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SENATE
FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Monday, 23 October 2017

PARLIAMENT

In Attendance

Senator Parry, President of the Senate

Department of the Senate
- Mr Richard Pye, Clerk of the Senate
- Ms Maureen Weeks, Deputy Clerk
- Ms Rachel Callinan, Clerk Assistant (Table)
- Ms Jackie Morris, Clerk Assistant (Procedure)
- Mr Brien Hallett, Usher of the Black Rod
- Mr Tim Bryant, Clerk Assistant (Committees)
- Ms Michelle Crowther, Chief Financial Officer
- Mr Tim Grainger, Director Parliamentary Education Office

Parliamentary Budget Office
- Ms Jenny Wilkinson, Parliamentary Budget Officer
- Mr Colin Brown, First Assistant Parliamentary Budget Officer
- Mr Tim Pyne, First Assistant Parliamentary Budget Officer
- Mr Paul Gardiner, Assistant Parliamentary Budget Officer
- Mr Gareth Tunks, Assistant Parliamentary Budget Officer
- Ms Karen Williams, Assistant Parliamentary Budget Officer
- Mr Andrew Watterson, Acting Assistant Parliamentary Budget Officer

Department of Parliamentary Services
- Mr Robert Stefanic, Secretary

Parliamentary Library
- Dr Dianne Heriot, Parliamentary Librarian

Information Services Division
- Mr Ian McKenzie, Acting Chief Information Officer
- Ms Christine White, Assistant Secretary, Parliamentary Recording and Reporting

Building and Security Division
- Mr Paul Cooper, First Assistant Secretary
- Ms Fiona Knight, Assistant Secretary, Building Services
- Mr Michael Healy, Assistant Secretary, Capital Works
- Mr Graeme Anderson, Acting Assistant Secretary, Security
- Mr John Yanitsas, Director, Group 2 and 3 Works

Operations Division
- Ms Myra Croke, Chief Operating Officer
CHAIR (Senator Paterson): I declare open this meeting of the Senate Finance and Public Administration Legislation Committee. Today the committee will begin its examination of the supplementary budget estimates for 2017-18 for the parliamentary departments, the Prime Minister and Cabinet portfolio, Finance portfolio and cross-portfolio Indigenous matters. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee has before it a program listing agencies and outcomes relating to the matters for which senators have given notice. The committee has fixed 8 December 2017 as the date for the return of answers to questions taken on notice. The committee's proceedings will begin today with the parliamentary departments and proceed to Outcome 1 of the Department of Prime Minister and Cabinet. At 4.30 pm the committee is due to examine the Australian Public Service Commission and the Office for Women. The committee will also examine the portfolio agencies listed on the program. The committee will examine Outcome 2 of the Prime Minister and Cabinet portfolio on Friday at the cross-portfolio Indigenous matters hearing. The Finance portfolio will be examined tomorrow, Tuesday, 24 October.

Under standing order 26 the committee must take all evidence in public session. This includes answers to questions taken 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 as a contempt. It is also a contempt to give false and misleading evidence to the committee. The Senate by resolution in 1999 endorsed the following test for relevance of questions at estimates hearings. Any questions going to the operations or financial position 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 there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly 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 explanation of policies or factual questions about when and how policies were adopted. I particularly draw the attention of witnesses to the order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity claim 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 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.

(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)

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

Department of the Senate

[09:04]

CHAIR: I welcome the President of the Senate, Senator the Hon. Stephen Parry; the Clerk of the Senate, Mr Richard Pye; and officers of the Department of the Senate. I thank the department for providing updated information on Senate committee activity, which has been circulated to the committee. Senator Parry, do you wish to make an opening statement?

The President: No, thank you, Chair.

CHAIR: Mr Pye, do you wish to make an opening statement?

Mr Pye: Very briefly, Chair. Since we last appeared before the committee, there's been a rotation among senior staff which has landed Brien Hallett back in the seat of the Usher of the Black Rod. He joins me and our Chief Financial Officer at the table.

CHAIR: Thank you.

Senator WATT: Given I'm an infrequent attendee at this committee, can I get some guidance on how you intend to allocate time?

CHAIR: I will let you run for a reasonable period. If it becomes unreasonable, I'll shift to another senator.

Senator WATT: Define 'reasonable'? Let's see how we go. Thanks everyone for coming along today. Mr President, on Thursday I sent you a letter to give you some notice that I intended to ask some questions about the operation of standing order 27(5). That standing order states:

A senator shall not sit on a committee if the senator has a conflict of interest in relation to the inquiry of the committee.

That's the standing order that deals with conflicts of interest involving senators. Did you receive that letter?

The President: I did, Senator Watt, and I thank you for that notice.

Senator WATT: Mr Pye, perhaps I could start with you. Can you explain the type of conduct that might fall within the bounds of this standing order?

Mr Pye: If you have a look at the passage about that standing order in Odgers, it will tell you that the standing order is directed at ensuring there aren't conflicts between the private interests of senators and their public duties. I think it draws attention to a statement made on the standing order by President Beahan way back in 1994, which draws a line between a private interest in the subject of a committee's inquiry which conflicts with the duty of a senator to participate conscientiously in that inquiry. It's a classic line-drawing exercise between the private interests of senators and their public duties.

Senator WATT: You're right, I think that is the only reference made to that standing order in Odgers. I understand that standing order has rarely been invoked?

Mr Pye: It's never needed to be enforced by any action of the Senate, that's certainly the case.
Senator WATT: Are you aware of whether there has been any occasion since 1994 when that standing order has been raised?

Mr Pye: I know the standing order's been raised from time to time with senators in their participation in privileges committee inquiries, but only really to say that it doesn't apply in relation to the sorts of questions that were being asked there, which were more about senators expressing views in their professional work and whether that should rule them out of participating in inquiries of privileges committees.

Senator WATT: As you say, in terms of interpreting that standing order, we have to rely on that statement of President Beahan back in 1994. It comes down to a situation where a senator has an interest in the subject matter of an inquiry that conflicts with the senator's duty to participate conscientiously in the conduct of the inquiry.

Mr Pye: That's certainly the money quote, I guess, that has been referred to by my predecessors in giving advice on this in the past.

Senator WATT: Do you have any idea what might be meant by 'a senator's duty to participate conscientiously in the conduct of an inquiry'?

Mr Pye: I suppose that means senators should, when they're participating in an inquiry, make decisions in the public interest and on the basis of evidence that is given to the inquiries in which they're participating.

Senator WATT: It probably would also encompass membership of a committee conducting an inquiry as well, wouldn't it?

Mr Pye: That's what the standing order itself is particularly directed to.

Senator WATT: I noticed also in President Beahan's statement that he gave an example of the type of thing that might fall foul of that standing order.

Mr Pye: I think he referred to the example of someone owning shares in a company whose activities were directly under inquiry.

Senator WATT: Yes, I think that was the example he gave. In his view, for a senator who held shares in a company to participate in an inquiry concerning the activities of that company, whether directly or indirectly, would probably fall foul of that standing order.

Mr Pye: It certainly would make the standing order a relevant standing order, but I don't know that President Beahan was saying that the bare ownership of shares would necessarily mean that there's a conflict of interest. I think you have to judge these things in the context of the circumstances in which they're raised. I don't think it's a black-and-white exercise.

Senator WATT: Sure, but it raises the question.

Mr Pye: It certainly would open up the question of the application of the standing order, yes.

Senator WATT: And if someone did have a concern that a particular senator might be in breach of that standing order, how would they raise that concern?

Mr Pye: I think the first place to raise it would be with the committee that's undertaking the particular inquiry. It seems to me that, as with many questions of order and process in relation to committees, committees are often best placed to determine these questions in the
first instance. If a committee were unable to satisfactorily deal with an issue like that, then the 
committee could report its concerns to the Senate.

Senator Watt: You might raise it with the chair of the committee as the person 
overseeing the business of that committee?

Mr Pye: With the chair or in the letter to the committee as a whole.

Senator Watt: What if the chair of the committee was the person about whom you had 
a concern that they might have a conflict? What would be the appropriate course there?

Mr Pye: I don't know that that changes the nature of the appropriate course, Senator. I 
think the appropriate course is still to raise it with the committee. It would be expected that 
whenever correspondence is sent to a committee it would be circulated to all members of the 
committee. Certainly, that would be an approach that secretariat staff would take.

Senator Watt: It's quite normal though, if a senator or anyone else wants to raise a 
matter with a committee, to direct that correspondence in the first instance to the chair, isn't it?

Mr Pye: It is quite common for people to do that, but chairs and secretaries usually work 
hand in hand to make sure that committees are aware of the correspondence that goes to them. 
Having said that, it could be correspondence directed to the deputy chair of a committee, if a 
committee has a deputy chair, or to any member of a committee, who would then be able to 
raise it in a meeting of the committee.

Senator Watt: Would you acknowledge that it might present a bit of an issue— 
if, for instance, I had a concern about a particular senator having a conflict of interest, it might be a 
little bit difficult to direct that concern to the chair if they have the conflict?

Mr Pye: Sure, but those other options are therefore available to you.

Senator Watt: Mr President, if a senator brought a conflict or a possible conflict of 
interest to your attention, what action would you take?

The President: In the first instance, I would go back to the committee. I'd probably follow 
the guidelines of the privileges resolution No. 4 in which one of the options, part B, would be 
in the first instance to go back to the committee—if I were to consider giving precedence to a 
matter of privilege—and the clerk has outlined how you would communicate with the 
committee.

Senator Watt: So, If I were to raise a concern with you about a particular senator who 
might be a chair of a committee having a conflict regarding the business of that committee, 
you would refer that back to the committee to determine?

The President: Correct. In the first instance, we involve the committee—whether it be a 
chair or a member of the committee—and irrespective of who raised it with me, whether a 
member of that committee or not, I would refer the matter back to the committee to ascertain 
if the committee had an issue or a concern.

Senator Watt: You don't think that that causes a bit of a problem to send the matter 
back to the very committee where there might be a senator or even a chair who has a conflict?

The President: Not really, because it's my duty to investigate in that sense. If a legitimate 
matter has been raised with me, my first port of call would have to be the committee. There's 
no other way around that. Then the committee can formally communicate back to me in any
way they wish to, but that doesn't preclude the opportunity for any senator to raise the matter on the floor of the Senate at any stage in any event.

Senator WATT: Is this the kind of matter that would potentially be referred to the Standing Committee of Senators' Interests?

The President: You're raising a slightly different matter there. If you're then suggesting that a senator has failed to declare a matter of interest, again, that's a matter for the committee to address in whichever way it wishes to—either back to me, and if that then raises a matter of privilege, I would then deal with it under the resolution No. 4 or, again, any senator can raise that as a matter of concern on the floor of the Senate.

Senator WATT: Fortunately, in my little time here, I haven't come before the Standing Committee of Senators' Interests, but I take it that this is the committee that would deal with the failure of a senator to declare an interest—is that correct?

The President: Not exclusively. It's probably more a matter to be referred to the privileges committee if that, again, were something that I as President would grant precedence to, if that were a matter raised to me. The Clerk may have some additional comments in relation to how the senators' interests committee would interact with that particular issue.

Mr Pye: The senators' interests committee could be a committee that you would refer a matter like this to, from the perspective of the proper interpretation of that standing order in that particular circumstance. The committee has looked broadly, over years now, at the question of the appropriate regime for disclosure of interest, so the Standing Committee of Senators' Interests could be a place that this sort of matter is sent for investigation. The privileges committee could be a place where this could be sent for investigation. But it's really a matter for the Senate itself to determine which method of investigation the Senate thinks is the right process.

Senator WATT: What would be the threshold that would tip it over into becoming a matter that would warrant referring to the Standing Committee of Privileges?

Mr Pye: The privileges committee looks at matters that appear to amount to obstruction with the processes of the Senate or its committees. If a majority of the Senate was of the view that this sort of matter needed to be investigated as possibly interfering with the work of a committee, that might be an avenue the Senate might want to take.

Senator WATT: I notice that privilege resolution 6(3), which relates to senators seeking benefits—I won't read the whole thing because it's quite long—essentially says that a senator shall not ask for, receive or obtain any property or benefit on any understanding that the senator will be influenced in the discharge of their duties or enter into any contract. There's a prohibition, if you like, on seeking benefits and—not necessarily asking for those benefits—passively receiving or obtaining those benefits on any understanding that it will influence their behaviour. If the actions of a senator amounted to that, that would obviously be a matter that could be referred to privileges.

Mr Pye: There have been cases referred to the privileges committee on that basis before.

Senator WATT: Have there been instances where a conflict of interest amounted to a contempt?
Mr Pye: There was a case involving the then Leader of the Australian Greens Bob Brown and Senator Christine Milne referred to the privileges committee on an allegation that they had received or been offered benefits on the understanding that they would make decisions in the Senate in a particular way. The Senate referred that matter to the privileges committee. The privileges committee said, 'There's nothing to see here.' But you can see that the Senate would have an interest in making sure that there is 'nothing to see here' in cases like that.

Senator WATT: Besides privilege resolution 6(3) and standing order 27(5), are there any other standing orders or orders of the Senate that cover conflicts of interest involving a senator?

Mr Pye: Only the standing orders about the resolutions of senators' interests themselves.

Senator WATT: Just to sum up, in terms of the legislative underpinning, we've got standing order 27(5), which says that a senator shall not sit on a committee, and presumably be a chair of a committee, if that senator has a conflict of interest, in relation to the matters dealt with by that committee. And we've got privilege resolution 6(3), which prevents senators from obtaining benefits in return for influencing their position. They're the key—

Mr Pye: They're the key standing orders, I'd say—yes.

Senator WATT: I will just put a couple of example questions to you about how those rules should operate. If a senator had an interest in a company that was contracted to deliver projects that were being discussed by a committee, do you think that standing order 27(5) would apply?

Mr Pye: I do. Standing order 27(5) always applies. The question is whether it's relevant to the circumstances of that particular case. If somebody raised a question with me along those lines, the first question I'd ask is: what does the committee think?

Senator WATT: It keeps coming back to the committee.

Mr Pye: I think it does. In the example you mentioned there, and the example you gave in your correspondence with the President, you seem to be talking about unchallenged proceedings of a committee. If a committee is quite happy to have questions asked and quite happy to have its inquiry progress under the set of circumstances that you describe, and the committee hasn't raised that matter with the President or with me or reported to the Senate on the issue, then I don't know that there's much more to be said other than that these standing orders, like all of the standing orders, need to be interpreted according to the context in which they're raised.

Senator WATT: That of course presumes that the rest of the committee is aware of the potential conflict of interest?

Mr Pye: Indeed. That is why, if somebody raised it with me, the first thing I would do is write to the committee about it.

Senator WATT: Would you think, then, that it's prudent for a senator who has an interest in a company that is delivering contracts that are overseen by a committee to draw that interest to the attention of the committee?

Mr Pye: I don't know that I'd offer a view on that one way or another. I think that all senators should declare interests relevant to their work as senators, including as members of committees.
Senator WATT: And keep their declarations of interests up to date, no doubt, as well, so that people are aware?

Mr Pye: Within the time frames that are set out in the resolutions, yes.

Senator WATT: I will give you some specific examples. You'd be aware that other senators and I have raised concerns about some of the interests of Senator O'Sullivan.

Mr Pye: Yes.

Senator WATT: I'm not sure if you aware, but in May last year, in the budget estimates, Senator O'Sullivan asked a series of questions at the Legal and Constitutional Affairs Committee's hearings about the timing and delivery of NDRRA payments—disaster relief payments. In fact I think he complimented officials on the speed with which they process claims and payments under the NDRRA scheme. According to Senator O'Sullivan's declaration of interest at the time—this is what he told the Senate in making that declaration—he derived income from a company called Newlands Civil Construction. That company was contracted to do work under the NDRRA. Is that the kind of interest that a senator should disclose to a committee?

Mr Pye: Again, I'm not going to make a comment one way or another on the specific interests that people have. I do agree that—

Senator WONG: Mr Pye, A specific set of circumstances has been put to you. I appreciate it is unusual for an opposition to ask you questions about these sorts of issues because of their political nature. But this is a reasonable question about the remit of the standing order and particular factual circumstances. On what basis do you say you shouldn't have to answer?

Mr Pye: My view is the same view that we've always tried to put, which is that it's a matter for senators themselves to determine how the senators' interests resolutions apply to their circumstances. So I don't think it's appropriate for me to dig into the detail of that question, but I agree that all senators need to be declaring interests that are relevant to their activities as senators, including as members of Senate committees. I don't think that's uncontroversial.

Senator WATT: I will go back to the example that former President Beahan gave in 1994. He gave a specific example of something that might constitute a conflict of interest such that a senator should not sit on a committee. The example he gave was a senator holding shares in a company, the activities of which are under inquiry. So wouldn't it be the case that to ask questions and make comments about payment times for a program from which a senator is deriving a benefit through their company would surely amount to the kind of conflict of interest President Beahan was talking about?

The President: Senator, if I could answer. The Clerk very clearly indicated up-front that this is a matter—he's interpreted the standing orders in the sense of how they would apply from a procedural perspective. I don't think it's reasonable to ask the Clerk—

Senator WONG: We'll ask you.

The President: I'm happy to answer, but I'm just saying I don't think it's reasonable to ask the Clerk. You're really asking the Clerk to adjudicate on a matter which has been clearly said up-front by myself and the Clerk that, in the first instance, we would send this matter back to
the committee. We would inquire as to the committee how the committee felt. I presume this is your impression only at this stage, Senator Watt, and I think in the ordinary circumstance, if this were raised with me—you've written a letter to me indicating you were going to raise it here today—the next step would be, if you raised it more formally by a letter to me more formally or, indeed, you have the right to raise this on the floor of the Senate—

Senator WONG: What is 'more formally'?

The President: Either write to me—

Senator WONG: Hang on, he's written to you. What is the more formal thing you want?

The President: Senator Watt has written to me informing me as a matter of courtesy he would be raising this today. I really appreciated that. We're answering the question. But Senator Watt has not asked me to determine whether this is a matter that should be granted precedence for the purposes of privilege.

Senator WONG: Right.

The President: In any event, if Senator Watt was to more formally ask me or raise it on the floor of the Senate, which you're entitled to, then in the first instance I would go back to the committee and ask the committee for their impression, their interpretation, their comments, anything the committee wanted to respond back to me in relation to this matter. That is the first instance. You're asking us now to jump ahead of that process. We can't do that until the committee has given us a response.

Senator WATT: One of the reasons I'm raising it here is that, on 25 August, I wrote to the Prime Minister and copied my letter to Senator Brandis as Leader of the Government in the Senate, raising a number of concerns about potential conflicts of interest involving Senator O'Sullivan, including the one I've just given you which involves NDRRA. I haven't had a response to that letter from either the Prime Minister or Senator Brandis. I'm happy to table copies of that letter. I expected some sort of response or action or referral to a committee and I'm still waiting nearly two months later.

The President: Again, Senator Watt, that's not within the remit of the Prime Minister, with all respect to the Prime Minister, to actually suggest that a Senate committee do this or do that. This is a matter for the Senate to decide. If you're suggesting this is a matter of privilege or, indeed, a matter for the Committee of Senators' Interests, you really have to then progress that matter by formally approaching me or raising it through the Senate, and then the appropriate questions will be asked of the committee. That is the first step. We haven't got to that first step. I think you're asking us to adjudicate beyond a first step.

Senator WATT: We'll obviously have a think about that and may well do that. The other issue I raised with the Prime Minister and Senator Brandis called for Senator O'Sullivan's removal as chair and member of the committees in which he has been asking these questions.

The President: That, again, is a matter for the Senate to determine and the committee to determine.

Senator WATT: I think prime ministers have a fair bit of sway over who goes on committees.
Senator WONG: Oh, Mr President, if I may. I wish it were so, but you and I both know the chairs of the legislation committees are allocated to the government by government members.

The President: Correct.

Senator WONG: We 'hear no evil, see no evil', but the reality is—

The President: Opinions can be expressed—

Senator WONG: If I can finish—'hear no evil see no evil', but the reality is that you and I both know that's a false construction. If the Prime Minister wanted to remove Senator O'Sullivan because he had an interest in some of the matters that come before the committee of which he is chair and paid to chair and chosen to chair by the coalition, then the Prime Minister could do so.

The President: The Prime Minister can have a view and the Prime Minister can make requests but the Prime Minister cannot do that. The Senate and the Senate committee does that.

Senator WONG: The Senate committee?

The President: The Senate committee elects chairs and deputy chairs.

Senator WONG: With a government majority on a legislation committee.

The President: It is still a Senate committee. Opinions can be expressed, but the Senate itself, or the Senate committee, will make the determination.

Senator WONG: There is a fiction to your answer.

The President: No, there isn't, because the Senate itself can have the final say. This matter can be raised with the Senate, and the government does not have the numbers in the Senate, as you very well know, Senator Wong.

Senator WONG: Sometimes they do. They seem to love Pauline up a lot. She gets a lot of love.

The President: This is purely a matter for the Senate to determine in whichever format the Senate wishes.

CHAIR: Before you go on, Senator Watt, I note that it is now 9.30 and we are due to move on to our next witness, which is the PBO. You have had 25 minutes so far, which is a fair chunk of the time allocated. I know Senator McKenzie has some questions. How many further questions do you have, Senator Watt?

Senator WONG: No more than 10, possibly fewer.

CHAIR: Please proceed.

Senator WATT: With those NDRRA payments, you are saying that I should be writing formally to you and that you would refer that to the committee for consideration?

The President: I would seek the committee's views, yes.

Senator WATT: Again in February this year, at the Rural and Regional Affairs and Transport Legislation Committee's estimates hearing, Senator O'Sullivan, as chair of the committee, discussed the progress of the Toowoomba Second Range Crossing project. That is another project which his family company had been contracted to provide works on—to the
value of $2.5 million. Again we can't find any record of him having made any declaration of interest to the committee. Is that appropriate?

The President: You are asking whether or not a senator has accurately declared his or her interests. I am not privy to every senator's record of interest. You are suggesting something has been raised and that there has been no declaration of interest. That is a matter on which you should write to me. I would then inquire of the committee.

Senator WATT: I go back again to what President Beahan said. He has given the very example we are talking about here—a senator holding shares in a company the activities of which are under inquiry. Senator O'Sullivan is asking questions and making commentary about a project being funded by the Commonwealth government that he, through his company, is deriving a benefit from. He is not making anything known to the committee about that. Surely that is a direct conflict of interest?

The President: Again, the committee needs to determine whether or not they have a concern.

Senator WATT: Again relying on Senator O'Sullivan keeping his register up to date?

The President: All senators are required to keep their register of interests up to date.

Senator WATT: I will point you to one final example. The Rural and Regional Affairs and Transport Committee has been conducting an inquiry into the red meat industry. According to his statement of interests, Senator O'Sullivan has substantial financial interests in the cattle industry, and there have been media reports quoting him saying that, having spent much of the past two years in Senate inquiries investigating what is wrong with the red meat industry, he is still investing confidently in expanding his own cattle breeding and backgrounding operation. Isn't this an example of a senator flagrantly ignoring the rules relating to conflicts of interest?

The President: You are asking me to make a comment—

Senator McKENZIE: Senator Watt, I have kids in school and you have to. Does that mean we can't ever inquire into education matters?

Senator WATT: What is the financial benefit, the private benefit, that you or I derive from having our kids in schools?

Senator McKENZIE: There is a private benefit.

Senator WONG: Come on!

Senator WATT: Is that a pecuniary interest?

Senator McKENZIE: Does that mean any National Party senator who owns a farm can't look at water, cattle or sheep issues?

Senator WATT: They should certainly be disclosing their interests to the committee and perhaps getting other people to ask questions.

Senator McKENZIE: Everyone on that committee knows Senator O'Sullivan owns cattle.

Senator WONG: You can't just do that—

CHAIR: Senator Wong, you are not assisting. Order!

Senator WONG: He is sensitive because Senator Watt is asking questions about conflicts of interest. It is not the same as sending kids to school.
Senator McKENZIE: Senator Watt is saying that nobody on the committee knew that Barry has heaps of cattle. Everybody knows that.

CHAIR: This is not assisting. Senator Wong, please do not—

Senator WATT: Senator O'Sullivan is asking questions about things he gets money out of.

CHAIR: Senator Wong, there is no need to have exchanges with Senator McKenzie. She is not a witness. Please have your exchanges with the witnesses.

Senator WONG: She is behaving like one.

CHAIR: Thank you, Senator Wong. Senator Watt, please continue.

Senator WATT: Could you please take on notice my question about the appropriateness of a senator asking questions and making commentary in committees that he is a chair of about matters through which he is deriving a personal gain?

The President: It is not a matter I need to take on notice. I'm very happy for you to write to me in a formal structure about the concerns you have and I would then follow the course of action that I have outlined earlier in your questioning. You're quoting and you're providing very small fragments of committee work. There is no way that I can make an assessment of these very small fragments, which the Clerk has indicated and I firmly endorse, it is all within context. You're not providing me any context, you're just providing me with some small snippets of information which I'll take as being factual.

Senator WONG: What is the context you think might change?

The President: There is an entire context around everything, and even Senator McKenzie with her interjection highlighted the fact that you have to look at the broad context of exactly what the questions were about and a number of other matters. I'll come back to my firm point that I would investigate and inquire of the committee's views. That is what I am required to do.

Senator WONG: Of which Senator O'Sullivan is chair?

The President: There is an entire committee, Senator Wong. There's not just one individual—

Senator WONG: Sure, sure.

The President: and the committee wouldn't be communicated with just through the chair, if that were the case.

Senator WONG: I understand that is your position, but you would accept that asking a chair to investigate himself is—

The President: That wouldn't happen.

Senator McKENZIE: In the beef matter, it's Sterle's.

The President: It wouldn't happen.

Senator WONG: It wouldn't happen?

The President: No, I wouldn't write just to the chair to investigate himself, that would be ludicrous. I would write to the committee. I go back to the other point that it is within the purview of any senator at any time to raise this matter on the floor of the Senate. If any...
senator thought the matter wasn't being adequately dealt with by a committee, a senator can go public on the record in the Senate and have the—

**Senator WATT:** I have done that on multiple occasions and I have pointed to the letter I've written to the Prime Minister and Senator Brandis, to which they have not replied.

**The President:** You've written two letters about that, but you have never raised the matter in a formal sense and asked the Senate to deal with this matter.

**Senator WATT:** I have raised it in the Senate on a number of occasions.

**The President:** But you have not asked the Senate to deal with the matter.

**Senator WATT:** Just to complete, I'm wondering what the point of the standing order is. It says:

> 5. A senator shall not sit on a committee if the senator has a conflict of interest in relation to the inquiry of the committee.

If a senator who has interests in a company can ask questions about matters that that company is deriving a benefit from, if that's not a clear conflict of interest requiring that senator to not sit on the committee, what is?

**The President:** Again, it is a matter for the committee to determine the context. The committee members listen, are involved in, receive and read, and so the committee is the best-placed entity to determine whether a demonstrated conflict of interest exists.

**Senator WONG:** Chair, can I have a follow-up on that?

**CHAIR:** You may.

**Senator WONG:** I understand it's your position that the committee needs to deal with it, and we'll take that on board. I wonder, from the perspective of the public, we have a standing order that essentially says, in layperson's terms, 'In a committee we expect you to act as a senator and not pursue things about which you might have a private interest.' From a layperson's or the public's perspective, having you say, 'That might be what the standing order says, there might be allegations raised that Senator O'Sullivan has asked questions in committees around things around which he has a private interest' and you say, 'The best thing to do is to write to him as chair of the committee to resolve it,' you can understand why people might feel—

**The President:** You're putting words in my mouth. I didn't say, 'Write to the chair of the committee.'

**Senator WONG:** Okay. 'Write the committee that he chairs,' on which the government has majority in circumstances where the Leader of the Government in the Senate and the Prime Minister have declined to act. You say, 'That's sufficient.' Everybody knows nothing will happen if we write to the committee. That is a reality, isn't it?

**The President:** No, everyone doesn't know what would happen because the committee would then write back to me. I reiterate: you say the committee has a majority of government senators. There are six members. Anyone of those six members can then raise this matter formally in the Senate in exactly the same way as the matter would be raised in the committee and then the Senate can determine—of which the government doesn't have a majority, Senator Wong. The Senate can be the ultimate arbiter in this and the Senate has the right to determine any way the Senate wishes to determine. If the Senate is satisfied with the allegations raised
by Senator Watt and if the Senate has sufficient information—which we don't around this committee table here at the moment; we just have snippets of information that Senator Watt has provided, not the full contextual aspect of the entire inquiries and who has done what and who has declared what. We are in an area of limited information here. If any senator is not satisfied with the outcome of what a committee says, any senator can raise that at any time on the floor of the Senate for all of the public, all of the world, to hear.

**Senator McKenzie:** On that issue, Senator Parry: Senator Watt, in his line of questioning, mentioned Senator O'Sullivan's beef interests and the fact that we have just concluded a two-year inquiry into the beef industry. That particular inquiry was conducted by the Senate Rural and Regional Affairs and Transport References Committee. For clarity: my understanding is that that committee is controlled by the Labor Party. Is that correct?

**The President:** It would have an opposition majority.

**Senator Watt:** Senator O'Sullivan is a member.

**The President:** There again—

**Senator McKenzie:** It goes to Senator Wong's claims—that the government controls this committee.

**Senator Wong:** Just to clarify—

**Senator McKenzie:** The government doesn't control the committee for inquiring into the beef industry.

**Senator Wong:** That may be the case. I was referencing the contracts, the substantial multimillion-dollar contracts under the NDRRA that Senator Watt asked about—questions which absolutely were asked, as I recall, in the context of the legislation committee, which is government controlled.

**Senator McKenzie:** That may be the case. I was talking about the beef inquiry.

**The President:** That again highlights the point I have been making. We are making decisions or discussing matters with limited information. This is why the committee is in the best position to make such determinations in the first instance.

**Senator McKenzie:** Mr President, I have privately raised with you my concerns about, and my interest in, the security measures that have been implemented around Parliament House. I notice that, since the winter break, a number of trees have been cut down. Could you please update us on the security measures being implemented, tell us about the number of trees and talk us through the process that was undertaken?

**The President:** This is by and large a matter for the DPS, but I am happy, if the committee is happy, to answer these questions here. It is not strictly a matter for the Department of the Senate, although it does affect the Senate side of the building. I will be guided by the chair.

**Chair:** Please continue.

**The President:** With the number of trees, when DPS arrives they might be able to assist. I think 20 or so trees and shrubs have been removed. The shrubs that have been removed are, in any event, of the sort that die on a regular basis. They needed to be removed for the security fencing to be put in place from the Senate entrance driveway, the inward aspect of the driveway, to the fixed wall. I think every senator on entering the building would have seen the...
trenches, the foundations and the formwork for the concrete going in where the fence will be and for other services that will be implemented on either side of the fence. Once the fence is erected, the shrubbery will then go in around the fence. The shrubs are designed to retard progress to the fence—they are robust shrubs. I understand they are being grown offsite as we speak. They will be planted in a more mature state rather than as seedlings or smaller shrubs.

Are you interested in what is going on in the building in general as well as what is happening on the Senate side?

**CHAIR:** Perhaps we will revisit this when we come to the Department of Parliamentary Services. You would then have the assistance of your officials with more detailed questions.

**Senator McALLISTER:** On notice, could provide please details of any official travel you have undertaken since the last budget estimates, including the reason for travel and the dates for travel?

**The President:** Certainly.

**CHAIR:** I thank representatives of the Department of the Senate for their evidence.

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**Parliamentary Budget Office**

[09:45]

**CHAIR:** Welcome. I thank the PBO for providing updated information on PBO activity, which has been circulated to the committee. Ms Wilkinson, congratulations on your appointment as Parliamentary Budget Officer. Do you wish to make an opening statement?

**Ms Wilkinson:** Very briefly. As the committee is aware, I was appointed three months ago. I’d like to take this opportunity to give credit to Phil Bowen, who was the inaugural Parliamentary Budget Officer, for what he achieved over the first five years in the establishment of the Parliamentary Budget Office, and also for the smooth handover that he effected when he retired at the end of July. Within the PBO I’ve been very impressed with the calibre of the staff, the professional quality of our systems and the efficiency of our operations. Over the past three months, in addition to continuing to progress our costings work and research, I’ve met with a number of parliamentarians and heads of government agencies to get direct feedback on the PBO. Overwhelmingly this feedback has been positive and very much in line with the recommendations that were provided by the independent review of the PBO. As you’re aware, in our 2017-18 work program we’ve carefully considered the recommendations of the independent review of the PBO and have outlined how we intend to progress those.

**Senator LEYONHJELM:** Good morning. Nice to see you here. I have to say, one of my favourite departments, if not my favourite department, is the PBO.

**CHAIR:** That's a rare distinction.

**Senator LEYONHJELM:** That said, I'm still going to ask you about your national fiscal Outlook—

**Senator McALLISTER:** Here is a part of the Public Service that Senator Leyonhjelm actually likes.

**Senator LEYONHJELM:** I'm softening the blow, because I'm about to challenge you on your national fiscal outlook. Don't get too excited. You released last week your national fiscal outlook. You report that Australia's spending and revenue is in the middle of a range of G20...
countries. You also note that many countries use public pensions funded through taxes to achieve what we do through compulsory superannuation. If you included compulsory superannuation in our spending and revenue calculations, in a similar fashion to many other OECD countries, wouldn't that push us into the upper range on your table?

**Ms Wilkinson:** Thank you for your question. I might hand over to Mr Pyne. You're right, and we noted, in the table in which we provided an international comparison of Australia's spending and revenue net debt position compared with other countries, that in part Australia has a different arrangement for providing retirement income from many other countries—certainly not from all other countries. Countries like Canada also have a mandated amount of income which has to be saved as part of their Canadian Pension Plan. Countries like the US don't have explicitly mandated savings but have a range of tax arrangements which provide incentives for individuals to save in ways that supplement the payments they would get from their Social Security system.

It is challenging, when you're comparing different countries, to control for all of the different ways in which we structure our economies and the ways in which we provide a range of different services. If you were going to do a complete comparison across countries, which controlled for retirement incomes, you'd have to have a baseline estimate of the amount of retirement income that would be provided. Australia has a different system because we have a targeted, means-tested age pension system, which is then supplemented by superannuation. It would be quite a challenging exercise to actually control for all of those things in order to make sure you that you were making a comparison on a like-for-like basis. It would increase estimates of Australia's spending and revenue relative to some other countries, but it would decrease it relative to other countries. Is there anything you would like to add, Mr Pyne?

**Mr Pyne:** No.

**Senator LEYONHJELM:** The point I was trying to get to was whether we are comparing like with like. What you're suggesting is: sometimes we are and sometimes we aren't?

**Ms Wilkinson:** What I'm suggesting is that it is very difficult for any international comparisons to be comparing like with like when you have different countries that are offering a very different range of services at different levels. What we're trying to do in the National fiscal outlook is provide as comparable a comparison as we think we can do at the moment, particularly in Australia's case, looking at the national level rather than just looking at the Commonwealth level. It is a comparison which draws upon data that the OECD pulled together that the IMF use, and I think that it is a reasonable comparison, notwithstanding the fact that different countries have different priorities when it comes to different programs.

**Senator LEYONHJELM:** Ultimately, it's a matter of judgement as to how high is too high, in terms of spending and revenue. But, to the extent that international comparisons influence judgements about that here in Australia, it would be nice to have a true like-with-like comparison, so that those who are influenced by international comparisons are comparing apples with apples. Do you think there's any possibility that you could, in future reports—because you do these every year, I think—

**Ms Wilkinson:** We do.

**Senator LEYONHJELM:** take account of differences in pension funding?
Ms Wilkinson: I'm very happy to take that as a suggestion. The National fiscal outlook is one of our flagship annual publications. We do think it's important to provide this information every year, once all of the Commonwealth and state budgets have been landed. I think that question of how you would control for the size of 'pension', for example, as a per cent of GDP or as a per cent of wages, across countries, would be the thing that you'd actually have to try and think about; how would you estimate it, if you were going to provide that sort of a comparison?

Senator LEYONHJELM: I will leave that as a suggestion at the moment. Thank you.

CHAIR: Before you move on from that, Senator Leyonhjelm, perhaps this might assist. I'm aware of a paper that has attempted to address this issue from my previous life—in the interests of full disclosure—when I was working at the Institute of Public Affairs. Mikayla Novak, a researcher there, attempted to resolve this problem, I think, by going the other way. Rather than just adding Australian superannuation to our tax-to-GDP measures, she attempted to remove some of the equivalent pension schemes from other nations' tax-to-GDP figures to get a more realistic comparison. Her point was that you have to do one or the other in order to equally compare them.

Ms Wilkinson: That's right.

CHAIR: That's a few years out of date now, but that's a paper out there that attempts to do that.

Ms Wilkinson: Correct. We'd be very happy to look at that paper.

Senator LEYONHJELM: I recall that paper, which is one of the reasons why I asked that question. That was some quite good work, but it is a bit old now.

Ms Wilkinson: We're happy to look at it.

Senator LEYONHJELM: Also in that National fiscal outlook report, you indicate that the Commonwealth is expecting significant revenue growth but revenue growth for the states is expected to be subdued. Despite that, all the states, except for Western Australia, are expected to run operating surpluses through the forward estimates period, while the Commonwealth isn't. Is that correct?

Ms Wilkinson: That's correct.

Senator LEYONHJELM: Good.

Ms Wilkinson: Sorry, just to be clear, the Commonwealth obviously does run a surplus by the end of the forward estimates period.

Senator LEYONHJELM: That's right. Well, yes, if you can believe that. You report that WA's own source revenue per capita is more than any other state and that WA, consequently, receives the fewest transfers from the Commonwealth per capita of all the states. We certainly heard them complaining about that. But your report indicates that, if you combine the two amounts, total revenue per capita is greater in WA than in any other state. Is this correct?

Ms Wilkinson: That's correct.

Senator LEYONHJELM: Good.

Ms Wilkinson: If you are referring to figure 2-10, that is correct. What we have illustrated in figure 2-10 is the average state per capita revenue, taking into account both own-source revenue and transfers from the Commonwealth over the five years from 2011-12 to 2015-16.

Senator LEYONHJELM: Yes, that's right. The question, then, is: do you agree that this is relevant to the current debate occurring in Western Australia about whether further tax
increases are justified? In other words, they currently have higher total revenue per capita—the government has higher total revenue per capita in WA than any other state. In your judgement, would that be relevant to the current debate in WA about whether further tax increases are justified?

Ms Wilkinson: That is a matter for the state government. The state government has to look at their fiscal position. They need to look at the sustainability of their fiscal position and they need to consider whether (a) it is sustainable, and (b) if their judgement is that it is not, whether that should be managed through higher taxes or lower expenditure, or some combination of both.

Senator LEYONHJELM: I figured you'd say that. Thank you very much.

Senator McALLISTER: My congratulations, Ms Wilkinson. Can I ask whether you've made any significant organisational changes since you took up your new role?

Ms Wilkinson: No, I haven't made any significant organisational changes. We have one SES band one position, which we have advertised and we will be looking to fill shortly, but I haven't made any other changes to the structure of the organisation.

Senator McALLISTER: I have a couple of questions about the work plan that you released in September. They are really questions of detail within that. Have you spoken to the government about legislating recommendation 12 of the independent review—that is, the recommendation that goes to the timing of the publication of the post-election report on election commitments?

Ms Wilkinson: No, we haven't spoken with anyone in government about implementation of that recommendation.

Senator McALLISTER: Do you plan to?

Ms Wilkinson: We would be happy to speak to government about that but, at the end of the day, it is a matter for government as to whether they wish to bring forward legislation to amend the act in order to change those timeframes.

Senator McALLISTER: They haven't sought advice from you about the implications of implementing that recommendation?

Ms Wilkinson: Not as far as I am aware.

Senator McALLISTER: You've indicated you're seeking to improve budget transparency. Are there areas of the budget that you think are insufficiently transparent at the moment?

Ms Wilkinson: I think it is a continual challenge to try and make sure that budget papers and fiscal issues are presented in a way which is as transparent as possible and is as accessible as possible. The PBO has previously released reports which look at the budget treatment of particular measures, so I am thinking here particularly of the Higher Education Loan Program, where the PBO tried to explain in its entirety what the impact of that program is on the budget. There are sometimes specific programs where we think it is useful for us to provide some information to be clear about what the budget impact and/or the impact on the balance sheet of particular programs is, but when I think about budget transparency, I am also thinking more generally about trying to improve the general understanding of terms, concepts or general positions within the budget. When we draft our research papers, like the national
fiscal outlook and the medium term projections report, one of the things we are trying to do there is to provide that information in a way which is as clear as possible to make it as accessible as possible to the broader audience. So I see budget transparency as being both the way in which we produce the reports that we do and it can also influence individual elements of our research program.

**Senator McALLISTER:** Okay. On one of those questions: earlier this year we spoke to Mr Bowen about the technical note on second-round effects and behavioural responses. At that time he was hoping to publish that by the end of June 2017. Can you give us an update on where that is up to?

**Ms Wilkinson:** Yes. That paper is well advanced. That's a paper which is trying to explain, if you like, how costings are constructed, what a costing is, and why it's the case that one would or one wouldn't include broader macroeconomic effects or second-round effects, or what are also called indirect effects, in costings. As I said, that paper is well advanced, and I would expect that we will be releasing that paper before the end of November. It wasn't published before I was appointed as the Parliamentary Budget Officer. The judgement I have made is that if we are going to release a paper which describes how we may or may not take into account second-round effects or macroeconomic effects, it also makes sense to actually step back and provide more clarity on what a costing actually is. There's a recommendation from the review of the Parliamentary Budget Office that we should provide more transparency in relation to what a costing is—what the process is for compiling a costing. My judgement is that these two papers probably need to be released together, so we have a positive paper which is explaining what a costing is, and then you can explain the next level of detail, which is why you may or may not include this additional level of detail in a costing when you release it.

**Senator McALLISTER:** Understood, thank you.

**Ms Wilkinson:** So they're both coming together. I apologise that it's taken longer than we had hoped. We have released a number of papers over the period since I have been appointed, but this one—to be honest, sometimes it's just that it is actually complicated to express in accessible language some of these technical things that are part of our day-to-day work program.

**Senator McALLISTER:** Finally, I wanted to ask about resources. Have you requested any changes to your staffing allocation?

**Ms Wilkinson:** No, I haven't. We have currently around 41 staff who are at the PBO. As Mr Bowen previously foreshadowed, we are expecting that over the next three years we are going to need to draw down from our special appropriation in order to provide sufficient resources for the PBO over these three years, and he has already foreshadowed that, by the end of the forward estimates period, we will need to be having a discussion with the parliament or with government about ongoing resourcing.

**Senator McALLISTER:** My apologies; when you said, 'he has foreshadowed', who is he?

**Ms Wilkinson:** Mr Bowen. In the previous estimates I think there was quite a long discussion about our resourcing and about how sustainable our resourcing was, and I think Mr Bowen described the fact that we had this special appropriation which was allocated to the
PBO when it was established. It's in the process of being drawn down. We are expecting that it will be fully drawn down by the end of 2021.

**Senator McALLISTER:** Yes. So have you begun a conversation with government about funding, post that time?

**Ms Wilkinson:** Other than the discussion that we have had with the JCPAA, we haven't had any discussion with government directly.

**Senator McALLISTER:** Right. So effectively, that is a conversation with the parliament but not with the government?

**Ms Wilkinson:** Correct.

**Senator McALLISTER:** In your mind, is there a point in time when that conversation needs to commence?

**Ms Wilkinson:** I think it's always useful for these conversations to start well ahead of the time in which you may need additional resources, and I think that's why the fact that our special appropriation would be fully drawn down by the end of 2021 was foreshadowed earlier this year in discussions with the JCPAA. I would expect that over the next year or two we should be having those discussions so that everyone is well aware of the sort of level of resourcing that we would need to supplement the PBO with just in order to maintain the same level of resourcing that we have had over these first five years.

**Senator SMITH:** Congratulations, again, Ms Wilkinson, on your appointment. My question is about reference to media citations in the annual report—it's been a common feature in the annual reports. In your new role as the Parliamentary Budget Officer, how do we ensure that media citations don't become the record of success for the Parliamentary Budget Office and inadvertently bump up against its independent, nonpartisan role, which the Watt review identified as its standout features? How do we strike the appropriate balance between being involved in public policy debates and discussions without compromising the independence and high regard of the PBO?

**Ms Wilkinson:** I guess the way I would think about it is the media citations are one measure of the impact that the PBO research may be having in the broader public discussion. I think it's important that we keep an eye on other indications of how the PBO work is influencing either parliamentary debates or public discussions. One of the things that we have certainly committed to is repeating the survey that we conducted—I think it was in the middle of the last term of parliament—of the key users of the PBO, in order to get a judgement directly from this broad range of stakeholders as to how useful the PBO services and research was. The media citations are a useful way of us getting a sense as to whether we are producing material which is accessible enough to be used in the public debate but it's not the be-all and end-all.

As much as anything else, the thing that we have to be mindful of is how the PBO is perceived rather than just whether it's cited. That comes down to a more nuanced examination of the way in which our reports are received and the way in which they're used in the public debate. It probably would be useful for us to look within the media citations, to get a sense of the extent to which we are being used, in a way which is contributing information to the debate—which is exactly what our objective is—rather than becoming a player in the debate itself.
Senator SMITH: I have two questions regarding the Watt review. The first is a progress report around recommendation 4, which was the proposition of using experts or panels of experts outside of the Parliamentary Budget Office to inform or test the work of the PBO. Could you give us an update in regard to that?

Ms Wilkinson: As I think you're aware, Senator Smith, I'm certainly very much in favour of the PBO drawing upon a broader range of resources in trying to build its capability. We get asked questions across every area of government. We're quite a small team; it's just not realistic that we can have all of that expertise in-house. We have been working through the proposal to implement a panel of external advisers. The way in which we're thinking about it is that this panel is going to work best for the PBO if we use it in a number of different ways. There is likely to be a subset of external advisers who themselves engage directly with our research program, so we'll be using this to seek feedback from them about how we're writing our reports, about the nature of our work program going forward. There are other external advisers who we think it would be useful for us to have identified, who have specific subject matter expertise, and we will be able to use them as part of the process of both benchmarking some of our costing models and our analysis work and also testing ex-post evaluations of some of the costings work that we do. I'm expecting to write to the JCPAA shortly outlining how we're expecting this panel of external advisers to operate. Across the panel of external advisers, the way in which we engage them will probably vary quite a lot depending on the particular expertise that an individual will be bringing to the panel.

Senator SMITH: So it's not that we'll be contracting out the work of the PBO?

Ms Wilkinson: We will not be contracting out any work to this panel of external advisers, and we will not be compromising what are the very important confidentiality provisions that the PBO holds very dearly. We'll be using these people to test some of the ways in which we're thinking about policy areas in order to make sure that when we're providing advice to parliamentarians it's as well informed as possible.

Senator SMITH: We won't be remunerating any of these expert panel members?

Ms Wilkinson: We're certainly not expecting to remunerate any of them. If we were to convene meetings in Canberra, we may pay for travel for them to join us in Canberra. But I think we're looking at all sorts of ways in which we can engage with these people, most of which are likely to be over the phone rather than face-to-face meetings.

Senator SMITH: My final question goes to recommendation 8, which is one that I'm quite interested in. This is about the opportunity that might exist to shift or transfer the responsibility for the Intergenerational report to the PBO. At the moment, the Intergenerational report is owned by government—owned by the Treasury. Recommendation 8 in the Watt review suggested that consideration could be given to transferring responsibility for the Intergenerational report to the PBO on the basis that the contents of the Intergenerational report might be better appreciated and that we might find the contents of the report better taken up by government if it was owned independently rather than being subject to partisanship—which could probably characterise the execution of the Intergenerational report, certainly the last Intergenerational report. Given your Treasury experience, what's your view in regards to that? How difficult might that be to progress towards?
Ms Wilkinson: As you are aware, it is a matter for government as to whether they wish to—

Senator SMITH: Give it up?

Ms Wilkinson: Shift responsibility for the Intergenerational report from the government. Currently, it's a report of the government. Treasury, obviously, do a lot of the work to put the report together, but it is, at the end of the day, a report of the government, and it's a matter for them if they wish to transfer that to the PBO. Whether that would mean the Intergenerational report would then have more influence over the public debate—different people will have different views as to whether that's likely to be the case. I would note that there are PBO-type organisations in other countries that do have responsibility for providing some of that long-term forecasting, so it certainly is done in other countries. The Congressional Budget Office: that's one of their responsibilities. It's one of the responsibilities of the Office for Budget Responsibility in the UK.

In relation to recommendation 8 from the review of the PBO, what we're doing in the way in which we structure our research program is to try and make sure that we are improving the robustness of our medium-term forecasting framework which, to my mind, is pretty integral if you are then going to be thinking about what the longer term pressures and trends are. In two of the pieces of work that we've identified that we would like to at least commence in this year, there's one report on ageing and there's another report, which is looking at the different sorts of pressures on the tax system. Both of those are going to issues—

Senator SMITH: Over the medium to longer term?

Ms Wilkinson: It's over the medium term, but both of those are issues which certainly would affect fiscal outcomes over the medium term and the longer term.

Senator SMITH: In terms of the PBO's current capacity, it wouldn't yet have the capacity to take on an intergenerational-type report. It is something that you would have to move or grow towards if that was to happen?

Ms Wilkinson: I think that the PBO has been building that capability essentially from its establishment. The focus of the PBO work program has been increasingly over time looking at filling the gap in the public policy debate, which is around what the medium-term pressures on the budget are. It's a continuous process. We're certainly anticipating in the 2017-18 year that we'll be continuing to make progress.

Senator SMITH: Great. Thanks very much. Congratulations again.

CHAIR: Are there any further questions for the PBO? As there are not, I thank you very much for your evidence.

Department of Parliamentary Services

[10:16]

CHAIR: I welcome Mr Robert Stefanic, the Secretary of the Department of Parliamentary Services; Dr Dianne Heriot, the Parliamentary Librarian; and officers of the department. I thank DPS for providing information pursuant to the committee's recommendations in the DPS inquiry, which has been circulated to the committee. Mr Stefanic, do you wish to make an opening statement?
Mr Stefanic: If I may quickly make a correction, Chair: in my letter to the committee on 10 October, I made reference to a presentation in relation to the Central Reference Document. I indicated that Ms Pamille Berg and Mr Harold Guida had given that presentation. I should have omitted Mr Guida's name; only Ms Berg presented.

CHAIR: Thank you. Dr Heriot, do you wish to make an opening statement?

Dr Heriot: No, thank you, Chair.

CHAIR: Mr President, do you have an opening statement on this matter?

The President: No, thank you, Chair.

Senator KITCHING: I’d like to have an understanding about the process that's followed when there's a security incident. Just tell me if I'm correct: when there's a security incident, security officers are required to report the details to the director of security operations? Is that correct?

Mr Cooper: Yes.

Senator KITCHING: The director of security operations—is that you, Mr Cooper?

Mr Cooper: No, that's not me.

Senator KITCHING: Who is it?

Mr Cooper: That is Mr Peter Butler.

Senator KITCHING: How are those reports furnished? Do security officers complete a template document? Are there a list of questions that have to be answered?

Mr Cooper: It depends on what we're defining as a security incident. We have incident reports where staff are required to submit a report in relation to an incident. But there are certainly occasions where the nature of the incident might be that it's detected by our security operations room, or advice from the AFP. So it's true to say that the director of security operations is informed of security incidents. However, he may not be the first person informed depending on the nature of the incident.

Senator KITCHING: What's a prescribed turnaround time for reporting an incident—let's say from serious to maybe not so serious. What's a prescribed turnaround time? Is there a prescribed turnaround time?

Mr Cooper: There isn't, except we expect that if it's a major security incident or if it's an imminent issue, it's dealt with immediately. Otherwise we would expect people filling in security incident reports to do so as soon as possible. I note, however, that we have a 24/7 security force. Someone moving onto night shift, or for other reasons relating to their hours or their roster, may not be in a position to provide a report straightaway. But our general rule is that it should be done as soon as possible.

Senator KITCHING: How does the director of security operations provide the reports to the AFP station sergeant?

Mr Cooper: I will invite the acting assistant secretary of the Security Branch to speak about that, but I will add that not all incidents would necessarily be provided to the AFP. Again, it depends on the nature of the incident, the seriousness of the incident—

Senator KITCHING: But you collate them?

Mr Cooper: Yes.
Senator KITCHING: Mr Anderson, the question Mr Cooper has directed to you is: who provides the reports to the AFP station sergeant and how is that done? What formats are used and so on?

Mr Anderson: Those reports are provided to the AFP either via the director of security operations or the assistant director of security operations. They'll usually be emailed to them and then they'll discuss those security incidents in the weekly joint management group meeting.

Senator KITCHING: What's the prescribed time frame for the director of security operations to provide the reports to the AFP station sergeant?

Mr Anderson: There is no prescribed time frame, but they usually provide them as soon as practicable—usually the next working day if the incident has occurred overnight. As soon as they get the incident report, they usually forward them directly to the AFP.

Senator KITCHING: Are there any circumstances where they wouldn't?

Mr Anderson: The only time they wouldn't forward one of those incident reports to the AFP is when the incident is of a minor nature and doesn't require being seen by the AFP.

Senator KITCHING: Are there written guidelines which security officers follow with respect to reporting an incident?

Mr Anderson: There are guidelines. I don't have them with me, but there are guidelines.

Senator KITCHING: Are you able to provide those to the committee?

Mr Anderson: Yes. I will take it on notice to provide them.

Senator KITCHING: When the guidelines are revised, how are security officers informed?

Mr Anderson: The PSS undergo competency management training, a yearly training program to maintain their standards. There are other mechanisms we would use to inform them. There are bulletin boards, daily briefings and team leader briefings at which the team leaders would advise them.

Senator KITCHING: Are the weekly briefings an all-in meeting? Is everyone there?

