know from the tribunal's point of view there are seniors and people who are less senior with service—how could a divisional head get across and know what is going on in their lives with their families, intimate details about these people, and how they are going in their jobs and how they are performing? They could not, physically.

Let me go to the blunt question. My thesis is that a division head may eventually end up with a human resources file on their desk of an appraisal of a member, somewhere, anywhere, about whom they have little real personal knowledge or appreciation—the subject of the assessment. That must nearly be the case with 151 staff members spread all across the nation, some of whom you are seeing very briefly every two or three months. I am not trying to take this anywhere. I am just trying to get my head around this appraisal process because it is of great interest to me how people are reappointed, and we have not even got on to new appointments with vacancies.

Ms Leathem: For example, there is a cycle of appraisal. You obviously cannot do all the members at the same time.

Senator O'SULLIVAN: No, I appreciate that.

Ms Leathem: The way in which they would approach the task—for example, when they commenced the cycle in August 2016 there was a goal to have 60 per cent of the members appraised by the end of 2017. What they would do is prioritise people who might be coming up for reappointment so that you know that you are in a position to make an assessment of those people, and, equally, of any new members who might have come on board and might need more support, development and so forth. That is the approach that they take in the appraisal cycle.

Senator O'SULLIVAN: I get that. I understand that would be the case. But the division head has a file on their desk. This might open it up for you: if I were to get the division head of migration and refugees—Is that a he or a she?

Ms Leathem: That is Jan Redfern.

Senator O'SULLIVAN: If I were to get Ms Redfern, without her making reference to anything, could she name her 151 members for me?

Ms Leathem: I would be amazed if she could name 151 members.

Senator O'SULLIVAN: I perhaps should have asked that question 20 minutes ago. So now we have a divisional head who has an appraisal in an envelope on their desk of a member
who they possibly could not name. She might not know the antecedents, history, professional
history or anything about the member—and, with 151, she could not be expected to. But the
burden of my question is: she will take advice and, I would have thought, give significant
weight to the advice of the independent person or the deputy who conducted the appraisal,
who may be closer to ground zero and might know the member more thoroughly.

**Ms Leathem:** It might help you understand the process more if I were to explain the most
recent round of appraisals, which involved about 60 members. Approximately 20 were
conducted by the division head, approximately 20 by the deputy division head and 20 by the
independent appraiser, but they then got together and moderated those appraisals so that they
had some confidence that there was consistency and that the division head had the ability to
speak with both the other appraisers about their observations about that member.

**Senator O'SULLIVAN:** But it is fair to say that if the appraiser is someone who has
come from the outside, someone who has been—

**Ms Leathem:** A former member.

**Senator O'SULLIVAN:** A former member who has come from retirement, and I say, 'I
want you to do these 20 appraisals,' there is a possibility that that appraiser would not know
any of these people at the start of the process.

**Ms Leathem:** Yes, that is a possibility.

**Senator O'SULLIVAN:** So we have a retired judge, say, who comes in and is given 20
names of identities that they do not know. They will conduct an appraisal as best they can in
the time allowed. Do you know what sort of time is devoted to a single appraisal? Is it an
interview?

**Ms Leathem:** There are a whole range of different processes and criteria. For example,
they will do some hearing observations. They will read a sample of decisions. They will look
at things like timeliness, appeal rates, the outcomes to see whether or not they are within the
range that you would normally expect of members. There are a whole range of criteria that are
used in that process.

**Senator O'SULLIVAN:** In terms of their decisions, which I want to try—

**CHAIR:** I have two questions I want to ask before we move on to ASIO.

**Senator O'SULLIVAN:** I want to round off this body. I will try to be as prompt as I can,
Chair. We may have to pick it up at another time. I want to put a proposition to you.

**CHAIR:** No, you may ask a question.

**Senator O'SULLIVAN:** Do you believe that there are occasions when a former member
who has appraised a person that they do not know could eventually caucus the outcome of
that appraisal with a deputy head that also does not know much about that member and a
division head who might not even know the person at all?

**Ms Leathem:** I do not understand the question, Senator.

**Senator O'SULLIVAN:** I will have to take it one step at a time. We have agreed that the
former member might not know the individuals that they are appraising—they are strangers.

**Ms Leathem:** No prior knowledge of them.
Senator O'SULLIVAN: No prior knowledge of them. We could have a deputy who is not familiar with the member from Perth—may know about them, may have encountered them but it is not one of their close personal relationships, for them to put a personal judgement in place. That is a possibility?

Ms Leathem: That is why there are objective criteria in the appraisal process.

Senator O'SULLIVAN: I think that answers my question. It is done on the basis of objective criteria. You could have a division head who really does not remember them—might see a photo and remember seeing them. So this is a completely objective process. The division head then, as I understand—and this closes my questions—who might not have known that person, has caucus with two other people who might not have known the person or only have known them casually. After they have caucused on having done the work with an objective appraisal, they could go off to the head of the court and give a recommendation. That is how it works?

