COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS
LEGISLATION COMMITTEE

Estimates

MONDAY, 2 MARCH 2020

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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Monday, 2 March 2020

HOME AFFAIRS PORTFOLIO

In Attendance

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

Department of Home Affairs

Executive

Mr Michael Pezzullo, Secretary, Department of Home Affairs
Mr Marc Ablong PSM, Deputy Secretary, Policy
Ms Cheryl-anne Moy, Deputy Secretary, Corporate and Enabling/Chief Operating Officer
Ms Linda Geddes, Deputy Secretary, Citizenship and Social Cohesion/Commonwealth Counter-Terrorism Coordinator
Ms Malisa Golightly PSM, Deputy Secretary, Immigration and Settlement Services
Mr Paul Grigson, Deputy Secretary, Security and Resilience
Ms Alison Larkins, Commonwealth Coordinator-General for Migrant Services
Mr Cameron Ashe, Acting National Counter Foreign Interference Coordinator
Mr Mark Brown, Chief Audit Executive/Chief Security Officer
Dr Derek Bopping, Deputy Counter-Terrorism Coordinator
Mr Wayne Buchhorn APM, First Assistant Secretary Capability Division
Ms Stephanie Cargill, First Assistant Secretary, Finance Division/Chief Finance Officer
Mr Pablo Carpay, First Assistant Secretary, People and Culture Division
Mr Anthony Coles, First Assistant Secretary, Immigration Integrity and Community Protection Division
Dr Steven Davies, First Assistant Secretary, Data Division/Chief Data Officer
Ms Pip de Veau, First Assistant Secretary, Legal Division/General Counsel
Ms Nicole Ingram, Deputy General Counsel, Legal Division
Ms Peta Dunn, First Assistant Secretary, Immigration Programs Division
Major General Craig Furini AM CSC, Commander, Joint Agency Task Force Operation Sovereign Borders
Mr Samuel Grunhard, Acting First Assistant Secretary, Critical Infrastructure Security Division
Ms Vanessa Holben, First Assistant Secretary, Aviation and Maritime Security Division
Mr Hamish Hansford, First Assistant Secretary, National Security and Law Enforcement Policy Division
Mr Stephen Hayward, First Assistant Secretary, Health Services Division
Mr Richard Johnson, First Assistant Secretary Citizenship and Social Cohesion Policy Division
Mr Andrew Kefford PSM, First Assistant Secretary, Visa Delivery Transformation Division
Mr Angus Kirkwood, First Assistant Secretary, Strategy Division
Mr Luke Mansfield, First Assistant Secretary, Refugee, Humanitarian and Settlement Division
Mr Michael Milford AM, Group Manager, Technology and Major Capability
Mr Greg Miller, First Assistant Secretary, Cyber Security Policy Division
Mr Daniel Mossop, Acting First Assistant Secretary, Commonwealth Transnational, Serious and Organised Crime Centre
Mr. David Ness, Acting First Assistant Secretary Citizenship and Multicultural Programs Division
Mr Andrew Rice, Acting First Assistant Secretary, Identity and Biometrics Division
Mr David Wilden, First Assistant Secretary, International Policy Division
Mr Michael Willard, Acting First Assistant Secretary, Immigration and Community Protection Policy Division
Mr Ben Wright, First Assistant Secretary, Procurement, Property and Contacts Division
Mr Robert Cameron, Director General, Emergency Management Australia
Dr Derek Elias, Acting Assistant Secretary, Regional Processing Contracts, Joint Agency Task Force Operation Sovereign Borders
Mr Joe Feld, Assistant Secretary, Regional Processing Contracts, Joint Agency Task Force Operation Sovereign Borders
Mr Tony Smith, Deputy Commander Operations, Joint Agency Task Force Operation Sovereign Borders
Ms Alana Sullivan, Deputy Commander Regional Processing and Resettlement, Joint Agency Task Force Operation Sovereign Borders

**Australian Border Force**
Mr Michael Outram APM, ABF Commissioner
Ms Justine Saunders APM, Deputy Commissioner Support
Ms Mandy Newton APM, Deputy Commissioner Operations
Mr Phil Brezzo, Assistant Commissioner Strategic Border Command
Mr Kingsley Woodford-Smith, Assistant Commissioner Close Support Command
Ms Erin Dale, Assistant Commissioner Port Operations Command
Ms Kylie Rendina, Assistant Commissioner Border Patrol and Coordination Command
Ms Sharon Huey, Assistant Commissioner Operational Practices Command
Ms Jo Crooks, Assistant Commissioner Enforcement Command
Rear Admiral Lee Goddard, Commander Maritime Border Command
Dr Bradley Armstrong PSM, Group Manager Customs
Ms Kaylene Zakharoff, Group Manager Immigration Detention

**Australian Criminal Intelligence Commission/Australian Institute of Criminology**
Mr Michael Phelan, Chief Executive Officer

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**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**
Dr Rick Brown, Assistant Director, Australian Institute of Criminology
Ms Anne Brown, Chief Operating Officer
Mr Stewart Sibree, Acting Executive Director Technology
Mr Matt Rippon, Executive Director Intelligence Operations
Mr Mark Harrison, Executive Director Capability

Australian Federal Police
Mr Reece P Kershaw, APM, Commissioner
Mr Darren Box, Acting Chief Operating Officer

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

Australian Transaction Reports and Analysis Centre
Ms Nicole Rose PSM, Chief Executive Officer
Mr Chris Collett, Deputy CEO, Intelligence
Ms Kathryn Haigh, National Manager, Legal and Policy (General Counsel)
Dr Nathan Newman, National Manager, Regulatory Operations
Mr Ben Skaines, Chief Finance Officer
Mr Bradley Brown, National Manager, Intelligence Partnerships

Committee met at 09:01

CHAIR (Senator Stoker): I declare open this hearing of the Senate Legal and Constitutional Affairs Legislation Committee for the additional estimates. The Senate has referred to the committee the particulars of proposed expenditure for 2019-20 for the portfolios of Home Affairs and the Attorney-General and other related documents. Today's estimates are from the Home Affairs portfolio. The committee has set Friday 24 April 2020 as the date by which answers to questions on notice are to be returned. The committee has also decided that written answers to questions on notice should be provided to the secretariat by 5 pm on Friday 13 March 2020.

Under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

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

The Senate has also resolved that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which will be incorporated in Hansard.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

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

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

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

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom this the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

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

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

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

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

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

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

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

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

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

Before we get underway, I seek a motion from the senators present to permit the media to record proceedings, subject of course to the usual rules about encroachment.

Senator KENEALLY: I move that way.

CHAIR: There being no objection, it is so resolved.

Australian Federal Police

[09:04]

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

Senator Payne: No, thank you.

CHAIR: I welcome officers from the Australian Federal Police. You may make an opening statement before we go to questions.

Mr Kershaw: Thank you, Chair. I would like to make an opening statement. Since the last time I appeared before this committee, the AFP has been part of the government and community response to the bushfires, the White Island volcano eruption and the coronavirus outbreak. I would like to acknowledge and wholeheartedly thank the first responders from across Australia and overseas as well as all of our members who have been directly involved in the events of the past few months. For those families that have suffered loss, I offer my deepest personal sympathies.

The AFP will continue to respond with our partners to serve the Australian community. The AFP has kept up its operational intensity, achieving some significant outcomes. There have been arrests in connection with the largest methamphetamine importation in history,
preventing over 1.7 tonnes from reaching our community. One hundred and twenty charges have been laid for child exploitation crimes and 18 children removed from harm just since last October by our joint state and territory teams. We arrested and charged a man with five terrorism offences upon his return to Australia from Turkey. And the AFP coordinated with more than a dozen law enforcement agencies in Europe and Australia in one of the largest cybercrime investigations to date, disrupting the use and sale of ransomware in 124 countries, 85 warrants were executed internationally, 434 devices were seized and 13 people were arrested overseas.

I appear before you today having represented the Australian Federal Police as the eighth commissioner for over 100 days, and it has been a very busy 100 days. In my last appearance before this committee, I made it clear that my absolute focus is ensuring the AFP is the best-performing police it can possibly be. This involves supporting our frontline to maximise operational impacts, reducing red tape for faster decision-making and strengthening key partnerships. I have recently concluded my 100-day plan of action and embarked on a new strategy for 2020 that will see the AFP deliver maximum damage to the criminal environment.

However, I want to touch on some matters previously subject to media reporting and detail what they mean for the AFP and for the public. I announced at the last estimates hearing that I had tasked Mr John Lawler AM APM to examine the AFP's response to and management of sensitive investigations. Mr Lawler examined more than 200 documents, conducted 55 meetings and consulted more than 100 internal and external stakeholders. As part of this process, and as I committed to you, I met with media executives to understand their concerns. Mr Lawler's report was made publicly available on the AFP's website—again, as I committed to you at my last appearance. I have accepted all 24 options in principle, and work is underway to implement the investigation, governance and structural improvements suggested by the review. Of note, referring agencies will have a clearer understanding of the requirements to make a referral and a sensitive investigations oversight board will provide an additional layer of analysis and consideration, governing decision-making for sensitive investigations. A key focus of this consideration is on the harm of the referred manner.

That brings me to my next point. I am sure you would be aware of a recent matter referred to the AFP by the New South Wales Police in relation to a member of parliament. In deciding not to pursue the matter, we have taken on board certain elements of the framework set out in Mr Lawler's review report. We provided clearer detail about our considerations in determining that the matter should not be pursued. I want to express once again my utmost confidence in the AFP officers who investigate a range of complex matters in a challenging environment and do so to a high standard.

I would like to move onto the completion of my first 100 days as commissioner and the strategy for the remainder of 2020 and beyond. From 3 February, the AFP has a new organisational structure based on regionalised service delivery. The new structure will result in quicker decision-making at the front line and deployment of appropriate resources across the organisation. This year we will hold one of our largest graduations ever for five recruit courses, including Federal Police development programs, a protective services officer program and a lateral program, recruiting experienced police detectives into the AFP.
Protection operations response teams are in place in Canberra and Brisbane airports, providing specialist first response capabilities to better detect, deter and prevent potential hostile threats and the rollout of this capability continues across our designated airports.

This year we will focus on attacking one of the primary motivators behind organised crime: profit—something I have elevated through a Dedicated Criminal Assets Confiscation Taskforce reporting directly to my office. This will provide the AFP and our partners with an opportunity to deliver maximum damage to the environment, and I have set a KPI of $600 million in restrained assets out of the hands of criminals and back to the Australian government over the next five years.

I will continue to focus on the physical and mental health of the AFP and I am committed to further work on the US CLOUD Act, streamlining requests for evidence held by US based companies. Too often, too many investigations are held up by the fact that critical electronic data is stored offshore and the processes to access that information have not kept pace with the everyday use of technology. We want to cut through that to make sure justice is swift and certain and ultimately to protect vulnerable Australians.

To further reduce red tape, I've established a new strategy and performance office to see that the goals we set are implemented and monitored in line with organisational priorities and intent. Last week we announced the national operations state service centre which will work more closely with jurisdictional partners and provide stronger connections between Australian policing, offshore partners and other external stakeholders. That's what we're here for.

I’m looking forward to 2020 and beyond. Each year we will set ourselves ambitious goals and each year we will deliver on those. I’m focused on ensuring the ongoing safety and protection of the Australian public from those that seek to do us harm and, whether it is organised crime, terrorism, child abuse or criminal finances, the AFP will be relentless in delivering maximum damage to the criminal environment. I am committed to ensuring our people are equipped to do their job as effectively and safely as possible. I am also looking forward to your questions and my Acting Chief Operating Officer, Darren Box is here with me to try to limit the number of questions I take on notice, given that, apparently, I set a record last time.

CHAIR: That's the spirit, Commissioner Kershaw! Do you have a copy of your opening statement that you'd be prepared to provide?

Mr Kershaw: Yes, I do.

CHAIR: Thank you very much. I will hand to the Labor senators first. Senator Keneally.

Senator KENEALLY: Thank you very much, Chair. Thank you, Commissioner, Mr Box and Mr Pezzullo as well as Senator Payne for being here today. Commissioner Kershaw, I thank you for your opening statement and commend you and your officers on the success you've had as outlined on some of the significant and complex criminal matters where you have seen significant progress, both in terms of arrests and particularly in terms of protecting vulnerable children from the vile crime of sexual exploitation.

Before I turn to my questions for you, Commissioner, Chair, with your permission, I seek to table documents released under the FOI Act by the Department of Home Affairs referred to in decision FA200100376. I seek to table these now, because Labor senators will refer to them throughout the day. To assist the department and the secretariat, I may just take a
moment to flag that, while these folders consist of 49 documents totalling 686 pages, they are available to the secretariat in soft copy to assist the department ahead of the questions later today. I draw specific reference to the following pages within the entire document: FOI document one, page 14 of 14; FOI document four, page 14 of 14; FOI document seven, page 14 of 14; FOI document 11, page 14 of 14; FOI document 15, page 14 of 14; document 20, Page 14 of 14; document 23, page 14 of 14; and document 28 page 14 of 14. These pages contain statistics related to the Australian Border Force's Cape class patrol days, which I will be referring to later today. The documents obtained under freedom of information laws show a significant drop in the Australian Border Force Cape class patrol boats in April prior to last year's federal election.

I want to make clear that these documents will be disclosed via the Department of Home Affairs' disclosure log in the near future. The document I'm tabling today is the same one that will be released by that process. However, the statistics in this document are of the utmost importance at today's Senate estimate hearings. The Senate and the Australian public have a right to know how the Department of Home Affairs is being managed and operated under the minister, Peter Dutton, and these documents provide an insight into said workings. I seek to table the documents now.

**CHAIR:** Thank you. Do you have an access copy—an electronic copy or otherwise—for senators?

**Senator KENEALLY:** There is a soft copy that has been provided to the secretariat.

**CHAIR:** Do you wish to provide this to the witnesses so that they can follow along with what you're discussing? It seems like it's a fair thing to do.

**Senator KENEALLY:** That is fine. The department, I assume, having been the provider of the document, does also have it.

**CHAIR:** I'm sure they will have it among the many documents in the department. But, nevertheless, let's provide it to the witnesses so that they're able to keep up with your references.

**Mr Pezzullo:** Thank you. That would be helpful, because even though I take the import of Senator Keneally's statements that these are departmental documents, it looks like they've been assembled in a particular order—

**Senator KENEALLY:** By the department, yes.

**Mr Pezzullo:** and they've been bound together. So it would be helpful for us to be able to scrutinise those documents, even though they appear to be ours or are said to be ours. Having at least one of those very heavy looking volumes passed to one of my officers would be very helpful.

**Senator KENEALLY:** Commissioner, in your first media interview after taking this role, you pledged:

... an era of unprecedented access to public interest information currently shielded by layers of bureaucracy, restrictive costs and a long-standing culture of selective sharing.

I commend you on that. The article to which I am referring is "'A new paradigm': Australia's new top cop promises era of transparency', written by Zach Hope and published in The Sydney Morning Herald on 1 November 2019, and I table a copy of that now.
CHAIR: Thank you.

Senator KENEALLY: In it, you are quoted:

… previous AFP regimes had not been intentionally secretive, but "maybe [officers] are being told 'let's just buffer that or let's try and dodge that'."

"My view is tell the truth because it's going to come out and the truth is the truth."

You, no doubt, bring that same approach of transparency and truthfulness to this estimates hearing.

Mr Kershaw: Yes.

Senator KENEALLY: Thank you. I would like to now turn to the matter you referenced in your opening statement regarding the referral by the New South Wales Police Force of the Angus Taylor matter. In a letter to shadow Attorney-General Mark Dreyfus on the 6 February 2020, which I table now, deputy commissioner Ian McCartney stated that the decision not to pursue an investigation was made 'having regard to the low level of ongoing harm' and 'The significant level of resources that would be required to investigate the matter weighed against the AFP's current operational and investigative priorities.' Is this statement by deputy commissioner McCartney that there is a 'low level of ongoing harm' a concession that there is ongoing harm but you have determined that it is just at a low level?

Mr Kershaw: No. That was part of what's probably missing, and it might help you. I can read out part of the letter that was sent, 'As a result of inquiries undertaken on information provided by the New South Wales Police Force, the AFP, having carefully considered the possible lines of inquiry and investigative action available, has determined it is unlikely further investigation will result in obtaining sufficient evidence to substantiate a Commonwealth offence.' Harm was part of it, and also the apology that was made, as well as a significant level of resources and against operational investigative priorities. This was part of our new framework and made by our new board.

Senator KENEALLY: Sure. I do intend to come to the investigation itself, and I will ask about that sentence later. I understand the point you made in your opening statement that you now have established a sensitive investigations oversight board. I'm trying to understand what the phrase 'a low level of ongoing harm' means. It's hard to read it any other way but the plain English language meaning that there is ongoing harm but you have determined that it is at a low level.

Mr Kershaw: Yes. I think that speaks for itself.

Senator KENEALLY: How do you determine it is at a low level? What are the process or protocols within the AFP to determine what the level of harm is?

Mr Kershaw: That would be something that the board would have discussed. I'm not on that particular board, but I can take that on notice if you'd like to see how they reached that particular threshold.

Senator KENEALLY: So the sensitive investigations oversight board discussed the Taylor matter and made a determination that there was a low level of ongoing harm?

Mr Kershaw: Yes.

Senator KENEALLY: Do they have any processes or protocols to make that determination?
Mr Kershaw: Yes. They are experienced officers who would have taken all the information in at the time and reached a decision point.

Senator KENEALLY: Do they have something akin to the CCPM that the AFP might use to determine the priority and impact of an investigation? Do they have a protocol that is as developed as that?

Mr Kershaw: No. We do have CCPM. However, as you are aware, we're overhauling that particular model, given the fact that the viewpoint, even in the review by Mr Lawler, was that CCPM needs to be overhauled into a different model. We are looking at what we call an operational priority model. They would have used a combination of a number of different things. That would have been included, and the new framework that we've been suggested or recommended by the Lawler review.

Senator KENEALLY: So that framework is not finalised yet?

Mr Kershaw: No, not yet. I think what's important is to understand it's a careful thought process. This is objective, not being subjective. I trust those deputy commissioners' and other senior officers' judgement and that they made that call.

Senator KENEALLY: Who signs off on that determination in an assessment? This was an assessment, not an investigation. Who signs off on the determination that the sensitive investigations oversight board made that there is a low level of ongoing harm? Do they make that and then does it go to you for a sign off or to some other officer for a sign off?

Mr Kershaw: No, not in this particular matter. The letter, which was the final signature, was the deputy commissioner of investigations Ian McCartney.

Senator KENEALLY: So he is the one who received a recommendation of some form? Was it a resolution or a recommendation from the sensitive investigations oversight board?

Mr Kershaw: Well, he sits on that board, so—

Senator KENEALLY: He sits on it. So they made a determination there was a low level of ongoing harm, although they didn't have a clear protocol yet in place for doing that. I recognise that they have just been established.

Mr Kershaw: Yes.

Senator KENEALLY: I'm trying to understand who owns that decision.

Mr Kershaw: He does.

Senator KENEALLY: Did the Australian Federal Police interview the Lord Mayor of Sydney, Clover Moore, as part of its assessment?

Mr Kershaw: I'm not aware. To 100 per cent confirm that, I'll take that on notice. I'm not aware that the mayor was interviewed.

Senator KENEALLY: Commissioner, I understand that you've just said you don't want to take many questions on notice, so perhaps I can be helpful and suggest this seems to be a question that could be answered by your organisation within the next hour if not the next few moments.

Mr Kershaw: I've actually got a new system here. I've just been told that, no, the mayor was not interviewed.
Senator KENEALLY: The Lord Mayor was not interviewed by the AFP. Did the sensitive investigations oversight board have access to the Lord Mayor? Did they speak to her?

Mr Kershaw: No. My information is that there was no interview.

Senator KENEALLY: The lord mayor is the victim, if you will, in this circumstance. How do you make a determination of harm and a decision not to continue to an investigation without speaking to the victim of the alleged crime?

Mr Kershaw: That's a matter, again, for the decision-makers, and they've made that decision on the materials available to them at the time, and that was what was referred to us by the New South Wales police.

Senator KENEALLY: The lord mayor gave a statement of evidence to the New South Wales police. I table that now. Did the AFP have access to that statement?

Mr Kershaw: If you give me a moment, I may have to answer that once I can substantiate whether or not it was in the referral from the New South Wales police.

Senator KENEALLY: The lord mayor said in her statement that 'in dealing with important and pressing issues, it's our responsibility as elected officials to deal in facts. My ability to lead a council that takes strong action on climate change rests on the support and trust of the community. I formed the opinion that the incorrect figures were given to the press in an attempt to undermine my reputation and the city's work in addressing climate change.' The lord mayor goes on to say, 'I felt the inflated travel figures supported by the incorrect figures from the annual report are an attempt to distract and undermine' her record. She points out that the 'ongoing question about the source of the documents, which the minister and other government representatives are still saying came from the City of Sydney website, continues to undermine community trust in my ability to lead the council and meet our reporting obligations under the Local Government Act.' Finally, she says the false information 'raises questions about the city's financial management and probity'. Commissioner, what happened in the Angus Taylor matter is a political hit job by a federal minister on another level of government. It relied on a doctored document. This Taylor-made affair is a clear attempt by a politician to use a fraudulent—

Senator HENDERSON: I'm sorry—

Senator KENEALLY: Excuse me. I am getting to my question.

Senator HENDERSON: Please do.

Senator KENEALLY: The Taylor-made affair is a clear attempt by a politician to use a fraudulent and altered document to undermine and attack the reputation and credibility of a political opponent in this case—

Senator HENDERSON: Senator Keneally, I'm sorry to intervene, but I do think it's important that you're here to ask questions.

Senator KENEALLY: I will take my direction from the chair and I would ask you to make points of order. Thank you.

Senator HENDERSON: That was a point of order.

Senator KENEALLY: It relied on a doctored document—
CHAIR: Just get to the question, please.

Senator KENEALLY: Commissioner, this was a clear attempt to undermine and attack the reputation and credibility of a political opponent—in this case, Clover Moore—on an issue of national and international significance, climate change—

Senator Payne: That's your assertion, Senator.

Senator KENEALLY: Now that you have heard Ms Moore's statements, do you have pause to reflect whether this kind of politically motivated attempt by a federal minister to undermine another elected representative is simply a matter of low-level, ongoing harm?

CHAIR: Some might say this is all a political attack on Mr Taylor—but, please, answer the question.

Senator KENEALLY: Chair, I'm asking my questions not of you but of the commissioner. Thank you.

CHAIR: I'm sure the commissioner will answer.

Senator Payne: They are prefaced, Senator, as you well know, by your assertions and your interpretation of circumstances and the situation, to be very clear.

Senator KENEALLY: Minister, I respect your right to answer the question. I'm simply making the point that I wasn't questioning the chair; I was questioning the commissioner.

CHAIR: Let's get the answer from the commissioner.

Mr Kershaw: My answer is simple: I support the officers that undertook the investigation and the oversight board—it's as simple as that—and their decision is their decision, and I support that.

Senator KENEALLY: Have you been able to determine whether or not the AFP had access to Ms Moore's statement?

Mr Kershaw: They have. They did, yes.

Senator KENEALLY: They did. Did the sensitive investigations board have access to it?

Mr Kershaw: Yes.

Senator KENEALLY: Do you stand by your assertion that there is a low level of ongoing harm?

Mr Kershaw: Yes, and I think what's clear again is that those officers are extremely objective. We act impartially, and they've made the decision, and we've been very public about that.

CHAIR: Senator Keneally, I've given you 15, nearly 16 minutes—

Senator KENEALLY: That included, partially, my tabling of the document.

CHAIR: That's right—that was three minutes, so can you bring this to a neat conclusion in the next minute or two, please?

Senator KENEALLY: I have just a few more questions on this subject and then I would be pleased to move onto other subjects. Thank you, Chair, I appreciate it.

CHAIR: After this subject, I will give the call to someone else.

Senator KENEALLY: I appreciate that. On the same matter and on the same question of impact, what role does motive play in an investigation?
Mr Kershaw: I'm sorry; I don't understand the question.

Senator KENEALLY: If a person has a strong motive to engage in a particular criminal activity, does that give the police greater reason to investigate?

Senator HENDERSON: Point of order: the imputation in that question is highly offensive, Chair, and I would ask Senator Keneally to rephrase the question.

CHAIR: I didn't hear the question, because I was talking to Senator McKim.

Mr Kershaw: To help you out, Senator, we use physical and fault elements within various offences. We look at those particular elements—intent, recklessness and a whole range of things. We don't necessarily look at motive.

Senator KENEALLY: I tell you what, Chair: in the spirit of cooperation, and in anticipation of interjections from other senators, I will cease my line of questioning here and return to this, and allow you the opportunity to share the call around.

CHAIR: Respectfully, I think that might be less efficient. If you've only got a little more to go, let's get it done, and then we'll hand over to Senator McKim.

Senator KENEALLY: Okay, mindful that I would like to be able to ask my questions free of unnecessary interruption. Thank you.

CHAIR: I'll be the judge of what's necessary or unnecessary. Please continue, Senator Keneally. I'll give you up to 20 minutes. We're at 17 now.

Senator KENEALLY: Commissioner, are you aware there have been rumours on social media for a month that Minister Taylor's wife, Louise Clegg, is a possible Liberal candidate for the Lord Mayor of Sydney?

Senator HENDERSON: That is disgraceful!

Senator Payne: Chair, if there are matters that go to the estimates and are relevant to the estimates then of course the commissioner can be invited to answer those matters. But, if all Senator Keneally wishes to do is, as I said, engage in her own assertions and interpretation and then ask completely extraneous questions, she won't be at all surprised if other senators intervene upon her.

CHAIR: I tend to agree.

Senator KENEALLY: I table a media report from this week that Ms Clegg is likely to run as the Liberal Party candidate for the Lord Mayor of Sydney.

Senator HENDERSON: Point of order, Chair.

Senator Payne: That's not the responsibility of the police commissioner.

CHAIR: Let me see this document.

Senator Payne: How does that go to the responsibility of the police commissioner, Chair?

Senator KENEALLY: Well, if I could ask my question, perhaps we could get to that.

Senator Payne: I asked the chair, actually.

CHAIR: What's your point of order, Senator Henderson?

Senator HENDERSON: My point of order is that the question that Senator Keneally has raised has no connection with responsibilities of the commissioner of the Australian Federal Police, and I would ask that she be brought back to her role as a senator of this committee.
CHAIR: I tend to agree. The Private Sydney gossip column from *The Sydney Morning Herald* is not relevant to the additional estimates process.

Senator HENDERSON: Talk about a political attack job! It's absolutely disgraceful. I'm sorry, Chair, but it is disgraceful.

CHAIR: Senator Keneally, please move on.

Senator KENEALLY: Commissioner, can you advise if the police assessment of Minister Taylor took into account, as a possible motive, not only wanting to discredit the Lord Mayor Clover Moore because she disagreed on a policy matter but also that his wife might run against Ms Moore in an upcoming City of Sydney council election?

Senator HENDERSON: Point of order again, Chair.

CHAIR: It's out of order, Senator Keneally. This is not relevant to the additional estimates process.

Senator KENEALLY: I think it's quite relevant. We have a federal minister who used a doctored document to attack not only his political rival in policy terms but also, potentially, his wife's rival in political terms.

CHAIR: This has nothing to do with the additional estimates process.

Senator KENEALLY: The police decided not to proceed to an investigation, and I'm well within my rights to ask these questions.

Senator HENDERSON: That's a matter for the chair.

CHAIR: Whether or not somebody down the track might nominate for the mayor of Sydney has no bearing on the allocation of funds in the budget of the AFP, and, quite frankly, if we want to look at allocations of funding, we should be looking at the cost of the investigation that has been a political hit job on Mr Taylor for your own purposes. I think it's in everyone's interest that you move on.

Senator KENEALLY: Commissioner, might I ask you: while some might conclude that the doctored document affair was clumsily executed, have you nonetheless considered that your decision not to proceed to an investigation might lead other politicians to conclude that there is little to no risk of facing consequences if they try a similar and possibly better-executed tactic against a political opponent in the future?

Senator HENDERSON: Again, Chair, I would like to take a point of order.

Senator KENEALLY: Would the benefits of success outweigh the risks of being caught?

CHAIR: Debating points like this are not relevant to the appropriations. Senator Keneally, get to the point.

Senator KENEALLY: If I could table then, please, the CCPM for the Hunt matter. The Hunt matter—

CHAIR: I hope it is something more credible than the gossip column from *The Sydney Morning Herald*.

Senator KENEALLY: It is the New South Wales CCPM log. This is not the Hunt matter—excuse me—it is the Taylor matter. It makes clear that the impact to the client is 'significant', and the priority is 'essential'. The cost, by the way—there are no non-salary budget hours—is at zero. I will table that document. My question to you, Commissioner,
remains: in considering not to proceed with an investigation, did you consider that others might draw the conclusion that there is 'little risk' to seek to execute a similar tactic against a political rival and the chance of success outweighs the benefit—

**Senator HENDERSON:** Point of order, again, Chair.

**CHAIR:** Stop, Senator Keneally. We have a point of order. What's the point of order?

**Senator HENDERSON:** My point of order is that Senator Keneally is continuing to abuse the Senate estimates process, and I would ask her to refrain from doing so.

**Senator KENEALLY:** Why does the government not want the truth to come out—

**CHAIR:** Senator Keneally. I have not ruled on the point of order. You need to wait for the point of order to be ruled upon. Do you care to respond to the point of order?

**Senator KENEALLY:** I am simply asking why the government doesn't want the truth of the matter to come out.

**CHAIR:** No. Let's deal with the point of order first. Do you have something to say in response to Senator Henderson's point of order?

**Senator KENEALLY:** I refer to the opening remarks that said that questions regarding the activities of government—

**Senator HENDERSON:** I think that's an acceptance that there has been abuse—

**CHAIR:** Stop. Let Senator Keneally respond to the point of order.

**Senator KENEALLY:** Thank you, Chair. I refer to your opening remarks where you reflected that the point of Senate estimates is to make inquiries into the activities and operations of agencies, and that is what I am doing.

**CHAIR:** Keep it closely to the activities of the agencies and a little less speculative, please.

**Senator KENEALLY:** I am seeking to understand how the police make a determination, after conducting an assessment, not to go to an investigation—an assessment they had determined is essential. How do they make that determination? Did they weigh up the risks of what others might in future take from their decision not to proceed to an investigation, which is that the risks of being caught are low and carry little consequence compared to the success of carrying off the tactic?

**Senator HENDERSON:** Point of order, Chair.

**CHAIR:** What's the point of order?

**Senator HENDERSON:** My point of order is that the question does not relate to the appropriation matters concerning the Australian Federal Police. Again, I would ask that Senator Keneally be brought back to her role as a senator on this committee within the scope of estimates.

**CHAIR:** Senator Keneally, this is your last question on the matter, so I will let you finish up and then we will share the call.

**Senator KENEALLY:** My question stands. I am waiting for an answer.

**Senator Payne:** It's not a question that goes to the role of the Commissioner of the Australian Federal Police.
Senator KENEALLY: Minister, why can't Minister Taylor just tell the truth on this matter?

CHAIR: That is the last question. That is out of order.

Senator HENDERSON: That is completely out of order and a complete abuse.

Senator KENEALLY: Why doesn't the government want the Australian people to know what happened?

CHAIR: Senator Keneally, you are now two questions over your rather large indulgence of 25 minutes, and you no longer have the call. I am going to ask some follow-up questions before I provide Senator McKim with an opportunity. Commissioner, on 6 February, the AFP cleared Minister Taylor, saying there was no evidence to indicate that he was involved in falsifying information. Is that correct?

Mr Kershaw: Yes.

CHAIR: That was just over a month after the New South Wales Police financial crime squad had referred the matter to the AFP. Is that correct?

Mr Kershaw: Yes. New South Wales referred to the AFP on 20 December.

CHAIR: What was the cost, both financially and in terms of hours worked—the personnel and resources—of undertaking this investigation?

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

CHAIR: The New South Wales police commissioner, Mr Fuller, described the referral as 'a great diverter of my time'. Would you make a similar statement in relation to the impact on the AFP, given that you are dealing with child exploitation, terrorism, major fraud and so on? Is this the kind of matter we should be applying the AFP's resources to?

Mr Kershaw: What is clear is that we are focusing on those crime types that I said in my opening statement—organised crime, counterterrorism, preventing harm in our community, as in physical harm—and that is a priority of ours.

CHAIR: Including this Taylor matter, the shadow Attorney-General has made or overseen 10 referrals of coalition members of parliament to police. Every referral was dropped with no charges laid, and I can't help but think that, if we were talking in the civil courts, Mr Dreyfus would be open to a finding of being a vexatious litigant. What are your beliefs on how many of these matters have been found to be groundless—

Senator KENEALLY: Point of order, Chair.

CHAIR: and is there something we can do to ensure that we are focusing on the matters that are meritorious?

Senator KENEALLY: Point of order, Chair.

CHAIR: Yes.

Senator KENEALLY: In your question, you asked Mr Kershaw what his beliefs were. You are asking him to form an opinion. In your opening statement, you made clear—

CHAIR: I accept your point of order.

Senator KENEALLY: Thank you, Chair.
CHAIR: Is the use of public resources by Mr Dreyfus on 10 occasions to refer groundless complaints appropriate?

Mr Kershaw: Part of the Lawler review addressed this issue of referrals to the AFP, no matter where they come from. What we're looking at with the new environment is to educate and to create that awareness about any value you can add before you refer a matter. It may be that you might obtain proper legal advice—a department or anyone—and actually have it stated out what the elements of the offence are and a whole range things, because often it is not clear to us what the referral is actually pertaining to and what the offences are. Some of these matters are not straightforward. For us to stop wasting our time, it is important to add value to that referral before it comes to us.

CHAIR: Given the high level of responsibility that exists on a legal practitioner to respect the course of justice and not to abuse the channels of justice that exist for the pursuit and prosecution of serious crime, what do you say should be made of the fact that there are 10 complaints in a row from Mr Dreyfus, each and every one of which have been the subject of not a single charge?

Senator KENEALLY: Point of order, Chair. Again, it seems you may be asking the commissioner for an opinion.

CHAIR: No—

Senator KENEALLY: Perhaps you could rephrase that question in a way that doesn't seek to elicit an opinion from the commissioner.

CHAIR: I will make it clear: I don't seek to elicit an opinion; I seek to elicit information about the knowledge the commissioner has of the connection between the course of justice and the higher responsibility of legal practitioners within it.

Mr Kershaw: I think there is an opportunity here to improve the system, and that is what I was saying with the Lawler review. He has gone to the heart of that issue and said—not only outside the secretary's board or the various departments that refer matters to us—that there needs to be greater knowledge and understanding of what matters you can refer to the AFP, what's appropriate and whether or not you can add value before you refer it to the AFP.

CHAIR: Thank you. Senator McKim, you have the call for 10 minutes.

Senator McKIM: Thank you. I wanted to ask a few questions on the same matter that Senator Keneally was raising. Did the AFP even commence an investigation into Mr Taylor?

Mr Kershaw: It is an interesting question. Part of the Lawler review says we are to move away from evaluation or assessment—and I think we have used that quite regularly—to the matter, not the person, that is under investigation. Technically speaking, this goes toward our definition of a sensitive investigation, which this would be. Under the new framework, this would be classified as 'under investigation', but not necessarily that the person is under investigation, if that makes sense.

Senator McKIM: Yes. Thank you. It does. I'll rephrase the question slightly. Did the AFP even commence investigating this matter?

Mr Kershaw: If we took the Lawler review, that is being under investigation—

Senator McKIM: Yes, but—

Mr Kershaw: It speaks for itself.
Senator McKIM: Okay. In your letter to Mr Dreyfus, Mr McCartney, the deputy commissioner, said, 'As a result of inquiries undertaken and information provided by New South Wales police, the AFP, having carefully considered the possible lines of inquiry and investigative action available, has determined it is unlikely further investigation will result in obtaining sufficient evidence.' Does the word 'further' in that refer to the New South Wales police investigation or does it refer to any investigation, even of a preliminary nature, undertaken by the AFP?

Mr Kershaw: It's coming from us, so it's about the AFP.

Senator McKIM: So the AFP did investigate this matter?

Mr Kershaw: As I said, yes, because we are saying now, under the new framework, it's 'under investigation'.

Senator McKIM: Even when you are considering whether or not to investigate?

Mr Kershaw: Yes. I would say there's a timeline to this and what you would be looking at is your resource allocation and whether you have established the offence or not. Then we would follow the evidence and do our usual investigative inquiries. I think it's a good thing that we are actually trying to not say it is under assessment or evaluation; we move straight into 'under investigation'. As I have said previously, we want to move through these matters as expeditiously as possible as, given the fact of their sensitive nature, time frames are critical.

Senator McKIM: Alright. That's understood. Thank you. Did the AFP conclude that further investigation was unlikely to substantiate a Commonwealth offence because there was no Commonwealth offence that fitted the alleged facts, or was it because there was a Commonwealth offence that fitted the alleged facts but the AFP didn't wish to pursue this matter for the reasons you made public?

Mr Kershaw: What we do is look at various Commonwealth acts and other relevant acts such as state acts as well. The team did that and then they put the lens over the top of that and asked, 'Does that fit within that?' We pursue criminality. They ask, 'Does that fit within that framework?' If it doesn't then the common term we use is that we are 'out of work'.

Senator McKIM: Was that the case in this matter?

Mr Kershaw: Yes. They have gone through that process.

Senator McKIM: Yes, but I'm asking about the outcome of that process.

Mr Kershaw: The outcome of that process was that it didn't fit within any criminality aspect to the level that is expected.

Senator McKIM: Did the AFP interview Mr Taylor as part of this investigation?

Mr Kershaw: No.

Senator McKIM: Why not?

Mr Kershaw: Again, it goes back to those decisions made by the sensitive investigations board and those senior officers and the deputy commissioner. There was no need to, in their view, at that stage.

Senator McKIM: Why was there no need to investigate?

Mr Kershaw: It is simply in our letter. We are out of work on that matter. It's finished. It's finalised. If anything, we've probably shared quite a lot about this publicly, more than we
would on any other matters. It is something that I'm trying to encourage our organisation to be more transparent on, and that's what we've been. But I do support those officers and their skill. I think there's probably more than 100 years of experience in that room when they make these kinds of decisions.

Senator McKIM: In regard to what you've said publicly about this, one of the reasons that the AFP has given to not investigate this matter further is on the level of resources required. But it wouldn't take very many resources just to give Mr Taylor a call and ask him if he did it, would it?

Mr Kershaw: I think that is us being honest again. I am responsible, as the accountable officer under a number of acts, to the Australian public, the government and yourselves for making sure that we're spending our money wisely—spending taxpayers' money on pursuing criminals.

Senator McKIM: Yes, but you don't know whether Mr Taylor behaved criminally or not because you didn't complete an investigation.

Mr Kershaw: I think I've been clear. The letter states that there is no criminality on Mr Taylor's behalf.

Senator McKIM: No, it doesn't, actually; it says there's no evidence.

CHAIR: That suggest one isn't a criminal.

Senator McKIM: No, it doesn't.

CHAIR: If there is no evidence you aren't a criminal.

Senator McKIM: I am asking the commissioner. Commissioner, I'll just draw your attention to that letter to Mr Dreyfus from Mr McCartney, the deputy commissioner, on 6 February. It doesn't clear Mr Taylor at all. It says that the AFP has identified there is no evidence to indicate Mr Taylor was involved in falsifying information, yet you didn't even ring him up and ask him if he'd done it. What sort of investigation is that? Isn't that the first thing you would do?

Mr Kershaw: No, we don't operate like that. And I think it's really important that we don't go around asking everyone who perhaps is not involved in the matter, 'Did you do it?'

Senator McKIM: In fact, information was falsified here, Commissioner, was it not? Information was falsified in a letter that Mr Taylor signed. That's a fact, is it not?

Mr Kershaw: On the surface, yes, that's a reasonable suspicion.

Senator McKIM: So, you've got false information in a letter signed personally by Mr Taylor. In what investigative plan would you not simply ring the person who it is alleged has done this and ask them about it? Again, it would take nearly no resources of the AFP—a relatively very small amount of resources—to do that, would it not?

Senator Payne: I'm not sure that the commissioner was going to take your advice on its investigative processes.

Senator McKIM: I'm not offering advice on investigative processes.

Senator Payne: I think you are, actually.

Senator McKIM: I'm asking questions about investigative processes.

Mr Kershaw: Again, it's in the letter. We've acknowledged the apology.
Senator McKIM: I will come to that in a minute—the apology. But I'm specifically asking the basis on which your team, or the board—I'm not clear whether the board was established at the time; actually, perhaps you could answer that—

Mr Kershaw: The team made the decision. We can call it a board. I'm happy with that, even though we've only just accepted the options in principle. But I'm happy with that reference.

Senator McKIM: Did the board sign off on the team not asking Mr Taylor whether he had committed this offence?

Mr Kershaw: They take into account all the material available, and their skills, as I said, and I back them in on this.

Senator McKIM: Did the team, or the board, consider the public interest in making this decision?

Mr Kershaw: I'm sure they did, but I wasn't in the room. The other thing is that there is a fail-safe to all this, and that is commissioner's discretion. That was contained in the law review as well. And if I was not satisfied—I'm probably the last gate, so to speak. I was satisfied that there was no need to go any further as well. And I'm going to keep saying this: I support that board and their decision-making. If anything, they should be congratulated for making such a swift decision and putting it out there in the public.

Senator McKIM: Was the public interest considered or not?

Mr Kershaw: I'm sure it was.

Senator McKIM: You're sure it was. Okay. So, if you're right in stating that the public interest was considered, as part of that consideration did the team, or the board, consider the impact the alleged conduct had on trust in Australian politics in general? I'm sure you'd agree that that is significantly in the public interest.

Mr Kershaw: It's not really something we take into account.

Senator HENDERSON: A point of order, Chair: I would ask Senator McKim to return to the purpose of estimates, please.

Senator McKIM: It is. I'm asking questions about an allocation of resources by the Australian Federal Police.

Senator HENDERSON: I'm not sure that was the case.

CHAIR: I rule that it is in order. But Senator McKim is running out of time, so I will let him use his last minute wisely.

Senator McKIM: Commissioner, you were just saying something, before you were interrupted by that point of order. I was asking about whether, as part of the public interest test—

Mr Kershaw: Part of the process of any investigation into a crime involves us identifying the elements of the offence. It's a basic tenet, and that's the physical and fault elements that are contained in the Criminal Code, the Crimes Act et cetera. That's what the team do, and public interest comes into that as well. But they don't take into account anything else that's not relevant.
Senator McKIM: So, in the view of the AFP the damage that this affair caused to the general trust in Australian politics is not a public interest consideration. Is that right?

Mr Kershaw: Well, in this particular matter—I'd have to check with my officers—I would be highly doubtful that they would have had that in their minds when they reached that decision.

Senator McKIM: Okay. Thanks. I think you've agreed. And I'm not trying to bump your figures up here, Commissioner, but is it fair to say that you've offered to take that on notice?

Mr Kershaw: I think what I would like to say is that the team did consider public interest, and it's as simple as that.

Senator McKIM: I'm happy for you to take this on notice. Could you please provide the elements that the team considered when it considered the public interest. In other words, what kind of public interest matters were considered?

Mr Kershaw: Sure.

Senator PATRICK: This first question relates to a question on notice, SE19004. I asked in relation to metadata warrants and whether or not they had intruded upon or looked into whether or not parliamentarians' metadata had been accessed. Your answer to that was that there is no compliance requirement to record the occupation of the subjects of metadata warrants outside of journalists' information warrants. This question goes to the processes you have in place at this point in time to ensure the conduct of an investigation—and I want to make clear, I'm not referring to an investigation into a parliamentarian for a criminal offence; that clearly is a different category. This relates to accessing a senators' metadata where, for example, a constituent might have made a complaint about something and, of course, knowing that that could be accessed by the police would have a chilling effect on the proceedings of the parliament and the ability for us to do our job. That is the context in which I ask this. Noting the recommendation of the Privileges Committee and their report No. 168, relating to metadata, what procedures do you currently have in place to ensure your officers do not infringe upon the privileges of the parliament in respect of accessing metadata?

Mr Kershaw: I spoke PJCIS about this. In the context of our process, we have a very robust process for making application for that data and, again, it has to meet criminality. So you have to establish that there is an offence and that it's in accordance with the act and then there is a whole process of authorised officers, who are commissioned officers or ones who are appointed by the commissioner. I think in the AFP's context, around 250 officers can authorise that. And if it's to pursue the investigation of a criminal offence then that's the process that we take. We only come to privilege when that's an issue. It's a bit like when we execute a search warrant on legal premises: we don't stop—as in, we only stop when that claim is made and then we go through a process there.

Senator PATRICK: For example, when you raided the offices of the ABC, I note that you had strong regard for privilege. That was reported in the news that you avoided any texts, messages or emails that involved conversations with parliamentarians. In the course of the process to sign off on an order that allows accessing metadata, do you have anything in the procedures that cautions authorising officers to consider aspects of privilege?

Mr Kershaw: I think that's almost the cart before the horse. If, for example, they are looking at a service and they need to obtain the metadata, part of that might be to establish
who is operating that device. Then they would collect that and then make that decision about where they're going to with that. That may come later on, if that makes sense. You can't do it free, necessarily. Again, if it's to establish and eventually secure evidence of a criminal offence being committed, it may not be on the individual that we are getting that metadata from. It may be a whole range of things that the investigation team would be looking at. As soon as that would be identified that there is a parliamentary member involved, of course, the team would start to look at that very carefully and then that, under our new framework, would spin off into a sensitive investigation and go into a different area of the AFP.

Senator PATRICK: That all sounds proper. The process normally is in the execution of a search warrant now. Much of the process is about enabling a parliamentarian to make a claim; they're aware there's a search, they can look at documents and some of them may wish to make a claim of privilege, which initiates another procedure. I will be quite specific: in your documentation that deals with intrusive powers, do you specifically mention privilege or parliamentarians so that it is left unambiguous and the officers can't say, 'I didn't know about that?'

Mr Kershaw: Not within that particular form. However, we do have a protocol for parliamentary privilege embedded in our organisation. We are working through that protocol with the Attorney-General's Department; I think it goes back a number of years. All our officers are aware of that particular guideline/protocol.

Senator PATRICK: I will leave it there. Can I go to Witness J. I note that the Attorney, in an answer provided to the Senate by Minister Payne, said that the AFP was the investigating body in respect of Witness J. I presume you are in agreement with that?

Mr Kershaw: My advice is that that should be directed to the Attorney-General's Department.

Senator PATRICK: This is within your knowledge. You clearly know whether you investigated.

Mr Kershaw: Yes, we did.

Senator PATRICK: Thank you. Can you provide—you might have to take this on notice—the date on which the AFP commenced the investigation and the date on which you passed a brief to the CDPP?

Mr Kershaw: I would have to take that on notice, given the sensitive nature of that.

Senator PATRICK: Sure; no problem. In November 2019 it was reported that the AFP had executed a search warrant in February 2019 on the Melbourne home of Mr Johns's, or Witness J's, brother, seizing all copies of memoirs that Mr Johns had written in prison and emailed to his brother. Which federal agency referred that matter to the police?

Mr Kershaw: I'm not sure. Because that's an ongoing matter, I will have to take that on notice.

Senator PATRICK: So the matter is ongoing? There is a brief that has gone to the CDPP?
Mr Kershaw: I will take that on notice.

Senator PATRICK: I will read out a few questions that you can take on notice; I understand it is an ongoing investigation. What alleged offence was involved in this further matter that basically caused the warrant to be executed on Mr Johns's brother's property? What offences were specified in the search warrant? On what date was the search warrant executed? And did a search also take place of Mr Johns's cell at Alexander Maconochie Centre, and was that search conducted by warrant or by other means, noting it is a prison establishment?

Senator Payne: I'm sorry, are you reading or using material from a media item?

Senator PATRICK: It was reported in the media that—

Senator Payne: So these are media assertions—

Senator PATRICK: Yes.

Senator Payne: not matters officially released in relation to an investigation?

Senator PATRICK: No.

CHAIR: If you are referring to a media article, it would be preferable for you to provide a copy of that to the witnesses.

Senator PATRICK: Sure. I can come back and provide that.

CHAIR: I will accommodate that on this occasion, but please come with it in future.

Senator PATRICK: Okay. I don't have to refer to it. The AFP might, in its own knowledge, understand that a search warrant was executed on the house of Mr Johns's brother. I put that to you as a question.

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

Senator PATRICK: In terms of that particular investigation, has the matter been referred to the CDPP and, if so, on what date?

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

Senator PATRICK: Thank you.

Senator FIERRAVANTI-WELLS: Chair, can I ask one question on Senator Patrick's—

CHAIR: If it's a brief follow-up on the same topic.

Senator FIERRAVANTI-WELLS: Thank you. Commissioner, in answer to Senator Patrick's question, you indicated that an investigation where it comes to your knowledge that a parliamentarian is involved would go off into a special area. I would assume that the original investigation in relation to whatever that offence is would continue, but under the umbrella of a much more sensitive involvement?

Mr Kershaw: It may or may not. Can I explain it this way: if we splice it off, can it rest over in that area or does the whole thing need to go across? That is the decision-making point for the team in allocating it: whether or not it needs to go wholly across.

Senator FIERRAVANTI-WELLS: Thank you.

Senator KENEALLY: Can I return to the assessment of the Taylor matter and go to the point you raised in my first question, where you referred to the letter which I have now tabled from Deputy Commissioner McCartney. Regarding the second paragraph, 'The AFP, having
carefully considered the possible lines of inquiry and investigative action available, has determined it is unlikely further investigation will result in obtaining sufficient evidence to substantiate a Commonwealth offence, can I ask: either through the AFP's own inquiries or from the brief of evidence provided by the New South Wales police, did the AFP obtain access to the metadata logs from the City of Sydney's annual report of 2017-18, both Word and PDF versions, from the City of Sydney?

Mr Kershaw: I am not aware. To clarify that, I would have to take it on notice.

Senator KENEALLY: That seems like something that could be answered by your agency within the next half hour. So, if I ask, maybe we can avoid taking it on notice and seek to get an answer here.

Mr Kershaw: Yes.

Senator KENEALLY: Commissioner, I have seen these metadata logs and they show that the city's annual report, both in Word and PDF form, was uploaded on 27 November 2018 and not updated after that date. I would be keen to know if the AFP was aware of those metadata logs. Are you aware that the National Library's Trove archives website shows that, in April 2019, the same version of both the PDF and Word versions of the annual report was online as it is today?

Mr Kershaw: Personally, no.

Senator KENEALLY: Can we find out if the AFP is aware of that?

Mr Kershaw: Yes. I will take that on notice.

Senator KENEALLY: Can the AFP point to any evidence it collected either through its own inquiries or from the New South Wales police that supports Minister Taylor's statement that a draft version of the City of Sydney's annual report in Word or PDF format using the 1.7 and 14.2 figures ever existed on the City of Sydney's website?

CHAIR: Senator Keneally, I gave you 25 minutes the first time around on the basis that you would conclude this topic and move on to the next of your topics.

Senator KENEALLY: This is the next of my topics.

CHAIR: It seems as though you're back to the same old issue.

Senator KENEALLY: With respect, this is a different area on this topic. Earlier the commissioner referred to the sentence that I just read out, and I indicated then that I would come back to this. When I said I had concluded, I had concluded my questions around the ongoing low level of harm. I did indicate that I would have questions on this.

CHAIR: Senator Keneally, this is of course your opportunity, so I can't stop you from asking questions, though it does burn some goodwill if one doesn't stick to the undertaking to have moved on. I think saying that this is a different aspect of the same topic is a little disingenuous. It means that, for future timeslots, I will be keeping you strictly to 10 minutes and sharing the call around, since accommodations don't seem to assist. I will allow you to continue on, with a minute extra to reflect the fact I have interrupted you.

Senator KENEALLY: Thank you. I again record that, at the very beginning of this hearing, I indicated I would go to this topic. Did you find any evidence that the draft version that Minister Taylor asserts had the 1.7 and 14.2 figures ever existed on the City of Sydney website?
Mr Kershaw: I'll take that on notice.

Senator KENEALLY: Again, I note that's the kind of thing which I think could be answered within the hour, and I would seek to have the AFP provide that answer. Did the AFP form a view that the documents Minister Taylor or his office provided to The Daily Telegraph were a forgery?

Mr Kershaw: Again, I'm going to take that on notice.

Senator KENEALLY: You're not able to answer that after the assessment that was conducted?

Mr Kershaw: I think I need to take it on notice.

Senator KENEALLY: Okay. Through the AFP's own inquiries, or from the New South Wales police, did the AFP obtain copies of emails between The Daily Telegraph and the City of Sydney on 29 and 30 September relating to this matter?

Mr Kershaw: I'm not sure, so I'll take that on notice.

Senator KENEALLY: Again, I think that's something which could be answered by the agency—

Senator HENDERSON: A point of order, Chair. I would just ask Senator Keneally not to reflect on the commissioner in relation to decisions that he makes to take certain questions on notice.

Senator KENEALLY: It's a request, thank you, not a reflection.

CHAIR: I rule, not you—

Senator KENEALLY: I'm responding to a submission; it's a request not a reflection—

CHAIR: Okay. I think the commissioner is formidable enough to correct the record if he finds a reflection to be unreasonable.

Senator KENEALLY: Thank you, Chair. I've seen emails between The Daily Telegraph and the City of Sydney that state, 'Taylor's office printed a copy of your annual report out on September 6.' I refer to a statement provided by Minister Taylor on this matter, where he confirmed that his office accessed the City of Sydney website on September 9, and I table that statement here. Either through the AFP's own inquiries or from the New South Wales police, did the AFP resolve the conflicting claims from Minister Taylor's office as to whether the document was accessed on 6 or 9 September?

Mr Kershaw: Again, I'll take that on notice.

Senator KENEALLY: Again, I would make the same request, if possible, that we could have that answered before you conclude your evidence today, thank you.

Mr Kershaw: Sure.

Senator KENEALLY: Either through the AFP's own inquiries or from the New South Wales police, is the AFP aware of Google analytics from the City of Sydney website that show how many people downloaded the annual report for 2017-18 in both PDF and Word formats for the dates of 6, 7, 8 and 9 September, 2019?

Mr Kershaw: I'm not aware of that; I'll have to take that on notice.
Senator KENEALLY: I've seen the City of Sydney Google analytics. They show that the downloads for September 6 were two, for September 7 were zero, for September 8 were one and for September 9 were 10. Are you saying that you're not aware if the AFP had that information?

Mr Kershaw: Yes, I'm going to take it on notice.

Senator KENEALLY: Thank you. So on the four most relevant days, according to Minister Taylor's office, between the 6th and the 9th, when he may have downloaded or accessed this, there was a total of 13 downloads. Did the AFP determine the IP addresses or identities of those 13 downloads?

Mr Kershaw: Again, I'll take that on notice.

Senator KENEALLY: Either through the AFP's own inquiries or from the New South Wales police, is the AFP aware of how the City of Sydney configures its Google analytics—that is, is it the only way to determine if a download of the 2017-18 annual report from the website occurred?

Mr Kershaw: I'll take that on notice.

Senator KENEALLY: I'm advised that the City of Sydney's Google analytics and configuration only tracks downloads when the user clicks the download link. If the direct URL to the PDF or Word file were typed into a browser address bar, or shared via email or messenger, Google analytics would not capture that download in its report. So, either through your own inquiries or from the New South Wales police, did you determine if Minister Taylor or any member of Minister Taylor's office visited the direct URL to the PDF or Word version of the report and shared it via email or messenger?

Mr Kershaw: I'm not aware of that. I'll take it on notice.

Senator KENEALLY: Senator Keneally, you've provided to the secretariat a copy of a document that you seek to rely upon and table. The first page of it: is that something you've prepared or—

Senator KENEALLY: No, that is actually what Minister Taylor's office released. It can be downloaded from various places and it's been reported in several media reports. But that is what was released by Minister Taylor's office in that format. He did not put any heading on it.

CHAIR: Thank you.

Senator KENEALLY: Thank you for the opportunity to clarify that, as well, Chair. Did the AFP interview journalists from The Daily Telegraph?

Mr Kershaw: Again, I'll take that on notice.

Senator KENEALLY: Do you know if the New South Wales police did, and if they forwarded those interviews on to the AFP?

Mr Kershaw: I am not aware. I will take that on notice.

CHAIR: You have one minute remaining, Senator Keneally.

Senator KENEALLY: Did the AFP interview council staff at the City of Sydney?

Mr Kershaw: Again, I'll take that on notice.
Senator KENEALLY: Do you know if the New South Wales police did, and if they forwarded that on to the AFP?

Mr Kershaw: I am not aware. I'll take that a notice.

Senator KENEALLY: Did the AFP interview the lord mayor's staff at the City of Sydney?

Mr Kershaw: I am not aware. I'll have to take that on notice.

Senator KENEALLY: With all of these I would also ask if you would take on notice whether the New South Wales police did and if they forwarded those interviews on to the AFP. Did the AFP interview environment department staff?

Mr Kershaw: I'm not aware. I'll take that on notice.

Senator KENEALLY: Did the AFP interview Minister Taylor's staff?

Mr Kershaw: I will take that on notice.

CHAIR: Senator Keneally, your time is up. How much more do you have?

Senator KENEALLY: I have just a few more questions.

CHAIR: It looks like you've got another page and a half.

Senator KENEALLY: No, not on this matter. Specifically, did the AFP interview Mr Josh Manuatu.