Mr Anderson: The weekly meeting I am referring to is the joint management group, which is chaired by the Parliament House security controller—the AFP officer position in charge of security here at Parliament House. There are DPS representatives from the PSS there, AFP representatives and representatives from the other chamber departments. These matters are discussed at the weekly meetings of the group.

Senator KITCHING: Mr Cooper, have you ever issued a direction, verbal or otherwise, to one or more security staff to deviate from the prescribed incident reporting guidelines?

Mr Cooper: Not that I'm aware of.

Senator KITCHING: Mr Anderson, can you confirm to the committee that security officers have never been directed, verbally or otherwise, to deviate from the incident reporting guidelines?

Mr Anderson: Not to my knowledge.

Senator KITCHING: Has there ever been an occasion when an incident has been redirected away from the director of security operations to avoid a report to the AFP?
Mr Anderson: Again, not to my knowledge.

Senator KITCHING: Mr Stefanic, if it were found security staff had been given verbal instructions to deviate from procedure in order to withhold information from the AFP, would you take strong action?

Mr Stefanic: I'd need to look at the nature of the incident and then the procedures and policies related to it, but without any further detail it's very hard to make a judgement. Everything turns on what an incident is and how serious it is.

Senator KITCHING: I'd like to know how the department interacts with the AFP. Who interacts with them on a daily basis?

Mr Anderson: I can answer that question. We interact with the AFP on a daily basis. They're present at the daily briefings. I also interact with the security controller of Parliament House on a weekly basis and through other forums such as the joint management group, the IPARC and SMB. We interact with the AFP in that fashion. As incidents arise, we contact the AFP directly.

Senator KITCHING: We have just discussed the process of how incidents are reported to the operations room through the director of security operations and then on to the AFP station sergeant. I think you said the only exception to that would be if there was a minor incident which wasn't worth reporting. I want to clarify that.

Mr Anderson: It would be done on a case-by-case basis. Usually the parliamentary security operations room would be the first point of contact, if there's a security incident. They view the CCTV footage. It's also where the phone lines come into for people to report. They also have the PSS radio network. That's usually the first port of call. From there the PSOR, depending on the time of day, would contact directly either the assistant director of security operations or the director of security operations. Depending on the nature of the incident—if it's a serious incident, they will contact the AFP directly. Keep in mind the AFP are also on our radio network so they can hear what's going on as well.

Senator KITCHING: The AFP would then assess the report and make a determination as to the next steps, is that correct?

Mr Anderson: Correct. Depending on the intensity, duration scale of the incident—if it's a serious incident, the AFP would assume immediate control.

Senator KITCHING: Obviously there's frequent and there's open communication with the AFP?

Mr Anderson: Correct.

Senator KITCHING: Mr Cooper, to the best of your information, knowledge and belief, are you aware of any information associated with the security upgrade works which have been inappropriately disclosed or lost or misplaced?

Mr Cooper: That goes to operational security, and we wouldn't discuss that in a public forum.

Senator KITCHING: I don't want to talk about operational security; I want to discuss the fact that a 1,000-page security manual was lost last November.

Mr Cooper: Senator, I can't comment on that for the reason I've just given.
Senator KITCHING: Okay. How was the manual lost? I'm not asking about the manual or about the details in the manual; I'm asking how a 1,000-page security manual was lost last November.

The President: Senator Kitching, if I could intervene, you have alleged a security document has been lost. The witness has indicated that he can't comment on whether that is correct or not correct because of the potential sensitivity to security or the compromising of security. I think the witness has been quite clear on that. You're now asking him to comment on questions that he really has indicated he doesn't want to comment on.

Senator KITCHING: Chair, on this matter, we are spending $126 million approximately on security upgrades to Parliament House. There's a security manual that's been missing for nearly a year. I'm going to go to some questions around some mitigation that DPS has tried to do which involved the hiring of a contractor to investigate this which started in February. Over the Christmas holidays, no-one did anything. In February, they decided that perhaps they should look into this. I would like to ask some questions about that. I will put them on notice, if they're not able to be asked in a public forum. Remember, this is public money that's being spent and the fact that we are spending a lot of money, $126 million approximately, yet some of this may be undone because a 1,000-page security manual was lost by another contractor. I think this is in the public interest.

CHAIR: Thank you, Senator Kitching. Unfortunately, placing them on notice won't assist you, because the answers have to be provided in public. Please feel free to ask your questions but also tread sensitively—

Senator KITCHING: I'm not asking about what's in the document. I understand the sensitivity.

CHAIR: I understand, but it sounds to me, from their answers, that the circumstances around the allegation of losing a document are also sensitive. Please give them appropriate leeway when asking your questions. Perhaps if your queries have not been satisfied, a private briefing for Senator Kitching might be appropriate.

The President: Chair, can I circumvent this a little bit? I understand Senator Kitching has this right and she is asking for the right reasons. Could I suggest, at a future occasion, that the Finance and Public Administration Legislation Committee be briefed on this particular issue. It is something that's best not to put in the public arena. I will state this for public consumption: there has been no compromise to Parliament House security.

CHAIR: We are just on time for a break. Senator Kitching, perhaps you can return to this matter in 15 minutes time.

Senator McALLISTER: May I ask the President to give consideration to this question over the break: is he invoking public interest immunity in refusing to answer questions posed by senators?

CHAIR: I'm sure the President can consider that over the break.

Proceedings suspended from 10:30 to 10:46

CHAIR: Mr President, over the break did you consider the question asked by Senator McAllister?
The President: I did. The public immunity in relation to security, as discussed with you during the break, is purely about security. I've mentioned this before in other estimates hearings. There are two things we'd be happy to do at any stage—that is, address the committee outside of the estimates process in private on any of these questions in detail. That's a given. That would happen at any stage the committee desires that to take place. The second issue, in relation to costings, may come up later as well. I've indicated in the past that we don't want costings to be itemised, so people can't work out what we're spending on what particular aspects of security hardware, infrastructure and electronics. Moving on to this particular issue, we're happy for Senator Kitching to keep asking the questions, which she's entitled to do. Let us take them on a question-by-question basis. There is no compromise to the security implications here at Parliament House with the allegations that Senator Kitching has raised. However, I'm very conscious, and so are the departmental officials, that the more information that comes into the public arena, the greater that risk is. Provided we can answer the questions with those conditions I've mentioned, we're happy to proceed on that basis.

Senator KITCHING: The fact that the security manual has been lost is common knowledge. There's nothing secret about that. I'm trying to get to the bottom of how this happened and what DPS has done to ensure it never happens again. I know it wasn't DPS who lost the 1,000-page security manual; it was a private entity. You did, I think, then try to mitigate this by contracting with an investigator. That was in about February-March this year. Is that correct?

The President: The secretary and other officers will be able to answer those questions. Thank you for placing that on the record. The Speaker and I have monitored this closely. The DPS have been exemplary in this.

Senator KITCHING: I am not saying that they're exemplary.

The President: Well, in our view they are. You might beg to differ. Secondly, you have indicated a manual is lost. There is no indication or confirmation that that manual has gone anywhere—as in, there is no indication it has gone into hands where it could be used in any other—

Senator WONG: Do you know where it is?

The President: I will let the secretary answer those questions. But I am just indicating that it's—I don't want to leave it out there that this manual is somewhere out there in the public domain. I will invite the secretary now.

Mr Stefanic: As soon as I was advised—or, as soon as DPS was advised, an immediate process commenced to inform and advise and investigate. Within a very short period of time of DPS becoming aware of the loss of the material, I was advised by Mr Cooper, and shortly after that advised the presiding officers of the situation that we had. We followed a process on a timely basis, given that we knew there was a period of time between the documents having been lost and that information having been reported to DPS.

Senator KITCHING: So you knew in February this year?

Mr Stefanic: Correct—to my knowledge, yes.

Senator KITCHING: You were told by the private entity that they had lost it in November 2016: you were told in February, and you acted immediately?
Mr Stefanic: I believe the answer to your questions is yes.

Senator WONG: Can we just get the chronology? We know that the 1,000-page manual was lost in November 2016.

Mr Stefanic: That is what we have been advised.

Senator WONG: By the contractor, is that correct?

Mr Stefanic: Correct.

Senator WONG: The DPS was advised when?

Mr Stefanic: In February.

Senator WONG: How?

Mr Stefanic: I am not sure what the first point of contact was. Perhaps Mr Cooper might have some information.

Senator WONG: Mr Cooper?

Mr Cooper: The relevant party advised my division, and that very day the secretary was made aware.

Senator WONG: My question was how: how were you advised?

Mr Cooper: I believe it was a phone—no, it was a letter.

Senator WONG: A letter in February 2017?

Mr Cooper: Yes.

Senator WONG: In that letter, did they explain why they waited?

Mr Cooper: Those matters have been looked at and resolved—

Senator WONG: Mr Cooper, I just asked a very simple question. I will go to those issues shortly. I asked, in the letter, did they explain why the delay in advising that the manual had been lost?

Mr Cooper: I would have to refresh myself with the letter, Senator, in order to answer your question.

Senator WONG: Maybe you could do that.

Senator KITCHING: Do you have the letter here?

Mr Cooper: No.

Senator KITCHING: Does someone sitting behind you have it?

Mr Cooper: No, Senator.

Senator WONG: We will come back to that; maybe someone can get it. Mr Stefanic, can I just go back to the chronology: in February 2017, Mr Cooper was advised. Were you advised the same day?

Mr Stefanic: I understand, yes.

Senator WONG: What was the date?

Mr Stefanic: I don’t have it in front of me.

Senator WONG: Can we get that, please? And then you advised the presiding officers, when and how?
Mr Stefanic: Normally in these circumstances, I would contact the senior advisers of the presiding officers by telephone.

Senator WONG: That is a process answer. What actually happened on this occasion?

Mr Stefanic: As a matter of course, I would call the senior advisers.

Senator WONG: Yes. Did you do that on this occasion?

Mr Stefanic: Yes.

Senator WONG: On the same day?

Mr Stefanic: Yes.

Senator WONG: Both the Speaker's office and the President's office?

Mr Stefanic: Yes; normally, I would always advise them immediately.

Senator KITCHING: Was the Prime Minister's office informed?

Mr Stefanic: Not by my department, Senator.

Senator KITCHING: Was Mr Keenan informed, as the Minister for Justice? Or was the Attorney-General informed?

Mr Stefanic: The AFP were made aware of it as soon as DPS was made aware of it. Presumably, they would have had their own processes.

Senator WONG: Sorry; who made the AFP aware? Was that you, Mr Cooper?

Mr Cooper: No, that was Mr Anderson.

Senator WONG: Right. So you told the AFP, Mr Anderson?

Mr Anderson: Yes.

Senator WONG: When did you do that, Mr Anderson?

Mr Anderson: The time escapes me, but it would have been within a matter of hours.

Senator WONG: But on that day?

Mr Anderson: Yes.

Senator WONG: So the same day as Mr Cooper gets a letter, Mr Stefanic is advised and tells the President's office, and you then advise the AFP?

Mr Anderson: Correct.

Senator WONG: By letter or phone call?

Mr Anderson: No, in person.

Senator WONG: Mr President, Mr Stefanic said the Prime Minister's office wasn't advised by him. Were they advised by you or your office or—

The President: No.

Senator WONG: Really?

The President: It's a matter for the parliament.

Senator KITCHING: Was the Minister for Justice or the Attorney-General advised?

The President: Not to my knowledge, unless it happened through agency.
Senator KITCHING: I want to come back to the entity that lost the manual, but I want to turn to what DPS did in response, and I understand you hired an external party to conduct an internal audit. Is that correct?

The President: Correct.

Senator KITCHING: What was the turnaround in that?

Mr Stefanic: I believe it was a matter of weeks.

Senator KITCHING: Weeks?

Mr Cooper: What do you mean by 'turnaround'?

Senator KITCHING: You knew about this. Did you do it that afternoon thinking, 'We'd better get our skates on and work out what's happened here'? You took weeks to do this.

Mr Cooper: When you say, 'Get our skates on and work out what happened here,' that's exactly what we did. However, the decision to engage someone to assist us isn't an automatic decision. We were considering the issue and we sought advice from other security agencies to ensure we went about it in the appropriate manner, and then we sought to appoint someone.

Senator KITCHING: How was that consultant sourced and was that consultant known to any employee in the department prior to that person's engagement?

Mr Cooper: I certainly couldn't tell you whether that person is known to anybody in the department. What I can tell you is that that person, by reputation, was known to me and known to Mr Anderson. We were the two people determining who to engage, but I need to point out that neither of us actually knew the person and neither of us had met the person.

Senator KITCHING: But they were someone you trusted.

Mr Cooper: Yes, the person has a very strong reputation and we sought advice from the AFP community that we had a matter we needed to look at. A number of names were presented. I do believe it wasn't the first name. The first person suggested to us was unavailable, and when this name came up we made inquiries as to that person's availability.

Senator KITCHING: Mr Anderson, does that go for you as well, that you didn't know the person who was hired?

Mr Anderson: I knew who he was but I had not personally met this person until they had walked through the door of Parliament House.

Senator KITCHING: When you are hiring someone, is there a conflict-of-interest disclosure at that point?

Mr Cooper: There would be, but there is not a need for one on this occasion. When you don't know the person, it’s—

Senator KITCHING: What did the audit results reveal?

Mr Cooper: I will continue and my colleagues will stop me but, as is the case with a lot of these things, you approach these things with a worst-case scenario. You cover every base early and you determine that you are going about it in the appropriate manner. That's exactly what we did and we did that in a timely manner. Often it is the case, with these things, that the conclusion turns out to be far less concerning than it may have looked, but we are obliged to take the worst-case scenario with these matters and have them investigated in the way we did. The outcome the President's spoken about, there being no substantial breach of security—
Senator KITCHING: But you've never found the document.

Senator WONG: Hang on, I don't understand that evidence. There's no substantial breach of security. It's common ground that a manual has been misplaced, correct?

Mr Cooper: I may have put words in the President's mouth.

Senator WONG: That's correct, isn't it?

The President: That's correct.

Senator WONG: To this stage, as I understand the President's evidence, he is saying we can't find any evidence that it's gone into the hands of someone untoward but we don't know where it is.

The President: Correct.

Senator WONG: So we don't know who's got it. Is that right?

The President: It's definitely lost.

Senator KITCHING: By definition, that means, 'We don't know where it is.'

The President: Correct.

Senator KITCHING: I want to turn back now to the entity that lost the document. What action has been taken in relation to them?

Mr Cooper: The entity was involved in the investigation. They were required to provide their view on what damage could possibly have occurred by the document's not having been found. They were then asked to improve their handling of sensitive information. Further, some contractual documentation has been amended to ensure that we have a greater—

Senator KITCHING: Let me get this right. That sounds like a rap over the knuckles. They have a very large contract. Having lost a document—that, I think we all acknowledge, is a huge problem—they're still involved?

Mr Cooper: Whether or not it's a huge problem comes after the assessment and the investigation. That work is being done. I refer to the President's comments earlier about the assessed outcome of this matter. Yes, the entity is still involved.

Senator WONG: Was this a direct source procurement or did you say there was an open tender process?

Mr Stefanic: The consultant?

Senator WONG: Yes.

Mr Stefanic: It was a direct source.

Senator WONG: What's the list you referred to?

Mr Cooper: We were seeking to gauge the most appropriate person to do the work. My comment was about another name that was offered to us—

Senator WONG: By whom?

Mr Cooper: By either an AFP or an ex-AFP officer.

Mr Stefanic: I've just been advised it was a limited tender, so I wish to correct my misstatement.
Senator KITCHING: Mr Anderson, you're a former AFP officer?

Mr Anderson: That's correct.

Senator WONG: You're correcting your statement to Senator Kitching? You have provided evidence to the committee, Mr Stefanic, that it was a direct source procurement.

Mr Stefanic: I'm correcting my statement, yes.

Senator WONG: The report has been provided to you?

Mr Stefanic: The investigation report? Yes, it has.

Senator WONG: And the date of that?

Mr Stefanic: I don't have the—

Senator WONG: Hang on. Can we come back with some dates? I want the date in November 2016 when they say it was found. I want the February dates, which include contact with the presiding officers' offices et cetera. I want the date on which the report was provided. As I understand the evidence, no contact was made by either DPS or the presiding officers—either you or the Speaker—to the Prime Minister's office, the Attorney-General or the Minister for Justice. Is that correct?

The President: That's correct, to the best of my knowledge.

Senator WONG: And there is an oral report to the AFP on the day the letter was received, is that right?

Mr Anderson: I believe so.

Senator WONG: Is there anything else in the chronology we've missed?

Senator KITCHING: Mr Anderson, did you phone the AFP or was that Mr Cooper?

Mr Anderson: I spoke to the AFP in person.

Senator WONG: The report was received when?

Mr Anderson: I don't have the exact date.

Senator WONG: Around?

Mr Anderson: The contract for the investigator ran from 27 February to 23 March.

Senator WONG: Mr President, you've not disclosed this to any leaders or security committees in the Senate?

The President: No. There has been no need to do that.

Senator WONG: Why's that?

The President: Let me give you a little bit of an outline of the nature of the manual that Senator Kitching has been referring to. Firstly, it was an early draft of some issues.

Senator WONG: I thought we weren't supposed to ask questions about content. If you want us to ask questions about content, I'm happy to ask questions about content.

The President: I'm not telling you content.

Senator WONG: That is exactly what you're talking about.

The President: No, I'm not; I'm just saying it was an early draft. That has nothing to do with content. Secondly, some portions of that early draft are now redundant. Thirdly, a number of aspects have been modified. Finally, about 50 per cent—this is the report the
The presiding officer has got back from DPS—are commercially available products. I think it goes to what Mr Cooper was saying earlier. You start off with the worst-case scenario; once the investigation was completed, our fears were allayed considerably. However, we still don't want to identify aspects of this, so people don't go looking in areas that we don't want people to go looking—just in case matters are discovered. But we're comfortable at the moment that there is no compromise to the security arrangements at Parliament House.

Senator WONG: You're comfortable there's no compromise, despite the document being lost and you not being able to tell who has access to it?

The President: Correct. But also I've just outlined our concerns have been allayed somewhat because of what is actually in that draft.

Senator KITCHING: Why did you hire a private investigator? Why didn't the AFP investigate? And was the private contractor known to the AFP force here?

Mr Anderson: I can't speak to whether the AFP here knew—

Senator KITCHING: Was there full disclosure? That is really what I'm asking. Did you disclose fully to the AFP that this document had gone or was missing? Or did you say, 'We are actually going to look at keeping this all in-house, and not perhaps fully inform other parties'?

Mr Anderson: No, Senator. As I said, I verbally briefed the security controller here. He was comfortable that at this stage it was a matter for DPS, and not a matter for the AFP. I did not raise the investigator's name at that stage because we had not decided to engage an investigator at that stage—until later.

Mr Stefanic: Senator, can I just say that this isn't the sort of matter that the AFP would be engaged in. It was not identifiably a criminal matter so, on the face of it, a required investigator would be able to assess how the information came to be lost.

Senator KITCHING: In earlier questioning I asked you about how reports were provided. You verbally briefed the AFP; I think you said to me earlier that you normally email. Did you email as well?

Mr Anderson: There may be emails, Senator, I can't recall.

Senator KITCHING: Okay, so there was definitely a verbal briefing.

Mr Anderson: Yes.

Senator KITCHING: There might be some other paperwork somewhere, because, I think also in earlier questioning, you said: 'Yes, normally details are covered', and that you would do that in writing. Can we have a copy of those documents as well, please?

Senator WONG: You have to say something, you can't just nod!

Mr Anderson: Yes, Senator.

Senator WONG: Thank you. Can I just ask what the consequences for the contractor were?

Mr Cooper: The contractor has been required to re-assess its document-handling procedures, and it’s been required to make amendments to some contractual documents that will further tighten the requirements around such matters occurring again, and to make clearer their obligations.
Senator WONG: Is this contractor an entity which has contracts with other portfolios?

Mr Cooper: I would assume so.

Senator WONG: Have you disclosed these events to other agencies within government who contract with this particular contractor, in order for them to ensure that the lapses which have demonstrably occurred in relation to this contract don't occur in relation to other—some would argue—more serious contracts?

Mr Cooper: No, Senator.

Senator WONG: Why not?

Mr Cooper: Senator, in dealing with this matter we have sought advice from relevant law enforcement and intelligence agencies. They were all supportive of the way that we're approaching this. They are aware of the matter. They are aware of what we believe the, I guess, level of risk is, and that's as far as we've gone.

Senator KITCHING: Mr President, when you say that the Attorney-General, the Minister for Justice, and the Prime Minister's office, for example, weren't informed unless it was by agency: they may well have been informed by one of the security agencies. Is that correct?

The President: Correct. They haven't been informed from my office, and to the best of my knowledge the Speaker's office.

Mr Stefanic: Can I just add—the information that was lost did not relate to any of the security systems in place at the time, so there was no impact on the security of the parliament.

Senator WONG: That begs the question—this is why we didn't open up content, but you can't open it up, with respect, for your ends only—did it relate to systems that were in place at the time, and for how long were those systems compromised?

Mr Stefanic: I'm trying to assist by providing some context. It is hard to answer questions without it—and this is the whole risk of talking about this in this forum.

Senator WONG: The only people who have brought up content are yourself and the President.

Mr Stefanic: I understand that, but in answering your questions—I know you are looking at timeframes and what has been done, but there's important content that also needs to be in the public domain.

Senator KITCHING: I guess, Mr Stefanic, the point would be that if their paper handling or their handling of their information is not ideal, then you might want to pass on to other agencies in other ministries the fact that this has happened, because it is not just a question of the content, it is a question of their competency.

Mr Cooper: With respect, you're making an assumption as to the seriousness of the matter—

Senator KITCHING: I thought we agreed it was a serious matter that a 1,000 page security manual has gone missing and still no-one knows where it is.

Mr Cooper: The point I wish to make is that an investigation occurred, and were there grounds for taking further action—more formal action referring a matter to the AFP or
ASIO—that would have occurred, and with that would have come notifying other government departments of the major concern. That was not the outcome of the investigation.

CHAIR: Senators, for time management reasons, are you finished on this topic?

Senator WONG: That's fine.

The President: Could I make a final statement?

CHAIR: Yes, Mr President.

The President: I want it very clear in the public domain that this relates to matters that would have taken place in the future, not matters that had actually taken place, which gives the department the opportunity to modify and change if a risk is deemed to be out there because of this issue. I will go through the other aspects again: it was an early draft; a lot of the matters are now redundant; a lot of matters have been modified; and over 50 per cent of the materials that were going to be sourced were commercially available. I will just leave those matters. It is not a serious breach of security, and security at Parliament House has not been compromised.

Senator LEYONHJELM: I'm sure you are aware that the security works occurring around here are a matter of considerable public comment at the moment. I'm just wondering if you might be able to give us an update on how things are going—an estimate of final cost, when you expect it all to be completed and anything else you think the public will be interested in?

Mr Stefanic: Perhaps I might start. The project is running according to program at the moment. I understand its budget is running according to the capital allocation for that project. The works will continue until—I'm not sure of the actual date.

Mr Cooper: Until the end of 2018.

Mr Stefanic: December 2018.

Senator LEYONHJELM: Why is it going to take another 12 months?

Mr Stefanic: There are many aspects to the project. I know a lot of the commentary has been based on fences being worth $126 million. That's just plainly wrong and is ludicrous on the face of it. Without breaking it down into too much detail, senators will have noticed there are significant groundworks currently occurring on both the Senate and the Reps side as well. There's additional hardening activity that is occurring to those entrances and the main entrances to the building. There is also replacement of existing infrastructure in other parts of the building, including the existing CCTV system. There are many aspects to this. Some of the time period that it's taking for this project incorporates delays required because of the sittings in the House—so as not to impede the function of the Houses—so a lot of the work is scheduled around the work of the parliament.

Senator LEYONHJELM: When will the visible signs of construction be completed?

Mr Stefanic: Unfortunately, there will be visible signs of construction until the end of 2018. It will just move, so different parts of the building will be disrupted more than others. There will be more hoardings or scaffolding in different areas at different times, so it will move.

Senator LEYONHJELM: Are you talking about visible signs outside or inside the building?
Mr Stefanic: Predominantly outside.

The President: Can I say, Senator Leyonhjelm, that this is probably the ugliest stage we'll get. I think there'll be gradual improvement but it's going to remain ugly for a while.

Senator LEYONHJELM: It's going to remain ugly for a while.

Senator RHIANNON: Indefinitely, once you get the fence up.

The President: I think you'll be pleasantly surprised. When all the hoarding and protective barriers come down, and some trees are replanted and the shrubbery is back in, I think we'll be asking what the fuss was about. We'll wait and see. Ask me in a couple of years.

Mr Stefanic: You also asked about inside and outside. The project to replace skylights will commence in a few weeks and there will be considerable scaffolding in the Members' Hall.

Senator LEYONHJELM: There's scaffolding on the roof visible through the window. Hasn't that work started already?

Mr Stefanic: Yes, that's not related to the security work. That's a separate project to replace leaky skylights.

Senator LEYONHJELM: Sorry, I interrupted you. You were saying the skylights—

Mr Stefanic: There will be some intrusion internally, as scaffolding is put up while the skylights are being replaced.

Senator LEYONHJELM: Is it on budget?

Mr Stefanic: Yes.

Senator KITCHING: Chair, I put some questions on the security and the building upgrade. Would now be a good time to ask them?

CHAIR: I promised I'd go to Senator Rhiannon and then Senator Xenophon.

Senator RHIANNON: What is the total number of lobbyist passes currently in circulation?

Mr Cooper: I'll just look for you, Senator. As at 31 August 2017, we had 1,710 sponsored passes. Was that the category you were asking about?

Senator RHIANNON: Yes. 1,010?

Mr Cooper: No, 1,710.

Senator RHIANNON: When people are inquiring about the number of lobbyists, that's how many you'd say have access to the building at the moment, 1,710?

Mr Cooper: Of lobbyists, yes.

Senator RHIANNON: You can take this on notice: do you have figures on how many each year? I'm interested in seeing the movement, say, over the last five years for each financial year.

Mr Cooper: I can take that on notice. I don't have those numbers here.

Senator RHIANNON: Is it still the case that you don't release the names of those lobbyists?

Mr Cooper: That is the case, Senator.
Senator RHIANNON: Why is that the case?

The President: Well, Senator Rhiannon, if we start releasing names of everyone who has a pass to Parliament House, apart from the obvious ones, being senators and members, they are prone then to have their pass stolen or prone to be followed. There are many aspects to security in not releasing the names in a public setting. I'm sure that, if you wanted to ask privately if so and so had a pass or not, that would be facilitated but, certainly, not in a public forum.

Senator RHIANNON: In so many other parliaments—the British parliament and the US—all this is on the public record. Why was a decision taken not to release those names?

The President: I don't want to put anyone at risk.

Senator RHIANNON: Are you arguing it's a security issue?

The President: That's exactly what I'm suggesting. It's a potential threat. Why create a threat if you don't need to? But, again, if you want a question answered about who may or may not have a lobbyist pass, I'm happy for that to take place, but not in a public setting.

Senator RHIANNON: In terms of it being judged a security risk, is that your judgement? Have you had written advice from ASIO? How is this determined?

The President: It's been discussed, and it's been determined it is obviously a potential threat. If you issue names of people who have passes to this building, then those people, by definition, will potentially become the subject of someone wanting to obtain their pass and of the potential harm that could follow through that.

Senator RHIANNON: I take from what you've just said, President, that no written advice on this has come about from discussion. Who has had input into that discussion?

The President: I'll check about the written advice. But these matters are discussed constantly, whether it be through offices of departments or just in general terms with offices I deal with: with the Speaker's office, with my office, with staff—

Senator RHIANNON: Any ministerial input?

The President: Potentially. These discussions are ongoing. I discuss matters of parliamentary security on an ongoing basis with many people. It occupies a lot of my time.

Senator RHIANNON: Is it a security issue about a risk to those people, or a risk to this building?

The President: Well, both. If you get someone who wanted to identify themselves as a passholder, they could create a likeness to a passholder, steal the pass, do harm to the person of the pass they've stolen and then enter this building. That's a potential risk.

Senator RHIANNON: So you've had advice. Is there written advice that you can table, or advise us of, and put on the public record? Or is it ongoing discussion, which seems to be the tenor of what you're saying?

The President: It is constantly ongoing. This is a moving feast. It's a live issue, and we have to constantly assess it.

Senator RHIANNON: You are saying it's so important, so where it's coming from needs to be bedded down. Can you take on notice what form the advice takes, whether it is written advice and who from, and, if it's not written advice, how that decision is being made?
The President: I'll take it on notice and I'll see what I can provide back to you.

Senator KITCHING: Are these the orange passholders? Is it possible to break down the 1,710 into categories?

The President: Those are the orange passholders, I think; 1,710.

Senator KITCHING: There are some orange passholders with car park passes. Is it possible to distinguish in that, for example, and is it possible to distinguish into subgroups of the orange passholders?

Mr Cooper: I will ask Mr Anderson to comment on that.

Senator SMITH: Just pursuing that line: is it then possible to distinguish who is a lobbyist registered on the lobbying code and who is a lobbyist who might be a NGO and not registered on the lobbying code?

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

Senator RHIANNON: In 2012—I think this is for Mr Cooper—the review of lobbying regulations revealed there are about 4,000 lobbyists not covered by the regulations. If you're a lobbyist employed by BHP or one of the big corporations, you're not captured by the regulations. How many lobbyists are there estimated today operating in this building who are not covered by the regulations?

Mr Cooper: I would have to take that on notice. I'm not familiar with that report from 2012.

Senator RHIANNON: Mr Stefanic:

Mr Stefanic: Just to restate: we don't make any assessments about who is a lobbyist and who isn't. That's not within our area of purview.

Senator RHIANNON: Senator Rhiannon, it is somewhat less than 1,710, because they're incorporated within that figure.

Senator RHIANNON: If it was 4,000 in 2012—we had a Senate review into this, which the Senate agreed to—how can you make the judgement that it is less than the 1,700?
For two reasons. Firstly, the current figure of sponsored passholders is 1,710. Within that group of sponsored passholders exist people who would call themselves lobbyists. So it is somewhere between zero and 1,710. The department does not keep track—in fact, it does not assess—who is a lobbyist or who is not. These are passes sponsored by senators or members.

Senator RHIANNON: Okay. Thank you.

Senator SMITH: So the senator or member effectively vouches for the passholder?

The President: Correct. And I think the reason that has come down dramatically from 4,000 is that's probably when the Speaker and I started restricting who could have passes to the building.

Senator RHIANNON: On what basis did you make those restrictions?

The President: We just tightened up the provisions for people to obtain a pass, again, because we wanted to limit the number of people coming into this building—into the private areas, the secure areas, of the building.

Senator RHIANNON: So you mean 'tighten up the provisions' in terms of lobbying activities? Was it specifically that, or lots of things?

The President: No. Senators and members had a higher threshold of criteria in which to allocate passes. We conducted a table-top review, if you like, of who had passes to the building and we found there were far too many. We wanted to have legitimate needs for people to come into the building, into the secure areas. Anyone can come into the public areas of the building.

Senator RHIANNON: Thank you.

CHAIR: Thank you. Senator Xenophon.

Senator XENOPHON: I have a short line of respect with respect to the changes of Hansard. Who can help me with that?

Mr McKenzie: I can.

Senator XENOPHON: Thank you. Mr McKenzie, I understand there have been some changes to Hansard such that the editor responsible for the Hansard of a particular set of proceedings is no longer in the chamber; you now have a different system, whereby you have an officer of Hansard in the chamber for half an hour to keep a log but those that actually produce the Hansard are no longer in the chamber. Is that correct?

Mr McKenzie: I will have to take that on notice to get the exact specifics.

Senator XENOPHON: That's broadly correct, though, is it not?

Mr McKenzie: I might ask my assistant secretary to come to the table. While Christine White is coming to the table, what I can say is that we have started a process to look at the use of captioning as the first cut of Hansard. There remains a Hansard operator in the chamber but we are starting to use captioning as a first cut.

Senator XENOPHON: No. Maybe Ms White can assist me on this. This goes to this very fundamental principle about the importance of Hansard properly and faithfully recording the proceedings of the parliament. The system has changed, has it not, so that the editor
Ms White: Yes, that is correct. The—

Senator XENOPHON: Before we go any further, can you tell me what other parliaments undertake that process? My understanding is that the House of Commons and, indeed, many other parliaments that use Hansard, still have the editors, those responsible for producing the Hansard for that particular set of proceedings, in the chamber so they get the full context and the nuances of what is actually going on in the chamber.

Ms White: I'm not aware that this particular practice is adopted in other parliaments.

Senator XENOPHON: So we're in uncharted water. Other parliaments take the view that it's best to have the person responsible for the Hansard for those sets of proceedings, for that particular period of time, actually in the parliament; correct?

Ms White: That would be correct.

Senator XENOPHON: So we've gone down another path where you don't actually have the Hansard reporter actually in the chamber responsible for accurately reporting those proceedings?

Ms White: In the process of producing the Hansard, the editors actually access the recording of the proceedings—

Senator XENOPHON: It's not the same though, is it?

Ms White: They still have access to the log that they're maintaining within the chamber.

Senator XENOPHON: What's been put to me is that the reason you have Hansard editors in the chamber is so they can get the context of the interjections, the nuances of what is happening. They're actually there in the chamber to faithfully record the proceedings of the parliament. Other parliaments haven't gone down the path we have.

Ms White: We are relying on our colleagues to produce the log and record the interjections and so forth for a period of time. The editors who are back at their desks are then doing the transcribing and editing.

Senator XENOPHON: It is not how it was envisaged when Thomas Hansard first printed off Hansard so many years ago, is it?

Ms White: No, and technology has changed as well.

Senator XENOPHON: But it hasn't changed in the sense that other parliaments around the Commonwealth aren't adopting what this parliament is doing?

Ms White: Not that I am aware of.

Senator XENOPHON: What quality assurance mechanisms are there now compared to previously? My understanding is that the main quality assurance is an external error rate coming from members who happen to read Hansard and pick up any errors. Hopefully they are not trying to change the meaning of what they said—you need to be aware of that. Quality assurance in Hansard has changed over the years, has it not? You don't have the internal quality assurance that you used to?

Ms White: We do still have the same quality assurance in the sense that the section of audio, or the transcript of it, does go through two sets of hands—that is, the work is subedited.
That approach is the same. It has been in place for many years. There was a period during which, due to the ratio of trainees to trained editors, we weren't subediting all the trained editors' work. That has now been reinstated. That has come at the same time as—

Senator XENOPHON: I appreciate that. Given the time constraints, could you take it on notice to detail what the quality assurance processes have been in the past, in the last few years, and what they are now?

Ms White: Okay. Senator XENOPHON: My concern is whether there are any plans to further cut the Hansard workforce, which might then impact on the quality of Hansard in faithfully reflecting what is occurring in our parliament.

Ms White: Okay. Would you like me to take that on notice?

Senator XENOPHON: Could you tell us about the workforce plans now?

Ms White: We are introducing a couple of new measures at the moment. We have made a change to how our Hansard editors are rostered. We are using what we call open rosters. This coincides with your initial observation about the change in practice with respect to editors being in the chamber. With open rosters, rather than rostering our staff to sit in the chamber for 7½-minute turns, we have one person there for 30 minutes. Open rosters mean that when an editor finishes one turn—that 7½ minutes of audio—they can then move straight onto the next available turn, as we call it, rather than having an assigned turn every hour and a half.

Senator XENOPHON: My final question relates to you, Mr President. This will probably be my last question to you in estimates.

The President: I will miss them severely!

Senator XENOPHON: Yes, I can tell by the grief-stricken look on your face. Given the fact that we are undertaking this experiment with Hansard that other parliaments around the Commonwealth have not—that we are losing the immediacy of the editors being in the chamber—could you take it on notice to discuss this issue with the Speaker of the House of Representatives and to look closely into this issue? I understand it is an efficiency measure, a cost-saving measure. But I would have thought that, if there were one thing we shouldn't be scrimping on in this building, it is making sure that Hansard truly and accurately reflects what goes on in the chamber—all the nuances and subtleties that you can't get under the new system, a system which seems to be something that other parliaments in the Commonwealth are not going anywhere near.

The President: Thank you, Senator Xenophon. I share your concern. The Hansard should be the absolute accurate record of proceedings in the chamber. I will discuss it with the Speaker and, if there is anything I need to report back, I will. However, I think it is something we should monitor and monitor closely.

Senator McALLISTER: I want to come back to the security works. Under these interim arrangements while the works are being completed, can I ask what disability access arrangements are in place, particularly around the works on the Senate and House of Representatives entrances?

Mr Stefanic: Yes. We will be allocating additional parking spaces within the public car park for people with mobility issues, so that they are not disadvantaged in terms of having a
space that they can access; I'm mindful, however, that it may not be as close to their office or
the area where they work as where they would have previously parked.

Senator McALLISTER: Right. So while the lifts are not functioning between the Senate
and House car parks and the main part of the building, the only lift access from a car park to
the building will be via the main car park, is that correct?

Mr Stefanic: It will be from the public car park and from the ministerial car park.

Senator McALLISTER: Have you done an assessment about whether that meets the
relevant guidelines for disability access for the building?

Mr Stefanic: Under normal circumstances, we actually exceed requirements for disability
access in the public car park, in terms of the actual allocation of spaces. Where we do not
comply is the gradient of the spine ramp that is currently in the public car park. As part of the
works we'll be conducting next year in the public car park, we'll look at remedying the issue
of the gradient.

Senator McALLISTER: I am not intimately familiar with the relevant guidelines, but do
temporary arrangements—where people with mobility issues will only be able to access
the building via either the public car park or the ministerial wing—meet the relevant
guidelines for the building?

Mr Stefanic: I understand that the ramps that will be put in—in addition to those
additional spaces being created—will meet the guidelines for access.

Senator McALLISTER: So, in the absence of work to change the arrangements for
ramps, it wouldn't meet the guidelines. When will the work related to the ramps take place?

Mr Stefanic: It is not yet scheduled. We haven't yet resolved the tender process for what
we are calling the group 3 works. The group 3 works will encompass the forecourt
redevelopment as well as what we are referring to as a public car park enhancement.

Senator McALLISTER: Right, so group 3 is the forecourt and the public car park, and
you haven't scheduled those but you expect them to be undertaken in 2018 sometime. Is that
correct?

Mr Stefanic: For the group 3 works, that is currently the plan; yes.

Senator McALLISTER: When do we expect the lift access in the Reps and Senate car
parks to be disabled?

Mr Stefanic: I perhaps might ask Mr Healy, who I notice has conveniently taken his place
at the table. He might be able to assist you, Senator.

Mr Healy: The lifts are currently scheduled to be offline during this coming summer
period. They are to be offline at the same time as we are upgrading the entrances on the
Senate and House of Representatives sides of the building.

Senator McALLISTER: When you say the summer period, what does that refer to?

Mr Healy: They are currently scheduled to begin in late December. But there are a few
issues at the moment, that I am working through, so I am not able to give you firm dates at
this point.

Senator McALLISTER: But no sooner than late December?

Mr Healy: No sooner than late December, no.
Senator McALLISTER: If there are issues with timing, the question then becomes questions of completion and whether the works will have been completed when senators and members return in February. Is that correct?

Mr Healy: The lifts will be offline for about 10 to 12 weeks to do the actual lift refurbishment work, but the refurbishment of the entrances will actually take longer than that period. So the idea is to do the lift works inside the same window as we are doing the entrances. If the entrances need to move, I will move the lifts to match.

Senator McALLISTER: I understand. Will the lifts be offline only for the period in which the lift refurbishment takes place? Or will the lifts be offline for the entire period of works associated with alterations to the Senate and House entrances?

Mr Healy: The lifts will be offline for a longer period than it takes to do the lift refurbishment works, because the lift will effectively come to a space that you cannot get out of at the ground level. The period that the lifts will be unavailable will be the period that we are doing the upgrade of the entrances, not the period to do the upgrades of the lifts themselves.

Senator McALLISTER: You indicated that the lift refurbishments are estimated to take 10 to 12 weeks. What's the overall window of time allocated in the project plan for the refurbishment of the entrances?

Mr Healy: The overall period to do entry refurbishment is approximately 20 weeks.

Senator McALLISTER: That's five months, so if it begins in late December there's no possible way it can be completed by the time we get back in February.

Mr Healy: No.

Senator McALLISTER: So the lifts are going to be out for 20 weeks, at this stage, assuming the current timetable, to the end of May.

Mr Healy: Around those dates.

Senator McALLISTER: We are now anticipating five months—and we don't know when the group 3 works on the public car park will commence.

Mr Healy: We have not yet let a variation for the group 3 works. It's very close to being let. I anticipate that during this financial year it will be mainly at planning phase, a design phase, and the works on the car park will actually be next financial year.

Senator McALLISTER: We are now, from what I can understand, approaching a period where there will be no disabled access to the building, that is compliant with the guidelines, for five months—from December through to May—and that is the best-case scenario.

Mr Healy: We expect to have six spots allocated in the ministerial area, and that is fully compliant, but the additional spots will be added in the public car park and, as the secretary explained, there are issues to do with the ramps.

Senator McALLISTER: But those issues to do with the ramps are not going to be attended to until the group 3 works, which are not going to commence until the financial year which follows. We can conclude that during this period, when the Senate and House entrances are being attended to, between December and the end of May, there will be no compliant disability access to the building except via the ministerial wing, which has quite restricted availability for other reasons to do with security.
Mr Stefanic: I can see where you are headed, Senator. We will be mindful that we don't reduce the number of available spaces, where the crossover of those works may potentially occur. It's a serious consideration.

Senator McALLISTER: But I'm not actually concerned about the availability of spaces—although perhaps I should be, based on your answer. My immediate concern is that it sounds as though the ramps are not compliant, so now there is no compliant access.

Mr Stefanic: Because of the construction of the building when it was, we are not required to achieve contemporary DDA compliance. We comply from the point of time at which it was constructed, but the requirements have moved since then. It's just that we don't meet current DDA requirements.

Senator McALLISTER: We expect to remedy that in the second half of next calendar year.

Mr Stefanic: Correct.

Senator McALLISTER: I want to come back to the questions Senator McKenzie and others were pursuing about the trees. I think 20 trees have been removed so far. Are any of those to be replanted?

Mr Stefanic: Yes. Our intention is, after the works are completed with the fencing, that there will be significant shrubbery planted on both sides of the fences that are being installed, and that includes in the landscape area where the shrubs have also been removed. We are currently developing a plan which will see replanting of trees in the areas where they have been removed. We are in discussions with one of the original landscape designers to ensure that what we put in place is appropriate for the conditions—and what we've learned in the last 30 years—and that we will meet the design integrity requirements.

Senator McALLISTER: Is there any contemplation of replanting the mature trees that were removed?

Mr Stefanic: That species of tree is something we will be looking at.

Senator McALLISTER: But the specific, individual mature trees? They've just been removed and disposed of, have they?

Mr Stefanic: No, no—of course, yes.

Senator McALLISTER: How were the bushes and shrubs that were removed from the garden beds between the Senate and House of Representatives slip-roads and Parliament Drive disposed of?

Mr Stefanic: I believe they would have been mulched.

Senator McALLISTER: Who made the decision, ultimately, to do that rather than to sell them or dispose of them by some other means?

Mr Stefanic: The majority of native species can't be transplanted. They tend to die if you disrupt them.

Senator McALLISTER: So it was contemplated by the department but you received advice—

Mr Stefanic: We haven't specifically sought advice about the salvaging of the shrubbery. One thing we did look at was, when we realised that the shrubbery would have to be
removed—it's my understanding that the shrubbery has been replaced two to three times since
the construction of the building, so the shrubbery that's there is not original.

Senator WHISH-WILSON: Does the department order plastic bottles for schoolkids
when they come and visit Parliament House and do their tours?

Mr Stefanic: I might ask Myra croke.

Ms Croke: Yes, we do.

Senator WHISH-WILSON: Is there any possibility that you could source an alternative
to plastic bottles?

Ms Croke: We are looking at other options for what we could do.

Senator WHISH-WILSON: Could you give us an outline of what they might be?

Ms Croke: Can I take that on notice? I haven't got that detail with me. We have been
looking at what we could do, even the sizing of the bottles and whether we would use cups,
but I will take that on notice and give you specific detail.

Senator WHISH-WILSON: As a matter of interest, how many would you order annually
for the school packs?

Ms Croke: Schoolchildren visitors are in the—the number range is 100,000 to 120,000,
typically, in a year. I would have to check the precise number of plastic bottles that we order.

Senator WHISH-WILSON: So we're a pretty big consumer of plastic bottles?

Ms Croke: Yes.

Senator WHISH-WILSON: I don't think I need to say more. I will check with you next
time. We have glass in front of us here, but when we go to various hotels around the country
for Senate hearings—and there are thousands of meetings—has there been any discussion
about having a unified or coded process to ask them to also provide glass rather than plastic
bottles? What kind of process could we go through to—

Mr Stefanic: That would be a matter for the Department of the Senate and the Department
of the House of Representatives. It's not something that DPS has—

Senator WHISH-WILSON: It's not something that DPS would look at.

The President: I'm very happy to raise that matter with the Clerk for you.

Senator WHISH-WILSON: Thank you. The environment committee is now doing that,
but it would be good if other committees could take that on board.

I'm not sure who to direct my next question to, and it's something I've wanted to ask for
nearly a year. For COMCAR drivers—who we all think are fantastic—it was put to me that
even in the middle of summer they have to wear their jackets and ties. It's a bit of an archaic
practice considering—I don't often wear a tie in the Senate! Most other industries and
workplaces are quite flexible around this. Is it possible that the tradition that has them having
to wear jackets and ties could be reviewed, especially for the summer months?

The President: That is a matter for the Department of Finance; however, again, I'm very
happy to raise that with the Department of Finance, unless you want to do it personally when
they meet?
Senator WHISH-WILSON: I'll see how I go. But if I could raise it with you, Mr President, and follow up, it could be, perhaps, something for the Senate to consider.

Senator SMITH: Next you'll be suggesting the air-conditioning in the cars—

Senator WHISH-WILSON: Don't get me started on that! I think we should be planting a row of trees along where their cars are stacked, but I understand there may be some security implications in that. But, certainly, shade from trees would reduce power bills from running cars with air-conditioners for hours on end. Perhaps I could ask you to consider that as well, Mr President?

The President: I'll add it to my list, Senator Whish-Wilson.

Senator SMITH: The Parliamentary Education Office and the subsidy that's used by schools to bring students to parliament here in Canberra, who can answer some questions in regards to that?

Mr Stefanic: The Parliamentary Education Office is run by the Department of the Senate.

Senator KITCHING: Mr Stefanic, I take it that you have responded to some questions on notice that relate to the dollar value of temporary personnel services. I can give you the QONs, if that helps—50, 104, 54 and 69. I've done you the good service of adding that up over an 11-month period. You've spent $7,928,697 on temporary staffing. I was a little surprised that it was so high—on a monthly basis that is $720,790. Can I ask what your strategy is to allow the department to spend just under $8 million in an 11-month period on temporary staff, labour hire and recruitment services?

I notice Mr Creagh is here, I want to ask you questions about breaking down those figures. I'm happy for you to take this on notice: could I have a breakdown of taxpayer dollars spent on temporary staff and labour hire for each division, branch and subbranch for the entire department for the past two financial years and for what positions? A breakdown of taxpayer dollars spent on the engagement of recruitment agencies for each division, branch and subbranch for the entire department for the past two financial years? And the purpose of the engagement? And details for every position advertised, positions filled and the term of each position broken down for each division, branch and subbranch? I would also like to know about the advertising. Were those positions advertised on the DPS website? Otherwise, how were they advertised? How was a successful applicant engaged—was that person selected from the application submitted on the DPS website or was the successful applicant hired via a recruiter? I would like to know which positions were recruited only through the services of an engaged external recruiter?

Mr Stefanic, I would like to understand how recruitment activities are managed? Is a comprehensive report furnished?

Mr Stefanic: Could you repeat the question again?

Senator KITCHING: I would like to understand how recruitment activities are managed, because $8 million is quite a lot. I would like to know how temporary staffing is managed. Is there a report? I am happy for you to take this on notice because we are well over time. Is there a comprehensive report and where is it? Is it public? How do I locate that? I note that the Parliamentary Service Amendment (Managing Recruitment Activity and Other Measures) Determination 2017 was tabled a couple of weeks ago. Can the department tell me how the
tabling of this determination affects internal processes and procedures? Chair, I do have another question that relates to the entitlements audit.

Mr Stefanic: Just before you hop to the next line of questions, we will get that information for you. The thing that is important to put on record is the bulk of that expenditure relates to labour hire for catering. All the staff costs are parked against revenue generated by catering.

Senator KITCHING: So you are saying the majority of $720,000 per month is for catering staff? Is that correct?

Mr Stefanic: To give you—

Senator KITCHING: Why are you hiring? That is what I am really asking.

Mr Stefanic: It is the fluctuation and the loads within the building. For example, on a sitting week where there are lots of functions at Parliament House, we need to ramp up our staffing levels considerably to meet not only the dining needs but also the number of events at Parliament House. On a non-sitting week, when there is not a lot of activity, we don't need that amount of core staff. The idea of the temporary employment arrangements allows us to ramp up at very short notice to meet the needs of the parliament.

Senator KITCHING: Thank you for that, but if you could give me some further detail on notice that would be appreciated. Thank you.

Mr Stefanic: No problem.

Senator KITCHING: I have some questions in relation to the auditing around the fact that you have two recruitment systems running, Kronos and SAP. There was a question from Senator Bernardi last year around this. I think you said you were moving from one system to another. This was going as you expected—'Quite smoothly,' was the response to his question. What about people's leave entitlements, and did the audit results indicate that employees' leave entitlements are affected by the transfer from one system to another and the fact that I can't find it in your enterprise agreement, that you are able to deduct automatically if there's been an overpayment, in terms of leave?

I draw your attention to section 324 of the Fair Work Act, which does not enable you to make any deductions from people's pay, which I think is what has been happening, unless it is in someone's enterprise agreement. If you can point me to a clause in your enterprise agreement that allows you to do that, I would be grateful—in fact, I have a copy here—but I would like to know: firstly, are you making deductions from employees' pay packets because there has been an overpayment of leave; and, secondly, is that overpayment due to the fact that it's not the employee's fault but rather you are transferring between systems and people are being penalised because the transfer is not going as smoothly as one might think?

Ms Croke: I would like to clarify a couple of issues and then answer your questions. Of the systems you are talking about—SAP and Kronos—SAP is our current payroll system. It is also the system that supports a lot of other arrangements in the department but our payroll is on SAP. Kronos is, primarily, a rostering system; it is used for staff in the department who are on a roster. The issue you are referring to with leave is an issue that arose when we transferred from our previous payroll system, Chris21, to SAP in February 2015. So we are aware that there is an issue, and it's quite technical and has taken us quite a while to sort through. The pay data that transfers across, from the number of hours that people have
worked and recorded on Kronos, transfers across as a pay data file to SAP to create people's payments. From that, their leave records and their leave accruals are calculated.

Senator KITCHING: Are you making deductions from people's pay packets?

Ms Croke: Not without talking to the staff. Normally when people apply for leave and if they haven't got a credit they know about it, and they talk to HR and that's resolved. The issue we have here—

Senator KITCHING: How are you talking to them? Are you having a discussion? You are, obviously, far more expert than I, but I would put that in writing. Have you got any emails between you and the staff saying, 'Look, we did make an overcalculation; we are going to ask you to pay back'? And, by the way, I'm not sure it's really the employee's fault if the systems aren't transferring data properly.

Ms Croke: I accept—

Senator KITCHING: I would further say that, in fact, you may be in contravention of section 324 of the Fair Work Act.

Ms Croke: We have given initial advice to all the affected staff to explain to them what's happened and we explained the process we have gone through. We are then proposing to give very detailed advice to each employee affected which will give them a complete outline of the impact on their leave records. So they will get that advice.

Senator KITCHING: So you have deducted, without having given the records—is that right?

Ms Croke: We are giving them the advice. We haven't deducted anything at this point in time. And the issue we've got is we need to correct it and run it all within one pay period so that we've got the records accurate—because we are actually going back and trying to correct some of the records. We need to run it, tell staff what the impact is; in a number of cases we actually—

Senator KITCHING: Well, not tell staff; because what you have actually said previously is that you would have a discussion with staff.

Ms Croke: And we are having that discussion, and we will continue to have that. But we want to give each affected employee quite a detailed record of the impact on their leave. There are some people who are owed leave. There are some people who have either been over-credited or their leave has not been deducted correctly, and therefore they owe leave to the department; in effect, a debt. So we are working through all those issues. We will continue to talk to staff about that as we go.

Senator KITCHING: I did promise the chair I would try to finish at high noon, so I will do that, but I will put a series of questions on notice about this issue.

Senator WONG: Very quickly on another point, which is the cleaners' contract, Mr Stefanic. I don't want to go through the whole kit and caboodle, but will it be resolved in a manner that deals with the concerns that have been previously raised in this committee?

Mr Stefanic: I certainly would hope so, Senator. I've met on one occasion with the President's Senate leaders group. Following that meeting, I also spoke to Senator Lines in relation to concerns she had in relation to the contractual arrangements. As I have indicated previously, we have an internal and an external cleaning contract. What we are looking at

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doing is aligning the two, and we have brought forward the work for development of a contract for the internal cleaning, so that when June 2018 rolls around we are ready to go with the new arrangements. We will be putting a request for tender out this week, which is broken up into a number of packages which will provide contractors with the opportunity to tender for all or pieces of those packages. The main point of that process is to establish some pricing, and to do a tender evaluation. At that point, we would also—and the presiding officers have asked me to look at this—see if there's any merit in having any of those services provided in-house.

CHAIR: There being no further questions for the Department of Parliamentary Services, I thank them and the President for their evidence this morning.

