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Proof Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Estimates

(Public)

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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Tuesday, 19 February 2019

ATTORNEY-GENERAL'S PORTFOLIO

In attendance
Senator Cash, Minister for Small and Family Business, Skills and Vocational Education
Senator Reynolds, Assistant Minister for Home Affairs

Attorney-General’s Department
Mr Chris Moraitis, Secretary
Mr Iain Anderson, Deputy Secretary, Legal Services and Families Group
Ms Sarah Chidgey, Deputy Secretary, Integrity and International Group

Families and Legal System Division
Mr Cameron Gifford, First Assistant Secretary, Families and Legal System Division
Dr Albin Smrdel, Assistant Secretary, Legal System Branch, Families and Legal System Division
Ms Ashleigh Saint, Assistant Secretary, Family Law Branch, Families and Legal System Division
Ms Alex Mathews, Assistant Secretary, Family Safety Branch, Families and Legal System Division

Legal Services Policy Division
Ms Tamsyn Harvey, First Assistant Secretary, Legal Services and Policy Division
Ms Kathleen Denley, Assistant Secretary, Legal Assistance Branch, Legal Services and Policy Division
Ms Ariane Hermann, Acting Assistant Secretary, Legal Assistance Branch, Legal Services and Policy Division
Mr Michael Johnson, Acting Assistant Secretary, Office of Legal Services Coordination Branch, Legal Services and Policy Division
Ms Sam Byng, Assistant Secretary, Royal Commissions Branch, Legal Services and Policy Division
Mr David Lewis, First Assistant Secretary, Legal Services and Policy Division
Mr David Lewis, Acting General Counsel (Constitutional)

Integrity and Security Division
Mr Andrew Walter, First Assistant Secretary, Integrity and Security Branch
Ms Joanna Virtue, Assistant Secretary, Integrity Branch
Ms Julia Galluccio, Acting Assistant Secretary, Security and Criminal Justice Branch
Ms Lucinda Atkinson, Acting Assistant Secretary, Institutional Integrity Taskforce

International Division
Ms Sue Robertson, First Assistant Secretary, International Division
Mr Stephen Bouwhuis, Assistant Secretary, International Cooperation Unit
Ms Karen Moore, Assistant Secretary, International Cooperation Unit
Ms Anne Sheehan, Assistant Secretary, Office of International Law
Mr Jesse Clarke, Assistant Secretary, Office of International Law

Enabling Services Group
Ms Helen Daniels, Chief Operating Officer
Mr Trevor Kennedy, Assistant Secretary of Financial Services
Mr Stephen Andrew, Chief Information Officer
Ms Ayesha Nawaz, Acting Assistant Secretary, Human Resources

Corporate Services
Mr Stephen Lutze, Chief Financial Officer, Corporate Division

Information Division
Mr Stephen Andrew, Chief Information Officer, Information Division
Mr Michael Harrison, Deputy Chief Information Officer, Information Division

Strategy and Governance
Mr Paul Cronan, AM, Acting Assistant Secretary, Strategy and Governance
Ms Emma Appleton, Special Advisor, Strategy and Governance
Royal Commission into Aged Care Quality and Safety
Mr James Popple, Official Secretary to the Royal Commission into Aged Care Quality and Safety

**Australian Government Solicitor**
Mr Michael Kingston, Australian Government Solicitor

**PORTFOLIO AGENCIES**

**Administrative Appeals Tribunal**
Ms Sian Leathem, Registrar
Ms Elizabeth Connolly, Executive Director, Registry Operations
Ms Jacqueline Fredman, Executive Director, Corporate Services
Ms Sobet Haddad, Senior Reviewer, Immigration Assessment Authority

**Australian Commission for Law Enforcement Integrity**
Mr Craig Furry, Executive Director Secretariat
Mr Dallas Rogers, Acting Executive Director Operations

**Australian Financial Security Authority**
Mr Hamish McCormick, Chief Executive & Inspector General in Bankruptcy
Mr Gavin McCosker, Deputy Chief Executive, Chief Operating Officer and Registrar of Personal Property Securities
Ms Joanna Stone, Chief Finance Officer
Mr Andrew Sellars, General Counsel
Mr David Bergman, National Manager, Insolvency and Trustee Services
Mr Paul Shaw, National Manager Regulation and Enforcement
Mr Peter Edwards, National Manager, Client Services Division

**Australian Law Reform Commission**
Mr Matt Corrigan, General Counsel of the ALRC

**Australian Human Rights Commission**
Professor Rosalind Croucher AM, President
Ms Padma Raman, Chief Executive

**Commonwealth Director of Public Prosecutions**
Ms Sarah McNaughton SC, Commonwealth Director of Public Prosecutions
Ms Andrea Pavleka, Commonwealth Solicitor for Public Prosecutions
Mr Simon Ash, Chief Corporate Officer

**Commonwealth Ombudsman**
Ms Jaala Hinchcliffe, Acting Commonwealth Ombudsman
Mr Paul Pfitzner, Chief Operating Officer
Mr Dermot Walsh, Senior Assistant Ombudsman
Ms Autumn O’Keeffe, Senior Assistant Ombudsman
Ms Louise Macleod, Senior Assistant Ombudsman

**Inspector-General of Intelligence and Security**
The Hon Margaret Stone AO, Inspector-General of Intelligence and Security
Mr Jake Bliert, Deputy Inspector-General of Intelligence and Security
Mr Steve McFarlane, Assistant Inspector-General of Intelligence and Security

**National Archives of Australia**
Mr David Fricker, Director-General
Mr Jason McGuire, Assistant Director-General, Corporate Services

**High Court of Australia**
Ms Philippa Lynch, Chief Executive and Principal Registrar
Mr Adrian Brocklehurst, Manager, Corporate Services
Ms Carolyn Rogers, Senior Registrar

Family Court of Australia
Ms Louise Anderson, Acting CEO and Principal Registrar
Ms Virginia Wilson, Deputy Principal Registrar, Family Court of Australia
Mr John Mathieson, Deputy Principal Registrar, Federal Court of Australia
Ms Catherine Sullivan, Executive Director, Federal Court of Australia
Ms Kathryn Hunter, Chief Financial Officer, Federal Court of Australia

Federal Court of Australia
Mr Warwick Soden OAM, CEO and Principal Registrar
Ms Louise Anderson, National Director Court and Tribunal Services
Ms Sia Lagos, National Operations Registrar, Federal Court of Australia
Mr John Mathieson, Deputy Principal Registrar, Federal Court of Australia
Ms Catherine Sullivan, Executive Director, Federal Court of Australia
Ms Kathryn Hunter, Chief Financial Officer, Federal Court of Australia
Ms Christine Fewings, National Registrar, National Native Title Tribunal

Federal Circuit Court of Australia
Mr Steve Agnew, Executive Director Performance, Planning and Strategy
Mr Stewart Fenwick, CEO and Principal Registrar

Office of the Australian Information Commissioner
Ms Angelene Falk, Australian Information Commissioner and Privacy Commissioner
Ms Elizabeth Hampton, Deputy Commissioner

Office of Parliamentary Counsel
Mr Peter Quiggin PSM, First Parliamentary Counsel
Ms Meredith Leigh, Second Parliamentary Counsel
Ms Susan Roberts, General Manager and Chief Finance Officer
Ms Aasha Swift, General Manager Publishing

Committee met at 09:02

CHAIR (Senator Ian Macdonald): I declare open this meeting of the Senate Legal and Constitutional Affairs Legislation Committee for its inquiry into the additional budget estimates for 2018-19. This is a public hearing, as you all know. The committee's been referred the portfolios of Home Affairs, which we did yesterday, and Attorney-General's. The committee has set Friday, 29 March as the date by which answers to questions on notice are to be returned. We also ask that written questions on notice be provided to the secretariat by 5 pm on 1 March.

We are required to take all evidence in public session. Witnesses know that, in giving evidence, they're protected by parliamentary privilege. I think the people at the table are all well familiar with that and don't need me to repeat it. Any questions going to the operation or financial positions of the departments and agencies that are seeking funds in estimates are relevant questions for the purpose of estimates hearings. 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 otherwise expressly provided.

The Senate has 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 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 how and when policies were adopted.

For any claim for public interest immunity, witnesses are specifically reminded that a statement that information in a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order of the Senate. Witnesses are required to provide some specific indication of the
harm to the public interest that could result from the disclosure of information or the document. I appreciate the public interest immunity claim has to be made by a minister, and the minister at the table would no doubt have to refer that to the actual minister, who is in the Reps.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

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

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

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

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

The media has requested permission to film the proceedings. The committee has agreed to this, but I remind the media that permission to film can be revoked at any time and that filming may not occur during suspensions or after the adjournment of proceedings. If any witness objects to the filming, the committee should be advised and the committee will think about that. Copies of resolution 3 of the Senate concerning the broadcasting of committee proceedings are available from the secretariat, should anyone need one.

I welcome Senator the Hon. Linda Reynolds CSC, representing the Attorney-General. Minister, would you like to make an opening statement?

**Senator Reynolds:** Thank you, but I don’t.

**CHAIR:** Very well.
[09:06]

CHAIR: Our first witnesses are the Family Court, the Federal Circuit Court and the Federal Court of Australia. Thank you, Mr Soden. I think we can almost make you a permanent member of this committee because we've seen so much of you, which is, of course, always a pleasure. Would you like to make an opening statement?

Mr Soden: Just a short statement, to assist the committee with to whom it may direct its questions. As you would know, the Federal Court entity for portfolio budget processes includes the Federal Court, the Family Court, the Federal Circuit Court, the National Native Title Tribunal, the Australian Competition Tribunal, the Copyright Tribunal of Australia and the Defence Force Discipline Appeal Tribunal. I'm here representing the Federal Court of Australia today. My colleague Ms Louise Anderson is presently the acting chief executive and principal registrar of the Family Court. She is representing that court and, also, the Federal Circuit Court. I thought that may assist the committee with to whom it can direct questions.

CHAIR: Thanks very much, Mr Soden. That's useful. I might start the questioning. Ms Anderson, what's the status of your acting position?

Ms Anderson: I was appointed by Chief Justice Alstergren to act both in January and February of this year. My appointment ends on 28 February this year.

CHAIR: So the appointment of the CEO and registrar is within the jurisdiction of the Chief Justice?

Ms Anderson: Yes. Up until 12 months, I understand, there can be acting positions.

CHAIR: So it's not a government appointment?

Ms Anderson: It is a government appointment, but there's capacity for the Chief Justice to appoint, for a time, an acting chief executive officer.

CHAIR: All right; thank you very much for that. You've been there in exciting times, one might say—or interesting more than exciting.

Ms Anderson: If I may, I do have an opening statement. I know it's unusual for the court to do that, but, given the exciting times, as you reference, I thought it might be appropriate for me to do so.

CHAIR: If you would, please.

Ms Anderson: Thank you. On 10 December 2018, the Hon. William Alstergren was appointed as the Chief Justice of the Family Court of Australia. He also retains his commission as Chief Judge of the Federal Circuit Court of Australia. The appointment of the Hon. Justice Robert McClelland to the position of Deputy Chief Justice of the Family Court of Australia was also on 10 December 2018. On the occasion of the Chief Justice's appointment, the Chief Justice made clear his intention to implement some reforms both in the Family Court and the Federal Circuit Court in respect of family law matters so as to build public trust and confidence, establish a case management system that provides no wrong door for litigants in the family law system and simplify procedures to make it easier for the Australian public to understand what the court does and why. This is very much in line with the Chief Justice's responsibilities for ensuring the effective, orderly and expeditious discharge of the business of both courts.

By way of assistance to the committee, I intend to speak to three initiatives that the Chief Justice has put in place since December. First of all, the Chief Justice has established a rules harmonisation working group which consists of members of both the Family Court and the Federal Circuit Court. Its remit is to review and harmonise the rules of both courts as they apply to family law as well as consider common case management and common forms. Given the workloads in both courts, we're looking to engage external expertise to assist in that process, with the aim that a framework for the harmonised rules will be available to the court for consultation at the end of March 2019. Work is also underway on a draft practice guideline, which is to indicate a common case management practice while the work on the rules is underway, and this is currently before the rules harmonisation working group.

There are a number of case management initiatives that the Chief Justice has implemented. They are, in the main, to look to reduce delay and move through the pending case load in both the Family Court and the Federal Circuit Court. In the Family Court, 52 per cent of the 3,000 matters that are pending are over one year old and, in the Federal Circuit Court, 32 per cent of the 17,000 pending family law matters are over one year old. In order to reduce the number of pending cases and provide certainty to Australian families, the courts, as has been
mentioned on a number of occasions, require more judicial and registrar resources. However, it's equally important for the court to put in place effective and efficient means by which to reduce that backlog within our existing resources.

The first is that the Chief Justice is implementing a call-over, following the call-over in the Federal Circuit Court, where over 1,000 matters were reviewed and there was a 50 per cent settlement rate. The property disputes that are before the Family Court that are unallocated and do not have a trial date are to be called over in March. They will be referred to dispute resolution outside of the litigation process and, if the matters don't settle, they will be very promptly listed to trial before a judge. The judges who will be doing these call-overs will primarily be the Chief Justice and the Deputy Chief Justice so as to make available judges to hear trials if those matters do need to proceed.

The court is still considering the most appropriate way to review the parenting cases and will be working within a case management team with registrars and family consultants given that the parenting matters give rise to different issues. At the request of the Chief Justice, the judges of the appeal division have agreed to sit in more first-instance matters, assisting primarily in Sydney and Melbourne. That will make a real contribution to assisting those Family Court judges dealing with trials.

Also on measures to reduce delay, under the Chief Justice's leadership there's been a protocol instituted across both courts to support the timely delivery of reserved judgements. Regular reports are produced and we have case management judges whose remit is to be across the case load in their region and liaise with judges. Where a judgement is reserved for three months, that will be brought to the attention of the case management judge. That case management judge will have a discussion with the judge to ask for a time for delivery. If that time for delivery is not met and six months lapse, that will be drawn to the attention of the Chief Justice and then the Chief Justice will put in place a number of measures to ensure that that judgement is delivered, including directing the judge not to sit until the judgements are delivered. This has been in place since December.

Finally, registrars are very valued within both the Family Court and the Federal Circuit Court, and work is well underway to put in place a national management structure so that we can really use the registrar resources across both courts most effectively. The benefits are already becoming evident. In the Federal Circuit Court in Newcastle, all property matters are listed before a registrar for a settlement conference. That's been in place now for 12 months. Those discrete property applications represent 35 per cent of all of the matters in that Newcastle registry, and 65 per cent of that 35 per cent are now being settled, not needing to go to a judge, allowing the judge to focus their resources more on parenting matters. We're extending this initiative to the larger registries in March 2019.

CHAIR: Thanks, Ms Anderson. Is that a written statement that we can get a copy of?

Ms Anderson: Yes. I've got a few little notations. I will just tidy that up and then I'll be happy to pass it to the committee.

CHAIR: Thank you. The secretariat can take that. Whilst we're not practising lawyers or experts, we've gained some expertise over six or seven days of hearings recently involving the Family Court. Those suggestions, those initiatives implemented, seem to be wonderful initiatives to try and deal with some of the problems that we constantly hear about, as parliamentarians, with people coming to us with complaints about the Family Court particularly. That seems to be, to my inexperienced ears at least, a very good step in the right direction. So thanks for that.

Ms Anderson: Thank you, Chair.

Senator PRATT: As the chair said, we've become rather more familiar with issues within the Federal Circuit Court and Family Court by virtue of the Federal Circuit and Family Court of Australia Bill. I wanted to ask you both whether you've been consulted on any potential amendments to the legislation.

Ms Anderson: I have not, Senator.

Mr Soden: No, Senator.

Senator PRATT: So, as far as you're aware, the bill before the parliament is as it stands?

Mr Soden: I'm not aware of any proposed amendments.

Senator PRATT: I want to refer you to the recommendations from the majority report of the Legal and Constitutional Affairs Legislation Committee inquiry into this bill. Are you at all familiar with that report?

Ms Anderson: Yes, Senator.

Mr Soden: Yes, Senator.
Senator PRATT: Recommendation 1 was that the proposed divisions 1 and 2 of the new model be provided with additional registrars. Have you done any modelling or do you have any estimates in terms of how much additional registrars would cost, per registrar?

CHAIR: Can I just stop the clock before you answer. That report's been tabled in the Senate, hasn't it. Has it been discussed?

Senator PRATT: No, but it was tabled late on Thursday. It's online here.

CHAIR: So it will have gone to the government on Friday. I'm pleased to hear that you have read it in such a short time.

Senator PRATT: You're already familiar in a such a short time!

CHAIR: All of our hard work has been worthwhile.

Senator PRATT: Notwithstanding the fact that we dissented from it—

CHAIR: Of course.

Senator WATT: I particularly commend the dissenting report to you!

Senator PRATT: There are some worthy suggestions in the government's report, notwithstanding the fact we still oppose this merger. There have been concerns expressed about the impact of the bill. Have you looked at the issue of registrars? Ms Anderson, in your opening remarks you made some comments about the level of resourcing for the courts and the backlog that's there.

Ms Anderson: I have read the report, but the report has not been considered by the Family Court or the Federal Court, nor the Chief Justice or Deputy Chief Justice, in any formal way. So, no, there has been no modelling. However, I could say that the courts would welcome further resources for additional registrars. As I mentioned in my opening statement, we have already put in place a new management structure so that we can look to utilise registrar resources effectively across the Family Court and the Federal Circuit Court. But at this point we have not undertaken any modelling.

Senator PRATT: What does a registrar, in general terms, cost currently?

Ms Anderson: The registrars in the Family Court are paid, under the Federal Court's enterprise agreement, at what we call an executive level 2. That's around $120,000 to $150,000, plus the 15.4 per cent superannuation.

Senator PRATT: I wanted to ask with respect to further impacts of the proposed bill—there was considerably important evidence coming out of Western Australia during the hearings. Have those concerns been expressed to both of you, in particular the appeals pathways and issues arising with respect to that?

Ms Anderson: I've read the submissions, but nothing has been brought to the attention of the court in a formal way, other than what was before the committee.

Senator PRATT: So, there are significant issues as expressed—reading from the majority report:

Concerns were raised by Western Australian submitters in relation to how the bills would apply to the Western Australian jurisdiction and the FCWA. In particular, submitters and witnesses expressed concern in relation to the proposed appeals pathway in relation to decisions made by the FCWA in the exercise of its federal family law jurisdiction.

Are you, Ms Anderson or Mr Soden, able to explain to the committee the nature of Western Australia's concerns and specifically what their concerns are?

Ms Anderson: It may be a question appropriate for the department. They may well have a greater capacity to answer than I do at this point.

Senator PRATT: So, you're not in a position to know what amendments to the bill might be required to address those concerns?

Ms Anderson: No.

Senator PRATT: Mr Moraitis, are you?

Mr Moraitis: As has been made clear, we received the report on Thursday or Friday, I think. I read it myself on Friday. The team—me, Mr Anderson and Dr Smrdel, are looking at all the recommendations and have read all of it, including the dissenting part of the report. The elements of the Western Australian jurisdiction is something we're obviously aware of. If necessary, Dr Smrdel or Mr Anderson can explain that. We obviously haven't been able to consult with Western Australian colleagues since Friday and we're in the process of consulting those others. But if you'd like us to explain the issues we're happy to do that.

Senator PRATT: Well, I have a general understanding of the issues. I guess I was concerned that there was an expectation that parliament was supposed to pass this legislation last year without these issues having been
addressed. To what extent does the bill as amended in line with the recommendations of the majority of the committee address those concerns?

Mr Moraitis: As I said, we've just received the committee's report. We've read it, and considering discussing this with government, and it is ultimately a matter for government as to how they wish to proceed in response to those recommendations—unless Mr Anderson knows anything further, in the last 12 hours.

Mr Anderson: It is important to note that WA raised those concerns before the bill was actually introduced. We've had quite a bit of contact with the Western Australian government, and that's the normal course. They wouldn't write to the courts directly to raise policy concerns. They would write to the Attorney-General. So, they have laid out those, and we've had some engagement with them. Now, obviously the committee's put some views about the measures that are in the bill, and the government is now considering the committee's views. But there had been some exchanges before the committee expressed its views as well.

Senator Reynolds: Senator, perhaps I can also shed some light on that. Given that it was tabled on 14 February—last week—both the department and the Attorney-General's office are carefully reviewing the recommendations. And as I understand it, two relate to the FCFC bill. So, given that it's been only a few days since tabling, they are certainly taking it very seriously and will be looking at all the recommendations.

Senator PRATT: Yes. Well, as you would know, from Labor's point of view the recommendations don't go far enough, but these are recommendations that have come with a government majority in terms of the concern of your own members.

