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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Monday, 21 October 2019

Members in attendance: Senators Abetz, Chandler, Ciccone, Griff, Hanson, Henderson, Keneally, Kitching, Lambie, Lines, McKim, McMahon, O'Neill, Patrick, Pratt, Roberts, Stoker, Watt.
HOME AFFAIRS PORTFOLIO

In Attendance

Senator Cash, Minister for Employment, Skills, Small and Family Business
Senator Payne, Minister for Foreign Affairs, Minister for Women

Department of Home Affairs

Mr Michael Pezzullo, Secretary, Department of Home Affairs
Mr Hamish Hansford, Acting Deputy Secretary, Policy
Ms Cheryl-Anne Moy, Deputy Secretary, Corporate and Enabling and Chief Operating Officer
Ms Linda Geddes, Deputy Secretary, Citizenship and Social Cohesion and Commonwealth Counter-Terrorism Coordinator
Ms Malisa Golightly, Deputy Secretary, Immigration and Settlement Services
Mr Paul Grigson, Deputy Secretary, Security and Resilience
Mr Cameron Ashe, Acting National Counter Foreign Interference Coordinator
Mr Karl Kent OAM, Deputy Commissioner and Commonwealth Transnational, Serious and Organised Crime Coordinator
Mr Michael Milford AM, Group Manager, Technology and Major Capability
Mr Mark Brown, Chief Audit Executive and Chief Security Officer
Mr Derek Bopping, Acting Deputy Counter-Terrorism Coordinator
Ms Stephanie Cargill, First Assistant Secretary, Finance Division and Chief Finance Officer
Mr Pablo Carpay, First Assistant Secretary, People and Culture
Mr Lachlan Colquhoun, First Assistant Secretary, Citizenship and Multicultural Programs
Dr Steven Davies, First Assistant Secretary, Data Division and Chief Data Officer
Ms Pip de Veau, Assistant Secretary, Legal Division and General Counsel
Ms Peta Dunn, First Assistant Secretary, Immigration Programs
Mr Samuel Grunhard, Acting First Assistant Secretary, Critical Infrastructure Security
Ms Vanessa Holben, First Assistant Secretary, Aviation and Maritime Security
Mr Stephen Hayward, First Assistant Secretary, Health Services
Mr Richard Johnson, First Assistant Secretary, Citizenship and Social Cohesion Policy Division
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, First Assistant Secretary, Strategy and Capability Division
Mr Luke Mansfield, First Assistant Secretary, Refugee, Humanitarian and Settlement
Mr Greg Miller, First Assistant Secretary, Cyber Security Policy Division
Mr David Nockels, First Assistant Secretary, Identity and Biometrics
Mr David Wilden, First Assistant Secretary, International Policy Group
Mr Michael Willard, Acting First Assistant Secretary, Immigration and Community Protection Policy
Major General Craig Furini, Commander, Operation Sovereign Borders
Ms Alana Sullivan, Senior Assistant Secretary, Regional Processing and Resettlement, Joint Agency Task Force Operation Sovereign Borders
Mr Joe Feld, Assistant Secretary, Regional Processing Contracts, Joint Agency Task Force Operation Sovereign Borders
Mr Tony Smith, Deputy Commander, Operations, Joint Agency Task Force Operation Sovereign Borders
Mr Damien Kilner, Assistant Secretary, Citizenship and Translating Interpreting Service
Mr Robert Cameron, Director-General, Emergency Management Australia

**Australian Border Force**
Mr Michael Outram APM ABF, Commissioner
Ms Justine Saunders APM, Deputy Commissioner, Support
Mr Phil Brezzo, Assistant Commissioner, Strategic Border Command
Mr Peter Timson, Acting Assistant Commissioner, Operational Practices Command
Mr Kingsley Woodford-Smith, Assistant Commissioner, Close Support Command
Ms Mandy Newton APM, Deputy Commissioner, Operations
Ms Erin Dale, Assistant Commissioner, Port Operations Command
Ms Kylie Rendina, Assistant Commissioner, Border Patrol and Coordination Command
Ms Sharon Huey, Assistant Commissioner, Enforcement Command
Mr Craig Summerville, Acting Commander, Maritime Border Command
Dr Bradley Armstrong PSM, Group Manager, Customs Group
Mr Matthew Duckworth, Assistant Secretary, Customs and Border Revenue
Ms Christie Sawczuk, Assistant Secretary, Trade Modernisation and Industry Engagement
Mr Tim Fitzgerald, Assistant Secretary, Trusted Trader and Trade Services
Ms Alice Stanley, Assistant Secretary, Traveller
Mr David Brightling, Assistant Secretary, Modern Slavery and Human Trafficking
Ms Kaylene Zakharoff, Group Manager, Immigration Detention Group

**Australian Criminal Intelligence Commission and Australian Institute of Criminology**
Mr Michael Phelan, Chief Executive Officer
Mr Jeremy Johnson, Chief of Staff
Dr Rick Brown, Deputy Director, Australian Institute of Criminology
Mr Matt Rippon, Executive Director, Intelligence Operations
Mr Mark Harrison, Executive Director, Capability

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Ms Rochelle Thorne, Executive Director, Technology
Ms Anne Brown, Chief Operating Officer

**Australian Federal Police**
Mr Reece P Kershaw APM, Commissioner
Ms Sue Bird, Chief Operating Officer

**Australian Security Intelligence Organisation**
Mr Mike Burgess, Director-General
Ms Wendy Southern, Deputy Director-General

**Australian Transaction Reports and Analysis Centre**
Ms Nicole Rose PSM, Chief Executive Officer
Ms Peter Soros, Deputy Chief Executive Officer, Regulatory Strategy
Dr John Moss, Deputy Chief Executive Officer, Corporate Operations
Ms Chris Collett, Deputy Chief Executive Officer, International
Mr Ben Skaines, Chief Finance Officer

**Committee met at 09:03**

**CHAIR (Senator Stoker):** I declare open this meeting of the Senate Legal and Constitutional Affairs Legislation Committee for the supplementary budget estimates. The Senate has referred to the committee the particulars of the proposed expenditure for 2019-20 for the portfolios of Home Affairs and the Attorney-General, and other related documents. The committee will proceed today with its examination of the Home Affairs portfolio.

The committee has set Friday 6 December 2019 as the date by which answers to questions on notice are to be returned. The committee has also decided that written questions on notice should be provided to the secretariat by 5 pm on Friday 1 November. Under standing order 26 the committee must take all evidence in public session. That includes all answers on notice.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as contempt. It is also contempt to give false or misleading evidence to a committee.

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

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 of the officer 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. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised.

_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: Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information or the document.

The committee has agreed to permit the media to film proceedings, subject to the usual rules and in accordance with any decision of the committee and the secretariat. I remind the media that this permission can be revoked at any time and filming must not occur during suspensions or after adjournments. If a witness objects to filming, the committee will consider that request. Copies of resolution 3 concerning the broadcasting of committee proceedings are available from the secretariat.

Australian Federal Police

[09:07]

CHAIR: I welcome Senator the Hon. Marise Payne, representing the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs. Minister, would you like to give an opening statement?

Senator Payne: Thank you very much, Madam Chair. It is great to see you in the role here today. I will briefly, if I may, acknowledge that we welcome the new commissioner of the AFP, Commissioner Reece Kershaw here this morning. I also acknowledge the contribution over many years of former Commissioner AJ Colvin and, on behalf of the government, in this forum we wish AJ and his family the very best for the future and we look forward to working very closely with Commissioner Kershaw. Thank you.

CHAIR: Likewise, the committee welcomes you, Commissioner. We hope your first estimates will be a good experience.

Mr Kershaw: I do as well. Thank you, chair. I appreciate that.

CHAIR: Would you like to make an opening statement?

Mr Kershaw: I would like to read out a statement. Good morning, chair and committee. I thank you for the opportunity to make a brief opening statement. I appear before you today acknowledging the establishment of the AFP some 40 years ago. Since that time, we have been responsible for safeguarding the Commonwealth's interests and leading international and national policing efforts to combat crime. It's an honour to return to the AFP and a privilege as commissioner to lead the women and men of the AFP who are dedicated to serving and protecting the Australian community.

My efforts during my term as the eighth commissioner will be focused on ensuring that the AFP is the best-performing police force we can possibly be, and to reinforce and reassure our
partner agencies that we are shoulder to shoulder in delivering outcomes for the community. We do incredibly important work in the AFP every day. Our dedicated members continue to serve the community daily, both at home and overseas, often risking their own safety. The AFP enforces and upholds the law, and our establishing act, the Australian Federal Police Act 1979, specifically sets out the functions of the AFP.

As the commissioner and accountable authority, I remain committed to delivering policing services as effectively and efficiently as possible. In order to do so, I have embarked on a 100-day plan of action to ensure that our structure is fit for purpose now and into the future, to ensure that our processes are as efficient as they can be and to identify opportunities to improve the support for our frontline police. I have engaged an expert team to improve the operating model of the organisation to better align with the AFP’s purpose, priorities and stakeholder expectations. This will involve reorganising our structure and streamlining our processes.

Further, in light of my public commitment to improve the processes around the recent investigations involving the ABC and News Corp, I’ve enlisted the services of former CEO of the Australian Crime Commission, Mr John Lawler AM APM, to conduct a review into all sensitive investigations. This incorporates matters relating to unauthorised disclosure, the application of parliamentary privilege, espionage and foreign interference, and war crimes. The review will not be an audit into the current matters at hand, but rather a holistic approach to ensure that we have in place investigative policy and guidelines that are fit for purpose. Mr Lawler will provide my office with options around opportunities for interventions and strategies to ensure the AFP is best placed to address sensitive investigations in the future. This will include baselining of what constitutes a sensitive investigation; articulation of the human resources, skills, training, technology and facilities required; re-formation of governance and business processes, including alternative mechanisms for referring entities beyond the AFP; and organisational structures. After this statement I will table a copy of the terms of reference of the review for the committee’s information.

I also aim to improve our internal business processes and ensure the placement of staff is aligned with the new operating model. I will be working with our state and territory partners to deepen our relationship to maximise our operational impact and effect. I value the importance of true partnerships with law enforcement and other agencies, both domestic and international. I recognise that harnessing these partnerships and resources is critical in targeting the criminal environment and those people in groups seeking to harm Australians and our community. We will continue to look for enhanced opportunities while working with our colleagues from the Home Affairs portfolio. The whole-of-government arrangement strengthens our ability to work together to combat the evolving threats from terrorism, serious organised crime, foreign interference and challenges posed by technology in a rapidly changing environment.

As I have stated publicly, what is critical to the AFP’s success is: providing frontline police officers with the appropriate training, technology and equipment; ensuring the operating model of the organisation is fit for purpose and supports our frontline policing and investigations now and into the future; and having the best strategies and support mechanisms to ensure the health and wellbeing of all of our staff.
I would like to thank the Minister for Home Affairs and the government for the resource commitment to the AFP. The AFP's total net resourcing has increased between 2018-19 and 2019-20 by $112 million. The 2019-20 budget provided certainty and consistency over the forward estimates. This certainty is critical to allow us to effectively plan and ensure we continue to protect Australia and Australia's interests. As an organisation, we continue to work on long-term sustainable funding models to achieve the objectives of sustainability and flexibility.

In the last financial year, the AFP has met or exceeded the majority of our performance criteria. My intention is to continually strive to improve our performance in the area of community confidence. I will review how we align our benchmarks with other state and territory police organisations. I will also look to enhance the community's confidence in the AFP, through increased community engagement and awareness of the exemplary work being done by the AFP. As highlighted in our 2018-19 annual report, some of our significant achievements for this year include: 502 people arrested for Commonwealth offences, six people charged as a result of terrorism investigations, 60 people charged as a result of child protection operations, 40 tonnes of illicit drugs seized by overseas police with assistance from the AFP and 14.9 tonnes of illicit drugs and precursors seized at the border and domestically.

I'd also like to take a brief moment to address some current matters and a few key issues. Freedom of the press: with regard to the recent inquiries and media reporting on the freedom of the press, as I previously stated, police independence and freedom of the press are both fundamental pillars that coexist in our democracy. I strongly believe in these two pillars, and this is the approach I intend to make.

I welcome the direction from the Minister for Home Affairs, outlining his expectations in terms of taking into account the importance of a free and open press. In support of the direction, the AFP has finalised an internal national guideline on investigations of unauthorised disclosure of material made or obtained by a current or former Commonwealth officer. I'm also aware of the direction issued by the Attorney-General to the Commonwealth Director of Public Prosecutions. The Attorney-General's direction reaffirms the importance of the AFP to thoroughly investigate these matters and to collect all relevant information and evidence to ensure the Attorney-General and the CDPP can make a fully informed decision where relevant. As I mentioned earlier, the outcomes of the review conducted by John Lawler into sensitive investigations will better inform the AFP on how to deal with these matters. I look forward to working with you and your parliamentary colleagues to ensure the review takes into account the deliberations of other parliamentary inquiries currently underway.

Recently there has been reporting on Mr Hakeem al-Araibi, which is a matter the AFP has addressed with the committee at previous estimates. I'd like to reassure the committee and the public that the AFP has been working with the Department of Home Affairs to address the lack of connectivity between border systems and the INTERPOL database to reduce the likelihood of this happening again. I've delivered a letter to Mr al-Araibi to extend the AFP's apology for his unfortunate detention in Thailand and to reassure Mr al-Araibi that the AFP is continuing to review and improve processes in consultation with other relevant agencies to ensure we respond appropriately to these matters in the future. The AFP is working closely with the department to resolve the overarching policy and legal questions arising from this matter. The AFP is also continuing to work with the department to implement any new
policies through system and operational changes, taking into account competing priorities and resourcing.

Our international relationships, including those facilitated through INTERPOL, remain vital to the AFP's efforts to protect Australians and Australian interests. Last week, I attended the 88th INTERPOL General Assembly where I reaffirmed the AFP's commitment to our international partners to cooperate in our global fight against all transnational crime types, to protect communities and bring those who would seek to do us harm to justice.

I'd also like to briefly touch on the AFP's assistance in the Registered Organisation Commissions investigation into the activities of the Australian Workers Union, noting the court outcomes two weeks ago. The AFP's involvement in this matter has been limited to the provision of search warrant assistance, and the AFP has not conducted a separate investigation into the AWU. As always, the AFP has acted in good faith to assist another agency in this matter. The search warrants were applied for by the ROC and issued to the ROC with respect to AWU premises. The AFP has had no further involvement in this matter.

In relation to superannuation, a whole-of-government issue that the AFP is also facing is the appropriate calculation of allowances reflected in AFP members' superannuation payments. This issue arose from an omission in the drafting of a prior enterprise agreement, and this will be addressed in all future negotiations and agreements. To deal with the matter, the AFP has also undertaken a systematic review into this issue, which identified some allowances should have been considered as salary for superannuation. The AFP has been working diligently over a number of months to ensure that all affected members are aware of the plan to rectify the problem. This includes an update to our recording systems to ensure that this does not happen again. The process to repay our members will take time due to the complex nature of the calculations, the span of years involved and the large number of employees affected. I want to reassure both the organisation and the community that we are working hard towards resolving this matter as a priority.

I'd also like to acknowledge the passage of the Crimes Legislation Amendment (Police Powers at Airports) Bill last week. The AFP strongly supported the measures in the bill, particularly following counterterrorism Operation Silves in 2017. In summary, the new measures will enhance public safety in the aviation environment and enable AFP officers at major airports to direct a person to produce evidence of their identity; direct a person to leave the airport and/or not take any flights for up to 24 hours; and direct a person to do anything else necessary to facilitate an identity check direction or move-on direction where necessary to prevent or disrupt risks to public order and personal safety at airports. Prior to commencement in the coming months, the AFP will work closely with the Department of Home Affairs to ensure proper implementation, including developing guidelines and standard operating procedures and training for officers at major airports. I want to commit to the Australian public that the new powers will be used appropriately, proportionately and in a manner that is in accordance with community expectations.

I hope that this information is helpful to the committee and the public in providing an overview of my term as the eighth AFP commissioner and some of the priorities and matters I will be addressing in my hundred-day plan. Finally, I would also like to acknowledge the recent anniversary, on 12 October, of the 2002 Bali bombings. It's difficult to believe that this tragic event occurred 17 years ago, resulting in 202 deaths, which included 88 Australians, 38
Indonesians, 23 Britons and people of more than 20 other nationalities. The AFP and Australian law enforcement partners have a long history of working with the Indonesian National Police, including the joint establishment of the Jakarta Centre for Law Enforcement Cooperation, to help protect our communities now and in the future. Chair, I will do my best to answer any questions that the committee has on these or other matters. Thank you.

**CHAIR:** Are you prepared to provide a copy of your statement to the committee?

**Mr Kershaw:** Yes, I am.

**Senator KENEALLY:** Welcome, Commissioner, and congratulations on the appointment to your role. I thank the other officials who are here today. Commissioner, have you seen the front page of *The Australian* today?

**Mr Kershaw:** I haven't. I have now.

**Senator KENEALLY:** You haven't seen it?

**Mr Kershaw:** No, because the bit of software that I have said there is no front page, so I hadn't actually seen it until you've just shown me.

**Senator KENEALLY:** Have you seen the front page of *The Sydney Morning Herald*?

**Mr Kershaw:** I have now.

**Senator KENEALLY:** The *Financial Review*?

**Mr Kershaw:** Thank you.

**Senator KENEALLY:** The *The Age*? The *Telegraph*? The *Herald Sun*? The *Courier Mail*? The *West Australian*? The *Advertiser*? Remarkably, the *NT News*? The *Mercury*. The *Canberra Times*? Anything strike you as similar in all of those front pages?

**Mr Kershaw:** It looks like someone has put a black marker through whatever was on there.

**Senator KENEALLY:** Each one says: When government keeps the truth from you, what are they covering up?

Do you understand what has sparked the Australian Right To Know campaign for media freedom? What do you think the events were that sparked this campaign?

**Mr Kershaw:** I'm an evidence based police officer. I haven't even turned my mind to that.

**Senator KENEALLY:** You haven't turned your mind to the fact that every newspaper in the country looks like it has been redacted as a result of government secrecy?

**Mr Kershaw:** I think what I haven't turned my mind to is what sparked that. There are obviously a number of matters that are in the media and so on. I would be speculating, because I'd have to ask the editors that question, which is what I normally would do to form my own views.

**Senator KENEALLY:** I put to you that what sparked the Australian Right To Know coalition coming together is the extraordinary occurrence we saw earlier this year of consecutive raids over two days by the AFP into two different media organisations. Do you think that's a fair characterisation of what sparked the current debate in Australia about media freedom?
Mr Kershaw: Again, if I'm going to answer that question, I'd like to actually ask the editors if that's actually the reason behind that.

Senator KENEALLY: Have you had any opportunity since you became commissioner to reach out to the media editors across the country and speak to them?

Mr Kershaw: Not at this stage, but I do intend to.

Senator KENEALLY: You spoke quite a bit in your opening statement about media freedom. Why did you feel the need to include it if you weren't aware of what might have caused this campaign and you haven't yet spoken to the media editors?

Mr Kershaw: I think if you go back to when I was first announced, when I did a press conference, I actually raised it then, back in July.

Senator KENEALLY: How did you become aware of the issue, though? What prompted you to raise it in your opening statement when you became commissioner and in your opening statement here today?

Mr Kershaw: I think that's quite clear. I've made myself clear to say that I believe in our democracy and press freedoms. I think it's appropriate that I have brought in John Lawler to have a look at these types of matters to see if there are any areas for improvement, our processes and so on. On top of that we have a new ministerial direction, and the Attorney-General's direction as well.

Senator KENEALLY: Bringing in Mr Lawler to conduct a review, is that a concession that things are not working as well as they could in relation to respecting media freedom?

Mr Kershaw: Like every new commissioner that comes in, they always like to have a look at things to make sure that everything is working efficiently and in accordance with all the guidelines and procedures, and that's what I've done.

Senator KENEALLY: You spoke of the ministerial direction. That was issued some weeks ago now. Isn't the fact that every major newspaper in the country has run a redacted front page claiming that the government is keeping the truth from you recognition that the ministerial direction has not adequately addressed the concerns of media organisations in Australia?

Mr Kershaw: I'd have to ask them that.

Senator KENEALLY: But you haven't done that yet. How long have you been commissioner?

Mr Kershaw: Nineteen days.

Senator KENEALLY: It was important enough to raise in your first statement as commissioner and to raise here. Have you written to the media outlets seeking meetings with them?

Mr Kershaw: No, but I will be meeting with the right people at the right time.

Senator KENEALLY: Who are the right people?

Mr Kershaw: Some of them will be the editors and other journalists. I have very good relationships with a number of existing journalists, who've already reached out to me asking to meet with me. I've said now that I'm back in country—and I've been quite busy, as you'd appreciate, with my incoming briefings and other things—that that will occur.
Senator KENEALLY: When will be the right time?

Mr Kershaw: That's a good question. I think the right time is to look at my diary, and probably over the next few weeks I'll be talking to the media.

Senator KENEALLY: Will you look to do that before the Parliamentary Joint Committee on Intelligence and Security and the Senate Environment and Communications References Committee complete their inquiries, or will you wait until those inquiries are done?

Mr Kershaw: No, I think it's right of me to sit down and listen to what the various outlets and media representatives have to say to me. I've always had a very good relationship—we don't always agree on everything—with the media, and I do respect their role and my role at the same time. That will occur over the next few weeks.

Senator KENEALLY: Commissioner, I understand from media reports, and I believe it has been confirmed previously by the AFP, that they had planned a third day of raids.

CHAIR: Senator Keneally, can you provide that media report so that the witness isn't being asked to speculate?

Senator KENEALLY: Let me rephrase my question while we wait for a copy of that from my office. Could you confirm whether or not the AFP had planned a third day of raids into News Corp?

Mr Kershaw: I'd have to take that on notice.

Senator KENEALLY: You can't confirm that here?

Mr Kershaw: I just have to take that on notice.

Senator KENEALLY: Can you also take on notice when the decision was made to not follow through on those raids and who made that decision?

Mr Kershaw: I can take that on notice as well.

Senator KENEALLY: Did you have something to add, Senator Payne? I thought I heard you say something. I apologise; I wasn't sure if you had something to add to the commissioner's answer.

Senator Payne: I'm sure you'll hear me when I do.

Senator KENEALLY: Can I turn to your opening statement, as it relates to media freedom. You said you'll be tabling the terms of reference to Mr Lawler's review. How was Mr Lawler chosen?

Mr Kershaw: I chose him.

Senator KENEALLY: It was your decision? Did you discuss it with the minister's office?

Mr Kershaw: No.

Senator KENEALLY: Or the minister directly?

Mr Kershaw: No.

Senator KENEALLY: Did you discuss it with Mr Pezzullo?

Mr Kershaw: No.

Senator KENEALLY: So you chose him?

Mr Kershaw: Yes.
Senator KENEALLY: Did you have a set of criteria in choosing a person to conduct the review?

Mr Kershaw: Yes. I know John Lawler very well, and he has the highest level of integrity and impartiality. He's also a very well-respected investigator. When he was not a deputy commissioner or the CEO of the Australian Criminal Intelligence Commission, and he's the appropriate person, I believe, to do this review.

Senator KENEALLY: I'm not disputing your authority to make the decision; I'm just trying to determine that he is your handpicked person to conduct the review.

Mr Kershaw: Yes.

Senator KENEALLY: You said he will do this review. Will you give a commit that that review will be released once it's finalised?

Mr Kershaw: Yes.

Senator KENEALLY: Thank you. You said that it is not an audit but rather a review to ensure that you have a holistic approach and that the AFP is fit for purpose when reviewing and investigating matters around sensitive information disclosure. However, will you reconsider reopening the investigation into the review of the medevac leak?

Mr Kershaw: I'd have to wait for his review and then I would have a look to make sure we have our processes and our governance and so on in place. I don't have that intent now, because I don't have that information in front of me. So, at this stage, no.

Senator KENEALLY: At this stage, no, you won't make that commitment? But it is possible that his audit—excuse me, not an audit—his review, could lead to you reconsidering some of the matters that have previously been closed?

Mr Kershaw: It's probably going to be more along the lines of governance, to make sure things were done appropriately. It's more about how, as an organisation, we can make sure that all those processes and the stakeholder expectations are understood, and also that the media understand what our processes are as well.

Senator KENEALLY: Commissioner, you said you were or are developing a 100-day plan of action. Will you release that publicly?

Mr Kershaw: For some of it, I probably wouldn't be able to, because there are some internal sensitive issues that we'll be covering, but what I intend to do is announce a new structure in the AFP that everyone will be aware of. In implementing our internal processes, some of those involve covert operations and so on, so I wouldn't necessarily make a public statement around those areas.

Senator KENEALLY: You also mentioned in your opening statement, you've developed an internal national guideline regarding the disclosure of sensitive matters. Is that publicly available?

Mr Kershaw: I believe it is. It probably is not right now. I'd have to come back to you to check on that.

Senator KENEALLY: Given the rather dramatic front pages, do you think it might be in the interest in developing community confidence that you make that publicly available?

Mr Kershaw: Yes.
Senator KENEALLY: Thank you.

CHAIR: I remind the members of the press who are here that it is contrary to the rules to photograph from directly behind the minister, even if it is towards the back of the room, but if you're prepared to go to the sides of the room that is more than okay.

Senator PATRICK: I'll just briefly touch on a matter that I'm sure you're aware of, because you've written to me. It goes to your opening statement about police powers at airports. You'll be aware of the article that was in The Advertiser, and indeed I contacted your office about AFP officers at Adelaide airport basically telling people to stand up against a wall and drop their baggage, and then a dog conducted some screening. There were quotes from people in the paper:

… they were also told to drop their bags and stand by the wall.

"They said nothing more, nothing at all," Mrs Mortimer said. "The dogs just came in and sniffed all our bags.

"We did not know if it was fruit or drugs they were looking for.

"There was not a smile, you just thought 'what the hell is going on?'"

Mr Mortimer said: "We have been through second- and third-tier countries and never seen anything like it."

I was involved in that particular incident; I was also a party who was searched in relation to that and can confirm that the police were very short in how they dealt with the matter. You have written to me. In the context of the new police powers and in the context of that particular incident, what changes have you discussed with police about how to interact with the public in those sorts of circumstances? I understand that they were doing their job; it was the manner in which they conducted their job.

Mr Kershaw: I think your letter has highlighted that there are areas for improvement there. At the end of the day, we serve you, Senator, and the Australian community, and if our service wasn't up to standard then that's an area that obviously we'll be looking at improving. Normally that's either through managerial guidance or through training. I have taken onboard what you've said, and I also welcome that. There are other avenues, of course, if you're not happy or anyone else is not happy with that level of service. You can make a complaint, and we do, as you know, have internal professional standards that can actually address some of these issues in a more formal way and try to resolve these matters in an amicable way where everyone understands that we're taking it onboard and we're taking it seriously. Of course, any kind of perception of misuse of power or that our officers were overindulgent we normally tend to address through managerial guidance and training.

Senator PATRICK: Is there anything that would prohibit an officer basically indicating to people at an airport: 'We are conducting additional security. Please, to assist us, would you mind standing across on the side, and we're just going to have a dog search your bag'? There's nothing that would prevent them from saying that?

Mr Kershaw: No. That would be common sense and reasonable.

Senator PATRICK: So, there's a basic expectation that that's what the public could expect.

Mr Kershaw: Yes.
Senator PATRICK: Politeness in the enforcement, where people aren't resistant in any way—just going about their daily business.

Mr Kershaw: Yes.

Senator PATRICK: Thank you. I'll put that matter to the side. I just want to raise a couple of matters related to parliamentary privilege, and just to frame this, I'll read from a High Court judgement, Hearne v Street, with Justice Kirby:

The privileges of Parliament, including of a State Parliament in the Commonwealth of Australia, do not exist for the benefit of parliamentarians and their staff and officials alone, or even primarily. … Parliamentary privilege exists for the benefit of the people who are governed by laws made by the Parliament concerned.

So, the principle is, parliamentary privilege is actually provided so that people in the public can contact members of parliament and can confidently raise issues which then might get raised in the parliament, and they are protected in those conversations.

That's the context setting, because I've got a couple of questions around privilege. The Privileges Committee met and deliberated over metadata searches by police and/or other agencies in respect of parliamentarians and indeed people contacting parliamentarians. I asked a question at estimates a couple of estimates ago, because the committee recommended that the presiding officers engage with the executive—and I understand that the police took the lead on this—in relation to a protocol that would be developed for the protection of metadata, obviously between parliamentarians and their constituents. Can you give me an update on where that's up to, please?

Mr Kershaw: Can you just restate that last bit?

Senator PATRICK: In response to the Privileges Committee's 168th report, a recommendation was made that the police would engage with the presiding officers to develop a protocol—in much the same way as a protocol exists for search warrants on parliamentarians—looking at parliamentarians' metadata. What protocols are to be put in place in respect of things like metadata warrants and so forth?

Mr Kershaw: My information is that we are happy to do that. We're also working with the Attorney-General's Department, who actually have the lead on this. My own brief research highlighted that our guideline on search warrants where parliamentary privilege may be involved dates back to I think 2005, so it's overdue to be looked at. I'm happy to be involved in that process and in making sure that we've got the right policies and procedures in relation to this.

Senator PATRICK: My question was intended to be a bit more forensic. I'm trying to work out: when can we expect a response? I'm happy for you to take that on notice.

Mr Kershaw: I will.

Senator PATRICK: It's been ongoing for some time. I've seen the protocol in relation to search warrants. It's probably five or 10 pages. Surely it can't take that long to develop a protocol that ensures that parliamentary privilege is afforded not just to the parliamentarians but especially to people contacting parliamentarians.

Mr Kershaw: I will make that a priority and I will take it on notice.
Senator PATRICK: Thank you. Can you advise me: how many metadata warrants have been issued in respect of a parliamentarian or someone who was engaged in a conversation with a parliamentarian?

Mr Kershaw: I'll have to take that one on notice as well.

Senator PATRICK: Thank you. In the 2013 election, there was a raid on a staffer of Senator Conroy, and during that raid the media were in attendance. I don't expect you to necessarily have the answer to this, but Commissioner Colvin said at the time that he had discussed accusations that the media were tipped off with the law enforcement Integrity Commissioner and that they would be referred to the AFP professional standards branch. I've not heard anything that's come from that referral. Are you aware of anything?

Mr Kershaw: No, Senator. Are you saying that our officers had breached our professional standards?

Senator PATRICK: No. This was dealt with at estimates, but Commissioner Colvin said that he had discussed accusations that the media were tipped off with the law enforcement Integrity Commissioner and that they would be referred to the AFP's professional standards branch. Clearly some investigation or referral occurred, but we've not heard the outcome. I appreciate it's some time ago, and you may not be aware of that—

Mr Kershaw: I am happy to come back to you on that.

Senator PATRICK: Thank you very much. That's it for me.

Senator McKIM: Good morning, Commissioner. In your opening statement you said the AFP had written to a Mr al-Araibi and apologised to him. What exactly did the AFP apologise for?

Mr Kershaw: If I can get a copy of the letter—I could probably read it out, if that's appropriate?

Senator McKIM: Sure, thank you.

Mr Kershaw: I'm just going off my memory here.

Senator McKIM: That's all right. If you need some time—

Mr Kershaw: I apologised in the sense that we are looking at better systems between the department and ourselves. He spent 77 days in prison in Thailand, so, as an accountable organisation to the community, I felt it was right to do that. In my letter, that's how I explained it. But I'll table a copy. I'm happy to give you a copy of that. I've got it here.

Senator McKIM: Thank you.

Mr Kershaw: I'll just read it out; it's not too long: 'Following my commencement as Commissioner of the Australian Federal Police, I've been reviewing a number of matters which have come to my attention. One of these issues has been the circumstances surrounding your detention in Thailand. I extend my apologies for your unfortunate detention in Thailand in November 2018. Please be assured that this is in no way related to your protection status, as the AFP had no awareness you'd been granted protection in Australia until after your detention. The AFP is continuing to review and improve processes in consultation with other relevant agencies. We'll respond appropriately to these matters in the future. Should you wish to discuss this further, I invite you to please contact Assistant Commissioner, International Operations, Scott Lee. Yours sincerely.'
Senator McKIM: Thanks, Commissioner. Given the fact that you have issued that apology to Mr al-Araibi, you must be accepting, on behalf of the AFP, some level of responsibility for what happened. Would that be fair?

Mr Kershaw: Yes.

Senator McKIM: Does that specifically relate to the email from the ABF falling through the cracks at the AFP?

Mr Kershaw: Yes.

Senator McKIM: Are there any other matters that the AFP feels responsible for in the context of this case, apart from that one email falling through the cracks?

Mr Kershaw: Not that I know of, no.

Senator McKIM: Thank you. You said you have reviewed or are reviewing your processes to—I think these were the words you used—'minimise the chance of something like this happening again'. It may have been Mr Colvin I'm remembering having said that. Is that review complete? Are you confident that you've done all that you can as of today to ensure that no-one else ends up in the situation that Mr al-Araibi found himself in?

Mr Kershaw: I'd have to take that one on notice. I know there's some work in hand right now between us and the department, so I'd probably like to come back to you.

Senator McKIM: All right. Mr Pezzullo, are you able to respond to that? Sorry, I know you were doing something else, but the question is—the commissioner just said there is some work in hand between THE ABF and the department in regard to the matter of Mr al-Araibi and ensuring that the chances of something like that happening again are minimised. Are you able to add any information for the committee about the work in hand?

Mr Pezzullo: I am happy to do so. But, particularly with the Commissioner Outram here this afternoon—

Senator McKIM: So he's dealing with that on behalf of—

Mr Pezzullo: Within the department, the Border Force is an independently operating authority. It has budget links back to the department, but the day-to-day operations of the Border Force are really a matter for the commissioner, save to say that you'll recall, back in February, there was advice given to the committee that, between Commissioner Outram and then Commissioner Colvin, a review had been undertaken under the auspices of my authority to see what the end-to-end process looked like, in terms of emails that weren't acquitted and telephone calls that were not responded to, and, as I best recall it, a review was conducted. I've got a recollection that we either tabled that review or possibly put it on our website, so the question is probably best pitched to Commissioner Outram as to how the progress of the implementation plan is going.

Senator McKIM: Thank you. Commissioner, are you or was the AFP aware that either the department—that is, Home Affairs—or the ABF looked into cancelling Mr al-Araibi's protection visa while he was in prison? Is that something the AFP's aware of?

Mr Kershaw: I'd have to take that on notice, sorry, Senator.

Mr Pezzullo: I should say, Senator, in fairness, it's perhaps a question better directed to the department and the ABF when the relevant offices are here.
Senator McKIM: Sure.

Mr Pezzullo: I don't want to anticipate their answers, but I can speak to the fact that there has been some less than accurate reporting on that. But, perhaps, when the departmental and ABF officers are present you can pursue that point—

Senator McKIM: Thanks for your assistance there, Mr Pezzullo. Commissioner, I want to turn to the issue of—I'm not sure how you would describe it—the preliminary assessment of a matter that was referred to you by the Department for Home Affairs—that is, the leaking of an ASIO document that contained information from ASIO with regard to the medevac legislation. It was on the front page of *The Australian* on 7 February of this year.

CHAIR: Can you provide a copy of that, please? Can you provide a copy of the media report you're referring to?

Senator McKIM: I don't have a copy of the report, but—

CHAIR: Can you come back to it when you do?

Senator McKIM: No. I'll pursue it this way then: is it correct the Department of Home Affairs asked the AFP to investigate such a leak?

Mr Pezzullo: Just to assist the newly appointed commissioner, without rehearsing the detail of previous evidence former Director-General Lewis and I gave in February, it is the case that a Home Affairs submission, to be precise, which encapsulated non-operational but nonetheless sensitive information from ASIO about how ASIO conducts its security assessment processes—particularly on the point as to whether the 24-hour turnaround or, indeed, a 72-hour turnaround of a security assessment—was practicable in that sort of time frame. You might recall at the time, when that advice was proffered in December, the proposition in the Senate version of the legislation had a 24-hour turnaround. ASIO gave my department advice about the unworkability of that time frame. We then encapsulated that advice in that ministerial submission, which, as we have disclosed before, was then the subject of an unauthorised disclosure to the newspaper to which you have referred.

Senator McKIM: Who was that advice prepared for?

Mr Pezzullo: I'll refer back to my evidence and that of the former Director-General Mr Lewis in February: it was advice prepared for the Minister for Home Affairs.

Senator McKIM: Minister Dutton?

Mr Pezzullo: Correct. In the form of a submission.

CHAIR: Senator McKim, can I encourage you to direct yourself as much as possible to issues about the AFP, since this is their session? There'll be plenty of time to get onto ASIO and Home Affairs, if that's all right.

Senator McKIM: Commissioner, the AFP declined to investigate that matter. I'll confess: I was very surprised and horrified by it at the time, because we've got a situation where a briefing note, prepared for Minister Dutton, was presumably deliberately leaked to suit the government of the day's political agenda.

CHAIR: I think that is a little out of line.

Senator McKIM: I'm not sure it is. I'm just giving context to my question.

CHAIR: Just stick to facts.
Senator McKIM: Given that the AFP ultimately declined to escalate this to a full investigation, can you confirm that, in your preliminary work, the AFP discovered that just 11 people had access to that document?

Mr Kershaw: No, that's not correct. My information is that it was over 200.

Senator McKIM: Over 200 people?

Mr Kershaw: Yes.

Senator McKIM: In general terms—I'm not asking you to name names—what were the categories of those people? Were they political staffers, politicians—

Mr Kershaw: I'd have to take that on notice. I'm not even sure that the work would have been done around that, because, as you know with emails and so on, that can be an issue in itself to identify. But estimates are that it was over 200 people.

Senator McKIM: Does that relate to access to the final classified file, or does that relate to information that later became embedded in that memo?

Mr Kershaw: Part of it was that some of the 200 people obviously received some of the documents leading up to the final versions.

Senator McKIM: How many people had access to the final version?

Mr Kershaw: I'd have to take that on notice.

Senator McKIM: The report is that it's just 11, which doesn't seem to be a large pool of suspects for an inquiry.

Mr Kershaw: I think 11 email addresses received the final version.

Senator McKIM: Given that just 11 email addresses received the final version, why did the AFP decline, ultimately, to investigate that matter?

Mr Kershaw: I'd have to go back to that. We do have a priority system, and we have an assessment based system as well. We have to be accountable for the financial side of the house as well—that is, the likelihood of being able to present a brief of evidence to actually substantiate a charge. All those sorts of things are taken into account when you look at a complex investigation like this where there are a number of people involved and a number of email addresses and so on. It's often a call for the case officer, with some governance put in over the top, to make sure that that's their decision and that it's based on evidence and our internal processes.

Senator McKIM: What was the rank of the person who made the call not to investigate?

Mr Kershaw: I'll have to come back to you on that.

Senator McKIM: So you'll take that on notice?

Mr Kershaw: I'll take that on notice.

Senator McKIM: Thank you.

CHAIR: Senator McKim, that exceeds the 10 minutes.

Senator McKIM: I'll come back—

CHAIR: Can I ask you to take a little break, unless you're close to the end?

Senator McKIM: No, that's fine.
Chair: Thank you for that. Can I ask you to find that media report and provide it, so that if there is something you need to clarify, Commissioner—

Mr Kershaw: Thank you.

Senator McKIM: Sure, although, I think the commissioner's well aware of the matter that I'm referring to.

Chair: In any event, that would be super. Thank you.

Senator PRATT: Senator Keneally was asked to table a document and I'm here to table it on her behalf now: 'AFP raid on ABC reveals investigative journalism being put in the same category as criminality'. Thank you.

Commissioner Kershaw, in relation to the AWU raids in October 2017, given events in the courts, can I now ask you how confident you are that the AFP's raids on the offices of the AWU in Sydney and Melbourne on 24 October were lawful?

Mr Kershaw: My knowledge is—we're the agency assisting the ROC. So we collect those documents or that material for that agency, which we did do, so we're actually not the ones who are doing the raids. We're standing by to make sure that the warrant is executed in accordance with the law and making sure all those things are done appropriately. So I'm confident that we did and my briefing reflects that.

Senator PRATT: In that context: the evidence provided at the court hearing into the raids, which have found that they were 'unlawful'—will you be reopening your investigation into the media leaks that occurred prior to the raid taking place?

Mr Kershaw: I think part of this goes towards the Lawler review, as far as just making sure that when we do these agency assists the appropriate governance is in place from our side. But perhaps there's more investigation—that's not the right word here, but more inquiries done—to ascertain that warrant and make sure that all of that information is correct.

Senator PRATT: Do you contend that, given it is now seen to be unlawful, you did have all your ducks lined up with the ROC? You say, essentially, it's the ROC's job to work out whether or not it's lawful, but you don't want to get pulled into unlawful raids that are politically motivated, or anything else, because it's the AFP's reputation on the line. You don't want to get involved in unlawful raids, do you?

Mr Kershaw: Correct. I think that would be part of our review into this whole issue and that's where I'll be placing that into that review.

Senator PRATT: Okay. I can see that in the terms of reference it does link to your role when you're working with other agencies.

Mr Kershaw: Yes.

Senator PRATT: So it does give you cause for concern, that you were pulled into what turned into an unlawful raid—it turned out to be an unlawful act.

Mr Kershaw: I think that's reasonable. As an agency we're always wanting to improve our level of service, and as part of our review we'll be looking at the court's decision to see if there are any areas there we could learn from and improve in.

Senator PRATT: I'll ask you again. Given it was both unlawful and leaked to the media, will you be reopening your investigation into those media leaks?
Mr Kershaw: I'll have to take that on notice.

Senator PRATT: Have you considered that question?

Mr Kershaw: Not at this stage. That's why I'd like to take it on notice.

Senator PRATT: I'd very much like you to consider, in taking it on notice, the fact that you can't look at the media leak itself in the absence of the unlawfulness of the raid itself in terms of the need to come to grips with the motivation behind these acts. When it was recognised before this committee that the media leak was unlawful, in terms of previous investigations of the AFP, there was very clear evidence that not everyone the AFP sought information from cooperated with the committee.

Mr Kershaw: Based on the information I have at hand now, the CDPP is not proceeding. There is no reasonable prospect. So, my intent would be to not be looking at that issue. I would rather be looking at the agency assist aspect.

CHAIR: Senator Pratt, he's taken it on notice. I think you need to move on.

Senator PRATT: Chris Enright, the executive director of the ROC, when questioned in the Federal Court about the raids, said:

… I was aware of what the Minister's agenda was. Clearly, the Minister was on a particular – a political side of parliament that had an agenda. I was clearly aware of that.

You've said that you're not going to pursue these leaks, but is the AFP right to serve as a political weapon of the government of the day?

CHAIR: That's outrageous. Nobody's suggesting that, Senator Pratt.

Senator PRATT: But clearly, if you go to the terms of reference that the AFP is looking at here, in terms of baselining what constitutes a sensitive investigation and how that's managed, that clearly points to those political risks, doesn't it?

Mr Kershaw: We're not a political organisation. We're a police force. We fit within society to make sure the rule of law is maintained, and that's what we'll continue to do.

Senator PRATT: I'd like to return to Chris Enright's statement:

… the Minister was on a particular – a political side of parliament that had an agenda. I was clearly aware of that.

So when the AFP undertook these raids with the ROC, you were working with an agency that was clearly aware that their responsible minister had a political agenda. Is that appropriate in the context of a raid that you're involved in?

Mr Kershaw: I don't know, because, again, we look at the law. We're there to support that other agency, so we don't go into that kind of detail. But, having said that, I've said that Lawler review will take into account this matter and others that we can learn from.

Senator PRATT: But your statement is somewhat contradictory. You say very clearly that you're not here to serve as a political weapon for the government of the day, but you don't have the protective factors in place that prevent you from being pulled into that. Do you think it's appropriate for the AFP to be pulled into a political stunt?

Senator Payne: I think you've failed in your questioning to advance to the next step in this process. Perhaps you were going to come to it in due course. The next step would be that a ruling was handed down in the Federal Court of Australia on Friday 11 October, which
indicated there was no political influence by the minister over the ROC's decision. The court handed down its judgement on that matter. I presume you would have—for the sake of clarity and, of course, statement of facts—come to that point in the record in your questioning.

Senator PRATT: Well, you've now done that for me.

Senator Payne: I wouldn't want you to have not done that.

CHAIR: Can I also add that, by way of clarification, the evidence that Enright gave was that—and I think it's quite important that we're accurate about this—he had assumed she had an agenda rather than as a matter of known fact. Senator Pratt, please continue. I'll give you a little extra time to reflect that.

Senator PRATT: The issue here is not the political motivation of the ROC or otherwise; it's the issue of the motivation of the minister in the context of the AWU raid and the leaks to the media. There's also the context of where you've got the executive director of the ROC put on the record in the Federal Court that it is his belief that the minister was on a particular political side of parliament that had an agenda and that he was aware of that.

Senator Payne: Fortuitously, Senator, we have a ruling from the Federal Court that emphatically and explicitly clears the minister of any political influence over the ROC's decision, which I'm sure you'll get to.

Senator PRATT: I'm not here questioning you about the ROC's decision; I'm questioning the AFP about the investigation into the leaks to the media about the raid itself, which were widely reported to have come from her office. The investigation by the AFP found that they could not clear that matter up because certain people weren't forthcoming in clarifying and giving evidence to the AFP.

Senator Payne: You're referring to what I presume is testimony under oath in the Federal Court. I understand the minister also testified under oath in the Federal Court. All questions put to the minister were answered. Not one element of that testimony has been challenged by the AWU or its lawyers, and that's shown on the transcript.

Senator PRATT: I'm very, very clear about the historical aspects of this. It's not necessarily even the minister's evidence that's in question here; it's the number of other people that did not come forward to give evidence that you might have expected to because they would have been in the possession of that knowledge. Can I ask you, Commissioner Kershaw, about the steps taken to insulate the AFP from political influence. You've got baselining here of what constitutes a sensitive investigation. I note that you've currently got some guidelines in relation to how these matters are managed, but I think those guidelines somewhat protect the political interests of government. Can I ask what steps you've taken in the meantime, before this review gets underway, to protect yourselves from political influence?

Mr Kershaw: As I said, our functions are in section 8 of the AFP Act, and I've made it clear to all of my staff that that is our focus and core reason for existing. As police officers, we take an oath to act without fear, favour or ill will towards others, and we treat everyone fairly. This matter has been dealt with by us in a very professional way. I am looking forward to the outcomes of Mr Lawler's review, and I don't want to pre-empt his review.

Senator PRATT: So what are you doing about this in the meantime? We've seen the front pages of the newspapers today in relation to press freedom. The nature of the relationship the
AFP has with journalists and government is at the heart of these things here. You're saying it's still a wait-and-see approach in the context of this review?

Mr Kershaw: No, because we've already had a ministerial direction. We have an Attorney-General's direction, so we've implemented that into our internal processes.

Senator PRATT: You said that you—
CHAIR: This will have to be your last question, Senator Pratt. We're just a fair bit over time.

Senator PRATT: In your opening statement you alluded to the briefs that you'd had coming into your role and that you hadn't had time to meet with the heads of news agencies and journalists yet. Can you tell us about the briefs that you've had on the matter of press freedom?

Mr Kershaw: Yes, I've had a brief.

Senator PRATT: Is there any more detail you can give us about those briefings?

Mr Kershaw: I've been given a brief by the relevant assistant commissioners and relevant areas in the organisation.

Senator PRATT: Were they written or verbal briefs?

Mr Kershaw: We had verbal briefs and also the briefs that I have in front of me here.

CHAIR: Okay. Thank you. Is there anything you need to tie that off?

Senator PRATT: That's fine.

CHAIR: Thank you very much, Senator Pratt. Senator Henderson?

Senator HENDERSON: Thank you very much, Commissioner. Good morning.

Mr Kershaw: Good morning.

Senator HENDERSON: I'd like to ask you about the work of the National Anti-Gang Squad. We know that gangs, particularly the Apex group in Victoria, continue to present a significant threat to safety and security. Could I ask you: what are the state based figures for the National Anti-Gang Squad?

Mr Kershaw: I'd have to take that on notice.

Senator HENDERSON: Can you talk a little bit about the squad, the work of the squad and the difference that it is making in the community?

Mr Kershaw: The way of now and into the future is to work together with all agencies, in particular our state police agencies, the ACIC. A whole range of other agencies are angled in at organised crime, in particular, at different threats to different states and cities and so on. It's a successful partnership where we're able to combine our joined-up expertise and our joined-up capabilities. As you know, organised crime knows no borders. It has international context. I did raise this at INTERPOL to say global impacts have affects at local and national levels. One incident that happens overseas has a ripple effect in Australia. Organised criminals have a pretty good understanding of how to exploit some of our systems and the borderless nature.

It's the same with our domestic picture of organised crime. We know that outlaw motorcycle gangs pose a serious threat. We've had some very good success in dismantling and disrupting those particular groups who don't share the Australian values, often seek to harm
Australians and don't abide by the law. I'm very committed to deepening our partnerships, in particular with our state police agencies. I haven't announced any of this publically until now, but I will be looking at building a state service intelligence centre—and I have raised this with all the commissioners recently at the police commissioners forum—which will be able to assist states in a greater way, because we have to move faster and keep up and get ahead of some of these organised groups.

Senator HENDERSON: You mentioned there have been some successful outcomes. Can you provide more detail in relation to those successes?

Mr Kershaw: I've got some of our organised crime statistics. To give you an idea of the workload currently, we have 561 cases on hand. In relation to organised crime, we have 126 active investigations, 83 cases awaiting finalisation, 153 cases before the court, 25 cases in brief preparation and 27 cases under evaluation. We'll continue to target organised crime, and, in particular, their supply chain, and work with our partner agencies.

Senator HENDERSON: What does the intelligence picture tell us about the threat of outlaw motorcycle gangs? Are they, in your view, an increasing threat across the country?

Mr Kershaw: They are. It goes back a long way. If we want to go back to pre September 11 in the US, for example, they were the No. 1 security threat for the nation. In Australia they have grown in numbers, but it's pleasing to see that law enforcement efforts, I believe—and that's evidence-based—have disrupted their activities. They do pose a threat to our community. We know they do not share our values, and they don't abide by the law.

Senator HENDERSON: Just in relation to the work of the National Anti-Gang Squad, can you talk about how the squad is assisting tackling serious issues in the community, such as combating drug importation, specifically ice?

Mr Kershaw: Part of their remit is obviously to share all the intelligence and have community engagement. We like to have that deep engagement with the community to understand what some of their issues are. We do rely on the Australian community and various communities across the country to provide us with information and intelligence. That's how we work.

We look at relevant legislation we can use to disrupt and dismantle these groups and prevent them from continuing on. As you would be aware, there are different laws in different states in relation to outlaw motorcycle gangs, but we're also examining where there are areas where we can use those various powers in those states most efficiently and effectively.

Senator HENDERSON: Commissioner, thank you very much.

Senator CHANDLER: The government recently passed the Combatting Child Sexual Exploitation Legislation Amendment Bill 2019 to include new offences relating to the possession of abuse material and possession of childlike sex dolls and to introduce some crimes around failing to report, obviously coming out of the Royal Commission into Institutional Responses to Child Sexual Abuse. Has the AFP made any arrests under that legislation yet?

Mr Kershaw: I would have to take that on notice in relation to that legislation.

Senator CHANDLER: That's all right. Thank you for that. On a similar topic, will the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection
Measures) Bill, which is currently before the parliament, have a role to play in assisting AFP officers to fight these crimes against children?

Mr Kershaw: Yes. I think one of the growing crime types is the exploitation of children online, and obviously Australians are travelling overseas to exploit vulnerable children. It is something that we are committed to with the new centre being built and the joined-up approach with our state partners and other federal agencies.

Senator CHANDLER: Sorry, Commissioner. That's the Australian Centre to Counter Child Exploitation?

Mr Kershaw: Yes. It's very welcome. It's a growing crime type and one of real concern for us that more and more people are getting online and abusing children, but amongst all this we have victims, and that's where we have the legislation and other tools we have. Our approach is that we need to be really victim focused on this. There are a lot of children that we've been able to save or rescue from being further exploited or victimised, and we welcome those tools and that legislation that help combat these offenders, who often will not stop until law enforcement intervenes.

Senator CHANDLER: Of course. Could you perhaps provide some more detail about how the centre has been established and perhaps how it's being viewed internationally in terms of the role that it's playing in fighting these crimes.

Mr Kershaw: I know it's joined up across the globe already, which is great. I spoke, when I was at Interpol last week, to the UK in particular. They're watching the model. They think it's probably one of the best in the world and that Australia is probably leading in this area. So it's quite refreshing to hear that. There are others—Europol, Interpol and others—who are watching what we're doing—and the US authorities as well. So we've got some international expertise in other agencies who are looking at that particular model, and it's embedding, basically, our state police and other counterparts in the one centre and having a whole range of enforcement but also preventative strategies to make sure that we make the internet a difficult place for these predators to operate.

Senator CHANDLER: I assume—because we are talking about the internet here and that's not something that necessarily has its limitations at Australia's borders—that it is important for us to be engaging at a global level on this issue. Would that be correct?

Mr Kershaw: Sorry, Senator.

Senator CHANDLER: That's all right, Commissioner. It's important for us to be engaging globally on these issues because the internet is not necessarily something limited to Australia, so hopefully if other jurisdictions are viewing what we're doing in such a positive light—

Mr Kershaw: Yes. There are actually organised syndicates that will abuse one child, for example, who may be in another country, and the syndicate might be based here and so on. So you have to work across the globe, given the internet and the ease of use with which they can share these images, videos and so on and exploit these children. I just had it placed in front of me that there have been three individuals who've been charged under the new amendments.

Senator CHANDLER: These are the combating child sexual exploitation agreements.
Mr Kershaw: Yes. A 44-year-old man appeared in Melbourne Magistrates Court on 26 September. He was the first person charged. A 37-year-old Sydney man appeared before Blacktown court on 2 October, and a 50-year-old South Australian man appeared before the South Australian Magistrates Court on 4 October. So it just goes to show that they are spread out all across our country.

Senator CHANDLER: Yes. Those amendments addressed a number of different crimes. Do you have the specifics of which crimes they were charged with?

Mr Kershaw: Yes, I do.

Senator CHANDLER: Thank you. If you could share them, that would be wonderful.

Mr Kershaw: Section 474.22A was one of the charges, which is possessing or controlling child abuse material obtained or accessed using a carriage service. For the Sydney man, there were five counts of possessing child abuse material obtained or accessed via a carriage service, contrary to section 474.22A; two counts of producing child abuse material, contrary to the Crimes Act of New South Wales; and four counts of possessing or controlling child abuse material under 474.19. Then the South Australian man was charged with one count of possession of child abuse material obtained or accessed using a carriage service contrary to 474.22A.

Senator LAMBIE: I think I will ask the minister this. This was one of former Senator Hinch's interests before he left. Apparently the coalition had done a deal with him over a sex offenders registrar. Can anybody throw some light on where that is up to? Apparently he wanted a sex offenders register and a deal had been done, and yet I've seen no bill and no legislative changes come up in reference to that. I'm sure former Senator Hinch would like to know where that is at.

Senator Payne: Thank you very much for your question. I don't have any details on that with me, but I am very happy to take that on notice. I will seek some advice and come back to you and the committee.

Senator LAMBIE: Thank you very much. I just quickly want to go over operation raptor—is that what it's called? Can you give me an explanation on what that—

Mr Kershaw: Is that our internal operation about protective security you are talking about or is that the New South Wales—

Senator LAMBIE: Is that the organised crime one?

Mr Kershaw: Yes.

Senator LAMBIE: Yes, sorry. Can you give me some—

Mr Kershaw: The New South Wales police have a team called Raptor. I am aware of it. They are a multidisciplinary team of uniforms and detectives that we would utilise and work with.

Senator LAMBIE: On organised crime specifically?

Mr Kershaw: For combating, in particular, outlaw motorcycle gangs.

Senator LAMBIE: I want to take note here that I was out with the veterans motorcycle group raising cash and money on Saturday, and it was very awkward for the police officers there at the time because there were about 250 riders and there was no random drug testing or
alcohol testing; everybody got tested before they left the gates. I understood this group was for dealing with organised crime, and I find it bizarre and overkill that, for over 200 riders, every single one of them, their rego was taken, their license was taken and photographs were taken. Every single one of them that was driving or riding a bike was alcohol tested.

Mr Kershaw: Where did this occur?

Senator LAMBIE: In Canberra over the weekend. I am just making you aware of it because it was quite difficult, I think, for your men and women in uniform doing the job and then for the veterans. I think there's a fine line of who is organised crime and who isn't. If Raptor was used, I have to ask why.

Mr Kershaw: Normally they are intelligence based and deployed. So they would have intel on that.

Senator LAMBIE: That every single one of them was going to get on a bike and be drunk?

Mr Kershaw: Not necessarily. It could be a police tactic that they used.

Senator LAMBIE: It would be nice to get an explanation on that.

Mr Kershaw: I am out of my lane on this.