The President: Thank you, Chair.
PRIME MINISTER AND CABINET PORTFOLIO

In Attendance

Senator Brandis, Attorney-General
Senator Cash, Minister for Employment, Minister for Women and Minister Assisting the Prime Minister for the Public Service

Department of Prime Minister and Cabinet

Outcome 1

Overview

Dr David Gruen, Deputy Secretary, Economic

Economic Group

Dr David Gruen, Deputy Secretary
Mr Simon Duggan, First Assistant Secretary, Economic Division
Mr Wayne Poels, Assistant Secretary, Regulatory Policy Branch/Executive Director, The Office of Best Practice Regulation
Ms Dominique Lowe, Assistant Secretary, Commonwealth State Relations Branch
Ms Tanja Cvijanovic, First Assistant Secretary, Policy Innovation and Projects Division
Ms Gemma Van Halderen, First Assistant Secretary, PC Inquiry into Data Availability and Use.
Ms Kelly Pearce, Assistant Secretary, Environment, Energy and Climate Change Branch
Mr Duncan McIntyre, Assistant Secretary, Policy Innovation and Projects Division
Ms Tara Oliver, Managing Director, Behavioural Economics Team of Australia

Social Policy Group

Ms Lin Hatfield Dodds, Deputy Secretary
Mr Nathan Williamson, First Assistant Secretary, Social Policy Division
Ms Susan Fitzgerald, Assistant Secretary, Health
Ms Linda Laker, Assistant Secretary, Education
Ms Ailsa Borwick, Assistant Secretary, Social Services and Immigration
Mr Geoffrey Brown, First Assistant Secretary, PFAS Taskforce
Mr Chris Carlile, Assistant Secretary, PFAS Taskforce
Ms Patricia Bergin, First Assistant Secretary, Office for Women
Ms Melissa Cranfield, Assistant Secretary, Office for Women
Ms Rachel Livingston, Deputy Branch Manager, Office for Women
Ms Rachael Farrell, Senior Advisor, Office For Women

Innovation and Transformation

Ms Mary Wiley-Smith, Acting Deputy Secretary
Mr Luke Yeaman, First Assistant Secretary, Industry, Infrastructure and Environment
Ms Julia Pickworth, Assistant Secretary, Infrastructure, Population, Agriculture and Regional Development Branch
Mr Neil Williams, Assistant Secretary, Industry, Innovation, Science and Communications Branch
Ms Claire Howlett, Acting First Assistant Secretary, Cities Division
Ms Kate Lynch, Assistant Secretary, Cities Division
Mr Oliver Richards, Assistant Secretary, Cities Division

Governance Group
Ms Yael Cass, Acting Deputy Secretary
Ms Paula Ganly, First Assistant Secretary, Ministerial Support Division
Ms Philippa Lynch, First Assistant Secretary, Government Division
Ms Charlotte Tressler, First Assistant Secretary, Financial Services Division
Ms Michele Graham, Acting First Assistant Secretary, Cabinet Division
Ms Celeste Moran, Assistant Secretary, Legal Policy Branch, Government Division
Ms Callie Zorzi, Acting Assistant Secretary, Parliamentary and Government Branch, Government Division
Ms Emma Greenwood, Chief People Officer, People Branch, Corporate Services Division

National Security
Mr Allan McKinnon, Deputy Secretary
Ms HK Yu, Acting Deputy Secretary
Mr Hugh Jeffrey, Acting First Assistant Secretary, International Division
Ms Kylie Bryant, First Assistant Secretary, National Security Division
Mr Lee Walton, First Assistant Secretary, Information Sharing and Intelligence Division
Mr Simon Merrifield, First Assistant Secretary, ASEAN-Australia Taskforce
Mr Lee Goddard, Assistant Secretary, South, South-East Asia, Americas and the Middle East Branch

Cyber Security
Mr Alastair MacGibbon, Deputy Secretary
Ms Sandra Ragg, First Assistant Secretary, Office of the Cyber Security Special Advisor

Commonwealth Counter-Terrorism Coordinator
Mr Tony Sheehan, Commonwealth Counter-Terrorism Coordinator

Australian Public Service Commission
The Hon. John Lloyd PSM, Australian Public Service Commissioner
Ms Stephanie Foster, Deputy Australian Public Service Commissioner
Ms Kerryn Vine-Camp, First Assistant Commissioner
Ms Annwyn Godwin, Merit Protection Commissioner
Ms Clare Page, Group Manager, Corporate
Mr Marco Spaccavento, Group Manager, Workplace Relations
Ms Kerren Crosthwaite, Group Manager, Employment Policy
Ms Donna Tait, Acting Group Manager, Workforce Information
Ms Debbie Miller, Group Manager, APS Reform
Mr Patrick Palmer, Group Manager, Tribunals
Ms Liz Quinn, Group Manager, Centre for Leadership and Learning

Social Policy Group
Ms Lin Hatfield Dodds, Deputy Secretary
Mr Nathan Williamson, First Assistant Secretary, Social Policy Division
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Mr Geoffrey Brown, First Assistant Secretary, PFAS Taskforce
Ms Patricia Bergin, First Assistant Secretary, Office for Women
Ms Melissa Cranfield, Assistant Secretary, Office for Women
Ms Rachel Livingston, Deputy Branch Manager, Office for Women

Independent National Security Monitor
Ms Kylie Bryant, First Assistant Secretary, National Security Division
Dr James Renwick, Independent National Security Legislation Monitor

Infrastructure and Project Financing Agency
Mr John O’Neil, Acting Chief Executive Officer
Mr Bill Brummitt, Chief Operating officer

Office of the Inspector–General of Intelligence and Security
Ms Margaret Stone, Inspector–General of Intelligence and Security
Mr Jake Blight, Assistant Inspector–General of Intelligence and Security

Digital Transformation Agency
Mr Gavin Slater, Chief Executive Officer
Mr Peter Alexander, First Assistant Secretary, Digital
Dr Lesley Seebeck, First Assistant Secretary, Investment and Advisory
Mr Jose Del Rio, Acting First Assistant Secretary, Strategy
Ms Angela Chow, Acting First Assistant Secretary, ICT Procurement
Mr George-Philip de Wet, Acting Assistant Secretary, Chief Financial Officer
Ms Joanne Cantle, Acting Assistant Secretary, Human Resources
Ms Genine Johnson, Acting Assistant Secretary, Communication and Engagement

Observer
Ms Katie Puttock, Chief of Staff

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE
National Australia Day Council

Jennifer Barbour, Chief Executive Officer
Carolyn Ludovici, General Manager, Programs & Operations (Observer)
Damian Tunney, General Manager, Communications & National Network (Observer)

[12:05]

CHAIR (Senator Paterson): I now welcome the Attorney-General, Senator the Hon. George Brandis, representing the Prime Minister, and officers of the Department of Prime Minister and Cabinet. We are examining outcome 1.

I 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)

Witnesses are reminded a statement that information or a document is confidential 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 set 8 December 2017 as the date by which answers to questions on notice are to be returned. Attorney-General, do you wish to make an opening statement?

**Senator Brandis:** No, thank you.

**CHAIR:** Dr Gruen, do you wish to make an opening statement?

**Dr Gruen:** I have a short opening statement.

**CHAIR:** Please proceed.

**Dr Gruen:** Since the last hearing, Mr Allan McKinnon, Deputy Secretary National Security, has been working on the establishment of the Office of National Intelligence and the new Home Affairs portfolio. Ms HK Yu has been acting as the deputy secretary for national security during this time. On 18 September, Dr Steven Kennedy was promoted to the role of secretary of the Department of Infrastructure and Regional Development, and Ms Mary Wiley-Smith is acting as the deputy secretary of innovation and transformation. On 3 October, Ms Elizabeth Kelly, Deputy Secretary Governance, joined the Department of Industry, Innovation and Science and Ms Yael Cass is acting as the deputy secretary in charge of governance. I have an updated organisational chart for the committee which I'm happy to table.

**CHAIR:** Thank you, that will be helpful.

**Senator Wong:** I will start with the COAG secretariat or support group within the department. Which deputy secretary is that under?

**Dr Gruen:** Ms Lin Hatfield Dodds.

**Senator Wong:** If I wanted to ask for the discussion of new terrorism offences that was on the COAG agenda, I go to you, Mr Sheehan?

**Mr Sheehan:** Yes.
Senator WONG: There was an article by Mr James Massola of the SMH earlier this month which described a leaked copy of the meeting agenda, including a reference to the range of counter-terrorism issues, the creation of an offence to possess instructional terrorist material and to change terrorism hoax criminalisation. Are you aware of that article?

Mr Sheehan: I don't remember the article precisely, but I expect that I would have read the article at the time.

Senator WONG: Can I table a copy of that? I am going to ask what happened as a result of that. Maybe you want to get the article first. Do you want me to come back to it, Chair, or just wait?

CHAIR: Yes, please. Why don't you go on to another matter while we're waiting.

Senator WONG: But I want to finish this matter!

CHAIR: We can come back to it at any time, Senator Wong. It's your call.

Senator WONG: Was any action taken as a result of the article being published? I will ask questions about the old chart, while the article is being obtained. We have an acting arrangement in innovation and transformation, an acting arrangement in governance, an acting arrangement in national security but I understand that the intention is for Mr Mackinnon to return post the establishment of Home Affairs and the Office of National Intelligence. Is that right?

Dr Gruen: Yes, that's the intention.

Senator WONG: There is also an acting FAS in cyber security. There are quite a lot of actings at the senior level of the department. Can you explain why that is the case?

Dr Gruen: The other position that has been filled is deputy secretary innovation, and that has been filled by Mr Barry Sterland, but he is not taking his role up until December. Innovation and transformation, I think, is the title.

Senator WONG: As yet, the governance position is still only acting, is that right?

Dr Gruen: Sorry, I should have filled you in on that, too. Ms Stephanie Foster will be taking up that role.

Senator WONG: Where's Ms Foster from?

Dr Gruen: From the Public Service Commission.

Senator WONG: Deputy?

Dr Gruen: Yes.

Senator WONG: Does that mean the commission might have to turn up and answer questions? You don't have to answer that, Dr Gruen. That was me being light-hearted.

Dr Gruen: I was aware of that.

Senator WONG: Mr Sheehan, essentially the article is based on a copy of the COAG meeting agenda, which includes the range of counter-terrorism issues that were to be examined at the meeting. I'm asking you: first, did PM&C take any action as a result of the publication of this?

Mr Sheehan: PM&C didn't take any action in relation to the publication of this article.
Senator WONG: The article contains information which has apparently been lifted from a leaked COAG agenda on new terrorism offences. Were you concerned at COAG documents being provided to journalists?

Mr Sheehan: I don't know what the journalist had or didn't have. I'm just looking at the article in front of me and so I can't make any comment.

Senator WONG: I'm sorry, I thought you said you were aware of the article at the time.

Mr Sheehan: I would have seen the article at the time.

Senator WONG: Do you want to read it, because I'm going to ask questions about it? It says 'a leaked copy of the meeting's agenda'.

Mr Sheehan: I note that's what the article says. I've seen it in the article but I can't comment on what it is that the journalist had and on the basis on which that's written.

Senator WONG: He said: 'I've got a leaked copy of the meeting's agenda.' All I am asking is: you see that written, and it appears that a part of the meeting agenda which deals with changes to terrorism laws was leaked. Was any action taken?

Mr Sheehan: The answer is no; there wasn't any action taken.

Senator WONG: There was no investigation into the leak?

Mr Sheehan: No.

Senator Brandis: It is worth pointing out, as you would be aware, this being a COAG document, that it was quite widely circulated and, of course, it was circulated to all of the states and territories—in other words, to people across both sides of politics.

Senator WONG: Are you suggesting that someone in the states or territories leaked it?

Senator Brandis: I don't know who leaked it, but the leaker, assuming there was a leak, must have been a person possessed of the document, and I think it's relevant to point out that there was a wide number of people on both sides of politics possessed of the document.

Senator WONG: The first person who raised 'sides of politics' was you, but I know you are addicted to partisanship.

Senator Brandis: I'm not suggesting anything—

Senator WONG: It's an addiction you should get over!

Senator Brandis: But if this is to be an honest inquiry, it should allow for the fact that if there were a leak it could have come from any one of the recipients of the document, which include, among others, all the states and territories.

Senator WONG: Yes. Well, I don't think that anybody but you has raised partisanship. Mr Sheehan, who prepares the COAG agenda?

Mr Sheehan: The COAG agenda is normally prepared through the COAG secretariat. In fact, the process by which that occurs is something that I haven't been involved with traditionally because I'm not part of that work. But the COAG agenda was developed in this instance, for the special COAG in respect of counterterrorism, in consultation with Commonwealth agencies and all the jurisdictions of Australia.

Senator WONG: There was no referral to the AFP?

Mr Sheehan: Not to my knowledge, no.
Senator WONG: Can I ask why no action was taken by PM&C, regardless of any intervention by Senator Brandis, as to who it was? We don't know who it was, but you have an agenda which refers to a discussion at COAG about terrorism offences which has made its way into the public arena. Why was no action taken at all by this department to ascertain how that document came to be public?

Mr Sheehan: I didn't have a basis at the time. I didn't consider at the time that I needed to do anything and, to my knowledge, there wasn't a decision made that it needed to be referred to the AFP at the time.

Senator WONG: Why did you decide that you didn't need—sorry; you finish your answer.

Mr Sheehan: I was saying that at the time, I think the focus was on doing the work to ensure that we had a productive COAG.

Senator WONG: Yes. I'm just asking why you made the decision that you didn't have to do anything?

Mr Sheehan: I didn't say, I think, that I made the decision not to. I didn't have a basis to make a decision.

Senator WONG: You didn't have a basis to make a decision. You've got an article that says a COAG agenda is leaked, including in reference to terrorism offences being changed. So you didn't regard that as necessitating any inquiry as to how that might have been made public?

Mr Sheehan: Senator, I didn't make inquiries at the time. I continued working towards the COAG at that time—

Senator WONG: But the decision has been made that this did not necessitate any further inquiry or investigation—self-evidently, because nothing happened.

Senator Brandis: That's not right. With respect, the assertion you have just made doesn't follow at all. I'm not aware of—

Senator WONG: No decision is a decision, Senator Brandis.

Senator Brandis: If I may—

Senator WONG: No decision is—

CHAIR: Order!

Senator Brandis: If I may, please, speak without interruption. Senator Wong, I'm not aware of the considerations that govern decisions whether or not to hold what is colloquially known as a 'leak' inquiry. However, I dare say that the widespread extent of circulation of a document may be a relevant consideration, which is why I made the point—not to be partisan but to be accurate, and to ensure that the committee was possessed of all the relevant facts—that these COAG documents were widely circulated across nine different jurisdictions.

Senator WONG: Yes, and I'm being accurate and asking questions of this officer. I'm asking why, when it is made public and when a journalist writes that they've been leaked a copy of the COAG agenda, why Prime Minister and Cabinet determined that there is no requirement for an investigation? Or if you'd like me to ask it in a more neutral way: why was no investigation deemed necessary?
Mr Sheehan: Senator, at the time my focus was very much on the work leading up to the COAG to ensure that we had a productive COAG. I did not make a decision in respect of the matters that you refer to.

Senator Wong: Well, you did, because no decision is a decision, isn't it? Essentially, no action is taken.

Mr Sheehan: I took no action.

Senator Brandis: That's not necessarily right, Senator Wong.

Senator Wong: No action was taken. That's reasonable. Yes?

Mr Sheehan: I took no action.

Senator Wong: Was the fact that no action would be taken discussed at all within the department?

Mr Sheehan: I don't recall discussing it.

Senator Wong: I'm assuming Ms Hatfield Dodds would come to the table if it had, in fact, been discussed with her, but she hasn't. Thank you.

Chair: Thank you, Senator Wong. Senator Kitching? I just note, by the way, that we are due to break at 12.30 for lunch.

Senator Kitching: I'll try to get through what I can here. I'd like to ask some questions about the guidelines for ministers and particularly the Statement of Ministerial Standards proclaimed by the Prime Minister in September 2015. Senator Brandis, so that we are very clear about that which I'm speaking, I'm going to read some excerpts from the Statement of Ministerial Standards. It says:

… it is vital that Ministers and Assistant Ministers conduct themselves in a manner that will ensure public confidence in them and in the government.

… … …

… Ministers and their staff are provided with resources and facilities at public expense for the effective conduct of public business. Such resources are not to be subject to wasteful or extravagant use, and due economy is to be observed at all times.

… … …

… Ministers are required to provide an honest and comprehensive account of their exercise of public office, and of the activities of the agencies within their portfolios, in response to any reasonable and bona fide enquiry by a member of the Parliament or a Parliamentary Committee.

Senator Brandis, do all ministers and assistant ministers sign up to the Statement of Ministerial Standards, and do they actually sign that statement?

Ms Cass: I'm not aware that ministers or assistant ministers are asked to sign this document. The standards are distributed by the Prime Minister to ministers and assistant ministers, asking that they note them and comply with them.

Senator Brandis: That's right, Senator Kitching. The question was to me. I'm not sure whether you meant 'sign' as in actually write your signature on a document or whether you were using the vernacular expression 'sign up to'. Certainly, ministers are made aware of the document and there is an expectation that they will be observant of it.
Senator KITCHING: While they may not sign in the formal sense of executing, perhaps in the vernacular or colloquial expression they are asked to sign up to it.

Senator Brandis: Sure. It is a statement of standards which they are expected to observe and, by assuming office, it is implied that they undertake to observe.

Senator KITCHING: Do you think such a statement is required?

Senator Brandis: I think it's good practice, Senator. This government isn't the first government to have had this or a somewhat similar document. I think it is good practice to set out a code of conduct. Whether it's strictly required, I don't have a view; but I think it's a good idea.

Senator KITCHING: Do you think the statement is taken seriously?

Senator Brandis: Yes.

Senator KITCHING: Are there internal mechanisms or audit processes to ensure that ministers do observe those standards—for example, 'due economy' when they're conducting parliamentary and ministerial business?

Senator Brandis: It's an obligation that lies upon each minister to be observant of the standards. All ministers are supported by ministerial staff, and it is one of the responsibilities of ministerial staff to ensure that all requirements made of their minister are observed.

Senator KITCHING: So it is up to each minister. But does the Prime Minister try to ensure that ministers do comply with those standards?

Senator Brandis: The Prime Minister, as the person who appoints ministers and issues the statement of what is expected of them, has the overall superintendence of the conduct of members of the government.

Senator KITCHING: If a particular minister or assistant minister were to look like they were sailing close to the wind, perhaps—maybe there's not always due economy taken, for example—would the Prime Minister call them in?

Senator Brandis: It all depends on the circumstances.

Senator KITCHING: Is anyone ever granted any exemption from the ministerial standards?

Senator Brandis: I can't think of any occasion.

Senator KITCHING: Is there such a concept of having an exemption?

Senator Brandis: I've never heard of it until you raised it.

Senator KITCHING: Therefore, ministers do have to refrain from being wasteful and extravagant with taxpayers' money?

Senator Brandis: The standards are what they say, and you've read them onto the record. Those are the standards.

Senator KITCHING: Could a minister perhaps lose their portfolio or have their ministerial career terminated if they're found to have wastefully or extravagantly spent public money?

Senator Brandis: It all depends on the circumstances.
Senator KITCHING: I want to read onto the record some expenditure of taxpayer money by the foreign minister.

Senator Brandis: Senator Kitching, with respect, this is not foreign affairs estimates—

Senator KITCHING: I'm talking about the ministerial standards.

Senator Brandis: and you have not foreshadowed a question. You said you were going to read something onto the record.

Senator KITCHING: I am going to ask you some questions.

Senator Brandis: If you have a question that is within the jurisdiction of this estimates committee, no doubt you will ask it. But reading things onto the record in relation to a minister in a different portfolio, I respectfully suggest, is not a proper use of this committee's time.

Senator KITCHING: It's not going to her portfolio. It's going to whether she's complying with the ministerial standards.

CHAIR: Let's get to the question, Senator Kitching, and that will help clarify whether it's appropriate for this committee or for another committee.

Senator KITCHING: The foreign minister has expended approximately $1.2 million in a variety of ways that include going to the polo, a taxpayer-funded RAAF jet to fly her and her partner, et cetera. But I'm not going into that—

Senator Brandis: Senator Kitching, you are making assertions. I have had enough to do with you to know your assertions cannot always be relied upon.

Senator KITCHING: Senator Brandis, what I want to ask you is: what does Ms Bishop classify as official or parliamentary or ministerial business? Last week she attended the premiere of the new Thor movie.

CHAIR: Senator Kitching, that sounds to me like a question for tomorrow when we deal with parliamentarians' work expenses and the independent agency that delivers them.

Senator KITCHING: I would like to ask Senator Brandis, given he has said the ministerial standards are taken seriously by all ministers and assistant ministers, whether the foreign minister has actually read the Statement of ministerial standards and is he aware of the Prime Minister speaking to the foreign minister about her expenditure.

CHAIR: I will allow Senator Brandis to answer if he wishes, but the question of entitlements sounds to me like an issue appropriate for tomorrow.

Senator McKENZIE: Hear, hear!

Senator Brandis: I will take up your invitation, Mr Chairman. You may be reassured, Senator Kitching, that Ms Bishop, as one of the most experienced and most respected ministers in the Australian government, is well aware of the standards and is always observant of them.

Senator KITCHING: I will ask some other questions. How is attending the Thor premiere official or parliamentary or ministerial business?

CHAIR: That is definitely a question for tomorrow.

Senator Brandis: You have made an assertion, and I don't accept your assertion. I have no idea what business Ms Bishop—
Senator KITCHING: Given we've had this discussion before, Senator Brandis, I'm happy to table the proof of Ms Bishop attending the Thor premiere.

Senator McKENZIE: Chair, point of order—once Senator Kitching puts down her prop. You, as Chair, have referred the senator to the appropriate place—

Senator KITCHING: Chair, I am tabling—

Senator McKENZIE: Excuse me, I'm raising a point of order.

CHAIR: Senator Kitching, don't interrupt the point of order. Senator McKenzie has the call. I'll come to you next if you wish to respond.

Senator McKENZIE: Thank you, Chair. You have ruled that this line of questioning is to be pursued tomorrow—that it is the appropriate place for it to be pursued. I would ask that your ruling be accepted by the senators on this committee.

Senator McALLISTER: On the point of order, Senator Kitching did spend some time talking about the Statement of ministerial standards. The Statement of ministerial standards are the Prime Minister's standards and they are directly within the responsibilities of the Prime Minister and his department. And we've discussed them on many occasions in this forum. The material that Senator Kitching drew the committee's attention to does go to questions of waste and extravagant use. It does go to the requirement for ministers to provide honest and comprehensive accounts of their exercise of public office in response to reasonable and bona fide inquiries. I do think that the statement of standards and the relationship of wasteful use of public resources is relevant for this committee and that Senator Brandis ought to answer them on behalf of the Prime Minister.

CHAIR: I'll have one more point of order. Senator Smith.

Senator SMITH: In support of your ruling, Chair, I think that the movie production was the subject of a media release issued by the minister in 2015. As the chair has said, and as the minister has reinforced, this matter is best taken to the foreign affairs estimates and not at this estimates. The minister has made a media statement about this over a year ago. It should be dealt with at foreign affairs estimates.

Senator McKENZIE: Thursday, Senator Kitching.

Senator Brandis: I see that it's half past 12 but I don't want Senator Kitching or, indeed, Senator McAllister to escape the innuendo that they have made with the question that came from Senator Kitching. So let me respond by saying this. We've not been told the date, the locality of the event or the nature of the event. For all we know, Ms Bishop may have had other public business in that place on that date. Or it may be the case that she attended this particular event in the role that she assumed as foreign minister in advocating Australia's interests, including, because I know that this is a matter of interest to her, the promotion, particularly in the United States, of the Australian cinema and film industry. I say that with some feeling because, as a former arts minister who, at one time, was responsible for the Australian film industry, I had a number of discussions with Ms Bishop and encouraged her, when she was in the United States in particular, to promote and advocate for the work of the Australian film industry, in particular with American studios. And she did so. I know that her advocacy of the Australian film industry was greatly appreciated by the industry and very effective. So it may well be that the particular event of which Senator Kitching speaks may have been related to that.
CHAIR: Thank you, Senator Brandis. As I understand it, Senator Kitching had two questions. One was whether the foreign minister was in compliance with the ministerial standards, which Senator Brandis has answered in the affirmative. The second was whether or not the foreign minister's travel to a particular event was within entitlements guidelines. If the first question has been answered, the second question can only be answered tomorrow when we come to outcome 3—support for parliamentarians and others, as required. If you have questions about whether that's in the guidelines, that's the appropriate place to do so.

Given that we are now over time for lunch, we will break for lunch. If you insist, we can return to these matters after, Senator Kitching, but I would advise that it's not the appropriate place to do so.

Senator KITCHING: I do have further questions, Chair.

CHAIR: Thank you. We will suspend and return at 1.30.

Proceedings suspended from 12:33 to 13:33

CHAIR: Senator Brandis, I understand you had a follow-up from our discussion prior to lunch.

Senator Brandis: Yes. I have some further information to provide in answer to questions asked of me before the luncheon adjournment by Senator Kitching, concerning the attendance by Ms Bishop at the Sydney launch of the film Thor: Ragnarok—I'm not quite sure what the pronunciation is.

CHAIR: Ragnarok, I think.

Senator Brandis: Ragnarok, is it? I've been getting into trouble with pronunciations lately! Ragnarok—all right. Ms Bishop attended the Australian launch of the film Thor: Ragnarok in Sydney on Sunday, 15 October. She not only attended in her official capacity but launched the Australian premiere and gave a speech at the Australian premiere. Ms Bishop was in Sydney that weekend in any event because she had returned from an official visit to South Korea and flew from Seoul to Sydney, and then the following day she transited to Canberra for the parliamentary sitting commencing on 16 October. There not being direct Seoul-Canberra flights, it was necessary for her to be in Sydney in any event.

The foreign minister and the Minister for Communications and the Arts, Senator Fifield, actually issued a press release dated 22 October 2015, which I'll table, in relation to the film Thor: Ragnarok, in which they point out that the decision of 20th Century Fox and Marvel Studios to make the film Thor: Ragnarok in Australia in 2016, together with another film, would bring more than $300 million in offshore investment to the Australian economy and provide over 3,000 direct or indirect jobs in Australia. Ms Bishop, in her capacity as Minister for Foreign Affairs, as I said before the luncheon adjournment, had been instrumental in advocating to American studios the desirability of them making blockbuster films in Australia.

Finally, I might add that the decision by 20th Century Fox and Marvel Studios to make Thor: Ragnarok in Australia—indeed, primarily in Queensland—was welcomed by the Premier of Queensland, Annastacia Palaszczuk. She said in a press statement that she made in June of this year that she wants another blockbuster for Queensland. She herself undertook a week-long trade mission to Hollywood to lobby for more blockbusters like Thor: Ragnarok to be brought to Australia, and in particular Queensland, and called on the federal government to
do more to bring blockbusters to Australia and specifically to Queensland. That is why Ms Bishop attended the Australian launch of *Thor: Ragnarok* in Sydney on 15 October, undoubtedly in her official capacity and undoubtedly, beyond a peradventure, within the guidelines.

**CHAIR:** Thank you, Attorney.

**Senator McALLISTER:** Thank you, Attorney, for that explanation. I myself share an interest with you and with Ms Bishop in the Australian film industry, and I don't doubt that people would like government to do more to support the industry. I suppose the question that is being asked, though, is about the appropriateness of the kind of support and the kind of activities that are being provided and whether they are within the ministerial guidelines, particularly as they go to prudent use of government resources. It's in the context of public scrutiny of Ms Bishop's travel, particularly travel, for example, to the Portsea Polo, to the Melbourne Spring Racing Carnival over a number of years, to the AFL grand final over a number of years, visits to tropical North Queensland reportedly costing more than $72,000—

**Senator Brandis:** I'll just pause you on that last one. I think what you're referring to is the fact that Ms Bishop led a very successful visit to North Queensland of the entire diplomatic corps, just as she had led successful visits of the entire diplomatic corps to Western Australia and, I think, other localities in Australia as well in her capacity as the foreign minister.

**Senator McALLISTER:** So the Prime Minister is satisfied that each of the examples I have provided is consistent with the ministerial standards?

**Senator Brandis:** Absolutely.

**Senator McALLISTER:** Good.

**Senator KITCHING:** I'll just repeat an extract of the statement of ministerial standards for you, Senator Brandis:

Ministers are required to provide an honest and comprehensive account of their exercise of public office, and of the activities of the agencies within their portfolios, in response to any reasonable and bona fide enquiry by a member of the Parliament or a Parliamentary Committee.

Do you feel that the foreign minister has done that, given that this information only came to light during a lunch break of Senate estimates, when the foreign minister is obviously trying to defend her record of travelling and, perhaps some might consider, travelling extravagantly?

**Senator Brandis:** Senator Kitching, that's completely wrong. The information has not 'only come to light'. It was the subject of a media release and posted on the foreign minister's website on the day in which she gave a speech in her official capacity at the launch, and has been a matter of public record from the time that it occurred.

**Senator KITCHING:** Senator Brandis, you'll recall from estimates in May-June that you and I had this discussion in another committee, where details of the foreign minister's travel only came to light after another break—I think that was a shorter break, to be fair; it was a tea break—

**Senator Brandis:** Senator Kitching, if you can't do your research properly and it falls to me to check with the foreign minister to perfect the record, so as to correct your misleading and innuendo-laden questions, then that's your problem.
Senator KITCHING: What I do want to ask you is whether you feel that the foreign minister—and whether the Prime Minister feels the foreign minister—has been transparent?

Senator Brandis: Absolutely.

Senator KITCHING: Because you'll recall, of course, from the other committee proceedings in estimates earlier in the year that there seems to have been some discrepancy between the Department of Foreign Affairs and Trade and her diary there and her Department of Finance documents.

Senator Brandis: There was no discrepancy whatsoever. If you didn't understand the entries I took you through that is a problem for you, Senator Kitching.

Senator KITCHING: Actually, you didn't take me through anything, Senator Brandis. What you did was that you took it on notice.

Senator Brandis: There was no discrepancy whatsoever.

CHAIR: Order. There's no need to talk over each other.

Senator KITCHING: I would like to understand why there seems to be different standards for different ministers? For example, Sussan Ley lost her portfolio. Are there different standards applied to different ministers and different assistant ministers?

Senator Brandis: No, there are not. The standards are the standards that you have read from in your earlier question, and those standards apply equally to every minister.

Senator KITCHING: Chair, I want to move on to something that's related.

CHAIR: You may do so.

Senator KITCHING: This is again on the Statement of Ministerial Standards. I'll read 2.21:

Ministers are required to exercise the functions of their public office unaffected by considerations of personal advantage or disadvantage. Ministers, in their official capacity, may therefore accept customary official gifts, hospitality, tokens of appreciation, and similar formal gestures in accordance with the relevant guidelines, but must not seek or encourage any form of gift in their personal capacity. Ministers must also comply with the requirements of the Parliament and the Prime Minister relating to the declaration of gifts.

What requirements does the Prime Minister impose on his ministers in relation to the declaration of gifts?

Senator Brandis: Well, I think you read the extract.

Senator KITCHING: Is there anything further?

Senator Brandis: Let me defer to the officials. They may be aware of some more particular requirement, but the extract from which you've just read seems to be the relevant one.

Senator WONG: Sorry, were you asking an official from the department?

Senator Brandis: I'm just inviting the officials to—

Senator WONG: I don't think it's in Dr Gruen's division.

Senator Brandis: inform the committee if there is something else, but I am saying what Senator Kitching read from would seem to be the relevant rule. Is there something else, Dr Gruen?
Dr Gruen: There are two paragraphs relevant to gifts. You've read out the first and I'm happy to read out the second, if you would like me to.

Senator KITCHING: I'm very happy for you to read it.

Dr Gruen: The second paragraph reads:
Ministers must not seek or accept any kind of benefit or other valuable consideration either for themselves or for others in connection with performing or not performing any element of their official duties as a Minister. Ministers shall ensure that they do not come under any financial or other obligation to individuals or organisations to the extent that they may appear to be influenced improperly in the performance of their official duties as Minister.

Those are the two paragraphs relevant to gifts.

Senator KITCHING: Senator Brandis, you comply with that obligation?

Senator Brandis: Yes.

Senator KITCHING: Why do you think it's important?

Senator Brandis: Are you asking me to offer an opinion? I think it's important because it's a good standard.

Senator KITCHING: You are also required to comply with the obligation for members and senators to declare interests to their respective houses of parliament?

Senator Brandis: The rule is as you and Dr Gruen have read it.

Senator KITCHING: So a breach of the parliamentary requirement to declare, inter alia, gifts and hospitality is effectively a breach of the ministerial standards?

Senator Brandis: The rule speaks for itself. You would have to refer me to any particular instance you want to refer to.

Senator KITCHING: I will come to that. The requirements for declaring gifts and hospitality to the parliament are not dissimilar between the House and the Senate. In the House gifts must be declared within 28 days and in the Senate they must be declared within 35 days. Does that sound right to you?

Senator Brandis: If that's what the document you're reading from says, no doubt that's correct.

Senator KITCHING: Has the Prime Minister granted the foreign minister an exemption from the requirement to declare gifts to the House?

Senator Brandis: Not that I'm aware, but I'll take that on notice.

Senator KITCHING: I will read part of the letter from Ms Bishop. I'm happy to table it.

CHAIR: That might be helpful.

Senator KITCHING: In that letter—

Senator Brandis: If you're going to table a letter, and you're going to ask me questions in relation to the letter, let me read the letter first.

CHAIR: While the letter is being photocopied, do you have other issues you want to pursue?

Senator KITCHING: I might wait for Senator Brandis to have a look at the letter.

Senator Brandis: I have read the letter now.
Senator KITCHING: You'll recall that before the lunch break we discussed the concept of exemptions, and I took it that that concept doesn't really exist in relation to the ministerial standards. I'm interested in the part of Ms Bishop's letter to the registrar of interests on 29 August this year where she says, 'I do not propose to declare official hospitality received in the course of my duties as Minister for Foreign Affairs unless I deem it could constitute a conflict of interest.' Do you think that's appropriate?

Senator Brandis: I do. What I think Ms Bishop is referring to is, for example, being entertained at state dinners or state lunches or other state occasions which, as you'd be aware, are part of the working day of a foreign minister.

Senator SMITH: Excuse me Chair and Senator Kitching. If you read the letter in its entirety, the last sentence says, 'I the foreign minister, Julie Bishop, am advised that this approach is consistent with the practice of former foreign ministers.' So my point goes back to the beginning of this discussion. Surely these are matters that are, if they are worth prosecuting—that's for you to decide—are worth prosecuting at the foreign affairs estimates and not this estimates. That's because Senator Brandis and other officials surely can't be asked to respond to whether or not this approach is consistent with the practice of former foreign ministers.

Senator KITCHING: Chair, I'm asking about the compliance with the ministerial standards, and that falls squarely within this portfolio area.

Senator Brandis: As I understood Senator Kitching's question, her point is that the provision of hospitality might fall within the meaning of the expression 'gifts'. I don't not consider that that is an accurate interpretation of the standard, and, as Senator Smith has pointed out, this is actually the custom and practice of previous foreign ministers. But, in any event, a foreign minister, for example, being entertained by a foreign government at a state luncheon would not, in my view, or in any reasonable construction of the word, constitute receipt of a gift.

Senator KITCHING: Can I just go back to section 2.22 of the standards, which Dr Gruen helpfully read before. It says: Ministers must not seek or accept any kind of benefit or other valuable consideration either for themselves or for others in connection with performing or not performing any element of their official duties as a Minister. Ministers shall ensure that they do not come under any financial or other obligation to individuals or organisations to the extent that they may appear to be influenced improperly in the performance of their official duties as Minister.

So, if Ms Bishop is not declaring gifts that may give rise to a potential conflict of interest when she's refusing to make her gifts public—

Senator Brandis: She's not—

Senator KITCHING: how does that gel with the ministerial standards?

Senator Brandis: That is a deliberately misleading representation. Ms Bishop did not say that she was not declaring gifts. She said that she was not declaring hospitality. She said that she was not declaring hospitality, consistent with the ordinary practice of foreign ministers. I've pointed out to you that, in my view, hospitality—for example, attending a state lunch or a state dinner in her capacity as foreign minister—would not, in any ordinary meaning of the word, fall within the understanding of a gift.
Senator McALLISTER: To accommodate the circumstances you describe, Senator Brandis, there is a threshold value of a gift that must be declared. Generally, hospitality would fall below that threshold. I suppose the core question is: does Ms Bishop declare all of the gifts she is required to declare under the provisions of the House of Representatives?

Senator Brandis: I'm sure the answer to that question is 'yes', but, if you want me to make an inquiry, I'll take it on notice. But I can assure you that Ms Bishop is compliant with her obligations. The letter of 29 August 2017 referring to hospitality offered to her in her official capacity as the Minister for Foreign Affairs, consistent with the practice of previous ministers, does not fall within that rule.

Senator KITCHING: In relation to the last sentence, which is, 'I am advised that this approach is consistent with the practice of former foreign ministers,' did the Prime Minister's department provide this advice to the Minister for Foreign Affairs? Who provided the advice?

Senator Brandis: I don't know.

Dr Gruen: We may need to take that on notice, Senator.

Senator Brandis: I'll take that on notice.

Senator KITCHING: Could you table it as well or send it to us? Thank you. Do other ministers who receive a number of gifts as part of their official duties refuse to declare the gifts they receive?

Senator Brandis: The ministers of this government are compliant with their obligations.

Senator KITCHING: When you're taking the question on notice in relation to the advice given to the Minister for Foreign Affairs, I'd like to see the advice given to other foreign ministers as well.

Senator Brandis: In relation to advice given to foreign ministers in earlier governments, you may or may not be aware that it is not the practice of the Public Service to make available to ensuing governments advice that was given to previous governments.

Senator KITCHING: I've got examples here from both the longstanding foreign minister Alexander Downer, who did declare hospitality, and Kevin Rudd, a former foreign minister, who regularly disclosed gifts. I'm happy to table those.

Senator Brandis: You don't need to, but you can if you like—it's a matter for you—but I've told you I will take the question on notice.

Senator KITCHING: So what I'm wanting to know is whether there's a discrepancy in what the current foreign minister is declaring in terms of hospitality, given that we have examples from former foreign ministers who have declared such hospitality.

Senator Brandis: Well, it may be that, as Ms Bishop allows in her letter of 29 August, it is appropriate to declare something that would be regarded as hospitality. Let me give you an example—and I'm not thinking of any particular instance; this is just a counterfactual. Let us say that a foreign government were to entertain an Australian minister at a guesthouse or a resort for a period of some days. That would be regarded, on the ordinary meaning of the word, as hospitality, and it may be that the foreign minister thought that it was appropriate to declare that. On the other hand, if what one is talking about is attending, for example, state lunches or state dinners or receptions, which is the daily work of foreign ministers—and often, I dare say, a daily chore of foreign ministers—one would not expect that to be declared.
I’ve just been handed a letter from Mr Rudd, dated 24 March 2011, which I will table, when Mr Rudd was Minister for Foreign Affairs, to Mr Elder, who was then the Registrar of Members' Interests, in which Mr Rudd says: 'Dear Mr Elder, in the course of my work as foreign minister, I am required to travel abroad in an official capacity on behalf of the Australian government. In doing so, some of my activities are funded by host governments. In this travel, I am representing the Australian national interest; therefore, I do not propose to declare such official hospitality as I do not believe they give rise to a conflict of interest. I am advised that this is consistent with the practice of former foreign ministers Downer and Smith.'

CHAIR: That rings a bell—in fact, it's remarkably similar language to Ms Bishop's letter.

Senator Brandis: Might almost be the same draftsman.

Dr Gruen: 'Consistent with the practice of foreign ministers'.

Senator Brandis: Consistent with the practice. Got any other questions, Senator Kitching?

Senator KITCHING: Yes. In fact, Chair, I will also table, coincidently, a letter from Mr Rudd to Mr Elder dated 5 February 2013 that does declare accommodation, and I'll also declare the longstanding and well-respected foreign minister Alexander Downer's declaration. I'll table those; thank you very much. Could I just ask: is the Prime Minister or the Prime Minister's department aware of the foreign minister being allowed to get away with more than other ministers? I would like to know: what are the consequences of breaching the ministerial standards?

Senator Brandis: Well, every proposition in that question is a falsehood. There has been no breach; nobody's been allowed to get away with anything. It is consistent with former practice. It doesn't fall within the ministerial standards in any event, because it is not a gift.

Senator KITCHING: I've finished on those topics.

CHAIR: Thank you. Senator Wong.

Senator WONG: On a different topic.

CHAIR: Please.

Senator WONG: Dr Gruen, I wanted to ask some questions about PM&C's involvement in energy policy and in particular, first, the commissioning of the Finkel review and the government's responses to that, and then the more recent round. In terms of personnel, can you tell me what PM&C's involvement was in those two processes. Do you want to do them in sequence?

Dr Gruen: Yes, certainly.

Senator WONG: I notice that energy comes up under Ms Wiley-Smith, but I assume that the Economic Group had involvement as well.

Dr Gruen: I have been responsible for the work of the relevant division, which is Industry, Infrastructure and Environment, up until very recently. And I have kept a responsibility for energy simply for the purposes of continuity. So I have been responsible.
Dr Gruen: And Luke Yeaman, who is the first assistant secretary, has been responsible. So it might make sense.

Senator WONG: It does make sense. So notwithstanding the org chart where Mr Yeaman's group reports to was Ms Wiley-Smith—

Dr Gruen: Yes.

Senator WONG: And there will be Dr Sterland—is he a doctor?

Dr Gruen: No, he's Mr Sterland.

Senator WONG: No, Mr Sterland. I'll tell him that you put him in his place.

Dr Gruen: No, I'll tell him that you did.

Senator WONG: Okay, ding ding. But they reported to you, notwithstanding it was a different—do we call these divisions?

Dr Gruen: Yes.

Senator WONG: A different division, yes.

Dr Gruen: Just for the record, the rest of Industry, Infrastructure and Environment does report to Ms Wiley-Smith. Given that this was a topic on which there had been a lot of work done, the judgment was made that it made sense for me to continue to have responsibility for it.

Senator WONG: I have no criticism of that, Dr Gruen, particularly given your history under governments that have dealt with energy policy over a long period of time. So can we start with—I'm not going to go into too much detail, but can you just remind me—I apologise that I haven't kept across every process step here.

Dr Gruen: Yes.

Senator WONG: Dr Finkel's report was commissioned at the request of Mr Frydenberg or the Prime Minister?

Dr Gruen: I might just Luke Yeaman to come up to the table.

Mr Yeaman: If I may just refer to my notes for a second, Senator—

Senator WONG: Yes.

Mr Yeaman: Senator, I stand to be corrected on this point, but my understanding is that the Finkel review was commissioned by the COAG Energy Council, involving, from the government's perspective, Minister Frydenberg. The report is through that body.

Senator WONG: What involvement did PM&C have with either the commissioning of that report or any subsequent response to it?

Mr Yeaman: Nothing beyond the normal role of PM&C, which is to provide briefing to the Prime Minister in the normal course of events.

Senator WONG: Okay.

Dr Gruen: But it's worth saying that we were kept abreast of developments with the Finkel review.

Senator WONG: What does that mean?

Dr Gruen: To the extent that there were meetings, we were almost always represented at those meetings—meetings of officials.
Senator WONG: So there was an officials working group that sat beneath the Finkel review process?

Dr Gruen: There was a secretariat in the Department of the Environment and Energy.

Senator WONG: For the Finkel review?

Dr Gruen: Yes.

Senator WONG: And PM&C was represented on that?

Dr Gruen: I'm not sure whether we had a secondee to that secretariat.

Mr Yeaman: No, we didn't. The Finkel review was supported by the Department of the Environment and Energy. Post the Finkel report being released, that work was carried on by the Department of the Environment and Energy. We were in close contact with them, but we didn't have a formal secondee on the taskforce.

Senator WONG: So the secretariat sat in the department of energy with no PM&C secondees. Was there a working group?

Mr Yeaman: No, Senator, we just stayed in close contact with the department.

Senator WONG: And then after the review was received, what involvement did PM&C have?

Mr Yeaman: The same involvement, Senator. We continued to stay in close contact with the department. We didn't have any formal arrangement in place.

Senator WONG: And on how many occasions did the Finkel review go to cabinet?

Mr Yeaman: I'm not in a position to discuss. It's cabinet—

Senator WONG: Well, you are. I have asked for dates or numbers of times; I'm not asking what happened with it.

Dr Gruen: Senator, we can take that on notice and try and get you an answer before the end of the day.

Senator WONG: I'd appreciate that, thank you. When was the decision by government made to write to commission—do I say commission?—or request to seek advice from the ESB, and by whom was that decision made?

Dr Gruen: Senator, the Minister for the Environment and Energy requested advice from AEMO—of course, the CEO of AEMO is one of the members of the Energy Security Board—on the risks to reliability and affordability posed by the exit of thermal generation. And that request was made on 28 June.

Senator WONG: The second part of my question was what involvement did PM&C have with the decision to request that advice?

Mr Yeaman: No direct involvement, beyond the normal discussions with the department.

Senator WONG: Was there a cabinet decision that gave rise to that request?

Dr Gruen: That goes to an issue of whether or not something went to cabinet, doesn't it?

Senator WONG: Did it go to cabinet?

Dr Gruen: I'm not sure that we answer questions about things that went to cabinet.

Senator WONG: Dates—on which date did this go to cabinet?
Dr Gruen: We'll take that on notice and answer it if we can.

Senator WONG: I knew you would say that—okay. So he requested it on 28 June 2017.

Dr Gruen: Yes.

Senator WONG: What involvement did PM&C have with the process of consideration by the ESB as between June and October of this year?

Dr Gruen: I'll run through some of the things that happened.

Senator WONG: If you want to give me a full chronology, I'd be most grateful.

Dr Gruen: We can give you a full chronology, but some of this covers other things—but that's fine. On 8 August, Dr Kerry Schott and Clare Savage were appointed as the chair and deputy chair of the Energy Security Board. I think you're aware of who the members are of the new Energy Security Board.

Senator WONG: Yes.

Dr Gruen: On the 9th there was a meeting with retailers.

Senator WONG: Sorry?

Dr Gruen: 9 August.

Senator WONG: Yes, who's that?

Dr Gruen: With the Prime Minister and energy retailers.

Senator WONG: Yep.

Dr Gruen: And of course Minister Frydenberg was at that meeting, as well. On 25 August, COAG Energy Council provided advice to COAG on implementation of the Finkel review.

Senator WONG: Which was?

Dr Gruen: If my memory is correct, the government had committed to 49 of the 50 recommendations.

Senator WONG: Did it provide advice in relation to the CET—the 50th recommendation?

Dr Gruen: We would have to take that on notice, about whether COAG Energy Council provided that advice.

Senator WONG: Did you provide advice on the CET?

Dr Gruen: We provided advice to the Prime Minister on Finkel—and one of the things that Dr Finkel recommended was a credible and enduring emissions reduction mechanism, and he talked about the possibility of that taking different forms. We certainly provided advice to the Prime Minister on the Finkel recommendations.

Senator WONG: Can you continue? So we got up to 25 August.

Dr Gruen: We did.

Senator WONG: And just so we're clear, I'm asking about PM&C's involvement with the ESB in the lead-up to their response.

Dr Gruen: Okay. But then you asked me to read out all the—

Senator WONG: That's true—you can do that too. You could just give it to me.
Dr Gruen: I could do that.

Senator WONG: Why don't you do that?

Dr Gruen: Why don't I do that? I think that's fine. Yes, I'm very happy to give you this page if you'd like it.

Senator WONG: Excellent.

Dr Gruen: We'll get it photocopied.

Senator WONG: Thank you.

Dr Gruen: I just need a copy back, because you might ask more questions.

Senator WONG: Who knows? What was the structure within the public service which supported, if at all, the ESB work? Did you have a working group? Was there a secretariat?

Mr Yeaman: There had been an ongoing discussion off the back of the Finkel report, and in response to the email advice—and in fact dating back further—about the best way to deliver security within the energy market, whilst meeting our climate emissions targets. The Department of the Environment and Energy had been leading that work, initially as part of supporting the Finkel report, and then in terms of taking forward advice to government. To the best of my knowledge, there wasn’t a set government taskforce, or any other structure in that way. And the Department of the Environment and Energy was in regular contact with the regulators throughout that process, including the Energy Security Board.

Senator WONG: It just seems very odd that you'd have something which is essentially whole of economy, has a whole-of-economy effect—that you don't have a group of public servants allocated to working with the ESB, or supporting that work.

Mr Yeaman: Central agencies including PM&C, Treasury and Finance have been working closely with the Department of the Environment and Energy for some time on these issues in the market and all the normal advice was provided to government in that way. There was not a formal mechanism.

Senator WONG: 'The advice to government was provided in that way'—what does that sentence mean?

Mr Yeaman: When advice was provided to government on these proposals, about the best way to deliver a security and energy market. Central agencies have been closely involved in both the formulation of that advice and in providing advice to ministers.

Senator WONG: Presumably there is not consolidated advice from different agencies, or was there?

Mr Yeaman: I am not in a position to discuss the nature of the advice.

Senator WONG: You put on the record that you work closely together, so is that joint advice?

Mr Yeaman: No, it was individual advice.

Senator WONG: So there is no task group or—what do you call those—

Dr Gruen: IDCs.

Senator WONG: That's the term I've been looking for—no IDCs?

Mr Yeaman: There was not a formal IDC.
**Senator WONG:** It seems odd for such a big policy area. Was it considered?

**Dr Gruen:** There was work being worked up in the Department of the Environment and Energy and as part of our role, because this was an important area of responsibility for the government, we were closely involved in that work but there was no formal IDC.

**Senator WONG:** Then your document says 'AEMO release updated GSOO'—the gas statement of opportunities.

**Mr Yeaman:** Yes, the gas statement of opportunities. This timeline covers the whole—

**Senator WONG:** I won't go to that right now. I am interested in the meeting of 19 September. The board met with the Prime Minister and first proposed the guarantee at that point. Is that right?

**Mr Yeaman:** That is the first time the department was formally aware of a specific proposal in the form of the guarantee. As I said, it followed on the back of a long series of work in the area of the electricity market.

**Senator WONG:** Was any departmental official in that meeting?

**Dr Gruen:** On 19 September, yes, we were represented.

**Senator WONG:** Who?

**Dr Gruen:** I'm pretty confident that I was at that meeting.

**Senator WONG:** At that meeting was it clear that there would be two elements to the guarantee—reliability and emissions?

**Dr Gruen:** I don't have notes from that meeting. The general idea of there being two issues that needed to be resolved, namely reliability and coming up with a mechanism that would be consistent with Australia's Paris targets, the idea that both of those things were critical, had been discussed for some time. The specific mechanism was, as we say, talked about at that meeting. The general idea that those two things were critical and they had to be solved together had been clear for some time.

**Senator WONG:** The next relevant date I think is nine days later, a meeting with the Prime Minister, the Treasurer and the minister for the environment and the presentation of initial advice on the guarantee or the obligation, is that right?

**Dr Gruen:** Yes.

**Senator WONG:** Was Mr Frydenberg in the meeting of 19 September?

**Dr Gruen:** I would have to check but that is my recollection.

**Senator WONG:** So the first meeting where this is raised in a principles level meeting—that is, the obligation—is 19 September?

**Dr Gruen:** As I say, the general idea had been raised earlier than that—the general idea that there were two problems to be solved, one of reliability because of the rising share of renewables, or intermittent renewables, and achieving the emissions reductions; the idea that both of those had to be solved—

**Senator WONG:** That is a problem identification, this is a solution. You are telling me the first time principles are involved in a discussion with the ESB where that proposition is raised is the 19th?
\textbf{Dr Gruen}: The statement I would make is that by the 19th details of how this would work were being fleshed out, including that it would be an obligation on retailers.

\textbf{Senator WONG}: When was the first meeting of the ESB, do you know?

\textbf{Dr Gruen}: We could find that out.

\textbf{Senator WONG}: I think you said to me Dr Schott and Ms Savage were brought in on 8 August, so I presume they were meeting prior to 19 September.

\textbf{Dr Gruen}: Yes, I would presume so too.

\textbf{Senator McALLISTER}: Do you know on how many occasions, Dr Gruen?

\textbf{Dr Gruen}: We can find out what we can tell you. I'm happy to do that.

\textbf{Senator McALLISTER}: Thank you.

\textbf{Senator WONG}: Right. So then ESB meets with the PM, the Treasurer and the minister for the environment, presents initial advice on reliability and an emissions obligation. You then say here: 3 October, Mr Frydenberg formally requests advice. Was that the advice which generated the ESB's letter to him?

\textbf{Dr Gruen}: Let me just check. That's my understanding.

\textbf{Senator WONG}: Okay.

\textbf{Dr Gruen}: Yes.

\textbf{Senator WONG}: I was a bit confused about this. So there's the meeting with the Prime Minister at which this option is raised. Was this generated by the ESB or within government—this option of having a dual, two-pronged obligation?

\textbf{Dr Gruen}: That was the ESB's idea.

\textbf{Senator WONG}: Right. Okay. So that's first raised by the ESB with the Prime Minister formally on the 19th, but that's actually prior to Mr Frydenberg's request for advice. Is that right?

\textbf{Dr Gruen}: We'd have to check the detail, but certainly, by the 19th, the outlines of what the ESB had in mind were made clear.

\textbf{Senator WONG}: Sorry. I understand that response.

\textbf{Dr Gruen}: Okay.

\textbf{Senator WONG}: What I was asking was: on the chronology you identified, and I think this has been publicly indicated too, Mr Frydenberg formally requests advice on 3 October. Is that right?

\textbf{Dr Gruen}: That's certainly what that says. If there's anything more to add to that, we'll let you know.

\textbf{Senator WONG}: Well, why does all this work happen before advice is actually formally requested?