Senator Reynolds: But, as you know, given that it was tabled only last week, to do justice to the report and the issue, the government and the department need more than a handful of working days to come up with a considered and strong response.

Senator PRATT: How long has the department known about the issues raised by Western Australia? You said you knew about those concerns even before the bill was prepared.

Dr Smrdel: The Attorney wrote—and I don't have the dates with me, but prior to the bill's being introduced to the parliament—to his state and territory counterparts to broadly canvass the amendments as proposed, and the WA one would have contained some WA-specific references for the Western Australia Attorney-General's consideration.

Senator PRATT: What were the references in that correspondence? What were the issues canvassed?

Dr Smrdel: I would have to largely take that on notice. One of the key issues from WA's perspective was in relation to appeal pathways for the family law magistrates of WA, but I don't have the letter to hand. That's just my recollection.

Senator PRATT: If the legislation was prepared without that input from Western Australia, when did you ask for that input?

Dr Smrdel: Not having the letter to hand, I would need to take that on notice. We can get that answer to you during the course of the day.

Senator PRATT: Has the department prepared amendments to the legislation yet?

Mr Anderson: As the secretary has indicated, the government is considering the committee's recommendations and considering what, if any, amendments it wishes to propose to the bill.

Senator PRATT: So the answer is no. You haven't yet prepared anything.

Mr Anderson: I'm saying it's a matter for government.

Senator PRATT: There has been a particular project underway to create a common set of rules for the Federal Circuit Court and the Family Court. I'd like an update, please, on the progress of that project.

CHAIR: I think that's what Ms Anderson said in her opening statement.

Ms Anderson: Yes. But to the extent that I can assist—

Senator PRATT: That's fine.

Ms Anderson: there has been a committee established to look at that and also some common practice guidelines drafted for the committee's consideration.

Senator SIEWERT: Could you say that again. The urn is on. I missed what you said.

Ms Anderson: I mentioned that the Chief Justice has established a joint working group of judges of the Family Court and the Federal Circuit Court to review the current family law rules and propose a framework for a way to harmonise them and, at the same time, some draft practice guidelines have been drafted. They're before the
committee for consideration. They indicate a common case management approach, and they may be used potentially as an interim while the rules revision work is underway.

Senator PRATT: In terms of a common set of rules between the two courts, including a single point of entry, as far as I understand, that doesn't require legislation. Is that right?

Ms Anderson: That's right.

Mr Anderson: Senator, if I can just add to that. It's true that it doesn't require legislation, but it's also true that it has never required legislation. In the last 20 years, the courts haven't been able to make it happen.

Dr Smdrel: Senator, if I can just add further to that. The current formulation for rule-making power in the courts is that the rules are made by a majority of judges. What the bill is doing is enabling the Chief Justice and the Chief Judge to make the rules. There's also provision in the bills saying that the Chief Justice and the Chief Judge need to work together to strive to ensure a common set of rules. Currently, the model is that it's a majority of judges. As Mr Anderson pointed out, the need for a common set of rules has been well known for a significant period of time but has yet to be achieved.

Senator PRATT: You're arguing that the reason we don't have a common set of rules between the two courts is that the judges haven't yet agreed to do that by a majority in both courts?

Dr Smdrel: It's not necessarily the argument we're making. It's just an empirical observation that the need for a common set of rules has been understood for a long period of time and has yet to be achieved. The mechanism that the bill is putting in place is that the responsibility for the rules be the responsibility of the Chief Justice and the Chief Judge for division 1 and division 2, respectively.

Senator PRATT: How many judicial vacancies do you have in each court, currently?

Ms Anderson: There are currently 66 judges in the Federal Circuit Court. Two Federal Circuit Court judges were recently appointed to the Family Court of Australia, so there are two vacancies. In the Family Court of Australia, there are 21 judges sitting at first instance. There have been two appointments to the full court, the appeal division, from first instance judges in the Family Court. One judge has retired, so, whilst as always appointments are a matter for government, there is one vacancy.

Dr Smdrel: Senator, in terms of the information the government has to hand, we would say there is one vacancy in the Federal Court, three in the Family Court and three in the Federal Circuit Court—all arising since December—and all appointments are vacancies under active consideration by government at the moment.

Senator PRATT: Would addressing those vacancies be enough to address the backlog, though? There's clearly a need for more judicial officers and more registrars, is there not?

Ms Anderson: Yes, there is a need. It would be difficult at this point to say whether filling those vacancies would be sufficient but, certainly in conjunction with a number of case management initiatives, it would make a good impact on the backlog.

Senator PRATT: What's your hope in terms of the time line for filling those vacancies?

Ms Anderson: As always, it's very helpful if those appointments are made expeditiously.

Senator PRATT: You've given a bit of an outline, Ms Anderson, of the case backlog, and I'm also interested in the backlog in the Circuit Court. In particular, how has that changed for both courts over the last 12 months; and is there a comparison that is available?

Ms Anderson: Senator, I can certainly—

CHAIR: Senator Pratt's time has finished, so we'll get the answer and move to another senator.

Ms Anderson: I can take that on notice in terms of the comparison. I can say that, both in the Federal Court and the Family Court, the backlog—or the pending cases—has reduced slightly over the last 12 months. We're talking around 200 cases in the Federal Circuit Court and a very slight decrease in the Family Court, but I will take that on notice and provide that to the committee.

Senator PRATT: Thank you, and that answer's for both courts—is that right?

Ms Anderson: Yes.

Senator PRATT: I did have some questions specifically on the case management pilot, but—

CHAIR: Is that all?

Senator PRATT: Yes.
CHAIR: Does Senator Watt have any questions on this? We might just continue with you, Senator Pratt, if you're almost finished. Then I have a couple of questions, and both Senator Siewert and Senator McKim have questions too.

Senator PRATT: Can I ask about consultation with the Brisbane Federal Circuit Court judges about how the pilot for case management in the Brisbane registry is going.

Ms Anderson: The Chief Justice met with the Brisbane judges late in January to speak with them about the pilot and to see if any adjustments needed to be made. I understand that there's constant dialogue, given the criticality of that pilot, and there are changes being made if they're seen to be appropriate and helpful. The pilot continues, as it was intended which is having a number of judges sitting in a more case management role and moving matters through more promptly to first hearing before a trial judge.

Senator PRATT: Can I ask whether judges in Brisbane consider that the pilot has been successful.

Ms Anderson: As always, courts are a broad church and there are different views. There is no discussion yet of success because it is early days, but the information that we're getting from our data tells us that matters are being moved to finalisation more quickly than they were 12 months prior so, from an empirical basis, there is success. However, as I mentioned, not all judges share that view—many judges have different views on whether or not the pilot is delivering at this point.

Senator PRATT: Can you characterise the diversity of those views for us.

Ms Anderson: It would be a matter that is discussed between the judges and the Chief Justice. It is, at its highest level, probably best described as the pilot changes the philosophy of the individual docket system which the Federal Circuit Court has had in place since its inception in 2000, so it's understandable that there may be some different views expressed. It's the nature of change in courts, I'd suggest.

Senator PRATT: Indeed but, as you would well understand, for us to have oversight of what is happening within the courts, what they are being asked to do and whether these trials are effective, we need to work out how we access the views of those that are involved in these trials. Is there anything you can add for us, Mr Moraitis?

Mr Moraitis: I will ask Mr Anderson and Dr Smrdel.

Mr Anderson: Other than to say that we welcome the courts actually taking these initiatives, they are matters entirely within the courts' hands.

Senator PRATT: Were all of the Federal Circuit Court judges in Brisbane supportive of the extension of the case management pilot?

Ms Anderson: I'm not privy to that. I don't know.

Senator PRATT: Can I ask how the pilot improved the time frame for matters to be dealt with before a judge? Has it had any impact in that regard?

Ms Anderson: As I understand it, I can either take that on notice or request a colleague to come to the table who is more across the detail than I am.

Senator PRATT: Yes, that would be great, thank you. So my question was whether the pilot has improved the time frame for matters to be dealt with before a judge?

Mr Agnew: The initial data indicates that we have improved the time getting from filing to final hearing. There was a fair disparity in the times between the individual judges up there and there has been some equity delivered, in that regard, to litigants. We found the initial results were to bring the trial times in considerably, but the data is still pretty early and we're undertaking some evaluation of all that work.

Senator PRATT: When will that evaluation be available and will it be public?

Mr Agnew: As I understand it, the pilot will run to the end of the financial year, so I expect it will be some time after that, but we're collecting data on an ongoing basis and looking at it all the time.

Ms Anderson: In terms of your question about will that be made public. Chief Judge Alstergren, in October, published a paper for the family law conference where he spoke about the pilot and published performance data. I think that gives good indication that will be quite transparent and accountable about what it has delivered.

Senator PRATT: Can I ask if all matters listed before a judge on a particular day get heard on that day?

Mr Agnew: If that's a reference to a final hearing trial, no, there have been instances on occasions where the trials haven't been reached. They have been sent away.

Senator PRATT: Why do some matters not get heard on the day that they are listed?
Mr Agnew: There are a number of reasons. At times there has been some judicial unavailability in that judges have become suddenly unavailable and there are more trials listed than they can cope with on the day. The matter of listing matters for trial is a bit of an art form in terms of you have listing ratios. I would suggest that that has not been fully resolved yet, so there's still some work to be done around that space.

Ms Anderson: If I may, just referring to Mr Anderson's response where he congratulated the court for taking some initiatives, one of the problems that the Brisbane pilot sought to remedy was that there was inconsistency between the judges as to when a matter would get on for trial. For some parties in one docket it may be that they would have a matter in three months, for another 12 months. It was seen that that was not acceptable and very necessary to review the case management approach. These things are not always perfect, but they certainly show a commitment to endeavouring to use public money in the best way that we can and should, and our commitment to efficiencies. As I indicated, the performance data has been made public and our commitment will be to continue to do so.

Senator PRATT: I'm glad to hear that. What percentage of matters are not heard on the day they are listed? When will those matters again be listed before a judge? How long is the wait?

Ms Anderson: We will take those on notice. Thank you.

CHAIR: I don't have a lot of questions, because we did go through a lot of these things very carefully over the last eight day hearing or whatever it was, but, Mr Anderson, I will just go back to the questions about Western Australia and if you could help refresh my memory, I think I can say that all of the committee were impressed with the way the Western Australian system works, but the evidence, as I recall it, was that this is all because of something that happened 30 years ago, when the whole Family Court system was being put in place. It was done by special arrangement with the then Western Australian government, not with any other state government, so that's why it's different. On the basis that the Western Australian system is the best, would it be difficult to get all of the other states to do what they do in Western Australia?

Mr Anderson: In Western Australia, they decided in 1974 not to participate in the setting up of the federal Family Court system and that they would instead have their own Family Court, so we have the Family Court of WA, which is funded primarily by the Commonwealth.

CHAIR: Do they adopt the same law?

Mr Anderson: They have greater jurisdiction because they also have state jurisdiction, so they can in fact bring both family violence and children matters together with family law matters. They arguably haven't necessarily made the full use of that system in the period that they could have, but they are moving more in that direction now. To emulate that nationally, we'd need each state to set up their own family court.

CHAIR: Has that ever been canvassed?

Mr Anderson: I don't believe it's seriously been canvassed.

Dr Smrdel: To add to that, the Family Law Act does actually provide the facility for each individual state to set up their own family court. I don't recall the section off the top of my head, but at the time Western Australia was the only one that took up that ability to set up its own court. In all the other states, we don't have the data to hand, but we can only assume that they were happy for the Commonwealth to run it through the Family Court of Australia.

Mr Anderson: If I can expand on that, what we're doing, therefore, is working with the states to see to what extent we can have their magistrates courts, for example, exercising federal family law powers so that, if a matter comes before them in family violence or children's issues that also has a related federal family law matter—for example, there might be inconsistent orders made by a Family Court or orders made by a Family Court or the Circuit Court that might be difficult because of issues that have arisen in the state jurisdiction—they could amend those orders in certain situations. We're talking with Northern Territory about doing a pilot there, in Darwin in the Magistrates Court, we're talking with South Australia and we're also in the early stages of discussions with New South Wales about pilots there, to see if, even if they don't run their own family law court, nonetheless their courts and the federal family courts can work more closely.

CHAIR: That makes a lot of sense. I'm pleased to hear that. Ms Anderson, again, I thank you for your opening statement, which explained a lot of things. One of the complaints we as politicians get from our constituents often is the length of time that some judges, often for very good reason, take in delivering judgements. As I recall in your opening statement—I'm just seeking for you to confirm this—you said the chief judge had instituted some activities which would help address that. Would you run through those briefly again for me.
Ms Anderson: Of course. For the purpose of giving you some data as well, the Family Court of Australia resolves 93 per cent of its matters within 12 months by judgement and at this point the Federal Circuit Court resolves 62 per cent of its matters within 12 months. The Federal Circuit Court, as you would know, has not only family law but also general federal law and a fairly sizeable migration jurisdiction, which just influences that performance data. The chief judge and chief justice takes performance very seriously and has instituted a protocol whereby the position of executive director for court performance has been created, which is the person who looks at data, data and data. Reports are published regularly and drawn to the attention of the case management judges, who, where there is a reserve judgement coming up to three months, speak to that judge and ask for a time for delivery. If that time for delivery is not met the matter is then brought to the attention of the Chief Judge or Chief Justice, subject to which court. Then there'll be some further conversations, and measures will be put in place to support those judges to deliver the judgement. If the matter is still not resolved, the Chief Judge or Chief Justice may direct that that judge does not sit until the reserved, or all reserved, judgements are published.

CHAIR: Does not sit in the normal jurisdiction until the—

Ms Anderson: Yes, that's right.

CHAIR: I think that's a wonderful idea. I appreciate there are a lot of reasons why judgements are delayed, but, as you know and we politicians know, it does cause great anxiety to the parties. Do you have in your head the longest judgement that has not yet been delivered—the longest time?

Ms Anderson: Overall, the filing to judgement in the Family Court of Australia is 24.92 months and in the Federal Circuit Court it's 15.5 months. The Federal Circuit Court also disposes of matters through what we call extempore judgements with great frequency—that is, oral reasons delivered at the end of a hearing. They're not counted in that 15.5 months. I'll take on notice, if I may, the outliers. We certainly have data, but I think for the purpose of the committee it would be sensible for me to confirm I'm accurate with that.

Senator WATT: I noticed a report in The Sydney Morning Herald today—I have copies if you haven't seen it yourself. The headline is 'Jailing of father a "miscarriage of justice."' I've just forgotten which office is best to answer questions about the Federal Circuit Court, Ms Anderson?

Ms Anderson: Yes.

Senator WATT: Have you seen that article?

Ms Anderson: Yes, I have.

Senator WATT: The article says:

A Federal Circuit Court judge in Brisbane—

who jailed a father of two for a maximum of 12 months for contempt of court in family law proceedings has been blasted by the Family Court for committing a "gross miscarriage of justice".

The judge concerned is Judge Salvatore Vasta. The report says:

The man, who has two children aged 5 and 9, spent six days in a maximum security prison on suicide watch before he was released pending the outcome of an appeal.

The full court of the Family Court's judgement, released on Friday, said:

… Judge Vasta had no legal power to make the orders and it would be an "affront to justice" to leave them in place.

… … …

There was "no factual foundation" for the order and the judge had no legal power to make it …

The court said Judge Vasta proceeded on the basis that a fellow Federal Circuit Court judge had already found the man was in contempt of the court's orders, although it was "patently obvious" this was not the case.

I suppose I'm mainly interested to find out what sort of judicial education is being provided to judges like Judge Vasta to ensure that this sort of 'gross miscarriage of justice', to quote the Family Court, doesn't occur?

Ms Anderson: If I may in—

CHAIR: Can I just say, Senator Watt, again, if you continue in your process of trying to smear people who cannot respond—

Senator WATT: I'm just citing three judges of the Family Court.

CHAIR: You do it at length, which wasn't necessary for your question. I can never understand your motivation for these things, but anyhow, that's—
Senator WATT: I think the gentleman who was locked up for six days in a 'gross miscarriage of justice' might like people asking a few questions.

CHAIR: This is not a case for you to make political statements or whatever.

Senator WATT: I haven't made a political statement; I've asked about judicial education. I haven't made any political statement there whatsoever.

CHAIR: The details were unnecessary for the question.

Senator McKim interjecting—

CHAIR: Senator McKim, if you want to chair this committee you make sure you get the majority in the next parliament, and you can sit here. Until then I'll chair the committee. Ms Anderson?

Ms Anderson: Thank you. In terms of judicial education—I won't turn to the specifics of the judgement; I'm sure you'd understand why—the Federal Circuit Court judges meet for four days once a year, where there is extensive judicial education, from the delivery of extempore judgements through to jurisdiction-specific training, whether that be on family violence, migration or judgement writing. There is also a judicial education program that the Chief Judge has implemented over the last year, generally by video conference, where judges are brought together once a month. Again, that might be presented by a Federal Court judge on a particular legal issue or by an external expert on matters that are of current interest or concern to the court or where there is a very identifiable need for judicial education. There is also the Judicial College of Australia, which provides courses. Federal Circuit Court judges are supported to attend those.

Senator WATT: Will there be any review of the judicial education being provided in light of this judgement?

Ms Anderson: I can't speak to that. The judgement was published yesterday. I'm sure it will be reviewed by the Chief Judge.

Senator SIEWERT: I want to go back firstly to the issue of Western Australia. In terms of your conversations with the West Australians, could you expand a bit on that and tell us how much consultation or discussion there was with Western Australia before the bill drafting was finalised?

Mr Smrdel: It's been a few months back now. There were certainly telephone discussions and email exchanges with the relevant officials in the West Australian Department of Justice. I don't have dates to hand to provide that degree of granularity, but there were certainly discussions, both electronically and phone conversations, with the Western Australian Department of Justice, as well as the Attorney's letter to the Western Australian Attorney-General, which basically outlined the proposed amendments that the bill was going to put forward.

Senator SIEWERT: So at the time of drafting you would have been aware of the concerns, conflict in fact, with West Australian law and the difficulties the appeals process would have for our system in Western Australia?

Mr Smrdel: We were certainly aware of their concerns. The argument principally comes down to the status of the family law magistrates of Western Australia. That's where the issue is principally arising; and then appeal pathways from that court, whether it should go to the family law appeal division of the Federal Court or remain within the Federal Circuit and Family Court, or potentially for appeals to stay within the Family Court of Western Australia itself. In terms of any issues flowing on from that, we are still in ongoing discussions with Western Australia.

Mr Anderson: If I can add to that, you referred to conflicts with West Australian law. It is not actually a question of conflict with West Australian law. It's more a question of the preferences of the Western Australian government as to how appeals from the Family Court of WA and from Family Court magistrates in WA should be heard. It's not a question of legal conflicts as such; it's about policy.

Senator SIEWERT: There are some people who would take it further than that, but I accept what you just said. So the government made a decision that they would in fact override and not take into account the Western Australians' concern—which isn't just the Western Australian government, but is shared by practitioners in Western Australia very strongly as well.

Mr Anderson: While Western Australia has its own Family Court, it's still in the family law system, and the government's view as expressed in the bills is that appeals were best heard by creating a new family law appeals division in the Federal Court. That was the government's philosophical and policy view, and that is expressed in the bills. Of course the committee's report has recommended that that part of the bill not proceed. The government is considering the committee's report.
Senator SIEWERT: Has there been correspondence from the West Australian government since the bill—outside of the committee inquiry process, where we heard really clearly the opinions in Western Australia—has there been further correspondence from the West Australian government about this issue?

Mr Anderson: We're not aware of any further correspondence. It doesn't mean that there hasn't been any, but we're not aware of any.

Senator SIEWERT: Could you take on notice to double-check that for me?

Mr Anderson: We will take that on notice.

Senator SIEWERT: Senator Pratt has covered some of the other issues there, but I would like to go to some evidence that we received from the Aboriginal Family Law Services in respect to issues around child protection. I don't know if you are aware of the evidence that we received in Western Australia and the matters that were raised, which, as I understand it, have also been raised with the ALRC inquiry, around the preference for child protection matters to be considered through the Family Court system rather than the Children's Court, because the Children's Court is seen as a criminal jurisdiction. I ask first if you've seen that evidence, and has this matter been brought to your attention separately to the inquiry that is currently being undertaken?

Mr Anderson: We are certainly aware of all the evidence that was given to the inquiry. I'm not sure myself whether it has been separately brought to our attention. There is always a lot of discussion happening in the family law realm. We don't have family law people here. They will be here this afternoon. If you like we could return to this later this afternoon when our family law people are here.