Ms Leathem: What is the question?

Senator O'SULLIVAN: Well, that was the question.

Ms Leathem: You made a statement.

Senator O'SULLIVAN: Could you have a situation where a person is appraised by a part-time independent appraiser who does not know the person, then caucuses about the person that they did not know—based on the results of their appraisal—with a deputy who does not know the person and a divisional head who does not know the person? That is a real possibility.

Ms Leathem: But there is not a possibility that none of those three people would not know the person.

Senator O'SULLIVAN: No. I am talking about on the level that I spoke about earlier—with some degree of intimacy: they know their name, their family circumstances, their current circumstances, in the same way that you would if you have got a small team of people you work with.

Ms Leathem: They are engaged in an appraisal process, yes.

Senator O'SULLIVAN: Which is an objective process on the papers—they ask a question, they get an answer, they appraise work—

Ms Leathem: There are a whole range of different ways that—

Senator O'SULLIVAN: All right. I will come back to this, because this is very important.

CHAIR: We will come back to AAT if we finish with ASIO, but, before we do that, Ms Leathem, have any of the executive directors, receivers and registrars who are currently working at the AAT ever been AAT members before?

Ms Leathem: I can think of at least one staff member who was, I think, originally a staff member and then was a member for a period of time.

CHAIR: I am going the other way. Have they been members and now are not members but are working for the AAT? For example, have any of you at the table now ever been members of the AAT?
Ms Leathem: No, we have not been, but there may well be people who have previously been members who had subsequently applied and gained employment at the tribunal. I would have to take that on notice.

CHAIR: That was my next question: could you take on notice any people who have been actual members of the AAT—

Ms Leathem: After their term has expired, whether they might work at the tribunal?

CHAIR: Yes, as nonmembers but working at the tribunal.

Ms Leathem: Sure.

CHAIR: What is a reasonable time—five years?

Ms Leathem: Sorry; what do you mean?

CHAIR: Can you go back five years?

Ms Leathem: Oh, go back that long. The difficulty is that the tribunal has only been in existence as a single amalgamated tribunal since July 2015, so we would probably only have human resource records for that long.

CHAIR: Perhaps if you go back to there.

Senator Brandis: I have been silent here, but if I may add to Ms Leathem's observations: there are aspects of all of these arrangements that are to be explained by the fact that we have been knitting together a number of different entities, and each of those entities had its own customs and practices and, dare I say, its own culture. Of course, the whole point of amalgamating the tribunals was to change that so that there was a degree of consistency and uniformity of treatment of cases across the different areas of practice. The AAT is still divisionalised to a degree. I dare say the divisions have continued some of the culture of the old tribunals from which they came, but, in an ideal world—and this was the vision of not Justice Duncan Kerr but Sir John Kerr, whose idea this Commonwealth merits review tribunal mechanism was, in the 1971 Kerr committee report—there would be consistency of treatment and consistency of the application of review standards across the whole of Commonwealth administrative law. As the tribunal evolves, as retiring members' terms expire and as new members come on board, in the fullness of time—I cannot say how long that will be of course—one would hope for the same kind of uniformity and consistency of treatment across different practice areas as, for example, one would expect in the Federal Court, even though it is a court that covers the whole country.

CHAIR: That is useful, and thank you for adding to that. The committee has agreed that at 10 o'clock we would move to ASIO. If we finish with ASIO, we will come back to the AAT then. For the time being, to the AAT people thank you for your attendance. You, like the rest of us, can learn a little bit more about national security matters as you wait. By arrangement with the committee, we call the Australian Security Intelligence Organisation.

Australian Security Intelligence Organisation

CHAIR: Welcome, Mr Lewis. Before the committee asks you any questions, I would ask if you have an opening statement to make, which I know has been the past practice. Over to you, Mr Lewis.
Mr Lewis: Chair and members of the committee, good evening. I thank the committee for your consideration with regard to our appearance this evening. I do have some opening remarks if it would please the committee.

I will begin by making a few comments about the tragedy that continues to unfold in Manchester in the United Kingdom. This has obviously been a very busy week for my organisation with a number of things unfolding both at home and abroad. I have been horrified by this act in Manchester: an act of cruelty and calculated premeditated murder. My thoughts and those of all ASIO officers go to the families and the loved ones of those killed and to our partners in UK intelligence and the law-enforcement community who are working currently tirelessly to better understand what has happened in that country.