Mr Kershaw: I'm not aware. I'll take that on notice.

Senator KENEALLY: Can we ask if the New South Wales police did and if they forwarded those interviews on? So, just to be clear, I would like to know if the AFP interviewed council staff at the City of Sydney, the lord mayor's staff at the City of Sydney—for Lord Mayor Clover Moore, you've already said no—environment department staff, and Minister Taylor's staff, specifically Mr Josh Manuatu. And you have already said that you did not interview Minister Taylor. For all of those questions, could you confirm if the New South Wales police conducted any of those interviews and provided that in a brief of evidence to the AFP with their referral.

Senator CHANDLER: Last year the government passed the combatting child sexual exploitation bill, which, as I'm sure you are aware, included a raft of measures designed to keep young Australians safe. I'm sure that we can all agree it is a fundamentally important focus of this government. Could you please give an update to the committee on how this legislation has been used?

Mr Kershaw: Besides our establishment of the Australian Centre to Counter Child Exploitation, which is up and running, the AFP between the 2018-19 financial year arrested 74 persons—this is for child exploitation matters—laid 372 charges, removed 26 children from harm domestically, 46 internationally, and identified 38 new victims that were unknown to law enforcement. Just up until 31 December 2019, 53 have been arrested, 507 charges have been laid—you have seen the increase there—23 children have been removed from harm here in Australia, and another 23 internationally, with a total of 46, and 27 new victims were identified who were unknown previously to law enforcement. We also have our joint agency child exploitation teams across the country. To the financial year 2019, 357 matters were referred and we've had the non-approval of travel of child sex offenders. In relation to
possessing a child sex like doll, on 14 January 2019 the AFP arrested and charged a male in South Australia. That is the first time the AFP has charged a person with this offence. This matter is currently before the court. Our investment within the ACCCE is continuing. In relation to possessing or controlling child abuse material obtained or accessing using a carriage service, as at 31 December 2019 the AFP commenced proceedings against 11 persons. It continues to be, unfortunately, an extremely increasing crime type for our country and for the globe. I was pretty outspoken at the National Press Club in my views about the seriousness of how, if we don't get a grip on the amount of abhorrent material across the internet, the grooming that continues and the vulnerabilities of our children, it will tear down the fabric of our society. On that note I would say that we also are involved in ThinkUKnow, which is a campaign around parents in particular. In 2018-19 we delivered 732 presentations to 16,000 parents, carers and teachers. So far, 2,814 presentations have been made to approximately 222,594 students across Australia by the AFP and state and territory police.

Senator CHANDLER: To clarify, you're saying there is a direct relationship between the increase in the number of charges you have been able to lay against those individuals and the passage of the Combatting Child Sexual Exploitation Legislation Amendment Bill.

Mr Kershaw: Yes.

Senator CHANDLER: Fabulous. You mentioned the Australian Centre to Counter Child Exploitation. How has the establishment of this organisation helped to fight these crimes we are talking about?

Mr Kershaw: We thank our minister and the government for the initiative. I can say very proudly that it is being viewed across the globe as probably one of the most innovative centres to be set up. We have learned from and listened to our partner agencies. It is having a combination of not just police but support staff. Even NGOs, other organisations and state police will be embedded into that centre. As we speak we are building it extremely quickly and we will get to our full numbers in a short period of time. By June 2020 we will be at full complement in the ACCCE, based out of Brisbane. It is an innovative centre. There is some work for which we have been recognised across the globe as very innovative in relation to child victim identification. The centre has some technology that, again, is world-class. We still have a challenge in identifying these offenders and that continues in regard to encryption and anonymity on the internet.

Senator CHANDLER: You mentioned that the issue of child sexual exploitation is an ongoing concern. Would you care to elaborate on that comment somewhat and explain to the committee why it's a concern both within Australia and internationally as well.

Mr Kershaw: I think the best way to explain that is a case example from 18 months ago that was ongoing for a long period of time, where an Australian was actually hosting a site in South Australia and 45,000 users were logged into that particular site. To get to the different levels within that site you had to share material. Often it was images and videos of real rape and torture of children. The team were able to identify that server from some very good police work. Sadly, though, whilst taking that site down was a very good result for us and over 200 arrests were made internationally, 44,800 people got away. This is the context of how serious it is as far as being able to combat it on a global scale. If we were ever to give you an in-house briefing on the level of what's occurring, you'll find it's beyond disturbing; it is quite shocking.
Senator CHANDLER: Do you have any concerns about the release of child sex offenders from prison once they have served their sentence and the impact this will have on the AFP?

Mr Kershaw: Yes, and we have a very good system around the register. We fully support that register and how that works, and, through the department and the minister, the very good work in preventing overseas travel by Australians who are registered sex offenders and who are taking advantage, unfortunately, of vulnerabilities in those communities in some of the regions. That is something we do support. My view too is that we are looking at deeper research on if these people can be fully rehabilitated. I think, if you asked our frontline officers, and I do, they'd probably say that their view is that they are not able to be, so it's a matter of time before they reoffend. We do see a lot of reoffending occurring.

Senator CHANDLER: That's a very troubling reflection from your frontline staff if you think there is a significant risk that these people, once they are released into the community, will reoffend.

Mr Kershaw: This is historical from the US: a US report highlighted that in their estimate between 70 and 80 per cent will reoffend.

Senator CHANDLER: That is a very sobering statistic. On the topic of reoffending, do you have any concerns about the release of terrorists back into the community after they've served their sentences? I know we have seen media reports in recent weeks about a number of convicted terrorists who's sentences, by virtue of coincidence, are all about to complete within the next year or so. Is the AFP concerned about these terrorists being rereleased into the community?

Mr Kershaw: We are, because we're focused on, obviously, preventing and disrupting and also making sure our community is safe. We do have a number of strategies in place. I think what's noted here is that, as at 25 February 2020, eligible for the high risk terrorist offenders scheme, there were 54. We have pending consideration for continued detention in 2020, seven. Then, between 2021 and 2060, 47. I do want to reassure the committee though, that we are committed to public safety as our number one priority. We are looking at all of those, in particular, for different options within the legislation, whether it be continuing detention orders or control orders. I note that 11 offenders were identified as eligible for release in 2020. Two have been released and are subject to control orders. One is subject to another less restricted measure. Of the eight to be considered for release, seven are eligible under the high risk terrorist offenders scheme. There is that particular concern.

On another note, since 2001 84 people have been convicted of terrorism related offences and 55 are currently serving custodial sentences, so those others would be out in our community. We work with various departments and agencies to make sure that our intelligence agencies are across all of those matters and we've been very successful in preventing attacks in this country. Just to give you a number—which I do have here—we have been able to undertake, as at the 14 January, 17 disruptions and 102 POIs, persons of interest, have been charged since our level was raised to 'probable' on the 12 September 2014, and convicted POIs—sorry, police terminology—persons of interest, is 83. We have a number of arrest warrants out for foreign fighters as well.

Senator CHANDLER: Thank you, Commissioner.
CHAIR: We are one minute from the morning tea break. Before we briefly adjourn, Senator McKim, I believe you have more questions. Is it 10 minutes worth?

Senator McKIM: It's probably the best part of 10 minutes.

CHAIR: Senator Keneally, do you expect you have 10 minutes worth or more than that?

Senator KENEALLY: Depending on the answers.

CHAIR: Let me frame it another way: is there more than one topic you wish to canvass?

Senator KENEALLY: No. For the commissioner's information and for the ease of the chair, I wish to continue on the line of questioning that I am on.

CHAIR: Senator Fierravanti-Wells has one question.

Senator FIERRAVANTI-WELLS: One question. Commissioner, I note your comments recently, particularly about paedophiles being hardwired. I think your comments were very, very accurate there. It's clear that the current sentences are not in keeping with community expectations. My question is: has the time come for more, higher mandatory minimum sentences for paedophiles?

Senator McKIM: A point of order, Chair.

CHAIR: Yes.

Senator McKIM: That's clearly outside the scope of estimates. Firstly, the commissioner is not a judge. Secondly, sentencing and mandatory sentencing are not matters legitimately within the purview of the AFP.

Senator KENEALLY: I could add to that point of order, Chair. While I understand and appreciate the question that Senator Fierravanti-Wells is asking, it does also seem to seek the commissioner's opinion on that matter.

Senator McKIM: Yes.

CHAIR: I'll accept the point of order at this point in time. We'll take the morning tea break. That'll give Senator Fierravanti-Wells a moment or two to think about whether there's another way she'd like to approach the question. When we resume we will—

Senator FIERRAVANTI-WELLS: I'll leave it at that. I made the point.

CHAIR: Thank you, Senator Fierravanti-Wells. When we resume, I will go first to Senator McKim, and I understand Senator Lambie has some questions.

Senator LAMBIE: Yes, thank you.

CHAIR: How many minutes' worth do you think you've got?

Senator LAMBIE: Probably about 10 minutes. Once again, it depends on how they answer them.

CHAIR: We will adjourn and continue with the AFP when we resume.

Proceedings suspended from 10:31 to 10:49

CHAIR: The Legal and Constitutional Affairs Legislation Committee will now resume its questioning of the Australian Federal Police. Senator McKim has the call.

Senator McKIM: Commissioner, I want to take you back for a couple of more questions on the matter we were discussing earlier, regarding the investigation into the provision of
false information in a letter signed by Minister Taylor. Could I ask whether the AFP undertook any lines of inquiry at all in this investigation.

**Mr Kershaw:** We always do undertake lines of inquiry, but I think what's important here is that I've answered as much as I can. I think it's appropriate with the letter that was provided and the process that was undertaken. My view would be that I'm not going to disclose every part of that investigation. I myself was not intricately involved.

**Senator McKIM:** I do appreciate that, and you have made that clear. It's just that the letter says that the AFP 'carefully considered the possible lines of inquiry and investigative action available' and then determined not to proceed.

**Mr Kershaw:** Yes.

**Senator McKIM:** So isn't it a reasonable conclusion to draw that in fact there was no investigative action taken and no lines of inquiry undertaken?

**Mr Kershaw:** Well, investigative action was taken.

**Senator McKIM:** What was that?

**Mr Kershaw:** That was not to continue.

**CHAIR:** Isn't that the conclusion rather than the investigative action itself?

**Senator McKIM:** Yes. Deciding not to do an investigation is not an investigation, is it?

**Mr Kershaw:** I've said this before: we're happy to say the matter was under investigation, and then the decision was made not to pursue or continue with that matter. That brought it to a close.

**Senator McKIM:** As part of that investigation—

**Senator KENEALLY:** Senator McKim, can I just interrupt and ask if the commissioner can clarify if it was an investigation or an assessment?

**Senator McKIM:** No, it was an investigation. We dealt with this earlier. They're calling it an investigation now.

**Senator KENEALLY:** Oh, now it is. Thank you.

**Senator McKIM:** Yes, post the review, as I understand it, Commissioner. I'll allow you to answer that yourself.

**Mr Kershaw:** Correct. We're trying to abide by the spirit and the options that were put into that review. I congratulate my team for taking that on board. This, I believe, will be a better system for the AFP and more transparent, as I've previously said.

**Senator McKIM:** Thank you. I genuinely believe these are legitimate questions, Commissioner. You're saying, under your new language post the review, that you undertook an investigation, but on the face of it this letter makes it clear that in fact that investigation did not undertake any lines of inquiry or undertake any investigative action. Is that correct? You've said in the letter:

As a result of inquiries undertaken and information provided by NSW Police Force, the AFP having carefully considered—

**Mr Kershaw:** It's getting—

**Senator McKIM:** Hang on. I'll just finish, Commissioner:
… the AFP having carefully considered the possible lines of inquiry and investigative action available, has determined—

that they were going to do nothing further. So isn't it the case that in fact the AFP has not undertaken any investigative action or undertaken any lines of inquiry?

Mr Kershaw: I think the letter speaks for itself.

Senator McKIM: Yes, it does, and that's what it says.

Senator Payne: Senator McKim, I'm sorry. The commissioner has tried to be helpful to senators, as you would expect.

Senator McKIM: Well, that's your interpretation.

Senator Payne: I'm sorry, Senator. If you would like to make another interpretation, please do. But the commissioner has provided the letter to the committee.

Senator McKIM: It was provided by Senator Keneally, in fact.

Senator Payne: I'm sorry. That's correct: the letter has been provided by Senator Keneally. It was, of course, sent to Mr Dreyfus. It sets out what the AFP have done, in paragraph 2; the determination that they formed, in paragraph 3; and reasoning, to the extent that they're able to provide it, in paragraph 4. So, Senator, your suggestion that it provides nothing is, I think, unfair to the Commissioner and the AFP.

Senator McKIM: In fact that wasn't my suggestion, Minister.

Senator Payne: It was, broadly speaking, Senator.

Senator McKIM: I can read the letter as well as you can. I'm actually inquiring into aspects of this letter to try and ascertain further detail. That's what I'm doing. Commissioner, when the AFP says in that letter, 'There is no evidence to indicate Minister Taylor was involved in falsifying information,' how does that statement sit with the fact that Minister Taylor actually signed a letter containing false information?

Mr Kershaw: Again, that's a decision that the board and the deputy have ultimately made, and I support that.

Senator McKIM: But that determination was made without even ringing Mr Taylor and asking him if he'd done it.

CHAIR: I think we've established that that's not the standard operating procedure.

Senator McKIM: This is Alice in Wonderland stuff here, and I can't help but think there's a protection racket being run on Mr Taylor's behalf here.

Senator Payne: Senator, if you're impugning the Australian Federal Police then I suggest you think very carefully about that.

Senator McKIM: I have thought very carefully, and I stand by my comments.

Senator Payne: I'd suggest that that is not the behaviour or approach I would expect from responsible members of the Senate.

CHAIR: Parliamentary privilege should be used with great care, and I would encourage Senator McKim to exercise that.

Senator Henderson: Can I also raise a point of order, please, Chair? That comment was completely out of order, and I would ask Senator McKim to withdraw it, please.
CHAIR: Senator McKim, you are encouraged to withdraw that—

Senator HENDERSON: Sorry, it's outrageous, and I just clarify—

Senator McKIM: What's outrageous is a failure to properly investigate this—

CHAIR: Senator McKim! Sarah Henderson! One person at a time. Senator Henderson?

Senator HENDERSON: Thank you very much, Chair. It's an outrageous statement, to suggest that the Australian Federal Police is in any respect running a protection racket. It is an appalling reflection on the Australian Federal Police and I would ask that Senator McKim withdraw it.

CHAIR: Indeed, one without evidence, but—

Senator McKIM: On the point of order, if I might: I'd encourage her to look at the Hansard of what I actually said, because in fact Senator Henderson has misrepresented what I said.

Senator HENDERSON: That is not the case.

CHAIR: Do you care to clarify what you said in a way that doesn't miss the mark?

Senator McKIM: No, I'd actually prefer not to waste the committee's time and move on, because I don't think that's a reasonable point of order—

CHAIR: Do you care to withdraw your reflection on—

Senator McKIM: I did not reflect on the AFP. If you review the Hansard, that will become clear.

CHAIR: Let's take that as a clarification that it was not Senator McKim's intention to reflect adversely on the AFP. Senator McKim, you have the call, with my encouragement to use the privilege of this opportunity with care.

Senator McKIM: Yes. Commissioner, as the result of your investigation, when the AFP says that there is no evidence to indicate Minister Taylor was involved in falsifying information, could you say the same about anyone working in Minister Taylor's office?

Mr Kershaw: Again, I have not been intricately involved in this matter. These were decisions made by the sensitive investigations board. I support their view and I'll stand by that view.

Senator McKIM: I think it's a—

Mr Kershaw: It's purely speculative, and we can just keep going down different rabbit burrows. I can guarantee you this: we act impartially and objectively when it comes to enforcing the law and upholding the law in this country, and I stand by the officers who made this decision.

Senator McKIM: Well, there are still significant unanswered questions in regard to the AFP's decision not to further investigate this matter. I want to take you to the investigation that the AFP did into a matter concerning Minister Hunt and the alleged hacking of his Twitter account. In the CCPM log of that matter, the AFP has determined the impact to client as 'critical', and yet in the CCPM log relating to the Minister Taylor matter, the impact to client allocated by the AFP was 'significant'. On what basis does the AFP think that an alleged one-tweet hack of a minister's Twitter account is more critical to client than the falsifying of information in a letter signed by a minister of the Crown?
Mr Kershaw: I don't have that brief in front of me, so I'd have to take that on notice.

Senator McKIM: Okay.

Mr Kershaw: Again, this is comparing apples and oranges. I can put two investigations alongside each other and come up with different outcomes every single time. It's actually not helpful to compare. If you ask any detective in this country, every investigation is unique in its own right. When you compare one investigation with another, it's actually not helpful in trying to understand what's occurred. You're better off focusing on that one particular investigation and what the outcome was—

Senator McKIM: Alright. I've tried to do that and, with respect, Commissioner, I haven't received answers that I believe are helpful to this committee while I've been doing that. So—

Mr Kershaw: I try my best, Senator, and—

Senator McKIM: Alright. You've taken that on notice. Can I also ask you, as a corollary, to take this on notice about the same two CCPM logs? The value to the AFP of the Minister Hunt matter was 'high' and the value to the AFP of the Minister Taylor matter was 'medium'. If you could just explain the discrepancy there, I would be very happy for you to take that on notice.

I would like to move to a different matter: has the AFP received any complaints regarding the government tender process to privatise Australia's visa-processing system?

Mr Kershaw: I'm not aware of any, but I'd have to clarify that and come back to you on notice.

Senator McKIM: Thank you.

Senator KENEALLY: I refer to an FOI lodged by Mr Mark Butler, which I now table, to the department of the environment. For ease of summary, I also table a media report on this matter from The Guardian Australia. In short—and, Commissioner, it will aid you in answering my question to understand this context—the FOI sought information for documents that reference the city of Sydney 2017-18 travel costs and reported claims the minister made about them. The department blocked access to two emails sent at 8.52 am on 25 October and a second email chain at 3.23 pm the same day. Either through the AFP's own inquiries or from the New South Wales police inquiries, did the AFP see these emails?

Mr Kershaw: Again, in relation to those matters, that is a very difficult question to actually answer in the sense that I don't know if you could be more specific about 'see those emails'. Do you mean did we access them or did we use a search warrant to access them? That may be a better way of framing it.

Senator KENEALLY: I am asking you if you read them. That is the plain English language meaning of what I'm asking. Is the AFP aware of the content of those emails that were blocked by the department of the environment?

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

Senator KENEALLY: Thank you. I refer to an FOI lodged by The Sydney Morning Herald and The Age seeking information from Minister Taylor's office for information relating to the City of Sydney's travel expenditure bill. In full and for ease of summary, I table a media report from The Sydney Morning Herald by Nick Bonyhady and David Crowe on 21 January stating that the minister's office refused to release one document consisting of
messages between the minister's office and an external third party because it contained sensitive business information'. Either through the AFP's own inquiries or from the New South Wales police, did the AFP gain access to those messages?

Mr Kershaw: Again, I am going to have to take that on notice.

Senator KENEALLY: Also, either from the AFP's own inquiries or from the New South Wales police, did the AFP establish the identity of that third party?

Mr Kershaw: I'll take that on notice.

Senator KENEALLY: In Deputy Commissioner McCartney's letter to Mr Dreyfus, which was tabled earlier, it stated that the AFP determined it is 'unlikely further investigation will result in obtaining sufficient evidence to substantiate a Commonwealth offence'. However, Mr Dreyfus's referral did not mention a Commonwealth offence. He made references to offences under the New South Wales Crimes Act. Did your assessment determine whether the alleged conduct of Mr Taylor or his office could constitute an offence under the New South Wales Crimes Act?

Mr Kershaw: I think that's better answered by the New South Wales police, who referred the matter to us after, in my view, no offence was identified by the New South Wales police.

Senator KENEALLY: Why did the New South Wales police refer to this matter to the AFP rather than request assistance from the AFP?

Mr Kershaw: That is a matter for the New South Wales police.

Senator KENEALLY: Did they not advise you why they were referring the matter to you?

Mr Kershaw: No.

Senator KENEALLY: It is my understanding that requesting assistance from the AFP would be the most logical way for the New South Wales police to address any jurisdictional issues—for example, when an offence under the Crimes Act occurs outside of New South Wales. You are not able to provide any advice to the committee as to why the New South Wales police referred this matter to you?

Mr Kershaw: I think that's a matter for the New South Wales police to explain. It wouldn't be right of me to answer a question on their behalf.

Senator KENEALLY: Commissioner, are you able to provide the committee on notice any letter or other written material provided by the New South Wales police that goes to the heart of this question of why they made the referral to the AFP?

Mr Kershaw: Yes, I can perhaps obtain the referral letter from the New South Wales police. I haven't seen it.

Senator KENEALLY: You haven't seen a copy of the referral letter?

Mr Kershaw: No.

Senator KENEALLY: Is there anyone here today who is able to answer the question?

Mr Kershaw: As far as if there is a referral letter? Normally how it works is they would say, 'Here is this particular matter, here is the allegation and here is what we have done and it's over to you; there may be Commonwealth offences.' That would be a normal referral letter, but I have not seen that letter.
Senator KENEALLY: It would be useful, in terms of the public’s right to know, if that letter could be provided to the committee. So I request that that letter in whatever form it came in—and email or whatever form of written referral they made—be provided.

Mr Kershaw: Sure.

Senator KENEALLY: In Assistant Commissioner McCartney’s letter to Mr Dreyfus, it states that the assessment undertaken by the AFP has identified there is no evidence to indicate Minister Taylor was involved in falsifying information. Commissioner, do you know who downloaded the document Minister Taylor relied on to cite incorrect travel costs in the City of Sydney’s annual report?

Mr Kershaw: I personally don’t know, no.

Senator KENEALLY: Did the AFP reach a conclusion?

Mr Kershaw: Again, I think we’ve been very clear on our process, on the letter and on the decision that has been made. I’ll just go again that, going down these lines, we could probably be here all day asking all these questions, and you’re going to get probably the same answer from me, which is: I’ll have to take that on notice.

Senator KENEALLY: Do you know if the document was doctored or altered?

Mr Kershaw: Again, I’ll have to take that on notice.

Senator KENEALLY: Do you know who altered or doctored the document?

Mr Kershaw: I’ll take that on notice.

Senator KENEALLY: Commissioner, with respect, you’ve been unable to confirm a number of aspects of the assessment—or the investigation, as it’s now called—today.

CHAIR: He has taken them on notice.

Senator KENEALLY: I just said he has been unable to confirm; thank you, Chair. And I take it, from my earlier requests for confirmation within today’s hearing, you’re not able to follow those up right now?

Mr Kershaw: That’s correct.

Senator KENEALLY: Okay. So, if I can just confirm that today we’ve learned that the police did not interview Mr Taylor and did not interview the Lord Mayor, Clover Moore. We have not had any confirmation as yet—

Senator HENDERSON: Point of order, Chair.

Senator KENEALLY: No, I am coming to a question; thank you.

CHAIR: Let’s get there swiftly.

Senator KENEALLY: Thank you; I appreciate that, Chair—and there are a number of matters that remain outstanding that the police are unable to answer today, including around the lines of inquiry. So, with respect, given your evidence here today, would you consider, given that you now have the sensitive investigations oversight board in place and the benefit of Mr Lawler’s recommendation—

CHAIR: Come on, Senator Keneally, is there a question?

Senator KENEALLY: I will repeat my question, since I was interrupted. Given that you now have the benefit of Mr Lawler’s advice and the sensitive investigations oversight board
and there are many unanswered questions, will you consider and would you commit to reopening the investigation into Mr Taylor?

Senator HENDERSON: Point of order, please, Chair.

CHAIR: What's the point of order?

Senator HENDERSON: Chair, Senator Keneally has again reflected on the commissioner by making reference to the fact that questions are not answered. The questions that the commissioner has not been able to answer have been taken on notice, and I ask that Senator Keneally does not continue to reflect on the AFP in this way.

CHAIR: I think the commissioner is robust enough to be able to handle the characterisation, albeit it puts a complexion on the evidence that might not be one all have taken away. I think the commissioner should answer the question.

Mr Kershaw: Thank you. The matter is finalised.

CHAIR: Thank you, Commissioner. That is time for you, Senator Kenally.

Senator LAMBIE: Minister, is it correct that the AFP was forced to find a $30 million efficiency dividend in 2017-18?

Senator Payne: I'm sorry, Senator?

Senator LAMBIE: Is it correct that the AFP was forced to find a $39 million efficiency dividend in 2017-18?

Senator Payne: I would defer to the commissioner, but I might ask Mr Box, as the acting COO, to respond to that.

Mr Box: The efficiency dividend for the Australian Federal Police for 2019-20—I think that was your question.

Senator LAMBIE: No. Was there an efficiency dividend in 2017-18?

Mr Box: I actually haven't got the efficiency dividend for 2017-18. I've got 2018-19.

Senator LAMBIE: Okay. If you could—

Mr Box: We could take that on notice and confirm it for you.

Senator LAMBIE: Yes, that would be wonderful. Do you know if there's an efficiency dividend for 2019-20?

Mr Box: Yes, there was.

Senator LAMBIE: How much is that?

Mr Box: The efficiency dividend for 2019-20 is $30.2 million.

Senator LAMBIE: Where are you finding those efficiencies? Basically, what's been cut? That's a lot of money. Could you give me some sort of outline as to where those—

Mr Box: Yes. AFP are subject to an efficiency dividend, like all entities within government, and we do look to find efficiencies. We're looking within ourselves and we look at things within the portfolio as well. We're looking at how we can do things across the portfolio and find efficiencies there. There are a range of things which we're looking at doing—the way we do our fleet, the way we're procuring our uniforms. There are a whole range of activities across the whole organisation where we'll look to find efficiencies. Ultimately, our aim is to support the front line—as the Commissioner said, reduce red tape—
and make decisions quicker. So we're looking at the way we administer ourselves so that we support the front line.

**Senator LAMBIE:** Did you have to have an efficiency dividend in 2018-19?

**Mr Box:** The efficiency dividend was applied to us, like all departments and agencies, in 2018-19.

**Senator LAMBIE:** How much was that?

**Mr Box:** That was $22.2 million.

**Senator LAMBIE:** So we've had $22 million, $30.2 million, and my figure is $39 million. So, in a matter of three or four years, you've had an $80 million efficiency dividend cut that you've actually got to find. Is that correct—in the last four years you've had about $80 million removed?

**Mr Box:** As well as efficiency dividends which have been applied to us, like all entities across the whole government and all departments, we've also had injections of funds. Last budget we had a significant investment of funds of $615 million over the forward estimates, across a range of measures. We've got stable funding going forward, which we appreciate, and we look to live within our means as best we can so that we operate efficiently and effectively and, as I said, reduce red tape to support the front line of the AFP.

**Senator LAMBIE:** Has there been a reduction in full-time staff over the past five years in the AFP?

**Mr Box:** I can get staffing numbers for you. As the commissioner has already said, we've got large recruit courses currently going through the system, and we'll be having a large graduation of sworn police officers soon, which will be good.

I can give you some numbers around our staffing levels at the moment, if that helps. We just do headcount, because there are lots of ways to count staff. Our current staffing level is 6,664 members, as at December, so that's fairly current. Obviously, these things move every day. We have attrition and we also have recruitment. Back in June 2019 we had 6,663. I might just give you the break-up between sworn, PSOs and professionals. As at December we had 3,261 sworn police officers, 724 sworn protective service officers and 2,679 professional staff, the majority of whom are supporting frontline operations. Back in June we had 6,663. As I said, these numbers will go up and down based on measures that we do. In June 2018 we had 6,728. Back in June 2017 we had 6,540. So from June 2017 to December 2019 we've grown by a hundred and—my maths says 124. I can give you a detailed breakdown over the years if you want.

**Senator LAMBIE:** Yes, I would actually like to see that. Could you go back to about 2000 for me. I want to see, since we're under the strain of—

**Mr Box:** I haven't got numbers back to 2000.

**Senator LAMBIE:** No, but could you take it on notice for me.

**Mr Box:** Absolutely.

**Senator LAMBIE:** I want to see what staffing levels you've had over the last 17 or 18 years since we've had national security issues and, obviously, terrorism.

**Mr Box:** Sure.
Senator LAMBIE: I just want to see where you guys have been placed, in the last 15 or 17 years, with your staffing.

Mr Box: We can take that on notice for you.

Senator LAMBIE: We all know what *The Daily Telegraph* is about. Sometimes it's not exactly truthful. But it was reported in January that 4,000 AFP officers had been underpaid over $24 million in superannuation and overtime payments. Do you know anything about that?

Mr Box: Yes. I can give you some information about superannuation. Just let me find the right brief for you.

Senator LAMBIE: What was the reasoning for that?

Mr Box: The issue with superannuation was that there was a mistake, effectively, in one of the enterprise agreements, with allowances which attract superannuation. We made a mistake in that we were not paying superannuation on certain allowances and we should have been. We are now rectifying that. There's a large project of work underway to fix the issue. All members will be paid their benefits. There are 9,302 members affected. It goes over a period of 12 years, so we have a lot of data to get through. We've got a team going through this to make sure all members receive what they are entitled to, and we're working really hard to do that. We've made provisions in our financial statements for the liability associated with that. That's been audited by the Australian National Audit Office. We've been completely transparent about it. We're working through the underpayment of the super in cohorts. We've done about 80 per cent of those members that are due to retire. We're trying to make sure that we prioritise those members who are about to retire and do other things with their lives, and then we'll go through all the rest. We're looking to get it all completed this year. That's what I can tell you. I'm happy to take other questions.

Senator LAMBIE: Do you know whether or not it's true that the government has delayed paying super to bring payments into the next budget financial year to make their bottom line look better?

Mr Box: That's not a matter for the AFP. The issue for the AFP is that we are committed to making sure all members receive all their entitlements, and we will do that.

Senator LAMBIE: Do you know anything about that, Minister?

Senator Payne: The government, across all portfolios and payments, makes the required contributions to ensure that public servants receive their entitlement.

Senator LAMBIE: So they're not delaying paying the super to bring payments into the next budget financial year?

Senator Payne: No.

Senator LAMBIE: Obviously the telegraph got it wrong.

CHAIR: If you're referring to a media article, do you have a copy to provide?

Senator LAMBIE: No, I don't, but I'm sure I can get you one. Are these efficiencies affecting your ability to keep Australians safe, Commissioner?

Mr Kershaw: No. Like every department, we have focused on delivering the best service and being very responsible with the taxpayer dollar that we receive. We're always looking for
innovative ways and being resourceful around how we combat crime across this country and beyond. You can have every confidence that we spend our money wisely.

Senator LAMBIE: So the cuts aren't affecting safety?

Mr Kershaw: No.

Senator LAMBIE: So the fact that you've lost $80 million in three years doesn't really matter then? It's not having an impact on any of that or on the safety of your own?

Mr Kershaw: Pretty much every police force in this country receives an efficiency dividend. We factor that in to our business. We know that it can and does encourage innovation and different ways of thinking about how we could do things. So we're okay with that.

Senator LAMBIE: We have more population growth and you're getting cuts, meaning there are probably less people on the front line. How does that make us—and your people as well—safer?

Mr Kershaw: I think we just demonstrate what the return on investment in the AFP is. It's a very good return on investment for the community. We just focus on that.

Senator LAMBIE: Okay, thank you. I have no further questions.

Senator HENDERSON: Commissioner, I'd like to ask you about some funding also. I want to refer you to the additional funding provided to the AFP in the 2019-20 budget. I understand there was an additional $600 million. Could you explain the purpose of that additional funding and any other related matters please.

Mr Kershaw: Yes. If it's okay, I'd like the acting chief operating officer to answer that.

Mr Box: In the 1919-20 the AFP received funding of $615 million over the forward estimates. As I said, there's a range of measures that money was provided for. I'll just go through the highlights. We got money for the National Anti-Gang Squad. There's a lot of work to be done there, and we spoke at previous estimates about the important work of the Anti-Gang Squad.

Senator HENDERSON: How much was that? Could you just break it down?

Mr Box: We got $94.4 million for the national anti-drug squad. We received $34 million for keeping illegal guns off the streets—

Senator HENDERSON: Sorry, is that the Anti-Gang Squad?

Mr Box: We got $94.4 million for the National Anti-Gang Squad.

Senator HENDERSON: Thank you.

Mr Kershaw: If I could help my colleague out here, I want to mention the benefit of the National Anti-Gang Squad. Since it started, nearly 6,000 firearms have been taken off the street. There is some simply outstanding work from our teams across the country.

Mr Box: The next significant one would be keeping illegal guns off the streets to keep the community safe. That was $34.1 million. We got $77 million for enhanced counterterrorism response, and $38 million for technical capabilities. I'm not doing the smaller ones; I'm just doing the highlights.

Senator HENDERSON: Sure.
Mr Box: We got $26 million for the fraud and anticorruption centre. We got $9.9 million to strengthen government counterfraud arrangements. We also got $303 million for additional operational funding, which goes across a range of measures, including counterterrorism, organised crime et cetera. That covers a range of things, but, obviously, as the commissioner said, they will be focused on our priority areas.

Senator HENDERSON: Just to clarify, there was an overall increase in resourcing in the last financial year?

Mr Box: Correct. Absolutely. Yes.

Senator HENDERSON: By what amount?

Mr Box: The funding injection in the last budget was $615 million.

Senator HENDERSON: In terms of the additional frontline operational funding provided in the last budget, what difference has that made to your operations on the front line?

Mr Kershaw: As you would have seen, we are now running at an additional capability at those nine designated airports, which is our protection operation response team. That is a counterterrorism first response. They are now able to carry long arms and that particular rollout was announced in December and is continuing this year. In addition, the opening of the ACCCE will be soon and that will have a full complement of staff. Under my 100-day plan, we have reorganised ourselves to allow for that. This funding is timely, because it is going to allow us to be more flexible and agile. We’ll be able to move with the environment that we are operating in now. A lot of our targets are offshore and move between borders. We will be more agile than ever before as far as our workforce goes.

One of the largest recruit graduations in our history will be this year. So that injection is helping us not just with human resources but also with building up those technical capabilities. As you know, the environment is changing rapidly in relation to technology and other developments in the environment. This includes the need to combat our opponents such as organised crime and terrorists and so on. They are using different methodologies and we have to keep up with that—and share that information and move quickly. So it is extremely helpful for us.

Senator HENDERSON: I am sorry we have not had more of an opportunity this morning to talk about the very important work you’re doing on the front line but I want to acknowledge that work. I just want to ask you about the importance of this additional funding in your Anti-Gang Squad and your counterterrorism activities. There is obviously a huge focus by the government on keeping Australians safe. Could you please expand on the work you’re doing in that respect?

Mr Kershaw: Yes. I am going to obtain the stats from our National Anti-Gang Squad, which I think will speak for themselves.

Senator HENDERSON: Thank you.

Mr Kershaw: In relation to the inception of the National Anti-Gang Squad funding, which was expanded over 2019-2023 to $94.4 million. Since inception—from 2013-19—5,937 firearms/parts have been seized; 4,143 charges have been laid; 1,303 arrests have been made; and $10.6 million approximately in cash has been seized. This is through the joint organised crime task force, which includes AFP, state and territory police, ACIC, ABF,
AUSTRAC. Year to date, we also have seven arrests, 42 charges laid, nearly half a million dollars in cash, 53 kilograms of methamphetamine and 200 kilograms of pseudoephedrine. In 2018-19 overall, the AFP seized 14.9 tonnes of illicit drugs and precursors at the border or domestically; 5.8 billion have avoided harm from illicit drugs and precursors seized. Through our international network, 40 tonnes of illicit drugs were seized by overseas police services with AFP assistance and 2.9 billion of harm has been avoided through drug seizures. We currently have 283 matters on hand. For example, in December of 2019, we charged three individuals and seized nearly 1.7 tonnes of methamphetamine and 37 kilograms of heroin, with a street value of nearly $1.2 million. In addition to that, if you look at our asset forfeiture, which is a key focus—I’ve set that KPI for the organisation—over $340 million has been recovered or confiscated by the Commonwealth since the commencement of our task force—

Senator HENDERSON: Just to clarify: which task force?

Mr Kershaw: This is the Criminal Assets Confiscation Taskforce, which is a key disruption methodology and tactic that we use to tackle organised crime, counterterrorism and other networks. This year alone—2019-20—we have restrained $240 million of criminal assets. In its eight-year history, the Criminal Asset Confiscation Taskforce has restrained in excess of $900 million in criminal assets. I have set that ambitious target of $600 million over the next five years, noting that this year the team have already responded and it is great to see that we have restrained more than $110 million, mostly offshore. That team is working very well.

Senator HENDERSON: Thank you. I have a final question. In terms of the whole-of-government drug strategy, are you able to provide some information about the AFP’s assessment of the work that has been done to combat illicit drugs broadly across all of government, and where the challenges remain?

Mr Kershaw: As you know, we work with our partners and, in particular, the Home Affairs team. Heads of the organisation meet regularly and discuss illicit drugs, assets and other things in organised crime. You have seen through the wastewater analysis that, unfortunately, Australia continues to be a market of choice for organised crime, in particular when it comes to illicit drugs. The return on investment is high and remains that way in Australia.

These syndicates are very sophisticated. They are able to control price. This means that not only are they able to meet the demands of the market; they are also able to control the price. So we are seeing a greater emphasis offshore—working in the Pacific and in the South-East Asian region—building their capability up, because what is often happening is they are shipping through those regions or leaving that product offshore until the right time to bring it in to Australia. More than ever, we are now working at greater levels across all the agencies, combating illicit drugs.

Senator HENDERSON: Commissioner, thank you very much. I have no further questions.

CHAIR: I understand Senator Molan has something super brief before we dismiss the AFP.
Senator MOLAN: Very, very brief. Commissioner, you mentioned that you have recovered a significant amount of money—and I understand that a lot of it is in the form of drugs and you can't onsell those drugs and generate cash. What amount of that money is eligible to be used in the proceeds of crime?

Mr Kershaw: What was that number I had? I had that in front of me. I'll have to get—there is quite a lot that actually goes back into the fund.

Senator MOLAN: I won't hold the committee up, but could I—

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

Senator MOLAN: Thank you very much—and, around that, how much has been paid out and how much is able to be paid out.

Mr Kershaw: Yes.

Senator MOLAN: Thank you.

CHAIR: Thank you Senator Molan and Commissioner Kershaw. I thank all the representatives of the AFP for your assistance this morning.

Australian Criminal Intelligence Commission
Australian Institute of Criminology

CHAIR: I welcome the Senator the Hon. Michaelia Cash to the table and the Australian Criminal Intelligence Commission and the Australian Institute of Criminology. Would you please state your name and position for the record.

Mr Phelan: My name is Michael Phelan. I am the chief executive officer of the Australian Criminal Intelligence Commission and also the director of the Australian Institute of Criminology.

CHAIR: Would you like to make an opening statement before we go to questions?

Mr Phelan: Thank you, Chair. I'm happy just to answer any questions people might have.

CHAIR: Thank you. Senator Ciccone has the call.

Senator CICCONE: Thank you, chair. Good to see you again, Mr Phelan. During the last estimates, I asked a couple of questions about Project Jacto. Thank you for your response to those questions on notice We learnt, through the 2017-18 annual report, that Project Jacto helped to develop a number of key intelligence holdings about the significant number of Malaysians visa applicants who are breaching the immigration system and circumventing some of the migration controls. This included identifying key labour facilities in Malaysia and Australia. You were also able to identify facilitation of the migration within Australia, including through corrupt officials. You also said the project has been running since February 2016. It is that project still running?

Mr Phelan: Sorry, I don't have the answers to the question on notice in front of me; that's my mistake. I can take on notice to find out whether the project is still going. But I will say that, even if the project itself is not still going, we continue to work under the determination in relation to illegal migration. The board approved determination in relation to illegal migration still exists, so the ACIC continues to use our coercive hearings and other powers of
compulsion to gather as much information as we can in relation to that particular crime type. In terms of the overall project, certainly in relation to illegal migration, that is still on foot.

**Senator CICCONE:** Are there no officials here who can confirm quickly if the project is still running?

**Mr Phelan:** I'm sure they're trying to find out exactly for me now.

**Senator CICCONE:** Okay. Should it still be running, there are a couple of questions I would like you to take on notice. Can you give me a sense of the size of the project? What is the average level of staffing that has been assigned to the project by the ACIC for each of the financial years since the project started? Is the team comprised of ACIC personnel or any other personnel for that matter? I'm curious to know if other agencies have participated as part of that project, what their roles are and the teams they are involved with. I ask these questions because I'm really interested in understanding the scale of the project. I just wanted to provide you with a bit of context.

**Mr Phelan:** I'm happy to take those questions on notice. But I will say that, like any project in the ACIC, the allocation of resources is fluid, so we have multiple people working on multiple determinations at a particular point in time. But certainly we'll get you as much information as we can on that. It's not something that needs to be protected. If I had the information here today, I would provide it to you.

**Senator CICCONE:** Thank you. I want to ask a few more questions in relation to the report I referenced earlier the 2017-18 annual report. Has visa fraud continued to rise since we spoke at estimates late last year?

**Mr Phelan:** I would have to take that on notice. The best agency to answer that would be the department, who administer visas. We would be able to provide insights into how it occurs and the different methodologies, but the department would have the raw figures for you.

**Senator CICCONE:** I am also interested in trends in migration fraud.

**Mr Phelan:** Something that worries us—and it has come from a number of our reports—is labour fraud. Particularly in some jurisdictions, labour that comes in from overseas is used in certain industries. A lot of those cases have been public. A number of cases occurred in Western Australia a couple of years ago where the ACIC, with the Australian Border Force, was involved in cracking down on people here on tourist visas working in market gardens et cetera. Those are the things that interest us a lot because, generally, they are well organised. You don't just turn up in Australia on your tourist visa and look for a job; people are recruited from overseas to come into Australia for those positions—generally, but not all the time. In those cases in Western Australia the Australian Border Force did a lot of hard work to gather the intelligence, working with us to look for organised crime links et cetera. And they certainly took some very overt action as well.

**Senator CICCONE:** Are there any specific countries that are still of concern?

**Mr Phelan:** I would have to take that on notice.

**Senator CICCONE:** In some of the initial commentary, there was a particular focus on Malaysia. Is Malaysia still an issue?

**Mr Phelan:** I'll take that on notice.
Senator CICCONE: I have another question you might like to take on notice. What makes other countries likely to be at risk? I would like to know what countries that weren't initially on the radar are on the radar now. For those that continue to be problematic, how are we trying to address some of those issues?

Mr Phelan: I don't think I have to take that on notice; a lot of it is intuitive. If it is possible to get to Australia on a tourist visa, there is opportunity, particularly for people come from countries where wages are a lot lower than ours, to return wages back to their home countries. All countries that fall within that category can be exploited by organised crime. Those individuals are exploited; there is no doubt about it.

Senator CICCONE: Yes, and earlier you mentioned labour hire. I'm interested in how that's been facilitated, whether there are any serious and organised criminals involved and how that operates. Are you able to enlighten me and the committee?

Mr Phelan: I wouldn't be doing it justice if I tried to enlighten the committee now because I don't have the strategic assessments in front of me, but, certainly at a later stage, I'm more than happy to provide senators with an operational briefing on some of the activity that we do in that area. Certainly, it's possible; I just don't have the strategic assessments in front of me.

Senator CICCONE: I appreciate that. Thank you. Given that we also know that there have been more than 30,000 onshore asylum claims made by Malaysian nationals since 1 July 2014, would it be reasonable to assume that some of these 30,000 would have been exposed to serious and organised crime groups that JCOT has identified?

Mr Phelan: I wouldn't like to comment on that, Senator, because I'd be talking about individual cases, even within the cohort, and it would be outside my lane.

Senator CICCONE: I'm not asking about individual cases, but more the general—

Mr Phelan: I know what you're asking, but, even then, I'd be passing comment on something that I simply don't know.

Senator CICCONE: Will you take that on notice?

Mr Phelan: I'd still be giving an opinion because we may not have all that data that the department has in relation to the individual claims for asylum, whether or not they were exploited or why they're claiming asylum. So it wouldn't be something that the ACIC would have information on at this point in time.

Senator CICCONE: It would be great if you could take it on notice and maybe talk to the department and see whether you can provide me and the committee with a response.

Mr Phelan: I'll do my best, Senator.

Senator CICCONE: In the last estimates when we were speaking about identity fraud and travel documents specifically—and I am quoting from the Hansard—you said:

… the processes in Australia, compared to other parts of the world, are pretty good, particularly in terms of our documentation verification system, which is run by the Department of Home Affairs. A lot of the data, of course, comes together through Australian systems. They're not all linked, but more and more of them are becoming linked, and that makes it more difficult—not impossible, but certainly more difficult—to assume someone else's identity. I'll never say that the system is perfect.

You mentioned—

CHAIR: Senator Ciccone, what were you quoting from?
Senator CICCONE: It was the *Hansard* from the last estimates. You mentioned that not all systems are linked. Are there some specific systems in the Home Affairs portfolio that aren't now linked?

Mr Phelan: At the moment, the ACIC has been given funding from both our operations and also from the government to produce the National Criminal Intelligence System, so that system is currently being built. We received nearly $120 million to build that system. It's due for completion towards the end of this year with various datasets from the Commonwealth and also from states and territories all being provisioned over the six months after the system is built. So with most of the Commonwealth systems that are held within the Department of Home Affairs—so we're talking about ACIC information, Australian Federal Police information, Border Force information, AUSTRAC data—all those sorts of data will be linked, so there will be the ability to search across that. The Department of Home Affairs is an agency that will be able to utilise that information, which—depending on what caveats are put on the information when it comes into the database by the provisioning agencies—can be used by the Department of Home Affairs for document verification when it comes to visa applications and so forth. So there are not many that won't be linked by the time the system is built.

Senator CICCONE: Are there any specific examples that you can provide to me or the committee? Last time I asked, there were generalist comments that were provided. Given the questions last time, I'm surprised that, this time around when I've been able to ask a couple of questions around systems, we still don't have any specific answers from ACIC.

Mr Phelan: I'm more than happy to take that on notice. I'm not trying to obfuscate. It's just that, if I knew those systems, I'd put them all together, but there are lots of systems—

Senator CICCONE: Are there no examples you could provide me?

Mr Phelan: Not off the top of my head.

Senator CICCONE: Are there any officials here today who could do that?

Mr Phelan: I don't think so—not from my agency. If I can put it in context, it is the department and the immigration services that will determine whether or not someone should get a visa, and their document verification systems. A lot of those verification systems that we talk about are overseas based, and this is where the department is very good at identifying which documents are false et cetera at the border. Border Force and the department, through their liaison officers—sorry to speak about other departments—do a fantastic job offshore in doing that.

But when it comes to Australian documents, certainly what I was alluding to last time in estimates when we talked about identity fraud—I'm talking about Australian documents. In Australia we do have very robust systems to verify our own documents. We do have the checking system where you can go on for all sorts of different reasons to be able to see whether government documents are verified, such as Medicare and other sorts of documents like that. Some systems that are not necessarily linked may be state systems. So, they're not all digitised, for example. So, not all births, deaths and marriages are necessarily digitised, and if they are we don't necessarily have access to them in the ACIC. In terms of all documentation, they're not all potentially digitised at this stage. But I'm happy to take that on notice, to give you a bit of context.
Senator CICCONE: Just to finish off, how would you assess the connections between Australia's systems and those of comparable nations, like the United States?

Mr Phelan: In terms of verification of our own documents, and their system to verify their own documents?

Senator CICCONE: Well, I guess the systems that are in place.

Mr Pezzullo: Senator, it might be helpful if we distinguish between two categories of systems connectivity. The Department of Home Affairs, and we're happy to engage with your questions when my officers are here, deal with applications and visa assessments that pertain to applications on the part of foreigners—that is to say, noncitizens seeking to come to Australia. That's ahead of the border, or pre-border. So, if there are questions around systems connectivities, access to intelligence or access to risk-assessment tools pre-border, that's a question more appropriately directed to me and my officers. If the question is behind the border or in the interior of Australia, the extent to which identity fraud can be undertaken in terms of falsifying domestic documents—which are often a combination of federal, state and territory information sets—then it's probably something that Mr Phelan and I can share, because we have dual and combined responsibilities there, in my case for document verification and in his case for the absorption of the functions formerly known as the CrimTrac functions. So, Mr Phelan could speak to that.

On the question of how we compare, I've given evidence to this committee over the course of five or perhaps six years that upon becoming the secretary of the former immigration department the flashing red light that I had—and I'll paraphrase evidence that I've given to this committee; I took up the position in the latter part of 2014—was the lack of connectivity between the immigration department that was not rated either for national security or for law enforcement purposes, notwithstanding commentary that you see from officers who assert that they had some expertise in this area. The lack of real-time checking of highly sensitive datasets, including with what are known as our Five Eyes partners, was frankly of deep concern to me. The government saw fit, in the 2014-15 budget and subsequent budgets, to fund a number of significant enhancements: the visa risk assessment tool, the acronym for which is, not surprisingly, VRA, and the connected information environment that pooled our holdings in relation to that offshore data. So, that's pre-border. That's a question for me and my department.

Senator CICCONE: No, my question is about the latter, and it's about verifying documents and about—

Mr Pezzullo: So, it's interior documents?

Senator CICCONE: Yes.

Mr Pezzullo: Thank you. Well, that is certainly—

Senator CICCONE: I just want some examples. We talked about how not all the systems have been linked and whether the ACIC can provide examples about that. So it doesn't go to the former; it's the latter part.

Mr Pezzullo: Understood, thank you.

CHAIR: Senator Keneally, we'll finish up all the Labor questions and then we'll go to Senator Henderson and then we'll allow these witnesses to get on with their day.
Senator KENEALLY: Thank you. We will be very brief. Mr Phelan, lovely to see you again. I ask about right-wing extremism, and I reflect upon the Australian Institute of Criminology's report, *Violent extremism in Australia: an overview*, of which we have a copy to table. I've had a read of this report. It says that Australia lacks 'empirical information and research' about right-wing extremism and says:

... Australia does not have any formal monitoring systems for this form of violence, such as that of the US Federal Bureau of Investigation's 'Hate Crime Statistics'.

Has anything changed since 2017?

Mr Phelan: The Deputy Director of the Australian Institute of Criminology might be able to help us.

Senator KENEALLY: Thank you. I've tabled a copy of the Australian Institute of Criminology's report, released back in 2017, where it said that Australia lacks empirical information and research about right-wing extremism and that it does not have any formal monitoring system for this form of violence, such as exists in the US FBI's hate crime statistics. Has anything changed since 2017 in relation to that warning?

Dr Brown: The picture that we painted in that report was from what we had available from a research perspective that, I think, was probably up to 2015, prior to the publication of that paper. At that point, the picture we painted was from the available evidence. We've not done a subsequent review in this area, so we can't definitively say whether that picture has changed at this point.

Senator KENEALLY: Thank you, that's helpful. Would it be fair to say that the report seems to suggest that such a register might be useful, or did you as an agency form a view that such a register might be useful in order to track and understand what the ASIO director-general has now described as one of the significant threats of terrorism in Australia?

Dr Brown: That really wasn't something that we went into any detail in in the report. The report was very much a historical overview of the issues that have occurred in Australia around violent extremism.

Senator KENEALLY: Mr Phelan, in what way is the ACIC involved in combating right-wing extremism?

Mr Phelan: One of the references we have is a national security reference, approved by the board, so we do assist ASIO and the Australian Federal Police in relation to the use of potentially coercive powers, hearings and/or notices to produce. We work very closely in conjunction with them. I have embedded officers specifically in relation to national security with those agencies. As required, those members who are attached to those agencies facilitate the exchange of information and datasets that the ACIC has access to and also potentially, if necessary, use our coercive powers. But I must say that they're used extremely rarely in relation to that particular crime type given that other agencies have coercive powers on their own. So we're looking for the nexus between serious and organized crime.

Senator KENEALLY: I understand that. Thank you. That's useful. Are you aware of development of any empirical information or research about right-wing extremism since the 2017 report?

Mr Phelan: No, I'm not—not specifically on that. But even from my time working in national security at the Australian Federal Police, I'd be extremely surprised if that data wasn't
available through ASIO given the extent that's happened since that time. And, of course, there have been a number of right-wing extremists that have been arrested and charged with terrorism offences post the data in that report.

Senator KENEALLY: I have some questions. In the interests of time I am happy for you to take them on notice. You mentioned ACIC have embedded officers and agencies. Do you have specialist staff dedicated to right-wing extremism? If so, how many? Can you at least give us an approximate number.

Mr Phelan: The answer to that is no in the first instance.

Senator KENEALLY: Great, then that resolves the rest of my questions on notice.

CHAIR: That brings the Labor time to 22 minutes. I will head over to Senator Henderson. As I understand it, that will be the last block of questions for this set of witnesses.

Senator HENDERSON: Mr Phelan, good morning. I would like to ask you about the Transport Security Amendment (Serious Crime) Bill 2019, which was introduced into the House of Representatives and which this committee is conducting a separate inquiry into. It relates to the aviation security identification card, the maritime security identification card and the proposal that the issuing of those cards be subject to increased checks by way of checking not just the conviction of the particular person but also whether that person has had a history of involvement in serious crime. Minister Dutton said on 23 October 2019 that, without this additional ability for ACIC to check these people, our airports and seaports are left vulnerable to exploitation by serious criminals. Could you summarise your concerns about the current regime and why this bill is so important. Could you please comment on opposition to this bill as well. We have heard some opposition already in relation to this bill.

CHAIR: I'm sorry to interrupt you, but the convention is that we do not ask questions about bills that are currently before the committee for inquiry. Are there other questions you want to ask?

Senator HENDERSON: Could I just ask more generally about the issues with security at airports and seaports. Could you comment on those issues in the broader context.

Mr Phelan: I will be careful not to talk about the bill, because I gave evidence before that committee last week. Australia is an extremely attractive target for serious and organised crime. The vast majority of the $47 billion that serious and organised crime costs this country is driven by drugs. That is a given, and most people know that. The issue with Australia is that, because we are an island, the vast majority of that revenue derived by drugs is from drugs that are sourced offshore. To put that in context, all heroin comes offshore, all cocaine comes from offshore, and we assess that, of the 11 tonnes of pure meth that is used in this country—nearly $10 billion worth at retail level—80 per cent also comes from offshore.

If something is coming from offshore then it needs to make its way through one of only two ways: through either the seaports or the airstream. The airstream can also include cargo; it does not necessarily mean passenger planes. The nature of serious and organised crime means you must control the whole of the logistics supply chain from manufacture all the way through to distribution. There are, for them, a number of chokepoints to get their illicit commodities to market. One of those is the points at the airstream and ports. That is where our greatest risk is trusted insiders. You must have trusted insiders to get through the ports or the airstream.
These criminals are running this like a business enterprise. They do not have a throw at the stumps and see whether or not they're going to get their drugs through. It is well organised and there are vulnerabilities in our system. We seek to advise government on where we see the vulnerabilities both in the airstream and via the ports. That is an extremely high priority for our organisation, given the harm that particularly narcotics or other synthetic drugs do to our society. It is a travesty that, while we are out there today, there is going to be $11 billion spent this year by mums, dads, uncles, aunts and kids on drugs—not spending it on food and shelter—at the retail level. At least $3 billion of that, at the wholesale level, is finding its way straight back offshore. There is a two-way commodity stream here. For us it is about plugging as many of the vulnerabilities as we possibly can. It is our job—both the law enforcement agencies that charge people and arrest people and our job as the Criminal Intelligence Agency—to try to advise and to target-harden Australia as best we can. We're pretty good, because we're an island. That limits the opportunities that criminals have. Having said that, it is up to us to provide as many of the details of the vulnerabilities as we can.

Senator HENDERSON: How do you further address those vulnerabilities?

Mr Phelan: By tightening up the networks—tightening the ability. Make it hard for people to get through airports and ports. It is not just the port; it is the whole logistics supply chain, all the way through from boats, stevedores, transport companies—all the way through. It is important that we know as much as we can about the individuals and the vulnerabilities that exist within that supply chain.

CHAIR: As there are no further questions, the witnesses are excused, with our thanks.

Ms Rose: I have brought a couple of people along today, because it is a very complex issue and there are many, many things in those reports that were incorrect.

Senator PRATT: Before we drill into the substance of those issues, I would like to quickly look at how AUSTRAC works, particularly with respect to protocols and processes that are in place to report matters to the police.

CHAIR: Thank you for providing those, Senator Pratt.

Ms Rose: I have brought a couple of people along today, because it is a very complex issue and there are many, many things in those reports that were incorrect.

Senator PRATT: Sorry to interrupt, but the chair said we have only half an hour. In taking us through that, can you tell us how many suspicious matter reports and how you examine those reports, if they need to be referred to the police?

Ms Rose: Yes, sure. I might refer to Chris Collett who will tell you all you need to know about SMRs.
Mr Collett: If it is helpful to the committee, I will conceptualise the financial intelligence agency into four categories. You raised the receipt of suspicious matter reports. To give you a sense of context, in 2018-19 we received somewhere over 240 thousand SMRs and a total of 158 million reports to AUSTRAC. The first core function we provide is the holding of that data and the provision of that data to both ourselves and to our partners across law enforcement and national security at Commonwealth and state and territory levels. In addition to AUSTRAC officers, there are over 5,000 trained analysts in our partner agencies who have direct access to our data in near to real time, within 24 hours or so, of AUSTRAC receiving it.