Senator LAMBIE: I just hate to see resources that should be used for combating organised crime used against veterans. I have a question for you, Commissioner. The video evidence and witness testimony of deliberate and systematic money laundering at Melbourne's Crown casino was presented to parliament by Andrew Wilkie MP last week. Do you know if the AFP has done anything about this evidence?

Mr Kershaw: We work with the Australian Criminal Intelligence Commission. They have the lead on that particular matter. We work with them, so that would be something that you would need to be aware of.

Senator LAMBIE: Do you know whether the AFP or the Criminal Intelligence Commission have actually spoken to Mr Wilkie?

Mr Kershaw: I'm not aware. I would have to take that on notice.

Senator LAMBIE: Has the AFP played any role in investigating the role that Crown management plays in the ongoing money laundering at Crown? Specifically, has the AFP investigated whether Crown secretly takes a cut of the money that is laundered in junket rooms before the cash is taken onto the gaming room floor by criminals?

Mr Kershaw: We are working with the ACIC, who have the lead on this. So we are awaiting their assessment.

Senator LAMBIE: Would that be the same with the allegations of the Crown aircraft and the gambling passengers coming and going from Australia at the moment without any Border Force checks? Just as money laundering is more AUSTRAC than AFP, this one's more Border Force than AFP, but both issues coincide.

Mr Kershaw: We would work with ACIC and Border Force in forming a picture, I guess you'd say, of whether there's criminality or not and work out which agency's going to take the lead in relation to that.
Senator LAMBIE: So you have yet to hear anything from your investigative partners about the Crown allegations.

Mr Kershaw: Correct.

Senator LAMBIE: And you've started to investigate yourselves, on your part?

Mr Kershaw: We work with ACIC, so it's more intelligence assessment that we would be doing.

Senator LAMBIE: I want to talk to you about the leaked documents that obviously exposed the Afghan files, as such. Did that push come from Defence? Did they ask for the investigation or did that come from Defence itself, the ask to investigate those leaks? And if it did come from Defence, who did it come from?

Mr Kershaw: My information is that on 30 April 2018 the Secretary of Defence referred that matter to the AFP.

Senator LAMBIE: What national security—what was the reason Defence did that? There must have been a reasoning or an ask 'Why?' They would've had to have given a new reason for them believing that.

Mr Kershaw: I'd have to have a look at the actual referral myself. I have not seen that.

Senator LAMBIE: Is there any way that referral is available to be passed to the committee?

Mr Kershaw: I'd have to take that on notice.

Senator LAMBIE: These next few questions are about the responsibility-for-action investigation of the potential misuse of Commonwealth material. Do you think it is acceptable by the AFP that materials created within a member's or senator's office can be or are Commonwealth documents?

Mr Kershaw: I'd have to come back to you on notice. I'm not a lawyer on that.

Senator LAMBIE: I'll give you an example. If there is an active leak from a member's or ministerial office now that relates to policy data or intelligence, is it correct that the AFP considers itself able to investigate staff and materials held within the minister's or member's staff office? For example, if a staffer or a member of that parliamentarian's office walks out with constituency files, tapings or anything else is that a chargeable offence?

Mr Kershaw: I'd have to come back to you on notice. Noting that there is parliamentary privilege as well that we have to take into account and so on, I will take that on notice.

Senator LAMBIE: I'd have to come back to you on notice. Noting that there is parliamentary privilege as well that we have to take into account and so on, I will take that on notice.

Senator LAMBIE: If there was a report made in reference to materials being taken from an office of a parliamentarian, where the former staffer has been directed to return materials they're alleged to have taken contrary to the member's instructions, is there any ranking of priority as to the level of speed of the investigation? I'm worried about your resources. This is where I'm going to, without getting any further. Are you struggling with resources in the AFP to keep up, to cover everything? I have to be very open and honest here. I've seen the problems firsthand and the response time is taking way too long for investigations. I think this is where you're running into trouble with what's happened over the journalist. So do you have a resourcing problem within the AFP?
Mr Kershaw: No. What we do is we have a very strong internal priority system. We, like every police force, have increased demand and we do the best with the resources that we have.

CHAIR: That brings us both to 10 minutes and to the break time. Do you have much to go?

Senator LAMBIE: No. I just would like to clarify that question. Do you believe, as the commissioner, that you probably do not have the resources that you need and that you are under the pump? Do you have enough staff, do you believe, to deal with all the matters at hand that the AFP are dealing with because I know you've also had to pick up the slack from national security over the last 10 years? Do you believe you have the resources needed, especially the men and women on the ground?

Mr Kershaw: Yes, I do. What I look for are efficiencies and looking at processes. That's why I've got the 100-day plan to reprioritise what we would say is some of our back end to ensure that they are fully supporting the front end and that we can move through these things in an expeditious way as efficiently and effectively as possible.

Senator LAMBIE: Thank you.

CHAIR: Thank you, Senator Lambie. That brings us to the scheduled break. Before I adjourn, I'll just foreshadow that, when we return, I'll give Senator Hanson an opportunity and then return to Labor senators.

Proceedings suspended from 10:31 to 10:45

Senator HANSON: I will be asking some questions about drugs in Australia, but I'd like to put on the record that I have the utmost admiration and respect for the AFP and state policing in how they handle the drug issue in Australia. I am also aware that it is a growing problem that we have and of how it is destroying lives and communities, especially in rural and regional Australia. My question to you is: are the drugs coming into Australia on the up, or are we keeping it under control?

Mr Kershaw: Thank you, Senator. We have seen an increase. Australia is a target market for organised crime, given the fact that our price and profit margin for organised crime remains quite high. We have embarked on a number of strategies offshore to work with our partners offshore to prevent those illicit drugs from coming to Australia before they even get to our borders. And we've been very successful for a number of years, in particular with our South-East Asian partners. In Myanmar we've had a lot of interdictions, and successes, and even in Colombia and Mexico—across the globe—to keep Australians safe from these harmful drugs.

Whilst the price and the market is profitable, we'll continue to be a target. Even at Interpol the greater need for intelligence to be shared faster, and across all countries, was raised, and that is what we're all working on. So, I do want to reassure you that we are—I actually put into my Interpol speech that regional communities in Australia now are also a target of organised crime and overseas based syndicates. That's something we'll continue to focus on. But we're having some good returns on our efforts with our international partners.

Senator HANSON: Do the penalties or censures that we hand out in Australia for illicit drugs determine the impact or the amount of imports or even manufacturing of drugs here in
the country? Does that have an impact on it, coming down to the court system and people selling drugs?

**Mr Kershaw:** I think with organised crime they're prepared to operate anywhere, including jurisdictions where capital punishment exists. They're quite capable, and they will use whatever means they can to make a profit. We have very strong laws in Australia as far as sentences go. However, I'm not convinced that that comes into their thinking at times.

**Senator HANSON:** Hence my question is about pill testing at venues. I know the emotional state people feel because some people have lost their lives because of pill testing, and I know that it is a hot political issue. Is pill testing at venues hindering you being able to do your job in stopping drugs coming into the country—if we are sending a message that it's all right to take a pill at these venues but it's not all right at any other time?

**Mr Kershaw:** I think organised crime don't look at that. Australia is a profitable market. If they can move their product, make a profit, reinvest and continue to build their wealth, and then they move into money laundering and into fraud—a whole range of other criminal activities—pill testing wouldn't come into their thinking. They would be looking at the Australian market, the price—it's a global business now.

**Senator HANSON:** You have an obligation to abide by the laws of the country and to enforce those laws. How is it that outside a venue it is illegal to take illicit drugs but you can go to a venue, have your pill tested and have it handed back to you and it's then okay for you to take that pill? Where is the line of what is classified as obeying the laws of the nation and not?

**Mr Kershaw:** If people possess those drugs and they're in offence then we'll enforce that.

**Senator CICCONE:** I want to follow on from your opening statement in relation to efficiencies. You said that the government had increased AFP funding by around $112 million in the recent budget. What was the efficiency dividend in 2018-19 and 2019-20?

**Mr Kershaw:** Is it okay for our chief operating officer, Sue Bird, to answer that question?

**Senator CICCONE:** Yes

**Ms Bird:** The efficiency dividend for 2019-20 from departmental appropriation was $5,700,000, and departmental capital budget was $399,000. That was for 2019-20 in the PBS.

**Senator CICCONE:** And for 2018-19?

**Ms Bird:** I don't have that right in front of me. I'll get it for you in a second, if that's okay, if you'd like to continue.

**Senator KENEALLY:** Could I follow on from that for a moment?

**Senator CICCONE:** Sure.

**Senator KENEALLY:** Last year at estimates hearings, Commissioner Colvin stated that the AFP faced 'a supply and demand challenge'. I refer and can table an article by John Coyne titled 'The downside of up: the AFP's supply and demand challenge'. Mr Coyne asserts that, while the AFP has received new money, in reality the additional resources are being used—and he's referring to new money in 2017—to hire staff into positions that had been cut previously to meet efficiency requirements. I'm happy to table that and to put that on notice, if you would be willing to comment on that observation by John Coyne from the Australian Strategic Policy Institute.
Ms Bird: Thank you. We will.

Senator CICCONE: You wouldn't happen to have those updated figures for 2018-19?

Ms Bird: I don't have them at the moment, it seems, so I'll get them to you as quickly as we can—in this session if we can.

Senator CICCONE: I jump back to press freedom. Commissioner, you would have seen today's front pages, and obviously Senator Keneally showed you The Australian. In my home state of Victoria, we've got the Herald Sun—as you know, Annika Smethurst was one of the journalists whose homes were raided—and The Age. Given today, but also the campaign leading up to today, are you concerned that your agency is perceived to be undermining press freedom in Australia?

Mr Kershaw: I think that's a good question. That's why I made the statements both in July and here today, and the fact that I'm doing a review into the way that we handle these matters. We now have a ministerial direction and an Attorney-General's direction.

Senator CICCONE: What do you plan to do, as the commissioner, to address these concerns? We heard earlier that you said that you'd try to catch up with the main editors from the major papers. But apart from a coffee what else is there in terms of a strategy?

Mr Kershaw: My intent would be—and it's what I've done previously—to work with the media and understand at a deeper level, besides what's reported, what some of the concerns are and how we can better execute our function at the same time as not traversing across the freedom of the press. That's something I'm really keen on pursuing. In the meantime, I have to make sure that our processes are being looked at and so on, and that's where those conversations and, I guess, information will be fed into that review.

Senator CICCONE: Okay. Does the AFP plan to have any further raids into any other media outlets or other journalists homes?

Mr Kershaw: Not that I know of! It's something that we'd be having a look at. We have to abide by some new guidelines. That hasn't come to my attention as of yet.

Senator CICCONE: If I could go off a comment earlier regarding gangs in Victoria: back in January 2018, Victorian Deputy Commissioner Andrew Crisp said that he believed that Melbourne did not have a gang problem and urged the media not to label groups of youth thugs as such. Do you agree with the sentiment of the Victorian police?

Mr Kershaw: Andrew's a really nice guy. I know Andrew. I think he's in another agency at the moment. They're his comments. That's his view. It wouldn't really be appropriate for me to give an opinion on his comments, because he's basing that on his own information.

Senator CICCONE: In your opening statement you also mentioned the need for appropriate training and support for your staff, which obviously is very important. I want to talk to you about the state of the mental health services within the AFP. How would you describe the AFP's mental health services that are currently available when compared to services on offer to employees in other typical departments?

Mr Kershaw: Ours are very good. We've got a number of different programs, initiatives and support mechanisms for our staff. As you know, I have mentioned that one of my priorities is to make sure both the physical and mental health of our staff is addressed and looked after. Often what happens is that a strategy that works for one particular staff member...
doesn't work for another, so we're constantly getting information back from the front end and our staff overall to see if those programs are working and making a difference.

It's quite complex, though, because it's an Australia-wide issue, mental health in particular, whether it be PTSD or traumatic incidents that people are going to these days. The AFP has contributed to Australia21 and other programs and had external consultants come in. We have chaplains, welfare officers and sworn and unsworn officers. The program is trying to address all of those issues and make sure that we're plugged into and connected to our workforce to make sure that when there is an issue in an area we can get into that prevention area to make sure people are looked after and so on.

I think part of my commissionship will be making sure we do care about our staff and we've got those right, whether they're debrief processes or interventions into the workplace. We need to make sure our workplace is a productive, healthy workplace and that when you leave this organisation—and a lot of people do a number of years—we still continue to make sure we look after you into those out years, because post your retirement is another area where some of these issues can manifest.

Senator CICCONE: So I'd be right to assume that the AFP would need more robust mental health services than other departments?

Mr Kershaw: We're a police force. We actually talk to the other police services about what their services look like. We've pretty much mirrored those. All of us are learning. Mick Fuller, the New South Wales commissioner, has taken me to one of his centres and shown me some of the approaches and innovations that they have. We're learning from each other. Again, I say that what works in one area may not work in another. Those are the things that are constantly on our radar.

Senator CICCONE: In early 2019 around $600,000 was provided by the government to the AFP for mental health initiatives. How has this money been spent?

Ms Bird: There was the proceeds-of-crime funding—$650,000 worth of funding—to develop a new health risk framework, policies and standards. Essentiallly, as you may be aware, the previous commissioner commissioned a report from Phoenix Australia into the mental health aspects. We also had an ANAO audit that looked at those services. As part of that the government did provide us with some funding to be able to deliver the recommendations of those two reports. There was $650,000 proceeds-of-crime funding in 2019-20 and $1.5 million, which was appropriated in 2019-20, to establish a project team to scope what the long-term police health model should look like. So, as Commissioner Kershaw has referred to, there's a large portion of work that needs to be done to analyse what the services have been in the past and what frontline policing is like now. Phoenix Australia was the first report ever commissioned specifically into police health, so, from that perspective, it's very informative. There are those two separate pieces of work going on at the moment.

Senator KENEALLY: Is there funding for those pieces of work? Is that what you are advising us?

Ms Bird: Yes, there is funding for that work.

Senator KENEALLY: For that audit work and an analysis of what needs to be done?

Ms Bird: Yes, so it's the analysis and the development of a police health model.
Senator KENEALLY: Has any of that funding gone into services for police?

Ms Bird: Yes, obviously we didn't stand still while we are also doing this report. A specific recommendation of the Phoenix report was that we should have a ratio of one health professional to 250 members of staff. We had certainly been working towards that outcome prior to that funding, but the funding has now enabled us to take a more strategic approach to that. We're sitting around one to 270, so we're progressing towards the 250 mark.

Senator CICCONE: How many AFP officers are currently on stress or mental health leave? Is that number up or down on previous years?

Ms Bird: I need to give some context before I answer that. We have an ageing workforce. Our average age is 42. One of the things that Phoenix drew out, which we had already learnt through our own experiences, is that mental health issues in first responders are cumulative, so particularly at risk are those with over 10 years of service. The longer you have been in service, the more likely you are to show symptoms of certain conditions. The other main point to make in terms of context is that one of the biggest barriers to this in any police force—and Commissioner Kershaw will probably have a view on this as well—is the stigma of reporting mental health issues, so our early work has been very much engaged with not only giving people confidence that it is okay for them to come forward with the fact that they might be suffering but also having the relevant services in place to help support them.

Senator CICCONE: I'm also concerned about what might be the knock-on effects. When one person is not well does that then impact on others? What support is there for the cohort when one officer is not well? That obviously will have an impact on their mates who are trying to support them. I want to know what services are around that as well, if you could quickly—sorry, Chair?

CHAIR: Senator Ciccone, you've gone well and truly over.

Ms Bird: We can actually give you a list of services, if that would be easier—we can give you the document.

Senator CICCONE: Yes, it would.

Ms Bird: Just very quickly though: one of the key things for us is—and you mentioned the teams—is that we're are delivering the Road to Mental Readiness training, which is a specific course which has been designed specifically for policing in Australia. One of the courses is pitched at supervisors of teams to be able to recognise these symptoms in their staff members as well as look after their own and how to lead on these things. The other is for team members to recognise symptoms in themselves and to take care of each other. That course is being rolled out right the way across the organisation.

Senator CICCONE: If you could take the numbers on notice, that would be great too. Thank you.

Ms Bird: Absolutely.

Senator ABETZ: I've got a bracket of questions relating to the Australian Workers' Union case involving the Registered Organisations Commissioner and the Australian Federal Police. First, can I ask: was the Australian Federal Police the second respondent in that case?

Mr Kershaw: Yes is what the general counsel just said.

Senator ABETZ: And did the AFP appear during the court case; and, if not, why not?
Mr Kershaw: No, is the answer.

Senator ABETZ: And why not—was it that no evidence was led against the AFP?

Mr Kershaw: It appears so, yes.

Senator ABETZ: How much did it cost the AFP to prepare for this case?

Mr Kershaw: I'd have to take that on notice, Senator.

Senator ABETZ: If you could, please and then can I ask: will the AFP be seeking to recover for, and on behalf of the taxpayer, the costs involved in circumstances where the Australian Workers' Union did not seek to lead one shred of evidence against the AFP but nevertheless had involved them and made allegations in the pleadings?

Mr Kershaw: Would we be seeking from—

Senator ABETZ: Costs against the Australian Workers' Union to recover the costs incurred by the taxpayer in the AFP preparing for this case.

Ms Bird: Can I just confirm: it's the costs in preparing for the court case or—

Senator ABETZ: That's right.

Ms Bird: We'll take that on notice.

Senator ABETZ: Thank you. Because I recall statements by, for example, the ACTU President Sally McManus asserting the government sends in the police; Brendan O'Connor, a shadow minister, saying that the AFP has been the government's political plaything; and Daniel Walton, the National Secretary of the AWU saying the AFP's actions were extremely politically motivated. This was all the hyperbole leading up to the court case but, when actually confronted with a hearing in court, not one shred of evidence was led, as I understand it, against the AFP to support any of those highly provocative assertions. Is that correct?

Mr Kershaw: I think what's clear is—and that's why I've asked for that review—that we do need to have a look and examine some of those processes as far as this matter and others go. That's where I have brought on Mr Lawler.

Senator ABETZ: But the Australian Workers' Union did not seek to lead any evidence to give credibility or support to those three public assertions amongst many others that were made against the AFP and the government in relation to your actions in visiting the Australian Workers' Union.

Mr Kershaw: I believe we've been removed.

Ms Bird: Yes, that's correct, and there was no wrongdoing found on the AFP's part.

Senator ABETZ: None whatsoever, and no evidence was actually led to even try to assert it.

Ms Bird: That's my understanding.

Senator ABETZ: So the white flag went up before the hearing even started, despite these highly provocative comments by trade union officials and one shadow minister.

Ms Bird: Yes, Senator.

Senator ABETZ: Thank you. I understand from the judgement of the Federal Court in this case that more issues still need to be resolved. What's the current status of the documents
that were held by the Australian Federal Police? Are they still being held by the Australian Federal Police?

Mr Kershaw: Yes. I believe they are.

Senator ABETZ: Good. Thank you. Has it been noted that the Federal Court found there was no time limit under the registered organisations act in relation to the pursuit of the matters the Registered Organisations Commissioner was concerned about and, therefore, your understanding is that the Registered Organisations Commissioner is free to continue to investigate?

Mr Kershaw: I'd have to take that on notice.

Senator ABETZ: If you could. Has it been noted that the Federal Court found there was no time limit under the registered organisations act in relation to the pursuit of the matters the Registered Organisations Commissioner was concerned about and, therefore, your understanding is that the Registered Organisations Commissioner is free to continue to investigate?

Mr Kershaw: I'd have to take that on notice.

Senator ABETZ: If you could. Is it the intention of the Australian Federal Police to make any submissions to any further hearings in relation to the documentation that is currently held by the AFP?

Mr Kershaw: I'd have to take advice on that so I will take that on notice.

Senator ABETZ: If you could. It is an offence to destroy documents that may be needed for the purposes of a court hearing.

Mr Kershaw: Is that a question?

Senator ABETZ: Yes.

Mr Kershaw: I'd have to look at the various legislation, but normally that would be correct—if it's evidence.

Senator ABETZ: Normally that would be the case. Thank you. Is the AFP currently conducting any investigation as to the destruction of documentation by the AWU?

Mr Kershaw: Not that I'm aware of, but I would like to come back to you appropriately.

Senator ABETZ: If you could. Is it also correct that, at least generally under criminal law, there is such a further crime of aiding and abetting an event?

Mr Kershaw: There can be. There can also be attempting or interfering with the course of justice and a whole range of different judicial type proceedings offences.

Senator ABETZ: So, in the event of documents being destroyed, it's not only the person who might be poking them into the shredding machine, but there might be criminal liability also attaching to those that may have encouraged or requested such behaviour, if it occurred.

Mr Kershaw: That's a possibility, yes.

Senator ABETZ: Thank you. To your knowledge, were the warrants that were issued by the magistrate in this Australian Workers' Union case granted on the basis that the magistrate was in fact satisfied that there were sufficient grounds to believe there was a real risk of evidence being destroyed at both the national headquarters in Sydney and the Victorian branch office of the Australian Workers' Union?

Mr Kershaw: I would have to take that on notice.

Senator ABETZ: If you could, please. Was the Australian Federal Police provided with the evidence put to the magistrate that there was a risk of documents being destroyed?

Mr Kershaw: I don't have any information on that. So again I will have to take that on notice.
Senator ABETZ: If you could, I would be much obliged. Can the Australian Federal Police confirm what was reported in the media, that Mr Walton, the National Secretary of the Australian Workers' Union, was visiting the Victorian office of the AWU on 24 October 2017, the day the search warrants were executed?

Mr Kershaw: I would have to take that on notice as well.

Senator ABETZ: You don't have somebody up the back who could tell us that?

Mr Kershaw: No.

Senator ABETZ: All right. Accepted. You may or may not be able to answer this on notice as well. In the event that there is, or will be, an investigation in relation to the destruction of documents, might Mr Walton, the National Secretary of the Australian Workers' Union, be able to assist the AFP with its inquiries—to use a euphemism—in relation to any allegation of document destruction?

Mr Kershaw: Obviously, we are open to anyone who wants to make a complaint or refer a matter to us. We will look at that.

Senator ABETZ: Thank you.

CHAIR: Thank you. You have the call, Senator Roberts.

Senator ROBERTS: Thank you. First of all, thank you very much for attending today, Commissioner. I want to acknowledge the professional approach of Australian Federal Police officers in all my dealings with them, and I appreciate their care. Mine is a simple question. Can you confirm that the Australian Federal Police will be responsible for policing the currency restriction cash-ban bill 2019?

Mr Kershaw: I'd have to have a look at that. I haven't got my list in front of me of all of the legislation that we enforce. But I will take that on notice.

Senator ROBERTS: If you are not responsible—and I am not aware of who is—could you advise us who will be?

Mr Kershaw: Sure.

Senator ROBERTS: If you are responsible, could you advise us whether or not the Australian Federal Police were consulted in the drafting of that bill?

Mr Kershaw: Yes.

Senator ROBERTS: Also, if you are responsible, have you any idea of how you would be able to enforce those provisions? Have you considered it?

Mr Kershaw: I will take that on notice and come back to you.

Senator ROBERTS: Thank you. Perhaps if you could also add: do you require any extra technology, such as data-trapping and data-matching capability or an additional budget to enforce this legislation? If you haven't considered that, then how do you propose to enforce this legislation—if it is your responsibility?

Mr Kershaw: I will take it on notice and get back to you.

Senator ROBERTS: Thank you. That's it.

CHAIR: I am impressed with your efficiency, Senator Roberts. Senator McKim.
Senator McKIM: Thanks. I just wanted to go back to the letter of apology to Mr al-Araibi. Could you inform the committee of what date the letter was sent to Mr al-Araibi?

Mr Kershaw: It was dated 17 October.

Senator McKIM: What was it that prompted you to send that letter? Just so that I'm clear—I understand what you were apologising for, because you have previously said that, but what was it that came to your attention that prompted you to send that letter and make that apology at that time?

Mr Kershaw: Once I became aware of the facts, my view was that it was the right thing to do.

Senator McKIM: How were you made aware of the facts?

Mr Kershaw: Basically through briefings, both verbal and through documents. It was my judgement and my judgement alone.

Senator McKIM: In coming to that judgement, were you aware of the report by the ABC's investigative unit that was published on 11 October?

Mr Kershaw: I do remember some media around this as well.

Senator McKIM: Did that play any role in your decision to offer an apology?

Mr Kershaw: I think part of that was knowing more about the facts, establishing whether or not that was the truth. As a police officer, I will always seek the truth. So, once I got the documented truth, I satisfied myself that it was appropriate for me to apologise.

Senator McKIM: Thank you. You have said in response to one of my previous questions this morning that you were only apologising for the one matter, if you like, which was the email that had been sent from Border Force to AFP that lay dormant for a number of days. In your briefings, did any other AFP matters come up in the context of Mr al-Araibi's case that you believe demanded your attention or any remedial action from AFP?

Mr Kershaw: No.

Senator McKIM: Thank you. Just going back to the matter I was asking you about earlier, which was the decision of the AFP not to investigate a leak of highly classified information—by the way, the chair asked me to table a copy of that, so I have a copy there for the secretariat. That is the story in The Australian by Mr Simon Benson of 7 February.

CHAIR: Thank you. I appreciate that.

Senator McKIM: Commissioner, it has been reported that the reason the AFP determined to take no further action in regard to the request by the department to investigate that matter based on the high number of suspects and the low prospect of prosecution. Is that accurate?

Mr Kershaw: Can you just ask that again, Senator?

Senator McKIM: Sure. It's been reported—and this is a report in The Guardian—that the reason the AFP decided not to fully investigate this matter was the high number of suspects and the low prospect of prosecution. Is that accurate? In other words, are those the reasons the AFP decided not to take this matter further?

CHAIR: Senator McKim, is that from the article you just handed up?
Senator McKIM: No, that's from another article that I also don't have a copy to table. Now that I'm beginning to understand how you would like these hearings to be conducted, please accept my apologies—

CHAIR: That's okay.

Senator McKIM: and I'll provide a copy of that story as soon as I possibly can. But I think, Commissioner, I can ask the question without necessarily referring to the story. Perhaps you could just say what the reasons were that the AFP determined it would take this matter no further.

Mr Kershaw: Was that the previous answer I gave around the 11 emails and the 200?

Senator McKIM: Yes, it's the same case.

Mr Kershaw: I would say the same as what I previously said.

Senator McKIM: Just to be clear, then, the reason that the AFP determined not to take this matter further was the large suspect pool?

Mr Kershaw: Yes—the limited prospects of us being able to successfully identify a central suspect or suspects.

Senator McKIM: All right. I'm not sure if the commissioner has a copy of the story in *The Australian* in front of him. It's the one I just tabled, Commissioner. The fact is that that story not only revealed highly classified ASIO advice; it also revealed the existence of a letter that was sent to the member for Mayo, Ms Sharkie, offering her a briefing and outlining why the government opposed the proposal to introduce what has become known as the medevac legislation. Was the fact that the story included that information considered by the AFP when you were making a decision about whether to proceed to a full investigation on this matter?

CHAIR: Commissioner, if you need the article in order to be able to proceed, you're entitled to ask for that—although it looks like it is coming from the back of the room now.

Ms Bird: Can I just check the title of that article in *The Australian* on 7 February?

Senator McKIM: It's 7 February, published at 12 am. The heading is 'Phelps bill a security risk: ASIO'—and, I'll just be clear, it ultimately wasn't. Ms Phelps tabled the amendments, which were passed. But I note that, yes, that was the title. Commissioner, if you have that story in front of you now, the paragraphs I am referring to are the ones that start 'Crossbencher Rebekha Sharkie will meet the Prime Minister this week' and 'Ms Sharkie received the offer late on Tuesday' et cetera.

Mr Kershaw: Normally media articles would not necessarily come into the decision-making of whether to continue with an investigation or accept an investigation, but I would like to take that on notice.

Senator McKIM: Sure. To assist you with your response to that, I understand that under normal events, media articles may not be considered, but the only reason we knew there was a leak in this case was, in fact, this media article. It strikes me that, even though you said earlier that there were only 11 emails—but you added the extra information that there were about 200 people who had access to the documents—even a preliminary assessment on whether to proceed with a matter ought to have utilised the other information provided in this article, which was that Ms Sharkie had been offered a briefing in a letter from the government and
that that information could have assisted the AFP in narrowing down the pool of potential suspects. So will you consider that in the provision of your response on notice?

Mr Kershaw: I think what's clear, from the information that I am relying on, is that we did accept a referral on 7 February from the Department of Home Affairs.

Senator McKIM: I am well aware that you accepted it, but isn't it the case that the AFP declined to fully investigate this matter?

Mr Kershaw: We reached a point where it was not reasonable for us to continue. That was the decision made by investigators and no doubt some senior officers.

Senator McKIM: You've taken on notice what the ranks of the decision-makers were in that circumstance.

Mr Kershaw: Yes.

Senator McKIM: Commissioner, we've got a situation now where there were raids by the AFP on News Corp offices and ABC offices. Investigations proceeded to at least that level on two separate matters where the leaking of the information was disadvantageous to the government, and yet in one circumstance where the leaking of information was advantageous to the government the AFP determined not to proceed to a full investigation. Do you understand how the optics of that look to people? I put myself in that bracket. I find it highly unfortunate that the AFP is in this position, because it seems on the face of it that different decision-making criteria were utilised in arriving at the decision to raid journalists and News Corp and the ABC on investigations into leaks that were disadvantageous to the government, but when a leak happened that was advantageous to the government—and was jumped on, I might add, by Minister Dutton on the very same day the information became public—the AFP determined not to proceed to investigation.

Mr Kershaw: We are apolitical, as you know. As police officers, we don't play politics. That's not our role. We're there to enforce the law. I'm reassured that the AFP has a proud history of not being politicised, as you would know. For me, I would reinforce the seriousness of people doing these unauthorised disclosures. I'd prefer that no-one actually did any disclosures. That would make life a bit easier for all of us. I do want to reassure you that part of the Lawler review is to look at all of these avenues and make sure that our processes are clear so that yourself and others and the Australian community understand that we're not a political organisation; we're a police force.

Senator McKIM: Understood. Will Mr Lawler have access to all the information that led the AFP to decide not to proceed further with the leak of the ASIO classified advice, and will Mr Lawler also be able to make recommendations in regard to future actions in that space?

Mr Kershaw: He'll be given access to whatever he requires for the terms of reference. He probably didn't know I was going to use his name so much today, but he's a very professional and competent individual. We've said, 'Whatever you need and whatever support you need to make your determinations, we'll supply that,' so if he deems that fit then he will get access to that.

Senator McKIM: All right. Thanks, Commissioner. To tie up this line of questioning, are you able to, in a really simple way, explain why the AFP determined not to take that matter further—that is, the investigation into the crime of leaking classified ASIO information to *The Australian* newspaper?
Mr Kershaw: I think what would be reasonable is if I took that on notice and came back to you with a more detailed reasoning and perhaps some of our thinking and processes so that that will reassure you.

Senator McKIM: Thank you, Commissioner. I do appreciate that. I'll end by saying that I've been a member of this committee for a number of years now, and the decision-making matrix that the AFP uses in situations like this is completely opaque. As someone who asked your predecessor—and now you—on a number of occasions about how the AFP arrives at decisions on whether to investigate or not, I have no idea what your decision-making matrix is, and I think it would help the AFP if that were made public.

Mr Kershaw: Most definitely.

CHAIR: Thank you, Senator McKim. We are chasing the clock, but we'll do one more session with Labor senators and then we will move on. Senator Keneally?

Senator KENEALLY: I have some questions regarding Taskforce Cadena, which is the joint agency task force for combating instances of visa fraud resulting from criminal syndicates abusing the migration system and to traffic in foreign workers. I understand that the task force is led primarily by Australian Border Force and the Fair Work Ombudsman but collaborates with the AFP. So, I just have some questions in relation to the AFP's role with Taskforce Cadena. In the AFP, how many people, in total, work under the auspices of Taskforce Cadena?

Mr Kershaw: I don't have any information on that at the moment. Regarding how many officers, I'd have to take that on notice. The Australian Border Force is the lead.

Senator KENEALLY: So, you're saying it's not a static number? Do they stand up and stand down, depending on whether there is activity? Or is there a standard allocation to Taskforce Cadena?

Mr Kershaw: I'd like to come back to you on that, if I can, because I don't have any information at this stage, and I'd just be speculating.

Senator KENEALLY: Just to borrow from Senator Abetz: there's no-one standing behind you who might have that information?

Mr Kershaw: I don't believe so, because our briefing doesn't include the numbers, so I would say we're going to have to chase that down for you.

Senator KENEALLY: Do you know what the process is that Taskforce Cadena follows to decide which agricultural properties it will raid? And do the AFP contribute to that process?

Mr Kershaw: Again, that's probably more in Border Force, for Commissioner Outram.

Senator KENEALLY: Okay. I will ask him. But perhaps I could put on notice the question of whether the AFP plays a role in the selection of agricultural properties to be raided.

Mr Kershaw: Sure.

Senator KENEALLY: Thank you. Do you know how many AFP officers would typically be involved in a raid?

Mr Kershaw: In a search warrant?
Senator KENEALLY: Well, on that task force.

Mr Kershaw: It just depends on the situation. We do a risk based assessment—planning, intelligence assessment. Normally you would make sure that it's a safety-first principle. So, depending on the nature of the warrant and the individuals we're looking at, it can vary at times.

Senator KENEALLY: What is the AFP's role on a Taskforce Cadena raid? What is their primary responsibility?

Mr Kershaw: Part of that is looking at the offences in relation to the Criminal Code and also obviously from an intelligence point of view to see what the links are to organised crime and transnational crime. That's important, and then where there are opportunities to utilise AFP's international network, or whether it be through Border Force as well. That's part of our role.

Senator KENEALLY: Do you know how many raids on agricultural properties the task force has conducted in the past 12 months and whether the AFP has been involved in each one of those? Or perhaps I could put the question another way: how many raids have the AFP been involved in?

Mr Kershaw: I'll take that on notice.

Senator KENEALLY: Thank you. Does the AFP have any role in determining whether workers have the appropriate approvals to work in Australia legally? Or is that a matter that is solely the responsibility of Australian Border Force?

Mr Kershaw: That would sit with Australian Border Force.

Senator KENEALLY: So, to be clear—I want to make sure I've understood you correctly—the AFP's role in relation to Taskforce Cadena is largely in terms of determining potential links to organised crime and potential offences under the Criminal Code and liaising with other police forces and enforcement agencies either in Australia or internationally regarding organised criminal activity?

Mr Kershaw: Yes. There are a number of things that the task force supports, in the national action plan, to combat human trafficking and slavery. They're listed, and I can read some of them out, if you like.

Senator KENEALLY: I suppose I was trying to understand the extent of the AFP's involvement in determining what property should be raided or how many officers are allocated to Taskforce Cadena and the role that AFP plays in planning or executing a raid. But if that's information you don't have in front of you, I'm happy to put that on notice.

Mr Kershaw: That would be great, thank you.

Senator KENEALLY: Thank you. Just to confirm, when it comes to the status of the workers, in terms of their legal or otherwise status to work in Australia, that's a matter for Australian Border Force?

Mr Kershaw: Yes.

Senator KENEALLY: Thank you. If I may, Chair, and I know we want to get through this very quickly, I have a couple of questions regarding the major outage in airport security in April 2019. I recognise this was an Australian Border Force security outage. I just want to know the impact, if at all, on AFP. I'm referring to when there were multiple systems down,
including the SmartGate facial recognition cameras, at major Australian airports for almost seven hours in April 2019. Did this have an impact on AFP investigations?

Mr Kershaw: I'll have to take that on notice.

Senator KENEALLY: Thank you. Have there been any other outages at airports that have impacted AFP investigations over the past 12 months and, if so, what were they?

Mr Kershaw: I'll come back to you. I will have to take that on notice as well.

Senator KENEALLY: Thank you very much. Chair, I'm fine.

CHAIR: Thank you very much, Senator Keneally. I really appreciate your effort to do that so efficiently. That concludes the time we will spend with you, Commissioner, and with the AFP. We will close this session and move now to the Australian Criminal Intelligence Commission.

Australian Criminal Intelligence Commission
Australian Institute of Criminology

[11:38]

CHAIR: I now welcome officers representing the Australian Criminal Intelligence Commission and the Australian Institute of Criminology. Would you like to make an opening statement before we go to questions?

Mr Phelan: No, thank you.

CHAIR: Senator Ciccone, you have the call.

Senator CICCONE: I want to ask a couple of questions regarding identity fraud. Am I correct in saying that identity fraud is one of the most common types of crimes in Australia?

Mr Phelan: Yes, you would be correct. I would add that as well as being the chief executive officer of the Australian Criminal Intelligence Commission I am also director of the Australian Institute of Criminology.

In answer to your question, yes, it's obviously a very important crime. The Australian Institute of Criminology in conjunction with the ACIC estimates that serious and organised crime in this country costs the community in excess of $47 billion, of which identity fraud would count for over $2 billion worth.

Senator CICCONE: Would it also be correct to say that identity crime is on the rise?

Mr Phelan: Yes, that would be correct.

Senator CICCONE: Would you provide any figures into what the latest stats are?

Mr Phelan: I don't have them in front of me, but I recently gave a lecture, last week actually, where we did talk about the cost of identity crime being in the vicinity of $2.2 billion to the Australian community. I can get a breakdown for you. I can take that on notice in terms of exactly what types of crime that is, whether or not it's online crime, whether or not it's identity theft and so on. But some of the disturbing figures that we did talk about were the prices on the black market, for example, of Australian identity documents. Given how our society and the position with which Australia is held globally, our passports, for example, are worth about $5,000 each, drivers licenses are over $600 and even a Medicare card with next to nothing on it is worth about $200 on the black market, so Australian identity documents are well sought after.
Senator CICCONE: On your organisation's website there are various PDFs, and one in particular has some stats from 2016 which reported that there was an increase of 8.5 per cent, so I'm interested to know what the latest figures are reflecting.

Mr Phelan: Certainly; I will take those on notice. I'll get the latest figures for you.

Senator CICCONE: I note the Australian Institute of Criminology has said that identity crime is a key enabler of serious and organised crime as well as saying that it's used to facilitate retail fraud and criminal crime—money laundering, drug trafficking and terrorism. What about identity crime in terms of travel, whether it be domestic or international?

Mr Phelan: Of course, Australia has pretty robust processes at the border. It's very, very hard to get into Australia's border with false identity documents, but no systems are perfect, which I think is quite clear. Those detailed questions on that are probably better addressed to the Australian Border Force in terms of travel documents. For example, the level of failure and the percentage of false identity documents they seize at the border would be best left to them, I would imagine.

Senator CICCONE: I guess people could use these identity documents to open things like bank accounts, credit cards and other items, and even apply for a passport?

Mr Phelan: Yes. Everything requires identity to be able to apply for it, and it's a cascading effect unfortunately. Once you get one, you can move to the next and move to the next and so on until you build up enough of a ledger, so to speak, to be able to change your identity or assume someone else's identity. But the processes in Australia, compared to other parts of the world, are pretty good, particularly in terms of our documentation verification system, which is run by the Department of Home Affairs. A lot of the data, of course, comes together through Australian systems. They're not all linked, but more and more of them are becoming linked, and that makes it more difficult—not impossible, but certainly more difficult—to assume someone else's identity. I'll never say that the system is perfect.

Senator CICCONE: How would you describe the level of sophistication of organised crime and people smugglers when it comes to identity fraud to facilitate that international travel?

Mr Phelan: It depends on the types of documentation and where they come from. Some are easier to obtain than others, particularly to facilitate international travel.

Senator CICCONE: Do you know the kinds of techniques they would use?

Mr Phelan: Stealing passports, stealing the identity of passports, having straight out counterfeit passports and travel documents. There are multiple ways to be able to do that. You can have a legitimate passport that's in a false name, or you could have a stolen passport where the picture looks the same, or, indeed, you could have a completely counterfeit passport.

Senator CICCONE: Are you also aware of any Australian or international statistics or research on the prevalence of identity fraud when it comes to travel documents such as passports, visas, national identity cards et cetera that could facilitate travel under fraudulent terms?

Mr Phelan: Not off the top of my head, but I can certainly take that on notice for those figures. I don't have a brief in front of me to do that, but there are a number of organisations,
including Interpol, that collect that data, for example, on missing and stolen passports, so the information may very well be available. I'm happy to take that on notice and do the best we can for you.

Senator CICCONE: Thank you very much. Have you had contact with the United Nations Office on Drugs and Crime on the issue of identity theft?

Mr Phelan: No, I haven't.

Senator CICCONE: In the role of a new senator you read many, many documents. One in particular I've got here is from the United Nation's Office on Drugs and Crime entitled *Global study on smuggling of migrants 2018* It says that smuggling of migrants by air is a business operated by organised crime. That 2018 study also notes that:

… smuggling networks are particularly sophisticated and creative in their efforts to obtain regular visas through fraudulent means.

Would you agree with that statement in this document?

Mr Phelan: I agree with the fact that serious and organised crime is very sophisticated and that, when it comes to crime throughout the world, it is global and sophisticated by its very nature. But criminals, particularly in the organised space, are looking for any particular vector they possibly can to exploit current systems that exist. It's incumbent on all of us, particularly those of us who work in the intelligence area, to try to identify those issues as best we can and then try to target-harden our own country and indeed help other countries to target-harden themselves so that we can at least close most of the loopholes. Some of those are legislative around the world. It's no surprise to anybody that criminals in a global world play a bit of legislative arbitrage around the world to try to find vulnerabilities. There are always vulnerabilities in a system, and criminals are no different to anybody else trying to find them. But here in Australia our job—and certainly the job of the ACIC—is to try and identify those by using all the powers that are at our disposal to put as much information as we can before policymakers, if necessary, to close any of those loopholes or to make it harder to operate in Australia or indeed to give specific information or intelligence and evidence back to law enforcement agencies to interdict and disrupt.

Senator CICCONE: So you would agree that it's difficult to detect people smuggling at our airports?

Mr Phelan: It's difficult but not impossible. Like I said, these are questions best put to Border Force in terms of the number of people they detect at the border with false documents in particular and fraudulently obtained visas. That is something I don't have in front of me.

Senator CICCONE: How can we be sure when people come through airports that they are not using false documents? Apart from looking at the documents going through the system, what measures are there at airports, if any?

Mr Phelan: Like I said, that's a question best directed to the department. I know from my own experience working overseas that the department is very forward leaning in terms of what it does offshore before people get on planes and in working with other agencies overseas to try to get people before they get on planes as well, particularly with false documents.

Senator CICCONE: In your opinion, given the increased risk of fraud and forgery of travel documents, can any government minister be correct in saying that people who arrive by air do so with valid travel and identity documents and that we know who they are?
Mr Phelan: I'm not in the habit of speaking for ministers.

Senator Payne: Sorry, Senator Ciccone, but I didn't hear all of your question.

Senator Ciccone: My question was: given the increase in identity theft and the forgery of travel documents—and I note that the government's talking points that were circulated last week mentioned that people who arrive by air do so with valid travel and identity documents—is that the case from your point of view and also that of the department? Thousands of people, if not millions, do end up coming through airports every year and yet they have fraudulent documents. How are we taking measures to stop that from occurring?

Senator Payne: I think Secretary Pezzullo is much better placed to respond on behalf of the Department of Home Affairs than I am, but the evidence that Mr Phelan has provided in relation to those travel documents and air arrivals is, I think, on the record. But I will ask Mr Pezzullo to add to that.

Mr Pezzullo: I think the best way to answer your question is that, when the relevant experts, including from our identity and biometrics division, are here this afternoon, along with their colleagues in Border Force, they can give you chapter and verse on the measures we have taken, particularly in the last five years, to make Australia one of the hardest targets in the world. It's very hard to penetrate our defences, and there are a whole series of layers. You referred to on arrival at the airport. The processing starts upon application weeks or, in some cases, months prior to arrival. In the last five years alone we have seen a dramatic increase in the refusal rate. Some of that relates to a unmeritorious visa applications, but some of it does relate to fraudulent resumes, fraudulent CVs, fraudulent associated documents and, in some cases, fraudulently obtained passports and/or visas.

We do a lot of comparative work with our international partners, both with our Five Eyes partners and with others. We've got one of the hardest targets simply because we have a universal visa system, which is the gold standard of having a strong defence at the border, and then that triggers a lot of processes, of both an identity and also a biometrics character, that would give ministers and, through ministers, this parliament a greater level of assurance than you would have in some other jurisdictions. But I think the best way to deal with this line of questioning, if it suits the committee and you particularly, Senator, is to ask the experts when the department appears, especially those experts who spend their lives on identity and biometrics.

Senator Ciccone: For me, it's just trying to make sure there is an assurance to the Australian public that the government can give that assurance—and given you are the secretary of the department that you can make that commitment—to the Australian public that these documents are being picked up at the airports.

Mr Pezzullo: Yes, I can. Absolutely.

Senator Ciccone: We've had an increase of people coming through airports who are caught up in people smuggling, and there have been a lot of reports of late of people being trafficked to work on farmlands and other areas of the horticultural industry.

Mr Pezzullo: That is asserted, Senator.

Senator Ciccone: What I want to know is: is there any assurance that you can provide to the Australian public?
Mr Pezzullo: That's asserted, but I'll be dealing with some of those matters, no doubt, when the department appears both in its own right, and with Border Force. But in terms of the line of questioning to the Australian Criminal Intelligence Commission, they are great partners, they work with us to assist us, but it's really predominantly a matter for the department.

Senator CICCONE: Are you aware of the United Nations Office on Drugs and Crime document?

Mr Pezzullo: Yes, I am. I think it was published in 2018, from recollection.

Senator CICCONE: That's what I said earlier, yes.

Mr Pezzullo: I'm well aware of it, and it would not surprise me and my colleagues in the border, intelligence or customs agencies around the world that this is a tough challenge. When I speak to them, they say to me: 'I wish we had your settings, principally your universal visa system, your uptake of biometrics collection and your identity systems that are linked to your intelligence systems. None of these occur in our jurisdictions.' Their immigration authorities tend to be outside homeland security or interior ministries, which is one of the great structural flaws in those jurisdictions, and I look forward to presenting this committee with relevant supportive data when we appear later on this afternoon.

Senator CICCONE: Was the ACIC invited to the United Nations Office on Drugs and Crime conference earlier this year, in June?

Mr Pezzullo: That's a matter I'll hand back to Mr Phelan.

Mr Phelan: doesn't ring a—

Senator CICCONE: So you're not aware?

Mr Phelan: No, I'm not aware.

Senator CICCONE: Can you outline what Project Jacto is?

Mr Phelan: Does't ring a—

Senator CICCONE: It's from the 2017-18 ACIC annual report.

Mr Phelan: I only have my 2018-19 report in front of me.

Senator CICCONE: Do you know anyone who has the 2017-18?

Senator Payne: Optimistically, I see Mr Phelan also has the budget papers—perhaps in case there are questions going to the budget.

Mr Phelan: If you give me some context, I am happy to try and answer the question for you, but the operation name doesn't ring a bell with me off the top of my head.

Senator CICCONE: In the annual report—as you haven't got it in front of you, I'll quote some of it so that you can take it on notice—it says:

As a result of our work under this special operation, we developed key intelligence holdings about a significant number of Malaysian visa applicants who were breaching the migration system and circumventing migration controls. This included identifying key labour hire facilitators in Australia and Malaysia who were involved in serious and organised crime activity. We also identified facilitation of migration within Malaysia, including through corrupt officials. This work enabled the Department of Home Affairs/Australian Border Force to undertake focused targeting of entities involved.
I just want to know if your agency has provided any briefings on the rising risk of people coming here by plane to any other agencies? If so, when and why?

Mr Phelan: I'll have to take that on notice, but it's not to my knowledge that have we done anything additional to that. We do have a reference, so a special operation or special investigation, under the act that is authorised by the board, which does allow us to use some of our coercive powers in relation to migration fraud on those serious and organised crime entities trying to defeat Australia's migration system. We have from time to time used those coercive hearings. As a result of those coercive hearings, the intelligence is primarily passed on to either the Border Force or the department's intelligence section directly.

Senator HENDERSON: Mr Phelan, I'd like to ask you about the issue of ice in Australia. From your perspective, what are the international trends? What is being done? Where are the drugs coming from? Could you give us a bit of a picture about your work in this respect.

Mr Phelan: Particularly in relation to ice, or crystal methamphetamine, there is no doubt that it is a massive problem in Australia. It is by far the largest amount of drugs, by volume, used in the community. As you would be aware, we commissioned two Australian universities to carry out an analysis of Australia's wastewater system. We have one of the most robust systems in the world for determining how much illicit—and licit—drugs are used. When it comes to ice, unfortunately the latest figures, which we've had year on year, show that 9.8 pure tonnes of ice were used by the Australian community. The next largest amount was cocaine at 4.1 tonnes, and then we move to MDMA at just over a tonne and heroine at three-quarters of a tonne. To put that into perspective, at the retail level—and this is mums, dads, uncles and aunts—people in the community are paying their drug dealers about $7.8 billion a year. Think of the opportunity cost of that. Sorry, I can sit on my soapbox for ages about this, because it's something that distresses me greatly, having worked with the Australian Federal Police for so long.

Senator HENDERSON: It distresses so many families right across this country.

Mr Phelan: You see not only the terrible effects that it has on communities but also the amount of money that is spent. Interestingly enough, the commission has also recently published a report on the effect of law enforcement seizures on ice usage in Australia. We were able to overlay the wastewater data, for the three years that we've been able to collect it, with major seizure data by either the Australian Federal Police or the Australian Border Force. We took the seizures that were over half a tonne, because that's obviously relatively large, and we were able to see that, about two to three months after each of those major seizures, there was a drop in usage before it went back up again. For the first time—certainly in my time as a law enforcement officer—we were able to empirically prove that law enforcement activity actually made a difference to the amount of drugs that were being used, certainly for ice.

It's all well and good for us to pontificate about these things happening, but the purpose of that was to show that there is a time and a place to hit with demand reduction strategies, and that is probably when the usage is going down. We've helped our policymakers, certainly within Health, and they've been very grateful for the data we've been able to put together so that we can tackle the problem together.
I heard Commissioner Kershaw talk about the purchase price of drugs in Australia. It is a truism, but drugs are no different to any other commodity. The price is solely based on supply and demand. Unfortunately, in this country the demand for all sorts of drugs is insatiable, and the supply side is rather robust. For example, for ice, the wholesale price has not changed at all—roughly, give or take 10 percentage points—over the last 10 years. It's roughly $120,000 or $130,000 a kilo at the wholesale level. It just goes to show that the supply side is very robust. Having said that, law enforcement, when it makes large seizures, can make a difference. So there is a lot going on in relation to ice, particularly with wastewater and working out where to target. We have, per capita, a larger problem in rural areas than we do in the cities in relation to ice, but also—

Senator HENDERSON: Why do you think that is?

Mr Phelan: I don't know. It's hard to say. Maybe it's choice in the cities. There's a little bit more choice in terms of other drugs to be able to take. But one of the things that's very interesting is that, when it comes to the wastewater review, it's good for a strategic intelligence product, but the states and territories have really taken it on board to carry out their tactical operations. One particular jurisdiction—which I won't name because I haven't said I would name them, and I think that's a bit unfair on them—had one particular regional area that had a large amount of usage of ice—because we give that granular detail back to the states and territories, such as which treatment plants it had come from, and they work out their catchment areas. They embarked on a six-month operation to really hone down on the dealers in that particular area, and the wastewater report showed that afterwards they had a marked reduction in the amount of ice usage in that particular region. That was a regional area in our country. It goes to show that the coalescence of data can actually work from a strategic point of view but actually to a tactical advantage of law enforcement officers. And one of the reasons we exist is to be able to provide that information.

Senator HENDERSON: Obviously the government is investing very significantly in combating the terrible dangers of ice. Do you believe that you are winning the war against ice?

Mr Phelan: Winning the war? So long as there is a high demand, then, no, we are not winning the war. We're doing our best, but there needs to be an effort from everyone involved. Given the data, to suggest, for example, that law enforcement ease up is not something that should happen. We've shown empirically that law enforcement activity, in particular by the Australian Federal Police and Border Force, will have a positive effect. There are lots of other factors that need to be brought to bear before we talk about winning the war, or battles for that matter, very much around demand reduction. I didn't say harm minimisation; I mean demand reduction. They're two different things.

CHAIR: An important distinction. Any other burning questions, since we are now out of time?

Senator CICCONE: I don't have a question, but I just want to let you know that we found the section relevant to Project Jacto. I'd be happy to table that for your benefit, if that makes it easier for you.

Mr Phelan: I'll find it from last year's annual report and report back on notice in any case. Thank you, Senator.
CHAIR: Thank you very much. I thank you each for your assistance today and offer you, Mr Phelan, the opportunity to be dismissed.

[12:03]

Australian Transaction Reports and Analysis Centre

CHAIR: I call officers from the Australian Transaction Reports and Analysis Centre, AUSTRAC. Welcome, Ms Rose. Welcome, Senator Cash. Would you like to make an opening statement, Minister, before we begin?

Senator Cash: No, that's fine.

CHAIR: Ms Rose, would you like to make an opening statement?

Ms Rose: No, thank you.

Senator KENEALLY: I'd like to ask some questions regarding the guidance that AUSTRAC provides on its website to assist regulated entities to comply with their AML and CTF obligations. Can you please describe the role of that guidance for the committee?

Ms Rose: AUSTRAC has a very large remit in the number of entities. We've now got over 15,000 entities that we regulate. We take a risk based approach and a guidance approach to that regulation. We are quite small, and obviously we want our entities to be the first line of defence against money laundering and terrorism financing. So, the guidance is attempting to get our entities to look at what they can do to strengthen their organisations and therefore the financial system against money laundering and terrorism financing and not having a tick-a-box compliance approach.

Senator KENEALLY: Terrific. Thank you. Has there been any change to how you are providing that guidance recently?

Ms Rose: Yes, there has. I started two years ago, and one of the things that I'm looking at doing is making regulation easier for small businesses to comply with. A lot of those 15,000 entities—in fact, the majority of those 15,000 entities—are small to medium businesses with a great deal of compliance across the board to manage. We want to look at making it easier for them to comply with the specific money laundering and terrorism financing requirements. So, we're looking at a more educative response rather than a strict compliance response.

Senator KENEALLY: I understand, though, that the removal of the guidance has been described by one stakeholder as 'undergoing a refresh'.

Ms Rose: Yes.

Senator KENEALLY: Would that be a fair way to describe the process you've just outlined?

Ms Rose: There is a refresh, but there's also legislative change that's occurring and has occurred in the past two years, and a bill's just gone up this week for further legislative change and streamlining. So, that will be ongoing refreshment, if you like, of that guidance.

Senator KENEALLY: Has the guidance been removed completely from the website?

Ms Rose: Not to my knowledge.

Senator KENEALLY: It hasn't been removed completely?

Ms Rose: Not to my knowledge, but I'll have to take that on notice, because I wasn't aware that it had been removed.
Senator KENEALLY: I also understand that the website no longer contains guidance about suspicious matter reports. Is that correct?

Ms Rose: I don't believe that's correct, but I'll check on that, because that's one of our most important guidance documents about suspicious matter reports, particularly because not only are we helping the entities understand what they have to do but also the better they comply with those suspicious matter reports the better-quality intelligence we then get and can provide to law enforcement partners.

Senator KENEALLY: Okay. We'll put that on notice, and we may see if we can get a printout from the website. It seems that the guidance has been either moved or removed. Perhaps I can also ask: we hear a lot about what AUSTRAC does with the big banks, but what about other potential risk areas for CTF and AML? As I understand it, AUSTRAC does not regulate non-financial businesses in professions such as real estate agents, lawyers and accountants. Is that correct? Are you aware of what the money laundering or terrorism financing risks are in the real estate industry, for example?

Ms Rose: There are a couple of questions there. Do you want me to answer your first one, about what we're doing with smaller entities, other than banks?

Senator KENEALLY: You don't regulate real estate agents, lawyers and accountants for AML and CTF?

Ms Rose: No, but we regulate money remitters, which are thousands of our entities, and we've just done a massive campaign across three states to look at all of the remitters, because quite often they're family businesses organising to send money home to families.

Senator KENEALLY: I understand that you do that. I'm trying to understand whether AUSTRAC has done any work to understand what the money laundering or terrorism financing risks are in businesses like real estate agents, lawyers and accountants.

Ms Rose: We call them professional facilitators. They're a group that's looked at, particularly internationally, through the Financial Action Task Force, which we're a member of, and The Egmont Group. Any countries around the world specifically regulate those entities; others just educate them. At this stage, we are educating those sectors, those border areas, as we look at high-risk areas, because not all of those professional facilitators are high-risk entities. Some are, and we've done risk assessments in the past, and we're doing some in the future about what particular areas we need to focus on.

Senator KENEALLY: Are you aware of any real estate agents prosecuted for money laundering or terrorism financing over the past three years in Australia?

Ms Rose: I'd have to check with the AFP, but there certainly have been a couple of professional facilitators. I can't recall exactly whether it was a real estate agent or an accountant that was involved in a money-laundering case with the purchase of property, but I can take that on notice.

