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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Monday, 18 February 2019

HOME AFFAIRS PORTFOLIO

In Attendance

Senator Reynolds, Assistant Minister for Home Affairs

Department of Home Affairs

Mr Michael Pezzullo, Secretary
Ms Rachel Noble PSM, Deputy Secretary, Executive
Mr Marc Ablong PSM, Deputy Secretary, Policy
Ms Cheryl-anne Moy, Deputy Secretary, Corporate and Enabling, Chief Operating Officer
Ms Maria Fernandez PSM, Deputy Secretary, Intelligence and Capability
Mr Luke Mansfield, Acting Deputy Secretary, Immigration and Citizenship Services
Mr Paul Grigson, Deputy Secretary, Infrastructure Transport Security and Customs Deputy Comptroller-General
Ms Linda Geddes, Deputy Secretary, Commonwealth Counter-Terrorism Coordinator
Mr Chris Teal, National Counter Foreign Interference Coordinator
Mr Karl Kent OAM, Deputy Commissioner, Commonwealth Transnational Serious and Organised Crime Coordinator
Ms Abigail Bradshaw, First Assistant Secretary, Enterprise Strategy, Risk and Performance, Chief Risk Officer
Ms Kylie Scholten, First Assistant Secretary, Executive Coordination
Ms Stephanie Cargill, First Assistant Secretary, Finance, Chief Finance Officer
Ms Pip de Veau, First Assistant Secretary, Legal, General Counsel
Mr Lachlan Colquhoun, First Assistant Secretary, Strategic Research and Communication
Mr Mark Brown, First Assistant Secretary, Integrity, Security and Assurance
Dr Richard Johnson, First Assistant Secretary, Immigration, Citizenship and Multiculturalism Policy
Mr Hamish Hansford, First Assistant Secretary, National Security and Law Enforcement Policy
Mr David Wilden, First Assistant Secretary, International Policy
Mr Mathew Fox, Acting First Assistant Secretary, Strategy and Capability
Mr Murali Venugopal, First Assistant Secretary, People
Mr Ben Wright, First Assistant Secretary, Productivity and Compliance
Mr David Nockels, First Assistant Secretary, Integrity, Security and Assurance
Dr Parbodh Gogna, Chief Medical Officer and Surgeon General
Mr Michael Milford AM, First Assistant Secretary, Information and Communication Technology, Chief Information Officer
Mr Radi Kovacevic, First Assistant Secretary, Major Capability
Mr Paul Cross, Acting First Assistant Secretary, Identity and Biometrics Division
Mr Steven Davies, First Assistant Secretary, Data Division, Chief Data Officer
Ms Peta Dunn, First Assistant Secretary, Immigration and Visa Services
Ms Frances Finney, Acting First Assistant Secretary, Refugee, Citizenship and Multicultural Programs
Ms Justine Jones, Acting First Assistant Secretary, Immigration Integrity and Community Protection
Mr Andrew Kefford PSM, First Assistant Secretary, Visa Delivery Transformation
Mr Angus Kirkwood, Acting First Assistant Secretary, Aviation and Maritime Security
Mr Robert Cameron, Director General, Emergency Management Australia
Mr Pablo Carpay, First Assistant Secretary, Critical Infrastructure Security
Dr Bradley Armstrong PSM, First Assistant Secretary, Trade and Customs
Mr Mark Croswell AFSM, First Assistant Secretary, National Resilience Taskforce
Mr Michael Rendina, Deputy Commonwealth Counter-Terrorism Coordinator
Mr Cameron Ashe, Deputy Counter Foreign Interference Coordinator
Mr Greg Miller, Deputy National Cyber Security Adviser, First Assistant Secretary, Cyber Security Policy
Mr Anthony Coles, First Assistant Secretary, Commonwealth Transnational, Serious and Organised Crime Centre

Australian Border Force
Mr Michael Outram APM, Commissioner
Ms Justine Saunders APM, Deputy Commissioner, Support
Ms Erin Dale, Assistant Commissioner, Strategic Border Command
Ms Rachel Houghton, Assistant Commissioner, Operational Practices Command
Mr Kingsley Woodford-Smith, Assistant Commissioner, Close Support Command
Mr Stephen Hayward, Assistant Commissioner, Australian Border Force Business Services
Ms Vanessa Holben, Assistant Commissioner, Detention and Offshore Operations Command
Ms Mandy Newton APM, Deputy Commissioner, Operations
Ms Kaylene Zakharioff, Assistant Commissioner, Border Patrol Coordination Command
Ms Sharon Huey, Assistant Commissioner, Enforcement Command
Ms Danielle Yannopoulos, Acting Assistant Commissioner, Port Operations Command
Rear Admiral Lee Goddard CSC, RAN, Maritime Border Commander
Major General Craig Furini AM, CSC, Operation Sovereign Borders Joint Agency Taskforce Commander

Australian Criminal Intelligence Commission
Mr Michael Phelan APM, Chief Executive Officer, Australian Criminal Intelligence Commission; Director, Australian Institute of Criminology
Ms Nicole Mayo, Acting Chief Operating Officer
Ms Rochelle Thorne, Executive Director Technology
Mr Matthew Rippon, Executive Director Intelligence Operations
Mr Mark Harrison, Executive Director Capability
Mr Jakub Bartkowiak, Acting Executive Director Technology
Dr Rick Brown, Deputy Director, Australian Institute of Criminology

Australian Federal Police
Mr Andrew Colvin APM, OAM, Commissioner
Ms Sue Bird, Chief Operating Officer
Ms Leanne Close APM, Deputy Commissioner National Security
Mr Ramzi Jabbour, Deputy Commissioner Capability
Mr Neil Gaughan APM, Deputy Commissioner Operations
Mr Karl Kent OAM, Deputy Commissioner, Transnational Serious and Organised Crime Coordinator
Mr Darren Box, Chief Financial Officer
Mr Peter Crozier, National Manager People, Safety and Security
Mr Stefan Jerga, Acting National Manager Legal
Dr Katrina Sanders, Chief Medical Officer

Australian Security Intelligence Organisation
Mr Duncan Lewis AO, DSC, CSC, Director-General of Security
Dr Wendy Southern, Deputy Director-General, Strategic Enterprise Management Group

Australian Transaction Reports and Analysis Centre
Ms Nicole Rose PSM, Chief Executive Officer
Mr Chris Collett, Deputy Chief Executive Officer Intelligence and International
Ms Kathryn Haigh, Acting Deputy Chief Executive Officer Regulatory Strategy
Mr Ric Walters, Chief Financial Officer

Committee met at 09:00

CHAIR (Senator Ian Macdonald): I declare open this hearing of the Legal and Constitutional Affairs Legislation Committee looking into the additional estimates for the 2018-19 year. The Senate has referred to this committee the particulars of proposed expenditure for the current financial year for the portfolios of Home Affairs and Attorney-General's, and other related documents. These are additional estimate proceedings. The outcomes to be heard during today's estimates are from the Home Affairs portfolio. The committee have set Friday, 29 March as the date by which answers to questions on notice are to be returned. We have also suggested that written questions on notice should be provided to the secretariat no later than 5 pm on Friday, 1 March.

I indicate at this stage that we senators are very privileged to be able to use the estimates to ask questions of public officials and ministers, but we should confine our comments to questions only. I won't allow any political statements or rhetoric, because time is very limited. I intend to use the bell at 10 minutes and give every senator a couple of minutes to finish that line of questioning and then we'll move on. We can come back to senators under the standing orders of the Senate, but if we keep it moving it will give everyone an equal opportunity to put their questions. I will, as is my practice, come to senators in proportion to their representation in the chamber, which means the opposition and the government will get principally the questions but we'll fairly come to the crossbenchers and minor parties during the proceedings.

I also indicate that the program for this committee is one that the committee adopts, but it has been my practice to do whatever the opposition, the Greens and crossbenchers want to do. I'm always fairly ambivalent. There are some things government senators want to ask about, but principally the program has been set by the committee, relying upon advice from the opposition, the Greens and the crossbenchers.

We must take all evidence in public session. This includes answers to questions on notice. Witnesses know about parliamentary privilege, so I won't go through that. I think most of the officers are also familiar with the rules of the Senate governing estimates hearings. Any questions going to the operation or the financial position of the department or agencies that are seeking funds in estimates are relevant questions for the purpose of estimates hearings. The Senate has also resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly otherwise provided.

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

For any claim of public interest immunity, witnesses are specifically reminded that a statement that information in a document is confidential or consists of advice to government is not a statement that meets the requirements of the order of the Senate made in 2009. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of information or the document.

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)

CHAIR: The media have requested permission to film the proceedings, and the committee has agreed to this. I remind the media that this permission to film can be revoked at any time and may not occur during suspensions or after adjournments of proceedings. If a witness objects to filming, the committee will consider that objection and determine whether filming should be continued. Copies of resolution 3 concerning the broadcasting of committee proceedings are available from the secretariat.

I welcome Senator the Hon. Linda Reynolds, representing the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs. Minister, do you want to make any sort of opening statement?

Senator Reynolds: Thank you, Chair, but no.

CHAIR: Thanks very much.

Australian Federal Police

[09:06]

CHAIR: We now move to the first witnesses, the Australian Federal Police. Commissioner, welcome to you and your colleagues. The committee has set aside 2½ hours altogether for this, to be followed by the Australian Criminal Intelligence Commission. As my colleagues at the table know, as long as they have questions we keep going, but we have done this program in the hope that we can get through to all areas of the department, and I will be encouraging people and reminding people as we go along of where we're at and where we've got to get to.

Commissioner Colvin, as I say, welcome to you and your team. Again, thank you very much for everything you do for us as a nation. It's always very much appreciated. Do you have an opening statement?

Mr Colvin: Thank you, Chair, and good morning. Yes, I do have an opening statement, if you agree.

CHAIR: Fire away.

Mr Colvin: Good morning, Chair and committee members. Thank you for the opportunity to make a brief opening statement. There are a number of recent issues that have been the subject of commentary that I'd like to address before we take questions from the committee. The Australian Federal Police take great pride in the work we do as Australia's national police force and, just importantly, in the trust placed in us by the community. I do not take this trust lightly, and I know that AFP members do not take this trust lightly. Keeping the trust and confidence of the Australian community is an extremely high priority for me and for all members of the AFP. It is for this reason that I want to ensure that the public record is clear and accurate with regard to the AFP's role in relation to some recent highly publicised matters.
The first of these relates to the recent circumstances surrounding the Hakeem al-Araibi detention in Thailand and his welcome return to Australia. Over the two months there has been varied reporting on this already. Today's Senate estimates is an appropriate place and opportunity to put the AFP's involvement on the record. There is criticism from some quarters about the length of time it took for the AFP and for me to make a public statement on this matter. This was a decision made in what we thought were the best interests of Mr al-Araibi. While Mr al-Araibi was in detention, Australia was working hard to secure his safe and speedy return. While it did not sit well with my members to be the subject of wrongful speculation about the AFP's involvement in this matter, the priority was to ensure a safe return to Australia for Mr al-Araibi.

While we are happy to go into the specifics about the AFP's actions regarding Mr al-Araibi, I will briefly provide the committee with an overview of the AFP involvement in the matter. As the committee will know, the AFP hosts the Australian Interpol National Central Bureau—or NCB—and AFP staff are seconded to the NCB. On 8 November 2018, at the request of Bahrain, Interpol issued a red notice for Mr al-Araibi, which the AFP conveyed to the Australian Border Force on 9 November. This is a routine process, as many names come on and off Interpol watchlists regularly.

At this time, neither the AFP nor the Australian Interpol NCB was aware of Mr al-Araibi's visa status. This was not known until after his detention in Thailand. Neither the AFP nor the Australian Interpol NCB can access visa information; we rely on notifications from the home affairs department. The home affairs department provided Mr al-Araibi's visa status to the AFP on 28 November, the day after his detention in Thailand. On 29 November the AFP sought and was granted permission by the Department of Home Affairs to refer Mr al-Araibi's visa status to Interpol's Office of Legal Affairs.

**Senator McKIM:** Sorry; what date was that?

**Mr Colvin:** It was 29 November. Interpol removed the notice within 24 hours of the AFP's provision of this information. The red notice was rescinded on 1 December Australia and Thailand time, which was 30 November France time.

I'm confident that, at all times, the Australian Interpol NCB adhered to the policies and procedures of Interpol. The home affairs portfolio has undertaken a number of reviews to establish a chronology of actions, with a view to improving information exchange and reducing the risks of similar cases in the future. I know that the home affairs department and the AFB are scheduled to appear later today, and I expect that they will also be prepared to respond to questions regarding their respective roles in the process.

The second issue I'd like to address relates to the AFP's investigation into the unauthorised disclosure of information to the media about the execution of search warrants in support of the Registered Organisation Commission's investigation into the AWU. I remind the committee that the primary investigation that led to this activity was not in fact an AFP investigation. As the committee will know, Federal Court proceedings related to this matter are ongoing; I understand there are still witnesses to be called. There are also suppression orders in place in relation to some of the evidence provided in those proceedings. With that in mind, there may be some limitations on what my deputies and I can say, but I want to assure the committee that any reticence to answer questions is not out of a desire to hide or avoid public scrutiny. We are here to answer your questions, and will make every effort to do so. But we do need to respect the ongoing Federal Court matters.

I've previously stated, and would like to reaffirm, that it is an issue of grave concern to me when AFP operational activity is inappropriately disclosed. As well as impacting on our operations, these disclosures also jeopardise the safety and security of AFP officers. The AFP undertook a thorough investigation into the unauthorised disclosure of its operational activity and compiled the strongest brief of evidence it could, which was then referred to the Commonwealth DPP. In this case the Commonwealth DPP determined that, despite our best efforts, the brief did not have sufficient prospects of success for them to prosecute. Under those circumstances, the AFP could not in good conscience lay charges.

The AFP wasn't present at the Federal Court last week, but we have seen the media reports. I understand from that reporting that the court has used section 128 of the Evidence Act to require witnesses to give evidence and offer them protection against self-incrimination. This is not an option open to police in a criminal investigation. Ultimately, we cannot compel people to provide us with statements. Indeed, it may surprise you to know that we cannot compel people to assist with our investigations or inquiries. As we need to meet the criminal standard of proof, we need to be able to prove offences beyond reasonable doubt. It's a high bar, and the CDPP took the view that the brief in this matter did not reach that bar. I should say that, in providing their advice, the CDPP did not make any criticisms of the thoroughness of the investigation. Additionally, at a case management hearing in August 2018, a Federal Court judge, Justice North, noted it was evident to him that the AFP had conducted a...
thorough and professional investigation. I am confident that the AFP investigation into this matter was robust, thorough and conducted entirely appropriately.

I hope this information is helpful to the committee and the public in understanding the AFP's approach to these two matters. I trust this dispels any inference that the AFP has acted in a political manner. This could not be further from the truth, and I reject these suggestions in the strongest terms. The AFP rigorously maintains its independence, impartiality and integrity. It goes to the very core of what we do. As always, my deputies and I will do our best to answer the questions that the committee has on this and other issues.

CHAIR: Thanks very much, Commissioner Colvin. Your last few comments are well known, but it's always good to repeat them—about your independence and the integrity of your force, which I think is well recognised in Australia and, I suspect, even worldwide.

Mr Colvin: Thank you.

CHAIR: I might just start the questioning before passing to—

Senator McKIM: If I might, before you start, could the committee be provided with a copy of Mr Colvin's statement please?

Mr Colvin: Yes.

CHAIR: You mentioned what your part in, let me call it, the leak was. Can you refresh my memory on the sequence? As I understand it, the issue was about AWU allegedly improperly dealing with members' money. The Registered Organisations Commission made certain findings. They required you to conduct searches. Is that right? It was the conduct of the searches that was leaked. Then you've been engaged to try and find out who leaked. Is that right?

Mr Colvin: The actual primary investigation is not something I can comment on because that's a ROC investigation.

CHAIR: No, I don't want you to comment on it, but just tell us what it is for clarity.

Mr Colvin: To be honest, I don't know that we know the exact nature of the investigation. We were asked by the ROC. Under their legislation, they needed our assistance to execute a lawful search warrant. That is what they did.

CHAIR: It was their search warrant.

Mr Colvin: We have to swear the search warrant.

CHAIR: So you have to get the search warrant. You were asked by the Registered Organisations Commission to get a search warrant.

Mr Colvin: We have to satisfy ourselves of the merits of the search warrant and then we execute it.

CHAIR: And the search warrant was to check the files of the AWU, was it?

Mr Colvin: The search warrant was to search for and seize anything that fell within the terms of the search warrant which may have afforded evidence to the investigation being conducted by the ROC.

CHAIR: So the warrant was done with information from the ROC on what they were looking for and why they thought the search would take place, and you are simply there to make sure the search warrant was done in the right way.

Mr Colvin: We're the executing authority. We have the executive power to execute the warrant. Our involvement continued because, as we now know and as well reported, the fact of that search warrant being conducted appears to have found its way into the media's hands before the search warrant was conducted.

CHAIR: But then your duty to execute the search warrant occurred. You did that.

Mr Colvin: Correct.

CHAIR: And you got documents and gave them to the Registered Organisations Commission.

Mr Colvin: I believe so.

Ms Close: After the execution of the search warrants, the AFP was requested by the federal court to hold the documentation because the following day there were proceedings that commenced at the federal court in relation to the search warrant activity.

CHAIR: So you're still holding the documents.

Ms Close: Yes, we are.
CHAIR: But you've finished that bit. That's over and done with. You've done the search, you've executed the warrant, you've got the documents and you're just holding them. That's that part out of the way.

Ms Close: That's correct.

CHAIR: As a separate incident, you've been requested by whom to investigate the leaking of the fact of the execution of a search warrant?

Mr Colvin: The AFP commenced that investigation. We commenced that ourselves.

CHAIR: Okay. You obviously were surprised when you turned up and the media were there. You've then instigated an investigation to see if anyone improperly leaked the fact that you were going to execute the warrant.

Ms Close: That's correct.

CHAIR: Is that investigation still ongoing or is it finished?

Ms Close: That investigation is now complete.

CHAIR: I think that was what Commissioner Colvin was saying. You found no evidence that anyone should be charged, bearing mind that you were restricted in who you could ask and what information you could gather.

Ms Close: Yes. We supplied a brief of evidence to the Commonwealth Director of Public Prosecutions and, based on some of the evidence that was there and some of the information that was not available to the CDPP, they determined that it was not appropriate to charge anyone with that offence.

CHAIR: So, the decision not to charge is actually the DPP's rather than the AFP's?

Ms Close: In this instance it was. We thought that there was sufficient evidence in the brief evidence. However, it was lacking some witness statements. So, on that basis the Commonwealth DPP wrote to us and advised that there were no reasonable prospects for a conviction in that matter and therefore wouldn't continue.

CHAIR: So, effectively in both of those exercises relating to this broad general thing the AFP are finished whatever they were there to do, except you're still holding some documents and you'll deal with them as you're told by a court at some time.

Ms Close: Yes.

CHAIR: Okay. Thanks. I'm always a fraction confused, and it's just good to put in place what exactly the procedures are, what exactly the AFP's issues are, or lack of issues, so that we can work from there.

Senator WATT: Minister, I have a question to you to start with. Is there a reason Senator Cash isn't here as the Minister representing the Minister for Home Affairs in the Senate?

Senator Reynolds: As I explained last estimates—the reason is exactly the same—that you now have a senator who is the Assistant Minister for Home Affairs, and I will be sharing it with Senator Cash, who will be here later, exactly as we did at the last one. But, given that I am the portfolio minister in the Senate, I am across all the day-to-day issues across Home Affairs, so it is entirely appropriate for me and Senator Cash to appear here.

Senator WATT: But Senator Cash is the Minister representing the Minister for Home Affairs in the Senate, isn't she?

Senator Reynolds: She is, yes—

Senator WATT: So, it would be pretty reasonable to expect that minister to come.

Senator Reynolds: Senator Watt, you can get your political statements out in a sec; just let me answer the question. The fact is, as you are aware, I am also the Minister in the Senate who takes the Home Affairs legislation through the Senate, because I'm in the Senate. So, as the Assistant Minister for Home Affairs, it is entirely appropriate for me to be here at estimates today and also to take the legislation through the Senate.

CHAIR: So, why don't you answer questions in question time?

Senator Reynolds: Because I'm not a cabinet minister—

Senator WATT: Good question, Chair.

Senator Reynolds: and we've got a cabinet minister in the Senate.

Senator WATT: If that logic applies, wouldn't it be more appropriate for a cabinet minister to be here, as is the case in every other estimates session?

Senator Reynolds: Senator Watt, if you have concerns about my performance as the Assistant Minister for Home Affairs—let's see how today unfolds. I am entirely capable of answering your questions, as I think I've demonstrated previously.

Senator WATT: More capable than Senator Cash?
Senator Reynolds: Oh, Senator Watt—please. If this is the best you've got for estimates today, with all the significant issues we've got going on—

Senator WATT: Well, we'll come to them.

Senator Reynolds: Senator Watt, you can impugn my credibility, my abilities—

Senator WATT: Not yours—Senator Cash's.

Senator Reynolds: That is fine, but I am the minister at the table. I am the Assistant Minister for Home Affairs. I am across my brief, and I'm across the brief of Home Affairs. So, if you do not like having me here, that is entirely your problem.

Senator WATT: I haven't got anything against you. I suppose it would be a bit embarrassing—

CHAIR: Senator Watt, we have limited time for the Australian Federal Police. If your questions to Senator Reynolds are about the police, then fair enough. But if they're about other matters, that should be—

Senator WATT: No, it's about—

CHAIR: cross-portfolio. And if there are other questions, that should be left to cross-portfolio with the appropriate—

Senator Reynolds: Can I just say, with the greatest respect to my colleague Senator Watt, that if this is all you've got, given everything that's been happening in your own home state of Queensland—you're attacking me, you're playing the person and not the issues.

Senator WATT: No, not you—Senator Cash.

Senator Reynolds: As I said up-front, Senator Cash will be here, and we're doing exactly as we did with the last estimates.

Senator WATT: So, she'll be here after the police's evidence, will she?

CHAIR: I've just indicated to Senator Watt that the questions should relate to the Australian Federal Police.

Senator Reynolds: Thank you, Chair.

CHAIR: If they're related to cross-portfolio—

Senator WATT: They do relate to—

CHAIR: Tell us how they relate to the Federal Police.

Senator WATT: Well, the commissioner just gave an opening statement that included remarks about their investigation into the leak from Senator Cash's office. That's why I'm asking these questions at the start. But I suppose it would have been a bit embarrassing for Senator Cash to have to sit next to the commissioner when he was talking about an investigation into her office.

Senator Reynolds: Senator Watt, you can impugn both myself and Senator Cash.

CHAIR: No, Minister, it's not helpful to respond to—

Senator Reynolds: but really it is not very professional. She will be here.

Senator WATT: So, she'll be here after the Federal Police leave, will she?

CHAIR: It's not helpful to respond to Senator Watt's political statements when they're not relevant to the matter before us. Senator Watt, you have six minutes.

Senator WATT: Sticking with this matter about the investigation into the leak from Senator Cash's office, how many officers were assigned to this investigation?

Mr Colvin: I will ask Deputy Commissioner Close to answer that.

Ms Close: In total, we had 14 officers at any given point in different parts of the investigation working on this. Sometimes it was less, sometimes it was more.

Senator WATT: Do you know what the cost of the investigation was?

Ms Close: I don't have that with me.

Senator WATT: I think we did ask that on notice last time and I'm not sure that that has been answered. Could you see if that has been answered? I couldn't find that myself.

Ms Close: Certainly, we will look at that for you.

Senator Reynolds: Senator Watt, I think I can confirm there were no questions on notice outstanding from the last estimates.

Senator WATT: Okay, well perhaps someone could dig up the answer to that one.
Senator Reynolds: We will get that for you.

Senator WATT: You have taken us through the outcome of this investigation and you have said that the AFP referred a brief of evidence to the DPP. I take it the formal way they dealt with it was that they advised you that, in their view, there was no prospect of a successful prosecution. Is that how it works?

Ms Close: Yes.

Senator WATT: On what date did they do that?

Ms Close: On 11 January this year—2019.

Senator WATT: As you have said, the decision to not prosecute is based on a lack of evidence, isn't it, or at least in this case?

Ms Close: Generally, yes.

Senator WATT: In their view there was insufficient evidence?

Ms Close: Yes.

Senator WATT: Not a suggestion that, in their view, no crime had been committed?

Ms Close: That's not what their role is to do—to determine that totally—so, that's right. There was insufficient evidence for a reasonable sort of prospect of a conviction.

Senator WATT: I think we covered this last time: can you remind me what the threshold is for the AFP to refer a matter to the DPP? Is it that, in your view, a crime has been committed, or there is a successful prosecution likely? What is the threshold?

Ms Close: We have to be satisfied there is a prima facie case that we would achieve a conviction, beyond reasonable doubt.

Senator WATT: So, in referring a brief of evidence to the DPP, it was the AFP's view that there was a prima facie case that a conviction could be recorded, beyond reasonable doubt.

Ms Close: That was our view.

Senator WATT: And that remains your view?

Ms Close: Yes, it does. However, we also work with the Commonwealth DPP. They are the authority to determine whether a prosecution should or should not proceed. We accept their advice.

Senator PRATT: In other words, you know who did it—not to clearly comment on that.

Senator MOLAN: Is that a correct comment?

Senator WATT: Now that that investigation is over, I presume there are some questions that you couldn't answer last time that you could answer this time. How many people were asked to make witness statements in this investigation?

Ms Close: More than 60.

Senator WATT: Any cabinet ministers?

Ms Close: Yes. We spoke to the offices of two cabinet ministers: Ministers Keenan and Cash.

Senator WATT: So, you spoke to their offices, asking for the ministers to make a witness statement?

Ms Close: Yes.

Senator WATT: Did that occur?

Ms Close: They both provided a statement in writing to the AFP.

Senator WATT: How many people declined to make witness statements?

Ms Close: There were eight people in total who declined to make statements.

Senator WATT: Who were they?
Ms Close: Because the Federal Court matter is underway, it is probably not appropriate for me to name names at this point, because some of the witnesses have been called to that Federal Court proceedings, and we know that that matter is part-heard from last week—it will continue on.

Senator WATT: So, some of the people who declined to provide witness statements in your investigation are currently giving evidence to the Federal Court?

Ms Close: Yes.

Senator WATT: Is that former staff of ministers?

Ms Close: That's correct.

Senator WATT: And former or current employees of the Registered Organisations Commission?

Ms Close: Yes.

Senator WATT: I notice, by the way, that Mr Enright from the Registered Organisations Commission is sitting up the back here. Is it at your request that he be here today?

Ms Close: No.

Senator WATT: So, he must have come of his own volition?

Ms Close: Yes—I understand he must have.

Senator WATT: He will have his turn later in the week.

CHAIR: Commissioner Colvin said he didn't know Mr Enright. Is that correct?

Mr Colvin: I don't know Mr Enright.

Ms Close: I don't know Mr Enright, either.

Senator WATT: He is the man right up the back. So, more than 60 people were asked to make witness statements, eight declined, and they include people who are currently giving evidence—former staff of ministers declined to give witness statements?

Ms Close: Yes.

Senator WATT: How did you describe the information that Minister Cash and Minister Keenan provided you? They sent you a letter?

Ms Close: They did. They sent the AFP a letter in relation to this inquiry.

Senator WATT: And would you say that that amounts to a witness statement?

Ms Close: No. I would not classify it as a witness statement.

Senator WATT: So, neither Minister Keenan nor Minister Cash provided a witness statement to the AFP?

Ms Close: That's correct.

Senator WATT: But they were asked to do so?

Ms Close: Yes, we wanted to have the opportunity to speak to them both and see if they could provide information to support our unauthorised disclosure investigation.

Senator WATT: But they declined your request and just sent you a letter?

Ms Close: They sent us a letter.

Senator WATT: How many times did you ask each of Minister Keenan and Minister Cash to provide you with a statement?

Ms Close: At least two occasions—each office.

Senator WATT: In writing?

Ms Close: In writing, as well as verbally through their staff.

Senator WATT: Can you work out the number of times that you requested?

Ms Close: I could. I don't have the numbers before me but I could certainly take that on notice.

Senator WATT: But your memory is that there were more than two times that the AFP wrote to Minister Cash and Minister Keenan seeking a statement.

Ms Close: No. I will have to take that on notice. I can't remember how many times we actually wrote to them.

Senator WATT: But on at least two occasions you requested each minister to provide a statement and they didn't do so. The commissioner has already told us that, essentially, the reason the DPP didn't prosecute was that, in their view, there was insufficient evidence to prosecute.
Ms Close: Yes.

Senator WATT: And I think you said before that there were witness statements missing, which contributed to the decision to not prosecute?

Ms Close: People, as is their legal right, chose not to answer or speak to the AFP and provide a witness statement. They were the statements that we were not able to provide to the Commonwealth DPP.

Senator WATT: So, it would be reasonable to conclude that the refusal of Minister Keenan, Minister Cash, and some of their former staff to provide witness statements prevented the DPP from prosecuting?

Ms Close: I don't think it was the lack of statements from Minister Cash or Minister Keenan, but certainly other witnesses who did not provide witness statements—that certainly went to the investigation we conducted in relation with that unauthorised disclosure.

Senator WATT: Senator Cash has been quite open in estimates that she received a confession from her former staff member that he had leaked this information. Surely, a statement from Minister Cash would have been fairly useful to your inquiry.

Ms Close: We certainly spoke to a large range of witnesses. Speaking to all of those witnesses allowed us to understand the timeline of events—what he believed occurred in relation to the unauthorised disclosure. Therefore, we put that together into the brief of evidence for the Commonwealth DPP.

CHAIR: We might have to leave that there. Can I remind you that I am allowing everyone 10 minutes, but then another couple of minutes to finish that line of questioning, and your couple of minutes is up. Can I clarify, Minister, because I made the comment: the reason you don't answer questions in the Senate at question time is that the rules of the Senate don't allow you to.

Senator Reynolds: That's exactly right.

CHAIR: For no other reason.

Senator Reynolds: Yes. But they don't preclude me, as a portfolio minister, from taking legislation through the Senate and also being here today.

CHAIR: Commissioner Colvin or Commissioner Close, can I just clarify: you were involved in the execution of the warrant, the one issue; looking at the leak, second issue. Both investigations are complete. Had the registered offices group—whatever is it called—determined that there was a fraudulent payment of money by the AWU to somebody, is that a matter then that you would have been re-involved again in this issue?

Mr Colvin: I don't believe so. I believe that the Registered Organisations Commission could have brought a prosecution to the DPP and that would have been a matter independent of the AFP.

CHAIR: So, if theft was alleged do you still think it is a matter for the registered organisation—

Mr Colvin: It would really depend on the information—

Ms Close: And the quantum. We have the rules in respect of where the threshold is that the Australian Federal Police may investigate a matter, or not.

CHAIR: That hasn't come to your radar at this state of the game?

Ms Close: No.

Senator MOLAN: I'll take this back to the intention of these estimates, which is going to finance. Over the last couple of estimates we've concentrated a lot, Commissioner, on your funding. What was your funding in the last financial year?

Mr Colvin: I'll refer to my Chief Operating Officer while the CFO joins us at the table.

Ms Bird: The CFO has just joined us. It was total funding?

Senator MOLAN: Thank you.

Ms Bird: I have it broken down from the PBS and as we've gone through. Darren, can you talk through additional estimates?

Senator MOLAN: In the first instance I'd like just the total, if you would.

Mr Box: Total funding available to the AFP—it's in the PAES document, so I'm just reading to you what's publicly available—is total departmental annual appropriation of $1.7 billion.

Senator MOLAN: $1.7 billion? That's considerably higher than last year, isn't it?
Mr Box: Yes. Let me go to the breakdown for you. Departmental appropriations have moved around for various reasons. We've received funding for various new measures, and ACT Policing revenue has gone up, so, yes, there have been various increases.

Senator MOLAN: How much more than last year, 2017-18, was your funding?

Mr Box: Total resources available increased by $115 million.

Senator MOLAN: $115 million, okay. From going through last year and going into this, I was of the opinion that we'd put something like an extra $300 million into the AFP.

Mr Box: Sorry, Senator; I might have given you the wrong number. That's the movement between the PBS and the PAES. I'm just trying to find the correct number for the movement between years.

Mr Colvin: While the CFO does that, Senator: you're correct; there was an injection of $321 million, from memory, and that was a very welcome injection. Of course, measures come on and off. That's a normal cycle of the budget. It wouldn't necessarily be a set figure increase of $321 million.

Senator MOLAN: Right. So that was the injection, but, if something is not used, I assume you negotiate how that money is used.

Mr Colvin: Yes, and that's a normal part of the budget cycle.

Senator MOLAN: But can I just confirm, comparing it to last year's estimates, that it's probably the biggest increase, isn't it? The government was prepared to put $321 million into the AFP additionally, regardless of whether you used it or whether you used it for the initial points—is that correct?

Mr Colvin: Absolutely. I think at the time it was quoted as the largest injection of one-off funding into the AFP for 10 years.

Senator MOLAN: So there can be no question that there were cuts to the AFP's funding, there was reallocation—issues began, issues ended—but there cannot be an allegation that—

Mr Box: To answer your question, Senator—and, for the record, you asked the question about increased funding from one year to the other but I gave you the movement between PBS and PAES.

Senator MOLAN: Yes.

Mr Box: Again, this is in the PAES. The available appropriation in 2017-18 was $1.683 billion. The available appropriation in 2018-19, as at PAES, is $1.78 billion. So there's an increase there. To answer your question: there's a normal budget process where money comes onto our appropriation and measures terminate as well, so there are ons and offs.

Senator MOLAN: In using that extra money—the $115 million or $321 million—what were the main things? You mentioned ACT Policing, but there are other significant antigang activities, I believe.

CHAIR: I thought you said ACT Policing was a revenue increase. That means they've issued more tickets, does it?

Mr Box: It's a cost recovery. The ACT pays for us to provide services to the ACT.

CHAIR: Okay.

Mr Box: The new measures are around national security, aviation, air cargo and the ACCCE funding to deal with child exploitation—

Senator MOLAN: What was the first word you used there? The what funding?

Mr Box: We have new measures around national security, of $3.2 million; aviation cargo air security, of $12.7 million; and ACCCE, of $12.3 million.

Senator MOLAN: And what's ACCCE?

Mr Box: Child exploitation.

Senator MOLAN: Thank you. With issues such as the Serious Financial Crime Taskforce, where does that stand at the moment? I guess it's a question about both funding and where we stand on the issue.

Mr Box: Yes. I haven't got a number for the task force with me, but I can take that on notice to find the funding for you.

Senator MOLAN: If you would, please, and also the National Anti-Gangs Squad and the Fraud and Anti-Corruption Centre.

Mr Box: Yes. The national anti-drugs task force—

Senator MOLAN: Is that the same as the National Anti-Gangs Squad?
Mr Box: I think so, yes. Funding this year is $17.5 million. Keeping guns off our streets for this year is $4.5 million. There are various measures around that. I haven't got the financial one at hand, but I can get that one for you.

Senator MOLAN: If you could get them to me, I would certainly appreciate that.

Mr Box: Yes.

Senator MOLAN: I believe that the deputy commissioner was appointed earlier this year as the Commonwealth Transnational Serious and Organised Crime Coordinator. That's the case, is it not?

Mr Colvin: Correct.

Senator MOLAN: Thank you. This is obviously a serious issue. Does the fact that you have appointed a deputy commissioner as that indicate that that's a serious issue?

Mr Colvin: That's correct. The deputy commissioner is here, and I welcome him to come up to the table. Absolutely. We welcomed the opportunity to appoint a coordinator for transnational serious and organised crime, for a range of reasons. First, we believed that serious and organised crime, particularly of a transnational nature, was having a large impact on Australia. We also believed that there was an opportunity across government to do more to make sure that all aspects of government were focused towards defeating that serious threat that we were receiving. Of course, many of these challenges sit beyond the ability of just police, so Deputy Commissioner Karl Kent has been appointed as the coordinator.

Mr Pezzullo: Working within the department.

Mr Colvin: In the department, I should say. His job, working with the department, is to bring that whole-of-government approach.

Senator MOLAN: Thank you. Welcome, Mr Kent. When I was involved in border activities, one aspect of transnational crime was people smuggling. Is that still the case, or is that somewhere else?

Mr Kent: People smuggling is certainly one of the threat areas of transnational serious and organised crime. The operational elements still live, of course, within the auspices of the AFP. However, in my role I report to the secretary, and my role is to coordinate across government agencies in order to strengthen policy, capability, and legislation in order to better combat and bring the fight to transnational serious and organised crime at its source. So the intent of my role is to build that national strategic picture and also to contribute towards building capability in that combat space.

Senator MOLAN: What are the agencies across which you coordinate?

Mr Kent: Within the Commonwealth, there are 18 different agencies that have different responsibilities relating to transnational serious and organised crime, from legislative responsibility to regulators to policing organisations to intelligence organisations. If we think about states and territories, police and attorneys-general departments have key accountabilities and responsibilities in that space, because transnational serious and organised crime is business as usual for those organisations as well. Also, we have our international partners because of the transnational nature and the international dimension. We work with our international partners—in particular the Five Eyes community.

Mr Pezzullo: If I might add to the deputy commissioner's answer, when we initially put together the Home Affairs construct one of the clearest refrains I heard from operational agency heads—Commissioner Colvin and Commissioner Outram—and my other colleagues was that too often in this space we try to arrest our way out of a problem. We have amazing police capability in this country. Esteemed forces and, indeed, an esteemed national police force is represented here at the table, but, by law, by training and by professional experience, they don't have access to all of the levers, some of which relate to other portfolios. For instance, sports integrity and dealing with certain dimensions of the drug problem sits with Health, to take one example. When transnational, serious and organised crime gets into money laundering, some of the regulators sit in the Treasury portfolio.

Commissioner Colvin and I initially, but joining with our brother and sister heads in Home Affairs, thought we should appoint, as we've done in the cyber area and as we've done in a few other areas, an officer with deep operational experience but an officer who would not direct operations. The Deputy Commissioner is here as a fully sworn and fully serving member of the AFP seconded to my department. I think Commissioner Colvin would reinforce this point: he does not direct operations. The Department of Home Affairs would never suggest, influence or in any way direct the AFP as to who gets investigated or who gets charged et cetera. That is purely a matter for each of the independent agencies—the Federal Police, the Border Force, the Criminal Intelligence Commission and AUSTRAC. Deputy Commissioner Kent's role is to not only coordinate across those agencies but to look at what the picture is that is being seen, say, from Latin-American drug syndicates, to take one
example. We don't want to go too much into the detail. What are all the tools that we might have not just in the AFP but in Border Force through international partnerships and through tax arrangements. What are the different tools that can be brought to these fight so that—to go back to my very first comment—you're not simply trying to arrest your way out of the problem and you're not playing this endless game of whack a mole that is ultimately self-defeating.

CHAIR: Senator Molan, I'll have to come back to you.

Senator MOLAN: That's fine.

CHAIR: My noise defeated me this time. I indicated verbally that you had another minute to wind up, but I can come back to you later. I'll go to Senator Watt, then Senator McKim, then Senator Patrick and then back to you, Senator Molan.

Senator WATT: Continuing on the issues around Senator Cash: what you've said is that on at least two occasions you approached Senator Cash and Minister Keenan seeking a witness statement. They declined. I take it then that there were additional questions that the AFP would have liked to ask Minister Cash and Minister Keenan beyond what they'd set out in the letters they sent you.

Ms Close: Yes, we would have liked to have spoken to them and obtained a witness statement, as we would have preferred from the other witnesses who didn't provide a witness statement to us.

Senator WATT: Sure. How many people were regarded as persons of interest? What I mean by that is people who the AFP took the view would need to be interviewed under caution.

Ms Close: By the time we got to that point in our understanding of what had occurred, there was one person.

Senator WATT: There was one person who was considered a person of interest. I don't suppose you are going to tell me who that was?

Ms Close: No. Not today.

Senator WATT: I don't know if you have been following the evidence in the Federal Court over the last week, but, given that evidence in the Federal Court to date indicates that the AFP had witness statements which established that Mr Mark Lee, an employee of the Registered Organisations Commission, told Minister Cash's chief of staff that the raid was occurring that day, did the AFP seek to interview Mr Lee under caution?

Ms Close: As I said, we have got the Federal Court process underway, so I'm concerned about providing information about specific individuals who are still yet to give evidence in those proceedings.

Senator WATT: Okay, but there was one person who you regarded as a person of interest, and that is one of the people who is giving evidence in the Federal Court, without naming who it is.

Ms Close: Yes.

Senator WATT: You might have also noticed that, in the evidence Mr De Garis, Minister Cash's former media adviser, gave to the Federal Court last week, he revealed that he found out about the impending raid from Minister Cash's then chief of staff, Mr Davies. Minister Cash has previously told the Senate that—

Senator Reynolds: Senator Watt, can I just clarify something here? I think the commissioner was very clear in his opening statement that they were not at the court hearings and that they're not involved in those court hearings, so what you're reading out now, you're asking the AFP officers to speculate about something that they don't have any firsthand knowledge of.

Senator Pratt interjecting—

Senator Reynolds: Certainly, a lot of the questions you've asked I think are totally in order, but asking the AFP officers to speculate about something they are not party to and is currently before the court, given that they have no knowledge about that, I think that is—

Senator WATT: I accept what you are saying.

Senator PRATT: Why don't you let them say that?

CHAIR: Thank you, Minister. That's useful, but the Federal Police can indicate whether they can or can't. I think your point is valid, but it's up to the police to say that.

Senator WATT: I presume the AFP have access to every media clipping that has been written about this in the last week.

Senator Reynolds: Thank you, Chair, but if you're asking the AFP officers here to speculate about an issue that they are not a party to because they've read it in the media—Senator Watt, even you know very well that that
is inappropriate. I would ask you to rule on that, because now Senator Watt has just said he wants the AFP to
comment on media articles.

Senator WATT: Is this eating into my time, Chair?
CHAIR: Yes, it is.
Senator WATT: Well done, Senator Reynolds.

Mr Colvin: We are happy to receive the questions but, as the minister has said and I said in my opening
statement, we are still a party to the proceedings. We are excused from this current proceeding. So we do need to
be careful. We are not in the court room. We have read the clips. There are many—I don't know whether we have
read them all and I don't know whether we know everything that has been said. We can't possibly give the totality
of the evidence. We will do our best to answer, but we will be circumspect.

Senator WATT: If a person destroys evidence relevant to a police investigation, that can amount to a criminal
offence of attempting to pervert the course of justice, can't it?

Senator Reynolds: Is that a hypothetical, Senator Watt?
Senator WATT: No. You will see why in a moment.

Mr Colvin: It depends purely on the circumstances.

Senator Reynolds: I think that is a hypothetical question.
Senator PRATT: It's not.

Senator WATT: Senator Reynolds, if you want to be asking questions, why don't you come back over here,
rather than over there? It's our opportunity to ask questions, rather than having the time taken by you interfering.

Senator Reynolds: As you and I well know, hypothetical questions are not appropriate questions.

Senator WATT: Okay. I will give you an actual case.

Senator Reynolds: As the commissioner said, it was a hypothetical.

Senator WATT: Do you want to just chew up that whole time?

Senator Reynolds: I am sure Senator Macdonald will give you some extra time. Senator Watt, you know that
asking the AFP to speculate on media reports and now asking hypothetical questions is really inappropriate.

Senator WATT: Are you finished?

Senator Reynolds: Senator Watt, if you are going to ask a non-hypothetical question, then please.

Senator WATT: Here is a non-hypothetical question. Mr De Garis gave evidence last week in court that he
destroyed, deleted text messages sent between him and other people involved in leaking this information about
the police raid. Is that a matter that could amount to the criminal offence of attempting to pervert the course of
justice?

Senator Reynolds: It sounds like a hypothetical to me, Senator Watt.

CHAIR: It is seeking a legal opinion.

Mr Colvin: Senator, that is the first I have heard that information, and in the absence of understanding the full
circumstances and context of it, I can't comment.

Senator WATT: What did your investigation reveal regarding the destruction of evidence, for instance text
messages, emails, or anything like that, by anyone?

Ms Close: I don't have that detail before me. We compiled the evidence, the witness statements, all of the
material that we had available to us and provided that to the Commonwealth DPP to consider.

Senator WATT: Did you find any evidence that evidence relating to the leak may have been destroyed?

Ms Close: We understood that could have been the case in some instances, yes.

Senator WATT: Involving ministerial staff?

Ms Close: It is impossible for me to speculate today about who that may or may not have been. I also did not
hear the evidence from the trial.

Senator WATT: Sure, but in your investigation you found some evidence that evidence relating to this leak
had been destroyed.

Ms Close: Yes. We did find that some of that material may have been destroyed. But we spoke to over 67
people.
Senator WATT: We also learned last week from the evidence in court that Mr De Garis and the media adviser in Minister Keenan's office conspired to leak this information.

Senator Reynolds: Is this another speculation about highly reliable media commentary?

Senator WATT: This is evidence given by Minister Cash's former media adviser.

Senator Reynolds: Which the AFP Commissioner has clearly said that he has no visibility on. Again you're relying on newspaper reports.

Senator WATT: They haven't commented on that particular piece of evidence. The evidence from Minister Cash's former media adviser was that he spoke with the media adviser in Minister Keenan's office and they agreed to essentially split up between them media outlets that they would contact about the raid. Did the AFP interview anyone from Minister Keenan's office?

Ms Close: Yes. We spoke to—

Senator Reynolds: Sorry, Senator Watt, this is clearly sub judice, so not only is it—

Senator WATT: No, it is not.

Senator Reynolds: It is also an issue that the commissioner has said he doesn't go on media reports.

Senator WATT: All I asked—

CHAIR: Minister, if that is a point of order, let me rule on the point of order.

Senator Reynolds: It is a point of order.

CHAIR: It may well be sub judice, but I think we have before us a table of very experienced officers who understand that, perhaps better than we do. And if it is sub judice, you are talking about—I must say I haven't been following it, but this is evidence that is unchallenged in another court, whether it's accepted as fact, of course, we'll have to wait until the end of that particular court case—

Senator Reynolds: Chair, can I just—

CHAIR: No. We will have to wait until the end of the court case.

Senator WATT: This is outrageous. All of my time is going with you two having a conversation.

Senator Reynolds: Sorry, Senator Watt, this is clearly sub judice, so not only is it—

Senator WATT: This is outrageous. All of my time is going with you two having a conversation.

Senator Reynolds: I just raised the point of—

CHAIR: I am actually ruling on a point of order to allow you to continue your questions, Senator Watt.

Senator WATT: Thank you, Chair, and I'd appreciate it if Senator Reynolds could allow us to ask questions as well. My only question was whether the—

Senator Reynolds: Oh, Senator Watt, for heaven's sake—

Senator WATT: AFP interviewed anyone from Minister Keenan's office, and I think your answer was yes.

Ms Close: Yes, we spoke to several people in Minister Keenan's office.

Senator WATT: You obtained witness statements from several people in Minister Keenan's office?

Ms Close: From some people, yes.

Senator WATT: Apart from Minister Keenan, who we know refused to give a witness statement, was there anyone in Minister Keenan's office who refused to provide a witness statement?

Ms Close: I'll have to take that on notice. I don't have the names before me.

Senator WATT: Again, the evidence last week was that Minister Cash's former media adviser and Minister Keenan's former media adviser collectively decided to leak this information and decided which outlets they would leak it to. Are you aware of that ever happening before, where ministers' offices decided to leak information about the police raid—in your experience?

Ms Close: That's impossible for us to respond to.

Senator WATT: Are you aware of it?

Mr Colvin: I just refer to my opening comments that I am always disappointed if material about police operations is made available to the public before it's appropriate. I think I will leave my comments at that. I can't speak for every person in the AFP or former commissioners. I will leave it at that.

Senator WATT: So Minister Keenan, at this point in time, was the responsible minister for the AFP, correct?

Ms Close: Yes.

Mr Colvin: Yes, he was.
**Senator WATT:** Therefore, he and his office have access to highly confidential information regarding AFP operations, correct?

**Mr Colvin:** Appropriate information, yes.

**Senator WATT:** How important is it that the minister who oversees the AFP, that that minister's office treats confidential information in confidence?

**Mr Colvin:** As important as it is that anybody who has confidential information from the AFP treats that information appropriately.

**Senator WATT:** But you don't expect a higher standard from your own minister and his office?

**Mr Colvin:** The standard is the standard.

**Senator WATT:** I think you said earlier in your opening statement, and you have said at estimates previously, that leaking this kind of information puts the safety of your officers in jeopardy. That's your view?

**Mr Colvin:** I have said that many times, yes.

**Senator WATT:** So the effect of having your own minister's office leak this information was to put your officers' safety in jeopardy?

**Mr Colvin:** I am not going to editorialise on that. I have said that I find it disappointing, and it puts my officers' lives and the operation at jeopardy. We had a brief of evidence. We had an investigation that deals with a standard of proof that the police are held to. That's the standard that we work too. I am not going to editorialise or comment on whether someone did or didn't do something. From our brief of evidence, we were looking at a very hard and fast sets of rules around a criminal offence, of which you've already heard that there was one person who was a person of interest to us. The DPP have quite appropriately said that there isn't enough evidence for us to proceed. Ideal in evidence—there is not enough evidence to proceed. I am not going to comment on whether someone did or didn't do it.

**Senator WATT:** Very last question here: do you intend to reopen this investigation given the evidence that has emerged in the Federal Court over the last week?

**Mr Colvin:** It always remains a possibility for police at any point to reopen an investigation. I am not going to say whether we do or do not intend to reopen this.

**Senator McKIM:** I want to go to one of the matters that you raised in your opening statement, which is the matter regarding Mr al-Araibi and his languishing in a Thai jail in fear for his life for a couple of months when Australia owed him protection. You said in your opening statement that the red notice was issued on 8 November at the request of Bahrain. Is the AFP aware that Interpol policies are not to issue a red notice when it's requested by a country from where a refugee has fled and found to be owed protection in another country?

**Mr Colvin:** That's correct.

**Senator McKIM:** So it's fair to say that red notice was erroneously issued by Interpol?

**Mr Colvin:** Well, it was issued in good faith by Interpol. They were not aware at the time of issuing it that he was subject to a protection visa.

**Senator McKIM:** I understand that, but you've made it clear in your opening statement that as soon as Interpol received information regarding Mr al-Araibi's visa status they removed the notice within 24 hours.

**Mr Colvin:** That's correct. The policy of Interpol is that if a person is found to be owed protection as a refugee then they will not issue the red notice.

**Senator McKIM:** So it's fair to say that red notice was erroneously issued by Interpol?

**Mr Colvin:** Well, it was issued in good faith by Interpol. They were not aware at the time of issuing it that he was subject to a protection visa.

**Senator McKIM:** I understand that, but you've made it clear in your opening statement that as soon as Interpol received information regarding Mr al-Araibi's visa status they removed the notice within 24 hours.

**Mr Colvin:** That's correct.

**Senator McKIM:** So in other words, the notice was erroneously issued by Interpol in the first place. I'll rephrase: it should not have been issued by Interpol in the first place, according to its own policies.

**Mr Colvin:** If they were in possession of all of the relevant facts, yes.

**Senator McKIM:** You've then said that the AFP conveyed the existence of the red notice—which, had Interpol been in possession of all the relevant facts, should not have been issued—to ABF on 9 November. Is that correct?

**Mr Colvin:** I will defer to Deputy Commissioner Jabbour, who has the best knowledge of the matter, but that is correct, yes.

**Mr Jabbour:** That is correct. On 9 November the AFP, in its capacity as NCB Interpol, provided notification of the creation of the red notice pertaining to Mr al-Araibi to the Australian Border Force.

**Senator McKIM:** I'll just keep asking questions, and you guys can sort out who answers them.

**Mr Jabbour:** Sure.
Senator McKIM: What steps did the AFP take to ensure that in fact that red notice was proper with regard to Interpol's protocols and policies? We've just heard that had Interpol been in possession of all the relevant information, it wouldn't have been issued. What steps does AFP take, in circumstances where red notices are issued, to make sure that they're actually not being issued with regard to people to whom Australia owes protection? As we've heard, this was issued even though, had Interpol been in possession of all the relevant facts, it wouldn't have been issued.

Mr Jabbour: There are a couple of answers to that. As the commissioner said, back in 2017 the Interpol General Assembly passed a resolution encouraging member states to pass information regarding refugee claimants to Interpol. The intention of that was to allow Interpol the opportunity to consider information as part of their deliberations as to whether to issue a red notice or not. Absent that, in the normal course of their duties they would, at the request of a member state, issue a red notice. The AFP does not have access, as the commissioner said earlier, to the immigration holdings pertaining to people whom Australia has provided protection. On these occasions the process that we rely upon is that we notify the Australian Border Force and if they then identify a match in the Home Affairs holdings, they would advise us. We would then seek authority from Home Affairs to release that information to Interpol for their consideration. That is what we did on this occasion, and the red notice was rescinded at that point in time.

Senator McKIM: Yes, but only after Mr al-Araibi had been imprisoned in Thailand.

Mr Jabbour: Regrettably, that is correct.

Senator McKIM: Right. Just so I'm clear, and possibly this is one to you, Minister, or Mr Pezzullo: the information regarding Mr al-Araibi's visa status was held by the same department that auspices AFP, was it not?

Mr Pezzullo: We are separate legal entities; we administer different legislation.

Senator McKIM: It's the same department, Mr Pezzullo, isn't it?

Mr Pezzullo: Regrettably, Senator—

Senator McKIM: Well, regrettably it's the same department.

Senator PRATT: You're in charge.

Mr Pezzullo: I would much prefer to have statutes which are not so prescriptive and prohibitive as to the mass sharing of data and information. If your party's now coming around to the mass exchange of information through automated means, that would have certainly mitigated this circumstance.

Senator McKIM: I will just trouble you not to engage in political commentary.

Mr Pezzullo: It's not commentary; it's a statement of fact.

Senator McKIM: Mr Pezzullo, the question's pretty clear—

Senator Reynolds: But Senator McKim, if you've got a concern about that—

Senator McKIM: No, it's okay, Minister. We're going fine without your assistance, thank you.

Senator Reynolds: No, Senator McKim, you did ask me or the secretary. What I can clarify on that point is that Commissioner Outram, when he appears here later today, will be providing more information about the issue of the exchange of information between ABF—

Senator McKIM: Thanks. I look forward to that.

Senator Reynolds: Because it is also ABF and AFP.

Senator McKIM: I understand that, Minister, thanks. I look forward to that.

Senator Reynolds: But the point the secretary makes is quite correct, and perhaps, Commissioner, if the AFP can explain the red notice process, because it is very cumbersome and manual.

Senator McKIM: That's okay.

Senator Reynolds: No, Senator McKim, you asked a question; I'm just answering it.

Senator McKIM: No, you're not here to ask the questions, Minister. I'll take care of that, thank you.

Senator Reynolds: No, Senator McKim: you asked me a question, and I'm going to say to you that both the AFP and the ABF can explain to you in a bit more detail the red notice process. And because they are not facilitated through the legislation, as the secretary said, there are thousands and thousands of red notices that, in the absence of automation, they have to do manually. My understanding of the issue between the ABF and the AFP is that that's where it slipped through the gap, as Commissioner Outram, I'm sure, will explain later on today. To answer to your question and to understand the answer to your question, you actually have to understand the red notice process and the manual processes that go with it.
Senator McKIM: Thanks for your assistance, Minister. I'll ask the questions.

CHAIR: Senator McKim—I have stopped the clock—you made a comment before to a public servant that was most inappropriate. It may have just been a passing comment. I'm not going to ask you to withdraw or apologise this time, but I just warn all senators that inappropriate comments to public servants will not be permitted. Public servants, as you know, cannot argue with senators, don't argue with senators, don't challenge those sorts of things, and so they're at a disadvantage. I just urge all senators to be appropriate in their comments. And they should be questions, not comments.

Senator Reynolds: And don't be surprised if the minister at the desk will respond to a political comment to the secretary.

Senator McKIM: All right. Do I get to ask some questions now, Chair?

CHAIR: You do—

Senator McKIM: Thank you.

CHAIR: but please be careful.

Senator McKIM: Mr Pezzullo, should we take from your previous answer that it was legislative matters that prevented the information being shared?

Mr Pezzullo: It was a combination of two things, so I will just conclude my remarks. An element of it relates to automation, the mass transference through computer connected systems of holdings that stretch across multiple agencies and departments. You are right in observing that the AFP and Border Force are part of a portfolio; but as a department of state established under section 64 of the Constitution, we are independent of, separate from and not in any way in a supervisory role over the AFP, nor indeed over Border Force. Each of us operates under statutes. We have the Migration Act 1958. It's got very clear stipulations about who can and can't access sensitive case information from a privacy point of view. The AFP operates under its legislation in pursuing matters relating to the Criminal Code, and the Border Force does things like enforce the Customs Act.

Regrettably, and perhaps I said it too short-handedly, not all of that information—although technology's getting us to a point where we could actually, through almost like a mass hive of information, churn that anonymously without any human being ever seeing it, in that perfect world everything would flag. Short of that world, you've got to transfer data from one legislative regime into another one. Commissioner Outram, as the minister said, will present his end of the transaction. There are tens of thousands of alerts, hundreds of thousands of transactions. Regrettably, and I don't want to pre-empt the commissioner too much, that translation of data doesn't always occur perfectly.

Senator Reynolds: And it's done manually at the moment, I understand.

Mr Pezzullo: Yes.

Senator McKIM: Mr Pezzullo, you talked just in passing about a flag.

Mr Pezzullo: Yes.

Senator McKIM: You would accept, I presume, that in an ideal world Mr al-Araibi's visa status and the protection obligations that Australia owed him would have flagged immediately once the red notice had been issued.

Mr Pezzullo: In an ideal world, it would have flagged without any human intervention being required. Chair, I'll seek your guidance: having heard the AFP commissioner's evidence about the AFP end of the transaction, the best course might be to hear Commissioner Outram's statement, if he intends to make one, because otherwise I'm just going to be continually pre-empting his evidence. Then I can speak to the Home Affairs piece, which is the third element in this story.

Senator McKIM: All right. I still have some further questions.

CHAIR: I am reluctant to change the order that's been—

Senator McKIM: No, I don't think anyone's proposing that. It's when he's ready.

CHAIR: If it's his responsibility and not yours, Mr Pezzullo, perhaps you should just say that.

Mr Pezzullo: No, it is a three-part arrangement: the Migration Act and visa determinations relate to the secretary, Border Force manages the border and the AFP manages Interpol.

CHAIR: Senator McKim is directing, and should be directing, his questions to the AFP at the moment. If he does that, we will avoid that problem.
Senator McKIM: Commissioner, you said in your opening statement that it was actually the home affairs department that provided Mr al-Araibi's visa status to the AFP the day after he had been detained in Thailand. When you say 'home affairs department' do you mean ABF or do you mean the department?

Mr Colvin: No, we do draw a distinction there, because there are sections of the department that have certain information.

CHAIR: Your 10 minutes are up, but you can have a couple of minutes to wind up.

Senator McKIM: Thank you.

Mr Jabbour: That information was provided to us by the Home Affairs character and cancellation branch law enforcement liaison area within the Department of Home Affairs.

Senator McKIM: All right. So we'll come to that when we reach the relevant part of the Home Affairs examination later today.

Mr Jabbour: There is one point, if I may, in relation to an INTERPOL red notice. The red notice indicates that the initiating country seeks the person's arrest for the purpose of extradition. That is all it does. So, even when the red notice was revoked on this occasion, the Thai authorities indicated that their intention was to continue to detain Mr al-Araibi under their immigration laws. A red notice is one means by which a country is notified of the intention of a third party to extradite a person; it is not necessarily the only means by which a country becomes aware of a third party's interest.