Second, we provide detailed and specialist financial intelligence over and above that, which involves our specialist analysts identifying a triaged and processed profile report and producing intelligence reports on that, bringing together other datasets and other information available to us. We also partner with our agency colleagues through a range of national task forces. Finally, we work with our private sector partners through a public/private partnership on shared intelligence collaboration.

Senator PRATT: Part of that question was, how do you determine what suspicious matter reports need to be referred to the police? Are there computer algorithms in place? How much is done by people?

Mr Collett: Both. Given the scale of the work that we do, and as is the case for so many areas of government these days, there is clearly an IT function.

Senator PRATT: So a bunch of that assessment might take place inside or outside the agency. You have got analysts and investigators. Who would examine suspicious matter reports that are flagged with those analysts?

Mr Collett: Every report that is received by AUSTRAC is triaged and profiled through our sophisticated IT systems. It's an issue we invest in quite heavily. Our analysts then respond to those as they are identified. We have agency intelligence priorities that govern and guide our work. They're informed both by government transnational, serious and organised crime priorities as well as national intelligence priorities. It is those arrangements that then prioritise the types of work that our analysts focus on.

Senator PRATT: You said there were something like 240 million reports.

Mr Collett: There were 246,000 SMRs and 158 million reports in total.

Senator PRATT: The suspicious matter reports are at 246,000. How many are substantively investigated? And how many analysts investigators would be analysing those?

Mr Collett: There's no precise way to answer those questions. There are around 5,000 analysts and officers in our partner agencies that are trained and have access to our system. To give you a sense of scale, there were approximately 2.1 million searches done by those analysts last year. As to the precise number of SMRs considered, I would have to take that on notice. I would have to consider how we would accurately answer that question. SMRs vary quite significantly in their content, their style and their scale, and they are, of course, suspicious matters—that is, they are not necessarily facts in the first instance.

Senator PRATT: And your partner agencies would be—what?—police forces? Any other agencies?

Mr Collett: Police.
Senator PRATT: The AFP and state police.

Mr Collett: Absolutely. To give you a sense of scale, some of our biggest users are the AFP, the ACIC, the Department of Home Affairs and our state and territory policing colleagues.

Senator PRATT: In some cases they would be referring matters to you to have a look at particular pieces of data for investigation.

Mr Collett: Absolutely. It works both ways. We perform what I would describe as a discovery function, identifying new matters and referring them to partners. Equally, they request our specialist assistance. We also work with them in standing task forces across a whole range of crime types from child sex exploitation to guns to drugs and so on.

Senator PRATT: In terms of matters that you refer to the police that haven't been initially referred to you, how many of those do you do approximately each year? Do you have standards that dictate the maximum amount of time that AUSTRAC should hold a matter before referring it to the police?

Mr Collett: Firstly, we never hold information before making it available to police. All the data within approximately 24 hours is available to all of our partner agencies and is searched and utilised by intelligence—

Senator PRATT: I understand it, from the point of view that it's there, but the presumption in what I am saying here is that you have identified some kind of criminal activity and you might need to refer it to the police because it is a criminal activity. That's the particular time I'm interested in.

Mr Collett: The volume that we refer?

Senator PRATT: No. The time that you might sit on a matter when you identify something suspicious or something that needs police attention. I understand if the police have brought a matter to you, they have constant access. But if you see some data that looks like it might have criminal activity associated with it, how long is it before you contact the police?

Mr Collett: It depends very much on the nature of the information. If it's what we would call a priority 1 matter, it would be days.

Senator PRATT: What's a priority 1? I would imagine child sexual exploitation would be a priority 1 matter.

Mr Collett: It is. We don't publish our intelligence priorities and the prioritisation within them for obvious reasons. But yes, priority 1 is the highest priority matters, and it includes some major crime types.

Senator PRATT: How many days do you sit on those matters before referring them to the police?

Mr Collett: We don't ever sit on them; it's a matter of identifying and prioritising them.

Senator PRATT: How long is it from when you have identified an issue to referring it to the police? How do you decide what's urgent? You've said that you categorise things. You say you don't want to tell us on the public record how you go about that. But there are allegations about the level of urgency with which you've treated those issues, and this committee needs evidence from you in relation to those matters.
Mr Collett: Thank you, Senator. If I go to the particular topic I assume you are referring to, child sex exploitation, three to four days would be a typical time frame for us to have an analyst consider an SMR and determine whether it requires further action or not.

Senator PRATT: Do you have a maximum time?

Mr Collett: No, it would normally be done in that sort of time frame.

Senator PRATT: You do have a system to treat urgency in relation to those matters?

Mr Collett: Yes. I should say more broadly—if you take terrorism financing, there are obvious time imperatives there, so we have particular arrangements, depending on the crime type, to increase or decrease the prioritisation and therefore the urgency of response.

Senator PRATT: Can I ask whether you have a maximum time for referring matters of child sex exploitation?

Mr Collett: A maximum time? No, we don't have a—

Senator PRATT: When would you become worried that a matter hadn't been referred in a timely matter?

Mr Collett: If the matter warranted referring, I would expect it to be referred within three to four days.

Senator PRATT: What is the maximum time your officials should take before referring a matter to the police if it warrants referral? You would say that's three to four days?

Mr Collett: The problem, Senator, is it's not that straightforward. The decision is around whether there is something to refer. A suspicious matter report is not a defined fact; it's not a black-and-white issue. Some of them are. Some of them are very clear-cut and very straightforward. Others could be a series of information about an individual—say, myself—about small transactions that I may or may not have made to a particular country. There is a judgement to be formed about whether it warrants further information, and that may well be further analysis from our analysts, it may be considering that data with other datasets, or it may well be referral to state and territory or federal law enforcement. But an SMR is an amorphous issue. They are not all interchangeable and they are not all of the same content or calibre.

Senator PRATT: No, but if you had a suspicious matter report where you identified a high likelihood that a financial transaction was being used to facilitate child sex abuse, surely, as yesterday's media highlighted:
A police expert … tackling child sex crimes said authorities should aim for a 24-hour turnaround to inform police of active crimes—and anything longer than seven days is unacceptable. Would you say that seven days is unacceptable?

Mr Collett: That article refers to an unnamed police officer. To be honest, Senator, I have no idea who is making that comment, and I don't think it's appropriate for me to comment on an unnamed police officer. Our time frame is three to four days to form a judgement on whether further action is required for an SMR of that nature.

Senator PRATT: Is a 24-hour turnaround viable?
Mr Collett: Not in an absolute sense. SMRs, as I've touched on, are complex and varied pieces of information.

Senator PRATT: But if you were able to refer it immediately, you would. How many of those have you referred—

Ms Rose: Can I just add a clarification that might assist? The information is all made available to our partners within 24 hours, so it's all there.

Senator PRATT: Yes, the information is there, but if you are the agency that has identified the crime, then you're the one with the obligation to contact that agency.

Ms Rose: That's an excellent question because we are not necessarily the agency that identifies the crime. We are the agency that has the financial intelligence that forms what we might think is a suspicious financial transaction that we forward on if we have more information, or we make it available to our law enforcement partners so that they can do further investigation and ascertain if a crime has occurred. We are not an investigative agency; we're a financial intelligence agency.

Senator PRATT: That I understand.

Ms Rose: So all we provide are the suspicious matter reports. As Chris has said, this can be a bank teller forming a suspicion that someone hasn't declared where their money's coming from. It can be a business not comfortable with some of the financial transaction details that they've seen. They forward that to us. We analyse some of it and we triage some of it, but we make all of it available to law enforcement within 24 hours, and then we add value where we can. Also, with their 5,000 staff that access our database, they look at matters where they think there is criminal activity.

Senator PRATT: You just used the words 'within 24 hours'.

CHAIR: Senator Pratt, I just wanted to let you know that you're at 13 minutes.

Senator PRATT: Let's be clear: if you see evidence that needs to be reported to police, that is given to them within three to four days.

Ms Rose: Yes.

Senator PRATT: Okay.

Ms Rose: And when we say 'evidence', it may not necessarily be that strong.

Senator PRATT: No, I understand that.

Ms Rose: Just intelligence.

Senator PRATT: Nevertheless, it might be intelligence of where a financial transaction has taken place, a financial transaction that has just paid for a recent act of child sex abuse, which is why the timeliness of the reporting of that transaction is very important.

Ms Rose: Correct. And the quality of the intelligence that we get in the first place.

Senator PRATT: Okay. Do you have the resources to ensure you can meet a 24-hour turnaround?

Ms Rose: At the moment we do. One of the things that AUSTRAC has been supported by the government in is investment in technology. The increase in managing data for AUSTRAC over the last few years has been extraordinary, particularly the exponential increase in
reporting since the Tabcorp, CBA and, now, Westpac matters. We're looking at better AI within the agency to process massive amounts of data, triage that and get it out more quickly.

Senator PRATT: In terms of a three- to four-day turnaround or a 24-hour turnaround, how quickly are you processing recent data, let alone how long it's taking you to refer something to police once it comes to the agency's attention?

Ms Rose: They're two different things.

Senator PRATT: I understand that.

Ms Rose: The data that comes in to us is made available through our systems to all of our partners, the 5,000 users, within 24 hours. That information is then analysed further by our systems and people. If we believe that there's enough financial intelligence to flag an issue with law enforcement partners, we will also do that within three to four days for this particular crime type.

Senator PRATT: Okay. I'm concerned in relation to the fact that, in relation to the Westpac matter specifically, AUSTRAC released identifying information about 12 suspects, including their dates of travel, international destinations and transaction amounts. Why was that information released?

Ms Rose: It was all anonymised, but there had to be a certain amount of information to be of value to the court.

Senator PRATT: It was anonymised, but surely, if you are a person engaging in that kind of activity, it would have been a red flag to you to start to cover your tracks.

CHAIR: 'Cover your tracks'. Please be careful with the—

Senator PRATT: No, the criminals to cover their tracks, not the agency.

CHAIR: Okay, I'm glad we have that clarification.

Ms Rose: I took it as criminals. I didn't take it—

Senator PRATT: In terms of specific statutory requirements on AUSTRAC to make timely referrals to the police, would a statutory requirement be appropriate?

Ms Rose: That's a good question, and I'm happy to take that on notice.

Senator PRATT: Take that on notice.

Mr Collett: Can I add one clarifying comment to Ms Rose's earlier comments that may assist you, Senator, with that question? Part of the challenge with intelligence work is that you don't have the full picture at any given time, and what is concerning on day one may simply not have enough grounds to warrant a referral—say, to the AFP. But, on day 3, when further reports or other data are available and analysts may form a view that that is now worthy of further consideration, in that sort of scenario where an initial suspicion is not of appropriate gravitas or grounds for further referral doesn't exist but at a later point does, that's the nature of intelligence work.

Senator PRATT: In relation to the Westpac matter, is it correct that Westpac self-reported its first suspicious child sex abuse transaction to AUSTRAC in July 2018?

Ms Rose: I am happy to talk about SMRs and the general process in which—
Senator PRATT: Can I perhaps ask if The Daily Telegraph was wrong in its reporting?
CHAIR: Can you just let the witness answer the question?
Senator PRATT: As you've highlighted, we're on very limited time. I want to ask if The Daily Telegraph was wrong in its reporting.
Senator Cash: We need to be careful, given that the matter is currently before the courts, so—
CHAIR: Which is why I wanted to give the witness the opportunity to clarify what she was talking about.
Senator Cash: General questions are clearly okay, but, in relation to Westpac, we need to be very, very careful.
CHAIR: Sub judice matters are matters of sensitivity, but I'm sure Senator Pratt will have that in mind.
Senator PRATT: I simply want to know if The Daily Telegraph was wrong in its reporting. I can't see how that's relevant.
Senator Cash: It reported several things. What are you specifically referring to?
Senator PRATT: My question was specifically about the date that that transaction was first reported to AUSTRAC in July 2018.
Ms Rose: We don't know what transaction that is referring to. Westpac refers transactions of suspicious matter reports on child sexual abuse all the time. That's part of the work that we do with them in partnership.
Senator KENEALLY: Can you clarify what you mean by 'all the time'?
Ms Rose: We have a public-private partnership where we have Westpac analysts that sit with our analysts and work on matters such as child sexual assault.
Senator KENEALLY: If I can put it this way, Ms Rose: someone listening or reading the transcript later might take you to be suggesting that Westpac is, on a daily basis, reporting child sexual abuse suspicious matters to you. You've just said they report them to you all the time.
Ms Rose: Sorry—reporting suspicious matter reports all the time.
Senator PRATT: Did you receive reports in relation to child sexual abuse from Westpac prior to July 2018?
Ms Rose: I'd have to take that on notice, but—
Senator PRATT: You had some matters referred to you in July 2018. How long did it take for those matters to be referred to the AFP?
Ms Rose: I'd have to take that on notice.
Senator PRATT: Is that because you don't know or because you need to assess—
Ms Rose: That's because I personally don't know and it's also that, if I did know, I would be very uncomfortable talking about that with the matter before the court.
Senator PRATT: It's a matter of public debate currently—
CHAIR: In relation to the aspect of the question that goes to the sub judice matters, I do think we need to exercise care.
Senator PRATT: Just because the matter is before the court does not mean that parliament doesn't have a right to ask questions.

CHAIR: There's a longstanding convention at committee that matters that are sub judice are not the subject of questions. If you wish to challenge that longstanding convention—one which existed under Labor governments also—then I'd suggest some reflection before doing so.

Senator PRATT: Because the matter is before the court does not make it automatically a matter of public interest immunity, Chair.

CHAIR: They're different things.

Senator Cash: Chair, in any event, the witness has taken the question on notice.

Senator PRATT: Legal privilege is not an acceptable grounds. The public interest immunity case needs to be staked out in the context of those court proceedings.

CHAIR: My understanding is that legal professional privilege hasn't been claimed, but, in any event, the matter has been taken on notice and I would ask you to move on, please.

Senator KENEALLY: If we could also just reflect, if Senator Pratt is correct in her assertion, and perhaps consider whether or not Ms Rose would be available to answer similar questions in a private hearing?

Senator Cash: That would be a matter for the committee to determine.

CHAIR: As I understand the process for a claim of public interest immunity, that's one of the steps that we go through: consideration of whether or not—

Senator KENEALLY: I don't think Ms Rose is invoking a public interest immunity.

CHAIR: She's not. That's right.

Senator Cash: The question has been taken on notice.

CHAIR: The question has been taken on notice in a public sense.

Senator Cash: Correct.

CHAIR: That's the end of the matter as far as this question goes. If Senator Pratt's got other questions, that's fine, although I note, Senator Pratt, that you're approaching half an hour now, and—

Senator PRATT: I do have some further questions in this bracket, and then we'll see if we need to come back after lunch.

CHAIR: We've been doing this in 10 minute blocks, and there are others waiting for questions, so if you could keep it to before lunch, please, that would be appreciated.

Senator PRATT: If there are other senators who want to ask questions of AUSTRA then we will have to come back after lunch.

CHAIR: If you can get it done in the next five minutes then I'll accommodate you.

Senator KENEALLY: To be clear, are you suggesting that AUSTRA would then be completed at 12.30?

CHAIR: I would like for that to occur, but I suspect that Senator Patrick has questions for AUSTRA, so that's not going to be possible anyway. But, to give your line of questioning completeness for the witnesses, I'd be grateful if you could wrap it up before lunch.
Senator PRATT: We will try our best. In terms of how Westpac works with other banks and entities if there's a concern about potential child exploitation, if you detect a suspicious matter in relation to child sexual exploitation what kind of protocols for communication does AUSTRAC have?

Ms Rose: For just one individual suspicious-matter report, or in speaking to them about methodologies and typologies?

Senator PRATT: No—if you detect a suspicious matter.

Mr B Brown: I think it goes to the heart of the response that's been provided by Mr Collett. When suspicious matters are reported within the context of our operations in the Fintel Alliance, which is the public-private partnership, we have been working directly with the Australian Centre to Counter Child Exploitation. We work with the child exploitation teams that are located within each state and territory, and we have worked with the Australian Border Force as a means by which to intercept, at the border, persons who might be leaving the jurisdiction where suspicious activity has been identified.

As was indicated prior, that time frame for our assessment and prioritisation of matters remains three days, in terms of that assessment, presently, across all suspicious matters, and I can provide an indication. In 2019 there were over 2,200 suspicious-matter reports that indicated a possible link to child exploitation. In the year prior, 2018, there were just over 500 matters that indicated possible child exploitation. So there has been, over the course of several years—and this has been reported publicly prior—a 643 per cent increase in the reporting linking financial intelligence activity to potential child exploitation.

Senator PRATT: In the context of a specific suspicious matter, what protocols do you have in place with other organisations such as banks and police? Do you have formal policies in place?

Mr B Brown: The requirement upon the bank is to report the suspicious matter. Under legislation, they have a certain time frame in which they have to do that. It's 24 hours for matters relating to terrorism financing and 72 hours for matters relating to money laundering et cetera. But that's on the basis of the time that they form the suspicion. That suspicion may not be formed on day 1; it may not be formed on day 365. It depends.

Senator PRATT: So in relation to protocols with other agencies such as police, what's the maximum time, from discovery to contact, to ensure that the police can take action?

Mr B Brown: My answer to that was: there's no specific end date or specific time frame determined with each individual partner agency. As Mr Collett indicated before, we operate with just under 50 partner agencies. With each one of those agencies we have different relationships. In some we actually have AUSTRAC officers working side by side. We have people located in Queensland, Western Australia, New South Wales, Victoria, South Australia—

Senator PRATT: My question was: if you have a matter of concern where you think there's a clear link to child exploitation, is there a clear time line for referral to other responsible agencies? Surely there must be.

Mr B Brown: I think with all of our matters there's a prioritisation that we operate under, which was mentioned earlier.
Senator PRATT: That wasn't my question—about prioritisation. Is there a time limit that creates the onus on AUSTRAC to refer serious matters to the relevant agency?

Mr B Brown: In relation to the child exploitation matters, we are assessing those matters within a three-day time frame for referral to relevant partners, or determination as to whether there is sufficient information within those reports to build an intelligence picture to which to refer—

Senator PRATT: If there—

CHAIR: Senator Pratt, can this be your last question, please?

Senator PRATT: Thank you. If there is sufficient information to establish that the matter warrants referral, will it always be turned around in that three- to four-day time period, for that referral to take place?

Mr B Brown: I think Mr Collett mentioned this before in terms of the complexity. If there is a matter to which we identify a suspicious matter report and it identifies thousands of other financial transactions within the report, there is a complexity for ourselves in building that intelligence picture.

Senator PRATT: Once you've built that intelligence picture and you're confident that it warrants referral—

Mr B Brown: Then the matter is referred.

Senator PRATT: do you have a protocol in place that insists that it must be referred?

Mr B Brown: Absolutely, we refer matters.

Senator PRATT: And what is the time line there?

CHAIR: Senator Pratt, you have now asked three more past your last question.

Senator PRATT: Thank you, Chair. The witness and I are trying very hard to understand each other, and I think we're nearly there.

CHAIR: We need to break. There is a meeting that several of the coalition senators have to make at 12.30. We need to bring the witnesses back for Senator Patrick anyway, but that's not an invitation to start from the beginning after the break.

Senator PRATT: No, that's fine. We have another bracket of questions and we can close these matters off.

CHAIR: Another bracket of questions is not what was—

Senator PRATT: I did indicate that we had two brackets of questions.

CHAIR: You said you had two brackets of 15 minutes, and you've been going for 35. So we will adjourn until 1.30, when we will continue with AUSTRAC. My apologies that I am not able to let you go just yet.

Proceedings suspended from 12:32 to 13:31

CHAIR: We will now resume hearings of the Legal and Constitutional Affairs Legislation Committee's hearing of the additional estimates. I give the call to Senator Patrick.

Senator PATRICK: Thank you, Chair. I just want to come back to a matter that was traversed prior to the break—the matter of AUSTRAC and Westpac. I just want to get a status in terms of the court proceedings. The matter, I understand, is in the Federal Court?
Ms Rose: Yes.

Senator Patrick: Is it before a single judge?

Ms Rose: Yes.

Senator Patrick: Is the matter that's being dealt with a criminal or civil matter?

Ms Rose: Civil.

Senator Patrick: Where are we up to in terms of the trial? I note on your website it appears you've filed an application. Have there been any submissions or interlocutory hearings?

Ms Rose: We're part way through mediation.

Senator Patrick: What does mediation involve? Just in general, not specific to the case—that would involve a party accepting or perhaps admitting to certain civil offences—

Ms Rose: That would be ideal, yes.

Senator Patrick: and then the Commonwealth seeking to find some appropriate penalty.

Ms Rose: Yes. Mediation is run by a court appointed mediator who works between the two parties to achieve that, and, as I say, we're midway through that process.

Senator Patrick: Thank you for those details. So no submissions have been made, and the first step is remediation.

Ms Rose: No submissions made to the court yet, I don't believe. That's correct.

Chair: It's often the case that submissions are made in the course of mediation, Senator Patrick, not that I know whether or not they have been in this case.

Senator Patrick: I just want to go now to a question which I think was asked before. I just want to traverse it a little bit more. It goes to the breaches. I think it was 23 million; is that correct?

Ms Rose: Yes.

Senator Patrick: What was the manner in which those breaches were detected? Were they detected by AUSTRAC, detected and reported by Westpac, or detected by a third party?

Ms Rose: Part of those—and this is on the public record—were self-disclosed by Westpac, and the remainder were detected by AUSTRAC.

Senator Patrick: My understanding from a previous committee was that AUSTRAC—and the reason I was bringing it up today was that I was dialling into that particular committee and they weren't prepared to concede that. Was it the case that AUSTRAC identified something, which then gave rise to an admission by Westpac, or was it the other way around? Did Westpac self-report and then that caused AUSTRAC to look perhaps further into the matter and it found additional things?

Ms Rose: Part of both. Certainly, the self-disclosure did result in more work being done by AUSTRAC. There is a presumption under the legislation that entities will actually take responsibility for the money-laundering strength in their agencies. That is why they will come back and self-report. But there was a great deal more unearthed by AUSTRAC after that self-disclosure.
Senator PATRICK: So, to be clear in my mind, that unearthing was the result of self-reporting and it wasn’t—where I am trying to get to in the question, and it's a question directed at oversight of AUSTRAC, not so much Westpac; obviously, you receive funding, you have a lot of tools available, and you have people employed to look at these things, and it would be somewhat surprising if this many transactions were taking place and AUSTRAC simply didn't detect it first.

Ms Rose: I might refer to my general counsel, because I am a little bit concerned that we are getting into the matters of the case.

Senator PATRICK: Sure. And I might just point out the conventions of the Senate in relation to sub judice are that there is quite a high bar in respect of making a claim, and that must be that anything revealed must involve a substantial danger of prejudicing proceedings before a court.

Ms Rose: Yes, and that is right, and there is prejudice to adjudication or mediation of the case. That is why I wanted to point out that we are midway through mediation.

Senator PATRICK: In some sense, what I am asking are questions of fact, not questions that would be considered to be points of law or—

CHAIR: Questions of fact can be quite pertinent in a proceeding, so that distinction alone is not enough. But I take your point that it is a relatively high bar, yes.

Ms Rose: Kathryn, is there anything we can add to that safely?

Ms Haigh: I think the CEO has answered the question as it was asked.

Senator PATRICK: Well, I will ask it again, because it was not clear to me. I am trying to establish the initiating reporting. Was it that AUSTRAC detected something that led to a conversation that might have involved self-reporting and then further investigation by AUSTRAC, or was it Westpac that self-reported and then that led to—I am after that first instance.

Ms Haigh: It is a matter of public record that Westpac reported the initial trigger for AUSTRAC's subsequent investigation to the agency.

Senator PATRICK: Thank you. That is very helpful. That goes to the question: how did this not get detected by AUSTRAC in the first place?

Ms Rose: That is part of the case and part of our issue with the transparency of what has occurred, so I am not going to go into that. But I will take a guess at what you are trying to get at. AUSTRAC regulates over 15,000 entities. The legislation works on the premise that those entities strengthen their own systems and have a responsibility to report when that hasn't occurred, and to manage that, rather than relying on regulation to keep them in line. I am happy to take it on notice so that we can give you as much information as possible without injuring the proceedings.

Senator PATRICK: Sure. I think what you are suggesting is that just having AUSTRAC there acts as a deterrent, because there is some level of enforcement of the law. My question really goes to noting that it wasn't first detected by AUSTRAC. What do we then need to do to make sure that, if similar activities are occurring by someone who doesn't choose to self-report, your organisation, with the tools that it has, will detect such activities?
Ms Rose: Sure. Like there was with the Tabcorp and CBA matter, which have both increased the matters of self-reporting, they are looking at lessons learnt from each of the enforcement actions to see why instances have gone on, if they have gone on for some period, and what needs to be done within the industry about it. I don't want to talk specifically about what I think Westpac should or shouldn't have done and when, and what AUSTRAC—

Senator PATRICK: Just because I am trying to manage time, I am not here to oversight how the banks might self-report; I am here to oversight how AUSTRAC carries out its functions. My concern in this matter goes to the fact that it wasn't detected first by AUSTRAC, that would indicate there is a hole missing in your toolset or something has gone wrong in the process. What have you done in respect of your own ability to detect and then deal with these sorts of things? I don't have oversight of the banks.

Ms Rose: I understand, but what I am trying to say is that AUSTRAC does compliance inspections on all of these entities. We work looking at these entities for failures and we isolate those issues and call them out. There are instances, and many instances, where banks, and other large entities particularly, will self-disclose. We continue to encourage that.

Senator PATRICK: Have you had a committee or formed a team up inside AUSTRAC to say: how did we miss this? What do we need to do?

Ms Rose: Yes, of course. Absolutely. The reason I am hesitating in going into detail is I will reveal some of AUSTRAC's operational—

Senator PATRICK: I am not asking you to do that.

Ms Rose: I know you are not. Would it help if I got our compliance managers to speak to you about how we deal with compliance and what we look for?

Senator PATRICK: I am happy, and the minister might facilitate this separate to the estimates process, that the committee might be given a private briefing on it.

Ms Rose: I would absolutely welcome a private briefing on the work that AUSTRAC does, because it is very complicated and we do often have challenges in explaining it to people. Of course, we won't be able to talk about the matter before the court.

Senator PATRICK: I am not interested in the details. I am interested in whether AUSTRAC has reflected on what happened—

Ms Rose: Happy to do that.

Senator PATRICK: and has looked at itself and said, 'There are some holes and we need to fill them.'

Ms Rose: I will just stop you there. I don't believe there are holes that AUSTRAC needs to fill. I think we have done an excellent job on this.

Senator PATRICK: But you didn't detect it.

Ms Rose: We are not expected to detect.

Senator PATRICK: Okay. It's not in your remit?

Ms Rose: No. We cannot possibly detect every AML and CTF contravention in this country—

Senator PATRICK: Can you detect any?

Ms Rose: The legislation puts the onus on the entities to do that.
Senator PATRICK: Can you detect any?

Ms Rose: Yes, and we have.

Senator PATRICK: Maybe if you could provide to the committee a list in terms of the act itself and the contraventions, which ones you are capable of detecting and which ones you are not?

Ms Rose: It is not about the act and the contraventions and which ones we are and are not able to detect. There are a range of enforcement actions that we have taken on a range of issues in the act. They're on the website, but I am more than happy to provide both a private briefing and an answer for you on all of those issues.

Senator PATRICK: Once again, the question goes to the fact that you did not detect in this instance. You could say to me: 'Senator, there is no requirement for us to do that. There is nothing that the minister requires of us, or the law requires of us, to detect those matters.'

CHAIR: In effect, that's already been said, Senator Patrick.

Ms Rose: I'll just add one more thing because I think I have answered it as fully as I can.

Senator PATRICK: We can get to a clear point. Is that the case, that you are not required to detect them all?

Ms Rose: Of course that's not the case. It's not possible to detect them all, particularly when we are talking about international transactions, and we are in this matter. We are relying on access to information internationally as well as domestically, and that is where we rely on our entities to provide us with the information under the act that they are required to provide.

Senator PATRICK: Okay. So one presumes they provided you with this information?

Ms Rose: No.

Senator PATRICK: They didn't provide you with this information even though they were required to?

Ms Rose: That is what the whole court case is about.

Senator PATRICK: I will leave it at that then.

Senator PRATT: Ms Rose, I've got some questions in relation to articles in the paper—

Ms Rose: Excellent.

Senator PRATT: on both AUSTRAC and your personal appointment as the chief executive officer. Before I ask you the questions, is there anything you want to place on the record for the committee in order to truncate those questions?

Ms Rose: Yes. I'm personally appalled by the articles and the errors within. I don't think I've got time to talk about all the errors in those articles here. A couple of things concern me, most importantly around the reputation of AUSTRAC—that AUSTRAC may have damaged in some way, shape or form investigations into child sexual abuse. I think that is appalling and abhorrent. As I've explained here today, our information is available to law enforcement within 24 hours. There is no delay for law enforcement around this country to get access to all of our information.

Senator PRATT: We understand that.

Ms Rose: I'm not sure that people do because—
Senator PRATT: Well, the records are there. The question is—
Ms Rose: Can I finish, Senator Pratt?
CHAIR: Senator Pratt, let the witness answer the question.
Ms Rose: I do have a second part to that. It alleges or alludes to the fact that AUSTRAC may have held back the provision of information to enhance its civil case, which is appalling. As in many civil and criminal matters, there can be parallel tracks of work done where criminality is disrupted at the same time an investigation goes on. And that is what has happened in this case.
Senator PRATT: In relation to your academic qualifications, could you please outline for the committee what those qualifications are.
Ms Rose: I don't think I need to outline them because they've been in the paper. I provided my CV to the journalist after multiple FOI requests about everything from my travel and travel companions, job applications and the like. To circumvent the enormous amount of work that it was taking for my staff to answer, I provided the CV to the journalist, and that has been put in the paper. Nothing in there is a surprise to anyone I work with or any of my employers.
Senator PRATT: So that is a diploma of—what?
Ms Rose: A hotel school diploma in hotel business and management.
Senator PRATT: When did you complete that qualification?
Ms Rose: I can't recall.
Senator PRATT: That is your tertiary qualification.
Ms Rose: I could have gone into the two university degrees I started and did not complete, but I didn't think that was probably helpful for a CV.
Senator PRATT: I understand on versions of the AUSTRAC website and in CrimTrac annual reports, your qualifications said you had tertiary qualifications in business management. Your tertiary qualification is a diploma in hospitality management—is that correct?
Ms Rose: Yes, correct, and others. Tertiary, I think you'll, find is defined as education after secondary school. What I haven't put in my CV, because I think for CEO's jobs it's not relevant, are the dozen or so other courses I have taken that are not degrees, and therefore I have not claimed that they are.
Senator PRATT: No, but you have removed the words 'tertiary qualifications' from the AUSTRAC website. Why did you take those words down, unless you thought they could be misconstrued as—
Ms Rose: No, not at all. I know that when we redid our website—and I was asked questions about this last year—everyone's bio was redone, and mine was rewritten by the media unit.
Senator PRATT: I understand that you also said in your CV you were instrumental in the establishment and operation of the New South Wales Innocence Panel.
Ms Rose: I absolutely was.
Senator PRATT: You joined the panel in 2002, is that right?
Ms Rose: Yes.

Senator PRATT: The panel was established in 2001.

Ms Rose: On paper, yes.

Senator PRATT: Are you able to clarify your role in establishing that panel?

Ms Rose: I was working at Corrective Services at the time as a case manager of the 500 most serious offenders in New South Wales. The ministry for police advertised for an executive officer of the Innocence Panel and senior forensics policy officer, which I applied for and won. The main requirement of that job was to commence the workings of the Innocence Panel under Nicholas Cowdery as the chair. I continued that on until or just before it was closed, not because of issues around processes but because of legislation.

Senator PRATT: As I understand it, the government wasn't confident in the principle of the work that the organisation was doing.

Ms Rose: Correct. Sorry, it was under Judge Mervyn Finlay, but Nicholas Cowdery was one of the leading members.

Senator PRATT: You have expertise, according to your records, in offender management. What decisions about offenders have you been involved in making?

Ms Rose: In the Serious Offenders Review Council, there was a visiting judge and several community members. We as team leaders—I think at the time I had L to Z—were required to work as secretariat to the judge and visit each of the jails, interview each of the 250 most serious offenders in New South Wales and go through their submissions, their paperwork and the reports from corrective services every six months to review their offender management status, and their grade, if you like, which indicates what they have access to and what sort of programs they need to rely on.

Senator PRATT: Who was the ultimate decision-maker in relation to those?

Ms Rose: It was a council, so those documents went to the Serious Offenders Review Council.

CHAIR: Senator Pratt, you are getting a pretty long way away from questions about the use of the appropriation that is going to AUSTRAC. So if you could be a little more economical, that would be appreciated.

Senator PRATT: The CEO is responsible for—

Senator Cash: Chair, is Senator Pratt suggesting that the CEO is not qualified? Is that the line of questioning you are going down? Because we would obviously refute that.

Senator PRATT: It is very important that we are able to ask questions so that the public can have confidence in their qualifications.

Senator Cash: I assume you will also be asking questions about the fact that Ms Rose does appear to have after her name 'PSM'. I am certainly hoping that Ms Rose will be able to elaborate on why she was awarded the Public Service Medal as part of this cross-examination.

CHAIR: I wouldn't want there to be a suggestion that people who don't have numerous degrees don't have interesting and valuable things to offer.

Senator Cash: I have been the minister for vocational education and training.

CHAIR: Quite right.
Senator KENEALLY: If I might assist the chair and the committee, I would have hoped that Ms Rose found this line of questioning useful in order to correct or put forward her responses to some of the statements that were made about her in the media yesterday. It's a very opportune time, and I'm glad that we've been able to provide it for you.

CHAIR: I would suggest that could have been done in one question rather than in 15 minutes when we are already over time. Please bring this to its conclusion.

Senator PRATT: The interview process you went through when you applied for the position at AUSTRAC—my understanding is that you were actually responsible for being the contact person for other candidates applying for the job. How is it that you are responsible for the recruitment process but actually end up with the job at the end of the day? How would you compare the qualifications of other applicants with your own?

CHAIR: You can't ask her to second-guess a selection panel's decision-making, Senator Pratt. Order! Minister?

Senator Cash: It is a statutory appointment.

CHAIR: That's right. It is entirely inappropriate for the person successful in receiving that statutory appointment to comment on the merits of competitors. Senator Pratt, move along.

Senator PRATT: Can you please take us through the process that you were asked to undertake in order to recruit for this statutory appointment.

Ms Rose: There was a recruitment process. I suggest that the attorneys-general be approached, as they ran that recruitment process. I think you should speak to them about the outcomes of that recruitment process because that was quite complicated. I did not apply for the job. I was approached by the minister sometime after that process was complete.

CHAIR: It's a good point. This is properly a line of questioning for the Attorney-General.

Senator PRATT: Did you approach the minister about your own interest in the job?

Senator HENDERSON: Point of order, Chair. I think Senator Pratt's questions here are out of order. They are not within the scope of the role of this committee in the estimates process, and I would ask Senator Pratt to return to appropriate questions to Ms Rose.

Senator KENEALLY: If I could respond to the point of order, Chair.

CHAIR: You can.

Senator KENEALLY: I would like to put on the record that statements about Ms Rose were published on government websites and tabled in annual reports, and it is within the rights of committee members to ask questions relating to her qualifications and how she was selected for the statutory appointment.

CHAIR: I agree that it is appropriate for one's qualifications and selection process to be considered, though I would note that a lot of this is more properly directed to the Attorney-General's Department—

Senator Cash: I believe those questions have been referred to the appropriate department.

Senator HENDERSON: Can I respond to the point of order. I think the line of questioning is reflecting adversely on Ms Rose; therefore, that is why I say that it is out of scope and that Senator Pratt should return to appropriate questions.
Senator Cash: Chair, I would like to make a statement in relation to this matter to ensure the government's position is properly reflected on the record.

CHAIR: Okay, I will do that before confirming anything else.

Senator Cash: The position of the AUSTRAC CEO is a statutory appointment. Ms Rose has been awarded the Public Service Medal. She was appointed as AUSTRAC CEO on 13 November 2017 under sections 211 and 214 of the Anti-Money Laundering and Counter-Terrorism Financing Act. Ms Rose has had a distinguished career in Australia's law enforcement and criminal justice and intelligence agencies. She has been recognised for her considerable contribution to law enforcement and, as I have already stated, was awarded the Public Service Medal in 2013. Prior to her appointment, she held several other senior positions, law enforcement positions, including deputy secretary at the Commonwealth Attorney-General's Department, deputy CEO of the Australian Criminal Intelligence Commission and CEO of CrimTrac. So I certainly hope that no senator is in any way implying that Ms Rose does not have a distinguished record of service in relation to the public service.

CHAIR: I accept that it is appropriate to look at one's qualifications for a position as part of the estimates process. I also am of the view that this is more appropriately to be raised with the Attorney-General's Department, if there is some sort of concern about the nature of the process. I am also of the view that Ms Rose is formidable enough to be able to defend her own high calibre for the position.

Senator Cash: I just thought it was appropriate for the government's position, given the line of questioning, to be placed on the record.

CHAIR: Thank you, Minister, quite right. Senator Pratt, is there anything more?

Senator Pratt: No, I want to conclude the last question. Ms Rose was responsible for taking applications from other applicants; nevertheless, the government made its own appointment. Ms Rose, did you approach the minister about your interest in that role or did the minister approach you?

Senator Henderson: Point of order, Chair.

Senator Cash: This has also been referred to the relevant agency.

Senator Pratt: It is relevant in terms of whether the manner in which the application—

CHAIR: Order! Let me finish hearing Senator Henderson and then I will hear the rest of you.

Senator Henderson: I think Ms Rose has already answered that question.

CHAIR: Senator Pratt, did you have a response that you need to get on the record?

Senator Pratt: No.

CHAIR: Minister, you were trying to say something.

Senator Cash: I believe these questions have been asked several times and have been answered, and I've placed the government's position on the record. I would also refer to Minister Dutton's comments yesterday on Insiders, where he strongly endorsed Ms Rose and her appointment.

CHAIR: Yes, noting that these types of questions are something of a hatchet job.
Senator Cash: In fact, I think he referred to the media article as a hatchet job. Media can allege anything; it does not mean it's true.

CHAIR: Senator Pratt, are you complete?

Senator PRATT: Thank you, Chair.

CHAIR: Senator Henderson, very briefly, please.

Senator HENDERSON: I just wanted to pick up on the minister's comments about Mr Dutton's remarks on the Insiders program yesterday, where he said that Nicole has taken Austrac to an unprecedented level of success not only with the banks but with many of the criminal syndicates that they're now working on with the Australian Criminal Intelligence Commission and the Australian Federal Police and their state counterparts, and certainly there are 760 million reasons why, in relation to the payout by the Commonwealth Bank, Ms Rose, it might be suggested that you have done a very good job. Could you expand on the work of Austrac in terms of the success, particularly in relation to the work of the Commonwealth Bank, which obviously delivered a great dividend to the Australian people.

Ms Rose: Sure. Austrac, I believe, has done some incredible work in the last couple of years. We've been given more funding and more people from the government to increase our enforcement, to go from an agency that had less than a handful of enforcement actions under its belt to being a lot more proactive in taking entities to court, or on the process to court, to actually really tell industry and big business in this country that it is their responsibility to take money laundering very seriously, and they play a very big part in strengthening the financial system in this country. It's not something where a regulator can sit up high and, as Senator Patrick said, just make everyone do it; it is their responsibility to actually have systems and processes in place that harden their companies against serious and organised crime. Austrac has done that through enforcement and we have done it through an increase in compliance. We have increased our compliance teams to go out and work with the high-risk entities—casinos, big banks; we have just done a very big project with the remittance sector—and increase the education and the guidance not just to big business but to small businesses like remittance companies, family businesses of one or two people, around the suburbs, sending money home, about their responsibilities. So we have done that on the enforcement side.

On the financial intelligence side, we have completely reinvigorated those teams to have them working with our law enforcement and intelligence counterparts in the national intelligence community and within Home Affairs. We've ramped up our engagement with state and territory police, some of which weren't using Austrac information at all. And we're looking at providing much better quality actionable intelligence so that police actually have reports that they can go out and action rather than giving them more work.

I could keep going—you probably don't want me to. But I am very, very proud. And I will say that, in the last census, we were in the top 13 agencies for engagement and happiness. We've got lots and lots of people that want to come and work at Austrac.

Senator HENDERSON: Ms Rose, can I finish up by asking you this: in light of the penalty paid by the Commonwealth Bank and the litigation with Westpac on foot at the moment, what sort of message does that send to our banks and to other financial services operators with respect to money laundering and other compliance matters?
Ms Rose: A couple of messages. We are lagging behind, or we have been lagging behind, domestically in this space. This is bringing us into line with enforcement action internationally—

Senator HENDERSON: You're referring to the conduct of the banks?

Ms Rose: The conduct, but the enforcement action against banks that has occurred in the last decade overseas and has not occurred in this country. It has said to big banks and big industry—we did Tabcorp as well, so there's also the gambling industry—that we are looking at their noncompliance and we will action it. We are also working with all of those partners in the Fintel Alliance, as I mentioned—a public-private partnership. So we expect they will work with us as partners, giving us intelligence. But, where they do the wrong thing, we will start enforcement action.

Senator HENDERSON: Thank you. I have no more questions.

CHAIR: Thank you very much. Officers of AUSTRAC, thank you for your evidence. You are excused, and we call to the table the Australian Security Intelligence Organisation.

Australian Security Intelligence Organisation

[14:06]

CHAIR: I welcome to the table officers from the Australian Security Intelligence Organisation. Would you like to make an opening statement?

Mr Burgess: Yes. I promise it will be a brief one. Thank you for this opportunity to speak to you today. Our organisation has an important mandate: to protect Australia and Australians from serious threats to security. The mission to protect drives the focus of our work and has a direct impact on both our community safety and the integrity of our democracy. Last Monday, I presented my first annual threat assessment, outlining the threats to security ASIO is dealing with. I won't provide additional here, other than to say in summary that the threat of terrorism at home remains probable. This means there is credible assessed intelligence indicating there are groups and individuals with the capability and intent to conduct an attack onshore.

Australia is also the target of sophisticated and persistent espionage and foreign interference activities from a range of hostile foreign-intelligence services. This activity is occurring at a scale and level of threat that is unprecedented. Given the evolving nature of these threats we face, ASIO continues to review our capabilities and the powers we have to ensure they are appropriate and proportionate to the threats. Thank you.

CHAIR: Thank you, Mr Burgess. Senator Carr, you have the call.

Senator KIM CARR: Thank you very much. I appreciate the point you make about your key responsibility being to protect Australians. That is a point we would all agree with. The point that I was attracted to in your statement from 24 February was your reference to the potential target for foreign interference in Australian universities. You made that point but
you also said that members for parliament were the subject of foreign interference. Could I begin with the university community. Have you had any conversations with vice chancellors of the universities about the nature of those threats?

**Mr Burgess:** Yes, we have—directly, but also through the great work of the Counter Foreign Interference Coordinator in the Home Affairs department. As you know, in that, we have been working collaboratively with universities; the guidelines were in fact drafted by the lead of the universities. So we have had many conversations with them.

**Senator KIM CARR:** Have those conversations concentrated on the question of cybersecurity or on a research program?

**Mr Burgess:** It concentrates on all elements of how a nation state might interfere in the behaviours or activities universities are engaged in.

**Senator KIM CARR:** I wonder particularly about the research program. Have you identified any breaches of the law in regard to the operation of the Defence Trade Controls Act?

**Mr Burgess:** You would appreciate that I am constrained as to what I can say in a public hearing. We have definitely identified individuals engaged in acts of foreign interference and espionage, targeting information around matters which are sensitive—as in intellectual property and things that are considered sensitive. Beyond that, I cannot comment publicly further.

**Senator KIM CARR:** However, I ask agencies right across the Commonwealth whether or not there have been any notifications of any breaches of the law in regard to the operations of the very rigorous regime we have in this country—much tougher than the United States in regards to the Defence Trade Controls Act. No agency has been able to advise me—in fact, they have explicitly said there have not been breaches. Are you saying to me that is not correct?

**Mr Burgess:** I am not commenting. I am neither confirming nor denying. It is not for me to comment.

**Senator KIM CARR:** The operations of that act go to the specific measures in terms of the prohibited export lists, which, of course, is changed every year. Do you get any access to that list?

**Mr Burgess:** We know what is on that list, yes.

**Senator KIM CARR:** I am sure you know what is on the list, but are you part of the process that evaluates that list every year?

**Mr Burgess:** No. Actually, ASIO is not the lead on setting that list. We are consulted on matters of threats and are aware of those technologies, but we are not the ones that deem which technologies are sensitive or not.

**Senator KIM CARR:** University vice chancellors have put to me that it would be of much greater assistance to them if you were able to actually tell them that there was a problem in specific terms rather than generalised terms—and, specifically, where you believe there are breaches of the regulatory regime occurring in this country at the moment.

**Mr Burgess:** By the 'regulatory regime', do you mean broadly or in relation to—
Senator KIM CARR: There are specific acts that go to the regulation, and part of that is the Department of Defence's role, part of that is the education department's role, and part of that is the role of the individual universities. It is one thing to make an assertion that we have a problem in the university community in terms of the research program, which some statutory agencies are doing—but not providing any evidence of it.

Mr Burgess: There are a couple of things to say there. First of all, ASIO's role—my agency's role—is to shine a light on the threat so it can be dealt with. Secondly, I have publicly talked about cases where individuals have come in to universities to conduct clandestine intelligence collection operations. But, beyond that, I will not discuss publicly specific details.

Senator KIM CARR: I was very specific. I asked you about the research program and the regulations of that research program.

Mr Burgess: My answer is the same. I will not comment on specific details.

CHAIR: Senator Keneally.

Senator KENEALLY: Mr Burgess, thank you for being here today. I would like to reflect upon your threat assessment and congratulate you for making that speech in public. I think it is a great aid to the parliament and the Australian community. Previously, ASIO has acknowledged right-wing extremism as a threat, but last week in your threat assessment you said that that threat is growing. What are the factors that are driving that growth?

Mr Burgess: We do not fully understand why we are seeing a growth. This is a matter that ASIO has been looking at for a good number of years. In the last three years, we have seen a rise in activity and a strengthening, and there are a few trends there. But we do not fully understand why this is occurring.

Senator KENEALLY: Germany's domestic intelligence agency announced they would create a central office for the investigation of right-wing extremist activities. Taking into account, of course, the relative size of Germany's population to Australia's—nonetheless, Germany's agency is going to create 300 roles in that unit. Does ASIO have plans to stand up a dedicated unit?

Mr Burgess: I will also comment that, in the context of Germany, they also have a history in this space.

Senator KENEALLY: Of course.

Mr Burgess: So I perhaps understand why they would be doing what they do. I and ASIO—we have no plans to set up a dedicated centre. My organisation focuses on the threats we are able to identify and need to investigate, and that drives where our resources go. As I said the other night, this one is a growing concern for us, but it does not and is not yet currently my principal concern.

Senator KENEALLY: I understand that the United Kingdom government has listed three right-wing groups as terrorist organisations. Canada has listed two. I understand Australia has not listed any right-wing groups. Given that we know from your speech there are organised cells operating within Australia, are you able to outline to the committee the reason why no groups have yet been listed in Australia?
Mr Burgess: Obviously, we constantly review proscription of certain groups. When we do that, we're mindful of the intelligence that we have, the legal threshold for which we can do so, and the purpose that that would allow us to achieve by listing such organisations. Whilst it's under constant review, I can't go into full details of those particular matters.

Senator KENEALLY: The experts that I've spoken to in Australia and in other parts of the world suggest that some of these right-wing groups are sophisticated in their understanding of terrorist listing proscriptions and they know how to just fall just under the threshold. Has ASIO got a view on that proposition?

Mr Burgess: My view on that would be currently I'm not aware of seeing that level of activity or sophistication in trying to avoid proscription. We are very much mindful of this issue and we are paying great attention to it. I'm not sure I could conclude that or I've seen that, at this stage.

Senator KENEALLY: Can you advise if any Australians have travelled overseas to the United States or Europe specifically to undertake training with right-wing extremist groups?

Mr Burgess: I obviously can't discuss particular matters, but, as I did talk about in my speech last Monday, there was one individual that was stopped from travelling because they were travelling to an Eastern European country—in fact, the Ukraine—to fight with right-wing groups.

Senator KENEALLY: Thank you. Finally, earlier we spoke to the ACIC and I pointed out that a 2017 AIC report noted that Australia does not have any formal monitoring systems for this form of violence, such as that which exists in the United States FBI's hate crime statistics. Mr Phelan responded that he wasn't aware of anything that has changed since 2017 but suggested in his answer that ASIO may have developed such a resource. Are you able to reflect upon whether or not Australia does have any formal monitoring systems in place for this form of violence?

Mr Burgess: Absolutely. ASIO's role is to look for this level of threat and those who wish to promote such violence. My counterterrorism division is focused on all forms of extremism, and there is a dedicated team that is looking at right-wing extremism.

Senator KENEALLY: Just on that point—to follow up that answer, Chair, with your indulgence—to make clear, your threat assessment outlined the two most significant forms of threat, in terms of terrorism and the capacity to carry out a terrorist activity in Australia, were Islamic fundamentalism and extremism, and right-wing extremism. Does ASIO have a view as to whether or not Islamic fundamentalism sits upon a left-right continuum?

Mr Burgess: Firstly, yes, I did say that Islamic extremism remains our principal concern, but I did call out the concern around right-wing extremism. With regard to where individuals or groups sit on the political spectrum, I avoid commentary on that matter. I'm not saying that to be clever. Yes, I did talk about right-wing extremism, which suggests I am labelling it. In that context though, unfortunately, neo-Nazi-like or similar groups have long been given the label of 'right-wing'—not by ASIO, and therefore, I don't comment and don't focus on that.

Senator MOLAN: Can I follow up on that question?

Senator KENEALLY: Sure. I would like to thank Mr Burgess and wrap up. Thank you, Mr Burgess and Dr Southern, for being here today.
CHAIR: I am going to go to Senator Roberts soon, but did you have something that you wanted to clarify?

Senator MOLAN: A very quick one. I'm just confused, Director-General, in relation to the use of the term 'right-wing groups'. I think I understand what the senator is getting to when she speaks about right-wing extremist groups. You made the point that you make no judgement as to where they might sit on a political spectrum, but certainly the Australian Institute of Criminality refers to them as 'far-Right violence'. Is there some way that we could look at the use of terminology in relation to this and refer to them as 'far Right' or 'far Left'? I just feel that we are setting ourselves up for serious failure in relation to this.

Mr Burgess: It probably is a good idea if we look at the terminology we use so we don't confuse people. My focus is on individuals and groups who promote communal violence or politically motivated violence, regardless of where they sit.

Senator MOLAN: Thank you.

Senator KENEALLY: To make it clear, I was not seeking to characterise anything except to pick up on the language the director-general himself used in his speech, for clarity.

CHAIR: I'm about to hand to Senator Roberts. Could I clarify one thing arising in my mind from Senator Keneally's questioning? There were questions asked of you in relation to whether or not there had been a declaration in relation to any groups that represent any of these far-Right extremist groups. If you had identified a group of that nature, they would be identified. Is that correct?

Mr Burgess: It depends, Chair, and I'm not meaning to be funny by that. It does actually depend on a number of things, including the nature of the threat and what we're trying to achieve by listing. If it's just proscribing an organisation, it doesn't necessarily stop the promotion of violence.

CHAIR: Let me frame it another way. If there was, in the view of ASIO, a value in proscribing an organisation of this kind, ASIO would not hesitate to do so?

Mr Burgess: That's correct.

CHAIR: Thank you.

Senator ROBERTS: Thank you all for attending today. Given the recently expressed concerns about the wide extent of spying by foreign agents in Australia, both in the media and in the community, is the partnership between the CSIRO and China, by way of the Centre for Southern Hemisphere Oceans Research, of concern to national security?

Mr Burgess: I won't speak on particular comments. Of course, I recognise research organisations' right to engage in research, but it's not for me to comment on particular matters. Even if there were concerns, I couldn't comment on them in this forum.

Senator ROBERTS: What about something more specific? Is ASIO aware that CSIRO and Qingdao National Laboratory for Marine Science and Technology are collaborating on a key military research project, developing a satellite with a powerful laser to be used for antisubmarine warfare that can pinpoint a submarine 500 metres beneath the surface—half a kilometre down?

Mr Burgess: I'm not aware of that particular research, but I would say ASIO has had many conversations with the CSIRO.
Senator ROBERTS: Is this project going to assist Australia's defence or work against it, given Australia's planned $145 billion purchase of another 12 submarines?

Mr Burgess: I think you'd have to ask the Department of Defence that question.

Senator ROBERTS: How timely is this in light of China being recently identified as mapping the submarine sea lanes off the West Coast of Australia, giving a route straight to the South China Sea?

Mr Burgess: Again, Senator, I won't comment on particular matters, but we have a range of activities and we look at those, and some of them are legitimate and some of them may not be. But I am restrained from commenting in a public forum.

Senator Cash: Chair, could we clarify with Senator Roberts: are you reading from press reports, just in terms of the line of questioning that the director-general is responding to?

Senator ROBERTS: Press reports to some extent, but also releases from CSIRO, I believe.

Senator Cash: When you are putting it to the director-general, could you just let us know where you are actually drawing the information from?

Senator ROBERTS: Sure.

Senator Cash: Thank you.

CHAIR: If it's possible to do so, it would be great if you could provide a copy.

Senator ROBERTS: Okay. Perhaps going back to the conversation that Senator Keneally started and Senator Molan jumped in on—I'm trying to put the question to you properly, Mr Burgess—the terms 'the Left' and 'the Right' would seem to be ones that confuse. Maybe they're even designed to confuse. Maybe they're even designed to confuse. I'm not accusing you of using those terms for that intent. They've been generally accepted across the community. But, to me, Hitler was raised as someone from the Right when he was a socialist. In fact, most of the dictators and most of the mass murderers of the last century were actually socialists or communists. So 'the Left' and 'the Right' gets fuzzy. Perhaps a better terminology would be to do with control versus freedom, in terms of the people who are seeking to take away freedoms, whether it be from a country or from individuals within a country. Because it seems to me that, whenever the terminology is confused, your job of communicating to the Australian people will be more difficult. Is there some element of that? I tend to talk in terms of freedom versus control. What are your thoughts on that?

Mr Burgess: I'm not sure I quite go for freedom versus control. This is about individuals or groups who promote communal violence or politically motivated violence. We focus on those elements of violence and extreme violence, and that's where the threat inquiry takes us. I agree it's unhelpful to assign them to a part of the political spectrum, because, actually, being on the political spectrum is a great part of our democracy. It's actually when individuals, regardless of where you sit, want to promote communal violence or politically motivated violence that they will get the full attention of my organisation.

Senator ROBERTS: So it's potentially violent versus non-violent. You're targeting violent groups.
Mr Burgess: Absolutely—that's where our lane exists. We don't look at people who protest, for example. That's entirely up to them. It's their democratic right to do so. It's when they promote violence that they become of investigative interest to ASIO.

Senator ROBERTS: So violence is the real key, not whether it's left, right or centre.

Mr Burgess: Correct.

Senator ROBERTS: Thank you very much.

Senator FIERRAVANTI-WELLS: Director-General, I'm not sure whether or not you saw some of the comments that I've made recently directly on this point—yes, I see you nodding. I am concerned about this and concerned about the use of the terminology of 'right'. 'Right' is associated with conservatism in this country, and there are many people of conservative background who take exception to being tarred with the same brush. I think that you do understand that your comments, particularly when you refer to them solely as 'right-wing', have the potential to offend a lot of Australians.

Mr Burgess: I certainly understand your point, Senator. I totally get it. My intention was not to offend any innocent people in that regard. As I said before, it's unfortunate that we refer to it as 'right-wing extremism', but, in the absence of something else—maybe we should look at a different label.

Senator FIERRAVANTI-WELLS: I think if one reads The Official History of ASIO, volumes 1, 2 and 3, I think that that's very, very evident, and I'm sure that you've read your history quite correctly, Director-General. My point is that both fascism and socialism have their antecedents in communism, and I think it's important for those distinctions to be made. I think that Minister Dutton's comments mopping up after this, if I can put it that way, were very clear: it doesn't really matter what spectrum they're on—if it's extremism, it's extremism. And I think that you would equally agree that there have been instances in this country where so-called 'right-wing' extremists protesting with flags—whether it's the BLF flag or other flags—have indicated that their politics are not necessarily right-wing; they were actually left-wing. So I think the time has come, Director-General, especially from you, to ensure that you are very careful with the terminology that you use, so that ordinary Australians, particularly those of conservative background, are not offended.

Mr Burgess: I'm happy with that, Senator. I totally agree.

CHAIR: Before I hand over to Senator Patrick, I have two clarifying questions. There has been mention, in the questioning from Senator Keneally, of the fact that the UK has listed two far-right extremist groups. Is that right?

Mr Burgess: That's correct.

CHAIR: Do either of the two right-wing terrorist groups listed in the UK—namely, Sonnenkrieg Division and System Resistance Network—have a presence in Australia?

Mr Burgess: I don't believe they do.

Senator PATRICK: Mr Burgess, thank you for your speech. I have read it. I just think it would be useful to put it on the parliamentary record as well. In your speech, you talk about foreign interference as a 'nuanced concept' aimed at 'covertly shaping decision-making to the advantage of a foreign power'. You go on to say it's 'highly corrosive'. As Senator Carr...
indicated, you put parliamentarians and their staff at the top of the list. Is there any reason why you put them at the top of the list?