Senator SIEWERT: Thank you very much for that. Can I ask another question on that: was this matter considered in the consideration of the reforms in the bill?

Mr Anderson: No, we weren't looking to take any jurisdiction away from states and territories in this process. This was about the federal family law courts.

Senator SIEWERT: So other reform to be considered in terms of this matter would be considered separately?

Mr Anderson: I think that's a really important point to bear in mind. There is a vast amount of reform going on in the family law system. This part of the reform is just about the federal family law courts. You've got the ALRC doing their review, but there were two bills passed by the parliament last year in the family law space around cross-examination, things like that. There is a lengthy list of other pilots that are going on around health justice partnerships and specialist domestic violence units. The parenting management hearings were a reform that was proposed and is still sitting in the Senate. There are always a lot of different streams of reform in the family law area.

Senator SIEWERT: Ms Anderson, can I go back to the issue around the rule revision. Can I check on a time line for that? If you said it and I missed it, I apologise.

Ms Anderson: The Chief Justice has asked that what we call the framework for the harmonisation is ready for consideration by the judges by the end of March 2019. That framework will not be the rule revisions themselves; it will be an approach. We anticipate that revision exercises this time, given the requirement for a majority of judges to agree to any changes to the rules, will be lengthy.

Senator SIEWERT: I understand that. Have you been given a time frame for when you are expected to get that finished? When you say 'lengthy', is it a year?

Ms Anderson: Early indications were at least 12 months.

Senator McKIM: I've got some questions around how the federal circuit and family courts determine risk and authenticity where allegations are made by children of sexual assault or abuse by one of their parents. To start off, what measurement tools are used by the courts to determine risk and authenticity where such allegations are made?

Ms Anderson: The Family Court of Australia requires parties to advise of risk, that is allegations or evidence of child abuse, family violence, substance abuse, mental health issues that may impact or inform the court's consideration of the matter. That is not mandatory, but a part of the application process. When and if a matter is identified, subject to the nature of the allegation it may be very quickly moved to what's called the Magellan list, that is a list of cases that involve significant evidence of child abuse. Those matters are then dealt with expeditiously, working highly collaboratively with the state or territory welfare agency to verify the material and identify the nature of the risk and what measures need to be put in place to reduce that.

In the Federal Circuit Court of Australia the application for initiating an application requires a notice of risk. That notice of risk may say there is no risk, or it will disclose risk. At this point over 54 per cent of all of the matters in the Federal Circuit Court's family law jurisdiction identify risk—so, that's in the thousands—
Senator McKIM: Are we talking about risk to children here?

Ms Anderson: We are talking about risk to children or risk of family violence, which of course can involve children—

Senator McKIM: Do you break that down?

Ms Anderson: In the notice it is broken down, yes, and then identified according to the registrar and/or at times a family consultant may be involved, and then there will be an identification as to the nature of the matter. If it's urgent, the matter will be brought to the attention of a judge very quickly. Fifty-four per cent of those matters—all are referred to the state or territory welfare agency.

Senator McKIM: Your response dealt in the main with expediting cases. Are there any management tools that are used to determine authenticity of allegations?

Ms Anderson: There are not. There are a number of allegations made in affidavit evidence. Of course, you know that will at times be put to proof in court, where that is tested. The court is undertaking some quite preliminary work on how to approach the identification, assessment, and management of risk through the application of assessment tools. That work is progressing. It has not yet been considered by the court as a whole, nor the legal profession or others. It's been carefully thought through internally and I would anticipate that it will be something we can seek external views on fairly shortly.

Senator McKIM: I understand that that's still under consideration. You have just given evidence that you would be in a position to undertake external views shortly. Have you considered what the nature of that discussion might be? Would the court release a discussion paper, for example, and ask for public submissions? Are you far enough down the track to give an indication what that would look like?

Ms Anderson: I don't think the court would be in a position to ask for public submissions, but the court has a committee comprised of judges of the Family Court and the Federal Circuit Court looking at family violence. That committee will review the proposal that we've developed about how to implement a measurement tool, and then, from there, there will be consideration with the body of judges, and then, usually through what I would call our stakeholder forums, some consultation around that. My hesitation is not to say that there won't be any consultation at all. It is more that the seriousness of this, the importance of the court putting in place a measure that really delivers benefits, is so high that we'll be very careful as to how we move to implement it.

Senator McKIM: May that require changes to legislation?

Ms Anderson: It's not contemplated that it would.

Senator McKIM: Are you aware of the findings of the royal commission into institutionalised child sex assault, which found, firstly, that children generally do not lie about sexual harm, and, secondly, that children generally disclose to the non-offending parent or a friend, and that one in four girls and one in six boys will be sexually assaulted before the age of 18?

Ms Anderson: I am aware of that.

Senator McKIM: Has that played any part in the consideration that the court has currently given to measurement tools on risk and authenticity?

Ms Anderson: The general findings have informed the consideration that the court has given. When I say court, there's a number of senior officers. As you would know, the court is the judiciary and then we have the administration. I would just be a little mindful of my description there. The measurement tool that's being considered is one that has been considered and adopted by other agencies around Australia, so it's not novel in that sense and it is indeed informed by quite a range of both academic considerations and the royal commission.

Senator McKIM: As part of that process, are you looking at how other equivalent courts around the world are dealing with this issue?

Ms Anderson: At this stage, yes, but only through a desktop review. We haven't been travelling.

Senator McKIM: No, I wasn't going to go there, Ms Anderson! Thank you, nevertheless, for clarifying that! It's been put to me that research tells us that children are the least likely to tell lies, but also most likely not to be listened to by the court system. Would you have a response to that?

Ms Anderson: No.

Senator McKIM: Do you keep statistics that track claims in the courts of child sex abuse? I ask because I think you said 54 per cent of cases relate to allegations of family violence. Is that correct, firstly?

Ms Anderson: There are allegations of violence, child abuse, or substance abuse or mental health issues that would inform the court's management of that case—so, 54 per cent of the Federal Circuit Court matters. It sits at
around 38 per cent, if I recall correctly, in the Family Court. In the Family Court, as I mentioned, those matters of really high risk are managed in a specialist list. So, yes, they are tracked, through different reporting mechanisms. In the Federal Circuit Court, given the number of cases where risk has been identified as an issue, they are not tracked independently.

**Senator McKIM:** So you're not able to inform the committee as to what percentage of matters that come before the two courts contain allegations of child sexual abuse, as distinct from those broader measures that you mentioned earlier?

**Ms Anderson:** I will take that on notice, if I may.

**Senator McKIM:** Thank you. I'm very happy for you to take this follow-up question on notice, as well. Is it possible to further break that down? If you are able to just focus on cases where allegations of child sexual abuse have been made, is it possible to further break that down to provide data around whether the child's evidence has been substantially accepted or rejected by the court?

**Ms Anderson:** I will take that on notice. I would think it's unlikely, because that is quite a granular level of description that will often play out, as it were, within the litigation itself. But I will certainly take it on notice.

**Senator McKIM:** I'm very happy for you to take it on notice. Has the court considered employing an expert multidisciplinary advocacy model, like, for example, a child advocacy centre, which was in recommendation No. 92 by the ALRC report in 1997 entitled *Seen and heard*?

**Ms Anderson:** The court employs around 80 full-time-equivalent family consultants in the child dispute service. Their primary role is to provide advice both to the court and families on the best interests of the child. They are social workers, psychologists, who provide a multidisciplinary perspective. We are considering the capacity of family consultants to work with registrars in early settlement conferences so that we can bring the mix of legal and social work perspectives.

**Senator McKIM:** I think you just said that there is a multidisciplinary perspective provided—

**Ms Anderson:** In some matters.

**Senator McKIM:** Which matters would those be?

**Ms Anderson:** They would be where the judge has referred the matter to a registrar, with the assistance of a family consultant, for an alternative dispute resolution measure.

**Senator McKIM:** Does that multidisciplinary perspective closely follow the recommendation in the ALRC *Seen and heard* report, or is that a different model that you've implemented?

**Ms Anderson:** I'm not as familiar with the report as perhaps would be helpful for you, so I couldn't say.

**Senator McKIM:** Could I ask you to take that on notice and provide any response that you're able to.

**Ms Anderson:** Of course.

**Senator McKIM:** Thank you. Is Dr Rikard-Bell still utilised by the court as a single expert witness?

**Ms Anderson:** I do not know that, so we'll take that one on notice as well. Thank you.

**Senator McKIM:** Thanks.

**CHAIR:** Thank you very much for your evidence again. We very much appreciate that.

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**Office of the Australian Information Commissioner**

[10:10]

**CHAIR:** I welcome you, Ms Falk, as the Australian Information Commissioner, and your team. Thank you very much for joining us. Do you want to make an opening statement?

**Ms Falk:** I would, please, if time permits.

**CHAIR:** Fire away.

**Ms Falk:** Good morning and thank you very much for the opportunity to make some opening remarks. I'm accompanied here today by my recently appointed Deputy Commissioner, Ms Elizabeth Hampton. If I can touch briefly on some of the key activities, to update the committee since the last occasion, as the committee is aware, the OAIC's purpose is to promote and uphold privacy and information access rights. We work proactively with Australian government agencies and organisations to promote good personal information-handling practices and access to government held information. Individuals can also make complaints to my office regarding possible interferences with their privacy or request an Information Commissioner review of an agency decision under the FOI Act. As Information Commissioner, I also exercise a range of proactive regulatory functions in order to detect, deter and remedy.
There has been a lot happening in the domestic privacy and information access environment. Community, business and government engagement across the personal information management and information management landscape remains strong. In the six months from July 2018 to December 2018 we received over 10,000 inquiries about privacy, freedom of information and related matters. We received 524 requests to review freedom of information decisions of Australian government agencies, up 42 per cent on the same period the previous year, and we finalised 318 reviews, a 20 per cent increase on the same period the previous year. We continue to seek efficiencies in our FOI review processes and, through our early resolution procedures and other measures, we are seeing an improvement in the finalisation rates. However, nonetheless the incoming work is greater than that which we are able to resolve, and this is impacting on timeliness across both FOI and privacy regulatory work.

During the July to December period, we received 1,716 privacy complaints, an increase of 22 per cent on the same period last year. We resolved 1,410 privacy complaints over the same period, which is largely consistent with the numbers in the previous year. We have also had 12 months of implementing the Notifiable Data Breaches scheme. That scheme began one year ago this week. The scheme provides twofold protection to Australians: entities are required to notify individuals and my office when they experience a data breach that is likely to result in serious harm to anyone whose personal information is involved in the breach. In total, 812 breaches have been notified to my office since the scheme began in February 2018, with 262 reports in the most recent quarterly report, from October to December 2018. That’s up slightly from 245 the previous quarter. Individuals whose personal information has been compromised have also been notified, providing an opportunity for people to take action to reduce their risk of serious harm, such as by changing passwords or notifying their financial institution. But the scheme also has a broader purpose, with the potential to help entities avoid data breaches. Our proactive, educative role plays an important role in that regard. The publication of statistical information under the Notifiable Data Breaches scheme encourages entities to take action to mitigate the risks before their businesses are affected.

We also regulate the privacy provisions that apply to the My Health Record system. While this is not new business for the office, our role has recently increased, with the closure of the opt-out period and heightened awareness of the scheme. In addition to managing any complaints and inquiries about scheme, we continue our work to raise awareness of the privacy controls available for My Health Record, and we will soon release additional material to help the community understand these options.

In other regulatory developments, we are working closely with the Australian Competition and Consumer Commission on two key areas of co-regulation—digital platforms and the consumer data right—to secure strong data protection outcomes for all Australians. Our focus is on enabling the consumer and economic benefits that can flow from data sharing, by ensuring the system has a robust data protection and privacy framework and effective oversight. This interaction between consumer and competition law and privacy law can have great benefits for Australians and is of interest to regulators across the world. It's one of the many areas where we are actively engaging with our international networks. I am a member of the executive committee of the International Conference of Data Protection and Privacy Commissioners, and we are looking specifically at the convergence of these two areas of law, to achieve outcomes in the public interest.

The OAIC is an active contributor to global thinking around privacy and information access. Through our strong international regulatory partnerships, Australia leverages emerging regulatory trends, cooperates in cross-jurisdictional enforcement and seeks to facilitate globally interoperable privacy and information-access practices. We are committed to ensuring that privacy and information-access rights are protected, as a necessary foundation for facilitating innovation, transparency and business engagement in the global digital economy. That concludes my opening remarks.

**CHAIR:** Thanks very much for that. I'll go first to the deputy chair, Senator Pratt.

**Senator Pratt:** Ms Falk, do you have any background, given your role, on the reasons for the increase in malicious cyberattacks resulting in data breaches?

**Ms Falk:** The intelligence that my office has received through having the Notifiable Data Breaches scheme indicates that malicious and criminal attacks are the largest cause of notifiable data breaches and, of those, cyberincidents remain in the majority. The predominant issue that arises is compromising credentials. This can occur through a phishing attack. It can occur through a brute force attack. It can also occur through ransomware-type issues.

**CHAIR:** Could you just explain those three terms, please.

**Ms Falk:** A phishing attack would be where a wrongdoer seeks to trick somebody into providing their username and password in order to access a system. A spear-phishing attack is where a more sophisticated attack
occurs, where they masquerade as someone—perhaps as a close friend or a business colleague—and use personal information about that person to lure them in to provide their username and login details.

**CHAIR:** Are these fairly technical terms these days? Are they now part of the lexicon? Is that what people mean when they say 'spear-phishing attack'?

**Ms Falk:** They are, but I think for many of us they require reiteration. In the statistical reports that I publish, we have a glossary of terms. We've developed that in conjunction with the Australian Centre for Cyber Security as well as working closely with that centre to develop tips for individuals and also for organisations and agencies, to prevent these kinds of incidents.

**CHAIR:** I must remind my scuba diving friends not to use the term 'spear-fishing attack' any more!

**Senator HUME:** Can I clarify what a brute force attack is?

**Ms Falk:** A brute force attack is when there's an automated attack on a system where various configurations of passwords are used over and over to try and infiltrate.

**Senator PRATT:** What evidence is there about what kinds of actors are making these attacks? Are they criminal gangs? Are they foreign state actors? I'm sure there's probably a diversity. Are there people just doing it for fun?

**Ms Falk:** That information is not readily available to my office. In terms of the information that has to be provided under the Notifiable Data Breaches scheme, it's about the cause to the extent it's known. In many of these situations, the cause may not be ascertained. However, the Australian Cyber Security Centre and the intelligence agencies might have more information in relation to that.

**Senator PRATT:** When an attack is reported to you, what is your obligation? I find it somewhat concerning that there's no obligation to get to the bottom of who's behind the attack when it's perpetrated. Having a notifiable scheme is only going to go so far if you can't actually work with whoever has been attacked to address the underlying causes in their security which might relate to who made the attack in the first place.

**Ms Falk:** For many businesses, they may not be able to discern who the attacker was. However, the Australian Cyber Security Centre provides a resource for businesses to assist them in investigating matters further. We have an arrangement with the Australian Cyber Security Centre where information is shared between us in relation to these issues. But that technical expertise lies with that centre, rather than in my office.

**Senator PRATT:** So if I wanted to ask those questions of the Australian Cyber Security Centre in estimates, where would that take place?

**Mr Moraitis:** The ACSC is dual, in the sense that it's in Home Affairs but it's also with ASD. For what it's worth, this department used to have the Cyber Emergency Response Team, which is now a part of the ACSC. As Ms Falk alluded to, OAIC's role is to help people who have been the victims of this. ACSC kicks in to verify, as best they can, the sources. As you alluded to, Senator, they could be criminal gangs, they could be state actors, they could be—as you said—so-called hacktivists, people who have a grudge or want to make a point or have some agenda. It's the role of the ACSC to mitigate the risk at source. OAIC's role is to mitigate and address the consequences of the attack for individuals and consumers.

**Senator PRATT:** I can see that. I'm trying to work out where I might get answers to the questions I've just asked.

**Mr Moraitis:** Home Affairs and Defence.

**CHAIR:** We dealt with them last night, I think. Senator Molan asked some questions late last night.

**Senator PRATT:** Defence and Home Affairs, thank you. Ms Falk, is it correct to say—and we've discussed this before—you're currently fulfilling all three lead roles carried out by the Office of the Australian Information Commissioner?

**Ms Falk:** I've been appointed as the Australian Information Commissioner and also the Privacy Commissioner, and both of those positions are able to exercise the freedom of information functions.

**Senator PRATT:** Yes. Noting that the legislation does have the capacity to support three separate commissioners, how do you find that workload, in general terms?

**Ms Falk:** I've previously given evidence—I think to this committee and others—that the position that I'm appointed to is able to exercise those three functional areas, and that that's effective; and that if that were to change, that would be advice that I would give to government. I've pointed out to the committee, however, that in terms of the resourcing of the OAIC, the issues lie in terms of the staffing and case officers to assist to progress the increased workload that we've experienced over the last three years.
Senator PRATT: So you have experienced an increase in workload over the last three years. How would you characterise that? Where are the increases?

Ms Falk: In terms of the workload over previous years, in the last 12 months there was an 18 per cent increase on privacy complaints. For freedom of information access review requests, that increased by 27 per cent. Those kinds of percentage increases are fairly consistent over the last three years; however, in the past six months, from July to December, we've seen further increases. In relation to privacy, we have received a 22 per cent increase compared to the same time last year. In relation to FOI, in the last six months we have again seen an increase of 42 per cent of the numbers that we have received.

Senator PRATT: Okay. Can I ask if the increase in the number of malicious attacks leading to data breaches—clearly, you need to take the lead on that in your role as Privacy Commissioner—is taking a great deal of your time and attention?

Ms Falk: May I have the question again, please?

Senator PRATT: The number of malicious attacks involving data breaches, which I referred to before, has that increased your workload? How much of your time and attention does that take?

Senator PRATT: The Notifiable Data Breaches scheme has been a significant increase in the workload of the office, receiving more than 800 notifiable data breaches in the last 12 months. That compares to about 114 under the voluntary scheme that was in operation before that, so it has required the office to focus on and prioritise that work. Inevitably, because of the increased workload across all of our functions, it is unfortunately leading to some extended periods of delay inactioning some of the work.

Senator PRATT: In which areas are the extended areas of delay blowing out? are freedom of information requests one such area?

Ms Falk: I should caveat to say that every freedom of information request that is made to the office, or privacy complaint, is triaged and actioned in a timely way to determine the risk to the individual and also whether there are other factors that would warrant it being expedited. We resolve more than 50 per cent of the privacy complaints through an early resolution model; similarly, we have seen a success on the freedom of information side of the work in increasing the numbers that we're resolving. Having said that, those matters, both in privacy and FOI, that need to go to a full investigation are experiencing a delay to be allocated to an officer.

Senator PRATT: How long is that delay?

Ms Falk: It will vary from case to case, depending on whether there are particular factors that would warrant expedition, as I've said. The oldest matter waiting for resolution for privacy is at nine months at present. For freedom of information, the allocation time is 8.5 months.

Senator PRATT: Do you have statistics on that that we can compare over time?

Ms Falk: I can give you some comparisons as at October last year. For instance, for privacy the allocation time was around 7.5 months, and that's moved to nine months. For FOI, at October last year it was 8.5 months. It's moved to 11 months. In terms of addressing that very real issue, we're working proactively in terms of the causes of the increase in matters, working to seek to ensure that there's good FOI decision-making happening in the first place, and, in terms of privacy, that there's good awareness across government and business around responsibilities. At the same time that we're looking at our internal processes, we are putting more focus and resources on our early resolution, which is bearing fruit. As well as that, we are looking at what our resourcing needs might be moving forward, should that workload be sustained.

Senator PRATT: Can I ask how many FOI requests are currently before your office?

Ms Falk: Yes, currently on hand we have 784 FOI IC reviews.

Senator PRATT: And you said the longest case still waiting for allocation, I think, was—

Ms Falk: 11 months.

Senator PRATT: 11 months?

Ms Falk: Yes.

Senator PRATT: What is the average time it takes for your office to complete a whole FOI decision, on average—for the whole case load?

Ms Falk: I would have figures for average completion times for last financial year. I think I should take that on notice to make sure I'm accurate.
Senator PRATT: Do you have any statistics at all that you can share with us today? You can frame them in a way you're comfortable with reporting, if there is something you can tell us.

Senator Reynolds: I think Ms Falk said she will take that on notice to make sure she can provide accurate information for you, Senator Pratt.

Ms Falk: Unfortunately, I don't have those figures in front of me.

Senator PRATT: So you don't have the average completion time? Do you have some figures with you in relation to completion times, not averages, but other—for example, you were able to tell us the longest time. Are you able to tell us how many cases are waiting for a similar length of time?