Senator McKIM: Okay. Thanks for that. Commissioner, did the AFP have any role at all in informing the Thai government of Mr al-Araibi's travel plans or his arrival in Thailand?

Mr Colvin: I can answer that. Yes, that is correct. In accordance with the INTERPOL rules, once the AFP in its capacity as NCB INTERPOL became aware from Border Force of Mr al-Araibi's imminent departure from Australia on the 27th, we did notify both Thailand and Bahrain in accordance with INTERPOL procedures.

Senator McKIM: And that was because the red notice had been issued?

Mr Colvin: That was because there was an INTERPOL red notice in existence, and we were aware of the imminent travel of a person who was subject to that red notice.

Senator McKIM: Who specifically did the AFP notify in both Thailand and Bahrain?

Mr Colvin: The National Central Bureau.

Senator McKIM: The NCB equivalent in those countries?

Mr Colvin: Our equivalent—yes, that's correct—in those locations.

CHAIR: This might be an appropriate time to leave that, Senator McKim. We can come back to you if needed. Senator Patrick.

Senator PATRICK: Good morning, Commissioner. You may not be able to answer this, but it will alert Mr Pezzullo's team to questions I might ask of Home Affairs. I asked some questions about the Confiscated Assets Account—this is money that goes into an account as a result of prosecutions. The sorts of amounts that have been confiscated each year range from about $30 million to $40 million. The amount of money that's going from those accounts back into rehab seems very small. In 2015-16, $42 million was confiscated; $1 million went to drug treatment and diversion measures. Do you have any feel for where the rest of this money goes? Does any go back to the AFP in any way, shape or form?

Mr Colvin: There are a couple of things I would say. Just for the record, the money in the criminal asset confiscation fund is not always as a result of a prosecution. The Proceeds of Crime Act does allow for civil based forfeitures, so I just put that out of there. I know the context of what you are asking, though. The AFP, like any other agency and in fact, I think, members of the community can make applications for access to funds that have been forfeited that sit in the CAC fund. There are rules that are administered around that that sit with the department. On occasion, we have had money allocated back to the AFP for one-off programs. It can't be for enduring appropriation—so, it's not a substitute for ongoing funding. But, certainly, we have used it on one-off occasions for particular projects or measures that we wanted. Beyond that, we don't administer it.

Senator PATRICK: I will ask questions of Home Affairs a bit later. Can you give us some idea of what kind of project you might have used it on, or maybe that is something you could take on notice, to give a more comprehensive answer.

Mr Colvin: The CFO is just coming back to the table.

Mr Box: To answer your question—and we might have to take the totality on notice—we did use CA funding for foreign bribery: within this financial year, $4.8 million for foreign bribery.
Senator PATRICK: You make application to whom to get that money?

Mr Colvin: Initially to the department. I think the decision-making is a process that the department runs with the minister.

Senator PATRICK: Okay, I'll refer later to Home Affairs, but Mr Pezzullo, on notice, I just want to get some more information about that, thank you.

Mr Pezzullo: Okay.

Senator PATRICK: I'll just very quickly switch across to Witness K and Mr Collaery. I note that you've advised that, over a relatively extended period of time, you formed a brief that went to the DPP in relation to Witness K and Mr Collaery. I know the matter is before the court, but I'm not going to go to any matter that's being decided by the court at this particular point of time. I'm just wondering: in the context of that or in the activity conducted in forming up that brief, did the AFP ever examine illegality from a Commonwealth official perspective or a minister's perspective? Obviously the brief ended up heading down the Collaery and Witness K path.

Mr Gaughan: We did receive a referral in the middle half of last year in relation to the point you just raised. We conducted an investigation and were of the view that no offence had been committed.

Senator PATRICK: Yes, sorry, there was a letter that was written by senators to the AFP.

Mr Gaughan: Yes, correct.

Senator PATRICK: This really predates that. This says: during the examination, during the preparing of a brief for the DPP—which took place well before that—were any of those aspects considered? For example, did an official commit a crime in any way, shape or form?

Mr Gaughan: Senator, noting that we commenced the investigation in December 2013 and a brief of evidence was provided to the DPP in February 2015, I'll have to take that on notice because I don't have that level of detail.

Senator PATRICK: Okay. That's fine. You'll note that Mr Collaery gave a brief to the Australian National University where he spelt out some of the issues and some of the events that had taken place. In that speech, he basically made the point that he didn't think that the particular operation that is alleged to have taken place in East Timor involved a national security function or a foreign affairs objective or a national economic wellbeing objective. Noting that that was in the public domain, can I just ask you on notice to examine whether or not, during the preparation of the brief, those factors were ever considered by the AFP or in any way explored.

Mr Gaughan: We'll take that on notice, Senator.

Senator MOLAN: I'd like to go back, if I could. I mentioned 'national antidrugs', but I think we were talking there about a different issue. I'm interested at this stage in the National Anti-Gang Squad. Does the National Anti-Gang Squad have a presence in all states?

Mr Colvin: It does, Senator, but again I'll ask the deputy commissioner for operations to answer this.

Mr Gaughan: The National Anti-Gang Squad works not just with state and territory law enforcement but also with the Australian Criminal Intelligence Commission and the Australian Taxation Office. There are 87 positions that currently exist within that particular activity. Whilst there are standing gang squads, if you like, in the state jurisdictions, the territories have liaison officers only, but they still have a presence.

Senator MOLAN: Good. What have you been able to achieve in operational outcomes?

Mr Gaughan: Certainly since the inception there have been a significant number of arrests that have taken place. For instance, in Victoria in the financial year 2018-19, 146 people were charged; 47 firearms or firearm parts were seized; and just over $150,000 in cash was seized. In total during that financial year—

Senator MOLAN: How much cash?

Mr Gaughan: $157,000. In total in the relevant financial year, 68 arrests have been made, 233 persons have been charged—

Senator MOLAN: Is this back in Victoria or nationally?

Mr Gaughan: That's across the country. Forty-four firearms or firearms parts have been seized, and very close to $1 million in cash has been seized.

Senator MOLAN: Certainly the first series of figures applied to Victoria. Is that the Apex group?
Mr Gaughan: No, it's motorcycle gangs, outlaw motorcycle gangs. So a very clear distinction on this—this is OMCGs, which we would refer to as outlaw motorcycle gangs.

Senator MOLAN: Okay. Are they being held in check? Certainly there was an increase to the amount of funds that you are confiscating, and possibly, I think from memory, a drop in the number of arrests. Is that approaching being under control?

Mr Gaughan: I think it's fair to say that OMCGs across the country are still the main distributor of illicit drugs throughout the community. It's an ongoing challenge for law enforcement across the country to ensure that we keep them in check. It's also important to note that the NAGS, whilst it's domestically focused, also has a strong presence or a strong working relationship with our international partners, where we're trying to mitigate the spread of outlaw motorcycle gangs into the region, particularly into the Pacific and also in South-East Asia.

Senator MOLAN: I guess this works back into transnational crime—part of the coordination of transnational crime.

Mr Gaughan: A hundred per cent.

Senator MOLAN: So the bikies, the outlaw motorcycle gangs, were certainly active in drugs in general. Ice in particular?

Mr Gaughan: Ice in particular, also cannabis, also cocaine. So, with pretty much any illicit substance, they're involved in the mid-level distribution.

Senator MOLAN: We certainly get reports from rural areas of particular problems with ice, and possibly this is because you can localise a rural area. Do the outlaw motorcycle gangs have a continuing presence in many rural areas?

Mr Gaughan: They do. I think the Australian Criminal Intelligence Commission is appearing sometime later this morning. They will be able to talk more fully to the wastewater analysis work they've done, which is enabling law enforcement to pinpoint areas of specific concern, and we're allocating resources accordingly.

Senator MOLAN: In relation to the Fraud and Anti-Corruption Centre, I've been on a committee which has been looking at a federal ICAC, and there is discussion about that at present. Can you provide an overview of what the FAC actually does?

Mr Gaughan: The Fraud and Anti-Corruption Centre does two things, primarily. The first one of those is it actually does act as an investigation area for serious Commonwealth fraud. The second one is that, working with the other members of the Fraud and Anti-Corruption Centre, it determines exposures, if you like, to Commonwealth activities or grants that have been subjected to fraud, and it attempts to work with those agencies to plug those gaps.

Senator MOLAN: And who initiates them? Can anyone initiate that?

Mr Gaughan: Correct. There are 14 agencies currently in the FAC, and all those agencies work together, housed here in Canberra, to determine systemic problems with programs and to plug those gaps.

Senator MOLAN: Can you give us a couple of examples of 14 agencies?

Mr Gaughan: DHS, DSS, Tax, Border Force—pretty much any Commonwealth agency that has a program of works involving money.

Senator MOLAN: How active is the FAC at the moment?

Mr Gaughan: It's very active. Currently we have five fraud matters under investigation, two corruption matters and a further 18 matters under evaluation. And there are 11 foreign bribery matters as well, which we investigate.

Senator MOLAN: Is that Australians offering bribes overseas?

Mr Gaughan: Correct.

Senator MOLAN: Where are the offices located? Does this go down to all the states?

Mr Gaughan: No, they're based here in Canberra, but we do have connections through state and territory fraud areas as well and we work quite closely with those.

Senator MOLAN: Chair, that is probably all I have on those two issues.

CHAIR: We will go to morning tea shortly, but you have another 2½ minutes, which I might use. I am curious about the terminology. What is the difference between a gang and an organised crime group? For example, the mafia, if they exist—I don't know whether they do or don't—are they a gang? What is the terminology for gangs?
Mr Colvin: It's a good question. At times there is probably loose use of the terms 'gang' and 'organised crime group' but, by and large, the National Anti-Gangs Squad is looking at those groups who align themselves with a particular—

CHAIR: Ethnicity?

Mr Colvin: No; a brand, a symbol.

CHAIR: Motorcycle gangs.

Mr Colvin: Yes, outlaw motorcycle groups will sign allegiance to the group. They will have rules of incorporation for what you need to do to become a member of the group. But there are other gangs: street gangs—a whole hierarchy of gangs. Frankly, it is not uncommon for us to see these gangs working together. You might have quite an organised, coordinated group, such as an outlaw motorcycle group, calling on street gangs to help distribute drugs or calling on different ethnic crime gangs, because of their expertise in a particular service that they might need. It's a good question. We probably use the definition a little fluidly at times but, by and large, when we are talking about the National Anti-Gangs Squad, we are talking about outlaw motorcycle gangs who have ascribed to a particular set of principles with that group.

CHAIR: Your Serious Financial Crime Taskforce would very often involve motorcycle gangs, who do it all for money—and quite lucratively, I think, until you guys came along. What is the benefit of having a task force on serious financial crime and then a task force or squad on anti-gangs, and a centre, which I call a task force, on fraud and anticorruption?

Mr Colvin: The benefit is that it brings focus to the issue. They don't work isolation. Our National Anti-Gangs Squad will work with our financial crimes squad, and our Fraud and Anti-Corruption Centre will work with our counterterrorism teams. They work very seamlessly, but it does bring a level of focus and intensity to the operation. I wouldn't want to discount that outlaw motorcycle gangs are involved in financial crime, but our financial crime task force is not looking at a great deal of motorcycle gangs. I would imagine that the criminality they are targeting is largely from a different end of town. It involves a lot of tax fraud, for instance.

CHAIR: We might leave it there and resume at, say, 10:38.

Proceedings suspended from 10:27 to 10:49

CHAIR: We'll resume the Legal and Constitutional Affairs Legislation Committee's inquiry into additional estimates. My apologies, my arithmetic was awful. It should have been 10.43 when we were coming back, not 10.38—and then we had a private meeting. So I apologise to everyone for that. Secretary, it's your fault for not checking my arithmetic! We'll go to Senator Pratt.

Senator PRATT: Mr Colvin, can you please advise us from the AFP's end what is the process for ensuring that a red notice is not issued for someone who is on a protection visa or that you don't notify authorities about someone's visit if they are owed protection from the nation which has requested the red notice?

Mr Colvin: I guess there are two steps to that. The first is we become aware that someone is on a red notice—and not just someone who is in Australia, who may be Australian or who may have passed through Australia; we are notified of all red notices and, in fact, all INTERPOL notices as a global way of finding out the movement of people. This case shows that, if we are aware a red notice exists and the person has been afforded protection as a refugee in Australia, then we notify INTERPOL and INTERPOL, under their rules and regulations, will remove that red notice.

Senator PRATT: How do you acquaint yourself whether someone is owed protection in Australia?

Mr Colvin: We ourselves don't have access to that information, so in the first instance we rely on the Border Force. It's a combined effort, as the secretary has already talked about.

Senator PRATT: I know, but do you ask Border Force to look?

Mr Colvin: Deputy Commissioner Jabbour, please jump in in a minute. INTERPOL notices are updated constantly—every day or every couple of days. As they are updated we provide that information to the department via the Australian Border Force and they then run those names and check against their records and their holdings for a number of things: Is the person in Australia? Should we be looking for this person actively and asking the host country, who have asked for the red notice, what their intentions are? Or what's their visa status, as in this case?

Senator PRATT: Did you make those inquiries before you notified the Thai authorities about Hakeem al-Araibi?
Mr Colvin: On 8 November, when INTERPOL issued the red notice, his name would have been along with a number of names. Perhaps I should just hand to Deputy Commissioner Jabbour, who will have the details.

Senator PRATT: And the numbers?

Mr Colvin: We will have the numbers, yes.

Mr Jabbour: On this occasion, as the commissioner said, with the notification of the red notice that the AFP provided to Border Force, Mr al-Araibi was one name out of a number of names. To put it into context, in 2018 there were 43,723 notices and diffusions of all types created by INTERPOL. I guess my point is that 13,516 of those were red notices, so the volume is quite high in relation to the issuance of red notices. Going back to your point, there is an agreed protocol between all agencies. The AFP, in its capacity as NCB INTERPOL, disseminates red notices to other agencies and the expectation is that all agencies undertake matching across their databases. The AFP does that against its known holdings. Other agencies are required to undertake matching against their databases and then advise the NCB if there is a match.

Senator PRATT: So they are supposed to advise you if they have a match, including for someone's status as a refugee? Is that what you're saying?

Mr Jabbour: That is correct.

Senator PRATT: Why did that not all happen before you made contact with the Thai authorities in this case?

Mr Colvin: Senator, we're acting on the assumption that it had happened and no notification back to us that this person was a match with our records in Australia—

Mr Jabbour: Correct.

Mr Colvin: along with 42,000 others, we take no further action. The next the AFP was to know was when he presented at the border leaving.

Senator PRATT: When did you notify the other parts of the department responsible for that checking of the notice for Hakeem al-Araibi?

Mr Colvin: The red notice was issued on 8 November in Lyon, France. We notified on 9 November.

Senator PRATT: When did he leave the country?

Mr Jabbour: On the 27th.

Senator PRATT: The 27th of November. Are you aware of what time it would normally take for that kind of checking to take place?

Mr Colvin: We defer that to departmental colleagues and Border Force colleagues.

Senator PRATT: In terms of who would notify INTERPOL that someone had been granted a humanitarian visa, does the AFP or Border Force do that?

Mr Colvin: The AFP would, acting as the INTERPOL NCB.

Senator PRATT: Once INTERPOL is notified, what happens then?

Mr Jabbour: There's a protocol established. As I alluded to earlier, back in 2017 INTERPOL addressed this issue and they've established an Office of Legal Affairs in their headquarters in Lyon, France. The protocol is that the NCB notifies the INTERPOL Office of Legal Affairs for them to give consideration to the issues and potentially revoke the red notice. That is indeed what occurred on this occasion. When the AFP in its capacity as NCB became aware of the visa status of Mr al-Araibi, we notified the INTERPOL Office of Legal Affairs and within 24 hours the red notice was revoked. Regrettably, that was after Mr al-Araibi had been detained in Thailand.

Senator PRATT: When did you notify Thailand because you thought the red notice was active?

Mr Jabbour: On the 27th, the day of his departure, once we'd been notified by Australian Border Force that he was departing Melbourne for Thailand.

Senator PRATT: Is there a legal obligation on the Department of Home Affairs or the minister or anyone else to notify you in the AFP that a person has received a protection visa?

Mr Pezzullo: A legal obligation? No.

Mr Colvin: I wouldn't think so.

Mr Pezzullo: As in stipulated by a statute of this parliament? No. It goes to the exchange that I had with Senator McKim before. We have to set up operational, technological and practical processes and procedures that sit under different legislative authorities.
Senator PRATT: The Courier Mail had reported that details about him were not logged properly in an Australian law enforcement system, leading to a lack of data sharing that would have prevented his detention. Is that correct?

Mr Colvin: I read that. I'm not sure what that was referring to because that's not the reality.

Senator PRATT: What is the system that The Courier Mail is referring to and who administers it?

Mr Colvin: I have no idea, I'm sorry.

Mr Pezzullo: I think the better course, if I might suggest it, is that, once Commissioner Outram has given his account, you can join the two pieces of the transaction together and then we'll have a more informed discussion as evidence to this committee.

Senator PRATT: Have you had those discussions, Mr Pezzullo?

Mr Pezzullo: Yes, but the chair gave me clear directions earlier that we're currently examining AFP estimates. Once we've heard from Commissioner Outram, I'm very happy to join in the discussion.

Senator Reynolds: Can I just reinforce what I said earlier. As a secretary said, there are three parts to this. The AFP is one part of it, but it's important that you hear Commissioner Outram's testimony, and I understand he will raise this issue in some detail in his opening statement so you can see where that happened between the two agencies.

Senator PRATT: I understand that fully well. My issue is that Mr Colvin will no longer be with us at that point. Mr Pezzullo, I need to be able to ask those questions now because they contextualise my questions to Mr Colvin.

Mr Pezzullo: We're in AFP estimates.

Senator Reynolds: They have been asked and answered in this—

CHAIR: Perhaps we could ask Mr Colvin and the relevant officers to hang around, because I don't think it will be long before we get to Border Force, once we finish this. But I would rather deal with police matters.

Senator Reynolds: Senator Pratt, as the Hansard will show, Senator McKim also asked questions on this and I think the AFP can answer—

Senator PRATT: I followed those questions closely and they're not the same questions.

Senator Reynolds: Just allow me to finish, please. The Hansard will show that all of those questions have been asked and answered at least twice.

Senator PRATT: No, they weren't the same questions.

Senator Reynolds: I'm sure the commissioner will be very happy to respond to them, but, again, he can only speak to the AFP's part of this.

Senator PRATT: I understand that. We understand that The Courier Mail reported that two days after Mr al-Araibi was detained, Border Force told the AFP that he had a protection visa, which would have voided the Interpol alert. You weren't aware that he had a protection visa prior to his departure? So who was it that notified the AFP and when precisely did this occur?

Mr Colvin: There is a chain of events which I think it is best that we step through so that the committee is very clear about how this unfolded. I will get the Deputy Commissioner to do that.

Mr Jabbour: If I may I will to go back to put it into context. On 27 November the Australian Federal Police was informed by Australian Border Force of Mr al-Araibi's imminent departure from Australia. They requested advice as to whether any lawful authority existed to prevent the travel, given that Mr al-Araibi was subject to a red notice. You weren't aware that he had a protection visa prior to his departure? So who was it that notified the AFP and when precisely did this occur?

Mr Colvin: There is a chain of events which I think it is best that we step through so that the committee is very clear about how this unfolded. I will get the Deputy Commissioner to do that.

Mr Jabbour: I didn't ask anyone. The Australian Border Force asked the Australian Federal Police, in its capacity as NCB Interpol, whether there was any basis to detain Mr al-Araibi or prevent him from travelling on the strength of the red notice. That is standard procedure.

Senator PRATT: Who did you ask in relation to that?

Mr Jabbour: I didn't ask anyone. The Australian Border Force asked the Australian Federal Police, in its capacity as NCB Interpol, whether there was any basis to detain Mr al-Araibi or prevent him from travelling on the strength of the red notice.

Senator PRATT: Yes, but surely that's the wrong question in this case?

Mr Colvin: It's the right question to ask if you're not considering the protection visa. This is a regular question. A red notice is not a notice in Australia to arrest, but in Border Force's mind they rightly flag that there is a person leaving the country subject to a red notice. Do we have a reason, that is a warrant, on the basis of the red notice, that should prohibit him leaving? The answer was no.
Senator PRATT: Do you have a question where you ask at the same time if someone is subject to a protection visa?

Mr Colvin: No.

Senator PRATT: Surely that should be part of the process as well.

Mr Colvin: In the context of this, we have absolutely no reason to believe they would be. We don't ask if they are subject to a whole range of reasons that might void a notice, but we asked the question on 9 November; we had no response; to us that is clearance that, other than the fact that this person is on a red notice—somewhere in the world, mind you—the next thing we know is when they are at the border. So no, I wouldn't suggest it's necessary for us to ask on every occasion if they are subject to a protection visa.

Senator PRATT: From looking at the earlier media reports, when he's given assurances that he is okay to travel, on what basis should one side of the department be giving that assurance?

Mr Colvin: I can't speak to that at all. It's not an assurance that was provided by us. I have seen that media reporting. I have no knowledge of that assurance.

Senator PRATT: Was that assurance that he was okay to travel appropriate?

Mr Colvin: I can't answer that. It's not something we would have done, contemplated or said to him. It is not a matter for the AFP. We had no reason to stop him travelling. We didn't even know that he was in Australia until this point. He was entitled to travel. There is no lawful reason to stop him travelling. That was the beginning and the end of the AFP's decision-making process at that time.

Senator PRATT: I understand that. Do you have any obligation to report back into the Department of Home Affairs and into Immigration and Border Force when they're giving advice that says he is okay to travel when they haven't even checked—

Mr Colvin: Can I ask you to ask the question again? I want to be very clear. I'm a little confused by what you are asking.

Senator PRATT: How can the Department of Home Affairs in other parts give advice about whether someone is okay to travel in terms of it being a risk to themselves—

Mr Colvin: Sorry—advice to whom?

Senator PRATT: To the person travelling—if they haven't checked with you?

Mr Pezzullo: I'm not aware of any such advice.

Mr Colvin: I am not aware of any such advice. From an AFP perspective, we would not have said to any person, 'By the way, you're subject to a red notice.' That's not something that we are obliged to do, nor would we alert somebody to police interest, particularly because we have no knowledge of the protection visa.

Mr Pezzullo: Chair, I think the best way to deal with this is that I will anticipate a question, as will Commissioner Outram, at the appropriate point in the proceedings. Senator, unless you can furnish me with better particulars, I have seen some media reports that the gentleman in question sought his own assurances either through the consulate-general or the honorary consulate-general in Australia for the Kingdom of Thailand. That would not be advice given to him under any sort of authority from us, but I will run it down, because I think your question is: would a Border Force officer or Home Affairs officer have said, 'You're right to travel?' I have not read any reporting to suggest that. I think the premise of your question, if I am getting my recollection accurate here, is that he sought his own assurances from the Thai authorities, but we will anticipate that as a question.

Senator PRATT: What should someone have done in his circumstances to make sure that they were not inadvertently at risk?

Mr Pezzullo: That is a speculative question. The gentleman in question is a permanent resident of our country, free to come and go subject only to checks that the AFP mandatorily do, as the commissioner has said, about whether there is any reason to prevent him from leaving—for instance, he's the subject of an arrest warrant within Australia. That would be one of your questions, Commissioner. Otherwise a permanent resident, like a citizen, is free to come and go. He travels on a particular passport, can book a ticket and can get on a plane.

CHAIR: We might leave that there and come back to you, Senator Pratt. Can I ask the commissioner about ice. We have had evidence before about the ice epidemic. I have also read in the papers about some successes you have had. Can you give me an overview of that issue. Are we winning or is it too big a problem?

Mr Colvin: Clearly the waste water analysis that the Australian Criminal Intelligence Commission has conducted over a number of cycles now—and the CEO will be able to talk about it more later—tells us that we have a large addiction to methamphetamine, ice, as well as other narcotics. We are seeing opioids increase. We
are seeing cocaine increase. These come in ebbs and flows. That is what the longitudinal evidence would tell us. Are we winning? I have never publicly described this as a war and I don't think calling it a war on drugs is a helpful way to describe or envisage this, but we, and our partners, are seizing large quantities of illicit drugs, particularly ice. I will ask Deputy Commissioner Gaughan to speak about that.

Mr Gaughan: I think Deputy Commissioner Kent rightly pointed out earlier in his evidence that we're not going to arrest our way out of this problem. We have put in place over the last few years some mitigation strategies which take the fight offshore, if you like, trying to interdict the drugs coming prior to their coming to Australia. That has been successful with the work we have done through Taskforce Blaze, which is with the Chinese, where, to date, from 2 November 2015 to today we have interdicted 9.8 tonnes of mainly ice in China and 10.8 tonnes of mainly ice here in Australia. That is a significant amount of drugs in anyone's language. That has led to a bit of a displacement effect in that, because of the success in China, we are seeing less drugs from China come to Australia and indeed the Chinese authorities are interdicting less drugs in China, because of the good corporative workforce. We have seen a displacement into Myanmar, which is unfortunate, but we are working closely with Myanmar police service through our liaison officers there. As an example, since 2016 we have seized in excess of 18.8 tonnes of assorted narcotics and 595 tonnes of precursor chemicals. That is a significant amount. The displacement effect will continue. As recently as last week there was a record seizure in North America of ice that destined for Australia that was being transported by Mexican or South American cartels, so whilst we are having some success regionally, we can't rest on our laurels. The rest of the activity will no doubt take place broadly through South America, where we have liaison officers as well, but we are attuned to the fact that we need to be nimble and we need to respond to the threat wherever it pops up.

CHAIR: If I ask you how many liaison officers you have in Myanmar, is that an appropriate question or would you rather me not ask?

Mr Gaughan: We have one permanent liaison officer in Myanmar, but I will add that we have adopted recently what we are calling a fly in, fly out methodology whereby we will supplement that liaison officer with additional intelligence resources as well as additional liaison officers when we become aware that there is something bubbling that we need to get on top of.

CHAIR: Excuse my ignorance, but is any ice, cocaine or methamphetamine produced in Australia? Do you have data on what the percentage is?

Mr Gaughan: Cocaine is not produced in Australia; it is just about solely produced in South America. Ice can be produced in Australia if the raw ingredients, mainly pseudoephedrine and ephedrine, are transported into Australia, again, primarily out of Southeast Asia. Heroin is imported either through South America or in through Asia again. The trend in the last couple of years has been for ice to be imported; however, I am aware that, as recently as today, that trend may be changing based on some current seizures.

Senator HUME: Can I clarify: in an earlier answer you said 18.6 million tonnes?

Mr Gaughan: 18.6 tonnes.

Senator HUME: I don't have a good sense of whether that is more than previous years or less than previous years, and, if it is more or less, it is because there it is less of it or more of it out there. Do you have a sense of how much we are stopping versus how much, potentially, is getting in?

CHAIR: Or better AFP work.

Mr Gaughan: The CEO of the Australian Criminal Intelligence Commission will be able to give some data through the waste water analysis in relation to what we think is getting through. In general terms, seizures are definitely up—I don't think there is any doubt about that—but consumption is probably steady.

CHAIR: The importation of all sorts of drugs—is it mainly through containers, through Australia Post, through being on persons coming into the country?

Mr Gaughan: The large quantities, if you like, are coming either through containers or through other vessels, particularly yachts and mothership-daughtership type arrangements whereby a large ship hovers off the coast somewhere and a smaller boat goes out, picks up the drugs and brings them back to shore. There is a mix. Small amounts of drugs are coming through the mail on a regular basis, and ABF is seizing those at the border. I suppose, Senator, your imagination is the only thing from stopping you to bring drugs into this country. You can come up with some very innovative ways to hide the drugs to make it very difficult for Border Force to detect at the border. We are relying on intelligence, not just what we glean from Australian partners but, more and more, what we're getting from our international partners to enable us to target the particular container which we have a fairly high probability contains those drugs.
Mr Pezzullo: Are we now examining my department's estimates, Mr chairman?

CHAIR: If it's an easy answer, Mr Pezzullo, if you perhaps—

Mr Pezzullo: I will take it on notice and answer it after Mr Outram has given his statement.

Senator PRATT: You haven't had any involvement in telling the minister's office about this matter?

Mr Jabbour: Prior to the Australian Border Force notifying the Australian Federal Police of Mr al-Araibi's imminent departure from Australia, we were not aware that Mr al-Araibi was indeed in Australia, nor that he was the subject of a protection visa. So prior to that the AFP did not provide advice to anyone, because we were not aware of the situation prior to that point.

CHAIR: Senator, I will just stop the clock there for a moment. I said earlier that we wanted to keep these separate, but is Mr Outram in the area?

Mr Pezzullo: I don't think so. I don't think Border Force is due to appear until after lunch—

CHAIR: No, they're not. I thought they were coming on next, but I just see we've got a few other agencies, and I was just thinking if it was—

Senator Reynolds: They're not due until—

CHAIR: Yes. I was just thinking if he was here it might be better to have a session on al-Araibi and—

Mr Pezzullo: With the chair's concurrence would it be possible for Deputy Commissioner Jabbour to perhaps join the discussion? Would that be acceptable, Chair?

CHAIR: That's what I suggested before, but I don't want to have the police hanging around here all day. Anyway, if Mr Outram is not here it's an irrelevant—
Mr Colvin: If the committee likes, Deputy Commissioner Jabbour will wait back, if out of the Border Force evidence there is something there is something that we need to—then we can do that.

CHAIR: That'll be fine. Thanks for that. Okay, sorry, Senator Pratt, you have about six minutes left.

Senator PRATT: Thank you. So you're saying that the AFP had no role in notifying the office?

Mr Colvin: What I would like to be clear of is, putting this in the context of the day, until such time as we were advised that he was subject to a protection visa we had no reason to think that this was anything other than a very standard transactional matter that we deal with lots—

Senator PRATT: Yes, I know—

Mr Colvin: I have no doubt that once we became aware that there was a failure of the system at some point, then the minister's office would have been notified. We would have to check exactly what our role was in that. I suggest it would've been with the department. We can take that on advice and give you exact detail. But up until that point we had no reason to think that this was an issue.

Senator PRATT: Mr Pezzullo, can I ask you when the department was first notified.

Mr Pezzullo: I think the chairman has just given us some guidance that we will have a joined up, dedicated session regarding this matter in the context of the appearance of the department and Border Force after 2:15.

Senator PRATT: But what is the purpose of you being at the table now?

Mr Pezzullo: In this case it's to assist the interim commissioner—

CHAIR: We usually have the secretary of the department sit through all of estimates. That's why he's paid so much—he has to sit here all the time, as long as we do—

Senator PRATT: But he's paid to answer the questions if he knows the answer.

Mr Pezzullo: To take a practical example—

CHAIR: in the order that the committee sets the program.

Mr Pezzullo: I've got the AFP brief in front of me, I'll have my own departmental brief in front of me and I'll have the commissioner before me. It doesn't suit your convenience, and I do apologise for that, but the chair has given us a rather unorthodox but I think helpful opportunity to appear as three agencies—department, Border Force and Federal Police—and I am sure all of your questions will be answered as best as they can within that time.

CHAIR: When we hear Commissioner Outram's opening statement we might then move onto a session about al-Araibi, and then move on to general Border Force things.

Mr Pezzullo: I think that would be most helpful.

Senator PRATT: Apparently, Mr Colvin said that Mr al-Araibi was not travelling on a passport but with temporary documents and that Border Force contacted the AFP for guidance. That was reported in The Courier Mail.

Mr Colvin: I saw that reported. I wasn't actually aware of that. I've since found out that it is true. I don't believe that was something that I said directly to the journalist, but—

Senator PRATT: No, but Border Force did contact the AFP for guidance on this matter. Is that correct?

Mr Colvin: When he presented at the border he would have been travelling on an Australian issued travel document because of his protection status—

Mr Pezzullo: As a resident.

Mr Colvin: as a resident. Because he has flagged in the system that 'this is a person who is subject to a red notice', they have rung us.

Senator PRATT: What was the nature of those temporary documents? I guess I'll have to ask Border Force that, but was the AFP asked to look at those temporary documents?

Mr Colvin: No. We were asked to provide advice as to whether there was any lawful reason on the basis of the red notice to prevent his departure from Australia, which is a very normal part of the process.

Senator PRATT: Was the AFP aware that Mr al-Araibi was travelling on temporary documents when he left the country?

Mr Jabbour: No.

Mr Colvin: I don't believe we would have been, no.
Senator PRATT: So you would not have been aware that the nature of his documents was temporary, which is something that might often be the case for people who are on protection visas?

Mr Jabbour: No. The information was that Mr al-Araibi had presented at Melbourne Airport, due to travel to Bangkok, and the Australian Border Force requested advice as to whether any lawful authority existed to prevent the travel. That's the extent of the information that we were aware of at that time.

Mr Colvin: We didn't attend. Even though we have police at the airport, this isn't a routine matter that we would attend. It was a matter for the INTERPOL NCB to provide that advice.

Senator PRATT: Next time you were asked that question, would you ask, 'What is the nature of their travel documents?'

Mr Colvin: No, I don't think we would. This is a routine—the failure of the system, if that's what we're going to call it, I want to be careful about it, was not at the barrier. It was not in the exchange between the Border Force officers and the NCB officers.

Senator PRATT: Okay. Where was the failure in the system, as you characterised it?

Mr Colvin: As we've said, when we notified Border Force colleagues on 9 November that this person was subject to a red notice, in the normal course of events if that had flagged a match we would have been advised back sometime after that that this was a person who was on a red notice and was in Australia and was subject to a protection visa.

Senator PRATT: As a norm, how quickly does the department turn over that information and give it back to you?

Mr Colvin: I'd have to take that on notice. I think it varies, to be honest, because on one day we might issue them there could be two new names and on another day there could be 300 new names.

Senator PRATT: How quickly do you normally get the answer back?

Mr Colvin: We'd have to take that on notice and find out from NCB.

Mr Jabbour: I think you'd find there's a protocol in place, Senator. I think within two weeks is the undertaking. Again, it depends on volume. As I said earlier—and the commissioner just touched on this—the volume can be quite high. As the secretary said, unfortunately it is a manual system of checking. There's nothing automated about this.

Senator PRATT: What policies and procedures do you have in place for that window of time in which there might be a risk that someone travels and that crossmatching hasn't happened?

Mr Jabbour: That's part of the review that's been undertaken by the Home Affairs department as a result of this. We're all feeding into that, and we will certainly review the time frames as a result of this case.

Senator PRATT: Okay.

Mr Colvin: Ideally, it's instantaneous, but, as the secretary has said, our systems aren't at that stage at the moment.

Senator Reynolds: That point you raise, Senator Pratt, is at the heart of what Commissioner Outram will be talking about in his opening statement. His opening statement goes directly to that question you've just asked.

Senator PRATT: Thank you. In terms of the guidance the Border Force sought from the AFP, was it simply on whether there was a preclusion on this person travelling?

Mr Jabbour: That's correct.

Senator PRATT: What do they mean when they ask that question?

Mr Jabbour: I think we need to explain, if I may, in relation to the red notice: a red notice is a confidential instrument issued by Interpol to raise the awareness of law enforcement agencies all around the world of the interest in a person from a third party who seeks to extradite that person. That person typically will not be aware of law enforcement interest in them as an individual. It's a confidential database for police purposes. If we put it into, for example, an Australian context, if I may, as a used case, where Australia has sought the extradition of individuals from overseas, the process is this: we will seek a first instance warrant for the arrest of the individual before an issuing officer in Australia. We will then request Interpol issue a red notice alerting all member countries to the interest that Australia has in that individual, and we will attach a copy of the arrest warrant that has been issued by an issuing officer in this country.

Senator PRATT: Thank you.

Mr Colvin: Can I just say something that might help the committee.
CHAIR: Yes.

Mr Colvin: That's the way it works in Australia. Every country has its own procedures for red notices. There are some member countries of Interpol that will take an Interpol red notice as an arrest—

Senator McKIM: Like Thailand, for example.

Mr Colvin: No, I don't believe—

Mr Jabbour: It is up to each jurisdiction, and we don't honestly know. In Australia we can only talk about our processes. The warrant that we have is not sufficient in many countries for them to detain that individual. We then need to work with the jurisdiction to be able to create an instrument locally, but this is all done covertly without the knowledge of the individual.

Senator McKIM: Are we over to me, Chair?

CHAIR: Yes.

Senator McKIM: I just want to go back to 27 November, which is the day—I think you've given evidence today—Mr al-Araibi left Australia. Do you have the time that the call was received by the ABF by the AFP?

Mr Jabbour: No, I just know it was in the morning. I'm sorry, no, I don't.

Senator McKIM: Could you take that on notice?

Mr Jabbour: Sure.

Senator McKIM: Do you know whether that call was received before or after Mr al-Araibi left Australia?

Mr Jabbour: It was before.

Senator McKIM: Do you know how long before?

Mr Jabbour: No, I don't. I know he presented at the airport and the request was whether he should be permitted to travel or not. It was prior to him departing the country.

Senator McKIM: Can you take on notice how long before that call was made?

Mr Jabbour: Yes.

Senator McKIM: Thank you. When did the AFP notify the NCBs in Bahrain and Thailand about Mr al-Araibi's travel?

Mr Jabbour: On 27th after his departure.

Senator McKIM: Do you know how long after his departure?

Mr Jabbour: No, I don't know. I will have to get the exact timings. I don't have the exact timings.

Senator McKIM: Was it prior to his arrival in Thailand?

Mr Jabbour: Yes, it would have been.

Senator McKIM: So it was while he was in the air.

Mr Jabbour: Yes. I will have to check the exact timings for you, but, absolutely, it was prior to his arrival in Thailand. That's correct.

Senator McKIM: Is the AFP aware that Thailand has the death penalty?

Mr Jabbour: Absolutely, for certain offences.

Senator McKIM: So was the national guideline on international police assistance in death penalty situations activated?

Mr Jabbour: Absolutely considered, on this occasion—but he wasn't being detained for an offence in Thailand, on this situation; the offence occurred in Bahrain.

Senator McKIM: Understood. I am aware of that. The AFP is also aware, presumably, that Bahrain has the death penalty.

Mr Jabbour: For certain offences, that's correct.

Senator McKIM: Was consideration given to Bahrain's use of the death penalty, in this situation, given that it was Bahrain that issued the red notice, which was erroneously accepted by Interpol because they didn't have all the information, as we heard earlier? Was the fact that Bahrain had the death penalty considered by the AFP in this situation?

Mr Jabbour: If I may, I'll take that in two parts. I wouldn't accept, with the greatest of respect, that the red notice was issued erroneously by Interpol. The red notice was issued based on the available facts that Interpol had before them, and it is incumbent upon member states to advise Interpol of any reasons to, potentially, revoke a red
notice. That is, indeed, a well-established system that has been in place for many years. So I would submit that the Interpol red notice was issued by Interpol at the request of Bahrain, quite appropriately, and at a point in time when Australia became aware, or was indeed aware, that the person was subject to a protection visa. That's when the opportunity presents, in accordance with well-established Interpol processes, for Australia to notify Interpol, in Lyon, to review and, potentially, rescind the red notice. That occurred on this occasion.

Senator McKIM: Sorry to interrupt, but the issue here is that that didn't happen until much later and—as you earlier gave evidence—regrettably, after Mr al-Araibi had already detained in Thailand.

Mr Jabbour: That's correct, but, with the greatest respect, I don't think we can blame Interpol for that.

Senator McKIM: I've got a different view, but you're entitled to yours, of course.

Mr Jabbour: That's a matter for Interpol, but they'd need to be provided with that information to be able to inform their decision-making process.

Senator McKIM: Understood. But had they been in possession of all of the facts, which include that Mr al-Araibi had been accepted as a refugee by Australia on the basis of persecution in Bahrain, if Interpol had known that, they would not have issued that red notice, would they?

Mr Jabbour: It is highly unlikely that they would have issued the red notice; that is correct.

Senator McKIM: To the second part of my question: did the AFP consider the fact that Bahrain had the death penalty prior to notifying the Thai government of Mr al-Araibi's arrival in Thailand?

Mr Jabbour: That is a question I will take on notice and come back to you in the afternoon to confirm that that did take place. I will confirm that this afternoon, if I may.

Senator McKIM: I'd appreciate that. Just before we leave the guideline, were the requirements of the guideline followed, in all aspects, in this case?

Mr Colvin: I'd like to take this on notice so that we are absolutely clear on the intersection of our international obligations under the Interpol agreements and the intersection of our national obligations around death penalty guidelines. Before we answer, I want to get clarity, myself, on the way they interact.

Senator McKIM: All right; thanks, Mr Colvin. We heard in your opening statement that Home Affairs has undertaken a number of reviews, with a view to improving information exchange in this case. Are you able to inform the committee of the outcome of those reviews?

CHAIR: If it relates to the police, yes. But if it relates to—

Senator McKIM: All right, I'll rephrase the question.

CHAIR: You can ask it later.

Senator McKIM: I think Mr Pezzullo will rightfully point out that that's a matter for the Home Affairs estimates—

CHAIR: Yes.

Senator McKIM: and he's nodding that that's the case. I will ask Mr Colvin a slightly different question. Have any recommendations been made to AFP as a result of Home Affairs reviews, in terms of things that could have been done differently, things that didn't happen that should have? The whole thing.

Mr Jabbour: There is one issue that arose as a result of the review undertaken by AFP.

Senator McKIM: Sorry, is this a review undertaken just by AFP?

Mr Jabbour: It was part of the overall review, and we scrutinised our processes and activities as part of that overall review. We certainly concentrated on the aspects that directly involved the Australian Federal Police performing its role as the NCB.

To that effect, yes, there was one gap, if I can call it that, that I identified. It occurred on 28 November, the day after Mr al-Araibi had been detained in Thailand. An AFP NCB member emailed Home Affairs character and cancellation branch law enforcement liaison, to their group email address, to convey correspondence from NCB Bahrain alleging that Mr al-Araibi had indeed departed Australia on a suspected false travel document. The email requested confirmation of the validity of Mr al-Araibi's travel document. That same day, 28 November, Home Affairs responded to the individual AFP NCB member's email account, advising that Mr al-Araibi was travelling on the valid travel document and also held a protection visa. This was the 28th. Home Affairs advised that details
regarding Mr al-Araibi's visa and travel documents should not be disclosed at that time. This is the first time the AFP was notified of Mr al-Araibi's visa status.

That said, however, after sending the original email to Home Affairs, the individual AFP NCB member ceased duty and did not return to duty until after NCB received separate advice the following day regarding Mr al-Araibi's visa status. This is a gap that was identified during the review, and arrangements have now been put in place to avoid a repeat of this occurrence. The gap is that an individual member, on this occasion, albeit the day after Mr al-Araibi's detention, sent an email from the member's individual email account to a group account within Home Affairs. Home Affairs responded, quite appropriately, to that individual's email account, but that individual had ceased duty. We've now changed those arrangements. My assessment, Senator, is that that did not change the course of events on this occasion. But, certainly, better practice is that it should have come from and responses should have returned to a group email account which other members who were on duty over a 24-hour period would have had access to.

**Senator McKIM:** And those changes have been put in place?

**Mr Jabbour:** Those changes have been made; that is correct.

**Senator McKIM:** Was that the only matter. Sorry, Mr Jabbour, forgive me if I am paraphrasing here, but I think you said this was ABF's part in the broader Home Affairs review.

**Mr Jabbour:** Correct.

**Senator McKIM:** Were there any other matters—

**Mr Jabbour:** AFP, sir.

**Senator McKIM:** Sorry; the AFP's part in the broader Home Affairs review. Were there any other matters that arose out of the AFP's self-examination in this situation?

**Mr Jabbour:** Not from an AFP perspective.

**Mr Colvin:** I would refer to the department for the broader review. They may or may not be able to—

**Senator McKIM:** Just on that—Mr Colvin, thank you—were there any recommendations made to AFP out of the broader review, in terms of things that could have been done differently or gaps in the system?

**Mr Jabbour:** Not that I'm aware of.

**Senator McKIM:** Have you seen the final review?

**Mr Colvin:** I don't think that the review is finalised yet.

**Mr Jabbour:** I'm not sure, Senator. I'll have to take on notice whether the final review has been published. But we've been working very closely, as you'd appreciate, in relation to this matter. I will have to confirm it. I've certainly read a lot of correspondence in relation to it from both sides. Whether that is, indeed, the final review, I'm not 100 per cent sure.

**Senator McKIM:** We can follow that up at the appropriate time. Thanks, Mr Jabbour. Just back on the national guideline on international police-to-police assistance in death penalty situations, you said, I think, that this wasn't a matter where the death penalty may apply. Is that right?

**Mr Jabbour:** Not for Thailand.

**Senator McKIM:** Not for Thailand, yes. And then I asked about Bahrain, and you've agreed to take that on notice.

**Mr Jabbour:** Correct.

**Senator McKIM:** Is it your evidence to the committee that the guideline was followed in this case?

**Mr Jabbour:** To the best of my knowledge. But I did say that I would take on notice, if I may, the arrangements with respect to Bahrain. And, as the commissioner pointed out, we'd also need to consider the intersection between Interpol regulations and, indeed, those guidelines, just for clarity.

**Senator McKIM:** Yes.

**CHAIR:** Thanks, Senator McKim. Senator Pratt?

**Senator PRATT:** Thank you. I would now like to turn to the au pair raids that took place on 11 October in relation to the AFP's raid of the Department of Home Affairs. As I understand it, you were seeking the source of information to the Senate inquiry, and we spoke about this in estimates last year. Of course, you characterised it in relation to 'media leaks'. Have you since been directed and notified that the information you seized in that raid is covered by parliamentary privilege?
Mr Colvin: We were notified at the time. I am going to hand to Deputy Commissioner Gaughan, but I do want to make one point—I know I said it at the last estimates hearing as well—I know it was widely reported in the media that this was a 'raid', but I have to say that I believe that calling this a 'raid'—

Senator PRATT: Okay.

Mr Colvin: It's a search warrant by consent with the department at an agreed time.

Senator PRATT: That's fine.

Mr Colvin: We're not dealing with—

Senator PRATT: I am not going to buy in to debating that.

Mr Colvin: I am sorry to make a small point, Senator, but it gets reported all the time.

Senator PRATT: Thank you for clarifying. 'The execution of the search warrant' is fine.

Mr Pezzullo: Officers were very welcome to attend that morning.

Senator PRATT: I'll concede that and move on. I don't mean to—

Mr Colvin: Thank you.

Mr Gaughan: So, to your specific question, on 26 November 2018 the AFP became aware of the Privileges Committee's 172nd report, which deemed that parliamentary privilege would apply to what was seized.

Senator PRATT: Okay. Have you concluded your investigation, or is it ongoing?

Mr Gaughan: We consider the investigation finalised.

Senator PRATT: I understand you have received a complaint with respect to the execution of that warrant. Can you tell us the basis of the complaint and what you have done to address it?

Mr Colvin: Yes. A complaint was received from a member of the public, and that has been referred to our professional standards team.

Senator PRATT: Okay. What have you done? What was the nature of that complaint, and what have you done to address it?

CHAIR: Is it appropriate to be publicly talking about complaints made to the Federal Police before they're investigated?

Mr Colvin: Chair, I'm comfortable talking about the nature of the complaint. The individual concerned is a part of the investigation and has made a complaint about the police action on the day, and—as you probably saw reported in the media—inferences of political interference. That matter is now being investigated and I don't think I should comment any further on it.

Senator PRATT: Okay. In relation to executing that warrant, what would you do in the case of knowing that that warrant had questions or parliamentary privilege that related to it?

Mr Gaughan: I think we have answered this question before in these particular proceedings. As you would be aware—as would the chair of this particular committee—we appeared in an in-camera hearing of the Privileges Committee. I think we are skating on thin ice here in relation to answering any questions around the evidence we gave in that committee.

CHAIR: Commissioner, I was just about to make that point. For the record, I am deputy chair of the Privileges Committee, and we really don't talk about things that happened, particularly not about in-camera hearings of that committee.

Senator PRATT: I am not aware of the inquiry before the Privileges Committee, but, as you would understand, I am well aware of the execution of that warrant—

Mr Colvin: Yes.

Senator PRATT: and my own concerns in relation to the way that warrant was executed and whether parliamentary privilege was upheld at that time.

Mr Colvin: This gets to the very core of our evidence to the Privileges Committee. I respect that you have an opinion on this. We have expressed our opinion to that committee, and the committee has yet to determine how it wants to find in relation to that. What I will say is that, as always—even before this matter—the AFP continues to be very attuned to the expectations and guidelines of this parliament. This is very difficult territory for us, as you can imagine.

Senator PRATT: I do understand.
Mr Colvin: We tread very carefully, as we did in this matter. Beyond that, the Privileges Committee will make a determination about whether it thinks we did or didn't do the right thing.

Senator PRATT: Okay. I'll drop the privileges matter because I know you will be well aware of those concerns.

Mr Colvin: Yes.

Senator PRATT: There are a set of guidelines in relation to the execution of warrants in relation to privileged matters.

Mr Colvin: Yes.

Senator PRATT: You will also have a set of guidelines in relation to media reporting on politically sensitive matters, as I understand it.

Mr Colvin: Not specifically on media reporting of sensitive matters, but we're conscious of it, yes.

Senator PRATT: There's a set of guidelines in relation to your obligations to tell the minister's office about something that is sensitive.

Mr Colvin: Yes.

Senator PRATT: And the guidelines might say that you should tell them or, frankly, that you shouldn't tell them, and you need to make a judgement about what's appropriate to tell them.

Mr Colvin: Yes.

Senator PRATT: I note the messages on the execution of the warrant between Deputy Commissioner Gaughan and Minister Dutton's chief of staff have been released. These were text messages rather than WhatsApp messages, as per your testimony last estimates.

Mr Colvin: That's correct.

Senator PRATT: Is it normal to provide advice to the minister's office that early before the execution of a warrant?

Mr Gaughan: If I could provide some context which I think's very important in relation to your questioning here, my text message, obviously, was at 11.52 am and is date stamped—and that's fairly clear. Earlier that morning the national manager, Assistant Commissioner Deb Platz, who's responsible for this particular area, attempted to call the minister's office and chief of staff—on that date. When the calls weren't answered, Assistant Commissioner Platz sent a text message to the minister's chief of staff at 11.14 am on 10 October. This text message stated: 'Craig. Hi. Our team are executing some search warrants today that may cause some media attention. These relate to the leak of emails relating to au pair matter. Please call if you'd like further information. Regards Debbie.' She then received a phone call from the minister's office shortly after that text message. For operational reasons which were due to technical compatibility—that's probably about as far as I want to go with that—it was decided that the search warrant activity would be deferred to the following day, 11 October. That was why my text message was sent at 11.52. That provides the context. Assistant Commissioner Platz also provided similar advice to the minister's office by way of a telephone call at 5.51 pm on the 10th and the warrant was executed on the morning of the 11th, as you're well aware.

Senator PRATT: Was the warrant signed by a judge and when was it signed?

Mr Gaughan: It was signed by a magistrate, which would be the normal course of events. Again, this crosses over on evidence we gave to the Privileges Committee in relation to timings. A warrant expired and a new warrant was issued. Again, we probably can't go much further than that.

CHAIR: I am uncomfortable—

Senator PRATT: We did ask this on notice.

CHAIR: Hang on, Senator Pratt. I'm uncomfortable about all of this because, as I say, I know a bit more about it because of Privileges. But, as well as that, Senator Pratt, as you know and have admitted, you were personally involved. We don't want to get into a slanging match about a senator perhaps protecting a criminal with stolen documents. The questions you're asking could possibly lead to questions about that issue, and I think it's probably appropriate for all of us if we treat this matter very, very cautiously. I urge you perhaps to move onto another subject. It has been fully litigated in the Privileges Committee, it will be eventually reported to the President and to the parliament, and people can make their own assessments of the appropriateness of the senator's involvement in what could have been a crime.

Senator PRATT: Is it normal for the minister's chief of staff to have a role in directing when warrant activity should occur?
Mr Colvin: Absolutely not, and the chief of staff has not been involved with directing the activities of the police.

Senator PRATT: So the thumbs up was just, 'Thanks for letting us know,' rather than, 'It's okay to go ahead'—is that what you're saying?

Mr Gaughan: It was actually my thumbs up, Senator.

Senator PRATT: Okay, good. I'm glad to know it. Minister Dutton is the minister responsible for the AFP, and your guidelines are that he should be advised on any warrant activity that might be politically sensitive. What procedures do you have in place to deal with any possible conflicts of interest in relation to this?

Mr Colvin: Every matter is taken on its merits at the time, and we have to make a judgement, as we always do, about what's appropriate and what's not. In this case, this was a matter referred to us by the minister's department. We have no reason to believe that the department or, for that matter, the minister were in any way going to affect, or could affect, the operational outcome. That's what we have to consider. In who we tell and what we tell, we're always considering: will this impact operationally on the matters that we're progressing?

Senator PRATT: So you didn't make an assessment of the conflict of interest in relation to whether the minister might have a direct interest in this matter? What consideration did you give to the nature of the material in this case and whether it presented a conflict of interest?

CHAIR: Again, that was fully—perhaps I shouldn't even say that.

Mr Colvin: It is just a normal part of what we do, making judgements about how much information and the basis. A lot of the work we do we don't tell the minister or his office. It is around those matters that are going to become sensitive in the media and attract media attention. That is a standard course of conduct that we have had for as long as I can remember. If we felt there were a conflict of interest, for example someone in the office or the minister was in some way intricately involved in the facts that go to the commission of the offence, we would have to consider it. But in this case I don't believe we saw a conflict or a problem operationally for us at a time that was tantamount to when the warrant was going to be executed initially—because that was delayed, as you have just heard—that we felt that there was any conflict or operational imperative not to tell him.

Senator PRATT: The text from Minister Dutton's chief of staff says, 'This afternoon is also fine.' It does read as if they are giving direction to you about as to when the warrant is executed.

Mr Colvin: I can state categorically for the record that that is not the case. I accept that you could interpret it that way, but that has never been the case, hasn't been the case and won't be the case.

Senator PRATT: In terms of a conflict of interest with Minister Dutton, this parliament might receive information under parliamentary privilege that pertained to a member of parliament. If that member of parliament were also the minister that you were advising about the execution of the warrant, in what way did you consider the guidelines in relation to whether politically sensitive material, as to whether it was indeed appropriate at all to advise the minister?

Mr Colvin: We need to take a step back here. We are investigating the allegation that a member or a department released material in an unauthorised manner. The whole crux of the investigation was about who released that material. That is the crime we are investigating. I accept that there is a lot of other white noise that sits around this.

Senator PRATT: Parliamentary privilege is white noise?

Mr Colvin: No—in terms of the essence of the crime and the alleged offence that we are investigating. I am not saying parliamentary privilege is white noise at all. In fact you well know that we have taken these matters very seriously and always do. But my officers are investigating the suspected unauthorised release by an individual. That is what we were investigating.

CHAIR: Are politicians not able to be investigated if they are part of a criminal activity; that is, as an accessory after the fact to stolen documents? Do parliamentarians have any special rules?

Mr Colvin: There is nothing that prohibits a parliamentarian being investigated, but there are rules around what we can access, when we can access it and how we go about that investigation. Those are the rules of parliamentary privilege.

CHAIR: You have been questioned at length today about two incidents, one of which involved members of a parliamentarian's staff allegedly holding stolen documents, and another one about a parliamentarian—

Senator PRATT: Leaked documents.
CHAIR: Stolen documents—documents that didn't belong to that person, but were illegally taken from their rightful source and held in a parliamentarian's office. I am just concerned—if you are going to commit a crime, make sure you involve a parliamentarian so the Federal Police have their hands tied. How do you deal with difficult issues like that?

Mr Colvin: I don't wish to comment on the nature of what it allows. Parliamentary privilege rules exist. They are rules that have existed for a very long time, which, by the very nature of the work that the AFP is involved in, are often tested to see that they still apply to the situations that we find ourselves in. And that is what the privileges committee is considering now to see whether the rules, as they currently apply, are still appropriate and how did they apply in this particular matter? No-one, to my knowledge, is free from accusation of having committed a crime. Where the restrictions are is in our ability to investigate that.

CHAIR: Because of parliamentary privilege?

Mr Colvin: Parliamentary privilege exists for a reason and I am not to discuss or debate the merits of that. It exists and we work within those rules.

CHAIR: Neither am I. But it seems to me that we've spent a long time at this estimates investigating two incidents of suggesting the police are at fault when very often one might say perhaps it's parliamentarians or their staff who are aiding and abetting a crime. I guess that's hardly a question.

Mr Colvin: I will take that as a comment.

CHAIR: Can I finish that by saying that I personally have the utmost faith in the competence, honesty, integrity and independence of the Australian Federal Police. In my long experience, both in government and in opposition, I have been mightily impressed about the approach that the AFP has taken. I really didn't want to get into this area—and I suggested to Senator Pratt that it may be inappropriate—but perhaps now we can move on.

Senator WATT: Can I move to a different topic? You will be familiar that last week there was an apparent leak of classified national security information to The Australian on the 7 February, that was the leak of ASIO information in respect of advice on legislation that was before the parliament relating to the medical transfer of sick refugees. I understand from media reports that Mr Pezzullo as the secretary has formally referred this leak to the AFP for investigation, is that correct?

Mr Colvin: That is correct.

Senator WATT: Mr Pezzullo, did you speak to the minister, or his office, either prior to that referral or after that referral?

Mr Pezzullo: No. And I make it a practice not to engage with ministers or their staff. If I decide, as I am obligated to as a secretary appointed under section 57 of the Public Service Act, that there has been an unauthorised disclosure of our classified advice—what a minister does with our advice in the parliament is covered by privilege and hat a minister might wish to do in terms of their own personal media is a matter for the minister—where I see references to documents, including paraphrased or, indeed, closely extracted extracts from documents that I know that my department's generated, I will without hesitation refer it to the police commissioner.

Senator WATT: Mr Colvin, are you or one of your officers able to give us a progress report on that investigation?

Mr Colvin: The matter is being evaluated at the moment.

Senator WATT: Obviously you can't provide a lot of information about this but can you tell me if you have identified any particular lines of inquiry?

Mr Colvin: The matter is under evaluation.

Senator WATT: Are you looking at any ministerial officers as well as the department about that leak?

Mr Colvin: It's all under evaluation.

Senator WATT: So you're evaluating whether the leak may have come from ministerial offices or departmental offices—

Mr Colvin: For every matter like this we receive we evaluate what avenues of inquiry are open to us, what the prospects of a successful investigation will be. We are going through that. Whether an offence has been committed, what the nature and the context of the document that has been leaked, what it's protection and classification is—we are going through that process at the moment.

Senator WATT: So at this early point in the investigation all possible sources are open for investigation whether it be ministerial offices or departmental sources?
Mr Colvin: The matter is under evaluation.

Senator REYNOLDS: Senator Watt, I presume, in fact I know, that then includes whether there was a leak at all. So you're making a presumption that there was a leak, and I believe it is important to put that on the record that part of the evaluation will be if it even happened in the first place.

Senator WATT: How else could ASIO classified information be published in a newspaper without there being a leak?

Senator Reynolds: That is part of the evaluation. You and I both know they have to first determine if a leak had occurred, and there certainly hasn't been any evidence of that yet.

Senator WATT: You are seriously saying there is no evidence of a leak even though national security information is in the newspaper?

Mr Colvin: All I'll say is—

Senator WATT: Commissioner, that was directed at the minister.

Senator Reynolds: Sorry, Senator Watt, I've said that, clearly, part of the evaluation has got to be if a leak occurred.

Senator WATT: What else could it be, other than a leak?

Senator Reynolds: I'll hand over to the commissioner.

Senator PRATT: We can ask—

CHAIR: No, no. We're not guessing whether a newspaper report is fact, and I'm not sure if the police can comment on that anyway.