Attacks such as this, targeting some of society's most innocent, cause my officers at all levels, both here in Australia and overseas, to redouble their focus and effort to counter this menacing threat. I have contacted my counterpart, the director of MI5, to express our sympathy and offer support if required to our colleagues in the United Kingdom. With respect to the matter of any impact the Manchester attack might have here in Australia, I have, as you know, advised the government that the national terrorism threat advisory level should remain at 'probable', which is where it has been since September 2014. Consistent with the comments made—I think yesterday—by the Prime Minister and other senior members of the Australian government, we remain vigilant in considering all of the intelligence information that might subsequently affect the national terrorism threat advisory system. In fact, the system is under constant and close review. I note that for Australians travelling, the Department of Foreign Affairs And Trade's Smartraveller advisory for the United Kingdom has been elevated to level 2—there is a four-tier system; this is the second top tier—which is advising Australians travelling to the United Kingdom to exercise a high degree of caution.

Changing tack now to the Lindt cafe coronial inquest: notwithstanding the findings and the recommendations of Coroner Michael Barnes, this event remains a tragedy. I reiterate the condolences and sympathy of all ASIO officers that were expressed at an earlier hearing of this committee and to the family and friends of Katrina Dawson, Tori Johnson, the surviving hostages, the first responders and everyone affected by the tragedy. In addition, I want to acknowledge the courage and the professionalism of those officers of the New South Wales police service who were directly involved in the incident, and I note the coroner stated yesterday that the bravery of these officers inspires awe and is difficult to fully appreciate.

Noting that the coroner's findings were made public yesterday and in respect for the coronial process, it will be important for ASIO and other parties to undertake due diligence in considering the detailed findings and the recommendations in the coroner's report. While the coroner found no particular fault regarding ASIO's involvement in the incident, he has made some very helpful observations and recommendations, which we are now in the process of analysing and will follow up.

The commitment to improvement in our organisation is an ongoing process, and there are always lessons to be learned. It is important to note that since the Lindt cafe siege, and that was 2½ years ago now, much has been learned and improved in terms of our national counterterrorism arrangements. The point I make here is that we have not been standing still during this period of high activity but we have implemented changes and improvements in both our internal operations and the way we collaborate with our partners at both federal and
I am very satisfied with the manner in which ASIO has responded throughout this inquest and I note the coroner too, which is more important, was appreciative of the level of cooperation and access that both he and his supporting staff had to ASIO and ASIO records. I note the calibre of our own officers who gave evidence, and the professional approach of many officers who have supported the coronial process.

Before I provide the committee with a brief security update, I would just like to acknowledge and welcome Dr Wendy Southern, who commenced in ASIO in mid-May—in fact, just two weeks ago—as a deputy director-general. Wendy is not at the table but is sitting two rows back, on the end of the row. Wendy is replacing Kerri Hartland, who, you will recall, appeared as a deputy before this committee on many occasions.

Since my last appearance, on 28 February, our work has continued largely unabated. Our core focus areas are fivefold; they have not changed: countering terrorism and the promotion of communal violence; countering espionage, foreign interference and malicious insiders; countering serious threats to Australia's border integrity; providing protective security advice; and, finally, collecting foreign intelligence in Australia at the request of either the Minister for Defence or the Minister for Foreign Affairs. It is important to note that our work in these areas is set against a steadily worsening overall security and operational environment. Espionage and foreign interference continue to occur on an unprecedented scale, and this has the potential to cause serious harm to the nation's sovereignty, the integrity of our political system, our national security capabilities, our economy and other interests. We do not expect the counterterrorism threat to diminish in the foreseeable future and we must remain focused in order to address the unprecedented global and domestic threat environment that we have witnessed since 2014.

Rapid technological change continues to provide people who are engaging in activities that threaten the safety and the security of Australians with new tools to conceal their activities from security and law enforcement agencies. Here I note the widespread use of encrypted communications by our counterterrorism targets, which remains a particular area of concern. In addition, to manage the significant demands these targets are placing on our resources, we have needed to redirect resource to respond to heightened threats to our own staff, to our facilities and to our operations.

A combination of these factors underpins the steadily worsening security and operational environment, heightened threats, unprecedented case load, both in terms of volume and the seriousness of the threats, as well as an increasingly complex and resource-intensive operating environment. ASIO will continue to remain vigilant and agile. We are committed to working with our intelligence and law enforcement partners on countering an array of threats.

As is customary, Chair, I will provide a specific update on counterterrorism. I mentioned in my previous estimates appearance in February that, since the national threat level was raised on 12 September 2014, there have been four successful—if I might use that word—attacks here in Australia and 12 major CT disruption operations, including one disruption relating to a right-wing extremist. This has all been done in response to imminent attack planning. Four attacks and 12 disruptions. There are still around 100 Australians currently fighting or engaged with terrorist groups in Syria or Iraq. That number has been constant, you might recall, for some months now. There are around 200 people in Australia that are being investigated for providing support to individuals and groups involved in the Syria-Iraq
conflict, including through funding and facilitation or seeking to travel there. The overwhelming majority of these people are young men and women. At least 64, and possibly as many as 76, Australians have been killed because of their involvement in the conflict.