\textbf{Dr Gruen}: This was a process of developing a new way to deal with these joint problems. And I think the way that the time line plays out is that, on 3 October, Minister Frydenberg formally requests that the ESB give a more detailed account of their idea.
Senator WONG: Can I ask this: did the government delay getting Mr Frydenberg to write to the ESB for advice because they wanted to be sure, before such advice was sought, that they would be happy with the response?

Dr Gruen: Sorry, I missed that.

Senator WONG: Was the delay in Mr Frydenberg seeking advice because the government wanted to make sure that the government would be happy with the ESB's response before the government formally sought advice?

Dr Gruen: No, I don't think so.

Senator WONG: So why the delay?

Dr Gruen: I think it was just a case of working it up.

Senator WONG: But a minister can write and ask for advice, and the board can wait till it's finished doing it. It just seems odd that he doesn't even ask for advice until 3 October.

Dr Gruen: That's the—

Senator WONG: I'll ask this in Energy.

Dr Gruen: Yes.

Senator WONG: Okay. You then get preliminary advice on 5 October and then, a week later, final advice, correct?

Dr Gruen: Say it again, sorry?

Senator WONG: Preliminary advice is then provided by the board on 5 October, and then on 13 October the final advice is provided in the form of the letter to Mr Frydenberg.

Dr Gruen: Yes.

Senator WONG: Is that correct?

Dr Gruen: That's right, yes.

Senator WONG: Did you see a draft of this letter before it was sent?

Dr Gruen: No.

Mr Yeaman: No, I didn't.

Senator WONG: Are you familiar with the letter?

Mr Yeaman: Yes.

Senator WONG: And this letter was sent—was it copied to the Prime Minister as well?

Mr Yeaman: I think it was only sent to the minister.

Senator WONG: So how did you receive a copy? From the ESB, presumably.

Mr Yeaman: It was made public, I think, when it was transmitted to the minister.

Senator WONG: Yes. But you didn't have to wait for this on a website. You're the PM&C, so presumably you got a copy of it. I'm just trying to work out how you got it.

Mr Yeaman: On the same day.

Dr Gruen: Very possibly.

Mr Yeaman: Yes.

Dr Gruen: I'd have to check.
Senator WONG: First, I just wanted to check: the regulation impact statements—is that what they're still called?

Dr Gruen: Yes.

Senator WONG: That function went from Finance to PM&C, I think, after the change of government; is that right?

Dr Gruen: Yes, it's in PM&C—that's true.

Senator WONG: Which bit of you does that?

Dr Gruen: I do it.

Senator WONG: You do it?

Dr Gruen: Yes.

Senator WONG: Did a RIS get done for the—what is it called?—national electricity guarantee?

Dr Gruen: It's called the National Energy Guarantee.

Senator WONG: Sorry, 'energy'.

Dr Gruen: That's all right.

Senator WONG: It isn't actually a guarantee, but anyway.

Dr Gruen: The process of preparing a RIS is part of the cabinet deliberation, so I'm not at liberty to discuss that. But I can tell you that the government remains fully compliant with its RIS requirements.

Senator WONG: Was an exemption provided? I can tell you that, when I was Minister for Finance, our government did make public, including on a website, which I don't think you do any more, whether we published RISs and also whether an exemption was given.

Dr Gruen: I'm happy to take that on notice.

Senator WONG: Did you publish a RIS?

Senator Brandis: We'll take it on notice.

Dr Gruen: I'm happy to take it on notice. Do you mean, 'Is there a RIS for this on the website?' Is that what you're asking?

Senator WONG: You declined to answer on the basis of cabinet process. I'm putting to you that that is not consistent with precedent. We can go and get Mr Frydenberg's lengthy discussions under former Prime Minister Abbott about how important regulation impact statements are. I'm not interested in all of that history. I just want to know whether a RIS was done or whether an exemption was granted. Both are able to occur, and that generally is not secret. If it is secret on this occasion, people would want to know why.

Senator Brandis: Senator Wong, Dr Gruen has indicated that he considers that questions go to the deliberations of cabinet. He has, in any event, taken the question on notice. I think you've made it clear what you're interested in, and you've heard his response.

Senator WONG: A regulation impact statement looks at the economic cost and benefit of a particular proposal, doesn't it?

Senator Brandis: Yes.

Senator WONG: Correct. So on what basis is it asserted that that should be kept secret?
Dr Gruen: I'm not asserting it should be kept secret; I'm taking it on notice. I can tell you that the government's announcement of its decision to accept the Energy Security Board's recommendation was announcing the position the Commonwealth government would take to the COAG Energy Council meeting and that the Office of Best Practice Regulation will work with the Department of the Environment and Energy to ensure that the COAG RIS requirements are met in relation to it at that time.

Senator WONG: Okay, well, that's a more sensible answer—saying that a RIS will be done in the context of the COAG consideration. Where is the OBPR in the org chart?

Dr Gruen: It's in the economic division. It may have a name like 'regulation—

Senator WONG: 'Regulatory policy, including OBPR'.

Dr Gruen: That's it.

Senator WONG: Mr Poels, when were you first aware of the government's decision in relation to the National Energy Guarantee?

Mr Poels: As part of the normal process of cabinet.

Senator WONG: When?

Mr Poels: I'd have to take that on notice; I haven't got the dates off the top of my head.

Senator WONG: Are you able to assist us as to whether a RIS was performed?

Mr Poels: As Dr Gruen said, the government is fully compliant with its RIS requirements.

Senator WONG: How?

Mr Poels: Every cabinet decision requires a RIS.

Senator WONG: How?

Mr Poels: Sorry?

Senator WONG: How is it fully compliant in relation to this matter?

Mr Poels: Every cabinet submission requires a RIS.

Senator WONG: No, no, no—please listen to the question. How is it compliant in respect of this matter?

Mr Poels: One of the things about the COAG process is that's the ultimate decision-making body.

Senator WONG: Can you point me to the part of the policy that you say is relevant to this process?

Mr Poels: I can provide you with guidance, if you like.

Senator WONG: I can look on the website, but what do you say? What I'd like to know is this. You've made an assertion—'The government is fully compliant with its RIS policy.'

Mr Poels: Yes.

Senator WONG: Was that the assertion?

Mr Poels: Yes, that's right.

Senator WONG: Okay, I want to know which bit of the RIS policy you say has been complied with.
Mr Poels: As I said, the government's key requirement is that every submission requires a RIS, and that can take a various number of forms.

Senator WONG: Right, so there are different forms. Is that including an exemption?

Mr Poels: Including an exemption.

Senator WONG: Was an exemption provided on this occasion?

Senator Brandis: Senator, I think you're coming back to where Dr Gruen indicated that he'd take the question on notice. But it does seem to bear upon the deliberations of the cabinet.

Senator WONG: Fair enough. Is it usual that RISs are made public, in whole or part, Mr Poels?

Mr Poels: At the final decision point, they're required, yes. They're put up on our website.

Senator WONG: Has one been put up in relation to the NEG?

Mr Poels: Not as yet.

Senator WONG: When do you anticipate it would be put up?

Mr Poels: Once the final decision is taken by the COAG body.

Senator WONG: Thank you. Dr Gruen, can I take you to the letter we were describing earlier, which is the letter of the 13th.

Dr Gruen: Yes.

Senator WONG: It's a very fast turnaround, isn't it? It's only ten days between the formal request for advice and the actual provision of the advice.

Dr Gruen: As I said, there'd been a lot of developmental work done before that.

Senator WONG: Did PM&C undertake any economic modelling or assessment of this?

Dr Gruen: We did not undertake any economic modelling.

Senator WONG: Who has?

Dr Gruen: I think the letter actually reports on—if I can find it—

Senator WONG: I have some copies here. Do you want one?

Dr Gruen: No, I have a copy. The letter talks about expected price impacts and that the Commonwealth has requested that AEMC undertake detailed modelling of the guarantees to provide further information as part of the consultation process. As you know, there are estimates of the price falls, and then there's that statement.

Senator WONG: Okay—so, 'Here's our estimate, but there will be modelling done subsequently.'

Dr Gruen: That's right.

Senator WONG: Page 6, I think.

Dr Gruen: Page 6.

Senator WONG: I just want to go through a couple of things and make sure I understand them, Dr Gruen, and I'm sure you'll be able to explain them very clearly to me. On page 3, there is the first obligation. This is the third paragraph on that page:
The ESB is proposing the development of an obligation on retailers to meet a percentage of their load requirements with flexible and dispatchable resources, that is, resources that can be scheduled by the market operator depending on the real time operating needs of the system.

My first question is a nomenclature one. Can you explain, or perhaps outline to us, the way in which the term 'dispatchable' is used, as you understand it here, and then the addition of the word 'flexible', which I think actually changes or conditions the nature of the obligations?

Dr Gruen: For detailed questions you really should ask the department, but 'dispatchable' means that it is capable of being dispatched when the operator requests it. Depending on the technology, some dispatchable energy is dispatchable instantly, or virtually instantly, and other types take up to 15 minutes to be able to be dispatched. So it depends on the technology.

Senator WONG: And what do you understand 'flexible' to mean?

Dr Gruen: I think it's best to ask the department.

Mr Yeaman: If I could add, I think 'flexible' relates to the second part of Dr Gruen's statement, that it can be flexibly dispatched as needed in the region or area that's requiring energy.

Senator WONG: Okay. The third paragraph from the bottom says:

This approach supports liquidity in the contract market with contracts for dispatchable resources trading at a premium to less firm resources …

In other words, the market price provides a—

Dr Gruen: A value.

Senator WONG: It ascribes a value to reliability—correct?

Dr Gruen: Yes, that's right.

Senator WONG: Explain what happens in relation to the second obligation, then. Is there a value ascribed to a low emissions profile under this scheme?

Dr Gruen: As you're aware, Senator, the government would impose a trajectory for emissions, and then the market would work out—and then this is all part of the same contracts that the retailer is obliged to contract with generators. So there is a symmetry, if you like, between the two obligations.

Senator WONG: So the market ascribes a value to reliability and will similarly ascribe a value to a low emissions profile. What do we want to call that characteristic? A low emissions something?

Dr Gruen: It will depend on whether the system, left to itself, achieves the required emissions intensity or not. If it did, left to itself, then there would be no value.

Senator WONG: But if it doesn't—

Dr Gruen: Then there would be a value.

Senator WONG: then how does the market ascribe that value?

Dr Gruen: Via supply and demand, and competition.

Senator WONG: And it would be reflected how?

Dr Gruen: It would be reflected in the value of the contracts.
Senator WONG: So, therefore, if I’m a low emissions generator and you're a retailer with this particular obligation, you pay me more—if you need to?

Dr Gruen: It will depend, and it may also depend on time of day.

Senator WONG: Sure. In the second scenario you outlined, which is where the market doesn't, I suppose, find its equilibrium without some value being ascribed—you as the retailer; I'm the low emissions generator—at that point, you pay me more? Is that how that—

Dr Gruen: Well, the contract will have a different price.

Senator WONG: Correct. And have you done modelling on what that price would be?

Dr Gruen: We have not done modelling, but, as the letter says, the Commonwealth has requested AEMC to undertake modelling of these two guarantees.

Senator WONG: So could I also just confirm: an alternative way to meet the obligation is to buy international units—correct?

Dr Gruen: Doesn't the letter—

Senator WONG: Page 5, third paragraph.

Dr Gruen: Yes; I think it made reference to that—

Senator WONG: Yes.

Dr Gruen: as a possibility.

Senator WONG: ‘Australian carbon credit units and international units could be permitted to meet a proportion of the retailer's guarantee,’ et cetera, et cetera.

Dr Gruen: Yes.

Senator WONG: So that means: you're the retailer again in this scenario; you can purchase carbon credits or carbon units, either internationally or in the Australian market, to meet your obligation—correct?

Dr Gruen: I think this is an in-principle statement.

Senator WONG: Sure.

Dr Gruen: It's not about whether—it would depend on the model.

Mr Yeaman: I think that goes to the detailed design of the scheme, which will need to be discussed through COAG, and with further advice from the Energy Security Board.

Senator McALLISTER: Could I just ask a follow-up question? I think it's anticipated that, for both standards, whether it's the emissions intensity standard or the reliability standard, retailers would have an option to roll over excess performance or address underperformance in the following year—that's a part of the design that's contemplated in this initial letter?

Dr Gruen: It's the same paragraph.

Mr Yeaman: I think again that goes to the detailed design, and those questions are better directed to the department, I think.

Senator McALLISTER: But it is contemplated here.

Mr Yeaman: Insofar as it's raised in the letter. But I think those are detailed design matters that need to be considered further.
Senator Brandis: I think it's best, Senator McAllister, that we let the letter speak for itself. These gentlemen are not the authors of the letter, and they're not the designers of the scheme. So I didn't object to Senator Wong asking reasonably general questions, because Dr Gruen and others are, of course, people very well qualified in economics. But as to the actual—

Senator WONG: He's probably one of Australia's foremost experts on carbon prices. That's why we wanted to—

Senator Brandis: As to the actual detail of a scheme not designed by these witnesses, or the interpretation of a letter of which none of them was the author, I think it's perhaps a little unfair to the witnesses. As I say, general comments are fine. But the exegesis of this letter is not really a fair question for them.

Senator McALLISTER: I understand that point. I do want to ask them, though, whether they've had any discussions, either with the department or with the Energy Security Board, about penalties, should people be unable to meet the standard, because the letter appears to be silent on that question.

Senator Brandis: I think, Senator McAllister, really that—

Senator McALLISTER: It's a process question, about whether they have provided them any advice or had any discussion.

Senator Brandis: I think it's more than that, with respect. I think that does fall within the observation that I just made and you seemed to agree to. This is not the estimates and these are not the witnesses to whom detailed questions about design features are appropriately directed.

Senator McALLISTER: Yes. I'm not asking them to enter the mind of the drafters of the letter. I'm just asking whether they've had any discussions with the ESB or with the department about penalties.

Dr Gruen: Senator, I'm not going to have a discussion about what specific things we've discussed. But we have certainly been at meetings at which the broad outline of these ideas has been canvassed. But I'm not going to go to specifics.

Senator WONG: Okay. So this matter goes to COAG in September?

Dr Gruen: Hopefully not September.

Senator WONG: Sorry, November—my apologies. I was reading something about September. November.

Dr Gruen: It goes to the energy—

Senator WONG: There is a fair bit of time travel, I think, which you will all engage in when it comes to this, but anyway.

Dr Gruen: It's currently planned to go to the COAG Energy Council on 24 November.

Senator WONG: Which is first ministers?

Mr Yeaman: Energy—

Dr Gruen: COAG Energy Council.

Mr Yeaman: Energy ministers.

Senator WONG: So when is it going to first ministers?
Mr Yeaman: At this stage, there's no plan to take it to a scheduled meeting for first ministers. The Prime Minister has said publicly that it would first go through the COAG Energy Council process and that he was open to then meeting amongst first ministers if necessary.

Senator WONG: Okay. Were the states advised? So, in terms of your process, you have final advice on the 13th. On 16 October, there are media reports that the advice is considered by cabinet. I'm not going to ask you about that, other than to confirm that it went to cabinet on 16 October?

Dr Gruen: We're not at liberty to—

Senator WONG: Okay. What I want to know is: prior to the announcement, did you engage in any consultation with the states and territories?

Mr Yeaman: We didn't, in our department, engage with the states and territories prior to that date. It's possible that either the Minister for the Environment and Energy did—

Senator WONG: Sure.

Mr Yeaman: or the department did, but we didn't.

Senator WONG: But the Prime Minister announced it. So his department, as far as you're aware, didn't engage with states and territories prior to that announcement, correct?

Mr Yeaman: Correct.

Senator Brandis: These witnesses didn't. What, if any, engagement there may have been with states and territories is a matter for others, I think, Senator Wong.

Senator WONG: I specifically was talking about the department, not the Prime Minister's office.

Senator Brandis: Sure, but all Dr Gruen and the others can say is whether they had such an engagement, and they've said they didn't.

Senator WONG: Can anyone else in the department tell me? I don't want to have to close that down. I think if you want to tell me about the Prime Minister engaging with states and territories, that's fine. I just wanted a departmental—

Dr Gruen: No, the Prime Minister's department did not.

Senator WONG: Thank you. Did you provide advice on the NEG in the context of it being considered by cabinet?

Senator Brandis: That goes to cabinet deliberations, Senator, as you know.

Senator WONG: I think you've agreed, haven't you, Senator Brandis, it did go to cabinet? If you didn't, I suppose that would be a bigger point, wouldn't it? If the Prime Minister has announced—

Senator Brandis: I'm just making a point that the question that—

Senator WONG: Yes, it does.

Senator Brandis: As Mr Tony Jones might say, 'I'll take that as a comment.'
Senator WONG: Well, okay, if you—
Senator Brandis: The question you've just put goes to cabinet deliberations.
Senator WONG: Did it go to cabinet?
Senator Brandis: The question you've put—
Senator WONG: You should say yes.
Senator Brandis: goes to cabinet deliberations, Senator.
Senator WONG: You should say yes, because otherwise the story might be that the Prime Minister has announced one of the largest changes to energy—
Senator Brandis: Senator—
Senator WONG: —in the nation's history without taking it to cabinet. Are you going to leave that statement?
CHAIR: Order, senators!
Senator Brandis: You know perfectly well, Senator Wong, that I'm not at liberty to disclose what matters go to cabinet.
Senator WONG: That's not true. That is not true.
Senator Brandis: I'm not at liberty.
Senator WONG: Senator Minchin sat there some 10 years ago and told us whether or not the Murray-Darling Basin Plan went to cabinet. We don't ask about cabinet content; we can ask about dates.
Senator Brandis: That may have been Senator Minchin's practice 10 years ago. But I'm not at liberty to comment on cabinet deliberations, and I won't.
Senator WONG: So you won't—
Senator Brandis: And you should not take my assertion of the standard proposition that ministers don't discuss cabinet deliberations as in any way a confirmation of the proposition you've put.
Senator WONG: So you won't tell us whether or not the Prime Minister—
Senator Brandis: I'm saying I'm not—
Senator WONG: I hadn't finished the question, George.
CHAIR: Order! Senators, refer to each other by your correct titles, please.
Senator WONG: Well, perhaps he could stop interrupting me. So you won't answer whether or not the Prime Minister's much-vaunted, high-profile, big-bang announcement of a National Energy Guarantee was ever considered by cabinet?
Senator Brandis: I'm not saying it wasn't. I'm merely saying I'm not at liberty to answer the question.
Senator WONG: Yes, you are.
Senator Brandis: You've asked me. No, I don't think I am.
Senator WONG: Of course you are. It's ridiculous. It's often—
Senator Brandis: I don't dispute or challenge what you've put to me. But you're asking me to disclose what was discussed at cabinet, and I'm not at liberty to do that.
Senator WONG: It has been asked and answered previously, and the question that I can't ask is what happened in cabinet. But, anyway, if you want to say no to that, that's a matter for you.

Senator Brandis: I'm not saying that.

Senator WONG: Okay. So no discussion with the states.

Senator Brandis: Senator Wong, that's not what the witness said.

Senator WONG: By the department. Relax, Senator.

Senator Brandis: I'm very relaxed.

Senator WONG: No discussion with the states by the department.

Senator Brandis: Okay. Thank you.

Senator WONG: Was there any discussion by the department with external stakeholders before the announcement?

Dr Gruen: Not by the department.

Senator WONG: Thank you. When, to your knowledge, were state governments first advised of the energy policy?

Dr Gruen: I think I'll take that on notice.

Senator WONG: Okay. I can probably get this, but did PM&C agree the terms of Mr Frydenberg's formal request for advice from the ESB?

Mr Yeaman: Not to my knowledge.

Senator WONG: Do you have a copy of the letter?

Mr Yeaman: No, not to hand.

Senator McALLISTER: Just in relation to the timetable that's set out here, it indicates the Prime Minister meeting for the first time with the ESB on 28 September. Is that correct—there's no contact between the Prime Minister and the ESB between its formation on 8 August and 28 September?

Dr Gruen: I'm happy to take that on notice, but there's no suggestion that there might not have been contact between the PM and members of the ESB before that. But I'm happy to take that on notice.

Senator McALLISTER: If you could provide an indication of any meetings between the Prime Minister and either the ESB as a whole or members of the ESB in the period between its formation and 28 September, that would be appreciated.

Dr Gruen: I'm happy to take it on notice.

Senator McALLISTER: I wonder if that could happen over the course of today.

Dr Gruen: We'll do what we can.

Senator McALLISTER: Thank you.

Senator Brandis: Of course, your questions are about PM&C, and of course the Department of the Prime Minister and Cabinet wouldn't ordinarily be expected to know what individual contact the Prime Minister may have, either with the ESB or with individual members of it. They may if they were involved in organising meetings, but they wouldn't necessarily be involved in organising meetings.
Senator McALLISTER: Are you able to confirm anything, Senator Brandis?

Senator Brandis: I'll take that on notice.

Senator McALLISTER: Thank you. In a similar vein, is there any correspondence with either the Prime Minister or Prime Minister and Cabinet between 8 August and 28 September?

Senator Brandis: Once again, PM&C can answer in relation to correspondence from PM&C. They may, but would not necessarily, have visibility of correspondence from the Prime Minister. So, as to the latter, I'll take that on notice.

Senator McALLISTER: Thank you. For clarity, what I'm trying to establish is what kind of tasking was provided to the ESB. The press release that was put out at the time of their formation provides an extremely high-level description of what their job is, and yet by 19 September they've come up with a kind of detailed substitute proposal that replaces the clean energy target, or at least some version of it, and I'm interested to understand what motivated them to do so. It may be that these are questions better directed to Mr Frydenberg, but I'm keen to understand it from the Prime Minister's perspective and the perspective of this department.

Senator Brandis: From the Prime Minister's perspective, as I've said, I'll take the question on notice, and from the department's perspective, to the extent to which they're aware or were involved, they can provide answers. But the assumption shouldn't be made that, because PM&C may not have had visibility of every aspect of what passed between the prime minister and the ESB, any conclusions would be drawn, because you wouldn't expect them to.

CHAIR: Before we move onto another topic, I have some clarifying questions. Dr Gruen, I was listening to your evidence before about the interdepartmental committees provided to the ESB. I presume that your statement that PM&C have an interdepartmental committee with the ESB doesn't mean that there wasn't support for the ESB from the government.

Dr Gruen: Indeed.

CHAIR: So, for example, other departments could have provided support.

Dr Gruen: Indeed.

CHAIR: To your knowledge, were there other departments that provided support?

Senator WONG: He said Energy did.

Dr Gruen: So I think the question should be asked of the Department of the Environment and Energy.

CHAIR: Are there any other bodies that would have provided support—for example, the COAG Energy Council?

Dr Gruen: I think, again, they're the best department to ask for that detail.

CHAIR: Okay, thank you; we'll follow up with them. Just further, on the issue of international permits—I think my understanding is correct, but please correct me if I'm wrong—there is advice from the ESB to the government that the National Energy Guarantee could include international permits but the government hasn't adopted a position yet on this issue.

Dr Gruen: I tried to make that clear in my evidence.
Senator WONG: Yes, he did, to be fair to him.

Dr Gruen: The letter from the ESB talks about the fact that, in principle, you could use it, but that this was a matter for policy, and that that policy has not been set absolutely.

Senator WONG: Can I go to the investigation undertaken by Dr Parkinson in respect of Mr Billson?

Dr Gruen: Yes.

Senator WONG: Dr Parkinson is not here to answer questions, I understand.

Dr Gruen: That's true.

Senator WONG: Is there anyone who can assist us with the rationale behind the findings?

Dr Gruen: I can assist you initially but, to the extent that there are further questions, Ms Cass will assist us as

Senator McALLISTER: We are very hopeful that the department will be able to assist us on this question. We had sought, as we have on at least one occasion previously, to have Dr Parkinson attend for this matter.

Dr Gruen: Yes.

Senator McALLISTER: That request was not agreed with the government, but it is a matter we are seeking to pursue.

Senator Brandis: It hasn't been a custom for the Secretary of PM&C to attend these estimates.

Senator McALLISTER: I did not assert that that was the custom, Senator Brandis.

Senator WONG: No, but there might be some things that are solely within his—

Dr Gruen: I can assist.

Senator WONG: Remind me, Dr Gruen. My recollection is—and I've obviously been dealing with a number of matters—the facts are not disputed that Mr Billson was appointed to a position as executive chair of the Franchise Council of Australia prior to leaving parliament; is that right?

Dr Gruen: Yes. So Mr Billson was appointed as executive chair of the Franchise Council of Australia. It was announced in a media release by the Franchise Council on 23 March 2016.

Senator WONG: When did he leave parliament?

Dr Gruen: On 9 May.

Senator WONG: Was he receiving remuneration from the Franchise Council while an MP?

Dr Gruen: That I don't know, but we can find out for you.

Senator WONG: I'd like to know that. That is the assertion that's been made public. I want to know if that's what Dr Parkinson found out.

Dr Gruen: We can find that out.

Senator WONG: I asked a chamber question about this—question 3377. I asked the Minister representing the Prime Minister—that's Senator Brandis—whether or not Mr Billson consulted the Prime Minister or PM&C before his appointment and whether or not his
appointment was consistent with part 2.24 of the Prime Minister's statement of ministerial standards. I actually asked that question on 16 April last year. Have you provided an answer to that?

Dr Gruen: Ms Cass is just going to come and help me on this.

Ms Cass: Senator, let me just—

Senator WONG: I'll help you. As far as I'm aware, this question has not been answered in the Senate. Is that correct?

Ms Cass: I don't believe it has been answered in the Senate. I think it lapsed after it was initially asked.

Senator WONG: What do you mean lapsed?

Ms Cass: Is that not correct?

Senator WONG: No. What do you mean lapsed? It just means you are continuing not to answer it, so I'm trying to understand why it hasn't been answered.

Senator Brandis: Senator Wong, I can give you some information about this in relation to Mr Billson because it was raised in the House of Representatives on 10 August.

Senator WONG: I will ask about content; I'm just asking about this question. Do you mean it lapsed because of the election? Is that what you mean Ms Cass?

Ms Cass: Are you referring to question on notice 3377, initially asked on 18 of April 2016? Is that correct or incorrect?

Senator WONG: Yes.

Senator Brandis: The officer, Senator Wong, is right. I think you will find that when there is a dissolution of the Senate, as there was last year—

Senator WONG: Yes, and I usually—my officers confirmed this—resubmit those I want answered, and I thought it was resubmitted.

Ms Cass: I believe it has been resubmitted and it is now parliamentary question on notice 514. I don't believe it's been answered yet.

Senator WONG: Why not?

Ms Cass: I believe it is still requiring clearance.

Senator WONG: On what date did that answer first go to the Prime Minister's office?

Ms Cass: I don't know.

Senator Brandis: Senator Wong—

Senator WONG: I'm allowed to ask that question. I know it is embarrassing that a bloke that was on your front bench was getting money from another source. I am actually allowed to ask this question.

Senator Brandis: I have heard your questions and I'll make an inquiry.

Senator WONG: Let me finish the questions.

Ms Cass: I'll be needing to take that on notice, Senator.

Senator WONG: On what date did the first answer—the answer in relation to the first question which I asked on 16 April last year—go to the Prime Minister's office?
Senator Brandis: That question lapsed, so you are talking about what you say is a resubmitted question.

Senator Wong: No, I am entitled to ask that question, Senator Brandis. This is not a forum where you can tell me what I can ask. I am entitled to ask the department in relation to the answer to the first question—that is, 3377—on what date—

Senator Brandis: So this is a question—

Senator WONG: Can I finish?

Senator Brandis: Well, Senator—

Senator WONG: Chair, I haven't finished my question.

CHAIR: Order. Senator Wong, finish your question.

Senator WONG: Thank you. I would like to know whether an answer was prepared by the department, or a draft answer, in relation to 3377 and, if so, on what date it was submitted to the Prime Minister's office. That's my first question. My second question—

CHAIR: Just one question at a time, perhaps, Senator Wong.

Senator Brandis: One at a time, please.

Senator WONG: Is he chairing now?

CHAIR: No, Senator Wong.

Senator Brandis: We will take that on notice. Nevertheless, let it be clear this is a lapsed question submitted in a previous parliament. Whether it is possible—

Senator WONG: Which you keep dodging.

Senator Brandis: The question lapsed because the Senate was dissolved, and for no other reason.

Senator WONG: In April or May you could have answered.

Senator Brandis: Whether it is possible to ask the question in the 45th Parliament about a question that lapsed upon the conclusion of the 44th Parliament and the dissolution of the Senate is something I will have a look at.

Senator WONG: I have resubmitted the question.

Senator Brandis: Okay. On what date did you do that?

Senator WONG: I am asking a question. I have resubmitted the question. I think Ms Cass said—if you had listened to her—that it has been resubmitted and she confirmed it was question No. 514. Was that the number?

Ms Cass: That's correct.

Senator WONG: Right. When did you prepare an answer to 514?

Ms Cass: I will take that on notice and I will find out for you.

Senator WONG: Do you know whether you have provided that to the Prime Minister's office?

Senator Brandis: All of these questions will be taken on notice.

Senator WONG: You are very worried about this, aren't you?

Senator Brandis: Not at all, Senator.
Senator WONG: Then answer the questions.
Senator Brandis: Not even remotely, Senator, but it is appropriate that questions—
Senator WONG: A bit of a cover-up here. The question is asked in April 2016 and still everyone says, 'Nothing to see! Nothing to see!'
CHAIR: Order!
Senator Brandis: That, Senator, is because it lapsed, as you know. I was trying to explain to you, Senator, what the position is.
Senator WONG: Oh, now it's 'Patronising George'. I was wondering how long it would take.
CHAIR: Order! Senator Wong, the commentary doesn't assist.
Senator Brandis: Senator, do you want an explanation or don't you?
CHAIR: It might entertain you, but it doesn't assist the committee.
Senator WONG: This is funny. He just can't help himself.
Senator Brandis: Senator Wong, do you want an explanation or don't you?
Senator WONG: You're not giving me any information.
Senator Brandis: Well, let me. On 10 August—
Senator WONG: I have. On 10 August, I submitted a new question. There you go.
Senator Brandis: On 10 August Mr Burke—
Senator WONG: I submitted a new question on 10 August 2017. Thank you—very efficient staff I have! So why hasn't that been answered, Attorney?
Senator Brandis: If you will bear with me, Senator.
Senator WONG: A question about Mr Burke I can guarantee is probably not an answer to the question I just asked.
Senator Brandis: Let me tell you what I can tell you, Senator.
Senator WONG: It is called a non-responsive answer.
Senator Brandis: Chair, may I proceed without being interrupted?
Senator WONG: He's not answering me. By definition, how can—
CHAIR: Order, Senator Wong.
Senator WONG: Chair, relevance. How can a question about an answer to a question about something I ask in the Senate possibly be answered by what Mr Burke, the Manager of Opposition Business in the House, has to say?
CHAIR: Senator Wong, if you are not satisfied with the answers provided by the Attorney—
Senator WONG: It's just wasting time.
CHAIR: you're very entitled to ask follow-up questions. But commentary during his answers doesn't assist us getting to that point.
Senator WONG: His answer is not assisting.
CHAIR: I'd ask you to refrain from doing that, if possible. Attorney?
Senator Brandis: Thank you very much indeed, Mr Chairman. This issue was raised in the House of Representatives by Mr Burke on 10 August this year, and the Prime Minister was asked whether he had taken any action. The Prime Minister said he would raise the matter with the secretary of his department, Dr Parkinson, to investigate. On 4 September, Dr Parkinson advised the Prime Minister that Mr Billson had assured him that he both understands and has complied with his post-ministerial obligations under the Statement of Ministerial Standards. Mr Billson also assured Dr Parkinson that he understands the requirements of the Australian Government Lobbying Code of Conduct. Dr Parkinson advised the Prime Minister that, on the basis of the information available to him, he had 'no reason to conclude Mr Billson has breached either the Statement of Ministerial Standards or the Lobbying Code of Conduct.'

Senator Wong: So it takes a question in the House of Representatives for Mr Turnbull to respond to a clear question of probity. I asked the question in April 2016 and August 2016, and nothing happens until something is raised in question time in the House of Representatives before a bunch of journalists. What does it say about this Prime Minister's commitment to probity, really?

Senator Brandis: Well, Senator, that's a process issue about the time taken to answer a lapsed question—

Senator Wong: Two.

Senator Brandis: which you then resubmitted.

Senator Wong: Two questions.

Senator Brandis: However, the point is that both your and Mr Burke's questions raised an issue concerning Mr Billson—

Senator Wong: Two questions.

Senator Brandis: I am advising you that the matter has been investigated by the secretary of the Department of the Prime Minister and Cabinet, Dr Parkinson, who has advised the Prime Minister that he has no reason—

Senator Wong: I'm going to ask questions about that.

Senator Brandis: This is a direct quote: 'no reason to conclude Mr Billson'—

Senator Wong: Don't worry, we'll ask questions about that.

Senator Brandis: 'has breached either the Statement of Ministerial Standards or the Lobbying Code of Conduct.' So the matter has been investigated, and that was the conclusion of the investigation.

Senator Wong: So just so you're aware, Ms Cass, I've just been provided with a few more details. In fact, the first question was submitted in April—it must be 2016—and was 3075. It then became 3377, lapsed again at dissolution and was then resubmitted again as 514. So we've actually asked it three times. Rather than re-traversing, my question will be in respect of all of those times. So three times it's been asked and not answered. No answer has been filed in the Senate as required. I'd like to know, on each of those occasions, was an answer prepared by the department and, if so, when it was provided to Mr Turnbull's office. Now I want to come back—
**Senator Brandis:** We'll take those questions on notice, Senator Wong. But the point is that the question has been answered. It's been answered by me, because I've just told you what the outcome of Dr Parkinson's inquiry was.

**Senator Wong:** It's non-responsive, but anyway, I'm not going to be distracted by you. Can I go to the letter from Dr Parkinson to Mr Turnbull, Dr Gruen?

**Dr Gruen:** Yes.

**Senator Wong:** The statement is, 'On the basis of the information available to me'. I want to know, first, did Dr Parkinson conduct an investigation? Did he speak to any ministers, any ministerial staff, any public servants or anyone external in the course of this investigation?

**Dr Gruen:** I can tell you, Senator Wong, that Dr Parkinson spoke with Mr Billson on multiple occasions and considered a public statement released by Mr Billson, which is available on the FCA website, dated 9 August 2017. He also considered emails that he received from Mr Billson on 20 and 21 August. Mr Billson assured Dr Parkinson both orally and in writing that he understands and has complied with his post-ministerial obligations under the ministerial standards and that he understands the requirements of the Australian Government Lobbying Code of Conduct. As you know, the Prime Minister tabled Dr Parkinson's letter of the fourth. At the question time on 16 October, the Prime Minister confirmed that Dr Parkinson spoke to Mr Billson in preparing his advice, and that Dr Parkinson did not interview any ministers. Dr Parkinson's role was to provide advice in relation to the Lobbying Code of Conduct and the ministerial standards rather than any broader issues of conduct being considered in the House of Representatives.

**Senator Wong:** Right. And just remind me—Mr Billson was or was not a member of the frontbench at the time he took the job?

**Dr Gruen:** The timing is the following: on 21 September 2015, Mr Billson ceased to be Minister for Small Business in the Treasury portfolio; on 23 March 2016, Mr Billson's appointment as the executive chair was announced in a media release; and on 9 May 2016, Mr Billson ceased to be a member of parliament when parliament was dissolved.

**Senator Wong:** Is he paid from March 2016?

**Dr Gruen:** I think I have already taken that on notice, and we'll get you that information if we can.

**Senator Wong:** As I understand what you have just told me, Dr Parkinson's investigation consisted of speaking to Mr Billson, emails from Mr Billson and a public statement from Mr Billson. Is it correct to say that the investigation did not involve discussions with or information being provided by anyone other than Mr Billson?

**Dr Gruen:** The only information I have is that he did not interview any ministers, and I am happy to take the rest of that question on notice. I can give you more information about the nature of the decision that Dr Parkinson came to if you would be interested.

**Senator Wong:** Sure.

**Dr Gruen:** The conclusion that Dr Parkinson came to was based on the following: first, Mr Billson did not breach the post-ministerial employment provisions at clause 2.24 of the Statement of Ministerial Standards, because his advocacy for reform of the proposed Fair
Work Act 2009 amendments, which relate to joint employer liability between franchisors and franchisee employers, was a matter which fell within the portfolio responsibilities of the Minister for Employment, and it was therefore not a matter on which he would have had official dealings as the Minister for Small Business in the Treasury portfolio. In other words, the ministerial code refers to matters on which they have had official dealings as minister. The point is that Mr Billson's advocacy for reforms related to matters that fell within the portfolio of the Minister for Employment rather than his previous work as Minister for Small Business in the Treasury portfolio.

**Senator WONG:** That is a very fine distinction, Dr Gruen.

**Dr Gruen:** It is. The question that Dr Parkinson was responding to was a question that—

**Senator WONG:** Sorry, could I just ask which documents you are reading from? Is this the letter from Mr Turnbull to—

**Dr Gruen:** No, it is the question that Mr Burke asked the Prime Minister, and on the basis of that question the Prime Minister responded that he would raise it with the secretary of his department, so I was going to read the question that Mr Burke asked.

**Senator WONG:** I can read that.

**Dr Gruen:** I am sure you can, but it is relevant: 'The Prime Minister's ministerial standards prohibit former ministers from lobbying members of Parliament on any matter relating to their previous portfolio for 18 months.'

**Senator WONG:** So, where is the advice that you are reading from—where Dr Parkinson has determined that the phrase 'relating to the portfolio' ought be read, if I may say so, quite narrowly because, technically, policy responsibility might reside in another portfolio?

**Dr Gruen:** Where is that advice?

**Senator WONG:** Yes. You have just read to me an answer which says, essentially, in content, 'We don't think it's relevant to the portfolio because it was a matter within the employment portfolio not Treasury.' I am asking what you are reading from. Is that Dr Parkinson's letter to the Prime Minister, is there a report or is this just your briefing note?

**Dr Gruen:** It is my briefing note that goes to the basis on which Dr Parkinson came to the conclusions that he came to.

**Senator WONG:** Is that made public anywhere?

**Dr Gruen:** No, I'm making it public by reading it to you.

**Senator WONG:** Okay, please go ahead.

**Dr Gruen:** 'It was not a matter on which he would have had official dealings as the Minister for Small Business in the Treasury portfolio. Nor did he breach the prohibition on lobbying activities under clause 7.1 of the Lobbying Code of Conduct, because he was not engaged in lobbying activities in relation to a matter on which he had official dealings in the last 18 months in office as the Minister for Small Business in the Treasury portfolio. Mr Billson's position, as Executive Chair of the Franchise Council of Australia, did not fall within the definition of being a lobbyist under the Lobbying Code of Conduct, where a lobbyist is defined as a person lobbying on behalf of a third-party client. He therefore does not need to be and is not registered as a lobbyist on the lobbyist register.'
Senator KITCHING: Did Dr Parkinson look at the second part of 2.24:
Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public.

Dr Gruen: I think Dr Parkinson is certainly aware of the lobbying register and of the ministerial standards, so he is obviously fully aware of both of those documents.

Senator KITCHING: Do you have a briefing note about that?
Dr Gruen: That Dr Parkinson is fully aware of the—

Senator KITCHING: No. That:

Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public.

Dr Gruen: So that is in the statement of ministerial—

Senator KITCHING: That is the second part of 2.24.

Dr Gruen: Sure.

Senator Brandis: The conclusion, might I remind you, Senator Kitching, from Dr Parkinson was:

… I have no reason to conclude Mr Billson has breached either the Statement of Ministerial Standards or the Lobbying Code of Conduct.

And he refers, in his letter to the Prime Minister of 4 September, specifically to clause 2.24 and to all of clause 2.24.

Senator KITCHING: I think my question to Dr Gruen was in relation to whether Dr Parkinson had furnished information, as he has about the first part of 2.24, rather than—

Senator Brandis: That is a mischaracterisation of what he is saying. I read it before and I don't want to delay the committee, but, if you like, I will read it again. Dr Parkinson has concluded that Mr Billson is not in breach of clause 2.24—not a part of clause 2.24, but that he is not in breach of any part of clause 2.24.

Senator KITCHING: Senator Brandis, what I am asking Dr Gruen, is, in his briefing note that he seems to have there, does he have a briefing note in relation to not taking advantage of information to which they have had access as a minister?

Senator Brandis: Dr Parkinson has said that in his letter.

Senator KITCHING: I am asking whether he has any further detail in relation to that part of 2.24? I can speak more slowly if that would help?

CHAIR: Senator Kitching, that is not helpful or necessary.

Dr Gruen: As the Attorney-General has read out, Dr Parkinson is very clear in his letter to the Prime Minister that his judgement is that Mr Billson both understands and has complied with his obligations under the standards, and he draws particular attention to that clause. With respect to the rest of the question about the advice that I have and that I read out, I have given you everything I have.

Senator KITCHING: Thank you, that is the question I was asking.
Senator WONG: I will try and finalise this. I am conscious there is a lot more to do. Dr Gruen, I think you have agreed that the only information you have about a person or persons to whom Dr Parkinson spoke to in the context of this investigation is in relation to contact with Mr Billson. No ministers were consulted, but you are taking on notice whether any other contact with any other person occurred?

Dr Gruen: I think I am taking on notice whether we have anything further to add to that answer.

Senator WONG: Yes, agreed. That is the first point. Secondly, I want to confirm that the circumstances in which Dr Parkinson's letter was made public was after a media request—is that right?

Dr Gruen: I think it was made public in two different ways. The Prime Minister tabled the letter in question time on the 16th, but the letter was also released to the ABC's 7.30 by Dr Parkinson on the 5th.

Senator WONG: Prior to the Prime Minister tabling it?

Dr Gruen: Prior to the Prime Minister tabling it.

Senator WONG: The ABC reported that the Department of Prime Minister and Cabinet only made Dr Parkinson's letter public after a request from the ABC. Is that correct, and if so why?

Dr Gruen: I don't have any information on that, but I can also take that on notice and get back to you if we have anything to add.

Senator WONG: Who made a decision that it was not to be released, and then who made that decision, if any—

Senator Brandis: You are assuming that a decision—

Senator WONG: I said 'if any' at the end of it. If I can say the next bit: who made the decision to release the letter on the 5th?

Dr Gruen: Again, I'm happy to add anything we can add to that answer.

Senator WONG: It's the case, isn't it, that Mr Billson was receiving, based on your timeframe, remuneration from an external body— as executive chair of the Franchise Council, was it?— from 23 March to 9 May, relevantly while still an MP?

Dr Gruen: I'm not in a position to confirm or deny whether his appointment was remunerated over that period, but I'm happy to get back to you. That is not something that I am aware of.

Senator WONG: I don't think that is disputed. I think Mr Billson has publicly admitted it, but that is fine.

Dr Gruen: We can certainly confirm.

Senator WONG: This is actually a question for the minister: is the Prime Minister comfortable with members of his party room, members of parliament representing the Liberal Party, receiving moneys from a third party while sitting in this parliament?

Senator Brandis: First of all, it hasn't been accepted by Dr Gruen—

Senator WONG: Mr Billson's accepted it.
**Senator Brandis:** I don't know whether Mr Billson has said that publicly. I just don't know. The relevant issue here is that at the Prime Minister's request—

**Senator WONG:** No, I asked you a question. I know you want to answer a different question. Is he happy with people getting money from a third party while representing the people of Dunkley?

**CHAIR:** Order!

**Senator Brandis:** Senator Wong, you're interrupting me again. You asked me about a factual assumption that I don't know was in fact true, but the point I'd make to you is that the relevant matter here is that one independent person of undoubted probity has investigated this matter, namely the secretary of PM&C, Dr Parkinson, and Dr Parkinson has concluded that there has been no breach by Mr Billson of any relevant standard.

**Senator WONG:** Dr Gruen, you said at the outset that the remit of Dr Parkinson's investigation was very precise: it was whether or not the lobbying code of conduct and/or the ministerial standards had been breached. Correct?

**Dr Gruen:** I'll be brief. Dr Parkinson was asked to respond to the question that Mr Burke asked the Prime Minister on the 10th.

**Senator WONG:** So Dr Parkinson—

**Dr Gruen:** Dr Parkinson's answer went to that.

**Senator WONG:** Correct. So Dr Parkinson was never asked to advise whether or not it was appropriate for the people of Dunkley to be represented by someone who was being paid by the Franchise Council as well?

**Senator Brandis:** He was asked whether there was a breach.

**Senator WONG:** Was he asked that question, Dr Gruen?

**Senator Brandis:** He was asked—

**Senator WONG:** Was he asked that question?

**Senator Brandis:** Senator—

**Senator WONG:** He wasn't!

**CHAIR:** Senator Wong, I think your question is very clear.

**Senator Brandis:** Senator Wong, he was asked whether there had been any breach. He was asked the very question put to the Prime Minister on your behalf, you collectively as the opposition, by Mr Burke. He answered the question that you, the opposition, interrogated the government about.

**Senator WONG:** I am asking you the question now, and I assume you will need to take it on notice to confirm what is on the public record—that Mr Billson was engaged by the Franchise Council. I would like to know whether Mr Turnbull thinks it is appropriate for a member of the Liberal Party representing the people of Dunkley to take a salary from a third party while sitting in this parliament?

**Senator Brandis:** I will take that on notice—

**Senator WONG:** Thank you.
Senator Brandis: but might I point out to you that it is very appropriate for backbench members of parliament to receive remuneration from third party sources not inconsistent with their responsibility as members of parliament.

Senator Wong: That's hilarious!

Senator Brandis: It's both consistent and commonplace.

Chair: Thank you. I believe we have finished on this issue.

Senator Wong: I've got plenty more, but I think Senator Xenophon is here.

Senator Xenophon: This follows on from the line of questioning of Senator Wong in terms of the energy policy and the role of PM&C. I don't think this has been asked: noting that the changes to be made are rule changes, notwithstanding some legislative changes and emission targets as required, how will those rule changes be developed in the context of public consultation and industry consultation? What does PM&C view as the appropriate level of consultation with both the public and industry in terms of the ESB and the National Energy Guaranteed?

Dr Gruen: I think it is appropriate for that level of detail on this topic to be asked of the department. The Department of the Environment and Energy will be in front of estimates later in the day. I think it is appropriate to ask them.

Senator Xenophon: You may be able to answer this: what role will there be for South Australia, noting that South Australia is the lead legislator in respect of the rules because the national electricity laws are contained in the schedule that is the National Electricity (South Australia) Act 1996? Given the conflict between the Premier of South Australia, energy minister Frydenberg and the Prime Minister on this, what role will South Australia have in the context of these rule changes?

Dr Gruen: I am happy to defer to you on questions of South Australia.

Senator Xenophon: No, don't do that.

Dr Gruen: I am not an expert on the details of how this applies to South Australia, though I am aware that the arrangements are different for South Australia than for other states. With that level of detail, I am sure the officers from the Department of the Environment and Energy can cite you chapter and verse.

Senator Xenophon: Sure. I might ask you take it on notice.

Dr Gruen: Happy to.

Senator Xenophon: My final question is: has your office been contacted by any large gas users recently, or in the last several months, suggesting that such is the pressure on energy prices that it may put them in an untenable position in terms of continuing to operate and with it potential job losses?

Dr Gruen: I can take on notice whether the Department of Prime Minister and Cabinet has been approached. I can take that on notice; happy to do that.

Senator Xenophon: Would you be aware of industry or businesses saying, 'Such is the pressure on gas prices that we're in a very difficult position in terms of being able to continue on for much longer'?
Dr Gruen: I think it is common knowledge that gas prices have gone up substantially and that is putting pressure on businesses, and that's why the government and the Prime Minister have acted to make sure that there is sufficient gas in the domestic market and that we are not left with a shortfall.

Senator XENOPHON: I understand that and I appreciate that, but my understanding is that there are a number of businesses out there, significant employers, who say that however welcome the government's policies are or may be, crunch time is coming for them now. They're saying that any relief from government policy, as a result of government policies recently announced and those from several months ago in terms of gas policies and reservation schemes and export controls and the like, will be too late for them. Are you aware of any feedback from industry to that effect—that is, they are running out of time?

Dr Gruen: Not in the terms that you have—

Senator XENOPHON: In any other terms, similar terms?

Dr Gruen: Simply reading the press, it is very clear that there have been several companies that use gas that are feeling under pressure, and that is why the government has been so active in trying to do something about this. If the specific question is, 'Has Prime Minister and Cabinet received specific representations from companies', I can take that on notice and get back to you.

Senator XENOPHON: Yes, in the context of no matter how welcome the government's policy changes are, some of these companies are running out of time and they need immediate relief in order to be sustainable.

Dr Gruen: Yes; okay.

Senator XENOPHON: Thank you.

Senator ABETZ: I have a brief question, if I may? When was the most recent enterprise agreement by Prime Minister and Cabinet ratified? Or when did it come into force?

Dr Gruen: I will get some help with that. I have some of that detail but it is not—

Senator ABETZ: It was relatively recently?

Dr Gruen: It was relatively recently.

Senator ABETZ: All right; I don't need the exact date, so we can move on.

Dr Gruen: We do have the exact date if you are after it.

Senator ABETZ: Good. Were there any clauses in that agreement relating to induction and union presence and freedom of association?

Ms Greenwood: The agreement came into effect on 1 August.

Senator ABETZ: Thank you.

Ms Greenwood: It was voted in on 28 June.

Senator ABETZ: The first of August is good enough; I think I understand the mechanics. Does the agreement have any clauses in it relating to induction and union presence and freedom of association?

Ms Greenwood: My understanding is that the agreement has clauses relating to unions' access to the department, and there's a subsequent policy that relates to induction.
Senator ABETZ: And 'a subsequent policy'?

Ms Greenwood: Yes, it's not in the agreement.

Senator ABETZ: So when was that determined?

Ms Greenwood: That was negotiated as part of the enterprise agreement negotiations.

Senator ABETZ: So we've got enterprise agreement negotiations, which are then ratified by the Fair Work Commission, but we've got a little side agreement, so can you tell me the details? Are you able to table that side agreement?

Ms Greenwood: Yes, I can.

Senator ABETZ: Good. Is it easily available or not?

Ms Greenwood: Yes, I should be able to get it for you today.

Senator ABETZ: If you could—and, secretariat, if it wouldn't be too inconvenient, once you've received it, could you let me know and then, if there's the opportunity for further questions, all good; please don't delay. If you've moved on, I understand, but that would be most helpful.

Ms Greenwood: May I just clarify. It wasn't negotiated as part of the agreement; it was taken to staff during the negotiation process because it was a policy that related to the agreement.

Senator ABETZ: But did this find its way to the Public Service minister?

Ms Greenwood: No. It is not part of—

Senator ABETZ: So the Public Service minister would never have been aware of this, and the Fair Work Commission itself would not have been aware of this?

Ms Greenwood: No, because they're not part of the agreement.

Senator ABETZ: Yes, but we've got a side agreement.

Ms Greenwood: We've got a standard agreement of consulting with staff around those policies.

Senator ABETZ: Was it discussed with the bargaining representatives?

Ms Greenwood: Yes.

Senator ABETZ: During the official bargaining?

Ms Greenwood: As part of that process, yes.

Senator ABETZ: So why wasn't it included in the enterprise agreement itself?

Ms Greenwood: It's not necessary to the agreement. It's a level of detail as a policy or guideline.

Senator ABETZ: It wasn't to keep it away from government and the Fair Work Commission?

Ms Greenwood: No, Senator. As per a range of other policies and guidelines, they were negotiated with staff directly and as part of that process, but they were separate to the formal enterprise agreement negotiations.

Senator ABETZ: Who asked for this side agreement?

Ms Greenwood: I would need to get further information on that and take that on notice.
Senator ABETZ: If you could. These enterprise agreements, if memory serves correctly, need to be agreed or ratified by the Australian Public Service Commissioner?

Ms Greenwood: They pass through the APSC; they don't need to be ratified as such.

Senator ABETZ: They pass through the APSC. Did this passing through, to use that terminology, with the APSC involve the side agreement?

Ms Greenwood: No.

Senator ABETZ: No. That is very concerning, I must say, but I will wait until I see the documentation—and, if I could have a copy of the enterprise agreement as well, I'd be much obliged.

Ms Greenwood: Yes.

Senator McKENZIE: I was hoping PM&C could outline some achievements from the July G20 meeting that the PM attended in Hamburg.

Dr Gruen: Yes, I am happy to do that. I can start with that, but I can bring people to the table who will help me with that.

Senator McKENZIE: That would be great, thanks, Dr Gruen.

Dr Gruen: Obviously, one element of the G20 is the opportunity for the Prime Minister to talk with other leaders of the largest and the systemically important countries in the world.

I think one of the benefits of the G20 is very much that leaders of the large and important countries in the world are in the same place. It is one of the signs of, if you like, the esteem with which the G20 is treated by leaders that, almost without exception, they all come to the G20. As far as I am aware that would be the only international meeting where that's true. It is almost without exception, unless something extraordinary happens in the days leading up to the G20 meeting. For instance, there was one meeting where I think there had been a terrorist attack in France and the French president didn't make it to the G20 meeting. I think that was in Antalya in Turkey, and he sent his foreign minister. But it is almost without exception that the leaders of all G20 countries come to the G20. The importance of that is that it means that there is the opportunity for the Prime Minister and other leaders to talk to each other, both in official bilateral meetings but also in opportunities, which they all clearly value, of being able to pull someone aside and have a conversation about something important that is in the international domain. Although that is not a kind of official outcome of the G20 meetings in the sense that it doesn't appear in any of the communiques, I think of that as being quite important, to the extent that it's an opportunity for leaders to build up a relationship with each other. I think that's quite important and it's one of the things that's going for the G20.

Senator McKENZIE: Dr Gruen, did one of those sideline meetings result in cuts to tariffs for Australian steel exports?

Dr Gruen: To the extent that there were private meetings between the Prime Minister and other leaders, I am not in a position to confirm or deny the topics of conversation. To the extent that you're relying on public statements, that's fine, but I can't really add anything to them.

Senator McKENZIE: No worries. Thank you.