Mr Colvin: Chair, I will say this: what we have to deal with, as I've said many times before, is evidence and offences. We have to look at the proofs of the offence, not what people think or believe has occurred or what might be in the media. We need to look at the elements of the offence to satisfy ourselves that the alleged activity matches the elements of the crimes that we have available to us.

Mr Pezzullo: I should add that the mere fact of my referral—because I'm not qualified or competent to make those determinations; that's a matter for the commissioner. It's not for me to establish whether there's evidence of a crime or whether there's evidence that a crime has been committed by any particular person. It's my job as a secretary to alert the police commissioner through the referral to say, on its face, it appears to be the case that it's possible that extracts, at least, or sections of a document which has otherwise got classification markings on it has somehow made its way into this report. I cease my evaluation at that point. The commissioner then, because it's a potential criminal matter, has to establish: Is there an offence in question? What are the facts that might support the elements of an offence being established? And then he has to make a decision about whether to proceed. That describes our separate roles.

I should, for the record, too, Mr Chairman, through you, say that there is a third vehicle, of course, whereby my satisfaction can be achieved that our documentation has been appropriately released to the public, and that is of course if the minister requests and authorises the declassification of said document. Earlier I said that what a minister does under parliamentary privilege is for a minister; what a minister chooses to declassify, subject to law, of course, in their own personal media activity is a matter for the minister. But the department, whether it's through FOI or the Archives Act or generally otherwise, can also release documents into the public domain, appropriately redacted. In the case that you're referring to—I think we're both familiar with the case in question—that request was made and the document in question, with a number of redactions, was subsequently declassified and publicly released. So, just to be ample in my evidence, there are three pathways to get classified information on the record.

Senator WATT: Okay, got that. Commissioner, does that mean then that your officers haven't yet interviewed anyone about this matter?

Mr Colvin: It doesn't necessarily mean that. As part of the evaluation we may well do that, but we've only had the matter for a week, a few days; I doubt that we would have got to that stage yet.

Mr Gaughan: No, no-one's been interviewed yet. I might add that inquiries such as this will probably determine that there were a very large number of people that had access to that particular document.

Senator WATT: So you haven't got to the point yet where you can rule out any sources of that leak?

Mr Gaughan: We're still under evaluation.

Senator WATT: It is the case, isn't it, that ministerial staff who have access to this sort of information have security clearances?
Mr Colvin: Sorry, Senator, can you just repeat that? My apologies.

Senator WATT: Am I right that ministerial staff who have access to this sort of information have security clearances?

Mr Colvin: I would want to take that on notice, because not all those ministerial staff have security clearances.

Senator WATT: Even those with access to this kind of national security information?

Mr Colvin: I'd want to take that on notice.

Senator WATT: But you'd agree that, if it does end up being proven that a leak has occurred, that is a pretty serious breach of clearance conditions, isn't it?

CHAIR: No, you wouldn't answer that—it is purely hypothetical.

Senator WATT: What are the penalties for such leaks, if they are proven?

Mr Gaughan: It's national security, so it's five—

Mr Colvin: Depending on the classification of the material, it can be five years for national security material or two years for other material.

Senator WATT: So up to five years jail for leaking this kind of information?

Mr Gaughan: If it's deemed to be national security information.

Mr Colvin: If that's the offence, that is applicable to the circumstances as we find them.

Senator WATT: Are there any penalties for ministers who direct their staff to leak national security classified information?

Mr Colvin: I deal with criminal law. If it doesn't fit in with a criminal offence then it's not something I can comment on.

Senator WATT: So there's no separate penalty for a minister who directs their staff to do so?

Mr Colvin: When you say 'penalty', are you talking about a criminal offence?

Senator WATT: Yes.

Mr Colvin: If the facts of the matter point out that a person, whether they be a minister or otherwise, has committed an offence, they've committed an offence.

Senator WATT: And that could either be themselves leaking information or being accessory to that?

Mr Colvin: It's hypothetical. It depends on the situation and the circumstances that we find.

Senator WATT: When do you expect that investigation to be finalised?

Mr Colvin: It could be some time. Our history with these is that they are long, complex and require us to talk to a lot of different people.

Senator WATT: Has Minister Dutton or his office spoken to the AFP about the leak, given that you sit within his portfolio?

Mr Colvin: No, not to our knowledge, and nor would I expect that he would.

Senator WATT: How do you manage such cases when an investigation might touch on the office of the minister you answer to?

Mr Colvin: We would deal with it very sensitively.

Senator WATT: Are there any protocols in place?

Mr Colvin: Beyond what Senator Pratt was talking to us about earlier, these are matters of judgement that we make as police officers.

Senator WATT: I have one other topic, Chair, but I know Senator McKim is keen to ask some, and it might be better if I wait and have a full 10 minutes, if that's possible.

CHAIR: Yes, you only have a minute left. Senator Molan or Senator Hume, do you have anything? No? Okay, Senator McKim.

Senator McKIM: What was the classification of the relevant document?

Mr Colvin: The reason I don't want to answer that is what's reported in the media may not be what we believe we're dealing with. The classification is all subject to the evaluation we have to make, because that determines what offences may or may not have been committed.
 Senator McKIM: All right. Mr Pezzullo, you've said that you were legally required to make this referral to the AFP. Is that right?

 Mr Pezzullo: Under the protective security framework, which obligates all secretaries to make such referrals, yes.

 Senator McKIM: What bar do you have to clear, in your mind, before you make such a referral? I'll just flesh that out. If you'd seen a report in a national newspaper that purported to be an extract from a classified document but it clearly wasn't, presumably you would not have referred that matter. You said in your evidence that, I think, paraphrasing even from extracts of the document—

 Mr Pezzullo: On its face. If the secretary's given cause after an investigation conducted by his or her own officers, including by those who have drafted the relevant document, if on its face it appears to be the case that the journalist in question has either cited a document or—worse—has got possession of it, that's the bar. But that doesn't of itself prove that a crime has been committed. That's a matter for the—

 Senator McKIM: Understood. But you said if it appears—

 Mr Pezzullo: Yes, on its face.

 Senator McKIM: What you're saying is that it appeared, on its face, as if the relevant journalist had either had sight of or was in possession of that ASIO brief.

 CHAIR: We're getting into supposition.

 Senator McKIM: No, with respect, we're not.

 CHAIR: It 'appears this' and it 'appears that'. We can only ask Mr Pezzullo or the AFP, who we're dealing with at the moment, on facts within their knowledge, not what might appear to someone to be a case or not.

 Senator McKIM: That's right.

 Mr Pezzullo: I have to open my mind, Senator, to the possibility that through some remarkable coincidence—or 'a coincidence', shall we say—that the journalist in question has closely paraphrased or summarised a document that I know my department's created, and I have to hold open the possibility that it might simply be a coincidence—similar syntax, similar grammar, similar sentence construction. That's something that one gives attention to. The other factor that one turns one's mind to is: has the journalist maybe heard about such advice but doesn't seem to have had any detailed briefing on it? Canberra is a fairly small place. Lots of people think they know things. Often, particularly to those of us who know quite a lot of things, you look at it and say, 'No, they don't know what they're talking about.' So you run a set of filters. Again, none of that establishes the fact that a crime under the criminal code or the Crimes Act has been committed.

 Senator McKIM: Yes; thanks, Mr Pezzullo. My question was: is it the case that you formed a view that it appeared, on the face of it, that this journalist had either had access to or was in possession of a classified ASIO—

 Mr Pezzullo: Or had been—yes. That's a pretty serious bar to clear. I wouldn't have referred the matter otherwise.

 Senator McKIM: I appreciate that. Commissioner Colvin, what date and, if possible, what time was that referral from Mr Pezzullo received?

 Mr Colvin: It was on the day of the article, but we'll take on notice exact details.

 Senator McKIM: So it was the same day.

 Mr Colvin: Yes. I am quite confident it was. I was not in Canberra at the time, but I'm pretty sure—

 Senator McKIM: That's okay. I'll ask Mr Pezzullo. He might be able to clear it up for us. Mr Pezzullo, did you make that referral to the AFP on the same day that the article was—

 Mr Pezzullo: Or the following day. I'll have to check the records. We do go through a process of evaluating the story first, just so we're not overburdening the commissioner and clogging his processes. If it wasn't the day, it would have been the day after.

 Senator McKIM: All right, thank you. Commissioner, you've said that Mr Pezzullo's referral remains under evaluation by the AFP. Are there protocols in place around who you would report back to once that evaluation and any subsequent investigation was complete?

 Mr Colvin: We have protocols around an evaluation, we have time lines we try and do an evaluation in, and anyone who refers a matter to us can see, on our website, what we will consider. I would ordinarily go back to the person who referred it, in this case the Secretary, to say, 'We have evaluated and we will proceed to an investigation' or 'We have evaluated it and for these reasons we're not taking the matter forward.'
Senator McKIM: So you would notify Mr Pezzullo once the AFP had made a decision on whether or not to commence a formal investigation?

Mr Colvin: Correct.

Senator McKIM: In the event that you decide not to, that would be referred to Mr Pezzullo, and presumably from the AFP’s point of view that would be the end of the matter.

Mr Colvin: Yes.

Senator McKIM: If you decide to proceed to a formal investigation, you would notify Mr Pezzullo of that and then proceed with the investigation?

Mr Colvin: Yes.

Senator McKIM: In that case, when the investigation is complete, who would you notify of its outcome?

Mr Colvin: If the investigation was successful from our perspective and we led charges against somebody, it would become fairly obvious. But if we proceeded with an investigation, concluded the investigation at some point, didn't find an offender, didn't believe we had the evidence, then we would come back to the secretary or the person who referred it to us and advise them of that.

Senator McKIM: The reason I am asking these questions is that—this is my view—you look at motivations in these things, and if you do look at motivations I think it is reasonable to make a preliminary assumption that in fact it was leaked for political purposes. The reason I am asking these questions about reporting—

Senator Reynolds: Just to clarify, Senator McKim, are you saying that they take an assumption of guilt upfront, that it is reasonable to take an assumption of guilt?

Senator McKIM: No, not at all.

Senator Reynolds: Can you perhaps rephrase that, because it sounded so suspiciously like that.

Senator McKIM: No, I can't.

CHAIR: Let him finish his question first.

Senator McKIM: Thanks, Chair. No, senator, I won't. You can read the Hansard later and have a look at it for yourself.

Senator Reynolds: I heard exactly what you said, and it is what you said.

Senator McKIM: It's not in fact what I said at all, so you're just misleading the Senate. The reason I am asking these questions is because ultimately the minister who has portfolio responsibility for home affairs, and certainly for the AFP—you may yet determine that he was involved in this leak. What would you do in that circumstance?

CHAIR: That's hypothetical. You don't have to answer that.

Mr Colvin: I'm not going to answer that. It is under evaluation.

Senator McKIM: Perhaps this is one for you, Mr Pezzullo. Did the relevant advice pertain to a bill tabled by Dr Phelps in the House of Representatives, or did it pertain to what has become known as the medevac amendments which were moved in the Senate by me and Senator Storer?

Mr Pezzullo: It related to Mr Benson's story, principally, if I recall, related to the government legislation that was amended in the Senate. It may have had passing reference to the separate, now I presume no longer active, private member's bill that Dr Phelps had in the other place, being principally the legislation formally known as the Migration Act (Miscellaneous Measures) Bill.

Senator McKIM: That is what Mr Benson's story referred to.

Mr Pezzullo: It appeared to be.

Senator McKIM: I am asking about the advice.

Mr Pezzullo: The advice in question, which, as I said, on its face appears to be well known to the journalist—in certain sections at least; there are elements that don't appear to be well known the journalist—pertained to the government legislation that was initiated in the House but subsequently amended in the Senate, and which of course came back to the House last week and subsequently was passed in both houses.

Senator McKIM: Not to Dr Phelps's bill.

Mr Pezzullo: Correct. There might have been passing references—I will have my staff check this—where the advice might have been couched in terms like 'and this is similar to Dr Phelps's bill' or 'this provision would act similarly to Dr Phelps's bill'.
Senator McKIM: But the ASIO advice related primarily to—

Mr Pezzullo: It wasn't ASIO advice. It was advice from my department. If the Director-General of Security had concern that his documentation or reporting had been disclosed, he would have referred the matter to the Federal Police. The submission in question I am concerned about is the Department of Home Affairs submission, which draws on ASIO advice, in part.

Senator McKIM: When was that advice provided? That advice was presumably provided to Minister Dutton?

Mr Pezzullo: I will check the record. It might have been both ministers in our portfolio, because it is an immigration matter and a home affairs matter. Of course Mr Dutton is the overall cabinet minister as well.

Senator McKIM: And could you also check what time and date that advice was provided to either Mr Dutton or Mr Coleman or both?

Mr Pezzullo: Mr Chairman, through you, I can now anticipate these questions, because they're properly questions for my department, after 2.15 or whenever we get to my department.

Senator McKIM: Okay, alright, no worries. I've just quickly got a couple of others on different topics for the AFP. We might be able to skate through them.

Mr Colvin: We can also answer some questions on notice from earlier.

Senator McKIM: Thanks. That'd be really helpful.

Mr Jabbour: In relation to the question you asked about the exact time the AFP was contacted on the 27 November, it was at 12.08.

Senator McKIM: Is that am or pm?

Mr Jabbour: That is am.

Senator McKIM: It's am.

Mr Jabbour: Sorry; pm—just after lunch.

Senator McKIM: Just after lunch.

Mr Jabbour: A response was provided to Australian Border Force at 12.18 hours, and that was to confirm that there was no warrant in place that would prevent Mr al-Araibi's travel. I'm advised that he was cleared for travel by Australian Border Force at 12.18—the same timing. At 15.06 hours, AFP NCB Canberra notified both Thailand and Bahrain of the travel of Mr al-Araibi. Mr al-Araibi arrived in Bangkok at 20.51 hours local time, which is 00.51 on 28 November our time—just before 1 am. In relation to your question pertaining to the death penalty: yes, the AFP did turn its mind to the protocols and guidelines. It was not applicable in this case as Mr al-Araibi was convicted in absentia and sentenced to 10 years imprisonment; there was no death penalty outlined in the—

Senator McKIM: That was in Bahrain.

Mr Jabbour: That's correct. And that was outlined in the red notice.

Senator McKIM: Thank you.

Mr Jabbour: So the death penalty was definitely considered and did not apply in this instance.

CHAIR: We'll come back to you, Senator McKim, if you have other questions. I have some questions of the AFP, but can I just remind my colleagues that we are now almost an hour over time. We do have a big program to go through and we've already highlighted some particular time limits in relation to Mr al-Araibi. There are quite a lot of other things on the program, so I will just ask senators to perhaps keep their questions as short as possible.

Commissioner, can you tell me what jurisdiction the AFP have for crimes that might have been committed in holding centres in Nauru or Manus, both of which, of course, are in the jurisdictions of other sovereign countries? What jurisdiction—

Mr Colvin: We have no jurisdiction.

CHAIR: So if there were serious crimes committed in those holding centres—

Mr Colvin: It falls within the jurisdiction of Nauru, for instance.

CHAIR: If there are crimes committed and those people then attempt to enter Australia, what jurisdiction does the Australian Federal Police have?

Mr Colvin: Two things. I've just been reminded that there is law in Australia about the extraterritorial nature of crimes committed against Australians. So the murder of an Australian overseas does trigger an offence in Australia. But I want to be very clear: that doesn't give us jurisdiction to just go to Nauru and investigate and take
evidence. We would still need the local authority's permission to do that. In terms of somebody who may have committed an offence in a foreign country and then come into Australia, if they've been convicted of that offence, it gets into the situation where we were before, where you might have red notices or extraditions. But, if the offence occurred in another country, we have no jurisdiction over that crime in Australia.

CHAIR: If the offence occurred in another country against an Australian without any appropriate action being taken by the enforcement agencies of that country, and then that person came to Australia and a complaint was made, does that then give you jurisdiction?

Mr Colvin: Depending on the circumstances, it could make it a crime under Australian law. We still have to collect the evidence to prove that crime and the evidence will almost certainly be in a foreign jurisdiction. We can't just elicit that evidence and bring it back to an Australian court.

CHAIR: If it's an Australian person who is and the victim happens to have been working fly-in fly-out on Nauru, would that then—

Mr Colvin: The evidence of the crime would still be in Nauru, for instance. The circumstances, the facts, the physical evidence and the forensic evidence is more than likely going to be in Nauru. I have no ability to extricate that other than by using international frameworks to collect that evidence.

CHAIR: This is getting a bit hypothetical, which, perhaps, I shouldn't allow, but, in the case of an Australian person who's working in that country and who comes back to Australia with a broken jaw or something and then makes a complaint to the Australian police, would you then have jurisdiction, should that perpetrator then end up in Australia?

Mr Colvin: I don't believe a broken arm is going to fall into Australian law. It's an assault that occurred in Nauru.

CHAIR: If the assault had occurred in Nauru—

Mr Colvin: Yes, or whatever country—

CHAIR: against an Australian person?

Mr Colvin: Yes, that's right. The only offence that has extraterritorial nature of this type is causing the death of an Australian overseas.

CHAIR: Sorry, can you just repeat your answer? I was distracted.

Mr Colvin: It's really difficult, because the circumstances need to be considered. There are extraterritorial offences in Australia for causing the death or serious harm to an Australian overseas. It was brought in after the Bali bombings, quite frankly. Parliament passed it to make sure that the crime committed there was an offence in Australia, should we ever get to that point. Since then it has been amended a few times. There are some very high profile cases of Australians falling foul of criminal behaviour overseas. That does actually constitute a crime in Australia, but, of course, the evidence sits overseas. If an Australian in Nauru, in your scenario, is assaulted—a common assault in Nauru—when they come back to Australia they could make a complaint to local police or Federal Police. We would ordinarily refer that back to Nauru to investigate. If the alleged perpetrator was then to come to Australia, and the victim was to say, 'That's the person who assaulted me,' we're still a long way short of satisfying, I would think, the elements of the crime that I just talked to you about, notwithstanding that the evidence of the crime still exists in Nauru.

CHAIR: But if the Australian is in Australia with a blinded eye from a punch or something, the evidence is—

Mr Colvin: Witness statements, forensic evidence and a whole range of things would still be in Nauru.

CHAIR: Let me characterise this very generally and broadly by the Bali crime, what is the definition of 'serious crime'?

Mr Colvin: I'd have to go back and consult the legislation to see how explanatory memorandum defined it at the time, but it has been revised a number of times since 2002.

CHAIR: Am I pushing you too far to perhaps make an assessment on whether security issues are issues that relate to the security of Australia and Australians? Would that be within the purview of 'serious crimes'?

Mr Colvin: It is about serious harm, not necessarily the security. I'm happy to take it on notice and unpack the legislation, if that's what the committee wants.

CHAIR: I guess I could get the library or someone else to do that to save your time. I'm conscious of taking up your time when you have so many other important things to do. I'll leave it there and go to Senator Watt.

Senator WATT: Can I just check, we did start a few minutes late, so—
CHAIR: We're going to 12.30—

Senator WATT: Even though you were late getting back from the morning tea break?

CHAIR: Yes. And then we had a private meeting.

Senator WATT: You were several minutes late. We could actually finish up with the AFP if you gave us—

CHAIR: I think Senator McKim has other questions, I think my colleagues have questions, so we will finish at 12.30 pm and be back at 1.30 pm.

Senator WATT: The next bracket of questions from us is going to take more than the four or five minutes we've got, so why don't you give it to Senator McKim and we'll do ours after lunch.

CHAIR: Senator McKim, you've got four minutes.

Senator McKIM: Does the AFP have anything to do with the provision of funds to the Papua New Guinea government for the building or renovating of the Bomana Prison in Port Moresby?

Mr Colvin: Bomana Prison? I don't believe so, no, Senator.

Senator McKIM: Could you take that on notice?

Mr Colvin: Yes, we'll double-check.

Senator McKIM: Thanks.

Mr Colvin: We certainly have assisted RPNGC with improvements to the Bomana Police College, but I'm not aware of anything to the prison. I can't see why we would, but I'll check.

Senator McKIM: That's all right. Just as a supplementary then, and I'm very happy for you to take this on notice, were there any detention facilities in respect of the police college?

Mr Colvin: We'll check.

Senator McKIM: Thanks. I think I know the answer to this, but I just want to ask it anyway. Does the AFP have any knowledge—this matter was covered in a Four Corners program recently—of women from Saudi Arabia being prevented from entering into Australia if there is a potential for them to make a claim for asylum in this country?

Mr Colvin: No, Senator.

Senator McKIM: The AFP has no knowledge?

Mr Colvin: We are not involved in that matter.

Senator McKIM: Commissioner, can you tell me where does your jurisdiction begin when a plane lands and somebody deplanes, but they haven't yet gone through immigration? Do you have jurisdiction there?

Mr Colvin: By international convention, yes, but it is contested space in terms of—

Senator McKIM: In the courts?

Mr Colvin: Yes.

Senator McKIM: In Australia?

Mr Colvin: Our police at airports will regularly arrest and charge people for crimes that have been—there is a whole range of international protocols about where jurisdiction starts and stops, about where planes have left from, where they're embarking to. It's not an easy answer to give, but by and large we do have jurisdiction, yes.

Senator McKIM: Okay, by and large you have jurisdiction. And just to be clear: that's before people have cleared immigration?

Mr Colvin: Yes.

Senator McKIM: For example, if there was a scuffle in the corridor where people are coming off the plane, AFP officers would, in your view, have the capacity to intervene there and defuse the situation and make relevant charges?

Mr Colvin: Yes.

Mr Gaughan: If I could add one thing: public order issues are clearly something we would be interested in, and there's a possibility our counterterrorism first response may actually at some stage—hopefully never—be in that no-man's-land, if you like.

Senator McKIM: And you'd still intervene in that situation, obviously.

Mr Gaughan: Absolutely.

Senator McKIM: Thanks, Commissioner.
Senator WATT: Chair, I'm in your hands: we could knock over all of our AFP questions in the next 10 or 15 minutes and then they could get on with their day.

Senator Reynolds: Chair, given the break was scheduled for 12.30, I've got an important briefing from 12.30 to 1.30. If you could have them as scheduled then I would definitely be back by 1.30 pm.

CHAIR: It's a bit difficult for other senators too. I appreciate the offer of allowing the Federal Police to go and do more productive things, but unfortunately we have our program. And for the reasons mentioned, we'll suspend now.

PROCEDINGS SUSPENDED FROM 12:28 TO 13:31

CHAIR: Welcome back to the committee hearing into the additional estimates for 2018-19. We have before us the Australian Federal Police, and I go to Senator Watt.

Senator WATT: Thanks, Chair. For this bracket of questions, it might be helpful to have the ACT police commissioner, if that's the right title.

Mr Colvin: Chief Police Officer. We don't normally bring them to estimates. He will be out in the ACT doing his job at the moment.

Senator WATT: Okay. I thought they might be in the audience.

Mr Colvin: No.

Senator WATT: That's okay. Let's see how we go anyway. I would like to draw to your attention a newspaper article in The Canberra Times from 25 January this year. It's entitled 'Cyclist injured in collision with Mike Pezzullo near Parliament House'. I have copies of that article if they're necessary.

CHAIR: It sounds like the Leo McLeay incident!

Senator WATT: It's actually pretty serious, as you'll hear, Chair, so I wouldn't be making jokes about it.

CHAIR: Is it?

Senator WATT: My understanding, based on this article and other information, is that it was a very serious accident where Mr Pezzullo ran into a cyclist early one morning. It resulted in the cyclist sustaining a broken collarbone, which required surgery. I understand the cyclist is not going to be able to drive for three months, so it's pretty serious. If you need any further proof, I have a photo of the bike and the broken collarbone.

CHAIR: What's your question?

Senator WATT: I'd just like the AFP to describe their knowledge of the incident to begin with.

Mr Colvin: Senator, I'll be able to say certain things, but then we might have to take some of it on notice. There was a report to the police; the police attended, spoke to a range of individuals and I believe concluded that no charges and no further police action were necessary and the matter was closed.

Senator WATT: When someone is injured in an accident, a cyclist is injured in an accident, the types of charges that are available include dangerous driving type charges—is that correct?

CHAIR: No. It's purely hypothetical.

Senator WATT: That's not hypothetical. That's a factual question.

CHAIR: As the commissioner will tell you, it depends on the circumstances. He's not here to guess what might or might not have happened if something had happened.

Senator WATT: Commissioner, you said that some officers attended the incident, and I think you said 'spoke to a number of individuals'.

Mr Colvin: Senator, the matter was reported to police, like any other traffic incident, and the matter was followed up by police. As part of that follow-up, I'm aware that they did speak to a number of individuals—witnesses, people involved—and this is where I need to take on notice exactly the finalisation of the matter. I believe the matter is now finalised.

Senator WATT: I understand it has been finalised as well. How was the incident reported to the Federal Police and by whom?

Mr Colvin: I'll take that on notice.
Senator WATT: In *The Canberra Times* report it says the collision occurred at 6.30 am:
… a bystander called emergency services and paramedics took the cyclist to Canberra Hospital. Police said they learned of the incident at 9.30am that day.

Maybe Mr Pezzullo can tell us whether he reported it to the AFP that early in the day.

CHAIR: No. That's not part of Mr Pezzullo's—

Mr Gaughan: I'll take it on notice—

CHAIR: Hang on. That's not part of Mr Pezzullo's proceedings before estimates.

Senator WATT: Why is that?

CHAIR: It's got nothing to do with the budget or expenditure or anything.

Senator WATT: He was driving a government car.

CHAIR: Senator Watt, this isn't just another Labor Party witch-hunt against public servants who can't respond.

Senator WATT: I just invited him to respond and you stopped him.

CHAIR: He's not going to do it in this hearing.

Senator WATT: Why not?

Senator PRATT: He might choose to.

CHAIR: It's not a matter for estimates or public expenditure.

Senator WATT: He's the secretary of the Department—

CHAIR: It's just what the Labor Party is good at doing in trashing reputations by innuendo, and it will not happen in my committee.

Senator WATT: I'm trying to give—

CHAIR: Commissioner Colvin, I think you said you have little detail and you will take these on notice.

Mr Colvin: Yes.

CHAIR: If you have any other questions of the AFP, Senator Watt, do it; otherwise we'll move on.

Senator WATT: Chair, Mr Pezzullo is the secretary of the department that we are currently examining.

CHAIR: I'm not allowing the matter. I don't care—

Senator WATT: This matter concerned and AFP allegation. It's entirely appropriate that we ask questions.

CHAIR: You've asked the AFP. The officer has said he's not familiar with it; he'll take it on notice.

Senator WATT: He was not familiar with the answer to that question. I've got others.

CHAIR: Well, ask the others. If you do that, well and good, and, if he can answer them, well and good, but I suspect that, if it's on the same subject, he'll tell you what he's already told you: he doesn't have the detail and he'll take it on notice.

Senator WATT: How about we let the witness answer the questions rather than you deciding what they're going to say?

Senator Reynolds: Senator Macdonald, can I just clarify—

Senator WATT: We've got another minister wanting to jump in and answer questions for the AFP.

Senator Reynolds: Are you finished, Senator Watt?

Senator WATT: Off you go.

CHAIR: What's your point of order?

Senator Reynolds: It's not a point of order; it's just a point of clarification for the benefit of Senator Watt. He made the assertion that it was a Commonwealth car and I understand it was a private car that he was driving. So it wasn't a Commonwealth car.

CHAIR: Minister, I'm not allowing questions like that unless there's some association with the 2018-19 estimates.

Senator Reynolds: And I've just clarified that it doesn't.

CHAIR: I'm not allowing Labor senators to trash people's reputation, as they're very good at doing and which they've been trying to do all morning. My patience is running out. If you have a question of the AFP, ask it; otherwise, we'll move on.
Senator WATT: A person has been badly injured—a broken collarbone—as a result of an accident—
CHAIR: Do you have a question?
Senator WATT: Well, are you going to let me ask it?
CHAIR: If you're arguing with my ruling—
Senator WATT: Are you going to let me ask my questions?
CHAIR: Ask questions of the AFP; go ahead. I've been inviting you to do that for the last five minutes.
Senator WATT: Have you finished?
CHAIR: Okay, if you have no questions, we will go to—
Senator WATT: No!
CHAIR: If you've got questions, ask them, Senator Watt. That's what I'm saying.
Senator WATT: Every time I try to ask a question—
CHAIR: Ask the question!
Senator WATT: you do that! You've already taken on notice, I think, who reported the incident.
Mr Colvin: When it was reported and who reported it—yes.
Senator WATT: I'd like to know whether Mr Pezzullo reported the incident to police after he was contacted by police? Mr Pezzullo can answer any of these questions if he wants to—
CHAIR: No, he can't because it has no relationship whatsoever to the budget estimates.
Senator WATT: So you'll take that on notice, Commissioner?
Mr Colvin: I will take it on notice.
Senator WATT: Were both the driver and cyclist interviewed by police given there was a serious injury sustained?
Mr Colvin: I'm going to take it all on notice. I just don't have the detail.
Senator WATT: Were both the driver and the cyclist tested for drugs and alcohol?
Mr Colvin: I'll take it on notice.
Senator WATT: In what circumstances do the AFP undertake drug and alcohol tests at accidents of this kind?
Mr Colvin: I'm going to take it on notice because I want to be clear about what the ACT law is on that. So I'll take that on notice.
Senator WATT: I suppose the corollary would be that, once we get that answer: were those procedures followed?
Mr Colvin: You asked if they were tested—yes.
Senator WATT: Has the AFP checked as to whether any phones were being used by either Mr Pezzullo or the cyclist at the time of the accident?
Mr Colvin: I'll take it all on notice.
CHAIR: It's an outrageous abuse of parliamentary privilege to try to trash the reputation—
Senator WATT: There is someone who has sustained a broken collarbone as a result of an accident, and all I'm trying to do—
CHAIR: I'm very sorry for that person and I hope they have a speedy recovery, but that's not a matter for Senate estimates.
Senator WATT: They'll be unable to drive for three months.
CHAIR: It's not a matter for Senate estimates. I feel sorry for him. I hope he recovers quickly and well—that's an issue—but, if you want to trash people's reputation, do it somewhere else; you're not doing it in my estimates committee.
Senator WATT: Has the AFP accessed phone records for Mr Pezzullo or the cyclist?
Mr Colvin: I'll take it on notice.
Senator WATT: I understand that Mr Pezzullo left the scene without waiting for police. Is there any requirement for people in accidents to wait for police to arrive?
Senator Reynolds: You're asserting facts that are not—
CHAIR: That's not an appropriate question.
Senator WATT: Mr Pezzullo can correct me if I'm wrong.
CHAIR: It has assumptions that will not happen. Senator Watt, you've been told by Commissioner Colvin that he doesn't have the detail. Anything related to it—he's told you what he knows, which is very limited—he'll take on notice.
Senator WATT: What do you—
CHAIR: If you have no other questions I'll go to another senator.
Senator WATT: What are—
CHAIR: We're already more than an hour behind.
Senator WATT: And if you would let me ask my questions—
CHAIR: These are not questions for estimates—
Senator WATT: we would get through them.
CHAIR: and if you ask estimates questions you have the floor to the Australian Federal Police.
Senator Reynolds: Chair—
CHAIR: No.
Senator WATT: Commissioner—
CHAIR: Senator Watt, do you have any questions of the AFP?
Senator WATT: were AFP or ACT police resources incurred in investigating this matter?
Mr Colvin: ACT police resources would have been used to investigate this matter.
Senator WATT: Therefore, this is a matter properly within the realm of this committee. What are the ACT police procedures, or what is the expectation of drivers involved in an incident as to whether they remain at the scene until police arrive?
CHAIR: Commissioner Colvin has already told you he will take it on—
Senator WATT: He hasn't answered.
CHAIR: He's already told you—
Senator WATT: He hasn't answered that question.
CHAIR: and see what the ACT law says about these things.
Senator WATT: That was about the drugs and alcohol. If you would listen to my questions rather than continually shutting them down—that was about drugs and alcohol.
CHAIR: It would be the same answer.
Senator WATT: It may not. How do you know what the answer's going to be? What is the ACT—
CHAIR: Because he's indicated he has no knowledge of this incident.
Senator WATT: Given that this is a matter properly within the realm of this committee, because police resources were expended in investigating this, I'm asking: what is the ACT law or procedure about the requirement for drivers to remain at the scene of an accident.
Mr Colvin: I'll take it on notice.
CHAIR: Again, officers are not required to explain the law to senators—
Senator WATT: You'll take that on notice, Mr Colvin?
CHAIR: in legal treaties or opinions.
Senator WATT: You'll take that on notice, Mr Colvin?
Mr Colvin: I'll look at the specific requirements under ACT law. I'm not familiar with it.
Senator WATT: Sure, that's why I was hoping the ACT police person might be here.
CHAIR: Well, did you ask for them to be here?
Senator Reynolds: Did you request for them to be here? No.
Senator WATT: So as well as taking that on notice, if you could advise whether Mr Pezzullo complied with those requirements.
Mr Colvin: I'll take it all on notice, and I'll think very carefully about what's available and appropriate for us to respond to.

Senator WATT: If Mr Pezzullo had remained at the site of the crash, would he have been interviewed there by the AFP?

CHAIR: This is an—

Senator Reynolds: Complete hypothetical.

CHAIR: amazing—

Senator WATT: It's not a hypothetical; it actually happened.

CHAIR: abuse of parliamentary privilege.

Senator WATT: I'm not creating something. Here's the newspaper article, if you don't believe it. It's not a hypothetical; this actually happened.

CHAIR: If you don't have other questions, Senator Watt, I'm going to go to another senator.

Senator WATT: Someone broke their collarbone. Stop trying to dismiss questions.

CHAIR: Senator McKim, do you have any other questions?

Senator WATT: So you're shutting this down.

Senator Reynolds: Chair, can I say something as minister of the table? I think that Commissioner Colvin in the circumstances has been very forthcoming. He has said exactly what the status of the inquiry was. He has said that he will take all of the questions on notice because he doesn't have the information to hand. I think it would probably be more productive if Senator Watt put them in writing in a question on notice so that all of those questions could be answered appropriately. I've got to say, Senator Watt, I think the imputation in those questions that the AFP didn't follow procedures is—

Senator WATT: I'm not implying that at all.

Senator Reynolds: Oh, yes you were.

Senator WATT: I'm trying to get to the bottom of what and whether Mr Pezzullo complied.

CHAIR: Order.

Senator Reynolds: I think they should go on notice.

CHAIR: I'll go to Senator McKim and Senator Molan.

Senator McKIM: I'm done with the AFP.

Senator MOLAN: I have one very simple question. It goes back to funding. We spoke before about the funding from last year. I was looking at figures over lunchtime. The figure that I come up with in relation to the funding for the AFP in 2018-19 is $1.485 billion. We were talking before, Mr Box. We spoke about $1.68 billion, or $1.7 billion—I'm very happy about rounding up. The figure that I saw in briefing notes was $1.485 billion.

Mr Box: I was referring before to the PAES documents—

Senator MOLAN: Which documents?

Mr Box: The portfolio additional estimates. It's on page 56 of PAES. There's a table there which quite clearly puts together all of the funding available to the AFP, including cost recovery from ACT and other things. That's the $1.7 billion that's available.

Senator MOLAN: And that cost recovery comes from where?

Mr Box: Section 74 external revenue is $293 million. That's not just the ACT; there are other cost recovery elements in that as well.

Mr Colvin: Defence contracts and ANSTO contracts.

Senator MOLAN: We also spoke before about various other activities that you conduct under that. Where does your ASL stand now? Who can speak to me about ASL? Where does your ASL stand on that budget?

Ms Bird: Are you requiring ASL or FTE?

Senator MOLAN: I'm after ASL and the difference between last budget year's ASL and this budget year's ASL.

Ms Bird: In terms of ASL, which is the average staffing level, the 2017-18 count was 6,300 and the 2018-19 count is 6,476.

Senator MOLAN: What are the main projects that caused the increase?
Ms Bird: From last year to this year, it would be the new measures.

Mr Box: On increases in our cap since 2017-18: the Australian Centre to Counter Child Exploitation was 28—

Senator MOLAN: Yes, we spoke about that before.

Mr Box: Aviation, air cargo and international mail security was 42.

Senator MOLAN: That was the $115 million in total, of all those additions, wasn't it?

Mr Box: Yes. There was one associated with the Pacific faculty for the Australian Institute of Police Management, and another 16 for investing in sustainable policing. Additional to that, we have movements in existing measures. We've got three ASL for the Northern Territory Child Abuse Taskforce. The 2017-18 capability measure was 216; that's the $300 million. For the close personal protection parameter adjustment, we have 20 ASL. Then we talked about external revenue. Movement in external revenue is five ASL, and locally engaged foreign employees is 104.

Senator MOLAN: There has been a proposal put up recently to increase the number of AFP officers in Indonesia. My memory is that there was a significant number in Indonesia, from the last time I was up there, both in the embassy and the centre that we work up there. I wondered if the AFP had made a request for the 27 extra positions?

Mr Colvin: Say that again?

Senator MOLAN: I believe it's been proposed that the number of police in Indonesia be increased by something like 27 positions. I think it was in relation to the change—

Mr Colvin: You're getting into some current conversations that we are engaged in with government; I don't think it is appropriate for me to get into those now. Our numbers across Asia fluctuate according to threat and demand. I think, at its height, we were up around 27 or 28 people in Indonesia. We are a little lower than that at the moment. Beyond that, I think we're talking about current negotiations with government.

Senator MOLAN: That's good. Thank you.

CHAIR: That leads into some other questions I had. I heard you say before that some of them are fly-in fly-out, depending on the circumstances and the need. In a permanent workforce—and I don't need actual numbers—is your biggest contingent in Indonesia, followed by London or Paris or South America? Can you just give us a broad indication, hopefully in descending order, of where you have the most people?

Mr Colvin: We can. If we remove our stabilisation capability building mission—so removing the Solomon Islands, Papua New Guinea and Timor-Leste, which have a very different style of arrangement—our liaison network sits at 74 officers at the moment. Our largest contingent is still in Indonesia. Then, I think, it would probably fall next to North America—

Mr Gaughan: The US.

Mr Colvin: Yes, the US—and then it comes down from there.

CHAIR: Could you name not necessarily the actual numbers but in descending order: Indonesia, North America—

Mr Gaughan: The way we have broken it up, it is more to do with geographical regions so that we have the ability to actually move people across those regions. For instance, we have, as the commissioner indicated, our most people in Indonesia, and then secondly it is the US. Then it sort of fluctuates a bit. We have six or so in London—so, that is quite a large post for us, as well—but specifically only in London, while in the US we have people in New York, Washington and Los Angeles. The number does vary. Most of our posts are only a single person or two people. They probably would be the three where there are more than those numbers.

CHAIR: They are actually liaison officers rather working investigative police officers?

Mr Gaughan: I think we have to be careful to just say they are liaison officers. They certainly get involved in day-to-day statement taking, certainly liaison that leads to interdiction of drugs. Certainly, we are moving our liaison officers a little bit more forward-leaning, particularly in South-East Asia, where they are not quite side by side with their international partners but they are fairly close in relation to exchanging intelligence, which has led to some of these significant interdictions in Myanmar.

CHAIR: Again, don't answer this if it is not appropriate: are most of them uniformed officers or are some of them in plain-clothes?

Mr Gaughan: They are all in plain-clothes.
CHAIR: That's all from me. Bearing in mind that we are an hour and a half behind the schedule, does anyone else have questions for the AFP?

Senator HUME: I have one quick question. Commissioner Colvin, about three years ago—in fact, I think it was almost exactly three years ago—you commissioned a report from Elizabeth Broderick into gender diversity within the AFP and about 24 recommendations came out of that report. I am wondering if you could update the committee on the progress of those recommendations and what the AFP has implemented in this sphere in the last three years.

Mr Colvin: The chief operating officer has the details in front of her.

Ms Bird: Of the 24 recommendations in the report, we have completed 11, with three pending finalisation in the near future—if there were any particular recommendations that you were concerned about, I can take you through them. So, we are making good progress on them and there will be 14 shortly.

Senator HUME: I know you said you are making good progress, but I am wondering how that manifests, I suppose in culture change, and potentially whether you have seen any differences in numbers or anecdotal evidence that there has been a shift in thinking in the three years since that report was commissioned?

Ms Bird: The way that we are measuring the impact of this really is through some statistics—for example, by reference to Safe Place. One of the recommendations was that we set up a safe place for reporting of such conduct. One of the findings of the report felt that people were not reporting such conduct, because they didn't trust the existing complaint mechanisms. Ms Broderick recommended we set up a unit called Safe Place. The statistics from Safe Place over the last three years—from 2016-17 through the now—are moving down in every cohort and category of complaint.

Senator HUME: They are not just gendered complaints, aren't they?

Ms Bird: No. The sort of categories that we are tracking here are complaints about acts of indecency, sexual assault, sexual harassment, bullying, assault—and another category, which is not those ones. Perhaps the best way to go through this is to give you a copy of this on notice. Is that all right?

Senator HUME: Thank you.

CHAIR: If there are no other questions, can I thank you, Commissioner Colvin, and your team, for being with us, and again for the work you do in Australia's interests. I understand that one of your officers is going to stay around for a roundtable on Mr al-Araibi later on. Thank you so much at this time. You are aware of the times we have set for answering questions on notice. I now call the Australian Criminal Intelligence Commission.

Australian Criminal Intelligence Commission

[13:55]

CHAIR: I welcome officers from the Australian Criminal Intelligence Commission and Mr Phelan, at the table. Thank you for being with us. Mr Phelan, did you have any opening statement that you wanted to make to the committee?

Mr Phelan: No, I didn't, Chair.

CHAIR: I might then go first to Senator Pratt.

Senator WATT: We have some questions for the ACIC, but, in the interests of time, if there are some other senators who have questions—I gather Senator Patrick has some—can we put ours on notice?

Senator PRATT: Yes.

CHAIR: Okay, thank you for that.

Senator PATRICK: My questions relate to some evidence provided to the JCPAA by the Auditor-General. Actually, it might have been in response to a question that Senator McAllister asked at the last estimates. The Auditor was asked which entities, government agencies, had raised the prospect of a section 37 certificate being issued in relation to audits, and the Australian Criminal Intelligence Commission was named as an agency that had started talking to the Auditor-General about such a certificate. Are you familiar with that?

Mr Phelan: I am, Senator, yes.

Senator PATRICK: I am just wondering. The first time this particular provision, section 37, of the act was used was in relation to an audit into the Hawkei vehicle for Thales. It had quite a spectacular effect of appearing in the news because they started to take the Auditor-General to court. He is of course an officer of the parliament. I'm just wondering whether or not your consideration in relation to the section 37 certificate has flowed from the court case and perhaps a more general awareness that that provision exists in the act.
Mr Phelan: I'm afraid not, Senator. Ours is, unfortunately, very benign. I commissioned an audit with the Australian National Audit Office into the biometric information systems program last year. When my chief operating officer was providing information to the Auditor-General, what they did in that letter was flag to them that of course they may turn their mind to section 35 in redacting some components—

Senator PATRICK: 37?

Mr Phelan: 37, sorry—of the potential audit, given our secrecy provisions that exist within the ACC Act about our information that we hold inside the ACC and the sharing components of that. So it was just a matter of them turning their mind to that—to whether or not they wanted to invoke the powers of the Attorney-General to redact those certain components. It was never our intention, and in fact we did not request, that any information be redacted from the audit. It was never our intention to do so; it was just so the Auditor-General could turn their mind to the secrecy provisions that existed in the ACC Act.

Senator PATRICK: The Auditor-General has given extensive evidence in relation to this at estimates and indeed with the JCPAA. His evidence—and I don't want to verbal him—basically goes down the line that of course he has extensive information-gathering powers, and you almost can't refuse a request from the Auditor-General. The section 37 certificate relates to what might be published in the final audit.

Mr Phelan: That's right.

Senator PATRICK: But the Auditor-General always works with agencies and has never had an issue with agencies in respect of simply working out together what should or should not be in a public report.

Mr Phelan: As was the case with this audit. We did not hold anything back. They had open doors. They could have a look at any of our holdings. We actually gave them access to all of our systems inside the ACIC, and nothing was there that they couldn't see. It was never our intention to do it. It was just so they'd turn their mind to the provisions around the publishing in case there was any data that was accumulated in accordance with the ACC Act that couldn't be published. That's all it was. We never even went close to that occurring. There was nothing in the audit report or nothing in the information that was seen that required me to even turn my mind to the fact of asking the Auditor-General to redact certain components at all. It didn't even cross my mind.

Senator PATRICK: In some sense, section 37 is the hammer approach, so I'm just curious as to why you felt the need to do that.

Mr Phelan: Well, I agree, but it was my chief operating officer who wrote it in an email, that was all. I'm more than happy to get the email when we get back and table it so that you can see the context, because, when I saw it, it was extremely benign.

Senator PATRICK: I have a redacted version, which was tabled by the Auditor-General. He's been very careful to make sure that he didn't reveal the content that you were seeking to hide.

Mr Phelan: No, nothing to hide from the public either. It was only our statutory responsibilities to protect information; that was all—information sources and so on. But of course, given this particular project, we didn't even go close to having to entertain doing any of those sorts of things. As I said, I'm happy to table—I even advised the Auditor-General that if he wanted to table the whole letter it was a matter for him.

Senator PATRICK: All right; if you're more comfortable, I'll take up that offer—

Mr Phelan: Certainly.

Senator PATRICK: and ask that you table what you're comfortable with.

Mr Phelan: Yes. I don't have it with me now, of course.

Senator PATRICK: No—absolutely on notice.

Mr Phelan: I'm more than happy to do that, and you'll see how benign it actually was.

Senator PATRICK: Sure, but you'll understand from a parliamentary perspective that the Hawkei audit has caused a fairly significant controversy, and I think that issue will flow for a number of years, because I know that there are some FOIs that are in place that will probably go to a court. All right. Thank you very much. That's very helpful.

CHAIR: Mr Phelan, you're the successor to the criminal—

Mr Phelan: CrimTrac and the Australian Crime Commission were merged from 1 July 2016.
CHAIR: And it was the joining of CrimTrac with the Crime Commission.

Mr Phelan: That's right—and also administrative responsibility for the Australian Institute of Criminology, on the same date.

CHAIR: I was asking some questions earlier about importation of drugs and locally grown and produced drugs. Do you have information on that that is readily available and that is appropriate to talk about publicly?

Mr Phelan: We do collect data, particularly in relation to seizure information. Every year we collect information in relation to particular seizures that happen at the border or domestically by all Australia's law enforcement agencies. That gives us quantum figures in terms of what sorts of narcotics and other synthetic drugs are seized throughout our country, as well as pricing—how much the average price is for each of those particular commodities across the country. I listened to the evidence of AFP Deputy Commissioner Neil Gaughan, and I concur with what he said in terms of particularly manufacturing of drugs. Certainly it's a well-known fact that cocaine and heroin do not come from Australia. They are not manufactured here at all. Ice ebb and flows, depending on the prevailing conditions. But certainly there was a want for more high-quality, high-purity product coming directly from China, which led to fewer Australian laboratories using precursor chemicals imported from South-East Asia. But of course we have seen that movement as a commodity country from south-east China through to Myanmar, which Deputy Commissioner Gaughan accurately stated, in terms of what they picked up from their own operations. We are seeing that exact same thing. Having said that, though, we still have seen some very significant laboratories manufacturing methamphetamine here in Australia. Recently—I think it was only late last year—a rather large lab was taken out in South Australia, which had the ability to produce multiple tens of kilos and hundreds of kilos. It was taken out as a result of a joint operation with the South Australian police.

So, whilst the majority of methamphetamine is imported when we are talking about high-quality ice, there are still some components of it that are made here. It's very difficult to work out what's from where. We don't, but other agencies run signature programs that are based on the seizures. So, if we wanted to get that data, I'm sure we could extrapolate that out for you and give you a happy medium of what's imported and what's made here. Of course, that would be based on seizure data.

CHAIR: Could you take that as a question on notice.

Mr Phelan: I will.

CHAIR: I am embarrassed to ask this question because I used to chair the parliamentary oversight committee of the Australian Crime Commission, but can you remind me in what circumstances you can demand answers of people you are investigating.

Mr Phelan: It depends upon the resolution of the ACIC board. There are certain powers within the act that result in operations and investigations being declared 'special operations' and 'special investigations'. Only the board can determine those types of investigations. When they are so determined by the board, we can then use coercive powers to bring people in for hearings before a statutory examiner and ask a series of questions of those individuals. Of course there are certain protections that are afforded the individuals who answer questions inside hearings, most prominently around self-incrimination. They still have to answer, but the evidence cannot be used against those particular individuals.

Also, when an operation is declared a special investigation or operation, it allows us to use other coercive powers such as for the production of documents and so on. Our other coercive powers have their heads of power in other statutes. So, if we want to use telephone intercepts, for example, that is under the Telecommunications (Interception and Access) Act. For listening devices it's very similar.

CHAIR: What are your numbers in the commission these days? Can you also tell me how many are what I would loosely term 'field officers', people who actually walk the streets and get information, as opposed to, as I recall from when I once visited your predecessor's headquarters, the number of people who sit and look at computers and do assessments, gather information and think about things.

Mr Phelan: I can take on notice exactly the duties of individuals in terms of how many I have working in the strategic intelligence branch and how many I have doing tactical intelligence. But, essentially, I've got just under 1,000 people within the organisation. That's made up of APS employees who are distributed throughout the country. Also, I have a number of contractors, particularly in our technology division, who develop and work on the provision of services for other policing jurisdictions throughout the country. At any one time, I probably have about 100 secondees from other agencies. They're predominantly state police attached to our state offices. Whilst we are Commonwealth funded, we are a national organisation and so the remit of the ACIC is rather large, particularly in collecting intelligence on serious and organised crime. That transgresses not only international...
federal matters but also state matters as well. So we work hand in glove with all law enforcement agencies in the country.

CHAIR: Do you arrest people? Does your commission do that, or do you just pass information on to the AFP or other agencies?

Mr Phelan: We have the powers, particularly my sworn officers working in each of the state offices. If they are seconded officers from a state or territory, they come with their state or territory powers. They are also sworn in as special constables with the Australian Federal Police to give them Commonwealth powers. So all of the powers of the police force exist within those individuals. So, yes, they have the power to arrest, they have the power to put together briefs of evidence and they have the power, if necessary, to put briefs of evidence to the DPP. As a matter of course, though, I have tried to steer the agency so that that is not our main game. We are in the business of intelligence collection and delivering intelligence services to the eight police forces as well as other agencies. We have eight of the best police forces in the world in this country. I don't need to be the ninth. We get our strength from working with our partners on everything, so the ACIC does nothing on its own. The only matters on which we would probably arrest and charge on our own are with people held in contempt of the commission themselves for not answering questions at our hearings and so on. If we have a summons issued for them to be picked up, then we would do that.

CHAIR: So people who don't answer questions that they're cohesively required to answer then commit an offence?

Mr Phelan: They do.

CHAIR: And the penalties for that?

Mr Phelan: I can't remember off the top of my head, but they're pretty high. I can take that on notice.

CHAIR: No, that's fine.

Mr Phelan: They are very high, and they're heard at the level of district court in each of the jurisdictions. So basically they are held in contempt of the ACIC.

CHAIR: Finally, you mentioned that the board can declare a target or—

Mr Phelan: An operation or investigation.

CHAIR: They can declare an operation as special?

Mr Phelan: Yes.

CHAIR: I will ask, perhaps, what constitutes the board rather than who does. If there's no problem in naming the board, you can do that, but if there is then I will really ask: what sort of people are on your board?

Mr Phelan: I have the commissioner of every state and territory police force, including the Chief Police Officer of the ACT. The secretary of the department is on the board as well. I'm on the board as a non-voting member. We have the chairman of ASIC as well. We have the Commissioner of Taxation on the board as well, and also the Director-General of ASIO. They are all statutory appointments to the board in accordance with the act. Then we have two other members of the board who attend: the Secretary of the Attorney-General's Department and the CEO of AUSTRAC. They attend the meetings but are non-voting, because those positions were previously on the board—or AUSTRAC wasn't, but it's an important partner. The board has to meet a minimum of twice a year under the act. The practice is that we meet four times a year, and those determinations and so on are made. The board's statutory powers are relatively limited but, of course, extremely important.

CHAIR: Thanks for that. Are there any other questions for ACIC? The opposition have indicated that they'll put some questions on notice. Thank you very much for your attendance.

Mr Phelan: Thank you, Chair.

Australian Security Intelligence Organisation

[14:13]

CHAIR: Mr Lewis and Dr Southern, welcome and thank you very much for joining us. I indicate that our committee advice is that there will be questions for you from the ALP, the Greens, Senator Patrick and Senator Hume, and we'll come to them in due course, but would you like to make an opening statement, Mr Lewis?

Mr Lewis: Thank you very much. If it pleases the committee, I would like to make a few opening remarks.

CHAIR: Sure. Go right ahead.

Mr Lewis: First of all, good afternoon, and thank you for the opportunity to make some comments this afternoon. In several weeks ASIO will celebrate and commemorate our 70th anniversary as our nation's security
service. It’s at times like this that we should all quite properly reflect on how fortunate we are in this country to enjoy the social and the legal stability that provides us with a security service that's bound by the rule of law while at the same time being empowered to provide the security so necessary for a thriving democracy. ASIO continues to operate at the centre of our national security arrangements, and I'm very grateful for the wonderful work done by my officers to protect our country every day.

My last appearance before this committee in October was our first as part of the Home Affairs Portfolio. The substantial change of moving ASIO from its position within the Attorney-General's Portfolio to the Home Affairs Portfolio, having sat in Attorney-General's for 70 years, has presented some challenges and opportunities and we continue to engage with those—particularly the opportunities. In keeping with our mission, there continues to be substantial goodwill and cooperation between portfolio agencies. For ASIO, critical relationships—particularly with intelligence and law enforcement agencies within the portfolio—remain as strong as ever. I want to stress that ASIO maintains its statutory independence, and our day-to-day operational activities and business remains the same. We remain committed to delivering on our mission to protect Australia, its people and interests from the threats to security.

We recognise that our security intelligence advice is unique and that it is only one input drawn on for policy development advice. In this context, I'd like to make two direct comments about ASIO and our officers. Firstly, ASIO does not and will not use its position to influence the national debate on security-relevant issues through unauthorised disclosures. I have the greatest confidence that ASIO officers work with integrity and do not leak information to third parties, as has been repeatedly implied in the media. Secondly, ASIO does not finalise policy or provide running public commentary on the effectiveness of policy proposals. These are important considerations, because they go to the trust that the parliament and ultimately the Australian people have in the effectiveness of their security service and the confidence that they have in ASIO. I scarcely need to remind senators of the important limitations placed on intelligence services in successful democracies such as ours. When reporting wrongly attributed advice from ASIO or where our classified advice is leaked, it undermines all that we stand for. I want to make this point, as it is often difficult for me as the Director-General of Security to correct the public record: we do not want to enter into a running commentary on every reporting error. ASIO's advice is provided to agencies to assist with policy development, and there are strict controls on how that advice is managed and disseminated and breakdowns in these controls are seriously damaging.

Moving onto the subject of the security environment, I'd like to make some brief remarks with regard to counterterrorism. Since my last appearance before this committee in October, we have seen one politically motivated attack in Melbourne: the Bourke Street attack. Generally the security environment remains largely unchanged. Australia's national terrorism threat level remains at 'probable'. Since the national threat level was raised on 12 September in 2014, there have now been seven terrorist attacks and 15 major disruption operations in relation to imminent attack planning. As illustrated by the Bourke Street attack, the most likely form of terrorism in Australia remains an attack by an individual or small group using simple attack methodologies. While this methodology has been demonstrated, the possibility of more complex attacks of course cannot be ruled out. Extremist groups involved in the conflicts in Syria and Iraq, particularly ISIL, continue to inspire, to radicalise and to direct individuals in Australia to support and engage in politically motivated violence. ISIL's military losses in Syria and Iraq, while great, will not eliminate the threat it poses to this country and to our interests and those interests globally. We expect the threat from ISIL-inspired lone actors will endure.

I don't propose to go into detail about individuals, but I note that around 100 Australians are currently in Syria and Iraq and have fought for or otherwise supported extremist groups involved in the conflict. With the military and territorial demise of ISIL, which has resulted in the dispersal of foreign fighters, including Australians, there is less certainty about what to expect of their return. However, we do not expect to see a large-scale influx of these travellers and, across government, we are working hard to ensure that they are managed and dealt with appropriately. Government agencies have a comprehensive process in place for Australians with terrorist connections seeking to leave the conflict zone, and I have every confidence that identified returnees will continue to be managed appropriately on a case-by-case basis by the relevant organisations.

I might say a few words on counterespionage and foreign interference. I reiterate my previous comments to this committee that the current scale of foreign intelligence activity against Australian interests is unprecedented. Hostile intelligence activity poses a real and existential threat to Australian security and sovereignty. The harm from this threat may not manifest for many years, even decades, after the activity has occurred. We work cooperatively with relevant operational and policy agencies to deliver a cohesive national strategy.

As the Director-General of Security, I am concerned at reporting in Australian, foreign and foreign-language newspapers over this weekend just gone wrongly asserting that the Australian-Chinese community is a target for a
ASIO and the national intelligence community at large. This is simply not so. These assertions and concerns were triggered by the removal of the permanent residency status of one individual and ASIO does not comment on individual cases. I have previously stated that ASIO does not investigate people based on their ethnicity, religion or cultural background. ASIO's investigative focus is on individuals and their activities of relevance to security. Our investigations are conducted discreetly, with great security and on a case-by-case basis. Across all investigations, ASIO is focused on the most critical threat and ensuring that we and our intelligence and law enforcement partners are positioned to counter them.

In Australia, we have many millions of residents from many ethnic backgrounds. This includes ethnic Chinese citizens, residents and other visa holders. These citizens and residents and their families make a major contribution to the Australian community and to our economy. They have established their homes, established their lives and established the lives of their children here in Australia. It's critical that we avoid commentary that will instil fear and taint a community that makes such a positive contribution to Australian life, our economy and our culture. As the D-G of Security, I can say categorically that, from a security point of view, the overwhelming majority of people with Chinese heritage here in Australia are of no investigative interest to ASIO as they are not of any security concern. We should not impugn the many for the actions of a few.

Finally, I have a couple of comments on transformation of our organisation. Senators, you are aware that the ongoing and ever-evolving challenges of our security environment are complex, and we expect these challenges to present at an increasing tempo. That requires that ASIO transforms and refreshes the way it does business. To meet the challenges ahead, we are adjusting our business and organisational model. We are transforming from a small, relatively self-contained agency to an enterprise much more closely integrated into the national security apparatus.

I come back to where I started. On the 16th of next month we will celebrate 70 years of ASIO's existence since its establishment back in 1949. We have come a long way from the commencement and we are proud of the endeavours and accomplishments of our organisation. As we enter our 70th year, we remain as committed as ever to being fit for purpose and being appropriately equipped to respond to enduring and future challenges. I thank you for permitting me to make these remarks.

CHAIR: Thank you very much, Mr Lewis, and congratulations to you and your team on your 70th anniversary.

Mr Lewis: It will be a very big cake, I suspect!

CHAIR: Yes! Again, fortunately and appropriately, very few Australians know exactly what you do. Sometimes they equate you to James Bond movies, but I'm sure it is nothing that glamorous. But we do very much appreciate, from our understanding, the very significant work ASIO does. So, on behalf of all of us and the parliament, congratulations and thanks for what you have done.

Mr Lewis: Thanks, Senator.

CHAIR: I also note your comments, and I'm pleased that the estimates, in this reasonably controlled environment, allow you to make some comments about why you don't comment on popular matters in the press. I think it's a timely reminder. I suspect that, more often than not, that will fall on deaf ears, but it's good you've had the opportunity to make that position clear, so I thank you for that.