As these figures indicate, Australians fighting and seeking to go offshore in Syria and Iraq remain a cornerstone of ASIO's priority work. It is important to make the point, however, that these individuals represent only one aspect of the terrorism threat to Australia and Australian interests, because Australians are at risk of being caught up in terrorist attacks overseas, including, particularly, those in South-East Asia. We are particularly concerned about the return of foreign fighters to our region. It is not just ISIL that is of concern but also affiliates and sympathisers who will outlive this group that are of concern. There are other groups, such as al-Qaeda and its affiliates, as well as new groups who may emerge that are inspired by Islamist extremist ideology. Monitoring these threats and providing advice to DFAT and our other partners to reduce the risk to Australians will also remain a high priority for ASIO.

Finally, I want to make the point that, notwithstanding coalition military success in Iraq and Syria, the seemingly inevitable collapse of the so-called caliphate is unlikely to be clinically clean and follow what I might describe as a definite time line. Because of these things, we assess that, well beyond the physical existence of this so-called caliphate, the threat of terrorism and the threat of a terrorist attack against Australians and Australian interests will continue. This is not the end and it is not the beginning of the end; it is more like the end of the beginning. We do not see this finishing any time soon. I conclude my remarks and welcome questions from the committee.

CHAIR: On behalf of all of the committee—and, indeed, I feel that in this instance I can speak on behalf of all parliamentarians—can I thank you and your team for the wonderful work you do, most of which we will never know about, but we can guess that you live in a very dangerous world. Your team do wonderful things to keep us safe. I know that every parliamentarian appreciates the work that you do.

I appreciate, and I know from things that Senator Brandis has said in the chamber, that you get on very well with the majority of people who arrive in Australia who are of Middle Eastern, Malaysian or Indonesian origin and that they are very good citizens of Australia, and I understand that, in various different ways, they help out. But has there been any assessment of those who came across our borders during the 2007 to 2013 period, many without passports, whose identities have never really been established? Is work being undertaken that will review those people who arrived without identities, so to speak?

Again, any question that I or anyone else asks here is on the understanding that if anything is of an operational nature then you will not answer it, and we will accept that. But I am just concerned about evidence we heard—on Monday, I think it was—about people who were flying to Malaysia or Indonesia obviously with travel documents but ending up in Australia without travel documents. It makes one wonder just what the purpose of all that was. In a very broad way is there some comment you can make on that?

Mr Lewis: The question of the identity of people crossing the border is first and foremost a matter for the Department of Immigration and Border Protection. Having said that, where that department considers that there is a security question to be asked, or there is a security matter that they cannot satisfactorily resolve, or they have doubt, the case will be referred to us. Many of the people of whom you speak will have been referred to us for further checking.
But, ultimately, the requirement to establish identity is something that the Department of Immigration and Border Protection has on its plate.

CHAIR: I read in the paper the results of the coroner’s inquiry that indicated that Man Monis was a refugee claimant and a successful claimant. That I think raises with me and many Australians a concern as to what checking has been done of people who are now permanent residents in Australia and, in many cases, Australian citizens. Again, I ask in a general way: is there any opportunity to revisit some of those who came across the border without proper identity documents?

Mr Lewis: You may not be aware, but the matter of Monis and the security clearance that was done with regard to his arrival in the country was outside the scope of the coronial inquiry, and, because it is an individual case, I would prefer not to comment on the case of an individual. But, to your broader question, there are—and I am sure people should take some reassurance from this—quite comprehensive processes in place between the Department of Immigration and Border Protection and ourselves and the Department of Immigration and Border Protection and other agencies in order to make sure that we have the field covered.

For ASIO, our interest is, as I know you are aware, only invoked where there is a matter of security involved. We do not make assessments on individuals based on their background—and by that I am talking about the race, the religion, their beliefs or anything of that nature. The question that we must ask ourselves is: are those individuals a threat to security? If the answer to that is yes, or we have a reasonable suspicion that the answer is yes, then we will proceed with a full investigation into those individuals.

CHAIR: Senator O’Sullivan, you have 10 minutes.

Senator O’SULLIVAN: Thank you for that, Chair. Mr Lewis, firstly I want to start with a matter that has presented itself in the last couple of days—at least within my scope of knowledge—and that is to do with individuals who hold either a maritime or an aviation security identification card. You would no doubt be familiar with the fact that that is required to get into particularly sensitive areas with regard to border control, and I think even national security, and to avoid criminal activity, particularly organised criminal activity. Evidence was given that there was a belief that, even if one of these individuals were of interest to your agency—your agency was not specifically named, but to national security agencies where they may be a person of interest to you, or whatever equivalent term you have—even though that knowledge may well be shared with the people with the delegated decision capacity to issue the card, they had no ability not to issue the card just on the back of the fact that they were a person of interest—and they may have been of serious interest to you. Are you aware of that anomaly?

Mr Lewis: I am not familiar with that last point that you are making, about whether the individual who is issuing the card has the flexibility around that.

Senator O’SULLIVAN: They tell us they do not.