Senator SMITH: Much of our success in securing the human rights position at the United Nations gives us an opportunity to pursue our position in regard to abolition of the death
penalty. I am just wondering, in advance of the Commonwealth Heads of Government Meeting in London next year in March or April, what we might be doing to utilise that forum to also advance Australia’s interests in pursuing the abolition of the death penalty, given that some of the most recalcitrant or retentionist states are actually Commonwealth members.

Ms Yu: Yes. As you know, Australia has won a seat at the UN Human Rights Council. We will continue to actively work in that forum to promote human rights. The Australian government certainly has been very vocal in this space. I suspect it will be a continuation of the good work we have been doing. Having this seat really allows us to showcase the values that the Australian government brings to this debate.

Senator SMITH: Projecting forward to the Commonwealth Heads of Government Meeting next year in London, what role will Australia play in using that forum to advocate for abolition of the death penalty amongst Commonwealth member states?

Ms Yu: I'm not sure that the Commonwealth agenda has been settled yet. We will be working very closely with the Commonwealth secretariat to ensure that our roles are played to their maximum ability in that regard. I'm not sure of the details of what's going to be discussed at the Commonwealth leaders meeting yet.

Senator McALLISTER: We went back to energy momentarily, and it did prompt me to reflect on your evidence that there really haven't been any final decisions made yet. As you stated, Dr Gruen, the final decision is for COAG, and a RIS will be prepared at that time et cetera. Given that there is no final decision on the energy direction for Australia, I'm questioning why the government has elected to spend at least $760,000 on advertising promoting the energy plan when the plan has not in fact been finalised? Actually, I misspoke. I believe it's $760 million.

Senator WONG: No, $7 million was what the article says—

Senator Brandis: I think that's wrong, Senator. You seem to be confused about the figure.

Senator McALLISTER: I am confused about the figure, Senator Brandis. You can enlighten me.

Senator WONG: The Australian says $7 million. We don't know. This is what we're asking.

Senator Brandis: You're asking how much, if anything, has been spent on advertising. I'll take that on notice.

Senator McALLISTER: I think $760,000 is the figure that's been provided for just the ads during the grand final.

Senator Brandis: You've quoted three things now—$760,000, $7.6 billion and $760 million.

Senator McALLISTER: Don't be difficult.

Senator Brandis: I doubt that $760 million is the relevant figure.

Senator WONG: Senator Brandis, you don't have to be insufferable. She's asked a question. Chair, Senator McAllister has asked a question about the grand final spend, which is clearly different to the broader campaign spending.
Senator Brandis: I will take the question on notice.

CHAIR: I'd rather she asks her questions rather than all this commentary on her questions.

Senator McALLISTER: Thank you. Why is it that a substantial amount of money, Senator Brandis, is being provided for advertising for a plan that has not yet been finalised?

Senator Brandis: There is a process, as you know, within the government in relation to government advertising. I will take on notice the manner in which this advertising has been approved. I'm sure it's been approved in the orthodox manner. In any event, I'll take that on notice.

Senator WONG: So you can't tell us why you're spending money on a policy you haven't finalised?

Senator Brandis: No, Senator. I think you're just being provocative.

Senator WONG: No, I'm asking the question. You can't tell us—

Senator Brandis: You've asked a question; I've said I'll take it on notice.

Senator WONG: Can you take this on notice. Why are you spending money on a policy that hasn't been finalised? Secondly, are you able to confirm or not confirm the figure that is now appearing in media reports, which is that you are going to spend an estimated $7 million on this?

Senator Brandis: You've asked me about the cost of advertising and I've said I'll take it on notice.

Senator WONG: I've asked you two questions and I've asked you to take them both on notice.

CHAIR: I think there is an appropriate place in the program to ask about this, which is government campaign advertising at 2.5 in the program tomorrow.

Senator WONG: Dr Gruen, can someone just remind me about the process by which government identifies bills or legislation which are to be given priority in any given session. Is there a subcommittee of cabinet? Are bills assigned. It used to be 'T status'. Can you just take me through that process.

Senator Brandis: I can tell you.

Senator WONG: No, I don't want an answer from you. I'd rather have an answer—

Senator Brandis: I will take the question.

Senator WONG: You don't know everything. I know you think you know everything, but—

CHAIR: Order, Senator Wong! As you well know—

Senator Brandis: Can you try and refrain from being rude every time your appear at estimates, Senator Wong.

Senator WONG: I'd rather have Ms Lynch answer, not you.

Senator Brandis: I will provide the answer.

Senator WONG: So you won't let her answer?

CHAIR: Order! Senator Wong, as you know—
Senator Brandis: There is a Parliamentary Business Committee. The Parliamentary Business Committee makes these decisions.

Senator WONG: Thank you. Ms Lynch, just tell me the process by which ministers or portfolios are asked to identify priority pieces of legislation, the process by which the PBC considers them and the process by which the parliamentary program is determined in terms of the priority assigned to certain bills. Can you take us through that briefly.

Ms P Lynch: There is a process of bids being sought three times a year prior to the anticipation of the upcoming parliamentary session. Those bids are then considered in the department and go to the Parliamentary Business Committee, which is a subcommittee of cabinet.

Senator WONG: And PBC prioritises them. Does it assign a particular status? How is the priority recorded?

Ms P Lynch: I'm just trying to recall what's on the public list that comes out regularly during the course of the sittings. But there are bills that achieve T status.

Senator Brandis: It is the practice of the Parliamentary Business Committee to consider priorities, yes.

Senator WONG: Yes, I'm just asking what the nomenclature is. Is it still T status?

Ms P Lynch: Yes, it is.

Senator WONG: Is that correct?


Senator WONG: Is it section, clause or paragraph 108? What do you want me to call it?

Ms Cass: 'Paragraph' is fine.

Senator WONG: Paragraph 108. Okay. Tell me if this is correct. Ministers write to the Prime Minister seeking approval for significant government appointments. The Prime Minister can determine whether a significant appointment requires cabinet approval or doesn't require cabinet consideration, correct?

Ms Cass: Correct.

Senator WONG: That is correct.

Ms Cass: That is correct.

Senator WONG: Paragraph 113 says:

In submitting proposals to the Prime Minister, ministers must ensure that an account is given of the selection process. Where the minister recommends re-appointment, particular justification for doing so
is to be included. Any urgency or sensitivity relating to the position or the proposed appointment must be explained.

This process continues or applies regardless of the mode of appointment; is that right?

Ms Cass: What do you mean by that?

Senator Wong: Some positions might require a particular administrative process for appointments. They might require a disallowable instrument to be tabled in the parliament or they might require consultation with another body. They might require two ministers to tick off on it. Various positions across government may have a different set of processes associated with them, correct?

Ms Cass: That is correct.

Senator Wong: Right. But this is the process in relation to significant appointments that the Cabinet Handbook sets out, regardless of the mode of appointment; is that right?

Ms Cass: It is the usual process for appointments that are considered by cabinet.

Senator Wong: I am going to be asking questions about a Mr Nigel Hadgkiss and his appointment as the commissioner of the ABCC. Can you tell me: did the minister, Minister Cash, write to the Prime Minister seeking approval of the appointment before the appointment action was finalised?

Senator Brandis: Senator Wong, I think these questions go to the deliberations of cabinet, and therefore they're not questions that can be asked of these officers.

Senator Wong: I can ask. That's actually before it goes to cabinet. The whole point of this is that this is a letter that goes to the Prime Minister before it goes to cabinet. I haven't actually even asked about the cabinet process. I've asked whether or not she sought approval.

Senator Brandis: That's really not the point. The point is that matters that may go to cabinet are the subject of a process in advance of the particular cabinet meeting which is to be regarded, in my view, as part of the cabinet process.

Senator Wong: Okay. Was Mr Hadgkiss's appointment conducted in accordance with the Cabinet Handbook or not?

Senator Brandis: I have no reason to believe that it wasn't, but I'll take the question on notice.

Senator Wong: Thank you. Paragraph 113 says 'any sensitivity relating to the position of the appointment must be explained'. At any point prior to Mr Hadgkiss's appointment did Minister Cash disclose to the Prime Minister as is required under these guidelines—in the handbook?

Senator Brandis: That goes to cabinet process.

Senator Wong: I'm going to ask the question. If you want to decline to answer it, feel free.

Senator Brandis: It's a—

Senator Wong: I haven't finished my question. I'll start it again. At any point did Minister Cash advise the Prime Minister of any sensitivities relating to Mr Hadgkiss's appointment prior to him being appointed?
Senator Brandis: Let me respond to your question in two ways. First of all, it goes cabinet process. But lest you be minded to suggest that by objecting on the orthodox ground to answering the question, I can tell you I have no reason to believe that Mr Hadgkiss's appointment was other than undertaken in the orthodox manner.

Senator Wong: Perhaps you could take on notice: when did the Prime Minister first become aware of the behaviour that Mr Hadgkiss engaged in which subsequently gave rise to him conceding that the behaviour was illegal?

Senator Brandis: I'll take that question on notice.

Senator Wong: Can you also advise: when was the Prime Minister first aware that there were Federal Court proceedings in relation to Mr Hadgkiss? They're two different questions.

Senator Brandis: By the way, in taking that question—and I will take your immediate question on notice as well—but in doing so, please do not understand me to be conceding the premise of the question that the Prime Minister was made aware of it, because I do not concede that.

Senator Wong: If that's the case, can you explain why the Prime Minister was not made aware of it, given that the cabinet handbook clearly requires ministers to disclose any sensitivities associated with such appointments?

Senator Brandis: You're making certain assumptions, not least in relation to chronology.

Senator Wong: Sure.

Senator Brandis: Nevertheless, I've taken the questions on notice whether or not the Prime Minister was made aware of it, given that the cabinet handbook clearly requires ministers to disclose any sensitivities associated with such appointments?

Senator Brandis: You're making certain assumptions, not least in relation to chronology.

Senator Wong: The minister has conceded that she became aware of Mr Hadgkiss's unlawful behaviour in October 2016.

Senator Brandis: Has the minister said that?

Senator Wong: Yes. She was standing behind you in question time and she said it. She was standing behind you.

Senator Brandis: I don't accuse you of this—

Senator Wong: You often do.

Senator Brandis: but I have had occasion with a number of Labor senators where paraphrases of what coalition senators and members have said have turned out not to be accurate paraphrases.


Senator Brandis: If you've got it there why don't you—

Senator Wong: I don't have it. I don't have all of it yet. I didn't think you would not concede it, given you were sitting in front of her. I know you don't listen to what people say, but that's pretty amazing.

Senator Brandis: What is your question, Senator Wong? Do you have a question?
Senator WONG: The Minister has conceded she knew of Mr Hadgkiss's behaviour in October 2016. I'm asking—

Senator Brandis: I'm not sure the Minister did concede that.

Senator WONG: Yes, she did.

Senator Brandis: My recollection is that the minister conceded she became aware of allegations.

Senator WONG: Conceded that she was aware of the behaviour.

Senator Brandis: No, No, No.

Senator WONG: She did say that.

Senator Brandis: Even you must appreciate there's a big difference being aware of conduct and being aware of allegations of conduct. My recollection is that—

Senator WONG: Can I proceed?

Senator Brandis: Senator Cash acknowledged that she was made aware of allegations that had been made against Mr Hadgkiss. Anyway, we can check.

Senator WONG: Why don't you go ahead and check? You have lots of staff to do that. Anyway, she's aware in October 2016 of the conduct which was subsequently found to be unlawful.

Senator Brandis: I think you'll find she was made aware of allegations.

Senator WONG: The conduct which was subsequently found to be unlawful. I want to know at which stage the Prime Minister or his office became aware of that conduct?

Senator Brandis: If at all.

Senator WONG: Yes. I'd also like to know, did the department attend, or does the department have any record of Senator Cash advising the Prime Minister of Mr Hadgkiss's conduct?

Senator Brandis: The Department of the Prime Minister and Cabinet wouldn't ordinarily keep a record of a meeting or a conversation between the Prime Minister and a minister.

CHAIR: Thank you, Senator Brandis.

Senator WONG: Hang on. He hasn't answered the question. I'll ask it again. Is the department aware of any interaction? Are you taking it on notice?

Senator Brandis: We'll take that question on notice. But I simply make the point that ordinarily, if a minister has a conversation with the Prime Minister, the Department of the Prime Minister and Cabinet will not ordinarily have visibility or awareness of that conversation. It may, but not ordinarily.

Proceedings suspended from 15:45 to 16:05

CHAIR: The committee will now resume. For the purposes of planning officials' time later on this afternoon, we will go to the agencies under Senator Cash's oversight as planned at 4.30, including the APSC and the Office for Women, but we will return to outcome 1 after dinner at 8 pm rather than going straight to the agencies such as the INSLM, because there are more questions that we're unlikely to finish by the time we get to 4.30.
Dr Gruen: Would it be possible for the committee to give an indication of those parts of the department that will not be required at eight o'clock?

CHAIR: We will discuss that now, while we are proceeding to these questions, and, before we go to the break at 4.30, I'll advise you if we're able to do that.

Dr Gruen: Thank you very much.

Senator Brandis: Let me make sure I understand you, Mr Chairman. We are resuming with the department at 8—

CHAIR: Yes.


CHAIR: We will go to them in due course, but only once we've finished outcome 1 with the department.

Senator Brandis: So I won't be required between 4.30 and 6, is that right?

CHAIR: Between 4.30 and 8, if you include the dinner break.

Senator Brandis: Yes, thank you. But Dr Gruen will be, is that right? Sorry, Dr Gruen, I didn't mean to wish that upon you.

Senator McALLISTER: We were talking earlier about the processes of appointment set out in the Cabinet Handbook, and I note that at paragraph 115 in the Cabinet Handbook there's a list of qualifications that ought to be assessed when making an appointment to a significant position. They go to qualifications, gender balance, real or perceived conflicts of interest, consultation as required and legislative requirements for the appointment. There is nothing there that refers to rules or conventions around appointing former parliamentarians to positions. Are there any rules around what might be considered when former parliamentarians are to be appointed?

Senator Brandis: No, there aren't.

Senator McALLISTER: And there's no register kept of former parliamentarians who have been appointed to positions?

Senator Brandis: Except to the extent to which the other instruments we've been discussing earlier today might bear upon the issue—for example, that rule about 18 months for former ministers and so on—there are no special rules about people who have served in the parliament later being appointed to other positions in government.

Senator McALLISTER: I wanted to ask about a specific appointment. There's obviously a requirement that a person be appropriately qualified, and I note that, on the website for the National Film and Sound Archive, in describing the qualifications of the former parliamentarian Fiona Scott, it states:

Ms Fiona Scott grew up visiting Disney and ABC film sets with her grandfather.

I wonder if that's the kind of qualification and experience the Cabinet Handbook was contemplating for making appointments to boards of this kind.

Senator Brandis: I'm not familiar with what's on the National Film and Sound Archive website. That's a question best directed to the minister responsible for communication and the arts in a different estimates committee. I'm sure that Ms Scott's qualifications were more
extensive than that, and you may be reassured that she wouldn't have been appointed unless she were a suitable person.

Senator McALLISTER: There are a lot of people who've been considered suitable who left the parliament at the last election. They include Andrew Nikolic, who was appointed to the AAT, which you're familiar with; Peter Hendy, who was appointed to the Commonwealth Grants Commission and the Council for Australian-Arab Relations; Ewen Jones, formally the member for Herbert, who was appointed as director of Defence Housing Australia; Fiona Scott, as mentioned, who is at the National Film and Sound Archive board; Eric Hutchinson, formerly the member for Lyons, who is now the Norfolk Island administrator; Russell Matheson, who, as you would know, is on the AAT; Louise Markus, who is chair of the AIHW board; Jamie Briggs, who is a director at Moorebank Intermodal; and Natasha Griggs, who has been appointed an administrator of Christmas Island and the Cocos Islands. There are a number of additional MPs who have gone on—I think this is less significant—as MOP staff. Philip Ruddock, of course, is also Special Envoy for Human Rights, and Sharman Stone is Ambassador for Women and Girls. Has there been any direction given to consider former MPs for appointment?

Senator Brandis: Not that I'm aware of.

Dr Gruen: No.

Senator Brandis: And you may be reassured, Senator McAllister, that each of those people would not have been appointed unless they were regarded as well qualified. In that regard, I hope you will agree with me that service in the parliament itself is something that gives all who serve a rare insight into public administration and those specialist areas in which members of parliament choose to involve themselves. I remember having been responsible for a number of appointments of people from both sides of politics, including from the Labor side of politics: the appointment of Justice McClelland as a judge of the Family Court of Australia; I thought he was a suitable appointee, having been the Commonwealth Attorney-General and a lawyer; of former Senator Linda Kirk to the AAT, who was an academic specialist in public law, and a very good appointment, I thought. I'm aware of previous Labor governments appointing people from both sides of politics to various offices. I think it's a good thing that, when people leave this place, the skills they acquire and the knowledge they glean here may, where appropriate, be able to be used elsewhere in the service of the Australian people.

Senator McALLISTER: It is a very comprehensive list. Nearly everybody who lost their seat at the 2016 election has been found some sort of job through the government process. I just wondered if it was a sort of 'no child left behind' kind of policy—

Senator Brandis: No.

Senator McALLISTER: 'No defeated MP shall be left behind.'

Senator Brandis: No.

Senator McALLISTER: Nickolas Varvaris, Luke Simpkins and Wyatt Roy appear to be the only coalition MPs who lost seats in 2016 who haven't been found a job. Are we looking at appointments for any of those members of parliament?

Senator Brandis: I haven't done an analysis. I can tell you: in my own department I have appointed a couple of people, as I say, from both sides of politics, to positions—

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE
Senator McALLISTER: But not those three: Mr Varvaris, Mr Nikolic and Mr Roy have to swim in the open ocean—

Senator Brandis: Mr Nikolic I appointed to the Administrative Appeals Tribunal.

Senator McALLISTER: You did, sorry, Mr Varvaris.

Senator Brandis: Mr Nikolic, might I remind you, was not only a member of parliament but, before that, he had a most distinguished career in defence, as both a senior officer who commanded troops, as I understand it, on the battlefield in the Middle East, but also, when his military career had finished, as a senior officer—I think he may even have been a deputy secretary or a first assistant secretary—in the Department of Defence. So I regard Mr Nikolic as a very eminent appointment.

Senator McALLISTER: But Mr Varvaris, Mr Simpkins and Mr Roy will have to swim in the open ocean. They will be fending for themselves in the wild.

Senator Brandis: No former member of parliament has an entitlement to any appointment, but, equally, serving in parliament is hardly a disqualification from future service in appointed positions and may well be a qualification or a credential in its own right.

Senator McALLISTER: Can I ask you to provide, on notice, a list of all the former MPs appointed since the last election, including the total remuneration provided for each of these appointments?

Senator Brandis: Yes, I will take that on notice.

Senator McALLISTER: I have another question about the appointment process. In August this year it was reported that Minister for Urban Infrastructure Paul Fletcher appointed Mr Paul O'Sullivan as the chair of the Western Sydney Airport Corporation. Is this one where the provisions of paragraph 108 of the Cabinet Handbook apply?

Senator Brandis: Just read that to me, please.

Senator McALLISTER: Mr Paul O'Sullivan has been appointed as chair of the Western Sydney Airport Corporation. My question is whether the provisions of paragraph 108 in the cabinet handbook apply. That is specifically where, if it is a significant appointment, the minister must write to the Prime Minister seeking approval of the appointment.

Senator Brandis: I don't know. I will take that on notice.

Senator McALLISTER: Can anyone help me with the terms of Mr O'Sullivan's engagement? Do we know how much he is paid as chair of the Western Sydney Airport Corporation?

Senator Brandis: I can't; but, if you want me to take it on notice, I will.

Senator McALLISTER: The reason I am interested in what happened in relation to the appointment process is that back in 2009 the Sydney Morning Herald reported that Mr O'Sullivan provided a letter of endorsement for Mr Fletcher in a preselection battle in the seat
of Bradfield, which, just as a matter of historical curiosity, was against the now member for Banks. I am wondering if Mr Fletcher advised the Prime Minister or cabinet, if the matter went to cabinet, of Mr O'Sullivan's previous support for his political career?

Senator Brandis: I don't know. I take it that Mr Paul O'Sullivan, of whom you speak, is the prominent businessman, or are you referring to the former Director-General of ASIO? There are two Paul O'Sullivans.

Senator McAllister: I think he meets the test of prominent businessman.

Senator Brandis: So it's the businessman, not the former Director-General. I don't know. Might I point out that Mr Fletcher, before he became a member of parliament, was himself a senior executive in the telecommunications industry. I have no doubt that he would have known Mr O'Sullivan professionally. I don't know whether he worked for the same company—he may well have done—but it is hardly surprising that one senior executive in the telecommunications industry might seek a reference from another senior executive in the telecommunications industry.

Senator McAllister: Are you talking about the reference that Mr Fletcher sought when he was seeking preselection?

Senator Brandis: You have referred to it. I'm not aware of it; but, if that's the case, I am merely making the point that it's hardly surprising that a senior executive in the telecommunications industry might seek a reference from another senior executive in the same industry.

Senator McAllister: That's so, but I am not really interested in the propriety of that interaction. I am interested in the subsequent appointment and whether or not a potential conflict of interest, perceived or real, was advised to the Prime Minister.

Senator Brandis: I don't know, and I've taken that on notice. Might I remind you, Senator McAllister, if you're not already aware, that Mr Paul O'Sullivan is one of the most respected senior business people in Australia. His name is regularly to be found on lists of the most significant business figures in Australia, so there could be no question of his suitability for the role that you have mentioned.

Senator Smith: Not just in Australia; I think in Asia, too.

Senator Brandis: Correct, Senator Smith.

Senator McAllister: I am not really interested in arguing the toss about that.

Senator Brandis: If you're going to play the game of trying to drag the name of an eminent Australian through the mud in these Senate estimates committees, people will judge you for what they see.

Senator McAllister: I am not really interested in arguing the toss about the merits of Mr O'Sullivan, and I am actually not in a position to comment on them, but there is a cabinet handbook that sets out a process where a conflict of interest ought to be advised and, if anything, that buttresses a merit based appointment to have a clear and unambiguous disclosure of all the relevant conflicts.

Senator Brandis: It is not apparent to me what conflict of interest you are suggesting, Senator. The fact that one person might know somebody does not mean they have a conflict of interest. I know you. I wouldn't exclude the possibility in years to come when your political
career is over of appointing you to something, Senator McAllister. That wouldn't mean I have a conflict of interest.

Senator McALLISTER: No, it wouldn't but you might notify people.

Senator Smith interjecting—

Senator McALLISTER: Indeed, as Senator Smith says, you're probably stretching it. I am interested to know whether the department has provided any advice. Are you saying that there is no conflict, or are you just saying that there may not be one?

Senator Brandis: Well, I'm asking what you're saying, Senator, but it's not apparent to me why you're even using the term 'conflict of interest', because nothing you've said to me suggests there is one.

Senator McALLISTER: Mr O'Sullivan provided support to Mr Fletcher in a preselection campaign that was obviously very important in Mr Fletcher's political career. There were a range of other candidates in the field at that time, as I recall. I am just wondering whether that support was considered a relevant factor and whether the department has provided advice on whether that might be considered a conflict of interest.

Senator Brandis: Well, we'll look. It's a silly suggestion, but we'll take it on notice.

Senator KITCHING: I'd like to ask some questions on PM&C staff. I am referencing particularly the annual report. In the table on page 58 of the 2016-17 annual report, the ongoing SES band 2 staffing has increased from 19 to 26 in one year. The ongoing SES band 1 staffing has increased from 74 to 82. Why is there an increase in the numbers of SES staff?

Ms Greenwood: That would be simply on the basis that we've had vacancies that we've needed to fill at that level.

Senator KITCHING: If I look at the org chart, which I think Senator Wong was referred to earlier today, that's where you've interviewed and some of the deputy secretaries have been appointed, some of whom haven't started yet—is that correct?

Ms Greenwood: Yes.

Senator KITCHING: That doesn't explain why there's the increase, because two of those appointments are in the next couple of months, aren't they?

Dr Gruen: As the table shows, the number of band 3 ongoing staff, based on substantive level, did not change from 16 June to 17 June, so they're the same. This precedes the movements of Dr Kennedy and Ms Kelly.

Senator KITCHING: Did you say band 3?

Dr Gruen: Sorry, I was simply drawing attention to the fact that the number of band 3s hasn't changed, so it's not a case of people acting up. That's not what we're talking about.

Ms Greenwood: We have also, however, had a number of task forces set up over that period, and some of those SES band 2 positions relate directly to task forces.

Senator KITCHING: What are the task forces?

Ms Greenwood: I might need to get that for you. There are a range of them. We've had PFAS. We have an ageing task force. We have an ASEAN task force. We have a task force that's looking at one of our external territories. We've had cyber, and we've also had some temporary roles into cities.
Senator KITCHING: What's been the total cost to the department from the increase in the number of SES staff?

Ms Greenwood: Sorry, Minister. What was that?

Senator KITCHING: I think you promoted me!

Ms Greenwood: Sorry, Senator.

Senator KITCHING: What's been the total cost of the department from the increase in the number of SES staff?

Ms Cass: We will take that on notice and provide that to you.

Senator KITCHING: Thanks, Ms Cass. What does this mean for the overall staff increase, including the additional SES staffing? What has that done to the wage bill, and how much has it grown over the past year? I am happy if you take that on notice.

Ms Greenwood: Thank you.

Senator KITCHING: How many PM&C staff are working in the office of the Prime Minister—so DLOs, CLOs, people on secondment and public servants employed under the MOP(S) Act?

Senator Brandis: What do you mean by 'CLOs'?

Senator KITCHING: Caucus liaison.

Senator Brandis: Sorry?

Dr Gruen: Cabinet.

Senator KITCHING: Sorry—cabinet liaison.

CHAIR: I hope there aren't any caucus liaison officers!

Senator KITCHING: Sorry; that was a malapropism.

Ms Greenwood: We have no staff on secondment. We have six staff who are working in the Prime Minister's office who are on leave without pay.

Senator KITCHING: Sorry—six on leave without pay?

Ms Greenwood: Six, yes, working under the MOP(S) Act.

Ms Cass: DLOs and CLOs we will have to provide you separately.

Senator KITCHING: That's fine.

Senator Brandis: Are you going to go onto another topic, Senator Kitching?

Senator KITCHING: Yes.

Senator Brandis: I've just got some more information for Senator McAllister, who asked me about the appointment of former politicians and seemed to be making a point about coalition politicians. Can I tell you—and I make no criticism of any of these appointments by the way; none whatever. I can advise you that Labor governments, state and federal, have appointed the following former Labor politicians to public offices: Mr Arch Bevis, Ms Anna Bligh, Ms Desley Boyle, Mr John Brumby, Mr Bob Debus, Mr Cameron Dick, Ms Verity Firth—

Senator WONG: You had to do state and federal to get close!
Senator Brandis: Mr Andrew Fraser, Dr Geoff Gallop, Ms Kate Jones, Justice Duncan Kerr, Mr Craig Knowles, Mr Jeff Lawrence, Senator Sue Lines, Mr Paul Lucas, Ms Sheila McHale, Mr Roger Price, Mr Mike Rann, Dr Andrew Refshauge, Mr John Stanhope—

Senator Wong: But you appointed Rann—

Senator Brandis: Mr John Thwaites and Mr Christian Zahra. I am sure all of those people were very worthy appointees.

Senator Wong: It's good that you had to aggregate state and federal to get close to how many you've managed!

Senator Kitching: Chair, could I just make the point: not only is there an aggregation but also, of course, some of those people have gone on—for example, Kate Jones is back as a state government minister—

Senator Brandis: Yes, I'm aware of that. I actually live in Queensland. But—

Chair: So they're just being hot-housed in between roles, I guess; is that your point?

Ms Cass: Senator, do you mind if just interrupt and answer a question you've asked about the number of CLOs and DLOs in the Prime Minister's office? We have three departmental liaison officers and two cabinet liaison officers who are in the cabinet secretary's office.

Senator Kitching: Thanks very much, Ms Cass.

Chair: We are due to move to Senator Cash's agencies in three minutes.

Senator McAllister: I have a very quick question, then, given that that's the case. I just wanted to ask some questions about the resources available to the Prime Minister at his private home in Point Piper. We have talked about this in previous estimates. He uses his premises for a number of official purposes. I assume that the Point Piper property is connected to the internet?

Senator Brandis: I imagine it is, Senator, but, if you want official confirmation—

Ms Ganly: Could you repeat the question, please?

Senator McAllister: Is the Point Piper property connected to the internet?

Ms Ganly: Yes, they have internet.

Senator McAllister: Do you know what type of connection the property has?

Ms Ganly: No, I don't. I can see if we have any information on that, but I don't have the information.

Senator McAllister: Do we know if it's connected to the NBN?

Ms Ganly: I'm not sure. I know there is NBN in that area, and I'll just see if anyone has that. No. We don't have that information. But I will take that on notice and see if we've got any information. We don't actually support the Point Piper property—

Senator McAllister: In that way?

Ms Ganly: Yes.

Senator McAllister: Well, if you can come back—we're back at eight. If it is possible to let us know, that would be terrific.

Ms Ganly: Okay. If we've got that information, I'll provide it.
Senator Brandis: But if it's a private connection, obviously, it is none of the government's business. So you're asking if there's some government involvement—is that right?

Ms Ganly: If there's government involvement, we would have the information. I don't believe that we do have that, but I'll confirm after the break.

Senator McALLISTER: Sounds good.

CHAIR: Thank you. That takes us right on the dot to 4.30. We will return with the Department of the Prime Minister and Cabinet at 8 pm. Senator McAllister, do you have any indication of any parts of the department that can be released?

Senator McALLISTER: Not at this stage, Chair, but I appreciate the issue for departmental officers, and we'll see if there is anything we can do. We have a range of questions still to go that do spread right across the department's operations, so it's a little bit difficult to narrow it down.

CHAIR: Unless otherwise advised, Dr Gruen, please keep your officials here to answer any questions that we might have after 8 pm.

Dr Gruen: Will do.

Australian Public Service Commission

[16:30]

CHAIR: I welcome the Minister for Employment and Minister Assisting the Prime Minister for the Public Service, Senator the Hon. Michaelia Cash.

Senator Cash: Thank you, Chair.

CHAIR: I also welcome the Hon. John Lloyd, Public Service Commissioner, and officers of the Australian Public Service Commission. I note that this will be the last attendance at estimates proceedings for Commissioner Annwyn Godwin in her roles as Merit Protection Commissioner and Parliamentary Merit Protection Commissioner. The committee wishes her well.

I 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. 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 set 8 December 2017 as the date by which answers to questions on notice are to be returned. Minister, do you wish to make an opening statement?

Senator Cash: I don't, thank you, Chair.

CHAIR: Mr Lloyd, do you wish to make an opening statement?

Mr Lloyd: No, I don't, Chair.

CHAIR: In that case, I will kick off proceedings. Mr Lloyd, I want to ask you some questions about threats made by the CFMEU about public officials. Are you aware of the CFMEU rally in Melbourne on 20 June of this year?

Mr Lloyd: Not specifically, Senator.
CHAIR: Perhaps, as I go on, it will jog your memory. Mr Setka was in attendance at that rally. He is the state secretary of the CFMEU. I'm going to quote some comments made by Mr Setka at the rally and I will be careful to do so in a way that doesn't broadcast inappropriate language. He said:

Let me give a dire warning to them ABCC inspectors, be careful what you do.

You know what we're going to do? We're going to expose them all. We will lobby their neighbourhoods. We will tell them who lives in that house and what he does for a living—or she.

Their kids will be ashamed of who their parents are when we expose all these ABCC inspectors.

He also said: 'They say that there's two things you can't avoid in life. I say there's three. One of them is taxes, one of them is death and the other one is the construction unions because, when we come after you, you better be careful.' Are you familiar with those comments?

Mr Lloyd: Yes, I do recall them.

CHAIR: From the point of view of the welfare of public servants, do you have any comment on the appropriateness of public comments like these by union officials?

Mr Lloyd: No, and I was concerned. Any threats like that against any Commonwealth official is a matter of the utmost concern.

CHAIR: How do threats, like this made by the CFMEU, affect those individuals that are named?

Mr Lloyd: I am not sure they are named, but it would cause unease. Commonwealth public servants have an obligation to go about their duties conscientiously and thoroughly. To have threats like that made against carrying out duties in that manner is uncalled for and, I think, a matter of concern and would, of course, be of concern to the particular individuals involved and, in this case, perhaps their families.

CHAIR: You are right in this instance. I do not think the actual names of the inspectors were used, but they were referred to in quite a specific way. We do know that the CFMEU and Mr Setka, in the past, have referred to officials by their names, including yourself at public rallies.

Mr Lloyd: That is certainly the case, yes.

CHAIR: Are you aware that a video of this rally was posted on the CFMEU Facebook page?

Mr Lloyd: No, I was not aware of that.

CHAIR: I am advised that it was. Other than your own personal experience, are you aware of comments of a similar nature made by Mr Setka or other CFMEU officials?

Mr Lloyd: A sense of the industry is that threats and comments of that nature are not uncommon, and going back to my time as commissioner those matters were referred to police.

CHAIR: There was one instance in 2012, again, referring to ABCC inspectors. I will read this to the best of my ability and avoid putting inappropriate language in Hansard. 'There's an old saying. My mum used to use it and I've said it once before. She used to say that the more that you touch excrement—I will paraphrase—the more it smells. That is them, they are
excrement. They are the excrement that they are. Just for the taskforce or rats or dogs, whatever they are, just remember one thing; when this is all over and they don't exist anymore, we've got to work elsewhere and we'll remember them because we know every effing one of them. We will never forget them. Do you recall that particular statement?

Mr Lloyd: I do recall that. The date, I think, was …

CHAIR: I have 2012.

Mr Lloyd: It was very similar to comments made when I was commissioner, which would have been 2010 or earlier.

CHAIR: Yes. Just to refresh the memory of the committee when it related to you personally, was Mr Setka involved in this incident or was it a different official?

Mr Lloyd: Yes, it was Mr Setka.

CHAIR: Are you aware of any complaints made or concerns raised by ABCC staff as a result of these repeated threats to them?

Mr Lloyd: I am not aware of any complaints made to the APSC. None came to us. I understand the latest comments were subject to an investigation by the AFP. I do not know the outcome of that.

CHAIR: Does the ABCC, to your knowledge, have to take steps to protect the identity of staff to protect their safety or their families?

Mr Lloyd: Yes. My sense is that I am sure it has continued from when I was there in that there are steps taken to ensure that inspectors are instructed about the robustness and, at times, the inappropriate conduct that they are subjected to when they go onto building sites. So there was, and I am sure there still is, training given to encourage them to be, if you like, resilient, but also for management to be aware of when such conduct is affecting an inspector, and to reassure them that, if the line is crossed, management will take action.

CHAIR: Are you aware of some of the more recent comments regarding Luke Collier, another CFMEU official, who made threats to public servants at the Barangaroo building site?

Mr Lloyd: I am aware of newspaper and media reports about that.

CHAIR: I am advised that he said to an FWBC inspector that he was lower than a paedophile, called a different one an effing grub and also read out the mobile phone number of an inspector over a megaphone at the building site. Is that in line with your recollection?

Mr Lloyd: I am aware of those types of comments, yes.

CHAIR: Are you aware that this particular female FWBC inspector—who I apologise as there is no way of saying this without saying it—by calling her an effing slut.

Mr Lloyd: I know that there was some very robust, wrong, abusive language on that site.

CHAIR: Are you aware that this particular female FWBC inspector who was harassed by Mr Collier reportedly feared for her safety, and it was reported she felt intimidated, fearing for her safety as CFMEU officials and 40 building workers surrounded her and a colleague?

Mr Lloyd: No. I'm unaware of that but I'm not surprised that would be her reaction.

CHAIR: That was reported in The Australian. How does this type of behaviour affect ABCC employees, who are public servants?
Mr Lloyd: Again, as I mentioned earlier on, public servants go about their role in a respectful, courteous, conscientious manner, and such abuse and treatment is uncalled for and of most concern.

CHAIR: Which union has coverage of ABCC employees, to represent them personally?

Mr Lloyd: They would be able to be members of the CPSU.

CHAIR: Surely any union that represents Public Service employees would be pretty outraged and disgusted by this kind of conduct directed at public servants? I would imagine that, if I were working for a union like that, I'd raise this kind of conduct with you as APSC commissioner. What representations have you had from the CPSU about these matters?

Mr Lloyd: None.

CHAIR: I assume none in relation to perhaps Mr Setka or Mr Collier specifically, but generally I'm sure you would have had representations more broadly about the safety of ABCC employees?

Mr Lloyd: No. I haven't received any representations.

CHAIR: None whatsoever?

Mr Lloyd: No.

CHAIR: To your knowledge, are there members of the CPSU at the ABCC?

Mr Lloyd: I don't know that.

CHAIR: Fair enough. So, for example, Nadine Flood, the head of the CPSU, hasn't called you—

Senator WONG: Chair, with respect, he doesn't know. A number of these questions really relate to Mr Lloyd's past statutory position, not his current one. I understand some leeway is given, but he's just given evidence that he doesn't know if anybody's a member of the union. How can you then follow up by asking him about the activities of the union in relation to the ABCC? I do think—

CHAIR: Later in the week in another committee, and perhaps I'll raise them there. I appreciate your advice, Senator Wong, but that doesn't sound like a point of order to me.

Senator WONG: It is a point of order.

CHAIR: On what grounds?

Senator WONG: The point of order is relevance to this committee. You're asking this person questions about another agency. He's given evidence that he doesn't know if there—

CHAIR: No. I'm asking—

Senator WONG: Hang on. He's just given evidence that he doesn't know if any members of the ABCC are in fact members of the union. I don't see how it's appropriate in this committee for you then to follow up with a question about the union that he says doesn't know has any coverage in the ABCC.

CHAIR: Thank you, Senator Wong. I appreciate your assistance here. I have a couple of questions remaining which relate directly to his role in the APSC. Just to recap: no objections
or complaints or in fact any correspondence has been raised by the CPSU with you about the treatment of ABCC employees?

**Mr Lloyd:** No. There has been none.

**CHAIR:** Presumably they would have to be unaware of them or—

**Senator WONG:** Point of order, Chair: he's given evidence that he doesn't know if any of them are members of the union. You're now asking him to surmise what is in the minds of the union officials of the CPSU, who you don't know have any members there. How can you do that?

**CHAIR:** I'm just assuming—

**Senator WONG:** It's not in his knowledge.

**Senator McKENZIE:** Given the CPSU does have coverage of ABCC employees—

**Senator WONG:** No. You weren't here, Senator McKenzie.

**Senator McKENZIE:** It would be typical to assume—

**Senator WONG:** No. You can't make an assumption. That's a hypothetical question, Chair.

**Senator McKENZIE:** We had to be subjected to nearly two hours of questioning where the minister and the department referred you continually to the Foreign Affairs, Defence and Trade Senate estimates, which you chose to ignore, continually.

**Senator WONG:** I'm happy if you want to ask questions from 2012 to make a political point because you're embarrassed about a commissioner being found to be illegal. That's a matter for you. But I'm just saying—

**CHAIR:** Order! This is very helpful commentary—

**Senator WONG:** Chair, I'm raising a point of order. That question is not in an appropriate form. You can't ask this witness—who has already given evidence that he doesn't know if any of the people employed at the ABCC are members of the union—what's in the mind of the CPSU, which is what you've just asked. It's ridiculous.

**CHAIR:** I can understand your reluctance, that these questions be asked, because I would be embarrassed to be associated with a union that failed to address these issues.

**Senator WONG:** You're the chair. Could you, please, behave like the chair? I have let this go because I understand the political games that are being played. I am making a different point, which is you can't ask this bloke to decide what's in the mind—sorry, Mr Lloyd—what's in the mind of the CPSU.

**CHAIR:** That's a fair point, Senator Wong. I won't ask him to speculate on the mindset of the CPSU but he's quite qualified to comment on what they have done and what they haven't done, which is well established.

**Senator WONG:** Which he's done.

**CHAIR:** Perhaps the minister can assist. Have the CPSU or Ms Flood raised with you any issues about ABCC employees or their safety?

**Senator Cash:** Not directly with me, no. I have personally raised with Ms Flood the issues but she has not raised them with me.
CHAIR: Do you know if she's raised them with her department?
Senator Cash: I don't know.

CHAIR: Can you share with the committee what Ms Flood's response was when you raised the issue with her?
Senator Cash: Unfortunately, I don't have that with me. I can take it on notice though and provide it to the committee.

CHAIR: If you could, that would be helpful. It's been reported publicly that Ms Flood is seeking the endorsement for the Senate, of the Labor Party, to replace Senator Cameron and that a grouping that may support her in the party includes the CFMEU. Minister, do you think that's a relevant factor in her failure to raise the behaviour of the CFMEU?
Senator Cash: It may well be but I'm not able to provide those details.

Senator WONG: Hang on, Chair. I understand you want a political hit but—really? The minister at Senate estimates is supposed to ask what's in the mind of a union official who doesn't have members—
Senator Cash: I did answer the question saying I was not able to provide the information.

Senator WONG: Thank you. At least someone's being—
CHAIR: Thank you, Senator Wong. We'll have to leave it to observers to judge why the CPSU and Ms Flood have failed to raise this issue. They're all the questions I have.

Senator WONG: Mr Lloyd, I would like to understand the process of your involvement with Mr Hadgkiss in relation to his ostensible resignation from his role as ABCC commissioner. Can you tell me how you first became involved in discussions—what was the first communication? Can we do this chronologically, first, please.

Mr Lloyd: What I would say is that Mr Hadgkiss tended his—

Senator WONG: No, that's not my question. You are reported as having had involvement in—and you can take issue with the way it's been reported; I'll come to that—I just want a chronology of process. When were you first contacted or how were you first made aware of issues associated with Mr Hadgkiss's employment and by whom?

Mr Lloyd: I'll take you through it. Mr Hadgkiss tendered a statement with agreed facts on 12 September.

Senator WONG: This is in the Federal Court proceedings?

Mr Lloyd: Yes. I became aware of the statement when I was contacted about the matter by Minister Cash.

Senator WONG: Minister Cash contacted you, when?

Mr Lloyd: That day, that evening.

Senator WONG: So 12 September.

Mr Lloyd: That's right.

Senator WONG: How did she contact you? Was it in person or by phone?

Mr Lloyd: She rang me up.

Senator WONG: What was the nature of that communication?
Mr Lloyd: She asked if I had seen the statement. I said I had seen a report of it. And she asked me to come up to her office.

Senator WONG: Did you do so?

Mr Lloyd: I certainly did.

Senator WONG: That night?

Mr Lloyd: That evening, yes. Minister Cash informed me that the government was of the view that Mr Hadgkiss's position as ABCC commissioner was no longer tenable, as a result of admissions he'd made that day. She sought my advice as Public Service Commissioner about that situation.

Senator WONG: Did you take notes of the meeting?

Mr Lloyd: No, I didn't.

Senator WONG: Was anyone else in the meeting apart from the minister and yourself?

Mr Lloyd: There were some of the minister's staff.

Senator WONG: How many staff?

Mr Lloyd: It was a busy night. There were people coming and going. Sometimes there might have been two people in addition.

Senator WONG: Sorry, Mr Lloyd, I'm having trouble with the noise outside—you'd think with two kids under six I'd be better at it, but I'm not—there were ministerial staff in the room from Senator Cash's office, correct?

Mr Lloyd: Yes.

Senator WONG: Minister, would that be right?

Senator Cash: That would be correct.

Senator WONG: Any PMO staff?

Senator Cash: There may have been at some stage, but parliament was sitting so we had people coming and going on various issues.

Senator WONG: I don't need to know their names—

Senator Cash: Thank you; I appreciate that.

Senator WONG: but could I have their positions?

Senator Cash: One would have been the chief of staff and one would have been a senior advisor.

Senator WONG: From your office?

Senator Cash: Correct.

Senator WONG: And what about from the PMO?

Senator Cash: I wouldn't know what the position is, but I'd say senior advisor level.

Senator WONG: I'll finish with Mr Lloyd and then move to you.

Senator Cash: Thank you.

Senator WONG: Mr Lloyd, can you continue?
Mr Lloyd: Yes. Following a discussion with the minister and the staff, later on in the evening I conveyed to Mr Hadgkiss the government's position that he consider his position in tendering his resignation. Following that, there were several discussions in the evening with Mr Hadgkiss. He obviously took some time to consider the developments and the advice he received from me. There were a number of discussions, and then some the next day as the arrangements were worked through on things such as timing of the day the resignation, when it would take effect and how an announcement would be made. Those types of issues are quite common in a situation like this.

Senator Wong: Thank you for assisting with the chronology, Mr Lloyd; I have quite a few questions as a result of that. Prior to Senator Cash calling you and advising that the government had formed the view that Mr Hadgkiss's position was no longer tenable, had you been aware of the fact the Federal Court proceedings?

Mr Lloyd: No.

Senator Wong: Were you aware of the fact of the behaviour which formed the basis of the Federal Court proceedings?

Mr Lloyd: No, I was not.

Senator Wong: And you'd never been asked to provide advice as to whether or not it was an appropriate thing for a statutory officer to have engaged in?

Mr Lloyd: No.

Senator Wong: Right. Now you said you didn't take notes in that first meeting.

Mr Lloyd: No.

Senator Wong: Did you take any notes of any discussions with Mr Hadgkiss?

Mr Lloyd: No, I don't recall taking any notes.

Senator Wong: Is there any documentation that the APSC has, either you personally or your officers, in relation to Mr Hadgkiss's resignation?

Mr Lloyd: I can't recall any. We had a number of telephone conversations. Mr Hadgkiss was in Sydney as I recall. I don't recall taking any notes.

Senator Wong: Right. How many telephone conversations?

Mr Lloyd: Look, there was—

Senator Wong: Was it 20, 10, five?

Mr Lloyd: Over the two days I'd say possibly eight to 10.

Senator Wong: Is it correct to say he wasn't particularly happy at being asked to resign?

Mr Lloyd: No, I wouldn't say that. I think initially he was surprised. Initially he took some time to consider it before he rang me back, and then I think he came to the view, as a senior public servant, that that was the course that was going to eventuate.

Senator Wong: Did Mr Hadgkiss initially indicate to you he didn't believe it was necessary for him to resign?

Mr Lloyd: I'd say he had a response of surprise, rather than saying it wasn't necessary.

Senator Wong: Meaning surprise that he was being asked to resign?
Mr Lloyd: Yes, I think so—as you would expect when a call comes out of the blue from the Public Service Commissioner.

Senator WONG: He has just admitted to unlawful conduct. You don't think that it's very unsurprising that people might want him to resign, do you?

Mr Lloyd: I'm not going to speculate on Mr Hadgkiss's thinking.

Senator WONG: Mr Hadgkiss was a statutory officer—correct?

Mr Lloyd: Yes.

Senator WONG: And he held office under legislation, a senior appointment that presumably would have gone through a cabinet process. How many other persons of statutory office have you been asked to procure a resignation from?

Mr Lloyd: Off the top of my head I can't think of any.

Senator WONG: You can't think of any others?

Mr Lloyd: No.

Senator WONG: So it wouldn't be a usual role for the Australian Public Service Commissioner to procure the resignation of a statutory officer, would it?

Mr Lloyd: As Public Service Commissioner you obviously talk to other secretaries about performance. It's part of my statutory functions. You often canvas the various spectrum of people, how they're performing. You try to be informed about those sorts of issues.

Senator WONG: But—no, secretaries serve at the pleasure of the Prime Minister.

Mr Lloyd: Yes.

Senator WONG: Not you.

Mr Lloyd: No. But the Secretary of the Prime Minister's department and I have to have a responsibility to establish a performance review assessment process—a framework.

Senator WONG: How did you convince him he should resign?

Mr Lloyd: I stated the government's position, as the minister and I had discussed. There's nothing more to add than that, really. It was up to him to consider it.

Senator WONG: How did you understand your conversation with Senator Cash? Did you understand she was asking for your help?

Mr Lloyd: She asked for my advice. As Public Service Commissioner, I have a responsibility for promoting and upholding the professionalism of the public service.

Senator WONG: Mr Lloyd, you were not only asked for your advice. Were you not asked to speak to Mr Hadgkiss?

Mr Lloyd: Yes.

Senator WONG: Thank you. That's not advice, is it? You were asked—you might have discussed what your view was; fair enough; but you were also asked to contact Mr Hadgkiss—correct?
Mr Lloyd: Yes. There's a chronology, as I explained to you before. There was a discussion with the minister, where my advice was sought in the discussion. After the minister reached a position I then conveyed it to Mr Hadgkiss.

Senator WONG: So you were asked to contact Mr Hadgkiss—

Mr Lloyd: Yes.

Senator WONG: by the minister.

Mr Lloyd: Yes.

Senator WONG: How many other—did you regard that as a direction?

Mr Lloyd: No. But I thought it was quite appropriate, as Public Service Commissioner.

Senator WONG: Do you think that the Public Service Commissioner can be asked to contact any statutory officer about asking them to resign? Or only ones in this minister's portfolio?

Mr Lloyd: I imagine I could be asked to do that with any statutory officer.

Senator WONG: Has any Public Service Commissioner, to your knowledge, prior to you doing this, actually done that?

Mr Lloyd: I don't have that knowledge.

Senator WONG: You've never done it before. Has anyone else done it?

Mr Lloyd: I couldn't say. I couldn't speculate on that. I don't know.

Senator WONG: Ms Foster, do you know of any such resignation request coming from the APSC before?

Ms Foster: I don't. It would be normal practice for a commissioner to deal with that on a very personal basis. So it's very possible that no other officers in the commission would be aware if that had happened.

Senator WONG: I do have a number of questions of you, Senator Cash, but we have another portfolio in which we can ask them. I did first want to ask this. Mr Anthony Southall QC has today announced his resignation to totally disassociate himself from the actions of former ABCC head Nigel Hadgkiss. Can I ask you this: when did you become aware Mr Southall was planning to resign?

Senator Cash: Mr Southall provided his resignation to the deputy secretary and my senior adviser, I believe— I will correct this for the record if I get the date wrong—on 15 October.

Senator WONG: So last week?

Senator Cash: Correct.

Senator WONG: When were you planning on disclosing that?

Senator Cash: There was no requirement to disclose it, as it is an internal ABCC staff movement.

Senator WONG: Okay. You can argue that. If he's doing it because he's disassociating himself from the actions of a man who you backed for a long period of time—

Senator Cash: They were not the reasons given in the resignation that was provided to myself. This is the first time I've become aware of those—

Senator WONG: As I'm asking you, or after you read the media?
Senator Cash: I've seen the Workplace Express article.

Senator Wong: Mr Lloyd, you also said the arrangements would be worked through. Can you tell me, what were some of the things you had to 'work through', using your words?

Mr Lloyd: It was things like the timing of the resignation, and also the timing of an announcement of the resignation, which obviously precedes the resignation itself. They were the two main things.

Senator Wong: How long—or what about payout? Was that discussed?

Mr Lloyd: No. That's set by the—

Senator Wong: And the timing of the resignation—were there options considered around that?

Mr Lloyd: There's obviously back and forth on that. It ended up, I think there was a two-week period, and that is what was settled on, I think.

Senator Wong: Can you say that last thing again?

Mr Lloyd: The resignation was two weeks—he gave two weeks notice of his resignation.

Senator Wong: I'm asking what options were discussed between you.

Mr Lloyd: We discussed how it would occur—when it would be announced and the timing. It could be one week or two weeks. Those sorts of things were discussed with him and me going back and forth.

Senator Wong: So, backwards and forwards. On notice, I'm asking: was there a longer period of notice discussed?

Mr Lloyd: I don't think so, no.

Senator Wong: You had around—I think you said around eight to 10 conversations with Mr Hadgkiss in terms of toing and froing. Were you reporting back to the minister in between, or someone else in her office?

Mr Lloyd: On some of those, I did, yes.

Senator Wong: You spoke directly to Senator Cash?

Mr Lloyd: Yes.

Senator Cash: Yes.

Senator Wong: In relation to what matters?

Mr Lloyd: That Mr Hadgkiss had accepted the fact he was going to resign—that was obviously one. Then, on the timing of the resignation.

Senator Wong: When did he finally accept he had to resign?

Mr Lloyd: That evening, was my recollection.

Senator Wong: Phone call number what?

Mr Lloyd: I don't know. I didn't take notes.

Senator Wong: I'm just trying to find out how much did he—perhaps you should have. It is you procuring the resignation of a statutory officer. It might have been appropriate to take notes, actually. Leaving that aside, you said he started off by being surprised. When did he finally tap the mat and say 'Okay, I'm gone?'
Mr Lloyd: Later that evening.

Senator WONG: Later that evening. And you don't know how many calls that took?

Mr Lloyd: No.

Senator WONG: You spoke to the minister that evening telling her that he had said 'okay'?

Mr Lloyd: Yes.

Senator WONG: And you okayed with the minister. Did you regard her as having to tick off on this?

Mr Lloyd: I was advising the minister, yes.

Senator WONG: And you talked to her about both the notice period and when it would be made public as agreed with him?

Mr Lloyd: Yes.

Senator WONG: And she agreed to what the proposition was?

Mr Lloyd: Yes.

Senator WONG: Have you negotiated that with any other statutory officer?

Mr Lloyd: As I said to you before, I can't recall that, no.

Senator WONG: Were you ever asked by Senator Brandis to approach Ms Triggs?

Mr Lloyd: No.

Senator WONG: Can I go back to this: you said you weren't aware of Mr Hadgkiss's illegal behaviour until that night.

Mr Lloyd: Yes. I was aware of the allegations. But the statement that night, I had never heard of it before.

Senator WONG: The minister's given evidence that she was aware of the behaviour which was subsequently found to be unlawful in October 2016. Can you explain to me how it is that a statutory officer is engaging in behaviour that is subsequently found to be illegal, that is the subject of Federal Court action, and you are not aware of it even though your minister is?