Senator KIM CARR: Could we have a copy of that statement, Mr Lewis? Is that possible?

Mr Lewis: Senator, if it pleases you, could we just take it from the *Hansard*. I've made some editorials as I've been going along there.

Senator KIM CARR: So you don't have any notes?

Mr Lewis: I have notes, but they don't represent exactly what I said.

Senator KIM CARR: I just wanted to quote you accurately in questions. That's all.

Mr Lewis: I would prefer if we could take it from *Hansard*.

Senator KIM CARR: You don't have them in a form you could give the committee?

Mr Lewis: No. As I say, I've made some editorials along the way, so I would rather not be misquoted on things that I did not say.

CHAIR: Yes.

Senator HUME: My questions are about advice that ASIO have provided to both the government and the Labor opposition on the Home Affairs Legislation Amendment (Miscellaneous Measures) Bill. That was advice
in the last week or so, I think. Mr Lewis, did you personally attend a briefing on the Labor opposition's amendments to the miscellaneous measures bill last week?

Mr Lewis: Yes, I attended a briefing.

Senator HUME: And you provided advice at that briefing?

Mr Lewis: Yes, I did.

Senator HUME: Can I ask what that advice was?

Mr Lewis: No, Senator, you may not ask what that advice is?

Mr Lewis: I thought I'd be pushing my luck!

Mr Lewis: But what I would like to say is that the advice that ASIO has given throughout the process of the miscellaneous measures legislation has been constrained entirely to the issue of the legality of the ASIO Act and the application of the ASIO Act as a component part of the miscellaneous measures bill as it was put forward. So we have constrained ourselves to legal advice only. I'm sorry—there is also the issue of what was originally the 24-hour provision, which has now, I think, spun out to 72 hours. That is the challenge for an organisation such as mine, which habitually issues adverse security assessments or qualified security assessments on people—which, I might add, are a very serious issue and are not something that can be arrived at quickly, particularly given the demographic that we are speaking of here, where the background of those individuals may be more challenging in terms of identifying the details.

Senator HUME: I have some very specific questions for you on that particular issue, but before I get to them—

Mr Pezzullo: So as to avoid confusion later, through the course of the day, I think your question, Senator, referred to prospective Labor amendments to the miscellaneous measures bill. Just to be abundantly clear, the director-general and I and a number of other officers did brief Mr Shorten and his various senior colleagues on the Senate-amended bill. There was no discussion of, nor were we able as public officials unless otherwise authorised by the government to engage with the opposition on, what alternative constructions of the legislation might look like—in other words, 'Were Labor to move certain amendments, what would you think of that?' As beneficial as that discussion might well have been, in a Westminster system you brief and advise the government of the day. You're not in a position, unless otherwise exceptionally authorised, to work through amendments with the opposition. I think your question went to Labor's amendments.

Senator HUME: Yes, it did.

Mr Pezzullo: I wanted to be really clear about that, because the briefing was about the Senate-amended bill.

Senator HUME: I thank you very much for that clarification. It is very important. Mr Lewis, I wonder if you—obviously without telling me exactly what that advice was—can confirm that the advice you provided at the briefing was in accordance with the advice you provided to the government?

Mr Lewis: Yes. We gave one set of advice on several occasions, and that advice was constrained to the application of the ASIO Act to the intended legislative package.

Senator HUME: So did the Labor opposition move amendments with security advice from you on them or not?

Mr Lewis: I have no idea.

Senator HUME: So, the Labor Party amendments, as Mr Pezzullo said—

Mr Pezzullo: Respectfully, Senator, I don't think that's a matter for the Director-General. And, as I made clear in my intervention—which was precisely designed to perhaps anticipate this line of questioning—the opposition in the Westminster system makes up its own mind about what amendments to pursue. And they did so in this case, I would infer—because it happened after our briefing—on the basis of the briefing Mr Lewis and I provided, along with several of our colleagues. I want to stress again that the briefing was on the miscellaneous measures bill as amended by the Senate.

Senator HUME: Yes. All right. Thank you. I will ask a slightly different question. Mr Lewis, how does ASIO provide security advice to the minister now? Earlier you mentioned adverse security assessment, I think it was. Can you advise the Senate of the process you go through now to give advice to the minister?

Mr Lewis: I don't think it's appreciably different to what it has been historically. That is, we are able to, at the most extreme end of the scale, provide an adverse security assessment on an individual whom we consider to be a threat to security. That adverse security advice would then go up in briefing form. It could go up in terms of
administrative action that is going to be taken or contemplated—the loss of a passport or the loss of other issues, administrative action that can be taken.

Similarly, there is a qualified security assessment, which is a slightly different order, but it's a very formal process. Again, administrative action in this case may not be taken on the basis of ASIO's security advice, but our security advice may add to other things which might cause a minister to contemplate administrative action. Second to last, we provide ministerial briefs which may go from time to time, which relate not to individuals; this would be more systemic issues that might confront us. And then finally, like all senior officials, I have a direct relationship with the minister and may raise with him in oral briefings from time to time concerns I might have.

**Senator HUME:** Can I ask you specifically about the QSAs or an ASA? For an Australian citizen, on average—and I know it's very hard to generalise—how long would a QSA or an ASA take ASIO to put together?

**Mr Lewis:** I don't think I can be specific here—and I'm not trying to be evasive. It just depends very much on the circumstance and the background of the individual. If a person was imminently traceable—they had a full history here, someone like, dare I say it, myself—where you could go back several generations and know exactly where the person came from, we would move through that fairly promptly. But if a person has a different kind of background, where they've come from someplace else, and the records may not be complete, it can take months and months and months.

**Senator HUME:** That's really the issue I wanted to get to. If a person's a foreign national who's lived a substantial part of their lives overseas, there would be some difficulty turning around the advice for a QSA or an ASA from ASIO's perspective—getting that advice to a minister in a timely manner?

**Mr Lewis:** There could be, yes. We would typically have to go to second and third countries to test their holdings on the individual, and that takes time.

**Senator HUME:** You say 'that takes time'; can you give us an indication of how long that takes?

**Mr Lewis:** It can be several months.

**Senator HUME:** Months—so, not 24 hours and certainly not 72 hours.

**Mr Lewis:** Again, it depends entirely on the circumstances. We can from time to time get very quick turnaround if it were some sort of national emergency, if there was a terrorist that was about to cross our border or something of that nature. But for what I would describe as more-routine administrative checks, then obviously prioritisation cuts in and it can take a considerable amount of time.

**Senator HUME:** So, for somebody who is currently on Manus or Nauru, does it concern ASIO that the expectation is that you will be able to turn around an ASA or a QSA within 72 hours?

**Mr Lewis:** Without going into the detail of the content of the brief—because that is not appropriate—we have advised on concerns that we have with regard to the application of the ASIO Act as it stands in the legislation as it was contemplated.

**Senator HUME:** Does that—I'm sorry; I'm translating—suggest that you think this particular part of the amendments that have been passed to this bill are potentially unworkable for your agency?

**Mr Lewis:** I'm not saying that. I have just said that we have restrictions because of the wording of the ASIO Act. There will obviously be limitations on how fast we can respond, and the speed of response would depend entirely on the information that we might already have on the individual. Obviously if we had a full picture on somebody we could respond instantaneously, but it depends on whether you have that or not.

**Senator HUME:** And this concern is something you have expressed to both the government and the opposition in briefings?

**Mr Lewis:** I have expressed to them that the ASIO Act as it is currently written, and the processes that we follow as a result of that act, would make the invocation of the ASIO Act of limited value, and not complete, if what I understand to be the intention of the act was correct.

**Senator WATT:** That being the original bill that was passed by the Senate—

**Mr Lewis:** That's correct.

**Senator WATT:** rather than the Labor amendments?

**Mr Lewis:** I haven't passed any comments other than on the original bill—

**Senator WATT:** I just wanted to make that clear.

**Mr Lewis:** and I wouldn't share any further advice that I have given on that.
Senator HUME: My understanding is that the original bill required a turnaround of 24 hours. The Labor amendments required 72 hours. But from what you are telling me, Mr Lewis, sometimes the work that ASIO does to provide a QSA, or to provide an ASA, could potentially take months?

Mr Lewis: Sometimes it could, indeed.

Senator PRATT: The Prime Minister and the Minister for Home Affairs announced on 22 November that the government would lower the bar to strip Australian dual citizens with terrorist convictions of their citizenship. On 28 November the government introduced a bill into the parliament. Did ASIO ever provide specific advice to the Minister for Home Affairs, or the department, about the desirability of amending section 35A of the Australian Citizenship Act?

Mr Lewis: Yes, ASIO was consulted on the citizenship amendment bill. But I would say that questions in relation to this are better directed to the department. The department has carriage of that bill. We were consulted and made a number of suggestions and some technical observations relevant to ASIO’s remit.

Senator PRATT: It is important I separate these questions out. These things get politicised—about the nature of who supports what—and, as you know, people take great weight in what you have provided advice on. The advice you were asked to consider was specifically about making it easier to cancel the citizenship of convicted terrorists?

Mr Lewis: I won't go to the detail of the advice we gave, I'm sorry.

Senator PRATT: So you won't go to the detail of which parts of that bill you did give advice on?

Mr Lewis: I just said that it was only in relation to that part that impacted ASIO.

Senator PRATT: Does amending section 35A of the Citizenship Act impact on ASIO?

Mr Lewis: I don't know. I don't have the details in front of me. I would have to take that on notice, unless the department is able to answer later on. I just don't have the information in front of me.

Senator PRATT: When did you first find out about the citizenship bill?

Mr Lewis: I don't know. I have no idea personally when that would have been. I know it was before Christmas, as you've described.

Senator PRATT: Were you are specifically to comment on the drafting of this legislation?

Mr Lewis: I just said we were consulted and we made a number of suggestions and technical amendments to the department with regard to that.

Senator PRATT: If the minister says the bill was drafted on the advice of agencies would that be accurate insofar as ASIO is concerned?

Mr Lewis: I'm not sure what was put in front of the minister, so I can't comment on that. The advice we put into the mix may or may not have been taken. I don't have an understanding of that.

Senator PRATT: So it's not correct for the minister to say that the version of the bill that was put forward to the parliament, including the section of the bill that lowers the threshold for stripping someone of citizenship, was drafted based on ASIO's advice?

Mr Lewis: No, I don't think that's what I said, Senator. You've cited the minister. I'm not sure what he said, but I understand you're saying that he said it was done on the advice of agencies. I'm sure that's correct. What I don't know is to what extent the advice that ASIO put into the drafting process was or was not taken.

Mr Pezzullo: I can add to that. As the department with carriage of the relevant legislation—and I'll check the records and you can ask me during the evidence of the department proper—if ASIO had any views, objections, caveats or concerns, they would have been expressly drawn to the minister's attention.

Senator PRATT: Yes, I don't dispute that, but what I do worry about is where the minister has a particular political objective in mind, which might be to politicise the removing of the rights of citizenship, and then says it was because ASIO gave us advice that it was the right thing to do—

CHAIR: Senator, this is to ask questions, please, not to make political statements.

Senator PRATT: Mr Lewis, you do understand why I'm asking the questions, don’t you?

CHAIR: Hang on. Can you frame your questions without reference to politicians? You can get to the same result and make it easier, can I say, for officers at the table, particularly ASIO, who are not involved in the political process. You can ask the same question but in a way that doesn't involve the officials having to be seen to be commenting on what politicians on both sides might or might not say.
Senator PRATT: Okay. Did you comment specifically on the drafting of the legislation? Mr Lewis, did ASIO do that?

Mr Lewis: You asked me whether we commented and I said that we were consulted on the citizenship amendment bill and we made a number of amendments and technical amendments relevant to ASIO's remit. It's probably important to note that citizenship cessation is one measure among a number to protect Australia and Australians from terrorism, but it doesn't necessarily eliminate the threat posed by those who are subject to citizenship loss.

Senator PRATT: Before I move on to other topics, if the department says 18 people might be under question for assessment in terms of lowering this threshold, surely that's not correct if any of those 18 are known not to be dual citizens. Did you provide advice on the extent to which that was taken into account?

Mr Lewis: No. It's a curious question, Senator, but, no, not on matters of citizenship. ASIO would not have given advice on that.

Senator PRATT: Is the minister correct to say there are 18 people of concern?

CHAIR: No—not, 'Is the minister correct'; 'Is it a fact that such and such—

Senator PRATT: No. It's fine. I will move on because—

CHAIR: I don't want officials to be—

Senator PRATT: I do understand that we don't want to get dragged into it. I'll move on to other issues to help the committee. Can I ask, please, about the classified advice from the Department of Home Affairs regarding the Phelps bill which was leaked to journalist from The Australian? Was that advice wrongly attributed to ASIO?

Mr Lewis: I think I said in my opening remarks, Senator, that the advice that ASIO gave in relation to the bill you refer to as the 'Phelps bill'—the miscellaneous measures bill—was confined to the application of the ASIO Act as it was a trade in the original bill that was put forward.

Senator PRATT: Yes, but was it wrongly attributed to ASIO as a result of that? In other words, you're saying it wasn't your advice that was leaked?

Mr Lewis: I'm saying we gave advice on the narrow interpretation of the ASIO Act. If The Australian newspaper or any other media organisation has gone beyond that, then that is not correct. We constrained ourselves to the issue of the legislative provision of the ASIO Act and how that could either assist or, in fact, obstruct the intention, as we understood it, of the miscellaneous measures bill.

Senator PRATT: Thank you. So, if you've reviewed what's in The Australian, clearly you're saying that advice can and should not be attributed to ASIO?

Mr Pezzullo: I can assist, perhaps, because it goes to the question of the referral I subsequently made. I think it might have been on the day of the publication, perhaps the day after, but I'll refresh my memory before we move to the department. I think the headline—Mr Lewis might have made reference to ASIO advice. But in fairness to Mr Benson, the journalist, when one actually unpacked the article and read—some people I suppose only read the headline and some read the whole article—it said something like—I will get the construction not precisely right—that in advice from the Department of Home Affairs, based on contributions or advice from ASIO, and I think possibly the Australian Border Force might have been named as well, the government has been advised of the following factors: X, Y, Z. That was the Benson article. So, if you actually read down the column it would have become transparently apparent that the advice was from the Department of Home Affairs, which drew on, in part, advice from ASIO. The Director-General has made clear that advice was confined to one particular matter. He has described the matter; I don't need to repeat it.

Senator PRATT: Mr Lewis, when did ASIO see the advice and was ASIO ever asked to review the advice before it was sent to the Minister for Immigration, Citizenship and Multicultural Affairs?

Mr Lewis: I don't have that detail in front of me. I can take that on notice and get back to you. We did see the advice, but I don't have the precise timing.

Senator PRATT: Can I ask if you agree with the analysis and the security assessment that was attributed to ASIO in the leaked advice, and more broadly?

Mr Lewis: You can ask, but really it is not a matter where ASIO is asked for advice or has the lead competency. The issue that you are referring to—what were the implications of the legislation—is a matter that is assessed by others, not by ASIO. That is something that is done elsewhere within the department and elsewhere within the security community. But, no, and I am not prepared to discuss my private views on that. It is irrelevant. So, no.
Senator KIM CARR: Mr Lewis, following your reading of this material in *The Australian*, which was headed 'Phelps bill a security risk: ASIO', you assured yourself that no officer from your agency was responsible for communicating any information from ASIO, did you not?

Mr Lewis: Yes I did.

Senator KIM CARR: And you are satisfied that there was no leak from ASIO?

Mr Lewis: Yes, I am.

Senator KIM CARR: Given what you said in your opening statement, this is the sort of behaviour that you think actually undermines confidence in ASIO as an agency in which the parliament has confidence and trust. Is that the thrust of your remarks?

Mr Lewis: Yes, it is.

CHAIR: Senator—

Senator KIM CARR: Just let me finish this.

CHAIR: No, Senator Pratt had finished her time. We'll come to you—plenty of time.

Senator PRATT: Do I have any time left.

CHAIR: No, you don't.

Senator PRATT: That's fine. I have two minutes of questions left.

CHAIR: You started at 2:36—

Senator KIM CARR: If I could just make this point. Your opening remarks—

CHAIR: Which means that your time has finished, Senator Pratt. I'll now go to Senator Molan.

Senator MOLAN: I have only one question. Director-General, as you are considering the issue of conducting assessments over a 72-hour period in relation to the migration bill miscellaneous issues, will this become for you an issue of more resources or of re-allocating resources? What is the resource impact on you, should there be, in that 72 hours, one person or 300 people?

Mr Lewis: If we were to be hit by 300, as you just described, that would be something that any amount of resources wouldn't resolve, in all probability, because of the timeframes involved. It really goes to the point, I think, I was making to Senator Hume earlier: it would depend on the information that we had on the individuals concerned. The more information we had, obviously, the quicker the turnaround time; and the less information we have, then you would very quickly move outside the 72-hour time frame.

Senator MOLAN: Nauru, I think, has a population of IMAs of about 500-plus; and on Manus Island it is about 400. Of that population of just under 1,000 people, are you able to say what proportion of them you have been looking at in detail for a long period of time, and who may come in very easily?

Mr Lewis: Senator, the bottom line on that is, no, I wouldn't comment on individual cases, but let me give you something here because I think this is important. When an IMA person arrives on Nauru, Manus Island or wherever they have arrived over the last many years, those individuals are run against the national intelligence holdings—that is, the Movement Alert List and other areas. So, they are run against national intelligence holdings. If the individual registers then, obviously, we will do follow-up investigations. If the individual does not register, they are not referred to ASIO by the immigration department and nor should they be.

Senator MOLAN: By registering, I assume you mean a red flag goes up?

Mr Lewis: That's correct. The only other time that they are run then against those national intelligence indices is if there is a prospect—and, Secretary, you might just confirm this—of them then being moved from one of those offshore processing centres to Australia, then they would be run again.

Senator MOLAN: Is it possible to say that 40 per cent of them have had red flags against them or 10 per cent—

Senator MOLAN: No, Senator. Chair, that's all I've got, thank you.

CHAIR: You've got another 6½ minutes. I might use some of your time, Senator Molan. For assessments of people on Nauru, you only look at them if asked by the Department of Home Affairs?

Mr Lewis: That's correct, yes. If they ping against the intelligence indices and are referred by the Department of Home Affairs, then we will begin an ASIO investigation into those individuals.

CHAIR: Were you saying earlier that you find it much easier to investigate people who have papers—passports and travel documents—than people who have absolutely nothing?
Mr Lewis: That would be true, Senator. If an individual had a very traceable and auditable background, it is quite clear to me that our investigators would move more quickly through that case than if they had to go and find that documentation, as I say, generally, through second and third countries.

CHAIR: Are you able to say that the countries of origin of people that have been investigated that have no papers are somewhere where you could get to Indonesia or Sri Lanka without a flight?

Mr Lewis: I don't think I could comment on that Senator; I'm not sure.

CHAIR: I'd ask you to take it on notice, only I'm not quite sure what you would take on notice—how you would become involved. You would only become involved if the Department of Home Affairs asked you to?

Mr Lewis: If it was referred to us, yes.

CHAIR: I will leave it at that. Senator Carr.

Senator KIM CARR: Mr Lewis, you were commenting in your opening remarks about the fact that ASIO has a very long history—70 years, you said. You were saying how important it was to maintain public confidence in ASIO, particularly in this parliament, by which I took you to mean—and perhaps you could correct me if I'm mistaken—across-the-board support, bipartisan support, for the work of ASIO. Was that correct?

Mr Lewis: Yes, Senator, I spoke about the support of the parliament for ASIO.

Senator KIM CARR: And that included a broad cross-section of the parliament and, when I say bipartisan, I mean both the government and the opposition.

Mr Lewis: I think 'the parliament' implies that it's everybody sitting in either house of this place.

Senator KIM CARR: Would it be fair to say that throughout the history of ASIO that has not always been the case?

Mr Lewis: Absolutely. Sadly, a cursory read of our official history will show you some of the awkward times that we've had as an organisation, and I for one would never want to return to those times.

Senator KIM CARR: Exactly. From what I know of your work after working with you in government, I would understand exactly what you mean, and that's why I might offer a view to you that I'm sure you would be very concerned—

CHAIR: No, offer a question.

Senator KIM CARR: I put this to you: that's why I understood you to be saying why you are so concerned about the report that appeared in The Australian identifying ASIO as the source of the material—a classified report—appearing on the front page of The Australian newspaper. Is that a fair reading of your response?

Mr Lewis: Yes, and I hope I made it plain in my opening remarks that the advice that ASIO gave was not what was represented on the front page of The Australian newspaper.

Senator KIM CARR: The history of this bill is quite an interesting one. It was actually a tidy-up bill, a non-controversial bill.

CHAIR: Do you have a question?

Senator KIM CARR: Yes.

Mr Lewis: I just want to make sure that the record is put straight: the advice that ASIO gave in this particular case was confined to the application of the ASIO Act in the miscellaneous measures bill.

Senator KIM CARR: The history of this bill is quite an interesting one. It was actually a tidy-up bill, a non-controversial bill.

CHAIR: Do you have a question?

Senator KIM CARR: I'm just reinforcing what the director-general's saying.

CHAIR: No. As I said at the opening, we're here to ask questions and leave the political statements somewhere else.

Senator KIM CARR: Thank you, Mr Chairman. I'll do my very best to get through this as quickly as I can, and perhaps you could do the same. Mr Lewis, the report was subsequently declassified. Were you consulted about the declassification of that material?
Mr Lewis: I feel confident we were consulted. I don't recall personally, but I'm fairly confident the department did come to us and say, 'Look, this is going to happen; do you have any concerns?' because, quite obviously, the department would rightfully have been concerned about putting out something that was in fact still classified from an ASIO point of view.

Senator KIM CARR: Yes. I'm just trying to remember a precedent for the events that we saw with this particular matter, with a document being presented to a journalist claiming it would appear from the report, to be based on a confidential and classified briefing from you—from ASIO, not you personally—which was subsequently declassified. Can you indicate to me whether or not there has been a precedent for that.

Mr Lewis: I don't think I've been around long enough to know that.

Senator KIM CARR: You've read the history. You know the history of your own organisation.

Mr Lewis: Yes.

Senator KIM CARR: You were a security adviser prior to this particular role that you're in now. You have a long and distinguished history in terms of your contribution in these fields. Do you recall an incident of this type?

Mr Lewis: I don't off the top of my head, but I hesitate to confirm that that's the case. Something may well have happened with leaked ASIO information in the past. I wouldn't want to give you an incorrect answer on that.

Senator KIM CARR: Thank you very much.

Mr Pezzullo: Senator Carr, could I add to the director-general's answers, because I think it reinforces a very important point that is premised in your questions about ASIO's independence and its standing in both the community and the parliament.

Senator KIM CARR: Yes.

Mr Lewis: The director-general was the only officer or official with whom I consulted before I made the referral. I notified Dr Parkinson that I intended to do so, but I'd already made that decision by that stage. Having read not just the headline—I think, as you've mentioned, the headline draws attention to ASIO—but also the body, it very clearly purports to be about a Department of Home Affairs submission which draws from, amongst other places, ASIO advice. In my judgement one of the tipping points that warranted a referral to the federal police commissioner, which was covered this morning, was the fact that it put ASIO in the spotlight of, if you like, a legislative argument around a bill. It was one of the factors that I added to my set of factors that led me to refer the matter. As I said, I consulted with the Director-General contemporaneously. He and I were mutually dissatisfied about the representation, potentially—we are not criminal investigators—of classified advice and, therefore, I decided to proceed. It goes to your point about the importance—

Senator KIM CARR: Yes, it does. Mr Pezzullo, I was going to ask you who you discuss the matter with?

Mr Pezzullo: Mr Lewis.

Senator KIM CARR: That's right. You've confirmed that you did not seek permission of any government minister?

Mr Pezzullo: No.

Senator KIM CARR: You acted on your own authority, as you are required to do, I would expect?

Mr Pezzullo: Indeed. I suspect ministers and their advisers found out about it as the referral was going.

Senator KIM CARR: But you are required, in terms of your legislative responsibility, to actually refer a leak of this type?

Mr Pezzullo: I think strictly speaking it is under administrative direction—the public's protective security framework, which binds all secretaries and agency heads to make such referrals. I think, from memory, it is an administrative instrument issued under the authority either of the Attorney-General or the Attorney-General's secretary. I will get that confirmed. But generally, as well, our job is to uphold the law. The law says you don't leak, in an unauthorised fashion, classified information.

Senator KIM CARR: That's right, even if you are a cabinet minister.

Mr Pezzullo: I don't know how to respond to that.

Senator Reynolds: Senator Carr, you weren't here this morning. That was canvassed at some length with the AFP Commissioner, and I might point you to his testimony. Again, he confirmed that it's still under evaluation—

Senator KIM CARR: Senator, I watched the proceedings. I am not arguing the toss about what the AFP has done. I am interested in the response of ASIO to what I regard as a highly offensive act by this government.
**Senator Reynolds:** Senator Carr, if you just let me finish, I understand that. But the point I was going to make is that, because it is still under evaluation he doesn't characterise it as a leak, because that has yet to be proven and that's part of the categorisation of this.

**Senator KIM CARR:** We are not going to there. We are going to the fact that this appeared. It is a classified document that appeared on the front page of The Australian newspaper.

**CHAIR:** This is not a debate. We are here to ask questions. Senator Pratt, do you have a question in the next minute?

**Senator PRATT:** Yes, I do. Noting that you might be constrained in terms of what you can say, the Prime Minister, in the House of Representatives this morning, referred to the cyberattack on the parliamentary system. How would you categorise the attack in terms of seriousness and is the integrity of our system still intact?

**Mr Lewis:** I would describe the attack as being sophisticated, which I think is the word that the Prime Minister used and, in fact, the Leader of the Opposition. It is a sophisticated attack on, in the first instance, the parliamentary services, and in the second instance on the three major political parties and their systems. Beyond that, I wouldn't comment other than to say that in terms of the electoral machinery which we have in this country, that is the Australian Electoral Commission and the various state electoral commissions that work with the federal system, there is no evidence that they have been compromised.

**Senator PRATT:** Is there any compromise of the systems overall? So you are saying the electoral systems remain intact. Does that mean there are other systems that are not intact?

**Mr Lewis:** I think I have just said that there were penetrations of the parliamentary system, of the DPS—the Department of Parliamentary Services—and the different systems that support the three major political parties. Beyond that, I would not be prepared to go. The investigation is underway. We are very busy at this time, together with our colleagues in the Australian Signals Directorate and the Australian Cyber Security Centre.

**Senator PRATT:** Was it a knock on the door or a significant compromise?

**Mr Lewis:** I am not going to comment, Senator. I am sorry.

**Senator PRATT:** Has the attack now been neutralised?

**Mr Lewis:** I won't comment on that. I describe it as 'being managed'. I don't want to go into the detail of exactly what has been stopped and started and so forth, but I am satisfied that it is being managed within an inch of its life.

**Senator PRATT:** Thank you.

**Senator McKIM:** I'd like to ask a couple of questions on the Australian report of 7 February. Has the AFP been in touch with ASIO in regard to its evaluation of Mr Priscilla's referral?

**Mr Lewis:** No, they've not been engaged with me. I can't comment about anyone else in the organisation—that's a question possibly for the police to answer—but, no, not with me.

**Senator McKIM:** They told us morning, by the way, that they're still evaluating the matter. You've expressed concerns about some of the things that led up to this report. Just to be clear, Mr Pezzullo gave evidence this morning—he's here, so he can correct me if I paraphrase him inaccurately—that he formed the view that on face value there may have been a leak of classified material. I'll pause there to give Mr Pezzullo a chance to—

**Mr Pezzullo:** That it appeared on face value that the journalist in question—who is a senior and distinguished writer for The Australian and is very careful in how he sources information—and I'm not the police, that information had either been summarised and paraphrased to him or that he potentially had sighted a document. The latter obviously being of more concern. Going back to my answer to Senator Carr, the fact that ASIO had been thrown into the mix—I think we all have a special obligation and duty to support the director-general, because of ASIO's powers and its role in our community, to ensure that it is absolutely beyond question in terms of its involvement in day-to-day politics—those two factors coming together warranted a referral.

**Senator McKIM:** I will come back to you, Mr Lewis. Mr Pezzullo, by using the words 'ASIO had been thrown into the mix', you're referring to the fact that the advice, which you have given evidence about this morning was actually advice from the department, borrowed from—or 'drew from', I think was your expression—advice from ASIO.

**Mr Pezzullo:** It drew upon advice from a number of agencies, including ASIO. As the director-general has said, and I don't want to summarise his evidence—he can speak for himself—his advice was particularly
pertinent, in fact, solely confined to but particularly pertinent, on the applicability of the ASIO security definition in the ASIO act.

**Senator McKIM:** So it's fair to say that you're very concerned about this circumstance, Mr Lewis?

**Mr Lewis:** Yes.

**Senator McKIM:** I think you used the term 'seriously damaging' in your opening statement; is that right?

**Mr Lewis:** I think I said, 'Instances like this can be seriously damaging to the reputation of an organisation such as mine.' We will obviously move on, but I want to make sure that senators are aware of my unease with this sort of leak. It's not a good place to be.

**Senator McKIM:** There is no argument from this chair, at least, Mr Lewis, and I'm sure other committee members would feel the same. Mr Pezzullo called you to discuss this prior to him making the referral to the AFP?

**Mr Lewis:** Yes, as he just described.

**Senator McKIM:** I'm not asking you to go into the detail of the conversation, but did you concur with his decision to refer the matter?

**Mr Lewis:** Yes. It seemed very sensible to me, and since I was satisfied that the leak had not come from inside ASIO then I thought it was most appropriate that Mr Pezzullo took the action that he did and refer it to the Federal Police.

**Senator McKIM:** Thanks for that. Senator Pratt asked you about the recent hack of Parliamentary servers and servers of political parties in Australia. It has been placed on the record that it's likely to have been the result of hostile intelligence activity from foreign countries. Are you able to confirm that?

**Mr Lewis:** I think the words that were used by the Prime Minister and I think the Leader of the Opposition were that it was likely to be a foreign state—state-based, might have been the words they used; I actually have the words here somewhere. The expression that was used was 'a sophisticated state actor'.

**Senator McKIM:** And how many sophisticated state actors are there in the world that could conduct attacks such as these?

**Mr Lewis:** There is a number.

**Senator McKIM:** Would you care to name them?

**Mr Lewis:** No.

**Senator McKIM:** Does this remind you of Russia's hacks on the US election, specifically the hacks on the Democratic Party? On the face of it, there are pretty significant similarities.

**Mr Lewis:** It doesn't remind me particularly of any actor. What it does, of course, is cause you to think about the frequency with which there have been penetrations of political parties and the discourse that goes around that in various countries in largely the Western world, but not exclusively, over the past three or four years.

**Senator McKIM:** So, this is I guess a recent phenomenon that has occurred particularly in democracies around the world?

**Mr Lewis:** Yes, I think that's true. It's not all democracies, but there have been enough to be of concern to us, and it caused us some months ago to set up the Electoral Integrity Task Force, which is a cross-government task force. It's not run by us, but the Australian Electoral Commission is of course central to all of that, and ASIO certainly supports that task force. It is of core interest to me to ensure that there is no foreign interference in our electoral process. And as I said, mercifully we have no evidence to show that the electoral mechanics, if you like—the electrons that go around our election—have been impacted in any way. It is purely confined to a limited attack on this building, the Department of Parliamentary Services and then an attack on the three major political parties of the country: Liberal, Labor and Nationals.

**Senator McKIM:** Understood, but would you concur with a statement that in order to interfere with elections in a democracy it's actually not necessary to hack the Electoral Commission in the context of Australia, that you can actually interfere in elections through the dissemination of information obtained from other sources—for example, political parties?

**Mr Lewis:** I agree with that. There are a number of ways this can be done, and of course attacks would be very dependent on what the local circumstances were. For example, is there compulsory voting or not? That would obviously impact how you were going to try to influence the election. So, it's kind of horses for courses, is what I'm saying.
Senator McKIM: Sure. Thanks. And I think this is going to be my last question on this issue. Has ASIO or anyone else on the task force that you mentioned, to your knowledge, had a look at some of the attacks that have happened around the world and tried to use the other processes that are underway in places like the UK and the US to inform yourselves as to how to better defend our democracy against attacks like this?

Mr Lewis: I can answer half of that question. It would also be profitable I think to put that to the department when the coordinator is available. But from ASIO's point of view the answer is yes—that we have of course been engaging our intelligence partners where we think there has been intrusion or interference to understand what lessons they have learnt in order that we can bring that back here and ensure that we steel ourselves against those kinds of problems.

Senator McKIM: And they would include your Five Eyes colleagues?

Mr Lewis: Yes.

CHAIR: Mr Lewis, you indicated that the attacks were on the major political parties. Is there any significance in that at all, that you can mention to this committee?

Mr Lewis: I don't quite understand the purpose of your question. It would be very significant, obviously, for organisations that have been subject to penetration. That's a matter of concern. And I might add that we are working I think very effectively with all those organisations that I mentioned now to ensure that the matter is handled expeditiously, that there is no further chance of the problem metastasising, and we're working to try to understand what has happened.

CHAIR: You mentioned three political parties. Were they the only three attacked? There's a fourth political party in Australia—well, and a fifth and a sixth and a seventh, I guess—but none of them were attacked?

Mr Lewis: Not to our knowledge.

CHAIR: Would you know only if those political parties then contacted you or someone contacted you and said, 'Hey, we've been hacked as well'?

Mr Lewis: I'd rather not go into the techniques that are used, but you can be assured that, once three political parties have been attacked, our checks then incorporate other related organisations to make sure that if there is any peripheral penetration that's gone on we would have an understanding of it.

CHAIR: Okay. That's particularly interesting. There was some evidence—and I think we've mentioned it in this committee before—about Russian bots. I'll get the terminology wrong, because I struggle to know what a bot is. But there have been some newspaper reports, and I think evidence in this committee, about foreign countries signing up as followers to a number of Australian—well, one only, but an Australian politician. Is that in the same category as attacks on the cyber system?

Mr Lewis: In a generic sense, yes. I mean, they are all attacks. If it would assist, I do have a young ASIO officer who is a full bottle on bots. She has just finished educating the Director-General on this subject.

CHAIR: Then I've asked you at the right time!

Mr Lewis: I'll confine my comments to just a few minutes, but no; that is another technique, which is very public, of using that sort of technology in order to metastasise messages.

CHAIR: We did mention this in previous estimates. Has ASIO been involved in following up those bot attacks or bot sophistications?

Mr Lewis: I wouldn't comment on our operations and what we've done in response to those. That is an operational response.

CHAIR: Okay. But, as you indicated, you have been looking at the attacks on the political parties and parliament. Have you been looking at the bot issue in relation to people—in this context, politicians?

Mr Lewis: Long pre-dating the current attacks that we're talking about.

CHAIR: It was just before the last estimates, actually. So, really my question was—and if you can't answer it I won't pursue it—you have said, 'Yes, we're looking at attacks on the parliament and the political parties.' You're just looking into them; you're not telling us anything more. But I'm just asking you: did you look into those bot issues where a particular politician, according to the papers and I think mentioned here, was the subject of an attack, or whatever you would call it, from Russian or other bots? Did you look into that?

Mr Lewis: Again, that is an individual case, and I would rather not comment on it. But I can assure you that the issue of bots and the threat that they pose to our electoral process and all of our partner countries' electoral processes is increasingly well understood. It has been a matter of interest to my organisation for some time, predating this current attack on the DPS and the three parliamentary parties.
CHAIR: Can we as politicians find out from someone? Do you lecture or give information on how to identify if we have bots on our system? Or should someone do that, if not you?

Mr Lewis: The Australian Cyber Security Centre is the organisation that is best positioned to engage with either industry or the parliament or the parties or in fact any external agencies. That is why the cyber centre was established, in order to make that interface between what I might describe as the very dark business of cyber work and engaging with the community, which is vulnerable. So the Cyber Security Centre: I would encourage you that that is the place to go and the people to ask.

CHAIR: Thanks, good advice. Are there other questions for ASIO?

Senator PATRICK: In relation to foreign interference, I apologise if I haven't been here for all the words you have been speaking about that, so if I mention something that has already been answered you can refer me to the Hansard. I know Senator McKim was talking about foreign interference. Do you see the threat of foreign interference growing?

Mr Lewis: Through time, yes. I have come to a view that foreign interference is more prevalent now than it would have been a decade or two or three decades ago, because you can. The facility for foreign interference is greater now than it has ever been in our history. That is really a comment about technology more than anything else. You are able to interfere in other people's electronic business in a way that was not possible in the past.

Senator PATRICK: Perhaps in the short term, would you say there has been an increase between this time last year and now?

Mr Lewis: I'm not sure I would put it into that tight a time frame. I think it is probably true to say that it is just growing inexorably through time. As we all become more dependent on electronic systems, those systems, unfortunately, while they do us a power of good, are also a great vulnerability. The other thing I might add, and this is a philosophical view, is that foreign interference is possibly more prevalent now because of the effects of globalisation. It goes in part to the technological issue, but the fact is that we have globalised systems at present—globalised supply chains and industries and so forth—so it is probably not surprising that this is a feature of our lives that we need to pay attention to.

Senator PATRICK: In the context of legislation that we passed last year—I know that it has really only just come into effect—has that been effective in slowing anything down or just helping you deal with something? The whole purpose of that legislation, I believe, would have been to provide a deterrent effect in respect of foreign interference. Can you give me some view as to whether or not that is having an effect?

Mr Lewis: I am very positive about both those pieces of legislation—the espionage and foreign interference legislation, and the second bit that we call FITS—the Foreign Influence Transparency Scheme. You are quite right to say, particularly in the case of the second piece of legislation, that it is going to be a very effective deterrent, because if you are not registered and you are caught out trying to have influence here in Australia without registering your interest in a foreign direction, you would be, prima facie, breaking the law. I find that a positive development. With regard to the EFI—the espionage and foreign interference legislation—of course I have been saying for some time that you don't get instant results about these things. Investigations of foreign interference typically have a very long sine wave, and we are working through that now. You know yourself that the laws that existed before EFI were archaic. There was even a provision in there for drilling, which we all thought was confused with the minerals industry, but it was to do with drilling soldiers up and down a road—marching people up and down a road. It was very, very Victorian—I don't mean the state of Victoria; I mean Victorian England—in terms of its wording. The new legislation is something that I welcome.

Senator PATRICK: I'm mindful of time. Since the passage of that legislation, which came into effect in December, I think, and noting your suggesting there's ongoing political interference, are those laws being exercised? Are we likely to see a prosecution in respect of that in the short term?

Mr Lewis: As I said, prosecutions in the foreign interference area are a notoriously long sine curve. They take a long time. You will recall there was no retrospectivity. I can't answer that question directly.

Senator PATRICK: Moving to the next federal election, what are you doing in respect of cooperation with the Australian Electoral Commission?

Mr Lewis: I did refer to this when we talked about the electoral integrity task force, which was established—

Senator PATRICK: If you've said something about it, I'm happy to go and look at the Hansard.

Mr Lewis: We sit on that task force and we contribute directly into it.

Senator PATRICK: To what extent are media organisations a target of clandestine foreign interference and then, flowing from that, are you interacting with media organisations?
Mr Lewis: I've commented publicly on foreign language newspapers in particular, but other than that I don't have anything to offer with regard to other media.

Senator Patrick: Going back to prosecutions, and noting what you said before, is it too early to be able to describe what role the AFP takes in foreign interference, noting it deals with the criminal—looking at briefs and activities—to understand what your role is versus that of the AFP?

Mr Lewis: I obviously won't speak for the police commissioner, but I can assure you that the AFP and ASIO are sitting back-to-back around these issues. I am confident—I've seen this myself—that we are ready to pass information that we have, which is intelligence, and to turn that where possible into evidence, because that's an exquisite kind of art. The mechanisms are in place for that.

Senator Patrick: So, predominantly, you're looking at the intelligence side of things and they're looking more at the turning into evidence and—

Mr Lewis: A prosecution.

Senator Patrick: prosecuting. Thank you. Do you have the same definition of what might be politically sensitive matters as the AFP? Are you running off a common set of definitions?

Mr Lewis: I would think so, although when we begin, if we were to begin, a foreign interference investigation, we would have already crossed the threshold of sensitivity at that point. That's why we would conduct the investigation.

Senator Patrick: I know you work in a world that necessarily involves a lot of secrecy, but you'd understand that in certain states when intelligence organisations and police organisations get involved in electoral matters there would be great concern. I'm not suggesting that that would take place here, but I wonder whether there is any documentation that you're going to put out publicly that would alleviate concerns that people—certainly people in other countries—might have.

Mr Lewis: I don't think ASIO would be putting out such documentation, but I would not be at all surprised if the Australian Cyber Security Centre and then of course the Electoral Commission were to put out advice and surety, where that was available, that they would do that. ASIO is not involved, as you've sort of intimated, in the electoral process as, perhaps, in some other countries you have the odium of a crossover there. With my organisation, as you know, from the very start of our legislation it has been very plain that ASIO is to remain free of political influence. It says that in the act, and we are religious and scrupulous in adhering to that.

Senator Reynolds: Senator Patrick, on that, I might be able to provide some additional information reassuring you about ASIO's role. As the Director-General has said, they are a member of the task force, which is chaired by the secretary of the Department of Finance, who looks after this, with responsibility for the Electoral Act.

Senator Patrick: I want to go very quickly to ASIO records. To provide listeners with context: ASIO is not subject to FOI but is subject to the Archives Act. I note that in your previous annual reports you have detailed the number of access requests. 2015-16 contained figures for the release of ASIO records under the Archives Act and the same with 2014-15: 650 requests for ASIO records, a 20 per cent reduction on the number of applications from the previous year. That detail no longer appears in your annual report. Is there any reason why that information is no longer included in your annual report?

Mr Lewis: No, not to my knowledge. Could I take that on notice and come back to you?

Senator Patrick: Absolutely.

Mr Lewis: There is no ostensible reason. It may be an oversight or some change in administrative process.

Senator Patrick: There are nerdy people in my office that read your reports.

Mr Lewis: I am very pleased and encouraged.

Senator Patrick: Can I ask you, by way of a question on notice, to fill in the gaps since that information stopped appearing in annual reports.

Mr Lewis: I will take that on notice.

Senator Patrick: I have one question left, and this might need to be taken on notice as well. As of 31 July last year, how many archive access applications referred to ASIO were outstanding for 90 days, more than a year, more than two years, more than three years, more than four years and more than five years?

Chair: We want an answer now!

Mr Lewis: We do have that information. I also have people who are very interested in this, so I will come back to you with that information.
CHAIR: No other questions for ASIO? Thank you very much for your attendance; it's very much appreciated.

Proceedings suspended from 15:32 to 15:50

Department of Home Affairs

CHAIR: We are dealing with the Department of Home Affairs, cross-portfolio, corporate in general. The program actually erroneously had including Australian Border Force. I'm not quite sure what that means or how it got there. We have the Border Force next, so I really ask colleagues to deal with cross-portfolio corporate and general matters, strictly so-called. I think we identified them last estimates. The sooner we get through cross portfolio and corporate in general, the sooner we can get onto Border Force, which I think is of interest to many people.

Senator McKIM: Could just confirm, when will Mr Outram give his statement? I was relying on the program.

CHAIR: At the beginning of the Border Force, outcome 1.

Mr Pezzullo: Mr Outram's statement also covers the matter canvassed this morning regarding Mr al-Araibi. Should that issue come up under cross-portfolio, not having heard from Mr Outram, it could be complicated.

CHAIR: We can't really anticipate questions, but I imagine that if we can get cross-portfolio, corporate and general matters out of the way, but strictly so-called. There has been a tendency in other committees and sometimes in this one to canvass everything.

Mr Pezzullo: If it were to come up under outcome 1, Mr Outram would have delivered his statement.

CHAIR: That is the intention. Cross-portfolio, I determine, is where your department has done something with the health department et cetera. Corporate is corporate, and general matters is staff.

Senator McKIM: Might I seek some clarity here, Chair? I do have some questions on that matter for Mr Pezzullo, which I believe would fall within cross-portfolio. I will put it on the record that I'm going to ask them anyway. You can rule them out of order if you like.

CHAIR: Are they related to Border Force?

Senator McKIM: No. They're related to the matters that Mr Pezzullo raised in his evidence this morning.

CHAIR: Do they involve the immigration department and Border Force?

Senator McKIM: Home Affairs and Border Force. I was just putting on the record that I'm going to ask some questions of Mr Pezzullo.

CHAIR: It is a question of whether you do it then or five minutes later. That is what I'm getting at. We are dealing with cross-portfolio, corporate and general.

Senator KIM CARR: Does Mr Pezzullo wish to give an opening statement?

Mr Pezzullo: I do, yes.

CHAIR: Sorry—I should have done that. Welcome to the department, although you have been here the entire time. I guess I did ask the minister this morning. Mr Pezzullo, over to you.

Mr Pezzullo: Thank you. The department and the portfolio of Home Affairs have been in existence for almost 14 months. As I noted in my statement to this committee on 26 February last year, Home Affairs would observe four key principles of implementation: first, preserve the traditional strengths of the home affairs agencies, respecting their statutory independence, professional skill and tradecraft, which are all deeply embedded in their workforces; second, take advantage of the creation of this larger and more integrated portfolio to build scaled-up capabilities and exploit previously unattainable synergies in areas such as intelligence, data exploitation and highly advanced digital systems; third, as mentioned, preserve the statutory independence of home affairs agencies and decision-makers, and ensure that all home affairs activities and operations are always conducted under law and subject to the supervisory checks that this parliament decrees; and, fourth, ensure that protection and security are means to pursue greater ends, namely economic prosperity, social cohesion and an open society.

I would like to take this opportunity to briefly outline some examples of how Home Affairs has gone about this integration process under these principles. First, transnational, serious and organised crime—or TSOC, to use the acronym—threatens the safety, security and trust of our citizens, the prosperity of our businesses and the economy and the integrity of our institutions. The appointment last year of Mr Karl Kent, the serving deputy commissioner of the Australian Federal Police, to the role of Commonwealth TSOC Coordinator signalled a more integrated and strategic national response. The Commonwealth TSOC Coordinator has significantly strengthened our fight against TSOC by drawing together capabilities across the Home Affairs portfolio and more broadly across the Commonwealth, and, of course, with the states and territories. In December last year, the Council of
Australian Governments, COAG, agreed to the national strategy to fight TSOC. The national strategy sets out how Australian governments will align efforts to combat TSOC, providing a framework for government agencies, the private sector and the broader community to address the threat.

Moving on: secondly, countering foreign interference is a whole-of-society challenge requiring the mitigation of vulnerabilities that extend across the traditional national security realm. Australia's institutions of democracy, our academic and research sectors, our social cohesion, our critical infrastructure and the media are all potential targets of foreign interference. The office of the National Counter Foreign Interference Coordinator, also established last year, has leveraged its access to other agencies under the umbrella of the Home Affairs portfolio to develop an integrated national effort to identify, assess and respond to foreign interference, and is drawing together the key policy, operational and social cohesion levers to respond. The coordinator, Mr Chris Teal, a serving deputy director-general of the Australian Security Intelligence Organisation, ASIO, is working with federal, state and territory entities to focus on foreign interference and engaging with those sectors of Australian society most at risk from foreign interference, including diaspora communities. The coordinator is also supporting the Australian Electoral Commission and the Department of Finance, which has departmental responsibility for the Electoral Act, to ensure the integrity of Australia's electoral processes, including in the lead up to the federal election.

Moreover, the Department of Home Affairs and our colleagues in the Department of Foreign Affairs and Trade have worked closely to ensure that there is close synergy between the domestic and international elements of our counter foreign interference approach. This has included active engagement with the valuable network of Australia's international posts to strengthen links with like-minded countries, as well as the secondment of a senior DFAT officer to the office of the National Counter Foreign Interference Coordinator.

I would like to take this opportunity to welcome the appointment of Ms Linda Geddes to the position of Commonwealth Counter-Terrorism Coordinator, along with the National Cyber Security Adviser, Mr Alastair MacGibbon, as serving deputy director-general of the Australian Signals Directorate, and the aforementioned coordinators for counter foreign interference and TSOC. The coordinators, four of them, are ensuring that a unified whole-of-government approach is being taken to protecting our security, sovereignty, values and national interests.

The beneficial synergies afforded by the creation of Home Affairs are also being experienced by industry and the broader community alike. As an example, Australia's aviation and maritime security functions are now co-located in the Department of Home Affairs, supporting their integration and coordination with the Australian Border Force, the Australian Federal Police and ASIO. This construct is enabling Home Affairs to work more closely with industry to deliver future solutions to ensure the security of the travelling public.

In collaboration with industry, Home Affairs has pushed greater integration between security screening requirements and border clearance processes; for instance, at major airports. This close partnership is working towards a more secure and, ultimately, seamless movement of people and goods across the border, providing joined-up border protection, trade integrity and national security outcomes. To ensure that the department is best positioned to achieve its outcomes, we monitor and adjust our budget settings and apportion our resources towards prioritised objectives. I wish to assure this committee that the department continues to work increasingly efficiently and effectively, but I would like to take this opportunity to stress that our effectualness is challenged by a range of ongoing factors.

First, with the establishment of the department and portfolio, our core functions have expanded far beyond the remit of the former Department of Immigration and Border Protection, now incorporating all of Australia's domestic national security and law enforcement functions. These areas will be of increasing importance to our domestic security in the years ahead and will have implications for resourcing, particularly in terms of ensuring that we have the necessary capabilities to work cross-jurisdictionally and internationally.

Second, we continue to grapple with increasing volumes. Over the past four financial years—I refer to 2014-15 to 2017-18, air cargo consignments that have been processed, to take one example, have increased by more than 50 per cent. Visa applications and grants have each increased by more than 20 per cent. These trends are forecast to continue over the coming years and decades. Additionally, we continue to see increasing demand for Australian citizenship. Over the last four financial years, the same years just mentioned, the number of citizenship applications has increased by almost 25 per cent, from more than 244,000 to more than 305,000. More than 16,000 people became new citizens on Australia Day this year, the largest number ever to take the pledge on Australia Day.

Third, we are managing a more complex threat environment that demands greater focus on integrity. Professionally resourced individuals and sophisticated criminal groups continue to seek ways to exploit border
flows for criminal opportunism and self-profit, to embed themselves in legitimate supply chains in order to obfuscate their activities and to circumvent border controls for nefarious ends. The increased proportion of high-risk cases across our visa programs, stemming from our better intelligence capability, and the shifting risk profile of many markets traditionally considered by the former department to be low risk, means that more applications require greater scrutiny, including more identity, character and bona fide checks. While we have been able to resource these functions largely within existing budgetary instruments, these areas are of increasing importance to our domestic security for the years ahead, particularly, as I said earlier, in having the necessary capabilities to work cross-jurisdictionally and internationally. While it takes considerable and intensive effort to assess 21st century risks, it is essential to do so in order to support the prosperity and security of our community. To take that one example, the skilled visa reforms the government introduced in March 2018, including the introduction of the temporary skill shortage visa, or TSS visa, strengthened the integrity of skilled migration and resulted in better quality skilled migration applications. This has been seen in higher approval rates and faster processing times for businesses applying under that scheme. In the permanent employer sponsored case load, similarly, applications lodged since the reforms have a 90 per cent approval rate, compared to a 65 per cent approval rate for those lodged prior to the reforms.

In closing, while Home Affairs is charged with carrying out the security functions of the state, our goals go beyond security and protection. We exist to support and enable Australia’s economic prosperity, social cohesion and the maintenance of a free, united and open society. I thank the committee for its time.

CHAIR: Thank you, Mr Pezzullo. Minister, is there anything you want to say?

Senator Reynolds: I would like to make a very quick comment, if I could, rather than an opening statement per se. As the Assistant Minister for Home Affairs, I would like to quickly place on record my gratitude and congratulations to all departmental staff, particularly the staff of Emergency Management Australia and those at the crisis coordination centre. It has been an extraordinarily busy natural disaster season, nowhere more so currently than in Queensland. I will be doing something more formally about this later, but I wanted to put on notice that they have done an extraordinary job in supporting states and territories in terms of their natural disaster response. Just to give you an idea, we have now had 33 LGAs in Queensland alone that have been activated for the disaster recovery funding arrangements. And task force 646 has been implemented, in particular, to support the 11 LGAs at the moment in the Central Queensland and Northern Queensland area. I just want to place on record my thanks for their professionalism and dedication and the extraordinary way that they have been working throughout the season in support of those who’ve been terribly impacted by these natural disasters.

CHAIR: Thanks, Minister. That’s very appropriate. As chair of the committee, I’m sure I speak for all senators in endorsing your remarks. As someone who is based in Townsville and who spends a lot of time in the north-west, I can tell you firsthand that the emergency services people—indeed, all of the Commonwealth agencies—have done a wonderful job. We have been fortunate in one way in that the biggest Army base in Australia is based in Townsville. The work, confidence and mental support the Army gave to the flood victims was first rate.

Senator Reynolds: Thank you. I would also place on record, as the coordinating minister for the Commonwealth, all of the other agencies that have swung into action. Centrelink have been extraordinarily responsive and have already paid out over $70 million to those in Queensland who were affected by the floods and other climatic incidents that have happened up there and Defence, with task force 646, swung into action. They have done an extraordinary job in getting fuel and fodder out and in providing other support and relief to the local communities.

CHAIR: Thanks, Minister, and, in passing on to Senator Carr, I’d also mention that you yourself have been there a number of times. Your assistance has been particularly good and noted, and I appreciate that.

Senator Reynolds: Thank you, Chair.

Senator KIM CARR: Mr Pezzullo, the department has yet to respond to the Australian National Audit Office’s January 2017 report No. 32, Offshore processing centres in Nauru and Papua New Guinea: contract management of garrison support and welfare services. That’s correct, isn’t it?

Mr Pezzullo: The ANAO report, you say?

Senator KIM CARR: Yes.

Mr Pezzullo: We would have provided comments and responded under the section 19 provisions of the Audit Act.

Senator KIM CARR: You did before. You made some comments, which were incorporated in the report, which was tabled in January 2017, but there’s been no government response to the ANAO report, has there?
Mr Pezzullo: I don't know that it's the practice of the government per se to respond to audit reports as opposed to, say, committees of parliament.

Senator KIM CARR: The department hasn't responded?

Mr Pezzullo: Our response, because the ANAO seeks our view—

Senator KIM CARR: So that's your response, is it?

Mr Pezzullo: That's right: whether we agree with the recommendations or otherwise.

Senator KIM CARR: Let me just remind you. Report No. 32 said:

The department did not develop an effective framework and strategies to manage the contracts and is not well placed to determine if the contract objectives have been fully met. Some four years into managing the contracts, a contract management plan was not fully in place, despite the complexity, risk and value of the contract.

It went on to say:

… did not adopt a systematic approach to monitoring the large number and variety of goods and services delivered under the contracts. A structured quality inspection program was not implemented and only three of the scheduled monthly audits for the period December 2014 to October 2015, were conducted. From April 2015 no audits occurred.

Given the findings of that report, which was delivered in January 2017, within months of that report the department—your department—was in discussions with Paladin to establish yet another contract, issued nine months later in September 2017. I'm just wondering: to what extent in those discussions did you actually consider the ANAO report's findings?

Mr Pezzullo: Completely, because the stance we took—and I stand to be corrected; the report was delivered to me two years ago—we accepted in terms of our management response the ANAO's recommended actions. You've got the report, perhaps, in front of you—I don't. We would have set up a remediation program. Ms Moy, perhaps, from our corporate area can remind me of the specific actions taken. I do recall that. In fact, I think I recall you asking me questions about it two years ago, and we said, 'Yes, of course, we will implement all of the recommendations, as we're obligated to, particularly in a circumstance where we say, "Recommendation agreed to"'.

Senator KIM CARR: A fair-minded person would be forgiven for reaching the conclusion that you have learned absolutely nothing from the ANAO report, given the Paladin disaster has now accompanied the findings.

Mr Pezzullo: Is it your intention to ask me questions about Paladin?

Senator KIM CARR: I'm just asking if that's a reasonable conclusion to reach.

Mr Pezzullo: No.

Senator KIM CARR: It's not?

Mr Pezzullo: As we go through the questions you no doubt have, and the answers—

Senator KIM CARR: I will. We will go to the detail right now. Given how serious the allegations have been in regard to Paladin's activities in Papua New Guinea—high-level corruption, fraud, money-laundering and serious criminal activity, involving a contractor for this Commonwealth, involving the expenditure of $423 million—have you not initiated an investigation yourself into those claims?

Mr Pezzullo: We will get to that.

Senator KIM CARR: Have you or have you not?

CHAIR: You have asked the question; let Mr Pezzullo answer.

Mr Pezzullo: What is reported in the media is in some parts not consistent with the reality of our records and what we understand to be our relationship with Paladin as a global group. Ms Moy can detail that history, then perhaps we can come to the serious allegations which you have characterised in your paraphrasing and how we intend to handle those.

Ms Moy: I might take you to our contact and the history of Paladin Group's dealings with the department in Papua New Guinea particularly. You know that Paladin is a global company. It has delivered security and related services to a broad range of governments and organisations in South-East Asia, particularly Papua New Guinea, since about 2007. It has been operating in Papua New Guinea since 2009 via Paladin Solutions PNG Ltd. It is registered in Singapore as a parent company of Paladin Solutions. They have worked on Manus Island as a contractor to Wilson and also to Decmil since 2013. Paladin Group and Paladin Solutions have had quite a bit of contact in regard to Manus Island work and working in that particular environment. As for the actual work that we undertake with Paladin, as I said, they were working with Decmil, Wilson Security and Broadspectrum. When the
withdrawal of Manus Island was due in October 2017, the Papua New Guinea government advised the Australian government and the department that they would—

**Mr Pezzullo:** Ahead of our withdrawal, I think.

**Ms Moy:** Sorry, ahead of our withdrawal. Early in 2017, approximately February, the Papua New Guinea government advised that they would undertake the contracts to manage the Manus Island and Port Moresby facilities required to accommodate the refugees and non-refugees who remain in Papua New Guinea, and they commenced that work. That work was solely the work of Papua New Guinea. We were not involved in those arrangements. The work that was then undertaken between Papua New Guinea and Australia happened quite regularly as senior officers meetings.

At the senior officers meeting on 5 July 2017 the Papua New Guinea Solicitor General advised he had provided advice to government that they could not proceed with those contracts or the tender based on the fact that they were in caretaker. Their election was finalised sometime about 8 July and the writs were issued on 20 April, so in that period of time the Solicitor General of Papua New Guinea determined that they could no longer continue. That meant that the Australian government, and the department as its actor, was required to step in and assist Papua New Guinea with the provision of services. There was very little time. We had previously undertaken expressions to market for services in regional processing countries. The number of people that replied to those tenders was limited. Primarily the people who expressed some interest early on and then decided that they wouldn't tender gave us the reason that there was too much noise for their organisations—they were international companies—around regional processing.

In that particular scenario and in that environment we talked to the Department of Finance, the Australian Government Solicitor and our external probity adviser, a legal firm, and we looked at our options for tendering to have someone provide those services such that we didn't have security risks, lack of accommodation and people not being fed and not having their welfare looked after. In doing that we spoke to the Department of Finance in regard to 2.6 of the CPRs, the Commonwealth Procurement Rules, which provides that:

> Nothing in any part of these CPRs prevents an official from applying measures determined by their Accountable Authority to be necessary for the maintenance or restoration of international peace and security, to protect human health, for the protection of essential security interests, or to protect national treasures of artistic, historic or archaeological value.

In our discussions with Finance they provided advice, as did the AGS and our external probity adviser, that under 2.6 of the CPRs we would be able to approach an organisation who may be able to deliver the services. On the basis of that we briefed our accountable authority, the secretary, to determine whether or not he agreed for us to use that process. On 10 August we got the go-ahead to use 2.6, because we did not have time for an open tender to attract others and we weren't even sure anyone would be in the market to provide the services. That is the basis of how we arrived at undertaking 2.6, which is not a limited tender; it is an ability to go to an immediate individual and ask for a quote for the services.