Ms Falk: We have a KPI of resolving 80 per cent of matters within 12 months, and we've consistently met that KPI over recent financial years.

Senator PRATT: Okay.

Senator PATRICK: I might help you, Senator Pratt. I have an FOI that shows that there are 18 matters that have been waiting 11 months to get to a case officer.

CHAIR: Okay. That might be a good time to go to Senator Patrick, who has some questions, and I will come back to you.

Senator PRATT: I've only got one more question.

CHAIR: Sorry, we should actually break at 10.30. You will be first on after that, Senator Patrick.

Senator PRATT: I've only got one more question.

CHAIR: Okay. Senator Pratt.

Senator PRATT: Journalists have been refused access to documents and are therefore raising concerns about the delays and the time it takes to have a government refusal of a decision reviewed by the Office of the Australian Information Commissioner. A key concern given to us is that, by the time a review is completed, the subject matter of the news story may no longer be current. This means that the government of the day may refuse an application entirely on spurious grounds, knowing that, even if the decision is ultimately overturned, the delay caused will ensure the information does not reach the Australian public in a timely and meaningful way. Would additional resources assist you in dealing with applications for the review of FOI decisions in a more timely manner?

Ms Falk: It's my responsibility to prioritise the appropriation that has been given to the office. I've talked through some of the strategies that we've put in place, including early resolution. We've tripled the number of matters for IC reviews that have been varied by agreement. There are early resolution processes that result in changed decisions, that result in further documents being provided to applicants. So we are seeing results. The figures that I've given you are a number of matters which are more complex in nature and have further exemption applications that may be applied to them.

Senator PATRICK: That answer doesn't go to the burden of the senator's question. She was asking whether or not more resources would assist you. That's a yes or no answer. You cannot, as a statutory officer, with responsibilities—

Senator PRATT: You are independent. You could actually give us—

Senator Reynolds: Senator Macdonald—

CHAIR: Senator Patrick, it is not for you to tell officers what they should or shouldn't do. You've made your point and asked for clarification.

Senator PATRICK: She's a statutory officer with responsibilities and she has to show leadership in that regard.

CHAIR: No. You're not here to lecture officers on how they should or should not act.

Senator Reynolds: Senator Macdonald, can I make a point of order?

Senator PATRICK: It's quite perfunctory, actually. It's perfunctory.

CHAIR: You're here to ask questions, which you've done. I'm sure the officer will answer, but it's not for you to lecture the officers on what they should and shouldn't be doing.

Senator Reynolds: In addition to your comments, through you, can I just ask Senator Patrick and Pratt to withdraw their comments—

Senator PRATT: No.
Senator Reynolds: because they were very unnecessary and unfair reflections on the professionalism of Ms Falk.

Senator PATRICK: This is a disaster, Minister. We have increasing numbers—

CHAIR: Senator Patrick, don't interrupt someone else when they're talking, in this case the minister.

Senator PATRICK: Well, the minister is—

CHAIR: I'll come to you later. I will take this comment by the minister as a point of order, and I will go to you, if you want to—

Senator Reynolds: Yes, it's a point of order.

Senator PATRICK: Completely ineffective, Minister—

CHAIR: Well, Senator Patrick—

Senator Reynolds: Senator Macdonald—

Senator PATRICK: your government on FOIs—

Senator Reynolds: can I just finish my point of order?

CHAIR: The hearing is suspended.

Proceedings suspended from 10:35 to 10:53

CHAIR: As we left, we were asking questions of Ms Falk. Minister, you raised a point of order, but I think we've got the gist of that and probably don't need you repeat it.

Senator Reynolds: Sorry, could I please just complete it, because I didn't get to complete it.

CHAIR: Just hang on. Can I just remind my colleagues that, as I said at the opening of this estimates committee, we are privileged to have the opportunity to question officers of the department and ministers. It's a rare privilege. It's very useful for parliamentarians to be able to do that, but we are here to ask questions and receive the answers, whether or not we like them, and personal abuse of public servants and political comments and statements will not be tolerated. I've made that clear all along. Unfortunately, I wasn't paying as much attention as I should have just before the break. I did hear a senator start to lecture officers on what they should and shouldn't do. That is not part of the estimates process. If there were improper comments or allegations made before that, I would ask any senator who was part of those to perhaps withdraw them and apologise. If that's not coming, there's not much anyone can do. We'll just note that and move on, and I'll be more diligent in the future.

Senator Reynolds: Chair, thank you very much for your comments. All I will say is that, from the two senators, there were two very audible comments that went to the heart of the independence and professionalism of the Australian Information Commissioner. I would remind senators here that, if you want to make a political point, you have a responsible minister here at the table. I would ask, as a matter of courtesy and decency, that both senators withdraw and even possibly apologise to the Information Commissioner, because it was unacceptable.

CHAIR: I've made that point, minister. As I say, I wasn't paying the attention I should have been, but I've asked those senators who were responsible to withdraw and apologise. But, if they don't, I'm afraid I can't take that further. Suffice it to say that I do acknowledge the professionalism and independence of all of the public servants and bureaucrats who appear before us, and that certainly goes to the Information Commissioner.

Senator PRATT: Chair, I would just like to record that I don't mean any particular offence attached to the words that I said, which underscored that Ms Falk has an independent statutory position and she's entitled to express her views at this committee, which she has done. I'm very grateful for the opportunity to have that engagement with you across the table, so thank you very much, Ms Falk.

CHAIR: Thank you for that, Senator Pratt. Nobody else? Okay. Where were we at?

Senator PRATT: I had just asked a question about journalists and the delays that they're experiencing, and Ms Falk had answered by saying they attempt to triage these things early on, in early reconciliation and early resolution of these kinds of occasions.

CHAIR: Thank you, Senator Pratt. I will get Ms Falk to answer that. You started your questioning at 10.18.

Senator PRATT: Yes, I'm happy to hand over.

CHAIR: And we finished at 10.35, so I will, once we have the answer to this question, move to another senator.

Senator PRATT: Ms Falk did answer. Senator Patrick will probably follow up with other issues of relevance in any case.
CHAIR: Thank you for that, Senator Pratt. Senator Patrick is the only other person I'm conscious of—no, Senator Watt has some questions too. So I will go to Senator Patrick next and then Senator Watt.

Senator PATRICK: Thank you, Chair. Ms Falk, I know you do a lot with the resources that you have, and I'm not critical of what you do with the resources that you have, but you, of course, are aware there's a statutory requirement for FOIs to be dealt with in a timely fashion, and you are at the heart of that when it comes to IC reviews. Would you accept that?

Ms Falk: My office has an obligation to seek to provide access and Information Commissioner reviews in the most efficient manner possible, and that's what we strive to do.

Senator PATRICK: And indeed timely. There is a requirement in section 3 of the act for the prompt release of information?

Ms Falk: Certainly.

Senator PATRICK: Okay. You have, as I mentioned before, 18 cases—and this may have been updated since this information has been provided to me—that are 11 months old. When I say '11 months old', I mean cases that haven't even been assigned a case officer. How do you deal with people when they're after information—some of it would be related to professional interests and some of it would be personal—and are in a situation where, for 11 months, they haven't even been assigned a case officer?

Ms Falk: Thank you, Senator. In terms of the matters that may have been with the office for 11 months, may I point out that those matters would not have lain idle during that time, so they would have been triaged. We would have sought the relevant documentation on the decision from the agency; we would have sought submissions from the parties; and we would have attempted to resolve the matter, either by providing a view as to the relative merits of the matter or by inviting the agency to make a revised decision if we considered that they had erred in their original decision-making.

The matters that you refer to would then have been placed in an allocation queue awaiting a case officer to conduct a more in-depth analysis of the matter and to prepare an Information Commissioner review decision should one be required. Even at that point, they would still liaise with the parties and seek to get a resolution in the interests of providing access to information in the most cost-effective and efficient manner.

Senator PATRICK: As you know, I have a number of IC reviews. I don't want to go to them; it would be inappropriate to go to them. But just in terms of the experience I have, with a number of them, when you send something to the Information Commissioner's office you end up with almost no contact, and in many cases no contact until such time as you have been assigned a case officer. So, I accept that you're saying that in the background things may be getting done, but I struggle to understand why you can't, in 11 months, get a submission from a department, why you can't elicit from them a revised decision, if that's possible. How does it take 11 months? That's longer than court matters in getting first submissions.

Ms Falk: I don't wish to obfuscate in relation to the issue you've identified in terms of the length of time. Ideally, these matters would be resolved in a more timely manner. What I seek to point out is that it is a smaller number of matters that require that length of time. They might relate to more-complex matters. And many matters are resolved in a much more timely way. I have managed to find some of the statistics Senator Pratt sought earlier. The average time taken to resolve in Information Commissioner review over the past three years has been between six and seven months. Many were resolved in a much more timely way, because that's an average amount. Some, regrettably, as you pointed out, are taking longer.

Senator PATRICK: There was a shutdown of your office back in 2014, I think it was—or a squeezing of resources—followed by a decision by Prime Minister Turnbull to re-establish that. Prior to that point, when we had three commissioners—an Information Commissioner, a Privacy Commissioner and a Freedom of Information Commissioner—as required by the statute, there was a lot of work being done by your office to train officials in the correct making of decisions so that hopefully they won't get to the point where someone has to make an IC review. What progress has there been, or what work are you doing in that space right now?

Ms Falk: In terms of our proactive work, it's very important that we're engaging with agencies to ensure that they're given the resources they need to make good decisions in the first instance. Of the kinds of engagement that we have, the first is the guidelines that my office issues, which are updated from time to time and that agencies must have regard to. We convene information contact officer network meetings. Towards the end of last year I spoke at one of those as part of Right to Know Week. Those are opportunities for all FOI practitioners across the Commonwealth to come together to hear from me, to hear from senior staff and also to hear from practitioners from across the Commonwealth to share their experiences. Those meetings run twice a year, and in between times we have a newsletter that's provided to FOI officers. And we've commenced providing, if you like, guidance and
tips in those newsletters that are based on the kinds of issues we're seeing through IC reviews, to help elevate the decision-making and to draw agencies' attention to areas that we're seeing in IC reviews warrant more attention.

Senator PATRICK: So, you don't have dedicated training courses. I think you used to, didn't you?

Ms Falk: In 2010 some training occurred, which was around a whole new act coming into being. That was for a period of time, to establish the new jurisdiction.

Senator PATRICK: We'll go back once again to the burden of Senator Pratt's question. I'll just read the testimony of Mr Walter from the Attorney-General's Department. At a recent hearing he conceded, 'There are undoubtedly stresses in the system.' You're conceding that there are stresses in the system inherently by the fact that you have all these delays running through the system. I say this in the context that ASIC used to say: 'No, we've got enough resources. No, we've got enough resources.' When the whole system breaks the reality pops out. I cannot understand how you could be sitting in your position as a statutory officer with obligations, knowing that there are stresses and knowing that you're falling behind—notwithstanding that you are working as efficiently as you possibly can with the resources you have—and not be able to form the view that you require additional resources.

Ms Falk: I've not said today that I don't require additional resources—in fact, the contrary. I was asked a question earlier around the three-commissioner model and my answer went to the fact that I thought that was working well at this time—if that were to change, I would advise government—but what is required is additional resources at the staffing level. I understand that that may not have been clear at the time. But I have been on record a number of times in terms of the increased workload and the fact that the ability of the office to keep up with that workload is being challenged. However, I don't think it's acceptable as a statutory officeholder to simply say that the office requires more resources with nothing else added to that. I think that would be simplistic.

It's incumbent on me to look at prioritisation across the office but also to understand the causes of the increased work, to work in terms of the proactive educative strategies that I've outlined and to ensure that we are taking a holistic approach to looking at our processes and that we are doing the best that we can. We can see over the last few years that we have continued to increase our throughput, and that's through trialling different pilots and different methodologies and looking very critically at our processes. I will continue to do that. There would be no regulator in the country, I'm sure, who wouldn't say that, inevitably, time frames couldn't be improved with additional resources, and I'm no exception to that.

Senator PATRICK: The budget is approaching. Have you made submissions in relation to the budget in terms of resources?

Ms Falk: I'm on the record as having said that I'm in discussions with government, and, of course, they're confidential budget discussions.

Senator PATRICK: Confidential in the context of what? I have a constitutional obligation to make sure from an oversight perspective that statutory officers are doing their job properly and so it's quite reasonable for me to question you on matters of resource, where the shortfalls are and so forth. It's quite a reasonable proposition. Can you give me some idea of the magnitude of resources you might require in the FOI space to enable you to clear the backlog that you currently have and to deal with the increasing numbers, notwithstanding you are working on efficiencies—that's one side of solving the problem? What magnitude do you think would get some of these decisions down to, say, six months?

Ms Falk: I'd need to take that on notice. I said earlier that in previous committee hearings we have undertaken some modelling in terms of what I project the current workload at and how it might play out over the forward years. We have done that work. I have been in discussion with government around what future resources might be required for the office.

Senator PATRICK: Can you make that modelling available to the committee, please?

Ms Falk: I would need to consider that and take some advice on that. Certainly I will consider that.

Senator PATRICK: What would your concern be in sharing that with the committee?

Ms Falk: The manner in which information may have been shared with government may not permit me to do so.

Senator PATRICK: I'm sorry, I don't understand that. There are various public interest immunities that you can advance—not one of them is 'sharing information with government'.

Senator Reynolds: Senator Patrick, I've got to say that I don't think the Information Commissioner could be any clearer. She's taken your question on notice and she'll come back after some consideration. So I don't think in
any way that Ms Falk has elevated this to a public interest immunity claim. She's merely said, quite appropriately, that she'll take it on notice.

**Senator PATRICK:** And then she talked about consideration. I'm asking about that consideration. It's a follow-on question to what she raised, Minister.

**Ms Falk:** I'd need to consider a number of things in terms of when that work was done, the relevance of it now and the circumstances in which I may have provided it to government.

**Senator PATRICK:** Okay. Are you allowed to accept a verbal FOI or does it have to be in writing?

**Ms Falk:** Senator, I'm sure you know the answer to that. It must be in writing.

**Senator PATRICK:** Yes, okay. Thank you. Touché. Thank you very much Chair. Can I just add that I didn't mean to offend; I didn't hear your statement saying you wanted more resources and that was the point that caused me great concern. So I apologise for what I said. I did not hear you expressing that you do need more resources.

**Ms Falk:** Noted, thank you, Senator.

**CHAIR:** Okay, thank you for that apology.

**Senator WATT:** Thanks, Ms Falk, for coming today. I'd like to ask a few questions regarding an article you may have seen in *The Sydney Morning Herald* last week, headlined 'Liberal MP Tim Wilson faces 'breach of privacy' claims'. Have you seen that article?

**Ms Falk:** Yes, I have.

**Senator WATT:** Okay. I've got copies anyway, if you need them. You probably remember, then, the article states:

Experts believe Liberal MP Tim Wilson may have breached privacy laws by failing to tell hundreds of people who signed up to a petition that their names, addresses, phone numbers and emails would be transferred to a multibillion-dollar fund manager.

The article notes:

The website, which does not have a privacy policy, encouraged users to sign a petition … and the information was then subsequently shared with Wilson Asset Management.

**CHAIR:** Senator Watt, if I can interrupt you again. If you have a question, can you please ask it? You have demonstrated in the last two days that you will go to any lengths to trash individuals and play the man and not the ball. This is about asking questions about public servants about policy. If you have a question, can you please ask it and forget the rhetoric, which is not part of the process.

**Senator WATT:** Well, Ms Falk needs to see some of the quotes from this article to have the context for my questions.

**CHAIR:** No, Senator Watt, in your last question which I commented upon, you could have asked what education facilities are available for judges, but you chose to smear people who can't respond.

**Senator WATT:** No, I chose to—

**CHAIR:** You're doing the same here. What is your question? And then if Ms Falk doesn't understand it, she can ask you to clarify, in which case you might want to give her an example. You continue to smear individuals rather than dealing with the ball—the policy; it's just becoming very obvious in these last two days. What is your question?

**Senator WATT:** Is that time you've just taken going to come out of my time again, Chair?

**CHAIR:** I haven't started the clock yet, unfortunately.

**Senator WATT:** Because I will note that over the last two days, pretty much every time I've attempted to ask questions, you have interrupted or shut me down.

**CHAIR:** You continue to smear individuals who cannot respond—

**Senator WATT:** I think that Mr Wilson has plenty of opportunities to respond.

**CHAIR:** and it's not relevant to the question before this committee, which is to ask questions and not simply repeat what you might have read in the left-wing press somewhere.

**Senator WATT:** So, yesterday the *Insiders* program is the Labor Party hour; today *The Sydney Morning Herald* is the left wing-press, is it?

**CHAIR:** I think that's well recognised. I don't think that anyone will argue with that. What is your question? Let me start the clock.
Senator WATT: Perhaps if you'd let me ask my question, you could then determine whether the context I'm providing is relevant. Ms Falk, there have been some suggestions in the media that Mr Wilson may have breached privacy laws. Is the Office of the Information Commissioner investigating any alleged breaches of the Privacy Act committed by Mr Wilson?

CHAIR: Well, the question could've been, is the Privacy Commission investigating any breaches in privacy by Mr Wilson?

Senator WATT: If you want to ask questions, you can ask them in the way you'd like to. I'm asking questions in the way I like to.

CHAIR: I'm trying to maintain some decorum here.

Senator WATT: That'd be a first.

CHAIR: One of the senators here might just suddenly turn on you and expose some of your unsavoury past, but we don't do that here.

Senator WATT: What are you referring to? Feel free.

CHAIR: I'm just trying to keep you on the straight and narrow, and the committee would be far better off if we did.

Ms Falk, do you have an answer to the question?

Senator WATT: Ms Falk, can I just pose my question again, so that you have it without interruption from the chair. Is the Office of the Australian Information Commissioner investigating alleged breaches of the Privacy Act by Mr Wilson?

Ms Falk: I'm aware of the matters that you have raised. I have received a complaint in relation to them. Ordinarily, I wouldn't talk on the public record about active matters, but because it's been in the public domain, I have said publicly I'm not investigating at this point but I am making preliminary inquiries. The purpose of those inquiries is to ascertain whether or not the Privacy Act has jurisdiction in the circumstances.

Senator WATT: So, not currently investigating, but undertaking preliminary inquiries to determine—

Ms Falk: Whether or not the Privacy Act would apply in the circumstances.

Senator WATT: If those inquiries result in your determining that you do have jurisdiction, you may then decide to investigate?

CHAIR: That's hypothetical, so you don't need to answer that.

Senator WATT: But the first step in launching an investigation is to determine whether you have jurisdiction. Correct?

Ms Falk: I'm making preliminary inquiries to determine whether or not I have jurisdiction—yes.

Senator WATT: Are those inquiries looking at whether Mr Wilson may have breached the Privacy Act by sharing private information with a third-party organisation that was used for direct marketing?

Ms Falk: The inquiries go to ascertain the facts and circumstances so that I can determine jurisdiction. There's been a number of matters referenced, in public commentary and articles, about whether or not the Privacy Act does or does not apply in the circumstances. I need to ascertain the facts in order to form my view.

Senator WATT: I take it then that given you're only at the preliminary inquiry stage you haven't interviewed Mr Wilson yet?

Ms Falk: No.

Senator WATT: And haven't sought a statement?

Ms Falk: No. Ordinarily, the inquiries would be through letter correspondence and a response to those inquiries.

Senator WATT: But you have received a complaint—you mentioned?

Ms Falk: Yes, I have.

CHAIR: Yes, for the third time.

Senator WATT: What are the consequences for someone who breaches the Privacy Act in the manner that's been complained of here?

Ms Falk: The Privacy Act applies in a number of circumstances. There's a number of options that are available where there's an interference with privacy. I don't wish to speak in relation to this current matter. In general, the office seeks to conciliate privacy complaints between the respondent and the individual.
Senator WATT: You try to conciliate. Is there the potential for fines or some sort of retraction? What is the range of options you have, apart from conciliation?

Ms Falk: Under the Privacy Act in general the powers I have access to are to seek to resolve matters through conciliation; through an enforceable undertaking, which would be enforceable in the Federal Court; to make a determination, and in a determination I can make a decision as to whether or not acts or practices are interferences with privacy. I can also award compensation. The other avenue that is available under the Privacy Act in general is to seek civil penalties for serious and repeated interferences with privacy.

Senator WATT: So, you aim to resolve disputes through conciliation, but if that's not able to be done your other options include seeking an enforceable undertaking that's enforceable in the Federal Court; you can potentially direct the payment of compensation to an individual whose privacy has been breached; and you also have the option of imposing civil penalties, which is another way of saying fines?