Mr Lewis: Rather than going backwards up the chain, we receive this information coming forwards. Whoever is the issuing authority, if they are uncomfortable about the security of an individual who presents then we may have that case referred to us. I can assure you that, in cases where that individual actually does not clear what I would describe as a security bar height, they would not be eligible for the retention of a card. I am sure that the authority—
Senator O'SULLIVAN: I might write to you, because that is in conflict with evidence given by the agencies who are distributing these cards. They indicated that that was not a bar. There are certain prescribed bars in the existing legislation, but one of them was not that they were a matter of interest to one of our national security organisations. I will reiterate: we did not talk about ASIO or any of the other agencies. I will write to you with the Hansard and—

Mr Lewis: Okay, yes. I do not know enough about the authorities that issuing agencies have. I do not know.

Senator O'SULLIVAN: I appreciate that. The law is being reviewed and will be presented back to the Senate. It failed in its first attempt in the Senate. Mr Lewis, despite the fatalities, it would seem that the number of foreign fighters from Australia is remaining constant, which would suggest that they are replacing themselves and there is renewal in the numbers. Is that a fair assessment?

Mr Lewis: I think there have been two issues. The flow of Australians to the Middle East to become foreign fighters has reduced dramatically. You can see by those figures of fatalities that the fatalities are creeping inexorably up. So I think the combination of those two things is how I account for the relative stability of that number.

Senator O'SULLIVAN: How would the assessment of 100 people—you have put that on the record, so it is not a matter of contention—compare to the peak figure of known Australians who were in a zone where they ought not to be in terms of being a foreign fighter?

Mr Lewis: I think the peak figure that I have quoted during my time in this job, which dates back to September 2014, when the spike began, was 140. It was pretty close to that. It might have been 141 or 142, but around 140 was the peak figure. We have been coming down for more than six months now. It would be nearly nine months, I guess, that the figure has been starting to reduce.

Senator O'SULLIVAN: It would not be unfair to suggest that is as a result, largely, of your organisation's work in terms of making a contribution to that?

Mr Lewis: I would not want to overstate our work, but we certainly have made a major contribution to what I think has been a cross-government effort—the work of a combination of our colleagues in the border protection area, people working in the passports issuance area and the Federal Police. There are a whole range of folks that have been involved in this, but it is true to say that ASIO has a central part to play in that.

Senator O'SULLIVAN: There were reports recently of some of these people being unhappy and wanting to return to the warmth of the fireplace here in this stable country with mum and dad. Are there any indications that that is increasing and will contribute to the reduction of numbers there?

Mr Lewis: No. I think I did say to this committee a year ago that we anticipated quite a large number of Australians coming back. But I have reported to the committee since then that that number has been wound back. We now assess it to be many fewer than we first thought. There are a few reasons for that. I mentioned the relative unpredictability of the way in which this conflict in the Middle East will finish. These things never finish cleanly, so we do assess that there is a strong possibility of an insurgency that will continue beyond what I describe as major military operations. We think that a number of foreign fighters will filter into neighbouring countries around Syria and Iraq, remaining in the Middle East region. Some
of them will go further abroad into Europe, some into South-East Asia, and we will get some back here. Australian borders are very strong, so if one of these fighters tries to get back into Australia, they will be detected on return and they will then face whatever the consequences of the law are. The force of the law will be applied to them. That is the reason why we think there will be fewer returning. I cannot give you a figure, but we do not anticipate it will be a large number.

I have said, however, before this committee that one of the challenges we have is the number of Australian children that are in the Middle East. Some of them were taken there by their parents, and some were born there. We have children from the age of 17 through to 17 days, and managing that issue, I think, will be a major undertaking for all of our agencies right across government. It will also involve states and territories and so forth, as resettlement, to the extent that that might occur, happens. The other point I would make—and I think this is important because often it is missed in the public discourse—is that Australian citizens have a right to return here; they are Australian citizens. That issue is very clear as a point of law.

Senator O'SULLIVAN: You may have been in the precinct when we were having discussions with the Administrative Appeals Tribunal. In fairness to them, as has been pointed out by the registrar, we need to know more about some of these decisions in that there will be mitigating facts that are not available in the Herald Sun. We have had the department try and move these people out of our country, and some have got horrific criminal records, if these facts are accurate; some of them would clearly be people capable of doing anything. My question to you is: has ASIO monitored any of these cases where a deportation, which may have solved a problem, has been overturned by the Administrative Appeals Tribunal? Do you know whether you have had an active interest in screening these decisions?

Mr Lewis: I did not have the benefit of sitting through your earlier questioning of the AAT in full, so I do not know the background to this. Unless there is a nexus with security with the individual and they are a person of interest to us, the answer is no.

Senator O'SULLIVAN: If that were the case, would it be fair to say that fact might be telegraphed to the agency that has responsibility in the first instance of making a decision? For example, would the department of immigration in certain circumstances be alert to your interest in an individual?