**Mr Burgess:** I didn't mean to put them at the top of the list. It was just listing a range of individuals or groups that actually get the attention, but, of course, members of parliament and their staff are in a good position to influence outcomes in this country through the very nature of parliament.

**Senator PATRICK:** I note that we're the only people exempt from the Foreign Influence Transparency Scheme as well. When you talk about the increased activity that you're seeing, does that relate to trying to influence politicians or is that more generally across the entire suite of things that a foreign actor may do?

**Mr Burgess:** You'd appreciate I'm constrained in what I can say, but, yes, they were on the list because they are targeted.

**Senator PATRICK:** Sure. When you talk about increases in activity here, are those increases equal across all the range of activities that you might expect from a foreign state, or are they focusing on foreign influence?

**Mr Burgess:** There's no doubt in my mind that foreign interference, the stuff that is deceptive or clandestine in nature, is at a level that we've not seen. Foreign intelligence services are very active. I can also say they don't discriminate; they are across the political spectrum.

**Senator PATRICK:** Sure. Do you see this as a tactical increase or is it something more strategic?

**Mr Burgess:** In my mind, it's definitely strategic.

**Senator PATRICK:** You talk about all levels of government. Do you say that the activities are more directed at federal politics or is it at state politics?

**Mr Burgess:** At all levels: councils, state and federal.

**Senator PATRICK:** In relation to foreign influence, you've been tracking this for a while. Have you identified any circumstances where, as you have been monitoring this—and I don't want to go into details of any specifics; I'm just trying to understand the effect—some attempt has been made and you can see there has been an influence on policy outcomes?

**Mr Burgess:** Yes. They are effective in their foreign interference. Not in all cases, but we have seen it.

**Senator PATRICK:** In the context of law enforcement, and in some sense this goes to where you draw the line in terms of where foreign influence gets to a point of breaching some law, I presume you investigate and, at the point where you identify criminality, that is where you hand it over to the AFP?

**Mr Burgess:** As you are aware, the legislation was passed—that is, the espionage and foreign interference law. Recently, the government announced the additional resources for the foreign interference task force, which is many agencies, but ASIO and AFP are the prime agencies involved in that. Yes, one element that we have is the ability to use law, and that includes prosecution. It's not the only one we take. It depends on the activities. It's a case-by-case assessment. As I said in my speech the other day, my organisation will support prosecutions, and we're heavily focused on that.
**Senator PATRICK:** But the point is you don't do the prosecutions. At some point you hand it across to the AFP.

**Mr Burgess:** The task force sits inside my building. We're not just handing it over, but, yes, they are a law enforcement agency, so they're the people who have the authority to take it to the next level. We're not law enforcement and we don't prosecute.

**Senator PATRICK:** We've had this increase in activity. You've had increases in budget that reflect that. In terms of results—and to a certain this goes extent to Senator Carr's question before—I presume we're going to see more prosecutions, or have seen more prosecutions in relation to this. Is it simply the case that we don't ever get to a prosecution point?

**Mr Burgess:** No, it is not the case. We get to prosecution. In the act, the power has been in place around 18 months now. The legislation is not retrospect, so you can't go back using what we already know. I can't go into the specific details, because prosecution is not for me, but there are a number of cases that we have referred and there are a number of developing cases that we're working on. We and the AFP are working hard on identifying and dealing with the threats we see.

**Senator PATRICK:** Thank you. That assists me. In terms of actual prosecutions, we know from an answer about Witness J from the Attorney-General that it's very unusual to see prosecutions conducted in secrecy. I presume you're able to tell us if there are any prosecutions that are on foot in respect of these sorts of activities.

**Mr Burgess:** Yes, I would be able to tell you. I wouldn't be able to comment on them but they would be a matter of public record.

**Senator PATRICK:** Sure. The question is: are there prosecutions on foot?

**Mr Burgess:** Not at this stage.

**Senator PATRICK:** Thank you. When you look at the influence that's taking place inside universities—and this also goes a little bit to Senator Carr's question—there could be activities that relate to the collection of intelligence or it could be related to influencing students; for example, foreign students. Where does the balance of the effort lie in respect of foreign states working in and around our universities?

**Mr Burgess:** I would characterise it as it's actually across all of our intelligence collection and then interfering, perhaps, in an individual's right to, at least in our country and under our law, say and do what they think.

**Senator PATRICK:** The AFP have indicated, even as recently as this morning, that they have a special branch that looks at politically sensitive prosecutions or investigations. Do ASIO have a similar regime in place?

**Mr Burgess:** We obviously do look into matters that are associated with political parties. I won't call them political, but we recognise the sensitivity there and we know how to handle those well. I have said this to leaders of parties, but I'm happy to say it here: when we identify problems inside a political party, I will go to the leader of the party, no-one else.

**Senator PATRICK:** Sure.

**Mr Burgess:** If there is a lawful matter, as in the law has been broken, then that's a matter that gets referred to the police.
Senator PATRICK: Okay. My understanding of your answer is that you don't have a specific unit that looks at politically sensitive—

Mr Burgess: It's part of our core business on the espionage front.

Senator PATRICK: Do you have a set of internal guidelines?

Mr Burgess: We have policies internally which actually guide what we do.

Senator PATRICK: Okay. Thank you, Chair.

CHAIR: I'll give the call to Senator Molan hoping that this might be our last block in the session and we might be able to excuse the witnesses.

Senator MOLAN: Director-General, I have some understanding, from a previous life, of the ASIO Act. My memory takes me back to what we non-technically called a questioning warrant, and I believe that at a certain stage there was controversy over whether there was a detain-and-question warrant. Can you clarify for me, please, ASIO's special powers to detain and question, and to use compulsion to do that, to get to your basic job of obtaining intelligence. Can you clarify that for me, please.

Mr Burgess: We are able under law today to obtain a questioning warrant or a questioning and detention warrant, so two warrants. These warrants obviously require the subject to appear before a prescribed authority to give information and obtain a proper record of things relevant to a terrorism offence.

Senator MOLAN: And are these warrants used often or sparingly?

Mr Burgess: That power came into being around 2003, and we've used that power 16 times.

Senator MOLAN: If they've been used 16 times since 2003, are they still necessary, do you think?

Mr Burgess: I believe they are, yes.

Senator MOLAN: My understanding is that they're linked mainly to terrorism investigations, and you said the other day in your threat assessment that the threat has broadened greatly. Do you think that we also need, as a parliament, to give you more powers in relation to this, because of your broader remit in the work that you do?

Mr Burgess: Yes. The powers that I have are a matter for government and, obviously, parliament. I believe I have a strong case for an expansion of these powers. In fact, ASIO has been on the record through other committees talking through what that might look like. I believe I have a strong case, but actually whether or not we do that is a matter for government, and Home Affairs is the department that administers the ASIO Act and addresses all other matters of policy. But I believe I have a strong case for that.

Senator MOLAN: And either yourself or the minister or the secretary: what specifically are you after in relation to amending these powers?

Mr Burgess: Again, I'm happy to say what we've said before. I'm very much of the view—and, previously, the organisation has suggested that these powers extended to all our heads of security; I don't believe that's necessary, but I do believe it's necessary espionage and foreign interference.

Senator MOLAN: Espionage and foreign interference?
Mr Burgess: Yes, which are two of our heads of security under the act.

Senator MOLAN: Thank you, Director-General.

CHAIR: I got a little overexcited. Senator Chandler has a couple of questions.

Senator CHANDLER: Mr Burgess, we have seen some media reports in the last couple of weeks about a number of convicted terrorists who are due for release from prison, having served the balance of their sentences. Does ASIO have any concern about the release of these terrorists back into the community and any threat that they might pose? It might be best to talk in general terms rather than specifics, obviously.

Mr Burgess: Absolutely, as we've witnessed—and as I mentioned in my speech last Monday—what's happened in the United Kingdom, it's clear that the ideology runs deep, and just because someone's served their time does not necessarily mean they leave jail free from being radicalised. Of course, that is a case-by-case basis, but I think it highlights the point that you're also picking up on, and I do remain concerned—we do remain concerned—about individuals who are due later this year, and then for the next three or four years we have a number of people coming out of jail. I do remain concerned. Obviously, some of them will not be of concern for us, but some of them will be. I can't share that in this forum.

Senator CHANDLER: Of course.

Mr Burgess: But I think the point is made: I am really concerned and we work with the home affairs department and others, state and federal law enforcement agencies, on what might be able to be done by that. My agency will remain focused on understanding the nature of that threat and watching it closely when they get their freedom, which they're entitled to under the current law.

Senator CHANDLER: Would it be fair to say—and, again, I don't want to get too specific, for obvious reasons—it is a strain on ASIO's resources that you have to monitor these convicted terrorists once they are out and back in the community?

Mr Burgess: There is no doubt our people are very busy monitoring these threats, and if additional members are out there that we are concerned about, then, yes, that puts an additional requirement on us. That's business for us. We just have to be able to deal with it.

Senator CHANDLER: Are there any other concerns out of the recent cases in the UK—key learnings from that, that you might be considering?

Mr Burgess: Yes, we are very close with our UK partners and we pay attention to what they might have learned to see whether that is relevant to us here. You are aware of one of the cases where the individual that managed to stab a citizen was actually being surveilled at the time, which indicated they knew something was up. The concern there, of course, is that—and our people feel this deeply—we, and the police, might even be aware of something, we might even be watching them, but our security blanket and the work of law enforcement is not a 100 per cent protection, unfortunately.

Senator CHANDLER: Of course.

Mr Burgess: Our staff feel that deeply.

Senator CHANDLER: Yes. There is only one 100 per cent effective precaution in that regard, isn't there, and it's keeping them behind bars?

Mr Burgess: If the law allows that, and that's a matter for the courts.
Senator CHANDLER: Thank you very much, Mr Burgess.

CHAIR: Thank you, Senator Chandler, and thank you senators. I will excuse the officers from ASIO with our thanks. We will adjourn for a short break. When we resume, it will be with the Department of Home Affairs. Can I put all senators on notice that I intend to be quite firm about asking senators to properly allocate their questions to the relevant program headings, and the definition of cross-portfolio, corporate and general matters will be interpreted quite restrictively so as to try and keep a little bit of order in the afternoon.

Proceedings suspended from 14:44 to 15:02

Department of Home Affairs

CHAIR: We welcome to the table the Department of Home Affairs, including the Australian Border Force, in relation to cross-portfolio, corporate and general matters.

The direction I gave prior to the break was that I would be keeping things quite closely within their outcome and program. I should clarify that I will be very strict as to outcome, but within an outcome I am happy for there to be a little bit of gentle movement between the programs so that there is no confusion from the senators' end. We will commence with cross-portfolio. I will provide the opportunity to Labor senators first—sorry, Mr Pezzullo, you have an opening statement. I beg your pardon, Mr Pezzullo. I wouldn't want us to miss out on that. Please excuse me.

Mr Pezzullo: Thank you, Madam Chair. I have been waiting six hours to—

CHAIR: And yet we’re not quite at halfway through the day, so there you are. Buckle up!

Mr Pezzullo: Thank you, Madam Chair. The re-establishment of the Department of Home Affairs was announced on 18 July 2017 with the commencement date of 20 December 2017. A department of state known as home affairs has been in existence at various times in the Commonwealth's history since 1 January 1901.

On 20 December last year, 2019, the Department of Home Affairs achieved two years of operation in its re-established form. Since 23 October 2017 I have used my opening statements to this committee to update the Senate on the formation of the department and the broader portfolio, which consists of the department itself and the statutory independent agencies ASIO, the AFP, the ACIC and AUSTRAC. As well as the Australian Border Force, the ABF, which for budget and management purposes is a component of the department, but which otherwise exercises powers independently in the areas of customs, immigration detention and enforcement, and civil maritime security.

After two years of sustained effort the department and the broader portfolio have been fully established. The portfolio leaders, that is the statutory agency heads, and myself have come together as a portfolio board, which I chair. Through the board we are able to harness our combined resources and authorities to drive collaboration and business improvement across the portfolio without the statutorily independent roles and functions of the agencies being in any way infringed. We meet regularly as a board to explore ways to pool resources and to achieve previously unattainable synergies. The board oversees portfolio-wide initiatives in relation to improved strategic and financial planning, capability development and acquisition, technology collaboration, intelligence and data sharing, consolidated business services and workforce mobility.
The department has, over the two years that I've just described, delivered on the core direction which underpinned its establishment in 2017: to take the disparate domestic security, law enforcement, immigration, border management and civil resilience functions of state, which had been scattered across a number of departments and agencies, and to integrate them into a single apparatus that can both advise and act on the array of risks the nation faces as a consequence of the otherwise highly beneficial connectivity and openness to global forces that characterises our society and our economy.

In 2017 the government took a calculated decision to move in this direction before a catastrophic crisis might have otherwise forced its hand. Doing so calmly and in a planned fashion is always better than doing something of this scale in the aftermath of a shocking crisis. Relevantly, such risks are apparent in the following areas: our supply chains, which can be penetrated by criminal elements for economic gain from transnational criminal activity; trade and travel networks, which can mask the illicit movement of people and goods in the vast volumes of trade and travel, the latter of which can also act as a transmission vector for pandemics; aviation and shipping, which can be a vector for terrorist attack and for enabling transnational serious and organised crime; global capital flows, which can mask investments in economic activities that might be detrimental to national security; social media, which can be a vector for disinformation and electoral interference and the fragmentation of social cohesion; cyberconnectivity, which can be a vector for attacks on critical national infrastructure as well as a platform for the dark web, which lies deep beneath the surface web; telecommunications and internet connected supply chains and networks, which can be an enabler of espionage as well as cyber-enabled disruption and sabotage; and a changing profile of disaster and climate risk, which will require enhanced civil resilience and response capabilities.

As I have advised this committee before, global connectivity and openness are overwhelmingly positive public goods, but we have to be vigilant in relation to the risk and vulnerabilities that come with such connectivity and openness. While we should not see darkness everywhere, we should not think for a moment that all is light. That is why, for instance, we have done so much work on protecting mass gatherings and mass transit networks—not with a view to preventing such gatherings and movements from taking place but with a view to putting in place sensible security precautions and thereby mitigating risks to the extent that it is responsibly possible without undue infringements of our liberties and our lifestyle being imposed.

Similarly, while connectivity is a positive force for global human interaction and prosperity, in the shadowy creases of the surface web lies the demonically evil phenomenon known as the dark web. As I've previously advised this committee, it is the expert view of my colleagues and myself that the only way to hunt and disrupt on the dark web is to better use the lawful capabilities of our law enforcement and technical intelligence functions in closer partnership and under strict oversight. As ministers have said, this is something to which detailed consideration should be given. That process is underway.

Again, the cyber domain brings with it great enhancements to human existence, but it is also a vector for malicious criminal and hostile state action. To this end, the government will soon consider a new cybersecurity strategy to succeed the strategy that was launched in 2016. This strategy is being developed across government by my department, which is playing a
leadership and convening role. Industry and other stakeholders are being closely consulted, and the government will soon have more to say on this issue.

After consultation with our staff and senior executive deliberation in 2017-18, we developed a departmental mission and motto of 'prosperous, secure and united'. That is, everything that we do is tested against not just the standard of security but the extent to which the proposed action will enhance—or at least not detract from—national prosperity and unity. The benefit of bringing these elements together is that we now spend much less time on coordinating and more on policy development, planning and delivery, under clear and integrated chains of authority and accountability.

Instead of spending valuable time, effort and energy coordinating across fragmented lines, we have been able to consolidate effort and resources in centres of excellence such as the counterterrorism centre, the counter foreign interference sector, the Cyber Security Policy Division, the Joint Agency Task Force Operation Sovereign Borders, the Aviation and Maritime Security Division, Emergency Management Australia and the Critical Infrastructure Centre—all of which are components of the department. Over the last two years we have been able to blend previously disparate functions, achieving greater multidisciplinary cohesion and effectiveness in integrating teams which work under clear lines of authority.

Some examples include the following. The citizenship, social cohesion and multicultural divisions bring together our work on national identity and values, citizenship, multiculturalism, community liaison, social cohesion and countering violent extremism. These functions were previously spread across different departments and agencies to the detriment of effective policy development and outreach to different communities and faith groups. Secondly, the social cohesion teams are working with our ADF and visa staff who are dealing with the border and quarantine issues associated with COVID-19. The social cohesion teams are tracking community sentiment around the virus and proposing appropriate actions in relation to the racism which can sometimes rear up in such circumstances. Again, these functions were previously spread across different parts of the machinery of government and often this meant that staff in different areas did not even fully appreciate what they would bring to such an operation. With the advent of Home Affairs we are able to consider border, visa, quarantine and social cohesion issues in the single motion.

To turn to another example, staff in the countering foreign interference team are able to bring a wider range of perspectives to bear on the challenge of protecting our democracy, perspectives concerning citizenship, social cohesion, civics, multiculturalism, social media, broadcasting, university research and electoral processes. In times past, this field of work was typically located behind secure doors in a world that seemed to come straight from the pages of a le Carre novel. While certain aspects of this field of work will always be highly classified and known to very few of us, it is otherwise now a standard line of policy development and coordination work.

I can also refer to the previously fragmented areas of aviation, maritime and transport security, which are now more tightly integrated with our border, ports and criminal intelligence functions, and also to the closer synergies that we have been able to achieve in the area of cybersecurity and critical national infrastructure and more besides. But, in the interests of time, I will leave the point there.
Taken together, these and other functions bear out the following thesis. If threats have become more hybrid and the line between peace and conflict is now a grey zone of shaded threats, risks and responses then the liberal democracy faces this choice—set up an apparatus such as Home Affairs before the crisis hits or be forced to take action in the aftermath of the shock of such a crisis. The departmental and portfolio structure and our functional arrangements that I have described also allow us to flex and surge our resources. This firepower, depth and capacity has been in evidence over the past two months as we have swung resources onto emergency management and disaster recovery—for instance, enabling more than $100 million in disaster recovery payments to impacted individuals, working hand in glove with the National Bushfire Recovery Agency. We have tightened border controls in the face of the COVID-19 outbreak and established in very short order biosecurity quarantine facilities, while at the same time operating our standard business processes and systems—for instance, the visa program—and while ever keeping a watchful eye on the terrorist threat at home and abroad, emergence of threats to our democracy through espionage, foreign interference and disinformation, as well as the alarming rise in foreign child exploitation and abuse through online means, especially on the dark web, as I mentioned earlier.

I refer the committee to the recently published fourth edition of the department's paper known as The Administration of the Immigration and Citizenship Program. Notwithstanding increased numbers of visa applications, the department achieved productivity improvements in visa program delivery, supported by the increased digitisation of services, such as online lodgement. As testament to heightened levels of integrity within the migration program, refusals rates for visas applications nearly doubled between the financial years 2016-17 and 2019-20. Following unprecedented growth in citizenship applications, we achieved a 58 per cent increase in conferrals in the financial year 2018-19 as compared to the previous year and have reduced the on-hand case load by more than 48 per cent since its peak in July of 2018.

Finally, I should like to refer to the data contained in the report that addresses the number of airplane arrivals, as they have become known, who claim protection. The report notes that of the some 45.5 million temporary visas granted between the 1 July 2014 and the 31 December 2019 around 105 thousand protection visas were subsequently applied for in Australia. This equates to approximately 0.23 per cent of total temporary visa grants. Between the 1 July last year and the 31 December last year, 2019, only 16 noncitizens who had claimed protection were identified as suspected victims of modern slavery with human trafficking by the Australian Federal Police. This is in the context of 4.7 million temporary visas granted over the same period. I look forward to the committee's questions. Thank you very much.

CHAIR: Do you have a copy of that that you might be prepared to provide to the committee?

Mr Pezzullo: Yes.

CHAIR: Thank you.

Senator KENEALLY: Thank you, Mr Pezzullo, for being here today. Chair, through you, could I confirm on our schedule that this is the section also includes Australian Border Force. Is that still correct?
CHAIR: Yes, but if it is something for Border Force that more properly belongs in program 1.1 or 1.2, or indeed—

Senator KENEALLY: Perhaps, if I could aid you, Chair, I have questions relating to the annual report for the Department of Home Affairs to put to Australian Border Force. I don't see them in the room at present, so I put that on the record to see. I have some questions for the secretary, but, if it is the case, as our schedule indicates, that Australian Border Force is part of this section, I would like to put it on the record that I do have questions for them.

Mr Pezzullo: I can assist. The Commissioner and his officers are very close by.

CHAIR: Perhaps it could be arranged for the Commissioner and his officers to come to the table.

Mr Pezzullo: I believe the Commissioner might have an opening statement.

CHAIR: Excellent. Are the other questions you have to ask of Mr Pezzullo properly for cross portfolio?

Senator KENEALLY: I have a range of questions relating to the annual report that I would like to pursue.

Senator Cash: For Border Force though?

Senator KENEALLY: For both Mr Pezzullo and Border Force. We do have a range of other questions relating to the Border Force enforcement program, which I think are appropriate at section 1.1.

Senator PRATT: Just to clarify, Chair, historically in the cross portfolio I believe we have had both Mr Pezzullo from the department and Border Force appear.

CHAIR: I'm not concerned about that. They're on their way.

Senator PRATT: It is fine. I just want to make sure that, once Border Force appeared, we weren't precluded from asking cross portfolio questions.

CHAIR: You won't be precluded, provided that it isn't something that belongs in outcome 1, 2 or 3.

Senator KENEALLY: Mr Pezzullo, I have a number of questions for you about the integrity of the 2018-19 Department of Home Affairs annual report. Do you have a copy of that with you?

Mr Pezzullo: No.

Senator KENEALLY: I assume that perhaps someone from Home Affairs brought a copy of your annual report.

Senator PRATT: I have one here too.

Senator KENEALLY: I have a copy. These questions will also relate to the 2017-18 annual report. I can provide you a copy of that. I was operating under the presumption that perhaps Home Affairs would have their own copy of their own annual report at this estimates.

Mr Pezzullo: It's so rare to be asked a question about the annual report that I've fallen into the practice of not bringing my own copy.

Senator KENEALLY: I can table a copy.

CHAIR: I must say I'm finding it refreshing!
Senator KENEALLY: I'm happy to table the 2017-18 report. I presume, Mr Pezzullo, that it's within your capacity in your department to provide you, as quickly as possible, with the 2018-19 report.

Mr Pezzullo: I'm sure they will. In fact, to assist matters further I might ask the chief operating officer and the chief financial officer to be on standby to promptly attend the table.

Senator KENEALLY: Thank you. We are going to be hindered a bit by the fact that you do not have a copy of your annual report.

CHAIR: He has just been passed one for 2018-19.

Senator KENEALLY: He does have one? Thank you. Very good. Mr Pezzullo, can you tell me, please, how many marine unit patrol days were reported in the 2018-19 annual report? I believe it is on page four.

Mr Pezzullo: Which year are we looking at?


Mr Pezzullo: The page of the 18-19 annual report that you have referred me to—I'm happy to read out the figure that is there: marine unit patrol days 2,195.

Senator KENEALLY: Thank you. I do not know if you have yet received a copy of the 2017-18 annual report that I have tabled, but I believe on page 19 you will find an answer to the same question. How many marine unit patrol days were reported?

Mr Pezzullo: Are you referring me to the equivalent tabled graph?

Senator KENEALLY: Yes.

Mr Pezzullo: Yes. 2,036.

Senator KENEALLY: Okay. That appears to be an improvement. In 2017-18, you completed 2,036 marine unit patrol days. Then that was increased to 2,195 marine unit patrol days in 2018-19. Is that correct?

Mr Pezzullo: That is a correct statement of what appears in those two annual reports of the equivalent page, yes.

Senator KENEALLY: So that is what I thought as well when I first read it. But I would like to explore that a bit more, if we may.

Mr Pezzullo: I think I would be hugely assisted in that regard by the commissioner, given that he has more direct and detailed knowledge of marine unit patrol days and, magically, the commissioner is here.

Senator Cash: Madam Chair, the commissioner has arrived and he may have an opening statement.

Senator KENEALLY: I respect the fact that the commissioner has an opening statement—

Mr Pezzullo: If I could get some guidance on your preference as to the commissioner being allowed to attend to his opening statement or to proceed with the senator's line of questioning.

CHAIR: Senator Keneally, how much more is in this line for Mr Pezzullo?
Senator KENEALLY: If Mr Pezzullo is asking Mr Outram to answer the questions, then the questions will be deferred to him. I have questions that are to Mr Pezzullo. He has called Mr Outram to the desk to assist in answering the questions. If I may, Chair, with the greatest respect to Australian Border Force, I am in a line of questioning that goes to the annual report. I recognise his right to make an opening statement but we commenced questioning and I would like to be able to proceed on my questions to Mr Pezzullo.

CHAIR: I'm happy to accommodate that. That is not a problem. We will finish this line of questioning and then we will have an opportunity to have an opening statement.

Senator KENEALLY: Thank you, Chair. I appreciate that. The 2018-19 annual report says that there were 2,195 marine unit patrol days. Which vessels are included in the 2,195 figure?

Mr Outram: That would include our Cape class vessels, the large-hold vessel Ocean Shield, Thaiyak and, I believe, our Bay class vessels.

Senator KENEALLY: Thank you. That detailed information is provided deep in the back of the annual report, on page 209. I will table that for the benefit of the committee. If we turn to the 2017-18 annual report, which vessels comprised the 2,036 figure in that year?

Mr Outram: My Deputy Commissioner, Support, is here.

Ms Saunders: Good to see you, Senator.

Senator KENEALLY: Deputy Commissioner, nice to see you again.

Ms Saunders: Just to confirm your question, was it the 2017-18 financial report?

Senator KENEALLY: Yes. We have established that in 2018-19 we have 2,195 marine unit patrol days, and that figure includes all ABF patrol fleets, including Ocean Shield and Thaiyak and the Bay class.

Mr Outram: Senator, if I could point you to page 211 of the annual report 2018-19.

Senator KENEALLY: Yes.

Mr Outram: At the top of that page, it says:

In the Department of Home Affairs Annual Report 2017–18, the Department and the ABF published material errors and/or inconsistencies in its reporting. As a result, comparisons against similar data from previous financial years may have been difficult. These are the corrections for 2017–18:

Page 19

The Department at a glance: marine unit patrol days, was reported as 2036 patrol days. The correct figure is 2668 patrol days, which includes all ABF patrol fleets, including ABFC Ocean Shield and ABFC Thaiyak.

Senator KENEALLY: Yes, thank you very much. That is the point I wanted to reach. I am happy to table page 211 for the committee. In the 2017-18 annual report, the figure of 2,036 only refers to Cape class and Bay class vessels.

Mr Outram: As I understand it.

Senator KENEALLY: Then you have subsequently corrected the record to include Ocean Shield and Thaiyak.

Mr Outram: That's correct.
Senator KENEALLY: So the first thing to note is that, in the two annual reports—2,195 marine unit patrol days, in 2018-19 and 2,036 in 2017-18—those two figures are not directly comparable. They are not apples for apples.

Mr Outram: Yes. The 2,668 and the 2,195 are, whereas, as we've said at page 211, the previous reference to 2,195 are, whereas, as we've said at page 211, the previous reference to 2,036 patrol days, it would appear, excluded Ocean Shield and Thaiyak.

Senator KENEALLY: So that we can do an apples for apples comparison, in 2018-19, if you remove Ocean Shield and Thaiyak, the total for Cape class and Bay class vessels is only 1,646.

Mr Outram: That may be the case. But it's about the effect that we deliver on the ocean with a range of vessels, not just the Capes. They don't work in isolation.

Senator KENEALLY: If I can just elucidate this further. In 2017-18, we had 2,036 marine unit patrol days, and what appears to be an increase to 2,195 in 2018-19 in fact was a decrease of 20 per cent on the year before for what you have traditionally defined as marine unit patrols—Cape class and Bay vessels. You've had a 20 per cent decrease in 2018-19.

Mr Outram: No. I don't accept that. Going through the figures for financial years patrol day statistics, Cape class in 2017-18 was 1,780, as I can see here, and that reduced in 2018-19 to 1,376.

Senator KENEALLY: But, if I may, Commissioner, in all previous annual reports since 2013-14 you have reported the marine unit patrol days in the 2018-19 report—that is, it does look like you added in Ocean Shield and Thaiyak in order to make the
numbers look like there was an improvement and to mask the fact that in the Cape class and Bay class the Marine Unit patrol numbers actually went down.

**Mr Outram:** I will take that in reverse order. There's no masking, point 1, at all. All of the vessels of the class that you've talked about are part of the Marine Unit, so there's no fudging of numbers. Those vessels weren't just magicked up and all of a sudden put on a different mission set. The Maritime Border Command have a number of maritime threats they deal with. They haven't changed in the period of time you're talking about. If you want to go back to 2013, not all of the Cape class vessels had actually finished being built at that point in time. Decisions about repriorization and extending the life of the Bay class weren't made at that point in time. The *Ocean Shield* we didn't have on our books at that point in time. So the growing of the fleet that we've now got today has evolved; it has changed. But that's not about masking or fudging numbers; it's about recognising that there are more mariners, more vessels, more days at sea.

**Senator KENEALLY:** Okay. Let's take it this way. In 2013-14, the annual report explicitly said that Marine Unit patrol days only include patrols by Cape class and Bay class. The 2014-15 report explicitly said that Marine Unit patrol days only include patrols by Cape class and Bay class. The 2015-16 and 2016-17 annual reports also explicitly recognise that Cape class and Bay class vessels were only included in Marine Unit patrol days, and so too does the 2017-18 report. We now have, at the issuing of the 2018-19 report, a change in methodology. I understand methodologies can change, perhaps relating to a change of circumstances, but I am trying to understand why this decision was made to change the methodology, who made the decision and whether the minister's office was consulted on this decision.

**Mr Outram:** We'll take that on notice, because we are going to have to go back and unpick a whole lot of history there, going back 2013. I don't have that information available to me. Let me say this though: there has been no masking or fudging or anything like that. To me as a commissioner, I have an amount of capability available to me for Maritime Border Command, and that's what we're reporting in the annual report. What happened back in 2013, 2014, 2015, 2016, I will go and check and we'll come back to you with answers to the questions you've posed.

**Senator KENEALLY:** If I can put to you that it does appear that you decreased boat patrols with the Cape class and Bay class by 20 per cent between 2017-18 and 2018-19.

**Mr Outram:** In 2018-19 we had some deep-level maintenance issues that we had to deal with. The Cape class vessels, coming to their five years in service, in addition to the survey and other things they have to do ordinarily, had to go into a deep-level maintenance process, which takes a long time and in fact was elongated because other things were unforeseen in terms of that very complex engineering process. That affected our days at sea. And there were also some issues with availability of mariners, particularly in the December and January period that year. I might hand over to Deputy Commissioner Saunders just to expand on that.

**Ms Saunders:** If I can make some general observations, too—that is, the number of ABF patrol days, like for like, in terms of vessels across the board, as you've touched on, have increased every year for the last three financial years, from around 2,400 in 2014-15 to almost 2,700 in 2017-18. As you've pointed out, there was a reduction in patrol days in 2018-19, to
the figure of 2,195. As the commissioner indicated, that was due to vessel maintenance and long recruitment and training time frames for our marine crew. I think it's also important to note that, whilst there was that shift during that year and numbers did fluctuate throughout the year, that did not have an impact on civil maritime security operations, as we have a layered approach and, as you know, work harmoniously with other Commonwealth partners, including Defence. And I just want to make the point that I know, Senator, you indicated concerns regarding April 2019 data—

Senator KENEALLY: I am going to get to that, yes.

Ms Saunders: I'm happy to explore that with you, but I do want to correct that, and I'm happy to explain the figures. For April 2019 the figure was actually 105. I can certainly understand how you've extrapolated from the year-to-date data from March 2018 to April, but they are year-to-date figures and actually reflect that there was a correction of data. I'm happy to talk through that with you as well, but I just wanted to make the point that, like for like, there has been an increase—

Senator KENEALLY: I am going to go through that with you. Can I come back on this point, Commissioner:

Mr Outram: Yes. We've gone from 2,453 in 2014-15 up to 2,576 in 2015-16 and 2,628 in 2016-17. In 2017-18 we went up to 2,668, and then we dropped to 2,195 in 2018-19.

Senator KENEALLY: And you dropped to 2,195—

Mr Outram: In 2018-19, for reasons we just explain.

Senator KENEALLY: We're talking Marine Unit patrol days.

Mr Outram: Yes.

Senator KENEALLY: That's a 473 patrol-day reduction from 2017-18 to 2018-19.

Mr Outram: Yes. As I said to you, the deep-level maintenance can take a vessel out of the water for weeks, and these vessels, particularly the Capes, were all built in roughly the same time period. Managing this sort of capability over its life cycle means that every five years or so you're getting into deep-level maintenance. There's not much you can do about it. If the engineers find unforeseen problems, they have to be fixed, and that can take a long time.

CHAIR: Senator Keneally, we're in cross-portfolio. I allowed you to ask questions on the basis that they were about the annual report, but this is really about border enforcement.

Senator KENEALLY: These are actually in the annual report.

CHAIR: In any event, you're at 18 minutes. Can you wrap this up within 20, please.

Senator KENEALLY: I doubt it. I would need to come back to it, Chair. I do flag that these are the figures that are in the annual report. I'm mindful of your direction about wanting to deal with things in the correct area, but this is the only place to ask about the annual report. These are very much the figures that are in the annual report. So, if I may, I will on this point—

CHAIR: I'll give you up to 20 minutes, and then we'll have to share it around.
Senator KENEALLY: Sure. I will flag, though, that I do have other questions, so when I get the call again I will return to this point, as Deputy Commissioner Saunders has indicated she is willing and prepared to answer the questions I have in that section.

CHAIR: That's fine.

Senator KENEALLY: If I may, Commissioner, on the point that you've had a 473-patrol-day reduction from 2017-18 to 2018-19, the correction was effectively buried in the report. I take your point that you were not seeking to mask it—

CHAIR: It seems a little pejorative—'buried'!

Senator KENEALLY: Thank you, Chair, for your editorial comment. Commissioner, you mentioned the challenges you faced with maintenance. Do you recall the findings of the 2018 ANAO audit into the management of the Cape class vessel fleet which found that risks to the achievement of performance and availability targets have not been effectively managed?

Mr Outram: I vaguely remember that report. I don't have it in front of me. I think, with the ANAO, we've been through subsequent gateway reviews and they've found us to be doing quite well. What I would say is that, if you look at the statistics, year on year—apart from last year—we've increased days at sea every year. The Cape class vessels are going out further and being driven harder than was ever imagined back in 2011-12. We are, with Defence, covering all of the vectors and all of the threats that need to be covered, so there are no gaps in capability or in outcome; in fact the on-water effect has been nothing short of remarkable. This year we are projecting to increase again, on the year before, our days at sea and the number of mariners available, so we are working very hard. I accept the ANAO's advice and feedback, and we are responding to that.

Senator KENEALLY: To sum up, we've had a 473-patrol-day reduction. You are hoping that this current year you will see an increase on what figure—from where you were in 2018-19 or from where you were in 2017-18?

Mr Outram: I may just give you a sense of it. Just while the deputy commissioner is pulling together those statistics, what I would also say is that there have been no funding cuts to the ABF's capability, but the increasing costs of fuel, wages and significant maintenance continue to place pressures of course, and the government provided the ABF with additional funding of $97.7 million in 2019-20 through an MPP as part of the budget process and two new MPPs as part of the MYEFO outlook process, which totalled $12 million. So the full-year budget for the capability is now $367 million, so it is being topped up as the costs go up. That's the point I would make.

CHAIR: Senator Keneally, we're now at 22 minutes and I'm going to stop you there.

Senator KENEALLY: I just want to confirm that the commission is taking on notice my questions: when was the decision made to change the methodology, who made the decision and was a minister's office consulted on those decisions?

Mr Outram: If indeed it was changed. We'll come back to you with the facts.

Senator KENEALLY: It was clearly changed. You've actually put in print that it was an error and you have change from every previous annual report.

Mr Outram: It may have been because new vessels became available. But I'll take it on notice and we'll come back to you with the facts.
Senator KENEALLY: You changed the definition from Cape class and Bay class and expanded to other ships.

CHAIR: Senator Keneally, I think your question has been taken on notice. You don't need to be argumentative.

Senator KENEALLY: I want to be clear for—

CHAIR: I understand that Senator Lambie has some related questions and that they are very brief. Before I hand to her, I might just ask one or two clarifying questions that might be helpful in assessing the effectiveness of the patrols that are being run by the Australian Border Force. The first is to ask: has it been five years since a successful people-smuggling operation entered Australia?

Senator KENEALLY: No.

Mr Outram: Yes, I believe that's right. We have the major general from Operation Sovereign Borders here in the parliament and you can talk to Operation Sovereign Borders.

CHAIR: Was a vessel with eight potential people wanting to come to Australia on board intercepted by Australian authorities and returned to Indonesia just in the last week?

Mr Outram: That's correct. Sorry, not in the last week; recently.

CHAIR: I'm having some grumblings from my Senate colleagues about the five-year figure. Tell me precisely what that five-year figure represents.

Mr Pezzullo: I can assist, Madam Chair. I think you'll find it refers to the fact that it has been over five years. The last time a venture successfully saw persons enter the migration zone and have to be taken into the Australian migration zone for consideration and then for transference to regional processing centres—I'll check this during a break, if we ever actually get one, because I realise that we're going to dinner, but I think the last time that occurred was July 2014—

CHAIR: Okay.

Mr Pezzullo: as distinct from the arrival of a vessel that had to then be dealt with by way of a turnback or a—

Senator Cash: A successful boat arrival.

Mr Pezzullo: Correct.

Senator KENEALLY: May I ask, for clarification's sake, whether Mr Pezzullo could confirm that, in August 2018, 11 people from an illegal vessel were found in Queensland's Daintree?

Mr Pezzullo: And subsequently returned, yes.

Senator KENEALLY: That was within the last five years, was it not?

Mr Pezzullo: And subsequently returned, yes.

Senator KENEALLY: To clarify Senator Stoker's question—

CHAIR: Senator Keneally, you've clarified.

Senator KENEALLY: within the last five years a boat has arrived in Australia with people seeking asylum on it.

Senator MOLAN: A successful boat.
Senator KENEALLY: A boat has reached Australian shores.
Senator MOLAN: And returned.
Senator KENEALLY: That wasn't Senator Stoker's question.
Senator LAMBIE: It successfully reached our shores, and that was it.
CHAIR: Order! We can't all talk at once. Senator Keneally has made her point.
Senator LAMBIE: It was bloody successful.
CHAIR: It's now Senator Lambie's turn to have the call.
Senator LAMBIE: I'm not sure which one of you can answer this. I have three quick questions that go back to the Cape class. In relation to the status of the Cape class in-service support program, how much money has been allocated to in-service support this financial year?
Mr Outram: We might come back to you, Senator, very quickly on that one. We're just looking now.
Senator LAMBIE: Okay.
CHAIR: Just for planning, I'll be coming to Senator McKim. I'm conscious that it is a long session, so, Mr Pezzullo, if you would like a brief break at any point, let me know.
Mr Pezzullo: Sorry?
CHAIR: If you need a brief break at any point, let me know and I can call a short suspension.
Mr Pezzullo: No, I have great stamina. Keep going.
CHAIR: Good. I don't want to cause you any harm.
Mr Outram: Senator, we'll just take some more time and, if we could, come back today before we finish with some facts and details about precisely what you've asked.
Senator LAMBIE: Okay, you might need to. My next question, and you can come back to me on this, would be: how does this compare with budget allocations for in-service support over the last three financial years?
Ms Saunders: The general target has been established as being 300 days for Cape class, but I did just want to make a point in relation to that. That was established based on the fact that maintenance was anticipated to be about 65 days per year. Certainly our experience over the last six years has been that we require at least a 110 days, so we are revisiting the value of the current target as it stands, recognising the complexity of the fleet that we have, the demands being placed on it and the likely maintenance requirements.
Senator LAMBIE: So a comparison from this year to the previous three years? Got it.
Ms Saunders: The general target has been established as being 300 days for Cape class, but I did just want to make a point in relation to that. That was established based on the fact that maintenance was anticipated to be about 65 days per year. Certainly our experience over the last six years has been that we require at least a 110 days, so we are revisiting the value of the current target as it stands, recognising the complexity of the fleet that we have, the demands being placed on it and the likely maintenance requirements.
Senator LAMBIE: So are you on schedule then, now that it's March, to achieve that number of days?
Ms Saunders: With the additional investment we've had from government in regard to our capabilities, in terms of maintenance and people, we anticipate we'll meet that target.
However, as I said, we are revisiting the value of that target, recognising that we know maintenance well exceeds the 65 days that we anticipated in that 300-day target.

**Senator LAMBIE:** Thank you. I have no further questions on that.

**CHAIR:** Thank you, Senator Lambie. Senator McKim.

**Senator McKIM:** Good afternoon, Mr Pezzullo, and to your officers. I can indicate: I have genuine overview questions and I have none at this stage for Border Force. I wanted to ask first about your incoming government brief to Minister Dutton that warned of the impacts of climate change on Australia. That's been reported on the basis of information received under freedom-of-information legislation. Could you confirm that you actually did provide an incoming government brief to Minister Dutton, post the last election, that dealt with the impacts of disasters exacerbated by climate change?

**Mr Pezzullo:** It dealt with disaster and climate risk. I might ask Mr Grigson and Mr Cameron to join me at the table.

**Senator McKIM:** Thanks, I appreciate that.

**Mr Pezzullo:** I can't quite recall the formula that was in the incoming government brief as released under FOI, but I suspect Mr Grigson's got it. Mr Grigson is the deputy secretary responsible for general oversight of the emergency management area, and Mr Cameron is the director-general of emergency management.

**Senator McKIM:** Mr Grigson, would you like me to ask questions, or is there any general information you'd like to provide to the committee about that incoming government brief?

**Mr Grigson:** I'm happy to take your questions.

**Senator McKIM:** I think that Mr Pezzullo, by implication, has confirmed there was such a brief. Would that be accurate, Mr Pezzullo?

**Mr Pezzullo:** That I made such an implication?

**Senator McKIM:** Yes.

**Mr Pezzullo:** I think I went further. I said there was an incoming government brief. It's been released under FOI, and it had a passage that's relevant to your question.

**Senator McKIM:** Thank you. Did this brief recommend any actions to the minister?

**Mr Pezzullo:** I refer you to Mr Grigson.

**Senator McKIM:** I'll just ask the questions, and you can figure out who's going to answer.

**Mr Pezzullo:** I'm very happy for Mr Grigson, who's got command of this area—incomparable command of this area—I field your questions.

**Mr Grigson:** It didn't make any specific recommendations. It noted the budget allocation that had been made and that there was likely to be an impact in future years.

**Senator McKIM:** When you say 'impact', do you mean budget impact or do you mean impact on the broader economy and our communities and ecosystems?

**Mr Grigson:** 'More frequent and severe heatwaves, bushfires, floods and cyclones' was the expression used.

**Senator McKIM:** Made more risky as a result of climate change?
Mr Grigson: I'm just looking for the exact words here. It was as a result of increasing climate risk. The brief I have in front of me doesn't use the phrase 'climate change'.

Senator McKIM: No, that's okay. I think we can accept that 'as a result of increasing climate risk' is referring to climate change. Was there any submission by the department that extra funding should be provided in order to mitigate those risks or in order to deal with the risks?

Mr Grigson: Not in this brief, no. It noted the $130 million that had been put aside.

Senator McKIM: Is the department aware that the Bureau of Meteorology states that we are on track for 3.4 degrees of global warming by 2050 and, in fact, that the bureau has given evidence today, in another Senate estimates committee, that Australia is on track for four degrees of warming by 2070? Is the department aware of those figures?

Mr Grigson: I didn't see the estimates hearing that you are referring to.

Senator McKIM: The 3.4 degrees has been stated repeatedly by the bureau, because that's a global figure. The world is on track for 3.4 degrees. Is the department aware of that?

Mr Cameron: Yes, I have heard that reported.

Senator McKIM: What work has the department done to understand what its world, in the department's universe, would look like under four degrees of warming in 50 years time?

Senator MOLAN: Very Chinese, I'd say.

Senator McKIM: I'm not sure that's an appropriate comment, so I'm just going to move past it and repeat my question, because I'm not a huge racist. So I'm just going to ask Mr Pezzullo—

CHAIR: Everybody, calm the farm.

Mr Grigson: We established the National Resilience Taskforce in 2018. It was set up within the department. It was established on 16 April 2018 and ended on 28 June 2019. It was run by Mr Mark Crosweller, who was a former director-general of EMA. It had two executive staff, a number of other staff—12. In 2019 when it finished, those staff moved into Mr Cameron's division, where it became the disaster preparedness branch, and the work continued.

Mr Cameron: The disaster risk reduction branch—my mistake.

Mr Grigson: That task force did quite extensive consultation—there was a long list of stakeholders consulted—and it produced the National Disaster Risk Reduction Framework. It sets out an agenda for the foundational work needed across all sectors to reduce existing risk, prevent new risk being created and ensure we have the information to do so.

Senator McKIM: Is that a publicly available report?

Mr Cameron: Yes, it is.

Senator McKIM: Is it on the department's website?

Mr Grigson: It is. I have the address here if you are interested.

Senator McKIM: No, that's fine, thank you. I appreciate that. Has the department done any work, either of itself or as part of a broader interdepartmental process, about costing the impact to Australia's economy of four degrees of warming in this country over 50 years?
Mr Grigson: No.
Senator McKIM: You haven't costed it?
Mr Grigson: Not at four degrees.
Senator McKIM: Have you costed 3.4 degrees?
Mr Grigson: No.
Senator McKIM: Why not?
Mr Pezzullo: Can I check the premise of the question? Did you say the impact on our economy, as a proposition about the impact on the macroeconomy?
Senator McKIM: Yes.
Mr Pezzullo: We may or may not be involved—
Senator McKIM: I will give you the context for this, Mr Pezzullo, because it might help you understand.
Mr Pezzullo: Understood.
Senator McKIM: Every time some of us in politics go out and talk about the need to reduce emissions by a certain date, the government ministers rush out and say, 'Your policies aren't costed.' What I'm asking is, 'Is there a process to cost the government's policies?' because the government has got this country on track for four degrees of global warming over the next 50 years.
Mr Pezzullo: I'm not sure that I could agree with the characterisation that that's an objective of policy, point 1. Point 2: the operation of the economy at large is a matter for the Treasury. The work done around our emissions targets and whether or not our target should be adjusted or otherwise is a matter for the relevant department that deals with emissions. Mr Cameron, in his day job, when he's not dealing with an immediate crisis, certainly is involved with various processes that he might wish to speak to that relate to disaster risk reduction and mitigation, preparedness. There's a whole branch within his ship that's focused on that. Our job is to translate data science, the advice that we receive from experts. We're not experts on climate change or climate risk itself. Our job is to adapt the advice, the science that we are presented with, and think about what that might mean for disaster preparedness, working with states and territories around things like land use management, urban and regional planning—
Senator MOLAN: Fuel loads?
Mr Pezzullo: Indeed. Sorry, I was going to come to that. How do you prepare for and mitigate risks that are advised to us by external experts? We are not experts in that area. What might that mean for emergency management, fire services and the like? You asked about impact on the economy at large. I'm trying to narrow down to what our department actually does.
Senator McKIM: Understood. I appreciate that. I will take that on board. Has the department done any work to cost areas within the department's responsibility that may require significant extra expenditure into the future as a result of Australia being on track to four degrees of warming by 2070?
Mr Pezzullo: Expenditure by the department?
Senator McKIM: By your department. This would go to future budget submissions to government and things like that. It does not take a lot of imagination to think of some of the things that might happen under a 3.4 degrees warming scenario. Mass displacement of billions of people around the world would be an obvious one that comes to mind straightaway. Increased resources might be needed to protect various pieces of infrastructure that the department has, as a result of increased bushfire risk, increased flood risk and so forth. I could probably talk about this for half an hour, but I am going to stop and ask you whether the department has done anything—

Mr Pezzullo: Do you want to swap?

Senator McKIM: I just ask you whether the department has done any work to cost those risks.

Mr Pezzullo: I really do appreciate your honing and refining of the domain that you are exploring. I might ask Mr Grigson and Mr Cameron to respond accordingly.

Mr Grigson: Two additional reports you may be interested in resulted from that task force. The first is called Profiling Australia's vulnerability. That is available online. The second one is Guidance for strategic decisions on climate and disaster risk. I draw your attention to those because we are trying to provide advice accepting the advice we are given the Bureau of Meteorology and others who cost the impact of climate risk. That is not something that we are specialists in, but where we do think we can provide advice is how to deal with that increased risk, particularly around disasters.

Senator McKIM: Do either of those reports that you referred me to contain costings within the department's areas of responsibility as I was outlining to Mr Pezzullo a moment ago?

Mr Grigson: I'm inclined to say no. Let me take it on notice and check for you but I think the answer is no.

Senator McKIM: I would just observe that I think there are significant risks to the department's future budget as a result of climate change and I urge the department to consider those very significant risks, in my view.

CHAIR: You have done a little over 10 minutes there.

Senator McKIM: I will come back, if you like.

CHAIR: Is that alright? Do you have another 10-minute block? What do you have?

Senator McKIM: Yes, I do.

Senator KENEALLY: I have one very quickly just to confirm something which follows on that. Can you confirm that the incoming government brief, as well as the Natural Disaster Risk Reduction Framework released by the department, quotes Deloitte Access Economics figures putting the cost of disasters to the Australian economy at $18.2 billion a year, rising to $39 billion by 2050?

Mr Grigson: Yes. I can. The answer to that is yes.

Senator KENEALLY: I now turn back to the line of questioning I was pursuing earlier. I will direct this to you, Deputy Commissioner Saunders. Earlier I tabled the FOI I received regarding the Cape-class vessels only—sorry, the FOI was not about that only; I'm referring to the portion of the FOI that refers to Cape-class vessels only. As reported by the department
to the minister, that has been released to me by FOI. We're talking about the number of Cape-class patrol days per month and the total number of Cape-class patrol days for the period July 2018 to June 2019. Can we first confirm the total figure for Cape-class patrol days for the financial year 2018-19.

Ms Saunders: The overall figure is 1,376. I'm happy to give you a breakdown per month if that would assist.

Senator KENEALLY: Thank you, that would be helpful.

Ms Saunders: July 2018 is 177; August 2018, 128; September 2018, 131; October 2018, 88; November 2018, 84; December 2018, 82; January 2019, 114; February 2019, 102; March 2019, 127; April 2019, 105; May 2019, 122; and June 2019, 116.

Senator KENEALLY: I will pull out my calculator later to confirm that those all add up to 1,376, but I do note that in the document that was released to me under FOI we have figures that are different for December. You reported 173 and today you have said it is 82. How did that happen?

Ms Saunders: You have received a snapshot in time. On that particular day, that is the data that has been produced. What has occurred is that in the month of April an anomaly was identified in the reporting in terms of ABF statistics, which recognised an error in three of the preceding months, which has been rectified or reconciled in that month of April. You have seen a straight extrapolation from year-to-date figures in March to April of 14 days, but what has actually occurred is that reconciles 91 days that were incorrectly recorded. Errors were identified in September, November and December.

Senator KENEALLY: November you have 84 and 84.

Ms Saunders: It was adjusted in April, down by 10.

Senator KENEALLY: No, the number you reported in the FOI was 84, and you just told me it was 84.

Ms Saunders: At that point in time, but subsequent to that there was an identification that it needed to be adjusted down by 10, which is why—

Senator KENEALLY: So it's 74?

Ms Saunders: No.

Senator KENEALLY: You read out 84, but 84 is what you reported. You have reported 173 in December and now you have just told me it is 82.

Ms Saunders: Yes, that's correct.

Senator KENEALLY: I am trying to work out: if you have reported it is 84 and then today you have said it is 84 for November, where is the adjustment?

Ms Saunders: The advice I have is that the accumulative adjustment of 91 days was made in April to reflect incorrect data from previous months. The advice I have—and I will correct that if required; I'll check this for you—is that September 2018 Cape-class patrol days were increased by two days; November 2018 Cape-class patrol days were adjusted down by 10 days; and December 2018 was adjusted down by 83 days.
Senator KENEALLY: I don't think we have reached much clarity here. I agree with you that there are 91 days missing. I don't agree that we have cleared up where those days have actually gone missing.

Ms Saunders: They haven't gone missing. It's a real calculation.

Senator KENEALLY: They have gone missing in your chart.

Ms Saunders: The only thing that has shifted is which months those days were attributed to. The overall year-to-date figure is correct as of April.

Senator KENEALLY: The year-to-date figure is correct as of April.

Ms Saunders: That's correct. The only changes that have occurred are the months that data has been allocated to over previous months.

Senator KENEALLY: Yes, and we still haven't gotten clarity as to where that allocation has shifted around. You just told me November is 84 days, but you actually reported 84 days in the FOI figure, whereas you reported 14 days in April figure.

Ms Saunders: The monthly data breakdown I have provided you are accurate figures as we know them today.

Senator PRATT: But with methodology is attributed to which month?

Ms Saunders: If I can just clarify in terms of methodology, the methodology hasn't changed. What has changed over time—and the commissioner has taken this on notice and we will come back in more detail—but on the face of it and my review of the data that has been used to inform the annual reports have been based on the capability we have at that particular time. It includes all of the capability, I should clarify.

Senator KENEALLY: I find it very disturbing that the figures that have been provided to the minister have been so inaccurate in terms of the month-by-month reporting, and I am still concerned about their integrity.

Mr Outram: There has been a focus on this behind the scenes and a fair bit of checking going on, so the list that was just read to you is the definitive list at the start of the answer to that last question. Let me just say that, but the correction in the annual report, as I have alluded to earlier, was an issue about the exclusion of the Ocean Shield and Thaiyak, which shouldn't have occurred, but there was no change in methodology. They should have been in; they just were not counted. When we are taking a snapshot in time, yes, sometimes it takes time for data to catch up, for people to check the data and to make sure the data is accurate and to do comparisons with months going back, but as I understand it, we are happy with that data we have provided you in terms of that year.

Senator KENEALLY: This was an FOI that I requested. It took some six weeks to prepare. It reflects data that has gone to the minister. What we have is a circumstance where you have put information into the parliament and then into the public—as it will be made public by the department in five days; I have done so a bit early today—that shows what would appear to be an alarming drop-off. It does not occur to you that perhaps that information in the public realm needs to be clarified before it is released?

Mr Outram: Yes, it should be clarified and that is what we have done today.
 Senator KENEALLY: This is a 680-something page FOI. You can't answer this, but I do wonder about the integrity of some of the other numbers that we will be perusing there, and I wonder if we are going to have to come back and question some other things as well.

 Mr Outram: At a point in time—let me give you an example. When somebody seizes tobacco, it may not actually be reconciled in systems for the purposes of data-counting for some weeks even. If we take those four weeks earlier than that point in time, numbers do move around and fluctuate. You get that with big data systems, big ingestion of data, imperfect sometimes, as those systems are—

 Senator KENEALLY: Sure, but the financial year ended some time ago now. April was some months ago, and there was no asterisk, no explanation as to why the April figure dropped off so dramatically.

 Ms Saunders: If I can just clarify again, as I said, that is a year-to-date figure which included a number of corrections. If I can go back to your question in regard to the November 2019 figures, my advice is that it was actually 94 initially and it was corrected down to 84. I think the challenge we have is the actual point in time when this report was generated for you, which included those corrections, so, in printing off the report, it does address part of the corrections but not all of the previous months. I think the challenge is looking at, this is produced weekly to reflect monthly figures. They do move, as the commissioner has said. There are a whole range of reasons for that to occur. It is a very manual process which then gets checked and reconciled, which is why we often refer to trends and ensure the end-of-year data is accurate and we can reflect then this year versus previous years. That is a much more accurate way of actually reflecting on the effectiveness and capability of the maritime.

 Senator KENEALLY: I have one more question, and I am willing for it to go on notice, because I am anticipating that it can't be provided here. Given we have had such significant changes to an FOI that was received only a few days ago, could you please provide day-by-day break downs of the number of patrols conducted by Cape-class vessels for the months of March, April and May.

 Mr Outram: We will take that on notice.

 Senator KENEALLY: I do intend to come back to this topic in outcome 1 later this afternoon, so if you could use some between now and then to come back with those figures—unless for some reason they are not available; I would have thought weekly figures could be available since that is how the report is compiled.

 CHAIR: Why are you returning to it in outcome 1 when you have insisted it belongs here, not in outcome 1?

 Senator KENEALLY: I can do it in outcome 1 as well; Deputy Commissioner Saunders volunteered to do it here, so I was happy to do it here with her.

 Senator McKIM: Mr Pezzullo, you might want to bring some officers to the table to assist you with my questions about your referral of the cash for visas matter to ACLEI and ACLEI's subsequent referral back to you.

 Mr Pezzullo: Sorry, your reference to cash for visas?
officers have twice had to correct evidence, subsequent to providing it, to this committee. These are allegations that certain classes of visas were approved for certain people on the basis of bribes being paid. You personally referred this to ACLEI for them to investigate. They subsequently referred it back to you. At our estimates in October last year, one of your officers gave evidence that that had not occurred and then corrected it the day after. So I have not actually had a chance to ask you and your department about this because of the wrong information that was originally provided to the committee, which was subsequently corrected, I accept. I see Ms Moy has joined you. Ms Moy, are you aware of what I refer to as the cash for visas allegations?

Ms Moy: Yes, I am aware of the issue.

Mr Pezzullo: Well, we think we are. He hasn't asked his question.