Ms Falk: Seeking a fine through the courts, yes. In all of those circumstances, there would need to be a finding of an interference with privacy. The other option available in any complaint that is lodged is to determine that the matter does not breach the Privacy Act, and to make a decision accordingly.

Senator WATT: Have you sought any legal advice concerning whether the Privacy Act does apply in these circumstances?

Ms Falk: In general, my office does seek legal advice from time to time on matters relating to the Privacy Act.

Senator WATT: As part of your preliminary inquiries, given that they are designed to determine whether you have jurisdiction, I presume that would involve obtaining legal advice on these points? I am not going to ask you what the advice is—if you have even received it.

CHAIR: I think you said before, Ms Falk, that you don't talk about current investigations underway—about the details.

Senator WATT: All I'm asking for, Ms Falk, is whether you have sought legal advice.

Ms Falk: Ordinarily I wouldn't comment on matters that are currently before me. In this case, because it's in the public domain, I have put on the record that I am making inquiries. But I don't consider it appropriate to speak in relation to the matter any further.

Senator WATT: This issue about jurisdiction, I just want to try to understand it a little bit better. My understanding is that the Privacy Act applies to government agencies but not to registered political parties. Is that correct?

Ms Falk: That's correct.

Senator WATT: And this would be one of the issues that you need to get to the bottom of before you can work out whether you have jurisdiction?

Ms Falk: I would like not to speak any further about the individual matter, so as not to prejudice the inquiries I currently have on foot.

CHAIR: How refreshing that someone understands basic natural justice—that clearly the questioner doesn't.

Senator HUME: Chair, can I ask for a clarification. Perhaps Senator Watt can table the documents he is referring to—

Senator WATT: Sure.

Senator HUME: Because he did say that experts have suggested there may be a breach. I think it would be important for the committee to understand who the experts are—obviously journalists and maybe party members are not experts.

CHAIR: Probably Mr Shorten, I would suggest.

Senator WATT: It's quite disturbing—the increasing trend of the government to slander journalists.

Senator HUME: It's not slander to suggest that a journalist is not necessarily an expert in privacy laws.

Senator WATT: I'm glad you raised this, Senator Hume—

CHAIR: Let's continue with estimates. Do we have more questions for the Information Commissioner?

Senator WATT: I do. One of the experts quoted in the article is Dr Andre Oboler, as senior law lecturer at La Trobe Law School. I don't know if that qualifies as an expert to your liking, Senator Hume!

Senator HUME: I don't know. I haven't read the article yet.
**Senator WATT:** Dr Oboler says that Mr Wilson's use of his title and the parliamentary coat of arms meant he was not subject to the same exemptions that political parties are afforded over privacy.

**CHAIR:** Senator Watt, this is not an opportunity to read into the record things that people can read in the papers, should they be interested and should they read the left-wing press.

**Senator WATT:** Senator Hume was questioning the expertise of these people.

**CHAIR:** Senator Hume is not questioning you. Neither of you are involved in that exercise. We're asking questions of the Information Commissioner, who has indicated she's investigating the matter and doesn't wish to comment further. If you have further questions, rather than a repeat of what you have already done, can you offer them now, please.

**Senator WATT:** So, Senator Hume can slander journalists and I can't have the opportunity to put back what the experts have said—

**Senator HUME:** I just asked you to table the document, Senator Watt.

**CHAIR:** Is the journalist some relation or friend of yours. If the journalist feels slandered, no doubt the journalist has opportunities to complain to the committee, or to the President, or to something else. It's not your worry, Senator Watt. Do you have any other questions for the Information Commissioner?

**Senator WATT:** I'd like the opportunity to ask them. Ms Falk, is that one of the matters you're considering—the issues raised by Dr Oboler?

**CHAIR:** Can I repeat again that if you are going to keep asking questions that Ms Falk has already answered and will no doubt answer in the same way again—it is under investigation and she prefers not to comment further. If you are going to keep asking that same question, wasting the time of this committee, and we have a lot to do, then I will pass to another senator.

**Senator WATT:** The other expert quoted in this article is Mr David Watts. Before you get to it, I will point out that my surname doesn't have an S in it, so you can not bother making an accusation that we are related. He apparently is Victoria's—

**CHAIR:** Do you have a question?

**Senator WATT:** Do we have to ask questions within two seconds now?

**CHAIR:** You once used to be a lawyer, I understand—obviously not a very good one. There is a way of asking a question without the preamble. We are here to seek information.

**Senator Reynolds:** Actually asking a question would be quite helpful at this point, Chair.

**CHAIR:** We just get the abuse, but not the question. Can we have the question. What is the question?

**Senator WATT:** Are you going to let me ask it, or do you want—

**CHAIR:** Your time is up.

**Senator WATT:** So you're not going to let me ask it?

**CHAIR:** You've got two minutes.

**Senator WATT:** You are a joke. You are an absolute joke of a chair.

**CHAIR:** You've got the run-down that I give to everyone.

**Senator WATT:** You are a disgrace—

**CHAIR:** If you want to get into a name-slinging thing, we'll do that somewhere else, but not in the committee hearings.

**Senator WATT:** That's right—only you dish out names in this committee, don't you.

**CHAIR:** Do you have any other questions in your remaining two minutes.

**Senator WATT:** I'd like the opportunity to ask them without interruption from you and Senator Reynolds.

**CHAIR:** Do you have any questions?

**Senator WATT:** Yes, I do. May I ask them without interruption?

**CHAIR:** You have two minutes.

**Senator WATT:** Mr Watts, the former Victorian privacy commissioner, has called for an investigation, and the concern he raises is that, if Mr Wilson's website is trading in personal information, then it could be in breach of privacy law, and he particularly points out the website doesn't have a privacy policy. Without getting into the specifics of this investigation—
CHAIR: So why did you mention all that?

Senator WATT: is it a breach of privacy principles for a website of this kind to not have a privacy policy advising people what will be done with their data?

Ms Falk: I'm unable to answer the question because it goes to facts and circumstances that I'm seeking to establish through preliminary inquiries. I did want to comment that the chair had referred to me 'investigating the matter'; just to be clear, I have not formed a view to investigate the matter at this point.

Senator WATT: Am I right that under Australian privacy principle 7, 'if an organisation holds personal information about an individual, it must not use that information for the purpose of direct marketing'?

Ms Falk: Australian privacy principle 7 goes to direct marketing, yes.

Senator WATT: And that is correct: an organisation must not use personal information for the purpose of direct marketing?

Ms Falk: That is the starting proposition and then there are a number of qualifiers to that principle.

Senator WATT: Am I right that, under Australian privacy principle 6, 'an organisation must not use or disclose personal information about an individual that was collected for one purpose', such as to register to attend committee hearing, 'for a secondary purpose', such as disclosing the information to a third party so that it can be used to market a product?

Ms Falk: You have read, I think, some provisions of the Privacy Act and the Australian privacy principles; that is the law.

CHAIR: Can I just advise the committee that it's a standing rule of the Senate, which applies here, that you don't ask officials for legal interpretations or advice. Senator Watt, you have the act, you can read it yourself, you are a lawyer; you don't need to waste the committee's time asking for interpretations of the act when it's not really appropriate. We allow some latitude in this committee when it's useful. But continuing to just read sections of the act and asking the commissioner if that applies is not a useful use of the time and it is contrary to standing orders.

Senator WATT: Thank you for your view of the world. I'm finished with my questions.

Senator Reynolds: Chair, I have to say, it's not surprising that Senator Watt had a rather limp attempt to distract from the real issue of this whole matter—that is, Labor's toxic retiree tax.

CHAIR: Minister, that's not helpful. That's not helpful. Order.

CHAIR: Thank you, Ms Falk, for appearing. Ms Hampton, congratulations on your recent appointment. Welcome to your first experience before the estimates committee in this role. Sorry we didn't have any questions for you. But no doubt we'll catch up with you at some time in the future. Thank you both very much and thank you for the work you do.

Commonwealth Director of Public Prosecutions

CHAIR: I now welcome the Commonwealth Director of Public Prosecutions and colleagues to the hearing. Thank you very much for joining us. Do you have an opening statement at all?

Ms McNaughton: No, thank you.

CHAIR: We very much appreciate your time here. I will pass first to Senator Pratt, the deputy chair.

Senator PRATT: Thank you very much. Ms McNaughton, at the last estimates, you said that the commercial/financial and corruption section of your organisation would handle prosecutions arising from the banking royal commission. Is that correct?

Ms McNaughton: Yes.

Senator PRATT: Have there have been any referrals to the DPP in relation to criminal matters arising out of the banking royal commission, either before or after the publication of the final report?

Ms McNaughton: Not at this stage.

Senator PRATT: Do you have any idea how many you're expecting?

Ms McNaughton: There have been estimates given for the purposes of working out potential costings for the future, yes.

Senator PRATT: And what are those estimates?
Ms McNaughton: On 19 October of last year, ASIC advised the Parliamentary Joint Committee on Corporations and Financial Services that it expected the number of criminal briefs referred to the CDPP to increase by 82 per cent over two years, so that's from 32 briefs in 2017-18 to 42 in 2018-19 and 46 or 47 the year after. If I can just make clear two things, 'briefs' doesn't mean number of defendants—briefs could include more than one defendant—and a brief doesn't mean inevitable prosecution, because when we receive a brief we then have to assess it in accordance with the prosecution policy of the Commonwealth.

Senator PRATT: Are those statistics the ones that you're working from to determine your management of cases and potential future prosecutions?

Ms McNaughton: Well, it's potential at the moment.

Senator PRATT: I know, but that's the baseline of referrals that you're working on. I imagine some of those matters are much larger and some are smaller than others.

Ms McNaughton: I can't comment.

Senator PRATT: Okay. You wouldn't have any idea at this point, then—have you started assessing against those guidelines about which are likely to result in criminal prosecutions, or have you not done so because you haven't received them yet?

Ms McNaughton: All we've got at the moment is that we have provided prebrief advice to ASIC on a certain number of matters of the type highlighted by the royal commission, but that's prebrief phase. Other than that, I can't comment.

Senator PRATT: Okay. For the prebrief phase, how many cases have you looked at in that regard?

Ms McNaughton: I'd have to take that on notice.

Senator PRATT: Okay. You've said 32, 42 and 46 over time. Can you just reattach the years to that for me.

Ms McNaughton: Yes: 32 was 2017-18, 42 was 2018-19, and afterwards it is 46 or 47, so that's 2019-20.

Senator PRATT: Is that also your best guestimate of the number?

Ms McNaughton: I can give you an indication for 2017-18, that financial year having concluded, and that is 97 defendants that have been referred. That's different to the way ASIC was counting.

Senator PRATT: Okay, so 97 defendants.

Ms McNaughton: Or potential defendants. That's briefs, so that's potential defendants.

Senator PRATT: And they would be grouped in among those 46?

Ms McNaughton: Thirty-two, I think. That was part of the 32 subset, but yes.

Senator PRATT: So you would expect that, if it's 32 in 2017-18—

Ms McNaughton: Which is the number of briefs, so that's potential prosecutions, not actual.

Senator PRATT: Yes. Then you would expect a greater number of defendants attached to those 46 briefs as well?

Ms McNaughton: Based on our experience, yes.

Senator PRATT: Are you getting referrals from places other than directly through the royal commission?

Ms McNaughton: We don't get them—with respect, Senator—from the royal commission.

Senator PRATT: No, I do understand that.

Ms McNaughton: We're not the investigators, so we get them via ASIC.

Senator PRATT: Okay. So they're not direct from the royal commission. Have those 46 and those 42, though, all been referenced, as far as you're aware, within the royal commission?

Ms McNaughton: That's not within my knowledge.

Senator PRATT: So some might be within and some might be outside that?

Ms McNaughton: I don't know.

Senator PRATT: Do you have a time line for when you might be in a position to determine whether you'll proceed with criminal prosecutions?

Ms McNaughton: That's a very broad question, with respect, Senator.

Senator PRATT: If you haven't been referred any matters formally yet, how long would it normally take you once you've received them to assess them?
Ms McNaughton: It depends. We have a 90-day target in order to assess our briefs, and that goes from the most simple to the most complex, and for our most complex we try and do it, if we can, within that period of time by forming a bit of a team and having worked perhaps in a pre-brief phase before. However, for the bigger, more complicated matters, clearly 90 days may not be sufficient.

Senator PRATT: But, clearly, given the number of stakeholders affected by these issues, it would be desirable to see resources applied to making those decisions—properly, of course, but as expeditiously as possible.

Ms McNaughton: We try to do that with all our matters because all our matters are of importance to the stakeholders involved.

Senator PRATT: In November last year, the government announced an extra $41.6 million to the CDPP over eight years—

Ms McNaughton: Yes.

Senator PRATT: specifically to allow for more prosecutions put forward by ASIC. Can I ask when that new funding begins.

Ms McNaughton: I understand—and I'll be corrected if I'm wrong—it is from the new financial year, so in July this year.

Senator PRATT: Are you already noticing, though, an impact on your work—

Ms McNaughton: Sorry, can I correct that? Perhaps my chief corporate officer could more properly respond.

Mr Ash: If you refer to page 109 of the portfolio additional estimates statement, against 'Strengthening enforcement capability for corporate crime', we're anticipating receiving $228,000 in 2018-19, $5,432,000 in 2019-20, $12,033,000 in 2020-21 and $10,346,000 in 2021-22. There's further funding beyond that, but I don't have that with me.

Senator PRATT: To be honest, though, it doesn't sound to me like $228,000 is going to be enough for you to get ahead of the curve of that volume of cases, noting the significant resources that some of the institutions you're considering whether to mount a prosecution against will be able to throw at the preparation of their own cases. Is $228,000 in additional resources the right figure?

Ms McNaughton: That's before 30 June, but obviously we are aware that the new funding is coming and we are trying to do what we can to appropriately resource ourselves to be able to meet those needs as they arise.

Senator PRATT: Have you asked for funding for before 30 June this year to enable you to expedite that work?

Ms McNaughton: Expedite what work, Senator?

Senator PRATT: It sounds to me like you're starting to get your head around the issues that are behind those 46 referrals and the 42 referrals in the last financial year, some of which would be underway and some of which will be large and emerging out of the referrals from ASIC. Two hundred and twenty-eight thousand dollars doesn't sound like enough to do the groundwork attached to everything coming out of the royal commission to me.

Ms McNaughton: I don't know what you mean by 'enough to do the groundwork arising out of the royal commission'. As I've indicated before, we haven't yet received any briefs. There's a bit of pre-brief advice work. We can absorb that sort of work within our whole office, and then we are looking forward to the extra funding coming into play in a larger amount from 1 July.

Senator PRATT: So what's involved in the pre-brief advice work?

Ms McNaughton: I'd have to take that on notice.

Senator PRATT: I'm not a lawyer, but I expect that there is a general background in terms of what you need to do in pre-brief advice work. You've described that you're doing that work now. I'm simply asking for a description of that kind of work.

Ms McNaughton: I'd have to take that on notice. It could mean anything.

Senator PRATT: Could it mean reading the royal commission report or what—

Ms McNaughton: I would have to take it on notice.

Senator PRATT: Okay. So it's not an area that you've actively been engaged with or—

Ms McNaughton: The prebrief advice in relation—

Senator PRATT: Yes, in relation to the royal commission.
Ms McNaughton: If I can just repeat what I said before. I am aware that there is prebrief advice being provided to ASIC on matters of the type highlighted by the royal commission. That's all I can indicate. I have no details about the nature of that prebrief advice or the volume of it.

Senator PRATT: And that's what the $228,000 is being spent on, as well as things within your own resources, to manage the increasing workload that comes out of the royal commission?

Ms McNaughton: As I understand it, yes, indeed the $228,000 would be being utilised in an appropriate fashion by my financial experts within my office. We are also embarking upon additional recruitment, so by 1 July we will have, it is to be hoped, appropriate additional resources starting to be in place.

Senator PRATT: They would have the relevant expertise in these kinds of crimes?

Ms McNaughton: The fortunate thing in my office is that we are able to move people from one place to another. People get promoted, people build up expertise, so within our office, yes, we can put people with appropriate expertise and as well as briefing the private bar to make sure that we've covered everything off, and we can have other people do our other work. So, yes, we manage these things quite closely within our office.

Senator O'SULLIVAN: I thank my colleagues for their indulgence. I know what it's like to sit in a committee and then to have someone blow in for two minutes. I will just take a minute to ground my questions. There was an event in Western Australia where there was a tragic loss of life by a passenger on a charter that went from Perth to one of the near islands. The police conducted an investigation. There was a coronial hearing. AMSA, who is the Australian Maritime Safety Authority, were involved. In evidence given by the head of AMSA yesterday—and there is no need to bore you with our interest in this in terms of how he arrived at a decision—he decided, he said, not to send a brief to the CDPP, despite being encouraged to do so by the police after the result of their investigation. Prima facie there are some breaches of maritime law involved, but here is the burden of why I've come down just to ask you a single question. In previous evidence he suggested that he decided not to either collate a brief or forward it to the CDPP after conversations with them. We will explore this further, but that would suggest that they had no material before them—no artefacts, no exhibits, no photographs, no statements, nothing—and yet he said, and I imagine it was oral advice from them from oral discussions, not to bother sending a brief because it had no prospect. I know you can't answer definitively on this, but would you find that unusual and would it offend the practice of your office? I'm happy for you to take it on notice, both the specific burden of the question plus a general one. I felt that it would be unlikely that the CDPP would afford oral advice as a result of an oral conversation when there was material that could well be examined and weighed up by them in terms of the prospect of a prosecution?

Ms McNaughton: That does sound unusual, if I could indicate that in general terms. But Ms Pavleka, the Commonwealth solicitor, has specific knowledge, or at least in general terms, about the matter.

Ms Pavleka: We have looked into this matter, because we were aware that there was another committee that had an interest in it. So, we were able to retrieve our file on that particular matter. And we could find nothing on our file that suggested that we had given any advice about the strength of prospects in relation to that matter. We couldn't see that we had a summary of facts, any sort of briefing note. We certainly didn't have a brief of evidence. Essentially the Commonwealth DPP was approached for advice in relation to that particular defendant, but on other matters—not on the matter that is of interest to your committee.

Senator O'SULLIVAN: So, we've got a hearing—and I won't labour from here, Chair—are you able to instigate an interrogation of your WA office more thoroughly beyond this? That's your scope of knowledge.

Ms Pavleka: It was actually not our WA office; it was our Townsville office, because they have a specialisation around maritime law, so that was the particular office that we sought advice from. Indeed, the two Commonwealth DPP officers who were involved in that matter have now left the DPP, and we took the opportunity to contact them and test their memories on it. Essentially we're in the position we are today, which I've just outlined to the committee, that—

Senator O'SULLIVAN: All right. Well, I might have my office brief your office on the events of these hearings, and you might want to monitor it and between us we'll see whether we can't unravel what doesn't even seem to be a mystery to me, but we'll see how it goes.

Senator Reynolds: Senator O'Sullivan, just taking my ministerial hat off for one minute and putting on my senator for Western Australia hat: thank you very much for raising that issue, because it's something I am very conscious of, and I agree with everything you said. It is something that needs redress. So, thank you.

CHAIR: Senator O'Sullivan, I know nothing of what you're talking about, but the lawyers from the Townsville office who gave the advice you said have now left the employ of the DPP?
Ms McNaughton: Yes, but it was about a different matter. It was an entirely different issue to the one that Senator O'Sullivan raised.

CHAIR: Okay, but I understood you to say to Senator O'Sullivan that advice was given verbally, unusually, and it was given by the Townsville office—

Ms McNaughton: No. With respect, that's not what the evidence was.

Ms Pavleka: Just to clarify; this particular organisation, this particular charter company—there was some advice that was provided in relation to some maritime matters in relation to that particular entity, but not advice in relation to the particular matter that is of interest to Senator O'Sullivan.

Senator O'SULLIVAN: So, it's some other, unrelated, issue.

CHAIR: I've no idea about the incident.

Senator O'SULLIVAN: In fact, it reinforces my position. They have a brief on other matters. They don't have a brief on this matter.

Ms McNaughton: And it was not oral advice, either.

Ms Pavleka: It was written advice. And perhaps I should just say, for completeness, that the only thing we could see on our file that touched on the incident with which your committee is concerned was essentially some oral context to why we were receiving a referral in relation to the other matter, that essentially the investigation into the other matters had been kicked off by what had happened in relation to the death of Mr Mills.

Senator O'SULLIVAN: Are you able to take on notice to provide me with that documentation, with that brief? Is there a problem with that?