Senator KENEALLY: Thank you. You made reference to other countries that will take a different approach. It's my understanding the United Kingdom does regulate such businesses for anti-money-laundering and counterterrorism financing.

Ms Rose: Yes.
Senator KENEALLY: Is that something that is under ongoing consideration by the government?

Ms Rose: Yes, it is. It came up in the 2016 review, and it was one of the recommendations. We are continuing to work with government on the risks and pros and cons, because, of course, regulating those entities would likely have a cost to many of those small businesses, so that's something that government is considering.

Senator KENEALLY: I'm aware that Senator Kitching has a question. I might cede some of my time to her.

CHAIR: To accommodate your committee juggling? That's fine.

Senator KITCHING: Thank you. I'm committee hopping, which sounds like it's more fun than it is.

Firstly, thank you for your time, Ms Rose. I'll limit my question to the last year of media reporting. Is AUSTRAC looking for—Mr Pezzullo might have a view on this—increased resourcing in terms of employing language experts and employing more analysts et cetera? Has that already started? I'm sure you know of the media reports to which I'm referring—not just in print but also, obviously, in Four Corners.

CHAIR: Do you have those?

Senator KITCHING: I don't have them on me. I think Ms Rose knows what I'm referring to.

CHAIR: Ms Rose, if you feel you need them, let us know and we will provide an opportunity for that to be found and given to you, but if you are comfortable to go ahead, do so.

Ms Rose: I've got a general understanding.

Senator KITCHING: I'm not looking for a particular comment on a particular article, but, obviously, there's the Four Corners program on money coming through the casino. Are you looking for more resourcing? Do you feel that it's necessary for language experts, for example? Obviously, there are some languages where one might encounter almost a cryptographic view on that, and analysts.

Ms Rose: Language experts, not so much, because we're looking at financial material. The language experts are more often used in the law enforcement agencies. We do have a number of language experts in our areas and posted overseas who are actually working with our counterparts in other countries. With regard to more resources, we're not necessarily investigating the need for more resources, but we are investigating the need to upgrade our IT systems, because of the data volume increase. Since a number of our high-profile enforcement actions and certainly the Wood royal commission, there has been, in some instances, a 580 per cent increase in data that has come through. That's something that we're not going to ingest using more people; it's something for which we're going to need more data analytics and big data facilitation for. We are looking at that internally with AUSTRAC, and we think that we can do much of it with what we've got now, but we're midway through that process.

Senator KITCHING: Just to follow on from Senator Keneally's the question, in the 2015-16 review there was found to be about a billion in questionable investments from Chinese investors. Has that been addressed?
Ms Rose: I'd have to take that on notice. I'm not sure what 2015-16 review you're referring to, whether it was an internal AUSTRAC review or—

Senator KITCHING: I think in 2015-16 AUSTRAC found about a billion dollars in suspicious transactions. I'm wondering whether there has been a review process from that. I'm wondering whether that's decreased, the amount of the suspicious transactions in a dollar figure? In any event, is that being analysed?

Ms Rose: I'll take the action on notice. But what I can say with the suspicious matter reports is that when they come in AUSTRAC will analyse those, and if we can find actionable intelligence—that is, we can make sense of those transactions—we will then create an intelligence product that we provide to our law enforcement partners, and then they decide what sort of investigation is ongoing.

Senator KITCHING: New Zealand has already passed laws in relation to real estate agents, solicitors, accountants, for example, and Senator Keneally asked about that. Have such laws improved, had a positive impact, in other jurisdictions—for example, in this case New Zealand?

Ms Rose: Through my discussions with New Zealand it's too early for them to tell. It's only been recent.

Senator KITCHING: But you are looking to see whether it's going to improve?

Ms Rose: Absolutely. We have a very tight Five Eyes group of financial intelligence units and this is something that we discuss about four times a year, looking at each other's experiences and the pros and cons. If we are regulating 15,000 entities now, if we went to regulate every single one of those professional facilitators we'd go to around 110,000, so we really do need to balance the benefit of what we get out of regulating every single one of those to maybe just the high-risk areas, so that's what we are doing.

Senator KITCHING: I can see that point. Thank you very much.

Senator CHANDLER: Ms Rose, could you give me a bit more detail about the Fintel Alliance?

Ms Rose: The Fintel Alliance was a trial, if you like, that was set-up in 2017, and it was the first of its kind. It is a private public partnership that we are in with banks and other government departments. At the moment, we have got just under 30 members. All of the main banks are members and a number of remittance companies, like PayPal, are on there. We have also got some other intelligence agencies and law enforcement agencies. What they do that's different to anything we have done before is in our Sydney and Melbourne offices we have members of those agencies, so a financial intelligence officer from Commonwealth Bank will come and sit next to one of our AUSTRAC analysts, and they will actually look at a crime issue together using the AUSTRAC available data and the data that only that entity has access to. As a result—we are about to release our first annual report—we've had some fantastic crime outcomes that we would never have been able to have solved before because we have got those two sets of information.

Senator CHANDLER: Can you give us some examples of those crime outcomes?

Ms Rose: Yes. For example, a good one is in child exploitation. There has been a great deal of work done on methodology and typology for online child exploitation. That's where
we have got offenders in this country paying money to facilitators in another country to perform acts of abuse on a child. It's quite difficult to track because they are relatively small amounts of money and they are often written down as gifts or schooling fees or something like that. We have worked with banks particularly, and our Western Union-type organisations, so that they will highlight those transactions. They will bring those into the Fintel Alliance. We will then try and match them with what we know using our Australian records and provide actionable intelligence that we can then present to a law enforcement agency to actually go and start knocking on someone's door. That work, in just the first year, has resulted in about 35 victims being saved or protected, and, in just the last couple of months, three individuals have been detained or arrested as a result of that. It is only in its initial stages.

Senator CHANDLER: And that's just in the child exploitation space?

Ms Rose: That's just in the child exploitation space.

Senator CHANDLER: So 35 children have in effect been saved as a result of the work you are doing?

Ms Rose: Yes.

Senator CHANDLER: That's fantastic.

Ms Rose: Yes, it is; it's great.

Senator CHANDLER: And what other crimes areas would you also be doing work in?

Ms Rose: We look at a number and they'll do it on a project basis. They'll look at terrorism financing. That is another quite difficult one to track because, again, you are looking at what could be a family that is simply sending money to relatives at home. How do you then track that to see if it is actually someone financing terrorism? You need to be working with the financial intelligence unit in the other country. A lot of what we do relies on the intelligence in our partner country. Fintel Alliance looks at some of the suspicious transactions, and the countries of higher risk, and then looks at the background details of the likelihood of some of those transactions being terrorism financing. And then, when they come up with something they think is actionable, we'll provide it to the relevant police force.

Senator CHANDLER: Sorry, did you say in your first contribution on this topic how many partner countries we have?

Ms Rose: We have MOUs with over 90 partner countries, and we have staff embedded in five overseas locations sitting in the FIUs or in posts in other countries.

Senator CHANDLER: And you said that this was initially part of a trial. It is now a permanent program?

Ms Rose: It is. We've just had nearly $30 million provided to make the trial permanent and make Fintel Alliance an ongoing part of AUSTRAC.

Senator CHANDLER: Fantastic. Would there be any scope to, for example, increase the number of partner countries that you are pairing with or increase the number of crimes that you're looking at as part of that increase in money?

Ms Rose: With partner countries, yes. It starts to get a bit more difficult with countries with, say, death penalty provisions. And it is partners internally, too; as we get more confident
with our privacy rules and our risk approach, we then want to broaden our domestic engagement as well.

Senator CHANDLER: Fantastic. It certainly sounds like you're doing very valuable work through that initiative. Well done.

Ms Rose: Thank you.

Senator HENDERSON: Ms Rose, in the wake of the very significant fine levied against the Commonwealth Bank of Australia, can you give us an update on how the culture of some of our banking and financial institutions might have changed as a result of your very, very tough action? You've also indicated, in some recent comments you have made to the media, that you are looking at imposing more legal action and also fines. If you could upgrade the committee on that work, we would be most grateful.

Ms Rose: We are looking at ongoing enforcement action. We have intentionally looked at increasing our enforcement tempo. I can't tell you what specific areas they are, but they will be a couple of areas that aren't necessarily just focused on the big banks. As I say, we have over 15,000 regulated entities. That will be ongoing in the next six to 12 months.

As far as the big four banks go—let's talk about the Commonwealth Bank, because it was the action against them. Their response has been fantastic. I am very impressed with the approach they have taken. They've had a number of days that have focused simply on financial crime, money laundering and terrorism. They are looking at changing the culture. They are training their staff, from the bottom up, about the importance of this area of compliance. Their engagement with us has increased extensively. They have been very proactive in the Fintel Alliance and engaging us in how to better provide suspicious matter reports and better quality data. So I really can't fault them on their reaction to that enforcement action, which is great.

In regard to the other three big banks, there have been very similar reactions. All the boards have been forthcoming in wanting to engage with AUSTRAC and provide us with assurance that they're taking it very seriously. Of course on this Australia has been a little bit behind the rest of the world. Internationally a number of the bigger banks have dealt with money-laundering scandals but we hadn't here in Australia. I think it's certainly a message that has resonated now throughout the banking community.

Senator HENDERSON: And you're confident that we're not going to see a repeat of the sort of conduct that we saw from the CBA?

Ms Rose: I certainly don't believe that there will be surprise now if action is taken. We probably took a number of entities by surprise that we would actually take that action—that this was being taken very seriously. Banks and financial institutions are incredibly complex businesses. They're very competitive in what they're providing technology wise to customers, and quite often that technology is in getting in front of all of the checks and balances that are occurring. That's always going to be a risk, and that's something we're asking them to really put upfront when they're starting to change technology and implement new projects. They've got to put this risk approach in for particularly money laundering and terrorism financing. Also, because of the action, many of them are going back and looking at what they've done for the last couple of years and self-disclosing areas that they have failed. We are working
with many of them in those areas of self-disclosure and seeing if there is anything more there and dealing with them as we go.

CHAIR: Senator Henderson, I'm going to interrupt you there, if that's okay.

Senator HENDERSON: Yes. Thank you very much. Thank you, Chair.

CHAIR: I did undertake to give Senator Keneally another go.

Senator KENEALLY: Thank you, and I will be as brief as possible. I appreciate it. I will table a printout we just did from the AUSTRAC website regarding suspicious matter reporting. It does seem to suggest that there has been some documentation removed. There are only two videos on there. I understand that previously there was documentation available particularly targeted at the banks. I table that. I'm happy if you would like to provide any updates.

Ms Rose: I do have an update, and it's contrary to your advice. I've got it here that it is all on there. We've just updated our website to make it easier to use and we have moved some of those documents. So either we haven't succeeded in making it easier to use, because you can't find them, or there is some misunderstanding. I'll take that on notice because my advice is that it's there.

Senator KENEALLY: That would be fantastic, thank you. I have a quick question about AUSTRAC's 2017-18 report, which says it provided 'regulatory relief to industry by deregulating the cash-in-transit sector'. My understanding is that that means that cash-in-transit providers are no longer regulated by AUSTRAC. What prompted that change and who authorised it?

Ms Rose: As part of our streamlining regulation, there was a low to negligible risk in the cash-in-transit sector for money laundering, and it was decided that, for the effort that was put on those small agencies, there wasn't a risk there in money laundering that we thought required them to be an ongoing entity. That was just before I started, so I would have to take on notice who actually authorised it. I suspect it is under the CEO's powers.

Senator KENEALLY: That's why I'm asking. Is it under the CEO's powers or does it require ministerial approval?

Ms Rose: I'd have to check.

Senator KENEALLY: Thank you, I'd appreciate that. Since this regulatory relief was provided has AUSTRAC had any reports of organised crime or other criminal groups moving into this sector?

Ms Rose: Not to my knowledge, but I'm happy to take that on notice.

Senator KENEALLY: I would appreciate that. Let me put it this way. Have you proactively sought to find out?

Ms Rose: My understanding is that after the deregulation occurred we did work with the industry because they had some concerns. I don't know what the outcome was of that engagement, and I'd have to check if there have been any proactive—because we are not an investigative agency, we wouldn't go out and investigate, but we would action if there were any suspicious matter reports or intelligence that had come to us indicating that there was a problem.
Senator KENEALLY: I suppose it's not so much the concern about a suspicious matter but rather the literal replacing of one stack of bills for another. If criminal organisations move into the business of actually moving money around, they're actually able to physically replace one set of bills with another.

Ms Rose: They are, but cash in transit normally works between moving money between our regulated entities. So, whether it's leaving or entering the bank or it's leaving or entering, say, a remittance provider, we would be expecting the reporting would be covered by the institution that that cash is moving in or out of.

Senator KENEALLY: So you would be relying on the banks to report any matters or concerns to you?

Ms Rose: Yes.

Senator KENEALLY: Is there any way that you've sought that information from the banks as a follow-up to the regulatory relief?

Ms Rose: I couldn't say specifically, but I could take that on notice.

Senator KENEALLY: I would appreciate that, thank you. I will leave it there and put the rest of my questions on notice.

CHAIR: That's really generous of you because it means we are running perfectly on time—thank you, Senator Keneally. We will shortly suspend. Ms Rose, you're excused.

Thank you for your assistance today.

Proceedings suspended from 12:31 to 13:30

Australian Security Intelligence Organisation

CHAIR: Would you like to make an opening statement, Mr Burgess?

Mr Burgess: Thank you for the opportunity to provide some opening remarks. I commenced as the Director-General of Security on 15 September, and I'm pleased to make my first appearance before this committee today. My initial observation as director-general confirmed what I have long known: ASIO is extremely well regarded, both here in Australia and overseas; it is a professional agency staffed by dedicated and passionate people who work tirelessly to protect Australia and Australians from security threats.

While ASIO necessarily operates in secret, it is a highly accountable organisation and well developed in its approach to deploying investigative tools and authorities. The use of ASIO's powers is always applied proportionately and with consideration to changing circumstances. ASIO regularly revisits assessments and amends as appropriate if information supporting a security case is changed. In my view, this is an example of a healthy organisation, one committed to operating with integrity and respect.

For partnerships, these are critical, particularly with intelligence and law enforcement agencies. The joint counterterrorism teams have demonstrated a proven and effective capability to rapidly mobilise Commonwealth, state and territory resources to achieve significant security outcomes. Within the Home Affairs portfolio and the broader national intelligence community, I'm pleased to report close cooperation between agencies on important national security matters.

I'd also like to acknowledge the importance of ASIO's international partners. These partnerships make a difference and help protect Australia and Australians from security
threats. Most importantly, ASIO works in partnership with the community. The relationship between ASIO and the community is based on trust, and this is one of the reasons why I will stringently avoid identification of individuals, sources and methods when speaking in any public forum. While ASIO has a variety of powers and capabilities that we can draw upon, it is often through the assistance of everyday Australians that we are able to detect and counter serious security threats. To those Australians I offer my thanks.

The security environment: we face an unprecedented level of threat, across both our counterterrorism and counterespionage foreign interference missions. These threats are not constrained to one section of the Australian community nor a single nation-state. ASIO identifies and investigates threats to Australia wherever they arise. The threats determine ASIO’s interest and investigative activity.

On counterterrorism, extremist groups involved in the conflict in Syria and Iraq, particularly ISIL, continue to inspire, radicalise and direct individuals in Australia to support and engage in politically motivated violence. Additionally, the threat of violence from the extreme right wing continues and remains a subject of close ASIO attention. The terrorism threat level for Australia remains at ‘probable’. Credible intelligence assessed to represent a plausible scenario indicates an intention and a capability to conduct a terrorist attack in Australia.

I’d like to turn briefly to our security mandate, of protecting Australia and Australians from espionage and foreign interference. This is a fundamental to ASIO’s work—catching spies was our original reason for being. ASIO assesses that the current scale of foreign intelligence activity against Australian interests remains at an unacceptably high level. Hostile intelligence activity continues to pose a real threat to Australia, our sovereignty and our security.

In closing, I would like to take this opportunity to acknowledge the leadership of the former Director-General of Security, Mr Duncan Lewis. Mr Lewis led ASIO for the last five years, through an extremely challenging period, with the concurrent rise of threats from terrorism and foreign interference. I’d also like to extend my thanks to him not only for his significant contribution as the director-general but also for his service to his country throughout his professional life. Lastly, as ASIO’s 70th anniversary ends, I’m committed to ensuring ASIO remains fit for purpose and that we are appropriately equipped to respond to the enduring and future security threats.

CHAIR: Thank you. I notice you had some notes you’d been working off. Are you prepared to provide a copy of the written version of your opening statement?

Mr Burgess: Thank you very much. I'll have someone from the secretariat come and collect that from you. It's much appreciated. I'll hand the call to Senator Keneally.

Senator KENEALLY: Thank you very much, Chair. Thank you, Mr Burgess and Dr Southern, for being here today. If I could start with ASIO's role in relation to people smuggling, given the now apparent spike in people smuggling via airplane arrivals, has ASIO provided briefings on this rising risk to any other agencies?

Mr Burgess: We'll take that question on notice but not that I'm aware of.

Senator KENEALLY: Thank you. I might just flag, Chair, that Senator Kitching's arrival reminds me to say I have about five minutes on this subject and then I might defer to her for the next five minutes.
CHAIR: That's fine.

Senator KENEALLY: Thank you. Has ASIO provided briefings on the rising risk of asylum seekers coming by airplane to any government minister or government MP or senator?

Mr Burgess: Not that I'm aware of.

Senator KENEALLY: What role does ASIO play in disrupting the people-smuggling trade, whether by boats or planes?

Mr Burgess: Our primary role is to provide security intelligence that sheds the light on a potential threat to our border.

Senator KENEALLY: And that's in relation to both airplanes and boat arrivals?

Mr Burgess: On all means—anything that affects the integrity of our borders.

Senator KENEALLY: How do you assess Australia's current ability to disrupt and/or investigate people smuggling, human trafficking and modern slavery?

Mr Burgess: I'm not sure I could answer your question fully, insofar as ASIO's role is a security intelligence agency and in that capacity we will shed intelligence light and perhaps do assessments on those things that we find. Beyond that, in terms of the ability to counter, that would be best asked by the department in a later session.

CHAIR: It might belong with Outcome 1 for Home Affairs.

Senator KENEALLY: As I'm sure Mr Pezzullo anticipates, I will have questions as well there. I'm just trying to ask a range of agencies their involvement in this issue. Has your capability in this area been increasing or decreasing—that is, have you been called upon more often, in the past, say, five years, than previously in relation to issues around human trafficking and modern slavery? How would you characterise, maybe is a better way to put that question, your involvement in that issue?

Mr Burgess: In terms of whether that's been on the increase or not, I'd have to take that question on notice.

Senator KENEALLY: I might stop there and cede some time for Senator Kitching. I will have some other questions I've flagged in—

CHAIR: That's fine, Senator Keneally. Senator Kitching, you've got the call.

Senator KITCHING: Thank you very much, Chair. Firstly, hello, Mr Burgess, and congratulations on your appointment.

Mr Burgess: Thank you.

Senator KITCHING: Can I ask about a number of associations, just to see if they have been flagged by ASIO? There's the China Overseas Exchange Association—I don't mind; you can take these on notice if you'd prefer.

Mr Burgess: I can take them on notice but it's unlikely I'd be able to answer that question through this forum.

Senator KITCHING: So why don't I read them. I do plan to ask about these in AGD's, to see if they've been registered on the FITS.

Mr Burgess: Sure.
Senator KITCHING: The World Trade United Foundation, the United Chinese Commerce Association of Australia, the Australian Jiangmen General Commercial Association, the United Chinese Commerce Association, the Federation of Chinese Associations, the Shanghai Chinese Association of Australia, the Australia Guangdong commerce council, and the Australia Zhejiang United Association.

Mr Burgess: I would take that on notice but it's unlikely I'd be able to answer that question. I'm constrained in talking about individual cases in forums such as this.

Senator KITCHING: Yes, a public forum. Are you aware if any of them have registered?

Mr Burgess: I'm not aware, and that is a matter of the Attorney-General's Department.

Senator KITCHING: In your annual report there was a case study:

An ASIO investigation revealed that an Australian Government clearance holder was in ongoing contact with a foreign intelligence service in Australia … ASIO conducted a security assessment interview of the clearance holder to determine whether they had been the unwitting subject of an intelligence cultivation.

I'm sure you know the case study to which I'm referring. I don't have a page number.

Mr Burgess: Forty-eight.

Senator KITCHING: Are you able to give us any information on that?

Mr Burgess: Again, I'd be constrained in talking about specific circumstances in a public forum.

Senator KITCHING: But after the security assessment, you recommended that the security clearance be revoked?

Mr Burgess: Correct.

Senator KITCHING: Was that someone who had applied for a staffing position?

Mr Burgess: Again, I can't talk about individual cases in a public forum.

Senator LAMBIE: Is ASIO currently running an investigation into Crown Resorts? I will take a yes or no.

Mr Burgess: I can't talk about specific investigations in a public forum.

Senator LAMBIE: What is ASIO doing about the way Crown illegally smuggles overseas criminals into its Australian casinos?

Mr Burgess: Again, unfortunately I can't talk about specific matters.

Dr Southern: We should probably be careful about assuming the outcomes of pending investigations.

Senator LAMBIE: I don't think we need to be investigating. We know what's happening. My big question is, why haven't they been charged?

Mr Burgess: I can't answer that question. You will appreciate that I can't talk about specific cases in a public forum. You should not assume from that we are involved, but I simply can't talk about any—

Senator LAMBIE: If you are not involved, who is involved? Who would be doing this? Is it ASIO, is it Home Affairs? What department is taking the lead on what's going on with Crown Resorts? Or that a mixture of your—
Mr Burgess: It would generally not be a matter for ASIO. Unless there is something that actually falls into our heads of security for us to investigate, we would not be involved.

Senator LAMBIE: Is there anything you can give up on Crown's illegal activities?

Mr Burgess: There would be nothing I could talk about because I can't talk about specific tasks that we're involved in.

CHAIR: Senator Lambie, are these questions more appropriately directed to the ACLEI sessions?

Senator LAMBIE: No. They're both going to get them. What would ASIO's response be if evidence emerged which showed that Crown casino management was overseeing a system where Crown was taking a cut of money that it had allowed to be legally laundered by international crime syndicates at Crown casinos?

Mr Burgess: That matter is not a matter for ASIO to consider.

Senator LAMBIE: Whose matter is it to consider? Whose responsibility will it be?

Mr Pezzullo: I might reaffirm what I said to you in an earlier session when you were asking related questions to the AFP. The question of visa issuance is a matter for my department. The matter of clearances through the border, including off so-called flights off tarmac or off terminal flights, is a matter for the Australian Border Force. They will be appearing under program 1. The question of criminal money laundering—your question presumes that certain activities are occurring, which, I would caution, you should not presume on the basis of media reports—if it ever got to a matter of someone being charged, that would be in relation to Criminal Code offences which the AFP would take forward. That's the broad division of responsibility.

Senator LAMBIE: So you are not aware of any evidence that may have emerged shows that Crown casino management has been taking a cut of money?

Mr Pezzullo: I'm not aware of any such evidence. You asked that of the Australian Federal Police earlier this morning and Commissioner Kershaw gave you the answer that you will recall. Again, I would caution against the presumption that things you might have read in so-called investigative journalists' reporting are factually based.

CHAIR: Senator Lambie, I know you have got the benefit of privilege while here, but perhaps there is room for a little more caution in assuming these matters are entirely settled.

Senator LAMBIE: I will see what the week brings. I have some security and intelligence questions on and what is going on in the Middle East, in Syria. First of all, have you got one-on-one that are actually reporting back to you, or are you relying on the US and our other allies to feed you that intelligence?

Mr Burgess: Again, I won't go into specific details, but I can tell you that we take intelligence from a range of sources. In the case of Syria, it is from a range of sources.

Senator LAMBIE: Have we got sources of our own who actually have their feet on the ground over there and are feeding back?

Mr Burgess: I won't talk about specifics in a public forum.

Senator HENDERSON: Mr Burgess, good afternoon. I would like to ask you about foreign interference, which obviously has had quite a bit of publicity of late. Could you speak
about what the government is doing in respect to combating inappropriate foreign interference and the role that ASIO is playing in this regard?

Mr Burgess: Certainly. I can talk about ASIO's component of that, but for the full detail of government's response the question is best placed to the department in the next session, where counter-foreign-interference responsibility lies. Our role as a security intelligence organisation is to shine a light on matters which are of concern to our government. The assessments we make are passed to others for action.

Senator Henderson: There's been a particular concern about Australian universities. What involvement has ASIO had in terms of expressing its concerns to Australian universities? Can you enlighten us on some of those communications? Are you taking any particular measures to combat some of the concerns in Australian universities?

Mr Burgess: We actually help others in that regard, and ASIO officers have been involved in conversations with the universities to share with them our perspective on what might look like inappropriate behaviour which is interference in kind. I would stress that when we do that we are part of the whole-of-government team effort. We are also very conscious with the universities to recognise that the role of open, collaborative research globally is a really good thing, and we are trying to help differentiate between that which is legitimate and critically important in a strong, vibrant education sector, including universities, and where it steps over to the point of being a problem for our country. We are one of many involved in that, but we are not the lead. We support others.

Senator Henderson: Can you describe the sort of conduct that you regard as stepping over the line, in terms of particular issues that you have addressed with Australian universities?

Mr Burgess: I can in general terms. Obviously I am constrained by what that might look like in real terms. It is anything that is clandestine or covert and activities that are at the direction of a foreign government, which in itself is counter to our national interests.

Senator Henderson: Can you expand on what you mean by that? For instance, do you include the financial contribution to a particular course that a university might be offering, which may not be covert but may be financed by a foreign state? Do you include that type of conduct as something that would be of concern to you?

Mr Burgess: It would depend on the nature of that investment and the nature of the course. You would recognise that in some cases it is entirely legitimate for universities to get funding from a range of sources. The details would determine whether we have a concern or not and what intelligence we might have behind that to suggest that might be inappropriate.

Senator Henderson: So it doesn't always have to be covert. It may be that there may be some sort of financing arrangement which may have some sort of improper motive.

Mr Burgess: As long as that motive was clear and the intention behind that is counter to our interests, whether the Counter Foreign Intelligence Coordinator would pick up the running on that issue depends on what was in Australia's national interest as to whether we would be concerned.

Senator Henderson: How would you describe your concern about foreign interference at Australian universities?
Mr Burgess: There is no doubt that that is one vector by which those who wish to do things that are counter to our national interest can and do actively engage.

Senator HENDERSON: How harmful can that conduct be in terms of our national interest?

Mr Burgess: In the medium to long-term, it can be extremely harmful.

Senator HENDERSON: And why do you say that?

Mr Burgess: If it's counter to our national interests, and that's defined in a very broad sense—again, I'm a little constrained about going into specifics here, so I can't talk about individual examples that would perhaps make it easier for me.

Senator HENDERSON: Can you give some general examples without referring to any particular case?

Mr Burgess: I would be happy to take that question on notice.

Senator HENDERSON: Are there any other sectors of the economy about which you are particularly concerned when it comes to foreign interference?

Mr Burgess: Again, it's difficult for me to share examples in a public forum, but it's more than the education sector.

Senator HENDERSON: Can you be broad in your response? Obviously the education sector is one sector. Are there other parts of the Australian economy or other parts of Australian cultural life where you believe there is a particular problem?

Mr Burgess: Critical infrastructure would be one sector, and most of that is in the hands of the private sector, so absolutely. Interference in the space of anything that by its very nature is deemed to be critical is problematic for us.

Senator HENDERSON: Are you able to expand on what you mean exactly by that? Do you have any particular concerns about any particular piece of critical infrastructure in Australia at the moment? Whether we're talking about communications infrastructure, ports, airports or data networks, are you able to be more specific about those issues?

Mr Burgess: From my point of view, again, I'm constrained. I would say that there is broad interest from certain nation-states across all those sectors, and we can see that through their intelligence collection attempts. That in itself is an indication that they have a greater interest in knowing what's going on, for a whole range of reasons, including the potential ability to interfere in our national wellbeing.

Senator HENDERSON: All right. Thank you very much.

CHAIR: Senator Keneally.

Senator KENEALLY: I will ask a few questions about right-wing extremism. I noticed that ASIO's annual report says that right-wing networks are better organised and more sophisticated. Would you say the threat from right-wing extremism has increased over recent years?

Mr Burgess: It's something that we have had an eye on for a number of years. I wouldn't necessarily say it's increased. ASIO has paid close attention to this matter for a number of years now.
Mr Burgess: Sorry; I didn't mean that your attention had increased; let me phrase it this way: do you think a right-wing attack in Australia is plausible? Does ASIO assess that that's plausible?

Mr Burgess: It certainly is plausible. In fact, there is a matter before the New South Wales Courts at the moment, so that gives an indication that it is plausible, yes.

Senator KENEALLY: The Christchurch attack was earlier this year. Can you give us a sense of what role that particular attack plays for those in the extreme right wing? That is, would you say it continues to inspire them?

Mr Burgess: There would be no doubt that that horrific incident would inspire some individuals, yes.

Senator KENEALLY: Now, there are some very well-known right-wing groups in Australia, but to my knowledge no group has been listed as a terrorist organisation in Australia. Is that still the case?

Mr Burgess: That's correct.

Senator KENEALLY: I understand the United Kingdom recently listed its first extreme right-wing organisation as a terrorist organisation. Are you of that?

Mr Burgess: I'm not aware of that.

Senator KENEALLY: Could you perhaps give us a sense of how strong these groups are in Australia. Is there a likelihood we may see them split and form different, smaller or more radicalised groups? Are they prone to that type of behaviour?

Mr Burgess: In terms of whether they are prone to that type of behaviour, I'd have to take that question on notice. I can say—again, without going into details—we have subjects of investigation, and they are ongoing. We have had an eye to this for a number of years now.

Senator KENEALLY: While I'm not seeking to discount any effort ASIO needs to take to monitor and collect intelligence on its targets—I appreciate the complexity of your tasks—is it a more complex task to monitor right-wing extremism compared to, for example, Shia Islamic extremism? Is the task different?

Mr Burgess: No, the task is not more difficult. It is equally as difficult as our task of investigating any form of violent extremist groups or individuals.

Senator KENEALLY: Sorry; I don't mean to suggest that. I meant: is it more complex given the geographic spread, for example, or the diffuse nature of the groups that we're talking about?

Mr Burgess: From a number of different angles, if you look at where individuals might be inspired or radicalised, that's a global phenomenon. In this age of connectivity, information can come at you from all over the globe that will radicalise or inspire people to conduct acts of violence which are abhorrent to us all.

Senator KENEALLY: I note that your annual report mentions you have prepared for stakeholders assessments on right-wing extremism. Are you able to provide details for, before Christchurch occurred, how often you would have proactively produced a right-wing extremism assessment or briefing and reactively produced a similar briefing? Now that Christchurch has occurred, has this changed? I'm happy to take this on notice.
Mr Burgess: If your question is, 'Do we have more demand for knowing what's happening in the right wing space?' there were certainly more questions asked as a result of Christchurch, but actually ASIO was well and truly seized of this issue prior to Christchurch and has been actively following this for a number of years. To your previous question, it's just been drawn to my attention that in our annual report we can say and we did assess that right-wing groups in Australia are more cohesive and organised than they have ever been over the previous years.

Senator KENEALLY: Thank you. Again, I'm happy to take this on notice. With this question I'm trying to get a sense of how you think about allocating resources. In terms of the staffing levels that you have focused on various types of extremist groups that pose a threat to the Australian community—for example, Shia Islamic extremism, Sunni Islamic extremism, extreme right-wing and extreme left-wing extremism—is that something you are able to provide or take on notice?

Mr Burgess: If you are asking where our resources are going to each particular task—

Senator KENEALLY: That is what I'm trying to understand, yes.

Mr Burgess: I will take that on notice. I think it may be difficult to answer, for a number of reasons. I could perhaps give a snapshot, although I'd be concerned about doing this. If I give a snapshot of what we are doing now, that in itself may not be an indication. We look across the full range of threats, especially when it comes to acts of politically motivated violence. We have a rigorous prioritisation scheme in place. We're driven by what we know. I can't promise you that we can deal with things we don't know about. As I said in my opening remarks, a very effective way in which we are able to identify and consider these threats is through everyday Australians who report to us and others their potential concerns. But that and other sources we have are not 100-per-cent coverage of the potential for something bad to happen.

Senator KENEALLY: To follow up on that, I know that for some time now the Australian government, through various agencies, including yours, have sought to work with the Islamic community in Australia as a way to prevent radicalisation and to counter violent extremism. Do you have any similar community outreach programs in relation to extreme right-wing groups?

Mr Burgess: I will take that question on notice. I think there is unlikely to be some public outreach to extreme right-wing groups. By their very definition, they would be closed.

Senator KENEALLY: I suppose it would perhaps be more along the lines of public messaging and public campaigns such as we have seen with some other types of countering violent extremism—the 'if you notice a change in behaviour in a family member or friend' type of messaging.

Mr Burgess: Again, that question would be best placed with the department for their lead in countering violent extremism.

Senator KENEALLY: Thank you. Back to the question of resourcing: I was prompted to ask these questions when I noticed that Germany's domestic intelligence agency recently stood up a 300-person unit deliberately focused on right-wing extremism—noting, of course, the differences in population and scale of the problem—and also that in the UK they recently noted that, of the individuals who went to receive confidential support through a countering
violent extremism program, 44 per cent were referred for concerns related to far-right extremism and 45 per cent for Islamist extremism. So I was just trying to understand if we have any sense of standing up a similar team here or if we have any statistics for grassroots or diversion programs and what their proportions might be.

**Mr Burgess:** Not that I'm aware of, at least from ASIO's perspective. Again, I would reiterate the point I made earlier: the threat of violent extremism comes from not just one element of our community; it is broad, and we will focus across all those elements where we identify threats.

**Senator KENEALLY:** I don't know where we are in time. Senator Stoker, I don't know where we are in timing. Senator Ciccone has some questions.

**CHAIR:** We are at nine minutes and 18 seconds, so we might take a break from you. I will share it around a little, and then we'll send it to you, Senator Ciccone. I'll ask one or two follow-up questions, Senator Lambie has a follow-up question, we'll go to Senator Patrick, and then we'll go to you, Senator Ciccone. The follow-up question I want to ask of you, Mr Burgess—and, if you have to take it on notice, I'll understand, given its detail—is this: what proportion of ASIO's work relates to the investigation or, I guess, the collection of intelligence on right-wing extremists?

**Mr Burgess:** I will take that question on notice.

**CHAIR:** I'd like to have the same question answered in relation to left-wing extremists, Islamic extremists and any other key groups of extremists in our community.

**Mr Burgess:** Certainly.

**CHAIR:** Thank you very much.

**Senator LAMBIE:** Is ASIO aware that government departments receive significant discounts for accommodation for departmental staff at Crown Metropol in Melbourne, and does ASIO accept this could threaten Australia's security interests if departmental staff were targeted for information while staying at Crown?

**Mr Burgess:** I was not aware of that. If that is the case, I'm not aware of that.

**Senator LAMBIE:** Do you know if any of your ASIO staff stay at Crown and whether or not they receive any discount whatsoever?

**Mr Burgess:** I'm not aware of that. I can take that question on notice.

**Senator LAMBIE:** That would be wonderful. Thank you.

**Senator PATRICK:** Mr Burgess, I'm going to ask you a series of questions in relation to the foreign interference scheme. Just to put some context to it, your annual report states:

Our advice and assessments during the reporting period continued to provide an important foundation for the work of the Home Affairs National Counter Foreign Interference Coordinator ... Our intelligence-led 'knowledge base' directly influenced the development and understanding of a whole-of-government strategy and complementary package of initiatives to counter the foreign interference threat.

ASIO further argues that the national security legislation passed by the parliament last year 'will increase the cost and risk' for foreign governments seeking to conduct interference in Australia. Finally, the report went on to say:
We assess that passage of the espionage and foreign interference legislation has had an impact on espionage and foreign interference in Australia, and caused some foreign intelligence services to reassess the risks associated with clandestine foreign intelligence operations conducted in or against Australia. However, we anticipate the most capable foreign intelligence services will adapt their behaviour over time to circumvent the new legislation.

That's just to give everyone the same context. Without going into any sensitive details, are you satisfied that the new legislation has had an impact on foreign intelligence activities in Australia? Has it caused a wind-back of activities by foreign states? How confident can you be of your assessments of its effect?

Mr Burgess: I am confident that these measures have helped make it harder for clandestine foreign intelligence service activity in this country, but there is no 100 per cent solution. We have seen them react to a hardened environment. That has not seen them stop their activity.

Senator PATRICK: Have you seen some people ceasing their activities?

Mr Burgess: We have seen a change, and I'm constrained by what I can say, for obvious reasons. We've seen a change. What that means is always subject to ongoing assessment. But I can say that these measures have hardened Australia, but ongoing vigilance is required and we will continue watch this. Sophisticated, determined foreign intelligence services will evolve their tradecraft to achieve their outcomes. I'm confident of that also.

Senator PATRICK: At present, there are only 184 entries on the public Foreign Influence Transparency Scheme database, including multiple entries from a number of companies or individuals. Is ASIO satisfied from a counter foreign influence perspective that the transparency scheme as presently constructed is sufficiently comprehensive?

Mr Burgess: If your question is, 'Am I satisfied that all the right people who should have registered have registered?' or 'Is that effective?' I would be loath to say yes or no because, again, in some cases, you don't know what you don't know if someone is operating covertly on behalf of someone else.

Senator PATRICK: Sure, but I'm talking about what you do know. Does that number seem low to you? There are 184 people registered. We must assure everyone that that doesn't mean that people are bad. Simply the whole purpose of it is to be open about any activities you are performing on behalf of a foreign state. Are you satisfied that number is anywhere near where it should be?

Mr Burgess: I am agnostic on that number because I know how our foreign intelligence services operate. I would remind you that this scheme is one of many components. It is a tool in your defence kit, if you like, to help harden Australia. So just looking at that number and making a comment on that is actually, from my perspective, meaningless.

Senator PATRICK: I am making these numbers up just to illustrate an example, but if you were aware of 3,000 people who were involved in those sorts of activities and only 200 had registered would that—

Mr Burgess: You would understand that I am restricted in what I can say because if I were aware of some individuals who should be on that list and aren't that would be the subject of an activity and I would not comment on that in a public forum.
Senator PATRICK: I think we heard in other estimates hearings—it might've been with the Attorney-General's Department—they've written to some entities to make them aware that the register exists. I presume that there are some entities where the government has some concern they might not have necessarily complied or perhaps have only complied with the letter of the law.

Mr Burgess: I'm aware that the Attorney-General's Department have written to individuals suggesting they should be on the list.

Senator PATRICK: From your viewpoint, because there are a number of exemptions in the scheme, such as legal services, commercial activities and other professional activities, does that limit the effectiveness as a transparency measure? Is that an area of concern for you?

Mr Burgess: I don't really have a view on that.

Senator PATRICK: Your report itself says that you anticipate the most capable intelligence services will adapt their behaviour. Do the exemptions to the Foreign Influence Transparency Scheme provide the sort of loophole that these foreign intelligence services could exploit?

Mr Burgess: Our challenge is to follow the tradecraft of these foreign intelligence services, and if we did identify issues where potential debate around the legislation and what it covers and what it doesn't should be reintroduced, we would have that conversation with my minister.

Senator PATRICK: So you might expect there could be areas where things could be strengthened, and once you've got sufficient data to support that you would go to the minister?

Mr Burgess: I don't currently have a view on that, but if we identified areas where we thought that one approach could be to strengthen legislation, we would take that up through the minister and that would be handled accordingly—a matter for the minister to rule on.

Senator PATRICK: At the heart of these laws, where the parliament itself is, in some sense, central to areas you want to protect from covert foreign influence, members of parliament, state and federal, are carved out of the Foreign Influence Transparency Scheme. Have you got any concerns about that now? That was a recommendation of the PJCIS. The parliament was to institute a scheme for parliamentarians. That hasn't been done. In some sense, that must create a hole.

Mr Burgess: That in itself is a matter for parliament. So I'm—

Senator PATRICK: That goes to a question I was asking this morning about parliamentary privilege. This morning I was suggesting that parliamentary privilege doesn't exist for parliamentarians; it exists for citizens in much the same way legal professional privilege belongs to the client. Parliamentary privilege is the ability for a citizen to engage with a parliamentarian without fear or favour and for the parliamentarian to then go off and make representations in parliament or to ask questions and so forth. But you're suggesting that
there are investigations, or that you have an unfettered ability to investigate? My concern here is with citizens who may wish to raise contentious issues with parliamentarians and whether or not that's somehow in the purview of ASIO's operations.

Mr Burgess: I'm satisfied ASIO has the powers to investigate matters we do need to. Obviously we're always conscious of parliamentary privilege, but if Secretary Pezzullo—

Mr Pezzullo: The constitutional position is clear. I'm not required to give you legal advice; that's plain on the reading of the Constitution in section 49. The privilege of the parliament is vested in relation to the parliament itself. It's plainly stated in section 49. It derives from rather ancient prerogatives of the parliament that were best crystallised in the 17th century. In fact, I think the Constitution might even make reference to the Bill of Rights. The parliament, or at least houses of the parliament, have seen fit over time—it's a matter for the Senate as to how it interprets both the constitutional provision and also the enactment in statutory form in the eighties of the parliamentary privilege scheme, which from memory was first codified in 1987. It was, prior to that, a subject of constitutional interpretation. The houses of parliament, which are individually sovereign, of course, have chosen to interpret what 'privilege' means. The Senate, for instance, passed a resolution that went to some of the matters that you're speaking to—that is to say, that that privilege extends beyond the perimeter of the parliament, if I can use that term, and it goes to persons who are seeking to engage with a parliamentarian in the performance of their duties. That was a Senate resolution passed—I don't have the date in mind—

Senator PATRICK: And supported by Justice Kirby in the High Court in Hearne v Street as well.

Mr Pezzullo: Quite possibly. As I said, I'm not seeking to give you legal advice. I'm just stating facts as are known to me. In fairness to the Director-General of Security, these are really matters of constitutional legal and policy interpretation. But to state, in the way that you have, that it's a clear constitutional position doesn't quite reflect the way in which the Constitution was developed in the 1890s, how it was codified and enacted in 1901 nor in, I think, 1987 how it was codified in statutory law. It is the case both as a matter of practice and through resolution of the houses that privilege has been expanded rather elastically to now conform with the interpretation that you're presenting, but I think it would be not entirely helpful to the committee for that to be assumed to be the entrenched constitutional position.

Senator PATRICK: That was a nice history lesson, Mr Pezzullo.

Mr Pezzullo: I'm just here to be helpful to you, Senator!

Senator PATRICK: I know you are! It was carved out, and indeed, for example, state MPs are not subject to the federal legislation either. I understand there are some constitutional issues. Part of our job here is to potentially apply pressure, perhaps politically, on our state colleagues to implement a scheme. It's somewhat hard when we have failed to do one for ourselves. We apply a particular set of rules to the public and carve ourselves completely out of those rules. I'm trying to seek some advice as to whether or not that is presenting a problem, that the parliament hasn't acted on what was originally advice that came, presumably, from your department, Mr Pezzullo. In the context, it was the PJCIS that recommended otherwise.
Mr Pezzullo: That's not quite factually supported either, Senator, I regret to say. The administration of this scheme is vested in the Attorney-General's Department. It's an integrity measure, as distinct from a counterinterference or counterespionage matter. It goes to the health of our democracy from a different perspective—that is to say that what a person has declared about themselves might be a tool that supports the director-general in the performance of his duties, as you heard him say in evidence a few moments ago. He's comfortable with the range of tools and powers that he has under the ASIO legislation to the extent that, and as I heard his evidence before, a person was acting, let's say, nefariously—I use that term loosely—

Senator PATRICK: We're not beyond the law, and I understand that.

Mr Pezzullo: I'm not applying that term to anyone, whether it is a parliamentarian or citizen otherwise—a person in our community. The fact that they were being—and I will use the colloquialism—'run by a foreign power' wouldn't necessarily turn on whether or not they appeared on an integrity scheme. That's one of the layers of protection that the parliament, as you say, has seen fit to put in place, obviously, at the instigation of the executive government. I would urge or at least commend to you, Senator, that questions about the administration of the scheme, its ambit, restrictions, carve outs and the reaction to the PJCIS recommendations are really best addressed to the secretary of the Attorney-General's Department and his officers when they appear tomorrow. It's a scheme administered by that department.

Senator PATRICK: Except as to effect. I understand the administration—

Mr Pezzullo: I understand the crossover, Senator.

Senator PATRICK: I guess I'm seeking answers in respect of the effect of any holes that are created—or any carve outs, rather than holes—

Mr Pezzullo: I think we both heard the director general say that—to use the term—carve outs or exemptions do not materially affect his ability to undertake security investigations.

CHAIR: Senator Patrick, I'm going to cut you off—you're at 15 minutes now—and give the call to Senator Ciccone.

Senator CICCONE: Thank you, Chair. I'm interested in ASIO's transformation that began last year after the 2017 review. What has been achieved in the first year of the transformation?

Mr Burgess: Thank you for your question. If I may, the need for transformation is representative of this world in which we operate, with an unprecedented threat level, and the need to better utilise the resources to ensure we are not missing something—so something bad gets lost in the data or something that should have been known to us wasn't known to us. The transformation is an ambitious program over a number of years. So far we've started off—there is a new operating structure in place, a new operating model that is being worked through. Work continues on the foundational work, subject to additional government approval through the budget process, to make the investments to change underlying capabilities that support our workforce to identify and best deal with the security threats that we are charged with dealing with.

Senator CICCONE: How many years are you expecting for this transformation to—

Mr Burgess: Four years is our time frame.
**Senator CICCONE:** What were the costs involved in the first year?

**Mr Burgess:** I would have to take that question on notice so I can get the precise figure for you.

**Senator CICCONE:** A follow-up would be: were there any unexpected costs?

**Mr Burgess:** We're happy to include that.

**Dr Southern:** To add to that: in relation to the transformation, for the first 18 months or so we've largely done the work internally, if you like, and resourced it internally with modest amounts of additional funding from government.

**Senator CICCONE:** Yes, I did notice that you had about $58-odd million extra as part of the budget. $58.6 million that was earmarked to sustain and undertake a lot of the preliminary work.

**Dr Southern:** That's correct. Of the $58 million, not all of that was for the transformation work.

**Senator CICCONE:** My next point is that I did note in your latest annual report, on page 109, that you spent $23.7 million more than you expected for consultants. Was this in relation to the transformation, to bring in consultants to assist the organisation with how it implements the transformation?

**Dr Southern:** The $23 million figure that you refer to would include some consultants, but it would not all be consultants.

**Senator CICCONE:** How much did you budget for in terms of consultants?

**Dr Southern:** I'd have to take that on notice.

**Senator CICCONE:** Why did it run over budget? Why the $23.7 million?

**Mr Burgess:** I'd be happy to take that question on notice. Obviously, that's an indication of overrun in supplier expenses. That's not the overall ASIO budget end point.

**Senator CICCONE:** I'd be interested to know whether it was to do with consultants charging more or other problems along the way where they've had to come in and reassess the invoice to government.

**Mr Burgess:** Again, the deputy director general called out that that's supplier expenses. That's a range of things that are covered. I'd be happy to take on notice whether our consultants, which would be a smaller portion of that money, actually started charging us more.

**Senator CICCONE:** Okay, and anything else that you could add would be great. Are there any other projects that did not deliver what you thought they would?

**Mr Burgess:** Not that I'm aware of, but noting I'm 37 days into the job.

**Senator CICCONE:** Hopefully you've enjoyed the 37 days!

**Mr Burgess:** It's been fantastic, Senator. Thank you.

**Senator CICCONE:** Are there any other projects that have performed better? That might be something you may want to take on notice as well.

**Dr Southern:** I think it would be the usual outcome across a budget year, that there will be a balancing during the course of the year across a range of projects.
Senator CICCONE: I understand that you want to be at the forefront of agencies using artificial intelligence. Have you started to build or look at other systems to implement to facilitate that ambitious plan for the organisation over the next four to many years ahead?

Mr Burgess: Artificial intelligence or data analytics, because it means different things to different people—using clever software and clever algorithms to help you do your job more effectively—is something which is a core tenet of our transformation program. But it's something that we would be doing regardless, because in a data-rich world we all recognise that computers can do things much faster than human beings. And as science advances, they are more capable.

Senator CICCONE: With that data and the data collection, what about the risks with collating or collecting too much data? What are the processes in place when there is too much data? I assume you can't look at every single bit of data that comes through. Would you be able to touch on that point?

Mr Burgess: What I can say in that regard is that that's where the smarts behind data analytics come into play. Yes, if you tried to have access to everything, you would quickly overwhelm yourself with data—would that be effective? Having said that, advances in machine learning, data analytics and artificial intelligence enable potential problems to be identified. So there's a balance. But I would be conscious that we will look to source and collect the information that we need at a minimum to do our job effectively.

Senator CICCONE: Have there been any risks to date or problems?

Mr Burgess: It depends what you mean by 'risks'. If you mean collecting too much and missing something, that's the problem we are dealing with right now. Given that threats are at an unprecedented level, there is a potential to miss something, and the application of data analytics actually helps us reduce the possibility of that being an event.

Senator CICCONE: What about the storage? I'm assuming there is a mixture of local and cloud?

Mr Burgess: Obviously, once we are analysing data, how we analyse it is our secret sauce, if you like, so generally that would not be done on the internet. We would be doing this in protected, secret and top-secret environments.

Senator CICCONE: Okay. Do you have the data analysis and storage capabilities that these kinds of data-rich technologies will generate? Are you ready to go? How will you prepare yourselves?

Mr Burgess: We have highly capable officers in ASIO. We have capabilities in-house at the moment. We've also recognised a significant change, hence the organisation identified the need for a transformation some two years ago and we know what we need to put in place to be more effective at our job.

Senator CICCONE: What are the next deliverables for the transformation? Are you able to touch on that point?

Mr Burgess: I would not want to discuss that in an open forum. But I'd be happy to take that on notice and see what I can share with you.

Senator CICCONE: Thank you.
CHAIR: Thank you, Senator Ciccone. It sounds like you've got something, Senator Keneally?

Senator KENEALLY: I just wanted to follow up on one of Senator Ciccone's questions, if I can, in the moment remaining. I want to go back to the overspend on consultants and contractors for the transformation, the $23.76 million. Did you say, Dr Southern, that some of that was consultants but not all of it? Did I hear you correctly?

Dr Southern: It's broadly supplier expenses. We have taken on notice to give a bit more detail on the composition of that overspend.

Senator KENEALLY: I'm just noting page 115 of your annual report; under 5.3 it says: 'Supplier expenses were $23.76 million higher due to the original budget as a result of the engagement of expert consultants and contractors.' If you could take that on notice and come back to us, I'd appreciate that.

Dr Southern: Yes.

Senator KENEALLY: Thank you.

CHAIR: Thank you. Senator Lambie?

Senator LAMBIE: Just in relation to international crime syndicates, how do you go about doing that? If they are flying in and out and they belong to another country, what is the success rate of you actually being able to put these people in jail? Explain to me how that all works. Do you know where I'm coming from? I'm just trying to work it out. Obviously, if they are flying in and flying out, and we eventually say, 'Yes, you're as guilty as sin', what happens to them? Can we deport them back here and put them in our own jails? What's the go here? Do you want to explain that to us all?

Mr Burgess: That's not my remit as the Director-General of Security. International crime syndicates and their criminal behaviour here in Australia is actually not in my purview unless it comes onto the remit of being a terrorist act, espionage or foreign interference or if it’s a problem for our border integrity.

Senator LAMBIE: Okay. I would have thought this was a problem to our border integrity, if these syndicates are flying in and out.

Mr Burgess: There's nothing wrong with individuals flying in and out of this country as long as they have the appropriate visas in place. If we identified anything, we would pass that to the police.

CHAIR: I thank witnesses at the table for their evidence. We appreciate your assistance today. You are excused. You don't get thanked, I'm sorry, Mr Pezzullo. You've got to stick around.

Department of Home Affairs

[14:31]

CHAIR: I now call officers representing the Department of Home Affairs, including the Australian Border Force, in relation to cross-portfolio, corporate and general matters. I want to draw the attention of members of the committee to the fact that we are strictly going to deal with cross-portfolio, corporate and general matters. If there are matters that are more appropriately raised under outcomes 1, 2 or 3, I will cut you off and direct you to point your questions in that direction. So I apologise in advance if that causes a little offence but
hopefully it will mean we can get through this stuff efficiently. Do you have an opening statement, Mr Pezzullo?

Mr Pezzullo: Yes, I do. Thank you, Madam Chair. I would like to begin by welcoming to the portfolio the Director-General of Security, Mr Mike Burgess, from whom you've just heard, and the Commissioner of the Australian Federal Police, Mr Reece Kershaw, who you met this morning. They commenced their appointments on 15 September and 2 October respectively.

On 13 October, earlier this month, I commenced a second term as secretary of this department for five years. Together with the Commissioner of the Australian Border Force and the Comptroller-General of Customs, Mr Michael Outram, the Chief Executive Officer of the Australian Transaction Reports and Analysis Centre, Ms Nicole Rose, and Chief Executive Officer of the Australian Criminal Intelligence Commission, Mr Michael Phelan, I have formed a new leadership team which is deeply committed to building an integrated portfolio over the next five years to 2025. This will build upon the transitional steps that were taken after December 2017 when the portfolio was initially established and in May 2018 when ASIO joined the portfolio after relevant legislative amendments were passed.

While much has been achieved to build the portfolio in accordance with government directions over this time, more needs to be done to fully realise future significant opportunities, especially in relation to improved strategic and financial planning, capability development and acquisition, technology collaboration, intelligence and data sharing, consolidated business services and, where appropriate, cross-agency workforce mobility. All of this will be achieved consistent with the statutory independence of the heads of agencies that, given the significant powers with which they are in trusted, needs to be protected and preserved.

As a leadership group we have decided to establish a portfolio board to oversee portfolio-wide programs and initiatives in those areas just indicated. The board, which I will chair as secretary of the department will be a forum for collaboration and to oversee mutually agreed programs and initiatives. It will not have, nor will it require, the legal authority to give direction to heads of agencies, each of whom will continue to exercise their powers under statute, reporting directly and independently to the Minister of Home Affairs.

Our work as a board will be greatly assisted by the outcomes of the strategic review of the portfolio, which was funded in the 2018-19 budget. Of the $7 million allocated for this purpose in that budget, less than $5 million was expended on the development of financial models and planning tools and a capability inventory, which will support our work to identify opportunities for increased efficiencies, to better understand our costs and to better manage our assets, including by way of giving high-quality advice on investment options and choices.

Turning to regional processing: as requested by the government of Papua New Guinea, the department has issued notices to Paladin Holdings and to NKW Holdings to terminate regional processing services in Papua New Guinea on 30 November 2019. The remaining transferees on Manus Island will shortly be moved to Port Moresby, with services there being managed by the Papua New Guinea government. As of 30 September this year the relevant population in Papua New Guinea and Nauru was 562 people, which is 23 per cent of the peak levels in June 2014. Another 1,117 people have been temporarily transferred to Australia for medical treatment or as accompanying family members.
As at 30 of September this year, 632 refugees from Papua New Guinea and Nauru have been resettled in the United States. Australian and US officials have contacted all eligible refugees in Nauru and Papua New Guinea and those in Australia to confirm their ongoing interest in resettlement. The United States is working through all outstanding cases, with the intention to conclude interviews by the end of this calendar year.

I turn now to the administration of the immigration and citizenship programs. On 22 March and 4 April this year, I informed the committee that the department had published a paper concerning the administration of the immigration and citizenship programs. The department has this morning published a third edition on its website. Some highlights, turning to citizenship first: between the financial years 2010-11 and 2017-18 the demand for Australian citizenship soared by 177 per cent. Processing times became drawn out due to the caseload increase, our heightened focus on program integrity and unprecedented numbers of complex identity assessments. We have made significant progress to reduce the on-hand caseload.

In the recently completed financial year, 2018-19, over 160,000 conferrals were finalised and more than 127,000 people acquired Australian citizenship, an increase of 58 per cent on the previous financial year, 2017-18. This is despite refusals, which take longer to process, rising at the same time by 53 per cent. For the 2019-20 financial year, the year we’re currently in, as at 30 September, around 93,000 citizenship-by-conferral applications have been finalised, which is a 177 per cent increase compared to the corresponding period last year. The department has also reduced the on-hand caseload to about 164,000, which represents a 34 per cent decrease from a peak of nearly 248,000 in July 2018.

Turning to visas: in 2018-19, the increasing digitisation of services saw 95 per cent of all visa applications lodged electronically, up five per cent on the previous year, 2017-18. Furthermore, call centre consolidation in that year resulted in average wait times of just over four minutes, which is 30 minutes less than the previous year. In 2018-19, the department received a record 9.6 million temporary and permanent visa applications and granted a record 8.8 million temporary visas, which is 100,000 more than were granted in 2017-18.