**Mr Pezzullo:** Known as special measures. I should add that I have direct knowledge of these matters, because under the procurement rules I am the decision-maker about whether special measures are warranted. I looked at the matter very carefully, including the lessons learned and the remediation program that we put in place in the context of the ANAO report that you have just referenced. I assured myself that it was government policy. I had to go to the government to ask: is it your policy intent to continue with the withdrawal of Australian delivered support services, under the auspices of the Commonwealth, at midnight on 31 October 2017? If the answer to that question is yes, as you well know, Senator, is a matter for ministers rather than officials—is yes, we have now missed the point, because of the change in approach, as Ms Moy has explained. I don't draw any implications, adverse or otherwise, but Papua New Guinea changed its mind saying from saying initially, 'We will take over the centre, deliver the services and run the tender'—in July, was it?

**Ms Moy:** That's correct: 5 July.

**Mr Pezzullo:** In 2017 the sovereign government of Papua New Guinea advised us that they did not intend to proceed with that course of action. In the time available—and I think it is fair to say that Mr Nockels would remember this very directly, because he signed the advice to me—I pressed very hard on the question: what options do I really have once the government made clear to me, as any fair-minded person could imagine they would, that they were not going to let people starve or go without food, water et cetera? I remember Senator McKim being quite rightly concerned about what arrangements would be in place for the single adult men in that location. It was determined as a matter of policy that yes, we would step in. Consequently, I, as the accountable authority, had to make a decision about how best to mobilise the market to deliver the desired outcome to support government policy, which was in support of the PNG Immigration and Citizenship Authority. Through the course of August 2017, with all of the advice that was previously summarised, we consulted across government: does the
secretary have any option other than the special measure, SM, provision? Mr Nockels, you might care to take up the tale from that point.

**Mr Nockels:** As the secretary has just explained, and as the deputy secretary has just explained, we were faced with a situation where we had to move very quickly to ensure that we had services available beyond 31 October. The committee may remember that the then service provider's contract, Broadpectrum, was finishing 31 October—

**Mr Pezzullo:** Formerly Transfield.

**Mr Nockels:** Formerly Transfield that's correct.

**Mr Pezzullo:** Broadpectrum more recently.

**Mr Nockels:** They were finishing their contract. We needed to continue services to that cohort in Manus and PNG more broadly, including Port Moresby. Given that we were faced with a very short time frame in which we needed to act, we consulted—as the secretary and the deputy secretary mentioned—with our probity advisers, with legal advisers and engaged with the Department of Finance, who were responsible for the PGPA Act and CPRs, and came to the conclusion that 2.6 was the pathway we needed to take. The challenge then, of course, was who is in the space, who knows the environment and—as the deputy secretary has just mentioned—Paladin had been delivering services at the East Lorengau Refugee Transit Centre, known as the ELRTC, for quite some years. They understood the environment. They understood the cohort. So when we needed to move quickly they were an organisation that we approached.

**Mr Pezzullo:** It's fair to say, Mr Nockels, it was for a full service contract, so it's not security as has been reported in the media, but garrison services—

**Mr Nockels:** That's correct, it is much broader than just security, so it's—

**Mr Pezzullo:** Bus services, the food—

**Mr Nockels:** Bus services, maintenance of the facilities et cetera.

**Senator KIM CARR:** I understand the terms of the Commonwealth procurement guidelines, but even if you are using that particular provision—so it is not even a limited tender. You have approached a company, a special measure—

**Mr Nockels:** A direct source—

**Senator KIM CARR:** That does not preclude you from consideration of sections 10.17 or 10.19—

**Mr Pezzullo:** Of course not—

**Senator KIM CARR:** which goes to the procurement rules in terms of evaluation of financial, commercial and technical abilities, nor the due diligence with regard to the capacities to actually undertake the work, nor in that matter with regard to—for instance—the question of low capitalisation of the firm, nor for that matter the question of what I might say has become now a criminal record. Is that not the case? You are actually required to examine all of those matters?

**Ms Moy:** That is correct.

**Senator KIM CARR:** Did you do that?

**Mr Pezzullo:** Yes.

**Ms Moy:** We did.

**Senator KIM CARR:** This is the beauty of 20/20 hindsight, you are now satisfied that those answers were positive for the Commonwealth in protecting the Commonwealth's interests?

**Mr Pezzullo:** The checks undertaken at the time.

**Ms Moy:** The checks undertaken at the time indicated that we were able to contract, so we had no concerns at the time with regard to—

**Senator KIM CARR:** You had no concerns?

**Ms Moy:** the checks that were undertaken in terms of the financial background.

**CHAIR:** We might leave it there and come back to you, Senator Carr. I will pass to Senator Molan, but on my way through to Senator Molan I will clarify something I think you said, Mr Pezzullo. Did you say Paladin had been working in Papua New Guinea since 2007?

**Mr Pezzullo:** Ms Moy gave evidence to that effect.
CHAIR: Were they working for the Australian government or for the Papua New Guinea government or for who?

Ms Moy: Their organisations work for various government and private companies within PNG, and they had also, as I said, worked from 2013 with regard to the ELRTC and as a subcontractor for—

Mr Pezzullo: Explain to them what the ELRTC is.

Ms Moy: Sorry, the East Lorengau Refugee Transit Centre—the development of that and the building of it.

CHAIR: So they were a subcontractor in East Lorengau since 2013—

Ms Moy: Yes.

CHAIR: Prior to that had they done any work for the holding centres in either Nauru or Manus?

Ms Moy: In Manus Island, yes, they had subcontracted to Broadspcetum. But I can also give you some other details—

CHAIR: Before 2013?

Ms Moy: No. From 2013.

CHAIR: I said before that, had they done—

Ms Moy: Not before 2013, no.

Mr Pezzullo: The agreement to go into Manus was established in 2013.

Ms Moy: I can give you some details of—

CHAIR: You said they had been in PNG since 2007. My question is simply had they done any work on Manus or Nauru from 2007 to 2013?


CHAIR: In 2013, were they the principal contractor or a subcontractor?

Ms Moy: They were a subcontractor.

CHAIR: Does the department oversight subcontractors?

Ms Moy: No, we do not—only through the prime contractor.

CHAIR: At what time in 2013 was this done? Can you just remind me about the opening of Manus.

Ms Moy: They were contracted to Decmil in December 2013. Decmil were responsible for a portion of the construction of the East Lorengau transit centre.


Senator MOLAN: Can I hand over to Senator Hume. It's more logical that Senator Hume go first.

CHAIR: Yes.

Senator HUME: I was going to ask questions about Manus and Nauru right now—the snapshot of who remains there and a little bit about them. Is this the right time to do that?

CHAIR: No, it's not. This is corporate and cross-portfolio.

Senator HUME: I understand that, but it's in the context of the US resettlement arrangement. Is cross-portfolio the right time for that?

CHAIR: No, I don't think so.

Senator Reynolds: It is outcome 1.4 for the US resettlement.

Senator HUME: All right.

Senator MOLAN: I am an extension of that, so Home Affairs cross-portfolio.

CHAIR: Just on this particular company, it's been around for some time. Some newspaper reports I have read just today, I might say, suggest that they're pretty new kids on the block, but that's—

Mr Nockels: Perhaps I could shed a little bit of light on that. The Paladin Group obviously has a number of subsidiary companies that work to it or are owned by it. Those companies are varied and work in a number of countries within South-East Asia, notably PNG, as we've been discussing, and Timor-Leste. They have a number of different companies that deliver those services. Just as an example of some of the sorts of services that they've offered and the different organisations they've offered them to, they've obviously delivered services for the ADF in the PNG context and the Singaporean consulate, all related to APEC activities in 2018. In Timor-Leste they
deliver services to the Australian Federal Police—that's ongoing—the European Union, East Timorese police, the international bank and the Asian Development Bank. Also in PNG, through a company called Black Swan International, they deliver services to the UK high commission, the US embassy, the Australian Department of Foreign Affairs and Trade, the Chinese embassy and the European Union, and they've delivered other services through that particular company relating to APEC. So, as the deputy secretary mentioned, they've obviously been in operation in a variety of different forms within this space for quite some years.

CHAIR: Okay, but some newspaper reports that have been given to me this morning suggest that they were a two-bob outfit with their head office at a beach shack in Kangaroo Island.

Mr Pezzullo: This goes to Senator Carr's earlier question. We're monitoring that media reporting very carefully. Obviously a group, global or otherwise, has various subsidiary entities. Some of them are registered here. Some of them are registered there. I've asked Mr Nockels to go carefully through the story that we have—we've got lots of documents and records; you can see the thickness of the files—and read those against the newspaper articles that have been coming out—I think in the Financial Review, from memory.

Senator McKIM: Before Mr Nockels does that, could he please be clear on which companies he's actually referring to here.

Mr Pezzullo: Absolutely.

Senator McKIM: Perhaps he could start by confirming which company it is that Home Affairs have contracted with—which subsidiary of the overall group.

Mr Pezzullo: Excellent question, Senator.

Senator McKIM: Thank you.

Mr Nockels: Senator McKim—and to the chair's question—the Commonwealth has a contract with Paladin Holdings Pte Ltd, which is a Singaporean based company. That is the contract that we have signed with, as people refer to it, Paladin. That is the organisation that we have contracted with to deliver services in PNG. Paladin Holdings Pte Ltd has a number of subsidiary companies, of which one is Paladin Solutions Group. When we first engaged Paladin in the broad to assist with delivering services in Manus, it was Paladin Solutions Group, under a letter of intent, but we signed the contract with Paladin Holding Pte Ltd, which is a Singaporean based company.

As I just mentioned of some of the other company names that are part of the broader Paladin group of companies—Black Swan, Sentinel in Timor-Leste et cetera—Paladin Holdings has a number of subsidiaries that deliver services in different countries in that part of the world. Again, to reiterate very clearly, the contract is with Paladin Holdings Pte Ltd, a company that is registered in Singapore.

Mr Pezzullo: And not in a beach shack, as far as we know?

Senator WATT: [inaudible] You mentioned that [inaudible] the Paladin Group had performed in Papua New Guinea prior to this contract. But am I right that, prior to this contract being signed by the department, the department had never had a direct contract with anyone in the Paladin Group?

Mr Pezzullo: I think that's right.

Mr Nockels: That's correct, because we had prime relationships with BRS, or initially Transfield and then Broadspectrum, BRS, and they would manage a number of subcontractors to deliver services under that broader umbrella of what they were doing. Wilson Security was one of those organisations and they subcontracted to Paladin to assist with delivery of services. In this case—

Senator WATT: So they've gone from being a small subcontractor to being a direct contractor?

CHAIR: Senator, these are my questions. We'll come to you shortly. If I can just continue with mine. So, Paladin, which I must confess I'd never heard of before, does the same sort of work as Serco, Spotless, Transfield, which seem to be providores right around the world for armies—

Mr Nockels: Broadly—they wouldn't be to the scale of some of those companies you have just mentioned, because they're multinational, multibillion-dollar companies that hold literally billion-dollar contracts, of which this is not. But they're in that broad range of services in terms of garrison, as the secretary said, which would be security facilities maintenance, ensuring that waste management is looked after, that fuel is delivered, the top-up generators et cetera—so, running all of those things around the East Lorengau Refugee Transit Centre. They also deliver a bus service and arrange other security-type escorts, as required, in Manus. They also look after activities in Port Moresby, in terms of some of the cohort from Manus needing to travel over to Port Moresby for a range of different reasons, generally health related. They would be managing them, as well, in the context of Port Moresby. I would also just make a point here that obviously this is all in support of Papua New Guinea and ICA,
which is the Immigration Citizenship Authority, which is running it from the PNG perspective. So, this is about supporting them under the regional resettlement arrangements that Australia and PNG have.

CHAIR: These regional resettlement arrangements, they've been in place since?

Mr Pezzullo: In the case of our arrangement with the government of Nauru, 2012, when the Gillard government accepted the recommendations of the independent panel to resume regional processing. And then mid-2013, when the Rudd government furthered that arrangement by striking an arrangement with Papua New Guinea. So, Nauru 2012; PNG 2013.

CHAIR: Mr Nockels, I think you mentioned the UK embassy and the Timor-Leste government—you mentioned a long list. Are they agencies, or governments or entities to whom Paladin already provides services?

Mr Nockels: That's correct. The Paladin Group in the broad, the Paladin Holdings company, which I mentioned previously—

CHAIR: Which is the one you have contracted with?

Mr Nockels: Correct—has a number of sub-companies or subsidiaries that then deliver a range of services. So, in the broad, that group, the Paladin Group of companies delivers a range of services to a range of clients, many of which I listed a short while ago.

CHAIR: This group that is actually apparently doing the work, is that something you choose or is it something the holding company proprietary limited says, 'Okay, we've got a contract with the Australian government. This subsidiary will do the work?'

Mr Nockels: No. We contract directly with Paladin Holdings Pte Ltd. They are bound by the contract to deliver those services. If they then, in turn, say, 'Some aspects of that might need a subcontractor'—as I mentioned before they might subcontract to a waste management company on Manus, as an example—then they would go ahead and do so. Under the contract, they need to let us know that that's what they're doing, but we would expect that that subcontractor to Paladin would be bound by all the contractual requirements that we have for Paladin. They would have to ensure that the subcontractor does likewise.

CHAIR: But the holdings company registered in Singapore is not the company referred to in media articles as the one with a head office in a shack on Kangaroo Island.

Mr Nockels: That is correct. The media report is talking about Paladin Solutions group.

CHAIR: Which is a subsidiary—

Mr Nockels: Correct.

CHAIR: of the holdings. My question to you was: you've contracted with the holdings company, and it's up to the holdings company to say, 'Right, this subsidiary will do this, this one will do that, this one will supply the bus and this one will supply the fuel.' I'm just trying to understand how this—

Mr Nockels: Just to be 100 per cent clear, the office that is mentioned in the media that's in WA, that is—

Ms Moy: Kangaroo Island, South Australia.

Mr Nockels: Sorry, South Australia. My apologies to those in South Australia.

Mr Pezzullo: A well-known island off South Australia.

Mr Nockels: It's the Paladin Group; it's the Australian entity.

CHAIR: Is that Paladin Holdings?

Mr Nockels: No, that's the Singapore based company.

CHAIR: But your contract is with the holdings?

Senator Reynolds: Chair, I've just got a little bit more information here for you on Paladin Holdings—the broader group. They've also been contracted by the ADF for APEC support, security support. They've also been contracted by DFAT for nearly three years now to provide security in Port Moresby.

Senator McKIM: This is Black Swan.

Senator Reynolds: Absolutely, but they're part of the group that has been—

Senator McKIM: Recently acquired by Paladin Holdings because you gave them so much money that they bought up Black Swan.

Senator Reynolds: If you'd like to have a debate about this, but I'm just providing some information to the chair.

Senator KIM CARR: Senator, we've heard this. We know all this.
CHAIR: Sorry, keep going, and thank you.

Senator Reynolds: I just wanted to highlight that point again. Paladin Holdings, who we contracted with—directly based out of Singapore—have a very extensive and very experienced operation.

Senator McKIM: Through a very recent acquisition of Black Swan.

Senator KIM CARR: Can I come back to where we started. The department is saying you had no reason for concern. You said that you had a letter of intent from Paladin Solutions. That is the Australian arm, which had an address at Kangaroo Island which was a post office box.

Mr Nockels: No. Paladin Solutions PNG is who we had a letter of intent with. We give them—

Senator KIM CARR: This is the one with the Kangaroo Island address?

Mr Nockels: No. That's the Australian Paladin.

Senator KIM CARR: Okay, where did you get the letter of intent from?

Mr Nockels: Apologies, senator, just to make it clear: we give the letter of intent to Paladin in order to deliver the services, they don't give it to us.

Senator KIM CARR: I see.

Mr Pezzullo: And we didn't send it to Kangaroo Island?

Mr Nockels: No, we did not.

Senator KIM CARR: When did you discover the Kangaroo Island address?

Ms Moy: We did not discover the Kangaroo Island address, because we're not dealing with that entity.

Senator KIM CARR: When did you discover the company required a loan of $10 million to get started?

Ms Moy: We're not aware of a loan of $10 million.

Senator KIM CARR: Did you provide them with a payment of $10 million to get started?

Mr Nockels: No.

Ms Moy: No.

Senator KIM CARR: That did not happen?

Mr Nockels: Did not happen.

Senator KIM CARR: When did you discover the criminal charges against the directors of the company?

Mr Nockels: That was made known to us via media reports in PNG. I would point out that that director is the director of Paladin Solutions group PNG and is not engaged in the contract that we have with Paladin Holdings Pty Ltd. The Commonwealth has no dealing with that individual. I'd also point out that those police charges relate to a matter some years ago. I think roughly about six years ago, whilst that individual was working in the PNG Defence Force. So, again, unrelated.

Mr Pezzullo: If I may, Mr Nockels. Because of the import of this line of questioning, but also the general discussion of this matter, I've asked Mr Nockels and Ms Moy to immediately alert me upon, as they read through these articles—there have been a series of them—whether there are any issues that engage the probity, integrity or national security interests of the Commonwealth.

Senator KIM CARR: Yes.

Mr Pezzullo: So we know what we've engaged them to do. We know what our contractual arrangements are. To your earlier point, notwithstanding the execution of this arrangement under the special measures provision, the rest of the CPRs are still always applicable.

Senator KIM CARR: That's right.

Mr Pezzullo: 'Special measures' only relates to how you find your partner, not how you engage with them subsequently. If anything in that media reporting gives us cause to be concerned as the Commonwealth, we will take action, including by way of reference to various external bodies, which could include, for instance, the Australian Commission for Law Enforcement Integrity, to take one example. So it's a standing review.

Senator KIM CARR: There's a series of allegations: Mr Thrupp being denied entry to PNG, his APEC business cards being cancelled and his credentials being cancelled.

Mr Pezzullo: We've read these reports. The question that I need to ask Mr Nockels—because I checked my briefings this morning prior to coming here, and I had yet not received any advice—is, on notice if necessary: Mr
Nockels, have you come across anything in the media reporting that would concern you as a Commonwealth official in relation to the Commonwealth's engagement with this entity within Paladin?

Mr Nockels: None whatsoever.

Mr Pezzullo: Thank you.

Senator WATT: I didn't realise you were asking questions now.

Mr Pezzullo: No, I sought advice

Senator KIM CARR: That's fine. You're seeking to assure the committee about the controller of this company and his business partner, Mr Ian Stewart, who recently purchased the Black Swan entity which you've referred to on various occasions and who are said to have associations with various politicians in Papua New Guinea. Various entities associated with these companies are on charges, including 106 counts of misappropriation of funds. That has no impact whatsoever on their capacity to run this company which is contracted to the Commonwealth of Australia?

Mr Pezzullo: The issue for me, as secretary, would be: is there any validity to what we in our trade refer to as open-source reporting, and is there anything in that reporting that would cause me to revisit, through contract and performance management measures, our engagement of this company? To this point, I have not been so advised.

Senator KIM CARR: Okay. Let's go through the detail, because I presume that you have investigated these claims. Is that the thrust of what your submission is?

Mr Pezzullo: No, 'investigation' has got a particular meaning in terms of opening a probity or criminal investigation. It's more akin to the referral discussion that we had earlier. If, on the face of the material that's in the media, in this case, or open-source more generally, Mr Nockels or Ms Moy would have cause to come to me to say, 'This particular element—and these stories run for many column inches—'is something that we need to look at; I intend to recommend to you that we refer it to an external body after an internal review,' then of course I would take that advice and we'd proceed on that basis.

Senator KIM CARR: Okay. You've explained the circumstances in which you initially contracted Paladin. That was for $89 million—is that correct? Was the original contract for $89 million?

Mr Pezzullo: Mr Nockels, do you want to go through the numbers?

Mr Nockels: Yes, that $89 million relates to a number of letters of intent which enabled us to engage Paladin to start work. You will recall that on 31 October the centre in Lombrum naval base was closing.

Senator KIM CARR: What was the date of that original letter of intent?


Senator KIM CARR: Who was the minister at the time?

Mr Nockels: I'm assuming it would have been Minister Dutton.

Ms Moy: Minister Dutton.

Senator KIM CARR: You've said before, Mr Pezzullo, that you went to government on this matter.

Mr Pezzullo: On the question of policy, not procurement.

Senator KIM CARR: On the policy only?

Mr Pezzullo: I needed to understand what was the government's risk appetite—I could have anticipated the answer, because I also am obligated to provide advice—if Broadspectrum's owners, with whom we were in respectful discussion about potentially continuing, had decided, for reasons to do with their own commercial strategies, not to proceed. If PNG was not in a position to tender and engage a service provider, if Broadspectrum was not willing to continue and if it was the stated policy of the Australian government to vacate the role at midnight on 31 October 2017, we would have—not in our legal custody but in supporting our partner the Immigration and Citizenship Service Authority of PNG—a situation where mainly single adult men—I think there are no families in Manus—

Ms Moy: That's correct.

Mr Pezzullo: I can't recall the numbers at the time, and I'll be corrected, but let's say there were upwards of 1,000 men. They would have, the following morning, no meals and no sanitation.

Senator KIM CARR: Yes, I understand that.

Senator McKIM: No, they didn't have any meals the next morning, Mr Pezzullo. I was there. They had no meals. They had no water. They had no electricity. They had no medication. On the morning of 1 November—
Mr Pezzullo: Thank you, Senator, that underlines the urgency of the circumstances.

Senator KIM CARR: I understand your line of argument. That's for the $89 million, which you say you undertook as the authorised officer without reference to government?

Mr Pezzullo: I authorised, as I'm only able to, the use of the special measures provision.

Senator KIM CARR: I'm not questioning your authority, I just asked the question—

Mr Pezzullo: Correct—

Senator KIM CARR: You did it on your own authority as you are—

Mr Pezzullo: Correct. Once I established the policy position that the government wished to provide services.

Senator KIM CARR: That accounts for the initial provision, the special measure. The second, the extension of $333 million in February of last year—and finishes, as I understand it, in June this year, that's correct? That was also a limited tender, why?

Ms Moy: The special measures was 2.6. The letters of intent were arrangements put in place to continue the services while we undertook the management of determining a contract. So the letters of intent were the first part to moving to a contract. Those four letters of intent preceded the signing of the contract on 28 February. I should just add in there that in terms of the special measures, having a special measures exclusion under 2.6 does not mean that you don't then undertake other parts of the CPRs such as value for money, effective and efficient—all of those—

Senator KIM CARR: We've agreed that that's a requirement under the Commonwealth procurement guidelines. What I'm interested to know is, surely you had sufficient time to go to a broader tender arrangement?

Ms Moy: A broader tender arrangement for something this size would normally take near on 12 months, if not longer.

Senator KIM CARR: But this is not even a limited tender. This is a special measure.

Ms Moy: Special measures—

Senator KIM CARR: This is beyond limited. You've gone to a specific company and then offered them a further contract of $333 million on top of the 89—

Ms Moy: No. We negotiated the contract on the back of a request for quote. So there was a formal process to arrive at that contract.

Senator KIM CARR: I see. So there was a negotiation?

Ms Moy: Correct.

Senator KIM CARR: They wanted more money than that did they?

Ms Moy: No, the negotiation is—

Senator KIM CARR: You offered them?

Ms Moy: When you are asked for a request for quote you put down what you are asking for. They advise what they can provide and you negotiate not only on the services but on the dollars, and that's also the period of time where we undertook all of the background checks through—

Senator KIM CARR: So you did the background checks did you?

Ms Moy: Yes.

Senator KIM CARR: I see. You mentioned that Paladin had some experience as a subcontractor. Where did they have experience in managing contracts of this size of over $400 million?

Mr Nockels: Obviously, one of the processes that we would go through in terms of procurement—the process that was just outlined—relates to a variety of different risks. That was identified as one of the risks through the procurement process, and we managed to approach that from a mitigation perspective. Part of that was around making sure that we were comfortable with the fact that the company had sufficient funds in order to be able to start and deliver on the project. From a technical evaluation perspective, they were able to meet the strong claim that they had the skills, as well as some previous experience. To your specific point around a contract of $300-odd million, they had not had that direct experience previously. Again, as I mentioned, obviously through a normal process, we identified risks. That was one of those.

Senator KIM CARR: But Mr Nockels, you're so desperate you'll take anything won't you? That's what happened, isn't it?
Mr Pezzullo: I'll take that question, Senator Carr, and I'll express it in my own terms. Desperation is not really a helpful part of our approach. We have to deal with the facts that are in front of us. As the accountable authority, who authorised the use of the special measure—because, by law, that is not a matter in the gift of ministers, the sole role that ministers play is to set policy. My strong preference, as a secretary of the department and also the accountable authority under the PGPA Act, would have been to embark on a 12 month tender process, which, knowing the government's policy directions to withdraw direct provision of services on Manus Island in October 2017, would ideally have started in the last quarter of 2016. Knowing what I knew about the ANAO's forthcoming fair-minded concerns about how the initial contracts were set up when regional processing was established in 2012 and 2013, my very strong preference would have been to have a long lead time, an open tender, a global search, assisted by specialised consultants and advisers, and that plan held fast until—did you say it was connected to the PNG election and caretaker?

Ms Moy: That's correct.

Mr Pezzullo: That plan held fast until mid-2017, when the sovereign state of PNG advised us, 'We don't intend to proceed. If you want to remain engaged with us in the provision of support services to us so that we can run the regional processing centre, so that persons can be resettled et cetera, you might need to change your approach.' Hence the urgency. We were dealing with an urgent situation, but we were never desperate in doing so.

Senator KIM CARR: When was the last time you did an audit of this company?

Mr Pezzullo: Mr Nockels?

Mr Nockels: We have a performance management framework that is built into the contract. That performance management framework is conducted constantly on a daily basis. It's breaking it down into when we would go to site—this is obviously in Manus or in Port Moresby. On a weekly basis we would have people who we have based up in Port Moresby, as well as our officers here in the national office in Canberra, who would travel to PNG, conduct, I wouldn't say an audit but performance management, in terms of normally how we would run a contract. That covers a whole raft of things, right from sighting incident logs, entry sign-in and sign-out—right down to that level of detail. We also have weekly engagement with PNG government representatives, ICA, who obviously run the centre in the broad sense—obviously Paladin provides services. That is a weekly meeting that dictates what sort of performance or what sort of issues need to be dealt with on the ground on a regular basis. We have monthly meetings with Paladin at a headquarters-to-headquarters perspective and we have quarterly meetings that involve all of the different providers—

Senator KIM CARR: This was an audit, was it? An audit?

CHAIR: Can you just finish and that will be the end of this segment. We will come back to Senator Carr.

Mr Nockels: And we have a quarterly meeting that has all of the different service providers who are delivering services—

Senator KIM CARR: What I'm interested in knowing—

CHAIR: We'll come back to you, Senator Carr. I have been reminded that you have had 15 minutes. I'll go Senator McKim, Senator Patrick, Senator Hinch and then the government, and then back to you, Senator Carr.

Senator McKIM: I'm just going to step us back a bit here. The letter of intent with Paladin Solutions was signed on 21 September 2017. Is that right?

Ms Moy: That's correct.

Mr Nockels: There were four separate letters of intent—if I could just take you through each one of those. The first letter of intent, 21 September, as the deputy secretary just mentioned, that was for $5,431,455.70. We then had a second letter of intent, on 9 November—this is 2017—for $34,312,361.60. There was a fourth letter of intent on the 7th—

Senator McKIM: You've given us two so far so you are probably missing the third.

Mr Nockels: Sorry, I missed the third one: 5 December 2017, $33 million, and then on 7 February letter of intent number four was executed for $16.5 million.

Senator McKIM: What's the total there?

Mr Nockels: I don't have a calculator, but it comes to about $89 million.
Senator McKIM: Say $89 million—that's the $89 million figure. So, $89 million was transferred under four separate letters of intent to Paladin Solutions? We'll come to Paladin Holdings and the contract in a minute, but this is pre-contract?

Mr Nockels: Paladin Solutions Group in PNG—correct.

Senator McKIM: That's right, in PNG. I'm not worried about the acquisition of Black Swan down the track, or Paladin Holdings. What experience did Paladin Solutions have in providing garrison services? You said they subcontracted—I think Ms Moy said to Broadspectrum and Wilson. Can you confirm that was for cleaning and maintenance services, Ms Moy—that was what they subcontracted for?

Mr Nockels: Perhaps I could answer that. It's predominantly security related services as it relates to the ELRTC East Lorengau—the refugee transit centre.

Senator McKIM: Security, and cleaning and maintenance?

Mr Nockels: I don't think it was for cleaning and maintenance at the time, no.

Senator McKIM: What was the value of the subcontract? Are you aware of that?

Mr Nockels: I don't have that. I'd have to take that on notice.

Senator McKIM: But just to be clear, your evidence is that it was simply to provide security services at one of the now three locations that refugees—

Mr Nockels: That's right. I'll take on notice how much was paid under the subcontract, and I'll take on notice just the confirmation of the breadth of services. I'm pretty sure it was predominantly security, but I'll just need to confirm that.

Senator McKIM: Thank you. I appreciate that—and also who they were subcontracting to.

Mr Nockels: Wilson.

Senator McKIM: I thought Ms Moy mentioned Broadspectrum as well.

Mr Nockels: Broadspectrum was responsible for managing the whole, so to speak. Wilson provided security services subcontracting to Broadspectrum.

Senator McKIM: And then Paladin subcontracted.

Mr Nockels: And then Paladin subsequently did that. On that, it's worth noting, as Ms Moy mentioned, that Paladin Solutions group, in a joint venture with another group in East Lorengau, also provided services to Decmil, which I think she mentioned a short while ago. Decmil was responsible for the construction of the transit centre.

Senator McKIM: All right. And what was the market capitalisation of Paladin Solutions when you signed the first letter of intent with them?

Mr Nockels: I don't have that with me. I'd have to take that on notice and just check, from a commercial-confidence perspective, that it would be okay to provide it. I'd just need to check.

Senator KIM CARR: But you did check.

Mr Nockels: Yes, absolutely. We had a commercial adviser, KPMG. They worked with us through the whole procurement process, and obviously in terms of checking financial viability—that was their role. They also checked that the company was a viable company and was in fact listed in Singapore, so they would go and check documentation with the Singaporean equivalent of the ASX et cetera. They were obviously also involved in providing advice around the whole procurement process, particularly as it related to value for money.

Senator McKIM: Mr Nockels, in your experience does the department generally, in circumstances like this, kind of forward-purchase services, or pay for services that have already been delivered? In other words, do you usually pay the money up-front? Or are you invoiced for services already delivered?

Mr Nockels: No. It's a letter of intent. Let's take the first one, on 21 September. We've now engaged Paladin to begin work. So, 21 September: you've got roughly 30 days before the closure of the centre. We need them to step up quickly, so they've got to gear up. We would say to them, 'We want you to start delivering services, and here's the first letter of intent'—with a number attached, which I indicated earlier was nearly $5½ million.

Senator McKIM: That $5½ million was given on the date the first letter of intent was signed? In other words, do you usually pay the money up-front? Or are you invoiced for services already delivered?

Mr Nockels: Generally what would happen is that, under a letter of intent, we would say to the provider—and this is general, not just for this particular case—'Because you're transitioning in, we will pay only if you seek permission from us to do that activity.' For instance, if we were to say to them, 'We need four buses; you need to deliver a bus service, so go and procure four buses', they would say, 'We're going to go and procure four buses,'
and we would say, 'Release the money under that $5 million to go and do that.' If they were to procure five buses and we had indicated only four, then we would not honour the fifth bus, and we would say, 'We're not paying for that under the letter of intent.' So, throughout the whole process as it relates to the letter of intent, the department had control over that expenditure the whole way.

**Senator McKIM:** And just back on my previous question around market capitalisation, could you also take on notice what the market cap of Paladin Holdings was when the contract was signed? And it might have just been a throwaway line, Mr Nockels, but it's actually not about whether Paladin thinks it's okay to release that information. If you don't want to release it you'll need to make a claim for public interest immunity on that.

**Mr Nockels:** I understand. I'm just checking on that, and I'll talk to our legal counsel about it.

**Senator McKIM:** Mr Pezzullo, I just wanted to chase up something you referred to a couple of times in your evidence. You variously categorised it as checking that the Australian government's policy was still to vacate the role at midnight on 31 October, and later you categorised it as checking whether it was still Australian government policy to withdraw direct provision of services on Manus Island.

**Mr Pezzullo:** Within the terms of the agreement that we had with the government of PNG.

**Senator McKIM:** Yes, within the terms of that agreement. When was the first time that the Australian government told you that it was their policy to withdraw the direct provision of services?

**Mr Pezzullo:** I'll have to take that on notice. It's been a long journey, but—

**Senator McKIM:** Yes. Most specifically for the people on Manus Island.

**Mr Pezzullo:** Indeed. I'll need to take that on notice. But it was enough time certainly to have been able to enter into a comprehensive tender process, perhaps with some expedited and accelerated phases, but I'll need to take that on notice.

**Senator McKIM:** You can take that on notice, but you've said 'enough time' so did you commence a normal tender process—if I could put it like that?

**Mr Pezzullo:** No, because the policy of the government—we'll need to check whether it was the last quarter of 16 or the first quarter of 17—was to say: 'PNG, thank you for supporting us with regional processing. We'd now like to step to a new phase of the relationship where we decommission direct Australian provision of support services and that you both run the centre and provide the services into the centre. By that logic you wouldn't run a procurement process for Australian supplied service.

**Senator McKIM:** So the policy was that the Australian government would cease the direct provision of services and would fund the PNG government—

**Mr Pezzullo:** Potentially fund, yes.

**Senator McKIM:** to provide those services itself.

**Mr Pezzullo:** Yes, and we'd reached an agreement that that alternative delivery model was feasible. Accordingly, the only planning up until mid-17 that we were undertaking was the headline planning we were undertaking which was a decommissioning exercise.

**Senator McKIM:** Okay. With regard to your role as the decision-maker around—

**Mr Pezzullo:** As the accountable authority.

**Senator McKIM:** as the accountable authority around special measures, how did you check that? Was that a conversation with the minister? Did you write to the minister?

**Mr Pezzullo:** I'll check the record. I'm certain that there would have been a submission involved or correspondence at the very least saying, 'Here's a circumstance with Broadspectrum withdrawing and government policy being reaffirmed. I'm checking that again that arrangements are to change on 31 October 2017. Of the implications of the change in direction by the government of PNG in July 2017, here are the likely options. I will need to make a decision.' Whether I asked for a reaffirmation of the policy or I just simply had the minister note what my inclinations were, I'll need to check on the record.

**Senator McKIM:** I think that you've agreed you'll take this on notice.

**Mr Pezzullo:** Yes.

**Senator McKIM:** My question was: what was the nature of that reassurance or that confirmation that you sort? If it was in writing, could you please provide—and I understand you'll take it on notice, so you'll want to work through the details, no doubt—your correspondence or your briefing note and any written or other response from the minister.
Mr Pezzullo: I'll take all of that on notice.

Senator McKIM: Do you recall: was it to Minister Dutton? That would be my expectation. Do you recall?

Mr Pezzullo: The ministerial arrangements that applied in mid-2017 would have seen the Minister for Home Affairs responsible for regional processing, yes.

Senator McKIM: Thanks. I have just a couple of other quick ones on this issue on that matter.

CHAIR: No, your time's up. We just allowed you to finish that line of questioning. We can come back to you later. Can I just remind my colleagues, I optimistically said cross portfolio corporate would only take a little while and that we could get on to border security very quickly. We're now running a bit behind time, but I know there are legitimate questions to ask. We are dealing with cross portfolio corporate and general matters.

Senator PATRICK: I want to reiterate Kangaroo Island is in South Australia.

Senator McKIM: Senator Patrick was most upset with you, Mr Nockels.

Mr Nockels: My apologies.

Senator PATRICK: Western Australia are already trying to take our submarines.

Mr Pezzullo: You need to be more fearful when Senator Wong finds out!

Senator PATRICK: Yes. And it's not the Cayman Islands either; it's a different kind of regime—just in case someone got confused. Ms Moy, I just wanted to get an understanding: prior to this urgency requirement that Mr Pezzullo had talked about, you said you'd gone to tender and there weren't many responses. Can you tell me how many respondents you did have?

Ms Moy: There was an approach to market in 2015, and the approach to market turned up—three?

Mr Nockels: No, it's just—

Ms Moy: Two?

Mr Nockels: There were possibly about five respondents. I think five respondents, of which—

Mr Pezzullo: We'll check—

Mr Nockels: Yes. We went to two who we felt could deliver the services.

Senator PATRICK: You had five respondents. Was Paladin one of those respondents?

Mr Nockels: We'll take that on notice.

Senator PATRICK: When you went you this urgency situation, where you went to a special measure, I understood that you went and did a request for quotes. You were in an unusual situation and, obviously, went to Paladin. Did you go to any of the other five respondents or however many had indicated previously in 2015 that they might be interested?

Ms Moy: The situation was that with the people who had responded, in terms of their capability of undertaking the role in Papua New Guinea, there were a number of those who had already suggested that they wouldn't be interested in undertaking work in regional processing and that took out the major companies. What we then needed to look for was somebody who had experience in Papua New Guinea, who had some sort of level of experience in remote service delivery and also who had some understanding of the regional processing position.

Senator PATRICK: Sure. Back in 2015 you got, let's say it was five respondents. I accept you might correct the record on that. There you've got at least five companies who have expressed an interest in that. When you went to the request for quote, did you explore those five companies or did you only go to one company, Paladin, for—

Ms Moy: No, we only went to Paladin.

Senator PATRICK: Why didn't you go back to one of the other five companies?

Ms Moy: I'll take it on notice in terms of the names of the companies who did actually express interest in the market. There were some issues with regard to a number of them who had already, since that period of time, notified us that they were no longer interested, and also whether or not the others would have the current experience in working in remote areas or in regional processing-type locations.
Senator PATRICK: You can see where my line of questioning is coming from. You've got five companies that had previously indicated something, one of which you don't think was Paladin, or you don't know, and then you went to Paladin. Why did you end up going there? Whose idea was that?

Ms Moy: Paladin was operating in the environment. They had been providing services to Wilson and with Broadspectrum. They understood the environment and we asked if they would be able to undertake these services. To date we're quite happy with the services that they're undertaking.

Senator PATRICK: To go back to those other five, can you at least provide a trail of why you didn't go back to those five? I'd be happy for you to do that on notice. In terms of a request for quote that then goes through a particular process to the point where Mr Pezzullo gets some sort of recommendation. Having worked inside government organisations there'll be a series of forms, one from a financial officer, one from a contracting officer and so forth. Is that the way the process works before it gets to Mr Pezzullo to sign off?

Mr Nockels: In terms of the special measures 2.6, we took that to the accountable authority, the secretary, who said, 'proceed down that pathway'. The actual delegate for the—

Mr Pezzullo: So in the circumstances we find ourselves proceed down that path.

Mr Nockels: Indeed. The actual delegation for contract signing, and all of the other matters around the procurement process, went to the deputy level in the organisation. We then constructed a normal procurement process, as you would have experienced as you have just suggested. We had a steering committee. We had a technical evaluation subcommittee, a pricing subcommittee et cetera. We went through the normal process to ensure that we were driving for value for money.

Senator PATRICK: Thank you.

Mr Nockels: Sorry, If I could add to that slightly as well. We also have within the department what's called a high-risk, high-value process around procurement. That was a direct response to earlier audit recommendations that Senator Carr had mentioned. That meant that as we went through that process we had an internal gateway process—a number of gates. Those gates included the chief financial officer, the chief risk officer and the general counsel. So they were signing off on the process as we went along, independent of the steering committee and independent of the subcommittees that would look at technical evaluation, pricing et cetera.

Senator PATRICK: Is it possible to provide, in the interests of transparency, that decision-making documentation set?

Mr Nockels: Yes, I don't think—

Mr Pezzullo: Hang on. Is the senator asking what our processes are, or is the senator asking for the documents that those committees—

Senator PATRICK: I'm asking you to list the documents in the specific instance.

Mr Nockels: The process?

Mr Pezzullo: No, I'll need to take that on notice.

Senator PATRICK: Sure.

Mr Pezzullo: That's like you asking for the entire vault of the submarine contract. It's the same thing.

Senator PATRICK: I can tell you the submarine contract will have almost a decade of documentation.

Mr Pezzullo: Indeed. This won't have quite that much, but if you're asking me what is the process map—

Senator PATRICK: No, I'm after the—

Mr Pezzullo: The actual documents? We'll take it on notice.

Senator PATRICK: The documents that go to the decision that was made.

Mr Pezzullo: Understood. We'll take that on notice. If there's public interest to be claimed, we'll deal with the executive government.

Senator PATRICK: Sure. I've got similar reports either through FOI or to committees in the past.

Mr Pezzullo: We'll have a look at it in the interests of being as transparent as we can.

Senator PATRICK: Thank you, and also the advice back from Finance. Mr Pezzullo, you said that you went to Finance and asked—sorry, Ms Moy might have said that.

Mr Pezzullo: Yes.

Senator PATRICK: You went to Finance and asked, 'What are my options in those circumstances?' Could you provide that advice to us.
Ms Moy: We'll take that on notice.

CHAIR: Was it in writing or oral?

Ms Moy: It is in writing.

Senator PATRICK: Just to help me out a bit, for the previous contract with Broadspectrum, could you give me a quantum of their annual cost of running the facility versus what we now have with Paladin.

Ms Moy: Certainly. As an example, for Broadspectrum in 2016-17, the Manus facility was $342.3 million for the 12 months.

Senator PATRICK: And under this contract?

Ms Moy: Under this contract we're at, for 18 months with the letters of intent, about $423 million.

CHAIR: I can do the arithmetic, but one's 12 months and one's 18 months. If the 12 months were 18 months or the 18 months were 12 months—

Ms Moy: It's comparable.

CHAIR: It's about the same. Okay.

Senator PATRICK: Once again on notice, I know you said you've had five letters of intent.

Ms Moy: Four.

Senator PATRICK: Not handing over what the scope of work was, can you provide any payments sequence—so the date and the amount.

Ms Moy: For the letters of intent?

Senator PATRICK: No, since the first letter of intent was signed, all the way through. So I presume every couple of months—

Ms Moy: We'll take that on notice.

Senator PATRICK: Thank you very much. I might just, in the one minute that I have left, jump sideways to section 37 certificates in relation to the Auditor-General. Mr Pezzullo, I presume you're familiar with those certificates.

Mr Pezzullo: Yes, I am.

Senator PATRICK: The Auditor-General advised the FPA committee last estimates that the department had raised the prospect of a section 37 certificate.

Mr Pezzullo: Which I had no intention of pursuing. If something came up in conversation, I'm very happy to delegate a degree of freedom of manoeuvre to my officers, but something as serious as an application under such a regime would have come onto my desk, and I can't see the circumstances applicable in that audit where that clause would have been invoked.

Senator PATRICK: This was in relation to Cape class patrol boats.

Mr Pezzullo: Yes.

Senator PATRICK: So clearly there was correspondence between the Auditor-General—

Mr Pezzullo: Or discussion.

Senator PATRICK: No, I've got correspondence.

Mr Pezzullo: Yes, but if my officers have flagged, 'We might have to invoke certificate X,' I trust them to make those judgements but then they have to trust me to make the final decision.

Senator PATRICK: I understand that. Where I'm going to is that section 37 certificates had never been used up until Thales used them in, I think, January last year, when that controversy started.

Mr Pezzullo: Yes.

Senator PATRICK: A certificate was—

Mr Pezzullo: That matter is a matter for the defence department. We don't procure armoured vehicles.

Senator PATRICK: I understand that, but that may have enlivened officials to the fact that the section 37 certificate existed.

Mr Pezzullo: We don't have secret laws in this country. It's known to all counsel—

Senator PATRICK: But do your officers read every statute?

Mr Pezzullo: They take advice from counsel.
Senator PATRICK: The point I'm making is that sometimes you become aware of things because of other—
Mr Pezzullo: It's a speculative link.
Senator Reynolds: Sorry, Chair, is there a question in this?
Senator HINCH: Excuse me, Chair. That is another topic, and your time is up, Senator.
Mr Pezzullo: It's a speculative association.
CHAIR: Thank you, Senator Hinch—I'll send you part of my salary for being Chairman! I've been remiss. The 10 minutes is just up, and I usually allow a couple of minutes to wind down in that area. I thought we were on the same topic.
Senator PATRICK: No, I had just jumped somewhere else.
CHAIR: Sorry, I should have stopped you, and I beg the committee's pardon.
Senator PATRICK: I'll come back to it; thank you, Chair.
Senator HINCH: I do have several issues to talk about on border security later on with Secretary Pezzullo, but I only have one question on Paladin, and that is: do you know if Ms Dutton—I think it's Ms Kay Dutton—is a relative of the Home Affairs minister, Peter Dutton?
Mr Pezzullo: I have no idea.
Senator HINCH: Can you take that on notice for me?
Mr Pezzullo: If it falls within my responsibilities, I'll look into it, but I don't know who the person—I know who Mr Dutton is—
Senator HINCH: This person's an executive with Paladin, and I think it's relevant.
Mr Pezzullo: I have no idea. And, just to reinforce, Mr Dutton had nothing to do with the procurement process. His sole role was to give me policy guidance on whether we'd have to provide services. We took it from there.
Senator HINCH: Thank you.
Senator MOLAN: Does the $1,600 a day have any relevance at all?
Mr Pezzullo: Sorry, what's the $1,600 a day?
Senator MOLAN: I assume it was the number of people on the island divided into the total amount. People have been saying in the media—
Mr Pezzullo: Oh, I see, yes. Ms Moy provided evidence about what the comparable costs were in global terms across a 12- and 18-month period, and I think her evidence was that there's been equivalence, in broad terms, of the payment. How that divides up per capita, number of persons, I'd have to take on notice.
CHAIR: How long have Paladin been operating?
Mr Pezzullo: Mr Nockels might return, but I think the contract required an urgent delivery of services from 17 October. How long they took prior to that to mobilise, I just don't know, and then the contract proper was finalised in February of 2018. But meals had to be prepared and other things had to happen in October.
CHAIR: That's fine. The purpose of my question is: have they discharged their obligations under the contract properly?
Mr Pezzullo: I think Ms Moy said that she was satisfied with their performance, and we've got a strict performance management regime to surveil their performance.
CHAIR: So, they've done what they're contracted to do?
Mr Pezzullo: Have they been satisfactory, Ms Moy?
Ms Moy: They have been satisfactory. And, as FAS Nockels mentioned earlier, the performance management framework operates on a daily basis. It's not something we go back and look at 30 days later about what's happened. So, in terms of how we manage that performance management framework, we have at times said to Paladin, 'That bit there is not up to scratch; you need to fix that,' and there are terms under the contract where we can abate the provider. So, under that performance management framework, we manage that quite vigorously.
Mr Nockels: If I could add in there as well: when we bring on a new contractor to deliver services, we do what's called user acceptance testing. So, from the day that they start, we run a user acceptance testing process where we work with them to ensure that they are doing what we contract them to do. That's above and beyond the normal performance management, because once you sign off on UAT you're then into normal BAU delivery. In this context we also did user acceptance testing, or UAT, with them.
CHAIR: Comments have been made about a $423 million contract, which sounds like a big contract. But what you're saying, Ms Moy, is it's about what the previous operator was being paid?

Ms Moy: It's comparable, yes, that's correct. And the regional processing contracts are large.

CHAIR: Mr Pezzullo, can I ask you whether anyone who's interested in this subject would have sought from you the actual facts? Because the facts, once you hear them, seem to be quite different from some of the media reports I've been having a glance at. Did anyone ask you for—and are you able to give—a factual account if someone says, 'Look, we're interested in this; I think there's something difficult about this', but can you give the sort of evidence that Mr Nockels will be giving today? First of all, do you do that?

Mr Pezzullo: The answer is yes, and typically a matter that's the subject of fairly comprehensive media coverage typically would involve an approach to our media area by the relevant publication, in this case the Financial Review. I'll just need to check with my senior colleagues as to whether such an approach was made, whether the claims were put to us, whether Home Affairs was afforded an opportunity to respond. I've read the articles fairly carefully. I just can't quite recall whether there are specific rebuttals contained within the story that quote our authorised responses. I'll take that on notice. But separately, in the interests of advancing the discussion about the actual narrative of what's occurred here rather than what has been refracted through media reporting, we've today released something of a chronology, which establishes the key points that Ms Moy and Mr Nockels have been referring to, and that's on the news page of our website.

CHAIR: Okay. I see in these newspaper reports—it doesn't seem that you're quoted—

Mr Pezzullo: I need to check.

CHAIR: although I do note that the company and the home affairs department are 'set to come under renewed scrutiny next week when Labor and the crossbenchers take up the matter' in the Senate. That's in the media report.

Mr Pezzullo: In fairness to the journalist, I'll check whether they approached our media unit. I don't know that they did, because I suspect that this would have been escalated to me, at least for my advance awareness. But I'll check.

CHAIR: I see that the Attorney is mentioned as having a comment on this on some sort of a program that runs on the ABC on Sunday morning. It's not his portfolio, is it?

Senator PATRICK: Insiders.

CHAIR: Is it?

Senator WATT: Yes.

CHAIR: I thought it was called 'The Labor Party hour'.

Senator WATT: About a million people watch it every week.

CHAIR: Well, you do have more members than I thought you had! Mr Porter was seen as making a comment, but it's not his department. I've asked you whether comment was sought from you. Is it possible—Minister, you might be able to say this: whether comment was sought from the minister, perhaps, not from the department? Do you know that?

Mr Pezzullo: Sorry, Mr Chairman?

CHAIR: I was just saying that either you or the minister might be able to elucidate whether comment or facts were sought perhaps from the minister. You don't think it's come from you, but you're checking on that.

Mr Pezzullo: Again, I'll check, as part of my earlier commitment to check, whether inquiries were made by the Financial Review to either Mr Dutton's office—and they were referred to us—or directly to the Home Affairs media unit. We'll have that checked.

CHAIR: If it was to Mr Dutton's office—I just want to be clear on this—I think you've said that it's nothing to do with Mr Dutton.

Mr Pezzullo: Under the law, the accountable authority for the oversight of procurement is the secretary of the department. That's why Mr Nockels sought authority from me to engage in—and I must say, and I might have to have my memory recollected here, but I said to Mr Nockels, 'David, one day you and I are going to be sitting at estimates and Senator Carr is going to be asking us about the use of the 2.6 special measure, so you need to assure me that this is truly our last tool in the toolkit.'

Mr Nockels: Indeed, I do recall similar comments, Secretary.

CHAIR: And was it your last tool in the toolkit?

Senator KIM CARR: Let's get on with it!
CHAIR: Was it the last tool in the toolkit?

Mr Pezzullo: Well, if you go to a special measure, an SM, that is the least desirable option, relative to the urgency of a situation. I'll go back to my earlier evidence, and I'll be very blunt here: I've given this evidence before, because Senator McKim in particular—doggedly, I think it's fair to say, and he's not here, but I don't think he'd mind me saying that—asked what is happening in October 2017, when the food will run out, the sanitation will run out et cetera. And I was giving evidence contemporaneously, consistent with the Australian government's position. In parallel—and they'll speak for themselves—I was personally putting Broadspectrum under a degree of ultimately unpersuasive pressure: would you not continue in this role if we had to run an extended tender process? The answer from Broadspectrum, under their owners, a European company, was: 'No; we'll extend to 17 October, but then we're out.'

As Senator Carr earlier observed, you then fall back from an open tender to a limited tender. In the circumstances where you can't even get a limited tender up, you go for a special measure. None of those matters fall within the authority of the minister. The minister is responsible to the parliament for my performance—obviously ministers are ultimately accountable in that sense—but they do not make decisions on special measures, I can assure you.

CHAIR: Thank you, Mr Pezzullo, Mr Nockels and Ms Moy. Senator Carr, you have some more questions?

Senator KIM CARR: Yes, I do. I want to come back to a couple of matters.

Mr Pezzullo: See, Mr Nockels, I told you that we'd be sitting here in two years' time.

CHAIR: You know that Senator Carr is a very distinguished former cabinet member—

Senator KIM CARR: I did ask a direct question before where I referred to a figure of $10 million and asked whether it had been paid in advance, if there had been an advance of $10 million, and you said no. Clearly you misunderstood me, and I just want to clarify this. The letters of intent provided a vehicle by which there was $5 million paid in advance. It's not the case?

Mr Nockels: As I explained, I think it was to Senator McKim, under the transition arrangements we would sign up a letter of intent.

Senator KIM CARR: I understand that. I just want to be clear about this.

Mr Nockels: The amount of money we would say is for this period of time—

Senator KIM CARR: I'm not asking you to repeat your evidence; I just want to clarify whether or not moneys were paid in advance to the contractor under the letters of intent.

Mr Nockels: As I was explaining, Senator, what we will do is we will sign a letter of intent with the service provider. That letter of intent will encompass a certain amount of money to cover activities. We would then say to that service provider, 'As you commit to expenditure'—I think I gave an example of buses.

Senator KIM CARR: Five buses, yes; we've been through this.

Mr Nockels: The department would then control that expenditure.

Senator KIM CARR: I'm not arguing the toss about whether or not you've paid the money, because clearly I'm asserting that you have. I want to be clear: how much money have you paid to Paladin in advance under these letters of intent? What was the total amount of money paid in advance for goods or for services under those letters of intent?

Mr Nockels: As I mentioned before, under the letters of intent I think the sum total was approximately $89 million.

Senator KIM CARR: Right. So when I asked the question before—did you pay $10 million—you said definitely not.

Ms Moy: Senator, I think you said did we give a loan of $10 million. There was no loan.

Senator KIM CARR: Okay. I want to clarify this. My question was imprecise. Now we've got that clarified. You've paid $89 million through the letters of intent in advance for goods or for services under those letters of intent?

Mr Nockels: As I mentioned before, under the letters of intent I think the sum total was approximately $89 million.

Senator KIM CARR: Right. So when I asked the question before—did you pay $10 million—you said definitely not.

Ms Moy: Senator, I think you said did we give a loan of $10 million. There was no loan.

Senator KIM CARR: Okay. I want to clarify this. My question was imprecise. Now we've got that clarified. You've paid $89 million through the letters of intent in advance for goods and services that you were expecting the company to provide.

Mr Nockels: We paid $89 million under the letters of intent for services as they were provided by the service provider.

Senator KIM CARR: Yes, but it was in advance.

Mr Nockels: As I mentioned before, the process of releasing that money was through a conversation between us and the centre's provider—
Senator KIM CARR: I understand that; I'm not arguing whether or not the money was—

Mr Nockels: to ensure that the Commonwealth had a good understanding of the—

CHAIR: Senator Carr, you asked the question and you've got to listen to the answer, even though you may not like it.

Ms Moy: Senator, a good way of explaining it is that under a letter of intent it's like paying an invoice.

Senator KIM CARR: I understand that. These buses weren't—they had not been purchased. You were providing them money for the company to procure the goods.

Mr Nockels: Senator, I used the buses as an example to help illustrate what I was talking about.

Senator KIM CARR: Yes.

Mr Nockels: In terms of the delivery of services, as I mentioned before, as the service provider says, 'We're going to buy buses'—using that just as a hypothetical example—

Senator KIM CARR: Mr Nockels, I understand that. We've been through this now three times. I want to know whether or not—

CHAIR: Senator Carr, you keep asking the question and you won't let the witnesses answer. If you want to give evidence, perhaps you should sit over that side of the table.

Senator KIM CARR: I've asked a question several times. I just want to be clear about this.

CHAIR: Can we let Mr Nockels finish his answer?

Senator KIM CARR: Mr Nockels, it's not like an invoice because an invoice is for goods already provided. This is for main provider for goods that had not been—

CHAIR: Thank you, Senator Carr. If you want to give evidence on what invoices mean, you go to the other side. Until then, our role is to ask questions and listen politely to the answers from the public servants.

Senator KIM CARR: I'm invariably polite. Mr Nockels, that's the case isn't it? This was not an invoice; this was money provided in advance of the goods being provided.

Mr Nockels: I stand by my response just a short while ago, Senator.

Senator WATT: With respect, the reason Senator Carr keeps coming back to this is just that I don't think we've had a clear answer.

CHAIR: Every time Mr Nockels tries to give a full explanation, he's cut off by Senator Carr. You either want Mr Nockels to give the answer or you don't. If you do want it, please let him finish the answer.

Senator WATT: It is correct, isn't it, Mr Nockels, that for these letters of intent, money was paid to Paladin before they'd provided goods and services, as opposed to them providing goods and services—they buy buses, they run buses—and then getting paid. For the letters of intent, the money was provided to them in advance of them providing goods and services. Is that correct?

Ms Moy: Senator, if I can just perhaps help clear it up. There's more than two ways of paying funds. So, in a contract, on invoice, quite often you pay for something that has already been provided.

Senator WATT: Understood.

Ms Moy: The letter of intent is paid for tied goods. A letter of intent says you're going to provide two buses: here is the money for those two buses only. That money cannot be spent on anything else.

Senator WATT: I understand that.

Senator KIM CARR: I'm not arguing that.

CHAIR: Let Ms Moy finish, please.

Ms Moy: That can either be on invoice—so they may be invoiced, and then we provide the funds when we see the invoice and they release their—or it can be that we may have to say, 'Here is $60,000 to do that one thing, and it's tied to that, and we need evidence of that.'

Senator KIM CARR: Ms Moy, this is the question: when it comes to the question of due diligence, you are required, as a Commonwealth officer, or your due diligence officers are required—

CHAIR: What's your question?

Senator KIM CARR: You are required to undertake checks under the procurement guidelines on the capitalisation of this company. If the Commonwealth is actually providing $89 million in advance for the provision of goods and services, this is money the company does not have to go and borrow or have in its bank
account to provide those services. The Commonwealth is providing money to undertake those services in advance. Is that or is that not the case?

Ms Moy: I don't believe that is the case, Senator. The funds were provided under a letter of intent—and the Commonwealth does letters of intent all the time across many types of services and industries. The purpose of the letter of intent is to provide comfort to the organisation who you are going to ask to provide the services—you have no contract. The letter of intent is a financial promise that we have already done all of the background checks about what we should do—

Senator KIM CARR: Yes, I understand that.

Ms Moy: to provide them with a level of comfort that they can expend the money and that we will pay that amount, for specific goods.

Senator KIM CARR: Most businesses, when they are purchasing or undertaking a procurement on behalf of the Commonwealth, are anxious to be paid within 30 days, not to be paid in advance. That's certainly the practice across this Commonwealth.

Ms Moy: Senator, what I'll do is take it on notice in terms of the actual timing of the events of the payments—

Senator KIM CARR: Yes.

Ms Moy: because I'm actually not convinced that payments were made at all times or at any time in advance on the actual contract.

Senator KIM CARR: That's the question I'm asking you, Ms Moy: how much was paid in advance? I put a specific question in relation to 10 million. It now transpires that my mistake was to describe it as a loan and refer to a figure of 10. It would appear that the figure is 89.

Ms Moy: The 89 is the letter of intent for funding.

Senator KIM CARR: That's right. My question is: was money paid by the Commonwealth of Australia to this company in advance of the provision of the goods? And, if that figure's wrong, how much was provided in advance?

Ms Moy: To provide satisfaction to your answer, I think it's best if I take it on notice and then I can provide the date and timing of the payments.

Senator KIM CARR: The further question I want to go to is where we left off before: you've indicated there's a whole series of meetings and other discussions you have with the Papua New Guinea government in regard to the operations of this contract, because, effectively, these procurements are being undertaken on behalf of the Papua New Guinea government. That's effectively what's happened here, isn't it?

Mr Pezzullo: Yes.