Ms Pavleka: I'd have to—

Senator O'SULLIVAN: You can take it on notice.

Ms Pavleka: Yes, I'll take it on notice.

Senator O'SULLIVAN: The contact with your office was from AMSA?

Ms Pavleka: It was with AMSA. We had no contact at all with the Western Australia Water Police, who I believe investigated the death.

Senator O'SULLIVAN: Thank you. I appreciate the opportunity.

CHAIR: Thank you, Senator O'Sullivan, and thank you for raising those questions without mentioning names, which sometimes embarrasses those who are mentioned. I appreciate that.

Senator WATT: Senator Reynolds, where's Minister Cash today?

Senator Reynolds: Ah! We're back to that again, Senator Watt! Well, as I explained at the last round of estimates hearings, and as we said in some detail yesterday morning, Senator Cash and I are both sharing these estimates—

Senator WATT: It doesn't seem like sharing. You're here most of the time.

Senator Reynolds: Senator Watt, if you can leave the political points for a minute, just let me finish. You asked me a question. As I reiterated yesterday, we are both sharing yesterday and today, as we did the last estimates hearings, and that's exactly what we're doing again today. Senator Cash will be here later on today, exactly as she was yesterday.

Senator WATT: She popped in for a couple of hours last night, but you were here the rest of the day. You're here again pretty much all morning. Yesterday your excuse was that you're the Assistant Minister for Home Affairs.

Senator Reynolds: I'm sorry, Senator Watt, but it is not an excuse.

CHAIR: No, it's a matter of fact.

Senator Reynolds: Senator Watt, really, if that is the best you can do, I'm actually quite disappointed that it wasn't Senator Cameron. He's let you do his dirty work this morning, but he's not criticising this. Really!

Senator CAMERON: You should withdraw. Chair, point of order.

CHAIR: Yes, that's not helpful.

Senator Reynolds: I have not said a word, and now I'm being accused of dirty work. The minister should withdraw.

CHAIR: Let's hope we can finish the proceedings with you professing the same.
Senator Reynolds: Senator Cameron, I withdraw that. However, Senator Watt, it is exactly the same answer as I gave yesterday. I am the responsible minister at the table, and I'm very happy to answer and capable of answering your questions that need to be directed towards a minister of the Crown at the table. So I cannot help you beyond what I have said several times already.

Senator Watt: You're not the assistant minister for the Attorney-General, though, are you?

Senator Reynolds: Is that a statement of the self-evident?

Senator Watt: Well, what's the answer?

Senator Reynolds: Senator Watt, as you know, assistant ministers, including me, regularly are scheduled on to all sorts of estimates hearings. It is not unusual, and it is exactly as I outlined yesterday and at previous estimates.

Senator Watt: Who is the minister representing the Attorney-General in the Senate?

Senator Reynolds: Oh, Senator Watt!

Senator Watt: It's Minister Cash, isn't it?

Senator Reynolds: Yes, and I said she will be here.

Senator Watt: So why isn't she here?

Senator Reynolds: I said she will be here later on this afternoon.

Senator Watt: Will she be here the moment the DPP leaves?

Senator Reynolds: No, she will be here as—

Senator Watt: Half an hour after the DPP leaves?

Senator Reynolds: Senator Watt, I have said she will be here later this afternoon.

Senator Watt: Why does she not come when we're asking questions that directly relate to her?

Senator Reynolds: Chair, really!

CHAIR: These estimates, in case it escapes anyone's notice, relate to the expenditure of government money for the 2018-19 financial year. They're additional estimates. Which minister appears at which table hardly seems to be relevant to the expenditure of Commonwealth money.

Senator Watt: You don't think so?

Senator Reynolds: Senator Watt, you can impugn me and Senator Cash all you like.

CHAIR: No, Minister.

Senator Reynolds: But you have a responsible minister at the desk as normal. Why don't you ask questions about the issue, Senator Watt, rather than besmirching me and Senator Cash again?

CHAIR: Let's see if Senator Watt has a question of the DPP.

Senator Watt: The only reason I'm asking is that—

Senator Reynolds: We know why you're asking, Senator Watt.

CHAIR: Minister, it would help if you didn't debate with Senator Watt.

Senator Reynolds: My apologies, Chair.

CHAIR: Senator Watt, do you have a question of the DPP?

Senator Watt: I do.

CHAIR: Could you proceed now. You have 6½ minutes left.

Senator Watt: Yes. I will note that—

CHAIR: No, do you have a question?

Senator Watt: Minister Cash has claimed some form of privilege or immunity—

CHAIR: Do you have a question?

Senator Watt: around 60 times in the parliament to refuse to answer questions. She did it again last week in court, refusing to answer questions.

CHAIR: Order! Senator Watt, if you're not asking a question of the DPP, I'll go to another senator.

Senator Watt: No, I'm asking a question to the minister, which I'm entitled to do.

CHAIR: About the DPP, yes. You are.
Senator Reynolds: Chair, I'm happy to answer that question.

CHAIR: No.

Senator WATT: Minister, where is Minister Cash accountable? When she's in court, she can't talk about it because of parliament. When she's in parliament, she can't talk about it because of court. When is she accountable?

CHAIR: That's not an appropriate question, and I rule the question out of order.

Senator Reynolds: Chair, I'm very happy to answer.

CHAIR: No, Senator Reynolds. Please. The question is out of order. Do you have questions of the DPP?

Senator WATT: I do. Ms McNaughton and your team, thank you for coming along today. In short, why is no-one being prosecuted over the leak of confidential police information from Minister Cash's office?

Ms McNaughton: Senator Watt, thank you for your question. Can I indicate that I made a declaration of a conflict in relation to this matter because of appearance or perception of conflict, so I've had nothing to do with the decision-making in that matter.

Senator WATT: Okay. Can you just explain the nature of that conflict.

Ms McNaughton: It's an appearance or perception of a conflict because of my role in 2015 as one of the counsel assisting the trade union royal commission.

Senator WATT: But you—

CHAIR: Sorry, can we just let the DPP finish her answer so that it's recorded.

Senator WATT: Sure.

CHAIR: I think you said you were at the private bar.

Ms McNaughton: When I was at the private bar, in accordance with the cab rank rule, I accepted a brief in relation to that trade union royal commission. Because of these matters, I am taking a very conservative approach to any issue of conflict. If it goes even vaguely near any such issue, I have declared a conflict.

Senator WATT: It wasn't my intention to go anywhere near your involvement in that royal commission, but what you're saying is that you haven't played any role in this prosecution, or potential prosecution, whatsoever?

Ms McNaughton: None at all.

Senator WATT: So who would be the correct person to direct this to?

Ms McNaughton: Ms Pavleka.

Senator WATT: Thanks. Ms Pavleka, can I just pose the question to you? In short, why is no-one being prosecuted over this leak?

Ms Pavleka: Essentially, we received a brief of evidence in relation to one individual in relation to this matter and, as is the usual course, we applied the prosecution policy of the Commonwealth. That is a three-stage test. Initially, we consider whether or not there is prima facie evidence of the commission of a crime by that person. What that means is that we look for some evidence to support each element of the offence. Then the second stage is that we look for reasonable prospects of conviction. That is a higher standard. Essentially we would also factor in, at that point, what the defence case might be. We would look at the credibility of witnesses. We would look at whether we had a complete narrative with all evidence required.

Senator WATT: And what was the third stage?

Ms Pavleka: The third stage is the public interest aspect. Once we've decided that there are reasonable prospects of conviction, we apply a public interest test to see whether or not it is in the public interest to actually prosecute. That might mean that, in certain circumstances, an offence might be, for example, so trivial that you wouldn't bother, or personal circumstances of a defendant might mean that a prosecution wasn't warranted—things of that nature.

Senator WATT: In your consideration of this brief of evidence, did you establish that there was prima facie evidence of the commission of a crime?

Ms Pavleka: Yes, in my view there was prima facie evidence.
Senator WATT: So the AFP referred to you a brief of evidence relating to their view that an individual had committed a crime. You reviewed it, and you decided that there was prima facie evidence of the commission of a crime. So you then went on to the second stage?

Ms Pavleka: Correct.

Senator WATT: Did you establish that there were reasonable prospects of conviction?

Ms Pavleka: Not in this particular instance, no.

Senator WATT: Why was that?

Ms Pavleka: A combination of factors, which I will not go into the particularity of. But I am conscious that yesterday the police did indicate that one of the factors was the absence of certain evidence, so I can confirm that. But, in terms of legal advice more generally, of course it's privileged, and ordinarily in this sort of circumstance it would not be in the public interest to disclose the intricacies of it. There's also a second factor operating at the moment, which I know the police were very conscious of yesterday. That is, of course, the Federal Court proceeding, which is still running and where witnesses are being called. So I'm also very conscious of that. But, in general terms, I can say there were a combination of factors, and I can confirm, obviously, what was conveyed by the police yesterday.

Senator WATT: Given the evidence that we received from the AFP yesterday, essentially what you're saying is that a key factor in you deciding there were no reasonable prospects of conviction was that some witnesses had not provided statements?

Ms Pavleka: That was certainly a factor.

Senator WATT: What we were told yesterday was that there were eight individuals who had refused to provide witness statements. Is that your understanding as well?

Ms Pavleka: I thought it was potentially nine, but eight or nine.

Senator WATT: It was a little unclear yesterday whether Minister Cash and Minister Keenan were included in those eight or whether they were in addition. But you think it was eight or nine?

Ms Pavleka: I think it was eight or nine, from recollection.

Senator Reynolds: I can actually assist with that. There was a little bit of misreporting in the media last night on this, and I can't imagine how that happened.

CHAIR: Strange!

Senator Reynolds: However, I can confirm that both ministers that you have mentioned were approached by the AFP and they did voluntarily provide that assistance—I understand that in Minister Cash's case that was written information—and that the AFP didn't come back for any more information. As you well know, Minister Cash appeared on Friday in court. So, in relation to your first rhetorical flush on this, Minister Cash has at all times responded to AFP requests for assistance and cooperation, as she did with the court on Friday. So I'm not sure how this misapprehension occurred in the media, but I can assure you that both ministers did provide the information to the AFP, as was requested.

Senator WATT: Ms Pavleka, did you see the evidence that was provided yesterday by the AFP?

Ms Pavleka: I have seen most of it, I think, and I've seen a transcript of most of it.

Senator WATT: So you would have seen that the AFP yesterday said that they didn't consider the letter that Minister Cash sent to them to constitute a witness statement?

Ms Pavleka: Yes.

Senator WATT: And is it your view that the letter Minister Cash sent was a witness statement?

Ms Pavleka: It was not a witness statement.

Senator WATT: Right. Sorry, Senator Reynolds.

Senator Reynolds: Sorry, Senator Watt: the AFP took that information and my clear advice is they did not come back for any additional information from Senator Cash.

Senator WATT: Ms Pavleka—

Senator Reynolds: So you're splitting hairs. We need to be very clear on this: both ministers were asked to provide information to the AFP and both ministers did. And my understanding is—in this case you're talking about Senator Cash—that they did not come back as a follow-up to the information she provided in terms of a request for any more information.
Senator WATT: Thank you.

Senator Reynolds: Senator Watt, that is a very important point. She provided information—

Senator WATT: You've made the point.

Senator Reynolds: She provided information and they did not follow up seeking further information from her.

Senator WATT: You've made the point and we've now heard—

CHAIR: Just one moment.

Senator PRATT: Did he ask more than—

CHAIR: Senator Pratt, please! You are the deputy chair. Please at least keep quiet while I'm just trying to help the committee. My timer didn't go off. Senator Watt, you've had 10 minutes, but, as is my practice, I allow a couple of minutes to finish that line of questioning, so you've got another couple of minutes.

Senator WATT: Thank you. Ms Pavleka, did you also see the evidence from the AFP yesterday that they had requested both Minister Cash and Minister Keenan to provide witness statements on at least two occasions?

Ms Pavleka: Yes, I did read that.

Senator WATT: In fact, my recollection is that the AFP said yesterday that there were additional questions that they would have liked to have asked Senator Cash and Mr Keenan had they had the opportunity. Did you see that evidence yesterday?

Ms Pavleka: I guess it would be a matter of what's on the transcript. It does ring a bell, but I'd be guessing.

Senator WATT: Any suggestion that the AFP were satisfied with the information they received isn't true, is it, based on what they said yesterday?

CHAIR: Ms Pavleka, I urge caution in your answer until you read the transcript because I'm not quite sure that Senator Watt's relating of the evidence is actually accurate. You should look at the transcript before you answer that.

Senator Reynolds: Chair, could I follow up on that?

CHAIR: Yes.

Senator Reynolds: Could I just reiterate again: both ministers were contacted by the AFP. They both provided a written response.

Senator WATT: Not a written statement.

Senator Reynolds: Senator Watt, let me finish.

CHAIR: Just ignore the interjections.

Senator Reynolds: So both ministers provided a written response and the AFP, to the best of my advice, did not follow up with the either of them seeking any further information.

Senator WATT: So, when they say 'on at least two occasions they requested a witness statement', that's not following up?

Senator Reynolds: Senator Watt, you can twist anything around you like, but the fact is they did not come back for further information.

CHAIR: Minister, this is not a debate and it helps if you don't respond.

Senator Reynolds: No, I'm telling you the facts, Chair.

Senator WATT: Why don't we get Minister Cash in?

CHAIR: Senator Watt, you're out of order, as usual.

Senator WATT: If Minister Cash were here, we could ask her.

CHAIR: The hearing is suspended for five minutes while Senator Watt brings himself to order.

Proceedings suspended from 12:03 to 12:08

CHAIR: I call back to order the Senate Legal and Constitutional Affairs Legislation Committee and its inquiry into the additional estimates for the financial year 2018-19. For the record, I indicate that the short suspension just called now was because I was talking and making a point and, in giving instructions to the committee, I was continually overheard by another senator, and in spite of my attempts to bring order to the committee that was not possible. So the only way to bring order was to suspend the hearings, which is what I did yesterday and what I will continue to do today if senators cannot follow the rules of procedure, the courtesy, and the good manners of allowing other people to speak and take directions from the chair. We gave two minutes
extra to Senator Watt, which has now expired, so I will move on to another senator, which is me. You have a point of order, Senator Cameron?

**Senator CAMERON:** Chair, I'm asking a question of you. Does that mean your behaviour will be held to the same standard, because that's not how you normally behave?

**CHAIR:** I will treat that with the contempt it deserves, Senator Cameron.

**Senator CAMERON:** Can I also indicate I'm seeking the call when you have finished.

**CHAIR:** We have a process here, which I'll continue to follow and have done religiously and fairly through the last day and a half and through all of my time as chairman. That practice will continue.

Just on those issues, while they're fresh in mind, I will put a question to the DPP. It's been given in evidence so far that Senator Cash appeared in a court case yesterday, which she's not a party to; she was called as a witness in a case brought by the AWU to try and stop documents alleged to have been stolen being made public. This is a court case in the Federal Court, under a judge. Is Senator Cash obliged to appear at that court case, where she's not a party, under parliamentary privileges or any other legislation?

**Ms McNaughton:** I don't believe I have the expertise to answer that.

**CHAIR:** Do you have any knowledge of that, Minister, or Mr Moraitis, perhaps?

**Ms McNaughton:** I'm here as the Commonwealth DPP. All I can indicate is from my general legal knowledge, certainly, but I can't comment on any particular case that's not within my remit.

**Senator Reynolds:** Chair, I can shed some light on that.

**CHAIR:** My information was—and I am deputy chair of the Privileges Committee—that the Parliamentary Privileges Act specifically states that, in those circumstances, a parliamentarian does not have to appear in response to a subpoena. Can anyone help me on that?

**Senator Reynolds:** I can, Chair, and I think the background to this is very important to answering that question. The court case that you refer to was launched by the AWU in an attempt to prevent the Registered Organisations Commission from getting access to the documents seized from the AWU by the AFP under warrant. The documents were seized as part of an investigation into possible illegality of AWU donations to GetUp! and Bill Shorten's election campaign when the Leader of the Opposition was national secretary of the AWU. The reasons the documents needed to be seized by the AFP under warrant is that there were reports that evidence in relation to the ROC's investigation was being destroyed or tampered with. A Victorian magistrate accepted this evidence and issued the warrant in relation to that case. The AWU had previously been given an opportunity to provide these documents voluntarily, but they did decline to do so. So the AWU clearly wants this investigation shut down entirely. That's the background.

Coming directly to your question, the actual parties to this court case are the AWU, the AFP and the Registered Organisations Commission. Senator Cash is not and has never been a party, nor is Minister Keenan. So the question is: why did Senator Cash appear? You're quite right: under parliamentary privilege, she did not have to. But she was subpoenaed to give evidence; she wasn't required to attend, but she did so, as she did cooperate with the AFP and provide the information that they sought from her. So I think the real question is: why is the AWU so desperate to hide the information about what they did with their members' money? But I can assure you that parliamentary privilege, as I understand, did apply, and Senator Cash still went and gave evidence and cooperated with the AFP.

**CHAIR:** Thanks; that's the answer to my question. Perhaps if someone at the table—the cleverer lawyers amongst us, not that I'm doubting you at all, Senator Reynolds—can confirm for me that the Parliamentary Privileges Act does mean that parliamentarians are not obliged to attend in response to a subpoena in a matter they're not party to.

**Mr Moraitis:** Can I take it on notice? We'll get back to you this afternoon, if you like.

**CHAIR:** Thanks, Mr Moraitis.

**Senator Reynolds:** My understanding is the answer is yes.

**CHAIR:** That's my understanding, but I'm—

**Senator Reynolds:** Senator Pratt, you're on the privileges committee. You would know better than anybody else that the answer to this is yes.

**Senator PRATT:** I'm not on the privileges committee.

**CHAIR:** No. She's been mentioned in privileges committees but is not a member.
Senator Reynolds: My apologies. Mentioned but not a member.

CHAIR: So are we all mentioned, at various times, I hasten to add, without disclosing anything from the privileges committee, which is not appropriate for me to do. Ms McNaughton, with evidence taken at the royal commission, which you were questioned about earlier—

Ms McNaughton: I beg your pardon. I was not questioned about the royal commission earlier.

CHAIR: As I understood, there were questions to you about—

Ms McNaughton: Sorry, the banking royal commission?

CHAIR: Yes. There were recommendations made for prosecutions and you were questioned, at some length—the banking royal commission—about what you were doing and how you were doing it.

Ms McNaughton: Could I take that question on notice, please.

CHAIR: Okay. Do you have any idea of that, Mr Moraitis?

Mr Moraitis: I'd have to take that on notice. I think I do, but I want to make sure that I'm right.

CHAIR: I thought it was—

Senator CAMERON: Nobody wants to get near this!

CHAIR: It's a long time since I was a lawyer.

Senator CAMERON: No-one wants to touch it.

CHAIR: I'm not sure why. The issue is whether evidence at a royal commission can be used de novo by the authorities or—or like ICAC—do they have to go and get their own evidence again?

Senator Reynolds: I think, after consultation with the secretary, the relevant officials who will be able to answer that will be when the department is on itself, later this afternoon. They'll be able to answer your question then.

CHAIR: Which section is that?

Mr Moraitis: After 3.30.

Senator Reynolds: Cross-portfolio?

Mr Moraitis: Yes.

CHAIR: That's stymied my questions. My understanding was—but, Ms McNaughton, you're getting briefs or instructions, did I understand you, about the banking royal commission?

Ms McNaughton: No, with respect, not yet. Nothing, so far, by way of a brief has emanated from ASIC that I understand arose from the royal commission. The only matter—I think it might be only one, in the pre-brief phase. We had inquiries over the break and I'm just trying to confirm that. We'll get back, in more detail, on notice. As yet we have had no referrals, arising out of matters raised in the royal commission, from ASIC.

CHAIR: My question was not specifically to any royal commission but a general thing. Is evidence taken at a royal commission able to be used, without further work by the authorities, to bring prosecutions or do you have to get the evidence de novo? Can anyone assist me with integrity commissions, like the New South Wales ICAC, in those instances? Can anyone tell me what the rules are for evidence given in integrity commission hearings?

Mr Moraitis: As I said, our expert will be here after 3.30. My recollection is that relevant authorities have to recommence de novo to gather a brief of evidence, rather than rely on statements or anything like that from a royal commission. I'm happy to be corrected because I'm recalling from decades ago.

CHAIR: I thought it was a pretty simple question but it's not as simple as I thought it was. If someone could clarify that—I'm sure there must be a thousand lawyers listening to this who could give me the answer at the drop of a hat. Anyhow, I'll leave that there.