Over the past 12 financial years, which is the period inclusive of 2007-08 through to 2018-19, Australia experienced a significant and welcome growth in visa applications. Specifically, visitor visas granted increased by 56 per cent, from about 3.6 million to 5.7 million, while student visas granted increased by 46 per cent, from about 278,000 to just over 405,000. People who enter Australia on a temporary visa do so legally, having undergone identity checks and various risk based assessments. Improvements in our checking and intelligence systems have led to a significant increase in the detection of high-risk and fraudulent applications. Over the five years inclusive of 2014-15 through to 2018-19, the average refusal rate across our visa programs increased from 2.4 percentage points to 3.9 percentage points. This means that in 2013-14 around 1.5 per cent of the visa program—some 110,000 people—entered Australia who should not have come under current risk settings and who would not do so under today’s strengthened checking and intelligence systems. Of all the people who arrive in Australia on a temporary visa, only a very small proportion seek Australia’s protection. Of the some 40 million people who were granted a temporary visa over the past five financial years from 2014-15 through to 2018-19 inclusive, about 92,000 protection visas were applied for in Australia—or onshore, as we say—representing about 88,000 applicants, which is about 0.23 per cent of total temporary visa grants.
Officers working in the area of protection decision-making are deeply experienced, with an average tenure in the department—as the former immigration department and now the Department of Home Affairs—of 11.4 years. They are highly professional and expert. More generally, since the integration of Customs and Immigration—that is, over the four financial years between 1 July 2015 and 30 June 2019—the staff attrition rate within the visa processing and immigration policy areas of the department has averaged 9.8 per cent, which is one of the lowest attrition rates across the department. Moreover, over the period 2007-08 through to 2018-19—those 12 financial years that I referred to earlier—funding for the visa processing function was increased by approximately 40 per cent to an all-time record, which has enabled the department to deal with the significant growth in demand that I outlined earlier.

Commentary to the effect that there has been a diminution of professional capability, capacity and corporate knowledge in the area of immigration and citizenship program management is uninformed by the facts, as is the assertion that immigration and citizenship operations have been relegated to secondary status with the merger of Immigration and Customs in 2015 or the establishment of the portfolio in 2017-18. I would urge any senator, either a member of this committee or otherwise, who might be interested in acquainting themselves with the facts to avail themselves with a briefing on how the immigration and citizenship programs are actually managed and delivered by our dedicated and expert officers.

Finally, turning to budget: in relation to our 2018-19 budget, the department ended the financial year with a small operating surplus of $235,000. Notably, we had to absorb the impact of bond rate movements with increased long-service and recreational leave expenses by about $48 million, and the department's external legal expenses were more than $72 million in that year—an increase of more than 140 per cent over the five financial years to 2018-19. This cost escalation, which has been entirely absorbed by the department, is almost entirely attributable to the sustained upsurge in migration and citizenship litigation, including visa decision-making, such as asylum claims by former illegal maritime arrivals and subsequent merits and judicial review challenges. In 2018-19 the portfolio also achieved $18.5 million in efficiencies, and we anticipate there being a further $150 million in savings from now until 2021-22.

Senator KENEALLY: You cited quite a few numbers in your opening statement, and I thought I might just try to follow up to understand the context of the cross-portfolio resourcing and challenges. Can you confirm how many people, as of 30 June 2019, were on bridging visas in Australia?

Mr Pezzullo: Ms Golightly will come to the table to answer questions on visas—assisted, as she requires, by her officers.

Ms Golightly: I'm just going to look at that figure for you, Senator. It is 205,649.

Senator KENEALLY: Thank you. As of 30 June 2019 how many unlawful non-citizens—that is visa over stayers—were in Australia?

Ms Golightly: Sorry, I didn't quite hear the last bit.

Senator KENEALLY: I am looking for the number of unlawful non-citizens—that is visa over stayers—in Australia as of 30 June 2019.

Ms Golightly: The estimates of that figure are in the order of about 62,000.
Senator KENEALLY: I'll come back to that later. Thank you. I note the secretary's opening statement where he had the number of protection visas applied for, in Australia for the last five financial years from 2014-15, was about 92,000. You can take this on notice: between 7 September 2013 and the current date how many people have arrived by aeroplane and made an onshore claim for protection? Unless you have that number—

Ms Golightly: That was 2013?

Senator KENEALLY: Between 7 September 2013 and the current date how many people have arrived by aeroplane and made an onshore claim for protection?

Ms Golightly: I'll see if we've got that figure with us but otherwise take it on notice.

Senator KENEALLY: Thank you.

CHAIR: Senator Keneally, I wouldn't strictly call this cross portfolio. Do you want to, perhaps, give the witnesses an indication of the information you want? They can go and research it and provide it to you in that session? How do you want to handle this?

Senator KENEALLY: I suppose I'm responding to the secretary's opening statement, which gave us quite a number of figures and they were helpful.

CHAIR: It did but that's a statement for the entirety of the Home Affairs presentation.

Senator KENEALLY: Sure.

CHAIR: I'd very happily allow you to come back to it in that section.

Senator KENEALLY: Noting that we only have until 3.15 pm for cross portfolio, as long as we have sufficient time in the outcomes I am happy to pursue some of these questions there.

CHAIR: Thank you, that's very accommodating. I appreciate it. I will hand over to you, Senator McKim.

Senator McKIM: Thanks, Chair. Mr Pezzullo, I wondered if you could give the committee an update on the referral to ACLEI that you made on 6 March this year with regard to cash for visas, colloquially, but specifically the allegations from Mr Anees, which you previously told the committee you had been referred to ACLEI for investigation?

Mr Pezzullo: Yes, I did didn't I?

Senator McKIM: Yes.

Mr Pezzullo: I gave evidence on this back in April. Ms Moy, and perhaps Mr Brown, might come up and assist me with my recollection.

Senator McKIM: I guess the question, just for clarity, is: have you heard back from ACLEI? And if so—

Mr Pezzullo: I don't believe so, but I will get that checked with Ms Moy and/or Mr Brown.

Ms Moy: The secretary is correct. We have not yet had any finalisation from ACLEI, so the matter is still under consideration.

Senator McKIM: Thanks. It's over six months now. Has the department made any inquiries as to the status of that investigation at ACLEI?
Mr Pezzullo: I personally haven't, but I know there is regular and frequent dialogue between my offices and the Australian Commission for Law Enforcement Integrity. It's always a matter for the commissioner as to what he chooses to disclose back in return, but perhaps Mr Brown has more particular information than I have.

Mr Brown: Could I have the question, sorry.

Senator McKIM: We've just heard evidence from Ms Moy that ACLEI has not yet completed its investigation. Are you aware of the matter that we're discussing, Mr Brown?

Mr Brown: I did hear that.

Senator McKIM: My question was: has the Department of Home Affairs followed up with ACLEI asking for a status report or an update on how things are going?

Mr Brown: The normal way in which it progresses is that ACLEI undertakes its assessment and its investigation and then approaches us if it requires any information. As a matter of course, we don't approach it. In answer to your question, no, they haven't provided us any information.

Senator McKIM: They have not requested the provision of any information from the department—sorry, I withdraw that. I'll ask a new question: has ACLEI got in touch with the department and asked for any information held by the department that might be necessary to help them with their inquiries?

Mr Brown: Not that I'm directly aware of, but, as a matter of course, ACLEI can approach anybody in the department to seek information without my direct knowledge.

Senator McKIM: But you're not aware of that happening?

Mr Brown: That's correct.

Senator McKIM: Thank you. I've got some other questions about Mr Anees, but I'll wait till we get to the onshore detention output group. Maybe this question is one for you while you're still at the table, Mr Brown: have ACLEI indicated to the department that they are investigating the allegations made by Mr Anees?

Mr Brown: They haven't shared any information with me one way or another.

Senator McKIM: Ms Moy, are you aware of whether they actually are investigating? The reason I ask about an investigation is that my experience with the AFP is that they run through a preliminary process first, before they decide whether it will proceed to a full investigation. So I'm wondering if the department is aware whether ACLEI has a similar process in place, where they work through issues and then decide whether or not to proceed to a full investigation. If the department is aware of ACLEI having that process, are you aware where that particular request sits within that process?

Ms Moy: ACLEI is on our program for tomorrow.

Senator McKIM: Yes, I'm aware of that, and I'll be asking some questions there, but I'm just after an update in terms of the department's awareness, Chair.

CHAIR: Okay.

Mr Brown: In this particular case, no, I'm not aware of where they're up to with the investigation—where it sits on their timeline or their investigative process. Two things about that: as Mr Brown mentioned, we don't actually approach ACLEI with regard to where they're
up to with their particular investigations, and that goes to their legislation. The second point is that we're unable to undertake anything with regard to that particular case until such time as ACLEI have advised us of the process that they will undertake and where they are. So in terms of their specific process, I'd suggest that it depends on what the accusation or allegation is, and it's probably something where it's a good idea to address that with them.

**Senator McKIM:** Thanks, that's fine. I'll do that. Chair, I want to move to another topic, and I'll preface my questions by saying that I am aware that significant parts of this would fit into an output group, but I do believe it's relevant to the central hub of the portfolio. It goes to Mr al-Araibi's case, which we were discussing earlier with the Australian Federal Police, Mr Pezzullo. The reason I think it's relevant is that it relates to communications between two separate arms of the home affairs department, if I could put it like that: the Australian Federal Police and the Australian Border Force.

**CHAIR:** We'll get it started and see how we go. If there's a problem, we'll interrupt you.

**Senator McKIM:** Given the Australian Federal Police have written a letter to Mr al-Araibi apologising, effectively, for their part in this, has ABF or the department written a similar letter to Mr al-Araibi?

**Mr Pezzullo:** Within the department or associated with the department, it's principally a matter for the Border Force commissioners. Madam Chair, I'd suggest, notwithstanding the fact that he hasn't presented his opening statement, that this is an opportunity—at your discretion, of course—to ask Mr Outram to come to the table.

**Senator McKIM:** It is quite particular.

**Mr Pezzullo:** Senator McKim's point is that it's about coordination of information, I suppose, so, really, I'm in your hands.

**CHAIR:** Senator McKim, if you're going to keep to the matter of coordination, I'm comfortable with that. If Mr Outram could come to the table that would be good.

**Senator McKIM:** Thank you, Mr Outram, I didn't mean to interrupt you there. Has ABF communicated with Mr al-Araibi about the circumstances that led to him being imprisoned in Thailand for over two months?

**Mr Outram:** No. I would refer you back to our conversation on the public record at estimates, where I apologised to him for the error that occurred in the Border Force.

**Senator McKIM:** Yes, okay. Given that the AFP have now written to Mr al-Araibi and apologised, do you think the ABF would consider doing the same?

**Mr Outram:** As I said, Senator, I apologised on the record to Mr al-Araibi and his family. The ABF commissioner has made the decision to write to the new ABF commission—I'll take that under consideration, but having done it on the public record unequivocally I'm satisfied with that.

**Senator McKIM:** Thanks. I want to go to the detail about a couple of things that happened between ABF and AFP back in November last year. Would it be correct to say that ABF loaded the red notice that applied to Mr al-Araibi onto the Central Movement Alert List without notifying the AFP or Interpol that Mr al-Araibi was owed protection by Australia?

**Mr Outram:** I think we covered this in quite some detail in February. Obviously, that's all covered on the *Hansard*, including the details around the processes that are involved, which
are quite complex. What I would say is that since then of course a review has been undertaken and we've made a number of improvements to ensure, as best we can, that this doesn't happen again.

Senator McKIM: All right. Before we go to the processes you've put in place, is it accurate to say that ABF did in fact load the red notice on to the Central Movement Alert List without notifying AFP or Interpol that Mr al-Araibi was owed protection?

Mr Outram: Senator, we're going over my former evidence here, which I dealt with in quite some detail with you in February. It will be on the Hansard, so first of all I would refer people to Hansard. But, from memory, what occurred was that the information was loaded onto the system but an officer, unfortunately, due to the pressure of work, didn't send an email.

Senator McKIM: Yes, I'm aware of the issue with the emails. I don't recall us dealing with this specific question. Obviously, I stand be corrected, but I don't recall us dealing with this specific question in our last estimates conversation. Perhaps it would be helpful if you just take that on notice—

Mr Outram: Sure, I'll take that on notice. I think it was covered in quite some detail—the process—but I'll take that on notice.

Senator McKIM: No worries. I have just a couple more on this. Mr Outram, you've put in place processes, I think. You've made some changes; are you able to step us through what those are, in broad terms?

Mr Outram: Yes, I am. In terms of working with the department on the system itself, there have been some changes made in the profile that's given to information about red notice. I may ask other officers to step forward and assist me here. We're also working with the department to try to build in an automated process here where an email isn't required—where somebody doesn't have to actually type an email and press send on the email. That's for obvious reasons; that eliminates the human error. That's not in place yet, but it's being worked on. And a number of quality assurance checking processes have been implemented in the Australian Border Operations Centre, and training has been provided to staff.

Senator McKIM: So you've done a review and the review identified some steps that needed to be taken to improve procedures. Have all the steps that the review identified were necessary actually been implemented?

Mr Outram: Not all yet. As I understand it, the automation part is more difficult and complex. It requires our technology department to put that in place. I understand that it's being worked on.

Senator McKIM: Apart from that, have all the other recommendations from the review been implemented?

Mr Outram: I may just ask Deputy Commissioner Operations to get down to that level of detail.

Ms Newton: All of the Australian Border Force related recommendations have been implemented. As the commissioner said, training for staff, as well as a manual-checking process that takes place.
Senator McKIM: But Commissioner Outram just said that there was one recommendation that had not been implemented—one around automation and IT. When you say that they all have been, can you just explain that apparent discrepancy?

Senator McKIM: Commissioner Outram just said there was one recommendation that had not been implemented around automation and IT. When you say 'they all have been', can you explain that apparent discrepancy?

Ms Newton: At the moment we're working through technical issues with our IT group within the department as to how the INTERPOL Red Notice will be automatically delivered to the Australian Federal Police.

Senator McKIM: So that particular recommendation has not yet been implemented?

Ms Newton: It has not been finalised. It's in the process of implementation.

Senator McKIM: Are there any others of the recommendations that are in the process of being implemented but have not yet been finally implemented?

Ms Newton: The manual quality assurance process was introduced to ensure AFP and INTERPOL receive the true match notification and associated client information from the broader operation centre. The technical system changes includes creating two new alert reason codes for INTERPOL and migrating existing data for the new codes. AFP, INTERPOL and character cancellations program management section, which is part of the ABF, are working on finalising that with Home Affairs as the department. MOUs are being revised to include systems access, which will provide AFP the information required so that automation alone will be sufficient for AFP to action true matches. In addition, the ABF and Department of Home Affairs have commenced joint initiatives with AFP and INTERPOL to fully integrate an information exchange in the long term, including a check against all INTERPOL holdings. The integrated information exchange will require extensive work with a varied set of stakeholders, and that work has commenced.

CHAIR: I'm going to have to cut you off, I am sorry. There are others who are waiting, and we are against the clock.

Senator McKIM: I have a couple more cross portfolio questions, but I'm happy to come back to them.

CHAIR: I might have to pop you at the end of the line, I'm sorry.

Senator ROBERTS: Thank you all for coming today. We complimented Minister Dutton for restoring Australian borders from sea entry. I'd like now to discuss air entry. What is the current rate of asylum seeker arrivals in Australia by air since July 2014, and is it increasing?

CHAIR: Senator Roberts, before you go there, on what basis is this cross portfolio?

Senator ROBERTS: It's more for Immigration, I'd say.

CHAIR: That belongs under outcome 1. Are you prepared to hold your questions until then?

Senator ROBERTS: Sure.

CHAIR: I just want to make sure we follow the program. I'm sorry to have interrupted you; I beg your pardon. Senator Patrick, are your questions cross portfolio?
**Senator PATRICK:** I'm not quite sure; I'll seek your guidance here. There's an issue related to transport security that sits—

**CHAIR:** Transport security is listed in outcome 1.

**Senator PATRICK:** It sits between Infrastructure, Transport, Cities and Regional Development and Border Force. I don't know whether to strictly stick with transport security.

**CHAIR:** Transport security.

**Senator LAMBIE:** This will be a cross portfolio question. I'm going from ASIO to someone else, so this will be a cross portfolio question.

ASIO says it would contact the police if they found out foreign criminals had snuck into the country. My question relates to this, because no department wants to take ownership of this casino stuff, so let's go again. Last week, a video interview from a Crown Casino driver was released. That driver said his job is to illegally smuggle Chinese criminals into Australia via the Melbourne airport without going through customs. What is the Department of Home Affairs doing about this new evidence? Has it palmed it off somewhere else or is Home Affairs taking this evidence more seriously now?

**Mr Pezzullo:** I would caution you in the application of the term 'evidence'. 'Evidence' has a particular meaning for us in the law enforcement business. To the point of the question: the department issues visas. Visas are not issued in any way other than under the Migration Act. No-one can come to Australia without a visa, so the suggestion that people come uncredentialled is wrong.

The Australian Border Force checks credentials both upon boarding at the other end and then upon arrival. Mr Outram and his officers can speak to that. No-one gets to cross the border without having their credentials checked. That includes their passport, their identity and whether they've arrived on the correct visa.

Behind the border, post border or after arrival, if matters of a criminal nature arise—as was stated quite clearly, I thought, this morning—if there's evidence of a crime, which is a breach of the Criminal Code, the AFP would look at it. I'm familiar with, I'm aware of—I won't call it evidence; evidence has a very particular meaning in our business. The information that's arisen, I know, is of interest to a number of agencies, who no doubt will look at it. There's the department from a visa-issuing point of view, the Border Force from a border-clearance point of view and if there's evidence of a crime no doubt the AFP will look at it. No-one has suggested anything, other than those three entities within the portfolio and within government will do anything other than look at this information.

**Senator LAMBIE:** Are you trying to say that some of these people coming in are coming in with visas? You're telling me you're checking every plane on arrival. You're going on those Crown aircraft and you're—I'll tell you what, that never used to happen on Palmer United stuff—checking every vehicle, every plane coming in, every private plane coming in and out. You're going on every one of them, with your boots on, to check them, are you?

**Mr Pezzullo:** I hung up my boots a very long time ago.

**Senator LAMBIE:** Every plane?
Mr Pezzullo: Commissioner Outram will speak to the issue of terminal or off-terminal clearances, and I'm sure that he is very well prepared to answer your question. I suspect he still has issue boots.

Mr Outram: The answer is, yes. We do off-terminal clearances, which is where aeroplanes come into Australia at a regulated international airport. We clear the passengers off the terminal within the airport confines. We have arrangements for that to occur. We clear them from an Immigration and Customs point of view and the Department of Agriculture from a biosecurity point of view. We have arrangements in place to do all of that. In terms of charters, which is in another airport—for example, Essendon—yes, we go to visit those aircraft and we clear the passengers and the crew from an Immigration, from a Customs and from a biosecurity point of view. There are joint agency arrangements in place to facilitate all of that work between us all.

Senator LAMBIE: So you never had a problem with these people coming in an aircraft before without visas; is that what you're telling me? It's tickety-boo, 100 per cent.

Mr Outram: If somebody comes without a visa, we don't let them enter Australia. That's our job. We do a number of checks at the border. From the Immigration point of view, firstly, it's: have they got a visa, have they got a valid travel document and is the travel document for the person who's got it? They're the three checks we make. Then we get into the Customs point of view: are they carrying anything with them that they shouldn't have? That's the second line of checking. Then it's biosecurity, from a quarantine point of view.

Senator LAMBIE: Do you have a number of how many people slip through the system?

Mr Outram: We have that data with us, in terms of how many off-terminal clearances and charters we clear a year. By the way, these are functions that have existed under the Customs Act. There's a facility in the Customs Act for us to do this, specifically. It's been there for many years. But I may ask the deputy commissioner to provide you with some of the numbers. It's about 2,000 year, but I'll give you the exact number.

Ms Newton: Of the number of clearances we do as off-terminal clearances—which is in an international airport but we may clear them away from the terminal location where most people go through—in 2017-18 we had 1,287, in 2016-17 we had 1,263 and in 2015-16 we had 1,613.

Senator LAMBIE: If people were getting through, explain to me how they'd get through and override the system without showing their visas?

Mr Outram: As I've said, of everyone who arrives in Australia that we come into contact with on arrival at an Australian airport, we invalidate the fact that they've got a visa as an entitlement, if they're a noncitizen and they've got a visa to be here. That's point 1. It's also that, with the passport they've got, their face matches the version on the passport.

Senator LAMBIE: You've obviously seen everything that's going on with Crown. Quite obviously, from the stuff that's coming through on the TV and from what's been going on over the last three months, it's sitting there in front of us. They're not showing their passports. How does this work? I'm sorry, something's wrong here. I need you to be honest with us and tell us what's going on.

Mr Outram: I've got no intelligence or evidence, as you call it, in front of me that says there is a problem here. What we have is a story, and we will look into it with the AFP and
others. But I am not aware of any instances of any corporate entity bringing people to Australia illegally, deliberately and systematically.

**Senator LAMBIE:** You've obviously spoken to Andrew Wilkie, then?

**Mr Outram:** Sorry?

**Senator LAMBIE:** Have you spoken to Andrew Wilkie?

**Mr Outram:** No, I haven't.

**CHAIR:** Senator Lambie, the suggestion you have made to Mr Outram that he is being something less than honest is a serious one, and I'd ask you to exercise care in doing so.

**Senator LAMBIE:** That's just it, you see. I am doing my due diligence here, but we're not 100 per cent sure, because we've got one side telling us these people are coming in with no checks and then, as we do with government, they'll tell us what they need to tell us—what they know. That's my whole point.

**CHAIR:** Everything you've said does not mean there is necessarily an aspersion to be cast against Mr Outram, and I'd ask you to be careful in the way you exercise your right under privilege to make these allegations.

**Senator LAMBIE:** Okay. Since these episodes with Crown casino have been playing out in front of the media, what actions have you put in place, or what actions did you immediately put in place, to go and do these checks?

**Mr Outram:** We already have systems and processes and law and policy in place. It's been there for many, many years. I haven't been checking out these allegations. What I'm doing is speaking to my officers, who are telling me that they are going to Essendon Airport and all these other airports, doing these clearances routinely and collecting data and information about it, and we have a system in place. As to the allegation that the system is being exploited somehow, we will look into that with the AFP, the ACIC and others. If there is evidence that there is serious exploitation and criminality going on, it will be dealt with, but I am not aware of any actionable information or intelligence that would enable me to do anything as such.

**Senator LAMBIE:** I know, but have you been proactive? Have you been a little bit more proactive to go and check out these accusations at all?

**Mr Outram:** I haven't been checking out these allegations. What I'm doing is speaking to my officers, who are telling me that they are going to Essendon Airport and all these other airports, doing these clearances routinely and collecting data and information about it, and we have a system in place. As to the allegation that the system is being exploited somehow, we will look into that with the AFP, the ACIC and others. If there is evidence that there is serious exploitation and criminality going on, it will be dealt with, but I am not aware of any actionable information or intelligence that would enable me to do anything as such.

**Senator LAMBIE:** I have one more question for Home Affairs. Does the Department of Home Affairs have a double standard for Australian borders? Do borders only count when someone comes by boat and not when they come on a Crown jet?

**Mr Pezzullo:** That's a question for the department? The law under the Migration Act and the ancillary provisions in the Customs Act is applied universally. You made a reference to what used to happen on Mr Palmer's jets. I'm happy to take any information that you might want to send to me on that, and we'll have a look at it.

**Senator LAMBIE:** No, what I said was that you didn't do checks. I never got checked. So I'm simply asking: whether they're coming internationally or not, how many checks do you actually do? Not all of them are checked, are they?
Mr Pezzullo: The law is applied universally. So, when you ask if we have a double standard and carve out particular entities, the answer is no.

CHAIR: Senator Lambie, that is the expiry of your time. I know Senator Patrick has some cross-portfolio questions. If the committee is open to it, I'd suggest that we move into outcome 1 after the break, but I'm happy for everyone to have a think about that and let me know their attitudes to doing so, since it is a deviation from the program.

Senator PATRICK: Mr Pezzullo, I have some questions that go to FOI, which fits within the corporate classification. You are the principal officer under the FOI Act in relation to FOIs. I note that in an answer you provided to question No. 409—to the Senate rather than to this estimates committee—the number of FOIs in 2017-18 was 14,663, and it went up by approximately 4,000 in 2018-19. I note that you haven't increased staff; you've got 74.54 FTE, or about 74, and it's still currently running at 74. It appears, just on the early numbers, that you're likely to get about 18,000 this year as well, if I just divide it very simply—and I know that's not necessarily the accurate way to do that. Are you doing anything in relation to the increased number over those couple of years, in terms of resources to be able to process FOIs?

Mr Pezzullo: No. I've got an obligation to address finite resources across all of my risk areas. If I were to simply apply a measure that says that, as volumes in particular areas go up, you throw more resources at them, we're not funded on that basis, as I think you know. It's nice to be conversing with you again, by the way, Senator. I would have to take resources away from frontline operations, whether it's counterterrorism or counter-foreign-interference. So my preference is to seek from the chief operating officer, who's joined me at the table, whatever we can do to streamline processes and reduce internal red tape—noting that there are mandatory steps under the legislation that obviously have to be adhered to. I must say that, gratifyingly, we have a very low overturn rate with the Information Commissioner, which suggests to me that my decision-makers are operating, yes, under heightened tempo and increased volumes but are making the right sorts of decisions, just looking at the metric of the overturns from the Information Commissioner. My charge to the chief operating officer is to, wherever possible, take out the red tape, try to streamline and try to get yet more productivity out of that group of officers, who do a splendid job working on that case load which, as you rightly say, is likely to go up; that's what the data tends to suggest. But beyond that, until I'm convinced otherwise that there is a requirement because of faulty decision-making or more persistent overturns at review, that area is performing very well. I'm happy to look at any productivity-enhancing measures, better IT et cetera, but I'm not looking to shift significant resources into that area, because they would have to come from frontline operations. Ms Moy, do you have anything to add to that answer?

Ms Moy: In terms of some of the numbers, we're looking at about 21,500 this year. That's about where we're on track to at the moment. Eighty-four per cent is our compliance rate for personal requests, and overall it is 82.7.

Senator PATRICK: Compliance with what? With the time frame?

Ms Moy: With time frames.

Senator PATRICK: Okay. I'll tell you the thing that disturbs me most in these numbers: the number of deemed refusals, which simply means you ran out of time. You never bothered
to seek an extension; you just let it run over time. My personal experience in the FOIs that I've done to Home Affairs—and I do FOIs across a number of departments—is that you put something in and, after the 30-day statutory period, nothing has been received. So you acknowledge the initial FOI and then that's it; nothing occurs. That seems to me to be somewhat disrespectful, in the context that you should at least seek an extension and keep people informed as to the fact that you're not going to hit the time frame.

Mr Pezzullo: I don't see how that experience sits squarely with the facts that Ms Moy has attested. We have over 80 per cent compliance, so, when you say you never get anything, that simply can't be factually right, because in 80-plus per cent of the cases—

Senator PATRICK: I'm saying in my experience—

Mr Pezzullo: In your personal experience.

Senator PATRICK: I've done a couple.

Mr Pezzullo: Unless there is a particular issue in relation to responding to Senator Patrick's FOI requests—which I doubt would be particular to you, Senator—I can't see why that discrepancy would exist. Ms Moy, do you have an answer to this riddle?

Senator PATRICK: They're your numbers: about 3,700 per annum are simply deemed refusal, which means they just hit the 30 days with no responses received.

Mr Pezzullo: I understand the point, but we were in compliance in 80-plus per cent of cases. Ms Moy, how do we answer this riddle?

Ms Moy: That's correct. There have been some deemed refusals, and unfortunately one of yours, I think, was involved in that. When they hit that 30 days, that does not mean the department stops processing it. It does mean that in some cases, for various reasons, there might not have been the contact that should have occurred, and we do aim to improve those numbers. I think there is an issue with the size of the portfolio and the numbers. I think we went through about 2.8 million pages in 2018-19 in terms of requests. So sometimes the workload does get to the 30 days and something gets missed. But, across 17,000, it's a smaller number and we work to improve that. As the secretary said earlier, six of those—four partially and two fully—were overturned by the OAIC.

Mr Pezzullo: Only two were fully overturned?

Ms Moy: Two were fully overturned and four partially.

Mr Pezzullo: I misread my brief. So only four were partially overturned.

Ms Moy: Four were partially overturned, so six altogether.

Senator PATRICK: Out of how many applications that went to the Information Commissioner?

Mr Pezzullo: Across the caseload of tens of thousands.

Senator PATRICK: Not all of them go to the Information Commissioner.

Mr Pezzullo: Yes, I know. I understand that, but the ones that she reviews—

Ms Moy: In 2018-19, there were 261.

Senator PATRICK: On the philosophy of your allocation of resources, in some sense you're saying you are happy to allocate resources to the front line to deal with people who are not complying with the law generally, but, for people who have a lawful entitlement to
receive data in a timely fashion—that's what the act says; it's the object of the act—you simply say, 'I don't choose to fulfil my lawful obligation.'

Mr Pezzullo: I didn't say that at all.

Senator PATRICK: Okay, I'm giving you the opportunity to—

Mr Pezzullo: I've got to spread finite resources across every single piece of legislation this parliament sees fit to pass. It's within it's your prerogative to pass laws as you see fit. Like my colleagues in the portfolio and more generally across government, I have to apply finite resources which allow us to comply to the maximum extent we can. You have heard data on our in-time compliance, which is well over 80 per cent. In 261 matters that went to the independent statutory reviewer, two—

Senator PATRICK: That good.

Mr Pezzullo: I'm very impressed with those performances.

Senator PATRICK: I'm very unimpressed with the number of deemed refusals, which means you are not providing people with access as commanded by the parliament. You know the concepts here, Mr Pezzullo. While that happens from time to time and you do allocate resources, if you are not complying with the law, if you are not compliant with the command of the parliament, you ought to be seeking additional resources.

Mr Pezzullo: Which element are we not complying with?

Senator PATRICK: Under the objectives of the FOI Act—and all legislation should be interpreted through the objectives—people are entitled to timely access—I believe the word 'prompt' is in the objectives—to information. They are entitled to that in law, and if you are not meeting that requirement, you should be tapping the minister on the shoulder and requesting some more resources. The question is why you are not doing that. I'm just saying there should be an obligation on you, Mr Pezzullo, in circumstances where people are entitled to service from your department and entitled to access from your department, to seek additional resources in circumstances where you are not coping. I get that you can't do everything. You said you have not sought additional resources.

Mr Pezzullo: No.

Senator PATRICK: Why not?

Mr Pezzullo: Not specifically.

Senator PATRICK: You don't view those laws as important? You get to choose which ones are important?

Mr Pezzullo: I think that law is very important. We provide, within the balance of the resources that we allocate to the function, prompt and timely advice. If the statute were to say, you have to deliver this number of decisions within X time frame, and when there is a deemed refusal you have a right—

Senator PATRICK: The statute is very clear. On each decision, you should respond within 30 days. That's what people are entitled to: prompt responses.

Mr Pezzullo: And you heard the performance metric. I don't know how it compares with other departments.
Senator PATRICK: That might go to quality as opposed to quantity. I'm not criticising the quality.

Mr Pezzullo: All I can say is that if we are within 80 plus per cent of being in compliance—no doubt there are lengthy, complex, multipart FOIs. Often there are FOIs on FOIs or sometimes FOIs on questions taken on notice. Sometimes you get it the other way. An officer and a team might well take more than 30 days to process that. I'm not sure I am under a statutory obligation to keep the applicant notified. Perhaps it is good manners and good practice. As Ms Moy said, we will do better—

Senator PATRICK: There are opportunities in the FOI Act for you to seek an extension from the Information Commissioner, and you do on some occasions.

Mr Pezzullo: Yes, we do.

Senator PATRICK: But on other occasions you simply let it time out.

Mr Pezzullo: As Ms Moy said—

Senator PATRICK: In fact, when you do that—

CHAIR: Let the witness answer the question.

Mr Pezzullo: As Ms Moy said, nothing times out, because if it is a live application it is always being worked on until it is closed. If it is past the 30 day deadline, if it is deemed to be refused, it is not as though the officers drop pens on it.

Senator PATRICK: You know you are getting an extra 4,000 this year, based on what Ms Moy has said. It's going to 22,000 from 18,000. Are you going to seek additional resources, or are we going to have significantly more people not receiving their information or a decision in the time frame?

Mr Pezzullo: As we go into budget processes, I have to have regard to the risks that the nation faces, the threats—

Senator PATRICK: I just want to know why you are not seeking additional resources. That's the responsible thing to do. You have a statutory obligation to the public to provide timely access to information. It's not appropriate that you sit there and simply say, 'I don't consider that important enough.' That's not your prerogative.

CHAIR: Senator Patrick, the question has been asked and the question has been answered.

Proceedings suspended from 15:24 to 15:40

CHAIR: The committee will now resume its questioning of the Department of Home Affairs, including the Australian Border Force, in relation to cross-portfolio, corporate and general matters. I give the call to Senator Keneally.

Senator KENEALLY: Mr Pezzullo, I would like to ask you some questions about the Home Affairs strategic review. I want to thank you very much for the briefing I received. I thought it was quite thorough, even though it was just an hour long. It's clear that the strategic review seems to be a sound piece of work. As you made clear, bringing together the Department of Home Affairs is a complex process. It's seven agencies, 23,000 employees and $8 billion of taxpayer money. I think you've done a lot of work to set the department up for success, and I understand your teams are now busy implementing the work. So my first
question is—with that lovely opening, I will acknowledge!—are you happy with the results of the review?

**Mr Pezzullo:** It certainly has been an invaluable resource that we've been able to rely upon. For the benefit of the committee—and I do apologise for having to go over some of the ground that we imparted during the briefing—the intellectual property, the data and various artefacts that I referred to in my opening statement, such as the capability inventory, the true cost basis, once you take into account depreciation and other factors, of our assets and workforce costs, have informed us in quite a material and significant way that, yes, would lead me to be quite pleased with the results of the review. I can assure you, Senator, directly and the committee more generally that, as I said to you in the briefing, it's informing our ongoing work both for the MYEFO round that we're in now and in terms of positioning for the 2021 budget.

**Senator KENEALLY:** What kinds of benefits do you think the review will deliver specifically? I know I had the benefit of a briefing, but I would like the committee and the public to know what the direct benefits would be.

**Mr Pezzullo:** I might ask the first assistant secretaries for strategic planning and financial planning to join me at the table. Without ranking them in any particular order, without suggesting this is a strict hierarchy of importance, a deep understanding of the asset base is perhaps the most important element of the strategic review: which assets are approaching end of life; which assets could benefit from some extended remediation that would keep them in life; what opportunities there are, as assets achieve end of life, to perhaps look at new technologies, particularly on a collaborative basis with our colleagues across the portfolio, whether it's hyperscale cloud technology and the like. Generally speaking it is capital and assets—again, I don't want to put a hierarchy to this, because these things are all somewhat equally important in an interdependent organisation—and scale benefits: how you might be able to scale internal business services without compromising the independence that each statutory head needs in order to fulfil their duties; what you can do in what is typically called the back office; what achievements you can reach in terms of scaling those services and therefore deriving efficiencies.

A third area which is somewhat related is: where can you apply new technology not so much on the capital side but in terms of your business practices and processes? Some of the questions asked earlier about big data, for instance, go to this. Fourthly, what are the efficiencies that might accrue from different workforce models—for instance, common recruitment, just to take a very basic one. Notwithstanding some of the very particular requirements for ASIO and the Australian Federal Police and some other elements of our organisations, how might you achieve benefits in terms of, for instance, common HR practices?

That's just both an impressionistic and not particularly structured response, but I'm happy to have both Mr Kirkwood and Ms Cargill add to that answer if that's of interest.

**Senator KENEALLY:** I think that's sufficient for our purposes here today. It sounds like the department's happy with the outcome of the review, which leads me to the question: why the big secret? Why not tell the public about it? It seems rather odd that the information that's in *The Guardian* today seems to suggest that the department would give just one-word answers in response to questions on the review.
Mr Pezzullo: Two different strands are at play there, Senator. There's no secrecy in a review that's announced as a budget measure in the 2018 budget papers to the tune of $7 million, and we didn't need to expend all of that; we came in at under five. I made quite a detailed statement—I've been reminded as I've been preparing for these proceedings—to the committee meeting of estimates in May of 2018, and there have been references otherwise to some of the spin-off products. I've referred to the capability inventory. I've referred to the strategic road map, both to this committee and in other proceedings. I don't know that the premise of your question—why the secrecy—is supported by the facts.

On the particular issue of whether, through our media engagement activity, we engaged comprehensively with, I think it was The Guardian, from memory—in relation to, 'That's all fine; can we get a copy of the review?' Large organisations have got lots of communication that people choose to put into emails—I personally don't, because emails are a matter of record—where an area says, 'Is this the one that you're leading on?' And they'll respond and say, 'Actually no, it's not me; it's Betty or Bert'.

Senator KENEALLY: Yes, that's precisely what happened, and the response was: 'The Home Affairs capability road map was completed and provided to the minister in late 2018. The report has not been publicly released.'

Mr Pezzullo: That's right. And both of those elements are factually true. The road map was one of the foundational products that was informed by the review, and that has gone to the minister. I've referred to the capability inventory and road map several times, including in this evidence but also previously as far back as May of 2018—break sentence, dot dot dot—whether there was a summary report of the work undertaken by our consultant under the auspices of the strategic review is something that Mr Kirkwood, perhaps, is best placed to answer. I think our offices were diligently transacting amongst themselves. I don't know why people put this sort of stuff in emails, but anyway. Is this something that you know about, Mr Kirkwood? I go old-school: I just tend to prefer to speak to people on a phone and then, once a decision's made, you then record matters on email, which is a state statement of record. Mr Kirkwood, some of your officers were seeking clarity as to whether there was one document, whether there were a number of documents, or whether there was a final, omnibus report that encapsulated the entire strategic review. You might care to illuminate for us how they transacted all of that through email traffic.

Senator KENEALLY: Well, we could read it—I don't really know that I need to have it described again. It's all out there in FOI document 16. Mr Kirkwood, I don't know if you can speak to this, but the Information Publication Scheme established by the FOI Act compels agencies to publish on their website certain information they hold, and it encourages agencies to be open and transparent and to consider publishing information they aren't obliged to publish. So here we have $7 million, as you said, Mr Pezzullo, of taxpayer money spent on a review. There were very simple questions from a journalist: was it done, what were the outcomes, and will it be made public? And the answer is, 'Mark is comfortable with close to one-word responses.' If this is such good news, why can't the public know about it?

Mr Pezzullo: Mr Kirkwood, what's your view on that question?

Mr Kirkwood: Thank you for the question, Senator, and in some ways it's good to be able to correct the record here today, because I think there were some inaccuracies in the reporting this morning, which a close read of the FOI documents confirms. First of all, I guess, with the
way that this was handled inside the department, I think it's entirely consistent. Where the strategic review process was complex, it touched on a range of areas across the work the portfolio was doing, as the secretary outlined. It was dealing with capability issues, with finance issues and with efficiency issues, and it is still correct today that there are a number of different parts of the department that were involved. And that is purely reflected in the email traffic of, 'which part of this are we talking about,' and trying to clarify the correct response.

Mr Pezzullo: It's the elephant problem—you're touching the trunk, you're touching the ear, you're touching the leg, but it's all an elephant.

Senator KENEALLY: It's a $7 million review announced in the budget. It's pretty specific.

Mr Kirkwood: But every element of that process, whoever we asked, thought it was them, and none of them—

Senator KENEALLY: In fact, somebody thought it wasn't them, in the FOI.

Mr Kirkwood: And it was only in being able to look across the entire spectrum of all those activities—and even the advice out of my own area was not correct, because it looked at the capability work that was closest to us. So, the very specific question that was asked was about the strategic review process, and that was the very precise answer that was given. Otherwise we would have been imbuing answers into all of those other different areas, which would have been misleading at the outset.

Senator KENEALLY: So, the journalist's question came to you many months after you had in fact completed this review process and briefed the minister, as I understand it—unless you're going to tell me differently. Was there a plan to ever release information on the outcome of this $7 million review?

Mr Kirkwood: I think that's one of the points of clarity—that the response that you mentioned to the FOI documents—I could actually direct your attention to document No. 20, which is the short response you were talking about, and prior to that, document 17, I believe it is:

A Home Affairs Portfolio Capability Roadmap was completed and provided to the Minister for Home Affairs in late 2018. The report has not been publicly released

That was not cleared by me; that was removed by me, because it was inaccurate and it was misleading in providing the response. This capability road map is not the review. It's one of the documents that was informed by the review, but it's one part of a bigger piece of work.

Senator KENEALLY: Thank you. I note that there is still nothing on the department's website about this entire $7 million project, and I note the secretary's evidence that it's come in at $5 million. Do you ever think you had an obligation to update the parliament and the public on the expenditure of that money? Was it ever a consideration that it was an obligation upon the Department of Home Affairs? Or were you going to keep this secret unless you happened to be asked about it?

Mr Pezzullo: All estimates and appropriations are subject to the scrutiny of this parliament. I announced in May of last year, after the money had been appropriated, about the purposes to which we were going to put these funds. That work was diligently undertaken over the subsequent six to nine months. It informed a number of documents, some of which
are the subject of ongoing consideration. If you're asking whether every budget measure is specifically reported back on, that's not been my recollection.

**Senator KENEALLY:** Mr Pezzullo, this isn't just any budget measure; it's a brand-new department created with a great deal of fanfare, with a review ordered just a few months into it, announced by the government, of $7 million. It's not just any budget.

**Mr Pezzullo:** Across the forward estimates, the portfolio expenditure—$25 billion, I think it is—we treat every single dollar very respectfully. But in the scale of the $25 billion forward estimates funding stream, it falls below the threshold, even with a rounding error. We treat every dollar very seriously and precisely. That's why we saved money and didn't expend to the full limit of the appropriation money on external consultancies and the like. So, we take each dollar very seriously. But in terms of reporting back to this committee, as I said, across a budget appropriation of both administered and operating expenses of $25 billion, this is an important initiative but not particularly material in terms of the amount.

**Senator KENEALLY:** I will stop there, given that the chair has been very charitable with her allocation of time.

**Senator HANSON:** We were talking earlier about border security and the number of people coming into Australia, and I know it was an issue a couple of years ago—the number of visas that were applied for from Malaysia, and it's the only country where you can apply for visas online. Has that changed?

**Mr Pezzullo:** That's not factually right. It's correct to say that it's the only online lodgement country. In fact, most—

**Senator HANSON:** I meant to say from an Asian country.

**Mr Pezzullo:** No, that's also not correct. As I said in my opening statement, we've rolled out online applications to most parts of the globe. I think we are down to five per cent still being paper based, including many countries in Asia. For instance, China is online lodgement. I will get Ms Golightly to confirm that.

**Ms Golightly:** That's correct—95 per cent of all applications are now online globally.

**Senator HANSON:** Is it a problem with some countries compared to others? A lot of people come from Malaysia and, I think, India. Please correct me if I'm wrong. The ones who come from these countries that apply online for visas—do we have more problems with them overstaying and they end up before the AAT?

**Ms Golightly:** I don't think we have more of a problem with online than not online. Indeed, sometimes online applications give us more information and more ability to check. There are different types of electronic applications. There are what we call ETA entries, and others, that have a full online application. ETA countries, which includes countries in Europe as well as Asia, have streamlined applications under agreements with those countries. Sometimes the amount of information collected there is less because they are streamlined. But, in those cases, we develop good risk assessments that allow the system to identify those which really should be handed off to an officer to double-check or look into further.

**Senator HANSON:** If people are travelling to Australia, is it a requirement that they must have a return ticket home?
Ms Golightly: It would depend on which visa they were coming to Australia on. For example, if it was a permanent visa, the answer is no.

Senator HANSON: If they are a tourist who has applied for a visa to come to Australia, do they have to have a ticket to return back to their own country?

Mr Pezzullo: They're still visa-specific. If you've got a four year-student visa, I don't think anyone expects you to have a booked flight four years hence.

Ms Golightly: No. But even a visitor visa is valid for three months; and, with some of those, you have return visits. It would depend on the visa.

CHAIR: Senator Hanson, this sounds like it is about visas and it belongs in outcome 2.

Senator HANSON: It was leading to that because of border protection and the numbers coming into the country.

CHAIR: Border protection goes in outcome 1. I understood that you had something cross-portfolio in relation to one of Australia's islands.

Senator HANSON: I'll move to that. Mr Pezzullo, do you see people moving through Horn Island as a problem? It was brought to my attention by Thursday Island Council. They believe people may come across to Horn Island from Papua New Guinea. There is no processing whatsoever. There is no border security at all. People can come across and get onto a flight out of Horn Island straight to the mainland.

Mr Pezzullo: The suggestion that there is no border screening is not factually accurate. But, before I am admonished by the chair for straying into program 1.1—

CHAIR: And I will, Mr Pezzullo!

Mr Pezzullo: I'm duly admonished! I will cease speaking.

CHAIR: Okay. I think you need to save that for outcome 1.

Senator HANSON: But isn't that border protection?

CHAIR: Which is outcome 1. We are still in cross-portfolio. I'm sorry to inconvenience you, Senator Hanson, but I have to be consistent in the way I treat everybody. Senator Ciccone.

Senator CICCONE: My questions go to mental health. I don't know if the appropriate staff are here. Does the department provide any in-house counselling services to Home Affairs staff?

Mr Pezzullo: Chair, may I briefly interrupt. It was the established practice of your predecessor—and I'm sorry I didn't check this with you before—for Mr Outram, as the commissioner, to be afforded an opportunity to make an opening statement before program 1. Can I confirm that that is your intention as well.

CHAIR: That is still my intention, yes.

Mr Pezzullo: Thank you. I do apologise for interrupting.

CHAIR: No problem. Senator Ciccone has the call.

Senator CICCONE: My questions go to mental health. I don't know if the appropriate staff are here. Does the department provide any in-house counselling services to Home Affairs staff?

Mr Pezzullo: Yes.

Senator CICCONE: Is there anything provided beyond the standard EAP for your staff, and, if so, is there a different level of service or program?
Mr Pezzullo: If it's relevant to an officer's case management plan, particularly if they're under active case management either internally or through our Comcare arrangements. But I might ask the chief operating officer to address the question. As I understand it, the senator's question is: what mental health support is provided above and beyond Employee Assistance Program support?

Ms Moy: In terms of the support provided to staff, there's in-house support in terms of case management. There's also referral under early intervention to their own private supports, so they may go to their own psychologist or psychiatrist under early intervention. Again, that usually comes at the beginning of case management or on contact with the department to advise of an issue or seek assistance. The department also has a lot of different channels into mental health support in terms of how staff can approach through a peer support network, how they can approach contact officers and how they can reach in anonymously to our services. We put them on the web in terms of all the different internal supports and also the external supports that the department can refer people to. So there are a large range of support mechanisms depending on the individual's requirements and what the issues might be.

Senator CICCONE: Does the department's EAP provider provide any reportable data that can be used from your end?

Ms Moy: In terms of the data that EAP provides?

Senator CICCONE: Yes—obviously nothing specific about the individuals, but anything that allows you to be proactive in trying to address any specific issues within the department or a certain area.

Mr Pezzullo: We do have discussions with EAP in regard to what they're seeing in terms of the contacts they have. Again, it has to be quite cleansed information, because EAP is a private counselling session that people can use not only for their own personal work issues but for family issues, including parenting issues and children. So family members and the staff can access EAP. So we have discussions with EAP about the break-up of those sorts of contacts.

Senator CICCONE: Can you take on notice how many staff have accessed such services. If there's an ability to provide a breakdown of the types of services that have been accessed over the last three years, that would be great.

Ms Moy: Over the last three years, sure.

Senator CICCONE: Does the department have any systems in place to monitor the mental health and wellbeing of ABF officers? This follows on from a question I asked the AFP earlier about how they would describe the AFP's mental health services in comparison to other departments. I don't know if you're able to provide an answer to that.

Ms Moy: When I talk about the department, I include the ABF in that, so everything I talked about is in regard to the ABF as well. Also, in terms of talking to other departments, there's an interdepartmental committee that the department sits on in regard to mental health. We're actually meeting tomorrow with one of the other large departments to talk to them about what they provide to their staff in regard to mental health, but I don't know if—

Senator CICCONE: So the services provided to the department are the same as for ABF as well?
Ms Moy: Yes.

Senator CICCONE: Does the department provide any specialised services for operational areas at higher risk of mental health problems?

Ms Moy: The department has recently done some work in regard to those areas that are of highest risk. We also do some staff training in terms of the mental health toolkit for managers to address some of those. We do assessments of job roles to identify those areas where we need to pay particular attention. They may be those areas in the visa space that are looking at people's personal stories and issues. They also may be in countering violent extremism—those sorts of areas—and also the ABF front line.

Senator CICCONE: Are any services provided to the ABF Marine Unit?

Ms Moy: All of those services are available to the ABF Marine Unit.

Mr Pezzullo: Senator, I apologise for perhaps being less than clear earlier. The difference between the Australian Border Force and all of the other portfolio agencies is that, for reasons to do with government decisions upon the creation of the department and Border Force, Border Force is within the department for two aspects. One is finance; I'm the PGPA budget holder. The other is that, for all employment matters, I'm technically the employer. I delegate a lot of those powers to the commissioner. That is at variance with the arrangements that apply to the AFP, ASIO, ACIC and AUSTRAC. So, just to be clear, all of Ms Moy's advice is inclusive of the 14,000 plus workforce we have, which is the department public servants plus ABF as one workforce.

Senator CICCONE: From a couple of years ago, what was the justification for abolishing some of the internal staff counselling services in late 2016 and early 2017. It probably came from the former department, but there were changes made in that transition to the new department.

Ms Moy: I'll take that on notice, in terms of the actual detail of what was available in 2016-17, but the services that have been provided since that date are greater than what was provided in 2016-17 in terms of the ability to have the early intervention and in terms of going to your own private psychologist that you chose versus EAP. There's also a lot of work that is being done in terms of training provided to not only staff but individuals. There's also work that has been done to work with other portfolio agencies with regard to the services they provide, to share some of those services.

Senator CICCONE: Was there not an internal staff counselling service?

Ms Moy: I'll check the actual details of that.

Senator CICCONE: If you could, thanks. Has the department conducted a risk assessment on the impact that a reduction of workplace entitlements has had or could have on the mental health of your staff?

Ms Moy: A risk assessment on a reduction?

Senator CICCONE: Yes, of workplace entitlements.

Ms Moy: What reduction of workplace entitlements?

Senator CICCONE: I guess there has been a transition over the last couple of years from one department to this new department. What I want to find out is: what has the knock-on effect been onto your staff? Surely there has been added stress. We hear reports of reduction
in services. It's probably having an impact on morale within the departments. What I'm curious to know is: has that had any impact on the staff that you oversee?

Mr Pezzullo: There are two different issues at play there. The workplace determination, which, in our case, was arbitrated by the Fair Work Commission, is applicable to what was the Department of Immigration, Border Protection and the Australian Border Force. It has nothing to do with the creation of the Department of Home Affairs. All officers who came into the department from other departments—that is to say other than the Department of Immigration, Border Protection—carried entitlements in. Those enterprise agreements are respected as part of the process whereby they were MOGed—to use the term machinery of government change. Since that time, the Fair Work Commission has decided the basic conditions and the pay through arbitration. Those two things, temporally, happened at different times.

Senator CICCONE: I understand there is clause 10.46(f). I can table it if you haven't seen it. It's a workplace determination that restricts the sea going community allowance to no more than 18 days of sick leave per financial year. I believe that creates a considerable financial disincentive for staff to take appropriate leave to deal with health issues. Is it fair to say this incentive creates an unsafe work environment for those staff?

Mr Pezzullo: We don't tolerate an unsafe work environment for our staff. The difference between a typically bargained outcome under enterprise agreements and our case was that all parties had a chance to put that and related matters to the Fair Work Commission, which arbitrated an outcome, which is legally binding. Officers have to make their own decisions about whether they are satisfied with that. They did have choices in earlier ballots to choose potentially different outcomes, but they chose not to. In the end, under the Fair Work Act, we were obligated, being subject to an arbitrated outcome, to apply the workplace determination as determined by the commission.

Senator CICCONE: Does the department plan to expand any services to ensure that suicides or attempted suicides of ABF personnel, both at sea and at the college, don't occur in the future?

Ms Moy: I think I previously talked about the services that are available with regard to staff to address mental health issues. We continue to work with the ABF with regard to the services that they provide and the impact of those services on officers. Staff can also seek support and use the services for both personal and work related matters.

Senator McMAHON: My question relates to an expression of interest for a long-term lease solution for the Department of Home Affairs and Border Force accommodation and operational facilities in Darwin. The EOI was issued on 28 December last year and closed on 31 January. In August the department indicated that the assessment would be completed by 30 September but, to date, nothing has been released. Can you tell me what the current status of this project is.

Mr Pezzullo: I'm advised that the chief operating officer needs another folder. In the meantime I'd have to say, Madam Chair, that your predecessor never quite got this turnout. There are three empty seats, though, if you want to put an all points bulletin out.

CHAIR: And yet I feel like there's less of a show. Go figure.
Mr Pezzullo: It's that buzzer. I warned you about the buzzer. You don't have a buzzer. Ms Moy, I just won you some time.

Ms Moy: Sorry for the delay, Senator. In terms of Darwin, we have gone out on an EOI, which has been conducted by JLL on our behalf. Unfortunately, at this point in time we don't have any existing suitable sites or properties, with mainly greenfield sites presented. We are looking for a replacement to align our accommodation in Darwin and also our cargo examination facility, so at this point we're still working with JLL to identify suitable arrangements.

Senator McMAHON: Can you detail why a greenfield site would not be suitable.

Ms Moy: At this point in time I can't, because we need to look at what the arrangements would be. The work that needs to be done, in terms of Darwin accommodation and a container examination facility to be co-located, is a particular design that's not an everyday type of accommodation that's available in a commercial space. At this point in time we would have to look at funding for a greenfield site, so we'd need to go back to the Public Works Committee.

Senator McMAHON: What will be the process from here on?

Ms Moy: At the moment we're working with our provider of JLL—he's our government provider for property—to determine what the next best steps are.

Senator McMAHON: Thank you.

[16:13]

CHAIR: According to my little list, that brings us to the end of people who have cross-portfolio questions, so—going, going, gone—that's the end of cross-portfolio. We will now move to outcome 1. I ask that representatives of Border Force come up to the table. Mr Outram, do you have an opening statement?

Mr Outram: Chair, I congratulate you on your appointment. I also wish to acknowledge all new and returning committee members.

As I've previously advised, pressures within our operating environment continue to rise. For example, over the last four financial years international air travellers have escalated by over 17 per cent, from 38 million to 44.7 million, while imported air cargo consignments have increased by about 52 per cent, from 34.9 million to about 53 million. From an economic perspective, this is a really good news story of course. As important as it is to facilitate trade and travel, we also undertake a range of compliance and enforcement functions to maintain the effectiveness of our border in keeping Australia safe. In line with the broader Public Service, we're striving to improve all aspects of our business. We aim to be more efficient—for example, by searching less and finding more. We aim to find better ways of delivering our services—for example, through our Trusted Trader program. And we aim to focus our operations to optimal effect—for example, by targeting more compliance operations against unscrupulous labour hire intermediaries.

Ultimately we will have to find more ways to absorb ongoing volume increases in the number of people travelling to and from Australia and goods crossing our border and at the same time make the border a more convenient, seamless and digital experience. In this regard, a specific focus for my agency is modernising our customs and border functions. Australia's
two-way trade value is now worth more than $799 billion, and through the Australian Trusted Trader program we're ensuring a more secure and efficient trading environment to support our nation's economy and international competitiveness. Last financial year 233 businesses were newly accredited under the program, an increase of 157 on the 2017-18 financial year. At present there are just over 500 Trusted Traders. Importantly, the Australian Trusted Trader program provides a platform to test new technologies with trusted partners, such as Blockchain. We have also aligned the program with the Department of Home Affairs Known Consignor scheme, which secures air cargo exports by implementing security measures in the supply chain.

The ABF also continues to work with the New Zealand Customs Service to trial a digital secure trade lane. For businesses, the lane reduces administration at customs checks, while our respective government agencies obtain trade information more expeditiously so that we can target our enforcement efforts on higher-risk trans-Tasman cargo.