Senator McKIM: They're my words for it.

Senator Cash: Let's make sure we are on the same page.

Senator McKIM: You may have a different term for it.

Senator Cash: I'm sure the department do.

Senator McKIM: I'm happy to use whatever term you like.

CHAIR: Is there a less politically loaded term that could be used to refer to this investigation?

Senator McKIM: That was the allegation, by the way.

Senator Cash: The department are having to answer questions in relation to this specific matter, so perhaps if you could—

Senator McKIM: I'm happy to refer to it in whatever way would make the department's job easy. Ms Moy, how does the department refer to this matter?

Ms Moy: Basically, an integrity allegation by a detainee.

Senator McKIM: Okay. Just to be clear that we are talking about the same thing: the allegation is that bribes were made in order to get visas. That's the substance of the allegation—is it not?

Ms Moy: That's correct.

Senator McKIM: Okay. So this matter that was referred to ACLEI by Mr Pezzullo originally and then referred back to the department. When was it referred back to the department?

Ms Moy: On 2 April 2019, the department was advised that the integrity commissioner had decided to refer the allegation back to the department.
Senator McKIM: Yet in October last year, the department gave advice to this committee that, in fact, it hadn't been referred back and that advice was corrected, I think, the next day by Mr Brown. When did the department commence an investigation into this?

Ms Moy: I haven't got the exact date the investigation was commenced, but I can advise that the matter has been closed with no adverse findings. It was quite a deep investigation in regard to the allegations made by the detainee about any staff member who had had basically anything to do with the records and files of those indicated. There was no connection between the individuals and the detainees. All decisions had been made according to the legislation.

Senator McKIM: Who conducted the investigation?

Ms Moy: The investigation was conducted by the integrity and professional standards team.

Senator McKIM: Who is that?

Ms Moy: There is an entire branch of individuals within the Integrity and Professional Standards Branch in the Integrity, Security and Assurance Division, and they undertake not only code of conduct type investigations but also special investigations, particularly those where we report back to ACLEI what the findings are.

Senator McKIM: Did ACLEI supervise that investigation?

Ms Moy: No, they did not, but we are required to report back to ACLEI what the results are.

Senator McKIM: In fact, did the department ever provide an investigation plan to ACLEI as ACLEI requested? That's the evidence this committee had from ACLEI last year, that they had asked the department to provide an investigation plan as part of their monitoring of the investigation.

Ms Moy: I'll check what the actual details of the investigation plan was and the dates and those issues, but I don't have that information with me.

Senator McKIM: You'll take that on notice?

Ms Moy: Yes.

Senator McKIM: Just to be clear, I'll expand the question out. If there were any other matters that ACLEI asked the department to provide as part if its oversight of the investigation, what were those matters? Did the department provide them as requested by ACLEI, and, if so, when?

So the department has investigated itself and found that there was nothing to see here. Was Mr Anees, the person who made the allegations, interviewed as part of the process?

Ms Moy: I'll check that detail for you.

Senator McKIM: When was the investigation closed?

Ms Moy: On 21 January 2020 we reported back to the Integrity Commissioner, pursuant to section 66 of the LEIC Act.

Senator McKIM: Were ACLEI informed of that?

Ms Moy: Yes. That's how we report back to them.

Senator McKIM: Sorry, I thought you said the commissioner.
Ms Moy: Yes, the Integrity Commissioner.

Senator McKIM: Sorry, my mistake. You're saying that you'll take on notice whether Mr Anees was interviewed. Can I ask you to also take on notice: if he wasn't, why not, and wouldn't it normally form part of an investigation to actually interview the person making the allegations?

Has the department done anything else in relation to this matter, such as review Mr Anees's status?

Ms Moy: I would have to do defer to my colleagues in the visa space. It would be part of an investigation.

Senator McKIM: What about whether Border Force has done anything in regard to providing Mr Anees with safety? He's currently in immigration detention, Mr Outram. Has Border Force done anything over and above what you would normally do to ensure Mr Anees's safety?

Mr Outram: Safety from?

Senator McKIM: Retribution.

Mr Outram: From Border Force officers?

Senator McKIM: No—not necessarily, I should say.

Mr Outram: We do work with our service provider, Serco, very carefully, and each individual detainee is subject to ongoing risk assessment. I'm not aware of any specific measures being put in place for this particular detainee, but let me say that they wouldn't be treated any differently in that regard; they'd be subject to ongoing assessment.

Senator McKIM: Just on Mr Anees, while I've you there, Mr Outram: he's succeeded in a Federal Court appeal today. The Federal Court has found against the AAT, which originally found in favour of the minister, and the AAT has been ordered to rehear the matter, which of course could take years. Will you review Mr Anees's status with a view to considering whether it would be more appropriate for him to be held in community detention rather than immigration detention?

Mr Outram: Just to clarify the process, that would be the department that would review his status. We do the detaining part.

Senator McKIM: Okay. The same question to you, then, Mr Pezzullo.

Mr Pezzullo: I'm not current on what the Federal Court has decided today and what ramifications that might have for this gentleman's status. I'll take advice from my officers.

Senator McKIM: Will you come back on notice to the committee, if you're able to provide any detail.

Mr Pezzullo: If I'm able, I'm happy to come back on it.

CHAIR: Senator McKim, you're at nine minutes.

Senator McKIM: In that case, I could probably just deal with this really quickly, considering Mr Outram is at the table. This is probably a question for you, Mr Pezzullo, to be fair: is the department aware of how many First Nations people are currently in immigration detention? I'm obviously asking this on the back of the recent High Court decision.
Mr Pezzullo: We're evaluating that matter in relation to the judgement that came down in the matter of Love and Thoms. It's a fairly complex judgement. It was a 4-3 split decision. It will require us to determine what the policy prescription that flows from the decision is, noting that there were four separate decisions in the majority. So we're working with our colleagues in the Attorney-General's Department and taking our own legal advice. On the basis of the three-limb test, which—if I can say, respectfully—seemed to form the consensus of the majority judgement, we're working through whether there might be cases of persons being held in detention that might fall within the ambit of the three-limb test.

Senator McKIM: However, you did release the one gentleman whom the High Court found did qualify as a First Nations person—

Mr Pezzullo: Yes.

Senator McKIM: from memory, within 24 hours, did you not?

Mr Pezzullo: In that case, the court itself had turned its mind to the particulars. In one case, the matter was remitted; in the other case, the actual judgement related to the gentleman's status. So when you get a High Court decision that goes to particulars, it's fairly self-evident that it needs to be followed through.

Senator McKIM: But, Mr Pezzullo, can I just check this with you: you would accept, would you not, that if someone does qualify as a First Nations person—

Mr Pezzullo: Within the meaning of the test.

Senator McKIM: within the test that you mentioned earlier that was part of the High Court's collective decision, that in fact it would be unlawful for you to detain them.

Mr Pezzullo: Yes, and indeed if one of my officers forms a reasonable suspicion that a person who formally up until the day of the judgement would have fallen into the binary distinction of either being a citizen or an alien, with the development of new judicial authority, which flows from the highest court in the land in terms of the interpretation of our Constitution, effectively—I'm not sure if I'm capturing this respectfully in relation to what Their Honours found—is a third category of status. If one of my officers came to the view that a person fell within that—I'll call it a third category; I'm not using a legal term, I'm using my own lay description—then that officer would be duty-bound to advise both me and the commissioner who does the detaining that that said person should be released, yes.

Senator PRATT: The second one self-identifies at that time—sorry for interrupting.

Mr Pezzullo: A number of persons have come forward and advised potential claims.

Senator McKIM: I've just been asked by the chair to wrap up my questioning on this matter, Mr Pezzullo, so I'm going to try and do that. Can I be clear that you are actively reviewing—

Mr Pezzullo: Yes.

Senator McKIM: So I'm not asking about your general response to the High Court ruling—I actually will ask you about that, but I'm not asking about that now. I'm asking specifically with regard to how many First Nations people you currently are holding in immigration detention: so you are actively reviewing that?

Mr Pezzullo: Yes.
Senator McKIM: And how long will it take? What's the process? Can we expect a response reasonably quickly because, as you've already indicated, it would be unlawful to detain someone who met those tests?

Mr Pezzullo: There'd be an absence of power to detain a person in those circumstances. I think it's fair to say—and I might ask the General-Counsel to assist, if she feels she's able to—that we're working on that as quickly as possible. Perhaps Ms deVeau might like to amplify those comments.

Ms de Veau: The issue is that self-identification is the second of the three limbs under the Mabo 2 test, so it's a question of fact as to whether the three limbs, and each of the three limbs altogether, are made out. In some instances we have only self-identification. In other instances we have some material but not sufficiently enough to make the tests. Generally, in those matters where people have self-identified we are negotiating with them or with their legal representatives as to obtaining the appropriate information that would be able to as a matter of evidence and fact determine that the reasonable suspicion can no longer be held.

Senator McKIM: Thanks. That's helpful—last question now, Chair, I'm assuming I know the answer to this, but I'm just going to ask it anyway: at the moment there is no-one who has met those three tests that you are aware of that is in immigration detention?

Mr Pezzullo: I can advise that one person clearly met the test to the satisfaction of one of my officers and they were released during the course of last week.

Senator McKIM: Okay. So apart from that person? If I just ask currently—that's encouraging, thank you, Mr Pezzullo—

Mr Pezzullo: There is no-one else to my knowledge and not necessarily in the knowledge of Ms de Veau but in the visa stream who's yet close to establishing the appropriate—again, I'll use the lay term credentials; I'm not using a legal term.

Senator McKIM: I understand what you're referring to.

Mr Pezzullo: But, beyond the two gentlemen who were joined to the High Court case, leaving those two aside, one person has been released because the delegate formed a view that to hold that person would be detaining a person without power. Ms de Veau, I've been sitting here since nine o'clock focused intently on these matters. Has anything else come to light that would cause me to modify my answer?

Ms de Veau: Not such that anyone else has been released, but, as I said, negotiations are ongoing to establish evidence in a number of matters.

Senator McKIM: And are you able to tell us how many matters are currently active in that context?

Ms de Veau: I can. In round figures, I think it's in the vicinity of about 18 cases, but that spans all possible indications of indigeneity—not those that might ultimately meet the threshold. We already had information about the bulk of those prior to the Love and Thoms decision, and there have been a smaller number that have self-identified since the decision.

Mr Pezzullo: And I can assure you, Senator, lest there be any doubt—and I'm sure that nothing that we've said would cause you to have this doubt—we take all court decisions very seriously, but especially so in the case of a decision made by the High Court on questions of constitutionality. It's obviously the highest form of judicial authority that you can have, and
our officers work on those matters through the night as required and will ensure that we are acting in conformance with the new line of judicial authority that now exists in our nation.

Senator McKIM: I appreciate that.

Ms de Veau: Senator, I can indicate that, as of today, the figure that we're looking at is 23.

CHAIR: Last call for questions in cross-portfolio?

Mr Outram: Chair, we've got some answers for Senator Lambie, if we may.

CHAIR: Excellent.

Ms Saunders: Senator Lambie, on your question in regard to the Cobham contract, for 2018-19, the cost for conduct of coastal patrol services using Dash 8 aircraft was $115,982,239.

Senator LAMBIE: How does that compare to the budget allocations for in-service support over the last three financial years?

Ms Saunders: I will have to come back to you if you want to a breakdown of that, Senator.

Senator LAMBIE: If you can just put that back when you can find it—thank you.

Ms Saunders: Just to clarify, Senator, in terms of the variations, I can come back to you with particular figures, but I can give you a breakdown of the contract of costs over previous years: for 2018-19, as I said, it's nearly $116 million; for 2017-18, it's $105,149,603; for 2016-17, it's $107,351,526; and for 2015-16, it's $110,125,992.

CHAIR: Senator McKim?

Senator McKIM: I was just going to say, Chair, that I'm happy to deal with this later in the day, but the risk is that, if I don't at least raise it now, you might rule that I should have raised it in overview—

CHAIR: Which issue are we talking about?

Senator McKIM: The issue is an investigation that Mr Pezzullo referred to the Australian Federal Police around the leaking of details about a specific medical transfer from the offshore detention cohort to Taipei to Renee Viellaris, who is a News Corp journalist in Australia.

CHAIR: Let's deal with it very quickly.

Senator McKIM: Mr Pezzullo, I want to very quickly run you through the time line of this investigation. Is it correct that you referred this matter to the AFP on 18 March last year?

Mr Pezzullo: I didn't personally refer the matter; I'm familiar with the matter, but the officers—

Senator McKIM: I think you did.

Mr Pezzullo: It wasn't me personally, but the officers who look after referrals perhaps can assist me with answering these questions. I think we'll eventually get to the point where we'll establish to the satisfaction of all parties concerned that it was an erroneous referral. It's something that we've declared and made a public statement about, but why don't we hop through the steps.

Senator McKIM: So who have we got there? Ms Moy?
Mr Pezzullo: Ms Moy oversees the integrity function.

Senator McKIM: Ms Moy, was that referral made to the AFP on 18 March last year?

Ms Moy: That's correct—18 March.

Senator McKIM: And who made that referral?

Ms Moy: The referral was made through my Integrity, Security and Assurance Division.

Senator McKIM: By that division? So they referred that matter to the AFP?

Ms Moy: That's correct.

Senator McKIM: Subsequent to that, in October last year, the department put out a statement saying such administrative costs are regularly released publicly, so why was it that, in March last year, the department referred this to the AFP and then, six months later, said this is all business as usual? There seems to be quite a bit of discrepancy between those two positions.

Ms Moy: The matter of the referral was in regard to the article, as you'd expect. At the time the referral was made, there was not the information had by the people making the referral that the matter had already been unclassified and that that information would have been something that we would publicly release on request. As the secretary said, as we looked back, that was a particularly erroneous referral. We don't have many of them. In fact, this is probably the only one that I've come across in recent times, and you would be aware that in July the AFP changed the arrangements for referrals, and that process is now in place.

Senator McKIM: I appreciate that, Ms Moy. When was information declassified?

Ms Moy: Let's see if I have the information.

Mr Pezzullo: At the time to support the preparation—in the context of the preparation of the article by the journalist. In other words, it was given to her on an authorised basis, as I'm given—

Senator McKIM: Sorry, Mr Pezzullo, it's probably my ears—

Mr Pezzullo: Well, it wasn't retrospective—

Senator McKIM: and the jug boiling over there. Could you repeat that last answer, please.

Mr Pezzullo: I'll speak over urn that is boiling away there. I think the reason why, upon review of relevant facts in October of last year, we came to the conclusion that the matter had been erroneously referred is that, unbeknownst, as Ms Moy said, to the staff doing the initial assessment that the matter had been released with authority to the relevant media outlet, as we would release the information under FOI or release information in response to questions taken on notice here—

Senator McKIM: Who released that information to the journalist?

Mr Pezzullo: I'm not sure if that's been put on the public record. Perhaps Ms Moy can assist.

Ms Moy: I'm not aware of the release, Senator.
Senator McKIM: Mr Pezzullo has just told the committee that it was released with authority. How can you know that it was released with authority but not know who released it?

Ms Moy: I'm not aware of the individual who released. What I'm aware of is that the information was declassified or unclassified, as it should have been—it should have been correctly unclassified information—in the minister's office.

Senator McKIM: Okay. So the minister's office declassified this information?

Ms Moy: No, the minister's office gave it its correct classification, I would suggest.

Senator McKIM: But it was originally classified information, was it not?

Ms Moy: I'd suggest that it was incorrectly classified as 'classified'.

Senator McKIM: But it was classified. It was classified as 'classified' originally, right? Sorry, I know there are going to be people laughing at these forms of words. But it was originally designated as classified information, was it not?

Mr Pezzullo: I'm not even sure it was that. Wasn't it 'official'?

Ms Moy: I think it was 'official use only'. I don't have the original documents to determine the actual original classification.

Mr Pezzullo: It was information on contract expenditure, wasn't it?

Ms Moy: That's correct, the cost.

Senator McKIM: So it was originally classified 'official use only', and then—

Mr Pezzullo: We'll need to check that.

Ms Moy: I'll need to check, on notice, what the actual classification was.

Senator McKIM: So you will take on notice what the original classification was. You've just provided evidence to the committee that the minister's office gave it a different classification, which you say should have been the classification it already had. But, just leaving that aside, the minister's office changed its classification; is that correct?

Ms Moy: I don't know that the minister's office officially changed the classification. I don't think there was that process. It was known that the information was already in the public forum, and then the information was treated appropriately.

Senator McKIM: Did the minister's office provide that information to Ms Viellaris?

Ms Moy: I'm not aware. I wasn't in the—

Senator McKIM: Was that not part of the investigation?

Ms Moy: The investigation was undertaken by the AFP.

Senator McKIM: So you don't know whether they formed a view about who released this information to Ms Viellaris?

Mr Pezzullo: We'd have to ask the AFP, wouldn't we?

Ms Moy: I think the AFP is the—

Senator McKIM: No, I'm asking about the Home Affairs understanding. You made a reference to the AFP. They presumably came back to you at some stage and told you something. I am asking about your awareness: is Home Affairs aware of whether the AFP
found that a particular person or group of people had released that information to Ms Viellaris? And, if so, I'm asking who those people or that person was.

Ms Moy: I'm aware the AFP notified the department that the matter was finalised, no criminal offences were identified, and the information in the article was declassified and authorised for public release.

Senator McKIM: So the AFP found it was declassified. Who at the AFP declassified it?

Ms Moy: I would suggest that was the—from discussions with the minister's office, as I stated earlier.

Mr Pezzullo: But we should just check that with the AFP. I'm not sure what they've said on the matter publicly.

CHAIR: Senator McKim, is that sufficient on that topic?

Senator McKIM: If you wouldn't mind, I have a couple more on this. I feel like I'm trying to chase the rabbit down the rabbit hole at the moment, but it's going around and around.

CHAIR: You have seven minutes; at 10, I'll cut you off.

Unidentified speaker: We're still looking for the rabbit.

Senator McKIM: You don't think that the unauthorised disclosure of information about a person seeking asylum is important, but I do.

CHAIR: Please get on with it.

Mr Pezzullo: Just to be clear, we'll just check the language with the AFP. The AFP in finalising its—and we heard Mr Kershaw this morning talk about how they've changed their parlance, so I'll refer to 'investigation' in the looser, lay sense—

Senator McKIM: The new term.

Mr Pezzullo: When they do their initial assessment. But I heard Mr Kershaw's evidence very closely, they advised the department—on what date?

Ms Moy: 15 July.

Mr Pezzullo: On 15 July that there had been no unauthorised disclosure. So your characterisation—which I took to be the premise of your exchange with either the chair or Senator Henderson; I couldn't quite make it out—that there's an unauthorised disclosure, just as a matter of fact is erroneous, because the Australian Federal Police have said that there was no unauthorised disclosure.

Senator McKIM: That's what I'm trying to get to, because—

Mr Pezzullo: So there's no rabbit hole, because we've come back up into the field.

Senator McKIM: I don't agree. Because what I am trying to get to—

Mr Pezzullo: You don't agree with the Federal Police?

Senator McKIM: No, I don't agree with your characterisation that you just gave that there is no rabbit hole. I'm trying to get to the bottom of when and by whom this information was declassified. On the basis of your answers to date—and I acknowledge you've taken certain ones on notice—I'm no wiser than I was when I got out of bed this morning about when the classification of this information was changed and by whom. Those matters pertain directly to whether there was an unauthorised disclosure or not.
Mr Pezzullo: With all due respect, if I can just splice it into two: the factual matters about when the declassification was, and its authorisation for transmittal to a member of the press—that's been taken on notice, and, if we can assist you, we will. That's a matter of fact. The matter of conjecture as to whether at any point there had been an unauthorised disclosure—that's conclusively been dealt with. The Australian Federal Police has advised us to the effect that there was no unauthorised disclosure. I don't need to take that on notice. I'll check that characterisation with them, if you wish.

Senator McKIM: Yes, please.

Mr Pezzullo: In a sense, I am taking your question in two parts. Was there an act of declassification, and, if so, by whom and when? Was there an act of authorised release to a journalist, and, if so, by whom and when? That's as I understand you've asked. We'll see what we can assist you with.

Senator McKIM: My concern here is that the information was released by the minister's office—or, in fact, even by the minister—when it shouldn't have been. And I'll just pause here. Ms Viellaris is someone who regularly reports on matters in this field and, on more than one occasion, has had information that wasn't in the public domain before she'd put it there.

Mr Pezzullo: When you say information was released to her and then you pause and you say, 'and it shouldn't have been'—

Senator McKIM: I'm sorry, Mr Pezzullo, this is where I get to ask you the questions, not the other way around.

Mr Pezzullo: I was about to make a statement. I'm not asking you a question at all. I'm just saying there's a normative hook at the end that says, 'and it shouldn't have been'. I'm not clear in my own mind. It's a rhetorical question to myself: on what basis anyone can form a judgement that the information should not have been shared when it was duly declassified and authorised for release.

Senator McKIM: My concerns—

Mr Pezzullo: By definition, that's not an unauthorised disclosure.

Senator McKIM: My concern here, Mr Pezzullo, is that this information was released by the minister's office or by the minister to Ms Viellaris when it was classified and then the information was subsequently declassified, as Ms Moy has said, likely by the minister's office. That's my concern here.

Mr Pezzullo: I understand your characterisation and I listened to her evidence very carefully. If information is authorised for release, it cannot axiomatically be an unauthorised disclosure at the moment of its transmittal. It has to be cleared for release. The very act of giving authorised information to a member of the press to answer a factual question—we get media inquiries all the time. The very fact that it's given on an authorised basis means axiomatically that there cannot be a question of unauthorised disclosure of—

Senator McKIM: Are you saying if someone—

CHAIR: Senator McKim, you've had your last question about five times!

Senator McKIM: I know, but Mr Pezzullo keeps opening up new avenues of inquiry.

CHAIR: He's taken what you want on notice. Last question, Senator McKim.
Senator McKIM: To clarify your last response, Mr Pezzullo, are you saying that, if someone releases classified information, the fact that they have released it means that it's not classified?

Mr Pezzullo: No.

Senator McKIM: In that case, I've misunderstood you. Can you say what you last said again, please?

Mr Pezzullo: You can't release classified information in an authorised manner unless it's unclassified at the very point of its release. It's axiomatic. It's called clearing something for release.

Senator McKIM: That's right.

CHAIR: That ends the cross portfolio corporate and general matters consideration. We'll take a five-minute suspension and, when we resume, we'll deal with outcome 1.

[16:50]

CHAIR: The Legal and Constitutional Affairs Legislation Committee examination of the additional estimates will now resume with an opening statement from the Commissioner of Australian Border Force.

Mr Outram: Thank you. I would like to take this opportunity to provide a brief overview of the ABF's current priorities, challenges and operating environment. Since I last presented evidence to the committee, the Australian Border Force has continued its evolution as a contemporary border management agency, and recent events have shown that the ABF today is greater than the sum of its parts that were integrated in 2015.

In this reporting period, we have delivered strong operational outcomes, managed increasing volumes of trade and travel and worked within our budget throughout what has been a complex and high-tempo period that has seen the ABF play a leading role in the response to the COVID-19 outbreak and a small supporting role in responding to the catastrophic bushfire season. In doing so, we have prioritised efforts on the basis of risks and threats and have demonstrated considerable adaptability. This has been enabled in large part by the effective and ongoing cooperation with partner agencies and stakeholders.

The ABF has been at the forefront of Australia's response to the outbreak of COVID-19, which has been led by public health authorities, including the Commonwealth's Chief Medical Officer. We have worked hand-in-hand with the departments of health, agriculture, education, skills and employment, foreign affairs and trade, defence and industry to coordinate a holistic approach to the health emergency. Specifically, the ABF have been focusing on travel movements at borders and ports, as well as supporting the repatriation of Australian citizens, permanent residents and some foreign nationals evacuated from Hubei province, and facilitating their subsequent arrangements.

The ABF was able to commence the enforcement of the enhanced border control measures within a very short space of time, and airlines were advised of the initial announcement on 1 February—within a couple of hours of the government's decision. Formal written advice to airlines followed the same evening. I accept that some people's travel plans were disrupted and some people were significantly inconvenienced, but this was a necessary part of what was a difficult and unprecedented situation. In subsequent weeks, we have continued to
successfully enforce these measures, minimising the impact on travellers where possible through regular and thorough engagement, including with airlines, ports, maritime authorities and the cruise-shipping industry.

Modern, well-equipped quarantine facilities were established rapidly on Christmas Island, and a little later at Howard Springs near Darwin, to enable the safe return of Australians, permanent residents and their families from Hubei province to Australia. All of those people have now returned home and resumed their lives. I note that many have expressed their appreciation for the whole-of-government effort, including Qantas, to ensure they could safely return home. A further 170 people who were on the Diamond Princess cruise ship were also evacuated to the Howard Springs facility in the early hours of 20 February and are currently undertaking a 14-day quarantine period. I should note our condolences to the family of Mr James Kwan, who unfortunately passed in the last couple of days.

I am very proud of the way my officers have conducted themselves, whether on the frontline or in the huge planning effort behind the scenes, particularly when considering how quickly we implemented the new border control measures—over just a few hours. Throughout the operation ABF officers have performed with the professionalism, commitment, diligence and compassion expected of them by the Australian public, and I commend their efforts.

Over the past four financial years, the number of international air travellers has risen by more than 17 per cent, from 38 million to 44.7 million. While imported air cargo consignments have increased by about 52 per cent, from 34.9 million to approximately 53 million. International mail gateways received more than 190 million inbound mail articles in the 2018-19 financial year. Such enduring increases in volume necessitate a range of responses that improve efficiency and optimise the impact of our finite resources.

Our partnerships across the Home Affairs portfolio and with other intelligence and law enforcement agencies are delivering exceptional operational results, while our Australian Trusted Trader program is enabling us to focus our compliance efforts in more targeted ways. The ongoing Operation Cabestro, for example, is a joint investigation involving the ABF, the Australian Federal Police and the Australian tax office that started as a simple compliance activity in the ABF and is now targeting individuals and groups suspected of defrauding the Australian government of what could be hundreds of millions of dollars through claiming false duty drawback on imported alcohol.

The ABF-led whole-of-government Illicit Tobacco Taskforce has also continued to produce exceptional results, seizing more than 182 million cigarettes and 61 tons of loose-leaf tobacco at the border in the 2018-19 financial year. The estimated duty evaded there was more than $230 million.

Combating the scourge of illicit drugs of course continues to be one of the ABF’s highest priorities. A very recent example of the continued threat was the seizure last month of 154 kilograms of methamphetamine that arrived in Melbourne via sea cargo from Mexico. It is only through working closely with partners, in this case the AFP and Victoria Police, that we can continue to maximise our capability and defend against such threats.

The ABF continues to lead the government's efforts to combat one of the most egregious forms of exploitation in the supply chain—modern slavery. A key focus of this work includes
our engagement with business to ensure that supply chains in Australia are not tainted by modern slavery. Our border and supply chains also provide the mechanisms through which we can work with industry to improve the flow of people and goods for our overall economic benefit. We're developing a customs and border modernisation agenda designed to cut red tape, improve service delivery, enhance supply chain integrity and minimise revenue leakage. This is a complex program geared towards improving all aspects of our business while making our services more convenient, seamless and digital.

Delivering on this agenda will involve extensive partnership with industry, and to this end I have established the Customs Advisory Board and held our inaugural meeting on 25 February this year. Whether with whole-of-government partners, industry or internal staff and stakeholders, collaboration remains the centre of gravity of the ABF's ability to continue to prepare for and respond to multiple priorities and threats. Thank you, Chair.

CHAIR: Thank you very much, Commissioner. Labor senators, do you have some questions?

Senator KENEALLY: Yes, we do. To confirm, we are in outcome 1.1?

CHAIR: We're in outcome 1. You're welcome to ask any questions from the subheadings within outcome 1, and you have 10 minutes.

Senator KENEALLY: Thank you very much. If I could briefly go back to the line of questioning I had regarding the Cape class boats. Based on the figures in the FOI document, the figures that were provided to the minister on a weekly basis, it shows that there were 165 patrolling days in December 2018, but in the figures you just provided to the Senate you said there were only 82 patrol days in December 2018. This means you originally overcounted the number of December 2018's patrol days by 83 days. That's the equivalent of three Cape class vessels on the water for almost the entire month each. How did you get that statistic, the statistic provided to the minister on a weekly basis, so wrong?

Ms Saunders: As indicated previously, these are year-to-date figures. The overall figures reported to the minister were correct at the time they were provided. The correction is only addressing across the previous months as to when those patrol days were attributed. So you are correct though—if I can restate the figures of 91 as we've spoken about, so that was a result of an increase in two days in September 2018; an adjustment downwards of 10 in November 2018; and, you are correct, December figures were adjusted down by 83 days in December.

Senator KENEALLY: What I'm trying to understand is this: because these are weekly reports—I can understand a day or two here or there, but 83 days in one month? As I said, it's the equivalent of three Cape class vessels on the water for an entire month. I feel like somebody might have noticed that.

Mr Outram: Senator, obviously there's a reason why we are very careful about releasing statistics annually, because there is a chance to compare and contrast data sets and sources of data and information, and do that sort of checking. Of course if we release data on a daily or a weekly basis, there is always going to be a risk, I think, of some errors in data. But what I can say is this: in terms of the operational effect on water, there was no impact whatsoever. If you look at our operational results, whether that's with people smuggling or narcotics smuggling operations, all our operational effect that we apply on water, aerial surveillance, on water
response—everything across the board—is being maintained. I take your point about the counting on a monthly or weekly or daily basis, and we need to improve there, but overall the effect and the impact and the numbers in the annual reports, noting that correction about the 2017-18 year, are accurate.

Senator KENEALLY: I note your evidence that you've just provided, Commissioner, that the operational impact isn't affected, but do you recall a leak of a Department of Defence briefing that said the ABF was consistently missing patrol day targets by 20 per cent? It was in the Sydney Morning Herald in March 2019.

Mr Outram: As I've said to you, and I've put it in as evidence, we experienced difficulties last year due to a five-year deep-level maintenance and some crew shortages. I've not been shy about that. Let me say this: we work with Defence for a reason. It's because we have a rear admiral who is seconded into the Australian Border Force from the Royal Australian Navy who is the commander of Maritime Border Command within the Australian Border Force. The Australian Defence Force have been magnificent because where we have any gaps in our capability, they have been stepping up and filling those gaps. My point is there is no impact operationally on the water because of our relationship and the model that has existed with Defence over 10 years.

Senator KENEALLY: On 13 February 2019, the Prime Minister told media:
… a range of strengthening that has been put in place in terms of Operation Sovereign Borders and their operations. I want to stress that all of the actions and decisions that we are taking are implementing the recommendations of these agencies and the officials as presented to us this morning.
This was in reference to a meeting of the National Security Committee that occurred earlier on 13 February. Did you attend that meeting?

Mr Outram: I'd have to take it on notice, Senator. You said it was in February 2019?

Senator KENEALLY: It was 13 February 2019.

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

Senator KENEALLY: Do you recall a warning from the WA Police Commissioner, Chris Dawson, in April 2018 that there was 'a great shortage' of patrols along the West Australian coastline that was allowing large-scale importation of the drug ice into the state?

Mr Outram: Yes, I do recall that.

Senator KENEALLY: Commissioner, what I'm trying to get at is your evidence to us is that there is no operational impact. We have the Department of Defence saying you are consistently missing your patrol day targets. We have the WA Police Commissioner saying there's a great shortage of patrols. We have an FOI that demonstrates that the statistics that have been presented—well, let's just say that they have changed today, and, although they've been provided to the minister on a weekly basis, are in fact wrong.

Mr Outram: I'll deal with those questions, Senator; I'll take them in part. If you look at our trajectory of patrol days at sea from 2014-15 to the current date, there is generally an increase—apart from last year, that's one anomaly—year on year on year. If you look at the investment, noting the increases in cost of fuel and maintenance, there has been increased investment from government year on year, including at MYEFO and through budget. If you look at the number of crew we have available, year on year there has been an increase.
In terms of the 27,000 kilometres of coast we have around Australia, our vessels tend to push further out to sea. We are not a literal waters coastguard. If you looked at New South Wales Police Force you wouldn't hear those complaints, and if you looked at Queensland Police Service you wouldn't hear those complaints because they have quite a lot of their own vessels that they use on the water along their coastline. Different police forces apply different treatments to that.

What I would say is this: we are currently working very closely with the Western Australian Police Force, we have set up a task force with them, and we are supporting them where we can. But the main thing we need with our assets on water is to respond to intelligence. A ship patrolling at sea: there are millions of square miles, so hoping by happenstance you're going to bump into a vessel that's got drugs on it isn't a great ideal use of your resources.

Senator KENEALLY: I understand that.

Mr Outram: We need intelligence, and so we are working very closely with the Western Australian Police Force in a task force to plug that gap.

Senator KENEALLY: I do have some questions later about the future of our maritime surveillance capacity. Can I come back to this though? Based on the figures in the FOI document, the figures that were provided to the minister on a weekly basis, the FOI did show, and we have confirmed this, there were only 14 patrolling days in April 2019. Did the minister or his office raise concerns about these figures and the dramatic drop in the number of patrol days in April?

Ms Saunders: As I indicated previously, the report doesn't reflect that 14 days were achieved in that month period before the previous report. That's an extrapolation—

Senator KENEALLY: It does.

Ms Saunders: based on the previous report.

Senator KENEALLY: The change between March and April does show that, though.

Ms Saunders: But what it doesn't reflect is that actually there were amendments, as I indicated, to the year-to-date figures overall, where there were ons and offs. So it's not as simple as just looking at it and saying, 'It's a straight extrapolation from the March report to April,' and saying that there's been an increase of 14 days. As I said, there were ons and offs over a number of months, and there were errors in that previous reporting. So if I can, once again, just confirm that for the month of November there were in fact 84 patrol days. There were then 82 patrol days in December of 2018, 114 in January 2019, 102 in February 2019 and 127 in March 2019.

Senator KENEALLY: I will just state again my request for the information I sought earlier, and you took on notice, in terms of day-by-day breakdowns. I'll conclude there, flagging that I would like to come back in this outcome. We have several matters in this outcome that are unrelated to this line of questioning.

Senator ROBERTS: First of all, Mr Outram, I just want to compliment the government, from Prime Minister Tony Abbott onwards, on the wonderful job they've done in tightening up the borders with regard to the boats. We understand the problem is difficult and that it
relies a lot on intelligence and not just brute volume. Could you tell us, though, how many asylum-seeker claims are backlogged for final resolution by the courts?

Mr Outram: That’s probably not a question for me.

Senator Cash: It's Mr Pezzullo and his people—who will now come to the table.

Mr Pezzullo: Madam Chair, just seeking your guidance—technically we're in outcome 2. Obviously I’m very happy to assist the committee as best as I can, but I just to draw attention to the fact that the question pertains to outcome 2.

CHAIR: That's a good point.

Senator ROBERTS: I'm happy to come back. I've got another line of questions.

CHAIR: If you could focus on the ones that fall within outcome 1, that would be ideal.

Senator ROBERTS: I want to go to a series of questions about entry to data in personal phones, emails and text messages—electronically. In a briefing provided to Senator Hanson from Minister Dutton's office, it was suggested that warrants are required to access metadata being collected on everyday Australians, and that only two agencies are authorised to access that metadata. Over the last 12 months, how many times has individual metadata been accessed?

Mr Pezzullo: Mr Hansford might come forward to address that as a matter of fact. We maintain some relevant statistics that might assist in the answering of the question.

Mr Hansford: Of the 20 enforcement agencies in the 2018-19 period, there were 295,691 authorisations for the disclosure of historical telecommunications data. That does not, of course, include the Australian Security Intelligence Organisation, that reports in a separate classified annual report.

Senator ROBERTS: Of those, on how many of those occasions was a warrant required?

Mr Hansford: For data retention purposes?

Senator ROBERTS: Yes. Data access purposes.

Mr Hansford: There is no warrant required for metadata.

Senator ROBERTS: So that means there were no applications for warrants?

Mr Hansford: No. But there are different types of ways that law enforcement can obtain data. Metadata is usually done through an internal authorisation, unless, of course, it relates to journalist information warrants, which then have a separate process. There could be information that relates to stored communications, which requires a warrant. Or it could be in relation to telecommunications interception information, which is kind of live information. That requires a warrant. The specific answer to your question on telecommunications data is that there would be no warrants required.

Senator ROBERTS: So warrants are only required for stored data, on a phone for example?

Mr Hansford: That's one element of what a warrant could cover, yes.

Senator ROBERTS: Okay. What were the 295,000 other accesses?

Mr Hansford: What were they?

Senator ROBERTS: What did they cover? How did people get access to—
Mr Pezzullo: It's important to spell out that that doesn't relate to content.

Mr Hansford: That's right. As the secretary just indicated, the requests for metadata don't relate to content. There are two particular aspects to it. One involves a subscriber check. For example, it might be my name and my number, and that's a straight data—

Senator ROBERTS: So that's one of the 295,000?

Mr Hansford: Yes, that's right. That's one component. The other component is traffic data, which then might give the call charge record of my phone but not the contents.

Senator ROBERTS: What about access to the content within a phone, or text messages?

Mr Hansford: For any access to content a warrant is required.

Senator ROBERTS: And there were no warrants issued? No warrants even applied for?

Mr Hansford: In the 2018-19 period, yes, there were 3,561 interception warrants issued to interception agencies. There were also 1,252 stored communications warrants. And there were also a number of surveillance device warrants and computer access warrants issued in 2018-19. In 2018-19 there were 740 surveillance device warrants issued to law enforcement agencies. There were also 31 retrieval warrants, which is for when you go to retrieve a surveillance device. There were also eight computer access warrants issued. That gives you a sense of some of the warrants that were issued across the nation for the 20 law enforcement and corruption agencies.

Senator ROBERTS: So it's quite a complex field.

Mr Hansford: There is a range of warrants, yes.

Senator ROBERTS: Is the information you're giving subject to an audit by an independent body?

Mr Hansford: The Commonwealth Ombudsman has an auditing-type function, and for ASIO, the Inspector-General of Intelligence and Security has an oversight mechanism. I could also refer you to the work that the department does every year both in the Telecommunications (Interception and Access) Act and the Surveillance Devices Act annual reports, where we report comprehensively on all of the statistics relating to warrants, including breaking down the warrants as per crime type or offence type so that you can get a sense about what the types of criminal investigations are that the nation and investigatory agencies are looking at on a macro level every year.

Senator ROBERTS: Thank you. I'll just come back to repeat some questions that I asked of ASIO with regard to border security. Minister, you asked a question before: the information was primarily accessed from scientific journals, the CSIRO's own bulletins and the media, to some extent—but the media was to a small extent. This is about the CSIRO collaborating with the Chinese. Given the recent expressed concerns about the wide extent of spying by foreign agents in Australia, is the partnership between CSIRO and China by way of the Centre for Southern Hemisphere Oceans Research of concern to national security?

Senator Cash: The secretary is able to assist.

Mr Pezzullo: Senator Roberts, I listened to the Director-General's evidence in response to your question earlier today and I certainly don't have anything to add, save for your reference to scientific journals. I think you classified those in three areas: scientific journals, CSIRO's own pronouncements and some media reporting—I think you said those were in the minority.
Senator ROBERTS: Yes.

Mr Pezzullo: I won't speak on behalf of Mr Burgess, but I'm sure that he would associate himself with this sentiment: unless he and I eyeballed each individual reference I'd say I'd be very surprised, for instance, but I'll check, if any CSIRO bulletin would say that they were undertaking classified research—

Senator ROBERTS: I'd be surprised too!

Mr Pezzullo: Well, indeed. So I don't know how you can get to a position of asserting, by way of the premise of your question, that there is classified research being inappropriately shared that would—I think, as I heard you earlier this afternoon refer to it—allow from a stand-off satellite distance the location of submarines; I think you said to the depth of 500 metres. I will personally review the CSIRO bulletins to which you refer. You will be able to knock me over with a feather if those CSIRO documents—I'll check—refer to that research in those terms. If you care to assist either me or the director-general by perhaps sending us the references to the scientific journals that you're drawing on, I'd very happily review those. But, beyond those comments, which are really about process, I don't have anything to add to Mr Burgess's evidence.

Senator ROBERTS: Yes. My purpose is not to knock anyone over with any feathers or anything else—

Mr Pezzullo: You'd surprise me greatly if the CSIRO were running around in its bulletin saying, 'We've got a magical way of seeing submarines through rendering the ocean transparent and we reckon we might just put that in hock with a research partnership with a foreign country.' I'll have a look—you hear things, but I'd be very surprised.

Senator ROBERTS: The purpose of my question went not to the intent of the research but to the possibility that that research could be used for other purposes by the Chinese.

Mr Pezzullo: I understand, but to draw that inference you've got to take a number of logic—I mean, we all hear things, but you've got to take a logic jump that says, 'Oceanographic research, dot, dot dot, eliminate dots, gets you to an ability to see through water to the depth of 500 metres.' And that, unbeknownst to anyone in the Commonwealth that this has been perhaps unwittingly or unknowingly trafficked to a foreign power—I heard Mr Burgess's evidence; I think he said he wouldn't have anything to add in a public forum, even if it were of direct knowledge to him. But I'll take it upon the department's behest to look at those journals and those CSIRO bulletins. If there's anything else I can possibly come back with, I will.

Senator ROBERTS: Thank you very much. I don't think the CSIRO is in the business of doing clandestine activities for foreign agencies, but we are concerned about border security and about security of our nation—

Mr Pezzullo: We are. You said to me that you've drawn from scientific journals; I'd be interested to know what they are. I think you said—and I might have misheard you, and I do apologise if I did—CSIRO bulletins, and then you said, I think, media reports—

Senator ROBERTS: Correct, they're the three.

Mr Pezzullo: Yes, thank you. Well, I would like to, for my own satisfaction, source those references.
Senator ROBERTS: And I undertook Minister Cash a reply to her question, so I'm happy to do that.

Senator Cash: Thank you.

Senator ROBERTS: My concern goes to inadvertent collaboration that might lead to the Chinese using that information, and surely that's a valid question to question our security over.

Mr Pezzullo: Without accepting the premise and the inference that I draw from your question—Mr Burgess gave you the evidence he gave you—I'll look at those journals myself, and if there's anything I can possibly assist the committee with I will come back.

Senator ROBERTS: Mr Burgess didn't give us much of a reply, and that's not being critical of him. He directed us to Defence, so I thought I'd ask here as well. So thank you very much for your answers. Thank you, Chair.

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

Senator ANTIC: I have a few questions in relation to the organisation Hezbollah. Can the department please just confirm what the current status of that organisation is in relation to Australian law?

Mr Pezzullo: Ms Geddes can come forward and assist. But if you're asking in relation to its listing, it's a matter of public record that it's not listed under the Criminal Code. Ms Geddes will further assist.

Ms Geddes: There is one wing of the organisation that is listed—the ESO.

Senator ANTIC: And is it correct to say that the so-called military wing of the organisation is not considered to be a terrorist organisation?

Ms Geddes: It is not listed as a terrorist organisation.

Senator ANTIC: I'm interested in that, because it's my understanding that, for example, in 2013, a political official of Hezbollah, Ammar Moussawi, said: 'Everyone is aware of the fact that it is one body. Its military and political wing are unified.' So I'm just interested in the rationale behind delineating between the two and the ESO being declared, rather than simply the entire organisation, if that's—

Ms Geddes: That's a matter for ASIO. That does the threat assessment.

Senator ANTIC: Are you aware of any discussions with Australia's Five Eyes partners or any other allies about the listing of—

Ms Geddes: That's a matter for ASIO

Senator ANTIC: It's still a matter for ASIO?

Ms Geddes: Yes.

Senator ANTIC: Earlier this year—in fact, very recently—there was a New South Wales criminal prosecutor who failed to convince the court to have a Sydney man with a violent criminal history declared as a high-risk terrorist offender because of this delineation between the two groups. In light of this, is there any appetite for altering the listing of Hezbollah, the ESO and the military wing together?

Ms Geddes: That's also a matter for ASIO.
Senator ANTIC: These are not questions that fall under the ambit—

Ms Geddes: No.

Senator ANTIC: Alright. I think I perhaps need to direct those to ASIO.

Senator Cash: Place them on notice. ASIO have—

Senator ANTIC: We could place those on notice, yes. Thank you.

Senator PATRICK: I want to go to the confiscated asset fund and get an update of how much is in that fund, if that's possible, and then I'm going to ask some questions on 1.6, related to regional airports.

Mr Hansford: As at 31 December 2019, $60.02 million was available for distribution, which is made up of the balance of the confiscated assets account. This was $132.279 million minus $67.251 million, which has been suspended in the confiscated assets account to meet commitments yet to be paid, and then less $5 million as a nominal buffer for non-discretionary payments under section 297 of the act—for example, as annual management fees to the official trustee.

Senator PATRICK: I would be grateful if you could, on notice, provide a list of where those funds have actually gone. I'm happy for that to be done on notice.

Mr Hansford: Certainly. I think there was a question on notice that we took last time we responded to you. That was AE19/166. We can update that table if you would prefer a breakdown.

Senator PATRICK: If you wouldn't mind, that would be greatly appreciated. Thank you for that one answer. Moving to regional airports—Mr Grigson.

Mr Grigson: How are you?

Senator PATRICK: Good, thank you. My questions relate to the $50 million of spending in respect of upgrading airports and also relate to operational costs in respect of regional airports. When you announced the $50.1 million for the capital costs in respect of regional airports, how did you come up with the number $50.1 million? How was that derived?

Mr Grigson: That's a combination of four infrastructure grants of $1 million, which were available to airports that would come into the screening process for the first time, and then there were a series of capital grants for equipment for airports that were already screening but not eligible for the $1 million infrastructure upgrade.

Senator PATRICK: The question went to how you came to the conclusion that $50.1 million—divided, as you've stated—was sufficient to cover the costs.

Mr Grigson: It was sufficient to cover the capital costs of equipment purchases with the exception of the four who were new to screening. But they also got an additional $1 million towards their infrastructure costs.

Senator PATRICK: I'll try a third time: how did you come to decide that $50.1 million was sufficient funding to cover those capital costs?

Mr Grigson: We took what we believed to be the average costs of the equipment through to the airports requiring upgrades in regional areas, added them together and then added four times $1 million on top, which was for the four airports that were new to screening.
Senator PATRICK: Ex post facto, you've engaged with airports since. Has that been enough to meet the grant requirements or request requirements for airports?

Mr Grigson: For the equipment costs, most airports are claiming the full grant available, although some—a few, not too many—are claiming less.

Senator PATRICK: Have any of those airports expressed a concern that the amount that is being allocated to them is insufficient?

Mr Grigson: Let me take that on notice—not to my memory, but let me check for you.

Senator PATRICK: Okay. Was a regulatory impact statement carried out in relation to the regulation to impose this requirement?

Mr Grigson: Let me check for you.

Senator PATRICK: My understanding is there were two instruments. One was related to the grants, which I think went through the parliament last year, and there is the instrument that's going through the parliament now, subject to disallowance.

Mr Grigson: That's right. That's why I want to check on the two pieces of activity.

Senator PATRICK: I have it on reasonable authority that there wasn't an RIS done. If indeed you find that is the case, can you explain on notice why one wasn't carried out.

Mr Grigson: We'll do that for you. What I can say is: if there wasn't one done, we would've sought advice about that. It wouldn't have been a decision that we took.

Senator PATRICK: There's been a lot of angst about regional areas—and it's spread right across the parliament now—as to the requirement and the effect that the requirement will have on regional airports, noting that the funding doesn't cover the ongoing operating costs. Is the government reconsidering aspects of this program in respect of further funding, assisting airports or rolling back requirements?

Mr Grigson: Not to my knowledge. We've made the $50 million available. It's been industry's responsibility for some time—for many years—to deal with the ongoing operating costs. So my answer is: not to my knowledge at this time.

Senator PATRICK: The Senate committee that examined this found that it was a fairly significant failing of government to not conduct analysis in respect of the ongoing effect this will have on regional airports. That basically received unanimous support across the political spectrum in that committee. Subsequent to the committee report, the department of transport is conducting a study into six different cities, so six case studies. Have you been made aware of the status of those case studies? Have they concluded?

Mr Grigson: We contributed some security information to those case studies. They're well advanced, but I don't have before me where exactly they're up to.

Senator PATRICK: I would've thought it would've been prudent to wait until those studies had concluded before the instrument was tabled. That hasn't happened. Why would you table the instrument before the analysis has been completed as to the impact this would have on regional airports?

Mr Grigson: For the regulatory change that the government has placed before the parliament, four airports come into the system and seven fall out, and we have a number of changes that have been made at other airports via notice. We think it's important for the
security of the network that those changes are made, which is why we've put the regulations before parliament. The question of impact on regional airports is for Infrastructure. We're looking at it purely from the security perspective.

Senator PATRICK: So it's the left hand of government not talking to the right hand of government. This is a total government decision that affects regional communities, and it appears as though one department, isolated as to the effect, goes off and makes a regulation here in the Canberra bubble, not considering what happens across the regions.

Mr Grigson: I wouldn't agree with that at all. We work very closely with Infrastructure. As you know, these recommendations were made when the relevant division was part of Infrastructure. So I wouldn't accept the idea that somehow or other we're working separately or in isolation from Infrastructure.

Senator PATRICK: Well, you just said that you make a particular decision and someone else has another role. I was just feeding off your statement—that you simply make a decision about security. Are you aware that the information that has been released to me under FOI shows that the airfares in Whyalla will go up by about $53 per seat if both Rex and Qantas are screening, and $69 per seat if Qantas is screening?

Mr Grigson: I haven't looked at the latest draft. I know there were some figures in there released to you. Some have been reviewed. I think there was a total cost, for instance, for the ongoing costs in terms of maintenance and screening. That has been reviewed by the airport itself, and the number is significantly lower. So I'd need to wait until the document is finalised before I comment on figures.

Senator PATRICK: Why would you introduce an instrument that imposes a requirement on Whyalla Airport when you don't understand what the impact is?

Mr Grigson: The decision to include Whyalla Airport was a risk assessment decision, a security decision.

Senator PATRICK: That wasn't the question I asked. The question I asked was: why would you introduce an instrument that placed a requirement on an airport when you haven't received the benefit of the study that has been done by the department of transport?

Mr Grigson: Because the security risk assessment is separate from the cost.

Senator PATRICK: Well, I put it to you that—

CHAIR: That's 10 minutes, Senator Patrick. Do you have further questions?

Senator PATRICK: I do have a few more, but you can flick on to someone else.

CHAIR: You've got the option of wrapping it up in the next two minutes or waiting until the next cycle.

Senator PATRICK: I'll wait for the next cycle, thank you.

CHAIR: Okay, that's fine. Senator Lambie.

Senator LAMBIE: Mr Dutton has said that the ABF's airline liaison officers offshore are playing a role in preventing coronavirus from reaching Australia. How are they actually doing that, in practice?

Mr Outram: Our airline liaison officers do exactly what's in their title. They liaise offshore with airlines to make sure that our policies at the Australian borders are being
implemented at check-in and at overseas airports—in other words, to make sure that airline check-in staff know what to look for in a passport, know what visas to look for, know what questions to ask. In this particular case, with coronavirus, there are a number of requirements—asking whether people have been in or travelled through mainland China, for example; checking passport stamps to see if that's the case, within the last 14 days; handing out information in relation to coronavirus; and advising our airline liaison officers if there are any passengers whom they think might be trying to circumvent the border controls. They're the kinds of things that our airline liaison officers would engage in in relation to coronavirus.

Senator LAMBIE: They would engage in or they are engaged in?

Mr Outram: They are engaging in. They're there. They're out there doing the job.

Senator LAMBIE: What COVID-19 screening activities are in place either at offshore or at Australian airports?

Mr Outram: Offshore—it depends on other countries. We don't control what other countries do in terms of health screening. We can't impose health screening in offshore airports. We obviously work with the airlines rather than the health authorities, so we can't control it. It would vary very much from country to country.

Senator LAMBIE: That's interesting. So you don't look at that when you're determining whether or not people should be coming into the country?

Mr Outram: Let me say this—

Senator LAMBIE: I'm just wondering, because, obviously, other countries have screening. They probably have better screening than we do, and it's heat sensing. You don't take any of that into account?

Mr Outram: Firstly, for the health-screening measures we put in place, we take advice from the Chief Medical Officer; we're not health practitioners. The kind of temperature-checking equipment we're using is very much based on the best Australian medical advice; let me say that. Secondly, if people present at an airport overseas and they are visibly ill, most airports around the world would prevent uplift of that passenger to protect the crew, other passengers and so on and so forth. The challenge here, with coronavirus, is of course that people can become ill later and they themselves don't know that they're ill. They may be unsuspectedly carrying a virus. So our controls offshore are based on where people have been: Have you been in or through mainland China in the last 14 days? Have you been in or through Iran in the last 14 days? We're very much focused on people's travel patterns and where they've actually been, and you can derive that sort of information from passenger name records, from their passports and by simply asking passengers questions.

Senator LAMBIE: Do any of our machines read heat—the temperature level?

Mr Outram: I'm sorry?

Senator LAMBIE: Do any of the machines in our airports, that you're aware of, pick up temperature?

Mr Outram: In Australia we are adopting a manual temperature-checking regime.

Senator LAMBIE: Okay. I was just wondering why there is a travel ban on Iranian nationals and not South Korean nationals. Is there a reason for that? Are we picking and choosing?
Mr Outram: I can't go into all the specifics, but we take our decisions based on medical advice, and those decisions are being reviewed daily.

Senator LAMBIE: Are there fewer South Korean nationals than Iranian nationals?

Mr Outram: I'm probably not the right person to ask.

Senator LAMBIE: Maybe the minister can answer that. Why have we put a travel ban on Iranian nationals and not South Korean nationals?

Senator Cash: Again, Senator Lambie, as I've stated in the Senate on a number of occasions—but also to adopt the evidence given by the commissioner—all decisions that the government makes are made on the basis of the best possible medical advice that we have.

Senator LAMBIE: So why is it that there are 4,200 confirmed in South Korea, 1,694 in Italy and only 978 in Iran but you've imposed a travel ban on Iran and not the rest of them? Where's the common sense in that?

Mr Outram: What I can say, firstly, is that it's not on Iran per se; it's on people, whether they're Iranian or not, who've been in or travelled through Iran. Really this is a question, I think, for the Chief Medical Officer. It's about the nature of what's happening in Iran and in China. We're not the experts here. We implement the border measures based on medical advice.

Senator LAMBIE: I realise what you're doing, I'm asking the minister: what is Minister Dutton doing? It should be his decision, shouldn't it? Why have we got—

Senator Cash: The government has been very, very clear—

Senator LAMBIE: There are four times the number of affected people in South Korea, and yet we don't have a ban.

CHAIR: Order! Senator Lambie, let the minister finish her answer before you go on to the next question.

Senator Cash: I understand the statistics, but, again—

Senator LAMBIE: I don't understand the reasoning.

Senator Cash: The government is acting on the advice given by the Chief Medical Officer. You would need to put the question to the Chief Medical Officer.

Senator PATRICK: So it's solely his decision? There's no minister involved in this decision?

Senator Cash: I would need to take that on notice, because decisions are occurring through the National Security Committee of cabinet.

Senator LAMBIE: What is the role of the National Border Targeting Centre in identifying inbound COVID-19 risk?

Mr Outram: Everybody who travels to Australia who is not an Australian citizen has to have a visa. The NBTC have made available to them passenger name records—that's data about passenger movements globally—and advanced passenger information—that's information about people who are getting onto an aeroplane to come to Australia—in real time. We want to check a number of things. One is that they've got a visa and that it's valid. Secondly, we want to check whether there is any information about that passenger that should
alert us as to their intention to come to Australia and to the need to take any action, either offshore or onshore.

Senator KITCHING: I think, Chair, that Senator Lambie is indicating I can have the balance of her minutes.

Senator LAMBIE: Three minutes or whatever it is.

CHAIR: Yes, that gets you four minutes.

Senator KITCHING: Excellent. I'll take what I can get! I'm going to refer to Senate estimates answers 19/124 through to 19/128, and it's in relation to the Victoria International Container Terminal and processes at the port of Melbourne. I did receive some answers back; I appreciate that and thank you. I didn't have all of my questions answered though. I then subsequently sent a letter asking for a private briefing, because I do understand that some of this is secure and there is a security consideration around some of those questions. But I would either like my questions answered or I would like the briefing. I can run through some of the questions again. I probably have three minutes left. But I'm only asking because I think there is a real security risk there and my understanding is that the people who work at the port of Melbourne do have concerns—some of the employees there and also the union that represents those employees. I'd also like to bring to your attention, Mr Pezzullo, that, for example in 19/125, the answer was, 'The Port of Melbourne was audited on 5 December 2017.' I'd like an update on that. I don't particularly want to do it here.

Mr Pezzullo: Senator, I think I was conscious of the fact that you've sought a private briefing. I just haven't got the thread in my mind as to whether there's been a response prepared and sent to you.

Senator KITCHING: I haven't received a response.

Mr Pezzullo: My inclination in the circumstances is that, given you've sought through the minister a private briefing on the matter, I'd certainly be interested to hear the questions—through you, Madam Chair—but given that you've asked for a private briefing, I think it's really a matter for the minister to then determine whether he's prepared to authorise that said briefing. If we start to give you, in effect, answers that anticipate that private briefing, we're in a bit of a paradoxical situation, are we not?