Mr Lewis: Inevitably, because they asked us to take the interest in the first place.

Senator O'SULLIVAN: I am talking in reverse.

CHAIR: We might have to leave it there.

Senator O'SULLIVAN: Thank you for all of your work, Mr Lewis and your team.

Senator DODSON: Thank you for being here tonight. I would like to express on behalf of the Labor Party this week, more than any other week, that we are keenly aware of the job you do at ASIO to keep Australia safe. The terrible events at Manchester in particular have driven home the threat we all face, and we know that you play a highly-significant role in keeping those threats at bay. We sincerely appreciate the work you and your officers do, as well as the other people you collaborate with. Certainly the work ASIO does is an incredibly difficult job but such a worthy one. The Lindt report has once again reminded us that the worst can and sometimes does happen. We have the best intelligence agencies in the world, coupled with the best enforcement agencies in the world, working in our favour. Thank goodness we do. I
wanted to say that on behalf of the Labor Party, but I would also like to thank you for your services to our country.

I might have missed some of the matters that Senator O'Sullivan was raising, but I would like to put a couple of questions to you, and you will decide whether you can answer them. Approximately how many Australians have returned to Australia from Islamic state conflict zones, such as in Iraq and Syria, in total?

Mr Lewis: Thank you, Senator, for those earlier comments. I know my staff would appreciate that very much. There are about 40—and I have said this publicly before—who have returned from the conflict zone over the last four or five years. What is important to note is that the overwhelming majority of those, and I cannot be precise here, but it would be in the order of probably 35 of those 40 came back to Australia before the caliphate was declared. So they were, in the main, Australian citizens who were involved in the civil war in Syria and were more interested in the internecine conflict than in targeting what I might describe as the West—not necessarily subscribing to the theory that Islam is at war with the West—but they were involved in the civil war in Syria.

So the numbers returning post the declaration of the caliphate is quite small. As you know and as has been covered in the media, they are a mixed group—some not necessarily with ISIL but fighting with other organisations in the Middle East. I hope that gives you some indication of the size of the issue.

Senator DODSON: The other question I have is: how many of those who have returned have been prosecuted under the foreign fighters legislation?

Mr Lewis: I think the AFP would have a better understanding of that than I do. I am sorry I do not know.

Senator WATT: I endorse everything that Senator Dodson has said, and I pass on my gratitude for the work that you and your officers do.

Mr Lewis: Thanks, Senator.

Senator WATT: I have questions about the coroner's report into the Lindt siege. I understand that you are working your way through that report and its recommendations. I asked a number of questions yesterday afternoon of the Attorney-General regarding the comments of the coroner about the letter that Mr Monis wrote to the Attorney-General in October 2014 and was not passed on to ASIO. The coroner identified that letter as one of two knowledge gaps in ASIO's handling of Mr Monis. Do you agree with the assessment that it was a knowledge gap?

Mr Lewis: I spoke at length in front of this committee a year ago, or whenever it was that the matter was being discussed, and the phrase that I used to describe the letter was 'very flat'. It was a flat, single-dimensional letter. You have seen the text of it. The inquiry from Monis was whether he had clearance to write a letter to communicate with 'Caliph Ibrahim', as he described him. I still hold that view. It made no material difference to any judgements that we were making. So, if you were looking for a gap in the sense that there was a single document missing, yes, in a metric sense, there was. Was it of any significance? No—and I think I made that point clear at the time when we spoke about this a year and a half ago.

Senator WATT: You would have noticed that one of the coroner's conclusions was, to paraphrase, that there does not appear to be an effective policy in place to require the
Commonwealth bureaucracy to forward correspondence received by it to ASIO if that correspondence is of a security nature. Is it also your understanding that, as we sit here now, there is no effective policy in place across the Commonwealth bureaucracy in that regard?

Mr Lewis: No, I do not think that is right. Not long after this matter was raised—I am sorry, I do not have the precise dates here, but it was a year or so ago—directions, I know, were issued for that gap to be closed. Certainly, with my own department, we know that instructions have been issued and correspondence that relates security is now being forwarded to us. The secretary and others are here; I think that can be corroborated.

CHAIR: We will not ask the secretary, because we did go through this yesterday and the secretary has made very clear what his department and other departments are doing.

Senator WATT: I think we are in no doubt as a result of yesterday's evidence that there is now a policy in place in relation to the Attorney-General's Department. My question was about the Commonwealth bureaucracy more broadly.

Mr Lewis: I do not have any evidence in front of me to suggest that the information is not coming to us. I am not concerned about it.

Senator WATT: I suppose that will be something that you will look at in the course of dealing with the report.

Mr Lewis: Most certainly. That is one of the recommendations.

Senator WATT: Regarding foreign fighters, is it the case that there is not anyone at the table who is able to advise how many people have been prosecuted under the foreign fighters legislation?