The measures I've outlined are merely some small elements of a longer-term multiphase plan to modernise our customs and border environment. Complementing the ABF's modernisation agenda, we continue to work ahead of the border. Our nation's security challenges, such as organised crime and terrorism, originate primarily outside of Australia. Indeed, 70 per cent of Australia's serious and organised crime threats are based offshore or have strong offshore links. At all times and wherever possible, the ABF strives to identify threats to our border upstream to prevent them from metastasising at our border or within our Australian community. A prime example of our work is our Airline Liaison Officer, or ALO, program. ALOs help us disrupt unlawful travel to Australia by identifying individuals engaged in visa and identity fraud or other criminal activities. In 2018-19 the ABF interdicted more than 380 people offshore who were attempting to enter Australia by using fraudulent documentation, an 89 per cent increase on the 2017-18 year. We also identified and offloaded a further 1,300 people seeking to exploit Australia's visitor and temporary visa programs, a 142 per cent increase on 2017-18. The ALO program saved Australian taxpayers literally millions of dollars in compliance and enforcement activities, legal costs and other government services that would otherwise be required if these people had made their way across Australia's border.

The ABF also continues to increase collaboration with international partners, including our contribution to Australia's stepped-up engagement in the Pacific region. For example, we are delivering a container control program, together with the United Nations Office on Drugs and Crime and the World Customs Organization. That program will create interagency port control and air cargo control units focused on improving supply chain security and trade facilitation. The first Oceania program, being developed in Fiji, will commence in early 2020.

Since 2015 the ABF has continued to integrate and build on its customs, migration and civil maritime functions and capabilities, and many other countries in our region and beyond are similarly seeking to better coordinate and integrate the work of their various border agencies in recognition of how borders are a critically important asset for economic productivity, revenue and security—benefits that are inextricably bound together. Our work at the border will continue to be shaped by our hyperconnected world, emerging strategic threats and the unintended consequences of new technologies. In preparing the ABF for these
challenges we are working to become an agency that is adept in terms of solving problems and agile in responding to competing demands.

In June 2018 the ABF released our ambitious strategy document 'Realising Our Full Potential' to further develop and augment the ABF's capabilities and leadership skills. Since that time we have completed around 50 per cent of the initiatives originally outlined. Of particular note, we've established the Australian Border Operations Centre, which embodies an operating system that has improved how we plan, coordinate and manage national operations, particularly to bring unique expertise together to solve problems across the broader continuum.

Finally, and very briefly, I'd like to highlight a few of the ABF's operational results from the 2018 financial year. We made more than 285,000 detections of illicit tobacco weighing more than 633 tonnes, representing more than $670 million in duty evaded. The ABF-led whole-of-government Illicit Tobacco Taskforce contributed to these results by seizing more than 182 million cigarettes and 61 tonnes of loose-leaf tobacco at the border, with more than $230 million in evaded duty. At the border, we also detected more than 19 tonnes of major illicit drugs, about five tonnes more than we achieved in 2017-18. To date, under Operation Battenrun, a national operation targeting unscrupulous labour hire intermediaries and foreign worker exploitation, 59 search warrants were executed, with 128 individuals being detained and 118 subsequently being removed from Australia, and 58 illegal worker warning notices were issued. Simultaneously, the ABF's sponsor monitoring unit undertook more than 500 site visits to ensure that sponsors were not breaching their obligations.

These results provide a mere snapshot of the professionalism and tenacity of the men and women of the ABF, who, whether on our front lines on land or at sea or in close support, are ardently committed to improving the lives of their fellow Australians.

CHAIR: Thank you, Commissioner. Do you have a hard copy of your opening statement that you'd be prepared to provide?

Mr Outram: Yes we do.

CHAIR: Thank you very much.

Senator ROBERTS: Mr Outram, I acknowledge the difficulty and the challenges you face and the way in which they appear to be faced. It's an increasingly complex set of circumstances with which you deal, and I'm sure that every time you make an improvement the people you are trying to chase and hold accountable make an improvement as well, so it will never stop. My questions are to do with asylum seekers. Is it true that currently around 80 asylum seekers per day arrive in Australia by air?

Mr Outram: No, I'm not aware of that statistic. Let me just go to some data that I do have. The Department of Home Affairs, of course, retain all the high-level data around people who come to Australia and claim protection.

Mr Pezzullo: If I might, it might assist the committee if both Ms Golightly and the commissioner's officers work together, because the visa issuance, as I've said several times today, is a matter for the department, and then the travel component of it is a matter for the ABF. But they work very closely together, so you've got the experts at the table. Perhaps for the rate of arrivals—that goes to Senator Keneally's earlier questions—I might ask Ms
Golightly to speak to that, and then the commissioner and his officers perhaps might go to matters to do with the actual travel component.

Ms Golightly: As mentioned in earlier evidence—in fact I think the secretary's opening statement—over the last four or five years the rate of people who come into the country and then claim asylum is about 0.23 per cent.

Senator ROBERTS: How many people would that be in a year?

Ms Golightly: We might be getting the figures for the year. I know in that same five-year period it was 92,000.

Senator ROBERTS: Asylum seekers?

Ms Golightly: Yes, people who claimed asylum.

Senator ROBERTS: That's very high, isn't it?

Ms Golightly: That is out of 40-odd million people coming in.

Mr Pezzullo: I refer you to my opening statement. Inclusive of the financial years 2014-15 through to the most recently concluded financial year, that is to say 2018-19, in relation to a flow of 40 million persons who arrived on temporary and indeed permanent visas, there were 92,000 applications out of 40 million for protection onshore, as we describe it—that is to say, protection claims lodged once you've arrived and you've cleared the border or you're at the border. As Ms Golightly said, that represents 0.23 per cent of the flow of visa arrivals over that time period.

Senator ROBERTS: So that 92,000 figure was over the four years?

Mr Pezzullo: Five years, inclusive of 2014-15. Starting on 1 July 2014 and concluding on 30 June this year, the stock of persons, the number of applications, was 92,000.

Senator ROBERTS: Thank you. How are they allowed to board the flight? What visas did they enter on?

Ms Golightly: The vast majority of visas in any one year that are granted are visitor visas. That's regardless of who then may or may not claim asylum when they get here. But in any one year, of course, most people coming to Australia are visitors.

Senator ROBERTS: What arrangements are in place with airlines to deny boarding flights?

Ms Golightly: There are actually quite a number of things we do offshore, before people come to Australia, and—I think as the secretary mentioned earlier—this starts right at the application stage, which is way before someone even arriving at an airport to board a plane. At the application stage, we have officers all around the world that have a look at the application, and we have systems that have risk parameters programmed into them, based on our experience and intelligence, which highlight those applications which need closer examination, and our officers will go through extra steps in checking those applications. Many are refused at that point, and, indeed, our refusal rates have been increasing significantly year on year. That's even before someone gets an opportunity to go to an airport. If they are granted a visa and then they arrive at the airport, if we have other information or alerts in place, and parameters that allow our ALOs—the officers that Commissioner Outram was just talking about—to identify people at the airport that they may wish to ask further questions of—and there is a certain number that are interdicted to them.
**Senator ROBERTS:** So a lot of it is done before they get to the airline.

**Ms Golightly:** That's correct.

**Senator ROBERTS:** What arrangements with the airlines are there?

**Mr Outram:** I might start from this point. The airline liaison officers are posted to a number of airports—obviously, I'd rather not give that out in public, but they are posted to a number of international airports, and they perform, really, two tasks. One is to check the bona fides of passengers coming to Australia, and obviously they target particular flights. The other one is to actually educate the check-in staff of airlines at those airports so that they are familiar with our requirements and processes. Back here in Canberra, part of the Australian Border Operations Centre I mentioned—our BOC, or our Border Operations Centre—where we have 24/7 staff, 365 days a year, who are engaging with airlines and checking departmental systems to make sure that, before passengers get on an aeroplane, they've got a valid visa. The airline liaison officers in questioning people are trying to ascertain: is the intent for travel the reason that's stated on the visa? So someone asked a question earlier on about whether they have a return ticket. There's an obvious question: if somebody's coming just for a couple of weeks without a return ticket, that might lead to further questions. They're also trained to look for fake documents and forgeries and those sorts of things. So, between the BOC and the ALOs—I'll give you some statistics: in 2017-18, the ALOs interdicted 205 people for fraudulently obtained or improperly documented travel. In 2018-19, that went up to 387. The Border Operations Centre interdicted 79 passengers in 2017-18, which in 18-19 went up to 179. Where the ALOs recommended an offload—because they felt the travel intent may not align with the visa or travel approval—in 2017-18 there were 555 cases, and in 2018-19 there were 1,343, or a 383 per cent increase on the previous year. So these officers are very practical and very busy, trying to make sure that people don't get across our borders here in Australia.

Then when people arrive here: at check-in we're notified through something called advanced passenger information that a passenger has checked in overseas, and there are a number of checks in place then in our systems to make sure that not only have they got a visa but also to ask if there is anything known about this passenger that we should be concerned about. And then when people arrive, if there is a matter that's of concern, then our officers at the Australian border will then take over. Of course, when they arrive in Australia, people need to have a valid visa. They need to have a travel document—this is at airports—and we do check, at either the primary line or through our SmartGates, that the person who's got the document is the person who should have it, in terms of the face-to-passport match.

**Senator ROBERTS:** Have you noticed any trends in either the number of people you block overseas or the number of people who arrive here as a result of the stronger maritime border protection?

**Mr Outram:** As I've said, the numbers in terms of our ALO work have gone up over the last two or three years. They've been very proactive and are doing a great job. Here at the airports, though, the number of unauthorised air arrivals by program year who've been screened at Australian airports after seeking to engage Australia's protection obligations at the actual airport before they get through the airport in 2016-17 was 41 passengers. In 2017-18 it was 62 passengers and in 2018-19 it was 60 passengers. Those numbers have remained broadly consistent.
**Senator ROBERTS:** What is the government response if this is the new way for people smugglers to get on board? Is it just: keep doing the same thing—tightening up?

**Mr Outram:** I don't think it's a new way. It's the way that people around the world—it's not unique to Australia—obviously sometimes seek to circumvent border controls. It's very hard to do that in Australia. It's mostly opportunistic in individual cases where people come to do that as opposed to highly organised cases. In some cases, there's an element of organisation, and we're on the lookout for that. But, by and large, it's sporadic and individual. I'm not aware of any sort of massively orchestrated campaign here against Australia or our border.

**Senator ROBERTS:** If someone gets through and arrives in Australia, what's done with that person? What do you do?

**Mr Outram:** Provided they satisfy the requirements for entry—so they've got a valid visa, and we've checked that; they've got a valid travel document; they've satisfied the face-to-passport check; and they've cleared the immigration part of the primary line—they then have to clear customs and quarantine, which is the a part of the Department of Agriculture. Once they've done that, they're in Australia. They can obviously move around in our communities as tourists or students or whatever.

**Senator ROBERTS:** If they subsequently apply for asylum?

**Mr Outram:** That's where the department takes over.

**Senator ROBERTS:** What is the process then?

**Ms Golightly:** I should also mention the numbers. You asked about trends. The numbers overall decreased in the last financial year by 12 per cent. In terms of the process for somebody claiming asylum, there is an application form, which they need to fill in with various bits of information, that is assessed by our expert staff who are highly trained and experienced, as the secretary mentioned in his opening statement, in this very specialised area. That assessment is made, and the claim is either granted or refused.

**Senator ROBERTS:** My last question is: what happens to the claimants whose claims are rejected?

**Ms Golightly:** The claimants have appeal rights under the law. So a number of things could happen. They could avail themselves of those appeal rights to the AAT and, subsequently, the courts. They could accept the decision and leave Australia, or they may have avenues to apply for a different type of visa. We'd have to look at the circumstances.

**Senator ROBERTS:** Would you consider deportation?

**Ms Golightly:** If they remain here unlawfully—so if they don't apply for another visa and the protection claim has been refused and is not under appeal—then they are unlawful in Australia and would be open to removal.

**Mr Pezzullo:** By way of a very brief supplementary comment: the evidence you've heard across the two sides of the department for the whole end-to-end stream suggests that—clearly, based on the evidence—99.73 per cent of people do not avail themselves. I'm not suggesting that availing yourself of a claim for protection is either a good or a bad thing; it's just factually the case that 99.7 per cent of people do not.
In the case of the 0.23 per cent of people who do—we’ve talked about the 92,000 over five years—the marginal gain that you would achieve in tapping that number down by putting onerous restrictions, in terms of students, tourist visitor visas and the like, would be completely disproportionate to the gain you'd be getting, because you'd end up creating so many disincentives in both the tourist visitor visa and student categories that that pain wouldn't be worth the effort. It's not to say you don't want people put in a position where they're here for a long time and potentially subject to exploitation, which I know has been an important part of the public commentary. But hopefully we have given you an assurance that from the time a person applies for a visa right through to their clearance for immigration control—and through to their being potentially breached as they go through various steps of lawful review—it is a very controlled process. For the additional effort of trying to get that down to zero, you'll get a vanishing return.

Senator ROBERTS: I understand. It's a very important area and it can't be 100 per cent, but you are striving for it.

CHAIR: Senator Roberts, I'm going to have to stop you there. We have many people waiting for us.

Senator HENDERSON: Chair, could I ask a couple of quick follow-up questions?

CHAIR: Is it truly follow-up?

Senator HENDERSON: Yes.

CHAIR: All right, keep it short.

Senator HENDERSON: Mr Pezzullo, is the practice of people coming to Australia legally, and then applying for protection, unique to Australia, or is it happening in many other parts of the world?

Mr Pezzullo: Given the demands on the refugee and asylum system, it is a systemic feature around the world. People try to cross borders. To be candid, it does to some extent depend on the level of attractiveness of the destination, coupled with whether permanent protection, as distinct from temporary protection, is on offer. There is an element of push created by the volume of people—70 million-plus people seeking some kind of movement away from conflict and other types of related zones. Is it systemic across the world? Yes. Do people smugglers and human traffickers take advantage of people's genuine desire to try to get to safer circumstances? Yes, absolutely.

When we have our discussions with both Five Eyes partners and other jurisdictions, and go through some of the data that we have just presented to Senator Roberts, there is among my colleagues a degree of incomprehension that we have got the numbers as under control as possible. I have to repeat myself when—

Senator HENDERSON: The 0.2 or 0.3 per cent of all air arrivals—

Mr Pezzullo: I have to repeat myself when I am briefing colleagues that 99.7 per cent of people arrive lawfully, undertake their business and act in accordance with their visa. That is not to suggest that they are seeking protection; I can feel the opprobrium that I am about to get from Senator McKim, so I'll anticipate that. There is nothing wrong with claiming asylum having arrived here lawfully. But you don't want to put people in a position where they are
incentivised to make payments to criminals. Frankly, the reaction we get is the 'Meg Ryan' reaction: 'We'll have what they're having.'

**Senator HENDERSON:** Can people who arrive by air be compared to those who arrive unlawfully by boat? There is obviously an attempt to try and compare the two. Can you comment very quickly on that.

**Mr Pezzullo:** It is a completely different problem; indeed, it is an existentially different problem. People who arrived in the most recent episode—between 2008 and 2013—had none of these checks done. They literally arrived, sight unseen, unknown to us, often with identity documents having been destroyed and after extremely perilous journeys. I think the committee is well seized of the key facts. There were at least 50,000 arrivals. We think 1,200 people drowned at sea—and we think that is a conservative estimate. I have been in this role or similar roles for about 10 years. I have seen a border crisis with colleagues. I have dealt with a border crisis. This, Senator, is not a border crisis, I can assure you.

**CHAIR:** Senator Keneally, you had a follow-up question?

**Senator KENEALLY:** Mr Pezzullo, is it true that the number of asylum seekers who arrived by air climbed from 8,562 in 2015, to 12,673 in 2016, to 18,267 in 2017, to 27,884 in 2018 and is now at 24,520 in 2019? That is, have we seen a big increase, year on year, since 2015?

**Ms Golightly:** The figures you just read out are very close to the figures that I have got, including that they decreased last year by about 12 per cent. Of course, these figures are in the context of the increase in the overall number of visitors that we get every year.

**Senator KENEALLY:** I note the secretary's continued assertion that it's 0.23 per cent of all arrivals. I don't remember the government making a similar argument when talking about boat arrivals—

**Mr Pezzullo:** Well, it was 100 per cent of—

**Senator KENEALLY:** which was 50,000 and now, according to ABC fact check, it's 100,000 asylum arrivals by airplane. I don't remember that. But I go to your Meg Ryan point, where you say other people say 'we want to have what they're having'. Have you seen the 2019 trafficking in persons report from Secretary of State Mike Pompeo in June?

**Mr Pezzullo:** I'm familiar with it.

**Senator KENEALLY:** He specifically did not want what Australia is having.

**CHAIR:** Can you provide a copy?

**Senator KENEALLY:** I can provide multiple copies to be tabled.

**CHAIR:** Thank you. And I think you had a media article that you were referring to earlier?

**Senator KENEALLY:** Yes, I can certainly also provide that.

**CHAIR:** Thank you, Senator Keneally.

**Senator KENEALLY:** Mr Pompeo did not want what we were having. He said in relation to Australia: Although the government meets the minimum standards, it did not convict any traffickers, initiated fewer prosecutions, did not adequately screen for indicators of trafficking among vulnerable groups …
It then goes on to talk about:
… human traffickers exploit domestic and foreign victims in Australia.
And:
There have been cases of reported exploitation in the fruit picking industry, where victims have reported excessive work hours, deliberate underpayment of wages, falsification of records and unauthorized deductions from wages.

He says that Australia needs to:
Significantly strengthen efforts to investigate and prosecute trafficking offenses, with increased focus on labor trafficking, and sentence convicted traffickers to significant prison terms.

If US Secretary of State Mike Pompeo does not want what we've got when it comes to dealing with people being trafficked through our airports, how can you sit here with a straight face and tell us that we are the envy of the world? We are clearly not.

Mr Pezzullo: Because I was in the state department not two weeks ago, and we had that precise discussion.

Senator KENEALLY: Did you get this report?

Mr Pezzullo: There are different things being conflated here. A universal visa system with a managed migration program underpinned by a points based skills test is something that the President of the United States—and Secretary Pompeo is a member of his cabinet—has explicitly stated as being what they want to achieve in terms of border control systems. In terms of targeting human traffickers, the evidence that we see in the field—and Commissioner Outram, no doubt, will later on be speaking about Taskforce Cadena—does not bear out anything other than this assessment. And in the cases where it has occurred, it's despicable; it's abhorrent.

Senator KENEALLY: Was Minister Jason Wood wrong when he said last year in this report I'm happy to table:
Organised crime and illegitimate labour hire companies are using this loophole—that is, our immigration system and the asylum protection claims—to bring out illegal workers who are often vulnerable and open to exploitation. This represents an orchestrated scam that enables these criminal elements to exploit foreign workers in Australia until their claims are finalised.

Is Minister Wood wrong?

Mr Pezzullo: When he was the chair of that parliamentary committee as opposed to being a minister?

Senator KENEALLY: Does it make a difference now that he's a minister?

Mr Pezzullo: He gets classified information and classified briefings.

Senator KENEALLY: Are you actually telling us that the Report of the inquiry into efficacy of current regulation of Australian migration and education agents, which Minister Wood signed off on, is incorrect?

Mr Pezzullo: I'm not suggesting anything about a parliamentary committee report. That's just one view, often—

Senator KENEALLY: In the chair's foreword—
CHAIR: Allow the witness to finish, Senator Kennelly.

Senator KENEALLY: In the chair's foreword, that is what he said.

CHAIR: Senator Kennelly, let the witness finish before you move on to the next question, please.

Mr Pezzullo: All I can go off is the operational data that I see. Mr Outram mentioned earlier, and I'll reinforce and repeat his evidence, because he and I are as one on this: we do see opportunistic attempts to both claim asylum after border arrival—in some cases, no doubt, it's premeditated. We do not see the scale of organised trafficking that leads to slavery, slave-like conditions and labour exploitation on the scale that is present in media commentary. We just see the evidence before our eyes. Commissioner, you see this most directly through your sweeps through Taskforce Cadena.

Do we see opportunistic attempts to depress wages, to hold people in a state of apprehension about their visa conditions—yes, occasionally, and there has been evidence given in this committee on many occasions of the joint work done by the Border Force and the Fair Work Ombudsman, which is in another portfolio. Do we see the global human trafficking that sees Australia as a light touch that can easily penetrate all of the border defences that I described earlier—no, we don't.

CHAIR: Senator Kennelly, I'm conscious that this was a brief follow-up.

Senator KENEALLY: It was, and I'm going to follow it up. I have plenty more documentation from government sources to put to the secretary, but I will do that later. I thank you, Chair, for your indulgence.

CHAIR: Thank you very much. No problem.

Senator PATRICK: I have questions in relation to transport security, so if the right person might wish to come to the table that would be appreciated.

Mr Pezzullo: Chair, just seeking your procedural clarity here: typically—again, I'm just making reference to your predecessor—matters pertaining to the department and the ABF working together have been taken as a batch, programs 1.1 through to 1.5. Then there's a natural break in the programs from 1.6 onwards which are purely within the remit of the department. I just seek your guidance as to what your practice—

CHAIR: I understand. I have told members of the committee that there would be a little bit of a less structured approach within outcome 1. Given they've been waiting patiently with that in mind, I might inflict whatever inconvenience that causes upon those at the table to come through on my undertaking.

Mr Pezzullo: We serve at the pleasure of the committee, so we'll just have to reorganise things a bit. I'll ask Mr Grigson and other officers to join us at the table.

CHAIR: Senator Kitching, I understand your questions go to a similar matter—is that right?

Senator KITCHING: They do. Not only that; Senator Patrick and I have a side deal where if he has any time left over he will allot it to me.

CHAIR: I was going to suggest that you should do yours as follow-up. If you're both in a similar mind, then that's okay.
Senator KITCHING: Yes, mine do go to transport security.

Senator PATRICK: Are you missing Senator Macdonald, Mr Pezzullo?

Mr Pezzullo: I'll keep that private to myself.

Senator PATRICK: I would like you to correct the evidence in relation to Meg Ryan. I think it was the person behind Meg Ryan that said, 'I'll have what she's having.' If you'd like to do what Meg Ryan did before that, I'd be interested in seeing it!

CHAIR: I do like your appreciation of the details, Senator Patrick!

Senator PATRICK: I put a question to Infrastructure, Regional Development and Cities in relation to transport security. The topic relates to the Home Affairs decision to place security requirements at regional airports. Reading from their answer:
The Department of Home Affairs is responsible for setting and managing aviation security requirements and is overseeing the $50.1 million funding allocated at the 2018-19 Budget to assist regional airports in purchasing the required security screening equipment.
There was a controversy in the last parliament, and this was agitated at the RRAT committee into regional airfares, that the government wasn't paying for the ongoing operation of the security equipment, which is quite expensive and has an impact on regional communities, and that they would have to foot the bill. They went on to say:
In light of issues raised, the department will work with the Department of Home Affairs and industry to conduct up to six case studies to assess the financial impact of the enhanced aviation security requirements on regional airports and, where possible, the flow on impact to the local communities. The airports, from across a number of states, will be selected based on varying passenger and flight departure profiles.
I'd like to get an update on the status of those studies that are going on, presumably, between you and others.

Mr Grigson: Yes, we're working with Infrastructure on that issue. They're the lead. They will pick the six or so airports to be studied and we'll work with them on the security element. We've had several conversations with them over the past few months and we're still working on that with them.

Senator PATRICK: So you don't really have any details as to when it's likely to be expected that a decision will be made in relation to any further funding?

Mr Grigson: No.

Senator PATRICK: One of the controversies in relation to this is that at some airports—I'll use Whyalla as an example, because that has been talked about in the media and has both Rex airlines and Qantas flying to the airport—the requirement, as we learnt at the hearing, was something along the lines of: if it's a 40-seat aircraft, security screening is required; if it's less, it is not. Therefore the Rex flights, with the SAAB aircraft that carries 34, won't need to be screened but the Qantas Dash 8 will need to be screened. That creates a problem, in that Rex say they're operating on limited margins, and, noting there's no requirement to have security checks, would then have to pay for the security screening unnecessarily. Qantas on the other hand will say, 'We are being disadvantaged in respect of our particular flight, and we now have to bear all of the cost of the security.' Has the department looked at that aspect of it?

Mr Grigson: Yes. The 40-seat requirement came out of a review done by the Inspector of Transport Security in 2017. We're shifting from a weight-based test to the number of
passengers. That follows a risk assessment that was done where the risk moved from being an aircraft being flown into a building, for instance, to a crowded place or a place with a larger number of people. The inspector had to draw the line somewhere, and he drew it at 40 seats.

**Senator PATRICK:** Okay. But my question goes to: it might be the case that, for example, if it is imposed upon Qantas, and they bear all the cost at Whyalla, they may cease to operate into Whyalla, and Rex will continue to operate there because they don't need that requirement. So it creates a problem. Has the department got the view that, if passengers from one particular airline are being screened, that Rex in that instance should be screened as well?

**Mr Grigson:** As I said, the tests are done on the basis of a risk assessment. The Inspector of Transport Security recommended 40 seats. There is already a difference that takes place in terms of weight, so not all aircraft flying into an airport will be screened. There is a circumstance already where there is some difference between aircraft that are screened and unscreened. As I said, we're aware of the issue. We've been talking to industry about it. But the 40-seat rule is the rule that we've decided to implement.

**Senator PATRICK:** Will the study that looks into the effect that this requirement places on communities examine not just the cost to the community but how it affects the airlines that may choose to operate at those airports?

**Mr Grigson:** The study will consider the flow-on effects of the costs to the various stakeholders at the airport.

**Senator PATRICK:** Okay. You're saying the lead is the department of industry?

**Mr Grigson:** It is.

**Senator PATRICK:** I'll ask them questions—

**Mr Grigson:** Sorry, you said 'industry'. It's Infrastructure.

**Senator PATRICK:** I'll ask them separately. I just didn't want to ask them only to be told to come back to you guys.

**Senator KITCHING:** Could I ask some questions about the Port of Melbourne?

**Mr Grigson:** Yes.

**Senator KITCHING:** I understand there are two security gates at the Victoria International Container Terminal. The first is staffed—and this is for employees, going in and out—and the second is not physically staffed, and that's where the trucks and cargo pass through. That's correct?

**Mr Grigson:** I don't know, but continue.

**Senator KITCHING:** I'm asking this under the critical infrastructure domain.

**Mr Grigson:** Continue. I'll call the right person to the table.

**Senator KITCHING:** Excellent, Mr Grigson. Australian employees in stevedoring operations in Australian ports are required to be screened by both the AFP and other intelligence agencies. Is this correct?

**Mr Grigson:** We run a maritime security card, an MSIC, out of my division. That is true. There are a number of checks done for people that hold an MSIC.

**Senator KITCHING:** So all other port employees are required to have a security screen undertaken?
Mr Grigson: If they access certain parts of the port.

Senator KITCHING: I understand that some of the critical functions of the Victoria International Container Terminal have been outsourced to a company in Manila. Is this correct?

Mr Grigson: I don't know.

Senator KITCHING: Is there someone who is following this in your section, Mr Grigson?

Mr Grigson: Let me take it on notice for you and see if I can get you an answer quickly.

Senator KITCHING: To facilitate this discussion, my understanding is that the functions of the security gates, the automated stacking cranes and the terminal operating systems are outsourced to Manila, so they're offshore. Does the International Container Terminals Services company train these workers in Manila or in Australia?

Mr Grigson: I'll find out for you.

Senator KITCHING: You'll take that on notice?

Mr Grigson: Yes.

Senator KITCHING: Do these workers in Manila have to undergo any of the security checks we have just talked about?

Mr Grigson: I'll take that on notice.

Senator KITCHING: So, with regard to a truck arriving at the Victoria International Container Terminal, under the system currently in place, they would drive up to the security gate and swipe a card, and they would then have to have their identity verified by someone at a computer screen in Manila?

Mr Grigson: I'd have to check for you.

Senator KITCHING: I'll give you this example: if you're a truck driver and you show up at the Port of Melbourne, your entire interaction would be with someone in Manila, in the Philippines?

Mr Grigson: I'll check the process for you.

Senator KITCHING: I guess the question is: without physical verification, what's to stop multiple drivers from using the same card? Do you see the issue?

Mr Grigson: I do see it. Yes, I do.

Senator KITCHING: Are you aware of any incidents of this happening?

Mr Grigson: No.

Senator KITCHING: Theoretically, could someone in Manila remotely open the gate for someone without a security card?

Mr Grigson: I'd need to check the operating technology in play.

Senator KITCHING: My understanding of what can happen, because the cards don't always swipe—as we all know, sometimes cards don't swipe well—is that someone from Manila can remotely, in Manila, open the gate at the Port of Melbourne.

Mr Grigson: I don't know. I'll find out for you. As I said, I'd need to know what the technology being used is.
Senator KITCHING: So someone who has not gone through any level of security screening could let anyone they like into a major Australian port?

Mr Grigson: I don't know that until I check for you.

Senator KITCHING: You're taking all of this on notice?

Mr Grigson: I am.

Senator KITCHING: Maybe what you could also take on notice is: from onshore here, do we have any oversight of the cybersecurity infrastructure and the measures being employed by ICTSI's Manila operations to ensure breaches do not happen?

Mr Grigson: The same as before.

Senator KITCHING: You're going to take on notice that—firstly, have you done an audit of the technology?

Mr Grigson: I'll have to take that on notice. We do do audits, but I don't know whether we've done the Port of Melbourne—

Senator KITCHING: You've got no-one here who could answer that? I would have thought that, if you've done an audit, someone in the room, or someone in the room behind, might know.

Mr Grigson: I'll take it on notice for you.

Senator KITCHING: If it hasn't been done, could you also take on notice: are there any plans to do so?

Mr Grigson: Yes.

Senator KITCHING: And, if you have, what did it reveal?

Mr Grigson: Yes.

Senator KITCHING: Is any report, annual or otherwise, provided to Home Affairs by the landlord or operators of the Port of Melbourne, and what sort of detail does this entail?

Mr Grigson: Yes.

Senator KITCHING: Are you aware of the Maersk-AP Moller malware incident in 2018?

Mr Grigson: I'm aware of it, but I couldn't give you any detail about it, if that's where you're going.

Senator KITCHING: The reason I raise this as an analogy is that they're the biggest container ship and supply vessel company in the world, and in 2017 they had almost their entire global port and shipping operation paralysed because of a security breach.

Mr Grigson: Yes, I'm aware of it.

Senator KITCHING: So are you concerned that running many of the critical functions of Melbourne port offshore, where we have limited to no oversight, puts it at greater risk of a similar data breach?

Mr Grigson: I need to look into the conditions that are in place around the Port of Melbourne. I don't have them before me. Before I could give you an answer on it, I'd need to look at them.
Senator KITCHING: Maybe you could also take on notice whether the department considers that ICTSI has gone to great enough lengths to militate against something like this happening, as it happened with Maersk.

Mr Grigson: I'm happy to do that.

Senator KITCHING: Under the Security of Critical Infrastructure Act, there's a register of critical infrastructure assets, whereby owners and operators of relevant critical infrastructure assets had six months from 11 July 2018 to register ownership and operational information on the register. Have ICTSI registered the Victoria International Container Terminal?

Mr Grigson: I'll check that for you. We have 207 assets on the register, so I'll check to see if it's on it.

Senator KITCHING: I would have thought the Port of Melbourne, which is the only port in Australia to do 20 million TEUs, would be a priority.

Mr Grigson: I expect that it's there, but I would hate to say, 'Yes, it's there,' and then find out that it's not.

Senator KITCHING: Okay. Under the SCI Act, a minister has ministerial directions power under part 3, division 1.

Mr Grigson: Yes.

Senator KITCHING: The Minister for Home Affairs has the ability to direct an owner or operator of critical infrastructure on whether a specified thing has been mitigated for national security risks, where all other mechanisms to mitigate the risk have been exhausted. You're going to take this on notice, but if there's been outsourcing of critical functions at the Port of Melbourne and there's potentially a lack of oversight here—by 'here' I mean onshore in Australia—could this direction be applied?

Mr Grigson: That direction has a very significant power behind it. Before we got to that point, we'd work through, with the companies concerned, other mitigations that might be in place. There are significant expectations of the owners and operators of all pieces of critical infrastructure to look to their cybersecurity.

Senator KITCHING: My understanding is that the ship-to-shore crane operations are still physically staffed and operated on site, but I also understand that that's because the technology isn't yet ready for this function to be automated, but it's coming, as we've seen in other sectors. Is that your understanding?

Mr Grigson: There's a continuing convergence between information technology and operational technology across all sectors, and the ports are no different.

Senator KITCHING: Do you know if tests have been run to see whether those operations could be automated?

Mr Grigson: At the Port of Melbourne or more generally?

Senator KITCHING: At the Port of Melbourne.

Mr Grigson: I don't know. I'll find out for you.

Senator KITCHING: Thank you. My understanding is that there have been unsuccessful attempts made to remotely control this process. That would also be done from the Philippines.
I'll just end with this: given that the Chinese telco Huawei was barred from providing Australia's 5G network over concerns that this would allow an interference with no oversight in a key piece of infrastructure, why is it okay for another piece of key infrastructure, the operation of one of the country's main ports, to be done from overseas with little or no oversight?

**Mr Grigson:** Without accepting the premise of the prelude to that around 5G, I'd need to look at the arrangements that are in place for the Port of Melbourne. As I said, there are 207 assets on the critical infrastructure register, and I don't have the details of all them before me.

**Senator KITCHING:** Could you take all of that on notice, but I would say that, if we were ever in a conflict scenario and we've got a port where the software is being run from overseas, that would be a problem.

**CHAIR:** This isn't an opportunity for a speech, Senator Kitching.

**Senator KITCHING:** No, I'm not giving a speech. That would be a problem. Thank you very much.

**CHAIR:** I might ask a couple of follow up questions, and that way I suspect we will be finished with transport, subject to anybody at the table telling me otherwise. What are the usual arrangements that are in place between government and airports regarding the costs of operating and maintaining screening equipment?

**Mr Grigson:** That's an industry responsibility.

**CHAIR:** Which bit? Operating and maintaining are both industry responsibilities?

**Mr Grigson:** That's right, with the exception that in the last budget the government decided to provide regional airports with $50.1 million to help with the initial purchase of equipment.

**CHAIR:** Is that the Regional Airport Security Screening Fund?

**Mr Grigson:** I don't have the name before me, but I'll ask Ms Holben, who knows these details better than me, to come to the table. There are two funds. One assists with training and one assists with capital purchases.

**Ms Holben:** You are correct, Senator: that is the correct fund for the regional airports and their upgrade to their screening equipment.

**CHAIR:** What's the rationale for the increased screening standards being required?

**Mr Grigson:** There was a report prepared by the Inspector of Transport Security in 2017 following the disrupted plan at Sydney Airport in that year. It made a series of recommendations, including moving to the 40-seat rule for aircraft flying into regional airports. The lessons we have learnt off the back of that disrupted plan and other advice from the intelligence agencies has led to the new regulatory requirements.

**CHAIR:** What consultation was engaged in with regional airports about getting the balance right on this?

**Mr Grigson:** We've consulted with regional airports over many months and, as recently as last week, we have continued to talk to airports. There's another consultation forum in the first week or so of November. It's sufficient to say different airports have had different concerns,
often around costs but not solely, and we've done what we can to put only the minimum required security in place to meet what we think is a changed risk environment.

**CHAIR:** How will this funding operate in a practical sense to ensure that regional airports improve their security, and how does that contribute to national security?

**Ms Holben:** The process is that they apply through the AusIndustry grants hub. It's an application process. The grants hub will assess their application and the $51.1 million will be apportioned to those eligible airports that have applied for funding.

**CHAIR:** How does that contribute to national security?

**Ms Holben:** In terms of the Inspector of Transport Security's recommendations, through upgrades of screening equipment we can assure ourselves that the prevention of unlawful interference will endeavour to ensure that we continue our security measures to mitigate those risks.

**CHAIR:** To cut through the management speak, what's the risk if we don't do this?

**Mr Grigson:** Senator, let me try and help you. The upgrade will provide more sophisticated technology to identify risks that come through the screening points. We hope that over time people will move through faster. So you may well get a dual benefit here, where the technology will pick up more items than it has previously and the flow of people will be faster.

**CHAIR:** Senator Roberts tells me he has connected questions. So we will briefly go to those.

**Senator ROBERTS:** Mr Pezzullo, I asked the question, 'Is the current rate of asylum seekers arriving in Australia around 80 per day?' You said that, no, it wasn't, that it was far lower. You cited an average of 50 per day over the last five years. The figure for 2015—

**CHAIR:** Senator Roberts, how is this about transport screening?

**Senator ROBERTS:** No, this is about my earlier questions.

**CHAIR:** Then it is going to have to wait. I beg your pardon. This is just about transport. I want to finish off the transport questions and then we will share around the call for people who have been waiting patiently. I'm sorry, I didn't realise you wanted to go back to other things.

**Senator ROBERTS:** That's what I said—I wanted to go to my earlier questions.

**CHAIR:** I beg your pardon. Sorry, you'll have to sit tight for a bit. Senator Pratt has been waiting patiently.

**Senator PRATT:** Thank you very much, Chair. I wanted to ask if you were aware of any emails, calls or text messages between Paladin and the department that raised concerns about corruption, bribes or political donations.

**Mr Pezzullo:** Not regarding transport security. My understanding from the chair is that we're on transport security.

**Senator PRATT:** No, I think we finished on transport.

**CHAIR:** We finished. It's a new topic.

**Mr Pezzullo:** Okay, thank you. So we'll reset the table and—
Senator PRATT: Feel free to use the time to come to my question.

Mr Pezzullo: Will do. I certainly won't be coming to Senator Patrick's suggestion, I can assure you. For the benefit of the new officers at the table, would you mind repeating the question. I'd certainly appreciate it, as would they.

Senator PRATT: Are you aware of any emails, calls or text messages between Paladin and the department raising concerns about corruption, bribes or political donations?

Major Gen. Furini: I'm not aware of any text messages or emails relating to that issue. I note that that issue was raised at Senate estimates on 4 April, where this matter was canvassed, and nothing has changed since that time.

Ms Moy: I'd just add to that that it was also canvassed at the hearing on 8 April and the secretary responded to the action that was noted on 4 April. On 4 April we did a preliminary look to talk to officers who would be involved in that arrangement in terms of the procurement of Paladin and the contract management. Nothing was found. Then on 8 April that was confirmed as being finalised.

Senator PRATT: On 1 October Richard Baker of The Sydney Morning Herald—

CHAIR: Do you have a copy of that to provide to the witness, in fairness to them?

Senator PRATT: Yes, I can. I don't know if there's a spare copy.

CHAIR: We can organise for the secretariat to provide a copy. If you can do aspects of your questions that don't require the article, that's okay.

Senator PRATT: No, that's fine. It would be great if I could grab another copy of it. But I'm sure that people are listening and that they can bring—

CHAIR: See how you go, and if the witness needs to see it then we can pause.

Senator PRATT: No, that's fine. That article by Richard Baker says that people have seen these text messages alleging that the department knew about these requests for donations.

Mr Pezzullo: Text messages from whom to whom?

Senator PRATT: That's what we're asking about.

Mr Pezzullo: Well, I don't know. I've neither read the article nor do I know who Mr Baker purports messaged some other person about alleged knowledge on the part of my officials in relation to the matter that you've raised.

Senator PRATT: When you took on notice at the last estimates—and I'm unclear if that information has come back to us—you said you would take a deeper look at these allegations.

Ms Moy: On the 4th that was canvassed, and on the 8th—and I think it's on page 18 of the Hansard, where the secretary comments and says that we had a look at the allegations and we looked internally to determine whether or not anyone had had any contact of that type.

Senator PRATT: I want to follow up verbally on the 8th, when the spillover estimates happened.

Ms Moy: That's correct. That was a matter that was finalised then.

Senator PRATT: So you didn't need to do any further investigations after that, in your mind?
Ms Moy: There was no indication that anybody within the department had had those contacts in regard to donations that were canvassed at the time, which I think were donations of $8 million.

Senator PRATT: Not that there had been donations but that there were requests for donations.

Ms Moy: That there were requests for donations of $8 million, on a political basis.

Senator PRATT: Do you have any idea where these kinds of statements are coming from? The news says that a contractor, which has asked that its name not be used, says it rejected donation requests and reported them to senior department officials. Do you reject that that has ever happened, or have you sought to find out if it has happened?

Mr Pezzullo: We have the benefit of having those officers working for us. This arose at the estimates in April of this year, as Ms Moy has indicated. The benefit we have, unlike Mr Baker or any other member of the Fourth Estate, is that we can actually speak to the officers who would be most logically the persons who would receive such communication, and they've not received such communication.

Senator PRATT: What have you done in the meantime? Perhaps there has been no communication, but there have certainly been media reports. What inquiries have you made to ensure that contractors have not been subjected to such requests for donations?

Mr Pezzullo: Since 11.18 am this morning I've been sitting here.

Senator PRATT: But the first reporting of this was on 22 March, and it came up in estimates.

Mr Pezzullo: Correct, and we looked at it at the time of estimates.

Senator PRATT: You looked at it in the context of whether reports had been made.

Mr Pezzullo: Yes.

Senator PRATT: But did you reach out to contractors to ask them if they had been subjected to such requests?

Mr Pezzullo: The more important—

Senator PRATT: No. That's the question I'm asking. Did you reach out to contractors to ask if they'd been subjected to such requests?

Mr Pezzullo: The question that we were asked, stated categorically by one of your colleagues: your department has been advised that such matters are being put upon this and other companies; is that the case? The answer was no, in terms of the reporting to us.

Senator PRATT: I'm asking you: is it the case that companies have been put upon in this way? Do you have any knowledge of that? I'm not asking whether it's been reported. What is your knowledge of whether these companies have been put upon in this manner?

Mr Pezzullo: How would I know about it if it hasn't been reported?

Senator PRATT: You might have made your own inquiries, given the importance of these issues, or perhaps you choose not to look because you don't want to jeopardise arrangements with the PNG government.

Mr Pezzullo: I'm not sure I follow, as to why—
Senator PRATT: Why wouldn't you look, given the gravity of the allegations in the press?

Mr Pezzullo: I'm assisted in this regard by related matter that's also the subject of reporting, whereby the one matter that we are aware of, where we did engage with the company, was advice that they sought about, 'What would we do, were we to be asked?' I think Mr Baker, just on a very quick reading of this article that was published this morning, went over both the evidence in April and other matters which, I think, have been the subject of—am I right in recalling FOI or questions on notice? I can't quite recall.

Ms Moy: I might have to check.

Mr Pezzullo: It's this issue of Paladin seeking advice on, 'What would we do, were we to be asked?' to which the response was, 'You'll not act corruptly.'

Ms Moy: That's correct, and, 'You'll follow the contract that requires you to not do so.'

Mr Pezzullo: That goes to the question of engagement with the company. Ms Moy might refresh us all as to the dialogue that we have had with the company, about the question that they have asked, which is, 'Were it to be the case that we were put upon with these forms of financial duress, how would we handle it?' and we gave them emphatic advice, which is to make sure that 'you obey Australian law, which is not to pay bribes'.

Senator PRATT: But how can you uphold Australian law, to ask people not to pay bribes, if perhaps the government's going down a path of choosing not to look, about whether this conduct is happening, in order to protect its own political interests?

Mr Pezzullo: I don't understand the premise of the question.

Senator KENEALLY: Let me try and explain it, if I can assist. The Sydney Morning Herald this morning reports:
The Home Affairs department has been repeatedly told by the contractor of approaches from PNG government officials …
These approaches include:
… one of PNG’s most senior government officials asked a Paladin director via a text message … for a personal payment of … about $15,000.

Mr Pezzullo: Yes.

Senator KENEALLY: This same PNG official, in 2017, asked Paladin for a political donation of $8 million and The Sydney Morning Herald says:
This request was reported by Paladin to a top Home Affairs bureaucrat in late 2017.

Mr Pezzullo: Yes.

Senator KENEALLY: So did that happen?

Mr Pezzullo: We gave evidence on that in April. From memory, your colleague Senator Carr asked—

Ms Moy: On the 4th and 8th.

Mr Pezzullo: We were asked explicitly about the $8 million, if I remember rightly.

Ms Moy: That's correct.
Mr Pezzullo: We were asked on the 4th. We must have had a spillover day or, for some reason, it was so useful all round that we were asked to come back four days later. We answered and said, 'We have no knowledge of that approach.'

Senator KENEALLY: Was David Nockels the department official who Paladin raised concerns with about the $8 million bribe request?

Mr Pezzullo: Again, we discharged that allegation in April by saying that no information had been received by any of our officers. We checked with all of them, including named and unnamed officers. They had not received advice to that effect.

Senator KENEALLY: You denied this.

Mr Pezzullo: We denied it in April and I've not seen anything since April to lead me to—

Senator KENEALLY: Is David Nockels still with the department?

Mr Pezzullo: Yes, he is.

Senator KENEALLY: Have you asked him?

Mr Pezzullo: He was asked at the time. In April of—

Senator KENEALLY: So you deny that David Nockels received information from Paladin about the $8 million bribe request.

Mr Pezzullo: We answered that question in April or we said we checked with all officers, Mr Nockels included, as to whether any such information had come to their attention, and the answer was, no, it hadn't.

Senator PRATT: Is there any information that came to Mr Nockels that would fit within this issue at all about demands from PNG officials?

Mr Pezzullo: Not as at the last time we checked.

Senator PRATT: Has it been misconstrued in some way? Journalists don't make up these kinds of allegations.

Mr Pezzullo: I'm sure lots of things have been misconstrued. Not as at the last time we checked, which was April of this year.

Senator PRATT: And what about now?

Mr Pezzullo: I'll take that on notice. I'll cause more inquiries to be made, in light of Mr Baker's article. It's not clear to me, and Senator Keneally was very helpfully highlighting elements of the article because I hadn't read it, whether any more contemporaneous information has come to light that postdates April of this year.

CHAIR: That's time, I'm afraid. How are you placed? Do you have much you need to wrap up?

Senator KENEALLY: Could I put a few more things. I will only be a couple of moments, if you don't mind, and we're happy to cede some time then. On 4 April, Secretary Pezzullo, you stated your department would more thoroughly examine your files—

Mr Pezzullo: Yes.

Senator KENEALLY: and there were questions on notice provided by the committee.

Mr Pezzullo: Yes.
**Senator KENEALLY:** We've been unable to find these questions on notice online. We've reached out to the secretariat of the committee to clarify. Have you answered them?

**Mr Pezzullo:** I believe we discharged them, I thought to the relevant senator's satisfaction. We had a spillover and we came back on 8 April. It's one of the matters that I recall.

**Ms Moy:** The *Hansard* of 8 April should have it.

**Senator KENEALLY:** We will check that. Thank you. Has the department ever provided any form of advice to Paladin about working with a company named Tactical Solutions International?

**Mr Pezzullo:** I'd need to take that on notice.

**Senator KENEALLY:** Okay.

**Senator KENEALLY:** In one case, an Australian government official working as an adviser to PNG's Immigration & Citizenship Authority approached Paladin in November 2017 to ask why the company would not engage TSI when it was clear senior PNG officials were keen for this to happen. Did this happen and who is this official?

**Mr Pezzullo:** Having taken the question of Tactical Solutions International on notice, I'll take that on notice as well, as a subset.

**Senator PRATT:** But do you have the knowledge of that now?

**Mr Pezzullo:** I took the question on notice. The more particular question of whether an Australian government official working as an adviser to the ICA, as it's called—the Immigration and Citizenship Authority—approached Paladin in relation to this company, I'll sweep up as part of that notice.

**Senator PRATT:** Okay, but that's not within your knowledge now?

**Mr Pezzullo:** No.

**Senator PRATT:** So it's not avoiding answering the question.

**Senator KENEALLY:** Just so we're clear, I think it would be fair to acknowledge that the reports in *The Sydney Morning Herald* are in fact contrary to the previous testimony provided by officials at Senate estimates. Can you guarantee you have not misled the Senate in relation to these matters in your previous answers in April?

**Mr Pezzullo:** I've always given evidence to the best of my ability, based on the facts that I had to hand.

**Senator KENEALLY:** And you will take on notice the questions we've asked and come back to us?

**Mr Pezzullo:** Yes.

**CHAIR:** Thank you, Senators Keneally and Pratt. I'll now go to Senator McKim, who I acknowledge has been very patient.

**Senator McKIM:** Thank you, Chair. I want, if we can, to tie up on the matters relating to Mr al-Araibi's detention. I guess, Mr Pezzullo, this one might be for you. There's an unclassified report into the circumstances leading up to Mr al-Araibi's detention. That report, in the executive summary, says that the review did not identify any systemic weaknesses. However, later in that report it says:
Due to the way the Department's systems were built over the last two decades, ICT capabilities represent an ecosystem of siloed, aging and disparate systems that are more akin to a patch-work quilt—

these are words from your own report—

than a highly functional operational platform.

That's pretty scathing. In what way is an ICT system that is more like a patchwork quilt than a functional operational platform not a systemic weakness?

**Mr Pezzullo:** Perhaps the crossing over of categories is occurring here. In terms of the matters that Commissioner Outram and former commissioner Colvin canvassed in February of this year, speaking about emails that weren't followed up or a phone call that wasn't followed up—Commissioner Outram will remind me—in the circumstances where you've got disparate, fragmented and hard-coded systems that aren't speaking to one another in the way that modern systems, whether they're cloud based or otherwise, would automatically refresh notifications, you've got to put in place—

**Senator McKIM:** That would be a systemic weakness, wouldn't it?

**Mr Pezzullo:** No, because it still is the case—

**Senator McKIM:** Oh, it's not a systemic weakness?

**Mr Pezzullo:** It still is the case that, whether it's about visa decision-making—and that's why we're seeking to overhaul our visa decision-making system with a global digital platform—

**Senator McKIM:** Privatise it, in other words.

**Mr Pezzullo:** Well, overhaul it.

**Senator McKIM:** Privatising it is what you're doing. But, anyway, we'll come to that later.

**Mr Pezzullo:** I had a feeling we might, but I thought we might just discharge that one on the way through.

**Senator McKIM:** Not quite.

**Mr Pezzullo:** Whether you remediate your customs platforms, visa platforms or movement alert systems to more contemporary technology can create the circumstance where the practices that you've put in place—I don't want to say to work around issues—deal with the fact that in some cases you've got coding that goes back to the eighties and nineties. Some systems are on mainframes. This is not atypical of IT that has to be remediated in a sequenced and patched situation. Typically, it's often, if you've got the capital, better just to go to a new platform. If you've got pockets as deep as Amazon web services and the like, I suppose you can do that. In those circumstances, we still rely on the diligence of our officers to operate according to standard operating procedures—

**Senator McKIM:** But that didn't work this time—

**Mr Pezzullo:** That's right. In this particular case—and that's the definition of systemic. Mr Outram will remind me of the sequence, whether a phone call should have preceded an email or an email should have been followed by a phone call—I can't quite remember the sequence.

**Senator McKIM:** Someone went on leave.
Mr Pezzullo: It was a leave matter—I do recall that.

Mr Outram: It was a combination of the two.

Mr Pezzullo: You put in place operational procedures to deal with the IT that you have. In an ideal world, if you can afford to spend billions of dollars to completely refresh your platforms so that they are seamless, cloud based at hyperscale, things like Interpol red notices are automatically loaded and there's an automatic almost magical change in the narrative in our movement alert system, that would be beneficial. The fact that you don't have that doesn't absolve—and I think Mr Outram apologised at the time; Commissioner Kershaw more recently—officers from the fact that they've got to follow particular steps and sequences. In fairness to the officers, in the vast majority of cases they do. In this one particular system—and that's the definition of systemic: something that isn't pervasive and omnipresent—an officer, or a number of officers, and I don't want to particularise it, didn't follow the SOPs put in place to deal with the technology that they had to hand. I don't see how in explaining that that there can be any other view taken that, in the particular application to this gentleman, specific flaws and failures occurred. Does that mean that that happens regularly to many people? The answer is no, because that would be the definition of systemic.

Senator McKIM: I would've thought an ICT system actually is systemic—same root word as 'system'—and one that's akin to a patchwork quilt more than a highly functional operational platform. I think most people would think that's a systemic weakness, but anyway.

Mr Pezzullo: I look forward to your support in our global digital platform investment proposal.

Senator McKIM: I'm not going to support you privatising the visa functions of your department, Mr Pezzullo.

Mr Pezzullo: But we're coming back to that, right?

Senator McKIM: That's certainly not going to happen, but we are coming back to that. Can I then ask—and perhaps this is best addressed to you, Commissioner Outram—as Mr Pezzullo's just said, there were systems in place that were cognisant of the fact that you had an ICT system like a patchwork quilt and those systems weren't followed. Was it actually an error of—I don't want you to name people—a particular person or people; or was it an error of the SOPs, for example, the standard operating—

Mr Outram: It was human error; a single person.

Senator McKIM: So someone acted—

Mr Outram: A very diligent officer, I might say as well. He was very upset by this.

Senator McKIM: I'm sure he or she was.

Mr Outram: He's done thousands of these and just forgot to press send on an email.

Senator McKIM: So you're satisfied, Commissioner, that the SOPs were robust and adequate?

Mr Outram: Yes, and in fact, as I said to you earlier on, we've built in additional quality assurance processes to make sure they're complied with plus additional training. The whole unit is focused on this. They deal with millions of transactions and don't make many errors.
Senator McKIM: Mr Pezzullo, do you think—perhaps I'll put it you like this: it's my view that the department does owe Mr al-Araibi an apology for what happened. We've heard evidence this morning that the AFP Commissioner has written to Mr al-Araibi. I acknowledge Commissioner Outram's apology in the previous estimates, but really an apology needs to be made to the person who's owed the apology, not just in a general public sense. Will you be apologising to Mr al-Araibi, Mr Pezzullo?

Mr Pezzullo: I'll associate myself with Commissioner Outram's earlier evidence. He said he was going to reflect on whether he needs to go beyond what he's stated to this committee. I take your point. Your point is that apology through this committee to an individual is one thing, but a letter or some kind of direct expression might well be a different thing. I'll consult with Mr Outram.

Senator McKIM: All right. Thank you. I've just got some questions. I understand that we're just ranging through outcome 1. I want to ask quickly whether the latest Independent Health Advisory Panel, the IHAP, report has been provided to the minister. It was due on 30 September, I understand, and we're obviously past that.

Mr Pezzullo: I think we're up to date, but I'll check and I'll ask both General Furini and Ms Moy, who oversees the health services function—noting that it's an independent panel, of course, but we provide some administrative support. So, I might just ask Ms Moy and, as required, the general to re-join. And your question pertained to the most recent—

Senator McKIM: My understanding is that the most recent report—

Mr Pezzullo: They're supposed to be up to 30 September—

Senator McKIM: Yes—it related to the time frame after 30 September.

Mr Pezzullo: And the question is: is that—

Senator McKIM: The minister's required to table it within three sitting days of being provided with the report, so the question is: has the latest IHAP report been provided to the minister?

Ms Moy: It has not yet been provided to the minister. It's under construction with the IHAP, and it should be provided within the next week.

Senator McKIM: Is there anything in particular that held that up? Or would you just categorise that as the normal administrative process? I guess I'm asking you: is there anything specific that delayed the formulation of that?

Ms Moy: No. The IHAP members, as you would be aware, work in different parts of Australia, and aside from their IHAP duties they also have busy jobs, and they have a busy role in the IHAP consideration process. The requirements for the reporting are something that they all need to be involved in, so it takes time to make sure that it's done—

Senator McKIM: But you said you think it'll be provided to the minister within the next week or so.

Ms Moy: I'd expect it to be around next week.

Senator McKIM: Thanks for that. And I'm sorry to jump around, Mr Pezzullo. My next batch of questions relates to the level of awareness within your department about people who are currently detained in the Bomana immigration detention facility in Port Moresby. Are you aware of how many people are currently detained in Bomana?
Major Gen. Furini: There are currently 47 failed asylum seekers detained at Bomana.

Senator McKIM: That's down from I think 53, which is the number we were provided with during a previous inquiry into a piece of legislation when I asked—I apologise; I can't remember whether it was you or not. But where are the other six people who previously were in Bomana and are now apparently not?

Major Gen. Furini: We understand that they were released over the past few days and they are, as we understand it, currently in Port Moresby.

Senator McKIM: Why were they released?

Major Gen. Furini: Noting that this is an issue for the government of PNG, it's my understanding that they were released on the basis that they had accepted a voluntary returns package.

Senator McKIM: Back to their home countries?

Major Gen. Furini: Yes, back to their home countries.

Senator McKIM: Is it true that people are being kept in solitary confinement inside Bomana?

Major Gen. Furini: I'm not familiar with the conditions inside Bomana.

Senator McKIM: Have you taken any steps to familiarise yourself with conditions inside Bomana?

Major Gen. Furini: I have not. The Bomana immigration facility is operated solely by the government of PNG. The decision to detain those 53 originally and to release the six was a decision by the government of PNG, and we have no visibility of what goes on inside.

Senator McKIM: So, just to be clear: there are no Department of Home Affairs staff, including AFP staff, who are involved in any way with the operation of the Bomana facility, Mr Pezzullo? Is that correct?

Mr Pezzullo: My recollection is that our involvement at the request of the government of Papua New Guinea extended solely to the build phase. But I'll just make absolutely sure. Commissioner, I don't think you've got any officers who work out of our office in Port Moresby associated with assisting the immigration and citizenship authority?