Senator KITCHING: Yes, I understand. I'm really give you the option, because I can tell you in relation to 19/128 the answer to that is: 'The department is unaware of any tests run regarding operations and automation functions at the Port of Melbourne.' I would ask: have you checked that, or has someone checked that, since I asked these questions in October last year? But why don't we see if I get a response back and then I can always come back in June.

Mr Pezzullo: I think I'd prefer that course if it's acceptable to you, Senator.

Senator KITCHING: I'm very happy with that, Mr Pezzullo.

Mr Pezzullo: Thank you very much.

Senator KITCHING: Thank you

Senator McKIM: Mr Pezzullo, I want to ask you about the hundreds of thousands of drivers licence photos that your department has received from the Tasmanian government, the Victorian government and the South Australian government.
Mr Pezzullo: Mr Grigson's getting a thorough exercise opportunity coming backwards and forwards, so I'll ask him to wear the carpet out again.

Senator McKIM: Thank you, that will be good for his cardiovascular system, no doubt. Mr Grigson, can you confirm that it is only those three states that I just mention that have transferred their photo licences to you?

Mr Grigson: Certainly, those three have. I just need to see who was next in the list, and whether we've uploaded them. Yes, they're the three uploads that are complete.

Senator McKIM: They're the three so far?

Mr Grigson: Yes—that are complete.

Senator McKIM: Do you have timetables or expectations for the other states?

Mr Grigson: I can give you that on notice, Senator. I don't have it here.

Senator McKIM: And do you have the dates on which those three states transferred their photos?

Mr Grigson: I don't have it with me, but I can give it to you on notice.

Senator McKIM: I'll just ask this in relation to Tasmania: were they transferred as one batch or were there a number of separate transfers?

Mr Grigson: I'd have to check.

Senator McKIM: You'll take that on notice?

Mr Grigson: Yes, I can do that.

Senator McKIM: Where is that data currently?

Mr Grigson: It's being held in the department but within a system that is contained, because it's not yet operational.

Senator McKIM: And how many drivers licence photos do you have currently?

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

Senator McKIM: There were 410,000 from Tasmania, were there not?

Mr Grigson: That sounds about right. We'll get you the exact number.

Senator McKIM: In any event, given that Victoria's one of the most populous states in the country, it would be hundreds of thousands, probably millions, of people's drivers licence photos. Are you aware that at least some of those photos were provided to you without permission of the people involved? In other words, when they renewed or obtained a drivers licence—and I can certainly state with confidence that this is the case in Tasmania—they simply weren't asked whether they were okay with their photos being shared, so you're actually holding photos that people have not given permission to you to hold or to obtain. Are you aware of that?

Mr Grigson: The arrangements we had with the states were that they would deal with consent issues as the images are provided to us, so I would need to check for Tasmania on what the circumstances were around their provision.

Senator McKIM: I'm happy for you to provide that on notice and also for the other states that have so far provided those photographs to you. What information systems have access to the database? Sorry, did you say it was one database, Mr Grigson?
Mr Grigson: Yes. It will operate as a hub. When it becomes operational, if we get the required agreements, it will operate as a hub. State agencies will interact with it and Commonwealth agencies as well. We won't be sharing the images back into states other than the images that are provided from those states.

Senator McKIM: Is it intended that businesses will have access to this database?

Mr Grigson: The document verification service, which you may know—

Senator McKIM: Yes.

Mr Grigson: is used by businesses under controls. We'd consider having businesses use the verification service but not the matching service.

Senator McKIM: So that service is currently being used by businesses.

Mr Grigson: The face verification service?

Senator McKIM: Yes.

Mr Grigson: The face verification service? No.

Senator McKIM: No, the first one you mentioned.

Mr Grigson: The document verification service?

Senator McKIM: Yes.

Mr Grigson: Yes, it has been for several years.

Senator McKIM: Is all that part of the same database?

Mr Grigson: No. The document verification service operates separately. Let's say you have a document with the details of a birth. The data is entered, it goes to the births, deaths and marriages registry of the relevant state, and it returns a yes or no.

Senator McKIM: But that's a separate database than the one that contains the drivers licence photos, is it not?

Mr Grigson: Yes, it will be. One's based on data and one's based on images.

Senator McKIM: So they'll be kept on separate databases. Is that your evidence?

Mr Grigson: I'd have to get advice for you on the technical structure of how that will operate.

Senator McKIM: Alright. Have those drivers licence photos been converted to biometric data?

Mr Grigson: I don't understand the question.

Senator McKIM: They come as a photo, right?

Mr Grigson: Yes.

Senator McKIM: Do you understand what biometrics is?

Mr Grigson: Yes. I do.

Senator McKIM: Have they been converted to biometrics?

Mr Grigson: So they can be used for face matching and data indication?

Senator McKIM: That's right.

Mr Grigson: I'd have to see where we are on the upload process.
Senator McKIM: Why would the upload process have anything to do with whether they've been—

Mr Grigson: Because we're in the—

Senator McKIM: Mr Grigson, it would be much easier if you let me finish my questions and then I'll try my best to let you finish your answers. Why would the upload process have any relevance to whether or not those photos have been converted to biometrics?

Mr Grigson: Because we're uploading state data state by state. There's a technical team working on the uploads and the construction of the database at the same time. I'm not sure at this point in time where we are in terms of the conversion of the images to something that is used on the database.

Senator McKIM: But it is intended to convert those photos into biometric data, is it not?

Mr Grigson: Yes, they'll be rendered in a way that can be used by the face verification and face matching services.

Senator McKIM: And you're going to take on notice whether that's begun to occur or not.

Mr Grigson: Yes.

Senator McKIM: The Parliamentary Joint Committee on Intelligence and Security basically rejected the legislation that the government proposed to govern the operation of this database, did it not?

Mr Grigson: It asked for changes to ensure greater protections.

Senator McKIM: It recommended it not be passed in its current form, didn't it?

Mr Grigson: Yes.

Senator McKIM: So where's that process now—the redrafting of that legislation?

Mr Grigson: We've put some advice to government, and government's considering it.

Senator McKIM: When did that happen?

Mr Grigson: I'll get you the date.

Senator McKIM: Do you recall if it was this year?

Mr Grigson: It was at the end of last year, and there was some further advice this year.

Senator McKIM: What was the difference between the two pieces of advice, in general terms?

Mr Grigson: From memory, it was to do with the legislative drafting.

Mr Pezzullo: Madam Chair, I might seek your assistance. I think typically the customary reading of the standing orders and the procedures of this committee are that questions around process of advice to ministers has always been considered in scope along with when advice was provided and if supplementary advice was provided. I think once senators start to peel back what the advice was and what the minister's advice was, typically, if I recall rightly—I've been appearing before this committee or other Senate committees for 18 years—content of advice is not considered to be in scope. If it's pressed by a senator, public interest protections might well then arise.

CHAIR: I wholly agree.

Mr Pezzullo: I'm just going off vague memories over a two-decade period.
CHAIR: I agree and I'm sure Senator McKim will keep that in mind.

Mr Pezzullo: I started very young, barely out of school!

CHAIR: It's your cross to bear!

Senator McKIM: Have any non-government organisations accessed any of those photos or biometrics relating to those photos?

Mr Grigson: Not to my knowledge, but I'll check for you.

Senator McKIM: For clarity, that would include private sector businesses. I'm asking about non-government agencies here.

Mr Grigson: Yes. We'll confirm that for you.

Senator McKIM: The IDMatch website indicates that the images are not yet available either through the face verification service or the face identification service.

Mr Grigson: Face matching service I think you'll find.

Senator McKIM: Face verification and face matching service, thank you. Is it still the case that the images are not available through either of those services?

Mr Grigson: Generally, yes, but just for precision, Services Australia has been trialling using some South Australian and Victorian images for the provision of services to people affected by bushfires with their consent. Let's assume that they lost everything in a house fire, came in to Services Australia and said, 'I've lost everything.' Services Australia would ask for their consent to use a face to identify them and, if a match comes back, that would help Services Australia provide those individuals with services. Apart from that, they're not generally available.

Senator McKIM: But is that face verification or face matching?

Mr Grigson: Face verification. So that's a yes or a no.

Senator McKIM: How does the consent work, or is that a matter for the state?

Mr Grigson: For Services Australia and the state?

Senator McKIM: Yes.

Mr Grigson: They ask the person for their consent when they come in to Services Australia to have their image matched.

Senator McKIM: If someone doesn't consent, what happens then?

Mr Grigson: I'd have to check for you. I'm not aware, where it was used, that anybody refused, but I can check that for you. It was a very small number; they weren't large numbers.

Senator McKIM: That means on your evidence that Tasmanian photos have not yet been accessed for the purposes of either face verification or face matching—is that correct?

Mr Grigson: I'll confirm that for you on notice.

CHAIR: Senator McKim, did you want a minute or two to wrap up, or did you want to come around again, noting that we're due to go to dinner in less than 10 minutes?

Senator CHANDLER: I have a couple of questions on the regional aviation security issues we were talking about previously and then, Secretary, I have a couple of questions for you on a general overview of some of the things I brought up earlier today. Could you provide
the committee with the background to the changes in regional aviation security that we were
talking about with Senator Patrick? What was the policy drive behind those changes?

**Mr Grigson:** Following the disrupted plot in Sydney in 2017, the Inspector of Transport
Security did a review for the department of infrastructure on recommended changes. There
were a number of recommendations that came from that. Among a number of the changes that
the government took up, one was to improve the capacity for screening at airports that already
screened and to change the way we decide which aircraft should be screened from a weight
requirement to the number of passengers, which was set at 40.

**Senator CHANDLER:** Those changes were obviously informed by a review following
the incident that you just referred to.

**Mr Grigson:** That's right.

**Senator CHANDLER:** In terms of the disallowance for the regulations that Senator
Patrick is seeking, what would be the practical impact if we disallowed these regulations.

**Mr Grigson:** Four airports that we think should come into the system given the volume of
passengers that move through them and the number of aircraft carrying more than 40
passengers that land at those airports would remain outside the system, and seven airports that
are currently in the system that we think would probably be below a risk threshold as a result
of that review would stay in when they would otherwise drop out.

**Senator CHANDLER:** The risk to airport security more broadly as a result of those
practical elements that you've just outlined?

**Mr Grigson:** It works as a network. We try to bring into the system airports where
volumes mean that a crowded place becomes a risk for that airport and further into the
system, in other airports as well. Many of the major airports will do rescreening or screening
for the first time but that doesn't remove the risk at airports that are medium volume airports
where you have 30,000 to 40,000 passengers moving through the airport on an annual basis
and a number of aircraft carrying 40 or more people.

**Senator CHANDLER:** So there would be a significant safety risk at airports if we were
to disallow these regulations?

**Mr Grigson:** A security risk yes.

**Senator CHANDLER:** Yes. Great that clears that up. Thank you very much for that.
Secretary, just a couple of questions for you. I
was speaking earlier today with ASIO and the
AFP around some concerns with what happens when we allow people who have committed
very dangerous crimes, crimes that put the community at significant risk—particularly
terrorist offences and child sexual offences—back into the community. I was hoping you
might be able to provide the committee with some commentary around the broader concerns
that you might have about these two topics and also the costs that are associated with
monitoring these people when they are re-released into the community?

**Mr Pezzullo:** Senator, if I might, rather than providing you with commentary that may or
may not be thought to reflect my sort of personal views about these things, in terms of the role
I play as secretary of the department our job is to administer the relevant legislation. There are
some crossovers with the Attorney-General's Department but typically the control and post
custodial sentence restraint regimes fall to the Department of Home Affairs. Then of course
when and if the parliament chooses to modify laws or to introduce new powers ASIO, the AFP and other agencies then apply those laws. We are looking very closely and carefully, as Mr Dutton has said publicly, in relation to post custodial arrangements.

As a matter of record, there are a number of persons who are currently incarcerated who were put into jail for very serious offences in relation to preparing for, and being willing to participate in, terrorist acts. Ms Geddes and her staff—Ms Geddes may wish to join us—are looking at both the circumstances here in Australia and comparatively at other common law jurisdictions, including the United Kingdom where this problem has also emerged. The government—I’ve got no doubt at all given its stance on these matters but also what the Prime Minister, the minister and others have said over time—would I think receive advice from the department very favourably as to whether laws might need to be amended. Obviously, that would then be a matter for the government to consider and then put to the parliament in the normal manner but it is something that we've got under very active consideration. Ms Geddes, would you care to add to my answer?

Ms Geddes: I think you provided a very fulsome answer, Secretary.

Mr Pezzullo: Thank you for the commentary, but are there any amplifying points that you think are worth drawing to the senator's attention.

Ms Geddes: As the secretary mentioned there are a range of mechanisms for those who are in prison at the moment. Should they be released the minister can give consideration to control orders and should an individual breach any of the conditions under those control orders they could be found back in prison for up to five years. We've also got, since 2017, continuing detention orders for really high-risk terrorist offenders. Should a judge have before him or her a consideration to keep that person in prison because of the risk that they pose to the community that's also in place. So there are a range of mechanisms that can be used to manage high-risk terrorist offenders.

Senator CHANDLER: But more broadly than just the community safety element—I say just the community safety element. It is fundamentally the most important element, that we make sure that members of our community are not at risk of these convicted criminals recommitting offences when they're released. I assume it would be a costly exercise in terms of monitoring them more broadly but also the expense of reinvestigating these people, these convicted criminals, when they reoffend?

Mr Pezzullo: I'm not sure I would use the term 'reinvestigation'; the matters which they've been tried, convicted and sentenced for have been dispensed.

Senator CHANDLER: Of course. Sorry. Investigating them when they commit further offences.

Mr Pezzullo: Indeed. I understand. Just to be even more pointed in relation to the evidence I gave earlier, in light of both the cohort of sentenced persons, convicted persons who are currently in our system, and in light of concerns that we have formed in collaboration with our partners in the Federal Police and ASIO—particularly in relation to a number of attacks overseas, including one very high-profile attack in London—we've certainly commissioned some work internally, which I alluded to earlier, through Ms Geddes, the relevant deputy secretary. Dr Bopping—who I see has been demoted back to a mere 'Mr'—heads our CT centre and is doing some work on that. As I alluded to earlier, we tend not to—
unless a senator wishes to press it, of course—go to the content of advice, particularly advice
that may or may not have yet been rendered to government. But I can confirm to this
committee that work is underway—I won't go to specifics because we obviously need to go to
government first—on whether there are gaps in legislative powers. There is also work on the
balance of cost versus the fundamental precept of liberty—once you've been sentenced,
you've done your time and you're out—how do you strike that balance? How do you ensure
the paramount responsibility the state has to protect citizens and residents, which is the
highest duty of the state? So Dr Bopping and his team are doing some work in that area.

Senator CHANDLER: Thank you. I certainly won't ask you to go into specifics. I
completely understand the sanctity of that work that you are doing, but it reassures me to
know that it is occurring. Thank you very much.

Mr Pezzullo: We are very actively seized of the matter. I can assure you.

Senator CHANDLER: Thank you.

Senator PRATT: I have a brief question, if I may, because it goes to earlier evidence, and
it has popped up in the media.

CHAIR: Okay, can the minister accommodate that?

Senator Cash: Yes.

Senator PRATT: Thank you very much, Chair. There have been some reports from the
ABC today about a Chinese research vessel that has been tracked in waters near Christmas
Island off Western Australia. I wanted to ask you, Commissioner: how did the Australian
Border Force detect that particular vessel? Was it a Cape class patrol or aerial surveillance
that detected it? Did the vessel enter Australians waters?

Mr Outram: I'll verify this, but it was probably detected on the AMIS system. Vessels at
sea have a beacon telling people where they are and what they are doing. No, it didn't come
into our waters, and we are aware from AMIS. We're tracking it that way.

Mr Pezzullo: If I might, Senator, I'll just repeat the advice I gave to Senator Roberts. I
think I couched it in rhetorical terms. Especially when you are relying on media reporting,
you hear lots of things. Lots of things are said, lots of things are stated. Senator Roberts drew
some inferences from certain readings that he had done. I'd just advise caution regarding
drawing any inference, including from the commissioner's answer, that matters reported in the
press equate to reality. I would just caution you against that. Just because something is in the
press—

Senator PRATT: That's why I wanted to clarify it. If it has been detected in the AMIS,
then it is essentially designed to be seen.

Mr Outram: I said to you I would come back to you and clarify, but by and large we are
aware of what is going on in our waters because vessels are telling us that they're there.

Mr Pezzullo: I think it's fair to say, Commissioner, that is a maritime identification
system?

Mr Outram: Exactly. Yes.

Senator PRATT: Yes.
Mr Pezzullo: No inference should be drawn that it is some sort of classified intelligence tracking system.

Senator PRATT: No. It is the regular—

Mr Pezzullo: It is a regular transponding system.

Mr Outram: It is a commercial system used not just by ourselves but a whole lot of commercial—

Senator PRATT: In other words, this vessel was not seeking to avoid detection in terms of needing to be seen by a patrol boat or aerial surveillance. It is designed to be seen through the AMIS system in the usual course of business.

Mr Outram: There was nothing unusual detected.

Senator PRATT: Thank you.

CHAIR: We will adjourn for dinner now. We will continue with outcome 1 when we resume.

Proceedings suspended from 18:04 to 19:06

CHAIR: The Legal and Constitutional Affairs Legislation Committee will now resume its examination of the additional estimates. We will continue our consideration of outcome No. 1. Senator Pratt, you have the call.

Senator PRATT: Before the dinner break there was some discussion in relation to COVID-19 and some questions from Senator Lambie. Indeed, Mr Outram's opening statement covered some of those issues. In relation to Australia's travel restrictions, are you aware of any noncitizens who have been in mainland China in the past 14 days and have nevertheless still been able to enter Australia?

Mr Outram: I'm not aware of any that have arrived from mainland China or who have been there in the last 14 days, but we can check the facts just to be doubly certain.

Senator PRATT: That would be good. If there's anyone else who might have any information relevant to that, that would be good. As far as you are aware, have there been any discretionary powers used to grant a visa to noncitizens who have been in mainland China since the travel ban?

Mr Outram: Yes, there have. Please bear with me one second. As at 24 February—so that's a couple of days ago—my guidance was sought for decision-makers on 37 cases, which are non-individual. Of those, I advised that 28 did not pose a risk to the Australian community, five might pose a risk to the Australian community and circumstances were not compelling and/or compassionate, and seven are pending awaiting further information on their circumstances.

Senator PRATT: That's 37 non-Australian citizens who have been in mainland China and have been able to enter?

Mr Outram: I'll get you through that. There have been 28 applications approved, three denied, two waiting for their advice and a couple under assessment, for a total of 37. In terms of number of travellers, that's 171. So those 37 applications relate to 171 travellers.

Senator PRATT: So that might be family groups.

Mr Outram: It could be family groups, yes.
Senator PRATT: I just want to be clear. Are they family groups, or would that include business applications?

Mr Outram: A business applicant could include a family group.

Senator PRATT: But they're not just family groups? They might be business colleagues?

Mr Outram: I am exercising, as the government has said, discretion in relation to a small number of cases where there are either compelling or compassionate grounds. You might remember the Ms Ren case, where her son, unfortunately and tragically, died whilst in Australia. Having consulted with the state and territory health body and Professor Brendan Murphy and satisfied myself that they hadn't been in Hubei province and a whole lot of other things, my discretion was to not cancel the visa of Ms Ren on arrival in Australia, so she could visit her son. So that's a compassionate reason.

In terms of businesspeople, I am receiving applications with information from the Department of Foreign Affairs and Trade that makes out the case for a small number of businesspeople where there's a compelling case for them to be allowed to return to Australia in certain circumstances. Again, I require the territory or state health body to notify me that they are satisfied with the arrangements for self-quarantine, and one of the prerequisites is that the person must be able to self-quarantine in an actual residence, not in a hotel—

Senator PRATT: I do have some questions about that. Of those 37 cases, that's 171 people. You said 28 are not at risk. Does that mean that those associated with those 28 applications have entered?

Mr Outram: They were approved. I couldn't say whether they've actually entered, but I approved them.

Senator PRATT: What proportion of the 171 people are they?

Mr Outram: A hundred.

Senator PRATT: Of those who might be a risk, what arrangements, if any, have been made for any of those people to enter? Is there anyone who is deemed to be a risk but has nevertheless been given the capacity to enter?

Mr Outram: No. If there's a risk then they're not allowed to come. I won't consent. Of course, people coming from mainland China are health screened on the Chinese side as well by the Chinese authorities. If they've been in Hubei province or there's a health concern, we won't bring them here.

Senator PRATT: Okay. Nevertheless, you've said that people are self-quarantining. In terms of those 28 applications, of which 100 have come in and those are deemed not to be a risk, nevertheless they have been quarantined?

Mr Outram: Yes, that's my understanding. Again, that's a matter for the state and territory health departments to manage. All I need from the state and territory health departments is that they've satisfied that the self-quarantine arrangements are appropriate, they're satisfied that the premises where the person will be staying is appropriate for that purpose, they've got the address and mobile phone number and, if they choose to, they can obviously check that those self-quarantine arrangements are being appropriately put in place.

Senator PRATT: In terms of those who might be a risk, they might have compelling circumstances. If they're in quarantine anyway, what's the difference?
Mr Outram: If we know they're a risk before they come—as in, for example, because they've been in Hubei province—then I won't actually exercise my discretion.

Senator PRATT: Okay. How are you determining whether or not people have been in mainland China?

Mr Outram: They're declaring it because they're making an application for me to exercise discretion, and the only reason they're doing that is that they're in mainland China. Otherwise, if they leave mainland China and take up residence in another country for a couple of weeks, of course they can come without the requirement.

Senator PRATT: I should be more clear. This is not necessarily where people have applied to come because they've self-declared. You're clearly having to check at our borders and ask people about their travel records.

Mr Outram: Yes. This is so we can enable a very small number of people who are resident in mainland China or have been in mainland China in the last 14 days to come to Australia for compassionate or compelling grounds. There is a very small number of cases. As I said, the Ms Ren case is a very good example of that, or they may be businesspeople who may have a pivotal role in an Australian organisation and a compelling economic or relationship issue as to why they should be allowed to come here.

Senator PRATT: They might be here to do some urgent surgery—

Mr Outram: You've got it.

Senator PRATT: There are plenty of reasons I can think of.

Mr Outram: Indeed, there are lots of reasons.

Senator PRATT: What I'm trying to get my head around is the extent. This is clearly separate from your universal questions where you're looking at the broader picture.

Mr Outram: It is, yes.

Senator PRATT: You've clearly also got screening in terms of whether people might have transited from mainland China to somewhere else and then come to Australia. Are you simply asking people where they've been or do you have access to their travel records? Are you taking what people say at face value?

Mr Outram: It's a combination of a number of things. Generally speaking, when people leave mainland China they'll get a stamp in their passport. So we're asking airlines at the point of check-in—particularly if you've got a PRC passport holder, but not just them—to ask passengers if they've been in mainland China in the last 14 days, in these circumstances. We have airline liaison officers who are, as I've said, working with airlines check-in people to check that. We are in some cases able to check passenger name records and other things, but, at the end of the day, it also does depend, to an extent, as you rightly say, on people telling the truth.

Senator PRATT: With private planes from mainland China, have any of those been allowed to arrive in Australia?

Mr Outram: No.

Senator PRATT: So there haven't been any private planes that have arrived?

Mr Outram: No.
**Senator PRATT:** With those 171 passengers, the 100 that have been given visas, you would—

**Mr Outram:** They'd have to come commercially, generally, yes.

**Senator PRATT:** They would be coming commercially via third countries or—

**Mr Outram:** They may have to, depending on how many flights. A lot of flights have been cancelled from mainland China, as you would appreciate. It's not far short of 500 now, I think, since 2 February. So they may have to transit via Hong Kong or Seoul or somewhere else.

**Senator PRATT:** In terms of any potential in the future for the World Health Organization to declare a pandemic-level crisis, are there other measures that will be activated by Australian Border Force?

**Mr Outram:** Only if asked to do so by the National Security Committee of cabinet.

**Senator PRATT:** Can you tell me what those measures would be?

**Mr Outram:** I can't, because I don't know what cabinet might ask us to do. Everything we're doing is based on medical advice and of course—

**Senator PRATT:** Yes, but surely you've also got to have an—

**Mr Outram:** analysis of what's happening in other parts of the world.

**Senator PRATT:** Yes, but surely you're putting some thought into planning those scenarios now.

**Mr Outram:** Of course we are.

**Senator PRATT:** What measures might they be, and how long would it take to activate them?

**Mr Outram:** I don't want to get into too much speculation. You can imagine that we're looking at worst-case and best-case scenarios and a whole lot of scenario planning is going on. I would rather not speculate and start to create panic and concern amongst travellers.

**Senator PRATT:** No, and I don't want to contribute to that either.

**Mr Outram:** It'd be speculative at this point.

**Senator PRATT:** I have confidence that health things can be managed. The issue is that there are a great many businesses et cetera that need to do a bit of their own scenario planning—

**Mr Outram:** Indeed, and they should be.

**Senator PRATT:** for how they might be impacted, and if you can't at least provide a framework of advice about how people might approach these issues, if a pandemic is declared—

**Mr Outram:** Well, it is kind of obvious that, in a sense, either the travel restrictions could be extended, kept the same, or reduced. They are the three possible scenarios.

**Senator PRATT:** Are you are looking at requiring additional resources and where those offices would be relocated from?

**Mr Outram:** As I said, we're looking at all scenarios, which could include extending the restrictions that we currently have, keeping them the same or reducing them. So, until we
know there is a requirement to do any of those three things, it's difficult for us to go and source more resources and those sorts of things. So, at this point in time, we're just doing contingency planning; we're not actually doing things to go and get more people.

**Senator PRATT:** If there was a more holistic travel ban that affected more countries, does that mean a reduction or an increase in demand for ABF's services?

**Mr Outram:** I'd probably have to take that on notice, I think, because there's a whole lot of 'what ifs' even within that scenario—in the nature of what a travel ban means. I talked about restrictions, rather than a travel ban. It's highly speculative—

**Senator PRATT:** Of course, sorry. I'll stop using colloquial—

**Mr Outram:** I can't just give you a number out of the air in terms of how many more resources I would need. It would depend entirely, for example, upon volumes of travellers—and they can change significantly.

**Senator PRATT:** Well, they can change because borders open back up, but there's more risk.

**Mr Outram:** Exactly, flight—

**Senator PRATT:** Nevertheless, some risk—

**Mr Outram:** Flight patterns—

**Senator PRATT:** or there might be reduced demand because travel decreases.

**Mr Outram:** There's a whole lot of 'what ifs' is my point, so it's hard for me to pluck a number out of the air and give you a number in terms of the resources that would require. It would be very much dependent on a point-in-time situation, which, again, could change with this pandemic scenario.

**Senator PRATT:** What additional support has been put in place for Australian Border Force staff who might be asked to work extra hours since measures have been put in place?

**Mr Outram:** We've already been putting in place a whole range of measures, primarily including, of course, up-to-date health advice. That's point 1. Our officers need to keep themselves safe at the front line, particularly—obviously—those who are working close to the travelling passengers. We're providing our officers with personal protective equipment—masks, gloves and hand sanitiser—and instructions on how to use those. We're working very closely with the Department of Health and the Chief Medical Officer to ensure that our health advice is entirely consistent with that of Home Affairs and other government departments and organisations, and we'll continue to monitor the situation, to take the health advice and translate that into advice for our officers on the front line to keep them safe.

**Senator PRATT:** Thank you. I assume that ABF staff have a capacity to undergo health checks. Is there any universal screening of them?

**Mr Outram:** I don't think there's universal screening, but there is definitely a capacity to undertake health checks. If any of our officers feel that they may have been exposed in any way to this virus—and not just this virus, of course; when you're dealing with the travelling public there are a whole lot of other scenarios—then they are provided with access, rapidly, to health—
Senator PRATT: It's not uncommon for people to think they're doing the right thing by going to work because they've got a cold or flu, but I guess that now we're in a heightened state that you don't—

Mr Outram: Well, we're getting towards that, aren't we? But at the moment, the advice there is very limited. I think we had the first community transmission today in Australia, so at this point in time it's very low risk. As I said to you, we're following the health advice very closely. Everything we do will be based on sound health advice and that will, no doubt, be updated from day to day.

Senator PRATT: In relation to the community transmission that's taken place: I understand that took place before the travel ban was in place and I know that work is being done with airlines in terms of tracking manifests with state government agencies and health agencies and the like. Does ABF have a role in the context of trying to backfill that, if the screening and control at the border is unsuccessful for some reason?

Mr Outram: Not in terms of community tracing. We provide information and data, if we've got it, that's helpful to the state or territory health authority for them to undertake that function.

Senator McKIM: Mr Pezzullo, I'll just give you an opportunity to invite Mr Grigson back to the table, because I only got halfway through my questions on the facial recognition drivers licence.

Mr Pezzullo: I'm sure he'd be delighted to join us.

Senator McKIM: Thank you, I appreciate that. Thanks, Mr Grigson, welcome back.

Mr Grigson: Thank you, Senator.

Senator McKIM: I was just reviewing the questions I asked you over the dinner break, and I want to make sure that I had, in fact, asked you something. What's your preferred name for this database of driver's licence photos? Is that what you're calling the 'solution'?

Mr Grigson: No, we're not. We're calling it the 'Hub' at the moment.

Senator McKIM: The Hub?

Mr Grigson: The Hub.

Senator McKIM: So what's the National Driver Licence Facial Recognition Solution—what's that?

Mr Grigson: I don't know, Senator.

Senator McKIM: You don't know?

Mr Grigson: But can I help you with a couple of answers to your questions, which might—

Senator McKIM: To my previous questions?

Mr Grigson: Yes.

Senator McKIM: I'd appreciate that, thank you.

Mr Grigson: I can confirm that no NGO has had access to any images supplied from Tasmania, Victoria or South Australia.

Senator McKIM: Does that include to private sector companies?
Mr Grigson: Yes.

Senator McKIM: 'Has had any access': that's in terms of up until today?

Mr Grigson: Yes, up until today has had any access. And you asked for the dates of advice?

Senator McKIM: Yes.

Mr Grigson: They were 28 November, 24 February and 28 February. And you asked if all images that have been collected to date had been enrolled in the biometric template, and the answer to that is yes.

Senator McKIM: Yes. Just on that last one: I think Mr Pezzullo and I may share not being experts on these sorts of technologies, so I apologise in advance if I get any of the terminology wrong. Does that mean those photos have been scanned or processed by a computer and converted into digital information?

Mr Grigson: They've been rendered into a form that can be used by the hub, if it becomes operational.

Senator McKIM: Okay. I understand that the hub is not operational yet and I also understand that you've provided advice from the government. I accept Mr Pezzullo's mild admonishment before dinner on that, that I shouldn't ask you about that, so please let me know if you don't want to answer this next question. Is it intended that the form which these photos have been rendered into, which you spoke about, include capacity for a photo to be provided to you—to your department—and that the identity of a person be determined by the matching of that photo, or the biometrics that have been rendered from that photo, with the biometrics that have been rendered from the drivers licence photos?

Mr Grigson: The Face Verification Service is where an image is supplied and checked against a holding, and the return is yes or no. That's the case.

Senator McKIM: Okay. What about for the Face Matching Service?

Mr Grigson: That's most likely to produce a less precise outcome, and you'd require an analyst to make a final decision. A human would need to make the final decision.

Senator McKIM: What's the difference between the two processes then?

Mr Grigson: In the first process, in the Face Verification Service, we know who the person is.

Senator McKIM: Oh, I see.

Mr Grigson: In the second one we don't.

Senator McKIM: Okay. Can I just be clear that face matching is not yet available?

Mr Grigson: It's not yet available.

Senator McKIM: But it's intended that it be made available?

Mr Grigson: I'll take that on notice, Senator. That comment goes to advice.

Senator McKIM: Thanks. I'm just going to your beta page—do you know what I mean when I say the 'beta' page?

Mr Grigson: I do.
Senator McKIM: Your beta page talks about identity matching. Which of face verification or face matching is identity matching? Or is it both?

Mr Grigson: Both. Well, sorry, they are what they say they are. One is—

Senator McKIM: When you say on the beta site 'identity matching', what do you mean?

Mr Grigson: It means that we can either verify identity using the Face Verification Service, or we can assist with identity matching with the Face Matching Service.

Senator McKIM: So it means both.

Mr Grigson: It means both.

Senator McKIM: Okay. So when the Tasmanian minister said that businesses will not be able to access the images, was that correct?

Mr Grigson: That's a decision that has not yet been taken, by us or by the Tasmanian government.

Senator McKIM: And is there a difference between the images and the biometrics that have been rendered from the images?

Mr Grigson: For this purpose, no.

Senator McKIM: For this purpose, no—alright. Are you the person I should be asking about the COAG agreement that was signed in 2017?

Mr Grigson: I'll do my best.

Senator McKIM: I tell you what, I'll finish my question—how would that be? The COAG agreement says:

Access to the FVS—

I presume that's the Face Verification Service—

Mr Grigson: It is.

Senator McKIM: Yes, so:

Access to the FVS to match information held by the Commonwealth, states and territories may be made available in the future to certain Organisations that—

And I'll just skip from (a) to (b):

(b) have a reasonable need to use government identifiers and facial images to verify the identity of an individual.

That's not face verification, is it, Mr Grigson, that's face matching, isn't it?

Mr Grigson: I think you've described, as the secretary's just said, a one-to-one match, which is the face verification service.

Senator McKIM: What non-government organisation might have a reasonable need to use either facial verification or face matching services?

Mr Grigson: I just want to underline that there's been no decision to allow this, but it may well be a bank that's verifying a person's identity for the purposes of opening a bank account.

Senator McKIM: Has there been a decision made by the department or the government, that you're aware of, around whether such a use by a corporation or a bank, in the case that
you've given, would only be possible with the consent of the person, or is that still an open question?

**Mr Grigson:** I'll take that on notice.

**Senator McKIM:** Okay.

**Mr Grigson:** My consideration of that issue has been based on consent, but I can't answer for all others.

**Senator McKIM:** Okay. Have any photographs or data from other sources, apart from the three state government drivers licence databases we were speaking about earlier, been uploaded as biometrics to this database, such as passport photos, for example, or something like that?

**Mr Grigson:** I'd need to check it. I'll take it on notice.

**Senator McKIM:** You'd know if passport photos were uploaded, surely?

**Mr Grigson:** You're asking whether photos have been enrolled into the biometric template and uploaded and I'll need to check that.

**Senator McKIM:** Have passport photos been imported?

**Mr Grigson:** I'll need to check.

**Senator McKIM:** Do people give their consent to this happening when they apply for a passport?

**Mr Grigson:** I'll need to check. I'll take that on notice.

**Senator McKIM:** So just to be clear, Mr Grigson, you've taken on notice whether photos from any source other than the drivers licence databases from the three states have been uploaded and also whether they've been converted—'rendered' I think is the term you used—into biometrics.

**Mr Grigson:** Yes.

**Senator McKIM:** Thank you. Is the department aware of the potential for false identification through the use of facial recognition software? I'm talking here about, for example, multiple birth siblings, people of colour who are consistently misidentified by this technology in other jurisdictions around the world where it's in place and, in fact, women, who are misidentified to a greater degree than men by this.

**Mr Grigson:** Yes, we've done some significant work on that. We are looking to improve those outcomes.

**Senator McKIM:** The final topic I want to explore as we march ever more rapidly down the road to a surveillance state in this country—

**CHAIR:** Alright. That's enough.

**Senator McKIM:** I beg your pardon?

**CHAIR:** Get back on track.

**Senator McKIM:** Well, it's true.

**CHAIR:** But it's not a question.

**Senator McKIM:** Your beta site, Mr Grigson, states that identity matching services cannot be used for real-time monitoring or live facial recognition of people in public places.
Mr Grigson: That's correct. The system is built so that you can't plug in—

Senator McKIM: A video feed.

Mr Grigson: a video to it.

Senator McKIM: I understand that.

Senator Patrick interjecting—

Senator McKIM: Thank you, Senator Patrick. Remember that when the metadata retention legislation was brought in it was all about counterterrorism, and now it's being used by local governments to bust people for having unregistered pets. Just remember the scope creep that we get here and that is consistent in these areas. How do you intend—Mr Pezzullo, I suspect this is either for you or the minister potentially, given that we do have the minister who represents the Minister for Home Affairs here—to prevent that sort of scope creep in the future?

Mr Pezzullo: It will be a function, ultimately, of the limitations and the stipulations that are built into the legislation. The bill that's presented to the parliament will be scrutinised, no doubt, by the relevant committee, the Parliamentary Joint Committee on Intelligence and Security.

Senator McKIM: Just so we're clear, Mr Pezzullo, what you're saying is that at this stage the intention is that the legislation will clearly spell out those limitations so that, if that were to change, parliament would effectively have to make that decision.

Mr Pezzullo: If the intent of usage of such capabilities was to evolve, it logically would require new legislation, yes.

Senator McKIM: I have just one follow-up to that, if I might. You say that the system's deliberately designed not to accept video feeds, but what would prevent somebody from simply taking a screenshot of a video and submitting that as a still photo?

Mr Pezzullo: Well, logically, in the hypothetical example that you proffered, real-time monitoring of many faces in a crowd, as I think you're suggesting—

Senator McKIM: No, I didn't, but anyway—

Mr Pezzullo: Perhaps I misheard the hypothetical scenario that you postulated, but there was some sense of capturing a large number of—

Senator McKIM: Real-time monitoring or live facial recognition is the term that your website uses.

Mr Pezzullo: Yes.

Senator McKIM: Real-time monitoring or live facial recognition.

Mr Pezzullo: Well, ipso facto and—dare I say it—axiomatically, to take a still screenshot of a particular image and have it processed through a system that's not designed to give a response in real time would mean that you couldn't conduct real-time surveillance, by definition.

Senator McKIM: You could conduct something pretty close to it, though, couldn't you?

Mr Pezzullo: I'm not quite sure what hypothetical scenario you're pointing to, but it seems to be suggesting some kind of scanning across multiple faces in a crowded area. Is that what you mean?
Senator McKIM: Say, for example, someone has computer access to a video feed of a public place with, as you say, a crowd of people. I'm interested in that person—screenshot, send it into the database, bang bang, it comes back with their identity. You've effectively got real-time mass surveillance.

Mr Pezzullo: It's hard for me to construct in my own mind, just as I was listening to you, a scenario involving the 'bang bang' of anything. I'm just not quite conceptualising what it is that is of concern. But Mr Grigson and I will look at your question very carefully, and if there's anything we can come back with helpfully to this committee then we will, on notice.

Senator PATRICK: Following on from that exchange: call me old school, but back in the old days—

Senator McKIM: The Australia Card days!

Senator PATRICK: you used to only be required to give a police officer your fingerprints when arrested. Obviously that's a method for matching, either there and then or down the track. In some sense this is the same sort of thing. We're using something that's probably better than fingerprints, if I just use Apple as an example of a company that's switched from fingerprint technology to facial recognition. In terms of the shift there, where you're now using information obtained from state databases, certainly in my case—I'm a South Australian—no-one ever asks me for permission. There's a paradigm shift there, from when people were entitled to not have their fingerprints taken unless arrested.

Mr Pezzullo: You're referring to the collection of fingerprints by the police I assume in the context of them collecting evidence at a crime scene or similar and then matching them against prints that are held in some kind of repository—a fingerprint database?

Senator PATRICK: Well, I'm not really familiar with police operations, but I'm assuming you would give your fingerprints upon being arrested—

Mr Pezzullo: I'm not sure that you or I have ever had occasion to have our fingerprints printed!

Senator PATRICK: I haven't, no—except when arriving in the United States.

Senator McKIM: I have. I was arrested in a forestry blockade in the 1980s.

Mr Pezzullo: We might need to refer to Senator McKim about what happened as he was being printed up!

Senator McKIM: That's well and truly on the public record, by the way, so anyone who's listening doesn't have a scoop!

Mr Pezzullo: If I understand the import of your question, Senator Patrick: if the police at the scene of a crime have dusted the scene and have collected evidence of fingerprints at that scene, then, going back to the 1920s if not earlier, they were able to then go back and match the prints. I think you and I have seen enough police shows so that we can mutually agree that this is a reasonable lay description of that process. They could run the print that they've collected at the scene against the holdings of fingerprints that they otherwise have—that's what you're referring to?

Senator PATRICK: Yes. In some sense it's really about the permission. Someone would have to volunteer fingerprints. I remember once in the Navy refusing to give fingerprints, just on the basis of conducting a search. The legal advice I was provided with was that I wasn't required to give fingerprints unless I was arrested.
Mr Pezzullo: I understand the comparison you're seeking to draw. I was trying to amplify in my own mind the example—the compare and contrast you're giving rise to. Mr Grigson, hopefully that has been helpful to set the context of the senator's question.

Mr Grigson: In terms of the face-matching service, where a person's identity is unknown, there will be a defined set of purposes. That service—

Senator PATRICK: Sure, but in some sense we're going back to that first stage, where you're verifying, where you're actually capturing the information just as I might be required to give my fingerprints. At least in the case where I had to give my fingerprints there was a legal step that had to be passed through, which involved an arrest or some authority in the law to take them. In this instance, the authority for you to take a piece of identification information was not sought from me when I had my photograph taken to get my South Australian licence.

Mr Grigson: There are two authorities at play here. One is the authorities around the Commonwealth's operation use of the system or the images. At the moment, we're running permissions under the privacy act across that. In parallel, each of the states has an authority to provide us with the images. That differs slightly from state to state, but that's a state responsibility.

Senator PATRICK: So that's in the fine print when I get my licence, is it?

Mr Grigson: For South Australia I'd have to check for you. There's an authority to disclose in South Australia. I know that because that's how we got the images. But how that's effected in South Australia, I don't know.

Senator PATRICK: That's the nub of the question. We could use the South Australian licence as an example. Could you take that on notice?

Mr Grigson: Yes, I'm happy to do that.

Senator PATRICK: I want to go back to the airport issue we were talking about before. Just to keep it compartmentalised, in relation to the $50.1 million, have you now allocated all of that funding?

Mr Grigson: A great portion of it. The four airports that are at question with the disallowance motion are on hold, but the great majority of the remainder of the grants have been made.

Senator PATRICK: Could you on notice provide which airports got the grants and how much they got?

Mr Grigson: I can certainly provide you with an aggregate figure—that's no problem. We're back into that territory where I'm a bit cautious about providing details of an airport and the grant they got, because it leads you to be able to work out what equipment they've got. Let me have a look and see if there's a way we can deal with that for you on notice.

Senator PATRICK: Sure. I'm not sure I entirely agree. I understand where you're going with it, but let's see what you can provide. I understand that not all tier-1 airports were able to apply for funding. For example, Hobart airport was tier 1 but was excluded from the application grants process.

Mr Grigson: That's right. I just need to check the detail. Certainly, at the upper end, airports were excluded from funding.

Senator PATRICK: Can you repeat that?
Mr Grigson: I would need to check the detail on the exact number of airports for you, but a number of airports were excluded from eligibility for the grants.

Senator PATRICK: Why was that?

Mr Grigson: Because the grants were structured around regional airports. We could have a discussion about that, I suppose, but I wouldn't describe Hobart as a regional airport.

Senator PATRICK: I'm not going to push too hard for Hobart, because I'm a South Australian senator. I'll leave that alone. My questions are done on airports. I still have some in relation to the National Counter Foreign Interference Coordinator.

CHAIR: And you still have three minutes.

Mr Grigson: Could I clear up one matter with you: there was no RIS for the current regulatory package following advice from the Office of Best Practice Regulation, but there was a RIS for earlier packages.

Senator PATRICK: Even though businesses are required to expend money?

Mr Grigson: I can only repeat to you what we were told by—

Senator PATRICK: Can you provide that advice to the committee, please?

Mr Grigson: Sure.

Senator PATRICK: Thank you.

Mr Grigson: It's in the explanatory memorandum. There's a reference to it. But we can provide that on notice.

Senator PATRICK: Thank you. So the National Counter Foreign Interference Coordinator?

Mr Pezzullo: Mr Ashe is currently performing those duties.

Senator PATRICK: As Mr Ashe is walking to the table: you have a CFI strategy based on five pillars, one of which is to engage at-risk sectors to raise awareness and develop mitigation strategies. I have a number of quick questions. What specific efforts have been undertaken by the NCFIC to engage with federal parliamentarians and their staff within government, opposition, independents and crossbenchers?

Mr Ashe: Our role is to, as you say, coordinate the whole-of-government response to, essentially, ASIO's assessment of the threat of foreign interference in Australia. To that end, we seek to raise the cost and reduce the benefit to foreign countries who would seek to interfere in Australian society. From our perspective, ASIO—I can't speak on behalf of ASIO, although I'm aware that they do engage with parliamentarians. The only time that my office has engaged with any parliamentarians was during the Electoral Integrity Assurance Taskforce, where, along with the Australian Electoral Commission, we provided a briefing on foreign interference in the context of the election.

Senator PATRICK: Noting that you're coordinating the strategy and the strategy does involve raising awareness, surely that means you understand what resources would be allocated to that particular task, or at least you'd seek some assurance that someone at least is looking after that particular element of the strategy and might have some knowledge as to what has been done in that space. I say this because Mr Burgess had indicated that federal parliamentarians are, in fact, a key target of foreign interference.
Mr Ashe: Absolutely. That's a category of foreign interference that we would refer to as political interference. That is the job of ASIO.

Senator PATRICK: I'm just trying to establish: you have a goal, which is to raise the awareness of federal parliamentarians. I certainly have never been briefed by anyone in relation to foreign interference. Maybe I'm beyond reproach—I don't know. That's where my question goes to.

Mr Ashe: I'm sure you'll understand that the issue of foreign interference as it relates to parliamentarians is a very sensitive issue. As a result of that, it's on the basis of potentially sensitive intelligence, and so we do leave the political interference aspect of this issue to ASIO. I'm not privy to all of the activities of ASIO in that—

Senator PATRICK: So it's ASIO that's doing that?

Mr Ashe: That's right.

Senator PATRICK: What about state and federal parliamentarians? Is it ASIO that does that?

Mr Ashe: That's right.

Senator PATRICK: Are they part of your strategy to raise awareness at the state levels?

Mr Ashe: We have raised awareness at the state level through what we called our domestic foreign interference summit, where we called together senior officers from the departments of premier and cabinet in each of the state and territories. We had a conference in Canberra where, in conjunction with ASIO, we talked about the assessment of the threat in the states. Personally, I and my office have visited all of the states and spoken to other officials, again raising awareness of the threat and discussing certain mitigations that could take place at the officials' level.

Senator PATRICK: There are two more areas I'm interested in. In terms of raising awareness, what has been done in respect of parties—for example the Liberal Party organisation, the Labor Party organisation, Greens and whomever—and also, separately, because the Chair's ruthless with her time, local councils, local government.

Mr Ashe: Again, on the federal political parties, given the sensitivity and the role of ASIO, ASIO's role is to raise awareness with the parties. I can only, again, speak to the electoral context when we have done that at the meeting with the AEC and the political parties. Sorry, what was the other part of your question?

Senator PATRICK: Local councils?

Mr Ashe: My boss, the actual National Counter Foreign Interference Coordinator, has met with several local councils down in Melbourne to give an assessment of the threat as we know it, and it's certainly part of our strategy to engage with local councils going forward.

Senator WATT: I've got a number of questions for Emergency Management Australia. I'll wait for Mr Cameron and Mr Grigson to join us. Just while you're taking your seats, can I again put on record the opposition's gratitude for the briefings that you provided to me and others over the summer break. It felt like we were speaking every other day through the summer break, so we really do appreciate the spirit in which you approached that, and the minister as well. Again, thanks. I know you worked incredibly hard over summer in general working to assist many Australians, so thank you for that.
Mr Grigson: Thank you, Senator.

Senator WATT: I want to just take a few steps back though and go to the period leading up to the bushfires. I'd like to begin by asking about the incoming government brief that was provided to the minister after the May election. It has been reported in the media that the brief provided by your department to the minister warned:
The physical effects of climate change, population growth, and urbanisation mean that without effective action more Australians' livelihoods will be impacted by disasters into the future and the cost of those disasters will continue to grow—

CHAIR: Senator Watt, do you have a copy of that article that you can provide?
Senator WATT: Yes, I do.
CHAIR: Thank you.
Senator WATT: It went on to say:
Coordinated national action to drive efforts to reduce these risks and improve national resilience is required
Can you confirm that it was EMA that drafted that brief?
Mr Grigson: We provided an incoming government brief to that effect. I have to admit I don't have that version with me.
Senator WATT: I'm not going to ask you a lot of questions about the brief. That brief was provided—was it provided to Minister Littleproud or Minister Dutton or both?
CHAIR: That article's just coming to you now, Mr Grigson, so you can cross-reference.
Mr Grigson: Thanks very much. Senator, I'd need to check for you. Let me check to which—
Senator WATT: You don't know which minister that brief was provided to?
Mr Grigson: It was certainly to Mr Dutton. I'd need to check for Mr Littleproud.
Senator WATT: That was provided after the election, so in May roughly?
Mr Grigson: Yes.
Senator WATT: What action, if any, was taken in response to that briefing?
Mr Grigson: I might hand over to Mr Cameron to talk about the budget allocation of $130 million or so, which you've probably seen before.
Senator WATT: This was for the disaster framework?
Mr Grigson: Yes, and the spending that was agreed with the states. We can talk too about the Disaster Risk Reduction Framework—
Senator WATT: I've got some questions specifically about that which I was going to come to, so maybe we'll deal with that then. So that briefing was provided to Minister Dutton and possibly Minister Littleproud in May, warning of the risks of more disasters from climate change. Then you'd be familiar from the public domain that a group called the Emergency Leaders for Climate Action, otherwise known as the ex-fire chiefs, wrote to the Prime Minister in April, in May and again in September seeking to meet with him about Australia's natural disaster preparedness. Were you asked to provide any advice either to your minister or to the Prime Minister about those requests to meet?
Mr Grigson: I'll have to take that on notice, but not from memory, because it was a matter for PM&C because they wrote to the PM.

Senator WATT: We've learned today from PM&C estimates that in fact two of those letters didn't actually make it to PM&C. The letters were sent to Prime Minister and on two occasions weren't forwarded to PM&C, and you're not aware of any of those letters being forwarded to your agency for advice either?

Mr Grigson: The answer to that is no.

Senator WATT: They were not?

Mr Grigson: No, they were not.

Senator WATT: Did you at any point provide advice to your minister about the issues raised in these letters by the Emergency Leaders for Climate Action?

Mr Grigson: We provided advice about the prospects of climate risk and the lengthening of the disaster season and so forth. I don't recall it being driven by the letters from the ex-fire chiefs. What they were putting was not news to us. We worked with ministers and the Prime Minister on preparing for the bushfire season.

Senator WATT: You said that you provided a number of briefings. I think you talked about essentially the risks from climate change and disaster risk.

Mr Grigson: The risks—yes, we did, including in particular this bushfire season.

Senator WATT: Roughly on how many occasions between the May election and Christmas 2019 did your agency brief your minister on the risk of the bushfires that we eventually saw? Would it be single figures or more than 10?

Mr Grigson: Certainly high single figures. We'll take it on notice.

Senator WATT: I'll get you to take on notice the exact number, but would it be fair to say that your agency briefed your minister on multiple occasions about the risk of bushfires over the 2019 summer prior to those bushfires occurring?

Mr Grigson: Yes.

Senator WATT: Verbally and in writing?

Mr Grigson: Yes.

Senator WATT: Are we talking on multiple occasions written briefings?

Mr Grigson: A mixture.

Senator WATT: Sometimes I find that, when people realise I'm talking about both verbal and written, the number actually increases. If we are thinking about meetings or verbal briefings as well as written briefings, would we be getting above 10?

Mr Grigson: If you're including ministers and their staff, certainly more than 10.

Senator WATT: More than 20?

Mr Cameron: Senator, if I might. You're asking a very broad question about preparedness and the outlook for the season. That would come up routinely in conversations, even as background context for an otherwise unrelated issue, so being able to put a figure on how many conversations we might have had with the minister or his office is very difficult to quantify.
Senator WATT: Can you take on notice your best efforts at quantifying that? Roughly how many times did your agency brief the Prime Minister or his office about the risk of the fires that we've just seen?

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

Senator WATT: Again, would it be multiple occasions?

Mr Grigson: We'd have to take it on notice and check.

Senator WATT: Mr Cameron, are you involved in that? Would you say it was multiple occasions that the Prime Minister and his office were briefed?

Mr Cameron: Yes, multiple, but, as to how many, we would need to work that out for you. I'm very happy to. Again, the qualifications I applied to the last answer apply there as much as they did previously.

Senator WATT: Sure.

Senator MOLAN: What were those qualifications again?

Mr Cameron: Senator Molan, I just said that all the time as a matter of routine business we have a conversation and then say, 'And because of X considerations, we need to do this,' or, 'We should do this,' or, 'You may wish to consider doing something.'

Senator MOLAN: So they were not specific briefings based on the ex-fire chiefs' letters?

Mr Grigson: No.

Senator WATT: We've moved on past that. Could you please provide to the committee copies of the written briefs that were provided to your minister and to the Prime Minister in advance of the bushfires?

Mr Pezzullo: We'll need to take that on notice. I prefer to review the material myself, Senator Watt. Just to reinforce the point just made to Senator Molan in response to his question, since the advent of Home Affairs this is my third cycle going through the preseason briefings. Mr Cameron and his predecessor, Mr Crossweller, have been assiduous in my encounters in ensuring that ministers are well seized of the preparedness across the Commonwealth, looking at things like fuel load, the issues around humidity and the long-term prognosis from our colleagues over at the met bureau about other relevant factors. Since I heard your question I have been reflecting as Mr Cameron along with Mr Grigson have been giving evidence on the risk of these fires. A listener closely following these proceedings might form the view that there was some kind of predictive omniscience that any of the rural fire services, Mr Cameron or others in this field had. I think, Mr Cameron, it's fair to say that no-one—not even the most expert practitioners in this field—would claim to have any kind of omniscient ability to—

Senator WATT: On that—

Mr Pezzullo: If I might, Senator, do you mind if I just conclude, please.

Senator WATT: I'm conscious I'm not being given a lot of time to get through this.

Mr Pezzullo: It frames the context of what you've been told. Your question several times said 'were warned of the risk' or 'were briefed on the risk' of these fires. I'm just concerned that a listener might take from that that there's some time travel capacity that either Mr
Cameron or his staff or others could go forward in time to ascertain what was going to happen on or about New Year's Eve or New Year's Day.

**Senator WATT:** Oh no, I'm not saying about—I understand what you're saying.

**Mr Pezzullo:** So no-one's suggesting a predictive capacity, but in terms of long-range trends and the preparedness measures that were being put in place by states, territories and the Commonwealth as a federated set of agencies. Mr Cameron, it's fair to say—I've only had experience in three of these cycles—this is a fairly orthodox, routine way to work your way into the summer, I take it.

**Senator WATT:** Given I've got limited time, I would like to ask the questions if you don't mind, Mr Pezzullo.

**Mr Pezzullo:** Indeed, that was a rhetoric reflection.

**Senator WATT:** Talking about specific warnings, in August 2009 the Bushfire and Natural Hazards CRC seasonal outlook showed above-normal fire potential across Australia, particularly along the coast of New South Wales. Now I take it that—

**Mr Cameron:** Sorry, Senator, 2009 or 2019?

**Senator WATT:** 2019.

**Mr Cameron:** Thank you.

**Senator WATT:** In fact, I remember you and I talking about this outlook.

**Mr Cameron:** Yes.

**Senator WATT:** Was your minister briefed about the above-average fire risk, particularly along the coast of New South Wales, that was predicted by the Bushfire and Natural Hazards CRC?

**Mr Cameron:** Yes, of course he was. That was publicly available information. It was put out by the BNHCRC and supported by AFAC and the met bureau and others and was widely distributed. In fact, it was publicly released from memory—or the first version of that at least was publicly released at the AFAC conference.

**Senator WATT:** Did your agency brief the Prime Minister, either verbally or in writing, about those predictions from that CRC?

**Mr Cameron:** That's publicly available information.

**Senator WATT:** I know, but what I'm asking is whether your agency briefed the Prime Minister or his office about that report?

**CHAIR:** Senator Watt, you're at 12 minutes and I'll give you up to 15 before I hand over the call.

**Mr Cameron:** Can we take that on notice, please?

**Senator WATT:** Sure. You might recall that on 22 November last year the Leader of the Opposition wrote to the Prime Minister, requesting that he hold an urgent COAG meeting to discuss Australia's natural disaster preparedness. Was your agency asked to provide advice on that letter?

**Mr Cameron:** To the best of my recollection, no. I'm happy to check.
Senator WATT: Okay. I must just start a couple of questions regarding aerial firefighting, which I'll come back to in the next bracket. You might recall I asked some questions about this at the last estimates, in October, about the funding request that had been made by the National Aerial Firefighting Centre. Can you confirm that the National Aerial Firefighting Centre was initially funded in 2003 on the principle of a fifty-fifty funding split between the Commonwealth government and the state and territory governments?

Mr Cameron: Yes.

Senator WATT: Can you confirm that by 2016-17 the Commonwealth contribution had fallen from 50 per cent to 23 per cent?

Mr Cameron: Say those numbers again?

Senator WATT: It went from 50 per cent to 23 per cent.

Mr Cameron: In which year?

Senator WATT: 2016-17.

Mr Cameron: 2016-17.

Senator WATT: Feel free to take that on notice, in the interests of time.

Mr Grigson: We'll take it on notice, Senator.