Mr Lewis: I do not know.

Senator WATT: Is there anyone here who does?

CHAIR: Only if you know, Mr Lewis. It is a matter for the AFP.

Ms Jones: We are happy to take it on notice.

Senator Brandis: I am not sure what you mean by the foreign fighters legislation, Senator. What specific act do you mean?

Senator WATT: I am talking about the Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014.

Senator Brandis: Which particular provisions are you talking about?

Senator WATT: I do not have the exact provision, but my understanding is that—

Senator Brandis: What is the offence you are describing, I mean?

Senator WATT: Any offence for undertaking military style action in a foreign land. We all know what this legislation is designed to achieve—it is to prevent Australians from fighting overseas. I am wondering whether anyone who has returned to Australia has been prosecuted under that legislation.

Senator Brandis: Well, that is really a question for the DPP. I think you are confusing two things. There is the prohibition on Australians fighting in foreign civil wars which was uplifted from an older 1979 act of the Fraser government and modernised; and then there was, as well, the new offence of being in a declared area—an area declared by the Minister for Foreign Affairs—which does not require the person concerned to be engaged in military or
hostile activity but merely being there without lawful excuse in the so-called no-go zone, and there are a series of exceptions like journalists et cetera. Are you talking about both of those offences?

Senator WATT: Yes.

Senator Brandis: I think it is best if we consult the CDPP. Certainly, the CDPP would be the person best placed to give you that information, particularly in relation to briefs of evidence that she may have received.

Senator WATT: Happy to get the precise numbers taken on notice. Are you aware, Senator Brandis, whether anyone at all has been charged under either of those options?

Senator Brandis: As I have said, I will take that on notice.

Senator WATT: Okay.

CHAIR: I do indicate that there are four crossbench senators and I will allow them five minutes each, which means the AAT officials will not come on again tonight. If they wanted to leave, they are free to do so.

Senator O'SULLIVAN: Will the AAT be in continuation if there is a spillover day?

CHAIR: They certainly will.

Senator XENOPHON: I will be as brief as I can. Mr Lewis, if I can echo the sentiments of both the chair and Senator Dodson on behalf of the Labor Party and behalf of all of us for the work that you do. We had an interchange on the last occasion about journalist information warrants. You may remember that. I note that the AFP recently did a mea culpa in respect of failing to obtain a journalist information warrant and, of course, there is a different regime in place for ASIO; it is through the Attorney. Are you able to say whether there has ever been a problem in terms of the protocols and processes in obtaining a journalist information warrant within ASIO?

Mr Lewis: I can say that there has not been a problem, Senator. If I might add, if there had been a problem it will be raised, of course, through the Inspector-General of Intelligence and Security. The IGIS is the process by which that would become apparent and we would make that plain.

Senator XENOPHON: I will race through these because of time constraints and I will try and do this within the next two minutes. If in the event that a person had their privacy breached unlawfully, in the context of journalist information warrants, would that person be notified of that as a matter of course? What would ASIO's policy be in respect of that?

Mr Lewis: That is speculative. It would depend on the situation. The bar height for this is very high and I could not speculate. It would be dependent on the situation.
Senator XENOPHON: In terms of the annual report in respect of the TIA act, the AFP made an application for 456 inception warrants in 2014-15. When the AFP gave evidence earlier today, I think it was today, indicated that it did not prejudice any ongoing police operation because you do not gather any information from simply the number of warrants that were issued and that they are looking at having a similar disclosure regime in respect of journalist information warrants. It was a positive answer, as I understood it from the AFP. Can you indicate whether ASIO will have a different point of view? Will it change its mind in terms of just publishing the number of journalist information warrants that have been issued, if any?

Mr Lewis: I did not have the benefit of hearing the AFP's response and the particular questions put to them, Senator, but—

Senator XENOPHON: Would you like to take that on notice, if that is helpful?

Mr Lewis: No—hopefully, I will be able to satisfy your query here. We run under a very different regime—as I explained, I hope satisfactorily, at the last hearing—to police. We have a different function, and the environment in which we are conducting our investigations is often very different. I have no intention of publishing the number of journalists warrants publicly.

Senator XENOPHON: Chair, I have other questions but I am mindful of my crossbench colleagues, so thank you for the time.

Senator HANSON: Can you confirm that the four terrorist attacks—and the 12 foiled—that have happened on Australian soil were committed by Muslims? And if not, who?

Mr Lewis: I did mention, Senator, in my opening remarks that, of the 12 thwarted attacks, one of those indeed involved a right-wing extremist. So the answer is no, they have not all been carried out by Muslims. But I have to stress, Senator, and this is very important: ASIO does not make its inquiries or its assessments on the basis of somebody's religion. We are only interested in people who are exhibiting or offering violence and, to the extent that there is violent extremism—which is very frequently inspired by a warped version of Sunni Islam—that is when our interests are invoked.