Mr Outram: That's correct, I have no officers involved.

Mr Pezzullo: I'm fairly certain—I'll need to check with the AFP to make sure that I'm not—

Senator McKIM: I would ask you to do that on notice.

Mr Pezzullo: I'm not sure, but I would doubt it. And General Furini, as the task force commander, has no-one involved either. We, as I think we have given evidence before, assisted in the build phase—

Senator McKIM: Yes, and paid for it.

Mr Pezzullo: Yes, indeed. Sorry, that was implied but, yes, to be explicit about it, we paid for it. It has been handed over and, as I understand it, it is fully operating under the auspices of the Immigration and Citizenship Authority of Papua New Guinea.
Senator McKIM: The Legal and Constitutional Affairs Committee has previously had evidence that there were people detained in Bomana who had been approved for transfer to Australia under the medevac provisions.

Mr Pezzullo: Yes.

Senator McKIM: Would you be able to update us on whether any of the six people who have been released since the provision of that information were actually people who had been authorised for transfer under medevac.

Mr Pezzullo: We'd have to check the detail. But it is the one point of intersection—and you are absolutely right, Senator, in drawing attention to it—whereby the operation of Australian law touches activities undertaken in accordance with Papua New Guinea law. And, as I think you are intimating, if medevac requests come in under the relevant subsection of section 198 of the Migration Act, where the person is being held in detention or is otherwise not able to be released for transfer—and this is applicable to Nauru as well—that is an issue we need to work through diplomatically. We'll need to check whether that intersection of laws has come into application in relation to any one of the six persons that you've asked about.

Senator McKIM: Are there any people currently detained in the Bomana facility who have been authorised for transfer under medevac? If so, how many?

Mr Pezzullo: I'm fairly certain the answer is yes. If General Furini can't validate that directly, perhaps Ms Sullivan can assist. I don't want to put a number on it but I do recall that there were a very small number of cases where there is that intersection of laws, and we are seeking to work through those matters diplomatically.

Senator McKIM: General Furini, are you familiar with that at all?

Major Gen. Furini: There are people detained in Bomana who have been subject to an approval for a 198E transfer. From recollection, it is 10 people. But I would need to confirm that against the six that were released in the last few days, so I will take that on notice.

Senator McKIM: Thanks. Ms Sullivan, are you able to assist in any way?

Ms Sullivan: No. Again, we'd have to reconcile that against the six that have been released. But there are a number of people in Bomana that have been approved.

Senator McKIM: Yes. Major General Furini has just that there were 10, although he did put the caveat that some may have been released as part of that half-dozen that have been released. We have had evidence from Australian lawyers representing these people. They basically can't communicate with them. Their phones have been removed as part of their detention. You have a situation where not only have they been authorised for transfer under Australian law but their legal representatives cannot contact them because they are effectively in solitary confinement with no way of communicating outside of the facility. Are you able to provide any clarity on that?

Mr Pezzullo: I can speak to that matter because I have seen those claims. This is where there is a clash or a conflict of laws. I understand perfectly well how the 198E mechanism works, but these persons are being held pursuant to Papua New Guinea immigration law. How persons are held—whether their phones have been removed, whether they have email and/or internet access—is strictly a matter for the authorities of Papua New Guinea. We can take it on notice. We can ask our colleagues in the Papua New Guinea government whether they
wish to add anything. There is nothing that can be compelled, even by the parliament here, but if there is anything that they might wish to, through us, put on the record, we’ll see if we can assist the committee.

Senator McKIM: They've basically been coerced into accepting return.
CHAIR: No, I'm sorry. Please stop, Senator McKim.

Senator McKIM: That's the problem here: they've been coerced—tortured, actually.
CHAIR: We are well and truly over time, at 17½ minutes. Can I ask a follow-up question just to make sure we're very clear: what is the status of the people who are in Bomana immigration detention centre?

Mr Pezzullo: They are being held there under Papua New Guinea law.
CHAIR: Are they people who have been found to be refugees?

Mr Pezzullo: Sorry. To be very clear, because there might be other persons there, the persons who were IMAs, illegal maritime arrivals, who are held in Bomana are held there under particular provisions of Papua New Guinea law. There might be—General Furini and Ms Sullivan will clarify this—other persons there who have got nothing to do with the issue around Manus and/or Nauru.

CHAIR: For the people who are the subject of Senator McKim's questions, what is their status? Have they been found to be refugees?

Mr Pezzullo: They would be all nonrefugees.

Major Gen. Furini: They are all nonrefugees.

Senator McKIM: Many of them were never assessed, though. It's probably reasonable to put that on the record.

CHAIR: Let's be precise, in fairness to Senator McKim and the other position: did they make applications for asylum?

Mr Pezzullo: Yes.

CHAIR: Were those applications assessed?

Senator McKIM: Not all of them, actually.

Mr Pezzullo: Yes.

CHAIR: Were they found to be people entitled to protection from Australia?

Mr Pezzullo: They have never been assessed in terms of our protection obligations, because under the regional processing arrangements that were re-established in September of 2012, as the High Court subsequently found, these persons were legally and lawfully transferred from our jurisdiction, having arrived here as IMAs. They were transferred—it's binary; you've got to go with one or the other—either into the jurisdiction of the government of Nauru, subject to Nauruan law, or into the jurisdiction of the government of Papua New Guinea, subject to Papua New Guinea law.

CHAIR: Were they entitled to protection from either of those places?

Mr Pezzullo: They were entitled to be considered under the laws of those countries for asylum status. The men—and I think they are all men, from memory—in Bomana are short-
handedly referred to by our colleagues in Papua New Guinea as failed asylum seekers—that is
to say persons who have failed the test of being genuine refugees.

**Senator McKIM:** Or not applied, Mr Pezzullo. You might want to reflect during the
break on the evidence you've just given, I think.

**Mr Pezzullo:** Well, they were assessed under Papua New Guinea law as to whether
protection was owed to them by the government of Papua New Guinea pursuant to its
international obligations.

**Senator McKIM:** Not all of them.

**Mr Pezzullo:** I hear Senator McKim's point about whether or not they applied. I've set that
to one side. I said very precisely that they were assessed under Papua New Guinea law and
were found not to be owed protection by Papua New Guinea.

**CHAIR:** Thank you, Senator—not Senator. Thank you, Secretary Pezzullo. I will now
hand the call to Senator Griff.

**Mr Pezzullo:** I'm not sure if that was a demotion or a promotion!

**CHAIR:** It's best not to ask, I think!

**Senator GRIFF:** I'm staying on 1.3. When assessing protection visas for refugees, is an
applicant's mental health status taken into consideration when forming a decision?

**Mr Pezzullo:** Obviously, Senator Griff, you're referring to Australian determination under
Australian law—or are we on Senator McKim's line of questions?

**Senator GRIFF:** It's when assessing a TPV or a SHEV.

**Mr Pezzullo:** Under Australian law?

**Senator GRIFF:** Yes. Is their mental health taken into consideration?

**Mr Pezzullo:** The law requires consideration, whether it's for temporary or permanent
protection. The principal consideration relates to whether the person has a well-founded
fear—can we get Mr Mansfield up? How was that, Mr Mansfield?

**Mr Mansfield:** Fine.

**Mr Pezzullo:** Thank you. Does the person have a well-founded fear of persecution within
the meaning of the convention, as has been incorporated into Australian domestic law both
statutorily and through the jurisprudence around that law? When you say, 'Is the person's
mental health status taken into account?' I suppose that, to the extent to which it relates to
their well-founded fear of persecution, that's a matter of interest, I suspect, to Mr Mansfield's
decision-makers. Am I correct in understanding your question to be about decisions made
about their well-founded or otherwise fear of persecution, or is it whether they are given other
consideration because of their mental health state?

**Senator GRIFF:** It's basically the way they present themselves. I'm really referring to the
Human Rights Commission report covering the presentation of refugees themselves and the
state that they are in at the time when they are liaising with your people. It's just that it's not
necessarily an ideal situation for them.

**Mr Pezzullo:** I understand. Mr Mansfield's division handles the Australian decision-
making process. The decision-makers have regard to in a sense their assessment of trauma
and torture as indicators of—and that includes mental health state, I suppose—persecution, a
well-founded fear or otherwise. Then the question of, were they to be granted refugee status and what that then means in terms of settlement services, support services particularly around rape, torture and trauma would be a factor down that pathway. If the claim is not upheld as being founded—and there are subsequent merits and judicial review—our decision-makers would have regard to that person's mental health status in terms of their potential removal. Because they've failed in terms of asylum, their mental health would be a factor potentially in their ongoing management both through bridging visas, as they go through various appeals, and their ultimate removal, if they're not ultimately successful. Mr Mansfield, is there anything you can add to that answer?

Mr Mansfield: As the secretary mentioned in his opening statement, our protection officers are very experienced and we do have psychologically vulnerable training that's offered to protection visa decision-makers to help them in their decision-making process. Where officers of the department form a view that the person has a mental state that would not enable them to participate in the protection visa process, then we would look at that very carefully on an individual case-by case-basis as to whether there was some other way to resolve their protection claims. Indeed we've worked with migration agents or legal officers around those particular cases, so there is a good awareness around the significant mental health traumas that people who are applying for protection may face. If someone was to become unwell during the course of an interview, for example, we would seek to pause the interview, cease the interview and reconvene at another time, and liaise with their legal representatives around those kinds of matters. So, yes, there's a good awareness of those issues.

Senator GRIFF: The Commonwealth Ombudsman has repeatedly raised the impact of the department's practice of rotating people in held detention between different detention facilities away from family and support networks, which does seem to be unnecessarily cruel. Why does the department do this?

Mr Outram: I might take that question, if I could. Onshore immigration detention is the responsibility of the Australian Border Force. We certainly don't move people to be cruel or for no good reason. We are very limited for space in our detention network. The facilities that we have available to us offer different kinds of amenity in terms of whether it be health, security and so on. So, when we move people around the network, it's a means of balancing the network and getting people into the best facility suited to their particular profile in terms of their risk or access to the amenities. So I may ask the—

Senator GRIFF: Just on that: the best facilities based on their risk? That's not taking into account their family, their other support—

Mr Outram: Yes, that's taken into account, Senator.

Senator GRIFF: So you take into account location of family and support groups?

Mr Outram: Yes. It's not just a factor-scoring model. Risk is an important input into the decision-making but so is proximity, access and closeness to families, networks and those things. That is actually a factor in our decision-making too, but it's not the only decision. I may ask the Group Manager Immigration Detention Group to explain in a bit more detail how we make those decisions.
Ms Zakharoff: The commissioner's covered off most of the key points. Certainly, we do have a consistent approach to the way we make placement decisions. We take into account—it's obviously around the detainee, but it's the detainee cohort as a collective. It's also visitors and other people who work in the centres that we need to take into account. We prioritise around medical needs, and family and community links are also part of our consideration. We'd also take into account whether there were imminent court matters in a particular location that required a detainee to be in a particular location at a certain time.

Senator GRIFF: There have been a number of Ombudsman detention review assessments which have recommended that people in detention be moved to a facility closer to friends and support networks. On how many occasions since 2012 has the Ombudsman recommended that a detainee be returned or transferred to a particular facility? You've actually denied that—

Ms Zakharoff: I would have to take that specific question on notice.

Senator GRIFF: Which detention facilities currently have capacity issues that would prevent the fulfilment of requests such as the Ombudsman's? Are there any that have particular capacity issues?

Ms Zakharoff: We are constantly reviewing the capacity of our centres and facilities that we have available. For example, we can have an influx of people who might come into one centre in terms of rapid removals at airports, and that might put particular pressure on a centre for a short period of time. Placements and the capacity are constantly managed by my team. I don't know that I could point to one that has particular ongoing pressure, that deals with the specific question that you're asking.

Senator GRIFF: Regarding people transferred to Australia from PNG or Nauru for medical treatment, when they first arrive from PNG or Nauru, are they all automatically placed in held detention unless they are in a medical facility?

Ms Zakharoff: When they arrive in Australia?

Senator GRIFF: When they arrive in Australia.

Ms Zakharoff: Yes.

Senator GRIFF: Is any consideration given to whether held detention is appropriate for the patient—in other words, where it might exacerbate their mental health problems?

Ms Zakharoff: It's a very similar consideration, in terms of placement options. By way of information, the majority of the transferees, as a result of 198E decisions, are in what we would describe as APODs—alternative places of detention—rather than immigration detention centres. But, to be complete, there are some who are in immigration detention centres, and those placements are largely based on where treatment might be initially required.

Senator GRIFF: Are there any in community detention?

Ms Zakharoff: Not as a result of section 198E decisions.

Senator GRIFF: Regarding those who have been transferred with accompanying family members, have any family units been separated in Australia, through either differing detention locations or accommodation requirements or hospitals or the like?

Ms Zakharoff: Not that I'm aware of, but to be perfectly complete in my answer I'll take that on notice and come back to you.
Senator GRIFF: Okay. If you could provide the numbers and the grounds on which they have been separated, I'd appreciate that.

Ms Zakharoff: Yes, certainly.

Senator GRIFF: How does the department decide which immigration facilities at which to locate particular transferees? You mentioned earlier that it might relate to medical capability and so forth. But is that all it relates to? Or does it relate in part to where you have availability?

Ms Zakharoff: Certainly it goes to availability and capacity. We're also typically relying on the health system of other jurisdictions—the states and territories. So, we certainly have to take that into account, and whatever their particular medical requirements may be—or what we understand them to be.

Senator GRIFF: How does a transitory person who's brought to Australia get out of detention and get moved from held to community detention?

Ms Golightly: The normal process is that we do assessments of whether held detention is the right place for the person, and it's usually an assessment around the risk to the community that they may or may not pose. Then a submission is put to the minister, who can decide whether the person can be released to community detention. That's for all transitory people.

Senator GRIFF: Could you, on notice, advise of the number of people in the last 12 months who have moved from held to community detention?

Ms Golightly: We can certainly take that on notice.

Senator GRIFF: That would be great, on notice. On average, how long does it take for a transitory person to be released from held detention after being brought to Australia from Nauru or PNG?

Ms Golightly: I'd have to take that on notice, too.

Senator GRIFF: What policy guides whether or not a transitory person in Australia is held in detention or community detention or granted a visa? Has this policy changed since the commencement of medevac?

Mr Pezzullo: They can't be granted a visa. It's not possible under the law.

Senator GRIFF: Okay. In answer to a question I had put on notice following budget estimates, B19004, regarding whether medical transferees are accompanied by security during their hospital stays, your department said, 'The detention facility's service provider will be present and provide security whilst the transferee is accommodated in an immigration detention facility or alternative place of detention, which may be a hospital.' When you say 'provides security', does that also mean that the transferee is restrained?

Mr Pezzullo: Ms Zakharoff, perhaps, is best placed to answer that.

Ms Zakharoff: Just looking for that answer on notice myself. Typically, no.

Senator GRIFF: No?

Ms Zakharoff: That person would not be restrained in that set of circumstances.

Senator GRIFF: Okay, so in what circumstances are they restrained?

Ms Zakharoff: Our service provider, Serco, will undertake a risk assessment in a range of settings if we are transferring detainees, for example, to different locations. An individual
assessment is taken for each set of circumstances. If the service provider has a view that restraints, for example, are required to effect the movement, which would typically be to reduce the risk of escape or—

Senator GRIFF: Or more convenient for them.

Ms Zakharoff: No, that's not what I was going to say—or if we're particularly concerned about self-harm. They're the circumstances in which we would see the service provider put a recommendation to the Australian Border Force, and the Australian Border Force superintendent of a facility would make a decision about whether planned use of force was acceptable.

Senator GRIFF: Are handcuffs routinely used on detainees in offshore detention when they attend a medical appointment?

Ms Zakharoff: Offshore? Or onshore?

Senator GRIFF: Onshore.

Ms Zakharoff: No, not routinely.

Senator GRIFF: Thank you, Chair.

CHAIR: Senator Keneally has a few follow-up questions.

Senator KENEALLY: Thank you, and I will be brief. If I can go, Secretary Pezzullo, back to the exchange we just had about Mr Nockels. I have checked the transcript from Monday 8 April, when Senator Carr did indeed ask Mr Nockels if he was aware of the request for a political donation of $8 million, and he said, 'I think we covered that at last statements.' Senator Carr said, 'I don't think I asked you that, did I?' And then you answered, similarly to how you've just answered me, that you checked and that you could not find any record or inquiries with your own department—that you're not aware of the matters regarding a request for an $8 million donation. So I'm just reflecting what—

Mr Pezzullo: That is correct.

Senator KENEALLY: I just would like to ask, Secretary, are you sure that David Nockels has not received any email correspondence which refers to concerns around inappropriate demands from PNG officials being discussed verbally with Paladin in November or December 2017?

CHAIR: Senator Keneally, I recall this being taken on notice because the information that was put to this hearing was at a different point in time to the evidence that was presented at the last estimates. And if it's been taken on notice, then that's the end of the matter as far as this hearing goes.

Senator KENEALLY: The secretary did say he had checked with Mr Nockels. He specifically just said that, so I just want to ask if he can confirm that and if he's certain that Mr Nockels has been asked and has given an answer that he has not received such a request.

Mr Pezzullo: I'm sure that between 4 April, when the matter first arose, and Monday 8 April we had cause to ask all relevant officials who might have received such communication, and the evidence that I gave, which you've summarised, to Senator Carr—in fact, it's very brief; why don't I read it out? This is in response to the exchange with Senator Carr:

I did say that we would check and, indeed, we have checked—
You should take that as meaning in relation to all relevant officers—
The question that has arisen in media reporting relates to requests of political donations to be made. We are not aware of those matters—
That's me speaking on 8 April, having checked with relevant officers.
We have made inquiries within our own department—
Mr Nockels is a member of the department.
The answer is that we're not aware of those matters. We have seen what's in the press, obviously.

Senator KENEALLY: Is Mr Nockels here? Because he hasn't ever really answered this question in Senate estimates.
Mr Pezzullo: Inquiries were made of all relevant officers, including Mr Nockels, and they answered to my satisfaction, sufficient that I could give the committee that assurance.

Senator KENEALLY: You just left the room. Did you ring Mr Nockels, when you left, to ask him these questions?
Mr Pezzullo: No, I did not.
Senator KENEALLY: And he's not here today, is he?
Mr Pezzullo: I've seen him somewhere.
Senator KENEALLY: Is he here to answer questions? I can't see him in the room, but he might behind a head.
Mr Pezzullo: I don't have eyes in the back of my head.
Senator KENEALLY: Mr Nockels, if you're in the room, can you make yourself known?
Mr Pezzullo: Madam Chair, I don't think that's how this works.

Senator KENEALLY: This is senate estimates. Senators are allowed to ask questions of department officials. He's a department official, of whom I would like to ask a question. So I'm asking if he's here.
CHAIR: True, but there is also an opportunity for more junior members of a department to refer their questions up the chain.

Senator KENEALLY: Only if they answer truthfully.
CHAIR: It comes to nought, because Mr Nockels hasn't got up. Mr Nockels does not appear to be in the room, and, in any event, this stuff has been taken on notice.

Senator KENEALLY: I have one last question. Mr Nockels was previously in charge of the Paladin contracts but is no more. Is that correct?
Mr Pezzullo: He's moved to a different area, yes.
Senator KENEALLY: When did that occur?
Mr Pezzullo: Some months ago. I'll take on notice the specific time of the move.
Senator KENEALLY: Why did he change roles?
Mr Pezzullo: It's a lateral move. We regularly look at our talent, and in this case it was a lateral move to take advantage of both interests and skills that he had in a different area.
Senator KENEALLY: Do you know if he moved after the April estimates hearing?
Mr Pezzullo: I'm reasonably certain that he did, but I will check.
Senator KENEALLY: Thank you.

Senator CHANDLER: I wanted to ask some questions regarding medevac. If there are relevant people to come forward on those points, that would be fantastic. Under the medevac law as it was introduced earlier in the year, how many notifications for medical transfer has the department received?

Major Gen. Furini: As of this morning, 341 notifications, of which 293 have been deemed valid.

Senator CHANDLER: So I would be correct in saying the balance of those were deemed invalid? I won't do the maths right now.

Ms de Veau: The validity relates to whether or not an application for transfer meets the initial criteria. That's not an assessment of whether the person will be transferred.

Senator CHANDLER: So the remaining 48—that being the difference—would be invalid, yes?

Ms de Veau: Yes, and invalidity might be that there aren't the two doctors or that the doctors, in their paperwork, have not addressed the criteria required to meet the initial test under the legislation. There might be a number of issues.

Major Gen. Furini: Including applications from countries that are not regional processing countries, including Australia.

Senator CHANDLER: Of the 293 applications that were deemed valid, how many people have been transferred to Australia?

Major Gen. Furini: One hundred and thirty-five people have been transferred.

Senator CHANDLER: Just on those numbers, have there been any instances of individuals applying, being rejected, and reapplying? Would those numbers that you've just given us include any reapplications, so to speak?

Major Gen. Furini: Those applications include 14 reapplications of people that were initially refused. Of those 14, 12 were subsequently approved and two are currently being drafted for ministerial consideration.

Senator CHANDLER: In terms of why there might be an approval after a reapplication, what are the sorts of facts that we're taking into consideration there?

Major Gen. Furini: I'd have to take that question on notice.

Senator CHANDLER: No worries; thank you. How many individuals have been approved for transfer to Australia where—because, as we know, there's a limited character assessment contained within the medevac laws—in effect, we've approved people that are perhaps not of as good a character as we would like, or where there are security concerns?

Major Gen. Furini: There have been six people approved who have been transferred to Australia and two people who have been approved still awaiting transfer to Australia, who have adverse security or character holdings in departmental databases.

Senator CHANDLER: That was a far more eloquent way of putting what I was trying to ask! Thank you. Once we have these transferred people in Australia, have any of them refused medical treatment once they arrive?

Major Gen. Furini: Yes. We have—
Senator CHANDLER: How many?
Major Gen. Furini: I'll have to take that question on notice.

Senator CHANDLER: You may not have this information in front of you, Major General Furini, but I'd also be interested to know what sort of treatment they have been refusing.

Major Gen. Furini: Five people have refused treatment of some kind including the treatment for which they were referred, and a further 43 have refused an induction check, chest X-ray or pathology on arrival as part of the screening into the country.

Senator CHANDLER: What does that mean in terms of where those transferred people end up? Do they continue to stay in Australia?

Major Gen. Furini: They do. What specifically happens to them I'll have to take on notice.

Senator CHANDLER: Yes, thank you. How many of those individuals transferred for medical reasons would currently be in, say, a hospital or a medical facility?

Major Gen. Furini: Currently, as of today—as of this morning—there are zero of those transferred in hospital. Over the time since the bill was enacted, there have been 13 people hospitalised, nine of which were for periods of less than seven days and four of which were for periods greater than seven days.

Senator CHANDLER: And what happens to these people after they have been hospitalised and then released?

Major Gen. Furini: They remain in detention, and in some cases receive further outpatient or specialist treatment, and in some cases require no further treatment.

Senator CHANDLER: And if they receive no further treatment, they cannot be sent back. Is that correct?

Major Gen. Furini: Under the act there is no explicit return mechanism.

Senator CHANDLER: So, essentially, these transferred persons are coming here on a one-way ticket.

Mr Pezzullo: A slightly more—I won't say eloquent, but a slightly more—

Senator CHANDLER: Nuanced?

Mr Pezzullo: nuanced explanation would be that the legislation—and I refer back to the evidence I gave to this committee in February as to the numerous difficulties or problematic features of the bill, acknowledging that the Senate version—I put this on the record—would have been catastrophic because it enabled future arrivals to immediately fall under its ambit. The House version, which ultimately then passed both houses, had that knocked out, except for persons born in regional processing, so that at least is helpful. Notwithstanding advice given to this committee, the return provisions were not explicitly linked, which is a problem.

Perhaps the most grievous flaw in the legislation, as it transpired, which explains how people who supposedly are sick can come here—they're brought here for assessment. The valid applications that Ms de Veau spoke of earlier fall under two limbs: they're for treatment or for assessment. The minister is required to have regard to both. So quite properly—and no-one wants to see anyone suffer from an illness—if a person is said to be in need of an assessment, it's best done in Australia, because of the machinery, technology and specialists.
They can come here to be assessed. If the assessment then leads to a conclusion, which you've heard in a number of cases, 'Well, actually there's no further treatment required,' then there's no ability to return them.

**Senator CHANDLER:** Right.

**Mr Pezzullo:** There are a lot of words there, but I didn't want it to be thought that the 'one-way ticket' premise of your question was completely lacking in explanation. That explains how it's a one-way ticket.

**Senator CHANDLER:** So, in essence, what you are saying is that if people are transferred here for further assessment and that assessment determines that no further medical action need be taken—

**Mr Pezzullo:** Or—sorry, Senator, I didn't mean to interrupt brusquely— that the treatment could be afforded back in the regional processing country. So, if you're an outpatient or you need to see a psychologist or a psychiatrist, with perhaps some medication around antidepressants, they can't be returned to that place for treatment.

**Senator CHANDLER:** So, even if the person comes to Australia and the assessment is made that they could receive those medical services back from whence they came, there is no express provision to be able to send them back to do that?

**Mr Pezzullo:** Correct. That is right.

**CHAIR:** Can I just get Ms de Veau's perspective on that too, given she does the operational assessment—

**Ms de Veau:** I'm sure her perspective won't be too divergent from mine—

**Mr Pezzullo:** but let's have a look.

**CHAIR:** Ms de Veau has a way of being precise with the act, which speaks to my way of things.

**Ms de Veau:** If we put the miscellaneous measures provisions to one side, the Migration Act already had and continues to have a section that deals with the removal of transitory persons brought to Australia for a temporary purpose. That's section 198(1A), and that provision specifically refers to people brought here under section 198B. The difficulty with the provisions as they were introduced under the miscellaneous measures act is that they don't link to the power to bring people here and the power to remove them again. So there would need to be an amendment to 198AD and 198AH to include 198C, which is the bringing power under the new provisions, to sit alongside the references in the Migration Act that exist in relation to 198B.

Some have suggested that there are workarounds. I note, for instance, that the Attorney, I think, released a precis of AGS advice that he received in February to say that there was no legal avenue available. I don't want to go into further detail in relation to the nature of that advice, but I did testify, in this committee's hearing in relation to the repair bill, that what was being suggested by some of the submitters on that day about alternative pathways had been considered but not in a way that we thought there was a valid pathway for the removal of people who were brought here under section 198C. The two reasons are that you have a very specific reference to a return power—once you have got an express power to do something,
you can't then rely on the general powers elsewhere; in a sense, to include something specifically means you are excluding get more generally—and just because they are being brought for a temporary purpose under both schemes doesn't mean, as some submitters suggested, that you would be able to piggyback on the references to section 198B. They are quite different schemes. One scheme is discretionary and the other is quite specific in the way it has been set up.

**Senator CHANDLER:** In terms of the application of medevac and the cohort that it applies to, is it correct that it only refers to those people who are currently on Manus Island and Nauru?

**Ms de Veau:** No, it doesn't. The reason is that there is a reference in those that it applies to in terms of relevant transitory persons. That definition includes a person who was in regional processing on the date of commencement, which was 1 March 2019, or a person born in a regional processing country. So the date of commencement isn't linked to a person who was born in a regional processing country. That means, for the purpose of being a relevant transitory person, a child might be born in 2020. They might be a child of people who are already residing in Nauru. They might be a child born to some people who arrive by boat and are taken, under the existing provisions, to a regional processing country in the future. They might—

**Mr Pezzullo:** The concern that we have—and General Furini has this is one of his risk factors—is that it could practically apply to future arrivals. We don't want to give away how you hack the system—

**Senator CHANDLER:** No, but you can't ring-fence those who might be eligible.

**Mr Pezzullo:** You can't ring-fence it, but, if you are a smuggler, you might be thinking about the sorts of demography you might try to penetrate our defences with, knowing that, if you could hook it to future births, you could get the whole family in. We are very concerned about that, and that is one of the intelligence factors that General Furini keeps an eye on.

**Ms de Veau:** And the added complication is that, once a child born in the future becomes a relevant transitory person on the recommendation of doctors to be brought here for assessment, the rest of the family unit provisions also kick in, so the entire family would be brought.

**Senator KENEALLY:** How many people have been transferred to Australia by the government, outside of the medevac process, for medical treatment?

**Mr Pezzullo:** Over what time period?

**Senator KENEALLY:** Since the government came to office in 2013.

**Mr Pezzullo:** I refer you to my opening statement. The total stock of persons in Australia who have been medically transferred is 1,117.

**Senator KENEALLY:** Does that include medevac?

**Mr Pezzullo:** My evidence was inclusive.

**Senator KENEALLY:** So that includes medevac—

**Mr Pezzullo:** So, two different legal categories.

**Senator KENEALLY:** How many people were transferred through medevac?
Major Gen. Furini: There have been 135 people transferred.

Senator KENEALLY: So it's safe to say that around 1,000 people have been transferred by the government outside of medevac?

Mr Pezzullo: All of whom have the rest of the provisions of the Migration Act applicable to them.

Senator KENEALLY: How many of those people have been returned to Manus or Nauru?

Mr Pezzullo: Less than a handful—because they are all injunctioned in various court cases or the subject of legal undertakings.

Senator KENEALLY: Could we get a precise number. There were very precise numbers regarding medevac, so I would like a precise number on this.

Mr Pezzullo: General, how many medical returns have we had? I don't think we've had any in recent years—because they all jump onto the legal cases.

Major Gen. Furini: I'll take the question on notice, although I would note that the last return to a regional processing country was on 15 April 2018, when we returned a single person.

Senator KENEALLY: You say there was a handful. Can you give us a ballpark figure? This is Senate estimates and you had a lot of specific figures in regard to Senator Chandler's questions. I would have thought that something as significant as returning people, which this government says is a high priority for it—if 1,000 people have been transferred here outside of medevac, how many have been returned to Manus or Nauru?

CHAIR: I accept your point, Senator Keneally, but he has taken it on notice and the standing orders say that's the end of the matter.

Senator PRATT: Point of order, Chair: the standing orders say that that's allowed only if the official doesn't know the answer.

CHAIR: Are you suggesting a more nefarious reason for taking it on notice, because that's a serious allegation.

Senator PRATT: No, I'm just reminding the official that they have an obligation to answer the question if they know the answer or if anyone else knows the answer.

Mr Pezzullo: I do not know the answer.

Senator KENEALLY: Can you check whether anyone else in the room knows the answer?

CHAIR: The good news is you'll have the answer very soon, because it has been taken on notice.

Senator KENEALLY: Thank you.

Senator ROBERTS: Mr Pezzullo, I'm not interested in the side issues of this topic that the other members have discussed: slavery and exploitation. They concern me, but I'm not in the least interested. Mine is a matter of accountability, arithmetic and integrity. Let's go to the figures that Senator Keneally presented through a newspaper article.

CHAIR: Which newspaper article are we talking about, Senator Roberts?
Senator ROBERTS: In the 8 October Sydney Morning Herald written by David Crowe: 'Jump in air arrivals by asylum speakers'.

CHAIR: That has been provided. Good.

Senator ROBERTS: Yes, it has already been tabled. These are the figures that that article provides, and I didn't see anyone from your department contest them: in 2015, 8,562 people arrived as asylum seekers. That's a rate of 23 per day. In 2016 it was 12,673. That's 35 per day. In 2017 it was 18,267. That's 50 per day. That is a doubling in just two years. In 2018 it was 27,884, which is a rate of 76 per day, which is almost four times. In 2019 a slight decrease: 24,520 asylum seekers arrived. That was a rate of 67 per day. According to David Crowe, including July, from 1 July this year, it is a rate of about 80 per day.

I take you back to my question, because what I want to do is get to the core of this issue. I said in my question: is it true that currently around 80 asylum seekers per day arrive in Australia by air? If not true, what is the current daily figure? I was led to believe that it's much, much smaller, but in fact, according to David Crowe, it is 80. This is my issue: I'm here serving the people of Queensland and Australia; you're here serving the people of Australia. My job is to hold you accountable. My job is also to help you, and for that I need the facts. To support you, I need the facts. David Crowe goes on to talk about the Administrative Appeals Tribunal. The government said 62,732 of the applications from 1 July 2014 to 19 August this year had been rejected; a refusal rate of 84.2 per cent. He goes on:

Tens of thousands of rejected asylum seekers have taken their cases to the Administrative Appeals Tribunal, which had a caseload of more than 60,000 matters at the end of September.

My question is: is it true that the rate of arrival of asylum seekers is now 80 per day?

Mr Pezzullo: No. If you take the data as at 31 August as distinct from 19 August, which Mr Crowe relied upon—in good faith, it has to be said—I think the rate is closer to 60.

Ms Golightly: 65.

Mr Pezzullo: As at 31 August—I don't have data, unless—

Senator KENEALLY: To assist Senator Roberts, after that information was provided and Mr Crowe wrote his article, didn't the department correct the record and say that it was 65 per day?

Mr Pezzullo: I don't know that we gave a daily rate, but we said that the data was effective to 31 August. It changes the—

Senator KENEALLY: The data you gave was the equivalent of 65.

Mr Pezzullo: It changes the denominator because the number of days is increased.

Senator ROBERTS: The point is that in the space of five years it has gone from 23 per day to 35 point day, a 50 per cent increase; to 50 per day, which is a doubling of just two years earlier; to 76, which is three and heading to four times; and now to almost 80, but you've said 67. 67 is roughly three times 23. There is a big increase there, Mr Pezzullo. Commissioner Outram told us about the many complexities of his job. I understand that. Border security and Australian sovereignty are extreme important to me and to most Australians. I'm wondering if you can acknowledge that trend and, secondly, if you can make
any comment about whether or not the Administrative Appeals Tribunal is perceived by
people who want to come here illegally or legally as a weak link?

Mr Pezzullo: It's probably true to say that there's an opportunistic attitude taken on behalf
of many people. They're thinking, 'If I can get a valid visa application up'—remember you
have to have a valid visa to get on the plane—'then, once I'm in country, either I can get a
favourable determination from the department,' which is unlikely because our refusal rate is
very high, 'or I can slip into the AAT and/or Federal Court proceedings. Australian law being
what it is and the regulations and the ministerial and other instruments being what they are,
I'll be able to get onto a bridging visa.' Does that present a degree of attraction? I suspect it
would. There is some evidence to suggest that that's the case.

The rate of increase, which Senator Keneally also read out earlier—I don't know that you
were here—basically tracking the same annual figures, does show the increase in annual, as
well as daily, rates. I was at pains, as was Mr Outram, to try to scale it for you. Over the same
time period, we've had 40 million arrivals. The effort taken to reduce that number to a
vanishingly small fraction of a per cent—it's currently running at about 0.23 per cent at the
moment—would have to be traded off against the diversion of resources that you would have
to undertake in order to try to get that number lower. There are things that you could do.

Senator ROBERTS: I accept that.

Mr Pezzullo: Indeed.

Senator ROBERTS: You mentioned that earlier on. My concern is, though, that by going
away from the data we have made a mess of the Murray-Darling Basin and we've made a
mess of energy in this country, and if we go away from the data here we could make a mess
of immigration. The government's already cleaned up a mess, and we commend it for that. My
point is that 2015 was not long after the government came in and really put the teeth into
stopping the boats, right? I'm thinking there's an alternative now, which is air travel, and
they're doing whatever they can to get in that way. Is this just the start, the thin end of the
wedge, or is it something that we can ignore?

Mr Pezzullo: It's cyclical. We're very data driven, you'll be pleased to know. We go off
the data. It is cyclical; it does come and go. I've never seen, in my former role as head of
Customs and Border Protection and now here, an exact displacement effect. That is to say,
persons who tried to come by boat, 100 per cent of whom came without documentation—

Senator ROBERTS: I'm not implying that. If it becomes difficult in one way—

Mr Pezzullo: Correct.

Senator ROBERTS: when it was easy then they're going to put their attention somewhere
else. That's my concern.

Mr Pezzullo: I was going to say that the clients—if I can use that term—of smugglers are
very different. The cohort is very different, the demography's different and the geographical
points of origin are very different. That's point 1. Point 2, without going into highly sensitive
intelligence related matters—and if Commissioner Outram or Deputy Commissioner Newton
want to add to this, I'd be delighted if they joined me—is that there has not been a
displacement effect in either the cartels or the syndicates. In other words, those who were our
principal adversaries through the period 2008 to 2013, which was the spike in maritime
arrivals, have tended to go into other lines of business.
Some—and I need to be very cautious about what I say about highly sensitive intelligence that is available to us—have a look at trying to come in by air, but frankly they can make more money waiting out our maritime border successes and doing other things, be it prostitution, drugs or other matters, through South-East Asia and South Asia, extending into Africa and elsewhere. The smugglers that are apparent in this stream—let's call it the air stream; I don't think they're equivalent streams, though others tend to make that claim—tend not to have that level of syndication. These are people who hear that we've got ample rule of law provisions—some people would say 'generous'. As long as you can get on the tarmac, as long as you can get into the country, there are processes by which you can hook yourself to merits review and/or judicial review. In a sense, good luck to them—if I can use that turn of phrase. We don't see the highly orchestrated syndication that we saw in that peak period on the maritime side, 2008 to 2013.

Is that an absolute separation? No. There is some overlap. Some of our adversaries have said—again I'm just going to be very general here and I'm not going to go to either time or place—I 'wonder, having made a lot of money out of boats, how easy it would be to get the visas and passports to penetrate Australia's airline liaison officers' and all the other measures that have been described to you through the course of the day. They tend to give up. It's a hard nut to crack.

Our case theory, our hypothesis about the air stream, is that it's opportunistic; it's word of mouth. People say: 'Put in a valid visa, whether it's to attend for a learning experience, a visitor experience or a tourism experience'—we have 40 million arrivals over that time period that we've been talking about—'Claim protection. You'll almost certainly be knocked back by the department, because it won't be a well-founded fear of persecution'—and Mr Mansfield can speak to the rejection rates—but you might have an opportunity, if you wait it out, through the AAT and the Federal Court.'

Senator ROBERTS: So the people who try to smuggle people into this country are really, in large part, criminals who will attach to any racket they can.

Mr Pezzullo: Largely. I was making a reference earlier to the displacement between maritime smuggling and other criminal activity. There's not much margin on the air side. Evidence that's been given to this committee over 10 years, which I know all too well, because I've been coming here for 10 years, says that the margin at its peak period, when we did lose control of our borders—I said earlier to you, or perhaps it was to Senator Chandler: 'I've seen a border crisis; this is not a border crisis.' The margins on an illicit commodity—that is to say that access to Australia, at its peak, was running at about US$5,000 per individual. For a family, it was US$25,000 to US$30,000, depending on the kinds of rates. Commissioner Outram, I should refer to you as well, as my colleague in this. We don't see those sorts of mark-ups in this game. The chances of being bounced, either in the visa application stage or at the airport, being denied uplift by the airline or being denied entry at the primary line, the immigration line or the quarantine line is just too high, so the margins aren't what those organised criminals tend to pursue.

Is it the case that there is some evidence of labour hire intermediaries and others seeking to get people into Australia to put them into nail salons, farms and the like? There is some evidence of that. It's not the same criminals. Mr Outram, I don't think you were here when I was referring to Taskforce Cadena. When the Border Force does its sweeps with other
agencies, we tend not to come across—although we do come across some—persons who need to be referred. I know you said that it was of incidental interest to you, or not of interest. We do come across some persons who need to be treated under human trafficking, slavery or labour servitude arrangements, but it's not in the tens of thousands. It's a handful of cases. Mr Outram?

Mr Outram: It's a very small proportion.

Senator ROBERTS: Have you had to detain any people, and, if so, what proportion have absconded, if any?

Mr Pezzullo: Detained at which stage?

Senator ROBERTS: After they arrive in the country and you find out they're illegal. Have you detained them?

Mr Pezzullo: Ms Golightly, they tend to be bridged?

Ms Golightly: Yes.

Mr Pezzullo: Unless there are security or character concerns.

Ms Golightly: Exactly. The way the law operates is that when somebody applies for a visa, including a protection visa, they are given what's called a bridging visa, and that makes them lawful. So we still know who they are and what they're doing. They have that bridging visa until their claim is decided and it's either granted or refused. If it's refused, they can avail themselves of appeal rights through the AAT and the courts, as the secretary was just outlining, in which case they would also be given a bridging visa to continue to make them lawful in the country. So, by and large, most people are lawful. There are a small number who don't avail themselves of the appeal process when their application is refused, and they're expected to leave the country.

CHAIR: We will suspend for a dinner break.

Proceedings suspended from 18:35 to 19:39

CHAIR: We will resume and continue our examination of the Department of Home Affairs officers in relation to outcome 1. There are still a few more questions under that heading. I will start with you, Senator Pratt.

Senator PRATT: Thank you very much. I have some further questions on Paladin, but in the context of their contracts. With respect to garrison services in Papua New Guinea, on what date was the current contract extended with Paladin?

Ms Moy: It was 29 June, and it goes from 1 July to 31 December, noting that Paladin has been given a notice to terminate for convenience to the end of November 2019—so that's been brought back one month.

Senator PRATT: Can you provide a statement to this committee about how much this contract is worth, on a per-month basis if possible, in Papua New Guinea?
Major Gen. Furini: I don't have that information other than to say that the contract as it currently stands, from 28 February 2018 to 31 December 2019, was valued at $443,029,508.

Senator PRATT: Can you please give me the value of the contract for between 1 July and 31 December or when it otherwise terminates?

Major Gen. Furini: For this financial year?

Senator PRATT: For the extension period, so yes.

Major Gen. Furini: I don't believe I have that number available here right now. I'll take it on notice.

Senator PRATT: Just to be clear, the value of the whole contract was some $443 million. That includes the extension, does it?

Major Gen. Furini: That's correct.

Senator PRATT: You don't have the previous value of the contract, before the extension, with you?

Ms Moy: I believe the extension to 31.12.19 was $109,239,312.

Senator PRATT: Thank you. Given what you said, that it's terminating in November, are you confident that this is the last contract extension they will have?

Major Gen. Furini: Yes, absolutely.

Senator PRATT: So everything is winding up under that $109 million currently.

Major Gen. Furini: That's correct. They are currently in the process of transitioning out—making, amending, disposing of assets and doing the things that need to be done to remove themselves from Manus.

Senator PRATT: Before this contract was granted, were any additions made to their contract, or subtractions?

Ms Moy: Sorry, Senator, I don't understand the question.

Senator PRATT: What changed in their contract extension, given they're winding up?

Ms Moy: The contract extension was done before the notice to terminate, for convenience. The contract extension was to continue services. Once the Papua New Guinea government made a determination that services in Papua New Guinea were no longer required, as people were relocated to the Port Moresby and surrounds, the notification was to terminate the contract as it stood at the time.

Senator PRATT: Given you've said there's $109 million in this contract, are you paying the whole value of that? Are you contracted to do that even though these services are being wound up?

Ms Moy: The contract payments will relate to the work actually done. The $109 million that's advertised is the top amount. That doesn't mean that that's the amount that will necessarily be spent in that period of time.

Senator PRATT: Have you done an estimation of what the government's likely to owe under this contract, given the wind-up is happening?

Ms Moy: I think we'd probably need to take that on notice.
Senator PRATT: I would imagine that you should be able to answer that soonish, given we're not that far away from November now.

Ms Moy: We'll have to take into account monthly costs, monthly pass-throughs. It'll have to be a calculation undertaken. I'm not quite sure where that's up to at the moment, but we'll take it on notice and come back.

Senator PRATT: Is the $443 million that has been paid to Paladin since the commencement of the contracts inclusive of all of the contracts to them?

Ms Moy: That's the value of the contract. I might have to come back to you on the actual expenditure.

Senator PRATT: How much has been paid?

Ms Moy: We'll come back to you on the actual expenditure to date.

Senator PRATT: You are not able to do that today, but you will take that on notice. Last week in question time, the Home Affairs minister said there were only four people on Manus. Where have the asylum seekers and refugees who were on Manus been moved to? How many remain not on Manus but still in PNG?

Major Gen. Furini: There are currently three people remaining on Manus under the care of PNG ICA. All the rest were voluntary moves to Port Moresby, with the exception of one individual who is on a resettlement pathway in Manus who has elected to stay there with his family.

Senator PRATT: How many people have been on a resettlement pathway in Port Moresby?

Major Gen. Furini: In total, there are approximately 47 people across PNG, inclusive of the individual in Manus, on a resettlement pathway.

Senator PRATT: How many?

Major Gen. Furini: 47.

Senator PRATT: I think this question goes to what I previously asked, which is: how much is Paladin receiving per month to look after the four individuals remaining on Manus? I think that must be substantially the same as the last question, in relation to payments, is it not?

Ms Moy: The costs to look after the four individuals would be part of the costs also to wind down and remove and close down. It'd be part of the normal contract costs.

Senator PRATT: So you'll answer that. If you can break down the costs for wind-up for care of the remaining individuals, given you will be reporting on actual expenditure, then that should be okay.

Ms Moy: If we can break it down in that way. It might be broken down in terms of what functions they are doing versus what it costs for the four individuals.

Senator PRATT: Finally, do you know or are you aware of how much tax Paladin has paid in Australia?

Ms Moy: No, Senator. That would be a question for the Australian Taxation Office.

Senator PRATT: Chair, if we have further time, I might flick over to my colleague. But if you want to give the call to someone else, that's okay too.
CHAIR: There's only a minute left in this block. How about I offer the call around and I'll bring it back to you promptly. How does that sound?

Senator PRATT: That's great.

Senator McKIM: Can anyone tell me how much has been spent on the Christmas Island detention centre since it was reopened?

Mr Pezzullo: I suspect Ms Zakharoff from the Border Force can assist. This is in the context of its reactivation out of contingency in 2019?

Senator McKIM: Correct.

Mr Pezzullo: Ms Zakharoff?

Ms Zakharoff: I have an expenditure figure. We've got administered expenditure of $26.8 million to 31 August 2019.

Senator McKIM: Okay. We're a month and a half past that now. Could you just remind me of when it was recommissioned? Do you have the date there?

Ms Zakharoff: Yes, it was announced on 13 February, from memory, and on 16 February it was reactivated.

Senator McKIM: It's still incurring expenses, I presume.

Ms Zakharoff: That's correct.

Senator McKIM: How many people have been detained there since it was reactivated?

Ms Zakharoff: I currently have four people.

Senator McKIM: Since the reactivation, have there ever been any other detainees there?

Ms Zakharoff: No.

Senator McKIM: So we've spent in the region of $30 million to detain four people for a couple of months—is that right? Does anyone want to confirm that?

Mr Outram: It wasn't re-established just to detain four people. That's what the cost is, and there are—

Senator McKIM: I beg your pardon. Could you just speak up please, Commissioner.

Mr Outram: Yes. I said it wasn't re-established for the purpose of detaining four people. There are two separate issues, but you are factually accurate: what's been spent has been spent, and there are four people in there now.

Senator McKIM: And in fact there have never been any others there since it was reactivated, as we've just heard from Ms Zakharoff. So we've spent $30 million in recommissioning a facility that in fact has been used to detain four people for a couple of months. That's an accurate statement, isn't it?

Mr Outram: That's correct.

Senator McKIM: Firstly, how many staff are currently working in the facility?

Ms Zakharoff: At 31 August 2019, there were 96 Serco personal, nine IHMS personnel and two Australian Border Force officers.

Senator McKIM: So there were over 100 staff there for four detainees. Is that right?
Mr Outram: They're not all there for the four detainees, Senator. Again, it's your characterisation that I disagree with.

Senator McKIM: What in particular would you disagree with, Commissioner?

Mr Outram: You're saying they're there for the four detainees.

Senator McKIM: What are they there for?

Mr Outram: There are staff there for contingency. You're aware of the history of that. That's why they're there: for contingency.

Senator McKIM: I'm aware of the grossly flawed decision to recommission Christmas Island because apparently we were going to get a flood of boats which never happened, and we were going to get everyone off Manus Island and Nauru under Medevac, which never happened either. Surprise, surprise! It's obviously been a surprise to the department that those things didn't happen, because that was the department's advice to Minister Dutton. It was no surprise to me. It was a terrible decision when it was made, based on totally flawed advice from your department, Mr Pezzullo.

Mr Pezzullo: That's principally a matter for the department. The precautionary option to reopen it was, as I gave evidence in February, principally in relation to the deeply flawed— I've described it as 'catastrophic'—Senate version of this legislation, which is not what passed the parliament.

Senator McKIM: Indeed.

Mr Pezzullo: I was just about to add that scaling deeply flawed legislation is always fraught, but when the not-so-catastrophic version of the legislation—

Senator McKIM: Could I just stop you there, Mr Pezzullo. I've asked you questions in the past that you haven't answered because you've said it's seeking an opinion, but you seem to be pretty happy to sit here and give a personal opinion.

Mr Pezzullo: It's not a personal opinion.

Senator McKIM: Well, it is a personal opinion.

Mr Pezzullo: It's the assessment made by the department—

Senator McKIM: It's your opinion.

Mr Pezzullo: which you say is deeply flawed. All I can say is that, in terms of ensuring that the deterrence posture that we struggled and campaigned through OSB so mightily to achieve between the years 2012, with the resumption of regional processing—which you disagree with, and I understand that—and the reinforcement of that posture through the standing up of Operation Sovereign Borders in 2013, the risk to the deterrent value that had been hard won over those six years was such that, in December last year, to go over the evidence given back in February, when the catastrophic version of this legislation was first presented—

Senator McKIM: That's the department's advice to the minister? It was 'catastrophic'?

Mr Pezzullo: Yes. It was our assessment.

Senator McKIM: But you were wrong, weren't you?

Mr Pezzullo: In terms of the version that then passed the House, which had some moderated measures, it was still the judgement of the department—I said this in February; in
fact, if I recall, we were almost doing this live, because these considerations were going on in February, when we had estimates a few weeks later—that it still required as a precautionary measure the activation of that contingency measure. That was before the Biloela family were ever on the horizon. That was a completely different track of consideration. And it remains the department's view that, along with a constellation of other measures that General Furini is responsible for, including strategic communications, reinforcing our intelligence effort, and our maritime posture, we have shored up the risk presented to Operation Sovereign Borders by the medevac legislation.

Senator McKIM: There was no risk to Operation Sovereign Borders from—

Mr Pezzullo: We're the professionals in this field, and we judged that there were—

CHAIR: There's an element of argumentativeness creeping in.

Senator McKIM: Well, you're wrong, Mr Pezzullo. History has shown that you are wrong.

CHAIR: Senator McKim, we're in the realm of debating points now. You have an opportunity to ask forensic questions. You don't have the opportunity to engage in debating points about matters of policy. If I can get you back on track then we can keep going. You're at eight minutes, so that might help to refocus the mind.

Senator McKIM: Well, history has showed that the department got it completely and utterly wrong. Why are there 100 staff on Christmas Island for only four detainees?

Mr Pezzullo: Without revisiting Ms Zakharoff's evidence, the judgement made about the minimum level of staffing required to activate to an acceptable operational standard involves that number. As I've just given in evidence—and it's repeating what I said earlier, but to summarise—it's not geared to the number of persons who are there now. It was geared to reactivating a facility that was otherwise being held in contingency. But, if there's any particular science, Ms Zakharoff, or any particular contractual requirements—if I remember rightly, there are minimum service levels that require a certain amount of funding and a certain amount of physical presence by staff and contractors.

Ms Zakharoff: That's correct. That number represents the minimum staffing profile to give effect to the facility being in an operational capacity.

Senator McKIM: So how long did that 100 staff, most of whom, presumably, are just playing patience or computer games all day—minister, have you got a problem with that? Tell me what they're doing if they're not sitting around twiddling their thumbs. For the overwhelming majority of the time since the recommissioning, there were no detainees in that facility, and now there's a poor family from Biloela who've effectively been tortured by your government and have now been exiled. What problem have you got with what I'm saying?

CHAIR: Senator McKim, let's keep estimates to its purpose. Casting aspersions on matters on which I suspect you and others will never agree is not constructive.

Senator McKIM: So how long is that hundred-plus staff going to be there?

Mr Pezzullo: As a matter of policy, it's more a matter for the department. For so long as the assessment remains that the requirement to reinforce the deterrence posture of OSB maintains our advice to government—and, at the moment, we don't have a terminating point for that period.
Senator McKIM: Thank you.

CHAIR: Senator McKim, I'm going to share the call around. I'm sure it will come back to you soon given how many people are here, but I know the Labor senators have been waiting patiently. I will hand over to Senator Ciccone.

Senator CICCONE: I just want to touch base on program 1.2, Border management, with respect to cargo inspections. Are you satisfied with the number of detections of illicit or restricted drugs you have made in the last financial year?

Mr Outram: Yes, I am. I am delighted that we were able to seize five tonnes more last year than the year before.

Senator CICCONE: From what I could see in the various reports, I think there has been a reduction of around 17½ per cent in detections for the 2018-19 year compared to the previous year. Is that your understanding?

Mr Outram: If you recall from my opening statement, I said that we are dealing with a significant number of increases in volumes at the border, and simply opening more containers, more parcels and searching more passengers is not the answer to the problem. What I want is to focus our efforts on those containers and those individuals that represent the highest risk, and what you will see is that, whilst we've measured less activity, the return on the activity we have put in place has led to five tonnes more of what we've seized. So, in other words, we're getting our targeting and our risk assessment processes, our intelligence processes, right.

Senator CICCONE: And how do go about identifying the content? I guess you don't know what's inside until you open it up.

Mr Outram: That's right, but of course, with three-plus million sea containers a year we can't open all of them, so there's got to be a method to the madness at the border, and the method is around intelligence and risk profiling. So we spend a lot of effort, particularly with the Intelligence Division of the Department of Home Affairs and our own National Border Targeting Centre, making sure that, for the return on the investment—in other words, which containers we do take off the wharf and which containers we do run through the X-ray machine and which we unpack and search—we're more likely to find something.

Senator CICCONE: The number of air, sea and international mail inspections has decreased by around 21 per cent to 38 per cent year on year. Why has that also occurred?

Mr Outram: Again, as I've said to you, because we are less focused on volume. So we can measure activity and allow it to masquerade as success. But what I'm pointing to is when you look at what we've actually seized in terms of the harm to our community, in terms of tonnes of drugs, we seized five tonnes more last year than the year before.

Senator CICCONE: Have staffing numbers also reduced at these facilities?

Mr Outram: No. Our staff numbers across the Border Force have been maintained over the last four years at roughly the same ASL.

Senator CICCONE: Would you take it on notice and provide some stats on that.

Mr Outram: Yes. Our chief finance officer is here; she would have the actual data in relation to our ASL numbers over the last three or four years.

Senator CICCONE: I'm happy for you to take it on notice.
Mr Outram: What I would say is this: we have to prioritise. As I said earlier, we cover the civil maritime domain, airports and seaports, and passenger facilitation, and we have a whole lot of customs compliance functions we have to attend to. So what we're building is a border force that's far more agile in responding to competing demands. We can't just have a whole lot of people siloed in mail examination facilities or cargo examination facilities. Sometimes we have to surge them into airports and vice versa. So we are creating more multidisciplinary teams, who, on any given day, will be doing different jobs.

Senator CICCONE: If you're able to take it on notice and provide some of those figures, that would be great.

Mr Outram: Sure.

Senator CICCONE: If you can also break down if there's been an increase in the number of casual staff or the type of staff that you've had.

Mr Outram: In fact, I'll give you the data, but we do have a number of intermittent and irregular employees, as we call them, who are temporary Border Force officers. They don't undertaken enforcement functions; they undertake administrative tasks in relation to the TRS scheme, for example, and processing at the primary line.

Senator CICCONE: If you could also include them in the overall figures, that would be great.

Mr Outram: Yes, they're counted towards the ASL figure; the budget rules or the finance rules changed a few years ago now, so they're now counted towards FTE.

Senator CICCONE: When you say 'large seizures' you obviously have had fewer seizures but have been able to identify more drugs. Can you explain or elaborate a bit further on that point?

Mr Outram: In terms of the small importations, if you like, or searching small envelopes randomly, we could do a lot of that. We could simply divert officers to the mail gateway and just open envelopes and try to seize drugs that way. What we try and do is use data and intelligence and our knowledge of where the vulnerabilities are in the supply chain to target the consignments that are likely to contain the highest volume of drugs. Of course, we can't just put all off our resources into finding narcotics; it's probably the most important challenge we have, but we also have to manage getting crew onto vessels at sea and we have to manage queues of passengers at airports—the numbers are going up every year—so we have to balance a whole lot of competing priorities.

Senator CICCONE: It's great that we've got officers who are detecting drugs and large seizures, but the concern I have is that there are smaller amounts of drugs which are coming through our borders. Even though they might be small amounts, when you put them all together it is a large quantity, and probably larger than the seizures that your officers are detecting. What I want to know is: what procedures are in place to try and capture that part of the market, given that we have also now had an increase of people using online shopping and using the postal service?