Senator KIM CARR: The Australian government says it doesn't want to provide it directly, but—in this circumstance, because of the urgent nature, and the election and various other points—special circumstances are required. Now, given those lengthy and detailed conversations—and that market intelligence-gathering—at what point did you pick up that there was a likelihood that the local Paladin director, Kisokau Powaseu, was to be charged with 106 counts of misappropriation and one count of money laundering?

Mr Nockels: I think I may have responded to that question a little while ago, and at the time I made the comment that we became aware of that through the media in PNG. The charges relate to a company director—that is my understanding.

Mr Pezzullo: Sorry, Mr Nockels. Are you referring to evidence that you provided today or in previous estimates?

Mr Nockels: Sorry, earlier today.

Mr Pezzullo: Thank you.

Mr Nockels: The individual, in my understanding, is a director of Paladin Solutions Group PNG, who we do not have that contract with. The allegations and charges relate to activities that took place some six years ago—that is my understanding—when the individual was working with the PNG Defence Force.

Senator KIM CARR: In regard to the other issue that's been given some light today, the MOUs signed between Paladin and Peren Investment—which of course is a company associated with the family of the Papua New Guinea parliamentary Speaker, who is the local member in Manus—when did you become aware of that?
Mr Nockels: We were aware, because it's a subcontract, that the Paladin contractor has a number of subcontractors with different companies in and around Manus, particularly around East Lorengau, so that's just normal business.

Senator KIM CARR: When were you made aware of these particular financial arrangements with the Speaker of the—

Mr Nockels: Sorry, I'm not aware of the particular financial arrangements that you are commenting on.

Senator KIM CARR: I'll put it to you specifically: when were you made aware of the MOUs signed between Paladin and Peren Investment?

Mr Nockels: I'd have to take that on notice as to the actual time that they informed us, as they need to under the contract.

Senator KIM CARR: In regard to the previous matter I raised with you, is there any question in regard to 'fit and proper persons' tests that are applied to Commonwealth procurement that would apply in these circumstances?

Mr Nockels: Whenever the Commonwealth would go to market or through a procurement process, obviously we would run checks on financial viability and ensure that a company could get a bank guarantee, have insurance et cetera. If there were any flags around that, obviously that would be part of our risk profile and conversation on whether or not we could go forward with that procurement. In this particular case, our commercial adviser, KPMG, ran a significant search over the last 12 months or so prior to us looking to engage them under contract and didn't identify any significant issues that were drawn to our notice that we would question.

Senator KIM CARR: And you didn't consult with any other agencies within the Commonwealth about the directors of this company?

Mr Nockels: No.

Senator KIM CARR: So you just relied on KPMG?

Mr Nockels: They're our commercial adviser. We engage them to assist us. We also had legal advice and probity advice. AGS provided the legal advice for us, so they were with us all the way through the process.

Senator KIM CARR: Okay. Look—

Mr Nockels: And the probity adviser—

CHAIR: No. You're finished. We'll come back.

Mr Nockels: The probity adviser obviously is there to ensure that the process runs appropriately to CPRs.

Senator KIM CARR: Thank you. Could I—

CHAIR: No. You can later on. We'll come back to you.

Senator WATT: Chair, we're getting about 10 minutes every hour at the moment. Is it the intention to continue it that way?

Senator McKIM: That's how it works, yes.

Senator WATT: It went 10 to us, 10 for you, 10 for each crossbencher, 10 to the government and then 10 for us. I just remember earlier in the day you said you—

Senator HINCH: Senator Carr has had much more time.

CHAIR: Seeing you've raised that, I'll take that as a point of order. Thanks to the secretariat for keeping an accurate record on this. We've had the ALP, then LNP, then McKim, then the ALP, then LNP, then ALP, then Greens, then three others—Green and crossbench—then LNP, then ALP, then ALP—although I must say the last three are really part of one thing.

Senator KIM CARR: Cut it out.

CHAIR: Cut what out?

Senator KIM CARR: What you're saying—that the other parties are part of the Labor Party.

CHAIR: No, I said the last three where I said 'ALP, ALP, ALP'. There are three different people on the one thing. In my process, which is pretty well known and very consistent, I try to give to the various political parties the same amount of time as their representation is in the Senate, which should mean the government gets the most. But it turns out the ALP get the most, the government get the second most and the Greens get the third most.

Senator KIM CARR: This process may well come to haunt you.
Senator McKIM: You won't be here!

CHAIR: Well, I will be here and I will probably still be chairing this committee! Now, it's my turn and I'd better start the clock again, because that's not my ten minutes. You've had some questions about the propriety of individual directors, and yet the one that has been named as having fraudulent charges six years ago in another country is not a director of any of the companies that you are dealing with, as far as you know?

Mr Nockels: That's correct. As I mentioned previously, the company that we have the contract with is Paladin Holdings Pte Ltd. This individual is not a director of that company, as far as I'm aware.

CHAIR: So, there has been a lot of fury and light about this particular person but he has got nothing to do with this contract?

Mr Nockels: He is not engaged to contract. He doesn't provide services to us under the contract relating to delivery of services in PNG.

Senator WATT: Except that he's a director of the company that you had letters of intent with.

CHAIR: No, he said before—

Senator WATT: He is a director of the company you had letters of intent with, isn't he?

CHAIR: KPMG, as your advisers—we all know KPMG, but can you give us a brief description of them? Who and what are they?

Mr Nockels: They're often referred to as one of the four large accounting-type companies, consultancy companies, and they are often engaged to provide advice around a range of different things, such as, in this case, procurement. We brought them in from a commercial perspective to provide us commercial advice in this space.

CHAIR: So, they're well-regarded in Australia. Is KPMG international?

Mr Nockels: They certainly are.

CHAIR: You pay them money so that they advise you on what's appropriate?

Mr Nockels: That's correct.

CHAIR: You spoke about probity.

Mr Nockels: Yes. We engaged a probity adviser throughout the process to ensure that we had an independent probity adviser ensuring that we were following correct procedure and process, to keep us on the straight and narrow in that sense.

CHAIR: Do you pay for the probity adviser? I think you said it was the Crown Solicitor, didn't you?

Mr Nockels: No. The probity adviser was a legal company, and we pay for that service as well.

CHAIR: You pay them money to assure you that everything you are doing in this and every other contract is squeaky clean and you're following the rules?

Mr Nockels: Yes, that's a way of describing it—yes.

CHAIR: Is it appropriate to ask who the probity adviser is, or is that something you'd rather not say?

Mr Nockels: I think Sparke Helmore is the name of the company. I will just need to confirm that, so I will take it on notice. But I think it is Sparke Helmore.

CHAIR: Do these letters of intent say in writing what you've been telling us about the five buses—I appreciate they won't talk about the five buses?

Mr Nockels: The five buses was a hypothetical to make a point to Senator Carr's question. But, yes, the letters of intent lay out what we would like the service provider to do, in the broad.

CHAIR: Are they publicly available documents?

Mr Nockels: No, and as I think the secretary mentioned before, I'm assuming we will take that on notice, in terms of provision of documents to the committee.

CHAIR: To see whether it's appropriate to table it, first of all? Okay. I won't pursue that if it's not normally done and not appropriate. But you are saying that in legal language, in contract language, it says that if you contract to do something then we will either pay the invoice or pay you once you've got the 'bus'. Does it say things that clearly?

Mr Nockels: Essentially, it says that as you deliver the services or you purchase goods, or whatever it is, we will pay you for that.
CHAIR: Just to be absolutely clear—and I think Hansard will record this—Senator Carr did ask you about a loan of $10 million. I just want to be absolutely clear that there was no loan to this company, or any other company, in relation to this matter?

Mr Nockels: That's correct. We don't loan money to another company like that—or any company.

Mr Pezzullo: We pay for goods and services.

Mr Nockels: Indeed. We pay for goods and services, as the secretary has just said. We don't loan money to entities. I recall now that the lawyers who provided probity advice were in fact Maddocks not Sparke.

CHAIR: It means nothing to me but they are a reputable firm and—

Mr Nockels: I think I may have mentioned before in some of my testimony that I talked about also getting legal advice which was through the Australian Government Solicitor. The AGS also provided significant legal advice in the contracting aspects.

CHAIR: The imputation of some of the questioning is that you as public servants or, by extension, Mr Dutton, who we've been told has absolutely nothing to do with this process, have done it wrongly. You're saying that whatever you've done has been checked by probity advisers, by commercial advisers and by people who understand the situation and have ticked off on what you've done?

Mr Nockels: That's correct. Also, I think I mentioned before that we ran a procurement process internally within the organisation that included having to work under the high-risk, high-value procurement process, which was introduced in response to some ANAO recommendations. That entailed a four-step gateway process, which involved both the general counsel, the chief risk officer and the chief financial officer signing off on the process as independent to the steering committee that was responsible for the procurement process and the subcommittees, that also reported to the steering committee around technical evaluation, pricing, et cetera, as we went through the process of reviewing and evaluating the response to the RFQ.

CHAIR: I will say by way of comment that I've sat through a lot of these hearings where you've been challenged quite dramatically and over the last four, five or six years, in very, very difficult times for your department. I understand that you've come through very, very well, so that's good to see. I know the department has been under a lot of pressure, because of the illegal arrival of over 50,000 people into our country. Mr Pezzullo, can I just confirm something I think you said before. You are putting a statement on your website detailing the facts—not the media speculation or the speculation run by various politicians. You are putting on a statement—

Mr Pezzullo: In fact, I believe that we have.

CHAIR: not entering into the political debate or justifying—

Mr Pezzullo: No.

CHAIR: one thing or another, but simply you're tabling the facts?

Mr Pezzullo: Assuming that this is a print off from the website live, as opposed to what was about to be loaded—but my staff will correct me—it's a very straight narrative of our engagement with Paladin Group. It doesn't go into either the politics of regional processing, if I can put it in those terms, nor does it engage with matters that are outside the jurisdictional competence of the department, some of which might well relate to ex or former employees of the company having issues in PNG's jurisdiction. I don't declaim the fact that that is something that needs to be followed up, but in terms of the engagement of my department with this process we've put out a two-page statement, or are about to depending on whether someone has hit the button. I'm told it's live.

CHAIR: Having praised the department I now have a criticism of the department. Why wasn't this done before when these when these what appear to be factually erroneous articles started appearing in the paper? Is there some reason why we haven't—

Mr Pezzullo: I will need to reflect on that, because there is a suggestion that has been forming in my own mind that perhaps we could have put this torpedo in and hulled the ship of this story last week. But that might have put a few journalists out of work for a couple of days, so I don't know. I'll reflect on—

CHAIR: It may well have reduced these hearings by five or six hours! But anyhow.

Senator WATT: It's $423 million of taxpayers' funds. I don't think it's a joke.

Mr Pezzullo: It's not a joke, indeed.

CHAIR: It is not a joke, Senator Watt, and seeing you've made the comment, can I reiterate that everything is being done with the utmost propriety.

Senator WATT: That's your view.
CHAIR: It is the view of the probity commissioner. It's the view of KPMG.

Senator WATT: They're entitled to their view—

CHAIR: It's the view of—

Senator PATRICK: We haven't seen that evidence—

Senator KIM CARR: Let's see what Auditor-General has got to say about this. Let's just see. I look forward to that—

CHAIR: Senator Carr, could you stop bullying your way in and shouting everyone else down—you're pretty good at that. But I do understand you were once a very senior, important cabinet minister, so you do know about all these things.

Senator KIM CARR: Sure, sure.

CHAIR: My time has finished. I'm going to go back to Senator Carr or Senator Watt for ten minutes. Then I will go to the three crossbenchers again—those that do have interests. In doing so, can I remind my colleagues that we've set a program. Might I say, the opposition and the Greens were principally involved in setting the program. It's not the government's document. I always make that clear, as I did at the beginning. We have a lot to do with the Border Force, which we're a couple of hours behind on, so I urge colleagues to be brief with their questions. With that, Senator Carr.

Senator KIM CARR: When was the department aware Mr Thrupp had been denied entry to PNG?

Mr Nockels: I'd have to take it on notice if we were made aware. Obviously PNG makes decisions about who comes into PNG and if they're—

Senator KIM CARR: I'm not arguing the toss about that. I'm interested to know—

Mr Nockels: I don't know. I'll have to take that on notice.

Ms Moy: We'll take that on notice.

Senator KIM CARR: Because Paladin is controlled by Mr Thrupp, is it not?

Mr Nockels: There are a number of owners of Paladin and Mr Thrupp is one of those.

Senator KIM CARR: Yes. But he's a senior partner in the company?

Mr Nockels: I think he's referred to as one of the managing directors.

Senator KIM CARR: That's right. And he has been denied entry to the country in which the services are to be provided?

Mr Nockels: I would have to check if we were made aware of that, but that's what, I think, some of the media is suggesting.

CHAIR: Do you know if that's true?

Mr Nockels: I don't know. I can't talk for the PNG government about if they're making decisions on who comes into PNG, sorry.

Senator KIM CARR: But you're in regular contact with the PNG government. You must, surely, be made aware of these types of incidents?

Mr Nockels: Again, I'd have to take that on notice to check if they made us aware directly of that.

Senator KIM CARR: All right. Mr Pezzullo, you're quite correct to emphasise the statutory responsibility is yours in regard to procurement. However, did you at any point brief any minister in the government as to the status of this contract?

Mr Pezzullo: As I said earlier, and I think it might have been Senator McKim who asked me, when I went to the government—I'm going to check the record—I might need to execute particular expediency measures, if it's the ongoing policy of the government to provide services—

Senator KIM CARR: I understand that, Mr Pezzullo.

Mr Pezzullo: So that was pre-contract.

Senator KIM CARR: I understand that, you've made that point clear. But in my experience ministers receive—

CHAIR: Do you have a question?

Senator KIM CARR: Ministers receive updates and factual briefs for noting—

Mr Pezzullo: Indeed.
Senator KIM CARR: on the status of a contract and the progress towards the implementation and terms of the expenditure of some of this scale. Have you provided a brief to government?

Mr Pezzullo: I'll take that on notice, because, in addition to noting briefs—and as you would well know as a former senior minister—if you're meeting with a counterpart where the matter might come up, there might be contingency points—

Senator KIM CARR: That's right. I'm going to come to that in a minute.

Mr Pezzullo: talking points, background points et cetera.

Senator KIM CARR: That's right.

Mr Pezzullo: Which go to the fact that there's an ongoing process. If Mr Dutton, for instance, was meeting with a counterpart and the issue arose, I'm paraphrasing: 'Mr Dutton, we're not able to provide these services. Do you think you're going to be in a position to?' his policy response would have been, 'Yes, we're committed to it and my department is handling the details.'

Senator KIM CARR: That's right.

Mr Pezzullo: If that was in a noting brief, a diplomatic visit brief or a meeting brief, we will do the research and come back on notice.

Senator KIM CARR: I'm interesting in all briefings. There was a COAG meeting in Papua New Guinea.

Mr Pezzullo: COAG?

Senator KIM CARR: Sorry, there was a APEC meeting.

Mr Pezzullo: Yes.

Senator KIM CARR: In it there were various international meetings with the Prime Minister. Were there any briefings to the Prime Minister about the status of this contract?

Mr Pezzullo: I would doubt it, but I will take that on notice. Again, we need to separate the policy question—is Australia going to provide services, yes or no?

Senator KIM CARR: Mr Pezzullo, I understand. You've made that point. I'm interested in whether or not there were factual briefs—presumably factual briefs—

CHAIR: You made that point.

Senator KIM CARR: about the operations of this contract.

Mr Pezzullo: I'll take that on notice.

Senator KIM CARR: Can you indicate whether or not there have been question time briefs provided to the minister.

Mr Pezzullo: We will encompass that within the scope of documents.

Senator KIM CARR: And can we have copies of those briefs, please. Obviously the dates, but can we have copies of all of those briefs.

Mr Pezzullo: All taken on notice.

Senator KIM CARR: Because I'd be very surprised if there were not briefs on an ongoing basis—

CHAIR: We're not here for your surprise. We're after questions.

Senator KIM CARR: about the administration of this contract.

Mr Pezzullo: That will become apparent in terms of our response on notice.

Senator KIM CARR: You've mentioned a website today. It has been put to me that the documents in relation to this matter have been taken down by the department. Is that correct?

Mr Pezzullo: Which documents?

Senator KIM CARR: The contract documents that were provided under FOI have been taken down.

Mr Pezzullo: I have no idea whether documents have either been posted or not posted.

Senator KIM CARR: You can't confirm that?

Mr Pezzullo: Either Ms Moy or Ms Noble, who runs our website operation, can assist me. I'm not aware of documents.

Ms Moy: I will follow that up, because that's actually on the FOI disclosure log.

Senator KIM CARR: That's what I mean. So you don't think it's true?
Ms Moy: I would be surprised if they were removed.

Senator KIM CARR: We checked this afternoon. We couldn't—

Mr Pezzullo: Was the link working?

Ms Moy: We'll have someone check for you.

Senator KIM CARR: Would you please do that. Because the annual reports from the previous years have been removed from the website as well—is that correct?

Mr Pezzullo: That is not within Ms Moy's competencies.

Senator KIM CARR: But it is yours.

Mr Pezzullo: Indeed, unfortunately.

CHAIR: You should know everything, Mr Pezzullo!

Mr Pezzullo: In fact, just while Ms Noble is mobilising, I've found that some speeches that I was researching that I had been given had been archived in a very deeply linked part of the website.

Senator KIM CARR: Obscure. Probably better for all concerned, is it?

Mr Pezzullo: Senator Carr, that is most ungracious and ungenerous. I'm outraged!

Senator McKIM: Not the Hobbit speech, is it?

Mr Pezzullo: I went to find that for a different reason.

Ms Noble: We'll check. I don't know if that information has been taken from our website, but if you say our annual reports have been removed—

Senator KIM CARR: Previous reports have been taken down.

Ms Noble: or archived.

Mr Pezzullo: There is this caching thing they're doing which relates to my speeches, Ms Noble. It's an affront!

Senator KIM CARR: Is it the case that you've actually undertaken maintenance of the website on Saturday 16 and Sunday 17 February?

Ms Noble: I will take that on notice.

Senator KIM CARR: It's just a little unusual to undertake maintenance of the website just before the estimates process. Is that a coincidence?

Mr Pezzullo: It's a mystery of IT programs of work. They're a mystery to me.

Senator KIM CARR: Someone not thinking.

Mr Pezzullo: Again, that is very ungenerous and ungracious, Senator!

Senator KIM CARR: It happens. Was the website actually down over that weekend?

Ms Noble: I'll have to take it on notice.

Senator KIM CARR: Can you find out for me whether or not it was scheduled maintenance?

Ms Noble: Yes, I can.

Senator KIM CARR: Who requested it? Was it requested?

Ms Noble: I don't know, so I will have to take that on notice.

Senator KIM CARR: Who authorised the work? At whose request was the work undertaken?

Mr Pezzullo: The website maintenance?

Senator KIM CARR: Yes.

Ms Noble: I'll take it on notice.

Senator KIM CARR: There are annual reports for 2016-17 and 2017-18, but the others appear to have gone missing. Have they been archived? Is that the suggestion?

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

Senator KIM CARR: If my conclusion is correct, will they be restored?

Ms Noble: Yes, they will be restored. Our annual reports are a matter of the public record.

Mr Pezzullo: Speeches by the secretary and other key documents absolutely will be restored.
**Senator Reynolds:** I'm sure you'll find them on the APH site as well and the various committees who report on the annual reports every year. I think they are quite readily accessible.

**Senator KIM CARR:** Well, they're not if they have been taken down.

**Senator WATT:** Mr Nockels, there have been a number of occasions when you've sought to make the point that this person in Papua New Guinea who has been charged with money laundering and fraud offences, I think it is, you have made the point that he is not a director of Paladin Holdings.

**Mr Nockels:** That's correct.

**Senator WATT:** My understanding, based on media reports, is that he is a director of Paladin Solutions—

**Mr Nockels:** That is also my understanding.

**Senator WATT:** and that was the company that the department signed letters of intent with to deliver services?

**Mr Nockels:** That's correct. At the time we signed those letters of intent those charges hadn't been made, and we were obviously unaware that PNG Constabulary was pursuing that.

**Senator WATT:** So it is the case that someone who's a director of a company with whom the department has signed letters of intent for about $89 million has been charged with money laundering and fraud?

**Mr Nockels:** I'm not sure if the director that you're referring to was the director at that time. We'd have to check and take that on notice.

**Senator KIM CARR:** Surely you would have checked that already?

**Senator WATT:** You said that you became aware of this through the Papua New Guinea media. Do you have a rough time frame for when you became aware that this person was charged?

**Ms Moy:** We have already taken that on notice.

**Senator WATT:** In terms of the exact date.

**CHAIR:** We break for dinner now. The committee is suspended until 7 pm.

**Proceedings suspended from 18:01 to 19:02**

**CHAIR:** I declare resumed this hearing of the Legal and Constitutional Affairs Legislation Committee into the additional estimates for the 2018-19 budget. We're dealing with cross-portfolio, general and corporate.

**Senator McKIM:** I just want to ask a couple more questions on the Paladin contracts. Mr Nockels, you gave evidence before dinner in regard to the payments and the letters of intent that were provided to Paladin Solutions. I know you used the buses as an example, so I'm quite cognisant of that, but you gave them as an example of a situation where the department may check that the company is doing certain things that it says it is doing prior to releasing money. I don't want to misquote you. Is it, in broad terms, accurate that sometimes that happens?

**Mr Nockels:** Correct. This approach is one that is often used, particularly when a company might be setting up into a new space and there are transition costs for that organisation and the Commonwealth wishes to maintain a strong element of control of those costs and what the money is being spent on. Our commercial advisers talked about the fact that Defence would often use this as a mechanism for allowing or assisting a company as it sets up. In this case, you'll recall with PNG that we've moved a large number of people to East Lorengau—three different centres. The service provider had to set that up—think logistics hub, transport et cetera. It was about assisting with that process. They had to hire people and pay people, et cetera.

**Senator McKIM:** Perhaps I'll take a step back. Do you have with you or could you take on notice the specific services or assets for which the company needed to access that money prior to them actually providing that service?
Mr Nockels: I don't have that layer of detail. That's obviously quite significant in terms of line items, items that would be required, right down to—again, I'm just using this as an example—beds, mattresses et cetera. I don't have that layer of detail with me.

Senator McKIM: Could I ask you to take that on notice. In doing so, I'm not asking you for the number of beds or bars of soap—I'm not after that level of detail—but can you provide a general overview for the committee on what kind of either services or consumables or assets that you needed to go through this process for.

Ms Moy: I can find some of these for you now, and we can take anything else on notice that you'd like. They were required to provide security services at all sites; incident management at all sites; emergency management at all sites; transport and escort, including the bus service at Manus, to all sites; reception, induction and departures for all sites, and that was somewhat also in support of the US resettlement; the properties for residents at all sites—

Senator McKIM: Sorry, what does that mean—the property for all residents?

Ms Moy: The physical properties, where they sleep and live—no, sorry, residents' property.

Mr Nockels: They'll have their own phones or whatever. The department under ICA will say, 'This is what they're not allowed in the centre.' We have to maintain that. That's what that is.

Ms Moy: Yes. I beg your pardon. There were also IT communications at the ELRTC and at POM—Port Moresby—sites, facility management at ELRTC and business services at all sites.

Senator McKIM: What was the second-last one?

Ms Moy: The facilities management at the East Lorengau Refugee Transit Centre.

Senator McKIM: And that's worth $90 million every six months in PNG, in the view of the department—because that's what they got in the first six months under the letters of intent, $89 million.

Ms Moy: As I mentioned earlier, it was very similar costs to BRS requirements. In fact, Paladin is probably about $5 million less per month if you look at the 12 over 18.

Senator McKIM: But the contract goes into the future from today.

Mr Nockels: It does.

Ms Moy: It goes to June 2019.

Mr Nockels: When you run a contract, you don't necessarily always use the full contract value. That's the point I'm making.

Senator McKIM: No worries. I presume there's a due diligence process. You might not have used those words, but you ran some kind of due diligence process over Paladin solutions. Would that be accurate?

Ms Moy: That's correct. We gave evidence earlier in regard to KPMG.

Senator McKIM: Did that process identify the market capitalisation of Paladin Solutions? I am not asking what it was, but did it identify it?

Ms Moy: I would have to check in the finance—that is one of the standard arguments but I'll come back to you on notice with what the break-up of the financial assessment was.

Senator McKIM: Did it also assess the company's capacity to do the job?

Ms Moy: I think FAS Nockels had that discussion before in regard to when we were looking at what the risks were—what were the risks of their being able to deliver the service to the level required.

Mr Nockels: I think I mentioned a technical evaluation committee, which is, from the technical perspective, measuring the service provider against their response to the RFQ, or request for quote. That subcommittee's approach is: can they do the job? What is their capacity and capability to deliver on what we're asking them to do?

Senator McKIM: Was Paladin Solutions' market capitalisation identified as a risk—their level of market cap?

Mr Nockels: I think I mentioned that earlier.

Senator McKIM: Was that in relation to market capitalisation? I stand to be corrected, I thought that was about—
Mr Nockels: I won't say market capitalisation. It was more broadly their financial position and I think we will take that on notice, as the deputy's just mentioned, in terms of the specifics of what that actually consists of.

Senator McKIM: Could you take on notice whether you're able to provide the committee with the KPMG report?

Mr Nockels: I'll refer to the secretary's earlier comments about taking it on notice.

Senator McKIM: That's been taken on notice?

Ms Moy: Yes.

Senator McKIM: What checks do you do to ensure that the company, now that it's contracted, is doing the job it's contracted to do? I get lots of messages from some of the guys on Manus Island and they reckon there's a whole bunch of people just standing around doing nothing the whole time.

Mr Nockels: I think I covered off on a lot of this in my earlier testimony. Perhaps starting with user acceptance testing, or UAT testing, once the contract is signed we go into a process of UAT testing. That's about measuring whether or not they're actually doing what we asked them to do.

Senator McKIM: How do you do that?

Mr Nockels: That consists of site visits, checking their documentation—we had people up in Manus and Port Moresby working with the service provider. So, hands on, day-to-day, we would go to site and we would check that the incident logs are being appropriately kept, that entry-exit logs have been appropriately kept. That's our user acceptance testing. That's making sure that we are comfortable that the provider has rolled into the position of doing this work and is actually doing it—so, user acceptance testing. We signed off on that, so we were very comfortable that they were doing that. We then move into performance management more broadly. We have a performance management framework embedded within the contract and I think I gave a significant sort of answer to Senator Carr about all of the things that that entails, which is quite significant.

Ms Moy: I'm happy to give you more detail on the user assurance testing.

Senator McKIM: No, I think that will be fine for now, thanks very much, Ms Moy. This is probably one for you, Mr Pezzullo. It's about whether there are any standing instructions from the minister or within your department around levels over which contracts need to be referred up to the minister. I presume it's much easier to buy a box of pens than it is to construct a new detention centre, just to use hypothetical examples. How does that work within your department? Is it a dollar figure that escalates it up the next level and does it ever reach the minister, or would it ever reach the minister?

Mr Pezzullo: Typically, the sorts of contracts that go to ministers for consideration tend to be found in the Defence portfolio.

Senator McKIM: Because of their size?

Mr Pezzullo: The size, the duration of the contract, the multi-decade duration, in some cases, as well as the costs. Ms Moy will correct me, because she assists me in the application of the procurement rules, but I think all of the delegations flow from me downwards.

Ms Moy: That's correct.

Mr Pezzullo: The only time I would need to engage with the minister is on questions of policy. I went through this earlier, so I'll just do it in summary form. If I'm about to engage a company contrary to the wishes of government policy then I'd want to establish that I was on clear ground with government policy. Then the procurement is my responsibility.

Senator McKIM: Understood. Presumably you don't sign off on every box of pens the department buys?

Mr Pezzullo: No, I don't.

Senator McKIM: What dollar value of contract would kick in your involvement?

Mr Pezzullo: Ms Moy, do the delegations flow by risk and/or duration and/or dollar value?

Ms Moy: The secretary has delegation for the entire budget of the organisation. I actually have to check what the dollar value is, but the CFO also has delegations similar to the secretary's in terms of sign-offs.

Mr Pezzullo: In this case, because of the combination of risk, regional processing has got its own complexities associated with a duration dollar value; we set the delegation, if I recall rightly, at deputy secretary, deputy commissioner level.

Ms Moy: That's correct—

Mr Pezzullo: So very senior.
Ms Moy: Under the high-risk high-value process that Mr Nockels talked about earlier, the final sign-off is at deputy secretary level.

Senator McKIM: Was this high-risk, high-value?

Ms Moy: It was. It went through the high-risk high-value process of the department, such that all gateways were signed off by the Chief Risk Officer, the CFO and General Counsel.

Senator McKIM: And who finally signed off on the contract?

Ms Moy: It was a deputy secretary—

Mr Nockels: Deputy Commissioner, Support.

Ms Moy: Deputy Commissioner, Support, in the ABF.

Senator McKIM: Which is an independent strategy agency?

Mr Pezzullo: It is, but as you and I have, I thought, often discussed, the ABF, unlike other agencies in the portfolio, comes under Home Affairs for budget. There is a single budget that covers the department and the ABF. All of the other statutory agencies have their own budgets.

Senator McKIM: So you were never made aware of these contracts, Mr Pezzullo?

Mr Pezzullo: I most certainly was. As I gave evidence earlier, I had to authorise the initiation of the special measures arrangement.

Senator McKIM: Yes, but that was the special measures arrangement?

Mr Pezzullo: Yes, and subsequently Mr Nockels and his team, under Ms Moy, supporting ultimately the delegate—but in the end the secretary is responsible for all expenditure—kept me generally informed as to how discussions were going.

Senator McKIM: And you didn't think it necessary to inform the minister?

Mr Pezzullo: Absolutely not, no. Well, having gotten clear from the government that we were to proceed post-October 2017, it was then simply my job to put in place the arrangements.

Senator McKIM: Mr Pezzullo, we've got a situation where, notwithstanding Mr Nockels' evidence earlier, the contracted value, including the letter of intent with the various Paladin companies, totals now $420 million, or about $423 million, I think it is. That's obviously come along in dribs and drabs. I don't mean that negatively, but it's come along in instalments, shall we say.

Mr Pezzullo: Stages and phases.

Senator McKIM: Stages and phases. How many stages and phases—what would the total number need to be before it would go up to the minister, as you've just said certain ADF contracts would go up? Would it get to a billion and then you think, 'Might tell the minister.'

Mr Pezzullo: I understand the question. Ultimately you could look at the entire regional processing equation as a subset of the money that we've expended on offshore management of illegal maritime arrivals since 2008. That figure is $16 billion. Because you're working through time, you put strategies in place to stop the boats, open up regional processing, engage with the US on that deal. Each of those phases, you are funded for. You go back to government twice a year at least, budget and midyear review. You anticipate over the next one, two, three, four years, if you're going over the full forward estimates period, what you will need to manage the issue, some of which relates to onshore detention, regional processing et cetera. With the benefit of hindsight, we are now here in 2019. If you look back 10 years, if you'd known that the cost of boat arrivals was to total $16 billion, that's starting to get to Defence scale procurement. But you're not purchasing a program of activities, because you're dealing with a live operational situation, which has been reviewed constantly every six months at least, and the government is funding you—whether it was the Rudd government, the Gillard government—

Senator McKIM: Rudd.

Mr Pezzullo: I'm not sure—

Senator McKIM: Rudd-Gillard-Rudd.

Mr Pezzullo: I don't know that there was an additional estimates; I just can't quite remember. And subsequently you're going forward in stages and phases to manage the totality of the problem.

CHAIR: We might have to leave it there. Senator Patrick.

Senator PATRICK: Mr Pezzullo, going back to the discussion we were having about the section 37 certificates, I might reframe my questioning. The Auditor-General has been quite positive about his interactions with pretty much every department, saying that there's a great dialogue that exists between departments and
generally there've not been problems in terms of departments making representations about what should and shouldn't be in a public report. So I just raise my question. In relation to the case of the Cape class patrol boats—but, of course, that could be anything—there was a letter that was written by one of your first assistant secretaries that raised it, saying: 'Pending further engagement with your office regarding publication of the report, we note the terms of section 37 of the Auditor-General's Act.' In my view, section 37 is a big sledgehammer option available to the Attorney, and I just wonder about your views on whether or not that's helpful in an early conversation with the Auditor-General.

Mr Pezzullo: I don't have the correspondence that you're referring to in front of me, but, as I gave in evidence earlier, it would be my decision, ultimately, as to whether to make such an application to the Attorney-General. And, just in terms of my general approach to issues of transparency and accountability to this place, I can't think of any circumstances in my portfolio where I would. I certainly wouldn't lightly undertake such an approach, but I probably wouldn't even undertake such an approach after long, thought out deliberation of the matter.

Senator PATRICK: I raise the question in the context of an Auditor-General who indicated to the parliament that actually, firstly, the Thales issue arose, and then there were two other agencies that immediately came up with section 37. The JPCAA is trying to work out what to do with that, and you generally don't appear before them. Having used it, I just wanted—

Mr Pezzullo: I've appeared before that joint committee.

Senator PATRICK: Rather than call you before a specific committee—

Mr Pezzullo: I'm very happy to be called.

Senator PATRICK: Rather than do that, because we're trying to consider recommendations we make from it, I'm asking you now: is that something you think would be used in the normal course of interaction with the Auditor-General?

Mr Pezzullo: By whom?

Senator PATRICK: By members of your department.

Mr Pezzullo: The officer in question made the judgement that, as a matter of clear public record, there were provisions in the legislation to adopt that approach. But the officer who signed that correspondence—who, if I recall rightly, is very senior and trusted confidant—would know also that, ultimately, he'd be referring that to me and that I would, in the end, give consideration to that question. Indeed, the power rests with the Attorney-General in any event, upon application from an officer at my level of seniority, and I couldn't imagine a circumstance where I would proceed without affording myself an opportunity to discuss it with the Auditor-General.

Senator PATRICK: Okay, thank you. I'll move on to—

Mr Pezzullo: The provision is on the statute books for a reason, so you'd always want to determine, on the basis of the facts, whether section 37 is applicable. What I'm saying to you is that, sight unseen, in the ordinary course, it'd be difficult to see how national security considerations would apply to many, if more than very few, matters that come before the Auditor-General.

Senator PATRICK: Sure. And he, of course, has the ability under the act to not publish anything that is harmful anyway.

Mr Pezzullo: Yes, indeed.

Senator PATRICK: I think he takes that role very responsibly.

Mr Pezzullo: And I think Mr Hehir and I would agree that the better course would be to negotiate, not in a contractual sense but in a sense of collegial discussion: 'Maybe you can make the same point by redacting or modifying this language. You can still make the same point and not give, for instance, a lot of detail about it'—about the maritime disposition of our fleet, to take an example. And I've always found the ANAO to be at least open to a discussion but, obviously, as we all are, jealously protective of, ultimately, their statutory obligations and rights.

Senator PATRICK: Thank you. That's very helpful. I mentioned before, with the AFP in the room, the Confiscated Assets Account, and now would like to go to the Department of Home Affairs in relation to this. I can see, in terms of confiscated assets, in 2014-15 it was $33 million, just rounding; in 2015-16, $42 million; in 2016-17, $34 million. That's quite a lot of money going into this account. My understanding is, and I know this is not necessarily a direct metric, that 24 of the 46 matters where litigation has commenced—a lot of them—are to do with drug related offences. It seems that, in terms of the allocation of funding to drug related rehabilitation, it's
only around two, three or four per cent of that asset account. Is it possible to get some idea of how that money is actually allocated and the areas that it has been allocated to?

Mr Pezzullo: It might be helpful—and we'll need to do this at a clip and briefly, Mr Ablong—for Mr Ablong, the head of our policy group, assisted my Mr Hansford, to explain how the fund works.

Mr Ablong: Senator, just very quickly, the Proceeds of Crime Act provides a scheme to trace, restrain and confiscate the proceeds and benefits gained from Commonwealth indictable offences. Projects funded under section 298 of the act must be for one of the following purposes: crime prevention measures, law enforcement measures, measures related to the treatment of drug addiction; and diversionary measures relating to illegal use of drugs. The primary limitation on the use of the proceeds of crime fund is that commitments cannot exceed the available value of the confiscated assets account. The minister may only approve programs if there is sufficient uncommitted funds in the confiscated asset account at the relevant time.

Senator PATRICK: Is this an accumulating fund and that, over the years, we've got some increasing number, if nothing is spent?

Mr Ablong: That's correct.

Senator PATRICK: How much is currently in that fund or account? That's probably a better word.

Mr Ablong: At the moment, the balance of the fund is $157.357 million.

Senator PATRICK: You've got $156 million sitting in an account that is available for things like drug rehab and so forth. If I want to lobby a minister or someone to make application to get those funds released for those purposes, as described in the act, how do I go about doing that?

Mr Ablong: The decision of when to invite applications and which projects to fund is at the discretion of the Minister for Home Affairs. Typically, on an annual basis, we will put out a call for proposals for the application of those funds to Commonwealth agencies. They will provide us with their proposals for what that money should be spent on. That's then examined by us to make sure it fits within those guidelines that I mentioned earlier and is the proper use of funds, and then we provide that information to the minister for him to make a decision.

Senator PATRICK: Can you on notice, please, provide any programs that have been funded since 2014-15; so just a list for each of the financial years and how much was funded.

Mr Ablong: We can do that. I can tell you at the table, if you like, that as of 18 February this year there are 26 active projects funded under the act for Commonwealth law enforcement and state agencies and five projects for non-government agencies. The projects include $4.827 million to the Federal Police to contribute towards countering child exploitation; $1.292 million awarded to the Australian Institute of Criminology to identify ways to reduce the production and distribution and viewing of child exploitation material; $3.569 million awarded to the Australian Criminal Intelligence Commission for the wastewater analysis project, which examines wastewater for drugs.

Senator PATRICK: Yes, I'm familiar with that program. It's a very good program.

Mr Ablong: There is $2 million to Crime Stoppers Australia to support the Dob in a Dealer campaign. They're the sorts of things, but we'll talk on notice and provide you with a fuller list on an annual basis.

Senator PATRICK: When is the next round or when will the next call go out for this account?

Mr Hansford: It might be helpful to supplement the deputy secretary's answer by saying that the Safer Streets Program was also funded out of the Proceeds of Crime Act. That had a whole range of different rounds. The most recent one that was funded was for a whole range of activities in relation to eliminating crime hotspots and antisocial behaviour. That was done through a public grants program. Four rounds have been funded to date. Round 4 is currently being prepared to go out for public consultation and public grants. So that would be the next available opportunity for—

Senator MOLAN: That's a different one under the one program?

Mr Hansford: That's right. They're just different rounds. There are two aspects to the proceeds of crime. The initiatives that Mr Ablong spoke about that fund law enforcement activities and also the Safer Communities Fund which can provide particular grants for either local councils or local schools.

Senator PATRICK: So if a senator such as myself identified the need for a particular drug related program in South Australia somewhere—obviously, I can't make an application to the fund, but I could potentially write to a minister or do I have to write to a departmental head?

Mr Ablong: Through the Safer Communities Fund it would be a nongovernment organisation, a community or a school.
Senator PATRICK: So non-government entities can apply?

Mr Ablong: Yes. They can go through those four rounds that Mr Hansford was mentioning. For a more substantive program then it might be through a minister or a Commonwealth department.

Senator PATRICK: So I have to start thinking about how to spend $157 million! Thank you very much.

Senator KIM CARR: Whose decision was it to reopen the Christmas Island detention centre?

Mr Pezzullo: In the context of the passage of the legislation recently?

Mr Pezzullo: It was a decision of the government.

Senator KIM CARR: The Prime Minister indicated in a press conference on 13 February that, 'We have approved'. I presume that he acted on the advice of you, is that right?

CHAIR: Just before you start, let me stop the clock, does anyone else have questions on general cross-portfolio or corporate?

Senator McKIM: I have a couple of others in cross-portfolio.

CHAIR: Can I go to you, Senator McKim, and try and get rid of that.

Senator McKIM: Sure. Mr Pezzullo, this is just following up on some of the evidence that was given when the AFP were at the table with regard to the review, that I believe you established, into Mr al-Araibi's situation. I think evidence was given that that review is still ongoing, is that correct?

Mr Pezzullo: I might just seek some clarity from the chair. I thought it was agreed by the committee that once Mr Outram had had a chance to make his opening statement, which includes in part—it's not all about—

Senator McKIM: I have a couple of others in cross-portfolio.

CHAIR: Can I go to you, Senator McKim, and try and get rid of that.

Senator McKIM: Sure. Mr Pezzullo, this is just following up on some of the evidence that was given when the AFP were at the table with regard to the review, that I believe you established, into Mr al-Araibi's situation. I think evidence was given that that review is still ongoing, is that correct?

Mr Pezzullo: I might just seek some clarity from the chair. I thought it was agreed by the committee that once Mr Outram had had a chance to make his opening statement, which includes in part—it's not all about—

Senator McKIM: Yes, but this is not about ABF. This is about your review.

CHAIR: We're coming on to that. We did say—

Senator McKIM: Chair, I'm happy to leave it, only on the basis that you don't tell me I should have asked it in overview when I try to raise it.

CHAIR: We've indicated that Mr Pezzullo, Mr Outram and an officer from the AFP—I think we're going to start on—

Senator McKIM: Alright. In that case I've just got—

CHAIR: I think we did actually agree with that.

Senator McKIM: That's fine. I'll park that for now.

CHAIR: I'd forgotten.

Senator McKIM: I want to ask some questions about how much money has been spent in legal actions with regard to people being transferred to Australia. Would that be appropriate in overview? I think it is, but I'll seek anyone's guidance.

Mr Pezzullo: It's pertinent to a particular program, that is to say 1.4, but it's also budgetary, so it's really a matter for the committee.

CHAIR: Let's deal with it in 1.4. Is there anything else, Senator McKim?

Senator McKIM: No.

CHAIR: No? Okay. We'll move on from corporate general and cross-portfolio. We'll now go to outcome 1. With the consent of the committee, we might deal with all the programs in outcome 1, so when it's your turn you can ask about any of those. Does that cause you any trouble?

Senator Cash: Will Mr Outram be given the opportunity to make his opening statement?

CHAIR: Yes, we decided earlier—

Senator McKIM: It's long anticipated.

Senator Cash: Sorry. I just wanted to make sure.

CHAIR: We decided earlier that Mr Outram will give his opening statement. I'm not sure whether Mr Pezzullo has another opening statement—do you?

Mr Pezzullo: No.

CHAIR: Then we'll have Commissioner Outram, the relevant commissioner from the AFP and Mr Pezzullo at the table to talk about al-Araibi. When we finish that, we'll go onto anything else in 1.1 at the choice of individual senators. By doing 1.1 to 1.10 in the same group, does that cause your officials any trouble, Mr Pezzullo?
Mr Pezzullo: No.

Australian Border Force

[19:35]

CHAIR: I welcome officers from the Australian Border Force, particularly Commissioner Outram. Thank you very much for joining us. We have, you've probably heard, long been awaiting your opening statement, which will cover a number of grounds, I assume, including al-Araibi, who has been the subject of some questions. When you're finished, we will go to senators—in order—to deal with only al-Araibi, and then we'll come back and do other things, if that's in order. We're doing it that way because there is an officer from the AFP here. Once we finish with al-Araibi, he can go home. Commissioner Outram?

Mr Outram: Good evening, Chair. Thank you and the committee for the opportunity to provide some opening remarks. As Australia's frontline border law enforcement agency and customs service, Australian Border Force officers and supporting staff work hard to maintain the security of our border and the integrity of our visa and customs systems. In doing so, we facilitate the movement of millions of travellers and goods across our border each year.

We continue to build our capability to respond to a rapidly changing environment in a flexible and agile way and to deliver quality outcomes for the Australian community. In the last twelve months we've focused on our people and their capability, our workplace culture, investment in our maritime capability, and fundamental changes to the way we're doing business. As a result, recent and much-publicised concerns about the impact of budget pressures have not, in fact, been realised. Predictions of record queues at airports, vessels not patrolling and an influx of guns and drugs through our border have not eventuated because we're doing things differently.

Through deploying our officers in more flexible ways, leveraging our partnerships and collecting and using intelligence and data, we've been able to adjust our operations to meet the ever-shifting nature of border threats and, of course, increased volumes. We're effectively balancing our resourcing decisions against border-related risks and, of course, our service levels. It's not a zero-sum game, and we have no desire to physically search the millions of shipping containers, passengers or mail items that enter and leave our country each year. Operating a tight fiscal environment has encouraged us to be more innovative, and we are finding better ways to manage the year-on-year increases in trade and travel. Over the Christmas holiday period alone, my officers processed more than 2.4 million people at international airports around the nation—more than 143,000 passengers each day—an increase of three per cent on the same period last year.

Change on the scale we've experienced in any organisation is, of course, challenging, but we've stepped up as an organisation and we're supporting our staff by encouraging them to use their skills, their intuition, and their experience with the knowledge that they will be given top cover when they take well-considered risks and informed decisions. My officers are trained to operate and apply border-related laws and regulations without fear or favour and with consistency. For this they are, of course, sometimes pilloried, but their actions are critical to maintaining the effectiveness of our border controls and related policies.

We don't always get it right. I understand that the Commissioner of the AFP has provided insight this morning to the AFP's involvement in the case of Mr al-Araibi. Likewise, I am happy to go into specifics about our actions, but offer the committee the following summary as an overview within my opening statement. On 8 November 2018, Interpol distributed a red notice regarding Mr al-Araibi. This information was provided to ABF officers on 9 November 2018 by the AFP. The ABF accessed the Interpol red notice on 22 November 2018 and ran details across Home Affairs systems. A central movements alert list, CMAL, alert for Mr al-Araibi was created on the basis of the Interpol red notice. There is an internal service standard of 14 days from the date of publication of the Interpol red notice for loading it onto Home Affairs systems. When the ABF match a person to an Interpol alert, a true match notification advice is manually sent via email from the ABF to the AFP National Central Bureau and to the Department of Home Affairs visa and citizenship group.

On this occasion, the true match notification email was not sent by the ABF to the AFP or to the Department of Home Affairs, which was an error and contrary to the agreed process. The true match notification would have included the visa type. This is a high-volume, manual process reliant on the transfer of data across multiple systems. ABF officers manage approximately 600 notifications a month in relation to Interpol. When Mr al-Araibi presented for departure from Australia on 27 November 2018 at 12.08 in the afternoon, as you've been told, the ABF informed the AFPNCB and requested advice as to whether any lawful authority existed to prevent travel. No domestic warrant existed and Mr al-Araibi was permitted to depart.

As mentioned by the AFP earlier today, the presence of an Interpol red notice is not known to the individual subject to the notice. Having reviewed the circumstances surrounding Mr al-Araibi, it is clear that human error...
occurred within the ABF process. Our officers work around the clock, managing huge volumes of transactions which require manual processes sometimes to bridge gaps between disparate IT systems. Human error can and will continue to occur, but it is rare. However, we have already implemented increased oversight of our management of these types of cases, and we're also working with other Home Affairs portfolio agencies to review relevant procedures and information-sharing practices to further reduce the risk of these circumstances occurring again.

The steps we've undertaken are this. Emails sent by the ABF to the AFPNCB and to the Department of Home Affairs have been reviewed and will be expanded to explicitly detail the relevant visa type, not just the visa subclass number. Quality assurance processes have been implemented at shift handovers to review alerts that have been actioned, including email notification from the ABF to the AFPNCB and to the Department of Home Affairs. As a final step we've directed ABF officers who action Interpol alerts at points of departure to expressly detail the specific visa type when contacting the AFPNCB. This was not a point of failure, but it acts as further assurance if earlier steps have not identified the existence of a protection visa holder.

The ABF have seen sustained investigative and enforcement compliance operations in relation to both our migration and customs functions and, in the financial year to date, ABF officers have made almost 24,000 detections of illicit drugs and precursors weighing more than 10.5 tonnes through the international mail and passenger and air and sea cargo streams. We've also made more than 1,100 detections of undeclared firearm parts and accessories. Since my last opportunity to address this committee, the ABF-led Illicit Tobacco Taskforce has continued to combat the malicious actors and organised crime syndicates that deal in illicit tobacco as part of the black economy. In January, the task force seized and destroyed eight acres of illegal tobacco crops with a potential excise value of more than $9 million from a property in New South Wales. This was the second successful operation in 2019, with the first resulting in the arrest of two men in Melbourne over alleged importation of illicit imported tobacco worth $10 million in evaded revenue. In addition to the task force, we continue to stop illicit tobacco at the border. In the year to date, the ABF have made more than 170,000 detections of illicit tobacco at the border representing more than $386 million in evaded duty.

Combating organised migration fraud also remains an operational priority due to the miscreant individuals who facilitate illegal worker exploitation and who make significant profits at the expense of their victims and place local businesses at a disadvantage. Operation Battenrun, a national operation targeting unscrupulous labour hire intermediaries, and Taskforce Cadena, which detects and disrupts criminal syndicates that exploit foreign workers for criminal purposes, are two examples of our ongoing focus in this area of work.

Over recent years, the number of people in held immigration detention has significantly reduced. My staff have been forced to manage an increasingly high-risk detention population. Many of those detained have had their visas cancelled on character grounds, including for being convicted of committing serious crimes or being involved in serious and organised crime in Australia. The ABF continues to work with detainees involved in organising recent protest activity; however, I strongly refute claims that conditions in our facilities are inhumane or brutal. On the contrary, we invest a significant amount of effort and resources to provide high-quality facilities and amenities and a broad range of services and activities within the detention network, and to ensure safety and security within the centres themselves. Immigration detention is used as a last resort. Where possible, unlawful noncitizens are accommodated in the community or in less restrictive alternative places of detention—in particular where children are involved.

Finally, and perhaps most importantly given recent events, I wish to emphasise to the committee that we maintain our high level of operational tempo in Australia's maritime domain, with ABF vessels and crew working in conjunction with those of the ADF to patrol Australia's territorial waters. The committee would be aware of the importance of Operation Sovereign Borders in deterring and preventing the resumption of large-scale people smuggling by sea to Australia, and the ABF's Maritime Border Command is one foundation, albeit a critical one, within that operation.

I think the future looks bright for the ABF. We continue to focus on our operational priorities of border protection, our migration system and trade enforcement—though our challenges and work as Australia's customs service in trade enforcement and trade modernisation get little, I think, of the public attention they deserve. We have successfully cemented our place as an influencer within the international border enforcement community, as an effective partner within Australia's law enforcement community and as a critical part of the Home Affairs portfolio. Through implementing our strategy and realising our full potential, over the coming years we will further enhance our capability and reinforce our signature values of integrity, professionalism, respect, accountability and teamwork. Thank you.
CHAIR: Thanks very much, Commissioner. As agreed previously, we'll just deal with the al-Araibi issue at this stage, starting with Senator Pratt.

Senator PRATT: Thank you, Chair, but we didn't have any follow-up questions on—

Senator WATT: Not on the statement itself.

CHAIR: No, this is on al-Araibi.

Senator PRATT: No.

CHAIR: Nothing on al-Araibi?

Senator WATT: No, I think we've covered that to our satisfaction.

CHAIR: I agree. Thank you. Nothing from the government?

Senator MOLAN: Not on al-Araibi.

CHAIR: Senator McKim, do you have some more on al-Araibi?

Senator McKIM: I do. Thanks, Chair. Commissioner, I don't have the benefit of your statement, but I tried to—oh, it has been provided to me now. That'll be helpful. You said that the true-match notification email was not sent by the ABF to the AFP, which was an error, and also that the true-match notification would have included the visa type. Just to be clear, had that error inside ABF not occurred, the AFP would have been aware that Mr al-Araibi was effectively on a protection visa and that he was owed a duty of protection by Australia, and they would have been aware of that prior to them notifying the Thai government of Mr al-Araibi's travel plans?

Mr Outram: Precisely. This is where the process broke down. They would have been aware, and that's the process by which we would make them aware. It's an email. Our officers in our Border Operations Centre who undertake this task execute literally thousands of tasks per day. It's a very busy centre, and the individual officer, whilst he diligently uploaded all the information around the red notice and checked against our indices, neglected to send an email to the AFP.

Senator McKIM: All right. Can I just go back a step: the AFP notified ABF on 9 November that a red notice was in existence regarding Mr al-Araibi?

Mr Outram: Yes. We routinely receive from the AFP lists of new red notices that have been issued, which also contain details of amendments to red notices already in existence and red notices that have been cancelled. We traditionally get a list by email from the AFP of all the red notice movements on quite a frequent basis.

Senator McKIM: Okay. I'm happy for Mr Jabbour to jump in here, but what's the purpose of that notification from ABF's point of view?

Mr Outram: It's so that we can commence checking against the list of people on the red notices and whether those people exist in our movement alert system. If they don't then we will create an alert within the system. It is also to check them against the holdings of the Department of Home Affairs in relation to their visa status.

Senator McKIM: Okay. You've given evidence that in fact that communication was accessed on 22 November, 13 days after it was sent.

Mr Outram: Yes. We have 14-day-service levels of turnaround for this.

Senator McKIM: Is that satisfactory?

Mr Outram: There are 600 a month we have to work through. The Border Operations Centre is a very busy centre, taking phone calls 24/7 from around the world. It has never been a problem before. We are doing a review, and if we need to tighten the time frame and put more resources in there we will have to look at that.

Senator McKIM: I suggest you do.

Mr Outram: I take your suggestion, Senator, but we are already looking at that.

Senator McKIM: I have some questions for Mr Pezzullo about that shortly. This department and ABF are actually created to deal with mass movement of people and mass numbers of people, aren't you?

Mr Outram: We are. You will be aware that we are dealing with some legacy systems here that are past their use-by date, and we are using manual processes for increasingly large numbers of people, with human beings, at the end of the day, being expected to undertake some of those processes. If this system were fully automated, of course that would be nirvana for all of us. We obviously have to include the human factor in this process.

Senator McKIM: Which part of ABF received that notification from the AFP?

Mr Outram: It's called the Border Operations Centre.
Senator McKIM: So the Border Operations Centre received that notification from Federal Police on the ninth, accessed the red notice and ran details across your system on the 22nd?

Mr Outram: It's not quite as simple as that. What happens is we get the list from the AFP, and then our officers in the Border Operations Centre have to manually go into the Interpol system and download information about each red notice. That information can be in French, Spanish, Arabic or English. They have to wait for the English version to appear. Then they pull the information down from the Interpol system. That enables them to check against, obviously, the CMAL system. There are literally hundreds of thousands of people already on there. They would then have to create an entry in relation to the person. They would then have to check it against the Department of Home Affairs holdings as well. If they identify that somebody has got a visa, then the process is they should notify by email both the AFP and the visa and citizenship group in the Department of Home Affairs.

Senator McKIM: Who set up the flag that went up when Mr al-Araibi attempted to travel, or did ultimately travel?

Mr Outram: Because the officer in the Border Operations Centre had raised the alert, but they neglected to send the email, then of course the alert is in the system that there is a red notice.

Senator McKIM: So the officer created the alert, which then ultimately resulted in the flag coming up when Mr al-Araibi attempted to leave Australia.

Mr Outram: Yes.

Senator McKIM: And that was when Border Force called the AFP.

Mr Outram: Exactly. Of course the officer at the primary line would be unaware of what has happened in the Border Operations Centre. They just see the alert there.

Senator McKIM: So basically, Mr al-Araibi's visa type was known to ABF, and what should have happened was that that should have been conveyed to the AFP, but that didn't happen, is that right?

Mr Outram: That's precisely what I've said.

Senator McKIM: Could I bring you in here, Mr Jabbour. Is it fair to say that if the AFP had known of Mr al-Araibi's visa status, we might have had a different outcome here, where in fact he wasn't shopped into the Thai government, as occurred?

Mr Jabbour: That's certainly possible. What would have occurred is, if we had been notified of the visa status, we would have then contacted the Interpol office of legal affairs and advised them of that situation, as we did in this case, and the red notice in this instance was revoked. So typically, yes, the practice is Interpol reassess the matter through the established frameworks they now have in place since 2017, and it would be likely, in all probability, that the red notice would indeed be revoked.

Senator McKIM: In fact it was, as you have alluded to, and quite quickly, within 24 hours.

Mr Jabbour: Within 24 hours, that's correct.

Senator McKIM: So if the email had been sent, AFP would have contacted Interpol.

Mr Jabbour: Correct.

Senator McKIM: And we now know that when AFP did contact Interpol, as you said earlier, regrettably after Mr al-Araibi had been arrested in Thailand, that red notice was cancelled within 24 hours.

Mr Jabbour: That's correct.

Senator McKIM: And if that notice had been cancelled in 24 hours, then presumably the flag wouldn't have come up when Mr al-Araibi went to travel because the red notice would not have been in existence.

Mr Outram: There would have been no alert on the Australian system in relation to Mr al-Araibi.

Senator McKIM: And therefore the AFP wouldn't have been contacted by ABF when Mr al-Araibi went to leave Australia, and therefore the AFP wouldn't have contacted the Thai government, because there would have been nothing to the AFP because there was no alert at the airport in that circumstance?

Mr Outram: No, there would be no contact between the Australian officials and Thai officials in that case.

Senator McKIM: Mr Outram, do you accept that that error—inadvertently, I'm sure—resulted in Mr al-Araibi spending, I think it was, over two months in fear for his life in a Thailand jail?

Mr Outram: I can't say unequivocally that that is the case, because I don't know what systems, processes and communications were exchanged between Thailand and Bahrain. Whether the existence of a red notice that was raised was the defining issue or not, I don't know. I can't answer that question, in other words, because it would be speculative on my part. But we obviously take this error very seriously. I don't want for a minute to give you the
impression that we're blaming an individual officer here. We're not. We want to provide our officers with the best systems that we can to enable them to do their job in a very fast-moving and high-volume environment. The officer in this case has simply forgotten to send an email. It's as simple as that, and, yes, the consequences can be quite significant. Our margins for error in what we do, not just in the Border Operations Centre but in a lot of our operations, are very small.

Senator McKIM: I understand that. Nevertheless, the evidence is that when the AFP notified ABF about the red notice on Mr al-Araibi, it was 13 days between that notification and any action at all being taken by ABF, which I understand is within your 14 days guidelines—

Mr Outram: I'd say that 'no action being taken' is an inaccurate characterisation.

Senator McKIM: So what action was taken?

Mr Outram: As I said to you, we received the email. Our officers then have to go to the Interpol site to check whether the red notice information has been translated into English and then pull that information down from the Interpol site individually, in each case. There could be 30, 40, 50, 60, 100 named people on each email from the AFP, with some new red notices, some amendments to the red notice—change of circumstances, changed information—and some cancellations. They have to individually pull that information down from the Interpol site once it's been translated into English. Then they would start to do the checks against the relevant systems.

Senator McKIM: When did that start in this case?

Mr Outram: I haven't got that level of detail with me as to exactly when that started, but we give ourselves that time period because of the amount of volume of these and the volume of work within that particular area. Whether it's reasonable or not—we'll do the review. But this sort of error hasn't occurred before.

Senator McKIM: No, but it had very serious consequence for Mr al-Araibi.

Mr Outram: Yes, indeed.

Senator McKIM: Would you like to offer an apology to Mr al-Araibi?

Mr Outram: I can't say unequivocally that what happened to him in Thailand was because of this error. I am obviously apologetic that an error occurred within the Border Force, and that is something that we're taking very seriously, as you would understand. We've dealt with the system. To offer an apology for him would say that I'm accepting that the outcome, what happened in Thailand, was entirely due to that error. I can't say that without speculating.

Senator McKIM: Mr Jabbour, are you able to shed any light on this? It was the AFP, ultimately, that got into contact with Thai authorities. Was it news to them that Mr al-Araibi had a red notice attached to him when AFP got in touch?