Mr Lloyd: I have responsibility for the whole public service. I don't oversight the activities—

Senator WONG: You did on this occasion.

Mr Lloyd: of statutory office holders in detail and I wouldn't expect to know the detail of cases, allegations, whatever it might be, against every statutory officer.

Senator WONG: The statutory office holder of the ABCC, so the Australian Building and Construction Commissioner, has an obligation to uphold the APS values—correct?

Mr Lloyd: Yes.

Senator WONG: It's crazy, isn't it—Mr Hadgkiss didn't uphold the APS values in this regard.

Mr Lloyd: Mr Hadgkiss resigned. He agreed to a statement of facts and it was felt the resignation was appropriate.
Senator WONG: Did he comply with the APS values or not? Self-evidently, the government didn't think he did?

Mr Lloyd: I beg your pardon?

Senator WONG: Self-evidently, the government did not think he did. If his behaviour was exemplary and he was upholding APS values, presumably he would still be employed. You can't possibly sit here and tell me—

Mr Lloyd: I didn't have any knowledge of this before the night of 12 September. That's when I first became aware of it. Before that, I think there were allegations made against him which he was, I imagine, looking at how he would defend.

Senator WONG: The act under which he is appointed says that the person who is the commissioner:

… will uphold the APS Values set out in section 10 of the Public Service Act 1999, including by performing his or her functions in an apolitical manner and acting impartially and professionally.

I'm asking you whether or not Mr Hadgkiss complied with that provision of the Act?

Mr Lloyd: At the end of the day, the actions that he admitted to in that agreed statement of facts—obviously, because we felt a resignation was appropriate—called into question his upholding of the APS values in that instance.

Senator WONG: Senator Cash, can I just go back to the beginning of the timeline that Mr Lloyd has given evidence about.

Senator Cash: 12 September 2017?

Senator WONG: Yes—12 September. He says you called him and conveyed to him that the government thought that Mr Hadgkiss's position was no longer tenable. When was that decision made, and by whom?

Senator Cash: I recall that I returned to my office after some meetings late afternoon, and my advisers advised me that Mr Hadgkiss had now admitted to the conduct. On that basis, I informed the Prime Minister that the allegations had now become admissions and it was my assessment that, on that basis, Mr Hadgkiss's position was untenable.

Senator WONG: So that was a conversation with the Prime Minister that night?

Senator Cash: Correct.

Senator WONG: Presumably that wasn't the first time the Prime Minister had been made aware of the allegations?

Senator Cash: The Prime Minister was made aware of the conduct on 12 September after the allegations became admissions.

Senator WONG: So you didn't tell him—so the Prime Minister was not made aware by you or your office of the conduct which gave rise to the admissions?

Senator Cash: Correct.

Senator WONG: Was he aware of the Federal Court case?

Senator Cash: My understanding was the Prime Minister has stated that it was reported in the press.

Senator WONG: But you never discussed it with him?
Senator Cash: I did not.

Senator Wong: It is an appointment that, under the cabinet guidelines, would require you to disclose any sensitivities associated with the appointment to the Prime Minister. Did you do so?

Senator Cash: No, I did not, as it was an appointment that had already been authorised by cabinet some years before.

Chair: As you mentioned yourself, Senator Wong, there are probably more appropriate places to pursue these questions, except for questions about Mr Lloyd's involvement.

Senator Wong: I am happy to come back. Unless there's something you want to tell me, Mr Lloyd, I might be finished, but you never know. I almost got a smile.

Senator Kitching: Mr Lloyd, could I just ask you about some communications with the IPA that were disclosed pursuant to a Freedom of Information request earlier this year. Do you have a copy of those documents?

Mr Lloyd: No, I don't.

Senator Kitching: I'm happy to provide you with a copy of the FOI documents. While those documents are being sorted, I will just ask some preliminary questions. Do you maintain a private email account as well as your work email, your APSC account?

Mr Lloyd: Yes, of course.

Senator Kitching: Is that a Gmail or something akin?

Mr Lloyd: Yes.

Senator Kitching: What methods do you use to separate work and personal correspondence? For example, do you ever send personal messages from your work account, from your APSC account, or work emails from your personal email address?

Mr Lloyd: Every work official email is sent from my apsc.gov account. I might occasionally send a personal one from that account, but that would be unusual. Then personal matters go through the Gmail account.

Senator Kitching: Thank you.

Senator McAllister: You are developing a new bargaining policy at the moment. Could you tell us where you are up to?

Mr Lloyd: The policy is still under development. I anticipate it will be announced soon.

Senator McAllister: Soon as in the next quarter, the next six months?

Mr Lloyd: It is the minister's decision but I anticipate it will be soon.

Senator Cash: It is currently in discussions with cabinet.

Senator McAllister: How many people are affected by the policy? Is it essentially the entire work force of the APS, or is it broader than that?

Mr Lloyd: It is broader than that. The current policy covers basically all government agencies. The Public Service numbers about 152,000 people, though that doesn't include the Defence Force, obviously. Australia Post is covered by it—at least another 100,000, perhaps more than that.

Senator McAllister: So in the order of 250,000 perhaps? We won't hold you to it.
Mr Lloyd: I think that is a rough guesstimate. I am not too sure of the numbers beyond the APS, obviously.

Senator McALLISTER: As a rough number, a quarter of a million people. That would make the Commonwealth one of the largest employers in the country?

Mr Lloyd: Yes.

Senator McALLISTER: In that context, do you take any advice in formulating your bargaining policy about the broader macroeconomic effects of the bargaining policy?

Mr Lloyd: Yes, you are always mindful of those sorts of issues.

Senator McALLISTER: What is the source of that advice?

Mr Lloyd: My role of course is to essentially administer it rather than to formulate it. The policy is a cabinet decision, and I administer the policy.

Senator McALLISTER: Senator Cash, can you explain who is responsible for formulating the proposal that is taken to cabinet, which agency—is it Mr Lloyd or is it someone else?

Senator Cash: The Australian Public Service Commissioner provides the advice.

Senator McALLISTER: So you both provide the advice and then administer it once agreed?

Mr Lloyd: Yes.

Senator Cash: But it goes to cabinet, obviously.

Senator McALLISTER: Of course, but the ultimate decision-maker is the minister and the cabinet?

Senator Cash: Yes.

Senator McALLISTER: You do it on the basis of advice. In formulating that advice, do you have in-house economists?

Mr Lloyd: I don't have a nominated person who is the APSC economist as such. Some agencies do have that beyond the Treasury. We have people who are conversant with these issues.

Senator McALLISTER: Do you seek advice from Treasury in formulating the advice?

Mr Lloyd: No.

Senator McALLISTER: You said you had regard to economic matters and you've said you don't have an economist in house and you haven't sought advice from Treasury. I am wondering if there is any other source of advice around economic matters I ought to be aware of or is it just based on the general views about the economy formed in your agency?

Mr Lloyd: Yes, we are aware of the economic issues and general views. That is how I would probably best describe it.

Senator McALLISTER: The CBA's chief economist has recently made some widely-reported comments about Australia's wage policy and he says of slow wages growth that there is a market failure here in a way and governments are there to sort out market failures. He says, 'There is a limit to how far you can go, running down household saving rates, and what
that tells you is we need to get more income'. Do you agree that low wage growth is market failure?

**Mr Lloyd:** It is not for me to pass opinion, I don't think. That would be a question probably more of interest to Treasury and the Department of Employment, I would imagine.

**Senator McALLISTER:** And, yet, you as the largest employer in the country haven't sought any advice from Treasury about your bargaining strategy.

**Mr Lloyd:** Yes, but Treasury would have an opportunity to comment as the matter is going through cabinet.

**Senator McALLISTER:** Right, but haven't you even been mildly curious about what they think about the economy and wages growth? It has been the subject of discussion at every estimates for the last year at least.

**Mr Lloyd:** Of course, you are interested in it. You read budget papers, budget commentary and those types of things.

**Senator McALLISTER:** But you just don't pick up the phone to the army of economists sitting in the Treasury?

**Mr Lloyd:** No.

**Senator McALLISTER:** What do you think it would mean for APS bargaining if you did take advice around wage growth? Do you think it would have any implications at all for the bargaining policy that you might develop?

**Mr Lloyd:** Can you repeat the question? It was a bit hard to follow. I can hear you all right; I'm just trying to work out what the question is.

**Senator McALLISTER:** Mr Lloyd, you are developing a bargaining policy for one of the largest employers, if not the largest employer, in the country. There is an army of economists saying that it would be better if wage growth was higher. I would have thought that that was a material economic issue for you to consider in the development of that bargaining policy. You have told me that you have not sought any advice from any qualified economist on that question in the development of bargaining policy. I am wondering, really, why that is.

**Mr Lloyd:** I would think that the current bargaining policy is quite a fair and reasonable pay offer. It's certainly in line with the wages bargaining policies of a number of the states. When you look at the movement of wages over a 10-year period, it stands up well against movements in the consumer price index and those types of data. Also, we have very generous conditions in the Australian Public Service—a great degree of flexibility, generous superannuation and employer contribution. So, overall, I think the policy is quite fair, reasonable and well grounded.

**Senator McALLISTER:** The Reserve Bank governor said that:

At some point, one imagines that's going to lead to workers being prepared to ask for larger wage rises.

He went on to say:

If that were to happen it would be a good thing.

Do you think it would be a good thing if APS employees were prepared to ask for larger wage rises?

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FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE
Mr Lloyd: I am here to administer the policy. The current policy, as you know, has a position of an average of two per cent over three years. I believe that is, as I say, fair and reasonable.

Senator McALLISTER: Is it consistent with the advice that I have cited to you from Dr Lowe and also Michael Blythe from the CBA?

Senator McKENZIE: Chair, I am just wondering if Senator McAllister is asking Mr Lloyd for an opinion?

Senator McALLISTER: I have asked a question of fact. Mr Lloyd's already conceded that there has been no economic input into his development of a bargaining policy. I am now asking whether he has considered the policy views presented by these other economists and whether he thinks they are relevant to his area of work.

Mr Lloyd: My experience is that there are a range of economic forecasts and opinions in the paper and the media every day. As I say, we have what I think is a fair and reasonable wages policy, supported by very generous pay and conditions, in line with the state governments' approaches on public sector policy for bargaining and wage growth. Also I think it is important that the public sector neither leads nor lags. When you balance all that up, I think the wages policy that currently exists is fair, reasonable and competitive. The objective is that we have the capacity to attract and retain a high calibre of staff, and my sense is that the wages policy allows us to do that.

Senator McALLISTER: Staff retention, sure, but the macroeconomic impacts are not being considered as you develop your bargaining policy at the moment.

Mr Lloyd: You asked me if I had an economist. I don't have an economist. We are aware of the economic commentary that is about and we are aware of what is in the budget papers. We frame the next policy in the context of that. Treasury has an opportunity to comment on the policy. I just think that, overall, the system ensures that the appropriate factors are taken into account.

Senator McALLISTER: Mr Lloyd, I think we are going to have to disagree. I find it extraordinary that, whilst you concede that macroeconomic impacts may be of relevance, you haven't taken any advice on it. I think that is really odd. I don't understand how you can possibly be properly discharging your duties without seeking advice of that kind.

Senator KITCHING: I think you have been handed a bundle of documents. Those documents start with the review by the FOI Commissioner, and attached at the back there are some correspondence and other documents which were discoverable. You will notice that some of those have exemptions. Worthy exemption was applicable under the Freedom of Information Act and that has been applied, so you will note there are some blanks in those documents. Could I take you to page 9. We were discussing the separation of your work and personal email. Section 47F has been used to exempt the sender of the email, but it begins with the subject header 'Re: more fan mail from your favourite union. Hi John, I'm not, kind regards'—exemption. A second one, from you to an exempted recipient, has the subject: 'Forward: more fan mail from your favourite union. The CPSU statement below refers to me as "an IPA pin-up boy". I hope you're not too upset about possibly losing the mantle. John Lloyd.' There is a third one on that page. There are various employees at the APSC, all have various exemptions, '… has just sent this through. I assume the CPSU has gone directly to'—
blank—‘in response to this article this morning.’ And then if you go over onto page 10, there is an email in the chain to an APSC employee. I won't name those, even though these are now public documents, but ‘the CPSU says’ blah blah blah et cetera. I do want to come to the one on page 12, but, before we get there, would you describe all of that as work correspondence?

Mr Lloyd: My view is—
Senator KITCHING: The fan boy reference, for example?
Mr Lloyd: I beg your pardon?
Senator KITCHING: The fan boy reference, for example.
Senator McKENZIE: 'Pin-up boy', don't you mean?
Mr Lloyd: Pin-up boy.
Senator KITCHING: Sorry, there was ‘fan mail’ and then 'IPA pin-up boy', and whomever you were corresponding with—

CHAIR: A hotly contested award, I might add.
Senator McKENZIE: As only you could, Chair.
Senator WONG: He is a commissioner. He is a statutory officer.
CHAIR: I am just saying it is very hotly contested and there are lots of contenders.
Senator KITCHING: It is hard to infer tone from writing, but I presume you were using a rather jocular tone when you wrote, 'I hope you are not too upset about possibly losing the mantle'. The mind boggles as to whom your correspondent could be, but do you think that is work correspondence?

Mr Lloyd: The comment that generated my response was certainly work-related. The CPSU national secretary is talking about political overreach and accusing me of hypocrisy et cetera. Sometimes, in these sorts of jobs, you have to really take things with a grain of salt and not get too serious about the criticisms and aspersions made about you, so I thought I'd share it with some other people. It's not strictly a work matter but it's just a way you sometimes have to relieve the tension, I suppose, and when you see these comments which you find irregular or unusual.

Senator KITCHING: Did you have further contact with the IPA on your personal email accounts?
Mr Lloyd: The IPA would send me a newsletter or something like that to my personal email account, yes.

Senator KITCHING: It's in that bundle; there's correspondence from the HR Nicholls Society.
Mr Lloyd: I'm a member of both organisations so it's hardly surprising—

Senator KITCHING: You've got some correspondence, here, on your work email, from the IPA. Do you also have correspondence on your personal email from the IPA?
Mr Lloyd: Of course I do, I am a member. My private email address is the address I registered with my membership. The IPA is very good at sending out regular reports and information and newsletters. So I do get that traffic into my—
CHAIR: I'm sure they would be grateful for that endorsement of their communications.
Senator SMITH: Weekly, actually, is the frequency.

Senator KITCHING: Would you say it's the IPA that's confused about where they should send mail to you?

Mr Lloyd: No, they're not. They don't send any of their newsletters, information, to my work account. They have responded to me, making a light-hearted response to what I found to be an annoying comment, but my engagement with the IPA—it's, essentially, the IPA coming to me, except when I pay my membership fee—comes to my private address.

Senator KITCHING: That just raises the point. If you go to the HR Nicholls Society letter, I think inviting you to speak at something, at an event, that's coming to your work.

Mr Lloyd: That was appropriate because they were—

Senator KITCHING: But you're a member. It's a little bit confused, because you've got a personal capacity as a member.

Senator McKENZIE: Do you speak at union events, Senator Kitching?

Senator KITCHING: I'm not the Public Service Commissioner.

Mr Lloyd: They were asking me in my official capacity as Public Service Commissioner if I would speak at a conference, so that was appropriate. I get lots of requests to speak at conferences from many organisations, every month just about. They're quite frequent. That is quite okay. And if a union wanted me to speak, they should write to me at the same address.

Senator KITCHING: So you'd have no problem providing the committee with a log of your contact with the IPA and the HR Nicholls Society over the last 18 months? I would be happy if it were in the form of an FOI disclosure log, which you'll see an example of in this bundle of documents.

Mr Lloyd: I'll take that on notice.

Senator KITCHING: On page 15 of those documents, you will see that there is an email from you to someone at the IPA. It's page 15 of 32, up in the top. It says: 'As discussed, dear—exempted by section 47F—I attach a document that highlights some of the more generous agreement’—blah, blah, blah—‘provisions’—blah, blah. 'As discussed, I attach a document that highlights some of the more generous agreement provisions applying to APS employees. I am free to discuss this at any time.' You obviously had a discussion prior to sending the email. Do you recall what that discussion was about and with whom?

Mr Lloyd: It's a bit hard. I don't recall exactly with whom. The staff changes there a fair bit. What I gave them was all publicly available material from enterprise agreements registered with the Fair Work Commission. And we have had, I imagine, other requests. I think there have been articles in the media about some of these types, the generosity, of employment conditions in the Public Service. It is probably just following that line of inquiry, which occasionally we do receive.

Senator KITCHING: It raises two lines of questions for me. Would you consider it appropriate for you to be speculating on what is generous and what is not?

Mr Lloyd: Yes. My word! As Public Service Commissioner I think that's quite appropriate. It's a matter which is of interest. As I say, the Public Service, as mentioned in the earlier question, should neither lag nor lead, generally, in pay and conditions matters, and I think it's appropriate to have views about that. Whatever agency, person, media, union—
whoever it might be—is interested in those issues, I'm more than willing to engage with them about that sort of issue.

**Senator KITCHING:** We're under a bit of time pressure, so I will go to another question. Do you talk to individuals from the IPA? Here we're capturing from an email the provision of information to the IPA following a discussion you've had. How often would you talk with people from the IPA?

**Mr Lloyd:** Very infrequently—that is, the staff of the IPA.

**Senator KITCHING:** Okay. So would you use your office landline?

**Mr Lloyd:** It is very infrequent and it is mainly in response to approaches they make to me. I don't pursue them.

**Senator KITCHING:** I do want to go on to another issue. I'm going to ask if perhaps you could, as you have with other documents, give the committee your appropriately redacted phone records for the last 18 months, whether they are from your landline or your mobile, showing your contact with members of the IPA.

**Mr Lloyd:** I'll take that on notice.

**Senator KITCHING:** Okay. I might put on notice some questions about providing research assistance to the IPA, but I do want to go page 29. On page 29 you'll see that there's a transcript of a doorstop from Senator Wong. Your email says that you'd like to catch up with the IPA to discuss Senator Wong's comments. Would this meeting be in your capacity as the APS Commissioner? At the top, where it says '29 of 32', you'll see the first one from you, redacted due to section 47F. This is your email: 'In para 2 of Penny Wong's interview she takes a swipe at two of the IPA's former directors. I would like to catch up with the IPA to discuss Senator Wong's comments. Regards, John Lloyd.’ Can I just ask: was that meeting in your capacity as the APS Commissioner?

**Mr Lloyd:** I'll take it on notice. It's a fair while back now. It was back in 2015.

**Senator KITCHING:** While you're taking that on notice perhaps you could also take on notice what connection you think those comments have to your work as the APS Commissioner. Also, did you end up meeting? I presume that if it was a work meeting you would have diaryed it or it would be in your calendar.

**Mr Lloyd:** Yes.

**Senator KITCHING:** One would presume. How many similar meetings would you have taken since you started in the role?

**Mr Lloyd:** As I say, very infrequent, very few.

**Senator KITCHING:** Section 13 of the Public Service Act provides that:

(8) An APS employee must use Commonwealth resources in a proper manner and for a purpose.

...  ... ...

(10) An APS employee must not improperly use inside information or the employee's duties, status, power or authority:

(a) to gain, or seek to gain, a benefit or an advantage for the employee or any other person;

Do you feel that providing special access and doing research for the IPA would fall within this provision?
Mr Lloyd: I reject the assertions in your question. What I gave the IPA was information available in agreements. There's no special advantage or gain to me, no financial benefit, no gain. The IPA is a public organisation engaged in public affairs. It has an interest in workplace relations, like many organisations in this country. I don't know all the detail of your question. It was a long question, but my sense of it is there's nothing untoward there.

Senator WONG: Mr Lloyd, I wasn't aware of this, and somebody has brought it to my attention that you had a swipe at me in this email. Do you want to tell me what the problem with my comments is? 'In para 2 of Penny Wong's interview she takes a swipe at two of the IPA's former directors. I'd like to catch up soon for a chat. Regards, John Lloyd.'

CHAIR: That seems like a fair characterisation of your press conference, Senator Wong, having read the transcript myself.

Senator WONG: You're a politician; you can say that. What's the problem with my comments, Mr Lloyd? Do you want to put them on the record here?

Mr Lloyd: The things they were responding to were in your doorstop interview, which is attached.

Senator WONG: Do you go through all of our doorstops and check who's having a go at the IPA?

CHAIR: It was clearly forwarded to him, if you looked at the email chain.

Mr Lloyd: I was mentioned—and it came to my attention—in your comments. In the second paragraph, you say:

There was … no interview, no formal short list, he just picked up the phone to John Lloyd and asked him if he wanted the job …

Which I felt was not accurately—

Senator WONG: But you didn't have the guts to raise it with me?

Mr Lloyd: That was not accurately conveying what happened.

Senator WONG: Why didn't you have the guts to raise it with me?

Mr Lloyd: I have no obligation to raise it with you.

CHAIR: Senator Wong, questions of guts I don't think really relate to the APSC commissioner.

Senator WONG: Senator Cash, do you think it's appropriate for a Public Service Commissioner to spend his time perusing opposition transcripts and communicating with someone—who did you communicate with, someone from which organisation? Was it a politician or the IPA?

Mr Lloyd: I beg your pardon.

Senator WONG: Who did you communicate this to—IPA—

Mr Lloyd: Yes.

Senator WONG: or a politician? IPA. So you spend your time going through our transcripts and talking to the IPA, where you think that one of us—

CHAIR: Senator Wong, you're verballing Mr Lloyd.
Senator WONG: All right; I'll rephrase the question. Mr Lloyd, you spent your time, as an independent statutory officer, going through a transcript and then communicating with the IPA because you were upset that two of their directors apparently were referenced in my transcript? That's what you spend your time doing?

Mr Lloyd: It's not what I spend my time doing.

Senator WONG: Apparently it is.

Mr Lloyd: Can I finish answering your question?

Senator WONG: Sure. Please do.

Mr Lloyd: I don't spend my time doing that. What we do get, like any Public Service organisation, is, when the organisation or the senior people are mentioned in the media, or in interviews, it's picked up by our media scrutiny service.

Senator WONG: Who is 'our' in that sentence?

Mr Lloyd: I beg your pardon.

Senator WONG: It's picked up by 'our'—?

Mr Lloyd: By the APSC.

Senator WONG: I wasn't sure if you were talking about IPA or not.

CHAIR: Oh, Senator Wong.

Mr Lloyd: No, the APSC. This was obviously picked up and it landed somewhere in my system. I had a look at it. I didn't agree with the comments, the way you described what happened, and I drew it to the attention of the IPA. There is another member of the IPA—I think they mention Mr Wilson in there as well, Tim Wilson.

Senator WONG: Don't you all stick together like a little club!

CHAIR: Senator Wong, that's really inappropriate.

Senator WONG: Seriously. I know you're in the club, but he's a statutory officer and he's spending his time hanging round, sending stuff to the IPA, saying, 'Oh, they had a go at us!' Seriously, media monitoring for the IPA is not part of your job description, mate.

CHAIR: Senator Wong, for your benefit, there may be more members of that club than even you are aware.

Senator McKENZIE: It might not be small after all.

CHAIR: Maybe even some members of this committee who've been asking questions about it have their own past professional involvement with the IPA.

Senator WONG: I know you're a member.

CHAIR: No, not me.

Senator WONG: That's fine. But he's a statutory officer.

Senator KITCHING: Can I just go back to page 14 and page 15, which are talking about generous arrangements in Commonwealth enterprise agreements. Did that meeting take place?

Mr Lloyd: Which meeting are you referring to?
**Senator KITCHING:** It says, 'I'm free to discuss this at any time.' Did you end up having a meeting?

**Mr Lloyd:** I'll take it on notice. As I say, it's 2015, so it's some time ago.

**Senator KITCHING:** When were you appointed as the commissioner?

**Mr Lloyd:** December 2014.

**Senator KITCHING:** Okay. I think that's all I have.

**Senator McKENZIE:** I would just like an update on how many enterprise agreements have now been signed up and approved under the government's current bargaining policy. What proportion of the Commonwealth Public Service do these agreements cover?

**Mr Spaccavento:** As at 4 October, which is the most recent data I have, 125 enterprise agreements had been voted up in 117 agencies.

**Senator McKENZIE:** What proportion of the Commonwealth Public Service is that?

**Mr Spaccavento:** It is approximately 88 per cent.

**Senator McKENZIE:** How many have been approved since the 2016 election?

**Mr Spaccavento:** I don't have a figure since the 2016 election.

**Senator McKENZIE:** Could you provide that on notice?

**Mr Spaccavento:** I have a figure since the current policy was introduced in November 2015, if that's helpful to you. Otherwise I could take it—

**Senator McKENZIE:** I think we've traversed those figures.

**Mr Spaccavento:** I'll take that other question on notice, then.

**Senator McKENZIE:** Sure. Can you outline some of the more recent agreements to be approved?

**Mr Spaccavento:** Yes. Some of the larger agencies had agreements approved recently, the Department of Human Services being the largest, as well as the Australian Taxation Office, and the Department of Defence comes to mind.

**Senator McKENZIE:** What does the federal government's policy allow agencies and departments to agree to by way of general pay increases over the life of the enterprise agreement?

**Mr Spaccavento:** It's an average of two per cent a year.

**Senator McKENZIE:** How does that compare with public service bargaining policies or positions of our state governments?

**Mr Spaccavento:** It's probably in the mid-pack of state and territory wages policies.

**Senator McKENZIE:** Talk me through that.

**Mr Spaccavento:** I do have figures, if you bear with me for a moment. For instance, New South Wales and Victoria allow for 2½ per cent per annum and in some cases up to three per cent and Queensland 2½ to three per cent. For South Australia since July 2016 the maximum is 1.5 per cent per annum. Western Australia is now offering a maximum of $1,000 per annum pro rata for part-time and casual employees. That's effective as of 12 May 2017. For Tasmania it is a total cost of agreement of no more than two per cent, and the ACT, three per
cent per annum. For the Northern Territory, there is an overall cost increase of up to 2.5 per cent per annum from January this year.

Senator McKENZIE: Thank you. What is the CPSU’s current claim for wage increases in the public service?

Mr Spaccavento: Its most recent claim that I'm aware of was for four per cent per annum, and I believe a component of that is of retrospectivity of back pay.

Senator McKENZIE: Has the bargaining position by the CPSU resulted in them encouraging the members in a number of departments and agencies to vote no to proposed enterprise agreements?

Mr Spaccavento: Yes.

Senator McKENZIE: Can you advise the committee, on notice, of the wage increases in dollar terms that public servants have received in agencies that have successfully voted up an agreement?

Mr Spaccavento: I'll need to take that on notice.

Senator McKENZIE: Thank you. And can you also, I guess conversely, tell me, for those agencies and departments that haven't voted up their enterprise agreement, what the loss has been?

Mr Spaccavento: Again, I can take that on notice, yes.

Senator McKENZIE: Can you specifically advise the committee, on notice, of the wages lost by public servants in the Department of Human Services?

Mr Spaccavento: Yes. I'll take that on notice.

Senator McKENZIE: And could you total that up? And how much has the entire Public Service lost in wages as a result of not voting up enterprise agreements with the two per cent wage increases as advocated by the CPSU?

Mr Spaccavento: It may be difficult to come to an exact figure, but on notice we will see if we can—

Senator McKENZIE: Yes, on notice is fine. Thank you so much.

Mr Lloyd: I should add that, interestingly, in Western Australia, with their new bargaining policy, they imposed a wage freeze of four years, I think, on members of parliament, judges and senior public servants.

Senator McKENZIE: And senior public servants?

Mr Lloyd: Yes.

Senator ABETZ: That surely wasn't a Labor government!

Senator McKENZIE: I think it is Mr McGowan.

CHAIR: Perhaps that's the unintended intention of the CPSU refusing to sign off on agreements with the Commonwealth—effectively a pay freeze.

Senator ABETZ: The workplace bargaining policy 2015: that remains the government's approach to workplace bargaining?

Mr Lloyd: Yes.
Senator ABETZ: Is it consistent with this workplace bargaining policy for a department to allow unions access to workers' email addresses?

Mr Lloyd: I would say it's certainly a very inadvisable approach. Whether it's policy, I don't think—it's an enabling framework. But an important feature of the policy is that freedom of association has to be respected and the right to choose to join or not to join a union upheld. So my sense would be, and I think your question was, giving—

Senator ABETZ: To allow unions access to workers' email addresses.

Mr Lloyd: So, is the practice you're questioning about whether they can send messages to them?

Senator ABETZ: Yes.

Mr Lloyd: Yes. I think that would not be a practice I would adopt or endorse. I'd have to know the circumstances of it and the agency. But I would think any agency should show abundant caution before taking that type of approach.

Senator ABETZ: And that would be to all workers and not just union members?

Mr Lloyd: Yes. That's why I think it's an initiative that does raise concern.

Senator ABETZ: Thank you. Is it consistent to invite the union to orientation sessions for new employees? Is that consistent with a bargaining—

Mr Lloyd: I'd have a similar position on that. It's not explicitly mentioned in the bargaining policy, but, again, it's a practice that certainly I would not adopt. I regard it as running very close to being inconsistent with the policy.

Senator ABETZ: Is it consistent to require inclusion of written material provided by the union, by the department, in onboarding material for new employees? Is that consistent with a bargaining—

Mr Lloyd: That was less clear but, again, if any material is provided I would suggest that there has to be a very clear understanding and balance that union membership is completely voluntary and people have a right to choose not to join.

Senator ABETZ: So, would you expect these matters to be included in enterprise agreements if they were to be—

Mr Lloyd: No.

Senator ABETZ: So, to get this clear: if clauses of the nature that I've just referred to were included in enterprise agreements, they would not be clauses that you would be agreeable to have go forward?

Mr Lloyd: Yes.

Senator ABETZ: And enterprise agreements, before they can be sent off to the staff for a vote in a particular area or department—or draft enterprise agreements, I should say—need to be agreed to by yourself or by the Australian Public Service Commission?

Mr Lloyd: Yes. We give advice as to whether the draft agreement is in accordance with the bargaining framework. That's our responsibility, yes.

Senator ABETZ: All right. Thank you very much.

CHAIR: If there are no further questions for the APSC, I thank them for their evidence. We'll now move to the Office for Women.
CHAIR: I welcome Senator Cash in her capacity as Minister for Women and officers from the Office for Women within the Department of Prime Minister and Cabinet. Minister, do you have an opening statement?

Senator Cash: I don't, Chair, but I would like to introduce to the committee the new head of the Office for Women, Patricia Bergin. I understand that Ms Bergin will provide an opening statement.

CHAIR: Excellent. On that basis, welcome, Ms Bergin. Would you like to make an opening statement?

Ms Bergin: Thank you very much. Yes, I'd certainly like to. First of all, I'd like to introduce myself, having commenced in the role of head of the Office for Women in late September this year, so only a few weeks ago. I'd also really like to recap on the role of the Office for Women and the way that we undertake our work and the work that's underway in some of the key areas that we're engaged with. I have a background that includes extensive experience in the public and private sectors, including a decade of working for myself as an organisational and leadership development consultant. My formal education is in economics and management, including a master's from the Crawford School at ANU. In the public sector I've previously worked across several portfolios at the senior executive level, including the departments of Industry, Employment, Finance and most recently Education and Training. I'm absolutely delighted to come to this role. Certainly, improving gender equality has been a consistent theme of my work as a leader across my career, and I now have an opportunity to make an even greater impact through my role with the office.

I just wanted to turn to the role of the office, because as a small office of about 30 people I think it's really important that we are also really clear about the role and the purpose of the office to ensure that we really closely align our resources with the government priorities in what is a very broad policy arena. In short, the Office for Women exists to advance gender equality outcomes in Australia to enhance our national prosperity and wellbeing. We also provide leadership and support in international fora to advance gender equality globally. Our primary focus is to support the government around its priorities for gender equality. These are to strengthen women's economic security, to support more women into leadership positions, to ensure that women and their children are safe from violence, and to support the government to drive positive outcomes for all women and girls globally through representation at the international fora and working in partnership with the international community.

In terms of how we work, the Office for Women works across government to both directly and indirectly deliver and shape policies and programs that support gender equality. In doing so it's critical that the way we work is in close collaboration with our stakeholders in leveraging their perspectives and expertise to deliver outcomes. This includes working with stakeholders across not only the Australian government but also from the private sector, the business community, the not-for-profit sector, the states and territories, and of course civil society. For example, we directly manage programs and initiatives such as the Women's Leadership and Development Strategy grants program, which supports projects aimed at improving gender equality.
We support the relationship between the Australian government and the network of National Women's Alliances, who are funded under the Women's Leadership and Development Strategy. There are now six alliances, after the recent launch by the minister of a new alliance to represent migrant and refugee women—the Harmony Alliance. We also manage the BoardLinks program, which aims to increase the number of women on government boards in partnership with the Australian Institute of Company Directors.

We support the Minister for Women to lead Australia's delegations in several international fora such as the UN Commission on the Status of Women and the APEC Women and the Economy Forum. We're also responsible for leading the coordination of and reporting on Australia's implementation of the National Action Plan on Women, Peace and Security and the UN's sustainable development goal 5 relating to gender.

In addition to those direct responsibilities, the Office for Women has a broader role in shaping policy and program development across portfolios. This is consistent with the role of the Department of the Prime Minister and Cabinet where we work with departments in developing policy to ensure they support government priorities including those associated with gender equality. We do that by providing advice to the Prime Minister and the Minister for Women on significant policy or program issues or initiatives relevant to women. For example, the development of the government's Women's Workforce Participation Strategy was the product of extensive collaboration across government, and it is now a key platform to increasing women's workforce participation.

We also engage with other departments to develop major policies and programs that are likely to have significant implications for women, particularly in relation to the priorities I mentioned earlier. Providing advice to departments on significant policy development is part of the cabinet process in terms of the impact of their proposals more generally. It is something that we do as much as we can across the range of policy at any one time. Finally, we support the government's engagement in those key international fora which I mentioned before.

The Office for Women is particularly conscious that the sectors beyond government play a vital role in Australia's efforts to achieve gender equality. This is also a significant part of our work as we look for better ways to engage with the business community, civil society, the women's sector, and academic and research communities to work together on key policy priorities. For example, our annual engagement in the UN Commission on the Status of Women is informed by extensive collaboration across these sectors, and we're also about to embark on a round of stakeholder consultation to help inform the next National Action Plan for Women, Peace and Security.

In closing, I look forward to supporting the Minister for Women and working closely with a wide diversity of stakeholders in further developing policy aimed at addressing gender equality in Australia. Thanks for giving me this opportunity to make a statement. I'm more than happy to take any questions that the committee may have.

CHAIR: Thank you very much.

Senator DODSON: I have a couple of questions on one area. Last week the Australian government allocated funding of $3.4 million to establish a new and expanded specialist domestic violence services unit. Was funding provided to any specialist Aboriginal family violence prevention legal service?
Ms Bergin: I might see if we've got further assistance. Basically, the specialist domestic violence units program announced under the Women's Safety Package has been expanded, as you say. Locations for the new specialist domestic violence units were identified based on consultation with the states and territories and family law courts as well as on information available about the prevalence of family violence and existing services. I might turn to my colleague to give a bit more detail on some of those units that have been funded.

Senator MOORE: With due respect, the question was specifically whether any Aboriginal services were funded, and we've only got until 6.30. Rather than get an overview, if you could answer the question that would be very helpful.

Senator DODSON: Specifically the Aboriginal Family Violence Prevention and Legal Service. Were any funds provided to them?

Ms Hatfield Dodds: Because that's a question about funding a service, it probably ought to be directed to the Department of Social Services who manage those funding programs. We don't have oversight of the specifics of the programs that they fund.

Senator DODSON: Women in prison. About 90 per cent of the Aboriginal and Torres Strait Islander women in prison in Western Australia have been the victims of family violence. What family violence support services do you see as working to reduce that number?

Ms Hatfield Dodds: In terms of the specifics of programs funded by the Commonwealth that is a question best directed to DSS. What I can say is that, last year, was the inaugural Reducing Violence against Women summit held in Brisbane in October. Every jurisdiction around Australia was represented. One of the focus themes of that summit was intimate domestic violence and Indigenous women. Certainly, the Office for Women were aware of the disproportionate statistics that focus around domestic violence and Indigenous women. There is a plan for the second summit, Reducing Violence against Women, to be held later next year or the first half of 2019. The other piece of work that PM&C is doing is through the Closing the Gap agenda in our Indigenous affairs group. They will be ready Friday to have a conversation about what they are doing in that space to start closing some of those statistics.

Senator DODSON: You would be aware then that the fastest growing sector of imprisonment in the Indigenous population is women. They are 21 times more likely to be imprisoned than their non-Indigenous counterparts. What programs are you aware of to support Aboriginal and Torres Strait Islander women in prisons?

Ms Bergin: Specifically, the third action plan under the National Plan to Reduce Violence against Women and their Children 2010-22 includes national priorities, one of which is specifically around Aboriginal and Torres Strait Islander women and their children.

Ms Livingston: In addition to the information that Ms Bergin has just provided about the third action plan there was a major report considered by COAG last year which looked at the needs around Indigenous prisoners and particularly the increasing rate of incarceration of Indigenous people. That report did specifically consider women as a growing proportion of the prison population, and it did commit the Commonwealth and states and territories to a range of actions to address that. Our Indigenous affairs colleagues in the department are leading on that process, so I think they would probably be best placed to provide the sorts of detail you are after.
Senator DODSON: Does that go to the fact that a number of these women suffer domestic violence and have children, and in recent days we have seen, in Western Australia, people being incarcerated for fine defaults. Are there sufficient services being provided to Indigenous women to cope with that situation?

Ms Livingston: Without going into the detail of the report, I could certainly recall that that was a key issue flagged in the report, particularly understanding that, not only are women a growing portion of the prison population, but also their needs in prison and upon release are quite different. They are quite often separated from their children and are really motivated by being reunited with their families upon release. Certainly the report was very cognisant of those issues.

Senator DODSON: My interest is whether there are sufficient services being provided to assist these women. It is one thing to know about them, but are there services that are actually going to assist them?

Ms Hatfield Dodds: Many of the services are provided by state and territory governments. It is a difficult question for us to answer. One thing we could do is provide you with a briefing out of session on the issues you are raising if you would find that helpful. We can work with our colleagues on that.

Senator DODSON: In the interest of time I might submit some questions on notice and then seek the briefing. Thank you very much.

CHAIR: I will go to Senator Leyonhjelm and then come back to Senator Moore.

Senator LEYONHJELM: Thank you. Are we breaking for dinner at 6.30? 

CHAIR: That is right. Correct.

Senator LEYONHJELM: I will be as quick as I can. The 1800RESPECT or the website for the Office for Women refers to violence against women as one of its objectives or one of its issues that it is dealing with. There are two aspects that it focuses on. One is female genital mutilation, the other one is domestic violence. What it says is that there is a clear link between violence towards women and attitudes of disrespect and gender inequality. I raised this at estimates last time, not with you but with the Department of Social Security—I think it was DSS—

Senator Cash: It would have been DSS then—not with this particular officer.

Senator LEYONHJELM: I asked them for references to corroborate that statement and they had a certain amount of difficulty, and there's quite a lot of contradictory opinion in the literature. In the interests of time, I am wondering whether you can substantiate that statement, because I can't really find anything that absolutely confirms that, and it's quite a disputed area. When you look at what other causes there might be for domestic violence—specifically your role is looking at women—obviously economic circumstances and cultural factors become important, or look to me to be important. What's your response to that?

Ms Hatfield Dodds: Certainly, I've seen a range of evidence that supports disrespect being one of the key factors that can result in violence against women, but I think perhaps we should take that question on notice, because certainly we don't have in front of us now that evidence or those data sources, but we'd be happy to find those and provide them to you.
Senator LEYONHJELM: Yes, I think that would be a good idea. The point is that the issue that was just raised by Senator Dodson is clearly cultural. Female genital mutilation is clearly cultural. The implication that violence towards women is a function of disrespect and gender inequality suggests that culture is not a key consideration, wouldn't you agree?

Ms Hatfield Dodds: If you're referring to the Stop it at the Start campaign, there's a lot of research that's gone into building the evidence base that supports that campaign, and the idea that disrespect is one of the key drivers of violence against women in a formative sense is really just one aspect of that campaign. It does take into account a range of cultural and other factors, such as poverty, such as stress—all that kind of thing—that actually can lead to violence against women. I don't think any of those drivers, in and of themselves, will necessarily result in violence against women. What the evidence seems to suggest is that you often get a confluence of those factors coming together and a flashpoint, and that's what often results in violence that happens.

Senator LEYONHJELM: This has very important implications for policy though. This is the Department of Social Services, so I may be attributing something to you that perhaps I should be asking them about as well. What it says is: 'There is a clear link between violence towards women and attitudes of disrespect and gender equality'. It doesn't say that there is a clear link between violence towards women and economic circumstances, or cultural factors. It just refers to attitudes of disrespect and gender inequality. That's quite significant, because a fair amount of money is being put into this program. If it's ignoring substantial contributors to domestic violence then it's misplaced, isn't it?

Ms Hatfield Dodds: The program is really managed out of Department of Social Services, so I think those questions are best directed—

Senator LEYONHJELM: I should probably pursue them, yes. I might do that. Thank you.

Senator MOORE: Towards 2025: an Australian government strategy to boost women's workforce participation was released earlier this year. Can we get some idea why it took from the commitment in 2014 to mid 2017 for us to have documentation?

Ms Hatfield Dodds: While we released the Towards 2025 strategy in 2017, there was a lot of work that happened in the interim. Essentially, the Office for Women was really conscious that the strategy needed to be based on a strong understanding of the current context, so we took a considerable amount of time to consult with other Commonwealth agencies to really make sure that the strategy was inclusive across government. The final release of the strategy was also delayed to incorporate measures from the last budget, the 2017-18 budget, and that, having been done, is now released.

Senator MOORE: We have talked about the strategy in the past, without having the strategy document—we talked about the commitment. In the budget estimates in May, Ms McIntyre stated that the G20 workforce participation target was based on the 2014 participation rates of men and women in the workforce. The strategy—and I have read it—actually says it is based on 2012 data. What was the reason for that? We talked about the importance of having a bottom line on which we could build and we were told it would be 2014 data. What was the basis for going with 2012, and does it have any particular impact?
Ms Livingston: This was actually a piece of evidence that we corrected after the last estimates. My understanding is that this is a decision that G20 nations have taken with respect to what the appropriate baseline is.

Senator MOORE: Your correction didn't explain why. Seeing as the commitment was made in 2014 and that was when the public statement was made that we were going to make this international commitment, why is 2012 the baseline?

Ms Livingston: I might need to take that on notice. That is certainly something that the Department of Employment might be able to assist with. They take the lead in terms of tracking Australia's performance against the G20 target but my understanding is that it wasn't a decision that Australia took in isolation—we have looked to like-mindeds as well as to what the appropriate baseline is.

Senator MOORE: In terms of having a clear understanding of the whole process, it is incredibly important to have this data right. Another issue around data: the document and the website talk about the participation rate adding up to $25 billion to the Australian economy and that is the figure flowing off the tongue, $25 billion, which is really significant. The Grattan Institute's statistic is based on an increase in women's workforce participation of six per cent. Can you clarify for me exactly what the increase in women's workplace participation is in the government targeting? At the beginning of the document it talks about what that is going to be and I just want to get it clear—is it the six per cent that is in the Grattan paper or another figure?

Ms Cranfield: Correct me if I have misunderstood your question, but I believe it was a six per cent improvement in the workforce participation gap for men and women which would bring us to an equivalence with Canada's participation and the Grattan Institute estimated that could add potentially $25 billion to the economy per year.

Senator MOORE: That is men and women. I am wanting to find out, again, focusing on the issue of women—

Ms Cranfield: That is increasing.

Senator MOORE: It is six per cent for women as well as men?

Ms Cranfield: An increase in women's work force participation of six per cent?

Senator MOORE: Do you know what the benefit to the economy would be of achieving the government's target? Are you still working on $25 billion?

Ms Cranfield: We have not got a figure beyond the $25 billion figure.

Senator MOORE: Are you planning to get one, in terms of the goal and the strategy that is looking particularly at women?

Ms Cranfield: Not at this stage.

Senator MOORE: In the website, which I really like, can I find out how much that cost and also the documents because we have had a number of discussions at this meeting about glossy documents. These are very glossy, the strategy documents, and you can take that on notice but I would like to know what that cost. Maybe I am wrong, but I don't think that that website was internal. Was that website developed internally, or did you have someone—

Ms Livingston: We did engage an external provider to assist us.
Senator MOORE: I thought so. Can we get the name of that provider and how much it cost as well. In the strategy it says:

... the Government is taking action to boost women's workforce participation by:

... ...

c. Examining the tax and transfer system and its impact on women ...

You know that we've had a number of discussions about effective marginal tax rates and the tax and transfer system. We were told this examination would be considered as part of what was then—in May—the soon to be released *Towards 2025: An Australian government strategy to boost women's workforce participation*. Can you tell us which department undertook the analysis of the tax and transfer system that informed the strategy?

Ms Cranfield: There were a number of departments that contributed and worked on an interdepartmental committee that developed the workforce—

Senator MOORE: Can you tell us who they were?

Ms Cranfield: I can look that up for you. One of those departments was certainly the Department of the Treasury. We made a correction to the evidence provided at the last hearings that Treasury had not undertaken specific EMTR modelling for the workforce participation strategy; the issue was discussed in the context of the strategy. But I would point out that EMTRs are not the sole or the most significant driver affecting women's workforce participation, and there is, in fact, research from the Australian Bureau of Statistics from 2014-15 that says that things like access to affordable child care and flexible working conditions are rated more highly—it was a survey based report—as issues that will affect women's participation in the workforce.

Senator MOORE: But it's still considered to be a factor—

Ms Cranfield: That's right.

Senator MOORE: and it is mentioned significantly in the strategy document. It was taken as being an important element. So, within that process, can we find out who did the modelling around that on marginal tax rates?

Ms Cranfield: There wasn't specific modelling in the women's workforce participation strategy.

Senator MOORE: There wasn't specific modelling at all about the impact of marginal tax rates?

Ms Cranfield: That's right.

Senator MOORE: Can we find out on notice, because of the time constraints that we have, who did what modelling on what? I'm not going to restate the ongoing discussion we have been having about modelling, but I would like to know, in terms of this document, who provided the statistical basis for the various claims that are made in the document and the link between that and the information in the strategy document.

Ms Cranfield: We can take that on notice.

Senator MOORE: As part of your consideration you looked at the survey—and we had this discussion—and the results of that survey indicated that marginal tax rates were not considered to be a major factor. Did you take into account policies or interaction of policies that do impact on marginal tax rates? Was that a part of the discussion process?
Ms Cranfield: It was before my time in the office, but I understand there were a number of discussions as part of that IDC process that helped form the development of the strategy. Those issues were considered, but, because it is not the driver, it was not an area of sole focus.

Senator MOORE: The IDC believed that that was not a major factor, even though it is a factor in the document. Is there any discussion about responses to marginal tax rates? Is that considered to be an element, in terms of an incentive to going back to work?

Ms Cranfield: As I said to you, it's one of a number of factors that are important, and there are a number of measures in the strategy that the government has suggested that are specifically focused on bringing women into the workforce.

Senator MOORE: Specifically linked to that issue?

Ms Cranfield: The strategy also discussed how EMTRs are a feature of our progressive tax system and the interaction with our welfare system. They are a point-in-time measurement. They're very complex and they differ so much. Mine, compared to my colleagues', differs considerably depending on the factors that are at play in my life at any one stage. Modelling on EMTRs is not done as a matter of course for all policy development. It may be undertaken if there are significant or complex policy changes that may be considered to impact on EMTRs.

Senator McALLISTER: Can you think of any occasions when that has taken place?

Ms Cranfield: EMTR modelling, if it is undertaken, is usually undertaken by the Department of the Treasury.

Senator McALLISTER: But you're talking about it now. As an officer in the agency who is meant to be conducting whole-of-government coordination of women's policy, is there a single occasion you can think of when that kind of modelling has been undertaken under this government since 2013?

Ms Cranfield: I would have to take that question on notice for you.

Senator McALLISTER: Yes, I imagine.

Senator MOORE: I'm trying to flesh it out. The strategy paper specifically mentions EMTRs, but contains no analysis of the EMTR providing a disincentive to increase workforce participation. It says they're there, but it doesn't provide the analysis. I was going to ask why, but I'm going to take your previous answer as the answer. I'll go back to read that and find out where it is. You know about the National Foundation for Australian Women's paper that they put out earlier this year? Was that taken into account? They did concentrate on EMTRs as a disincentive to employment.

Ms Cranfield: Yes, they did. I recall that report. I'm not aware of how those EMTRs were calculated. That information wasn't provided in the report, so it wasn't taken into account.

Senator MOORE: Was that part of the extensive consultation that we heard earlier as to why it took three years to have the document provided? Was that work with the National Foundation for Australian Women part of that extensive consultation?

Ms Cranfield: The workforce participation strategy was developed in consultation with government departments.

Senator MOORE: Reading through the document, it seems to be—and I'm picking up on the fact that we held it over so we could get the last year's budget initiatives mentioned in it—
that there's a whole lot of things already announced by the government as part of their ongoing action. Was there anything new in the strategy that was first made public for the release of the strategy? Was there anything in either of the two documents that are out there that was brand new and had not been previous government policy?

Ms Cranfield: Can I take that question on notice?

Senator MOORE: Sure.

Ms Cranfield: There are a lot of measures in there. We'll check for you.

Senator MOORE: There are a lot of measures there, but I've been through them. I wanted to see whether, as part of this announcement, there was anything new that hadn't already gone through previous budget discussions or whether it's just a compilation of what had already been created.

Ms Cranfield: There certainly were new measures that were part of the budget announcements—

Senator MOORE: The 2014 budget?

Ms Cranfield: It was the budget in May of this year that was ahead of the release of the strategy on 6 July.

Senator MOORE: If you can get back to me on if there's anything in this paper—which is a particular one about strategy for women—that is a new initiative, that would be great.

Senator McALLISTER: Perhaps the minister can assist?

Senator Cash: I think there's been some confusion. This is a document that sets out the whole-of-government approach, but the answer to your question is that there are strategies in there from this budget, hence the implementation plan looks at this budget. We've said that the document will be updated every budget so that it's literally a living document. New policies that are announced are added to the strategy.

Senator MOORE: But I'm keen to know whether there's anything here, because it seems to me that the document I read is a list of things that are from previous budgets.

Senator Cash: Can we take that on notice then?

Senator MOORE: That's fine.

CHAIR: Senator Moore, I think Senator McKenzie has a couple of quick questions. Do you have many more questions before 6.30?

Senator MOORE: No.

Senator McKenzie: Regarding the image-based abuse online portal, could you update the committee on the recent announcement and what the government is doing to prevent non-consensual sharing of intimate images, particularly after the debacle following the end of the AFL season.

Ms Hatfield Dodds: The Australian government is working hard to limit technology facilitated abuse, as you would be aware. The work spans across quite a few areas, including education awareness, victim support and legislation. The key initiatives include 1800RESPECT and ThinkUKnow, which is an Australian Federal Police program providing cyber safety education to parents, carers and teachers.

Senator McKenzie: How?
Ms Hatfield Dodds: It does presentations that cover things like online grooming, sexting, privacy and appropriate and inappropriate online behaviour. It is trying to empower parents and teachers to be able to work appropriately with children and young adults at different developmental stages. It also covers identity theft, fraud and general online safety. It is a pretty critical program that is delivered in multiple—

Senator McKENZIE: It is for parents and teachers?

Ms Hatfield Dodds: It is focused on parents, carers and teachers. In 2015 and 2016, the program delivered around 400 presentations to more than 10,000 parents, carers and teachers. The third frontline service that provides tools is eSafetyWomen, which was launched in April 2016. It is a website providing information to women, aiming to equip and empower them on how to have a safer online experience.

Senator McKENZIE: Could you update the committee on the launch of the national framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women.

Ms Livingston: The national framework to improve the accessibility of the courts for CALD and Indigenous women was developed by the Judicial Council on Cultural Diversity with assistance from the Migration Council Australia. That was based on two consultation reports that I understand the MCA assisted with, as well as some funding support from the Women's Leadership and Development Strategy over 2014 to 2016. The framework itself aims to provide a national approach to make the court system more accessible for vulnerable women. Specifically, it sets out guiding principles and also examples of best practice that courts can implement themselves. There is a wide range of examples in the framework. Some examples include: establishing local cultural diversity committees; engaging with local communities; looking at the specific roles that Indigenous and also cultural court liaison officers play; looking at issues like signage and also the physical space of courts; and recognising that not only are these groups of women coming to the courts system with particular vulnerabilities but many of them may also have experienced violence, for example. They have particular needs in that context as well. The idea behind the national framework is for individual courts to look at how they can implement that moving forward, and the framework encourages them to develop their own KPIs and also to report annually back to the judicial council on their progress.

Senator McALLISTER: I am interested in what appears to be an underspend for the Office for Women in the 2016-17 financial year, in the Women's Leadership and Development Strategy grants.

Ms Hatfield Dodds: You are talking about the year 2015-16?

Senator McALLISTER: I'm talking about 2016-17, actually. It's a little bit unclear, because we're working off the grant reporting page on the website, but it appears that so far only $2.75 million has been allocated out of a $3.6 million allocation.

Ms Hatfield Dodds: No, it's more than that.

Senator McALLISTER: Is it more than that?

Ms Livingston: The total appropriation for last financial year was $3.602 million. The total expenditure to date is around $3.5 million—noting, however, that some of the funds
have been accrued into this financial year where there have been milestones under funding agreements that still have to be met.

**Senator McALLISTER:** So an arrangement was made to have that carry forward?

**Ms Livingston:** Yes, that's right.

**Senator McALLISTER:** So there's essentially $100,000 underspent, perhaps?

**Ms Livingston:** Still to be spent.

**Senator McALLISTER:** Has that been allowed to be rolled over into the present financial year?

**Ms Livingston:** Because we accrue those payments, we don't need to formally roll that money over.

**Senator McALLISTER:** When I look at the allocated budget for 2017-18, is it incorporated into that figure or does it appear separately?