Senator WATT: Ms Pavleka, Senator Cash is trying to hang her hat on the fact that she sent a letter to the AFP, which I think we heard yesterday attached her previous statements to estimates. Would you clarify for me whether a parliamentarian's statements to parliament are admissible in court as evidence?
Ms Pavleka: Ordinarily, what would have happened is that, if there had been sufficient evidence, it would have been dealt with in a lower court, in a Magistrates Court. What happens there is that people come along and give actual viva voce evidence, but, of course, the benefit of having the statement is knowing in advance what the evidence will be. So it's more about disclosing the prosecution case so that an assessment can be made and alerting the defence to what the evidence will be. But, if the matter had proceeded, it would not have been a situation where we would've been tendering in evidence statements or letters. I'm not sure if that answers your question. Does that assist?

Senator WATT: It's enough, yes. So—

Senator Reynolds: Senator Watt—

Senator WATT: Oh, really?

Senator Reynolds: Chair—

Senator WATT: Every time I try to ask a question.

Senator Reynolds: Yes, you're asking a question and, as the minister at the desk, I have a right to respond.

Senator WATT: You are the most interfering minister in questions that we have on any committee.

CHAIR: Senator Watt, that's inappropriate.

Senator Reynolds: Senator Watt, you might not like the answers we're giving you—

CHAIR: Minister, please.

Senator WATT: And you're not even the actual minister.

CHAIR: Please ignore the interjections, which are unruly and illegal.

Senator Reynolds: Chair, can I answer this question, please?

CHAIR: If you want to add to the answer, you have every right to do so and I will now call you.

Senator WATT: This better not come out of my time.

CHAIR: It is coming out of your time.

Senator WATT: How is that fair?

Senator Reynolds: Chair, can I confirm again in relation to this issue, so that there is no question whatsoever in anybody's mind who's listening to this or will be reading the transcript afterwards, both ministers cooperated fully with the AFP. They provided the information that was required—

Senator CAMERON: Rubbish.

Senator Reynolds: whatever the hair splitting that they're trying to do now.

Senator WATT: What universe do you live in that you believe this? No-one believes this.

Senator PRATT: They didn't provide witness statements.

Senator Reynolds: Both ministers—

Senator WATT: They refused more than twice to give a witness statement.

Senator CAMERON: Absolute rubbish.

CHAIR: Order! If—

Senator Reynolds: Chair, having three senators talking over me—

CHAIR: Please, Minister, the same rules apply to you when I'm speaking. If I'm going to have three interjections at once when the minister is trying to give an answer to the question that had been asked, then I will again terminate the hearing. These hearings cannot proceed when people are trying to answer, people are trying to listen to the answer and I have three Labor members shouting down the person who is answering. I will not tolerate that. If that's going to be the practice, we'll adjourn now for lunch. Minister, you have the call.

Senator Reynolds: Thank you very much, Chair. As I said, I want to make it very, very clear on the record, in response to these questions and the repeated allegations from colleagues in the committee and elsewhere. The facts are these: both Minister Keenan and Minister Cash cooperated fully with the AFP. They provided the information that was required by the AFP and both engaged as they were asked to by the AFP. Whatever hair splitting those opposite want to do in terms of what the document was, the fact is that they cooperated fully, even though the Parliamentary Privileges Act—

CHAIR: Yes, you've said that several times, Minister, and I think we've got—
**Senator Reynolds:** The Parliamentary Privileges Act did not require them to do so, but they did, and Senator Cash appeared voluntarily in court on Friday. So you cannot possibly say that they did not cooperate.

**CHAIR:** Thank you, Minister. I am trying to stop people repeating themselves and you have said that before, and I appreciate that.

**Senator Reynolds:** Clearly the message wasn’t getting through, but thank you, Chair.

**Senator WATT:** Minister, does that mean that, if someone gets a call from the police today asking them to make a witness statement, they can just say no and send a letter and that’s all okay—that’s cooperation? Really?

**Senator Reynolds:** As you and I both know, that is an issue for the AFP. Now, very conveniently—

**Senator WATT:** They were pretty clear yesterday that they didn’t see it as cooperation.

**CHAIR:** Senator Watt, you’ve asked the question, and when the person you asked attempts to answer you try to shout her down. Whether this is the way you normally act in bullying people, particularly women, that’s fine in your own house.

**Senator WATT:** You’re not the person to make those comments, Chair.

**CHAIR:** You’re not going to do it here.

**Senator WATT:** Can you withdraw that, please?

**CHAIR:** You are not going to do it here.

**Senator WATT:** Can you withdraw that, please?

**CHAIR:** Senator Reynolds—

**Senator WATT:** A point of order: please withdraw.

**CHAIR:** would you continue—

**Senator WATT:** A point of order.

**CHAIR:** Yes?

**Senator WATT:** Please withdraw—

**CHAIR:** Withdraw what?

**Senator WATT:** your suggestion that I am bullying witnesses.

**CHAIR:** No, I won’t, Senator Watt, and let me give the explanation for this.

**Senator WATT:** You know a bit about bullying.

**CHAIR:** You asked the minister a question. The minister, who has a moderate voice tone, could I say, started to answer your question, whereupon you, with a very loud voice, shouted over the top of her, making it impossible for me or anyone else to hear the answer. To me, that’s typical of bullying. If you don’t like the term then that’s bad luck, but that’s how it appears to me.

**Senator CAMERON:** Chair, point of order. There is no standing order of ‘bad luck’. The standing orders are quite clear that you cannot make assertions against a senator that go to their credibility on this. You are the chair; you should understand the standing orders. You’ve been here longer than anyone else, and you just don’t seem to understand the standing orders. You try to run your own race—

**CHAIR:** Thank you, Senator Cameron; there’s no point of order.

**Senator CAMERON:** Yes, here we go!

**CHAIR:** Senator Reynolds, would you please continue with the answer you have. We have four minutes left in this session before we go to the lunch break.

**Senator Reynolds:** My thanks, Chair. Senator Watt, as I was starting to say: you and I both know the question you have asked is not one for the DPP, it’s actually for the AFP. You had every opportunity to ask these questions of them yesterday, when the AFP were here and were addressing these very issues. So vilifying myself and Ministers Cash and Keenan, and speaking over the top of me, as you have consistently, does not change the fact that both ministers—both ministers—co-operated fully with the AFP to their satisfaction, because they did not come back with any further requests.

**Senator Pratt interjecting—**

**CHAIR:** Order. Thank you, Minister. And you have made that point before.

**Senator Reynolds:** And that was an issue for the AFP, not the DPP.

**CHAIR:** Thanks, Minister. Senator Watt.
Senator WATT: I'm conscious we're getting close to the lunch break. We would like Senator Cash to come to the table after the lunch break, as the responsible minister, so that she can answer questions. There have been a number of questions—

CHAIR: Do you have a question of the DPP, Senator Watt?

Senator WATT: I would like you, as chair, to request the attendance of Senator Cash after the lunch break. She's got an hour's notice. I'm sure she's in the building. She should be here to answer these questions, rather than Senator Reynolds.

CHAIR: That is not the prerogative of this committee, and I won't be doing that. Do you have a question of the DPP?

Senator WATT: I do.

Senator Reynolds: Chair, can I just address that issue?

CHAIR: No, Minister—

Senator Reynolds: Senator Watt just—

CHAIR: Minister, I'm the chair.

Senator Reynolds: He was being instructed—

CHAIR: It was a question to me—

Senator Reynolds: by Senator Cameron.

CHAIR: Minister, you don't help when you try to talk over me—

Senator Reynolds: He couldn't even ask his questions on his own.

CHAIR: when I'm talking.

Senator Reynolds: Sorry, Chair.

CHAIR: It was a question to me—

Senator Reynolds interjecting—

CHAIR: which I have answered. We're here to ask questions of the DPP. Now, Senator Watt, if you have a question of the DPP, please ask it, otherwise we'll move onto the next witness.

Senator WATT: Ms Pavleka, I'm sorry for this unedifying display. You mentioned that this prosecution fell down because, in your view, there were not reasonable prospects of conviction. That was largely due to the absence of important evidence. You also mention that the credibility of witnesses is a factor in determining whether you have reasonable prospects of success. Was the credibility of witnesses a factor in this prosecution not proceeding?

Ms Pavleka: Can I say two things to that, Senator. I didn't say that the absence of witnesses was largely the reason; I said it was a reason. More generally, you're correct in saying that credibility of witnesses is certainly something that goes into the mix in assessing reasonable prospects of conviction, but I do not really want to get into the particularities of the legal advice here. As I said earlier, ordinarily it would not be in the public interest to disclose the nature of privileged legal advice to Commonwealth agencies, and that was the approach that was taken on the last occasion.

Senator WATT: Okay. You said that the third stage of the test to determine whether to prosecute is whether the public interest warrants it. Did you even get to that stage, or did it not get to that stage because it fell over at stage 2?

Ms Pavleka: We did examine whether it was in the public interest to prosecute, and our view was that if we had sufficient evidence then it would be in the public interest to prosecute.

Senator WATT: Right, so your conclusion was, firstly, that there was prima facie evidence that a crime had been committed; secondly, that it was in the public interest to prosecute, but the only reason that there was not prosecution was that there were no reasonable prospects of conviction; and, thirdly, an absence of evidence, an absence of witness statements, was a factor in deciding there was no reasonable prospect of conviction?

Ms Pavleka: That's correct.

Senator CAMERON: Game, set and match.

Senator WATT: Leaving aside this case, in general terms does it hamper a prosecution if witnesses do not provide witness statements?
Ms Pavleka: In a general sense, of course. In terms of our role in assessing prospects of conviction, we're always looking for the most complete evidence that can be obtained. It's very common for pieces of evidence to be missing. That's not unusual.

Senator WATT: So my question again is: does it hamper a prosecution if evidence is not provided?

Ms Pavleka: It does depend on the circumstances. It's a hypothetical question. In some instances it can, and in other instances—

Senator WATT: So it can hamper.

CHAIR: That's probably an appropriate answer to break on.

Senator Reynolds: You will have the pleasure of my company again.

CHAIR: We will resume—

Senator WATT: So she's still hiding!

CHAIR: Please ignore—

Senator WATT: She's still got the whiteboard out.

Senator Reynolds interjecting—

CHAIR: Ignore the interjections.

Senator WATT: She is the most unaccountable minister in this government.

CHAIR: We will resume at 1.30 where I will ask some questions to the DPP about the DPP's role, and then we will proceed on.

Senator CAMERON: Point of order, Chair. Could I ask for a meeting of the committee to consider requesting Senator Cash to attend? Can we do that straight after you break the formal hearing?

CHAIR: No, I have commitments.

Senator CAMERON: If you want—

Senator WATT: It would take three seconds, Chair.

CHAIR: We will call—

Senator CAMERON: Why won't you do it?

CHAIR: a private meeting at 1.30. It'll only take a minute or so when we resume.

Senator CAMERON: Chair, point of order.

CHAIR: I and other members have other commitments.

Senator CAMERON: The reason for the—

CHAIR: The proceedings are now suspended.

**Proceedings suspended from 12:31 to 13:32**

CHAIR: I declare the hearing of the Legal and Constitutional Affairs Legislation Committee in its inquiry into the 2018-19 additional estimates resumed. We are dealing with the Commonwealth Crown Prosecutor and we have with us the Commonwealth Director of the DPP, Ms McNaughton. We were onto questions and, as I indicated, it was my turn.

Senator WATT: Before the break, the opposition flagged an intention to move that Senator Cash appear. Are you going to update the *Hansard* as to the outcome of that?

CHAIR: No. I made a ruling beforehand and nothing that's happened in the private meeting has had any influence on that.

Senator WATT: So Senator Cash is not appearing?

CHAIR: Can I indicate again—

Senator WATT: So the cover-up continues?

CHAIR: Can I indicate, again, that the rules of the Senate—and surprisingly, we do have rules. You wouldn't appreciate that—

Senator WATT: Shall we just page Senator Cash?

CHAIR: The rules of the Senate provide that it is not even necessary to have a minister here unless the minister involved is a senator, in which case, they are—
**Senator PRATT:** If she wanted to be accountable, she could, simply by coming.

**CHAIR:** Senator Pratt, could you at least show the courtesy of not interrupting while I'm responding to a question that has been raised by one of your colleagues? Not only is it against the rules—the standing orders provide that any interjection is unorderly—but it is a matter of common decency and courtesy. What I'm saying is that the rules of Senate provide that, if the minister is a senator, he or she should appear, otherwise there's no requirement for a minister to even be here. Senator Reynolds is assisting us by being a minister at this hearing. It's been my long experience in this Senate—and it has been a long experience—that the choice of which minister appears is a matter for the government of the day. That's always happened, and that will continue, and I don't intend to change it, and the committee doesn't seek to change it. So I will continue with my—

**Senator CAMERON:** Chair, point of order.

**CHAIR:** Yes.

**Senator CAMERON:** Conventions are one thing, but getting to the bottom of illegality is another issue.

**CHAIR:** There is no point of order.

**Senator CAMERON:** That's certainly where we should be going, and you should stop covering up.

**CHAIR:** There is no point of order, Senator Cameron—not even the semblance of a point of order. If you continue interrupting, I'm just going to have to keep suspending the proceedings, because it's impossible for other senators, witnesses and anyone who might have the misfortune to be listening to this to hear if I get continual interruptions from members of the Labor Party.

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

**CHAIR:** That's the way it is. What is your point of order?

**Senator CAMERON:** Could you point me to where you have got the authority to unilaterally terminate the estimates hearings.

**CHAIR:** There's no point of order.

**Senator CAMERON:** Can you point us to that.

**CHAIR:** There is no point of order.

**Senator CAMERON:** Can you point us to it, because you keep threatening. You should say what the basis of the threat is.

**CHAIR:** There is no point of order, Senator Cameron. You're not even a voting member of this committee.

**Senator CAMERON:** I am a member of the committee, as you're aware.

**CHAIR:** You're not even a voting member of this committee.

**Senator PRATT:** All senators are members of this committee.

**CHAIR:** So, if you are determined to disrupt the hearing of these proceedings—

**Senator CAMERON:** Can you just tell us where you get this argument that you can unilaterally close things down.

**CHAIR:** The Labor Party are determined to disrupt these proceedings, because they have much to hide in relation to the illegal donations by the ACTU to Mr Shorten—

**Senator PRATT:** Cover-up!

**CHAIR:** And to the GetUp! campaign—the 'GetShortenUp!' group.

**Senator PRATT:** Which was found to be independent this week.

**CHAIR:** If you continue to disrupt these hearings so that these facts about Mr Shorten and GetUp! are not exposed—

**Senator PRATT:** Ah, you're revealing your political motivations.

**Senator CAMERON:** Ah, right.

**CHAIR:** These hearings are suspended for five minutes—

**Senator WATT:** Under what standing order?

**CHAIR:** until the Labor Party people can remember their courtesy and manners—

**Senator WATT:** Under what standing order are you suspending us?

**CHAIR:** and conduct themselves in accordance with the rules of the Senate. The hearings are suspended.
Proceedings suspended from 13:36 to 13:39

CHAIR: If we can get the DPP to the table—
Senator WATT: Point of order, Chair. We are waiting for advice from the Clerk about your behaviour and your power to suspend the hearing, which you've done twice.
CHAIR: There's no point of order.
Senator WATT: And the advice we've received to date is that you don't have—
CHAIR: There is no point of order. Now, Ms McNaughton—
Senator WATT: Do you believe in any rules? Do you have any rules?
CHAIR: I understand that the government has announced $41.6 million funding over eight years—
Senator WATT: Point of order, Chair. Point of order, Chair.
CHAIR: for the Commonwealth Director of Public Prosecutions relating—
Senator WATT: Point of order, Chair. Point of order, Chair.
CHAIR: Senator Watt, can you please keep quiet. You've done nothing but deliberately interrupt the hearings of this Senate all day.
Senator WATT: No, I have a point of order. There is a point of order. You know well—
CHAIR: You keep making baseless points of order—
Senator WATT: You know well the Clerk is on his way.
CHAIR: which have been ruled out of order and which you know are out of order.
Senator WATT: You know the Clerk is on his way—
CHAIR: If you can't control yourself—
Senator WATT: because you don't have the power to suspend the hearings.
CHAIR: can you please leave the chamber.
Senator WATT: You don't have the power to do that either.
CHAIR: Can you please leave the chamber.
Senator WATT: There are actually rules here. I know you don't want to follow them, but there are rules that you have to follow.
CHAIR: Ms McNaughton, I understand the government has announced an extra $41.6 million over eight years.
Senator WATT: Point of order, Chair.
CHAIR: for the Commonwealth—
Senator CAMERON: Chair, you must accept a point of order. You can't just behave—
CHAIR: I've accepted points of order. They are not valid.
Senator CAMERON: the way you are behaving.
CHAIR: What is your point of order? Which standing order?
Senator CAMERON: At last!
CHAIR: Which standing order?
Senator CAMERON: At last!
Senator WATT: Can you point to—
CHAIR: Which standing order is the point of order?
Senator WATT: Chair, you have consistently—
CHAIR: Which standing order?
Senator WATT: suspended proceedings without any power to do so. You cannot point to any standing order that allows you to do that. We are actually governed by rules here.
CHAIR: You tell me which standing order of the Senate are you requiring the point of order under, and we'll deal with it.
Senator CAMERON: The standing order—
CHAIR: Until you do that, there is no point of order, and that's my ruling.
Senator CAMERON: Chair, point order. Point of order, Chair. There is a standing order—
CHAIR: The Labor Party seems absolutely determined—
Senator WATT: We just want to ask questions without having proceedings suspended.
CHAIR: to completely disrupt these proceedings.
Senator WATT: You keep suspending them.
CHAIR: They keep raising improper points of order. They rule against—
Senator CAMERON: No, it's not an improper point of order.
CHAIR: They can't actually indicate which standing order they're making a point of order under. It is clearly a political exercise to disrupt these proceedings so the truth about Mr Shorten and GetUp cannot—
Senator WATT: So, it's politically motivated.
CHAIR: be exposed.
Senator WATT: I thought it wasn't politically motivated.
CHAIR: We'll continue with the proceedings.
Senator CAMERON: I've got a point of order, Chair.
CHAIR: What's your next point of order.
Senator CAMERON: The point of order is, as you are well aware—you're the longest-serving Senator.
CHAIR: What is your point of order? We don't need the commentary.
Senator CAMERON: The point of order is that you must convene this Senate estimates hearing consistent with the standing orders.
CHAIR: That's what I've done. There is no point of order. We'll continue.
Senator CAMERON: That's not correct.
CHAIR: The government has announced an extra $41.6 million funding—
Senator CAMERON: That's not correct.
CHAIR: over eight years for the Commonwealth Director of Public Prosecutions, relating to the increased workload following the Financial Services Royal Commission. Could you just confirm that you've got that money and what's intended to be done with it?
Ms McNaughton: Well, we don't have the money yet, other than the, I think, $228,000 that will be appropriated when the bill is passed. The rest of the money is for the future. And, at this stage, of course, we, as I've indicated before, have no briefs yet arising out of matters that were highlighted by the royal commission. We think we might have one pre-brief advice, but we are double-checking how many. Other than that, we are trying to make sure that our workforce is properly provisioned. We're going to be onboarding some new lawyers within the office and we'll be making sure that those areas of the office which are handling those matters are ready to receive briefs when they come, and also we'll be using members of the private bar as appropriate.
CHAIR: Thank you. So, how many additional lawyers or prosecutors would you intend to appoint at this stage, Ms McNaughton?
Ms McNaughton: That's an ongoing situation. We've got a campaign happening over the next few months—in fact, I think we've got three planned for the rest of this calendar year. We'll be monitoring the needs as the year progresses, but we do certainly want to make sure that we have enough—Ms Pavleka assists me. We have just onboarded, or are about to onboard, 25 new people, but we are doing three further campaigns, and so we anticipate it will be more than that.
CHAIR: What is your current staff, and how big an increase will that be in your current staff?
Ms McNaughton: Our overall raw number is in the realm of about 450. That's made up of a number of different types of ways that we employ people. Some are by way of permanent employment and some are by way of labour hire. Our permanent employment is 408. Our labour hire is 39. And by labour hire, just for the record, can I clarify what that means—
CHAIR: Yes, you better. Some people think that's a swear word.
Ms McNaughton: For the purposes of today, a labour hire arrangement is defined as an arrangement where a contractor is engaged to fill a position that would otherwise be filled on an ongoing basis by an APS grade employee. We have a few other contractors in a few other areas but that's what I mean by labour hire. I could go...
into various full-time equivalent or average staffing levels and the like but that's a ballpark indication of what our workforce looks like.

CHAIR: I understand you've been supportive of possible jurisdiction of the Federal Court to be expanded to include corporate crime. Is that an accurate reflection of your views on that subject?