Senator HANSON: So most of these people do follow Islam and the teachings of Islam, and that is where the radicalisation—so we have had an increase of radicalisation?

Mr Lewis: Well, I cannot comment on how devout they are, Senator; I have no idea. Are they violent? Yes.

Senator HANSON: Do you believe that radicalisation could be happening in our mosques? In mosques?

Mr Lewis: I would rather not comment on that, Senator, because it actually goes to some of our operational work. But I do go back to my earlier answer: that we are not interested in religion; we are interested in whether an individual is exhibiting or practising violence.

Senator HANSON: Correct. I understand that a lot of the problems that are happening in Australia are because of the increased belief in Islam—that is, where it is the only religion that we have in Australia where we have now had terrorist attacks and problems that are happening on our streets. And that is where we need ASIO and the police and everyone else
to try and thwart these dangers that we have, and loss of life. Do you believe that the threat is being brought in, possibly, by Middle Eastern refugees that are coming out to Australia?

Mr Lewis: I have absolutely no evidence to suggest there is a connection between refugees and terrorism.

Senator HANSON: Is ASIO concerned, for security reasons, about women wearing the full burqa in some areas?

Mr Lewis: We have made it plain on a number of occasions, Senator, that we have no security reason to be concerned about the wearing of a burqa, other than the requirement for individuals to identify themselves to authorities, and there are regulations in place for that.

Senator HANSON: One last question: are you aware that in Canada there has been an increased number of children that are born there—to refugees—who are actually converting to radical Islam? And is that also happening here in Australia?

Mr Lewis: I am not familiar with the Canadian experience and I see no evidence of it here, Senator.

Senator McKIM: Good evening, Mr Lewis, thanks to you and your team for coming in. Senator Brandis informed us earlier today that there has been no reconsideration of Australia's readiness to share sensitive intelligence material with the US. You would be aware of a range of recent occurrences, I am sure, including the meeting between President Trump, Mr Lavrov and the Russian ambassador to the US, Mr Kislyak, where President Trump revealed highly classified information—he has in fact confirmed that via Twitter. You would no doubt be aware that the Israeli defence chief, only a few hours ago, said that Israel had had to issue 'a spot fix' as a consequence of that revelation from Mr Trump. You would probably be aware that Mr Trump, in a phone conversation with the leader of the Philippines, who in my view is a mass murderer responsible for over 7,000 extrajudicial killings in his own country, told him that the US had two nuclear submarines off the coast of the Korean Peninsula. You may also be aware that the UK Home Secretary, Amber Rudd, has expressed dismay at leaks that The New York Times has published about this week's tragedy in Manchester—naming the suspect before the UK intelligence services were ready for that information to be released.

Mr Lewis, is there any reconsideration of Australia sharing sensitive information with the US in light of these extraordinary developments in recent times?

Mr Lewis: No.

Senator McKIM: Why not?

Mr Lewis: I have seen the speculation—some of it, not all of it—about some of those cases you have mentioned. I was in the United States myself in March to engage with the leaders of the US intelligence community, both new and old. There is absolutely no change, if you like, in our position around this. The United States is an old and trusted ally. You know yourself, Senator, the extraordinary dependence we have on the strength of that alliance. I can assure you that the leaders of the USIC that I deal with—we have a relationship which is no different from what it has been during the rest of my working life.

Senator McKIM: The Financial Times has reported, in the last few hours, that UK intelligence have decided to withhold any further information about the Manchester investigation from the US.
Mr Lewis: I have seen the media coverage of that.

Senator McKIM: Five eyes is, I guess, the Anglosphere of intelligence—the UK, US, Canada, Australia and New Zealand. I hope I have that right, have I? Those are the five. Cracks are starting to appear, are they not? Maybe they are microfissures, but, if the UK are now not sharing information on the Manchester investigation out of fear it will be leaked out of the US intelligence community, or potentially the White House, into the US media, do you not fear that, given those circumstances, potentially Australian assets or lives could be put at risk by a President who—these are my words, of course, not yours—is a blabbermouth?

Mr Lewis: I cannot comment on the speculation or your views. All I can say is that, from my point of view, the relationship is sound. I have seen all the different press speculation on this, but there is absolutely nothing coming across my desk—no official level correspondence—or via official level relationships. On any given day of the week, we have people on exchange who are visiting for professional reasons. We are working together on cooperative pieces of work. There is absolutely no diminution of that nor, in my mind, a crisis of confidence.

Senator McKIM: I appreciate you sharing that with us. I will reluctantly conclude my questioning of you this evening.

CHAIR: I thank you, Mr Lewis and Ms Cook—and your team—for coming today, particularly for your statement updating the parliament, Mr Lewis. Again, you have heard from all senators our appreciation and understanding—not terribly informed understanding, but understanding—of the difficult work you do. You go again with our thanks. I thank the Attorney, Mr Moraitis and his team, the secretariat staff and Hansard.

Committee adjourned at 23:00