**Ms Livingston:** No, it wouldn't be.

**Senator McALLISTER:** What about the underspend in the 2015-16 financial year? Was it carried forward?

**Ms Livingston:** It wasn't carried forward.

**Senator McALLISTER:** So $716,000 could have gone to women's organisations but didn't?

**Ms Livingston:** It wasn't carried over.

**Senator MOORE:** So that means it didn't.

**Senator McALLISTER:** So there's $700,000 that could have gone to community organisations but hasn't. What's going on with support in the disability sector for women, particularly disability advocacy?

**Ms Livingston:** $50,000 of funding from the Women's Leadership and Development Strategy has been set aside to support a piece of work around women with disability, specifically working with six national women's alliances.

**Senator McALLISTER:** Is that in the last financial year?

**Ms Livingston:** That's in 2017-18 funds. The Office for Women is currently in consultation with the disability sector about the best approach to use that funding.

**Senator McALLISTER:** Many organisations get by and do wonderful things with very small amounts of money, but $50,000 is a very small amount of money. What do you think will be accomplished for women with disabilities for $50,000? What's your hope?

**Ms Livingston:** The details will be worked out once we engage an organisation and work through the funding agreement and the details of the project with them, but the intention is to support the existing national women's alliances to do further work on women with disability. That acknowledges those organisations also have responsibility for providing a voice for women with disability, so it's to bolster their capability.

**Senator McALLISTER:** Do we consider that also to be rolled up in the overall budget allocation for the Office for Women, or does it sit separate?

**Ms Livingston:** It's under the Women's Leadership and Development Strategy.
Senator McALLISTER: It's within that program. I wonder, Senator Moore, if we might ask at this point about the Women's Leadership and Development Program, because my understanding is that that entire allocation has been expended already on the alliances in a prepayment of the three-year commitments. Is that correct?

Ms Livingston: Is your question whether the whole appropriation for WLDS for this financial year has been spent?

Senator McALLISTER: Yes, that is my question.

Ms Livingston: For this financial year the total appropriation is $3.29 million. Of that, $1.68 million has been earmarked for the national women's alliances and a further $1.02 million has been contracted for other projects. That would be our usual grant activity. That leaves around $590,000 that's still to be contracted for this financial year.

Senator McALLISTER: And the $50,000 for women advocacy in the disability is to come from that?

Ms Livingston: It will come from that.

Senator McALLISTER: That leaves how much for the next 10 months?

Ms Livingston: $590,000, less the $50,000 that has been earmarked for work with the disability sector.

Ms Hatfield Dodds: If I can go back briefly to the 2015-16 financial year, I'd like to take on notice your question about the underspend of around $700,000. I suspect that the timing of the election got in the way of the expenditure of those funds, so if we could check that and come back to you on notice, that would be good.

Senator MOORE: If we can find out what period of time there was no money spent, that would be useful, to see what the window was.

Senator LINES: Ms Livingston, you can take this on notice, I just want to add detail as to what first nations women or groups were consulted around the court access issue.

Ms Livingston: I'll take that on notice.

Senator MOORE: I had a long look at the Office for Women website, and there's nothing in there about the women who work in the Office for Women. Perhaps it would have been better if information about your background and what you're hoping to achieve in the Office for Women had been on the website and could be shared more widely, rather than using the time in Senate estimates. Lots of websites have, 'Who are we?' and you go in there, see a picture of someone and what their background is. That would be a positive element in the website.

Ms Livingston: I'll take that, thank you.

CHAIR: I thank the Office for Women and the minister for their assistance.

Proceedings suspended from 18:36 to 20:07

CHAIR: The committee will now resume its examination of the Department of the Prime Minister and Cabinet, outcome 1.

Senator MOORE: I have some questions around the SDG process, as I expect Ms Hatfield Dodds was expecting. I have to admit that I read the annual report with excitement,
and I couldn't find anything about the SDGs in there. Is there anything in the annual report that I've missed?

**Ms Hatfield Dodds:** It isn't in the annual report this year. We're engaged in preparing for Australia's first voluntary national review, as I'm sure you're aware. We have the 2030 Agenda for Sustainable Development referenced in a suite of our materials that are relevant to the goals that we are responsible for—goal 5 around gender equality and goal 11 around cities.

**Senator MOORE:** I just couldn't find 11. I found goal 5, and I thought that segment was really, really good. When you google 'Sustainable Development Goals', up comes goal 5 straightaway, but I couldn't find goal 11. Can you tell me who actually designed that? The actual one on goal 5 is very, very effective.

**Ms Farrell:** My team looks after goal 5. It was actually the departmental IT support that helped us design the website in that way.

**Senator MOORE:** It works very well; it has good information in it, and it also has the information about your community consultation around the SDG agenda, so I would like to find out a little bit more about that. You have a time frame set, and you're asking people to send in a contribution about how they're engaging in the goal process.

**Ms Farrell:** That's right—case studies. We're doing consultation a little bit differently. Working across government, each goal leader is doing things differently for their sectors. For us, for the women's sector, we're going through civil society, through all six of the national women's alliances. They represent over 200 stakeholder groups. We're also going through business, so we have also targeted, through Chief Executive Women, Male Champions of Change and our BoardLinks champions. We've also just gone out the state and territory governments. We've felt that that represents good coverage, because we're talking 500-plus or so different—

**Senator MOORE:** Is it later this year you've got a cut-off point?

**Ms Farrell:** That's right: 12 November.

**Senator MOORE:** I asked questions of Environment this morning, and they're using a similar approach of asking the community, and then they're going to create a compendium of those responses and publish them every year. Is it a similar model that you're using?

**Ms Farrell:** We think so, but I think it's a bit premature to say exactly what we'll do, because we haven't actually got the responses yet.

**Senator MOORE:** I think Environment have been working in this space for a long time.

**Ms Farrell:** They have, yes. The other thing that we are doing—and I think it might be useful to touch on now—is we're about to in a couple of weeks launch an interactive platform. So, whilst we've just talked about the VNR process, we're also looking at implementation more broadly right through to 2030. This interactive platform will be an opportunity to create a national dialogue on goal 5 and encourage the public, organisations and individuals to come in that space and showcase some of their experiences in that platform. It may be an opportunity for us, when we get the case studies for the VNR, to actually publish them on that, but it's just a little premature because we haven't received them.
Senator MOORE: What about other areas of the department? You said goal 11—and I don't have a great deal of success finding things on your website. So, if I just key in goal 11, that should come up?

Ms Hatfield Dodds: Mary Wiley-Smith up the end is responsible for Cities and can answer Cities for them specifically. More broadly though, governance arrangements around the Sustainable Development Goals are that, as you know, each portfolio agency is responsible. Even within PM&C, our three areas—Indigenous Affairs Group—

Senator MOORE: That was my next question: what's happening in Indigenous—

Ms Hatfield Dodds: Office for Women and Cities—have their own approaches. It depends on how they are going with their stakeholders, so I will let Mary answer for Cities and then come back to IAG.

Ms Wiley-Smith: Thank you very much. The Cities Division is looking at a range of measures to look at the performance of cities over time. It has really been our primary focus at the moment, and so we've been working with a number of stakeholders, and all state and territory governments, on a National Cities Performance Framework. An initial interim report has been released to the public and is out for further consultation. We hope to be able to finalise that report, which measures the progress of cities, later this year.

The Digital Transformation Agency is also developing an interactive website which we'll be able to go on and see the performance of our cities. In terms of goal 11, this work will actually help to inform our response to goal 11. We also have commenced consultation with stakeholders, and we're actually doing further consultation with our states and territories, and also the private sector, on the goal this year.

Senator MOORE: What about Indigenous affairs?

Ms Hatfield Dodds: They're on later this week, and you can speak to them directly of course—

Senator MOORE: Your website has something similarly about that?

Ms Hatfield Dodds: No, because we're taking a bit of a different approach with Indigenous affairs. We're trying to mainstream the issues and wash it through every portfolio agency's response to each of the goals. Rather than having an Indigenous response, we're trying to make sure that issues pertinent to Indigenous Australians are washed through.

Senator MOORE: So that's what PM&C is doing. In terms of your responsibility for coordinating the domestic side of the whole process, is there a report, an update of what's happening across all the departments? I am not excited about the concept of having to ask every single department what they're doing with their SDG program. Is your department going to be doing that?

Ms Hatfield Dodds: No, we're not. I'm happy to talk about what the Australian government is doing but, on governance, the 2030 development agenda is an international agenda and an international instrument, so DFAT's got primary responsibility for it.

Senator MOORE: I totally understand that, but I'm more worried about the domestic aspects.

Ms Hatfield Dodds: DFAT, because it's an international instrument, still holds responsibility for coordinating the domestic side.
Senator MOORE: So they're doing the domestic stuff as well?

Ms Hatfield Dodds: What we are doing is PM&C is essentially bringing our convening power into play and assisting DFAT and supporting their leadership. Part of how that expresses itself is I am co-chairing the deputy level IDC, and you have heard from Environment there is a FAS-level group and an EL2 level group. Really those three groups of officers are, I think, the collective oversight. So what we've said in terms of the VNR and what goes into that report is that it will be signed off at least at the FAS level before it comes to the deputy group for clearance. So it will be a collective clearance. Final decisions will be made by DFAT in terms of what's in and what's out.

Where we're at at the moment in our thinking is we don't want the report to be unwieldy and too long—and you can imagine it could be as long as anything. We're going to try for about four pages per goal, which doesn't leave us a lot of space. We want to put some case studies in and we want to have some visuals, so we're looking at using hyperlinks. We're going out in our consultations with big and small business, the community sector and civil society, and at the moment we're calling for engagement, case studies and input. Our current thinking is we ought to be able to hyperlink to a lot of that material, so that if we put, say, one case study in against goal 5, gender equality, we could have a link and you could go and look at everything that came from the non-government side—or non-Commonwealth, because the states and territories are involved as well.

The other thing we are looking at is the annex at the end of the report being an annex of sources, rather than an annex of data. If it's an annex of data and the Commonwealth is holding the pen of the report, the Commonwealth would have to be satisfied as to the quality of every piece of data. If it's an annex of sources, we can ascribe a source for those sources. So, if ACOSS or ACFID send us things, we can put those in there. And again, with hyperlinks, people can go from there to looking at the broader reports.

Senator MOORE: One of the things we've talked about is having an effective baseline. If you don't have an effective baseline, there's very little that you can do to look at progress, because it's all over the place. If you don't have someone, some person or some group, responsible, how are you going to be able to verify that you have accuracy? I'm all for engagement and all for devolution, but it's the Australian government that's signing off on your report when you do it next year. If you don't have confidence that the database on which you're operating is absolutely accurate, you are doing a lot of work with very little success. So how do you get that balance between devolution and accountability?

Ms Hatfield Dodds: The bottom line is that the portfolio agency responsible is DFAT. The group of APS officers—

Senator MOORE: So it's them!

Ms Hatfield Dodds: Yes—so it's them. But the group of APS officers collectively responsible is the deputies IDC, which pulls together the APS collectively The source we are looking at using, mostly from a Commonwealth perspective, is the ABS.

Senator MOORE: And they're very well established.

Ms Hatfield Dodds: They're very well established, and they have just sent out to portfolio agencies in the last month, I think, the compilation data that they've got, and agencies are starting to look at that.
Ms Farrell: I would just add that we also have an ABS officer who is seconded to the Office for Women, and she's also helping us with our data and with that baseline.

Senator MOORE: Okay. From your perspective, that same degree of accountability and the reliance on stats will be across all the different agencies.

Ms Hatfield Dodds: I guess the framework we're bringing to this is that a lot of the activity and a lot of the outcomes that we'll be seeking through the development agenda are not new to Australia. Some of it's new, but much of it is activity that, in the Commonwealth at least, portfolio agencies are interested in pursuing. So this first tranche of activity around the VNR is doing exactly what you said—establishing a baseline so we know what we are doing and we can identify if there are any gaps. And then we are ready for the second VNR, which will come sometime before 2030.

Senator MOORE: In terms of the linkages with state and local governments, and there's been some really good work by local government, do you have contacts at every level that have that accountability?

Ms Hatfield Dodds: Yes.

Ms Farrell: Yes. On the IDC and through the three different committees, we have representatives from the Department of Infrastructure and Regional Development, and they're the conduit out to LGA and the local government sector through their portfolio responsibilities.

Senator MOORE: And the state governments?

Ms Hatfield Dodds: Yes. The secretary of PM&C, Dr Parkinson, wrote to his state and territory counterparts in August this year, I believe, inviting them to be part of the 2030 development agenda, and we've had responses, I think, from every jurisdiction, who are keen to be involved. So we'll progress that. We've got a deputy senior officials meeting later this week, I believe, on Friday, 27 October, for COAG—a meeting that I chair—and the SDGs are on that agenda.

Senator MOORE: Has the senior group now had three meetings?

Ms Hatfield Dodds: Two meetings.

Senator MOORE: So the senior group has had two. The middle group?

Ms Hatfield Dodds: Two.

Ms Farrell: I think two groups of two, as I—

Senator MOORE: I was told by someone, and I forget who it was, that the third group is the one that's doing all the work and that they've had more than two meetings.

Ms Farrell: I think we've had two face-to-face meetings. But we do obviously work bilaterally on certain—

Senator MOORE: At those meetings, was anything discussed about the annual report process for this year? I am actually quite concerned about the messaging to the wider community in the annual report for 2016-17. It is not the first year of the agenda, it's actually the second year. It is the year in which the decision about having the voluntary view next year has been made and it's not in your annual report. It's not in the Environment annual report. I'm going through the others one by one. Was that discussed at all in terms of core business?
Ms Hatfield Dodds: Not at the deputy level group and I don't think at the others.

Ms Farrell: The EL2 drafting group and, I think it is fair to say, the FAS working group are also quite focussed at the moment on the VNR aspects.

Senator MOORE: That message is not translated in the statements from the departments. Minister, I know that it is an issue, and the government has signed off on that. But in the ministerial statements in the annual report it doesn't mention the 2030 agenda or the SDGs. Is this an issue that's been discussed with the ministerial group?

Senator Brandis: I'm not sure what you are asking me. Are you asking me to disclose what's been discussed in cabinet or—

Senator MOORE: No, I'm asking you whether this is an issue of priority for the ministerial group. I don't want to know detail; it just worries me that we're asking communities and civil society now to engage—and it's in quite a tight timeframe for them in getting the information back. But, in the major publications from each of the departments so far that I've read, it's not mentioned.

Senator Brandis: I think you may take it that this is a matter of importance to the government.

Senator MOORE: Okay, I'm happy to hear that.

Ms Hatfield Dodds: Senator, I would add that, for example, while it's not in PM&C's annual report, the Office for Women have referred to the SDGs in quite a few important publications. So the reports from the Australian delegations participating in the 60th and 61st session of the Commission on the Status of Women both reference the SDGs and what the Australian government is doing.

Senator MOORE: To be fair, Ms Hatfield Dodds, if you didn't reference them at the meeting of CEDAW at the UN where we made the commitment, where for some of the other nations of the world they are permeating every public statement they make, it would be pretty sorrowful. But I'm pleased you did. I think that's great. I actually am interested in—and I don't want to go back to what we talked about earlier—the strategy paper for women at work. That strategy paper doesn't have a high focus on SDGs don't have a high focus. That strategy paper was only released in July this year, which was after CEDAW. So there's got to be consistency, from my perspective, on the publication status around policy. If we are going to be in, we've got to be in.

In terms of the engagement with civil society, my understanding from what you said this morning—and I just want to get this really clear—is that DFAT has got the major responsibility for that. Is that right?

Ms Hatfield Dodds: That's right. DFAT's got the major responsibility of ensuring that portfolio agencies are engaging with their own stakeholders.

Senator MOORE: Good. I just wanted to make it clear before I asked them on Thursday. So, from your perspective, you bring coordination but you also have primary responsibility for the areas that PM&C cover.

Ms Hatfield Dodds: Yes.

Senator MOORE: So five, 11, and their whole issue about Aboriginal equality; is that right?
Ms Hatfield Dodds: That's correct. But also we're supporting other agencies. Last week we supported both DSS and Treasury in engagements of Treasury with the business community and DSS with the community sector just as part of our normal business as the Department of the Prime Minister and Cabinet.

Senator MOORE: Thank you very much. There could well be a couple of questions on notice, but that's it for now.

Senator ABETZ: I thank the officials for providing me with the documentation that I sought earlier. To be clear, an employee representatives rights policy was developed as part of the enterprise agreement 2017-20.

Ms Greenwood: At the same time as the agreement, yes.

Senator ABETZ: Yes, at the same time—indeed, it was part of the negotiation, and the full text was known to employees prior to the vote.

Ms Greenwood: All policies were. We developed all policies and guidelines, and made them all available to staff.

Senator ABETZ: Just to be clear, this policy was not submitted to the Australian Public Service Commission—the Prime Minister, in this case, being the relevant minister—or the public service minister.

Ms Greenwood: No, they weren't.

Senator ABETZ: If I may go through this document, in particular paragraph 4.3, it says, 'In discharging their representative roles at the workplace level, the rights of union representatives are, amongst other, the right to reasonable paid time to provide information to and seek feedback from employees in the workplace on workplace relation matters in the department during normal working hours.' Basically, the taxpayer is funding the union officials for undertaking their tasks during normal business hours. Is that how I am supposed to understand that part of the agreement?

Ms Greenwood: Staff, who are delegates of the CPSU, may provide information to staff during normal business hours.

Senator ABETZ: The right to reasonable paid time—that's what I was asking about. So, the taxpayer will be funding their salaries whilst they are undertaking these union activities?

Ms Greenwood: Yes, while they're providing information to staff on a reasonable basis.

Senator ABETZ: There's no requirement that the information being provided to staff be 'reasonable'. The only 'reasonable' in there is the right to reasonable paid time

Ms Greenwood: Yes.

Senator ABETZ: That's correct, isn't it?

Ms Greenwood: Yes.

Senator ABETZ: Then the next point is: the right to e-mail employees in their workplace. How on earth would a union get a worker's e-mail address?
Ms Greenwood: We would expect those e-mails to be sent out through a central e-mail address that we would have.

Senator ABETZ: So Prime Minister and Cabinet provides all the workers e-mail addresses to the union?

Ms Greenwood: No, sorry: we would send that information on behalf and we would only send it on an opt-out basis. Staff would obviously be able to opt-out or choose not to receive any information.

Senator ABETZ: So it is an opt-out situation, so how did you do that?

Ms Greenwood: We would ask staff to let us know.

Senator ABETZ: Wait a minute, we would or have you?

Ms Greenwood: I would need to check, whether we have yet or not.

Senator ABETZ: Anyway, I would have thought you would have done this by now but, if not, how would you do that?

Ms Greenwood: Simply by asking staff to let the corporate area know that, if they did not wish to receive union information, if they wish to opt-out.

Senator ABETZ: What sort of time limit would be given to the employees in relation to exercising this so-called opt-out?

Ms Greenwood: Sorry, I don't understand the time limit.

Senator ABETZ: If a worker does not respond to your e-mail—

Senator McALLISTER: Is it a bit like the unsubscribe function—

Senator ABETZ: Are they then—

Senator McALLISTER: You can opt-out from getting emails from GetUp! anytime you want?

Senator ABETZ: Have we finished, Senator?

Senator McALLISTER: I was just trying to help.

Senator ABETZ: Thank you. Can you tell me if a worker or employee has not opted out, is there a time frame?

Ms Greenwood: So what I expect we will do—and I will come back to you with details—is provide—

Senator ABETZ: If you could provide me with a copy of the message, that would be very helpful. But nobody at the table is aware of the time?

Ms Cass: I don't believe that this policy has actually been implemented as yet. It is wiser for us to come back to you with a description of how it is planned to be implemented in PM&C.

Senator ABETZ: So we don't know how it's going to be implemented at this stage. And so what makes us think that opting out is good enough as opposed to asking workers to register an interest in receiving union material?

Ms Greenwood: That was the discussion that took place at bargaining.

Senator ABETZ: Yes, but Prime Minister and Cabinet agreed to it, so why did you agree to opt out as opposed to opt in?
Ms Greenwood: I would need to look into that; I wasn't part of that process or negotiation.

Senator ABETZ: All right, if you could. Does this also—and all this, might I add, is at taxpayers' expense because union officials and union representatives are entitled to reasonable access to departmental facilities, including telephone, printing, copying, internet, e-mail facilities, noticeboards, meeting rooms, videoconferencing, lunch rooms, tea rooms and other areas. What else might the department have to offer that would not be available to these union representatives?

Ms Greenwood: They're fairly standard facilities for union representatives.

Senator ABETZ: In which departments?

Ms Greenwood: Across a range of departments.

Senator ABETZ: So you're aware of the detail of this for other departments, but you're not aware for your own.

Ms Greenwood: This is simply providing them with access to meeting rooms and tearooms, and some reasonable access to photocopying. Again, I would be—

Senator ABETZ: No: telephone, printing, copying, internet, e-mail facilities, videoconferencing—the list is there for all of us to read, Ms Greenwood, and you're trying to minimise it to just access to rooms, which is not helpful if we want to get through this evening. But this is all made available at taxpayers' expense—that's correct?

Ms Greenwood: Yes, that's access that's been made available.

Senator ABETZ: Thank you—not a difficult question, I would have thought. Are you able to provide me with a copy of the information at paragraph 5.2? 'Facilities for the CPSU section secretary or equivalent will be subject of letters of agreement between PM&C and the CPSU.'

Ms Cass: We are not aware that this letters of agreement process has been undertaken, nor am I aware of an actual implementation strategy being discussed or agreed in relation to this policy. I think, rather than all of us having some conjecture about that, we should go back, take it on notice and actually provide you with a description of the intended implementation strategy.

Senator ABETZ: There's no sort of option here, is there, in 5.2? 'Facilities for the CPSU section secretary will be subject of letters of agreement.' So it will be. So you are saying that has not happened?

Ms Greenwood: It hasn't happened at this stage, Senator.

Senator ABETZ: All right, we might revisit that. Are there any drafts that have been sent backwards and forwards to the CPSU?

Ms Greenwood: Not that I am aware of.

Senator ABETZ: And then, in section 6.2, we are told 'PM&C will include written material provided by the union about the role of the union, and membership in onboarding material. So onboarding—I dare say that means new recruits, yes—for new employees. So whether these new employees want any information on trade unionism, it will be foisted upon them whether they want it or not. That's correct, isn't it?
Ms Greenwood: The way in which that will be implemented—having had discussions with the APSC about this previously—is that new staff will be aware that there's no requirement for them to receive that, there's no requirement for them to attend those meetings, there's no requirement for them to join. So again it would be on an opt-out basis.

Senator ABETZ: I am a brand new employee fronting up to PM&C and this tells me that PM&C will include—will include—this information in onboarding material for new employees. I'm a new employee fronting up and undoubtedly I will be told, 'But you haven't opted out, so here's the union information.' What opportunity has the new employee had of actually opting out from receiving this information?

Dr Gruen: I think, as has been made clear, none of this has been implemented. I think it would help everyone if the officers were able to come back to you about whatever plans are underway. This document has not been implemented. It's all very well for you to say all these things that are going to happen, but at this stage it's hypothetical.

Senator ABETZ: But, Dr Gruen, this document is what allegedly helped get the whole enterprise agreement voted up. It was part and parcel of the negotiations. So please don't try to brush me off.

Dr Gruen: I wasn't trying to brush you off.

Senator ABETZ: This was integral. I asked that right up-front—whether it was integral, as the part of the enterprise agreement negotiation, that all the wording was settled prior to the vote—and I was told yes it was. So the union must have had an understanding of what this meant, and I would have thought, black on white, that PM&C will include written material about the role of the union and membership in onboarding material for new employees. So can I ask: will new employees receive onboarding material from PM&C? I assume the answer to that is yes. All right, what is the answer? So PM&C—

Senator Brandis: Senator, you asked a question. Give the officers a chance to answer.

Senator ABETZ: I thought I'd given them more than an opportunity but, yes, I'm more than happy for an answer. Silence again.

Senator Brandis: I think, in fairness, Ms Greenwood is considering her answer.

Ms Cass: So are you asking, Senator, if we were actually in a conversation about whether this actually has been implemented?

Senator ABETZ: No, I was asking whether new employees receive onboarding materials from PM&C.

Ms Cass: Currently, new employees receive orientation material—so when they start in their job.

Senator ABETZ: Right. Is orientation material the same as onboarding material?

Ms Cass: It is. It's training in the policy and practice of their workplace.

Senator ABETZ: It is—

Ms Cass: It is part of the introduction to a workplace.

Senator ABETZ: No; I'm asking whether orientation material is the same as that which is described in paragraph 6.2 as onboarding material.
Senator Brandis: Senator Abetz, maybe it might be best if we take these questions on notice. There's obviously a definitional issue here. I'm sure you don't want, and nobody wants, there to be any confusion about what we're talking about, so perhaps you could put these questions to the witness and they can take them on notice and provide an answer. There does seem to be a degree of doubt about whether you are referring to the same thing or something different.

Senator ABETZ: That's what I'm clearing up, Attorney. I think it's pretty clear—with great respect—the PM&C documentation refers to onboarding material, and I am asking: is that the same as the orientation material that Ms Cass has referred to?

Ms Greenwood: There's some crossover, but onboarding material tends to be information about how you start your job—

Senator ABETZ: That's right.

Ms Greenwood: and orientation material tends to go to broader information about the department and how you're doing the job, so one helps you get in and one helps you work when you're there.

Senator ABETZ: And my question was only about onboarding. So dismiss any thought of orientation, thank you, Ms Cass, and thank you for clarifying that. So can we now return to onboarding material? Does PM&C provide onboarding material for new employees?

Ms Greenwood: We provide some onboarding material to staff. At this stage we provide union information to staff as part of that information.

Senator ABETZ: So this providing of written material provided by the union is a new initiative by the PM&C? In the past, union material was not provided in the onboarding material, was it?

Ms Greenwood: Not to my knowledge.

Senator ABETZ: So this is a new initiative in 6.2. Is that correct?

Ms Greenwood: Yes; that would be my understanding.

Senator ABETZ: And then 6.3: 'PM&C will invite the union to orientation sessions for new employees.' That is also a new initiative, is it not, and it has not occurred in recent years in PM&C?

Ms Greenwood: To my knowledge no, but I would need to check.

Senator ABETZ: Please do. You tell me that employees have this great opt-out opportunity. So a brand new employee, confronted with union material and a union representative, all of a sudden says, 'Hang on a moment; I want to opt out of this,' and walks out, in front of all their peers is not likely to happen, is it?

Ms Greenwood: My understanding is that the way that we would implement this is that we would actually ensure that staff were aware prior to the union attending the meeting that they had the option to remove themselves from that meeting. There is no requirement for them to attend that meeting. So that is the opt-out approach that we have been discussing.

Senator ABETZ: So at what stage would they walk out? One assumes that, with this onboarding material and their orientation sessions, there would be other material provided to them. So would they absent themselves for the union session and then walk back in again
after the union had finished? It would be pretty uncomfortable for workers to do that on their very first day of work.

**Ms Greenwood:** I can't comment on whether it would be uncomfortable or not, but it would certainly be possible for staff to be told prior to that meeting and to absent themselves. That would be the approach we would look to initiate as an opt-out approach.

**Senator ABETZ:** How would all this work with the possibility of adverse action if people don't opt out? Does that mean PM&C could have a list of people open to union information?

**Ms Greenwood:** Sorry, Senator, I don't understand the question.

**Senator ABETZ:** Take that on notice. I'm sure when you read it you will. The policy is in place, you are telling us, but has not been implemented as yet.

**Ms Greenwood:** Yes; that's my understanding.

**Senator ABETZ:** Is that because there has not been a new intake since the enterprise agreement was ratified?

**Ms Greenwood:** We've certainly had staff commence since the new agreement was ratified.

**Senator ABETZ:** Has union material being provided to those new employees in there onboarding material?

**Ms Greenwood:** No; not to my knowledge, Senator, but again I will check.

**Senator ABETZ:** Thank you. If it has not been implemented at this stage, could I invite you to reconsider this policy document, because it wasn't part of the official enterprise agreement, and get Australian Public Service Commission advice on it and its contents? In relation to that, I would draw your attention to some evidence that the Public Service Commissioner gave earlier today when I asked them general questions.

**Senator ABETZ:** The workplace bargaining policy requires, at paragraph 9:

A draft enterprise agreement, or other collective workplace arrangement, is to be provided to the Commissioner for approval prior to tabling a final position to staff.

Why was this not provided to the Public Service Commissioner?

**Ms Greenwood:** We have regular contact with the APSC, and we provided all the documents that the APSC required at that stage as part of the drafting process. I was not part of that process, so I can take on notice your question and find out on what basis the information was or wasn't provided.

**Senator ABETZ:** I thought the evidence previously was that this employee representative rights policy was not passed by the Australian Public Service Commission. We agreed that, I thought, right up-front.

**Ms Greenwood:** We did.

**Senator ABETZ:** Thank you. I would have thought, with respect, that this is a collective workplace arrangement of sorts, and I'm asking: why, pursuant to paragraph 9 of the Workplace Bargaining Policy 2015 was it not provided to the commissioner.

**Ms Greenwood:** It wasn't provided to the commissioner, because it's not part of the draft enterprise agreement. However, we have—
Senator ABETZ: But it is. Can we not be agreed that it is a collective workplace arrangement?

Ms Greenwood: We would characterise it as an internal policy that's been consulted with staff and that relates to, or comes from, the enterprise agreement as an instrument. But it's not part of the enterprise agreement, and it's not—

Senator ABETZ: I know that, and that is why the policy talks about an enterprise agreement or other collective workplace arrangement. I think we can be agreed that this was collective, because it was part of the bargaining process. I think we can be agreed that this relates to the workplace, and it is an agreement because that is what was put to the workers prior to the vote. So why was this other collective workplace arrangement—not agreement, I correct myself—not passed by the Australian Public Service Commissioner?

Ms Greenwood: I can take that on notice and confirm a response, but my understanding would be that, as a workplace arrangement, as with other internal policies, there was no requirement to pass it through the APSC and that was the reason for not passing it through the APSC.

Senator ABETZ: In the Workplace Bargaining Policy, which is interesting, if you have a look at page 3, it tells us about all workplace arrangements. In paragraph 31, it says: The right for an employee to choose to belong or not to belong to a union will be respected. I know you say you do that by opting out, but I think most people would not accept that as being satisfactory. Then paragraph 32 says: Consultation and workplace relations arrangements in agencies are to be balanced and not unreasonably favour one group of employees over another. Agencies may make provision for consultative structures with employees, and where employees choose, their representatives, regarding employment relations matters.

So 'where employees choose'—opting out is hardly an employee choosing, is it? The default is that you will be part of all this union process, and you have to actively opt out. This is not choosing, pursuant to paragraph 32 of the government's Workplace Bargaining Policy 2015.

Ms Greenwood: I'd need to take that on notice and look at the policy.

Senator ABETZ: If you could, please. Then paragraph 33: Employees who are not members of a union may not wish to engage with, or receive communications from, a union. Agencies are to ensure that communication arrangements within the agency respect this. So, once again, you are saying you have to actually opt out. So one assumes that there may be a number of employees, the majority of whom—one assumes; I don't know—are not union members, in PM&C, who would nevertheless be receiving this union information, despite not being union members.

Senator McALLISTER: Chair, may I just enquire what you are thinking about time?

CHAIR: Senator Abetz has had a little bit less than 30 minutes, which is a very small proportion of the time today for this agency. I am happy for him to continue for a bit longer, considering the very generous time that ALP senators have had.

Senator McALLISTER: I will point out that I had asked for outcome 1 to run until 11 o'clock this evening, in anticipation of the very problems we are experiencing.
CHAIR: I don't think we could attribute them to 30 minutes of questioning from Senator Abetz.

Senator McALLISTER: No, but it is emblematic of the kinds of challenges that we are dealing with under outcome 1.

Senator Brandis: Mr Chairman, honestly, every member of this committee has an equal right to ask questions.

Senator McALLISTER: Of course.

Senator Brandis: Most of the questions have been asked by the opposition. And I don't say this lightly, Senator McAllister, but I do think it is quite wrong of you to suggest that, because Senator Abetz has asked questions—which are perfectly legitimate questions, that he is perfectly entitled to ask—that there is some kind of insinuation that the proper working of the committee is somehow being affected. Senator Abetz has just as much right to ask questions as you or Senator Moore or anyone else.

Senator ABETZ: Senator McAllister, the less you interrupt, the quicker I will be gone. That should put a smile on your face!

Senator McALLISTER: I was merely enquiring.

CHAIR: Perhaps to assist, Senator Abetz, you could give us an indication—

Senator ABETZ: Yes; very quick.

Senator Brandis: While we are having this slight pause to discuss procedural matters, will the Independent National Security Legislation Monitor still be required today?

CHAIR: Yes, Senator Xenophon has questions for him, but I understand they won't take too long.

Senator Brandis: Okay, and do we have any idea when the INSLM will be required?

CHAIR: After Senator Abetz and Senator McKenzie, we will come to Senator McAllister.

Senator McALLISTER: I have a lot of questions.

CHAIR: So it may be some time.

Senator Brandis: Can you give us an estimate please; for example, are you expecting to exhaust the evening's questioning with PM&C questions? Because if so, we can send Dr Renwick and his officials away.

CHAIR: I don't think Senator Xenophon would agree that we could send Dr Renwick away; he has come in a couple of times to check on the timing.

Senator Brandis: I wonder then, for the sake of Dr Renwick and his officials, if you, Mr Chairman, or perhaps the secretary of the committee, could make an enquiry of Senator Xenophon whether he is in a position to ask those questions immediately on the resumption after the evening adjournment, and fit them in then.

CHAIR: I would be happy to do that with the agreement of the committee.

Senator McALLISTER: I'm sorry—

Senator McKENZIE: If you are happy, Chair, I am happy.
Senator Brandis: I just think it is very unfair to keep officers—particularly officers like Dr Renwick who have travelled from interstate—here on the chance that they may or may not be reached by 11 pm.

CHAIR: We also have IGIS to get to this evening, as well as the DTA and the National Australia Council.

Senator Brandis: Look, that is fine, but you have said to me, Mr Chairman, that Senator Xenophon has indicated he has questions for Dr Renwick. In fairness to both Senator Xenophon and Dr Renwick, if they can be built into the program, then they should be at a specified time. As to the IGIS and others, unless senators have indicated to you that they have questions for those officials, perhaps they could be told that they may leave.

CHAIR: I have questions lodged by the opposition for the Digital Transformation Agency and by government senators for the National Australia Day Council, and by Senator Xenophon for IGIS.

Senator Brandis: Well then, in relation to those officials and agencies, it is entirely a matter for the opposition and for Senator Xenophon as to how they wish to prioritise their questions. It is a matter for them. But if, as appears to be Senator McAllister's position, there is a long period of questions for the department—and there are not many hours left in the day—unless she thinks that the Digital Transformation Agency and others who have been requested only by the opposition are likely to be reached, could those officials please be sent away? Perhaps the INSLM and IGIS could be slotted in this evening—

CHAIR: Thank you, Senator Brandis. Perhaps Senator McAllister and I will discuss this while Senator Abetz finishes his line of questioning, and we will come back to the committee.

Senator McALLISTER: Since we have had a long discussion about what I think without me contributing to it, I might just make my position clear. The reason that I asked what was actually a genuine enquiry about Senator Abetz's requirement for time, and the chair's approach to that, is that in our private meetings the committee has had a discussion about how to handle this evening. Opposition senators are acutely aware of how frustrating it is for the smaller agencies who are called late in the evening to be required to wait here. In fact, our proposition had been that it would be better if outcome 1 ran until 11 pm and we dealt with the smaller agencies tomorrow morning. That wasn't acceptable to government senators, as is their wont. But we have made efforts to manage this process—because, as you observed, Chair, this isn't the first time we've had this experience; it has happened on almost every occasion that I have attended estimates.

CHAIR: In order to not prolong this any further, I won't put the government senators' views on the record as to why that should be the case. We will return to Senator Abetz's questions and, in the meantime, Senator McAllister and I will have a discussion.

Senator ABETZ: Senator McAllister, that was very unwise: I now have a second wind—just joking! To sum up, paragraph 58 of the bargaining policy also requires, to assist the APSC in providing advice on bargaining across the Commonwealth public sector, that agencies are requested to advise the APSC about any significant employment relations matters. I would have thought that changing your policy in relation to union involvement with a side agreement from the enterprise agreement might have been considered to be a
significant employment relations matter, because you have actually changed the way you are
doing business in relation to the union and the induction of new employees.

Ms Greenwood: Senator, can I take that on notice?

Senator ABETZ: Yes.

Ms Greenwood: Because what we will need to do is look back across the two key
agreements, which are the FaHCSIA agreement and the old PM&C agreement, and look at
what representational rights are in each agreement, given that the negotiations involved, in
effect, those two key agreements in trying to come to a single agreement. I will take that on
notice and provide some more information.

Senator ABETZ: It was these clearly pro-union provisions about which the Public
Service Commissioner expressed some opinion. The fact that they weren't passed by the
Public Service Commission, the minister, or the minister for public service, looks to me very
much like somebody tried to pull a swiftie to achieve a certain pro-union outcome, which is
clearly not in line with the workplace bargaining policy. But I will leave it at that.

Ms Greenwood: Senator, it was certainly never our intention to be inconsistent with the
policy, so I will get more information and bring it back.

Senator McKENZIE: To follow up on Senator Abetz's line of questioning: with respect
to the communication activities that the union organisers have with staff, is there any
maximum time—either hours per day, days per week, hours per year—during which those
communication activities can be undertaken?

Ms Cass: I don't believe so. This is a new policy that has just been agreed—

Senator McKENZIE: I understand—

Ms Cass: The implementation plan has not been settled, Senator.

Senator McKENZIE: That's all right; I understand it hasn't been implemented but I don't
have it in front of me. So there is no maximum time on the number of hours or days that
union organisers who are employed by PM&C can spend on communication activities with
staff. Is that correct?

Ms Cass: Not to my knowledge.

Senator McKENZIE: Thank you, Ms Cass. Dr Gruen, I have one last question: how is it
envisaged that this time for communication activities will get approval from whoever the
organiser's superior is? Do they have to slip in a form? Or is it just a stamp and, 'on your way;
here is the whiteboard'?

Ms Cass: The implementation arrangements still need to be drafted and settled. We don't
have the answers for you, Senator. This policy has only just been entered, and there needs to
be a process of actually clarifying what implementation might look like. We are very happy to
come back and provide more information once that is settled.

Senator McKENZIE: Yes, could you take on notice the approval process, and whether
there is any maximum time? That would be great, thanks.

CHAIR: Just for the benefit of the agencies and officers, we are going to stick with
PM&C as scheduled, and we'll move to the agencies as scheduled, but I assure all agencies
that are here that they will have their time on the committee tonight. Between the opposition
and government senators, we'll ensure that will take place, so no-one will be waiting here unnecessarily.

**Senator McALLISTER:** I wanted to ask about the new portfolio of Home Affairs and the arrangements around that. The planning for the new superdepartment is to be undertaken within PM&C, and I understand you are leading the process, Mr McKinnon. Is that correct?

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

**Senator McALLISTER:** Which other officers are involved? Can you just tell me a little bit about how that's being organised.

**Mr McKinnon:** Essentially there are two main streams of work, and we in Prime Minister and Cabinet are leading the work which I guess you could call the structural, policy and legal work of putting together the overall structure of a new Home Affairs portfolio. There is a second task force which is an implementation task force, which is led largely by the Department of Immigration and Border Protection, and that's looking at much more of the practical matters about the way you join the agencies together, the movement of people, the financial details, the connections between systems and that sort of thing. Each of those task forces is a multi-agency task force—both the implementation one, led by DIBP because they're going to be the biggest portion of the new home affairs department, and the one within Prime Minister and Cabinet, which is looking after, as I said, these legal, structural and policy issues.

**Senator McALLISTER:** Before we go any further, can I clarify that, for the time being in any case, we should refer to it as the Department of Home Affairs? Is that what it is to be called?

**Mr McKinnon:** It's a Home Affairs portfolio. Within that there'll be a department, and I don't know that the name of that department has been absolutely settled yet. That'll be something for the government.

**Senator McALLISTER:** Shall I call it the superdepartment? Would that work?

**Mr McKinnon:** You can call it the Home Affairs portfolio. That would be fail-safe.

**Senator McALLISTER:** Each of these two streams is being managed by a multi-agency working group, one led by PM&C, with you at the helm, and the other led by Immigration. Which other agencies are engaged in your part of that project?

**Mr McKinnon:** There are a very large number of them: all of the intelligence agencies; Finance, of course, because it involves money; DHS; the Office of National Assessments, which is affected by it all, of course; the Attorney General's Department, of course, which is obviously affected by it; and the Office of Transport Security which is coming out of Infrastructure, so that's obviously involved as well. It is quite a significant list.

**Senator McALLISTER:** Is the list you just provided a comprehensive list?

**Mr McKinnon:** We have a regular weekly meeting, and the attendance at that fluctuates a lot, but it is pretty comprehensive. I can get the last attendance list and provide that to you.

**Senator McALLISTER:** Terrific. Is that the same list of agencies working in the working group over with Immigration, or is it a different constellation?

**Mr McKinnon:** I am not sure. I think it probably would be largely the same.
Senator McALLISTER: When Mr Turnbull made the announcement, he said that the announcement is the result of years of planning and research. I am just wondering: what is the date of the first brief prepared by the department that recommends in favour of establishing a portfolio of Home Affairs, with an associated superdepartment?

Mr McKinnon: I think he said there had been years of discussion; I'm not sure of the exact words. It was Mr Rudd who talked about a Department of Homeland Security, which is the US version, of course, and so there was the Ric Smith review, which looked at that and decided it is not really suitable for Australia. There was continued discussion about that. I led a team which wrote a report, a review of Australia's counterterrorism arrangements, which was released in early 2015. Again, we commented negatively on a Department of Homeland Security type arrangement, but we did indicate that Home Affairs arrangement, modelled somewhat on the UK example, would avoid the problems of gigantism. But we also made comments about the sort of preference, given Australia's own history and practical arrangements, to maintain the particular role of the Attorney-General in issuing warrants and authorities.

Senator McALLISTER: Just back to that question around the first brief that emerges from PM&C that recommends in favour of establishing a Department of Home Affairs?

Mr McKinnon: We sent up a formal briefing to the Prime Minister in February.

Senator McALLISTER: Do we have an exact date for that?

Mr McKinnon: I believe it was 10 February.

Senator McALLISTER: And at that time you were recommending the creation of a new portfolio?

Mr McKinnon: That was actually scoping how you would do it.

Senator McALLISTER: So it was an implementation brief. Did it recommend—

Mr McKinnon: It wasn't recommending—no. We were asked to explain how you would do it.

Senator McALLISTER: And the first concrete discussion within the government was earlier this year?

Mr McKinnon: There have been a range of different discussions, but that was the first brief, following the last election, that we sent up on this issue.

Senator McALLISTER: And an actual decision was taken?

Mr McKinnon: As I said, we were asked to show how you would do it, so I am not exactly sure when the decision was taken. Obviously, the government made a formal decision at a later stage.

Senator McALLISTER: Yes, and this may have been answered previously, but I assume it went to cabinet? Do you know the date of the cabinet meeting that considered it?

Senator Brandis: We don't go to cabinet discussions.

Senator McALLISTER: I am not asking for the content. I am asking the occasion on which the matter of Department of Home Affairs or the portfolio of Home Affairs was considered by cabinet, not the content of the discussion.
Senator Brandis: That question can't be answered without going into the proceedings of cabinet, or the deliberations of cabinet, which, as you know, is not permissible.

Senator McALLISTER: Senator Brandis, you have been here a lot longer than I have, but I rely on the others around me to tell me a little about the practice here and my understanding is that governments of both persuasions have provided headline information about the dates on which particular matters were considered by cabinet, and the dates in particular on which decisions of government were taken in Cabinet. You may choose not to provide information of that kind, but I understand that this has been common across governments of both flavours.

Senator Brandis: Up to a point, but it does depend on the particular facts and circumstances. Your question is premised upon an assertion about certain discussions taking place in cabinet and I am simply saying that, for Mr McKinnon, who of course does not sit in cabinet, to be responsive to that question, it would necessarily involve him disclosing what was before Cabinet.

Senator McALLISTER: Perhaps you can disclose. Perhaps you can tell me on what date cabinet determined that there was to be at portfolio of Home Affairs.

Senator Brandis: For the reason I just explained, I am not at liberty to do that.

Senator McALLISTER: So we can't conclude that it even went to cabinet then?

Senator Brandis: I didn't say that at all. I'm saying your—

Senator McALLISTER: Well, it leaves it open to that at least being one of the possibilities presented by your answer.

Senator Brandis: Please don't take me to be suggesting that because I am not. What I am saying is that your question is premised upon the disclosure of deliberations of cabinet, and that is what cannot be done.

Senator McALLISTER: Mr Turnbull has publicly indicated that the Attorney-General, the Minister for Immigration and Border Protection and the Minister for Justice will work with the Department of Prime Minister and Cabinet to develop these plans, with a view to their implementation from early 2018. How is that all going, Senator Brandis? How are you all working together?

Senator Brandis: There has been a very great deal of discussion along the lines you have indicated, and as foreshadowed. The process that Mr McKinnon has indicated and, indeed, which the Prime Minister in his press conference in July indicated, has occurred and has been occurring.

Senator McALLISTER: Has there been a cabinet subcommittee of any kind established? Or is this an informal arrangement between the three of you?

Senator Brandis: I think I can say that there's been no cabinet subcommittee established for this purpose. There has been a variety of mechanisms and working groups and so forth established, of the kind that Mr McKinnon indicated. But this is primarily an implementation matter, so this has been proceeding in the manner you've referred to and led by PM&C—and led, if I may say so, very capably by Mr McKinnon—in putting together what is actually quite a complex set of reconfigurations and arrangements.
Senator McALLISTER: You said there's been a variety of working groups established. Mr McKinnon has described two of them. Are there any additional—

Senator Brandis: Sorry to interrupt, but don't take me to be using working groups, as it were, as a proper noun. There have been a variety of different bodies led by PM&C and within the Public Service, involving Public Service departments and agencies, that have been addressing the various aspects of this task.

Senator McALLISTER: You said it was a complex task, and I accept that. Are you still planning to implement the new department from early 2018?

Senator Brandis: Well, the matter's still in development. I think we may say, Mr McKinnon, that things are towards the completion of the process, but the process is not at an end at the moment.

Mr McKinnon: There's still work to be done.

Senator Brandis: There's still work to be done, and no specific implementation date has been announced.

Senator McALLISTER: Right. So, is early 2018 still a reasonable descriptor, notwithstanding the fact that no specific date has been announced? Or has that timetable shifted?

Mr McKinnon: We would certainly like to be in a position to give that option to the government to establish the home affairs portfolio should they choose to at that time. So, it's not impossible, from our bureaucratic workflow.

Senator McALLISTER: The Prime Minister's made a public statement saying that he expects it will happen from early 2018. You're in a bureaucratic position to provide support for such a decision to be taken. It's then a matter for government. Is that a fair description?

Senator Brandis: I think that is fair. The time line that the Prime Minister indicated, of early 2018, is still the position. Mr McKinnon is nodding, and I want to get his concurrence with what I've just said on the record.

Mr McKinnon: I think a firm decision has yet to be made.

Senator Brandis: Correct.

Senator McALLISTER: So, it is a question of detail, but it's an important question of detail. To implement the plan as outlined, there would need to be significant changes to the administrative orders. Have they been drafted?

Mr McKinnon: We're currently drafting the revised administrative arrangement order.

Senator McALLISTER: Can you outline the content of the order?

Mr McKinnon: Well, the various bits of legislation associated with different parts of the agencies and the Attorney-General's Department which are being moved across to what will then be the home affairs portfolio—they will be shown in a different place on the administrative arrangements order, the responsibility of a different minister. Some of the descriptions above the line of what the responsibilities are will change. And of course it flows the other way, too, with the Attorney General having a very significantly enhanced role in oversight and integrity arrangements. So, there’ll be legislation and responsibilities flowing in that direction as well.
Senator Brandis: I think it's fair to say that the model as outlined by the Prime Minister in his press conference in July remains the model that is being worked towards.

Mr McKinnon: That's right.

Senator McALLISTER: So, the department of immigration, combined with parts of Attorney-General's, parts of the Office of Transport Security—any other major elements to this new creature?

Mr McKinnon: The best way to think about it is that there will be within the home affairs portfolio a—

Senator McALLISTER: I'm specifically asking about the department. I'm conscious of the other agencies that will sit within the portfolio.

Mr McKinnon: I see—in which case you're looking at the Office of Transport Security moving pretty much whole, as it is, the national security elements out of the Attorney-General's Department, some of the elements of the criminal justice area. And then there is the multiculturalism area, a small number of people out of DHS, and that's really about what it is moving into—

Senator McALLISTER: The department.

Mr McKinnon: immigration. There will also be some of the cybersecurity elements and cyberpolicy elements.

Senator McALLISTER: Moving out of PM&C into the—

Mr McKinnon: Some moving out of PM&C, some moving out of the Attorney-General's Department. The policy elements of those will go to the home affairs department, and other elements will go to the Australian cybersecurity centre, which of course will be—

Senator McALLISTER: In the portfolio, but not within the department.

Mr McKinnon: It will be with ASD in the broader Defence portfolio and established as a separate agency.

Senator Brandis: And I think, Senator McAllister, that although you said to Mr McKinnon that you're mainly interested about departments, of course this is a department that oversees the very important operational agencies that deal with domestic national security and border security. This is not meant to be a criticism, but I think it's a little artificial to look at the departments in isolation from the portfolio agencies, because it is the portfolio agencies in a sense that it is all about.

Senator McALLISTER: It is only that I have some clarity around which agencies are going into the portfolio. I've been less clear about the shape of the department within it. It is not that I consider one more important than the other. Do we have an estimated cost of establishing the new department?

Mr McKinnon: There's no additional budgetary cost anticipated at this time.

Senator McALLISTER: What about transitional costs? They'll be met from within existing resources?

Mr McKinnon: That's right.
Senator McALLISTER: Can I ask about the roles of different ministers within the allocation of portfolio responsibilities? Can you tell us about Mr Keenan's role under the new arrangements? I note that he'll be assisting the minister for home affairs on—

CHAIR: Senator McAllister, I'll just note that time has crept up on me and we are slightly over time for our break.

Senator McALLISTER: I can come back to this.

Proceedings suspended from 21:17 to 21:31

CHAIR: It being 9:30 pm, the committee will now resume. Senator McAllister.

Senator McALLISTER: Thanks. This shouldn't take too long. I started to ask about Minister Keenan and what exactly his role will be under the new arrangements.

Mr McKinnon: That is not a question for me; that is one for the Prime Minister.

Senator Brandis: The arrangements, as we indicated to you, have not been finalised. But, as the Prime Minister announced at his press conference, Mr Keenan will be one of two ministers working as junior ministers within the portfolio. There will be one minister dealing with immigration and one minister dealing with security. Mr Keenan will be the junior minister dealing with security matters.

Senator McALLISTER: Will his title continue to be the Minister for Justice?

Senator Brandis: I don't think that has been decided. I am not aware that that has been decided.

Senator McALLISTER: By which you mean, 'a decision is yet to be made'? Because there are two parts to your answer—'I am not aware that that has been decided'—I am just trying to understand.

Senator Brandis: Well, Senator, what we have is an announcement by the Prime Minister, which can be found in two places: a joint media release, dated 18 July, and the transcript of the Prime Minister's press conference of the same date, along with myself and Mr Dutton and Mr Keenan. The public announcement in relation to the structure is to be found primarily in those two documents. Now, as Mr McKinnon has explained, there has been an enormous amount of work done to give effect to what the Prime Minister explained in that announcement. That work is not complete. Nevertheless, I think it is fair to say that it is reasonably close to completion. Would you agree with that, Mr McKinnon?

Mr McKinnon: Yes, I would agree with that. I certainly hope so.

Senator Brandis: Indeed. So, when the work is finalised, then it will be given effect to. The Prime Minister has foreshadowed that will be early next year, and that is still the expectation. So there has been no delay, as it were. What the Prime Minister foreshadowed is what, in particular, Mr McKinnon's task force, under his very capable leadership, has been working towards, and is being effectuated.

Mr McKinnon: Senator, could I make a very minor correction to the record. I said an element of DHS going into the department; it is DSS, of course, the multicultural bit. I also forgot that the counterterrorism coordinator from Prime Minister and Cabinet will also be moving into that department. I have a list of the agencies which are consulted, if you want that complete list.
Senator McALLISTER: Could it just be tabled?

Mr McKinnon: I will find a way to do that.

Senator McALLISTER: That sounds good. Thank you very much, Mr McKinnon. I do understand, Senator Brandis, that it is a work in progress. I am just trying to understand which parts of the project have been settled and which have yet to be announced.

Senator Brandis: I think it is fair to say that, as a generalisation, the vast majority of it has been settled, but it is a package in the end.

Senator McALLISTER: Yes, understood. Will Minister Keenan continue to be the minister responsible for the Australian Federal Police?

Senator Brandis: I think we should await the announcement of the finalisation of the package.

Senator McALLISTER: Senator Brandis, are you able to tell us how your role will change?

Senator Brandis: Yes. The minister for home affairs portfolio will be the principal minister for domestic national security and border protection. Now, hitherto, the minister with principal responsibility for border protection has been the Minister for Immigration and Border Protection, and the minister with principal responsibility for domestic national security has been the Attorney-General. So that policy function will shift. The most important national security and law enforcement agencies, in particular ASIO, the Australian Federal Police and the Australian Criminal Intelligence Commission, which currently are agencies within the Attorney-General's portfolio, will be agencies within the new portfolio.