Mr Outram: There is a budget measure in place—I'll get the deputy commissioner of operations to talk to that—where we are surging officers into international mail, and, of course, we have our detector dogs which we regularly run through the international mail
centres. We're not ignoring letters; we're not ignoring that part of the business, but we're being a bit more judicious about our targeting operations.

**Ms Newton:** With those targeting operations, we'll surge people into a mail centre according to a set of strategies we might have that are intelligence informed, and those intelligence informed strategies are to try and make sure that we go in and look at material coming into, say, the mail centre that might come from a particular country that we want to target at that point in time. We have to get the balance between, for example, envelopes versus large packages coming through a mail centre, and that's where we're getting larger seizures—it might be 12 bottles coming through mail rather than one envelope that might have methamphetamine in it. There's always a balance that you have to have in continuing to check all types of mail, but the focus that we've had—based on intelligence from working with the Australian Criminal Intelligence Commission, state and territory police forces, the Australian Federal Police and AUSTRAC—is on ensuring that we're targeting the highest priority activity. We've brought our targeting staff back into the operational teams in the organisation, so they're working together with officers in places like the Container Examination Facilities to improve the targeting activity that we have, so that we don't have any containers going through where we're sure there's nothing in it. Once we do an X-ray, we don't open it. What we do now is risk-assess each of the containers as they come through, based on prioritisation and re-determining the priorities. That's why we've had a higher success rate, even though we've opened less containers, for example.

**Senator CICCONE:** Am I right to say that ABF is the only organisation that's detecting material that comes through our borders, or do state authorities or other federal authorities also do examinations? Would Australia Post, for instance, also have their own systems in place.

**Mr Outram:** We have a responsibility under the Customs legislation to make sure that prohibited and restricted imports don't get across our border from international destinations—imports, precisely. There is also of course the Department of Agriculture, which has biosecurity officers at the same mail gateway centre that we do. We work very, closely with them—literally next to each other—at those mail gateways. We also work next to them at airports, in terms of what's coming through our airports—you would see us at the back of the baggage hall. We aren't the only agency, and I should say that we work very closely with the Australian Criminal Intelligence Commission and the Australian Federal Police. The Australian Federal Police have something called a rapid lab capability, where we share data, information and intelligence about what's coming through the mail system with them. So if there are any changes in terms of import methodologies—scattergun importations, particular envelopes or letters coming to particular post codes—then we can get onto that very quickly. And of course we have Australian Federal Police visiting our mail gateways regularly to collect the detections of narcotics that we find and seize. We also do refer matters occasionally to the state police. For example, with small seizures of precursors that perhaps don't meet the AFP threshold for an investigation, we certainly would refer those to the state police. So it's very joined up. We're responsible for, if you like, the searching of what's coming into the country, but we don't do it in isolation. The border's a shared responsibility. Without collaboration and sharing of intelligence, information and data, we wouldn't have been able to increase our detections by five tonnes over the year.
Senator CICCONE: Just to change the topic slightly, can you confirm that back in 2017 there was a plot to set off an explosion on an Etihad A380 which, from what I understand, was organised with components that were sent to Australia via international cargo from Turkey? Is that your understanding? Can you shed any light on that?

Mr Outram: From memory, I know there's an AFP investigation that has taken place. There's been a prosecution in court where a lot of evidence has been listed, but I do recall there was a suggestion that parts of that device were brought to Australia either by mail or by air cargo—in other words, by couriers like TNT or whatever.

Mr Pezzullo: Evidence has been led in court pursuant to a criminal investigation. I think both the commissioner and I would want to remind ourselves that the investigation, of course, is AFP led. We gave evidence at the time—or at least the relevant agencies did; this was prior to the establishment of Home Affairs—that air cargo consignments may have been involved. But, as to what's been led as evidence in court and what's been proven in court, I'd really want to take that on notice. Unless the Counter-Terrorism Coordinator wishes to remind me of key facts that have been led, I'd probably refer you to the evidence that's been put before the court by the AFP.

CHAIR: Senator Ciccone, do you have much more left on this line?

Senator CICCONE: Just a few more. My final question on this point is: did these components make their way through undetected? It goes back to what I was asking earlier, trying to get an understanding of—

Mr Outram: I'd need to take that on notice, for the reasons the secretary's mentioned. The AFP did lead on that investigation and, as has been said, there's been a court trial and evidence led in court. I just want to familiarise myself with that and take that on notice if I could.

Senator CICCONE: Yes, okay. I've got some copies of an article that was published on news.com.au on 19 September of this year, entitled 'Illicit drugs easily bought on the dark web sent via the post to users across Australia'.

CHAIR: Do you have copies of that? You knew I was going to ask that, didn't you?

Senator CICCONE: I do. I've already printed them off.

CHAIR: Thank you. Very good.

Senator CICCONE: The journalist who wrote the article had inspected a Sydney facility that inspects post. Would this inspection have been organised by the ABF, by any chance?

Mr Outram: I'm sorry, Senator. You've caught me off guard here.

Senator CICCONE: That's all right.

Mr Outram: An inspection?

Senator CICCONE: Yes, there was an inspection.

Mr Pezzullo: A visit, perhaps?

Senator CICCONE: A journalist, I guess, gained access to a facility in Sydney that inspects post, so I just want to know: had that been organised by the ABF? I'm only going by the article.
Mr Outram: Certainly we work with journalists regularly to let them know how we work, what we do and the great work of our officers. It wouldn't surprise me if a journalist had been taken through the mail gateway facility to show how we do our operations in Sydney. It would have been kept at a fairly low level in terms of security classification, but we do that quite frequently. I can take on notice whether we did or didn't on this particular occasion for this particular journalist.

Senator CICCONE: Sure. The article says:
The … facility … processes 400,000 letters and parcels daily and every single piece is scrutinised in some way …
Given the fact that ABF only processed 1.1 million pieces in the last financial year, I just want to check: is that statement correct? Is it correct to say that only 1.1 million pieces were processed?

Mr Outram: In fact, in 2018-19 we inspected 36.4 million pieces of international mail.

Senator CICCONE: Okay. Are you aware of this Sydney facility, by any chance?

Mr Outram: We have an international mail gateway at Clyde in Sydney where we have a large contingent of ABF officers who work there full-time. We are embedded there with Australia Post. It's an Australia Post facility. It's where they bring all their international mail. We have a big operation there.

Senator CICCONE: Is it accurate to say that it processes around 400,000 letters and parcels daily, from your understanding.

Mr Outram: I'd need to take that on notice to give you that level of detail, I'm afraid.

Senator CICCONE: The article continues to say that, if officials make a large seizure such as the discovery last month of 750 kilogram of ice et cetera, Border Force officials know that on the back of that there will be an increase in attempts to import drugs in the mail. Given that Border Force has already made some particularly large seizures—and I appreciate you mentioning that to me earlier—why has there been a significant drop in those mail inspections, when we have examples that show that some of this mail that gets through the cracks contains a lot of drugs? I'm interested to see what you have to say.

Mr Outram: That sounds fairly speculative. We rely on intelligence that we get from law enforcement partners in the Department of Home Affairs. To say that if we get a large seizure in sea cargo it will automatically translate into a surge in international mail is overly simplistic, I'd put to you. As I said to you earlier on, we do move our officers between our different areas of operations, whether it be sea cargo, air cargo, international mail or the airport operations, and all of those are within our Port Operations Command. So we do move people around those different areas according to what's happening. But it's overly simplistic to speculate that if we get a large detection in sea cargo it will equate to a lot of letters coming in the mail.

CHAIR: My questions are in relation to cybersecurity. I'm not sure if that requires some changes at the top table.

Mr Pezzullo: Only to the extent that I can't handle it. Mr Miller, who's been waiting patiently all day, would love join me.

CHAIR: Let's let him have his moment to shine.
Mr Pezzullo: He's never backwards in coming forwards to take advantage of moments to shine, so he'll be here momentarily, I have no doubt.

CHAIR: For my first question I'll start with the general. I'm sure it won't be too tricky for either of you. There was a 2017 threat report prepared by the Australian Cyber Security Centre, and it said that Australia had not been subject to malicious cyberactivity that would constitute an official cyberattack. How has that situation changed since the release of that report? Has it changed?

Mr Pezzullo: First of all, Mr Miller—unless you've got a highly sensitive document, and I suspect you don't. It's an unclassified—

CHAIR: I don't plan to hand up any document.

Mr Pezzullo: Was there a public version of that report, Mr Miller?

Mr Miller: It's the public version. Senator, I'm aware of the report. I think there is a degree of philosophy around the definition. I think what we have seen is that Australia has been the subject of some pretty malicious cyberactivity that could constitute persistent threat.

CHAIR: Is a cyberattack with economy-wide ramifications that could target any of our major infrastructure a real risk? If so, how serious is that risk and what should we be doing about it? What are we doing about it?

Mr Pezzullo: The department, as the policy authority for cybersecurity, along with its very close partner the Australian Cyber Security Centre, which is a component of the Australian Signals Directorate, is indeed concerned about that very scenario. It's for that reason that, in reformulating Australia's cybersecurity strategy, which Mr Miller is leading from a policy point of view, working very closely with his colleagues in the Australian Signals Directorate along with colleagues in foreign affairs that deal with cyberdiplomacy and colleagues in the defence department, we are explicitly looking at the gaps in our legislative capability and capacity in relation to economy-wide cyberattacks. Ministers Dutton and Reynolds issued a discussion paper for industry consultation in September.

Mr Miller: Early September.

Mr Pezzullo: Amongst a number of questions which were posed to industry—this is at an unclassified level. I'm just trying to distinguish—

CHAIR: I'm only working from publicly available materials.

CHAIR: Yes. My apologies for my imprudence earlier, but there are things Mr Miller and I have in the back of our heads which are highly classified, and we always have to make sure that we've got the right partitions in our minds when we're in open session.

CHAIR: Quite rightly.

Mr Pezzullo: Ministers Dutton and Reynolds have asked industry, through the consultation process, to come back to us with their sense of the threat picture that they're seeing. The Australian government's got highly sensitive, and in most cases classified, tools that I can't go into a lot of detail about. We can see through a particular lens what's happening on our networks.

I'm deeply reluctant to 'mention the war' here, but I'm forced to. I'll take you to my evidence, given in May 2018, when I responded after the publication of the erroneous, false, non-whistleblowing article in the News Corp papers that's become known as the Smethurst
article. I'm deeply reluctant to mention it at this stage of proceedings. I thought I might be able to shimmy through the day without going there, but anyway.

The very issue that was set in motion between the Department of Home Affairs, the Department of Defence and the Australian Signals Directorate was the extent to which one day we can close the gap—and hopefully we can close this gap in sufficient time before that day, the equivalent of a cyber Pearl Harbor, comes—in terms of what the private sector can do on things like the electricity grid, our gas and water supplies, sensitive data holdings, traffic management systems and other critical pieces of national infrastructure, most of which are held, quite properly, for economic reasons, in the private sector. But there is an extent to which the margin of risk that they carry cannot be remediated by any private sector action. That is to say, were a bank, a utilities company or any other private entity to devote almost unlimited resources, would there still be forms of attack on critical infrastructure that could be executed by state actors, or very, very sophisticated non-state actors, who might be minded to attack our economic infrastructure? It's in that context and solely in that context, notwithstanding a completely erroneous and fabricated account of a leaked document, which stated on its face that this wasn't the case, because the newspaper decided to term what I've just described to you as a proposal to have ASD spy on all Australians and undertake mass surveillance.

This is a matter, of course, that's been largely traversed in another committee in the context of press freedom. I'll just put that to one side. This committee was briefed as long ago as a year and a half ago that the Department of Home Affairs, working closely with the Department of Defence and its colleagues in ASD, has, based on international experience, identified a possible gap in our legal and technical infrastructure. Mr Dutton has spoken about it in those terms. Minister Reynolds has joined him in the issuance of a discussion paper on that very fact. Without pre-empting future government decision-making in this regard, it's our hope in the department to bring forward considered, detailed proposals to address that high end of the risk spectrum—that is to say, that end of the risk curve that no amount of diligent, purposeful and targeted investment by the private sector can deal with, simply because the tools that you need to deal with those attacks are tools that properly should be vested in the state.

I don't want to cross streams with committees, Senator, but you might recall evidence that I gave to another committee considering this matter from a press freedom point of view. Without rehearsing that issue in too much detail, I spoke about the risk to national security posed by the leaking of the document by someone without any authority to do so, who had not availed themselves of any whistleblower protections. Thankfully, the article was so poorly written—and the journalist missed the fact that highly sensitive matters were contained in the detail of that report because there seemed to be an obsession to engage in a falsehood about Australians being spied on in terms of their emails, text messages and the like—that the details of how we would counter those sorts of attacks were partly dealt with in that submission. That is why it is the view of the home affairs department, along with colleagues in the Federal Police—leaving aside the press freedom question, which I'm not going to—that that sort of leaking without cause, leaking in relation to the blowing of a whistle on a falsehood, is so dangerous to the trust that we need to have with government, to the security that we need to put around such propositions and to the protection of those sensitive
capabilities. Mr Dutton and Minister Reynolds have indicated that early next year—and they haven't been any more precise than that—they'll be revisiting the question of a renewed cybersecurity strategy. One of the elements that I know Mr Dutton, from his public utterances, wants to consider is the role that government will play in protecting our nation's economic infrastructure, without in any way—I just want to be emphatic about this point—parlaying that or leveraging that defence of our critical infrastructure into some kind of mass surveillance program on Australian communications.

CHAIR: Who were the potential aggressors here? Put another way, who has the skill set to effect this kind of attack?

Mr Pezzullo: Certain state actors that, in a public forum, it would be imprudent of me to speak about in much detail; certain state actors, along with, potentially, and this is another risk that we're looking at, what I would describe as very capable non-state actors whose interests in mounting such an attack may not be of a geopolitical or diplomatic motivation—that is to say, to coerce us in terms of our national security interests—but might be designed to short a market, for instance, or to attack certain parts of sensitive infrastructure. We don't like to give away how you hack Australia, so we won't go into the details.

CHAIR: No, please don't.

Mr Pezzullo: I don't intend to. But Mr Miller, from a policy point of view, along with his colleagues in the intelligence community and colleagues in the Cyber Security Centre, have, I think it's fair to say, Mr Miller, an agnostic view as to whether the threat comes from a very capable state actor or, potentially—Senator Kitching asked about certain attacks on shipping infrastructure earlier, and I was reminded when she was speaking of the concern we have here. It could well be that in the not-too-distant future a capable non-state actor, which I might shorthandedly, without in any way seeking to diminish the threat, imagine as a Bond villain—let's think of it in those terms—may have motive, means and capacity to, for instance, short a market to change market signals and take advantage of that from a profit point of view. In years to come that might be as concerning to us as what certain state actor do.

CHAIR: If these are the emerging threats, what is being done from within the department to help adapt and prepare for those threats so that Australia's government and economic infrastructure is appropriately prepared?

Mr Pezzullo: Our job is to work on the policy and legal framework. That's the day job that Mr Miller has. We work collaboratively with our colleagues in the Australian Cyber Security Centre, who are hands-on the computers and the tools. Over in the Australian Cyber Security Centre, they do a terrific job, under Ms Noble's leadership, providing advisory services, technical support services and threat information to the private sector to improve their cyber-resilience. But, as you would have discerned from my evidence, notwithstanding all of that work, which is advisory in nature, supporting the private sector and providing threat pictures, you'll get to a point on the risk curve where the state will have to step in. So Mr Miller's working at great pace on this proposal. Is it fair to say that, Mr Miller.

Mr Miller: That's fair, Secretary.

Mr Pezzullo: We hope to bring concrete proposals before government as soon as possible.

CHAIR: Thanks to you both. Mr Miller, it looks like I won't need to ask you anything separate or different. I'll hand the call to Senator Patrick.
Mr Pezzullo: After that long answer, he probably feels no pressure!

Senator PATRICK: In respect of you saying you don't want to name state actors, Minister Dutton made a statement to the media two weeks ago suggesting that he was happy to call out foreign interference in universities, as well as cyberhacks. He went on to say his issue was:

... not with the Chinese people, not with the amazing Chinese diaspora community that we have here in Australia. My issue is with the Communist Party of China and their policies, to the extent that they're inconsistent with our own values.

There are other countries that call out the state actors. Are there discussions in respect of a change of policy there?

Mr Pezzullo: Senator Stoker was asking me specifically about attempts to attack our economic infrastructure in very particular ways—that is to say, through some kind of cybermounted attack on critical infrastructure, be it on banking, ports, electricity or the like. I do recall Mr Dutton's statement; I don't recall him making a statement in relation to cyberattacks on critical infrastructure.

Senator PATRICK: But is there a changing policy in terms of identifying state actors who are conducting cyberattacks within Australian borders in other areas?

Mr Pezzullo: Only to the extent contained in my evidence to Senator Stoker, including by way of a public discussion paper that I also referenced. We have identified the risk of certain state actors. We haven't particularised those actors—who can do certain things now or who is going to be able to do certain things in the future, both near term and medium term. In relation to mitigating those risks, I said in my previous evidence that we now work with the private sector within the legal framework that we have. But the question is to be posed to the community, including to the private sector—hence the discussion paper. The discussion paper that I mentioned earlier engages a question of: do we need to do more, including by way of active defence by the state—that is to say, the state of Australia—in relation to thwarting the most serious of those attacks? Does that represent a change in policy? It's certainly a more robust, forward-leaning and advanced position—so relative to our 2016 cyberstrategy that was announced in April 2016—and our thinking has certainly evolved since that time.

Senator PATRICK: I'll move to a slightly different topic: the report of the Commonwealth Ombudsman's monitoring of agencies' access to stored communication and telecommunication data. You would be familiar with that report, I imagine?

Mr Pezzullo: Yes, I am.

Senator PATRICK: I've gone through the report; I haven't added up all of the potential breaches, but I am relying on one of the journalists to give us rough orders. The Ombudsman found that officers did not have a proper delegation to authorise metadata accesses on 25 occasions, twice accessed data without proper authority and unlawfully accessed stored communications on two occasions. It goes on to say 17 agencies unlawfully accessed stored communication. The home affairs department disclosed it gave a series of 56 historic domestic preservation orders to some carriers over consecutive periods relating to the same person, a practice the Ombudsman found had in fact occurred 100 times—so unauthorised accesses. In some sense, you have a particular view about journalists doing a particular job and perhaps about people doing things that are unlawful. In this instance, these actions are in
contravention of law—the communications are not lawfully accessed—and involve people's privacy. What happens to officers when they are in breach of the law in respect of data accesses?

Mr Pezzullo: The difference being, of course, that we don't put in a superior claim to self-regulate. We have an ombudsman who does reports like this, which senators like you quite properly interrogate, and then we are held to account. So there is a difference, as opposed to the claims being made, including as recently as today with all of the carry-on in the newspapers that was a feature of the earlier part of these proceedings, for self-regulation. We don't self-regulate, and this is a perfect example of how that is so.

Mr Hansford: That's right. There are two answers to this question. The first is that we have robust reporting arrangements that we outline in our annual reports; the Department of Home Affairs compiles those for all interception agencies. So we have a good understanding of the extent and use of powers, and agencies report that to the Department of Home Affairs. When it comes to breaches in particular—I can talk from the Department of Home Affairs' perspective and the two recent reports in 2016-17 and 2017-18—the majority of the departmental issues that were reported by the Ombudsman were self-declared or identified to the Ombudsman. Where officers have breaches of the law, they self-identify. When the Ombudsman comes in year after year to review records, we make changes in the department—in the case I'm talking about. Those changes could be further education of officers, additional training and IT systems being updated to centralise data. The majority of cases that the Ombudsman has identified, when it relates to the department in particular, have been self-identified.

Senator PATRICK: My question went to consequence, actually—not to reporting and accountability, but to consequence for the breach of law in respect of access to telecommunications, access to metadata, unlawfully ordering preservation orders and so forth.

Mr Hansford: If there were no intent and it were an administrative error or a breach of law by an officer, which is what we'd class as an administrative breach of law, then there is no particular criminal consequence. That's the whole reason, as the secretary outlined, that there is oversight.

Senator PATRICK: Sorry, administrative—

Mr Hansford: If there is an error in an officer doing their job—the general counsel might have a more elaborate explanation—

Mr Pezzullo: It would be more precise.

Mr Hansford: That's right, from a policy officer.

Senator PATRICK: You are suggesting an immunity exists in law in respect of people who—

Mr Pezzullo: No. I think Mr Hanson's made it quite clear, as anyone who appreciates administrative law would understand, that decisions sometimes are made ultra vires, they go to court and/or they are otherwise dealt with. If the officer is acting in good faith—an example of a breach would be if the occupant of a position has moved and the new occupant hasn't been appropriately registered and has been able to exercise relevant powers. That's the kind of breach we're talking about. That's a breach of administrative law. It means that an officer has potentially acted in excess of power or ultra vires. Accordingly, it would be dealt
with in those terms. If an officer is acting negligently, culpably and with some sort of nefarious intent, that's a different matter of conduct. Having been invited by Mr Hansford, Ms de Veau is here.

Senator PATRICK: You are talking beyond power, and I understand what happens in terms of administrative law—

Mr Pezzullo: If an officer is not registered, for instance, on a particular ledger because they might have moved position. So officer X has departed the position and officer Y comes in—this is not to diminish it under any circumstances, Senator—but the ledger hasn't been updated, and the incoming officer starts to act under a perceived view of their delegation. This happens under delegations not all the time but not infrequently either. That's a technical breach because the person's name, R Patrick, has to be put on a ledger, as opposed to M Pezzullo, who used to be doing the job up until the week before. That is an administrative breach. It's regrettable, and certainly not to be condoned in any way, shape or form. It means that the officer exercising the delegation in that way where their name might not be on an appropriate ledger has done so absent power. It's no more complicated than that.

Senator PATRICK: Ms de Veau, do you have anything to add?

Ms de Veau: Only that the code of conduct is there if there are breaches that have described by the secretary and if they are not acting in good faith and have been negligent in relation to duty. But otherwise it's a question of administration.

Senator PATRICK: As opposed to someone who discloses in the public interest. There's a fuzzy line in all of this.

Ms de Veau: That might also be a criminal offence; it's on the books.

Senator PATRICK: I'm suggesting that unlawfully accessing telecommunications data is in fact unlawful. You're characterising it as an action beyond power. So I'm just saying there's a fuzziness through the eye of the beholder in this instance.

Mr Pezzullo: Senator, if I may, in some cases the Criminal Code Act prescribes certain penalties. An unauthorised disclosure of certain types of information under the Criminal Code Act carries with it a penalty of seven years imprisonment, for instance. There is a direct nexus between the action—that is to say, a disclosure, which I think you are getting at, to a journalist. Where someone hasn't availed themselves of whistleblowing protections under public interest disclosure for no good reason discloses, hypothetically, a top secret document, the penalty for that offence, from memory, is seven years in jail. The law states that. These laws, Ms de Veau will remind me, are not linked to the Criminal Code in that way, with terms of imprisonment associated with their breach.

Ms de Veau: I don't have the act in front of me, but that's not my understanding. I'll correct that if I'm wrong about that.

Mr Pezzullo: If this parliament makes provision for criminal penalties to be associated with an action—a breach of the Criminal Code Act, for instance, or formerly the Crimes Act 1914—the parliament would so advise.

Senator PATRICK: But you're not suggesting there is no crime associated with accessing data on a telecommunications system without some form of power?

Mr Pezzullo: Are there stated criminal penalties?
Ms de Veau: I would have to look at the act.

Senator PATRICK: Maybe we can go to someone else and think about this.

CHAIR: I will now hand over to Senator Keneally.

Senator KENEALLY: Chair, I'd like to table a document, and I have a couple of copies of it, so hopefully the chair and Secretary Pezzullo can have one, and then we can have it copied. I'll wait till the secretary has received it. Secretary, this is an email exchange between my office, Minister Dutton's office and the department, regarding a visit to Yongah Hill detention centre in November. Are you aware that I had made a request to visit the detention centre?

Mr Pezzullo: No.

Senator KENEALLY: Has it been the position of the department previously that members of parliament are able to visit these centres?

Mr Pezzullo: Members of parliament, whether they're members of the shadow executive or they hold other roles and positions, are invited to put such requests to the minister.

Senator KENEALLY: If I can clarify, I meant Minister Coleman's office, not Minister Dutton's office; my apologies. It is my understanding that the previous shadow minister, Mr Neumann, did a tour of Yongah Hill, and he was able to go with guards and have a full tour; it was not a limited tour. I just want to say: I made this request on 24 September. Are you aware of the determination I received today from the department?

Mr Pezzullo: No, I'm not. I've got a document here; I don't know what status or standing it has, Madam Chair. The senator said that she was tabling it, so I don't know if I'm able to draw on it in my evidence.

Senator KENEALLY: Well, then I would ask you to observe—

CHAIR: It's a public document if it's been tabled. I beg your pardon, Senator Keneally.

Mr Pezzullo: It's not a departmental document. It's an exchange between Senator Keneally's office and Mr Coleman's office, from what I can discern.

Senator KENEALLY: And detentions.visit@abf.gov.au.

Senator McKIM: They let me into Yongah Hill, so you must've done something pretty badly wrong!

Senator KENEALLY: Thank you, Senator McKim! I would just note—

Mr Pezzullo: Sorry, Senator—where's the reference? I'm just literally limited to the document I've got in my hand.

Senator KENEALLY: Right at the top of the page: 'From: Detention Visits', and the email is—

Mr Pezzullo: No, the 'From' is from an officer I understand to be on your staff, and it's to an officer on Mr Coleman's staff. Is there another document?

Senator KENEALLY: Maybe you have a different one. You may have the wrong page, and I do apologise. That might explain it. You didn't get the full document, sir. My apologies.

Mr Pezzullo: There is no need to apologise. I'm struggling with what appears to be incomplete—
Senator KENEALLY: Then that would explain the confusion. If we can just note that I made this request on 24 September. Today at 3.31 I was given approval, and then at 6.40 was told that the access would be restricted to an overview of the high security compound and a perimeter view.

Mr Outram: I think that the group manager here on my left, Ms Zakharoff, can help you with your question.

Ms Zakharoff: Yes.

Senator KENEALLY: What happened between 3.30 and 6.40?

Ms Zakharoff: I have not gone across the detail, but I am aware generally of the matter. My officers have, as we always do, undertaken a risk assessment in terms of visits. I can assure you: I have asked that this be re-looked at, but there is nothing untoward here. I have been to that centre myself, but I have not been into that area because it will depend on the nature of who's in detention at the time and which parts of the centre they are in. So it would be a decision that was taken in relation to all of the factors of the centre at the time, but, to give you some assurance, I've asked that we review that decision, and I'm happy to engage with your office on that.

Senator KENEALLY: So, just to confirm: there hasn't been a change of policy since Mr Neumann visited, in terms of shadow ministers being able to visit detention centres?

Ms Zakharoff: No, absolutely not.

Senator KENEALLY: Noting that the date of the visit is coming up—

Ms Zakharoff: I'll engage with your office tomorrow.

Senator KENEALLY: Thank you very much. I do appreciate that. If I can go on to another matter—and I'm aware that Senator Watt has some questions, Chair—I would like to ask briefly about this. I wish to table an article from The Guardian yesterday. According to this article, British officials have confirmed that they're working with various agencies in north-east Syria to kickstart the process of transferring to the UK the children of British parents linked to Islamic State. The last sentence in the article says that the UK, Belgium, France and Germany 'are currently examining how to exploit the ceasefire announced by US Vice-President Mike Pence on Thursday to repatriate women and children'. Has the Department of Home Affairs had any consideration of taking advantage of the ceasefire to remove what the Prime Minister describes as innocent children from the al-Hawl internally displaced persons camp?

Ms Geddes: We've had direction from the government that no official, whether they be military, Foreign Affairs, Home Affairs or other, be put in harm's way in relation to the women and children in al-Hawl.

Senator KENEALLY: Thank you. I have tabled an article that appeared in The Guardian yesterday. According to this article, British officials have confirmed that they're working with various agencies in north-east Syria to kickstart the process of transferring to the UK the children of British parents linked to Islamic State. The last sentence in the article says that the UK, Belgium, France and Germany 'are currently examining how to exploit the ceasefire announced by US Vice-President Mike Pence on Thursday to repatriate women and children'. Has the Department of Home Affairs had any consideration of taking advantage of the ceasefire to remove what the Prime Minister describes as innocent children from the al-Hawl internally displaced persons camp?

Ms Geddes: We've had direction from the government that no official, whether they be military, Foreign Affairs, Home Affairs or other, be put in harm's way in relation to the women and children in al-Hawl.

Senator KENEALLY: The article goes on to say:

Until last week the UK government's position towards repatriating British children was that it remained too dangerous for officials to attempt a rescue. However, following Turkey's invasion of the north of
Syria, the foreign secretary, Dominic Raab, hinted at a policy change, suggesting British orphans and unaccompanied minors could be returned to the UK.

It goes on to say:
… transferring British minors from Syria to the UK was currently relatively straightforward. "While things are evolving rapidly, our latest information is that transportation out of the area is possible and border crossings between Syria and Iraq remain open …

The UK is one of our Five Eyes partners.

**Ms Geddes**: That's correct.

**Senator KENEALLY**: Have we had any consultation with the United Kingdom about the steps they're taking to repatriate their children during the ceasefire?

**Ms Geddes**: Not during the ceasefire, no.

**Senator KENEALLY**: The article goes on to say:

The Kurdish administration is described as "extremely supportive" in facilitating future repatriations, as long as they are negotiated with UK government officials.

Have we had any contact with the Kurdish administration about negotiating the repatriation of these innocent children?

**Ms Geddes**: The Department of Home Affairs hasn't had any contact, no.

**Senator KENEALLY**: Have you had any discussion with Foreign Affairs about having contact with Kurdish officials, in light of the ceasefire?

**Ms Geddes**: We've got the direction from government and we're following that as directed.

**Senator KENEALLY**: Are you aware of any aid agencies that have been able to re-enter the al-Hawl internally displaced persons camp?

**Ms Geddes**: My understanding is that many, if not all, of the NGOs have left the region. There may still be some there.

**Senator KENEALLY**: According to this article:

Transporting the children to Iraq, where they can be flown from the city of Erbil to the UK, has been evaluated by Kurdish officials and British charities as both quick and safe, especially during the five-day ceasefire.

Is the government making inquiries as to whether it can use the five-day ceasefire and repatriate these children?

**Ms Geddes**: It would still require engagement by Australian officials, and the government has directed that no Australian official be put in any harm's way. It's still a dangerous area over there.

**Mr Pezzullo**: If I might, Senator, having reacquainted myself with the article in question: the quotes regarding passage from Syria to the UK the being relatively straightforward appear to be attributed to Save the Children. The reference is halfway down the second page.

**Senator KENEALLY**: That is true.

**Mr Pezzullo**: Three-quarters of the way through the first page there's a reference to 'Whitehall sources'—and I don't know who they are—confirming that they are working with
various agencies to 'kickstart' the process—and I think that's the reference you made. Well, sources shmources. The one comment that's actually attributed to the foreign office says:

We are looking at orphans and unaccompanied minors who bear UK nationality and whether they can be provided safe passage to return to the UK. We will examine every single case where we are asked for consular assistance, but this process is far from straightforward.

That is not dissimilar from our position.

**Ms Geddes:** That's correct.

**Mr Pezzullo:** I'm struggling to see whether differentiation in policy is—

**Senator KENEALLY:** I'm trying to understand if you've had any contact with the UK or have had any consideration of using this five-day ceasefire as an opportunity to repatriate the innocent children out of the al-Hawl internally displaced persons camp.

**Mr Pezzullo:** We are in regular contact with our UK, US and, indeed, other partners. I'm struggling to see on the face of this report whether there's been a material change to British policy. It does talk about the foreign secretary hinting at a policy change, and it talks about sources.

**Senator KENEALLY:** It does, and that is—

**Mr Pezzullo:** But the only quote from the foreign office as distinct from Save the Children—who have standing as a very reputable organisation; I'm not seeking to suggest otherwise—seems to suggest that every case will be examined on a case-by-case basis.

**Senator KENEALLY:** Yes, I understand that. I'm just putting to you that Save the Children believe it is possible to remove the children. They are describing the Kurdish administration as extremely supportive, as long as they're negotiating with government officials. You are correct: it's confirmation that Whitehall sources are saying they are working with the Red Cross. I'm just asking if you have given any consideration yourselves to using the ceasefire, as this also reports that Belgium, France and Germany are currently examining how to exploit the ceasefire. Has Australia considered how to exploit the ceasefire in order to repatriate what the Prime Minister and Minister Dutton have described as the innocent children who are currently in the al-Hawl camp?

**Mr Pezzullo:** Since the invasion and the advent of the ceasefire, which is a window of five days, the Prime Minister's has made comments, such as yesterday in Jakarta. The Attorney-General was asked this question directly. We wouldn't seek to add to or modify the advice they've given to the Australian community, which is that what was an extremely dangerous situation has become exceedingly dangerous. I can't quite remember the formula that Attorney-General Porter used yesterday morning on the ABC program. You should take from that that the advice that we have given to ministers is that the change in circumstances is not sufficiently material to give us any comfort at all that the risk has been lowered sufficiently.

**Senator KENEALLY:** Thank you. I'm happy to cede the rest of my time.

**Senator PATRICK:** Can I ask a supplementary question?

**CHAIR:** Senator Keneally, you are out of time. Senator Patrick, is yours truly supplementary?

**Senator PATRICK:** It's truly supplementary.

**CHAIR:** Okay, sure.
Senator PATRICK: Mr Pezzullo, I had a conversation with Save the Children early last week, and their indication was that, if the Australian government signalled that they would take care of these people if they made it to the Iraqi border, no Australian would need to be involved in removing the children to the Iraqi border.

Mr Pezzullo: That's been the position of that very worthy non-government organisation. Our job is to take their input, along with many other inputs we have, including through intelligence and other sources, and provide government with an overall assessment. There are many players in that part of north-east Syria, in particular. I don't know who has consulted with the Assad regime. I don't know who has spoken to the Russians. The Kurds certainly have put the view that you have just expressed; that's been conveyed on many occasions. There are Turkish military forces there now. There are Turkish aligned militia forces. It's badlands there, and you would want to be very, very confident that you had a comprehensive view of all of the risks being manifest through the actions of each individual actor, plus their interaction.

Senator PATRICK: In some sense it's Hobson's choice because, if left where they are, there is almost certainly going to be an awful outcome.

Mr Pezzullo: All of the outcomes are unattractive, high risk and regrettable. It would have been much better, of course, for certain adults not to have made certain decisions to travel. No-one's putting that on children under five and particularly young babies; that's fully understood. But our job is to provide an overall view to government of all of these sources of information that we have—respecting, as we do, Save the Children, which is a very distinguished and reputable body. But our job is to take into account all sources of information. The assessment that we have come to has been reflected in the public utterances of our ministers in recent days.

Senator PATRICK: But you accept that their proposal doesn't involve any risk to Australian officials?

Mr Pezzullo: It would be imprudent of me to accept that in an unvarnished way. Save the Children might well say that. As I said, who's checked with the Russians? Who's checked with the Assad regime? Who's checked with the Turkish military? Who's checked with the Turkish militia? I don't disagree with or take exception to the description of what the Kurdish forces might do, all other things being equal. The problem is that, in that part of the world, not all other things are equal.

Senator PATRICK: But, if those children made to it Iraq, I presume the Australian government would seek to protect those children and deal with those children.

Mr Pezzullo: Our ministers have been consistent on this—including as recently as in the last few days with the public pronouncements made by the ministers I mentioned—that each case would be examined in both a temporal sense and a geographical sense based on the merits of each individual case and the circumstances as they presented themselves to us.

Senator PATRICK: Even for the children? Surely, as you mentioned, for children under five, including babies, in almost all circumstances there would be no issue with making sure that we look after them.

Mr Pezzullo: This isn't a case of having an aspiration or an emotion or seeking to do the right thing, as we all would want to do, by very young children. It's a hard-edged, hard-nosed,
realistic assessment of what's happening on the ground. If it were just a binary conflict between two parties, that would be difficult enough. This is multidimensional conflict with many different factions, parties and groups, some of which are state aligned, some of which are states and the state alignment of some of which is not entirely clear. There are many players in this theatre, and we need to be very prudent in how we proceed.

Senator PATRICK: Thank you.

Senator WATT: How are you, Mr Pezzullo? I've missed you today?

Mr Pezzullo: I'm very well.

Senator WATT: I'm missing Senator Macdonald and Senator O'Sullivan as well. It's just this whole new world we're adjusting to! I have a few questions in program 1.10, about disaster financial support payments.

Mr Pezzullo: Mr Grigson and perhaps Mr Cameron might join us at this point.

Senator WATT: Thank you. While they're joining us, I might just thank them for some briefings they provided to me recently and also for the work that they and their teams have been doing in these unexpectedly early bushfires we've all been dealing with around the country. So thanks. In light of those recent bushfires, I want to turn briefly to some of the funding provided for firefighting. My understanding is that the federal government currently does provide some funding for national aerial firefighting capability—that's the planes flying over, dumping water on bushfires and things like that. How much do you currently provide?

Mr Cameron: This year, 2019-20, the Australian government will fund $14.98 million to the National Aerial Firefighting Centre.

Senator WATT: When was the last time that contribution was increased?

Mr Cameron: It's adjusted every year—parameter adjustments.

Senator WATT: Being essentially inflation? By 'parameter adjustments', what—

Mr Cameron: The indexation that's applied to appropriations for this sort of thing.

Senator WATT: So it actually has increased. Do you have the figures for, say, the last three years there?

Mr Cameron: I don't have the figures for the last three years. I've got the forward estimates; I'm sorry. But, in general terms, there have been a couple of step-ups since this program has been going. It's been going for 16 years, for quite a while, and there have been a couple of step increases along that journey. For example, last year there was a significant one-off boost, but I would have to take on notice all of the changes along the way.

Senator WATT: Do you have the figure for the one-off boost that you mentioned?

Mr Cameron: I probably do, but not immediately to hand. It might just take a minute, if I can come back to it during the course of your questions.

Senator WATT: There was a report on Background Briefing on the ABC on 6 October this year which said that the National Aerial Firefighting Centre, which I think coordinates a lot of this aerial firefighting activity across the states, have apparently submitted a business case requesting additional funding to support national aerial firefighting capability. In essence, what are they seeking?
Mr Cameron: They're seeking $11.4 million per year increase to that figure I cited earlier for a range of capabilities and functions to boost the national capability.

Senator WATT: Because these aircraft at the moment are entirely leased from overseas, I think?

Mr Cameron: No, that's not quite true. There's a mix. A good number are leased from overseas. There's a mix of individual airframe that are on call when needed, and one or two that are owned outright.

Senator WATT: Is it New South Wales that owns their own aircraft? Are they the only state that do?

Mr Cameron: I don't know the answer to that. I am certain that they have just bought that 737 that we have seen in action recently.

Senator WATT: Could you take on notice which states own their own aircraft?

Mr Cameron: Happy to.

Senator WATT: So the business case that's been submitted seeking additional funding, is that to lease more aircraft or lease aircraft for a longer period of the year? What exactly are they seeking the money for?

Mr Cameron: It would be to do a range of things, including increase accessibility.

Senator WATT: Over a longer part of the year? Or more aircraft for the same? My understanding is that these aircraft tend to be leased for a certain part of the year when they're most needed, the bushfire season. Is the business case seeking more funding to extend the part of the year that aircraft are available, or is it about increasing the number of aircraft over a certain amount of time?

Mr Cameron: It could be both. It's about accessibility to aircraft when needed, amongst other things.

Senator WATT: Has the National Aerial Firefighting Centre, whether it be in the business case or any other way, made a submission that they need aircraft for a longer period of the year than what they have traditionally needed?

Mr Cameron: You're asking whether the National Aerial Firefighting Centre has made that representation to the department?

Senator WATT: Yes.

Mr Cameron: Specifically, yes, probably, but not quite expressed like that. I think there is a recognition that fire seasons are longer, and that then leads to a discussion about accessibility of aerial firefighting aircraft as part of the suite of tools that firefighters have.

Senator WATT: Why are bushfire seasons getting longer? You said that there's a recognition that are getting longer.

Mr Cameron: Because we're observing fires where we haven't previously—earlier and later than previously.

Senator WATT: Is it the department's position that climate change is a cause of that?

Mr Cameron: I don't know necessarily that it's the department's position. We're taking advice from the met bureau, from CSIRO, the State of the climate report, for example, that
very clearly outlines the fact that we're going to experience more high fire danger weather earlier, and at the other end of the season later.

Senator WATT: Due to climate change.

Mr Cameron: Yes.

Senator WATT: Are you able to table a copy of that business case that's been submitted?

Mr Grigson: Let me take that on notice. I'll have to have a look at it myself before I give you an answer on that.

Senator WATT: Where's the department up to in assessing that business case?

Mr Cameron: Minister Littleproud was fairly clear about that on that Background Briefing program or subsequently in media appearances. He has said that the government is considering it.

Senator WATT: There's no sort of time frame within which you expect a decision on that? Or is it just part of the normal budget process?

Mr Cameron: That's for the government and its budgeting processes.

Senator WATT: I imagine that the department recognises that research on natural disasters is an important thing to fund around the prevention and response to disasters. The department supports research into these issues, doesn't it?

Mr Cameron: I think we'd like to be as informed as we possibly can be.

Senator WATT: I would like you to be informed as you can be. There is one particular cooperative research centre, the Bushfire and Natural Hazards CRC, that has been funded to undertake that type of research. My understanding is that their funding agreement expires in June 2021. Has the government entered into discussions with the CRC about renewing that funding?

Mr Cameron: The CRC has been pretty active in looking to determine what its post current arrangements will be. I understand that they have spoken to a range of people, including us in the department and with the relevant minister. That is actually not Minister Littleproud—it's the industry minister. The CRC's an industry department program. They've been pretty assiduous with that, I think.

Senator WATT: So to the best of your knowledge discussions are under way. Or is it the Department of industry who would be having those discussions?

Mr Cameron: If it's about the CRC program, that's an industry department program not an Emergency Management Australia or Home Affairs program.

Senator WATT: Feel free to take this on notice: can you provide a breakdown of the total funding provided by the department in disaster recovery since 2013?

Mr Cameron: I don't know that—

Mr Grigson: We'll take that on notice.

Senator WATT: Similarly, could you provide a breakdown of the total disaster mitigation funding since 2013.

Mr Grigson: We'll look at these numbers for you, too.
Senator WATT: There's a Senate inquiry under way now looking at the effectiveness of the government's northern Australia agenda. At some point we will no doubt get officials from your department to come along to that. I did notice that the Department of Home Affairs put in a submission to that inquiry, which among other things made the point that we face an increased likelihood of climate related natural disasters and that that is likely to have an impact on the future prosperity of particularly northern Australia, given its propensity to have disasters. Can you quickly summarise for us what the department's position is on that?

CHAIR: Could you pause there for a moment, Senator Watt? There needs to be care exercised in dealing with matters that are the subject of a select committee at any time.

Senator WATT: Sure. I'm not intending to prolong this. I have actually just asked questions about another topic that's the subject of a Senate inquiry and another committee as well. I'm just asking for a brief explanation of the department's position on that point.

CHAIR: Noting that you shouldn't go into matters that are relevant to the other committee.

Mr Cameron: Perhaps I could speak in very general terms here. We are likely to see, as I have said previously, and indeed we are seeing longer fire seasons, and if we see more severe other weather events, including things like cyclones or monsoon-like events as we saw earlier this year, that will have an impact on northern Australia.

Senator WATT: So it's likely that that increased number of disasters would have some impact on the economic success of northern Australia?

Mr Cameron: I'm not sure that I'm qualified to talk about economic success or otherwise. I can talk to you about natural disasters.

Senator WATT: The reason I'm asking you is that there has been a submission put forward by the Department of Home Affairs. I'm assuming your branch had some input into that submission.

Mr Cameron: Yes, we did. In general terms we can expect to see impact on things we value—communities, businesses, those sorts of things.

Senator WATT: As a result of increased disasters.

Mr Cameron: That's right. Chair, if I may, Senator Watt asked a question about the one-off payment for aerial firefighting last year. That was $11 million.

Senator WATT: In addition to the—

Mr Cameron: In addition to.

Senator WATT: And that was also in recognition of an increased demand for those services, was it?

Mr Cameron: It was a number of things. One of them was a complicated budgeting story. We were between national partnership agreements. The other was recognition that we were likely to face a severe weather season.

Senator WATT: I have lots of other questions, but I'll leave it at that tonight.

CHAIR: We might do Senator Henderson before the break and when we resume we will give Senator McKim the time he needs to bring outcome 1 to a close, then we can send the outcome 1 people on their way. I understand that there are little or no questions anticipated.
for outcome 3. I'm putting that on the record now so that I cannot be accused of not giving senators who aren't in the room an opportunity to express a contrary view. We have tried to get in touch with people but sometimes you can't reach everybody.

**Senator McKIM:** I have none in 3.

**CHAIR:** The coalition side can put it on notice as well. So if we resume and find that nobody has shown up with an enthusiasm for outcome 3 we might release the outcome 3 people and go straight on to knocking over with enthusiasm outcome 2 for the rest of the evening.

**Senator HENDERSON:** Mr Pezzullo, I would like to ask about the Illicit Tobacco Taskforce. Can you tell me how big the issue of illicit tobacco smuggling is in this country and the difference this task force has made?

**Mr Pezzullo:** The statutory officer who deals with this on a day-to-day basis is Mr Outram, the Comptroller-General of Customs, so I yield to my colleague.

**Mr Outram:** Thank you for the question. The task force was established on 1 July 2018. It received funding of $70.2 million over the forward estimates until 2023. It was really an outcome of the Black Economy Taskforce, a recognition that illicit tobacco deprives our economy of millions of dollars in revenue and also presents a number of health concerns. Since the task force has been running, it's effected the seizure of in excess of 61 tonnes of smuggled tobacco and approximately 195—that's 195 million smuggled cigarettes. This is equivalent to more than $223 million in evaded duty. In the 2018-19 financial year the task force seizures totalled approximately 61 tonnes of tobacco and 182 million sticks with an estimate value of around $230 million in evaded duty. In other words, you can see that the amount of tobacco we're seizing is rather huge at the border. The task force takes about a third of our total seizures. If you go back over the last few years, in terms of equivalent—

**Senator HENDERSON:** Can you clarify what you mean by 'the task force takes about a third of seizures'?

**Mr Outram:** In the Border Force we obviously find and seize tobacco as part of our everyday operations. Officers sometimes, without necessarily being part of the task force, will open a container and find 10 million sticks of cigarettes. That doesn't get attributed to the task force. In relation to the ABF's gross seizures, if you like, over the last say three years, in 2018-19 we seized 633 equivalent tobacco weight in tonnes. In 2017-18 that was 432 tonnes, and in 2016-17 it was 358 tonnes. So the sort of duty we're talking about here that's been evaded in 2018-19. That 633 tonnes equals about $670 million in evaded duty. So this is a big market in Australia, this illicit market.

Of course what happens there is that you find, as with any sort of illicit market, that criminals can sniff out a dollar. What we're seeing is that the organised criminal groups who have sometimes been involved in the trafficking of other illicit commodities, some are now focusing on just tobacco. They are retargeting Australia from a number of other countries in order to get their tobacco through the border. The task force works with a whole lot of other agencies; it's not just the ABF. It's ABF-led but it's whole of government. We've got the DPP working with the ACIC, AFP and a whole lot of other bodies as well to really dismantle the apparatus of the illicit tobacco model, smuggling model, but I might ask Deputy Commissioner Newton to add a bit more colour and context for you.
Ms Newton: I guess the targeting activity of the Illicit Tobacco Taskforce is primarily focusing on the organised crime element, and that's why we get information from AUSTRAC, work with ACIC, go through hearing processes associated with it, in ACIC, to be able to target those criminal networks that are moving tobacco. We also work in conjunction with offshore, like China and other countries, in being able to stop or stem the flow of tobacco coming into Australia as well. So the better intelligence we have and targeting activity we have, the more successful we are at stopping those criminal networks money laundering what comes out of the illicit tobacco back into other countries but also giving a very clear message to those nations that continue to move tobacco into Australia illicitly that we will detect them, because we have joint investigations with a range of agencies, including the Australian Taxation Office, in their role for the onshore illicit tobacco as well.

Senator HENDERSON: Are you seeing an impact on the operation of criminal networks? Have they got the message that Australia is now taking this very seriously?

Ms Newton: I think criminal networks are saying that we're prosecuting people as a result of those illicit networks, but it's still a lucrative income for those groups that are prepared to undertake smuggling of tobacco into Australia. Therefore, it's an ongoing set of activities that we will need to continue focusing on, just like drugs and other commodities that have been brought into the country.

Senator HENDERSON: Do you have an estimate as to the total amount of illicit tobacco that's coming into this country?

Ms Newton: I don't have those figures with me. There are other groups that come up with estimates of what they think the illicit tobacco market is but I'd have to take that on notice in terms of getting detail to you.

Mr Outram: The other thing I'd say is there have been legislative changes this year that have been very helpful. Tobacco is now a prohibited import, other than with a permit, and we've been rolling out the permit scheme. There have also been changes in relation to the collection of duty. Duty is now collected upon import rather than after it leaves a warehouse. So those changes have tightened up our ability to regulate this market, as well as the enforcement activities that the deputy commissioner talked about.

Certainly the message is out there, and the penalties have been incrementally, over the last few years, increased for illicit smuggling of tobacco into our country and the penalties are quite severe. They're not as severe as they would be for drugs. That's why, in terms of risk and return, if you're looking at it from a criminal point of view, it's still an attractive market. The risks to you, if you get caught, are not the same as they would be with narcotics, but the profits you can turn are pretty significant.

Senator HENDERSON: Apart from our excise revenue, it also has a big impact on retailers who are trying to sell tobacco legally—convenience stores, petrol stations, other retailers—and there has been an issue in action being taken by the states and the territories once the tobacco is in some illegal shop where it's being sold. Have you been able to improve your relationships with state and territory governments so that there are also more seizures happening, in relation to the illicit sale of tobacco products, if they do manage to get through the border?
Ms Newton: We always work with the states and territories in regard to particularly illicit activity that flows between the border as well as a state and territory jurisdiction. But, like every organisation, each of the local jurisdictions have limitations on their capability, and it's a decision for the states and territories as to how much effort they can put into local small shops that might be selling illicit tobacco.

Of course, the ATO work in the onshore space as well, and we work very closely with them. You now can no longer import tobacco through the mail system, where we saw large quantities coming through the mail system that would have been going to smaller entities to sell in shops. So everything that comes through the mail system now is seized as illicit tobacco. We try and work with other jurisdictions, particularly where it's organised criminality associated with the movement, as well as customs organisations within the region. There are operations that we work across all of the jurisdictions in trying to reduce illicit tobacco, as well as with the Korean customs service on occasions that exist where we're getting movement coming through Korea as well. So I think regionally we have a strong relationship—Malaysia and Indonesia, where we're seeing it come through as well—in how we stem the flow rather than actually trying to deal with it in small organisations or small shops across the country.

Senator HENDERSON: Obviously, very significant gains have been made in this area. Thank you very much for your answers.

CHAIR: We will break for the tea break. When we resume, we will have Senator McKim finishing outcome 1, and then we'll go on to outcome 2.

Proceedings suspended from 21:21 to 21:35

CHAIR: It being 9.35, we will resume our examination in the Home Affairs portfolio.

Senator McKIM: Mr Pezzullo, I'm going to try and facilitate some of your people getting a decent night's sleep tonight, if I possibly can. I have a couple of questions on the disaster financial support payments, which is the area that Senator Watt was just exploring. Once I've asked those questions, I think it would be okay for those gentlemen to knock off, as long as that's okay with everyone else in the room. Then we can go back to some of the matters around offshore and onshore detention. Firstly, has any money been provided from the Australian government disaster support financial payments scheme to the Tasmanian government as a result of expenses incurred fighting the bushfires that ignited in December last year in Tasmania?

Mr Cameron: The answer is yes.

Senator McKIM: How much?

Mr Cameron: I don't know that I can give you the total amount yet. I can give you parts of it, so I'm happy to do that. Under the jointly funded Commonwealth-state Disaster Recovery Funding Arrangements, or DRFA, assistance was made available in four LGAs, or local government areas: Central Highlands, Derwent Valley, Huon Valley and the West Coast. I'll summarise: recovery grants; freight subsidies for affected primary producers; costs associated with firefighting operations; funding to help councils with the costs of providing a range of activities—those local government authorities themselves—like evacuation centres; directly supporting affected people; funding to help with restoration or reconstruction of the central public assets, and small business disruption grants. Then there was an economic and

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community recovery fund that was specifically $9.9 million. The total cost of that first batch of assistance won't be known for some time, as those things start to play out.

**Senator McKIM:** Could you explain the $9.9 million?

**Mr Cameron:** Economic and community recovery fund.

**Senator McKIM:** So that payment has been made?

**Mr Cameron:** Yes.

**Senator McKIM:** That goes to the state government; is that right?

**Mr Cameron:** That goes to the state government.

**Senator McKIM:** That's $9.9 million.

**Mr Cameron:** And the suite of measures that I've just described to you are made available for activity that happened within those affected local government areas, but the total cost isn't known yet because we will need to wait for the state to submit a claim at the end of the period, and we will then reimburse the required amount.

**Senator McKIM:** So the claim from the state in regard to those matters has not yet been submitted; is that right?

**Mr Cameron:** No. There are a couple of things in play here. The total claim for those matters hasn't yet been finalised. But did you ask me specifically about the jointly funded recovery assistance measures?

**Senator McKIM:** No, but if you've got any information on that, I'll gladly take it.

**Mr Cameron:** I did.

**Senator McKIM:** Just to be clear: the Tasmanian government is yet to make a claim for reimbursement of firefighting costs; is that right?

**Mr Cameron:** That's right.

**Senator McKIM:** Separate to that, the Tasmanian Premier wrote to Prime Minister Morrison on 25 January this year to make a special request for reimbursement outside the disaster relief scheme for the firefighting effort inside the Tasmanian Wilderness World Heritage Area. Do you know anything about that?

**Mr Cameron:** I'm aware of the letter of course.

**Senator McKIM:** Has that come to you for attention?
Mr Cameron: No request has been made to date.

Senator McKIM: So you're suggesting that the letter does not contain a request?

Mr Cameron: The letter foreshadows a future request. I don't have a copy of the letter with me, but that's how we're reading it. No specific request, certainly in terms of what we would expect to see for a claim of such a nature, has been made that we are aware of.

Senator McKIM: Could you say that last thing again, please?

Mr Cameron: So no claim that would contain the sort of information we would be expecting for that sort of request has been made.

Senator McKIM: Would you be able to take on notice to provide the committee with a copy of that letter?

Mr Cameron: I'll take it on notice.

Senator McKIM: Thank you. Would the Tasmanian Wilderness World Heritage Area qualify as an essential public asset in the terms of the scheme?

Mr Cameron: No, not in terms of the funding recovery arrangements as they are structured for that category of expenditure. That usually refers to built infrastructure and typically things like roads and bridges—public assets like those sorts of things.

Senator McKIM: It's pretty arguable, isn't it, that, for example, carbon embedded in a World Heritage area forest would be a public asset? It would be quite arguable, wouldn't it, that biodiversity and threatened species are public assets? Who sets the rules for this scheme?

Mr Cameron: The recovery funding arrangements, the DRFA, is governed by a determination that's very explicit, with set categories and set arrangements. It is agreed between the Commonwealth and the states. It's a cost-sharing arrangement principally designed to do two things: the first is to relieve the states of the cost burden of big disasters and the second is to make sure that that relief and assistance is delivered as quickly as possible.

Senator McKIM: Yes, but the wilderness fires were a big disaster. There are no worries about that.

Mr Cameron: That is true. Where I was going to, Senator McKim, was really just that—the way that the determination that the minister has signed doesn't allow for those sorts of things to be covered under the reconstruction of essential public assets category of eligible expenditure.

Senator McKIM: Did you say that that was contained in a determination or did you previously say that it was contained in an agreement between the Commonwealth and the states?

Mr Cameron: It's contained in a determination, but the determination is agreed by all parties to it.

Senator McKIM: Through the COAG process presumably?

Mr Cameron: Between relevant ministers and treasuries.

Senator McKIM: Is that determination a public document?

Mr Cameron: It most certainly is.
Senator McKIM: Is it on your website?

Mr Cameron: Yes. It's at disasterassist.gov.au.

Senator McKIM: Is the agreement between federal and state ministers that led to the determination a public document?

Mr Cameron: The determination is a reflection of that agreement.

Senator McKIM: Could you take on notice whether you could provide a copy of the agreement for the committee, please.

Mr Cameron: Yes, I'm happy to. I would just caution, though, that there may not be a specific agreement other than the determination, which is a reflection of all the states having agreed to share costs in this matter.