Mr Jabbour: We didn't get a response either way in relation to whether this came as news to them. I will make this observation, though, notwithstanding all the comments we've made: as I understand it, Mr al-Araibi was issued with a protection visa on 30 November 2017. As I understand it, from reporting, he applied for a tourist visa to travel to Thailand on 4 November 2018, nearly 12 months after the issuance of his protection visa. As I understand it, from reporting, he was issued with his tourist visa on 8 November, and, on that same day, an Interpol red notice was issued by Bahrain, at the request of Bahrain. I cannot comment as to what the trigger for the issuance of that red notice was at that time. What I can say is that it was nearly 12 months after Mr al-Araibi was issued with a protection visa in this country. So those two events occurred on the same day.

Senator McKIM: That's a fair old coincidence, if it's in fact a coincidence, isn't it?

Mr Jabbour: Again, yes, that would be my assessment. But I'm not in possession of any of that material. That is a matter for the Thai authorities; as the secretary said earlier today, the application was made. So those two events, I understand, occurred on the same day, and you're aware of the rest of the arrangements whereby we then notified the Australian Border Force, and events occurred from there. The existence of a red notice certainly alerted, on this occasion, Thailand to the imminent arrival of Mr al-Araibi into Thailand. But you do not need a red notice, necessarily, to be in existence to be able to detain a person in certain foreign jurisdictions if another third party has requested a person be detained. So, as was the evidence I gave earlier, Senator, a red notice on its own does not enable the country necessarily to detain a person.

Senator McKIM: But it might.

Mr Jabbour: But it might, absolutely, or it may be at the request of a third party, without a red notice in place. But, yes, it may well be the red notice that triggers that, if that makes sense.
CHAIR: I'll go to someone else, namely me. We've been through all the facts. I think the committee's now got the absolute facts of what happened, except that it's an error—that's been conceded—in that it shouldn't have happened, but it did. Is there anything else relevant to this that you can tell us that would be of any useful information to the committee?

Mr Outram: Chair, I'm just going to advise that the Border Operations Centre received the translation from Interpol on the 22nd.


CHAIR: That finishes my questions, and I would like to move on. Are you happy, Senator McKim? You've got all the information—

Senator McKIM: Not quite, Chair, but I'm nearly done. I wanted to ask, Commissioner, whether your agency is aware of Mr al-Araibi seeking advice on whether it was okay for him to travel to Thailand before he departed.

Mr Outram: I'm not aware of that, no.

Senator McKIM: Would you take that question on notice?

CHAIR: Advice from whom?

Senator McKIM: It's my understanding that Mr al-Araibi contacted the immigration department—so this is actually a question for you as well, Mr Pezzullo—and asked was he okay to travel to Thailand and was told he was good to go.

CHAIR: Do you have any details of that so that the officers can look it up?

Senator McKIM: No. Well, that's been reported.

Mr Outram: What I would say is this, from the Border Force side: we don't provide travel advisory, point 1. There's no part of my organisation that people can just reach into for travel advice: ‘Am I good to go?’ So I'll check, but what I'm saying to you is it's highly unlikely the Border Force would provide any advice that anyone is good or bad to travel.

Senator McKIM: Thanks for agreeing to take that on notice and check. So, Mr Pezzullo, same question to you.

Mr Pezzullo: I'm happy to take that question on notice.

Senator McKIM: Do you know, as you sit here now, whether Mr al-Araibi sought such advice from your department?

Mr Pezzullo: No, I don't.

Senator McKIM: You don't?

Mr Pezzullo: No.

Senator McKIM: So you'll take on notice whether there was any contact—

Mr Pezzullo: Whether there was contact with the department and what the nature of the contact was.

Senator McKIM: From Mr al-Araibi or anyone acting on his behalf.

Mr Pezzullo: Yes, we'll take that on notice.

Senator McKIM: Prior to him departing.

Mr Pezzullo: Yes.

Senator McKIM: And, if there was that contact, what the nature of the contact was—the question—and what the nature of the advice was that Mr al-Araibi was given.

Mr Pezzullo: Yes—all taken on notice.

Senator McKIM: Mr Outram, I want to finish here. I'm not going to dispute that Bahrain may have reached out directly to Thailand in a hypothetical alternative reality, but you'd have to concede, wouldn't you, that the mistake made in ABF actually did directly result in the Australian Federal Police contacting Thai authorities and informing them that a red notice existed in relation to Mr al-Araibi, and that that would not have occurred if that mistake had not been made?

Mr Outram: I accept that.

Senator McKIM: You accept that. You sure you don't want to offer an apology Mr al-Araibi?
Mr Outram: I apologise for the error that occurred within the ABF, but I can't say, nor can I accept, that that error necessarily led to his detention in Thailand, that it wouldn't have occurred anyway. That's the point I'm making.

Senator PRATT: Perhaps someone could have told him before he left the country.

CHAIR: Commissioner—

Mr Outram: Senator, if I could, that's a completely different issue, as to whether we should tell people who are leaving the country that they are or they aren't on a red notice or they should or they shouldn't travel.

Senator PRATT: No, I understand. But he was under a red notice that might have been drawn to the attention of the Thai authorities anyway, and he should have known that that was at his risk.

Mr Outram: I think my answer to Senator McKim dealt with that.

Senator PRATT: Yes.

Senator McKIM: Before we leave this, Mr Pezzullo, I did flag your review with you earlier. In fact, I did try to ask you a couple of questions about it.

Mr Pezzullo: Yes.

Senator McKIM: I was put off until now. So I just want to ask those now, if I might. Can you confirm that you did commission a review into the circumstances surrounding Mr al-Araibi's detention by the Thai authorities as they are relevant to your department?

Mr Pezzullo: Yes.

Senator McKIM: When did you ask for that review?

Mr Pezzullo: I'd have to check our records and come back to you on notice.

Senator Patrick: [inaudible]

CHAIR: I can't stop him. The rules in the Senate are that as long as he has questions he can keep answering them.

Senator McKIM: So you've taken that on notice.

Mr Pezzullo: I'll have to check the detail.

Senator McKIM: So you will come back on that?

Senator PRATT: [inaudible]

CHAIR: I've been trying to shut him up, but nothing makes much sense.

Senator McKIM: In terms of the review, did it have terms of reference? What specifically did you ask be reviewed?

Mr Pezzullo: That we get to the bottom of the facts of the matter in terms of chronology, the business processes that were applicable, any technology issues and where potential points of breakdown or failure had occurred.

Senator McKIM: What about recommendations to make things better?

Mr Pezzullo: Recommendations of an interim character—Mr Outram has spoken to those. What I'm now considering are the more systemic, long-term, enduring implications that somewhat go back to the discussion that you and I had what seems to be many hours ago about the extent to which legislative systems and technology barriers prevent a solution that doesn't require Commissioner Outram to put in place what we'd describe as manual workarounds but that gets us to a place where we're using contemporary technology, highly sophisticated algorithms and data matching whereby we can automate this almost to the point of instantaneous, what's called, alert management. But to accelerate that program would mean that other programs, potentially, are not funded to an equal legal of priority, and it's a question of then managing those priorities. So the review has been completed; it's concluded.

Senator McKIM: That's been concluded, has it?

Mr Pezzullo: Yes. It gave Mr Outram some suggestions as to some immediate operational refinements, which I think you've basically detailed.

Senator McKIM: Actually, I do have some questions then. What were the recommendations of the review?

Mr Pezzullo: Working backwards, Mr Outram, having reflected on the outcomes of the review, has implemented the suggestions that were made to him, so I might refer back to Mr Outram.
Senator McKIM: Before we go to Mr Outram, we do know that the AFP have said earlier that one of the internal matters to the AFP that was discovered, if you like, as part of the review—and I might just stick with you for now, Mr Pezzullo; it was your review.

Mr Pezzullo: It was a review commissioned by me, yes.

Senator McKIM: Exactly. Will you make the review public so that people can have confidence that everything possible is being done to make sure that this terrible situation that Mr al-Araibi was placed in never happens again?

Mr Pezzullo: I'll take that on notice simply because a review of this nature would talk in quite some detail about our classified processes and systems. So a version of the review might be able to be made public, but not the review proper I would have thought. In which case, I would seek the appropriate public interest immunity from the minister.

Senator PATRICK: Point of order. This is obviously an important matter. Senator McKim has had a very long go at it. We have other questions in this program that we'd like to direct to Mr Outram and others as well.

Senator McKIM: Yes. I'm nearly done.

Senator PATRICK: That would be very much appreciated. It's been about 20 minutes.

Senator McKIM: Yes, I do appreciate that.

CHAIR: It's more than 20 minutes, and I have tried to indicate this. We have a long night to go. But, under the rules of the Senate—which you know I don't agree with—as long as any senator has any questions on a particular subject, they're allowed to keep going until 11 o'clock, if needs be.

Senator McKIM: I do thank the committee for allowing me to question this matter at length, but it is a matter of significant public interest and importance.

Senator PATRICK: Agreed. We just had to rotate the call over the course of the day, that's all.

Senator McKIM: Understood. So, Mr Pezzullo, what was the answer to that? Are you going to take it on notice whether or not you're going to make the review public?

Mr Pezzullo: Yes.

Senator McKIM: And, sorry, did you say you may consider making parts of the review public and redacting other parts?

Mr Pezzullo: Yes, and I stated that my rationale for that was that, inevitably, such a review would look at internal classified systems and processes, which, for reasons unconnected with this matter, relates to how you get in and out of Australia and how our border alerts are managed. I wouldn't want publicly to disclose those.

Senator McKIM: No. I appreciate the situation you're in, Mr Pezzullo. I just urge you to think about the significant public interest in this matter—

CHAIR: Do you have a question?

Senator McKIM: and the need for people to have confidence in Australian agencies like the AFP and ABF—

CHAIR: Thanks for your advice, but if you've got a question let's have it. Otherwise we'll move on.

Senator McKIM: when you are deciding whether or not to make that review public. Are you able to provide a time frame within which you'd be able to come back to the committee on that, Mr Pezzullo?

Mr Pezzullo: We'll come back within the stipulated deadline for returning questions on notice.

Senator McKIM: All right. Thank you.

[20:10]

CHAIR: Thank you, Commissioner. You're free to go, and we appreciate you staying around all day. Thank you very much. Now we're going to all of outcome 1. Could senators just indicate to the department which program they want when they start so that we can get the required officers. But it can be anywhere in outcome 1 as everyone has their chance.

Senator PRATT: Senator Carr had just asked about the Christmas Island reopening before he had to leave, in relation to whose decision it was to reopen the Christmas Island detention centre. Mr Pezzullo, you confirmed it was the government's. I note that this announcement took place before the passage of the Home Affairs legislation last week. When was it recommended to the government to reopen Christmas Island—on which date and time?
Mr Pezzullo: Your question included the premise—I just need to recall last week—that the announcement was made by the government before the passage of the legislation, which, if I recall correctly, occurred on the Wednesday in the Senate.

Senator WATT: That's right.

Senator PRATT: Yes, that's right.

Senator WATT: So the government made a decision to reopen Christmas Island before the legislation was passed by the Senate.

Mr Pezzullo: Yes. I'll take on notice the precise sequence and also seek counsel from ministers. Ordinarily, with the exception of a declassified departmental submission on the implications of the legislation, in the unusual circumstances of government legislation being amended by both houses of parliament contrary to the policy of the government—so we're in rather unusual territory here—such advice would never be made public. So I'll just need to refresh my memory as to when we initially provided contingency advice.

The declassified submission that has several times been mentioned today was dated, from memory, mid-December. So already at that time we were starting to think about contingency plans should legislation of this nature be passed, remembering that at that point we had the Senate-amended bill to deal with. The best option in the circumstances would be to confine the mass transference of persons from Nauru and Papua New Guinea to Christmas Island on the basis that the legislation as it then stood—remember, we're talking about pre-amended—referred to both medical and psychiatric treatment and assessment. In the analysis of the department—which is on everyone's website now, able to be reviewed—our concern was that the legislation in prospect, as passed by the Senate in December, attached itself not just to people who were ill but to people who doctors in Australia would want to see for assessment. So, on a reasonable worst-case basis, you were looking at effectively the closure of regional processing and the transfer of a thousand people en masse. That advice—I just want to be clear about the chronology here—was developed by the department, as the world now knows, in mid-December.

The important supplement to that answer is that, knowing during the course of last week that the bill was to be further amended in the House, with different time frames and confinement of the legislation to present residents in Nauru and PNG, the department—

Senator PRATT: Mr Pezzullo, I didn't actually ask about the nature of the advice. I asked for the date and time on which the advice was given in terms of recommending to reopen Christmas Island.

Mr Pezzullo: I've answered that our initial contingency planning advice went up in December.

Senator PRATT: Did that include reference to Christmas Island?

Mr Pezzullo: I'm sure you were listening so intently to my answer that you would already know that, yes, it did.

Senator PRATT: Okay. So you are saying you recommended to the government in December—

Mr Pezzullo: On the basis—I'm not going to the content of my advice—

Senator PRATT: Based on what might prospectively happen depending on what the parliament did.

Mr Pezzullo: Based, at that stage, on the bill as amended by the Senate.

Senator PRATT: Is it standard practice for cabinet ministers to talk publicly about the workings of the National Security Committee or what the NSC decides?

Mr Pezzullo: That's a matter for the Prime Minister and his senior ministers as to what they disclose about cabinet deliberations and processes.

Senator WATT: But I think you did say that it's a highly unusual situation for that kind of material to be discussed publicly.

Mr Pezzullo: There are two different issues here. The unusual situation pertained to departmental advice that has a bearing on legislation which is originally government legislation, is modified in the Senate contrary to the policy of the government and then comes back to the House with the potential for it to be enacted after passage through both houses, contrary to the policy direction of the government. That's the unusual piece. It hasn't happened since 1929.

Senator PRATT: So did the National Security Committee recommend reopening Christmas Island, or was it on your recommendation?

Mr Pezzullo: The National Security Committee makes decisions; it doesn't make recommendations.

Senator PRATT: So you made that recommendation based on those contingencies?
Mr Pezzullo: My department is the lead department in managing these contingencies, so we would brief our minister with our recommendations. As you heard earlier in the day, that would include consultation with ASIO and other colleagues.

Senator PRATT: So it was your recommendation to reopen Christmas Island.

Mr Pezzullo: It came from my department as the lead department supporting our ministers. We have two ministers with equity here. The cabinet minister is Mr Dutton and the immigration minister is Mr Coleman. They would have taken that material to the NSC.

Senator WATT: Was the reopening of Christmas Island put forward as one of a number of options?

Mr Pezzullo: I'd prefer to take that on notice, because that specifically starts to go to the very detailed content of the advice rather than the fact that advice of that nature exists.

Senator WATT: The reason I ask is that it's been presented by various ministers as: this was the recommendation of your department.

Mr Pezzullo: If ministers have said that, that would be an accurate reflection. They can speak about their deliberations; I can't.

Senator WATT: That would be 'an accurate' or 'inaccurate'?

Mr Pezzullo: 'An accurate'.

Senator PRATT: Of your advice?

Mr Pezzullo: Yes. If ministers have characterised it in that fashion, they have the licence to speak about their deliberations. I don't.

Senator WATT: Sure, but only if it's true.

Mr Pezzullo: It's very true.

Senator PRATT: So they have characterised your advice correctly by saying that the Department of Home Affairs had advised them.

Mr Pezzullo: Yes.

Senator PRATT: How can it be an issue of cabinet in confidence if the Prime Minister has spoken publicly in the media in multiple press conferences about these matters?

CHAIR: That's not a question for Mr Pezzullo.

Senator WATT: It is for the minister.

CHAIR: Okay, Minister Cash will no doubt either answer it or take it on notice.

Senator Cash: Could you repeat the question, Senator Pratt.

Senator PRATT: I was asking about discussion of these issues in relation to the deliberations of the National Security Committee. They've been referenced publicly in the media in multiple press conferences, but we've also been told that it's supposed to be cabinet in confidence.

Senator Cash: I'm not aware of the deliberations of the NSC, so I'd have to take anything that you've said on notice.

Senator PRATT: Okay. The Prime Minister stated in his press conference on 13 February what the advice of the Secretary of the Department of Home Affairs was, and he said:

The full cost of those was set out in the declassified briefing which you've already seen and the final costings of those will be staged over the re-ramp up of those facilities, and that is taking place in accordance with the recommendations from the Secretary of Home Affairs.

So you affirm that that statement is true, do you, Mr Pezzullo?

Mr Pezzullo: That's a true statement, yes.

Senator PRATT: Okay. On 16 February the Prime Minister stated that it was the recommendation of the Department of Home Affairs that Christmas Island be reopened.

Mr Pezzullo: Given that the Prime Minister's chosen to disclose the specifics of the recommendations put to his ministers, all I can do is to say that it's a very accurate description of what's transpired.

Senator PRATT: Given the fact that the Prime Minister announced the reopening of Christmas Island before the legislation was passed, the passage of the legislation is irrelevant to the reopening of Christmas Island—correct?
Mr Pezzullo: No. As I said in my earlier answer, and perhaps I'll just revisit or restate elements of it, as far back as December, when the Senate version of the legislation came to hand—obviously the Senate voted on a government bill and made significant amendments—we were already giving some thought to: what is our contingency plan to handle this? Obviously through the summer period, with the resumption of the parliament and the sitting of the House, which occurred last Tuesday, the first day of sitting, procedurally a message was going to be returned from the Senate to the other place to consider those amendments. I might just pause, Senator, because when you asked me the third time I would have already answered your question.

Senator PRATT: No, I appreciate what you've—

Mr Pezzullo: Thank you. So, over the two-month period between the rising of the parliament last year and the resumption of parliament last Tuesday, we knew that either the Senate version of the bill was going to be voted on in the House or some further modification of it was going to be voted on, so we continued our contingency planning all the way through summer.

Senator PRATT: Is there any legal requirement to have reopened Christmas Island specifically in the medevac legislation? I can't see that there has been.

Mr Pezzullo: Well, legislation typically doesn't direct the executive as to how it's going enforce the laws of the country. Those are matters for the executive. It's up to the executive, now that the parliament has graced the executive with the law of the land, which will, of course, be complied with. It's up to the executive to work out how best to apply that law.

Senator WATT: Can I just jump in here, Mr Pezzullo, because I think this is an important point.

CHAIR: Well, your time is finished, and I just really—

Senator WATT: Yes. We were waiting more than 20 minutes for Senator McKim.

CHAIR: Don't blame me for that, Senator Watt. It's the rules of the Senate which the Greens and the Labor Party put in place that make me powerless to move people on while they still have questions, and you know that. Now—

Senator WATT: I'm talking about rotating the call.

CHAIR: I tried my best to get Senator McKim to be briefer, but I had no success, as you could see. But there was nothing I could do about it. Your 10 minutes is up. We'll come back to you when other senators have had a chance. I'm going to go to Senator Hume or Senator Watt and Senator Hume or Senator Molan or me, and then Senator Leyonhjelm and then Senator McKim.

Senator HUME: I have questions about the cohort of people that remain on Manus and Nauru. Can I ask, first of all, how many people remain? I know they're not in detention. How many people remain on Nauru?

Mr Pezzullo: We might just be joined by Deputy Commissioner Newton and perhaps Ms Moy as well. They have the up-to-date population numbers across both locations.

Ms Newton: As of today, we currently have in Nauru numbers overall of 431: 330 refugees and three minors, and those three minors are on a pathway to the US that we expect to take place this month; 26 nonrefugees; and 75 not yet determined. PNG has a total of 584: 456 refugees, 121 nonrefugees and seven with complementary protection that are nonrefugees, so in total 128 nonrefugees.

Senator HUME: Can I just ask some questions about some of those categorisations. What are 'complementary protection' and 'nonrefugees'?

Ms Newton: Complementary protection means that they can't return to their country of origin, but they're not classed as a refugee, so alternate placement needs to be made, and that's a process that Papua New Guinea is working through with individuals.

Senator HUME: And nonrefugees? What are the reasons that people fail to be classified as refugees?

Ms Newton: It's a matter for Papua New Guinea and Nauru to determine the refugee status of each person that's interviewed. They go through a full process according to their own country arrangements. But they're not owed protection, because that country believes that they're not a refugee and they should be able to return to their country of origin.

Senator HUME: Is there an international standard for that? Is there something to do with the UN convention? What are the basic benchmarks? I'm not asking for anything too precise, but I'd like to know the reasons that these people may have failed to be refugees.

Mr Wilden: The 1951 convention for refugees sets out, if you like, the conditions upon which a refugee can be determined. Every country that is a signatory to that convention gives a commitment to meet those obligations.
Referring back to Ms Newton's earlier statement, the issue is, of course, one for PNG or Nauru in how they undertake their refugee status determination against the UNHCR's broader frameworks.

**Senator HUME:** Can I ask whether the 147 nonrefugees that are shared between Manus and Nauru qualify under the medevac bill to be sent to Australia for medical assessment or treatment.

**Ms Newton:** Yes, they do, Senator.

**Senator HUME:** They do? And they have exactly the same requirements as a refugee; they just need two doctors to recommend assessment or treatment onshore?

**Ms Newton:** That's correct under the legislation. It doesn't differentiate between a refugee and a nonrefugee.

**Senator HUME:** For those 147 nonrefugees across Manus and Nauru, are both Manus and Nauru waiting for them to either return home or resettle elsewhere of their own volition?

**Ms Newton:** That's being encouraged by PNG in particular, and four people have been removed.

**Senator HUME:** Four people have been—

**Ms Newton:** Removed from PNG back to their location of origin. They are nonrefugees.

**Senator HUME:** My understanding is that there are only men left on Manus. Is that correct?

**Ms Newton:** Yes, PNG only has males.

**Senator HUME:** But there are some women left on Nauru?

**Ms Newton:** That's correct.

**Senator HUME:** How many women?

**Ms Newton:** I'll just have to look that statistic up. I think it's in the vicinity of about 60, but I'll come back to you with that in a moment.

**Senator HUME:** Okay, thank you. How many medical professionals are currently on Nauru? If we're looking, we may as well get the same statistics for Manus as well as for PNG.

**CHAIR:** I know you've got them because we talked about this before.

**Ms Moy:** I have them here as well. There are 33 medical staff in terms of nurses and doctors and 30.5 mental health professionals, in terms of full-time equivalents.

**CHAIR:** How many is that second figure?

**Ms Moy:** 30.5.

**Senator HUME:** That's on Nauru?

**Ms Moy:** That's correct.

**Senator HUME:** And on Manus?

**Ms Moy:** And on Manus, in the Pacific International Hospital we have—I'll just have to find the numbers, sorry.

**Senator HUME:** That's all right. You can perhaps clarify for me while you're looking: of the 33 nurses and doctors and 35 mental health professionals, how many of those can recommend treatment or assessment in Australia?

**Ms Moy:** Any of the doctors.

**Senator HUME:** But not the nurses?

**Ms Moy:** Well, generally the nurses would refer to a doctor for a referral, yes.

**Senator MOLAN:** Is it 30.5 or 35?

**Ms Moy:** 30.5.

**Senator HUME:** And do you have a list of the specialisations of those doctors? How many are GPs; how many are neurologists or whatever they might be?

**Ms Moy:** I do, across the two sites of Manus. At the ELRTC—the East Lorengau Refugee Transit Centre—clinic in Manus, the staffing is one senior medical officer, one emergency medical officer, one medical officer, three primary-care nurses, one ICU emergency-room nurse, one paramedic, one after-hours GP, one after-hours nurse, a pharmacist, a lab technician and a biomedical technician, and we have dentists and dental assistants who fly in. So that's 13 health care professionals who are sitting in the ELRTC clinic. Then we have five mental health professionals—one psychiatrist, one mental health team leader, two mental health nurses and a counsellor. That's in the ELRTC. In Port Moresby we have health care professionals—one medical officer, one nurse, one medic
escort team lead, one medevac escort emergency-room nurse and a country medical director. That totals five health care professionals. There are three mental health professionals—one counsellor, one mental health team lead and a mental health nurse—and there's also relevant administrative staff.

**Senator HUME:** It sounds to me like there is quite a significant ratio of medical professionals to residents.

**Ms Newton:** It's one to seven, and there are 56 women.

**Senator HUME:** That sounds like a ratio that my colleague Senator Macdonald would be jealous of in the town that he is from.

**CHAIR:** That's very true.

**Ms Moy:** We also have similar details for Nauru, if you require those?

**Senator HUME:** Okay, could I get that question again?

**Ms Moy:** Staff deployed in terms of the Nauru Regional Processing Centre: one senior medical officer; one senior medical legal officer, who follows the GP administration; one health services manager; one emergency medical officer; four medical officers; three clinical team leaders; five primary-care nurses; three paramedics; three after-hours nurses; one obstetrician; one immunisation nurse; one radiology technologist; one pharmacist; and one laboratory technician. That's 27. And then we have mental health—two mental health team leaders; 13 mental health nurses; four additional mental health nurses; three psychologists; 1.5 psychiatrists in a visiting role; three counsellors; and two further trauma and torture counsellors.

**Senator HUME:** Again, can you tell me the ratio of medical professionals to residents there.

**Ms Moy:** I'll just get the ratio calculated for you. I don't have that right now.

**Senator HUME:** If you don't have it, that's okay. I'm sure we can work it out. We can take it on notice.

**Ms Moy:** And then we have a further seven staff who are in the Nauru settlement clinic—paediatricians, GPs, mental health nurses and hospital liaisons.

**Senator HUME:** Thank you. Can I ask: since the regional processing centres opened, how many residents from either PNG or Nauru have been sent to Australia for treatment or assessment?

**Ms Moy:** Sorry, could I get that question again?

**Senator HUME:** In the last 5½ years, how many residents from the regional processing centres, from Nauru and from PNG, have come to Australia for medical assessment or treatment?

**Ms Newton:** Eight hundred and ninety-eight.

**Senator HUME:** And they have all been sick, or are they—

**Ms Newton:** With accompanied family.

**Senator HUME:** Does the 898 include family members, or are family members on top of that?

**Ms Newton:** It includes family members.

**Senator HUME:** How many of them returned to Manus or Nauru?

**Ms Newton:** We'll just have to follow up on that. Of those, 807 are refugees, 257 are children, seven are non-refugees and 64 are not determined. Twenty-nine of those are children.

**Senator HUME:** How many went back to Manus or to Nauru?

**Ms Moy:** The number of people who have transferred to Australia in the five years—at the moment, the figure that Deputy Commissioner Newton provided is correct; it's the number of people who are here in Australia. Over a period of time, though, there have actually been 1,246 who have come to Australia for treatment. There have been 282 return over a period of time, and those returns were generally prior to 2015. There was a change in 2014—for babies born prior to December 2014, their families were moved here. So, to break the 282 down: four returned to Nauru in 2013, 61 in 2014, 155 in 2015, six in 2016, six in 2017 and one in 2018. And for PNG: four returned in 2013, 18 in 2014, 26 in 2015, zero in 2016, one in 2017 and zero in 2018.

**Senator HUME:** Of those who remain here, how many are having ongoing medical treatment and how many have finished their medical treatment?

**Ms Moy:** I'd need to take that exact figure on notice. Some have been treated for the cause for which they came to Australia, some have finished and some may well be being treated for something that occurred post their arrival in Australia.

**Senator HUME:** What would be the reason, other than medical, that those who have been brought here have not been able to return home to Manus or Nauru?
Mr Pezzullo: We've given evidence on this before: it's not in the medical lane; it's really in the legal lane. With the advent of a number of cases that are current in the Federal Court, M22 and M23 principally, lawyers who are sympathetic to the notion that not only should these people be brought here but they should remain here have tended to intervene in those proceedings to ensure that those who transfer here, either for medical treatment or those who accompany them, are joined to those cases. Ministers are then presented with the choice of either facing an injunction from the court at the interlocutory stage, where the judges simply say, 'Until we resolve the matter of common law, we're going to keep them here,' or the minister gives an undertaking saying, 'Were I to decide to remove this person, you will get 72 hours notice.' That of course creates a window for an injunction in any event. So the decline in the removals that Ms Moy spoke about—I think there has been quite a sharp decline in recent years—

Ms Newton: Since 2015.

Mr Pezzullo: is directly correlated to the establishment in common law of several cases that are being pursued against the Commonwealth through the Federal Court.

Senator HUME: So it is essentially the actions of activist lawyers that have prevented the return—

Mr Pezzullo: I'm not sure that I would characterise—I don't mean to impugn anyone's character. Doctors have got them here; lawyers are preventing them from leaving.

Senator HUME: Just finally, can I ask: if so many have come to Australia for medical treatment or assessment, from both PNG and from Nauru, in your experience have you seen cases where medical assessment or treatment in Australia was necessary but denied?

Mr Pezzullo: No.

Senator HUME: Thank you.

Senator WATT: Mr Pezzullo, can I go back to the evidence you were giving a little bit earlier. I think what I heard you say was that the original recommendation from your department to government that it should consider reopening Christmas Island was provided in December.

Mr Pezzullo: Our thinking about contingencies was developed in December, when we saw the Senate version of the bill. But obviously, knowing that both houses had risen and that the matter wouldn't be settled definitively until February, that advice was always in relation to contingencies.

Senator WATT: Yes. Obviously that bill was ultimately amended last week, first by the House and then by the Senate, with three pretty important changes, one—and I'm paraphrasing here—being that criminals would not be transferred for medical treatment.

Mr Pezzullo: Certain classes of criminals who are captured under section 501, subsection 7.

Senator WATT: Yes. Secondly, there would be a change around the length of time that the minister would have to make a decision.

Mr Pezzullo: Yes.

Senator WATT: And thirdly and most importantly, the ability to be transferred for medical treatment would be confined to those who are presently on Manus or Nauru, not any future boat arrivals that may happen.

Mr Pezzullo: Yes.

Senator WATT: So, the advice that the department provided in December—that the government should consider reopening Christmas Island—

Mr Pezzullo: Should be prepared to, as a contingency.

Senator WATT: should be prepared to reopen Christmas Island—was provided for a set of circumstances that are quite different to what has ultimately been agreed to by the parliament.

Mr Pezzullo: But, as I explained to Senator Pratt, our advice on the fly, through the course of last week—Tuesday, Wednesday and Thursday—was re-examined. And, on balance, having regard to—and I simply speak to this, because the Prime Minister has made this clear, and ordinarily I would never talk about advice in this level of detail, but for the fact that the chairman of the National Security Committee has himself spoken about it—that advice in the end had to be reconsidered in light of those amendments, particularly the third of those. And it remained the view of the department—and of course we're the lead department; we consult with colleagues, but in the end we have to provide advice to our ministers and through them to the Prime Minister—that because the bill still dealt with not only medical transfers that related to medical conditions that were evident in the diagnosis that the doctors would receive but also with a requirement to bring people here for assessment, this would potentially signal, looking at future communications through the various networks that are watching very carefully what's
happening in Australia, as the effective unravelling of regional processing. Whether this is objectively true or not is beside the point. Because of the conflation, or the conjunction—I shouldn't say 'conflation'—of treatment on assessment, it's our judgement that most people will come here.

Senator WATT: I just want to take you back to the comment of the Prime Minister in a press conference on 13 February—again, we're talking about last week here—where he said:

We have approved putting in place the reopening of the Christmas Island detention facilities, both to deal with the prospect of arrivals as well as dealing with the prospect of transfers.

But isn't it the case that the changes that have been approved by the parliament have no application to any future arrivals?

Mr Pezzullo: Correct.

Senator WATT: They're confined to people who are currently on Manus and Nauru.

Mr Pezzullo: Correct.

Senator WATT: So, the extent that the Prime Minister is justifying the reopening of Christmas Island on, to quote him, 'the prospect of arrivals' is not a factor?

Mr Pezzullo: No. That's neither the evidence that I've given nor, if I remember that press conference particularly accurately, and I think I do, what the Prime Minister said. The Prime Minister was at pains to make the point that, quite apart from the black-letter law, which of course will be observed to the letter—it is the law of the land now—the question that the government's concerned about is what this reflects in terms of sentiment: what is the shift? Regrettably the smugglers, as the Prime Minister and Mr Dutton and others have made clear, don't actually give you conditions of sale and they don't give you terms of conditions when they try to sell you a product. So, if the external sentiment appears to be that policy is softening—and the key factor there relates to the fact that people can come here for either treatment or assessment, and that is the key—

Senator PRATT: They're going to get turned back, aren't they?

Mr Pezzullo: I'll take that as an interjection.

CHAIR: No, it's a debate.

Senator WATT: I'm right, though. You've taken us through the decision process. The government wasn't forced to reopen Christmas Island. It made a decision to do so.

Mr Pezzullo: And I've said nothing other than the fact that, upon taking advice on where regional processing within which Operation Sovereign Borders regional processing provides such a potent tool of deterrence, if the sentiment or the shift in policy is perceived to be, rightly or wrongly and objectively or subjectively, as a shift in the direction of softening, the government decided—to Senator Pratt's point—not because the law requires it but because Operation Sovereign Borders works as an interdependent system of interdependent activities.

Senator WATT: Given it was a government decision to reopen Christmas Island, whose decision is the Prime Minister referring to in saying it's a very bad decision? Is he talking about his own decision to reopen it, or the National Security Committee's?

Mr Pezzullo: I think he may be referring to the Australian Labor Party.

Senator WATT: The Prime Minister said that he's got to reopen Christmas Island because of people who made a very bad decision. But Mr Pezzullo has said—

Senator Cash: I think he may be referring to the Australian Labor Party.

Senator WATT: that it was the government's decision to reopen Christmas Island, no-one else's.
**Senator Cash:** I can read you a quote that I've found from Prime Minister Morrison a day or two ago:

That is why we have taken the recommendation of the Department of Home Affairs to reopen Christmas Island. That's what we've done. That was not our suggestion, that was the recommendation of the Department of Home Affairs that this is what was necessary to address what occurred in the Parliament by the Labor Party voting to weaken our borders.

**Mr Pezzullo:** Can I add, just to be abundantly cautious, that I have no view and I've expressed no view about the attitude taken by different political parties in the parliament. I just look at the laws that the parliament generates. Who moved the amendment, who decided to vote, whether the legislation is in favour of the government's direction or against it, is of no concern to me. Any interpretation that somehow my department or the agencies within the portfolio or agencies that we consult with have concerns about what the parliament has done is a political question. We don't deal with political questions. We just deal with the passage of laws that the parliament overall brings down, and how we then implement those laws as the laws of the land.

**Senator WATT:** Just to confirm, no-one is forcing the Prime Minister to reopen Christmas Island. That's a decision of his own government.

**Mr Pezzullo:** As I've said—

**Senator WATT:** Based on advice.

**Mr Pezzullo:** In explaining government policy, which it's my duty to do, the government has taken the view that in light of the passage of this legislation, in light of the judgement that it's made, on advice, on the impact on one of the central pillars of Operation Sovereign Borders, it was moved to take certain actions, yes.

**Senator WATT:** I don't know if you saw this, Mr Pezzullo, but on Friday night, the Channel Nine news had a story about this, where the headline was, 'An Indonesian Fisherman'—they'd interviewed an Indonesian fisherman—'says he is ready to ferry asylum seekers across the Indian Ocean, claiming the reopening of Christmas Island signals that Australia is once again open slather for people smugglers.' This does concern you, as secretary, that this decision of the government to reopen Christmas Island is in fact what has sent a signal to the people smugglers?

**Senator McKIM:** Absolutely.

**Senator WATT:** Mr Pezzullo, does it concern you that potential people smugglers are saying that they consider the reopening of Christmas Island to amount to a signal?

**Senator McKIM:** They'll be salivating at the thought.

**Senator WATT:** Can we let Mr Pezzullo answer the question.

**Senator PRATT:** I'm sure Mr Pezzullo wishes the boats would come again.

**Senator WATT:** Mr Pezzullo, can you just answer the question.

**Senator Cash:** Chair, I think Mr Pezzullo may wish for Senator Pratt to withdraw that comment.

**Mr Pezzullo:** Mr Chairman, I take extensive offence.

**CHAIR:** I'm sorry, I didn't hear that.

**Senator PRATT:** I withdraw my statement.

**CHAIR:** Thank you, Senator Pratt.

**Senator WATT:** As Senator Pratt has withdrawn, Mr Pezzullo, can you answer the question: does it concern you, as the secretary of the department, that potential people smugglers have linked the reopening of their trade to the reopening of Christmas Island?

**Mr Pezzullo:** It concerns me whenever I see reporting, in open or classified sources, of people smugglers, their contractors, the people who deliver the services, potential clients, that reads changes in the Australian sentiment as softening, I'm very concerned. I've seen references, for instance, to changes of ministers, electoral outcomes, political party matters. I see lots of reporting.

**Senator WATT:** And now a decision of the government to reopen Christmas Island.

**Senator MOLAN:** Possibly even the passing of a bill.

**Senator WATT:** That's not what he said.
Senator MOLAN: A bill! A bill!

Senator WATT: That's not what he said. What this guy said—

CHAIR: This Indonesian expert?

Senator WATT: You seem to be pretty happy to rely on Indonesian fishermen when it suits you, in articles in other media outlets.

CHAIR: We need some serious questions.

Senator WATT: Mr Pezzullo, did the advice that you provided to government around the reopening of Christmas Island contain any advice about the risks in terms of a signal that would be sent in reopening Christmas Island itself?

Mr Pezzullo: It was comprehensive advice.

Senator WATT: So the advice you provided to government, being comprehensive—

Mr Pezzullo: We had regard to all the risk factors, yes.

Senator WATT: Including the signal that it would send in reopening Christmas Island.

Mr Pezzullo: Ordinarily, other than the fact that one document in this advisory sequence has been declassified, we don't normally talk about the factors that go into the advice. We normally brief Senate committees on the existence of advice and we give assurances to those committees that the advice is comprehensive and addresses all the risks, advantages and disadvantages of different courses of action.

Senator WATT: And in providing—

CHAIR: Thanks, Mr Pezzullo. Senator Molan.

Senator WATT: How long did Senator McKim have? The minute there's any trouble for the government you shut it down.

CHAIR: You have now taken 13 minutes. You're allowed ten and I usually allow two minutes to get the answer.

Senator WATT: How long did you give Senator McKim? Everyone can see what's going on.

CHAIR: You ask about Senator McKim. Seeing you've raised it— I've answered this three times already and you continue to raise this—Senator McKim was asking a line of questioning which, due to rules passed by the Labor Party and the Greens in the Senate, I am powerless to stop him or any other senator continuing to ask questions until they finish their questions. I cannot stop them. I did, on several occasions, attempt gently to suggest to Senator McKim that he was being selfish and holding up other senators who wanted questions, but to no avail, and that is why Senator McKim had something like 23 minutes and I was powerless to stop it. Everyone else has 10 minutes in this session, and I've allowed an extra two minutes to get a final question on that series of questions to allow answers to come through. My goodwill and good nature has been taken advantage of, and perhaps I'll go back to a strict ten minutes. On ten minutes we'll all stop.

Senator WATT: Well, you've done it to us most of the time.

CHAIR: I have not. You've had 13 minutes just now—in fact I think probably more than that. I'm wrong; it's more than 13 minutes. Senator Molan.

Senator MOLAN: I'd like to go to the Home Affairs Legislation Amendment (Miscellaneous Measures) Bill and the process problems that I think there will be in the bill, particularly in the decision-making process that is laid out in the bill. To the best of my knowledge—it seems to me, and I think it's probably the secretary that I'm talking to—

Mr Pezzullo: I fear you're right, Senator!

Senator MOLAN: I think I am! A key part of the process, of course, is the IHAP, the Independent Health Advice Panel. Secretary, what happens if the IHAP does not meet?

Mr Pezzullo: The legislation is clear that, if it doesn't meet, there's a deemed transfer approval in place. But Ms Moy and our general counsel, Ms de Veau, can take you through chapter and verse. Can I just state at the outset—I intimated this as I was conversing with Senator Watt and I was slightly thrown by Senator Pratt's now withdrawn objectionable comments—this is soon to be the law of the land, once assent is achieved. We have no—and I'm going to repeat this—we have no criticism to make of the merit of the law or which political party moved which element. That's not our job. Our job is to apply the law of the land as it has been bequeathed to us by this
parliament. So I just want to contextualise the answers that my officers are about to give. We will implement the law of the land as stated.

Senator MOLAN: I'm trying to understand the law of the land and the process that lies behind it.

Mr Pezzullo: Ms Moy, if the panel is either not constituted or doesn't meet, what happens to individual referrals that otherwise would have to go to the panel?

Ms Moy: Under section 198F(2) of the bill soon to become legislation, the minister must refer as soon as practicable, but not more than 72 hours after, an assessment to the IHAP where they have declined to transfer the person or refused the person's transfer. If the panel does not then inform the minister of its recommendation within the time required by the subsection, which is 72 hours, then the transfer is deemed to be in the positive.

Senator MOLAN: I assume we're going through the process now of constituting that panel?

Ms Moy: That's correct.

Senator MOLAN: My understanding is there is the Chief Medical Officer of Home Affairs, Surgeon-General of the ABF, Commonwealth Medical Officer and three or four others?

Ms Moy: Yes. The panel is not less than six members additional to the Surgeon-General of the ABF, CMO and the Chief Medical Officer of the Commonwealth. It is a minimum of eight people on the panel. Those other six members must include at least one person nominated by the President of the Australian Medical Association; at least one person nominated by the Royal Australian and New Zealand College of Psychiatrists; at least one person nominated by the Royal Australasian College of Physicians; and one person who has expertise in paediatric health.

Senator MOLAN: Can you tell me how the constituting of that is going? My understanding is that they're not being paid, and if we do get a large number coming through, we've got three days in which these people have got to dedicate themselves to addressing the issue.

Ms Moy: That's correct. The bill stipulates that there's no remuneration to the panel. The minister, Minister Cormann, has written to the colleges in question and has requested them to nominate individuals to be members of the panel. Those went out, from memory, last Wednesday night, after the passing of the bill, or early Thursday. The colleges have until Wednesday 20 February to respond and provide the nominations. There has been some discussion about how, obviously, the colleges will ask questions about various details. Specifically, they have asked about remuneration and reimbursement of travel et cetera. Once we receive the nominations, then it is up to the minister to appoint those people from that group of nominations.

Senator MOLAN: Must they come together to deliberate?

Ms Moy: Once they are actually appointed, they need to come together to go through some induction processes as well. Then the panel itself is required to set its own operations about how it will operate.

Ms de Veau: The other feature of the bill to highlight there is that any recommendation for a particular transfer made by the panel for the purposes of the section must be agreed to by a majority of the panel members.

Senator MOLAN: So it does vote.

Ms de Veau: It means the panel members in totality need to engage with each decision. It can't be that they divide themselves and allocate the particular case.

Mr Pezzullo: It's the minimum vote, and the majority is 5-3.

Senator MOLAN: We've heard talk that 300 people may already be in a position to move. It must be a full-time job to be on the IHAP?

Ms Moy: Depending on the arrival of those applications, it will be fairly well a full-time job to consider any negative decisions.

Senator MOLAN: Going through this, at various stages there is talk of a delegate. Can you see anywhere that the minister or others can delegate the powers in this bill?

Ms Moy: The minister's powers in section 6 of the bill are non-delegable. The secretary, in terms of his role, may be able to delegate the notification of the cases to the minister.

Senator MOLAN: And that's the only role that the secretary has?

Ms Moy: To notify the minister of the cases received within a specified time period.

Senator MOLAN: When a transitory person, or an illegal maritime arrival, comes to Australia, they still do bring their family and carers—that's correct, isn't it—as has happened in the past?
Ms Moy: Yes, the bill allows for a consideration by the two medical practitioners, the two doctors, to include the family and perhaps others in the transfer arrangements.

Senator MOLAN: And the others are likely to be who?

Ms de Veau: The way it works with the family is that they don't require a medical recommendation. If the person requiring medical assessment or treatment comes, then the family come automatically unless there is a security or section 501(7) character concern preventing that. So, there's no medical recommendation for the family: they get to come as a job lot, so to speak. For an accompanying person who's not part of the family unit, that requires one doctor to recommend that it is appropriate for that person to also accompany the person who is the primary—

Senator MOLAN: But that other person would not be recommended on medical grounds?

Ms de Veau: No.

Senator MOLAN: It might be caretaker's grounds?

Ms de Veau: It's a doctor saying: 'For person A, I recommend that person B—who's not part of the family unit—also come.'

Senator MOLAN: What would happen if a transitory person refuses treatment—if he has an injury which could easily be treated by the competence, the extraordinary competence, that we have on both those islands?

Ms de Veau: There is a medical necessity consideration, and that's a basis for the minister to say it's not necessary to bring the person but there's no specific provision as to whether that takes account of an unreasonable refusal of treatment. The test, as articulated in the bill, is that it's necessary to bring the person here to get the treatment. It doesn't go into why the person's not getting the treatment in the regional processing country.

Mr Pezzullo: If I can add to my earlier evidence that I provided responding to Senator Watt: it is true that significant features—and I'll call it, the Senate version—were modified through the bill's passage in the House, but other features remained intact: refusal of treatment, assessment as well as treatment, recommendation by the two doctors is not just to family members but accompanying support members. If you aggregate all of those factors, and absolutely acknowledging—and I acknowledge Senator Watt's point; he's not here at the moment—that the prospectivity of the legislation was knocked out by confining it to the current group. This was a significant material change that shored up the otherwise significant unravelling of OSB that would have occurred had the Senate version of the bill passed which would have been catastrophic in terms of its effect on OSB. When you aggregate those factors together, the interagency process, but ultimately the Department of Home Affairs providing advice through its ministers to the NSC, came to the view that it's better to manage this movement in a very controlled fashion almost like from one island to another island; provide as much medical support into Christmas Island as possible, hoping against hope that lawyers won't get involved but that's a far-flung hope; then repatriating people once the care has been appropriately provided.

That is now the law of the land. We will apply the law of the land, let me make that very, very clear. So, the imagined impact on OSB, as opposed to the objective impact on OSB, can be kept as undiminished as possible. Our concern is: this isn't about strictly what's passed the parliament; it's about what can be messaged or signalled as what's passed the parliament and, when taken together with other changes, including, for instance, the rising number of common law transfers that we mentioned earlier, in aggregate there appears to be—and I just want to stress this is about appearances, not reality—a weakening of resolve. That's why it's particularly important that the government, and indeed future governments, indicate that their resolve to maintain OSB is undiminished.

Senator MOLAN: Thank you. My second-last question is to do with the time periods that apply in each one of these steps. The first time period, I think I'm right in saying, is that the first decision the minister must make is within the first 72 hours. At that stage, does ASIO start to look at these people?

Mr Pezzullo: Well, I'd refer you to the Director-General's advice when we considered these matters under ASIO. I think Mr Lewis said that to the extent that they had comprehensive holdings they might be able to provide—I don't want to repeat his evidence and get it wrong—a preliminary view of some indication.

Senator MOLAN: Yes.

Mr Pezzullo: But typically people in this situation would not have deep internal holdings. They would have to go to foreign partners.

Senator MOLAN: There's been no need in the past.

Mr Pezzullo: Indeed, because they weren't coming here. The policy since July 2013 was that you would never come to Australia. I think Mr Lewis said that it would be very difficult, if not nigh on impossible—and I'm paraphrasing, and I'll correct my evidence if I've paraphrased wrongly—for them to be able to produce adverse
security assessments within the stipulated time period, even with the extent of the stipulated time period. But I do refer you back to Mr Lewis's evidence.

Senator MOLAN: I will. Thank you. It may take the minister 72 hours, in the first instance, after you refer it to him. And if he makes a decision not to, on health grounds, it engages the IHAP. That's another three days, I think.

Mr Pezzullo: Yes.

Senator MOLAN: If he then refuses on security grounds, that's one day. Is that right? It's 24 hours.

Ms de Veau: It's 72 hours initially, and that could be any of the three refusal grounds. And then if it's the medical necessity ground it goes to the Independent Health Panel. If it then comes back to the minister, he has 24 hours to then reconsider his security grounds, but he doesn't get to reconsider the medical grounds.

Senator MOLAN: Can I just confirm that, when you take all of those decision processes there, one illegal maritime arrival or transitory person plus their family plus carers, whether they're sick or they're not sick and who may even refuse treatment, whether they're refugees or not refugees, on an island with better health facilities than most towns in Australia, with access to Australian specialists should they need them, with a lower-level character test and insufficient time to conduct security checks, can come to Australia and get permanent residency? Has this got anything to do with children or with medical care, do you think?

Mr Pezzullo: I can't really answer that without getting clarity on the very last point you made. Can you just repeat the reference to permanent residency?

Senator MOLAN: I though that with temporary protection visas having gone, under a Labor government—

Mr Pezzullo: Oh, I see what you're saying. No, the question of residency in Australia, permanent or temporary, is not engaged by this legislation whatsoever. Persons transferred to Australia for medical treatment, either under common law requirements or now under a statutory regime, are not given a visa. They can't be given a visa unless the relevant material bar is raised. They come as unlawful noncitizens, who are detained for the entirety of their presence here. Now, the detention could be residential. The ward may be designated as a place of detention—it might be Christmas Island, in the scenario just described. But there is no way, under this legislation, that residency, permanent or otherwise, can be achieved.

Senator LEYONHJELM: I'm going to somewhat follow Senator Molan's line of questioning, and it may be that I'll repeat a couple of points asked about points that have already been clarified, because I'm a bit slow to catch on to things. Under the amendments to the amendment to the Migration Act, the medevac bill, section 198C(4)—I'd like you to tell me if I've got this right—can a treating doctor recommend that an asylum seeker on Manus or Nauru should accompany a person who is being brought to Australia for health care? Am I right about that?

Ms de Veau: That's correct.

Ms Moy: That's correct.

Senator LEYONHJELM: And then, under that same section, 198C(4), the treating doctor can recommend multiple people to accompany a person being brought to Australia for health care?

Ms Moy: That's correct.

Senator LEYONHJELM: Is it also true that, under the same section, an accompanying person need not be in the same family unit as the person being brought to Australia for health care?

Ms Moy: That's correct.

Senator LEYONHJELM: Is it also accurate that the minister must approve the transfer of an accompanying person or people unless the security and criminal concerns of new section 198G apply?

Ms Moy: That's correct, yes.

Senator LEYONHJELM: So is it a logical conclusion that a treating doctor has the power to transfer to Australia every asylum seeker on Manus and Nauru who does not trigger the security and criminal concerns of section 198G, provided these people accompany a person being brought to Australia for health care?

Mr Pezzullo: It's theoretically possible. But isn't it two treating doctors?

Ms de Veau: It's only one treating doctor for the recommendation.

Senator LEYONHJELM: Am I right so far?

Mr Pezzullo: Was the premise of your question that one doctor could, in a sense—

Senator LEYONHJELM: A treating doctor, yes.
Mr Pezzullo: gather everyone up as a support person? Theoretically, I suppose, but I don't think we're going to be limited to one treating doctor.

Senator LEYONHJELM: Given there will be more than one treating doctor anyway, so they could do this in batches, doesn't that scuttle the commitment that any noncitizen who wants to enter Australia by boat without a valid visa would be prevented from entering or remaining in Australia?

Mr Pezzullo: As I said to Senator Molan, the law on this has been very strictly applied since, as a matter of policy, the Australian government made it clear in July 2013—

Senator McKim interjecting—

Senator LEYONHJELM: Nick, I didn't interrupt you. Don't interrupt me, please.

Mr Pezzullo: Australian government policy was changed in July 2013, by former Prime Minister Rudd, and it has been applied successively ever since. If you arrived by illegal maritime means after 19 July 2013, you would never be allowed to settle in Australia. The inference that can be drawn from that is that you can't get a visa of any description. That's why persons who are medically transferred here—and there are now two pathways; there is a common-law pathway, because people are engaging a common law right through the Federal Court, and there will be soon a statutory scheme. Persons are brought here as detained persons. They cannot, by law, be given a visa.

Senator LEYONHJELM: I understand. Just a final detail: when does this bill take effect?

Mr Pezzullo: Upon assent, isn't it?

Ms de Veau: Yes. The day after royal assent.

Senator LEYONHJELM: So it will be fairly soon, I assume.

Mr Pezzullo: We're just working with the Parliamentary Counsel officers to the normal timetable to clear legislation to put before the Governor-General.

Senator LEYONHJELM: Chair, I have another question, on program 1.7. Can I ask it here?

CHAIR: Yes, anywhere in outcome 1.

Senator LEYONHJELM: I'm just wondering if I can get an update on the Australian Firearms Information Network, which was previously known as the National Firearms Interface. Where is that up to?

Mr Ablong: That network is run by the Australian Criminal Intelligence Commission. It's effectively a question for them.

Senator LEYONHJELM: Could you give me an update on the Australian Firearms Information Network, which I think was previously known as the National Firearms Interface? It's a national database of registered firearms. Where is that up to?

Mr Ablong: That network is run by the Australian Criminal Intelligence Commission. It's effectively a question for them.

Senator LEYONHJELM: Okay. Do you know if it's operational?

Mr Pezzullo: If it is run by the ACIC—

Senator LEYONHJELM: You can't—

Mr Ablong: We can take it on notice.

Senator LEYONHJELM: I think I've missed them, haven't I?

Mr Ablong: You have.

Senator LEYONHJELM: I might ask you to take it on notice in that case. Thank you. Also, can you take on notice what its cost is? I will add a couple more to your burden and then leave you in peace. How frequently do the states and territories provide updates to it? Is there a delay between a state or territory providing an update and the database itself being updated?

Mr Ablong: We'll take those on notice.

Senator LEYONHJELM: That's it, Chair.

Proceedings suspended from 21:15 to 21:32

CHAIR: I call back to order this meeting of the Senate Legal and Constitutional Affairs Legislation Committee in its inquiry into the additional estimates of 2018-19. We're dealing with outcome 1. Before we go onto that, Mr Pezzullo, you don't need to be Einstein to work out that we're not going to get to outcome 3. If you have any officers here who are particularly related to outcome 3, I think you can safely send them home. In fact,
we have no indications from any senator who wants to ask about that, but even if we did there's no way in the world we're going to get to them.

**Senator PRATT:** We did have questions prepared, but I do note the time.

**CHAIR:** Yes. I suspect we won't get to outcome 2 either, but I'm not going to make that call at this stage.

**Senator McKIM:** Chair, my apologies, could I have Ms Moy add to her evidence on Paladin? It won't take very long at all.

**CHAIR:** Yes, sure.

**Senator McKIM:** It relates to the contract documentation being still on the website, as required under FOI legislation. Ms Moy, this should be very brief and straightforward—your additional evidence regarding the location of the Paladin contract documentation under the relevant part of the FOI disclosure log.

**Ms Moy:** Sometime earlier this evening, we were asked in regard to whether or not the contract that had been released under a freedom of information request was still on the website, and it appeared to not be available. It is still actually on the website. We've checked. I've accessed it myself. I'm not sure if perhaps someone has gone and looked under 2019 versus 2018. It's under 2018 in August, disclosures. It is there and available.

**CHAIR:** Thanks very much for that helpful advice, and apologies to those who might have been offended by the imputation that it had been illegally taken down.

**Senator McKIM:** Mr Pezzullo, these questions relate to the legislation that passed through parliament—the medevac bill, as it's been broadly categorised. Firstly, is it the intention, when people are transferred back to Australia under the provisions of the amendments that passed through the parliament last week, that they be transferred to Christmas Island?

**Mr Pezzullo:** Yes. That is the policy of the government.

**Senator McKIM:** It's the government's policy to transfer people who are so sick that they can't get appropriate medical treatment on Manus Island, or in Port Moresby or on Nauru, to Christmas Island?

**Mr Pezzullo:** Yes. But sorry—I'm not accepting the characterisation. It's the government's policy to bring persons—

**Senator McKIM:** You're going to bring them to Christmas Island.

**Mr Pezzullo:** under the act that soon will be assented to, to bring people to Christmas Island.

**Senator McKIM:** That is outrageous.

**Mr Pezzullo:** Well, it's not for me to comment on—

**CHAIR:** Nor for Senator McKim.

**Senator McKIM:** Well actually it is for me to comment on.

**CHAIR:** We're here to ask questions.

**Senator McKIM:** It raises a number of questions.

**Mr Pezzullo:** But clearly, Senator McKim, it goes without saying that if a specialist is available only on the mainland then the mainland will of course be utilised.

**Senator McKIM:** You're going to transfer them in the first instance to Christmas Island.

**Mr Pezzullo:** That is the policy of the government, yes.

**Senator McKIM:** Well, apart from the needless and wanton cruelty that is inherent in that decision, that is a clear denial of the clear intent of the parliament, which is that people get access to better medical treatment, which is not available on Christmas Island, Mr Pezzullo.

**CHAIR:** Is there a question in that? If there's not, there's no need to comment.

**Senator McKIM:** Isn't that the case—that that medical treatment is not available on Christmas Island?

**Mr Pezzullo:** And it's my department's job to apply the law of the land, so we'll ensure, to the extent that we can in the time available, that that treatment is available on Christmas Island.

**Senator McKIM:** The government is trying to work around the clear intent of the parliament here—

**CHAIR:** Is this a question, or a statement?

**Senator McKIM:** which is that people get better medical treatment.

**CHAIR:** Is this an accusation or a question?

**Senator McKIM:** Yes, it is an accusation. Minister, what have you got to say for yourself?
CHAIR: If you have any questions, please ask them. Otherwise, we'll go to another senator.

Senator McKIM: Isn't it the case, Minister, that the government is trying to work around the clear and stated intent of the parliament of Australia here by transferring desperately ill people to Christmas Island, where there are actually not even medical facilities to reset a broken leg? Isn't that the case?

Senator Cash: Well, I disagree with the premise of what you've said, so the answer to the question is no.

Senator McKIM: Have you read the report released by the Human Rights Commission in November last year, Minister?

Senator Cash: I have not yet had the opportunity.

Senator McKIM: Have you read the report released by the Human Rights Commission in November last year, Minister?

Mr Pezzullo: Which one?

Senator McKIM: The one that said this:

Due to its remoteness, the nature of its security infrastructure, and the limited access to facilities and services on Christmas Island, the CIIDC is not an appropriate facility for immigration detention, particularly for people who are vulnerable or have been detained for prolonged periods of time.

CHAIR: Does that identify the—

Senator McKIM: That report, Chair. Have you read it, Mr Pezzullo?

Mr Pezzullo: It doesn't identify the particular report, but it does identify to me the consistently stated opinion of the Human Rights Commission.

Senator McKIM: Are you aware of the opinion of the local council chief executive, Mr Price—and I'll quote it for you if you're not—that:

If a person has a compound fracture they're air-vacced out. There's no operations done here.

Some of these people would have serious mental problems that need to be dealt with by specialists. We haven't got the specialists here to do that.

Are you aware of those comments?

CHAIR: This is a quote by a medical expert, is it?

Senator McKIM: It is Mr Price, the CEO of the local council—

CHAIR: A member of the Labor Party.

Senator McKIM: I've got no idea—

CHAIR: Or is it the Greens? From Tasmania, isn't he?

Senator WATT: He might actually be just an independent citizen.

CHAIR: I think he's from Tasmania.

Senator WATT: I've never heard of him.

Senator McKIM: I've never heard of him either, but that doesn't matter. He's currently the chief executive—

CHAIR: Anyhow, Mr Pezzullo, can you answer that?

Senator McKIM: of the council on Christmas Island.

CHAIR: The CEO of the local council, apparently, has a view on something, and you're being asked for comment.

Mr Pezzullo: I'm not sure about his view, but on the general point about whether we're going to extend or bolster capability, pursuant to the decision of the government to reactivate the facility, we will bolster medical capability.

Senator McKIM: Oh, please! That's what you've been saying about Manus Island and Nauru for nearly six years now, Mr Pezzullo.

CHAIR: Do you have a question?

Senator McKIM: And now the parliament has acted because there are people desperately ill.

CHAIR: Do you have a question?