Senator WATT: In December 2017, the Aerial Firefighting Centre submitted a business case asking the government to include a new clause in funding agreements to increase their base funding and ensure their funding was adjusted for CPI. How many times after submitting that business case did NAFC, the states or other agencies request an increase to aircraft funding?

Mr Cameron: Formally requested by NAFC, I think it was re-presented once. The business case was re-presented once.

Senator WATT: And the states and territories made similar requests, that Commonwealth funding for NAFC be increased?

Mr Cameron: No—done through NAFC.

Senator WATT: All the way through NAFC?

Mr Cameron: The relationship between the Commonwealth and the states for the purpose of aerial firefighting is through NAFC.

Senator WATT: Of course, there were a couple of occasions when the government provided top-up funding. It provided funding for a year without going to the ongoing funding request from NAFC.

Mr Grigson: It provided $11 million twice and the Prime Minister has now publicly announced that that will be made permanent.

Senator WATT: That's right, but, until that recent announcement in January this year, after the fires, all that NAFC had been provided with was top-up funding essentially to get it through the coming year, rather than ongoing funding?

CHAIR: Senator Watt, this is your last question.

Mr Cameron: If that's how you choose to characterise those two lots of $11 million supplementary payments—yes.
Senator WATT: Okay. And the—
CHAIR: No, Senator Watt—that was your last question.
Senator WATT: Okay. I'll come back to it.
CHAIR: You will. You'll come back to it in the next block. Just to clarify: the two $11 million top-up payments were precisely the amount that had been requested in each of those—
Senator WATT: No—they requested ongoing funding.
CHAIR: This is my question, not yours, Senator.
Mr Cameron: Precisely? Not precisely but very close.
CHAIR: Well, correct me, then.
Senator WATT: No—they requested ongoing funding—
CHAIR: My question, Senator Watt; not your question.
Mr Cameron: The only reason I'm equivocating here, Chair, is that some of the components of an $11 million supplementation were for ongoing, some were for a three-year period and others were for just an adjustment to a base. So, in general terms, yes, it was $11 million, but not mathematically, specifically.
CHAIR: So, in general terms, they were provided with the amount that had been requested?
Mr Grigson: Yes.
CHAIR: And at the time it was requested?
Mr Grigson: Yes.
CHAIR: It was simply provided on a per request basis rather than an ongoing, long-term basis?
Mr Grigson: Yes, Senator, and you'll remember that, when there was an additional request made to the government, it provided another $20 million on top.
CHAIR: Thank you. I think that's very helpful. Senator Molan?
Senator MOLAN: Thank you, Chair. Mr Cameron, many years ago, when I was a little bit younger than I am now, I was an aerial firefighting helicopter pilot. As a result of that, I was appointed to the board of the National Aerial Firefighting Centre for about three years. I'm interested in this discussion because the way of measuring the output of NAFC goes to how many aircraft they lease to fight fires each and every year. Would you be able to provide us with the numbers? From my memory, we never got much over 100 aircraft per year in the three years that I was the director. My understanding is that this year we got something in the order of 165 aircraft, with another 80 aircraft on state stand-by. Mr Cameron, is that roughly correct?
Mr Cameron: Yes, it is roughly correct.
Senator MOLAN: Thank you. It strikes me, then, that we can wrap ourselves around the axle for as long as we like about who did what to whom, who listened and who gave advice. The end product was that the government, in this unprecedented fire situation, planned extraordinarily for it—not just by mobilising the ADF but in a number of other areas,
regardless of whether or not they listened to ex fire chiefs. Is that not the case? If they produced 165 aircraft—and there were 142 aircraft, from my memory, before the fires started—and then more were added on top of that as the fires went on, would you say that is an unprecedented reaction to the fires in relation to aerial firefighting?

Senator McKIM: Sorry—I want to take a point of order. Senator Molan is clearly asking Mr Cameron for an opinion. He's asking him—

Senator MOLAN: No, I'm asking for facts.

Senator McKIM: No, you're not. You're asking whether or not something is unprecedented.

CHAIR: I will remind Senator Molan that we need to ask for facts and processes. We don't ask for opinions. I'm sure he'll keep that in mind as he frames his questions.

Senator MOLAN: Are you satisfied that, on the figures I've provided for the reaction of NAFC to this year's firefighting—you have explained that you spoke to the government about it and we had statements about the probability of strong coastal fires—this was a significant reaction?

Senator McKIM: Again, I'm sorry: 'significant reaction', Chair? It's the same point of order. It's a value judgement.

Senator MOLAN: One hundred and sixty-five compared to no greater than—

CHAIR: We've got to deal with the point of order first.

Senator McKIM: My point of order is that he's asking for a value judgement, which is an opinion.

CHAIR: I understand where you're coming from, Senator McKim. Perhaps you could put it in more objective terms, Senator Molan.

Senator MOLAN: Certainly. We have agreed that 160-something aircraft were provided for this and that there are 80 more on stand-by. Have you seen these number provided before?

Mr Grigson: These are high numbers. Perhaps it would help if I read out some facts.

Senator MOLAN: Please do.

Mr Grigson: In 2019-20 the Australian government funded NAFC to a total of $45.983 million: $14.983 million under a longstanding funding agreement, $11 million matching a similar amount last financial year, and $20 million for four additional firefighting aircraft—two large and two very large air tankers, two LATs and VLATs, as you would know them, Senator. The Prime Minister, as I mentioned before, has publicly committed to increase base funding to NAFC from 2021 by an additional $11.4 million ongoing. The funding contributed to the lease of more than 160 aircraft—we'll get to the exact number. The 2019-20 national fleet includes but is not limited to: six Erickson air cranes as well as other heavy-lift helicopters; 11 large fixed-wing air tankers—more than Australia has ever had before; two AT-802 Fire Boss water scooping airplanes; four helicopters and five fixed-wing aircraft equipped with infrared sensors to rapidly locate and map bushfires; one large passenger carrying fixed-wing aircraft; two helicopters capable of undertaking night fire-bombing operations; and a range of other specialist and supporting aircraft.
**Senator MOLAN:** Could you tell me also, and I'm happy to leave it on notice, if that's an unprecedented reaction?

**Mr Grigson:** We'll check for you.

**Senator MOLAN:** Thank you very much for that. Who provides emergency bushfire advice to governments?

**Mr Cameron:** The commissioners and chief officers meet in emergencies to discuss unfolding situations, unfolding emergencies, and that's when advice is then fed back to governments. The commissioners and chiefs nationally and me—in fact, I chair those meetings—meet in emergencies and provide advice on situational awareness, resource requirements and information up to government.

**Senator MOLAN:** Were the ex-fire chiefs who came along and requested a meeting with the Prime Minister offered any meetings at all?

**Mr Cameron:** With whom?

**Senator MOLAN:** With ministers or with anyone else?

**Mr Cameron:** Yes, with Minister Taylor and Minister Littleproud.

**Senator MOLAN:** Yes, that's what I heard. Did they accept those meetings?

**Mr Cameron:** To the best of my knowledge, the convenor, Mr Mullins, plus one or two others, I think, met with Ministers Taylor and Littleproud towards the end of last year.

**Senator MOLAN:** Could you check that for me, please, and come back to us?

**Mr Cameron:** I'm happy to.

**Senator MOLAN:** I'm not sure that that is correct, but something may have happened that I've missed, and you might be correct on that.

**Senator WATT:** It is—the Leader of the Opposition met with them on the same day.

**Senator MOLAN:** Thank you. I wonder if it is possible to do an analysis of the letter written in April or May to see whether, in fact, everything except the views—which I think were essentially political—on climate change in those letters from the Mullins group, had, by my analysis, already been recommended by the fire chiefs, by today's fire chiefs. Are you aware of that?

**Mr Cameron:** Am I aware of any analysis being done? No, I'm not.

**Senator MOLAN:** Could you do that analysis for us? Look at what they asked for and then you will see that, in almost every case, except for the political statement on climate change, it was done by the government.

**Mr Grigson:** We'll take that on notice.

**Senator MOLAN:** Thank you.

**Mr Grigson:** I do recall reading the April letter, I think, and it didn't stick in my mind as providing anything that we didn't know.

**Senator MOLAN:** Do you have confidence that Australia's aerial firefighting capability over the 2020 fire season was adequate?

**Mr Grigson:** I'm confident about that because that was the advice from AFAC. The government wrote to them in October and asked if they needed any more for the coming
season, and they said that they had sufficient. And then, after Christmas, when we'd not heard from them again, the government took it upon itself to write to them and ask if they needed any further assistance and acted on the response.

Senator MOLAN: That's right. And what was the response?

Mr Grigson: There was a request for one aircraft; the government paid for four. I think the ask at the time—I'd have to take it on notice to check—was for about $4 million, and the government provided $20 million.

Senator MOLAN: Good. Chair, I think they're all the questions I've got, thanks.

CHAIR: can I ask this: is it the government's practice to seek advice on these matters—obviously, through your role—from current fire chiefs or from past fire chiefs?

Mr Grigson: Current fire chiefs.

CHAIR: Are you aware of newspaper reports, which I shall shortly be able to table, indicating that a particular group of ex-fire-chiefs are a group of, essentially, climate activists who have been cultivated by known climate activist Tim Flannery?

Senator KENEALLY: On a point of order, Chair: I think you are asking them to form an opinion—

CHAIR: I'm asking if they're aware of those articles that have been in the press.

Senator KENEALLY: On a different point of order: if you're asking if they're aware of articles, I'd ask that you table them.

Senator Payne: I think the chair just said she would.

CHAIR: I am more than happy to do that, and, if you would like me to revisit the matter when those articles are here, I'm more than happy to do so.

Senator KENEALLY: I'd appreciate that. It would be a consistent practice across—

CHAIR: I think that's more than reasonable. The article, which I will provide, also indicates that a number of—well, at least one of those ex-fire-chiefs is somebody with Labor Party links, a former staff member of the Whitlam Institute and so forth. So I will table that in due course. In the meantime, Senator Watt, you have the call.

Senator WATT: I've got here the business case that NAFC submitted, and we've got copies of that available for members of the committee to have a look at. This was the business case submitted. It's dated December 2017, around two years before the fires that we're talking about hit. In the summary of that business case, at the top, they clearly ask for an annual increase of $10.774 million—not a top-up, not a one-off. They clearly were asking for an annual or ongoing funding increase, weren't they?

Mr Cameron: They were; that's true.

Senator WATT: They were.

Mr Cameron: I've got a summary of the five components of the business case.

Senator WATT: I don't need to break it down. You've just confirmed they were asking for an annual or an ongoing increase, but what actually happened after that business case was tabled was that the government agreed to a one-off top-up of $11 million in December 2018, not an annual increase; and then the government offered, again, a one-off funding increase of $11 million in December 2019, not an annual increase. It was only in January this year that
the Prime Minister agreed to the annual increase which had been requested two years earlier. Is that correct?

Mr Cameron: Yes.

Senator WATT: Is it possible to calculate the number of additional flights that that $11 million pays for?

Mr Cameron: Not at all.

Senator WATT: You've got no idea what you buy for that $11 million?

Mr Cameron: The reason I say 'not at all' and I say it so bluntly is that the operational decision-making for the use of the aeroplanes is entirely dependent on what fires are burning and where—what the best application of aerial appliance is—and the decision made about things as prosaic as 'that fire' or 'that other fire'. So it's not possible to do that.

The other key point is that the business case—and you talked about an increase in base funding—goes to inflation and an increase in base funding to account for foreign exchange variations. They're the two base adjustments in the business case. It is essentially a contribution to redress, if you like, the funding profile that you just described in your previous question to me. It doesn't necessarily go to another aeroplane.

Senator WATT: No.

Mr Cameron: So I can't actually point to numbers of sorties, if you like.

Senator WATT: Sure. Is it possible to say that that $11 million, though, without getting down into particular numbers, would pay for dozens of additional flights?

Unidentified speaker: One hundred and sixty—would that be enough?

Senator WATT: Where did you get 160 from?

Senator HENDERSON: Chair, would you mind, just by way of clarification, if I can ask: in relation to the $11 million, can I clarify that the $11 million was paid each year—2018 and 2019—so it was an annually paid amount of money, and the difference this year is that there's now been a determination that that will be paid ongoing. Is that right?

Mr Cameron: That's correct, Senator.

Senator KENEALLY: Can I just clarify—

CHAIR: We will adjust the clock.

Senator HENDERSON: I just wanted to clarify that. Thank you very much.

CHAIR: And while we have a lull—my apologies, Senator Watt—I have provided to all the relevant people, and I now table the article titled 'Fire chiefs' climate group a pet "project" of activist Tim Flannery'. It supports the propositions I earlier stated. Please continue, Senator Watt.

Senator KENEALLY: Just to clarify: is that former Australian of the Year Tim Flannery? Is that the person in the article?

CHAIR: His name is Tim Flannery.

Senator KENEALLY: Is he the former Australian of the Year Tim Flannery? I'm just seeking clarity.

CHAIR: I suspect so.
Senator KENEALLY: You've tabled the document; I haven't had a chance to read it in full.

CHAIR: You've got a copy of it there. Senator Watt, you've got the call.

Senator KENEALLY: I just want you to say the words: 'Tim Flannery, former Australian of the Year', Senator Stoker.

CHAIR: Senator Watt, you've got the call.

Senator WATT: Newsflash: someone accuses people worried about climate change of being political activists. Excellent plan—well done!

Senator PRATT: Or having a pet project.

CHAIR: Excellent. Very good. Carry on.

Senator WATT: Good work, Angus! We started talking earlier about the National Disaster Risk Reduction Framework. Just in really brief terms, what does that do?

Mr Cameron: The Disaster Risk Reduction Framework is a guide for national action across all sectors to address existing disaster risk and minimise new risks. I say 'all sectors', and I think, in fact, Mr Grigson may have mentioned in earlier testimony the very broad consultation, the cross-sectoral consultation, that went into development of the framework—all levels of government, the private sector and community organisation representatives.

Senator WATT: When can we expect an implementation plan for that framework to be released?

Mr Cameron: Soon. We're working with the states on that. We have been since pretty much mid last year—and there have been drafts back and forward. There is a time limited working group that's working on the national action plan for implementation of the framework. You would appreciate, I'm sure, Senator, that it didn't get much traction over the summer, the heart of the summer months, because most of the people that would otherwise be engaged in that were in fact diverted to much more immediate response and recovery issues. But it's certainly back on track.

Senator WATT: So the framework was released in 2018?

Mr Cameron: No.

Senator WATT: I see it's dated 2018.

Mr Cameron: Yes, and there's been some media speculation about how long that report had been completed and sitting. Perhaps if I could give you the time frame, the chronology, of the—

Senator WATT: Can I get you to table that? I'm going to run out of time shortly.

Mr Cameron: I would be very happy to—other than to say it was publicly released, along with the budget measure of $130.5 million, in April last year. It was endorsed by the Ministerial Council for Police and Emergency Management in June—

Mr Pezzullo: June 2019.

Mr Cameron: June 2019—thank you, Secretary—and work on the action plan has been worked on since then.
Senator WATT: You referred to some media coverage and, again, I have an article here from January this year, headlined, 'Government buried climate risk action plan' alleging that this risk reduction framework was left to gather dust in the Department of Home Affairs for 1½ years before the bushfires hit. You don't think that is a fair characterisation?

Mr Pezzullo: It is simply wrong. I will take this, Mr Cameron.

Mr Cameron: Sure.

Mr Pezzullo: It is simply wrong on the basis that the document in question went to a ministerial council of federal, state and territory ministers in the middle part of 2019. It was in Adelaide, as I best recall it.

Mr Cameron: It was in Adelaide, yes.

Mr Pezzullo: With some $130 million of federal money put into the tank in the May budget last year, ipso facto it's impossible to say it was left on any shelf over that time period. It could not, by definition, have been, because it went to the budget. The government provisioned that amount of money that Mr Cameron has just referred to and, because it relates to a federal, state and territory construct, it went to the relevant ministerial council, upon which all relevant emergency management ministers of all hues and stripes of our federation are represented. The document was tabled by Minister Littleproud in the middle part of 2019 and has been the endorsed framework since that time.

Senator WATT: So what has it actually done?

Mr Pezzullo: As Mr Cameron was outlining at the start of his answer, it provides guidance for all sectors of our economy as to how they might want to think about mitigating climate and disaster risk, about taking into account those factors in land use, planning, build standards, et cetera. It is funded to that considerable amount of money by the federal government. The ministers last year agreed that an action plan would be derived from the framework. That work was on foot through the course of the winter and into the summer and, as Mr Cameron said, a number of key expert staff were diverted on to immediate response and recovery over the summer and they're now back on the tools.

Senator WATT: So of that $130 million that has been allocated for this, how much has actually been released or spent?

Mr Pezzullo: Mr Cameron and Mr Grigson, back to you.

Mr Cameron: I'm sorry, would you mind repeating the question?

Senator WATT: Of the $130 million that has been allocated to implement this framework, how much has actually been spent?

Mr Cameron: So the national partnership agreement that gives effect to spending that has yet to be agreed. It will be offered some time very soon by the Prime Minister to first ministers.

Senator WATT: So this framework is dated 2018, we don't yet have an implementation plan, it hasn't released any funding yet, but you are saying it is grossly unfair to say it has been buried?

Mr Pezzullo: It is just a simple matter of logic. It has been sent to states and territories. Ministers have considered it; they had a very good discussion about it.
Senator WATT: Oh, that's good. But what difference is that making on the ground?

Mr Pezzullo: Well, national resilience, which is going to be intergenerational, doesn't stop work that relates to preparing for the forthcoming season. That work is done in parallel, so there is no suggestion that anyone should take from either the press reporting or this exchange that, absent the operation of the framework, nobody is looking at seasonal preparedness. That is completely contrary to the facts as well. In terms of what the intergenerational planning framework looks like, that is now publicly available. It is endorsed by Commonwealth, state and territory ministers. Now comes the hard work of implementation. In parallel, responding to particular climate disaster risks, which tend to be seasonal, continues at pace and in parallel.

Senator WATT: Okay. Just turning to volunteer firefighter payments, I have been given the figures in the bushfire recovery agency about how much has been paid, so I won't go back over that. You will remember that the Prime Minister, at one point through the summer, said that he wasn't prepared to pay volunteer firefighters, arguing they 'want to be there'. Was that statement made on the basis of advice from EMA?

Mr Cameron: The statement that—?

Senator WATT: Volunteer firefighters 'want to be there'.

Senator HENDERSON: Point of order, Chair. I would perhaps ask Senator Watt to rephrase his question, because I believe that he has mischaracterised the Prime Minister's position in relation to this matter.

Senator WATT: Well, it's a direct quote from the Prime Minister.

Senator HENDERSON: I understand that you are suggesting that this is a direct quote, but I'm taking the point of order because I'm suggesting that it misrepresents the Prime Minister's position. The question should not be allowed to stand.

Senator WATT: Did EMA—

CHAIR: Hang on, I haven't ruled on the point of order—unless this is a response?

Senator WATT: I'm happy to phrase it a different way.

CHAIR: Thank you.

Senator WATT: Did EMA provide advice to your minister or the Prime Minister that volunteer firefighters shouldn't be paid because they wanted to be there?

Mr Grigson: I can't go to the nature of advice. There was a conversation earlier in this hearing about that.

Senator WATT: Is it EMA's position that volunteer firefighters should not be paid because they want to be there?

Mr Grigson: That would go to the nature of advice.

Senator WATT: No, I'm not asking about advice. I'm asking the department's position.

Senator PATRICK: Chair, on a point of order.

CHAIR: Senator Patrick?

Senator PATRICK: It is really clear in the guide to witnesses at Senate estimates that the provision of advice or advice is not a public interest immunity, and the witness shouldn't
advance that as a reason not to answer a question. It's very clear in the resolutions of the Senate and it's spelled out very clearly in witnesses' guide to estimates.

CHAIR: That is right. Unless there is a public interest and so forth—

Senator HENDERSON: May I speak on the point of order?

CHAIR: Yes, you may.

Senator HENDERSON: Back to the earlier point I made on the point of order, I would just suggest that the second question from Senator Watt is continuing to misrepresent by imputation the Prime Minister's position—

Senator WATT: I'm just quoting the Prime Minister.

Senator HENDERSON: and I would ask Senator Watt that he be refrained or that he determine not to do so.

CHAIR: I'm sure Senator Watt will take some care with his phrasing and—

Senator WATT: I agree with Senator Patrick; I don't accept this claim of public interest immunity, but be that as it may.

CHAIR: I don't know that it is a claim of public interest immunity yet.

Senator WATT: It must be if the department's going to refuse to answer.

CHAIR: Give the witness an opportunity to answer in light of the point of order ruling.

Senator KENEALLY: If I might ask, what is the ruling? Senator Patrick made a point of order.

CHAIR: The ruling is that unless there are public interest considerations justifying a claim of public interest immunity then they do need to provide that evidence.

Mr Grigson: I'll need to take it on notice then, Senator.

Senator WATT: What public interest could possibly be affected by—

CHAIR: He's taken it on notice now, Senator Watt.

Senator WATT: This is a separate question.

Senator PRATT: Point of order, Chair.

CHAIR: Yes, Senator Pratt.

Senator PRATT: Can I ask you, Mr Grigson—

CHAIR: That's not a point of order.

Senator PRATT: The point of order is that a witness can't just take it on notice in order to make a future public interest immunity claim.

CHAIR: That's not how I understood it.

Senator PRATT: Well, if that knowledge is within his purview now, then he needs to provide an answer or explain the public interest immunity claim now.

CHAIR: Look, I'll ask the question of the witness.

Senator HENDERSON: Point of order, Chair.

CHAIR: Senator Henderson?
Senator HENDERSON: On the point of order, I want to make the point that Mr Grigson did not assert public interest immunity in his response.

CHAIR: No, he didn't; that was extrapolated.

Senator HENDERSON: That's right. I think that needs to be made clear.

Senator KENEALLY: I would like to hear the chair's ruling. I think she was about to make it, and I think it was going to be a wise one.

CHAIR: There's expectation now! Mr Grigson, if something is within your knowledge now, you need to provide that answer or make a claim of public interest immunity. If it is not within your knowledge now and you need to take it on notice, you are entitled to do so, and the senator who has asked the question will move on from that point. What you decide is based on the knowledge you have at this point in time. That is my ruling.

Mr Grigson: Senator, when I said I'd take it on notice, I was actually taking on notice the question as to the detail, not the public interest immunity part, because I genuinely don't know the answer.

CHAIR: Okay. I think that resolves the matter once and for all. Senator Watt, back to you.

Mr Grigson: That's what I was taking on notice, understanding the ruling you made about having to answer.

CHAIR: That's fine, thank you.

Mr Grigson: So if you're asking me whether I know now, the answer is: no, I don't, which is why—

CHAIR: And that means your taking it on notice is entirely—

Senator WATT: I'm lost. What is it that you don't know?

CHAIR: Hang on, Senator Watt. That means your taking it on notice is entirely appreciate. Senator Watt, you now have the call.

Senator WATT: Thanks. I just asked: what do you not know? I'm lost.

CHAIR: It was your question!

Mr Grigson: I hope that I have understood this correctly. Please correct me if I'm wrong. I'm taking on notice your question about the advice that we may or may not have given on the issue of volunteer payments.

Senator WATT: Separate to that and advice provided, is it EMA's position that volunteer firefighters should not be paid because they want to be there?

Mr Grigson: We have no policy responsibility for that. Most of the advice on volunteer firefighters comes from the states, not from EMA.

Senator WATT: And you'd remember that after that point the Prime Minister continued to refuse to agree to pay volunteer firefighters and at one point argued that he didn't have the power to do so and it was a matter for the states and territories? Do you recall that?

Mr Grigson: I don't recall that.

Senator WATT: I'm happy to find you the—

CHAIR: Senator Watt, be careful about relying on assumptions if it's not something that's within your knowledge.
Senator WATT: I'm happy to find you the media coverage to that effect. But it is the case, isn't it, that on at least two previous occasions, under former Prime Minister Keating and former Prime Minister Howard, the Social Security Act was invoked to provide income support to volunteer firefighters?

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

Senator WATT: In the ultimate decision to agree to pay volunteer firefighters through the states, did your department provide advice to government about that?

Mr Grigson: I'll take that on notice. It was a very busy bushfire season—

Senator WATT: It was.

Mr Grigson: and I have to say that the details of this line of advice are not in my notes and not in my memory.

Senator WATT: It was a pretty significant decision, and it was a bit of a 180 from the government about its position on volunteer firefighter payments. So I would have thought someone would remember whether your agency was involved in providing advice—

CHAIR: It's been taken on notice, Senator Watt. You need to move on.

Senator WATT: I was asking Mr Cameron whether his recollection is that the EMA was involved in providing that advice to government.

CHAIR: Okay, you can ask that of Mr Cameron.

Senator WATT: Thank you.

Mr Cameron: I genuinely can't remember whether we provided advice at the time, before the decision was made. We were certainly involved in working with the states to implement the decision. But that's not your question.

CHAIR: You are taking it on notice—to the extent that you are able to answer that?

Mr Cameron: Yes.

CHAIR: Senator Watt, including adjustments for interruptions—

Senator WATT: There have been a lot of interruptions.

CHAIR: You have had 18 minutes not counting the interruptions. If you could bring this to a conclusion in the next two minutes, that would be great.

Senator WATT: Separate to the disaster framework, I understand that the Home Affairs website refers to a National Catastrophic Natural Disaster Plan. Does that plan exist?

Mr Cameron: Yes, it does. Is that the one that is referred to as NATCATDISPLAN?

Senator WATT: That's the one. It exists?

Mr Cameron: It does exist.

Senator WATT: There is a plan?

Mr Cameron: Yes.

Senator WATT: Where could one find such a plan?

Mr Cameron: I have chosen not to publish that plan on the website where others are because it is very dated and it has in fact been overtaken by a number of other initiatives not so much based on the premise of that plan. I'm very happy to talk about that plan—
Senator WATT: Why don't you take on notice for us essentially what that plan provides for. Are you saying it has basically been superseded?

Mr Cameron: Essentially, yes.

Senator KENEALLY: By what?

Mr Cameron: By a number of other initiatives including, for example, some work we have been doing on the required capabilities and how to go about developing capabilities for severe to catastrophic disasters rather than having a set governance piece based on a very finite construct for a catastrophic disaster.

Senator WATT: You'd be aware that legislation was passed last year to establish the Emergency Response Fund. Can you give us a quick outline on what's happening regarding the establishment of that fund?

Mr Cameron: The Emergency Response Fund Act commenced on 12 December 2019. There are two components to the Emergency Response Fund. There is up to $150 million each financial year to fund emergency response and recovery following natural disasters in Australia that have a significant or catastrophic impact when the government determines that existing recovery programs are insufficient to meet the scale of the response required. And there's a $50 million component each financial year to build resilience to and to prepare for or reduce the risk of future natural disasters when the government determines that funding is over and above its existing suite of arrangements.

Senator WATT: The explanatory memorandum for that bill said that disbursements from the fund would be available from 2019-20. Can you advise us when you expect disbursements to actually commence from that fund?

Mr Cameron: That is a decision for ministers. That's a decision for the minister for emergency management, on advice.

Senator WATT: So no decision has been made at this point?

Mr Cameron: No decision has been made for this point. I will point out, though, and I feel obliged to point this out to you, that the government's bushfire recovery fund is $2 billion and we're talking here about $150 million.

Senator WATT: Yes. We've had a separate debate in another committee today about whether that bushfire fund even exists, because it's notional.

CHAIR: Now I've heard everything!

Senator WATT: Can I just remind the minister that in committee—

CHAIR: Senator Watt, that was your last question.

Senator WATT: This is not a question, this is a reminder.

CHAIR: We don't have speeches in estimates, so, no.

Senator WATT: It's actually a helpful one. It's a constructive one to the minister.

CHAIR: It had better be, Senator Watt.

Senator WATT: It is. Minister, in the committee stage of the debate on that bill, Senator Cormann undertook to consult with the opposition around the formation and guidelines regarding the ERF, and I am not aware of us having received any consultation up until now. So if that could be arranged that would be appreciated.
CHAIR: Senator Watt, I'm conscious that you've been going with exclusive interruptions for 22 minutes. I'm going to cut you off there. The person who will next have the call is Senator Henderson. I just want to canvass, does anybody else have questions for outcome 1? I'm conscious that we're at a quarter to nine and we haven't started outcome 2.

Senator KENEALLY: Yes, we definitely—I can flag that Labor senators have I think at least four areas within outcome 1 we still want to pursue.

CHAIR: Okay. After Senator Henderson, I will go to Senator McKim.

Mr Grigson: May I clarify a piece of evidence?

CHAIR: Of course.

Mr Grigson: I said to Senator Molan that after Christmas the government had contacted AFAC about aerial firefighting and that AFAC had requested $4 million for an additional aircraft. It was $5 million for an additional aircraft, and the government provided $20 million for up to four.

CHAIR: Thank you very much. Senator Henderson.

Senator HENDERSON: Mr Grigson, I would like to ask you, to the extent that you're able to answer this question, about information in relation to the financial assistance provided to communities impacted by the recent summer bushfires—in particular, the Australian government disaster recovery payment. Senator Watt touched on some of the support that we were providing as a government. Are you able to provide an overview of the support that we are providing to those Australians impacted by bushfires?

Mr Grigson: We can. I might ask Mr Cameron to do that. He's the full bottle on those sorts of details.

Mr Cameron: Senator Henderson, did you ask specifically about the Australian government disaster recovery payment?

Senator HENDERSON: That's one payment but to the extent that you're able to provide an overview of the financial assistance, that would be very helpful.

Mr Cameron: I'm just hastily looking through my notes to see where my table of total payments made is, and it's just not springing to hand. Thanks, Mr Grigson. There are, basically, three main components of payment to which the Australian government contributes. Two of those are Commonwealth own-motion payments. They're sole Commonwealth payments. That's the Australian government disaster recovery payment, the one you asked about. That's when the minister is satisfied that an event is a major disaster, for the purposes of this payment.

Senator HENDERSON: And that's $1,000 per eligible adult.

Mr Cameron: That's the $1,000 for eligible adults and $400 for eligible children.

Senator HENDERSON: Except that has now doubled per child to $800.

Mr Cameron: A separate payment along the same lines has been made to complement that for eligible children, so that adds up to $800 per eligible child. That's been made available to a very large number of local government areas.

Senator HENDERSON: Do you know the total number of payments or total amount of money paid under that scheme?
Mr Cameron: I do, but I'm having a little bit of difficulty putting my hand on it.

Senator HENDERSON: We can come back to it if you want.

Mr Cameron: That's alright. The other payment is the Australian government disaster recovery allowance, or DRA.

Senator HENDERSON: That's the 13 weeks of income support?

Mr Cameron: That's exactly right; that's that payment. They're the two Commonwealth own-motion payments. The third category is the jointly funded Disaster Recovery Funding Arrangements, or DRFA. The arrangement is formally known as the NDRRA, the Natural Disaster Relief and Recovery Arrangements, which we are administering jointly with the states and territories. I have it in my mind that the total amount of payments under DRP and DRA is in excess of $130 million, but I don't have the exact numbers here.

Senator HENDERSON: Can I clarify, in light of Senator Watt's questions about volunteer firefighters—you may not be able to answer this—what support volunteer firefighters are receiving?

Mr Cameron: The volunteer firefighter payment provides for lost income of up to $300 per day, up to a total of $6,000 per person.

Senator HENDERSON: Thank you very much. I want to very briefly move to the negotiations between Australia and the United States on the CLOUD Act agreement, which would significantly reduce the time it currently takes to acquire data that is vital to law enforcement and national security efforts between the US and Australia. Could I direct this to you, Mr Pezzullo: how many mutual legal assistance requests were made to the US in order to access data in the last year, and how long do these requests generally take to be made and completed? I'm just trying to understand the need for the CLOUD Act in light of the current challenges.

Mr Pezzullo: The short answer is: quite a number and a great deal of time. The slight complication we're going to have—and Mr Hansford will assist me—is the way in which machinery of government is set up. The Attorney-General's Department manages the, I think everyone would agree, fairly laborious process of seeking mutual assistance. Our department, because of the nature of the proposed rapid access to relevant telecommunications data, is leading on the CLOUD Act negotiations. It might be that Mr Hansford may or may not—he shouldn't be answering questions on behalf of the Attorney-General's Department in any event—be able to shed some light on current arrangements around mutual assistance, but I'd prefer that he focus his answers on matters that directly fall within the remit of our department and how the negotiations are progressing with the United States on said agreement.

Mr Hansford advises, having whispered into my shell-like ear, that he apparently has the consent of the Attorney-General's Department to provide said data. I just want to make it clear that, under the administrative arrangements order, the Attorney-General's Department manages that scheme. Mr Hansford can perhaps provide some headline data. If you have any questions specific to the mutual assistance regime, they'd be better placed to my colleagues tomorrow. If we could move as rapidly as possible to the CLOUD Act negotiations themselves, Mr Hansford.

Mr Hansford: Sure. On the headline figure that underpins the CLOUD Act negotiations in terms of the numbers of orders between the US and Australia: between 2009 and 2019
Australia made over 900 requests to the United States through the mutual legal assistance regime for either internet data or telephone records. Coming the other way, the US made under 30 requests during the same period. So that's the headline figure. When you look behind some of the data they are quite lengthy. Each mutual assistance request takes its own time, given the particular circumstances, but they are quite lengthy. So the policy rationale underpinning the CLOUD Act is to make that process much more seamless.

Senator HENDERSON: How are negotiations going? Could you update the committee?

Mr Hansford: They're going very well. Indeed, a delegation from the United States Department of Justice came down to Australia from 18 to 21 February and we had detailed discussions. I think it's fair to say that we're at a finishing point of those discussions and of the draft legislation as well.

Senator HENDERSON: How important do you regard the CLOUD Act as being?

Mr Hansford: I think the government outlined the importance of the CLOUD Act agreement in the agreement that Minister Dutton had with Attorney-General Barr on 7 October 2019. They reflected on the critical importance of the CLOUD Act to underpin the timely exchange of information, particularly between the US and Australia. Notably, some of the major tech companies are housed in the US; that's a particularly important point. The United Kingdom have outlined publicly the importance of sharing information between the US and the UK, and they're well advanced on a CLOUD Act agreement as well; indeed, it's before Congress at the moment. It is of critical importance. It will ensure better and more timely sharing of information, particularly to counter the issue of the delays associated with mutual legal assistance and the impact that that has on the investigation and prosecution of serious crimes like terrorism, organised crime activity, child sexual exploitation and the like.

Senator HENDERSON: Thank you very much, Mr Hansford.

CHAIR: Senator McKim, you've got 10 minutes.

Senator McKIM: I want to follow up on a couple of questions that I asked last time we were in estimates, about whether the Tasmanian government had requested financial assistance to recoup the costs incurred in fighting last summer's bushfires in Tasmania. From memory, it was Mr Cameron who was assisting me with that question. When I raised this with you last year, you were very clear in your evidence that the Tasmanian government had foreshadowed a request but not yet made it. Can you update the committee, if there is any update on that matter?

Mr Cameron: I can. If I recall correctly, your question to me was particularly around environmental protection costs and the Premier writing to the Prime Minister.

Senator McKIM: Yes.

Mr Cameron: That hasn't happened. Just to assure you that no-one's been sitting on their hands, though: there is still no request but we are actively working with our colleagues in the relevant areas of the Tasmanian public service. It's essentially about agreeing on a methodology, which we're close to doing, which will enable that letter as described to be written.

Senator McKIM: Sorry; when you say 'methodology', Mr Cameron, do you mean a methodology for calculating cost?
Mr Cameron: Yes, that's right.

Senator McKIM: Thank you. Has the Tasmanian government formally contacted any arm of the Australian government on this matter, that you are aware of, since it wrote on 25 January? I understand you'll be in discussion with colleagues in the Tasmanian public service but I'm asking about the government—by that, I mean a minister or the Premier of Tasmania. The former premier, Mr Hodgman, wrote on 25 January; I believe that was your evidence last time, that you were aware of that letter which foreshadowed such a claim being made. Has there been any other formal follow-up from the Tasmanian government since then or has it just been a matter of discussions with your colleagues in the Tasmanian public service?

Mr Cameron: To the very best of my knowledge, the latter.

Senator McKIM: Is there a cut-off or a deadline that you're working to here?

Mr Cameron: In the normal course of events, under the Disaster Recovery Funding Arrangements, states can include costs for a period of up to two years after the financial year in which the disaster occurred. If there are compelling circumstances—that's not quite the right language; I think it might be exceptional circumstances—the allowable time limit can be extended.

Senator McKIM: The Tasmanian government said publicly that they had till 31 March 2020 to submit a claim to the Australian government. You're not aware of any relevance around that date—31 March this year?

Mr Cameron: No, not without the material in front of me.

Senator McKIM: On the basis of your awareness, Mr Cameron, could you say if the Tasmanian government foreshadowed submitting a claim for only firefighting costs, or if the claim covered other elements such as, for example, environmental recovery assistance—in other words, funds to help the environment recover from the devastation of the fires?

Mr Cameron: I can't remember the granular detail of the letter from January from the Premier, so I can't help you there; I'm sorry.

Senator McKIM: Alright. Has anything over and above firefighting costs come up in your conversations with Tasmanian public servants?

Mr Cameron: I regret saying this, but I'll have to take that on notice. I will have to check with my staff to make sure that I give you a complete answer.

Senator McKIM: Okay, thanks, Mr Cameron; I appreciate that. Can I indicate for your officers, Mr Pezzullo, that almost all of the rest of my questions are in what would have been 1.3 or 1.4—that is, onshore or offshore compliance and detention matters.

CHAIR: Hold on; can we just check—are we talking about program 1.3?

Senator McKIM: Yes, 1.3 and 1.4.

CHAIR: Okay, sure.

Senator McKIM: We're ranging across program 1, as I understand it. Could I start by asking about the US resettlement arrangements. Are there any people who've been accepted by the United States for resettlement but have not yet been resettled in the US, and, if so, how many?
Mr Pezzullo: There are a number, and Mr Ablong and General Furini will address themselves to that question. From my recollection, 700 have been accepted and transferred, but how many have been accepted and not yet transferred is a number that I don't have in my mind.

Mr Ablong: As the secretary said, 702 refugees have resettled to date. Approximately 260 refugees have received provisional positive outcomes to resettle but have not yet made the journey.

Senator McKIM: Did you say 'provisional positive outcomes'?

Mr Ablong: That's correct.

Senator McKIM: Is there another stage beyond that that they're required to achieve before they are resettled?

Mr Ablong: Yes, there is.

Senator McKIM: There is?

Mr Ablong: They will go through health checks to make sure that they're fit to travel, and the US will then make its final positive decision in each of those cases.

Senator McKIM: So it's just the health checks that are left for that cohort?

Mr Ablong: Correct.

Senator McKIM: And you said 260?

Mr Ablong: Two hundred and sixty.

Senator McKIM: Is the department aware of any time frame within which the US is hoping to have those people transferred?

Mr Ablong: The current US planning is for that to occur by about midyear.

Senator McKIM: About midyear?

Mr Ablong: Yes.

Senator McKIM: Are there any other people still in the process apart from the 702 that have transferred and the 260 that you just mentioned? Are there other people at different stages of the process that have not yet received a provisional positive?

Mr Ablong: The US is still working on some interview processes, and the option of making yourself available for the United States resettlement is open to everybody who is in that cohort. So, people today could make a choice to enter that program right now and avail themselves of the opportunity to go through that process with the United States government.

Senator McKIM: Thank you. Do you know how many people have availed themselves of that opportunity that are not in that 260?

Mr Ablong: I will take that on notice and give you a definitive answer.

Senator McKIM: Are you able to split that 260 between Papua New Guinea and Nauru?

Mr Ablong: I will take that on notice.

Senator McKIM: I'm happy for you to take it on notice. Could you provide a country-of-origin breakdown.

Mr Ablong: Certainly.
Senator McKIM: Are any of the 260 people currently in Australia?

Mr Ablong: I believe the answer is yes. You will ask me the number next, and I will take that on notice.

Senator McKIM: I do ask, and thank you for taking it on notice. Are any of those 260—

Mr Pezzullo: I thought he wasn't going to ask it.

Senator McKIM: I don't think you were addressing me, Mr Pezzullo, were you?

Mr Pezzullo: No.

Senator McKIM: Were any of that cohort who are in Australia transferred under the medevac legislation?

Mr Ablong: Yes.

Senator McKIM: Do you have a number for that?

Mr Ablong: We will give you that number.

Senator McKIM: On notice?

Mr Ablong: Yes.

Senator McKIM: Is there a chronological end to the US resettlement deal?

Mr Ablong: The United States and Australia agreed to a number up to 1,250. In theory, were the US so disposed, they could continue the process for the length of time it takes to get to 1,250.

Senator McKIM: And are the US so disposed?

Mr Ablong: We are in constant conversations with the United States about how far their disposition will go.

Senator McKIM: And how far will it go?

Mr Ablong: At the moment they're in the process of trying to finalise by midyear.

Senator McKIM: At the moment the intention of the US government is to end the US resettlement arrangements by the middle of the year?

Mr Ablong: To finalise the interviews. By the time midyear comes around they will have effectively interviewed everybody who is still in a regional processing cohort—

Senator McKIM: And who has applied.

Mr Ablong: and they will have made decisions about the majority of that cohort.

Senator McKIM: I'm slightly confused. Does that mean the US government intends to end the processing in the middle of this year?

Mr Ablong: That is their current intention.

CHAIR: Senator McKim, you are in excess of 10 minutes. Can I come back to you for 10 in the next cycle?

Senator McKIM: You can, but I have just one more question on the US resettlement, which will tie that off.

CHAIR: If you can finish that off, that would be good.
Senator McKIM: Thanks. Of the 260 people that you mentioned—you may have taken this on notice, sorry; I've already asked it in the reverse, so I'm happy for you to move on, Chair, and I will come back to another topic.

Senator PRATT: Mr Pezzullo, we've had discussion at many an estimates in relation to bribery allegations made about Paladin. I'm wondering if you are now in a position to correct the record and your testimony, given you've been asked a number of times where you've said, 'There is no record, we have no such record, we are not aware of those matters, we have no knowledge of that approach and we discharged that allegation.'

Mr Pezzullo: I don't have any material before me that would lead me to think that I have to correct anything.

Senator PRATT: You would be aware that you did supply information that had come from the Department of Foreign Affairs and Trade in response to a journalist's query quite recently; is that not correct?

Mr Pezzullo: You are going to have to be more particular.

Senator PRATT: I will. It is a complex issue, as you might recall, particularly given how you have danced around the issue.

CHAIR: Excuse me, that is a bit of an unhelpful reflection there. I ask that you withdraw it and move on.

Senator PRATT: I'm happy to withdraw it. A media inquiry on 22 January the Department of Home Affairs stated, 'In relation to the broader question of alleged bribery, the department was made aware, subsequent to 21 October 2019, supplementary budget estimates, that Paladin had advised'—

Senator HENDERSON: Point of order, Chair.

CHAIR: Senator Pratt, I have had a point of order. Senator Henderson, what's the problem?

Senator HENDERSON: It's in relation to the matters that Senator Pratt is raising. Are they contained in a media report?

Senator KENEALLY: They are.

Senator HENDERSON: Also, could we have a copy before Senator Pratt continues her questions?

CHAIR: Yes, of course.

Senator PRATT: Yes, I'll get you a copy.

CHAIR: It looks like that's being arranged.

Senator PRATT: I did have them immediately on hand. Mr Pezzullo, do you mind if I keep reading the question while that's made available to the committee?

Mr Pezzullo: Well, I'll—

Senator PRATT: If you're not aware of the information I'm reading, then it's best you wait till that's in front of you.

Senator HENDERSON: Just on the point of order, I would—

Senator PRATT: It's only going to take a moment for me to—
Senator Cash: If Mr Pezzullo could be provided with a copy, that would be of assistance.

Mr Pezzullo: As much as I'd love to set a precedent about entertaining questions—

CHAIR: It'll come straight to you, Mr Pezzullo, and the photocopying and distribution process for senators will come thereafter. It's important you have that procedural fairness.

Mr Pezzullo: I've got in front of me a media article, yes.

Senator KENEALLY: Now I don't have it in front of me, because I've just given it to you, Mr Pezzullo, but I believe it is on the second page.

Mr Pezzullo: I can give it back to you.

Senator KENEALLY: That's alright. If you go to the second page—page 2 of four—the first paragraph says:

Home Affairs has confirmed to ... The Sydney Morning Herald that an alleged bribery demand to Paladin from a "purported" senior PNG official was reported to the Australian high commission in July last year.

That is the relevant part of the media report that Senator Pratt's questions relate to.

Mr Pezzullo: I think Senator Keneally's drawing your attention to that paragraph.

Senator PRATT: Yes. That information was provided by the Department of Home Affairs.

Ms Moy: That information came to the department post October estimates.

Senator PRATT: No, I understand. Let me ask the question.

Ms Moy: Sure.

Senator PRATT: You provided that information and you said that, yes, you had that information subsequent to the estimates. You also advised that the PNG government official had requested additional, unofficial fees and that Paladin advised that they did not pay the fees and that the matter had been reported to the Royal Papua New Guinea Constabulary. We've had numerous debates on this committee where you've been asked about these concerns never having been raised with Home Affairs. Do you stand by that?

Mr Pezzullo: Sorry, do I stand by what?

Senator PRATT: The fact of these concerns in relation to Paladin. You've said that you looked very hard and you hadn't seen any evidence of allegations of this nature.

Mr Pezzullo: I certainly stand by the accuracy of the answers that I've given you, based on my state of knowledge at the time that I gave you the answers.

Senator KENEALLY: This might assist. Ms Moy, you just said that the Department of Home Affairs was made aware of the information that was provided to the Australian high commission in July. On what date specifically was the Department of Home Affairs made aware of that?

Ms Moy: 23 October 2019.

Senator KENEALLY: Just after the October estimates?

Ms Moy: After the October estimates, In terms of the information that we provided in regard to that media request, the information was such that the high commission at the time did not report that information to either DFAT Canberra or Canberra Home Affairs. That was
because the information that they received did not meet the threshold and there was no indication that an extraterritorial offence had been committed.

Senator KENEALLY: If you don't mind, Senator Pratt, I might just pick up on a couple of things and follow on. Who was contacted in the department on 23 October?

Ms Moy: I'd have to take that on notice, in terms of who actually received the information.

Senator KENEALLY: Did it come from the high commission?

Ms Moy: Again, I'd have to take that on notice, in terms of the actual contact and who the individuals were.

Senator KENEALLY: That's not something that perhaps we could seek to have answered in the next few minutes? There may be knowledge within the room?

Mr Pezzullo: I doubt very much—

Ms Moy: I doubt that there would be knowledge within the room because—

Senator PRATT: We've got officers coming forward behind you so perhaps they do.

Major Gen. Furini: That information came to me on 23 October. It came from officials at the Australian high commission in Port Moresby.

Senator KENEALLY: What prompted them to forward it, if previously they didn't think it met a threshold?

Major Gen. Furini: A conversation that happened at Senate estimates two days earlier had prompted them.

Senator KENEALLY: On which date did the alleged approaches for bribes occur?

Major Gen. Furini: I'm not familiar with the date. The meeting occurred, I think, on 2 July, where it was advised to the high commission.

Senator KENEALLY: You are saying the high commission was advised—

Major Gen. Furini: Was advised on 2 July but—

Senator KENEALLY: on 2 July, so we can draw from that at some point prior to 2 July—

Major Gen. Furini: Yes, we could.

Senator KENEALLY: But you don't know that date. Was that included in the information provided by the high commission? Did they provide any other detail or did they just say: 'Hey, we've read estimates, just letting you know we were approached'?

Major Gen. Furini: Yes, that's pretty well how they phrased it. They'd been approached by the general manager of Paladin during an office call. He'd indicated that they'd been asked to provide some unofficial funds, if I remember correctly, for visa facilitation.

Senator KENEALLY: I realise that there may be some issues in terms of making that public, but I'd ask you to take on notice whether or not, and consider whether or not, that communication can be made public to the committee. Thank you.

My next line of questioning relates to something I asked at the previous estimates. Just to reflect on the same report that has been tabled. The Sydney Morning Herald does report that former Paladin director Ian Stewart raised these concerns in 2017. To quote the article it says:

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LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Mr Stewart said he had phoned the Home Affairs department in late 2017 to report the donation request and other improper approaches for Paladin to give subcontracts to politically connected PNG companies—

**Senator HENDERSON:** A point of order, Chair. I’m wanting to clarify with Senator Keneally, is this the same article or are we referring to a different article?

**Senator KENEALLY:** Yes, it's the same article. I always provide copies of the articles I am citing. Has an investigation been undertaken to look up phone records from 2017 between departmental officials and Mr Stewart?

**Ms Moy:** With regard to the contacts with Mr Stewart, we have looked at, and spoken to, all staff that worked in that space in regard to conversations or discussions with Mr Stewart. We don't have any evidence that Mr Stewart raised issues with regard to the $8 million that was previously asked about or the $15,000 that was previously asked about. We have no record or evidence that that was raised with the department. That being the case, equally the issue of someone asking Paladin, or any contractor, for funds is in and of itself not an offence that is within the remit of the Australian government or the Australian Federal Police. If Paladin had offered, or paid any funds, we would be extremely interested to see any evidence of that or any accusations in that regard. That's not the information that we have received at all, and we have looked.

**Senator KENEALLY:** So you have looked. It was a very specific criteria you put in your answer in terms of an $8 million or a $15,000 offer. I'm wanting to clarify, you didn't just look for those figures? You have looked more generally if Mr Stewart has raised—

**Ms Moy:** They are the figures that Mr Stewart had raised with us previously with regard to donations or had raised in media reports.

**Senator KENEALLY:** My question is: did you look for any other evidence that Mr Stewart had raised concerns in relation to requests for donations and other improper approaches? I only reflect that Secretary Pezzullo, the last time we discussed this, has said that the department would broaden their horizon beyond just the $8 million figure. I just want to clarify it, because you specifically just said $8 million and $15,000, and I don't want it to be that you only looked for those two offers, but that you looked more broadly.

**Ms Moy:** We specifically looked for those as well. The only information that we had was the previous information we had discussed prior to October 2019, where a Papua New Guinean individual who was unknown to us had misrepresented themselves to Paladin and Paladin had reported it to the Royal Papua New Guinea Constabulary and that person was charged. That was in request for funds, but that was a non-Papua New Guinea official. Mr Stewart had contacted us post April 2019 estimates and had provided us with some emails, which did not have any evidence or information or detail with regard to requests for donations or requests for funds. They were more with regard to discussions around, 'these are issues,' and the discussion that we previously had pre October 2019, which was where an individual had contacted us to hurry along with some visas. That discussion was had with the Papua New Guinea Immigration and Citizenship Authority, and they issued the visas in the time that we needed.

**Senator KENEALLY:** I asked if an investigation had been undertaken to look up phone records from 2017 between departmental officials and Mr Stewart. Can you confirm if that happened?
Ms Moy: Specifically phone records?
Senator KENEALLY: Yes.
Ms Moy: No, I'm not aware that we're able to trace phone records between individuals.
Senator KENEALLY: Okay.
Ms Moy: I wouldn't have Mr Stewart's number.
Senator KENEALLY: Who would have been Mr Stewart's contact within the department in 2017?
Ms Moy: Mr Stewart would have contacted a number of people in terms of operations on the ground in Papua New Guinea, and also offices in Canberra with regard to the contract.
Senator KENEALLY: Would that include the First Assistant Secretary of Property and Major Contracts at that time, Mr David Nockels?
Ms Moy: It could have included Mr Nockels, yes.
Senator KENEALLY: At the last estimates I sought to see if Mr Nockels could answer questions on this. Is he here today?
Ms Moy: I don't believe he is here, no. I haven't seen him today. He doesn't work in this space.
Senator KENEALLY: Mr Nockels was moved on 24 June 2019 to be the First Assistant Secretary of the Identity and Biometrics Division. Is he not here in that capacity?
Mr Pezzullo: No, I don't believe so.
Ms Moy: I don't believe so, no.
Senator KENEALLY: He is not here again. So he is not available again to answer questions at estimates on this matter.
Ms Moy: Not all officers attend estimates.
CHAIR: I don't believe he was requested.
Senator KENEALLY: His position is listed on the officials that has been tabled here. There is an acting person in his current role. Why is there someone acting in his current role?
Mr Pezzullo: He must be on leave or on some form of official duty. I don't know. I will ask Mr Grigson. He works for Mr Grigson.
Senator KENEALLY: Mr Grigson, where is Mr Nockels?
Mr Grigson: He is overseas.
Senator KENEALLY: He's overseas?
Mr Grigson: On duty.
Senator KENEALLY: Not on personal leave?
Mr Grigson: Yes.
Senator KENEALLY: When did he leave?
Mr Grigson: Sometime last week.
Senator KENEALLY: And when is he back?
Senator HENDERSON: Point of order, Chair. I'm sorry to raise this, but I believe Senator Keneally's questions are reflecting adversely on Mr Nockels. I would ask Senator Keneally to rephrase her questions.

CHAIR: I don't think there's anything adverse in the questions at this point.

Senator HENDERSON: It's just the fact that he is overseas and your questioning when he is going to return. It just does not have a good smell about it.

Senator KENEALLY: Are you contesting the chair's—the chair hasn't made her ruling yet.

Senator HENDERSON: I'm clarifying why I took the point of order, Senator Keneally, thank you.

CHAIR: Thank you for the clarification. I'm of the view that at this point the questions don't reflect adversely. They are strictly factual and, if they stray from that territory, I will call Senator Keneally to order. Please continue.

Senator KENEALLY: Thank you, Chair. Mr Grigson, do you know when Mr Nockels is returning?

Mr Grigson: I'm just finding out for you, Senator.

Senator KENEALLY: Thank you, I appreciate that.

Mr Grigson: Thursday, Senator.

Senator KENEALLY: So he went away last week and he's back next week.

Mr Grigson: Back Thursday this week.

Senator KENEALLY: Back Thursday this week.

Mr Grigson: That's right.

Senator KENEALLY: A pity we aren't having estimates on Thursday, isn't it? Alright. Chair, I will put on the record that Senator Pratt has a few follow-up questions in relation to this matter, when we return from the break, but I can see that you are keen to get to the break, so I will stop there.

CHAIR: Thank you. Can I get an indication from Labor senators about the volume of questions they have for outcomes 2 and 3?

Senator KENEALLY: Maybe we'll look at that over the break and come back to you.

CHAIR: I would value that. I ask Senator McKim to do the same thing. We will reconvene in 15 minutes.

Proceedings suspended from 21:21 to 21:36

Sleep Senator PRATT: Mr Pezzullo, does the Department of Home Affairs have an officer in the PNG high commission?

Mr Pezzullo: In Papua New Guinea's high commission in Canberra? No.

Senator PRATT: No, in PNG.

Mr Pezzullo: We have staff posted to the high commission, yes.

Senator PRATT: So they would have been posted there at the time that this information came in from Paladin in relation to this allegation?
Mr Pezzullo: We've had staff posted to the high commission for a considerable period of time, so I'm assuming that there would have been what are known as A based officers based to the high commission.

Senator PRATT: When you say that you had asked everyone whether there was any possible allegation around bribery or other kind of political donation, you did say that you would go and ask in the broadest possible terms. Did that not include that officer?

Mr Pezzullo: We have a number of officers posted offshore, and whether officers were specifically asked or not I don't know.

Senator PRATT: It's just that you said you were extremely confident that you had no such information before you.

Mr Pezzullo: That's right. You can only go off the records that you've got. Every time we investigate this matter we look at this. The records that we hold bear no resemblance at all to the claims that are subsequently made by people who say, 'Hang on, I think I told someone.' Then we will go and look at that and there's no record that we find.

Senator PRATT: The issue is that you said 'I have a preliminary view that we have no such record' but that you were going to go away and cast the net more broadly.

Mr Pezzullo: More broadly, yes.

Senator PRATT: This is matter that relates to—

Mr Pezzullo: Is that statement possibly dated 21 October last year?

Senator PRATT: That was 4 April, but on 21 October you made very similar undertakings. The department answered a question on notice that was from 21 October estimates. I'm assuming that that answer would have been drafted after 23 October. In that again you deny that there was any such information, despite the fact that this information came in to you on 23 October.

Mr Pezzullo: We've checked records. We continue to check records to see if anything that approximates what is otherwise stated as fact in media reports and elsewhere can in any way be said to resonate with our records. The answer up until now continues to be no.

Senator PRATT: 'Subsequent to supplementary budget estimates on 21 October, another comprehensive check of relevant departmental electronic records was undertaken. We could not locate any record of such a request or a record from Paladin advising of such a request.' Is that correct?

Mr Pezzullo: Are you reading from a response that we provided?

Senator KENEALLY: I'm happy to table this for Senator Pratt.

Mr Pezzullo: The language resonates. I'm seeking to be absolutely clear.

Senator PRATT: It's answer to a question on notice. To be honest, you said, 'This is subsequent to supplementary estimates.' So this is post supplementary estimates. Surely that review at that time would have picked up the information provided to you on 23 October—in the very same month.

Mr Pezzullo: It's a function of what was asked in the question taken on notice. We respond to the questions that we're asked.

Senator PRATT: I can read to you what I asked you. I said:
Has it been misconstrued in some way? Journalists don't make up these kinds of allegations.
You said.
Not as at the last time we checked, which was April of this year.
I asked:
And what about now?
You said:
I'll take that on notice. I'll cause more inquiries to be made, in light of Mr Baker's article.