Senator McKIM: Given the state is yet to actually request reimbursement for costs associated with fighting the fires inside the Tasmanian wilderness World Heritage area and has actually I think on your evidence simply foreshadowed that such a request might be made, has there been any communication subsequent to that letter being written on 25 January between the department and the state government maybe inquiring as to progress on a claim? The substantive firefighting action in regard to those fires has been complete for quite a few months now, so has anyone got in touch with the Tasmanian government to ask them whether they might actually be making such a request?

Mr Cameron: Yes, we have. Of course we have. But we are in contact with state colleagues, as I'm sure you would appreciate, on all manner of things routinely, and this would just be part of the normal conversation about how that claim is going.

Senator McKIM: Are you aware of how that claim is going?

Mr Cameron: Not specifically, but I imagine when the Tasmanian authorities are happy to submit it that we'll work with them to finalise it as quickly as possible.

Senator McKIM: But it's a claim for reimbursement of costs that fall outside the determination, doesn't it, because it relates to firefighting efforts inside the Tasmanian wilderness World Heritage area, which, as you have just agreed, falls outside the determination?

Mr Cameron: No, I didn't say that. That's not quite right.

Senator McKIM: I apologise. Could you set me straight, please.

Mr Cameron: I'm happy to outline the detail of the determination. You specifically asked about the reconstruction of essential public assets.

Senator McKIM: I asked whether the Tasmanian World Heritage area would be considered a public asset and you said no.

Mr Cameron: That's right—for the purposes of that part of the arrangements.

Senator McKIM: That's right.

Mr Cameron: Other parts of the arrangements could, in fact, now—

Senator McKIM: So what are 'arrangements'? Are they the determination? What do you mean when you say 'arrangements'?
Mr Cameron: The arrangements are governed by the determination. Perhaps I can help you here. There are four categories of eligibility expenditure that constitute the arrangements. Category A is essentially—I'll shorthand this a bit—payments to individuals on things like personal hardship and distress. Category B includes reconstruction of essential public assets and a bunch of other things. Category C is payments to community groups, primary producers and those sorts of things. You can see that you have individuals, reconstruction of essential public assets, which may be payments to states or eventually to two local governments, and then community groups, primary producers and those sorts of things. That pretty much covers the range of impacted—

Senator McKIM: What was D, sorry?

Mr Cameron: I haven't got to D yet. I'm leading up to D.

Senator McKIM: All right. You're up to C, with a little bit of a caveat!

Mr Cameron: That's right. You can see that with A, B and C it's payments for individuals and then payments for the reconstruction of essential public assets and then payments for community groups, primary producers and the like. Category D payments are for extraordinary measures above and beyond that which are individually negotiated with the state. That could be where a payment for this sort of thing could land, depending on what it is that's actually being sought.

Senator McKIM: My understanding, based on comments made by the premier, is that the Tasmanian government has written to PM Scott Morrison to make a special request, outside the disaster relief scheme, for the firefighting effort inside the Tasmanian wilderness area. Why would that fall outside the scheme if category D would, on your version, catch it?

Mr Cameron: It could catch it.

Senator McKIM: It could, but it might not?

Mr Cameron: I can't answer for the Tasmanian premier.

Senator McKIM: No, but from your point of view? You administer the scheme.

Mr Cameron: I do.

Senator McKIM: So from your point of view, would category D catch costs incurred fighting bushfires inside the Tasmanian Wilderness World Heritage Area that did not fall within A, B or C?

Mr Cameron: I suspect I'm going to give you an answer that's unsatisfactory. It could. It depends entirely on what the premier seeks.

Mr Pezzullo: Have you seen the detail of a request?

Mr Cameron: No, that was—

Senator McKIM: In fact Mr Cameron has seen the letter. The letter simply foreshadows a claim to be made.

Mr Cameron: That's right.

Mr Pezzullo: So we have seen the specifics of the claim.

Mr Cameron: No, we haven't. That's my point.

Senator McKIM: There has been no claim made, Mr Cameron. That is your evidence.
Mr Pezzullo: I will try to assist on this occasion.
Mr Cameron: That's very helpful.
Mr Pezzullo: It's entirely speculative, and I prefer that we avoid speculation.
Senator McKIM: I'll come to Mr Cameron's defence. He hasn't been speculating. He's been endeavouring to assist me.
Mr Pezzullo: If we haven't seen a request that may or may not fall into the spread of categories, A through to D, correct, until we see this?
Mr Cameron: That's right.
Senator McKIM: Mr Cameron, you gave evidence before that even though there's been some contact with relevant state government agencies, you're not able to inform the committee about when such a request may in fact be made?
Mr Cameron: No, I'm not.
Senator McKIM: Thanks. I'm done with Mr Cameron.
CHAIR: Does that mean you are complete on the disaster management front entirely?
Senator McKIM: I am.
CHAIR: That means that we are in a position to excuse all people who are relevant to the Australian government disaster financial support payments, program 1.10 outcome. We are also in a position to excuse all people who are present for outcome 3.
Senator McKIM: While Commissioner Outram is at the table I want to very briefly revisit the matter of an apology to Mr Hakeem al-Araibi.
CHAIR: Is this going to cover different ground to that which has already been covered twice?
Senator McKIM: It certainly does.
CHAIR: I hope so, Senator McKim.
Senator McKIM: Mr Outram, I've just reviewed the Hansard of our discussion at the previous estimates. Would you say it's fair to say that, although you stated that you were apologetic that an error occurred within Border Force, you declined my invitation to actually apologise to Mr al-Araibi?
Mr Outram: No. As I recall I said I would take that under consideration.
Senator McKIM: I'm not asking about what happened earlier on. I'm asking about what happened at the previous estimates.
Mr Outram: My recollection is that I apologised for the error made within the Border Force.
Senator McKIM: That is right, but you declined my invitation to apologise directly to Mr al-Araibi. You said:
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.
So you did decline my invitation.
Mr Outram: Just to be clear, I apologised for the error that occurred with the Border Force without equivocation. I also said to you today that I will take under consideration your request that a letter be written.

Senator McKIM: I appreciate that. Mr Pezzullo has given the same commitment. I want to go back Christmas Island briefly. Could someone explain why the Biloela family are on Christmas Island?

Mr Outram: I can explain that. Whilst the family were being removed from Australia, we were injunctioned from removing them. You will recall that we then had to put them into Darwin. On the way out of Melbourne, you may recall, there were protest activities, including at the airport where people broke into the airport. That created a safety and security issue. Similarly, while they were in Darwin the temporary accommodation they were in frankly wasn't suitable for any period of time from a safety and security point of view. It was like a motel. There was no other accommodation available in Darwin. Nor did I want to take them back to Melbourne at that point, because of the protest activity that occurred in Melbourne. We'd have the same problem again.

So I took a decision, to your points earlier, that given that we had an APOD up there on Christmas Island and an aircraft available in Darwin, that the best place to position them ahead of the court hearing that was scheduled for a few days after that would be Christmas Island. Over the next few days leading up to the court hearing I had to turn my mind to the possible outcomes. What if the court determines their removal? That was one thing. What if the court determines that we need to keep them in Australia until a subsequent court date? That's what happened. I went through this with all my officers, the pros and cons and what available places we have. Point one: none of our detention centres are suitable for families.

Senator McKIM: None are?

Mr Outram: No. We don't put children into detention centres, as you would be aware. We put them into alternative places of detention. So that took out a whole lot of places. I have to think about safety and security. Of course this case, as you will be aware, has been quite an emotive case. As I have said to you, I thought that protest activity caused a particular sort of risk to safety and security in Melbourne.

Senator McKIM: Of the family?

Mr Outram: Everybody. People breaking into airports creates problems for the police. It creates potential risks for Serco officers, for ABF officers, for the family, for protesters themselves. It creates a risk for the community. So Christmas Island was an option for me as the best place to manage the safety and security, subject to being able to satisfy myself that the family were able to access services, that the amenity there was suitable for children of the family and that we'd be able to manage any remote issues. So, for example, could we get the children into play groups, kindergarten and schools, access to medical services and those sorts of things. The answers to all those questions were in the affirmative. So when I compare what is available in Christmas Island from the safety, security and amenity point of view to what is on the mainland, Christmas Island is my preferred option.

Senator McKIM: Why is this family in detention at all?

Mr Outram: That is a different question.

Senator McKIM: That is why I have asked it.
Mr Outram: The Border Force don't determine that.
Senator McKIM: Who determines that?
Mr Outram: Generally speaking that's for the department and ministers to determine.
Senator McKIM: Mr Pezzullo, why is the Biloela family in detention at all?
Mr Pezzullo: It is the best way to manage the safety risks and the other matters that the commissioner just articulated.
Senator McKIM: No. The commissioner's been very clear that that is a separate question, Mr Pezzullo. Maybe you weren't listening to the exchange.
Mr Pezzullo: I was.
Senator McKIM: In that case, don't try to pull the wool over the committee's eyes. Those matters that the commissioner went to were around why Christmas Island was chosen as a detention centre. As the commissioner's rightly pointed out, it's a very separate request to ask why they are in detention at all. That is the question I'm asking. Why are they in detention? Why are they not at home in Biloela?
Mr Pezzullo: In our mind, having been through seven judicial proceedings, having no ongoing matters, subject to the disposal of the matter that the Federal Court has seen fit to take a position on or to consider at least, failing that eighth bid they'll be removed. In order to ensure the safety and security of everyone involved, they'll be detained. Where they're detained, as you quite properly say, Senator McKim, is then a function of the commissioner's determination, but they are two related issues.
Senator McKIM: No. With respect, Mr Pezzullo, they are not related at all. The question I am trying to get an answer to is, why is this family in detention?
Mr Outram: They're unlawful non-citizens.
Senator McKIM: There are plenty of unlawful non-citizens wandering around the community as we sit here talking. You are well aware of that. So again, why is this family in detention at all?
Mr Pezzullo: There are unlawful non-citizens on a removal pathway. Were it not for the fact that there is a hearing—
Senator McKIM: I don't think you should pre-judge the court's decision.
Mr Pezzullo: No-one's doing that.
Senator McKIM: I think you are.
Mr Pezzullo: No-one is doing that. Subject to the Commonwealth being confident, as we are, as to prospects, they'll be on a removal pathway. The easiest way to then remove them will be straight from detention. Where that detention is—
Senator McKIM: The department's been overturned in the courts more than times I've had hot dinners this year. On the Fiji matters—
Mr Pezzullo: We win many of the cases, if not most.
Senator McKIM: That's because you pull them out of the courts when people take action.
CHAIR: Senator McKim, don't be argumentative. Don't speak over the witness.
Senator McKIM: I'm going to keep asking the question.
CHAIR: Give Hansard an opportunity to be able to clearly get down the evidence by allowing the witness to finish before you go on to your next question. It's just courtesy for the Hansard people who serve us to let them do that, please.

Senator McKIM: Why is the family in detention, Mr Pezzullo?

Mr Pezzullo: They're unlawful non-citizens on a removal pathway.

Senator McKIM: Is every unlawful non-citizen in the country in detention?

Mr Pezzullo: Certainly there are none that I'm aware of that have been through seven court cases, having lost them all.

Senator McKIM: So they're in detention because they've been through seven court cases—is that the evidence you're giving to the committee?

Mr Pezzullo: We're confident of prospects and, subject to being able to make the argument to the court, they'll be removed.

Senator McKIM: Mr Pezzullo, I know that earlier today you described the rule of law as extremely generous provisions. It is the rule of law, and they're entitled to explore remedies in our justice system. At least I hope you would agree that they're entitled to do that. Do you agree?

Mr Pezzullo: They've certainly availed themselves of the free legal advice that they've been given.

Senator McKIM: And they're entitled to do that, aren't they?

Mr Pezzullo: Absolutely. And the court has given them standing for the eighth time around.

Senator McKIM: That's right. So they may be on a pathway to removal or they may not be, depending on what the court says. That would be accurate, wouldn't it?

Mr Pezzullo: Absolutely.

Senator McKIM: So they're not necessarily on a removal pathway, are they?

Mr Pezzullo: They're on a removal pathway absent an alternative direction from the court.

Senator McKIM: You have just agreed that the court may find for them, in which case they wouldn't have been on a removal pathway. When you say that this poor family with their two toddlers are in detention because they are on a removal pathway, how can you justify that when in fact it is the courts that will determine whether they are on a removal pathway, not you or the department?

Mr Pezzullo: I'm not sure that I can agree with that characterisation. The court doesn't make executive decisions about the administration of the legislation. It hears cases where a plaintiff suggests that we're not acting in accordance with the law, that we're acting beyond power, that we have made a decision that needs to be remedied. The court doesn't decide who is removed from the country or not. They decide the legal basis upon which decisions are made.

Senator McKIM: How many unlawful non-citizens are there in Australia at the moment? An approximate figure will do.

Mr Pezzullo: The evidence that we have, as Ms Golightly reminded us, was something in the order of 62,000 unlawful non-citizens.
Senator McKIM: That's right. And how many of them are in detention, approximately?
Mr Pezzullo: That number represents those for whom we have no locational detail.
Senator McKIM: So you don't know where they are?
Mr Pezzullo: That's right.
Senator McKIM: So by definition—
Mr Pezzullo: Out of the two million non-citizens.
Senator McKIM: By definition, they're not in detention, then.
Mr Pezzullo: That's right.
Senator McKIM: So there are 62,000—
Mr Pezzullo: You asked about unlawful non-citizens. They're all, by definition, unlawful non-citizens.
CHAIR: Senator, McKim, we are going in circles and time is against us.
Senator McKIM: We're not going in circles.
CHAIR: Could you be efficient, please.
Senator McKIM: I can certainly do my best, but if Mr Pezzullo would give me a sensible answer we could move on. We have now found out that there are 62,000 unlawful non-citizens in Australia—
Mr Pezzullo: That is an estimate.
Senator McKIM: That aren't in detention, but this poor family with their two toddlers does find themselves in detention on Christmas Island.
Mr Outram: I might open the Border Force point of view. We use detention sparingly. As you'd be aware, we have about 1,300 people in detention at any given time. Generally it's kept for those cases where people have exhausted legal avenues. From our point of view in the Border Force, where we're going to remove them, as you'd be aware we were enjoined as this family were actually being removed. So from the Border Force point of view, we're not trying to persecute anybody, but once they've exhausted legal avenues and they're on a removal pathway, to the secretary's point, they're detained. But in terms of families, can I say this as well: families and family groups, generally speaking, as I said to you earlier on, are not put into detention centres. I want to be clear here. Detention centres are quite hardened security facilities; whereas alternative places of detention can be a whole range of different facilities, ranging from hotels and motels to hospitals and to places like this that are family-friendly facilities.
Senator McKIM: But they have not exhausted all legal remedies, Commissioner, have they?
CHAIR: Senator McKim, you've already got your answer to this. It's asked and answered. Move on.
Senator McKIM: No, I haven't.
CHAIR: You've got your answer.
Senator McKIM: I've got all night.
CHAIR: We don't.
Senator McKIM: Have they exhausted all—in fact, you do, Chair, under the standing orders. You do have all night. If I've got all night, you've got all night.

CHAIR: I am not required under the standing orders to have you ask the same question over and over when it has already been answered.

Senator McKIM: It has not been asked, nor answered. Have they exhausted all legal remedies or not?

CHAIR: It has been asked and it has been answered, even if you did not like the answer you got.

Mr Outram: They're in our detention and they have no visa or lawful basis. So I can't release them from detention. They are unlawful.

Senator McKIM: Like the other 62,000.

Mr Outram: They're not in detention.

Senator McKIM: Who are not in detention. That's right.

Mr Outram: Most of those 62,000—

Senator McKIM: So why is this family different? Sorry, Commissioner, I'm going to have to insist on asking my question very carefully here. We know that not all unlawful noncitizens are in detention. We can agree on that.

CHAIR: Also asked and answered.

Senator McKIM: We can also agree that this family has not exhausted all legal remedies.

CHAIR: Also asked and answered.

Senator McKIM: That's obvious, because they're before the court as we speak. The court's given them standing, as Mr Pezzullo said. So what is different about this family, that they need to be exiled to Christmas Island, compared to all the other unlawful noncitizens and many other people who are on what Mr Pezzullo described as a pathway to removal? What makes this family so different that they had to be put in detention at all?

Mr Outram: I'm getting to your question. The 60-whatever thousand it is that we see are unlawful on any given day, they're a different group of people. Ninety-nine per cent of those people will leave voluntarily or regularise their visa arrangements with the department. Of the people we hold in detention, the vast majority of those leave this country voluntarily. The number of involuntary removals we do is about three per cent of the entire removals that we do.

It's not a simple equation, saying 62,000 versus the people in detention that are this family. This family are unlawful. We detained them with a purpose to remove them. They've got no visa. They've got no lawful basis. We can't release them from detention into the community. They've got no lawful basis to be in the community. So we're holding them in an alternative place of detention, not an immigration detention centre. Meanwhile, we are providing them with access to kindergarten, school, medical services and all of those things until we get to the court hearing.

Senator McKIM: If it was the government's policy to issue this family with a visa, they would have been given a visa, wouldn't they? There's plenty of capacity for the minister to lift
the bar here, in the public interest, and allow that family to apply and be granted a visa. That's right, isn't it, Mr Pezzullo?

**Mr Pezzullo:** I'll need to check the facts. We've given evidence on the use of the intervention power. It's either not been used at all or, in less than a handful of cases, in relation to—

**Senator McKIM:** Au pairs?

**Mr Pezzullo:** lifting the bar for IMAs as opposed to bridging visas for all sorts of other purposes. Contrary to the premise of the question, it's not been the government's policy to indicate to persons who were well advised that they would never settle here, failing their asylum processing claims, that they would have no opportunity to settle here. It's not the policy of the government to, in fact, lift the bar in the way that you've described.

**Senator McKIM:** So it's the government's policy not to lift the bar and allow this family—

**Mr Pezzullo:** In terms of illegal maritime arrivals; that's right.

**Senator McKIM:** Right. And that applies on your version to this family.

**Mr Pezzullo:** Yes.

**Senator McKIM:** So it's government policy that they not be able to have a visa, which is what Commissioner Outram is now relying on to support the decision to have them in detention at all.

**Mr Pezzullo:** It's internally consistent. If they don't have a visa, the commissioner has to arrange for their detention.

**CHAIR:** Senator McKim, I'm going to pause you there. You're now at 33 minutes in this stretch, bringing you to around about an hour and a half total time today. I'm going to give you a little bit of time to regroup. Senator Henderson has asked to ever so briefly clarify one or two matters, then I'm going Senator Patrick and then we'll return to you. Senator Henderson, you have the call.

**Senator HENDERSON:** Thank you very much, Chair. I just want to clarify a number of issues in relation to the matter that Senator McKim was raising. Mr Pezzullo, could you confirm whether the adult male and female of this group were told prior to having children that if they were found not to be owed protection they would need to return to Sri Lanka?

**Mr Pezzullo:** All illegal maritime arrivals were so advised. The time and place where that advice was given in relation to the two adults, I'm not entirely familiar with; I'd have to refresh my memory. But, as a general matter of policy, everyone who arrived prior to 13 July 2013 was advised that, subject to consideration under our law for refugee status determination, that was the only way in which they could stay. Those who arrived after July 2013, when there was a hardening of the policy, were advised that they would never settle here at all. That was the offshore group.

**Senator HENDERSON:** And that is made very clear?

**Mr Pezzullo:** Yes.

**Senator HENDERSON:** Even to couples who may have children in the future—that their circumstances won't change if they're found not to be owed protection?
Mr Pezzullo: I've seen some detailed briefing on this from Ms Golightly about the advice that was given particularly in cases where persons who had arrived separately formed a couple. But I'll check with Ms Golightly about the specific circumstances of the advice given to this couple.

Senator HENDERSON: While you're checking—I'll be quite quick—how many Sri Lankans found not to be refugees in Australia have returned home in the last five years? Do you have a breakdown by years at all?

Mr Pezzullo: Ms Golightly might. It's several thousand, but I'll get that checked. On the question of advice given to IMAs who might have arrived separately but who then formed a family unit, and the implications of their union in terms of whether it would materially affect their prospects, what was the advice to this family?

Ms Golightly: For this family or any other family, the advice is that the children take on the same status as the parents, which is as IMAs, arriving here as the secretary just described.

Mr Pezzullo: And that's a function of the fact that we don't have birthright citizenship. It's by descent or conferral. If you don't achieve citizenship through being found to be a refugee, you can't flow that citizenship to the child.

Senator HENDERSON: To return to my other question: how many Sri Lankans found not to be refugees in Australia have returned home in the last five years?

Ms Golightly: I'd have to take the exact number on notice, but it is—

Mr Pezzullo: Several thousand, isn't it?

Ms Golightly: Several thousand, yes.

Senator PATRICK: We were talking briefly before, in my last session, about officers perhaps inadvertently acting contrary to law. I had a look at the Telecommunications (Interception and Access) Act, and it does say, for example, that a person commits an offence if a person accesses stored communication. There are some exceptions to that.

Mr Pezzullo: There are some.

Senator PATRICK: But none of them appear to be ultra vires acts or mistakes.

Mr Pezzullo: There are some provisions that pertain to effectively illegal interception, for instance. That would be criminal. But I'll get Ms de Veau to speak to that. And then there are other—

Senator PATRICK: All I was going to suggest is that the Intelligence Services Act, for example, allows ASIS officers to commit certain offences in the conduct of their duty. Maybe on notice, could you explain the immunity from prosecution in circumstances where it would otherwise be a criminal offence to access stored communication without—

Mr Pezzullo: I don't think that the legislation comprehends an immunity. Ms de Veau?

Ms de Veau: As I understand it there is an offence provision for an interception.

Mr Pezzullo: Which is not authorised by law.

Ms de Veau: That's right. It's quite a complex piece of legislation. What I was proposing to do was to come back in writing to indicate whether the breaches that have been suggested by the Ombudsman to have occurred amount to an interception. That's the first point, and the
second point is whether in any of these circumstances they could be such that a criminal offence is made out.

Senator PATRICK: That would be helpful.

Ms de Veau: I don't think we're close to establishing that the offence provisions apply yet.

Mr Cameron: And nowhere did the Commonwealth Ombudsman suggest there was a breach of criminal law. They've outlined the administrative breaches, which relate to the oversight required for the TIA Act.

Senator PATRICK: Yes. The Ombudsman can be very kind. I'm just exploring that space, and I would look forward to the answer. In relation to the National Counter Foreign Interference Coordinator, are you the person I should talk to, Mr Pezzullo?

Mr Pezzullo: Yes.

Senator PATRICK: The annual report states that the NCFI coordinator is working with the private sector, including education and technology sectors. Can you elaborate on the broad nature of the outreach activity, in one minute or thereabouts?

Mr Pezzullo: Very briefly. As I've previously advised this committee, former Director-General Lewis and I decided to assist ASIO, which was focused on the threat and intelligence side of mitigating the risk of foreign interference. We established a position within the department that could go beyond the threat picture to advise on risk mitigation policies, practices and procedures. Mr Chris Teal, who's the serving Deputy Director-General of ASIO, has been seconded to the department. He's on some personal leave at the moment, but I can speak to his role.

His job is to work with ASIO. His team is embedded in the ASIO building. Their job is not to do operational analysis or intelligence. They take that information, including on briefings that they have on sensitive cases, and they work with sectors in order to advise those sectors—universities, technology sectors and the like, and they also work with partner Commonwealth departments—to advise on: 'What are the mitigants? This is what ASIO is seeing on the threat side. This is what our very sensitive intelligence collection is telling us about attempts to steal our IP and our technology and penetrate our decision-making processes and our political and parliamentary processes. What are some of the mitigants that you might want to think about in terms of hardening your entity, your corporation or your enterprise?' He works with colleagues in other relevant departments.

One very quick example, because we're on a speed date, is the university sector—an initiative led by Minister Tehan and the Department of Education, who have the day-to-day running of the relationship with the universities. Mr Teal and his team are lashed up with education, and they've arrived as the cavalry, if you like, to assist in that effort, because they're the deep experts to say: here's what you need to be looking out for and here are some of the mitigants you might want to consider.

Senator PATRICK: So that's the University Foreign Interference Taskforce?

Mr Pezzullo: Yes, correct.

Senator PATRICK: Prior to the establishment of that task force, had you been dealing directly with peak bodies such as Universities Australia and the Group of Eight.
**Mr Pezzullo:** Not me personally. I made reference to the fact that, once ASIO came into the portfolio, which occurred in May 2018, the former director-general and I took the opportunity to take a step back and say: how, traditionally, has this been done? A lot of the burden was falling on ASIO, which is an intelligence organisation, to share the threat picture. ASIO was having to do the heavy lifting of working with education and other departments to help develop mitigant strategies. We created this team as an intermediary that could work with ASIO, with the same level of high clearance—what we call 'code word level clearance', so they could see deeply into the intelligence. They then work with line departments, where often the officers don't have that level of clearance. So it's an intermediary, which never existed before, between the very deep expertise that ASIO has on the threat and the subject matter expertise that the line department might have on education, industry or other sectors that they engage with. They act as an intermediary capability. So when you say, 'Were we dealing directly with the sector?' the answer is: as Home Affairs, with ASIO embedded in it, we didn't exist as a construct prior to May 2018.

**Senator PATRICK:** There was something in your annual report about you engaging at least 18 tertiary institutions. That was done by Home Affairs?

**Mr Pezzullo:** Home Affairs in partnership with the Department of Education.

**Senator PATRICK:** What are the broad issues involved here? What are the foreign interference concerns with universities?

**Mr Pezzullo:** At the risk of going over some of the evidence that Mr Burgess was only able to give at a very high level in response to questions from Senator Henderson, what appears to be a very long time ago—Mr Burgess didn't want to particularly go into specifics in terms of the threat actors or what they're trying to do. He gave some general evidence, and I refer you to his evidence.

**Senator PATRICK:** That was earlier today?

**Mr Pezzullo:** Yes.

**Senator PATRICK:** Thank you. I'll go to the Hansard on that.

**Mr Pezzullo:** Then our job is to then take that threat picture and work with the sector and the line departments, in this case the Department of Education, to work on what are known as mitigants.

**Senator PATRICK:** Are Confucius Institutes another concern?

**Mr Pezzullo:** Mr Burgess declined to particularise concerns to that level of specificity.

**Senator PATRICK:** You're also engaging technology companies in this regard?

**Mr Pezzullo:** Yes.

**Senator PATRICK:** Does this extent to engagement on issues related to social media and efforts to spread propaganda, disinformation and fake news?

**Mr Pezzullo:** Yes.

** Senator PATRICK:** Your 2017-18 annual report highlights media organisations as targets for clandestine foreign interference activities. Have you engaged with media organisations on these issues?

**Mr Pezzullo:** Which annual report?
Senator PATRICK: For 2017-18.
Mr Pezzullo: The ASIO report or the Home Affairs report?
Senator PATRICK: ASIO's.
Mr Pezzullo: I'd refer you to ASIO.
Senator PATRICK: I might put that on notice. Has Home Affairs engaged with any of these media organisations, ABC or SBS on foreign interference issues?
Mr Pezzullo: Yes—again stressing we swim in one lane, which is risk mitigation and proactive strategies. We don't swim in the ASIO lane, which is threat. But we work together.
Senator PATRICK: Has Home Affairs or the coordinator engaged with the Department of Parliamentary Services and/or MPs and senators in relation to foreign interference?
Mr Pezzullo: I'll check with the relevant area. In relation to the parliament, I'm fairly certain the answer is on the tip of Mr Ashe's tongue. Mr Ashe is the deputy.
Mr Ashe: We have engaged with political parties in the context of the electoral interference task force, and that was in support of the Australian Electoral Commission's normal engagement with political parties in the lead-up to the election.
Senator PATRICK: What about the parliament itself? DPS?
Mr Ashe: Not the parliament.
Senator PATRICK: And individual senators and members other than those that might be party leaders or—
Mr Ashe: Not other than that particular engagement, no.
Senator PATRICK: That's the end of our speed dating, Mr Pezzullo.
Mr Pezzullo: Excellent.
CHAIR: Senator McKim, I will give you a final 10-minute block.
Senator McKIM: Just to tie off on the reason for the family from Biloela being in detention, the best I can do is this, so I'll just put it to you: Mr Pezzullo, are they in detention because it's government policy to be in detention?
CHAIR: Senator McKim, if we're going over old ground, I'm sorry we're not going over there. Are there any other topics you would like to cover with your remaining 10 minutes?
Senator McKIM: Well, you actually can't stop me asking this question. You don't have the power to do that.
CHAIR: I do have the power to stop unnecessary repetition, of which—
Senator McKIM: I have not asked that question before.
CHAIR: You have asked the question before.
Senator McKIM: You can check the Hansard. I have asked different versions.
CHAIR: Different versions of the same thing hoping you will get a different answer, but that is not how estimates works.
Senator McKIM: You don't want to go there. It didn't end well for Senator Macdonald when he tried this.
CHAIR: Senator McKim, I have tried to be very hard to be cooperative with you—
Senator McKIM: Is it government policy, Mr Pezzullo, that this family be in detention?

CHAIR: Senator McKim, stop.

You don't need to answer that question, Mr Pezzullo. It has been asked; it has been answered. This question has been dealt with. Are there any other senators who have questions for outcome 1?

Senator McKIM: Are you ruling that question out of the order?

CHAIR: I am, on the basis that it is repetitious.

Senator McKIM: I dissent from your ruling. That's where you've put us, Chair.

CHAIR: That is such a shame!

Senator McKIM: It is, isn't it, that you brought it to here?

CHAIR: I don't think so, Senator McKim.

Senator McKIM: So I dissent from your ruling.

CHAIR: That's okay.

Senator McKIM: Private committee meeting.

CHAIR: You have the right to request a private committee meeting.

Senator McKIM: Yes, please.

CHAIR: There'll be a brief suspension. Thank you very much.

Proceedings suspended 22:24 to 22:26

Senator McKIM: I wanted to ask some questions in regard to the medevac situation. We've heard evidence given today that there are 10 people in Bomana Prison that have been approved for transfer under medevac. Are there any others that the department is aware of in Papua New Guinea but not in Bomana Prison, who've been recommended for transfer under medevac but not transferred?

Mr Pezzullo: Who have been recommended but who have not yet been transferred?

Senator McKIM: Yes. We've heard evidence there are 10 people inside Bomana detention centre that have been recommended for transfer but haven't been transferred, because they're in detention. I'm asking about people who are not in Bomana but who are in PNG.

Major Gen. Furini: There are 39 people offshore who have been approved pending transfer, but I'm not aware of any more in PNG, other than the 10 I mentioned earlier.

Senator McKIM: So am I right to say there are 29 on Nauru.

Major Gen. Furini: No, that would not be correct. They are not being held up by the government of PNG. So there are people pending transfer, they've been approved and we're putting the arrangements in place to bring them to Australia.

Senator McKIM: But didn't you say there are 10 in Bomana but no others in that category in PNG?

Major Gen. Furini: Correct.

Senator McKIM: So 39 minus 10 is 29. They must be on Nauru?

Major Gen. Furini: It's 39 across Nauru and PNG.
Senator McKIM: So the 39 includes the 10 in Bomana?

Major Gen. Furini: Yes.

Senator McKIM: Sorry, that was just a misunderstanding. So there are 19 on Nauru. Is the Nauruan government holding up any of those transfers?

Major Gen. Furini: There are some delays being experienced with the overseas medical committee in Nauru.

Senator McKIM: Do those delays apply to all of the people that have been recommended for transfer in Nauru?

Major Gen. Furini: Not all, no.

Senator McKIM: How many are being held up by the Nauruan government?

Mr Bennett: I'll have to take that question on notice.

Senator McKIM: Can I just be clear: the Nauruan government is facilitating the transfer of some people who have been recommended for transfer under the medevac arrangements but not all. Would that be correct?

Major Gen. Furini: We have had some, yes.

Senator McKIM: So the statement I just made is correct?

Major Gen. Furini: Correct.

Senator McKIM: Thanks. And are you aware of the reason that some transfers would be being facilitated from Nauru and others not?

Major Gen. Furini: No, I am not aware of the specific reasons.

Senator McKIM: Have you made any attempt to discover those reasons?

Major Gen. Furini: Not that I'm aware of. We work each case individually.

Senator McKIM: Did you just previously take on notice how many of those cases?


Senator McKIM: Thank you for that. Can I ask a couple of questions about the Independent Health Advisory Panel. Firstly, when was Associate Professor Moloney appointed to the panel?

Mr Pezzullo: Ms Moy will assist on that score.

Chair: Is that the entirety of your question?

Senator McKIM: No, it's not.

Ms Moy: Professor Moloney—1 April 2019 was the appointment date.

Senator McKIM: And Associate Professor Gill?


Senator McKIM: And Dr Di Dio?

Ms Moy: Dr Di Dio was 1 April 2019.

Senator McKIM: They were not listed as panel members in the summary of IHAP's first quarterly report which was tabled in parliament, but they were listed in the long-form first quarterly report that was provided to the Senate after Senator Keneally moved for an order for the production of documents so. Can you explain that discrepancy?
Ms Moy: They were all appointed after 31 March, so the first report ends on 31 March.

Senator McKIM: When IHAP found that there were no patterns of disease that were noted to be unusual by the panel in Nauru, was it just the two departmental members listed in the summary report; or did that include the three independent members I've just mentioned?

Ms Moy: Can I ask which report you're referring to?

Senator McKIM: That was in the first report.

Ms Moy: In the March report?

Senator McKIM: Yes. So was it just the two departmental members who found that?

Ms Moy: The March report would have been Dr Gogna and Professor Murphy.

Senator McKIM: Are they departmental officers?

Ms Moy: No: Dr Gogna is a departmental officer; Professor Murphy is a Commonwealth Chief Medical Officer.

Senator McKIM: Attached to?

Ms Moy: The Department of Health.

Senator McKIM: Can I just ask, finally on medevac, whether you have any information around the length of time that the minister is taking to make decisions. Do you have an average length of time that the minister's taking to make decisions?

Major Gen. Furini: No, other than that he's making those decisions within the mandated time frame of 72 hours.

Senator McKIM: So there's no decision that's been made outside the 72 hours that you're aware of, Major General?

Major Gen. Furini: There have been three cases that have been considered deemed in that the decision wasn't taken in the necessary time frame. Two of those were as a result of the minister in the first 72 hours, and the last case was as a result of the IHAP not making a decision within their 72 hours and then the minister subsequently not making his decision in the subsequent 24 hours after that.

Senator McKIM: As they were deemed, presumably, as approved for transfer?

Major Gen. Furini: Therefore deemed as approved, yes.

Senator McKIM: Yes, and treated as approved by the department?

Major Gen. Furini: Correct, Senator.

Ms Moy: Can I just note that, just to be clear on that, the deemed ones are with regard to the minister's decision. The IHAP decision where they missed the 72 hours is a recommendation for transfer that goes back to the minister.

Senator McKIM: That's right, but I think Major General Furini just gave evidence that in that particular case the minister then missed—

Ms Moy: And then the minister missed, so that becomes deemed.

Senator McKIM: the 72 hours so it became, in effect, a deemed approval anyway.

Major Gen. Furini: Yes.
Senator McKIM: Thank you. Would it be accurate to say that, in some cases, once a medevac application has been lodged, that expedites people getting into Pacific International Hospital in Port Moresby? I've had cases raised with me where people couldn't get into PIH, so they've lodged a medevac application and suddenly the doors swing open and they're welcomed into PIH. Can you shed any light on that, Major General?

Major Gen. Furini: I have no knowledge of that particular outcome other than that once a medevac application is lodged we need to get independent medical advice, and that comes through a consultation with a doctor at either PIH or IHMS in Nauru to substantiate the claims made by the two referring doctors.

Mr Pezzullo: The only light I can shed on it would suggest that it's potentially the case that the opposite tendency is evident, insofar as that when an application is received we're perfectly entitled—in fact, we've got a duty—to ensure the minister is fully informed, so consultation occurs, in the case of Port Moresby, with that hospital. Regrettably—it's not universally the case—on a number of cases people have missed appointments; for whatever reason, they choose to. The hospital reaches out to them and says: 'Look, you've really got to turn up to your appointment. You're unlikely to necessarily be the subject of a positive recommendation from the department to the minister.' And, hey, presto, they tend to turn up quick smart, by and large, to their appointment.

Senator McKIM: That's certainly not in accordance with the information that I've got, but anyway. I have one quick question on citizenship by descent and I will put the rest of my questions in on notice in an attempt to facilitate.

Mr Pezzullo: To assist the chair: at this late hour we would be traversing to program 2.1. If that's an indication that program 1 has been fully—

Senator McKIM: I have one more question in program 1. I didn't mean to lead you or the Chair up the garden path. I'll ask that question and then I'm done with output 1—

Mr Pezzullo: Citizenship would then come under 2.1?

CHAIR: Yes, it does.

Senator McKIM: 1.7, 1.9—sorry.

CHAIR: Citizenship is in program 2.1.

Senator McKIM: Okay, I'll park it until we get into output 2.

CHAIR: So you have no further questions for outcome 1?

Senator McKIM: I have plenty, but in order to facilitate the committee I'm going to put them on notice.

CHAIR: Thank you. I appreciate that. Outcome 1 is complete. Those people who are only required for outcome 1 are dismissed with our thanks.

[22:37]

CHAIR: We will move to outcome 2.

Senator CICCONE: I'll be very brief. In relation to program 2.4, refugee and humanitarian assistance, to do with the Shergold review—where are we up to with the review, Mr Pezzullo?

Mr Pezzullo: It's the subject of consideration by the government.
Senator CICCONE: I guess that's sort of the response that has been given for some time now. When are we expected to see the report?

Mr Pezzullo: When the government has completed its consideration.

Senator CICCONE: Has it gone before cabinet?

Mr Pezzullo: It's the case that we don't go to the detail of cabinet deliberations. If you wish to press the point, I would be obligated to check with the minister as to whether he wishes to shed any light on the deliberations of the cabinet. It's not within my authority to advise you about when matters have gone to the cabinet.

Senator CICCONE: Have there been any drafts of the report ready to be published before Christmas, for instance? Are we likely to get a response by then?

Mr Pezzullo: The report is final. It's a non-sequitur to ask or to intimate that there's a draft version of the report. The report is final. The report has been delivered to the government.

Senator CICCONE: You'd think people would have a right to a timely response, given that you've had a number of organisations submit to the review, and they're also waiting to hear back.

Mr Pezzullo: In three decades of working in this game, it has commonly been the practice, nearly almost universally the case, that governments tend to consider reports that are before them and then announce a response at the time that they release the report.

[22:39]

Senator CICCONE: I'll move to program 2.2. On 18 July this year, in a speech to the National Farmers Federation, the Prime Minister announced that his government would commit to growing Australia's agriculture sector to $100 billion. Since that time what consultation has occurred between the department and other parts of the government regarding the role that changes to Australia's visa system may have in achieving this objective?

Mr Pezzullo: We work very closely with a number of departments—the department of employment, which is the department of the minister at the table; the agriculture department; and Foreign Affairs where it is relevant to their responsibilities. So those discussions are frequent and ongoing.

Senator CICCONE: Is the department aware of concerns that have been highlighted by a number of stakeholder groups, in particular the Victorian Farmers Federation and AUSVEG, regarding insufficient supply of unskilled labour to meet the demands of Australia's primary producers?

Mr Pezzullo: We're aware of stakeholder concerns about the mismatch that some stakeholders consider to be the case between their sector of agriculture and the availability of various levels of skilled labour, yes.

Senator CICCONE: What consultations have taken place between the department and any of these stakeholder groups?

Mr Pezzullo: I'll ask Ms Golightly to speak to what we do directly. Our job is to support and facilitate the departments that are sector facing, so the department of agriculture and the department of employment where that's appropriate, and we assist with the design of visa
solutions that may be applicable. Whether we have had direct engagement with the National Farmers Federation and/or AUSVEG I'll leave to Ms Golightly.

**Ms Golightly:** Yes, we have had consultation with both those organisations.

**Senator CICCONE:** Are you able to take on notice the dates or any other details that you can provide the committee? I'm happy for you to take that on notice.

**Ms Golightly:** Certainly, Senator.

**Senator CICCONE:** The department probably would then accept that there is insufficient supply of unskilled labour to meet the demands of the Australian agriculture sector?

**Mr Pezzullo:** I don't think you can draw the conclusion from the evidence just given that we accept the premise that there is an insufficient supply of labour.

**Senator CICCONE:** So what conclusion would you draw?

**Mr Pezzullo:** We draw the conclusion that important stakeholders have given us their view, and we consult with our colleagues, particularly in the agriculture department, the employment department and other departments, and we come to a collective view about whether those claims are substantiated by the facts.

**Senator CICCONE:** Does the department have a view about a report that was produced by the University of Adelaide and Dr Joanna Howe, who I understand has done a lot of work in this space? That report showed that 63 per cent of farmers who responded reported having to leave vegetables unpicked because of a lack of labour. Does the department express any views—

**Mr Pezzullo:** I'm not sure that we have a view about her analysis or her conclusion. As I said, we take inputs from many stakeholders, some of whom are academics, some of whom are practitioners and some of whom are lobby groups. More importantly, because we don't face into the sector every day, we sit with our colleagues in the agriculture department, the employment department and elsewhere and come to a collective view about what advice we should give government about the dynamics of any particular industry sector—in this case, horticulture and agriculture generally.

**Senator CICCONE:** How many individuals who have held either the working holiday subclass 417 or the working holiday 462 visa have sought to remain in Australia for a second year by undertaking work in the agriculture sector?

**Ms Golightly:** We have those figures. I know that there has been an increased number since last year. We can get you that figure.

**Senator CICCONE:** You might want to take it on notice. Also how many have sought a third year? I'm also interested to know what proportion of those visa holders have sought to remain in Australia for a second year by undertaking work in the relevant sector.

**Ms Golightly:** We'll have the second year figure for you. The third year doesn't commence—

**Mr Willard:** In answer to your first question, in 2018-19 the figure was 43,219 working holiday-makers on the second visa. The third-year visa commenced on 1 July this year, so at this stage no-one would be eligible for the third year because they have to accumulate six months work in a regional area to qualify.
Senator CICCONE: Okay. Of those who commenced the 88-day period of farm work, in order to obtain an extension to the working holiday visa, does the department have data on how many of these individuals complete the full 88 days requirement?

Mr Willard: We wouldn't have that data because completion of the 88-day period is a requirement to qualify for the second visa. We wouldn't know how many people didn't complete that period, because they wouldn't qualify for the second visa.

Ms Golightly: So the reverse is true. To qualify for the second visa, you have to have completed 88 days. So all those people have completed the 88 days.

Senator CICCONE: But is there any data? For someone who doesn't fulfil the first 88 days there is no data collected as to when they fell out, why they stopped at 80 or 70 days or—

Ms Golightly: Certainly not to that gradation. We'd have data on the number of people who applied and were refused, but they could be refused for any number of reasons, one of which might be that they didn't complete 88 days.

Senator CICCONE: So once they hit 88 days, you'll collect data. So, really, you've got no way knowing if someone were to drop off at 80 days, for instance, why they've dropped off at 80 days. No?

Ms Golightly: It's their own free will, how many days they do.

Senator CICCONE: Does the department have any data on the amount of different employers of those who commence the 88-day period of farm work, in order to obtain an extension of their holiday visa?

Ms Dunn: We don't track the employers of working holiday-makers, so we don't know how many times they change employers.

Senator CICCONE: Is the department aware of government members, including the Prime Minister, having previously indicated the government's intent to establish in agriculture-specific visa?

Mr Pezzullo: I think we've given evidence on this before. When you say government members, as distinct from the government, it's known to us that members of the governing parties—some of them have got a partiality to visas that fit that description, but it is not the policy of the government to pursue, at this time—

Senator CICCONE: The Prime Minister did make some comments.

Mr Pezzullo: He said that we would look at it. I've been in the meetings where we've looked at it.

Senator CICCONE: Even when he made a public comment to the National Farmers Federation?

Mr Pezzullo: He said that we would look at an agriculture visa and we'd look at whether there's an ability to achieve an equivalent, if not better, outcome through other visa forms.

Senator KENEALLY: Can I follow-up to an answer that Ms Golightly gave to Senator Ciccone? You said it was people's own free will whether they worked the 88 days. Are you familiar with the #88daysasslave hashtag on social media?

Ms Golightly: I've heard of it, yes.
Senator KENEALLLY: Are you aware of what some of the stories are that people share under that hashtag?

Ms Golightly: I am aware of the sorts of things that are described there, and we would always encourage anybody that has any issues to raise them with the relevant authorities.

Senator KENEALLLY: Are you aware that the Fair Work Ombudsman has raised concerns about worker exploitation on Australian farms, describing conditions endured by foreign workers as 'bonded like slaves' to labour hire contractors?

Ms Golightly: We work very closely with the Fair Work Ombudsman. I'm not sure I've heard of that particular quote, but we work with them very closely to combat any worker exploitation.

Mr Pezzullo: Can we source that assessment, Senator?

Senator KENEALLLY: Yes, and I'm happy to put it on notice to you too. It's 27 June 2018, ABC report 'Bonded like a slave: workplace watchdog investigation into labour exploitation reveals poor conditions'. It refers, specifically, to the fruit and vegetable sector, but I'm happy to provide that on notice to you.

Ms Golightly: We do a lot of work with the Fair Work Ombudsman and the ABF to combat worker exploitation and, indeed, any reports are investigated.

Senator KENEALLLY: I'm going to refer back to the University of Adelaide report that Dr Howe contributed to that the 88-day requirement has encouraged exploitation by attaching a critical migration outcome to work performance. I'm just challenging the notion that people have 'free will', that all people enjoy free will when they're in the '88 days a slave', as it's been described on social media, program.

Ms Golightly: Where there are allegations, they're investigated. My comment before was that it is up to individuals if they want to work one day or five weeks. They're here on working holiday visas. The whole point is that they—

Senator KENEALLLY: Because we're in area 2, I won't go back to some of the issues around aeroplane people. Instead I will put them on notice. If I might, while Mr Pezzullo is still here: Mr Pezzullo, you describe this as not a crisis. We've got 95,000—indeed, 100,000 if we take ABC Fact Check—people who have arrived through the airports to claim asylum. Many of them have work rights. They're often here four to five years until their claims are finalised. They are working in exploited conditions. They are lowering wages and conditions across the economy. They are taking jobs that Australians are not then able to access. And yet you describe this as not a crisis?

Mr Pezzullo: A border crisis would involve smugglers being able to get people into Australia without credentials, with destroyed documents, with people dying at sea.

Senator KENEALLLY: That's precisely what the United Nations report describes as happening with the movement of people by organised criminal syndicates through airports to access labour markets. That is precisely what is said in the UN document that you said earlier today you were familiar with.

Mr Pezzullo: If we look at the actual evidence, when Taskforce Cadena operations are conducted, we see the actual incidents of discovered trafficking, slavery or slave-like conditions are in very low numbers.
CHAIR: Senator Keneally—

Senator KENEALLY: I am mindful; I will put those on notice.

CHAIR: It's just not really outcome 2.

Senator KENEALLY: I understand that. I appreciate your ruling. Thank you.

CHAIR: That's okay.

Senator KENEALLY: Are you finished with that line of questioning, Senator Ciccone?

Senator CICCONE: Has the department been instructed by government to look at setting up or establishing an agriculture visa?

Mr Pezzullo: We've been instructed to look at the question of assisting our agricultural sector with appropriate visa solutions.

Senator CICCONE: Can you elaborate on what that means? What do you mean by 'solutions'?

Mr Pezzullo: There are different ways to credential people to come into Australia, whether it's labour related schemes, whether it's working holiday, whether it's designated-area migration agreements. The Migration Act has got a lot of flexibility attached to it and, rather than resolving down to a particular solution that is named 'X visa', it's best left in the hands of the practitioners—and you've got a couple at the table here—to assist, in this case, the horticultural and agricultural sector generally along with our partners in agriculture and employment to design immigration programs, some of which can be modifications of things like working holiday maker, some of which can be designated-area migration agreements or labour agreements that are particular to firms. There are many particular tools available to government to address skills shortages or labour shortages in any particular sector. I can't be any more precise than that.

Senator CICCONE: Thank you. I've been given a copy of a speech that the Prime Minister gave to the National Farmers Federation back on 18 October 2018. I'm happy to provide you with a copy, but I'm assuming you are familiar with what you've just told me before. To quote what the Prime Minister said:
Our Government does support moving towards an agricultural visa.

... ... ...

Yes, we will work to establish an agricultural visa.

Isn't that pretty solid ground that the government is determined to see an agriculture visa established at some point?

Mr Pezzullo: I think the date of that speech was about a year ago, if I remember.

Senator CICCONE: Yes, 18 October 2018.

Mr Pezzullo: I can assure the senator—through you, Minister, if I may—that there have been many discussions at ministerial and senior officials levels about how to deliver on the functional outcome that is being sought. It's as described in my evidence earlier.

Senator CICCONE: Thank you.

CHAIR: Senator McKim, you have the call.
Senator McKIM: Mr Pezzullo, I have a question about the law as it relates to citizenship by descent. Do children born to parents who've had their Australian citizenship cancelled retain the right to claim citizenship by descent?

Mr Pezzullo: Where the birth has occurred prior to the cancellation or the cessation?

Senator McKIM: Perhaps you could answer in relation to both: where the birth occurs before the cancellation and after.

Mr Pezzullo: I'll direct that to Ms Geddes, and, if required, the general counsel might wish to assist.

Ms Geddes: Could you repeat that?

Senator McKIM: Do children born to parents who have had their Australian citizenship cancelled retain the right to claim citizenship by descent?

Ms Geddes: It would depend on circumstances and timing.

Senator McKIM: Do you mean the timing of the birth?

Ms Geddes: The timing of citizenship that was taken away, in some instances, and timing of birth, yes.

Senator McKIM: If a child was born—

Ms Geddes: Are we talking about the current counterterrorism measures citizenship loss provisions?

Senator McKIM: That's one way that people can have their citizenship cancelled, so I'm happy to use that as an example. If someone has their citizenship cancelled and they have children who have not yet exercised their right to claim citizenship by descent, do those children retain the right?

Ms Geddes: If they are born to a parent who was Australian who lost their citizenship and if they were born after the citizenship was taken away and their other parent is not an Australian, then they're not Australian citizens.

Senator McKIM: I'm asking about their right to claim, not whether or not they are citizens.

Ms Geddes: They wouldn't have a right to claim.

Senator McKIM: What if they are born before the parent loses their citizenship?

Ms Geddes: Then they have a right to Australian citizenship, as long—

Senator McKIM: They can claim it even after their parent's citizenship has been cancelled?

Ms Geddes: That's right.

Senator McKIM: Thank you.

CHAIR: Senator Pratt.

Senator PRATT: How many people currently hold safe haven enterprise visas and temporary protection visas?

Mr Pezzullo: I'll ask Ms Golightly to answer that. Senator, just so we don't have to correct the record subsequently, in the circumstance that you described in your previous question, if the child was alive at the time of the cessation of the citizenship of one parent, the right would
flow from an enduring descent that came through the other parent if they were Australian, so it turns on the facts.

Senator PRATT: The child is a citizen.

Senator McKIM: I don't want to take up the committee's time with this. Could you simply take it on notice?

Mr Pezzullo: We'll take it on notice, because it would turn on facts.

Senator PRATT: Isn't this child a citizen in their own right? Anyway—

CHAIR: Thank you, Senator McKim, for that helpfulness.

Senator KENEALLY: I would refer both the secretary and Senator McKim to the PJCIS hearing that canvassed these issues last week. In fact, Mr Pezzullo, I think you might want to check that yourself because I'm not sure the answer you just gave is in keeping with—

Mr Pezzullo: I didn't give an answer. I said—

Senator KENEALLY: Just now—that you have just given now.

Mr Pezzullo: I said that I wanted to check what happens in the circumstance where there was no descent right flowing through either parent.

Senator McKIM: You're going to take that on notice, Mr Pezzullo.

CHAIR: It's taken on notice. I'm going to regard that issue as closed. Senator Pratt, you have the call.

Senator PRATT: Mr Pezzullo, you've directed my question to Ms Golightly. How many people currently hold SHEVs and TPVs? Also, how many of those would have originally been processed under the fast-track process?

Mr Mansfield: I can tell you the number of grants of TPVs and SHEVs. As at 30 September 2019, 16,325 temporary protection visas have been granted, compromising 5,476 TPVs and 10,849 safe haven enterprise visas. I don't have the data split by fast track versus non fast track, so I could take that on notice.

Senator PRATT: So those are the stats for those who have moved off the SHEV and TPV visas?

Mr Mansfield: That was people who had been granted a TPV or SHEV. Of the 32,469 people in the IMA legacy case load, 25,957 cases have been decided or otherwise resolved. That's about 80 per cent of the case load. Of those, there are the 16,325 grants that I mentioned. There are 7,045 refusals after merits review. There are 1,118 refusals made by the department which are currently at merits review. And there are 1,469 that are otherwise resolved. These are people who have departed before a final determination or failed to lodge, or withdrew, their application.

Senator PRATT: When will the majority of TPVs and SHEVs come up for renewal?

Mr Mansfield: It's a function of when decisions were made on their visas. There are already some temporary protection visas coming up for reassessment this year and the first safe haven enterprise visas will come up for renewal in 2020. But it depends on when they were decided. The bulk of people from the legacy case load won't come up for renewal until 2020-21.
Senator PRATT: As I understand it, applications are delayed because of a lack of resources within the department. How do you propose to handle another 30,000 of these visas being processed over the next few years as they come up for renewal?

Mr Mansfield: I wouldn't characterise processing as being delayed. We've finalised 80 per cent of the case load. We are down to the last 20 per cent. We have arrangements in place to progress that as quickly as possible. These cases are very complex to progress because of the lack of identity documentation for many. So we are working through it very systematically without compromising integrity. We have already dedicated some resources to reassessment work. As the final decisions are being made on the case load for the first time, we will divert those cases to reassessment work so that they can finalise those cases.

Senator PRATT: It appears to me, though, that you are always likely to have a large backlog given that the very nature of temporary visas is that they need to be renewed. In that context, what is the government's strategy for handling the ongoing and temporary nature of refugees under these visas living in Australia?

Mr Mansfield: We will continue to assess the reapplication of temporary protection visas and safe haven enterprise visas. Where they are found not to be owed protection following that process, they will be expected to go home.

Senator PRATT: In terms of that timeline, surely you have to give some recognition to the fact that people have been accepted as refugees and as humanitarian entrants. At what point does the government allow them to establish their lives properly instead of living in constant limbo?

Mr Mansfield: It's temporary protection and it's an assessment that is made at a point in time. At the end of the three-year period or the five-year period—

Senator PRATT: Yes, I do understand that.

Mr Mansfield: there's a reassessment that looks at whether they—

Senator PRATT: I do understand that the government has a very rosy eyed view of how a whole range of international human rights issues are just going to disappear overnight! Is there a time line on the length of time in which people will be living in limbo—

Mr Pezzullo: With all due respect, it's the law.

Senator PRATT: Yes, it is the law; but it is also the government's position to keep people living in limbo. I am asking a policy question of government: when will the government recognise that these are humanitarian entrants and allow them to establish their lives properly?

Mr Pezzullo: As a matter of policy, the government codified its policy by way of the amendments—

CHAIR: As a matter of policy, it should probably go to the minister.

Senator Cash: I think the secretary has articulated this at previous estimates—and I'm more than happy—

Senator PRATT: I can ask for an explanation of the policy.

Mr Pezzullo: It's an explanation of the policy; it's not advocacy.

CHAIR: Okay, if it's an explanation, that's fine.
Mr Pezzullo: If the government wants to change, I could explain the converse policy. It's like being a barrister: you've got to be able to argue either side. The policy was codified in legislative amendments that went through the parliament in December 2014. I understand the point Senator Pratt is making about the limbo status; it's not language that is recognised in the law. The parliament, at that time, decided that we would afford temporary protection—that's why it's called 'temporary protection'—for blocks of three years at a time and reassessments would be made at the end of that time. If the circumstances had ameliorated, changed or been mitigated in the homeland or in the face of persecution then persons would be expected to go home because their status would change. That's the nature of temporary protection, as distinct from permanent protection. If the parliament sees fit to change that law and flip back to permanent protection—I think that's the answer the senator is seeking—that would be a function of the governing party of the day having that policy and the parliament so changing the law. I don't think I've advocated a policy there, minister; I think I have explained a policy.

Senator Cash: I don't think you have; I think you have explained it.

Senator PRATT: Thank you, Chair.

CHAIR: You are all finished there, Senator Pratt?

Senator KENEALLY: We will put the rest of our questions on notice, mindful of the time.

CHAIR: Thank you very much. I am grateful for that cooperation. That concludes today's proceedings. I thank the minister and the departmental staff and officers for their attendance. I thank Hansard, Broadcasting and the secretariat staff for that work and patience, particularly given that we have gone a little bit over time. Is it the wish of the committee that documents that have been tabled during the day be accepted as evidence? There being no objection, it is so ordered. Senators are reminded that written questions on notice should be provided to the secretariat by 5 pm on Friday, 1 November 2019. With that, and our thanks, the hearing is adjourned.

Committee adjourned at 23:06