Senator McKIM: Yes. Do you accept the proposition that the government is deliberately denying the clear intent of the parliament here?

Mr Pezzullo: No, I don't accept that at all.
Senator McKIM: Well, Mr Pezzullo, I think it's clear as a bell.

CHAIR: We're not interested in your views, Senator McKim—

Senator McKIM: This is wantonly cruel and unnecessary.

CHAIR: we're interested in your questions.

Senator McKIM: Just when you think it couldn't get any worse, seriously.

CHAIR: Is there a question?

Senator McKIM: Yes: are you ashamed of yourself, Minister?

Senator Cash: No, I'm not, Senator.

Senator McKIM: Well, you ought to be. You're torturing—

CHAIR: That's not a question.

Senator McKIM: desperately ill people.

CHAIR: Senator McKim, I've warned you:

Senator Cash: Senator McKim, we've been through this before with you.

CHAIR: If you are going to use this session to make baseless accusations and political statements, we'll move to another Senator. Senator Watt—whoever: a Labor Party senator, one of you.

Senator Watt: Can I clarify something, Mr Pezzullo, that came up in the questions from Senator Leyonhjelm before the break. Given the fact that people transferred to Australia for temporary medical purposes are not eligible nor are they applying for a visa, is it correct that section 501 of the Migration Act did not apply to them until the passage of the Home Affairs Legislation Amendment (Miscellaneous Measures) Bill? So, another way of putting it: prior to that bill being passed, if an individual on Manus or Nauru was transferred to Australia for medical purposes, as has sometimes occurred, there's no existing requirement under the law similar to section 501 of the Migration Act around criminal convictions?

Mr Pezzullo: Section 501(7)—if the parliament was going to slap on 501, I suppose the whole apparatus would have been preferable. But it's a moot and somewhat academic point insofar as whether you come here under a common law action, a transfer anticipating a common law action or just a transfer administratively, or now under a statutory scheme, you don't come here under a visa consideration. But, as a matter of abstract theory, it is true to say that all persons transferred here, who are detained, wouldn't ordinarily have to go through the 501 filter because we're not giving them a visa, correct?

Ms de Veau: That's right, so the bar in section 146—I think it's (a)—applies, so unless that's lifted by the minister they can't apply for a visa once they're here. Were they to do that, then section 501 would come into play and of course, that has, from time to time, occurred. But I guess the main difference is that there hasn't been up until now a compulsion to bring them here; it's been a discretion of the minister. So, those sorts of considerations could theoretically be taken into account.

Senator Watt: So, for those who are listening who aren't as familiar with the legislation, the point being made is that, prior to the passage of the bill last week, if a person was medevaced to Australia, there was no option or authority for the minister to reject that person's transfer on the basis that there were concerns around their criminal past?

Mr Pezzullo: No, to the contrary, there was a wider discretion, because the compulsion, as Ms de Veau said, was not set out in statute. It was a function of administrative decision-making undertaken by officers of the Commonwealth pursuant to the agreements that we have both with Nauru and PNG to support their medical care for these people. Latterly, since 2015, the Federal Court has become involved because there are cases that engage the Federal Court. Quite properly, they then have a say in the matter to the extent that they have jurisdiction, and so ministers have been able to consider transfer applications holistically using every single element of the Migration Act and anything else they wish to bring to bear. Now that there's a statutory scheme, which is the new element, as modified in the House, the minister's discretion has now been confined to two limbs of a security and criminal character and one limb pertaining to medical necessity.

Senator Watt: The simple point being that section 501 did not previously apply to people who were medevaced but it does now.

Mr Pezzullo: No, a larger discretionary power applied because persons were being brought here, at our discretion, under detention and we could apply whatever manner of consideration was deemed suitable, including 'This person will not come to Australia for these reasons, but we'll try to source medical attention for them in a third country,' or 'We'll fly medical specialists in.' The discretion was very wide indeed.
Senator WATT: All right. I'll leave it at that.

Senator PRATT: So people were brought here with no legal basis?

Mr Pezzullo: Well, you can't enter Australia without a legal basis. One of my officers can be authorised to bring a person in as an—what's the technical word?

Ms de Veau: The provision is 198B, I think. I don't have the act before me.

Mr Pezzullo: As an unlawful noncitizen?

Ms de Veau: Yes. They're brought here under the ability to transfer people here for a temporary purpose.

Mr Pezzullo: So my officers, under the minister's delegation, have a wide discretion to allow a person to come into Australia as an unlawful noncitizen, but they are detained instantly.

Senator PRATT: Senator Kitching can further questions for us, Chair.

Ms de Veau: Could I clarify a matter from earlier. We were asked before the break about whether the minister's powers under the bill are delegable. They are not, bar one, and I don't speculate as to whether this was an oversight or not: the minister's power under section 198G, which is the power to transfer family members and carers, appears to be delegable. It doesn't have the same provision as the others do which says that it's to be exercised personally.

Senator MOLAN: Is that in the amending bill?

Ms de Veau: Yes.

CHAIR: Senator Kitching, you've got four minutes and 22 seconds.

Senator KITCHING: An interesting legal question! Could I move to the ships and vessels in the Cape class fleet. How many are there?

Mr Pezzullo: I might initially ask the commissioner and his officers to answer those questions, because they're his fleet.

Senator KITCHING: Thanks, Mr Pezzullo.

Mr Outram: In the Cape class fleet, as you asked specifically, we have eight patrol boats.

Senator KITCHING: Where are they stationed?

Mr Outram: We operate out of different ports; generally speaking, it's across the Top End, from Cairns as far across as Broome. So Cairns, Darwin, Broome—we operate out of a number of different places.

Senator KITCHING: As you'd be aware, there was a Fairfax article on 12 December last year that talked about operational limitations and that those operational limitations would be imposed to achieve a saving in the annual fuel budget. It also stated that ships would cease active patrolling to achieve this fuel saving. Is this true?

Mr Outram: No. The article was taken out of context. It's true to say that, like all agencies, we're under a bit of budget pressure and we're looking to find savings, including in the maritime domain. We looked to see whether there were different ways we could achieve the same effect. The term 'active patrolling' is a term that was picked up on. I suppose you could say, 'Define the level of activity in active patrolling.' We were looking for ways that we could do things smarter to achieve the same outcome. That didn't mean to say that boats weren't out in the ocean or that vessels weren't out there on patrol. It's a question of how much fuel you burn to get the same effect. I don't want to go into too much detail on our patrolling patterns for obvious reasons.

Senator KITCHING: No, that's fine.

Mr Outram: Quite recently, in relation to our maritime capability and capacity, we received an estimates variation—and I won't go into detail about that here; I'll take any questions on that on notice—because there have been some pressures in the maritime budget. But, that said, if you look at our statistics this year in the maritime space, we were spending more hours on the water this year than last, and, more than that, we were responding to a higher percentage of requests from, say, fisheries than we were last year. Of course the other thing I would point to is that we do also work hand in glove with the ADF. We don't just rely on Australian Border Force cutters and large hulled vessels out there on the seas; we also rely on the ADF, who support us.

Senator KITCHING: I do want to come to that. Do you have to make an efficiency dividend?

Mr Outram: I'm sorry?

Senator KITCHING: Does the department or the Border Force have to—

Mr Outram: We come under the departmental budget for the Department of Home Affairs.

Senator KITCHING: Mr Pezzullo?
Mr Pezzullo: Yes.

Senator KITCHING: What is it?

Mr Pezzullo: The budget?

Senator KITCHING: Well, you can tell me the budget, but I also want the efficiency dividend.

Mr Pezzullo: The chief operating officer and the CFO—CFOs always love to get a run in estimates; it's taken until almost 10 pm.

Senator KITCHING: Well, I don't want to deprive them!

Mr Pezzullo: The CFO will join me and she'll remind me, because there are different layers of the efficiency dividend, which accumulate over time.

Senator KITCHING: Yes.

Mr Pezzullo: If I give you a snapshot answer, I might not get it quite right. But Ms Cargill will give you an incredibly accurate answer.

Ms Cargill: I just need to find the correct brief. As the secretary has clearly pointed out, the department is subject to efficiency dividends and has been over an extended period of time, and they are cumulative. The other point that I should make as well, while I try to find the correct brief, is that the department is also subject to a number of other efficiency measures in addition to standard efficiency dividends which apply to the entirety of the Public Service.

Senator KITCHING: While you're finding that, perhaps I could ask you: do you do a comparison with Defence—obviously they have some of these ships as well—in terms of the operational requirements and the operational cost? Per vessel, for example, would you make any comparisons about the operational cost?

Mr Outram: Yes. We of course operate under very different operating models.

Senator KITCHING: Yes.

Mr Outram: For example, our industrial framework—the pay conditions and allowances of our officers—are very, very different from those of the ADF. We require certain certifications and other things in relation to AMSA and those sorts of things, which the ADF get exemptions from. Of course they have larger contracts, and, because they can leverage those larger contracts, they have a much bigger fleet than we do. But, having said that, we do work hand in glove with the ADF to see whether there are things we can learn. We have a marine and air branch, which manages our contracts, and we have a rear admiral, who runs the Maritime Border Command. He's a naval rear admiral who's embedded in the Border Force. So, yes, we do regularly engage with the ADF in relation to where we can learn lessons about how we can do things better and smarter.

Senator KITCHING: Because the chair is very strict on time, Ms Cargill, could I come back to you and maybe just ask Mr Outram some questions.

CHAIR: They'll have to be very quick. You're on your two-minute run-down.

Senator KITCHING: But last year you said you'd give me double time, Senator Macdonald!

CHAIR: I must have been dreaming!

Senator KITCHING: In those emails that were cited by Fairfax—and you have said, Mr Outram, that they were taken out of context—they said that operational limitations would be imposed. Are you aware of the existence of those emails? And in what way were they taken out of context, as you say?

Mr Outram: There was a suggestion—it was implied—that we weren't going to be sending vessels out on the sea, and it was also implied that they wouldn't be patrolling. As I said earlier on, the term 'active patrolling' is quite a technical term. If you think about that: in a 28-day swing, how many nautical miles should a vessel sail to achieve the same outcome in terms of surveillance and deterrence? These are the things we were looking at—whether we could achieve the same effect, the same outcome, for fewer dollars. We were looking to see if we could reel in about $3.2 million in savings in fuel, and the decision was taken not to do that. Since then, the pressure that we've been under in the maritime space—I've raised it with the department and with government, and we've received an estimates variation to supplement our budget in the maritime space. So we're no longer having to look at the patrolling patterns in that way.

CHAIR: Okay, that might be a good time to stop.

Senator KITCHING: Can I just ask—

CHAIR: No, we can come back to you, Senator Kitching. You've had about 14 minutes, thank you, and it's supposed to be 10. I have some questions, and then Senator Patrick has some questions. I've heard from estimates
before—and you'll answer me as you're able here—that both the department and Border Force, I think, as well as the military forces, obviously, have very intense intelligence activity, particularly in Indonesia and particularly as regards people smugglers. Is that correct?

**Mr Pezzullo:** I would characterise it in this way: the full apparatus and assets of the Australian government are deployed in relation to people smuggling, and that includes the full range of intelligence capabilities. Where they're located and which countries they're in we tend not to speak about. But, if you want to explore that area, it might be an opportune time, perhaps, to have General Furini, the commander of Operation Sovereign Borders, join us.

**CHAIR:** Yes, I did have some questions that General Furini would be responsible for, but I also wanted the opportunity to welcome you, General, to your first estimates, I understand. Welcome. It's a lovely, friendly little gathering we have here every three or four months.

**Mr Pezzullo:** Mr Chairman, with your indulgence, could I ask General Furini perhaps to make a very brief statement about the state of Operation Sovereign Borders.

**CHAIR:** Well, I'm going to pause the clock on my time, but I take this as sort of an opening—

**Senator PRATT:** No, Chair. If you want to allow that then—

**Mr Pezzullo:** It has been practice which you've allowed since 2013 for the commander.

**CHAIR:** It is. That's correct.

**Mr Pezzullo:** And it is the commander's first appearance.

**CHAIR:** Yes, and it's an opening statement, which we offer to all heads of agency.

**Mr Pezzullo:** Thank you, Mr Chairman.

**CHAIR:** General, welcome, and I invite you to make an opening statement.

**Major Gen. Furini:** As was stated, I did have an opening statement, but I'll truncate that in the interests of time. I am an experienced military officer with over 30 years of experience at the technical, operational and strategic levels in the areas of intelligence, operations and interagency and with a strong operational planning background, having most recently been the director-general of planning at Headquarters Joint Operations Command out at Bungendore. I would like to recognise my predecessor, Air Vice Marshal Steve Osborne, for his work in delivering the OSB mission, and I look forward to continuing his good work.

Finally, I would like to reiterate some of the secretary's messaging from earlier. The people-smuggling threat has not been defeated; it has only been suppressed. Criminal people smugglers have never stopped preying on vulnerable people and families, trying to convince them that Australia is now or will shortly become a destination that can be reached illegally by dangerous means. To that end, people smugglers continue to monitor events here in Australia to identify any changes, real or perceived, that they can exploit or market to these vulnerable people. As such, events here will be spun to sell the message to PII, or potential illegal immigrants, that their chances of reaching Australia are improving and that we are relaxing in our resolve to stop the boats.

Thank you, Chair. I'm ready to take questions.

**CHAIR:** Thank you very much, General. Again can I say on behalf of the committee: welcome and congratulations. You follow a long line of distinguished military officers who've held this position, including, as I recall, the original person in your role, who's now the Chief of the Defence Force. So you have big shoes to fill, and I'm sure you will.

Now I will resume the clock, because some of what you said leads into the questions I was getting towards earlier, talking about intelligence. Mr Pezzullo, Mr Outram and General, you're all experienced people. You've been in this business, I know from estimates, for a long period of time. Are you getting intelligence back about the people smugglers, whether their activity has increased, what they're saying and what they're telling people? The general has mentioned something along that line, but I just ask the three of you, or any one of you, just what your intelligence is showing has been happening in the last week or so.

**Mr Pezzullo:** That would be highly time-sensitive information, and I would want to reflect on the extent to which individual agencies who collect that intelligence would want me, the general or the commissioner to characterise it. I will reiterate what I've said many times at estimates: the Australian domestic scene is watched very closely. Social media, the internet, blogs and group chats are vectors and vehicles by which people stay in touch with the local scene.

**CHAIR:** Which you or your officers monitor to a degree?

**Mr Pezzullo:** In a manner of speaking. I don't particularly want to divulge—

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**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**
Mr Pezzullo: specific operational techniques that might relate to, for instance, the coverage of telecommunications systems. But, going right back to General Campbell as the first commander and, I think it's fair to say, General Bottrell, Air Vice Marshal Osborne and now General Furini, who will speak for himself here, they have been very much attuned to the way in which, irrespective of the objective reality of what's happening here in Australia—it could be an election; we're seeing this with changes of Prime Minister and changes of ministers. Just as a vignette—I think I've given this evidence before—

CHAIR: You have.

Mr Pezzullo: when Mr Dutton was appointed, for instance, word went out, 'They've appointed the former health minister,' with the presumption there being, I presume, that a health minister would be a social-policy-focused minister. So spikes in interest do not need to relate to any objective factors that relate to Australia's domestic political, legislative or bureaucratic arrangements; it's about how they're portrayed and conveyed. General Furini now has inherited a system of monitoring strategic communications. We have spoken about that at estimates many times before.

Mr Pezzullo: It is calibrated to pick up changes in sentiment. I might at that point pause and hand to General Furini—particularly, General, obviously not going into classified capabilities but looking at our strategic communications program and how we, as it were, track sentiment.

Major Gen. Furini: I have at my disposal a full suite of intelligence capabilities from across the Australian intelligence community, and I won't go into any more detail there, other than to say that we are able to determine the sentiment, the perceptions, that the potential illegal immigrants have offshore. As we track that, we spend a huge amount of effort in trying to get a message out to them to deter them from believing the people-smuggler marketing, the falsehoods that they tell, and to encourage them to not get on a boat. The best possible operational outcome from my perspective as the commander is that people are not getting on boats in the first place. So there is lot of effort offshore to encourage people, to educate people, to ensure that we drown out the messaging of the people smugglers.

CHAIR: None of you may want to answer this, and if that's the case say so. Has there been any noticeable change in the last week or so in the attitudes?

Mr Pezzullo: It's very difficult to answer that in an open hearing.

CHAIR: Okay, I won't pursue that further. Minister, can I come to you about some questions before about the opening of Christmas Island, which I think is recognised as a government decision. Is the government's purpose in doing it in expectation that, following the passing of the medevac bill, there will be a big increase in the number of people trying to get to Australia illegally? Is that the reason why? Are you able to comment on that, Minister?

Senator Cash: I think that—when you listen to what Secretary Pezzullo has said—any indication that we are undermining our strong border protection policies gives an indication to those who are watching us carefully that we are seeing a weakening in what we are doing. I'll just read out another quote from the Prime Minister when he was in Tasmania. He made no apologies. He said:

Our government will be doing everything within our powers-despite what the Labor Party has done to undermine our border protection regime—to ensure these boats don't come.

He went on to say:

That is why we—

as a government—

have taken the recommendation of the Department of Home Affairs to reopen Christmas Island.

And again he says:

... this is what was necessary to address what has occurred in the Parliament by the Labor Party voting to weaken our borders.

The Prime Minister has been clear. He is not taking a step backward.

CHAIR: No, but, without mincing words—not that I'm suggesting you are, Minister—is it the fact that the government expects that there will be a big increase in the number of illegal maritime arrivals trying to get to Australia? As a result of that, whilst Operation Sovereign Borders will do all in its power to stop that—I accept that—is it the government's thought that this is going to happen, so we've got to have a place to put them?

Senator Cash: There is certainly a risk, and that is what the Prime Minister has articulated. If you blink on border security, there are people watching. There is certainly a risk.
CHAIR: Commissioner Outram, you were speaking about your sea patrols across the top, and you mentioned quite rightly your involvement with the defence forces. Could I ask you or General Furini: are you able to elaborate on the extent of the seaborne shield we have across the top of Australia? We have, in general terms, spoken about this at a lot of previous estimates, but I'm just wondering if there's anything you can add to that today.

Mr Outram: Through Maritime Border Command, we generate the capability to support the general in relation to OSB requirements, and of course I won't go into details of where we position our maritime and aerial assets. But of course it's based on intelligence, knowledge of the maritime domain et cetera. I may hand over to the general for his comments about how adequately covered he thinks we are or are not in relation to the 11 per cent of the earth's oceans that we are responsible for patrolling. Of course, we are focused in certain areas.

Major Gen. Furini: The presence we have at sea is obviously complemented as well by the presence we have in the air in terms of surveillance and also our offshore intelligence networks. They all work in unison to create the effect that you have referred to as a sort of iron shield. I won't go into any specific details as to how that is postured or where it is located other than to say that it's a dynamic situation, constantly monitoring the threat and making adjustments, as any military commander does to his operational posture. At this particular point in time, I am comfortable that we have the right posture.

CHAIR: General—and perhaps you as well, Commissioner Outram—are you able to comment on the mental health of your servicemen and legacy health issues that resulted from officers from both your establishments having to pick dead bodies out of the water back in the days when there was an uncontrolled entry of people into Australia? Have you noticed any residual legacy health issues with your staff as a result of the jobs they were required to do then, particularly in grabbing dead bodies out of the water?

Mr Outram: I'm speaking for the Border Force side of things, and of course Defence would treat things in their own way. We've had a handful of cases of PTSD, post-traumatic stress disorder, in our workforce. Clearly, pulling dead people from the seas is an extremely traumatic experience for our officers, and I do worry that we have a latent problem within our workforce. We're a uniform law enforcement organisation where disclosure of those sorts of symptoms and issues doesn't necessarily come easily to our people. We're trying to change our culture and put in place the mechanisms. We have a lot of support mechanisms in place within the Department of Home Affairs and the ABF to encourage officers to come forward and report where they're feeling symptoms like that, but, yes, of course I worry that we have people in our organisation that have been affected deeply by their experiences a few years ago where they were pulling dead people from the water.

CHAIR: General, do you wish to add anything?

Major Gen. Furini: As the new commander, I can't comment specifically for now. As a member of the ADF I have no personal experience of those activities, but I can report anecdotally that I am aware that there have been traumatic experiences for ADF personnel who have been deployed on vessels in the past and that some of those mental health issues continue to today for some of those people. I'd suggest that perhaps that question could be directed to the Chief of Navy or the Chief of the Defence Force on Wednesday.

Mr Outram: Chair, we've got the new rear admiral from Maritime Border Command in the ABF, Lee Goddard, here. He might be able to provide some insights as to how the Navy handle these issues.

CHAIR: Thank you, Admiral, and welcome. Briefly, if you could perhaps—

Rear Adm. Goddard: Good evening. I'm the recently appointed commander of the Maritime Border Command and a sworn officer of the Australian Border Force, commanding both the Australian Defence Force and the Australian Border Force and other agencies when required in the maritime air and sea approaches to Australia. I have conducted the operation a number of times throughout my career. I've been in boarding operations, and I've also led the resilient and very professional women and men of both the Australian Defence Force and the Australian Border Force. It's tough. It's a tough role, but we are highly trained, we are conditioned and we are resilient, and we have protocols in place for those who experience very tough situations. My assurance to you is, while it is a tough job in very difficult conditions, we do look after our people then, now and in the future.

CHAIR: That's uncontested and I would have taken that for granted. But what I'm just trying to establish is if you have any knowledge or experience about particular sailors who may have suffered post-traumatic stress disorder from their activities several years ago in pulling dead bodies—a lot of them—out of the water. Are you able to comment on that?

Rear Adm. Goddard: Very generally—I wouldn't want to go into specifics. I'm aware that it's been very tough for some individuals both in the Australian Defence Force and the Australian Border Force. They are being...
well looked after now, but undoubtedly both the experience and the reflections on those operations have been difficult for some.

CHAIR: Okay. Thank you. My time is finished. Senator Patrick.

Senator PATRICK: Thank you. I just want to follow on from Senator Kitching on the Cape class. You've got 12 vessels and—

Mr Outram: Not Cape class vessels. We have eight Cape class vessels. We have 12 ocean-going vessels in total, eight of which are Capes.

Senator PATRICK: Okay. In relation to the Capes, normally when you've got eight vessels you don't have eight available at any particular time; you'll have some in long-term maintenance, some in short-term maintenance and some operational. Operationally, typically, how many do you have available at short notice?

Mr Outram: All the Capes are available. But, as you rightly say, we obviously don't have them all out at the same time. I'm reluctant to go into details of how many vessels we have—

Senator PATRICK: The Navy tells us what they are for our submarines, so there shouldn't be any sensitivity—in fact, what the Navy found was that, when you hide those sorts of things, culturally, organisations don't pitch to try to get the proper availability.

Mr Outram: I think the Navy would be a bit more reluctant to tell you exactly how many vessels they've got deployed in relation to Operation Sovereign Borders.

Senator PATRICK: I'm not asking for what's now, but just roughly. Of the eight, is it six that are typically available? Is it of that order?

Mr Outram: Again, what I would say is that all the vessels are mission capable. They're not all out there at the same time, as you rightly say. We have a model where we provide and generate the capability with Defence to support the various missions—one being Operation Sovereign Borders. We obviously have others in relation to illegal fishing and in relation to drug importations that we sometimes work with the AFP—et cetera. So we do manage to provide the capability we need to manage the threat. That said, as I said earlier on to Senator Kitching, we've been under some pressure in the maritime space and we've reached out to the department and to government. We've received an estimates variation that will allow us to increase the number of officers we're able to push on to those vessels to get more out.

Senator PATRICK: Sure. That was where I was going with this in terms of crews. If you've got six vessels available—and once again I understand you don't want to say how many are doing border protection, how many are doing fisheries and so forth—for the number of vessels that you have available, or are required to go to sea, have you got enough crews to man those vessels?

Mr Outram: As you just heard the Major General say, we've got enough capability to support Operation Sovereign Borders. He's satisfied that we've got the capability now that he needs to manage that threat. Would I like to have more officers to do more? Of course I would. But—

Senator PATRICK: All right. I'll make it simple. It's been put to me that you don't have enough crews to operate the vessels that you have. Is that the case?

Mr Outram: We put 18 crew on each vessel when we send it out, and the vessels go out for 28 days. As I said, we are receiving an estimates variation so that we can increase the number of crew that we have available and we can put more vessels out over the forthcoming period of time. Any operational head of any agency would say they would love more officers to get more of their kit out there to do more.

Senator PATRICK: Yes and no. When you've got a planned number of vessels, you typically plan for a certain number of crews to be available. So you'll have a number of billets that are available for sea-going officers and my question goes to: do you have all of those billets filled?

Mr Outram: Not being obtuse, Senator, but we don't work to a plan where we say we'll get, you know, eight Cape class vessels out at one time. The Rear Admiral will generate the effect by combining our maritime assets with those of the Navy to deal with the various threats that he has to deal with, whether it be related to fishing, Operation Sovereign Borders, or what have you. Of course we have a range of aircraft available as well.

Senator PATRICK: I'm focusing on the crews you have for Cape class vessels.

Mr Outram: I understand that. But you would appreciate that the way we manage the security and surveillance of our oceans isn't just on the water.

Senator PATRICK: I'm not actually trying to deal with how you might look at your total operational requirements. My concern is shortage of Cape class crews.
Mr Outram: As I said to you, we certainly have been under some financial pressure in the maritime budget, and that's been raised this year with the department and the government. We received an estimates variation, which I'm confident will allow us to get more crew out onto our Cape class vessels over the coming period of time.

Senator PATRICK: My experience of the Navy is they don't have a problem with money in terms of crew, because they have an allocated number of billets. The difficulty has always been with getting the right technical people interested in filling those billets. Is it a money problem or is it a crewing problem?

Mr Outram: Of course, we need budget to generate crew and to pay the crew. Our crew work certain patterns—you'd be aware of that. They work four weeks on, four weeks off, and they get a whole range of different allowances than a lot of other Border Force officers. If we want to put more officers into the maritime space, it means I have to take them from investigations, airports, cargo examinations—whatever else—so we have to look at the range of threats at the border. As I said in my opening statement, it's not a zero-sum game here; we don't open every container, stop every passenger and search everything, but we have a whole range of risks at the border we have to manage, one of which is in the maritime domain. So, yes, I could push more officers into the maritime space, but, without additional people, that will come at a cost to something else.

Senator PATRICK: But, for example, a marine engineer on a vessel is not the sort of person that you can simply take from another station across Border Force and put them into—

Mr Outram: No. There are certain technical roles that we recruit into—I accept that. Engineering would be one of those. Ships' cooks would be another of those. There are certain technical skills that we need that we don't have in the regular workforce, and we recruit directly into those positions.

Senator PATRICK: From what I understand, you're saying you don't have the full crews and you've been allocated some money to try and address that problem. I'm just trying to work out: is it really a financial problem or is it a problem of attracting people?

Mr Outram: No, we have no problem attracting people. In terms of the maritime crew, we generate them from within our existing workforce. I don't want Border Force officers who have never experienced law enforcement work going straight onto a vessel exercising powers at sea. What we're doing at the moment is recruiting from within so that we can actually embody those Border Force officers with the technical skills they need to operate safely at sea. That's the first thing. So we have to generate the capability from within for the Border Force enforcement officers, not the technical roles you were talking about. We recruit directly for the technical roles you're talking about. So that means—

Senator PATRICK: Do you get many of those from Navy?

Mr Outram: Yes. I think we have a number of people in our technical areas who are ex-Navy and also in our air and marine branch who do the contract management and those sorts of things and help us to manage the capability. A number of those people are ex-Navy as well.

Senator PATRICK: Thank you. That's it from me.

CHAIR: Senator Kitching.

Senator KITCHING: We were talking about the internal Border Force emails that were talking about operational limitations. Are you able to provide copies of those on notice?

Mr Outram: Sorry, I thought you were only talking about the maritime active patrolling. Now you're talking about more general budget control measures that we've implemented throughout the ABF.

Senator KITCHING: Am I able to get copies of those emails?
Mr Outram: We'll have a look at the article. I don't know the article you're talking about, their copies of emails.

Mr Pezzullo: The issues covered, now that I have better context, relate to the departmental budget control framework. How a particular officer, in this case in the ABF, has interpreted the guidance is a matter that I'll need to look at. The commissioner and I will look at the emails in question. As to the budget control measures that the—did you say acting?

Senator KITCHING: It was the acting regional commander for Victoria and Tasmania, Greg Dowse.

Mr Pezzullo: Got it. Certainly through the latter part of 2018, the final quarter of that calendar year, the commissioner and I had cause to come together and review our budget situation in light of the unprecedented increase in certain volumes—medical transfers being one issue, as already discussed, or the costs associated with increasing litigations. A whole lot of factors are driving pressure in our budget. The commissioner and I, because we run a single joint budget—this is where the difference is with, say, the Federal Police—had to consider all sorts of options, one of which the commissioner has spoken about this evening about changing patrol configurations, in order to ensure that where we were burning money, for example legal cases, we could shift resources where they were required but not shift those resources in such a way as to create risk.

Senator KITCHING: I understand.

Mr Pezzullo: So you're jumbling the whole budget together.

Senator KITCHING: My time is limited and there are many things I could ask you about what you've just said, but on 12 December—and I'm happy to table these Fairfax articles.

Mr Outram: I know the article, I think.

Mr Pezzullo: We'll take that on notice.

Senator KITCHING: I'm happy for you to. Can you guarantee that no ABF Cape class vessel stopped active patrolling to save money on fuel?

Mr Outram: Yes. That did not happen.

Senator KITCHING: When was the Minister for Home Affairs briefed about these cuts?

Mr Outram: I'd have to take that on notice. I don't have that date to mind.

Senator KITCHING: That's fine. Did the Minister for Home Affairs give any directive?

Mr Pezzullo: Yes. Your question necessarily goes to not just patrolling patterns for vessels but the global situation of our budget. It's my responsibility ultimately as the secretary to keep the minister informed about our budgetary situation. I advised him of the pressures that were being put on the budget—legal cases, medical transfers and all the other things that I've mentioned. There are others that I could go on about. In fact, we could have had a whole day of this, given that it's an estimates hearing—

Senator KITCHING: We could. I'm quite interested.

Mr Pezzullo: and the CFO could've been sitting next to me all day. The minister lay down some very clear parameter directions—'You are not to create risks or reduce activity in these areas.'

Senator KITCHING: So when was that done?

Mr Pezzullo: I'll take the chronology on those.

Senator KITCHING: Okay. Can I have a chronology? Can you give me—

Mr Pezzullo: I'll look at the sequence of events and I'll take that on notice because, necessarily, it relates to my advice to the minister and his response to that advice. I would wish to consult very closely.

Senator KITCHING: I understand.

Mr Pezzullo: Thank you.
Senator KITCHING: When was the immigration minister briefed about these cuts—and I'm happy for you to take that on notice.

Mr Pezzullo: I'll take that on notice. Typically, because this relates to the budget that stretches across the whole department and Border Force, it's ultimately a matter for the cabinet minister. But I'll take on notice the extent to which the immigration minister, who is within the portfolio, was also briefed. It affects his interests in terms of things like visa-processing times, citizenship-processing times and the like.

Senator KITCHING: Yes. On 12 December last, the Minister for Home Affairs stated:

Like any department the Australian Border Force needs to work within its budget. He also said that if there is going to be an overspend they'd look at those issues and that he was aware there was a document circulated within ABF. He then said:

That's not the government's position. I've given very specific instructions to the ABF commissioner that we won't be reducing those patrols at all.

Mr Pezzullo: Yes.

Senator KITCHING: Was the department taking action in cutting patrols against the government's wishes?

Mr Pezzullo: No, we would never do that.

Senator KITCHING: So who is responsible for reducing patrols? Was the government aware of any changes—

Mr Pezzullo: I think the commissioner said that that wasn't proceeded with—

Mr Outram: It wasn't proceeded with and it wasn't a reduction in patrols; it was a change to the way that we patrol.

Senator KITCHING: Okay, so you made a change to the—

Mr Outram: We didn't make a change, it was a proposal.

Senator KITCHING: You didn't make a change? Nothing happened?

Mr Outram: Nothing happened.

Senator KITCHING: There was no change at all.

Mr Outram: There was no change. It was a proposal to see if we could save money on fuel from patrolling differently.

Senator KITCHING: Okay.

Mr Outram: It wasn't a reduction in the fleet and it wasn't a reduction in the amount of vessels we have out there; it was simply to see if we could innovate and do things differently. Now, you've talked about IAEs and those other budget control measures. In fact, over the Christmas period you may remember that there were forecasts of queues at airports and that there were going to be huge problems—

Senator KITCHING: Yes.

Mr Outram: None of that eventuated. In the lead-up to Christmas and through Christmas the regional commanders, one of whom you've mentioned, acting with Deputy Commissioner Newton, who is on my left here, went through a laborious process of looking at whether we can adjust the way we examine cargo, the way that we manage airports and if we could do more with less. The fact is that whilst we did reduce the number of cargo examinations, for example, the number of detections went up. In fact, I think that the regional commanders did a fantastic job in looking at their operating models and saying, 'Can we do this differently?'

Senator KITCHING: The minister referenced a document in that statement, that he was aware there was a document circulated within ABF and he said, 'That's not the government's position.' When was the minister made aware of the document he referenced? Did you, Mr Pezzullo, make him aware of that document? Or did he become aware of it through other means?

Mr Pezzullo: I think that's caught within the ambit of the question that I've already taken on notice—

Senator KITCHING: Okay.

Mr Pezzullo: which is: when did we advise the minister and what was the timing of that advice?

Senator KITCHING: Fine. Commissioner Outram, did the Minister for Home Affairs give you an instruction not to reduce the patrols?

Mr Outram: He did. I think that was in December. I'll have to come back; I'll take it on notice. I can't remember the date; it was a Monday.
Mr Pezzullo: We should wrap it into the question already taken—

Mr Outram: We'll wrap it into the same question.

Senator KITCHING: Okay. And what did those instructions involve? Oh, you'll take that on notice as well?

Mr Pezzullo: We'll take it on notice.

Senator KITCHING: Could I have the document? If there was something in writing, that would be good.

Mr Pezzullo: That's advice to the minister, so we'll consult with the ministers.

Senator KITCHING: That's all good. If a media outlet hadn't brought the cuts to the Cape class patrols to the Minister for Home Affairs' attention, would the cuts have proceeded?

Mr Pezzullo: No. We don't talk to the minister through the media.

Senator KITCHING: I am so pleased to hear that!

Mr Pezzullo: And he doesn't talk to us through the media; we have a direct relationship.

Senator KITCHING: I just want to ask you about the cuts. As the secretary of the department, if the cuts are to be made is that you?

Mr Pezzullo: Yes. The budget overall is appropriated through this parliament. It's allocated to the department, with the Border Force being the singular exception—because all the other agencies are independent. The Border Force and the department come together to then subdivide the budget against all the program lines. And so for the budget that we're currently in, the budget would have been allocated for 1 July of last year. And then reality confronts you—the number of visa applications, legal cases, medical transfers, citizenship applications—and you calibrate your budget as you go through the year.

Senator KITCHING: I've got more questions, but I've heard the magic ringing sound!

Mr Pezzullo: This is tremendous; it's about estimates. It's the actual budget. If we get Ms Cargill up here, you'll just about have made my night!

Senator KITCHING: Is it true that some of the vessels are stuck in the harbour?

Mr Pezzullo: I'm not aware of any vessels stuck in any harbour.

Mr Outram: As we just went through, in a conversation with Senator Patrick, we don't have all our vessels out all the time. There's a lot of maintenance required for vessels. Our crews go out for 28 days and then they have to come back. They come back into port, and there's refuelling and resupplying. We never have all of our vessels out at one time.

Senator KITCHING: Two are based in the harbour?

Mr Outram: Based in a harbour? Not the Cape class vessels, at least. We do have different vessels for harbours.

Senator KITCHING: No, sorry; they're in dry-dock.

Mr Outram: No; all eight of our Cape class vessels have been out on active duty, if you want to call it that, in the last 12 months. None of them have been put in mothballs or under tarps or on blocks or anything like that. The only time they come out of the water is when they are in the maintenance program—so they're lifted out of the water.

Senator KITCHING: I don't want you to give any information that may not be appropriate in a public forum, but could I ask: do the Collins class submarines spend a year every few years in dry-dock at Osborne?

Mr Outram: Yes. Our vessels have to come in for an extensive five-year maintenance.

Senator KITCHING: Sorry; it's five-year?

Ms Newton: Every five years.

Mr Outram: But that's an extensive maintenance; they come in for maintenance far more regularly than that. We regularly have issues, as you can imagine, on the vessels of the nature that we have. There are mechanical and engineering issues that have to be fixed routinely.
Senator KITCHING: I've seen the Collins class being repaired, so I understand what you're saying. They're crewed by about 10 people; is that correct?

Mr Outram: No, that's the Bay class vessel. The Cape class vessels have crews of about 18, and the large-hulled vessels have crews of 37.

CHAIR: Does that finish that?

Senator KITCHING: Well—

CHAIR: You've had about 13 minutes. I'm being terribly generous today; I don't know what's happened to me!

Senator KITCHING: I'll put more questions on notice.

CHAIR: I have some questions; I'll share my 10 minutes with Senator Molan, who has some questions on cybersecurity. My questions are about disaster financial support payments—in outcome 1.10, if those officers are able to come forward. We can start with whichever one gets here first. Mr Ablong, which are you?

Mr Pezzullo: Senator Molan, can I just preface our evidence in this way: the Department of Home Affairs is solely responsible for cybersecurity policy; that is, the policy settings outside of warfare whereby cybersecurity is undertaken. The technical authority that deals with matters such as those that were spoken about in the parliament today by Mr Morrison and Mr Shorten falls under the auspices, under a single line authority, of the Director-General of ASD. ASD is an intelligence agency and cyber agency; it does not set policy. Its sole exclusion of its mandate relates to policy—that falls under the Minister for Home Affairs and me as secretary—and all other matters fall to the Director-General of ASD. I just want to lay that out, because we're not fragmented—we're integrated—but intelligence agencies and operational agencies do not set policy. So if you want to ask about policy—

CHAIR: That's a nice opening statement, because Senator Molan only has five minutes!

Senator MOLAN: That's fine. Although this was under cybersecurity, I'm much more interested in the assistance and access bill. Is that you?

Mr Pezzullo: We'll deal with cyber.

CHAIR: Okay. I'll go to Senator Molan.

Mr Pezzullo: Senator Molan, can I just preface our evidence in this way: the Department of Home Affairs is solely responsible for cybersecurity policy; that is, the policy settings outside of warfare whereby cybersecurity is undertaken. The technical authority that deals with matters such as those that were spoken about in the parliament today by Mr Morrison and Mr Shorten falls under the auspices, under a single line authority, of the Director-General of ASD. ASD is an intelligence agency and cyber agency; it does not set policy. Its sole exclusion of its mandate relates to policy—that falls under the Minister for Home Affairs and me as secretary—and all other matters fall to the Director-General of ASD. I just want to lay that out, because we're not fragmented—we're integrated—but intelligence agencies and operational agencies do not set policy. So if you want to ask about policy—

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Senator MOLAN: That's fine. Although this was under cybersecurity, I'm much more interested in the assistance and access bill. Is that you?

Mr Pezzullo: That's certainly us.

Senator MOLAN: That's good. Can you give us an update, please, Mr Ablong, as to where that bill actually is at the moment? It was passed in one form, and it's been through the Senate again in another form. What's the future of that bill now?

Mr Ablong: The Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 received royal assent on 8 December. So, the bill that was taken through the parliament last year has now become enacted as a law. The act actually commenced the day after royal assent, on 9 December.

Senator MOLAN: At that stage there were some very complex amendments going through, and there was great negotiation on that day. Have those amendments now been pulled through in a way that we may progress them, because at one stage the committees, on behalf of the parliament, were going to review those again and review the bill?

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Mr Ablong: When the act was agreed by the parliament, there was an agreement that further amendments would be introduced this sitting year, as well as inquiries by both the PJCIS, the Parliamentary Joint Committee on Intelligence and Security, which would continue its review, and further amendments to the act might be made. That has started in the parliament—going through the Senate last week, but has yet to pass through the House—a few amendments have passed through the House, sorry.

Unidentified speaker: The bill has been introduced into the Senate and one of the amendments has been passed.

Senator MOLAN: Any timings on that at all? When would we expect that to be taken to its next stage, which I think is a review—there is a review due, isn't there? But I think that's next year.

Mr Ablong: Well, there's a number of reviews due. The parliamentary joint committee continues to review and I think their final report is due on 3 April. The INSLM, the Independent National Security Legislation Monitor, is due to conduct a review. That is set out in the act. But that is not due for 18 months.
Senator MOLAN: Going into the substance of it—I think I have only a couple of minutes to go—there was certainly a lot of criticism of this in relation to mass surveillance and back-dooring. Is it possible, under this act, to collect mass surveillance data?

Mr Ablong: No, it's not. The act amends the telecommunications intercept act, which requires a warrant for a telecommunications intercept to be done on a case-by-case basis. All the amendments in the assistance and access bill did in relation to the telecommunications intercept act was to introduce additional powers related to communications that were through different means than the act was originally intended to—so, it covers computer communications as opposed to the traditional telecommunications that were intercepted.

Senator MOLAN: Apart from the technology involved, is there a dramatic change in the powers that—

Mr Ablong: No.

Senator MOLAN: Because a policeman could always get a—

Mr Ablong: He would need a judge to agree a warrant, or a minister to agree on an authorisation. But there are no additional powers in that sense—no.

Senator MOLAN: So, for a technical capability notice, if a provider thought that an agency was asking them to introduce, for example, a back door into something—

Mr Ablong: The act specifically precludes back doors.

Senator MOLAN: Certainly. What if the provider thought that there was a greater demand being placed on them than they were willing to accept?

Mr Ablong: The act, as enacted on 9 December, states that if a telecommunications or other company for whom a technical capability notice was issued believes that that would in some way endanger his technology, he is able to seek a review of that, through a technical assessor, and the act—

Senator MOLAN: Who's the technical assessor?

Mr Ablong: It will be appointed at the time. It kind of depends on what technology it is—if it's a telecommunications technology or a computer software technology. There are a number of different technologies, and a single technical assessor would not be capable of understanding the full range of those. But legally, to appoint one who had specialty in the particular technology that was being considered. The Act also requires that a retired judge be involved in that process as well.

CHAIR: Can I stop you there? It's a very important subject, but so is the one I want to raise about disaster recovery response. We've unfortunately had fires in the south and floods where I come from in the north. How many events have been activated for assistance under the Disaster Recovery Funding Arrangements this year?

Mr Grigson: If it suits you, we'll go through some of the events. As you would know, it depends a bit on the notifications we get from state governments, so in the different categories there will be different activations. Why don't we just bundle them up for each event? For instance, in Queensland, in the Far North Queensland monsoon, floods and so forth, there were 32 local government areas activated for different types of assistance. For the Tasmanian bushfires there were four. For northern New South Wales bushfires there were four. Looking across each of those categories, the categories did vary. As you know, there are different payments available to individuals, to primary producers and to small businesses, so it depends a little on which category was activated for which local government area.

CHAIR: You will excuse me for being parochial, but I'm based in Townsville. Whilst the fires are very important and a great tragedy to those involved, I just want to direct my couple of minutes to the Townsville floods. Do you have any indication at this stage of the extent of the damage for which the Commonwealth will be responsible on request from the state government?

Mr Grigson: There have been some damage assessments done in Queensland by the state authorities. They've done 8,768 damage assessments so far, 8,074 in Townsville. Of those, 2,063 properties were assessed as sustaining minor damage, 1,101 with moderate damage and 135 with severe damage. Seventy-six items of infrastructure—roads, bridges and so forth—sustained damage. Electricity supply is now judged to be back to 100 per cent of all customers.

CHAIR: Has the damage to infrastructure been assessed yet? Roads, railway, bridges, public facilities?

Mr Grigson: I'll get Rob Cameron, the director-general, to speak to that.

Mr Cameron: Those assessments of the infrastructure—roads, bridges and the like—are going to take some time to work through. We're engaged across government. We're engaged with the Queensland Reconstruction Authority and Transport and Main Roads to make sure we understand that as quickly as we can, so that we can
get an accurate estimate—as accurate as is reasonable at this early stage—of the total cost and the cost that the Commonwealth will share under the cost-shared Disaster Recovery Funding Arrangements.

CHAIR: So no figures yet and not for a while? That is understandable. Are you doing things for resilience of communities? A lot of communities come to me and say, 'The road has been washed away; it's likely to come under the recovery arrangements; but can you give us a bit more and then we'll build the road so the next flood won't affect it.' Is any work being done on resilience and abatement for damage in the future? What's the state of play there?

Mr Cameron: Under the arrangements I mentioned just before, the disaster recovery funding arrangements, DRFA, state governments can work with us, the Commonwealth, under one of the categories of reimbursement—their category D, for betterment—for elements of reconstruction there that go to betterment. So it's open to a discussion between the Commonwealth and the states. In relation to what's happening in Queensland right now, I wouldn't want to anticipate a formal request, but we're certainly open to discussion about that.

CHAIR: Perhaps on notice, could you just tell me about the betterment? Is there a government policy? Is it possible to do that? The budget for disaster, as I understand, is open-ended. Whichever people qualify will be paid, whether or not it's budgeted for. But there is, obviously, a need to look at the dollars. But could you, on notice, just tell me what the arrangements are for betterment?

Mr Cameron: Yes, I'd be very happy to.

CHAIR: Thanks very much. I'll now go to Senator McKim for about eight minutes, and then to the Labor Party, as I promised, for about eight minutes.

Senator McKIM: Minister, do you agree that it was the clear intent of parliament in passing the medevac bill to provide for better medical treatment for some people on Manus Island and Nauru?

Senator Cash: The intent of parliament was expressed in the bill, and the government has made very, very clear the risks associated with passing that bill.

Senator McKIM: No, that's not what I'm asking you, Minister. I'm asking you about the intent of the parliament, and you've said it—

Senator Cash: I'll take that on notice and refer it to the relevant minister.

Senator McKIM: No. You've just given evidence that it is expressed in the bill, and that bill is all—

Senator Cash: Yes, and I'll take on notice—

Senator McKIM: No. Minister, is it or is it not the case that that bill is all about transferring people so they can receive medical treatment?

Senator Cash: Given I am not the relevant minister at this table, I will take that on notice for the relevant minister.

Senator McKIM: You represent the Minister for Home Affairs in the Senate.

Senator Cash: Yes, and I said I would take it on notice for the relevant minister.

Senator McKIM: Mr Pezzullo or Minister?

CHAIR: Senator McKim, you don't need me to remind you you've got limited time. The minister's taking it on notice.

Senator McKIM: Thank you. I'm just trying to press on, Chair, if you wouldn't mind.

CHAIR: Yes. The minister has taken it on notice. You've asked the same question three times. You've been told three times that it has been taken on notice.

Senator McKIM: We can't get answers out of the minister, despite parliament's intention being as clear as a bell here. Mr Pezzullo, on what basis has the decision been made to detain people transferred under the medevac bill at Christmas Island rather than, say, in a mainland detention centre, where they would be far closer to the tertiary treatment that many of them require?

Mr Pezzullo: I can really just refer to my earlier evidence that, on the basis of the operation of the amendments, once assented to, eventually, over not too long a time period, involving the transfer of virtually all persons to Australia, advice was proffered to the government about how to go about delivering on the law of the land and still maintaining the strength of the messaging and the deterrence that underlies Operation Sovereign Borders.

Senator McKIM: But I'm asking about medical treatment—

Mr Pezzullo: Yes, I understand.

Mr Pezzullo: Senator, with all due respect, can you just allow me to answer the question in my own words, and then you can tweak it and interpret it.

Senator McKIM: It depends how long you take. We haven't got all night.

Mr Pezzullo: But I'm making it clear that you cannot disassociate how you deal with medical matters from how you deal with legal matters and from how you deal with operational matters. Operation Sovereign Borders is an integrated mechanism.

Senator McKIM: Okay. Thank you. I just reckon that, if deliberately harming people is the answer, you're asking yourselves the wrong question.

CHAIR: If you've got a question, Senator McKim, ask it. Your time's limited.

Senator McKIM: Mr Pezzullo, are you aware of a report in Fairfax published late yesterday, headlined: 'Hundreds of foreign criminals are being handed back their cancelled visas'?

Mr Pezzullo: I think I saw reference to it.

Senator McKIM: Is the department investigating the allegations that are contained in that article—

Mr Pezzullo: That a particular person said that—

Senator McKIM: which, in short, are that, for a payment of $80,000, you can get out of detention and into circulation?

Mr Pezzullo: Yes.

Senator McKIM: You're investigating those claims?

Mr Pezzullo: Yes.

Senator McKIM: Alright. Thank you. Is the department aware of the identity of the person, who's not named but is quoted in that report as saying: 'If you want to get out, get back to your family, organise $80,000 and transfer it into an account. I have a good connection and you will be out in a matter of months'?

Mr Pezzullo: Well, that'll be the subject of the investigation that I've just said we've got underway.

Senator McKIM: The reason I'm asking, Mr Pezzullo, is that that quote is, word for word, contained in a blog on a site called medium.com by a detainee currently. I believe, in Yongah Hill. That detainee identifies himself on this blog and, despite having been in detention for over two years and still being in the appeal period for his judicial review, he was visited today by two ABF officers and told he would be deported. Are you aware of that—or, Mr Outram?

Mr Pezzullo: That's really a matter for Mr Outram.

Mr Outram: No, I'm not aware of that visit today, Senator. I'll have to take that on notice to get further details.

Senator McKIM: Thank you. What I'm asking you to take on notice is on what basis this person—and I'll write to you this evening, Mr Outram. In fact I've got permission to say his name, so I will say his name: his name is Naroze Anees, and I have the badge number of one of the Australian Border Force officers who allegedly told him he would be deported. What I'm asking—I understand you don't have the details with you. That's—

Mr Outram: Well, we don't have badge numbers either, Senator. That's why I'm curious as to—

Senator McKIM: I beg your pardon?

Mr Outram: The badge number of the officer, so we can give you the officer's details.

Senator McKIM: It's an ID number. That's another problem with onshore detention, but we won't got there because we haven't got time but it's an ID number of the officer involved. What I'm asking you is: who made the decision to deport Mr Anees; and on what basis was that decision made, given he's still—this is all for you to take on notice—within the appeal period of his latest judicial review? How do you explain what appears on the face of it to be a massive coincidence that less than 24 hours after a story is published in Fairfax with a word-for-word quote extracted from Mr Anees's blog, which is publicly available and in which he's identified, he was actually visited by ABF officers and told he would be deported? I just want you to know that my officers are in very close contact with Mr Anees and we're watching this case very carefully.

Mr Outram: I'm fine with that. Let me advise you that ABF officers don't make decisions about cancelling visas, and we don't remove people from this jurisdiction unless it's lawful to do so and in conjunction with the department. So, the idea that we'd react within 24 hours to a media article to remove somebody from the country I find remarkable, but we'll come back to you.
Senator McKIM: Yes, so do I. So, Mr Pezzullo, will you take those questions on notice as well.

Mr Pezzullo: Yes.

Senator McKIM: Thank you. How much money did the department spend fighting in the courts to prevent transfers of people from Manus Island and Nauru in the last financial year? We've addressed this before and the figures have been available, so I'm just after, I guess, an update, Ms de Veau.

Mr Pezzullo: How much money do we spend on relevant litigation, rather than Senator McKim's characterisation of who was fighting whom—I think we've given that evidence before.

Ms de Veau: We have given it before, and for the current financial year—so, July 2018 to 31 January—the figure is $1.373 million. Secretary, just to confirm your estimation as to the accuracy of the statement that we're fighting, the figures would very much suggest that's not the case. So, for instance, out of about 51 cases, a total of 133 individuals were transferred but only with orders for 34 of those. So, transfers took place without court orders, even though we were in the midst of litigation for something like 17 of those 51 cases. Then a further 81 cases representing 209 individuals were transferred where lawyers engaged with the department and no litigation was commenced at all. So, there were a significant number of cases and, contrary to the public discourse suggesting we're fighting every case tooth and nail in the courts, these statistics simply suggest that that's not the case.

CHAIR: Thanks, Senator McKim. You are right on your eight minutes, and eight minutes for the Labor Party, whoever wants to take that.

Senator PRATT: In the current financial year, how many people have arrived in Australia by plane, or are non-boat arrivals, and made a claim for asylum?

Mr Pezzullo: Mr Mansfield might come and assist me. He's been waiting all day.

Senator PRATT: For precisely this question?

Mr Pezzullo: To have eight minutes of fame!

Mr Mansfield: Senator, I'll just find the relevant page. Can you repeat the question, please.

Senator PRATT: In the current financial year, to date, how many people have arrived in Australia by plane, or are non-boat arrivals, and made a claim for asylum?

Mr Pezzullo: Mr Mansfield might come and assist me. He's been waiting all day.

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Mr Pezzullo: To have eight minutes of fame!

Mr Mansfield: Senator, I'll just find the relevant page. Can you repeat the question, please.

Senator PRATT: In the current financial year, to date, how many people have arrived in Australia by plane and made a claim for asylum? It could be non-boat arrivals; I think that is how you usually collect the statistics. How does this compare to a similar period in the last financial year?

Mr Mansfield: I can comment on the number of people who have arrived by plane on a visa to Australia and then have subsequently applied for protection in Australia. The figure for 1 July 2018 to 31 January 2019 is 14,231 applications for onshore protection visas, subclass 866.

Senator PRATT: Okay, quite a bit more than half the number of last financial year. And those stats are collected in the same way as the stats previously on your website?

Mr Mansfield: I don't know the statistics that you're referring to on our website, but we normally report on lodgements in a consistent way each year.

Senator PRATT: Okay. Why, in the last four years, have more than 64,000 people who've arrived by plane claimed asylum in Australia, and are you now concerned that people are being smuggled by plane rather than by boat?

Mr Mansfield: I can't comment on the individual reasons that people seek to claim protection, other than to say that a significant number of people who apply for onshore protection are found not to be owed protection through a proper process, through an assessment of their individual claims, and decisions are made to refuse those applications. Around 90 per cent have their application refused.

Senator PRATT: Is it possible, perhaps, that criminal syndicates or people smugglers are in fact exploiting the visa processing backlog in the Department of Home Affairs because they're aware that people come to Australia and remain in the system?

Mr Pezzullo: No.

Senator PRATT: So you think these people legitimately think they have a claim for asylum and they're just misguided? They're not here for long periods of time trying to exercise work rights?

Mr Pezzullo: Australia is a very attractive migration destination, and applying for asylum is one way to, in effect, migrate to Australia. When you say these people are smuggled, without looking at each individual case, the visas are granted on the basis of a valid application, meeting the criteria of the Migration Act. People could be coming here for a sporting event, a concert or tourism, and then they apply.
Senator PRATT: So you refute the idea that they're simply applying to extend their stay for a longer period of time once they've arrived?

Mr Pezzullo: As to what motivates them, claiming protection is a major event in your life. I would not want to impugn them or impute adverse motives. If people feel that they've got a case to make—a justifiable case that they're being persecuted—we'll consider it, and Mr Mansfield's officers are experienced in assessing those claims.

Senator PRATT: All right, but it's a very high rate of refusal.

Mr Pezzullo: Yes.

Senator PRATT: Your website used to have statistics for onshore protection claims going back several years, but these statistics have been removed and are no longer available, with only the 2017-18 financial year and the 2015-16 financial year as at 30 April now available. On what date were those other sets of statistics removed, who was it who approved that they be taken down, and why?

Mr Mansfield: We'll take that on notice, but I just would add that at this point in time we're in the process of a fairly major redevelopment of the department's website, so some material still remains on the archived version of the website. Other material is being migrated over time from the old version of the website to the new version of the website, so it is quite possible that that material is still available but may not be easy to find. It's also possible that we're still in the process of migrating that information at this point in time. But we'll take that on notice.

Senator PRATT: Okay, if you could take on notice why that is, but it seems odd to me that you would allow the last couple of years to remain there but not all the data, particularly because that data shows a record number of protection visa applications under this government.

Mr Mansfield: We'll take that on notice, but obviously we're happy to answer any questions you have around lodgement patterns for the past few years.

Senator PRATT: Okay. Can you guarantee that the Minister for Home Affairs or his office did not ask for these statistics to be removed or that the Minister for Immigration or his office did not ask for these statistics to be removed or the Prime Minister or his office did not ask for these statistics to be removed?

CHAIR: There's no evidence that they've been—

Senator PRATT: I'm just asking the question. It's a yes-or-no answer.

CHAIR: There's no evidence they've been removed, and already today we've had one of these sorts of allegations, which have proved to be quite wrong.

Senator PRATT: Will you reinstate and upload these statistics to the website in a visible place?

Mr Pezzullo: Mr Mansfield's taken that on notice. We'll look at where we are in terms of the rebuild of a more-contemporary website and how quickly we can migrate useful information. I've raised copies of my own speeches, which I found hard to find. We will look at how quickly we can—

Senator PRATT: And surely you realise that it's a legitimate and important thing for us to be able to compare those statistics and the record of this government.

Mr Pezzullo: Yes. So, I've already made a mental note, after Senator Carr raised the issue with me—

CHAIR: He's wrong.

Mr Pezzullo: That's right, because there was an archived part of the website and a contemporary, modern part. And I'll look at our website migration strategy and reflect on today's exchanges about those matters.

Senator PRATT: But even if you are migrating old and new data, surely it's an illegitimate thing to separate out those years so that we can no longer compare them.

Mr Pezzullo: Well, I'm not accepting the assertion of the facts in the question. As I said, I'm going to look at it and come back to you on notice.

Senator PRATT: When you reinstate that data, can you reinstate the full historical record? Going back to 2007 and 2008 would be desirable.

Mr Pezzullo: I don't know what's been modified. Until I ascertain the facts, I'm not going to make any commitments. I'm going to come back to you on notice.

Senator PRATT: What is the government doing to address the concern that more people are now arriving claiming asylum by plane than by boat?

Mr Pezzullo: I have several responses. First of all, at the macro level there's been a tremendous surge in international movements associated with protection claims in recent years, largely to do with strategic matters in the Middle East and Africa. It's not surprising that those numbers are escalating. Secondly, our own visa...
processing system is being tightened in terms of building more scrutiny, more integrity—the work of our airline liaison officers combining our intelligence resources, scrutinising applications for either electronic visas or other forms of visas. Commissioner Outram's border point officers are skilled at triaging such claims and making rapid references to Mr Mansfield's people throughout the turnaround. And then ultimately, if people get through all of those gates, Mr Mansfield's assessors then look at the case.

It's not unique to Australia. Air-based movement to seek protection has been exploding around the world. It complements what's happening on the oceans, and people are seeking both a refugee outcome and a migration outcome, so the two processes get intertwined.

Senator PRATT: So, that's not why you've reopened Christmas Island, then? I'm sorry: I'm being facetious now, for my last question!

CHAIR: I thought you said that 90 per cent of them had been sent back home?

Senator PRATT: After five years.

CHAIR: You agree with that. Unfortunately Hansard can't record your nod.

Mr Pezzullo: We have a 90 per cent rejection rate, typically because for someone who can afford to go through all those processes and get an Australian visa it's unlikely, all things being equal—other than in 10 per cent of cases—that they have a well-founded fear of persecution. The people who actually need our protection are those who are unlikely to come either through the air stream or, frankly, often through illegal maritime means.

Senator PRATT: No, we understand that.

CHAIR: Thank you, Mr Pezzullo and Commissioner Outram, and all your staff for your help today. Sorry to those of your officers who have been waiting for outcomes 2 and 3. I apologise for that, but that's the way estimates are. We'll see you all again at the postbudget estimates sometime later this year. I thank Hansard, as always, and the secretariat staff for their assistance.

Committee adjourned at 23:05