**Mr Pezzullo:** I think that's me speaking in October last year.

**Senator PRATT:** That's right. You reply in that answer that subsequent to 21 October you had a comprehensive check. What I can't really fathom is that on 23 October this information came in to you, even though it might have been within the knowledge of your official in the Department of Home Affairs who was resident in the Australian High Commission in PNG, that you did not pick up a record that would have come in in relation to that information. It came in on 23 October.

**Senator KENEALLY:** Just to clarify, Major General Furini has just given evidence that the high commission notified the Department of Home Affairs on 23 October that they were aware of an alleged attempt at bribery or inappropriate payments that was raised with them by Paladin. As Senator Pratt has pointed out, you provided an answer in writing subsequent to 21 October to her question on notice. What we're trying to understand is, when you provided that answer how is it that you were not aware at that point of the advice that Home Affairs had received on 23 October?

**Mr Pezzullo:** The exchange that Senator Pratt has just described, recounting the exchange that we had, was answered specifically in relation to question 110. Perhaps Ms Moy might want to amplify that point for the benefit of listeners.

**Ms Moy:** The question on notice was specifically in regard to the $8 million bribe request.

**Senator PRATT:** That note in there says, 'note this discussion is around $8 million.' I did not ever say that in the context. Someone's written it there as a general context guide, but you and I both know that we were having a very broad discussion around bribery and corruption. Mr Pezzullo himself said he would cast the net wide in examining those matters. So there's no way that you can now construe that it's $8 million only.

**Ms Moy:** As I understand it, the discussion prior in *Hansard* was that. That was the context provided. In regard to that, though—

**Senator KENEALLY:** That may be the case, but, if we look at the last paragraph of the QON, the question on notice, you say, 'Subject to supplementary budget estimates on 21 October, another comprehensive check of relevant departmental electronic records was undertaken. Again the department was not able to locate any record of such a request or a record from Paladin advising of such a request.' Are you now saying that paragraph only relates to an $8 million bribe?

**Ms Moy:** That was the note provided in regard to the context of the QON.

**Senator KENEALLY:** So you're saying this entire QON is only in relation to an $8 million bribe and not the idea of a bribe in general?
Ms Moy: That is as answered at the time. It was in regard to the $8 million bribery, which was the information that was provided and spoken about in the media at the time, prior to October. Additionally, I can advise that Paladin have attempted to get evidence or information from Mr Stewart in regard to the allegations. They have put a media release on their website which talks about the issue of not being able to secure the evidence from Mr Stewart and that he provided a statement which said that he was unable to sign it because he wasn't able to satisfy himself of the evidence.

Senator KENEALLY: Mr Stewart has also suggested he would come to a Senate committee to provide evidence here.

Ms Moy: We'd be happy to see any evidence.

Senator KENEALLY: I'm still a little bemused and disappointed at the same time in your answer here because Mr Pezzullo has made quite clear in previous testimony: I've asked that the net be cast a little bit more widely to include the question: irrespective of any suggestion of inducement, extortion, bribery, corruption or misconduct otherwise, has the issue of a donation, without any adverse connotations otherwise, arisen and is reflected in our records in the manner described?

Mr Pezzullo: Was that me?

Senator KENEALLY: That was you. That was you on 4 April 2019, Senate estimates, page 37. I'm trying to understand: when the department signed off on Senator Pratt's question on notice, were you aware—did you sign off on it, Ms Moy? Who signed off on that question on notice?

Ms Moy: I'm actually not sure, Senator. I'll have to take it on notice and find out.

Senator KENEALLY: Surely somebody knows who signed off on that question on notice. I'm quite confident that is not the kind of thing that couldn't be answered here in this room in the next 10 minutes. I'm trying to understand: the Department of Home Affairs knew that the high commission had received information about a bribe request and Home Affairs knew about it on 23 October, but they chose to narrowly construe a question so as to avoid providing that information in the questions on notice, or was the department ignorant of what Major General Furini knew?

Ms Moy: I don't believe that anyone has misconstrued or tried to misconstrue a response. The response was provided to the question about the $8 million. I'll have to look at the time frame of the dissemination of the information that came to Major General Furini. I'll take that on notice and provide it.

CHAIR: Senator Keneally, do you have much more on this line of questioning, because we're at almost 12 minutes?

Senator KENEALLY: I just note for the record on behalf of Senator Chisholm: he wrote about this matter to the Minister for Home Affairs some weeks ago and has yet to receive an answer. I, through you, Minister, ask that Senator Chisholm receive an answer to his correspondence on this very matter.

Senator McKIM: I want to ask a couple of questions about offshore detention. Firstly, how many people in the offshore cohort are currently in Papua New Guinea and in Nauru?

Mr Pezzullo: In round terms, 500, but General Furini has the detailed breakdown.
Major Gen. Furini: Offshore, currently in PNG and Nauru, there is a total of 439.

Senator McKIM: Thank you. Can you break that down between the two countries?

Major Gen. Furini: Yes. There are 211 in Nauru and 228 in PNG.

Senator McKIM: Do you have figures on how many people from that cohort are currently in Australia?


Senator McKIM: And do you have them broken down in terms of whether they were on Nauru or in PNG?

Major Gen. Furini: I'll just have to check my briefing, which I don't have readily at hand.

Senator McKIM: Righto.

Major Gen. Furini: I don't have it. I'll have to get you that information on notice.

Senator McKIM: Thank you. We heard evidence just before the break that there were 260 people in that cohort who were provisionally accepted for the US deal but had not been transferred.

Major Gen. Furini: That's 260 from both PNG and Nauru and onshore in Australia.

Senator McKIM: That's where I was going. So, once the 260 people are transferred, how many people will be left offshore? You may not have that number. I'm happy if you want to take that on notice.

Major Gen. Furini: I don't have that number, other than to say it's very, very fluid because it will depend on any further medical transfers to Australia, plus any people that get negative or positive decisions who are still undergoing the US process et cetera. But it's fair to say there will be a cohort of people in both PNG and Nauru who will not have gone to the United States.

Senator McKIM: Yes. No, I appreciate that. Also, are you aware of anyone who's still on Manus Island? I understand—I believe—the facilities are closed Are the three facilities that were used post the closure of the Lombrum facility all closed in terms of any Australian government involvement?

Major Gen. Furini: They are all closed in terms of Australian government involvement.

Senator McKIM: And are there any people from that cohort left on Manus Island?

Major Gen. Furini: There are four people from that cohort, one of whom is on a resettlement pathway in PNG, so he's included in those other numbers; two refugees who are undergoing criminal matters; and a failed asylum seeker who elected to remain.

Senator McKIM: On Manus Island?


Senator McKIM: I wanted to ask some questions about Rakib Khan. He was a person who was sent to Nauru and he died in 2016, on 11 May. His mother has recently spoken publicly and made it clear that she still doesn't know how and why her son died. I want to ask either Minister Cash or Mr Pezzullo whether the department will commission an independent inquiry into how Mr Khan died so his mother can be provided with that information.
Major Gen. Furini: Mr Khan died in Nauru. Any inquiry into his death is a matter for the government of Nauru.

Senator McKIM: Well, Mr Khan was sent, involuntarily, to Nauru by the Australian government, was he not?

Mr Pezzullo: I think it's a matter of fact, and it's been upheld in case M68, I think—I can't remember—that Australia transferred custody of people who had sought to arrive here by illegal maritime means to Nauru and PNG—lawfully, under our Migration Act—and transferred those persons into the migration jurisdiction of those two countries, Nauru included.

Senator McKIM: Mr Khan was exiled to Nauru by the Australian government. He was cared for, leading up to his death, by contractors employed by your department, Mr Pezzullo. That was Aspen Medical and IHMS. Doesn't that provide your department and the Australian government with a level of responsibility to provide answers for Mr Khan's poor mother?

CHAIR: Senator McKim, I encourage you to be a little more precise in your language. Exile isn't the process we're talking about here.

Senator McKIM: It certainly was.

CHAIR: Although you may wish to characterise it that way—

Senator McKIM: I do.

CHAIR: Perhaps you could be a bit more precise in the way you describe the process.

Senator McKIM: I stand by the description of exile.

CHAIR: Perhaps Mr Pezzullo can put a more accurate description—

Senator McKIM: I'm not asking Mr Pezzullo to do that, and thanks for your assistance. What I'm actually asking, Mr Pezzullo, is whether the fact that he was sent to Nauru involuntarily by the Australian government and died while under care of contractors contracted to Mr Pezzullo's own department—

CHAIR: I heard the question.

Senator McKIM: set up an element of responsibility for the department to assist Mr Khan's poor mother to—

CHAIR: We heard and understood the question. You don't need to repeat it. The point was to say that you are describing something in a way that is not accurate at all.

Senator McKIM: That's totally accurate.

CHAIR: No, it isn't.

Senator McKIM: Yes, it is.

CHAIR: I'm not going to get in a petty tit for tat. Let's get on with the evidence.

Senator McKIM: Do you need me to repeat the question for a third time?

CHAIR: No.

Senator Cash: I think Mr Pezzullo understands.

Mr Pezzullo: I've refreshed my memory. All I can really do is add to or confirm my previous evidence and that of the general that this gentleman died in a foreign jurisdiction—
namely, the jurisdiction of Nauru—and the relevant coronial and/or investigative processes of that country are applicable.

Senator McKIM: Has the government made any inquiries to either the government of Nauru or the Republic of Nauru Hospital about the circumstances that led up to Mr Khan's death?

Mr Pezzullo: I'll need to check. I'll take that on notice as to whether, subsequent to this man's death, we made any inquiries at all.

Senator McKIM: Are you aware of any reasons why his mother shouldn't be given access to his medical records? I ask because she's being denied those records.

Mr Pezzullo: As I said, it's unfortunate and, indeed, regrettable—

Senator McKIM: Tragic, actually.

Mr Pezzullo: Indeed, tragic. Any death in any circumstance, particularly if it's unexpected, that causes grief to a loved one, such as a mother, can only be thought of at a human level as being tragic. But, as a matter of law—we have to deal with administration and law here—this is a death that occurred a foreign jurisdiction. Questions of medical records, who the attending medical practitioners may or may not have been and the circumstances of death are really matters best directed to the government of Nauru.

Senator McKIM: Your department holds medical details of Mr Khan—doesn't it?

Mr Pezzullo: I'm not sure as a matter of fact that that's right. But I'll just see if we've got copies or if—

Senator McKIM: He was about to be transferred to Australia on the day that he died.

Mr Pezzullo: I was going to get to that. If there was a question of a transfer to Australia—

Senator McKIM: Yes, there was. He was about to be transferred when he died.

Mr Pezzullo: then there might have been files or information transferred to the relevant decision makers who—

Major Gen. Furini: That was a transfer in emergency circumstances as opposed to a deliberate transfer.

Mr Pezzullo: If a transfer, emergency or otherwise, was about to take place, it might well be that there are certain medical facts or certain documents that reflect medical facts known to my offices. But I'd want to examine those documents. Accordingly, I'll take it on notice.

Senator McKIM: Okay. While you're taking that on notice, could you also take this question on notice: if there are such records, will the department provide them to Mr Khan's family and to his mother? I'm happy for you to take that on notice.

Mr Pezzullo: I'll take on notice the question of disclosure of records, yes.

Senator McKIM: Alright, thank you.

CHAIR: Senator McKim, you're at 9½ minutes.

Senator McKIM: Yes, this is my last question on this topic. Are you aware of the coroner's inquiry into the death of Hamid Khazaeri?

Mr Pezzullo: Yes, I am.
**Senator McKIM:** That recommend, in general terms, that there should be an independent judicial inquiry when people die offshore. Why has that not been accepted by your department?

**Mr Pezzullo:** I'll just check whether General Furini or perhaps our general counsel has an answer for you. But I recall a recommendation to that effect from the coroner—of course, it was a state coroner. Whether that's suggestive to federal authorities or binding is a matter that perhaps Ms de Veau can shed some light on.

**Ms de Veau:** The recommendations from the coroner included recommendation 8, which was ultimately a matter for the Attorney-General's Department. That recommendation related to potentially having some form of legislative change to provide for coronial powers in relation to deaths offshore. Recommendation 8 was:

... that the Commonwealth Attorney-General establish and fund a statutory framework to ensure the independent judicial investigation of the deaths of asylum seekers transferred by the Australian Government to regional processing countries.

And the response was:

The Attorney-General has reviewed this recommendation and notes that it raises practical difficulties and complex legal issues. Regional processing centres are located in sovereign foreign countries. Investigation into deaths in these centres as well as any contractual arrangements in place are matters for the governments of those countries. It would not be appropriate for Australia to implement a statutory framework for the repatriation and independent judicial investigation into the deaths of asylum seekers in sovereign foreign countries. However, the Australian government is considering options to build the capacity of regional processing countries in respect of their ability to conduct coronial inquiries.

**Senator McKIM:** So, Mr Pezzullo, in light of that recommendation from the coroner who was examining the death of Mr Khazaei, it remains your opinion that you won't commission an independent inquiry into Mr Khan's death?

**Mr Pezzullo:** I'm not sure whether we're listening to different evidence, but the government, in the form of the first law officer, has responded to that coronial inquiry and, as I heard it, responded to it in the negative.

**Senator McKIM:** Yes, it was certainly in the negative.

**Mr Pezzullo:** I'm just trying to draw the connection in my mind, as best as I can—

**Senator McKIM:** Well, I'm just asking you, given that the Attorney-General's Department has responded in the negative to that recommendation of the coroner regarding his inquiry into Mr Khazaei's death—given that that was in effect rejected by the Attorney-General's Department—would you commission an independent inquiry into Mr Khan's death, using the resources of your department?

**Mr Pezzullo:** I understand the question now. All I can really do is follow the same line of reasoning that the Attorney-General—did you say the Attorney-General himself, or his department at least—

**Senator McKIM:** I think it was his department.

**Ms de Veau:** It was through the department, but obviously it was in consultation.

**Mr Pezzullo:** In the end it reached the level of the minister responsible for the Attorney-General's Department. I think what you're asking me is: the Australian government's taken a
position on the general matter, but would I in this particular case create an exemption or an exception to that authority and use my own resources to—

Senator McKIM: Yes, to commission an independent inquiry.

Mr Pezzullo: I see. Well, for the same reasons that the Attorney-General—Mr Porter, I'm assuming, here—expounded in the general, I would have thought that, for the same reasons, that would apply here in the particular.

Senator McKIM: As you're taking those questions on notice, I would ask you to place yourself in the situation of Mr Khan's mother and try to understand the distress that she's in, where she doesn't know how and why her son died while he was in Australia's care.

Mr Pezzullo: And my earlier acceptance of those questions taken on notice goes to seeking to disclose to her as much as we can within our own jurisdiction. But you've now asked me about whether I'm going to commission a particular inquiry using my own resources, which for the reasons the Attorney-General's expounded generally would in this particular case be similarly applicable—infeasible, impractical, no extraterritorial authority—and for that reason not a viable approach.

Senator CICCONE: I have a couple of questions with respect to border security identity management. I don't know if there is anyone else that may need to come forward. I'm interested in knowing what the department is doing to reduce the risk of people entering Australia who are not who they say they are.

Mr Pezzullo: We do a lot of work in our identity and biometrics area to support both our visa decision-makers and also our Border Force officers, generally under the rubric of our enterprise biometric identification system. I might ask Mr Grigson, who may or may not want to come to the table, to add to that, assisted by Mr Rice. The question pertains to our enterprise biometric identification systems. Just to be clear: is the visa issuance stage the main point of your interest?

Senator CICCONE: I have a number of questions, as you would appreciate, but I am interested to know broadly what the department's overall view is and what the strategy is to reduce that risk of people entering Australia, in particular at the airport.

Mr Pezzullo: So both in terms of the issuance of visas in the first place and then the subsequent travel—because you have to have a visa to travel to Australia?

Senator CICCONE: For me, the line of questioning would be more around the airport and obviously the processes around the identity of individuals coming through your SmartGates.

Mr Pezzullo: So, Mr Grigson, how your group expertly supports the Australian Border Force.

Mr Grigson: Thanks for the question. I will pass to Mr Rice. Generally we assist with people assuring identity for people who apply for visas. There is often a biometric collected—but not in all cases—and, if we hold a biometric from a previous application, we match them to make sure it's the same person. So that's one aspect of our work. A second aspect is what we call a complex identity assessment, which is in both visas and for other purposes. This is where we think there may be some concern about a person's identity. We have teams in most
of the regional capitals who are expert at confirming a person's identity based on material provided in their application. They are the two main streams of work.

Senator CICCONE: Just to go to your first point, when you say a previous application, what do you mean?

Mr Grigson: Let's say you've made an application for a tourist visa, for a short-term visitor visa, and on that occasion we've collected a biometric. When you apply again for another visa we'll check that biometric again to make sure it is the same person.

Senator CICCONE: How is that biometric collected?

Mr Rice: It's collected through a range of approaches. We have a significant collection enterprise offshore through our service delivery partners, who collect biometrics for some visa classes. We will also collect some biometrics at the border as well.

Senator CICCONE: Who are these service delivery folk that we collect data from?

Mr Rice: They are contracted service providers.

Senator CICCONE: Are you able to provide it on notice?

Mr Grigson: They take in the visa application, do some of the paperwork, collect a biometric, come through to a departmental officer for—

Senator CICCONE: Are these overseas companies?

Mr Grigson: I'd have to get you some advice on that, Senator. We provide support to the relevant group—and here comes Mr Kefford to help me out.

Mr Kefford: We currently have arrangements with three companies around the world who fulfil the services that Mr Grigson was referring to.

Senator CICCONE: And who are the three companies?

Mr Kefford: There's a company called VFS and another one called CSRA.

Senator CICCONE: And what was the third one?

Mr Kefford: It is a subsidiary of VFS called TTS.

Senator CICCONE: Are they all based in Australia or are they overseas companies?

Mr Kefford: VFS is a Swiss company that operates out of Dubai, and CSRA is a US company.

Senator CICCONE: And the subsidiary?

Mr Kefford: It's all in the same ownership structure, Senator. The two VFS companies are in the same ownership structure.

Senator CICCONE: I assume there's a reason there are three companies. This must be part of a tender process. Do all three provide different datasets to the department or are we trying to ensure that the data collected matches for accuracy?

Mr Kefford: The standards are set by our colleagues in the biometrics division, having reference to accepted standards for that sort of data. In terms of the company histories, there has been a consolidation of those companies. It used to be three separate contracts and then the VFS purchased TTS about 18 months ago.

Senator CICCONE: Is any of that data shared with any other government agencies or departments?
Mr Rice: Mr Grigson spoke earlier about the face-matching services, in response to questions from Senator McKim. One of the data-holding services that the face-matching service connects to is our own biometric system, the enterprise biometric identification service. When the face-matching services are fully enabled, and as long as the requesting party has a legal basis to request that information, they could access that information. But that's not happening at the moment.

Senator KENEALLY: If I can just clarify, Senator Ciccone, when you say the 'face-matching services', for those who might be reading or listening could you explain what you mean by that? Who is doing face matching and in what context?

Mr Rice: Certainly. That was the line of inquiry that Senator McKim had earlier on, that Mr Grigson was responding to. That is what I was referring to.

Senator KENEALLY: But just in this context, could you briefly—

Mr Rice: In this context, it's no different to what Mr Grigson said earlier on. The face-matching services allow for that verification: 'Am I Andrew Rice?' and 'Who is this person?' They are, essentially, the face-matching services. As per the intergovernmental agreement on identity-matching services, from 2017, one of the biometrics holdings that are queried are our own images in Home Affairs—visa and citizenship images.

Mr Grigson: If I can just help, I think you are talking about assurance of visa applicants overseas from whom we collect a biometric.

Senator KENEALLY: Yes.

Mr Grigson: It's matched back here against the department's own holdings.

Senator KENEALLY: Right. And that was the case which you described—for example, if someone had applied previously or had been here previously.

Mr Grigson: That's right. It might be face, it might be fingerprints; it's some form of previous biometric holding that we can use, in the same way, to ensure that the person who is applying is the same person.

Senator CICCONE: In the second part of your answers earlier you mentioned that in most capitals, I think, you had officials. Why 'most capitals'?

Mr Grigson: The complex identity assessment teams are based where a great deal of the workflow is. There's a big team in Sydney, for instance, as you'd expect. I would have to look at the historical basis for them being based in the capital cities. They work at airports as well. They help with document verification, like a passport that looks like a false one.

Senator CICCONE: If you were at a capital that didn't have any officials in that space, would they be gathering intelligence or data from other capital cities? Is that how that works?

Mr Grigson: It is. The fact that a capital city might not have a team in place doesn't mean that the capital city doesn't provide a service.

Senator CICCONE: I don't want to know the specifics, in terms of the capitals, but how many teams do you have?

Mr Grigson: I'll take it on notice. I don't see any reason that we can't give you the list of where they're based.
Senator CICCONE: Thank you. What about the SmartGates that operate in our airports? How do they work, and, in a general sense, could you explain to me and the committee how that interacts with the data we just spoke about?

Mr Pezzullo: I might, in the first instance, see if the commissioner wishes to speak about how he uses the SmartGates. The department maintains the technology in them and there might be particular issues about data exchange that Mr Grigson can assist with. Commissioner, perhaps, how do you generally deploy your SmartGates?

Mr Outram: The SmartGates are basically the face-to-passport check. They make sure that the face that's in the passport and the photograph is the person standing in front of the SmartGate. They also will allow us to then identify passengers who may be of interest, for an immigration or a customs or a biosecurity point of view. The ticket you get will provide our officers with information they will need, in relation to passengers, that we need to do other things with. Basically, it validates the face to passport. We don't store information in SmartGates. We don't link it or cross-reference it to other databases. It's basically the face to passport.

Senator CICCONE: So it is basically just looking at the individual's face with the face that's on the passport?

Mr Outram: That's right.

Senator CICCONE: So it doesn't do any comparison to any biometrics?

Mr Outram: No, not beyond that. That's the comparison: your face standing in front of the camera and the picture that's on the passport. Obviously, with people with different hairstyles, who change their hair or whatever, the SmartGates are actually much more effective in identifying anomalies than humans are.

Senator CICCONE: Are there any deficiencies that you can think of in how the SmartGates work and how they interact with our visa system overall?

Mr Outram: I would love them to be linked to criminal records and other databases, for example, but they're not.

Senator KENEALLY: Sorry, did you say you would like them to be?

Mr Outram: Yes, I would, because we could obviously then pick up more people at airports who represent a risk to our country. But what they do, very efficiently, is allow passengers to move very quickly through airports and make sure that the person on the passport is the person standing in front of the camera. The queue times at airports since we introduced SmartGates have gone down exponentially. So we get the same outcome in terms of knowing who the person is, whether they are the person on the passport and whether there is any information about them we should be worried about, and referring them to what we call secondary examination, but it does it in a very seamless way.

Senator CICCONE: Part of the reason for some of this questioning is: what if someone has a fake passport?

Mr Outram: To that point, obviously our border doesn't start at the SmartGate in Sydney; it starts when somebody applies for a visa. Nobody can fly to Australia without a visa. That is point 1. They obviously need to get uplift from an overseas airport. Even there, the check-in person with the airline will be doing a face-to-passport check. Of course, these days passports
have smart chips on them. Obviously, to use a SmartGate you can only use certain passports with a chip in them. For those chips, a number of countries have signed up to a standard that reduces the risk. It doesn't eliminate it entirely, but it reduces the risk of people making fraudulent documents.

**Senator CICCONE:** How many fraudulent documents/passports are you aware of that you and your team annually come across?

**Mr Outram:** I will take that on notice. Let me say that there is a document alert system globally for any lost or stolen passports. For documents that are produced genuinely but are misplaced or whatever, there's a record of those travel documents maintained globally.

**CHAIR:** Senator Ciccone, we are at almost 13 minutes on this line of questioning. Do you have much more on this line?

**Senator KENEALLY:** Could I just follow up to wrap up this section to make sure we've understood correctly.

**CHAIR:** Okay.

**Senator KENEALLY:** There are some classes of visas that people apply for where they need to supply biometric information in the application, recognising that that's not all visa classes but some—correct?

**Mr Kefford:** Yes.

**Senator KENEALLY:** Secondly, when those people who have already supplied their biometric information travel to Australia and they present at this SmartGate, what happens is a comparison between the document they put in the SmartGate and the person standing in front. It does not check or link to the biometrics information that they have previously supplied at the SmartGate. Is that correct?

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

**Senator KENEALLY:** I'm mindful of the time, Senator, but I am just trying to understand. Say Senator Ciccone doesn't live in Australia and applies for a visa using his own biometric information, but then Senator McKim gets a fraudulent document that says he's Senator Ciccone, puts a photo of himself on that document and basically fraudulently presents himself. If he turns up at this SmartGate, the photo on the passport will be of Senator McKim. He will be the person standing there, but he's actually arrived on a fraudulent document, a visa, that has been validly applied for by another human: Senator Ciccone. So I'm trying to
understand: at what point might you compare the biometric information at SmartGate with what they have previously supplied?

Mr Outram: There are a number of mechanisms, of course, built into modern passports to prevent forgeries like that occurring. It is not very easy to just cut a photograph out of a passport and put someone else's in there.

Senator KENEALLY: I understand that, but the UN Office on Drugs and Crime has issued a very significant report about the rise of fraudulent passports, and I'm sure you are very aware of that.

Mr Outram: That's right. You've heard us mention the airline liaison officers a couple of times tonight. I don't want to go into exactly which airports they are at but there are airports where we get a lot of people hubbing through to Australia. They work with airlines and they are trained in document examination. They are given equipment so they can look very closely and carefully at documents to identify forgeries. So we are on the lookout as are officers back in Australia too. You can never guarantee that there's a 100 per cent guaranteed system but it is pretty tight and it is not that easy to defeat.

Senator KENEALLY: So I guess my question is: at some point is the data collected at the SmartGate compared or linked to the biometric data that was collected when they applied for their visa?

Mr Outram: It is not the biometric data but the chip in the passport. We will know from the advanced passenger information that that person is on a departmental system and we'll know whether or not they are on a document alert system, a person alert system or our central movement alert system. If there's any information that should be of concern about that document or that person, we will be alerted to that while they are in the air. Then when they arrive at the SmartGate, the SmartGate obviously will be configured to give us the heads-up that we need to do something different with this passenger, so it may not open. They may be held at the SmartGate or other things.

Senator CICCONE: Are there any plans to sort of connect the system?

Mr Pezzullo: Yes. The centrepiece of the new global digital platform that we're hoping to deploy, which is going to involve quite significant capital investment, is precisely designed to achieve the synergy that seems to be the premise of both of your questions—that is, to say the moment you start to apply for a credential to enter Australia you've got an anchored identity in 100 per cent of cases. It is one of the key design features of the request that we've put out to the market under a program known as the global digital platform. That anchored identity would stay with you for the life of your visa application, your travel, your intersection with the SmartGate and, while soever you are a non-citizen, your post border movements. You would have an anchored identity in 100 per cent of cases. We are on the verge of—not quite this year yet but we are close—issuing about 10 million temporary visas. This will probably be the most advanced system in the world for capturing anchored identities for 10 million non-citizens—

Senator KENEALLY: Over what period are you going to issue 10 million temporary visas?

Mr Pezzullo: Annually.

Senator KENEALLY: For clarification.
Mr Pezzullo: We are about to hit that annually. We are at 9.7, so we'll crack 10 million. To give the commissioner literally the best advanced warning we could possibly give the commissioner and his officers, from the moment you start typing in your intention to travel to Australia under any visa class, the global digital platform system would require—

Senator CICCONE: How long do you think it will take to implement the program?

Mr Pezzullo: What is the build time, Mr Kefford?

Mr Kefford: The implementation time frame that we're working towards is about 18 months post decision to proceed, and then a rollout over six or seven years by the time we go through all of the visa classes.

Mr Pezzullo: So we actively seek the Senate's support for the underpinnings we need to field this global digital platform. We very much look forward to the Senate's support because it will do exactly the things that both senators have been asking about.

Senator KENEALLY: Well done, Mr Pezzullo, well done.

Mr Pezzullo: Thank you. Can I take a bow at that stage?

Senator CICCONE: I can give you a free Tim Tam, if you want one of the Tim Tams here.

Senator KENEALLY: For the cheek of your answer there, you definitely deserve a Tim Tam.

Mr Pezzullo: The extent of the processes are pretty effective. I will give you a sense. In the 2018-19 financial year, our border operation centre prevented the uplift of 178 people improperly documented. That is where travellers are refused boarding as a result of an intentional misrepresentation, malpractice or fraud. Our airline liaison officers—387 people—were prevented from getting uplift. The Border Operations Centre denied uplift to 12,200 people where passengers were denied travel due to either no visa, visa cancelled, visa ceased for some reason, subject to a document alert or Interpol issue, or there was an issue around an ETA. And the ALOs offloaded another 1,343 people, where a genuinely documented traveller with a valid visa is refused boarding where the grounds existed to consider cancellation because they were actually lying about why they were coming here. So there is a lot of good work done to prevent people arriving or being uplifted from other countries getting onto an aeroplane and coming here who shouldn't be.

CHAIR: There has now been 21 minutes on this 10-minute block.

Senator KENEALLY: But it's about border security, and I think it's very interesting and important.

CHAIR: The whole day has been very interesting, Senator Keneally, but I'm going to pass the call to Senator McKim.

Senator McKIM: When Prime Minister Morrison was asked whether Senator Lambie had been given any assurance in regard to her crucial vote, which ended up being the vote that abolished the medevac process, he said about Senator Lambie: 'She has the assurance that the government will implement its policy. The government is always looking at ways in which you can resettle those who are on Nauru.' How is the government currently looking at ways to resettle the people on Nauru and, I presume, by extension, in Papua New Guinea?
Mr Pezzullo: Well, we've canvassed earlier this evening, in response to your questions and those of others, the US program. Mr Ablong and General Furini spoke about those matters.

Senator McKIM: Are there any other avenues?

Mr Pezzullo: Yes. I was coming to that. The Australian government, both in the form of the Prime Minister and Mr Dutton, have, on occasions, recently as I recall it, reiterated the fact the Australian government welcomes the longstanding offer from the government of New Zealand to also assist in this task. Mr Dutton has made it clear on the record, as it goes directly to the New Zealand offer, that there are certain security considerations that attach to that offer, principally—and I'll paraphrase him, but it's a fairly close paraphrase—he as minister does not want to detract from the momentum and incentive that attaches itself to the US program. And, secondly, the question of on-travel to Australia from New Zealand, both as a matter of fact but also as a matter of how that might be communicated by smugglers—who may be able to convince people that New Zealand is a part of Australia or is somehow an easy extension of Australia—troubles him, and accordingly we're looking at any potential resettlement agreement with New Zealand through those lenses.

Senator McKIM: Is the department aware of any discussions at officer level or political level between the Australian government and the New Zealand government?

Mr Pezzullo: Yes.

Senator McKIM: So they're ongoing, are they?

Mr Pezzullo: Yes.

Senator McKIM: Are they at officer level?

Mr Pezzullo: Yes.

Senator McKIM: Are you aware of discussions at ministerial level or government level?

Mr Pezzullo: To the extent that ministers oversee officials, they'd be aware that officials are in discussion, yes.

Senator McKIM: So what is the nature of those discussions?

Mr Pezzullo: They are on the points that I've just outlined.

Senator McKIM: So that's the momentum, I think you described it as, around the US and—

Mr Pezzullo: And maintaining incentive in the US program until it's fully exhausted.

Senator McKIM: But we've just heard evidence from Major General Furini—it may not have been—

Mr Pezzullo: It might have been Mr Ablong.

Senator McKIM: I think it was Mr Ablong—that, at the moment, the US government's position is that that will end sometime around the middle of the year?

Mr Pezzullo: Yes, that's right.

Senator McKIM: Presumably, if that were the case, that ought take care of that concern, ought it not, Mr Pezzullo?
Mr Pezzullo: Yes, if those circumstances are applicable at the time. But then there is the second limb of the concern, which is to ensure—and this is unique to New Zealand. Mr Dutton—and again I'm paraphrasing, but I think fairly closely—has put it in terms of the issue or challenge of on-travel. Whilst there is a visa system that governs travel across the Tasman, for all intents and purposes—and smugglers are very effective at distorting the truth and facts—it might be portrayed as being effectively visa-free travel. We know that that is not the case legally. In fact, New Zealanders, as has been made clear in another context, for the purposes of the Migration Act are effectively foreign citizens who can be deported—so just park that—

Senator McKIM: And regularly are.

Mr Pezzullo: Indeed—

Senator McKIM: Much to the chagrin of the New Zealand prime minister.

Mr Pezzullo: Well, apparently so, but, anyway, the government has restated its policy in relation to those matters, which is that the law of Australia will apply. So, let's just park that. I didn't mean to overly introduce that element into my answer. But it does refer to the fact that to the uninformed eye it might appear to be the case that travel from New Zealand to a state in Australia might be thought of as domestic travel. For us to accept and act on the New Zealand offer there are certain security considerations that have a bearing here. We would want to ensure that, from a strategic communications and messaging point of view, it was put absolutely beyond doubt that on-travel to Australia for those who arrived, particularly, after July of 2013, where the government policy—both sides of politics—have said to this, 'You'll never come to Australia,' that we have a way to enforce that. That's been the subject, of course, of debate in the Senate, because legislation has been put to the Senate and it's been the subject of Senate inquiries—I won't rehearse all of that. So, there are a number of hurdles and obstacles to be gone through before that offer can be taken up.

Senator McKIM: And is your government—sorry, it's not your government.

Mr Pezzullo: It's not my government. I work for the government of the day.

Senator McKIM: Yes. Many of us are happy about that. Is your department—

Mr Pezzullo: It's the people's government, so—

Senator McKIM: Well!

Senator Cash: The people elected the government.

CHAIR: Let's not get distracted.

Senator McKIM: Mr Pezzullo, I don't think we want to go down there, because we'd probably be here all night. Is your department—when you say officers—

Mr Pezzullo: There are complex constitutional grounds here.

Senator McKIM: When you say that there are discussions happening at officer level, with New Zealand, is one of the topics under discussion that second matter that you mentioned, around the on-travel and the messaging?

Mr Pezzullo: Yes.

Senator McKIM: So, your department's currently working on those matters.
Mr Pezzullo: Officials of the New Zealand government are under no—there can be no
doubt on either side of the discussion that on-travel to Australia is a matter of concern to the
Australian government, yes. That's been communicated to officials of the New Zealand
government, yes.

Senator McKIM: Given the totality of the answers you've just given, would it be
reasonable to suggest that the Australian government is still open to accepting the New
Zealand offer, if the outstanding matters could be resolved.

Mr Pezzullo: Yes, and the minister has said as much, pretty much in those terms, yes.

Senator McKIM: While Major General Furini is here, I have one other question that I
missed before, when I was asking about the number of people left behind on Nauru and in
PNG. I think I neglected to ask you for a breakdown by sex—in other words, men and
women—because I understand there's a very small number of women left on Nauru. Do you
know, as you sit here, how many women are on Nauru at the moment?

Major Gen. Furini: There is one woman in Nauru.

Senator McKIM: Is that a safe situation, Major General?

Major Gen. Furini: I'm assured that it is. Last week, the last eight females were granted
transfer to Australia for medical purposes. When that was offered to them, the last female
indicated to us that she did not wish to transfer and gave us all the assurances that she did not
feel that she was unsafe, that she had deep friendships and support in the Nauru community
and she was quite happy to stay.

Senator McKIM: Alright. She was effectively offered transfer to Australia.

Major Gen. Furini: Yes, she was.

Senator McKIM: Okay. Are you able to say whether or not that woman has been
accepted for resettlement in the US?

Major Gen. Furini: I'll have to—

Mr Pezzullo: Because it's a single individual it's very hard to anonymise the answer.

Senator McKIM: I accept that. I withdraw the question.

Mr Pezzullo: Thank you, Senator. I very much appreciate that.

Senator McKIM: I think this will be one for Commissioner Outram. Is the family from
Biloela still on Christmas Island?

Mr Outram: Yes.

Senator McKIM: Have they been off Christmas Island since we last discussed this at
estimates?

Mr Outram: No.

Senator McKIM: Could you give us a really brief overview of how that family has been
quarantined from the Australians that were evacuated from Wuhan?

Mr Outram: They're 15 kilometres away.

Senator McKIM: Are they?

Mr Outram: Yes.

Senator McKIM: So they're in a completely different facility?
Mr Outram: Yes.

Senator McKIM: Thank you.

CHAIR: Senator McKim, you told me you had a couple of questions, nowhere near 10 minutes, and we're at 10 minutes.

Senator McKIM: I did. Perhaps I could just ask this one more on Christmas Island. Obviously, that matter's still before the courts. Is it the intention that that family will stay on Christmas Island until a determination's made by the court?

Mr Outram: At this point, yes.

Senator McKIM: Okay, that's the intention. Are the children going to school?

Mr Outram: Yes. One's going to school and the other one is going to playgroup.

Senator McKIM: Okay, so the older child is going to school?

Mr Outram: Yes, the child that is school age.

Senator McKIM: Is that the local public school?

Mr Outram: Yes, it is.

Senator McKIM: And is that the local playgroup on Christmas Island?

Mr Outram: Yes.

Senator McKIM: Thanks.

CHAIR: Thank you, Senator McKim. Senator Keneally.

Senator KENEALLY: Senator Ciccone will seek the call next. Just before we go to that, Chair, I think I'm fairly confident in predicting that we will not conclude—

CHAIR: That would be very disappointing, particularly given—

Senator KENEALLY: section 2. We are still in section 1 and we haven't gotten to sections 2 or 3, and I do flag that Labor senators have questions in outcomes 2 and 3.

CHAIR: I'm conscious that the coalition have been very generous in withholding their right to seek the call in the course of the day in an effort to accommodate Labor and crossbench senators. I don't think they could have been more accommodating than they have been. It would be very disappointing if, despite that, we didn't finish today.

Senator KENEALLY: I'm simply flagging, out of respect for the officials here, that perhaps those who are waiting for outcomes 2 and 3 might be allowed to go home—and I invite contributions from other senators on this—because I can't see that we are going to conclude the entire program today.

CHAIR: As I understand it, Senator McKim has completed his questions for outcome 1.

Senator McKIM: I'm just reviewing my questions, but I think that's the case in outcome 1.

CHAIR: My understanding—

Senator KENEALLY: Have you concluded for outcomes 2 and 3?

CHAIR: My understanding is he seeks 10 minutes.

Senator McKIM: I do have questions in outcomes 2 and 3.
CHAIR: You said you had 10 minutes in outcome 2. I understood there was nothing in outcome 3.

Senator McKIM: If you'll just give me a minute.

CHAIR: As you know, it can be quite fraught trying to find a spillover day in circumstances where the minister's availability is difficult.

Senator KENEALLY: Sure. I suppose the challenge we have is that the Department of Home Affairs is a very broad and significant portfolio. In previous years, of course, these matters would have been dealt with by different committees on different days. We may have to go to a spillover. I don't think it's the end of the world.

CHAIR: It would be quite a shame, I think, in circumstances where the coalition has been very accommodating and might have handled things differently if completion today were not something that was being sincerely targeted. Nevertheless, we must press on. We have 20 minutes to go. As much as I'm sure those waiting are not enthusiastic about an 11 o'clock finish, we've come this far, and if there's any prospect of knocking it over then let's give it a good crack.

Senator KENEALLY: Are you now giving—

CHAIR: I'm giving you the call.

Senator KENEALLY: to Senator Ciccone?

Senator CICCONE: I'm going to talk generally about a couple of questions with respect to aeroplane arrivals claiming asylum. You may want to take this on notice. How many people arrived in Australia by aeroplane and claimed asylum or onshore protection in the months of July, August, September, October, November and December 2019 and January and February 2020? From 1 July 2019 to 29 February 2020, how many people in total arrived in Australia by aeroplane and claimed asylum? Could the department also provide stats on how many people in total have arrived in Australia by aeroplane and claimed asylum since 7 September 2013. I don't know if you have any of those figures with you.

Mr Pezzullo: We'll take it all on notice.

Senator CICCONE: Could you also provide the number of people who have arrived in Australia by aeroplane and claimed asylum since 23 December 2014?

Mr Pezzullo: Yes.

Senator CICCONE: Thank you. Is it fair to say that in recent years the large majority of these claims for asylum have come from Chinese and Malaysian citizens?

Mr Pezzullo: I'd have to check the data. I'll take it on notice.

Senator CICCONE: Is it the case that, in January 2020 alone, there were around 546 asylum claims made by Malaysian nationals and 309 claims by Chinese nationals?

Mr Pezzullo: I don't know. I'll take it on notice.

Senator CICCONE: If it is the case, those figures that I've put to you, has the department identified a reason as to why we've seen an increase in the number of asylum claims from China and Malaysia?

Mr Pezzullo: We'll look at that question on notice.
Senator CICCONE: Has the department seen any trends or correlation between the introduction of the online lodgement of tourist visas for Chinese nationals and a surge in the number of asylum claims from Chinese nationals?

Mr Pezzullo: We'll look at that on notice.

Senator KENEALLY: You don't have any of this data available?

Mr Pezzullo: We'll look at it on notice. It's a very particular question asked in a very precise fashion.

CHAIR: And he's entitled to take it on notice.

Senator KENEALLY: I understand that, but I just thought perhaps we could inquire if there was anyone here who had that data available, so we could avoid taking things on notice.

Mr Pezzullo: We'll take it on notice.

Senator CICCONE: Chair, I referred to Senate questions on notice No. 966 and No. 967. It sort of ties into a story by journalist David Crowe. I've got a copy of the article here if the department wishes for me to table it.

Senator Cash: If you're going to put questions to the secretary based on the article—yes, please.

CHAIR: Yes, please—it's just a good practice.

Senator CICCONE: In the 12 months after the online lodgement for Chinese nationals was introduced, from March 2017 to February 2018, 7,304 Chinese nationals who were on tourist visas made claims for asylum. Since the online lodgement for Chinese nationals was introduced in March 2017, until September 2019, being the most recent available statistics, 13,462 Chinese nationals on tourist visas have claimed asylum. My question to the department is, why were these many people granted visas in the first instance if they were not coming to Australia as genuine temporary entrants?

Mr Pezzullo: Well, it's tautological, if I might respectfully say. They would have been granted visas because they met all the requirements under the act to be granted a visa. Ipso facto—it follows axiomatically.

Senator CICCONE: According to the—

Senator KENEALLY: Could I follow up there, perhaps?

Mr Pezzullo: Sorry, I might have misheard the question. Why were they granted visas when they weren't meant to be granted visas, it's—

Senator KENEALLY: I think the question, if I could rephrase it, is, given that between March 2017 and September 2019 some 13,462 Chinese nationals have come on tourist visas to claim asylum, it's quite clear that these 13,462 people had an intention to come here to claim asylum.

Mr Pezzullo: Sorry, I'm not following. I'm not trying to be obtuse.

Senator KENEALLY: I understand.

Mr Pezzullo: When you say, 'They came on tourist visas in order to claim protection,' that's—
Senator KENEALLY: No, they came on tourist visas, and when they arrived they claimed protection.

Mr Pezzullo: Right. Well, they're two different actions—

Senator KENEALLY: Yes, so the question is—

Mr Pezzullo: You apply for a visa. My officers consider the visa against the stipulations and the legislation. If they're able to be granted a visa on a non-discriminatory basis under law, they're given the visa. If they then subsequently arrive here—by aeroplane, or, indeed, by any other means, but in this case we're talking about aeroplanes—and they subsequently claim protection, legally, that's a completely different action.

Senator KENEALLY: Yes, we understand. I think the point that Senator Ciccone was trying to get to is: is there any work done when someone applies for a tourist visa to check their intention to come and to leave, particularly given that we've seen this growth in Chinese nationals coming in on tourist visas? Does that suggest to the department that there needs to be some work done in terms of determining that, when someone applies for a visa, they do intend to leave and they're not coming for the purpose of claiming asylum once they arrive?

Mr Pezzullo: Our officers are trained to look at all questions of bona fides, whether the issue is fraudulent documentation, which we spoke of earlier, whether it's to come here for purposes other than the visa class that's been applied for. Our officers are well trained and, of course, look at all of those considerations.

Senator CICCONE: I guess the point we're trying to make here, Mr Pezzullo, is, if you're the department surely you'd be looking at this and going: 'You've got this many people coming to Australia seeking asylum. Something's clearly wrong—

Mr Pezzullo: I understand how the migration process works because I administer it. Over the last five years approximately—and it's been relatively static, but I'll take the variances on notice—0.23 per cent of persons who have travelled to Australia under temporary visas have claimed protection. That variance, give or take, has been, as I said, around the 0.23 per cent range.

Senator KENEALLY: We've heard you use this comparison before.

Mr Pezzullo: Yes. Well, it's not a comparison; it's a percentage.

Senator KENEALLY: You didn't use that percentage when it pertained to boat arrivals, so I think it's an interesting—

Mr Pezzullo: A hundred per cent of people who came illegally by boat came illegally by boat. Of the people who've come here on temporary travel visas—tourist, visitor or otherwise—0.23 per cent subsequently, quite lawfully, claimed protection.

Senator KENEALLY: How many have been found to be upheld?

Mr Pezzullo: The rejection rate is well over 90 per cent, although it depends on the country.

Senator KENEALLY: That would suggest that the vast majority of people coming here don't have a legitimate claim for asylum—90 per cent of them.
Mr Pezzullo: No. A hundred per cent of people who attempted to come to Australia illegally by maritime means came here illegally by maritime means. That's why they were dealt with by the law that this parliament passed.

Senator KENEALLY: I understand that. I'm wondering what percentage of all arrivals they are. You like to rely on that percentage.

Mr Pezzullo: What percentage?

Senator KENEALLY: Fifty thousand people: what is that as a percentage of all the people who've arrived?

Mr Pezzullo: It was 100 per cent of people—

Senator KENEALLY: What is that as a percentage of all the people who arrived in Australia?

Mr Pezzullo: It was 100 per cent of people who arrived by boat.

Senator KENEALLY: The highest year from my memory for boat arrivals was 2012, which was 25,000 give or take a few. It could have been 2012-13. So my question to you is: what percentage of all arrivals would that 25,000 represent?

Mr Pezzullo: In relation to people who had visas?

Senator KENEALLY: In relation to everyone who arrived.

Mr Pezzullo: Right. I haven't got off the top of my head how many temporary visas we granted in that year. I'll need to check.

Senator KENEALLY: I'd appreciate you taking that on notice. However I think Senator Ciccone's question still stands. I will remind you I wrote to you prior to estimates to say this was an area that Labor senators would seek to ask questions about, so I'm not quite sure why you're taking so many on notice. Senator Ciccone's point still stands. If you're the department and you're looking at this rise in people coming here and claiming asylum onshore, do you not step back and think, 'What's going on here?' especially as 90 per cent of them are found not to be legitimate refugees?

Mr Pezzullo: As I said, the key performance metric that's applicable here is, of the temporary visas that we grant, how many people in terms of the managed migration program—boat arrivals are completely separate because they're unmanaged arrivals—claim asylum? It is less than one per cent. In fact, it's 0.23 per cent. I look at—we've had this discussion before and I've given this evidence before—how much more additional resourcing that detracts from all of the other tasks that we're required to do to get that 0.23 per cent lower. When persons who travel here by visa are known to us, they have to have a visa, their documents are credentialed and they can claim asylum if they wish. There's a very high rejection rate—in some cases 90 per cent; in some cases more than 90 per cent—and they are here as a function of how our merits and judicial review processes work. It takes a considerable amount of time to resolve those cases.

Senator KENEALLY: If we know who they are, why does it take so long?

Mr Pezzullo: Because they've got rights to challenge the merit of decisions taken through the AAT and, quite often, assisted by members of the legal fraternity, they can then take their matters to our judicial system to get independent judicial review, and it just takes as long as it takes. But that's not a question of—
Senator KENEALLY: That has a cost, doesn't it?

Mr Pezzullo: It sure does, yes.

Senator KENEALLY: That then leads me back to Senator Ciccone's first question. This is not a new problem; this has arisen before, as I understand it. People have sought to game the asylum application process in order to come to Australia, stay here longer than a tourist visa would allow and access work rights. I understand that this problem has arisen before. In times past the department has gone in and disrupted and interrupted it. Senator Ciccone's question, if I can paraphrase him, seems to be: at what point does the department not look up and say, 'Wow, this is a big spike in aeroplane arrivals. What's going on here, particularly for Malaysia and China?' I note you took it on notice, but you and I both know there is lots of evidence to say there have been significant spikes in Malaysia and China. I am seeking to understand what, if anything, the department has done to disrupt the organised crime and criminal syndicates that are smuggling people into Australia on tourist visas so that they can access work rights.

Mr Outram: Can I come in there? I have no evidence that there are criminal syndicates smuggling people. People smuggling and this issue are two completely separate issues.

Senator KENEALLY: I'm sorry, Commissioner Outram, there is a report from the ACIC. There are reports of the Migrant Workers Taskforce.

Mr Outram: Would you like to let me finish?

Senator KENEALLY: There is a report out that is signed by Jason Wood.

CHAIR: Order! Senator Keneally.

Senator KENEALLY: The United Nations has issued reports on this.

CHAIR: Senator Keneally, you haven't let the witness—

Senator KENEALLY: It's quite untrue to say there's no evidence. It's misleading the committee.

CHAIR: Order! Senator Keneally, you're not allowing the witness to speak.

Mr Outram: Firstly, I'd like to defend myself, Chair, and say that I'm not misleading. What I'm saying to you is my honest evidence based on my knowledge and experience, which is not insignificant, if I might say so. You asked what we're doing. We are conducting investigations to disrupt people that might be involved as labour hire intermediaries or acting as migration agents. Onshore, we've seen some limited evidence of links to some serious and organised crime, some human trafficking—very small—and some money laundering. What we haven't seen are any links to the people-smuggling enterprises that bring people here by boats; that's my point. They're completely separate issues.

Senator KENEALLY: I didn't say that they were the same enterprises.

Mr Outram: You said it's people smuggling. People smuggling and human trafficking are actually quite different issues, if I could say so, along with modern slavery. We're conducting investigations in relation to where we get evidence of organised crime or systemic organisation. We are attacking that through our investigations and enforcement program. But let me say this: most people that we deal with as labour hire intermediaries or migration agents are just honest people doing a good job. This isn't some massive systemic problem that we're talking about here. But you're right; there are people who are organising for workers to
come here and get into the agricultural industry or get into the construction industry, and there are some people who set themselves up as migration agents who are doing the wrong thing. But this isn't people coming here through organised smuggling activities. They're getting themselves a ticket, they're getting themselves a visa and they're getting here themselves.

**Senator KENEALLY**: Commissioner, I respect your experience, but I would refer you to the parliamentary Joint Standing Committee on Migration. As well, I can provide you—I don't have them here to table at the moment but I've referred to them previously—with reports from the ACIC and others, and the United Nations have issued a report, which all point to organised schemes, if I can use that term so that we're clear, that organise people to come to Australia on tourist and other legitimate visas in order to get them here to apply for asylum so that they can gain work rights.

**Mr Outram**: There are some people who provide services—and let me be clear about language here—to enable people to do things for themselves. It's different from—

**Senator KENEALLY**: And then there are some—

**Mr Outram**: It's different from people smuggling—that's my point.

**Senator KENEALLY**: And there is also evidence that people think that they've paid for a ticket and work rights and then they get here and they're made to apply for asylum, not even realising that that is the application they're filling out. I'm aware of the time of the evening, but my frustration in your answer came from the fact that there is—

**Senator HENDERSON**: Chair, a point of order—

**Senator KENEALLY**: We're having a conversation; I feel like the commissioner and I are having a useful conversation—

**Senator HENDERSON**: And that's actually the point of order that I want to raise—

**CHAIR**: She does have the right to raise a point of order. What's the point of order, Senator Henderson?

**Senator HENDERSON**: I would just ask Senator Keneally to address questions to the witnesses and not engage in the conversation. I think it's appropriate that she direct questions to the witnesses. It might be joyful for you to have this conversation but I think you need to return to the purpose of estimates, Senator Keneally.

**Senator KENEALLY**: Would you like to rule on that, Chair?

**CHAIR**: It strikes me that conversations are in lieu of questions and the eliciting of information, but, nevertheless, let's keep it focused.

**Senator KENEALLY**: Thank you, Chair. Senators Ciccone, do you want to pick up on this?

**Senator CICCONE**: I will. Obviously, we heard from the ACIC earlier today that identity fraud is rife. I just want to see what the department's view is, but isn't it the case that we then don't really know everyone who comes to our borders? We don't really know the ultimate outcome, whether they're going to seek asylum or not. And because of that we're also now starting to see a rise in people seeking asylum, especially, as we learned in earlier discussions about smart gates and other mechanisms in the system, that those things are not really talking to each other. It's a very fragmented system that we have here. I guess the hope is that, at some point, when people come to Australia it will be through an integrated system
which can better capture these individuals. It just sounds like the department could be struggling, I guess, to manage the borders at the moment.

Mr Pezzullo: To the contrary, Senator. I think the burden of the evidence you've heard all through the day is that through advanced visa processing, as well as advanced travel, we've got a very high level of confidence in who presents at the border—probably one of the highest levels available to an advanced country. Whether or not a person is going to claim asylum—whether they have that intention—prior to their travel or whether they form that view after they travel, in the end that's not entirely able to be addressed through data analytics or intelligence. If a person masks their intention, they mask it.

Senator Keneally made reference to gaming the system. If we look at it holistically, it's not just about what you do pre travel or what you do at the border but, indeed, the features of our merit and judicial review system. Arguably, the product they're actually selling is legal complexity. So you could attack the problem from another end, if you wanted to take a holistic view, and you could seek to knock out, as a class, unmeritorious protection claims. That's got complications as well, including in relation to our obligations under the relevant conventions. So it's a multifaceted problem with multidimensional and multifaceted solutions.

Just in the interests of putting this on the record, I would reject the notion that our systems are fragmented and 'don't talk to each other'. I think you heard evidence repeated several times that for the purposes for which the smart gate is used, it does its job very well and, indeed, better than the human officer standing there in terms of being able to match the biometric identification that's chipped into the passport as against the face of the person presenting at the border. It has a very high—very, very high—recognition rate. I don't know that I was quite able to draw out your on-the-fly support for our global digital platform that would see an end-to-end anchored—

Senator KENEALLY: I think that's an enthusiastic interpretation, Mr Pezzullo—

Mr Pezzullo: biometric from the moment someone started to key in their application.

Senator KENEALLY: It depends on who does it, Mr Pezzullo.

Mr Pezzullo: It will always be the Commonwealth, I can assure you. It will always be the Commonwealth. So your characterisation—which I know you've done in a time compressed fashion—of fragmented systems that don't talk to one another so we don't really know who comes here and just about anyone can turn up and claim asylum, is refuted on the following grounds. Over the last 4½ years: 45 million temporary visas. How many persons have claimed asylum? 0.23 per cent. That remains roughly stable. Some cohorts go up and down; I accept that characterisation. I did take the countries on notice. A very high percentage of those are knocked out at merits and then subsequently at judicial review. Very few, as per our publication The administration of the immigration and citizenship program, are caught up in slavery or human trafficking. As Commissioner Outram rather forthrightly made the point, there hasn't been a switch between different modes of smuggling, be they boat or air. I need to reinforce the point—Senator Keneally and I weren't conversing; I was giving evidence in relation to her question—that the contrast with boat arrivals is this: when the boat turns up at our maritime frontier, literally everyone on that boat is unknown to us. Identity documents are destroyed—

Senator KENEALLY: We understand that.
Mr Pezzullo: and we spend years trying to resolve identity.

Senator KENEALLY: We do understand that.

Mr Pezzullo: So there's no point of comparison.

Senator KENEALLY: This is not a question about Operation Sovereign Borders. There's bipartisan support for Operation Sovereign Borders, as you yourself provided just a few moments ago.

Mr Pezzullo: In terms of air arrivals, we've got a very high level of confidence of who's presenting at the border. What their intentions are, in terms of having arrived to attend a tertiary course, a vocational training course or a tourism course, under our laws it's perfectly permissible—once you're on shore, either at the airport or once you're through the border or some time subsequently, perhaps towards the end of your tourist period or your training period—to say, 'I've got a well-founded fear of persecution and if you send me back I'm going to be persecuted.' By law, we're required to consider those claims. It's no more complicated than that.

CHAIR: Senator Keneally—

Senator KENEALLY: I'm willing to wrap up on this section. I said I would provide some information to Commissioner Outram and I can do that right now. I would recommend to Commissioner Outram the parliamentary Joint Standing Committee on Migration report from February 2019. I would also recommend to him the US Department of State report Trafficking in persons released in June 2019 that references Australia; the Report of the migrant workers’ taskforce, Attorney-General's Department, March 2019; The Australian Criminal Intelligence Commission annual report 2017-18; and the Parliamentary Joint Committee on Law Enforcement report from July 2017.

Mr Outram: Thank you. I stand by what I said about people smuggling.

Senator KENEALLY: Thank you very much.

CHAIR: We will have a short suspension for a private meeting and we will have a decision on what happens next when we return.

Proceedings suspended from 23:02 to 23:06

CHAIR: The Legal and Constitutional Affairs Committee has now resumed. Following a private meeting, we have resolved to conclude sittings tonight and continue on 26 March, which is a Thursday, during the next sitting week, from 4 pm to 7 pm, room to be advised. My apologies to those for outcomes 2 and 3 who have been waiting patiently. Unfortunately, that was not within my control, but, nevertheless, we will get through you on the 26th. Thank you all for your cooperation and assistance today. We do appreciate it very much.

Committee adjourned at 23:07