I can't do any better than read the Prime Minister's words at his press conference of 18 July when he said:

The Government will also review the role of the Attorney-General in the role in ASIO's operations in the work to design and establish the new portfolio to ensure continued and efficient oversight.

Now, I have always believed strongly in the role of the Government's First Law Officer—it will only become more critical as threats continue to evolve and the challenges of dealing with them more complex. So I am determined to ensure effective oversight, …

Then he went on to say a bit more. Basically, the Attorney-General's role as the minister responsible for oversight, integrity, the rule of law, including in particular oversight of the national security agencies, will be strengthened. That will be evident, for example, in the transfer into the Attorney-General's portfolio of three important agencies. That is the Ombudsman, the Independent National Security Legislation Monitor and the Inspector-General of Intelligence and Security, as well as the retention by the Attorney-General of the power over the issue of warrants and ministerial authorisations sought by ASIO.

Senator McALLISTER: I just wonder whether that will be an expanded ministerial role for Mr Dutton. Will that result in a change in his place in the order of precedence?

Senator Brandis: No idea. I can't imagine why, but that is entirely a matter for the Prime Minister.

Senator McALLISTER: I think everyone understands that it is not disputed and that this was not a recommendation from Mr L'Estrange and Mr Merchant.

Senator Brandis: That is because their review was looking at a different issue.
Senator McALLISTER: I didn't really want to argue about it, but I am wondering who it was recommended by. Was it recommended by the Department of Prime Minister and Cabinet?

Mr McKinnon: The Prime Minister, in the same press conference the Attorney referred to, said:

This is my decision. These machinery of government decisions are taken by the Prime Minister, obviously, with a lot of consultation with colleagues and others, but they are a decision of the Prime Minister.

So, it was something very much where we were tasked, as I said, to do a scoping and then an implementation—two different but significant bits of work. That is what our tasking was. The Prime Minister, in those many consultations with his colleagues that he referred to, obviously mentioned that he discussed the same issue when he was in the UK. He's obviously also talked to all the relevant agency and department heads. Somewhere in there the decision was made. We were basically serving the requirements that flowed from his making of that decision up to when the cabinet considered it.

Senator McALLISTER: So the Prime Minister made a decision and then sought advice on implementation, not whether or not to proceed?

Mr McKinnon: No. I said he was involved in a consultation. We were tasked to do things, and that was obviously something that was fed into the process heading up to cabinet consideration.

Senator McALLISTER: Did the Attorney General's Department provide a recommendation for the creation of this portfolio?

Mr McKinnon: No, to my knowledge the Attorney General's Department did not provide such a recommendation—nor were they asked to. So, it wasn't like they didn't recommend it; they weren't asked to.

Senator McALLISTER: I should clarify: did the Department of the Prime Minister and Cabinet recommend against it?

Mr McKinnon: No, we did not.

Senator McALLISTER: I am still slightly uncertain about the sequence of events. I think you said you were asked about implementation arrangements in February, but is it your belief that the Prime Minister had formed a view at that time that he was going to proceed? What was the basis of it?

Mr McKinnon: We were asked to undertake scoping arrangements in February, and then, a little while later, actual implementation. Again, at that same press conference, the Prime Minister indicated that an implementation plan would come to the NSC before the end of this year.

Senator McALLISTER: Did any agency of government recommend this, or was this something that happened entirely within the elected part of the executive?

Mr McKinnon: I couldn't say whether any individual agency recommended it. It wouldn't have been their role to do so. But, of course, the Prime Minister, in talking to each of the agency heads, would form his own view about not only the efficacy of their operations but the way that they relate to each other and the overall community. Of course, as he has made very
clear, the threat environment is changing, and that is becoming increasingly apparent. So, no, it wasn't any individual agency recommending the establishment of a home affairs portfolio that we were then asked to act on.

Senator McALLISTER: It is unusual, I would have thought, for the Department of the Prime Minister and Cabinet, which does play that role in coordinating advice and assisting the Prime Minister in forming a view, to not provide a recommendation on this core question. You'd agree it's unusual, unprecedented?

Mr McKinnon: We pride ourselves on offering a lot of policy recommendations, but also we are very responsive to what is required of us. We were asked over time. I had written papers—others had written papers— as I said, going back more than a decade, on this issue or different arrangements. It was constantly being examined. That was something I think that the Prime Minister made very clear. It was an idea that had been around and been discussed for a very long time.

Senator McALLISTER: And, on most previous occasions, it had been rejected. This is why I am so interested in how the Prime Minister formed a view that he ought to proceed. As you know, previous governments of both stripes have considered it and rejected it—in our case, even after it had been the subject of quite some discussion in the Labor Party previously.

Mr McKinnon: As I said, when I wrote the review of Commonwealth counterterrorism arrangements, which was released by former Prime Minister Abbott at the start of 2015, we again rejected a homeland security version of it, but did not reject a home affairs department version of a better, more joined up, integrated national security and intelligence community. In fact, we said that that arrangement would avoid the problems that were associated with a big homeland security type arrangement.

Senator Brandis: There is another point, I think, that needs to be emphasised here. You'll recall before the evening break I stressed that most of the work here is the work of the agencies, not the departments, so, collecting the various domestic national security agencies in the same department has an obvious logic to it. But, of course, the national security agencies and the law enforcement agencies do not operate under close ministerial direction—for example, there is actually a prohibition in the ASIO Act against the minister, with responsibility for ASIO, directing ASIO in relation to its operations. There is a very obvious reason for that, and that is because ASIO is a domestic intelligence agency, and it would be quite wrong and utterly inappropriate for a political officer to direct the operations of a domestic intelligence agency, which is why the prohibition has been there for as long as the ASIO Act has been there, since the 1950s.

The essence, or what is most important, it seems to me, is oversight, and that is why—and you're looking at only one half of this package—it's also important the Prime Minister strengthen the oversight and accountability roles of the agencies and reinforce and strengthen the role of the Attorney General's Department, with it's being in charge of that oversight and accountability. So, no minister is going to be telling ASIO what to do, because that's unlawful. It's prohibited by the ASIO Act. But ASIO will continue to be responsible to government, as it ought to be, through the oversight and accountability function.
Senator McALLISTER: Since we're on that, I might ask if the recommendations that Mr L'Estrange and Mr Merchant made in relation to oversight are being progressed as part of this structural and policy working group that you're leading, Mr McKinnon?

Mr McKinnon: As the Attorney said, they didn't consider home affairs at all. Their remit was to look at the intelligence agencies—

Senator McALLISTER: Sure; but they made a range of recommendations around oversight—

Mr McKinnon: They did.

Senator McALLISTER: and the Attorney has just alluded to that.

Mr McKinnon: They did indeed. They made a total of about—I can't remember the exact figure—74 recommendations. A significant number of those have already been set in place by the government, and the rest of them will be considered by the government shortly. The key ones, of course, were the establishment of an office of national intelligence, which, again, being done at the same time, is a significant increase in the size and capability of our intelligence agencies' leadership and in the way we'll do business. That effectively lifts ONA up from an analytical body—and increases the number of analysts by half—but also gives them an enterprise function, coordinating the overall community approach to intelligence, that wasn't there before, so that's a very significant change as well. The increase in IGIS's role I would say is a very fundamental one. It goes from a staff of about 17 to about 50, with an increased range of powers and coverage. They have to be seen as pillars. You have home affairs, the very large increase in the integrity oversight, which is the Attorney-General's responsibility, and then the office of national security, which is going to be coordinating all of the intelligence community.

Senator Brandis: Let me, if I may—it won't take more than a minute or so—read onto the record what the Prime Minister had to say.

Senator McALLISTER: I have got the transcript of what he said about that.

Senator Brandis: But people are listening to this, and, if we're going to have this discussion, we need to have an honest discussion in which there is no risk of misunderstanding. It won't take me a moment. This is what the Prime Minister said:

At the same time we are strengthening our security arrangements, we will also strengthen our oversight, accountability and integrity structures by increasing the powers and the remit of the Attorney-General in relation to Australia's intelligence communities and agencies of the new Home Affairs portfolio.

The principles of oversight of our intelligence agencies were core recommendations of the Hope Royal Commissions of the '70s and '80s

Strong oversight and accountability is important for public confidence that our agencies not only safeguard our nation's security, but do so respecting of Australians' rights and liberties.

The Attorney-General will retain his current role in the issue of warrants and ministerial authorisations.

It goes on to say:

I am determined that the protections and oversight we're establishing today on very strong foundations will remain a fundamental feature of our system. There will be stronger oversight, stronger oversight under these new arrangements.

... ... ...
… the key institutions charged with overseeing the intelligence agencies will be moved from my portfolio to the Attorney-General's portfolio.

That includes the Inspector General of Intelligence and Security and the Independent National Security Legislation Monitor and these will join existing portfolio bodies such as the Australian Commissioner for Law Enforcement Integrity.

I have also decided that the Commonwealth Ombudsman should be brought into the Attorney-General's enhanced oversight role, remaining as an independent statutory body.

… … …

Its placement within the Attorney-General's portfolio complements other changes announced today and cements the vital role of the First Law Officer in ensuring Governments act lawfully and justly.

The First Law Officer is the minister for integrity, the minister for oversight and integrity and that role is being reinforced.

This is the other side of the coin, as it were: bringing together the operational agencies in one portfolio, and strengthening the oversight of those agencies in the other portfolio.

Senator McALLISTER: I do understand that, because I have read the transcript, thank you. I had just asked whether in the work of the committee that you were chairing, Mr McKinnon, or in this work you are undertaking, the L'Estrange recommendations around oversight were being developed there, or considered.

Mr McKinnon: Yes.

Senator McALLISTER: Great. That's all I needed to know.

Mr McKinnon: They are all being implemented?

Senator McALLISTER: All of them are being implemented?

Mr McKinnon: Almost all of them in their original form—a couple of them slightly amended.

Senator McALLISTER: To accommodate the new organisational—

Mr McKinnon: Yes. There was some coordination throughout those two processes to make sure that we were syncing, and we were.

Senator McALLISTER: Right. I will move on to another topic. This might require Mr MacGibbon's attendance. We have talked to you before about the Prime Minister's use of private email servers. In August this year BuzzFeed released their story reporting on a two-year freedom of information battle with the government. I'm sure you are familiar with the story. They reported that the freedom of information documents released to them show that emails going to and from the Prime Minister's private server contained discussions in response to the death of Curtis Cheng. Were you aware that the Prime Minister was using a private email server to discuss a terror related incident?

Mr MacGibbon: My understanding is that there was no national security information discussed in any of the matters you refer to. We have, as you have said, spoken about this type of thing before. There are guidelines for how to communicate, and I saw no issues.

Senator McALLISTER: There are security risks associated with using private email instead of work email.

Mr MacGibbon: It depends on what you are talking about.

Senator McALLISTER: What does it depend on? You said there are guidelines—
Mr MacGibbon: It depends if you are talking about matters of national security. Clearly, there are guidelines on what you need to do.

Senator McALLISTER: Where are those guidelines contained? Can you explain the advice that is provided?

Mr MacGibbon: They are policies in government for how one communicates. If you talk about national security matters you either do it in a secure space or you use secure means to communicate—government mandated means. My understanding is that there was nothing in those emails, if I recall the story correctly. I am happy to have my memory refreshed, too, by the way. I saw nothing to be concerned about.

Senator McALLISTER: You have previously told us here, in May, that your advice is that it is not simply classified documents, that it is also sensitive information that ought to be sent on government systems rather than private systems. Would you class discussions in response to the death of Curtis Cheng as sensitive information?

Mr MacGibbon: I am more than happy to have my memory refreshed as to what the article said. I know Mr McKinnon has a letter that he has tabled before, and I'm sure he would be more than happy to table again, that talks about the advice—I have it here, actually. I am happy to read it to you if you would like, or to add it to the record again, if it helps. Would you like me to table it—

Senator McALLISTER: The transcript from last estimates from Mr McKinnon reads:

… in the letter we sent to the Prime Minister, the advice went beyond 'classified' to 'sensitive information must be sent on government systems'.

Mr MacGibbon: Again, I'm more than happy to have my memory refreshed as to what emails you are referring to. The Prime Minister cannot—nor can anyone—determine how a person chooses to write to them. If I remember correctly, there might have been some communications that were sent to email addresses. Again, that's not necessarily the fault of the person who receives them. The Australian Government Information Security Manual pertains to information that needs to be kept classified.

Senator Brandis: Emails—

Mr MacGibbon: You have the benefit of the internet.

Senator Brandis: I have the benefit of information that is being sent to me responsibly in relation to your question, Senator. And, might I remind you, you did pursue this at the last estimates.

Senator McALLISTER: We did. You didn't have the info then either.

Senator Brandis: The only things that the email about which you're concerned contained were the names of participants and the numbers for a teleconference between the government and community leaders. They are not classified; they are not sensitive. The fact of the call and who participated in the call was widely reported in the media at the time. So the point is: there was nothing inappropriate communicated by this email.

Senator McALLISTER: One of the emails contains the Prime Minister's office wi-fi login details. Do we not think that that might be considered sensitive information?

Mr MacGibbon: It depends on whether it's public wi-fi, and passwords can change of course. I'm not convinced that that is something that is of national security importance.
Certainly I wouldn't have thought that it would relate to anything that would trouble my position or anyone else's in government.

Senator McALLISTER: Mr MacGibbon, you're the expert—not me.

Senator Brandis: I'm advised that the wi-fi password was actually redacted.

Senator McALLISTER: Well, I'm sure it was in the FOI, but I'm not sure it was in the emails that were being sent between the private server and the government server. Is that the advice that you are providing me, Senator Brandis?

Senator Brandis: I am advised that the wi-fi password was redacted.

Senator McALLISTER: In the correspondence sent between the private server and the government server? Is that your evidence?

Senator Brandis: That's what I'm advised.

Senator McALLISTER: At the time the emails were released, the Prime Minister's spokesperson said that the email in question was not classified and contained no operational information at all. I just struggle to understand why material that related to connecting to the wi-fi system wouldn't be considered operational, Mr MacGibbon.

Mr MacGibbon: Again, Senator—

Senator Brandis: I can also help, Senator. Sorry to interrupt, Mr MacGibbon.

Mr MacGibbon: I appreciate it, Attorney.

Senator Brandis: I'm advised that the wi-fi which is referred to is a public wi-fi that was not part of the protected—

Mr MacGibbon: And that was the point I was raising before, Attorney—thank you. There are different types of wi-fi networks you might have. You might have one that has 'guests' on it inside a government department that visitors could use, and then you might have one that only members of the department can use—just as in some businesses you go to you can have a public wi-fi system versus one for employees. So that helps, thank you, Attorney.

Senator Brandis: I try to be helpful.

Mr MacGibbon: Thank you. Again, Senator, genuinely speaking, the Information Security Manual talks about classified national security information. Obviously, no-one wants any information to go out anywhere in government, but you have to have different levels—

Senator KITCHING: Ha!

Mr MacGibbon: Except at Senate estimates of course. But it's important that you understand that there are levels of these things, and it's okay to talk on an open telephone or to use an app or to send a letter as long as the information doesn't have national security implications. The system is designed to allow people to communicate, as people should, and then with some types of communication you want to make it harder.

Dr Gruen: Chair, could I take this opportunity to table some information from questions previously. It is about the Prime Minister's internet connection at Point Piper, and it simply gives the details.

Senator McKENZIE: This refers to some questioning from Senator Abetz earlier. Is orientation compulsory for every new employee?
Dr Gruen: There is an orientation program for new employees.

Senator McKENZIE: Is it compulsory?

Dr Gruen: I believe it is, but the thing that we were talking about earlier is something that has yet to be implemented.

Senator McKENZIE: You've made that very clear; it's all over Hansard. The question was about orientation.

Dr Gruen: Yes. If anyone has evidence to the contrary they should let me know, but I believe that the orientation program is compulsory.

Senator McKENZIE: And then you get the on-board process—is that compulsory or is that a package of information?

Ms Cass: It is much better if we give you some definitive information, Senator.

Senator McALLISTER: You are telling me that a response to a shooting, which was subsequently described as a terrorist related issue, is not relevant to national security. I find this surprising.

Mr MacGibbon: I'm not saying that, Senator.

Senator Brandis: We're not saying that at all, Senator McAllister.

Senator McALLISTER: He said the incident related to Mr Cheng and the emails was not relevant to national security. I find it a surprising assertion.

Mr MacGibbon: I don't think anyone is denying it was a significant incident, obviously, but my memory—I am more than happy to have my memory refreshed, Senator, if you want to show me the article—is that there was nothing of national security content in those emails, nothing sensitive in those emails. So, again, you can't conflate the two—answering one doesn't suggest that the matter was neither sensitive nor of national security importance. It is just that what was discussed in that particular email chain wasn't.

Senator Brandis: Let's be quite clear what this email was about. This was about organising a teleconference involving the Prime Minister and leaders of the local Muslim community, which also had participation by relevant police. It was about dealing with the sensitivities of the local community, given that this terrible episode had occurred. This was no more a matter of national security sensitivity than had the Prime Minister gone on television and been interviewed by Leigh Sales about the question, discussing the question, discussing the implications for the community, and the distress caused to the community by this incident is something that is plainly an appropriate matter of public discussion. Although this occurred by teleconference, this was a discussion between the Prime Minister and community leaders.

Senator McALLISTER: Well, perhaps it does go to the question, then, of making the decision. Mr MacGibbon, I think you said that material is provided to members of the executive government describing to them what communication channels they should use depending on the kind of communication that is being communicated. Fair enough. Who makes the decision about whether the information that's being communicated is sensitive, classified, non-sensitive or suitable for general consumption on a public wi-fi?

Mr MacGibbon: The originator of information is the one who will classify that information. Everything on a government system gets classified. If I understand your question
correctly—if the Attorney-General was to write something, he would put a classification on it if it was sent over those type of systems.

Senator McALLISTER: But it's his own decision?

Mr MacGibbon: Again, it depends on the type of matter that you're dealing with. Some of it, by its very nature, gets a classification. If it's a particular type of intelligence, by its nature it gets certain things—

Senator Brandis: Or a particular type of document. For example, a cabinet document—

Mr MacGibbon: That's a good point.

Senator Brandis: of itself receives the appropriate classification. Where something doesn't belong to a given category of document which attracts its own classification, then, as Mr MacGibbon said, a judgement is made by the author and transmitter of the document as to the appropriate level of protection, if any.

Senator McALLISTER: In 2015, a spokesperson for the Prime Minister said that the majority of government correspondence is routine and of a non-sensitive nature and is therefore not subject to sensitive security markings. Do you agree with this?

Mr MacGibbon: Who said that?

Senator McALLISTER: A spokesperson for the Prime Minister.

Mr MacGibbon: Yes—in some departments most things would be highly classified, but, for the vast bulk of government, I suspect that would be pretty true.

Senator McALLISTER: What guidelines are provided to members of the executive government about how they might go about classifying documents, perhaps generated by themselves, that don't meet any of those earlier tests that you set out, Senator Brandis?

Mr MacGibbon: I think it's the Protective Security Policy Framework, which comes out of the Attorney-General's department. From there, the Information Security Manual talks about the technical side and the use of technologies. But the PSPF, as it's known, I think is the foundational document, Attorney?

Senator Brandis: I think that's right, but if you want a more detailed answer that sets out the various documents that set out the levels of protection or classification, we'll take that on notice and give it to you.

Senator McALLISTER: I'm more interested in how practical it is that the guideline be applied when people are shooting off emails, particularly when they're making a decision about whether an email is sensitive or classified and hence not suitable for sending to or from a private server or whether it's unremarkable and could be a conversation conducted with Leigh Sales. Do you think that there is a requirement for clearer guidelines for executive members of government around this?

Senator Brandis: Speaking for myself, I don't think the guidelines are lacking in clarity. In my department, particularly with national security still in the department, we've always handled a lot of very highly classified and code word protected documents, and I've never had any cause to be in doubt as to the definitional category, as it were. Mr MacGibbon might have his own view about this.
Mr MacGibbon: I feel pretty satisfied that my colleagues and I would understand how to act and how to classify these things. It's a judgement call, like all things. But the email systems help you, of course—you must put a classification on something as you create it.

Senator McALLISTER: Not if you're sending it from your private server, and that's the point that we're going to.

Mr MacGibbon: Sure, I understand. But I don't have any difficulty, and none of my staff have ever raised any questions as to how they could do these things. When you get briefings and different security clearances, you're informed of the way you need to behave with that type of material.

Senator KITCHING: Do your staff ever send even teleconference organisational emails on their private email?

Mr MacGibbon: I'm not sure. I don't think so.

Senator McALLISTER: I imagine they don't.

Senator KITCHING: I want to talk about Minister Dutton's register of interest forms. In particular, I want to ask in relation to his register of interest and his owning of child-care centres. If it helps, Dr Gruen, I want to also go to the Cabinet Handbook and the guidelines contained within. I will just try to be as quick as possible. If we go to the Cabinet Handbook—I'm looking at the 10th edition: is that the most up-to-date version?

Ms Cass: It is the most up-to-date version, Senator.

Senator KITCHING: I particularly want to go to section 56, which states:

Ministers and officials attending Cabinet or Cabinet committee meetings must declare any private interests of which they are aware. This can include pecuniary interests, held by them or by members of their immediate family, which may give rise to a conflict with their public duties. Any such declarations will be recorded by the Cabinet note takers.

Can you confirm if Minister Dutton has declared any conflicts in cabinet, as outlined in section 56, under both prime ministers Abbott and Turnbull.

Ms Cass: I can talk you through the process that is undertaken to record statements of interest or conflicts of interest. I cannot confirm here for you whether it has occurred in this particular instance that you are mentioning. Ministers, in a cabinet discussion, may raise a conflict of interest. That is recorded in the cabinet notebooks by each of the note takers. And those notebooks, as you know, are retained for the record. So we keep a record of that. In this instance, I can't confirm whether it happened.

Senator KITCHING: Are you able to take it on notice?

Ms Cass: I can take it on notice and see if there is any specific information that might be able to be found.

Senator KITCHING: What I want to know is if the minister has declared any conflicts with child-care policy, as outlined in section 56 of the Cabinet Handbook. The reason I am asking about—

Senator Brandis: Declared to who?

Senator KITCHING: To the meeting.

Senator Brandis: Of?
Senator KITCHING: Of cabinet. Has he declared—

Senator Brandis: Senator Kitching, that question can't be answered without disclosing the deliberations of cabinet, which, as you know, no minister or, for that matter, official, is at liberty to do. However, I can absolutely assure you, Senator Kitching, that every member of the cabinet is aware of their disclosure obligations and every member of the cabinet is always very scrupulous to ensure that they comply with those obligations.

Senator KITCHING: There was a change to the child-care rebate, which was announced by the Prime Minister, ministers Birmingham and Porter, and Treasurer Morrison, on 8 February this year—and I have the press release, if that helps. Minister Dutton has some child-care centres. He—

Senator Brandis: I don't know that he does.

Senator KITCHING: Well, I do because I have his register of interest.

Senator Brandis: Are you saying Minister Dutton owns child-care centres?

Senator KITCHING: RHT—of which he is a beneficiary.

Senator Brandis: So he's not the owner.

Senator KITCHING: And Kirilly Dutton is an owner of the other—

Senator Brandis: You said a moment ago that he owned child-care centres. You are now saying that a company in which his wife has an interest owns child-care centres. Is that right?

Senator KITCHING: What I initially said was that he was a beneficiary.

Senator Brandis: You actually said he has childcare centres, which is not correct as he has now acknowledged.

Senator KITCHING: Let me explain to you: RHT Family Trust owns a childcare centre, and they own another childcare centre. One is trading as Camellia Avenue Childcare Centre, the other is Bald Hills Childcare Centre. There has been a purchase of a third one in Townsville.

Senator Brandis: And what sort of trust is this? Is this a family trust, is it a discretionary trust, is it an express trust, is it a constructive trust?—because whether or not Mr Dutton has an interest depends on the nature of the trust.

Senator KITCHING: I'm aware of trust law, thank you, Attorney.

Senator Brandis: Good, then tell me what sort of trust it is you assert exists.

Senator KITCHING: What he has listed is he is a beneficiary of RHT Family Trust. What I would like to know is, did Minister Dutton—

Senator Brandis: Have you inspected the trustee, the RHT Family Trust?

Senator KITCHING: or did Kirilly Dutton, who is the organisational representative for the Bald Hills Childcare Centre—when the childcare rebate was discussed in cabinet, did Minister Dutton declare a conflict?

Senator Brandis: I have already told you that all ministers in the government are aware of and are scrupulously observant of all of their disclosure obligations. You have asserted that Mr Dutton is a beneficiary, but unless you can satisfy me that you have read the trust agreement I don't accept the premise of your question.
Senator KITCHING: Perhaps I can ask you a broader question. Is it standard practice for Turnbull cabinet ministers to discuss and vote on policy in cabinet which gives them a direct financial gain without declaring any conflict of interest?

Senator Brandis: Absolutely not; I've already answered that question three times.

Senator KITCHING: And there's no way—

Senator Brandis: If I may continue without being interrupted, all members of the Turnbull government, like members of the Abbott government before them, are aware of and are scrupulous in their observance of their disclosure obligations to the cabinet. You have asserted that Mr Dutton is the beneficiary of a trust, but you can't tell us why you assert that. You don’t even know what sort of a trust it is. And you, evidently, haven't even read the trust deed.

Senator KITCHING: I am happy to table Minister Dutton's register of interests, if that is helpful.

CHAIR: Feel free if you feel the need, but it is a public document and we are very pressed for time.

Senator KITCHING: I will table it. I want to go to some further questions.

Senator Brandis: Do we have the trust deed? Unless we have the trust deed we don't know whether or not Mr Dutton, in fact, is a beneficiary.

Senator KITCHING: He's declared himself to be a beneficiary.

Senator Brandis: What has he said in his declaration?

Senator KITCHING: 'Beneficiary', Senator Brandis.

Senator Brandis: Can you read the entry, please?

Senator KITCHING: I will release these; they are public documents.

Senator Brandis: Just read the entry, Senator Kitching, because we've had experience with you before of misrepresenting what documents say.

Senator KITCHING: I'm the one asking you questions, so if you could please answer some questions, that would be helpful. In this, what I want to know is when the childcare rebate and the childcare subsidy was being changed and being approved by cabinet, were there any declarations of conflict? Or, if you are not able to answer that, can you answer the question: have there have been any conflicts declared in cabinet while you have been a cabinet minister?

Senator Brandis: I am not going to disclose the deliberations of cabinet.

Senator KITCHING: It is not a deliberation, it is a note that's been taken, as Ms Cass has said.

Senator Brandis: Yes, it is. That's not correct. For the fifth time, let me reassure you that all members of the Turnbull government, like members of the Abbott government before it, are scrupulous in their observance of their disclosure obligations to the cabinet.

Senator KITCHING: Senator Brandis, you've said that they're scrupulous—

Senator Brandis: Yes.
Senator KITCHING: but that it's also a matter of 'deliberation of cabinet', I think were your words. So how can it be? If people are scrupulous, won't they automatically realise that they do have a conflict? There won't be any deliberation of cabinet; what they would do is declare it immediately.

Senator Brandis: You are merely advertising your ignorance. Deliberations of cabinet extend to everything that may be said in the cabinet room.

Senator KITCHING: So there's been no discussion of section 44(v) of the Constitution.

Senator Brandis: I'm sorry?

Senator KITCHING: Of 44(v), where:

Any person who –

Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

What I am putting to you is that section 65EAAA provides for an individual to elect to have childcare rebates paid weekly to one or more approved childcare services. Therefore, if Minister Dutton is a beneficiary and his wife Kiralee Dutton is the organisational representative of another and they have purchased a third day-care centre in Edison Street in Townsville—

Senator Brandis: You mean the corporate trustee of a family trust of which they may or may not be beneficiaries.

Senator KITCHING: Senator Brandis, if you could just answer the question. Has there been discussion of whether section 44 (v) of the Constitution has been breached?

Senator Brandis: As I have said to you endless times, it is not for ministers or officials to disclose the deliberations of cabinet. However, I can assure you that all members of cabinet are scrupulously observant of their disclosure obligations.

CHAIR: The 10-20 minutes that opposition senators indicated they needed to finish DPM&C has now expired.

Senator KITCHING: I have one further question. Will Minister Dutton's ministerial colleague, Simon Birmingham, personally approve the childcare centre for operation in Townsville?

Senator Brandis: I don't have the faintest idea what you're talking about, Senator Kitching, but it sounds like a lot of rubbish to me.

Senator KITCHING: That's a very respectful way, Chair, for Senator Brandis, who should know better. Given he's first law officer of the land, he should know better and should be able to answer questions more fully.

CHAIR: If there are no further questions for the department, I thank them very much for their evidence and their forbearance tonight.

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE
Dr Renwick: I want to say three things at the outset. Firstly, since I was last here, I've been appointed permanently for three years until 30 June 2020. Secondly, as I think you all know, I've produced my three reports, which were tabled last week, and in each case I found the laws were necessary, were proportionate to the terrorist threats now faced and appropriately protected individual human rights. In each case, I recommended the laws be continued for a further period of five years. Finally, I should say, as I always do, I can indicate my resources continue to be satisfactory, and I remain grateful to PM&C, which provides those resources while respecting my independence.

Senator XENOPHON: I'll be very brief, given the hour. I just need to ask you, and I may ask the Attorney this as well, the status of the reforms that are supposed to be made as a result of the previous INSLM report on section 35P of the ASIO Act. There were six recommendations, and they were all supported by the government, but where are we with those reforms?

Dr Renwick: That is a matter for government, I think.

Senator XENOPHON: Have you been advised by government as to the status of those reforms?

Dr Renwick: I don't believe so.

Senator XENOPHON: Attorney, this is the last chance I'll be asking questions about INSLM.

Senator Brandis: May I say before I respond to your question, how overjoyed I am to see you again. I feared that, after last week, we'd never see you again.

Senator XENOPHON: It's up to the wise women and men of the High Court.

Senator Brandis: It is almost as if Banquo's ghost has come to life.

Senator XENOPHON: I thought Dame Nellie Melba was more appropriate.

Senator Brandis: Senator Xenophon, it is a matter under consideration.

Senator XENOPHON: That's a very unsatisfactory response, Attorney. That's a very lousy response, with respect. These are recommendations made some time ago by the previous INSLM. They are important matters in terms of section 35P, which go to the issue of insiders and outsiders and how they are treated. They were all recommendations supported by the government. Can you at least give us a time frame of when there is likely to be legislation drafted and introduced in respect of this?

Senator Brandis: It won't be this year. As I say, there are some national security bills coming forward between now and Christmas, but those bills don't deal with that topic, so it won't be before the end of this year.

Senator XENOPHON: The disappointment of not being able to deal with those bills is palpable for me.

Senator Brandis: I think it's manifest.

Senator XENOPHON: It's manifest! I can't take it any further there, Chair. That's it.
Senator McALLISTER: Dr Renwick, I just wondered—and we've talked about this before—if you've been able to obtain the top-level security clearance that is your requirement.

Dr Renwick: Yes. That was a prerequisite to me being appointed permanently. I was granted that in July, I think, and the Governor-General appointed me on 24 August.

CHAIR: Thank you very much, Dr Renwick. I appreciate you staying till this late hour for such a short attendance, but it was very helpful.

Dr Renwick: Thank you.

Infrastructure and Project Financing Agency

CHAIR: Mr O'Neil, do you have an opening statement?

Mr O'Neil: Yes, if you don't mind.

CHAIR: I hope it's very brief.

Mr O'Neil: It's very brief. It's my first time before estimates, so if you don't mind. It's only two or three minutes.

CHAIR: Given it's your first time and you say it's brief, please proceed.

Mr O'Neil: It is my first time at estimates and I am new to government.

CHAIR: Welcome.

Mr O'Neil: Just by way of update: the Infrastructure and Project Financing Agency, or IPFA, as we call it, was formally established on 1 July, as an executive agency within the portfolio of Prime Minister and Cabinet. I am the interim CEO of the agency. My background is over 25 years in banking, largely in project finance and energy and infrastructure finance. I have with me Bill Brummitt, who is the COO of the agency. Bill comes with a long track record in the Public Service and deep experience in Treasury, so it's been very helpful for us in setting up the agency. Bill led the transition team to set up the agency. The role of the agency is to provide innovative financing and funding advice to government on major projects, as well as providing commercial and risk advice on major projects.

In terms of the projects that we are working on, we have been tasked by the National Infrastructure Committee to advise on the funding and financing of several projects—in particular, the $10 billion Inland Rail project, the Western Sydney Rail and the Townsville City Deal. In terms of reporting line, we report to Assistant Minister Taylor, through to the Prime Minister and also the National Infrastructure Committee of cabinet. Just by way of corporate update: we occupy two offices, one in Sydney and one in Canberra. In Sydney we are located in Sydney at 100 Market Street, co-located with Treasury, and in Canberra we are located at 4 National Circuit, opposite the offices of PM&C.

We have currently 11 staff, five in Sydney and six in Canberra. In terms of a mix of private sector and public sector, in addition to me from the private sector we have an ex-lawyer from Ashurst who joins us with deep commercial and project finance experience. We also have another banker who has joined us who has deep experience in rail, energy and PPPs. In conclusion, the establishment phase of the agency is now over. We have a strong core team in place. We are working well with our key stakeholders in providing active advice to
government on these designated projects. It's a very exciting opportunity and I'm proud to be leading the agency.

**CHAIR:** Thank you very much, Mr O'Neil. Senator McAllister.

**Senator McALLISTER:** Congratulations, Mr O'Neil. I should let you know that you've eliminated at least one of my questions for you, so well done!

**Mr O'Neil:** Thank you.

**Senator McALLISTER:** Can I just check—this has been provided to us in writing—are you acting in your role or have you been permanently appointed?

**Mr O'Neil:** I am acting. I started on 1 July. There is a search underway for a permanent CEO. I'm a candidate in that process. That's being run by PM&C.

**Senator McALLISTER:** Is there a time line for finalisation of that appointment?

**Mr O'Neil:** That would be a matter for Prime Minister and Cabinet. The search is being run by Dr Parkinson.

**Senator McALLISTER:** Can I ask what SES band your position is? I am not asking for a specific salary, just the band.

**Mr Brummitt:** It is a Band 3 equivalent. It is an agency head role.

**Senator McALLISTER:** You mentioned that you were assisting with providing advice and I think it is advice on financing.

**Mr O'Neil:** Yes, financing and funding advice on major projects. We are not a bank—

**Senator McALLISTER:** Yes.

**Mr O'Neil:** we are purely advisers.

**Senator McALLISTER:** You also said commercial and risk advice.

**Mr O'Neil:** Correct—as well.

**Senator McALLISTER:** In the three projects you mentioned—InlandRail, Western Sydney Rail and the Townsville City Deal—are you providing advice in each of those areas?

**Mr O'Neil:** Yes.

**Senator McALLISTER:** So both the commercial and risk arrangements and the financing and funding?

**Mr O'Neil:** Yes. Every major project involves risk.

**Senator McALLISTER:** All of these things.

**Mr O'Neil:** Exactly. All of the above.

**Senator McALLISTER:** You mentioned those three specifically. Are there any others that you have been tasked with?

**Mr O'Neil:** There are a couple of other deals that we are providing initial advice on, but they are in a very early stage, such as the early advice on the next stage of City Deals.

**Senator McALLISTER:** Right.

**Mr O'Neil:** We are also advising on, in conjunction with CEFC and ARENA, the Port Augusta solar thermal project in South Australia.

**Senator McALLISTER:** Are there any others or just those five?
Mr O'Neil: No, that would cover it.

Senator McALLISTER: That is it? When you are talking about the next stage of City Deals, are you advising on specific propositions or are you providing policy advice around the structure of the next stage of City Deals?

Mr O'Neil: No, we don't provide policy advice.

Senator McALLISTER: Okay, so they are specific deals. What cities are being contemplated?

Mr O'Neil: As I said, the Townsville City Deal is the main deal that we've been involved in. Any other City Deals would be a matter for the cities division.

Senator McALLISTER: They have not been referred to you as yet?

Mr O'Neil: We've had early discussions on innovative financing around City Deals but nothing in particular.

Senator McALLISTER: I am a little bit confused because I asked you whether you were providing policy advice or specific advice on concrete propositions. You said that you do not provide policy advice, but you now tell me that these City Deals conversations are about nothing in particular. I am just trying to understand what you are actually doing in this next stage of the City Deals process.

Mr O'Neil: In terms of City Deals, a key component of City Deals is innovative funding and finance. As I said in the Townsville case, we are actively looking at two parts of the Townsville City Deal: one is the port channel widening for the Port of Townsville and the other is the TEARC—Townsville Eastern Access Rail Corridor. Both are potentially eligible for private participation in the funding.

Senator McALLISTER: Okay. But in the other conversations you are having about the next stage of the City Deals, what are you talking about?

Mr O'Neil: That is really a matter for the cities division. I would rather not comment on prospective City Deals.

Senator McALLISTER: You will be aware that under the standing orders, you are required to provide information unless there is a good reason not to provide it. The minister may make a claim of public interest immunity if, for some reason, this cannot be disclosed to the committee.

Mr O'Neil: Senator, do you mind if I take that one on notice and I will refer it back to my minister, if that's okay?

Senator Brandis: I think Mr O'Neil's point is not so much a public interest immunity point; it is the point that he is the wrong person to be making this enquiry of.

Senator McALLISTER: Senator Brandis, I do not know why you are opening this up. I have accepted that he has taken this on notice.

Senator Brandis: No, that's fine. I just don't want there to be any confusion—that's all.

Senator McALLISTER: All right. I have a final question. Can you explain to me whether or not there are formal procedures in place for how the IPFA is engaging with or consulting with the infrastructure department and with Infrastructure Australia?
Mr O’Neil: First of all, the department of infrastructure are the lead agency, so we work very closely with the department of infrastructure. InlandRail, for instance, is being undertaken by ARTC and the lead agency assisting is the department of infrastructure, and we are assisting the department of infrastructure in evaluating that project.

Senator McALLISTER: I am trying to understand whether there is a formal procedure in place. That sounds like a sensible arrangement.

Mr O’Neil: That is for the department of infrastructure. Then there is IA. IA has a very different role. IA’s role is in the early assessment and evaluation of major projects. It provides important advice to government on that.

Mr Brummitt: There is no formal procedure, but I would say there is pretty intense consultation, particularly with the department of infrastructure on a daily basis, and on a regular basis, I would say.

Mr O’Neil: As needed. IA is a very different function. They do an evaluation and an economic assessment of projects, whereas the department of infrastructure have the running of major projects right through to the delivery. So our involvement is very deep with the department of infrastructure, to answer your question.

Senator McALLISTER: Okay, thanks. Mr O’Neil. In the interests of time I will stop there.

CHAIR: I understand Senator Smith has a couple of quick questions and then we will move to IGIS.

Senator SMITH: My question is for Mr O’Neil. Are you involved in any discussions in regard to city deals in regard to Perth, and have those discussions involved urban rail or light rail propositions?

Mr O’Neil: Members of our team have been to Perth to meet with officials to talk about the Metronet project, but it is at a very early stage.

Senator SMITH: Have any other urban rail or light rail initiatives in Perth been discussed?

Mr O’Neil: No, not that I am aware of.

Ms Wiley-Smith: Senator, we have been in contact, in the Cities Division, with officials in Western Australia to talk about potential city deals, and I think I might have mentioned that in a previous estimates, and certainly there are a range of issues ...

Senator SMITH: You distributed a letter between the Prime Minister and Mr McGowan.

Ms Wiley-Smith: That is correct, Senator. There is a range of issues that have been raised but no decisions have been made yet.

CHAIR: If there are no further questions, I thank the witnesses for their evidence and look forward to having you back for longer next time. I now welcome the Office of the Inspector-General of Intelligence and Security, the Hon. Margaret Stone and the Assistant Inspector-General, Mr Jake Blight. Ms Stone, do you wish to make an opening statement?

Ms Stone: I had one prepared, but in the interests of time I think we can dispense with that.

CHAIR: You are very kind, I appreciate it, thank you. Senator Xenophon.
Senator XENOPHON: Ms Stone, I want to go to the issue of disclosures. How many disclosures have been made to IGIS under the Public Interest Disclosure Act?

Ms Stone: In the PID scheme?

Senator XENOPHON: Yes.

Ms Stone: In our annual report, which was tabled this morning ...

Senator XENOPHON: I am sorry I didn't have a chance to digest it.

Ms Stone: I didn't really expect you to be waiting for it.

Senator XENOPHON: You would be surprised at the sorts of things I wait for, including High Court judgements.

Ms Stone: Now I am disappointed. There were 11 last year, and, so far, none in this financial year.

Senator XENOPHON: Okay, and how many of those 11 were actually investigated? Were they investigated?

Ms Stone: Yes, indeed they were. All of them were investigated.

Mr Blight: Yes, all 11 were investigated by our office to the point where we decided that no further investigation was required and no action was required.

Senator XENOPHON: Right, so that was the outcome, that no further action was required. For how many of those was action required in the view of IGIS?

Ms Stone: I think I would have to take that on notice. It was a small number, from memory, but I don't have the actual number here. My guess is about four or five, but I would like to take that on notice.

Senator XENOPHON: Okay, so we don't need to restate that. Can you tell us how many of those 300 or so complaints made to IGIS about intelligence agencies were actually investigated?

Ms Stone: We have a distinction between contacts and complaints, and all complaints are investigated. With the large number of delays in security assessments for employment or visas, for instance, there are long delays because of the volume of such applications. We check with ASIO through looking at their systems—we don't just take their word for it—whether the application is being progressed in an orderly way. It is for ASIO to determine what percentage of their resources they place on those issues.
Senator XENOPHON: Thank you. You've been very helpful. Do any of the complaints relate to the refusal of a passport being issued?

Ms Stone: Did we have any, Mr Blight?

Mr Blight: Yes, we have had some.

Senator XENOPHON: In other words, as a result of an intelligence agency, the refusal of an Australian passport being issued—

Ms Stone: The refusal of a passport would presumably arise, if there was an adverse security assessment.

Senator XENOPHON: But have you had any complaints about that?

Ms Stone: In the last year, I don't think so. Did we, Mr Blight?

Mr Blight: Can we take that on notice? It's certainly an area we inspect. The decision, which is made by the foreign minister, is of course not a decision we look at, but ASIO's security assessments are an area we inspect regularly.

Senator XENOPHON: It goes to the issue of witness K. I think the Attorney-General would be disappointed if I didn't ask him any questions about witness K.

Ms Stone: I would indeed, too.

Senator XENOPHON: Yes, both for you and the Attorney-General. At the last estimates, I asked a series of questions on the Intelligence Services Act, where section 6 makes it clear that ASIS is not permitted to collect information on people inside Australian territory, in section 6(1)(a). If the agency cannot collect information on people inside Australia, it cannot lawfully have information on witness K in terms of the competent authority to advise that a passport not be issued. In the advice to the foreign minister, Attorney-General, you indicated that you'd take those questions on notice. The answers on notice I received were that this is properly a question for ASIS—questions 149(a), 14(b), 14(c) on notice—but ASIS is an agency not called here, so it's almost Kafkaesque that I can't seem to get an answer. It's on notice. It's up to ASIS, but ASIS isn't called before estimates. Can the shrug of the shoulder of the Attorney-General be noted for Hansard?

Senator Brandis: It is the case that the answer that you've been provided with is correct.

Senator XENOPHON: It is a touch Kafkaesque, though.

Senator Brandis: That's a matter for you as to how you might wish to characterise an answer.

Senator XENOPHON: I don't know how else to characterise it. Ms Stone, can you advise whether this is a matter within the purview of IGIS? Should you receive a complaint about the refusal of a passport based on advice from an intelligence agency as to whether you could look into it?

Ms Stone: ASIS was the competent authority in that case, but the refusal of the passport is a matter for DFAT.

Senator XENOPHON: I understand the refusal of the passport is a matter for DFAT but, if the information given to DFAT was on the basis that the agency was not permitted to collect information on people inside Australian territory, as in section 6(1)(a), are you in a
position to examine the advice given to DFAT by ASIS? In general jurisdictional terms, is that within the purview of your powers?

Ms Stone: Section 9AA(c) of the IGIS Act says that the Inspector-General must not:

… inquiere into a matter, other than a matter that is referred to the Inspector-General under subsection 65(1A) of the Australian Security Intelligence Organisation Act 1979, that is, or could be, the subject of a review by the Security Appeals Division of the Administrative Appeals Tribunal.

If the refusal of a passport could be a matter for review by the Security Appeals Division of the Administrative Appeals Tribunal then I'm not entitled to look into it. That's the general construction of the act.

Senator XENOPHON: I understand. Once that matter has been disposed of, one way or the other, by the Security Appeals Division of the Administrative Appeals Tribunal, could you then look at the issue of section 6(1)(a), which I referred to, as to whether ASIS was a competent authority?

Ms Stone: Presumably you're considering a situation where the applicant was unsuccessful in the Administrative Appeals Tribunal?

Senator XENOPHON: It could be either way, because the original—

Ms Stone: He'd hardly appeal—he'd hardly be coming to us with a complaint—if he won.

Senator XENOPHON: But would it be of concern to IGIS if it became apparent that ASIS did not have the proper authority to collect information?

Ms Stone: I think we need to distinguish two things here. We will inquire into anything that arises in activities by an agency that appears not to meet the standards of legality and propriety. So, in the course of our normal inspections, if we pick up that an agency is not working within those parameters then we will investigate it. But, in terms of a complaint, where the subject matter of the plaint has been dealt with by a judicial body, I can't see that we would investigate it because we would have no power to set aside.

Senator XENOPHON: Finally, in respect of your purview of issues of legality and propriety, would that also include issues of alleged or potential conflicts of interest?

Ms Stone: If we had reason to believe that there was an improper behaviour by an agency—and I'm using 'improper' to encompass both of those criteria—then we would look at it. But no such information has come to our knowledge.

Senator XENOPHON: But if there was a person making a complaint that ASIS was collecting intelligence within Australia contrary to section 6(1)(a) then that would be within the purview of your authority?

Mr Blight: Can I clarify a point on 6(1)(a). Section 6(1)(a) doesn't prevent ASIS from collecting intelligence inside Australia; it says that their goal must be to collect 'intelligence about the capabilities, intentions or activities of people or organisations outside Australia'.

Senator XENOPHON: That's right.

Mr Blight: That doesn't prevent them from gathering that intelligence inside Australia.

Senator XENOPHON: But if it wasn't for that purpose then there would be an issue as to whether it was for a proper purpose within 6(1)(a).

Mr Blight: I was just wanting to clarify.
Senator XENOPHON: Yes. But, if it was a particular complaint in respect of that, it is within your authority to look at those matters?

Ms Stone: I don't think I can add anything to the answer I've already given.

Senator XENOPHON: So you can look at these matters if there was a specific complaint about that?

Ms Stone: It depends what the complaint is.

Senator XENOPHON: Obviously.

Ms Stone: If the subject matter of the complaint is something that has been dealt with by judicial body then that's the end of it.

Senator XENOPHON: I won't take it any further.

CHAIR: As there are no further questions for IGIS, I thank you very much for your attendance.

Digital Transformation Agency

[22:50]

CHAIR: Welcome, Mr Slater. I hope you don't have an opening statement, giving the time that we have.

Mr Slater: Good evening, Chair. I do have an opening statement, but, in the interest of time, I am happy to table it.

CHAIR: That would be extremely helpful. Thank you.

Senator McALLISTER: Thank you for waiting, Mr Slater, and, indeed, to all of you for waiting. You may have sought to cover this in your opening statement, but I just wonder if you could give us a quick list of the projects that DTA is currently working on. You had only just started when you first appeared here.

Mr Slater: In the context of the DTA, there are three core activities that we undertake. The first is that we provide advice to government. That is really geared around identifying those key service transactions that we think are most important and impactful in the context of digitising those services for both individuals and businesses. Secondly, we are then working with agencies to set those programs up for success, and once we have made those decisions. That includes working with agencies to ensure that they have undertaken the proper planning, they do prototyping, they are applying agile project methodologies, they are looking for opportunities to leverage cloud services and looking for opportunities to leverage capability that exists elsewhere across government. The third area is then to provide a monitoring and oversight of the overall project investment slate for government. In the context of that, in the last data collection we did we identified 72 projects that are above the $10 million threshold that was identified as part of the criteria for the sweep. In looking at those, there are 17 projects that we are actively engaged in in some shape or form.

Senator McALLISTER: So those 17 projects fall out of that third function of monitoring and they are a subset of the 72 captured by the $10 million threshold. What is it about those 17 projects that you have identified?

Mr Slater: Our involvement is really around: we'll look at the strategic importance of those programs. It could be factors around the scale and complexity of those programs. It
could be related to the amount of the whole-of-life spend. That would be significant. We look at things like impact on individuals and businesses in terms of the outcomes of those programs.

Senator McALLISTER: So high risk—both ways, actually, in terms of opportunity but also downside risk?

Mr Slater: I wouldn't use the words 'high risk'. Any change initiative has a level of risk. At the end of the day, you are ascertaining the outcome you are seeking to achieve. And the best way to achieve that outcome is a combination of applying technology, changing processes, work practices—sometimes changing legislation. So there's always a level of risk. What we are looking for, though, across all initiative is: are those risks well understood and are they being effectively managed?

Senator McALLISTER: I'm sorry to be brisk about this, Mr Slater; I would like to have a longer conversation. I am interested, but we're constrained by time. So I don't mean to appear rude.

Mr Slater: That's okay.

Senator McALLISTER: You've identified 17 that fall into this category of strategic importance. Having identified them, what is it that you are doing?

Mr Slater: There are a range of activities that we get involved in, but I might hand over to Dr Lesley Seebeck, who has accountability for this function. She can provide you with some more information.

Dr Seebeck: We engage in a number of ways. A lot of what we do is get involved in the governance committees and the governance arrangements in those committees. It gives us the best oversight of what the responsible agencies are doing. We can offer advice about how to do things like change management programs. We can also offer support—for example, in the user-centred design and delivery, user research, agile delivery methodologies and so on.

Senator McALLISTER: Are you doing that for each of these 17 projects?

Dr Seebeck: It depends on what the projects are engaged in. In almost all of them, we're engaged at the governance layer—so we will sit in the IDCs, and so on.

Senator McALLISTER: Is it possible to get a list of the 17 projects?

Dr Seebeck: Yes, we can give you that.

Senator McALLISTER: Can you provide details of the engagement you have with those projects? It sounds like you have some categories—and then you have options for engagement? Can you tell us what they are for each project?

Dr Seebeck: Yes, we can provide those.

Senator McALLISTER: That would be terrific. Can I just ask a final question—and we're going to have to come back to this at another time. In the past we've talked with your predecessor organisation and officials in your role, Mr Slater, and asked about what role the organisation has when big projects are going very bad, because there have been a lot of tech failures and we're genuinely interested to understand why and what can be done. In the past it seemed that remediation was not a function that DTA saw as a core remit. Is that still the case, or has that changed?
Mr Slater: That's still the case. The role and the mandate of the DTA are quite clear, as I mentioned at the start: (1) to offer advice to government around where best to invest, in the context of each digital transformation ambition, which is fundamentally around digitising more services; (2) to improve the experience for individuals and businesses; and (3) to improve the returns generated as a result of the investment made in ICT-related programs. We work with agencies to help set those programs up for success—everything that Dr Seebeck mentioned around making sure that they're doing prototyping, deploying agile project methodology and leveraging cloud services. Finally our role is to provide an oversight and advisory function to government.

Accountability for the successful delivery of those programs sits with those respective agencies. That's very clear, and I think it should be. It's about a single point of accountability. That's where the policy decisions sit for those respective agencies. That's where the delivery capability sits. Our role is to provide advice and guidance on how to understand your risk profile associated with change initiatives, how to bring best practice to bear, and to be involved in that capacity. But accountability for making those things happen sits with those agencies.

CHAIR: As there are no further questions for the Digital Transformation Agency, I thank you very much for your patience this evening and your evidence.

National Australia Day Council

[10:57]

CHAIR: Welcome, Ms Barbour. Do you have an opening statement?

Ms Barbour: No.

CHAIR: That's very good to hear, with the few minutes we have remaining! I'd like to ask you some questions about the recent politicisation of Australia Day, particularly by a series of local councils in Melbourne. You'd be familiar with decisions made by councils like the City of Yarra and Darebin council. Do you have any concerns about how Australia Day is being politicised in this way?

Ms Barbour: I don't think that's for me to discuss, I'm sorry. I think that's something for the government to make a decision on.

CHAIR: Sure. Has the Australia Council put in place any measures to ensure that the activities it supports on Australia Day do not become inappropriately politicised?

Ms Barbour: To give you some context: this is day 3 of my job at the National Australia Day Council—so, if we can just take what I say in that context.

CHAIR: Of course.

Ms Barbour: I understand that the National Australia Day Council is very conscious of risk and does a risk strategy and mitigation for every event it does. In terms of detail around your question, I haven't got that.

CHAIR: Perhaps you can come back on notice with a bit more detail, if you're able to. I'd also be interested to know—on notice, if necessary—whether you would reconsider any activities hosted by councils, with the Australia Day Council, if they were to be done in a politicised way?

Ms Barbour: I would have to take that on notice.
CHAIR: Could you also take on notice whether you are aware of any planned activities with the councils in question, particularly the City of Yarra or Darebin council.

Ms Barbour: Yes, I'll take that on notice.

CHAIR: As no other senators have any questions, thank you very much for your evidence this evening, brief as it was.

Ms Barbour: Thank you.

CHAIR: That concludes the committee's examination of the parliament portfolio. Hearings for the Prime Minister and Cabinet portfolio will recommence on Friday with an examination of the cross-portfolio Indigenous matters. I'd like to thank ministers and officers who have given evidence to the committee today. I'd also like to thank Hansard and Broadcasting for their assistance and of course the secretariat—and particularly to those agencies this evening who we were only able to question briefly. I now declare this meeting of the Senate Finance and Public Administration Legislation Committee adjourned until tomorrow, when we'll hold the hearing for the Finance portfolio.

Committee adjourned at 23:00