Ms McNaughton: It is not entirely accurate. I did read in the media that we had been supportive. In fact, we regard that issue as a matter of policy, and that matter is more appropriately directed to the Attorney-General. We are neutral on that issue.

CHAIR: Did you want to comment, minister, or Mr Moraitis, about that?

Senator Reynolds: I have no comment, thank you.

Mr Moraitis: It is a matter of record that the department prepared a report for the government and that has been acted upon. The idea of having corporate jurisdiction extend to the Federal Court is something that has been announced and we are working with the jurisdictions to fine-tune that.

CHAIR: Does that require legislation?

Mr Moraitis: Some parts of it might. I will ask Mr Anderson who has the detail.

Mr Anderson: I guess the first thing to say is there has been a review done and the government has made a decision. But now we need to do more work to actually work out how it is going to be implemented, so that's going to take a certain amount of time to do. It will require legislation. I will ask Dr Smrdel to say something more about that.

CHAIR: Sorry, before Mr Smrdel adds to that, did you say the government has made a decision and has it been announced?

Mr Moraitis: Yes.

Mr Anderson: It was announced in the government response to the Financial Services Royal Commission.

CHAIR: Of course, yes. I recall that.

Dr Smrdel: The government announced that additional jurisdiction will be provided to the Federal Court on an in principle basis. So what still needs to be done is to work out additional resourcing for the court, which would be occurring through the budget process that is currently under way. But subsequent to that there is also the need for legislation to actually provide the Federal Court with criminal law jurisdiction for corporate crime. They already have jurisdiction for cartel matters, so the Federal Court already has serious criminal law jurisdiction but this would be in addition to it. I think from the numbers of cases, which I don't have to hand, which ASIC is predicting then it would need a level of additional resources for the Federal Court.

CHAIR: Okay. Thank you very much for that. Just before I pass to the next senator, over the break was anyone able to find out whether evidence in a royal commission can be used aigntio for prosecutions?

Mr Moraitis: Not yet. I'll have someone available perhaps this afternoon.

CHAIR: I shall curtail my curiosity until that time. Does anyone else have questions of the DPP?

Senator WATT: I do. Thank you, Ms Pavleka. Where we got to before the break was that the DPP's view was that there was prima facie evidence that a crime had been committed, that you did think it was in the public interest to prosecute. But the reason for no prosecution was that there were no reasonable prospects of conviction, partly due to a lack of evidence or failure to provide witness statements on the part of some parties—

Senator CAMERON: Is that correct?

Ms Pavleka: Yes.

Senator WATT: That's correct, yes. One other thing that I think has puzzled a lot of people, which you might be able to explain for us, is that the evidence that Senator Cash previously provided to estimates was that she had received a confession from one of her staff members. So I think a lot of people have assumed that someone confessed; it's an open-and-shut case. Can you explain why that is not the case, or why you weren't able to use that confession if that was a factor?

Senator Reynolds: Confession?

Senator WATT: Well, Senator Cash—

Senator Reynolds: Confession?

Senator WATT: Senator Reynolds, both Senator Cameron and I were in estimates when Senator Cash told estimates that her former senior media adviser had admitted, confessed, however you want to put it—
**Senator Reynolds:** Senator Watt, you have a very short memory, because if you'll recall, I was there at the time—when you had probably 40 hours of asking the same question over and over and over again, which you are again doing here today. As she said then, and as I said now—

**CHAIR:** I can assure you he won't be inquiring for 40 hours, Senator Reynolds!

**Senator Reynolds:** It was at least four different sessions, where you hounded her over and over and over again. And her answers have been entirely consistent, as they were again on Friday, as I understand from media reports.

**Senator WATT:** I haven't got to the consistency of what she said.

**Senator Reynolds:** Senator Watt, it is very clear—

**Senator WATT:** Chair, am I going to get to ask any questions here without being interrupted? Seriously?

**Senator Reynolds:** Well, you asked a question; I'm just answering it.

**CHAIR:** No, you're getting an answer to a question you raised.

**Senator WATT:** I asked Ms Pavleka the question. Ms Pavleka, is there a reason that the confession, admission, whatever word Senator Reynolds wants to choose—

**Senator Reynolds:** Confession—

**Senator WATT:** Again: interrupted.

**Senator Reynolds:** Confession has a very precise meaning. I believe, in law, and again, Senator Watt—

**CHAIR:** Senator Reynolds—

**Senator Reynolds:** it is inappropriate.

**CHAIR:** let the question be asked first. It's directed to Ms Pavleka, but you can add to the question, as the minister at the table, in accordance with normal practice.

**Senator Reynolds:** Thank you, Chair.

**CHAIR:** So let's just continue. Have you got the question, Ms Pavleka?

**Ms Pavleka:** I think so.

**Senator WATT:** Yes. Why was that admission—whatever word you want to put around it—not able to be used as part of a prosecution?

**Ms Pavleka:** I think there's an assumption in your question; that would probably be my first observation. And the second thing I'd probably say is that we have considered all the admissible evidence that was provided to us, in relation to the brief of evidence we received in relation to a particular individual.

**Senator WATT:** And is the point you're making there that what Senator Cash told estimates was not admissible?

**Ms Pavleka:** No; that's not the assumption that I'm referring to.

**Senator WATT:** I'm still unclear about why evidence to an estimates committee from a cabinet minister—that a staff member told her that he leaked information—could not be used in a prosecution. It seems to an outsider that it's pretty much an open-and-shut case, but there must be a reason that isn't the case.

**CHAIR:** A prosecution against whom?

**Senator WATT:** I would have thought Mr De Garis is a pretty good place to start, being the person who admitted to doing it, but I don't know who it was that they were looking at prosecuting. Ms Pavleka, are you able to answer that?

**Senator Reynolds:** Chair, can I just make a point of order here? I think Senator Watt has now just slipped to a new low, if possible. Not only is he using highly inflammatory words about confessions; he's now mentioning individuals, quite without reason, and I would just ask you, Chair—

**Senator WATT:** Except that he broke the law. Except there was prima facie evidence that he committed an offence.

**Senator CAMERON:** A criminal offence.

**Senator Reynolds:** It is entirely inappropriate. As I have said, both ministers provided all of the information required.

**CHAIR:** Yes.
**Senator Reynolds:** Now, whether information that is on the *Hansard* is subject to privilege, and the imputation that because it was on *Hansard* it's somehow separate—it's just inconceivable. And, Senator Watt, I saw your—

**CHAIR:** This is a rather long point of order.

**Senator Reynolds:** Tantrum on *Sky News*. It's just inexcusable, what you're saying now.

**CHAIR:** You can't have much to do with your time, Senator Reynolds, if you're watching that rubbish!

**Senator WATT:** Minister, why didn't—

**CHAIR:** Sorry, I don't think there is a point of order. It's improper to make imputations against other senators, but for other people I'm not sure that that necessarily applies. People who are maligned in the Senate do have an opportunity to write to the President and seek redress. So there isn't a point of order.

**Senator Reynolds:** Sorry, speak up, Senator Cameron. I don't think we heard—

**Senator WATT:** Minister, why didn't—

**Senator Reynolds:** Oh, Senator Cameron is telling you again what to say. Why doesn't Senator Cameron just ask me the question?

**Senator WATT:** No, he is not, actually. You really are interrupting quite a lot for a minister at the table.

**CHAIR:** Senator Watt, as I implore all senators, please ignore interjections. They're all unruly and inappropriate, but what's your question?

**Senator WATT:** Minister, why is it that Minister Cash and Minister Keenan were not willing to provide a witness statement to the AFP to enable the DPP to prosecute? Why did they rely on privilege to avoid cooperating?

**Senator Reynolds:** Senator Watt, as I said, you have sunk to new lows. I have said, probably at least three times today, as simply and as clearly as I could, that both ministers provided information. Whether it's officially a statement or whether it was a letter, it was the information required by the AFP as they asked for. They provided it, although, as you know, they didn't need to under the Parliamentary Privileges Act. They provided the information. The AFP did not come back for further information, and Minister Cash last week went to court. Again in what she said, as I understand from public reporting of this, she was entirely consistent. She has been consistent from the day when I was sitting behind—

**Senator WATT:** Chair, we've heard this several times, eating into my time.

**CHAIR:** Order!

**Senator Reynolds:** You've asked the question again.

**CHAIR:** Order, Minister! It's an unruly interjection. I concede I've heard this from the minister five times before, but I've heard your question 10 times before. If you continue to ask the question, you'll have to sit through the answer yet again. Please continue Reynolds.

**Senator HUME:** Chair, just before you continue, may I ask you to stop the clock on Senator Watt for just a moment, just so I can get a clarification on something from the witnesses, if that's all right, Senator Watt. Can someone explain to me—and I'm not a lawyer, so forgive me; I'm not quite outnumbered at the table here but not too far off—the difference between a witness statement and a statement. Is there a difference in legal meaning between the two in the context of an investigation like this?

**CHAIR:** Sorry, can I hold that question. I will come to you. Senator Watt has three minutes to go. That's really a question you can take up in your time. That might be more appropriate.

**Senator HUME:** Yes, Chair, I understand, but I think it changes the inferences of Senator Watt's questioning, if there is a difference.

**CHAIR:** Well, nobody is in any uncertainty as to what the inferences are from the Labor Party, but they're wrong. But that's not for me to say. Senator Watt, you've got three minutes.

**Senator WATT:** Thank you, Chair. Ms Pavleka, am I correct that a sworn witness statement is admissible evidence that can be used in a prosecution?

**Ms Pavleka:** As I explained before, what would happen in a proceeding in a magistrates court—a summary hearing, for example—is that the statement wouldn't be tendered as the person's evidence. Rather it would be used as a proof of what their evidence is expected to be. Essentially, one of the reasons you get a police statement is so that you have an idea, and a very good and precise idea, about what the witness is going to say. That's not just for the benefit of the prosecution but also for the benefit of the defense as well. In committal hearings, for example,
that's when you would actually tender the statement—in a committal hearing. But this would not have been a matter where we would have proceeded through a committal and ultimately to a trial. It would have been dealt with summarily.

Senator WATT: Thanks. Apart from the requests that the AFP made on at least two occasions, they said, to Minister Cash and Minister Keenan to provide a statement, did the DPP make its own requests to Minister Cash or Minister Keenan to provide a statement or to cooperate with the investigation? Was there any contact at all?

Ms Pavleka: No, that would not be the usual process, and certainly it was not the process in this case.

Senator WATT: You relied on the AFP to do that?

Ms Pavleka: Absolutely.

Senator WATT: Did the DPP make any requests of the AFP to obtain witness statements from Minister Cash and Minister Keenan?

Ms Pavleka: We obviously had a number of discussions with the AFP during the course of our consideration of this matter, but those discussions really are the subject of privilege. I think this came up on the last occasion you might have been asking me what the nature of advice might have been or about requests that we had made of the AFP. A privilege was taken on that occasion around the legal advice, and I would be doing the same in this instance.

Senator WATT: Did the DPP emphasise the importance of obtaining witness statements from ministers and staff to the AFP?

Ms Pavleka: I think my answer would be the same as for the previous question.

Senator WATT: You can't say whether you emphasised the importance of obtaining those statements.

Ms Pavleka: I would say that the nature of the discussions with the AFP is the subject of privilege.

Senator WATT: Evidence has also been given in the Federal Court over the last week that other senior staff in Minister Cash's and Minister Keenan's offices were involved in leaking this information. We've heard in the Federal Court that her former chief of staff was involved, obviously her former media senior adviser—

CHAIR: What's the question—

Senator WATT: Did those people cooperate with the AFP and DPP investigation?

Senator Reynolds: Can I make a point of order—

Senator WATT: Did those people cooperate with the AFP and DPP investigation?

Senator Reynolds: Could I comment here or perhaps make a point of order? Senator Watt is now asking the witness to speculate about what she may or may not have read in the media.

Senator WATT: No, I'm asking whether those people cooperated—

Senator Reynolds: I would also suggest that some of the questions are for the AFP and they should go on notice to the AFP. They are questions rightly for the AFP, not the CDPP.

Senator WATT: No, my question was whether they cooperated with the DPP and the AFP—

CHAIR: Senator Watt, please, please, can you stop interjecting? We will get along much better and much quicker if everyone has their say without interjections. Minister, please finish your point.

Senator Reynolds: What I was saying to try to assist Senator Watt is that some of those questions were clearly directed at the AFP, and given they weren't asked of the AFP yesterday, Senator Watt might more appropriately put them on notice for the AFP.
CHAIR: That's very helpful, but there's no point of order. I'm sure that Ms Pavleka, as a responsible and senior lawyer, will understand that she doesn't comment on things that she has no personal knowledge of and are only gained by reading very limited newspaper reports. But it's up to Ms Pavleka how she answers it.

Senator WATT: I haven't got too much longer—

CHAIR: No. Your time is finished for the moment. We'll come back to you. Did you answer that, Ms Pavleka?

Ms Pavleka: I think essentially I've said—

CHAIR: Said it before.

Ms Pavleka: Yes—

Senator WATT: No. We didn't get an answer as to whether those four individuals co-operated with the DPP and the AFP.

Ms Pavleka: I'm not sure who has given evidence in the proceedings so far, other than Mr Davies?

Senator WATT: Did he cooperate with the DPP and the AFP?

CHAIR: The DPP is the only question you could take there. What the AFP might have done is not in your knowledge.

Ms Pavleka: My hesitation in answering that is around the fact that I'm thinking it's tending to go to the nature of the advice we have provided around the legal advice. Would you let me just think about that and obviously—

CHAIR: Perhaps if you take it on notice.

Senator PRATT: Can I ask a question?

CHAIR: No, you can't. We're going to Senator Hume. I will come back to you, Senator Pratt, if you have questions.

Senator HUME: I want to expand and clarify a little bit more on the issue I raised earlier—and then was overruled by the chair—particularly in the context of an AFP investigation, on the difference between a witness statement, or providing a statement, or—and I know Senator Watt used the word—a sworn statement. What is the difference in an investigation like this? What is it that the AFP is asking for?

Ms McNaughton: I can give it to you in general terms—not that investigation. I have already said I have nothing to do with that decision-making. In general terms, a formal police witness statement is a signed statement taken usually by an officer. It endeavours to be covering various matters that come up and they endeavour to perhaps make further inquiries and come back so that it's as useful and as complete as it can be. Although, statements can come about through other means. Sometimes, people's lawyers provide statements to the police. Statements can be also less formal. As Ms Pavleka has indicated, if the matter is in a summary jurisdiction, where people do give viva voce evidence, they could be technically less formal. But if they're going to go indictably, that is, to a higher court—that's to the County or District Court or the Supreme Court—for trial, there are various provisions in various of the states' criminal procedure acts that provide that statements have the bear various jurats and the like, so they have to be in a particular format. And if they're not in that format they won't get through the committal stage. There are, however, exceptions. For example, once a matter is committed for trial there may be a new witness come to light and you could do perhaps at trial what's called a Basha inquiry—you would be having an inquiry before a superior court as to what a witness might be able to say. So, there are all sorts of things available. But in the Local Court normally a police statement is a signed statement that attempts to be as fulsome as it can.

Senator HUME: But it's not necessarily that one form of statement proves more than the other?

Ms McNaughton: I'm also reminded that there's usually some sort of acknowledgment that there's a penalty for giving false evidence in that statement. Is one more effective than another?

Senator HUME: I suppose more fulsome. Does it prove more than another?

Ms McNaughton: The statement itself in a Local Court doesn't prove anything, because you have to call the live witness. But it perhaps gives a firmer indication of what might be available from that witness.

Senator HUME: You've got to forgive me if I don't understand the legalese attached to it. Is one more admissible than the other?

Ms McNaughton: Again, if you are in the Local Court it's the spoken word that is the evidence. It's certainly more routine to provide a signed statement that's taken by a police officer from a witness.

Senator HUME: And a signed statement is a sworn statement? That's interchangeable, is it?
Ms McNaughton: Yes, I think for these purposes it is.

Senator HUME: Did the AFP ask for a statement in any particular form or a particular format, or following any particular rules?

Ms McNaughton: In?

Senator HUME: In this particular circumstance?

Ms McNaughton: I'd have to pass that to Ms Pavleka.

Ms Pavleka: The AFP would be in the habit of taking statements with a proper jurat at the bottom, where there would be an acknowledgment that falsity in the statement might be liable to some sort of penalty. As a matter of routine, that would be the form of statement they would take.

Senator HUME: Does that mean that it needs to be a sworn statement?

Senator PRATT: That's the statement they refused to sign.

Ms Pavleka: Could you repeat that?

CHAIR: I'm sorry about the interjections. I'm powerless to stop the discourtesy, particularly coming from the—

Senator Reynolds: Chair, can I just—

CHAIR: No, Senator Reynolds, the same applies to you. When I'm talking I don't want to be interrupted.

Senator REYNOLDS: My apologies, Chair.

CHAIR: I'm disappointed that the deputy chair, and Labor senators generally, continue to interrupt, making it difficult for you and me and everyone else to hear. Senator Hume?

Senator Reynolds: Chair, can I raise a point of order. I think that interjection from Senator Pratt was highly inappropriate and factually incorrect and I would actually ask her to withdraw that comment.

Senator PRATT: I withdraw.

Senator Reynolds: Thank you.

Senator HUME: Let me rephrase: does the AFP, when it's requesting statements, specify what format those statements need to be in? Does it say that it needs to be sworn?

Ms Pavleka: You would have to ask the AFP that.

Senator HUME: Okay.

Ms Pavleka: But what I can say is that from the briefs of evidence that we receive from the AFP there is a standard format that they use, and it is commonly referred to as a sworn statement.

Senator HUME: Are all statements provided on a voluntary basis?

Ms Pavleka: In relation to criminal matters?

Senator HUME: I suppose in the context of what we're speaking about now, would the statements that have been requested be provided on a voluntary basis?

Ms Pavleka: Yes. I think the police dealt with that yesterday when they indicated they can't really compel anyone to make a statement in a matter. It's really totally a voluntary process.

Senator HUME: Do we know whether the letters sent to the ministers requested the statement in a particular form?

Ms Pavleka: I don't know the answer to that.

CHAIR: We're really getting into, as I mentioned before, questions to the AFP, not to the DPP.

Senator HUME: I'm interested to know that, if the AFP had additional questions, why they didn't ask for them. Surely they would be satisfied with the original statements—with whatever they had already received.

Ms Pavleka: I think the police are best placed to answer that.

Senator Watt interjecting—

CHAIR: Thanks, Senator Watt. We don't want your discourteous interruption again. Are you finished, Senator Hume?

Senator HUME: Yes, I think so.

CHAIR: I'll just use the other three minutes of your time. Ms McNaughton, what interaction do you have with state directors of public prosecutions?
Ms McNaughton: We meet semiformally, I suppose, a couple of times a year. We have a meeting called CADs, conference of Australian directors. We've got one coming up later this month. So we do meet to discuss issues of mutual interest. That would be the most regular contact. I suppose that develops a relationship. Otherwise, we have contact with each other as required, because sometimes we have to take over their matters, or they have to take over our matters—that sort of thing.

CHAIR: I perhaps should know this, but can I just clarify: your role is confined, usually and generally, to Commonwealth law—is that correct?

Ms McNaughton: That's correct.

CHAIR: And the state DPPs deal with state law?

Ms McNaughton: Correct.

CHAIR: But where there is an overlap—I assume there are cases where both the state and the Commonwealth have jurisdiction.

Ms McNaughton: Yes, sometimes people are charged with both Commonwealth and state matters, and then there's sometimes a discussion between our officers—rarely at my level. More junior officers than me have discussions with counterparts in the relevant state office as to who might be the best DPP on the basis of the balance of the seriousness of the charges—it might be one way or another—or perhaps particular expertise one way or the other. Joint task forces also raise those issues; Commonwealth and state task forces can raise those issues. But they're normally worked out in a very collegiate and cooperative way. In fact, they're always worked out in a collegiate way with our state and territory counterparts.

CHAIR: You have offices of your organisation—what's the right term?

Ms McNaughton: Agency.

CHAIR: Your agency. You have offices in different parts of Australia?

Ms McNaughton: I have an office in every state and territory capital city, together with Cairns and Townsville. So I have 10 offices.

CHAIR: In one of those areas where you do not have resident offices, is it a practice, and is it possible, for you to engage the state directors of public prosecutions to prosecute federal matters, although they are federal matters rather than state matters?

Ms McNaughton: Just to clarify, I do have an office in every state and territory. To the extent that there are remote country towns in parts of Queensland or Western Australia, we use a variety of different methods to cover the courts in those areas. Sometimes, for early mentions of the matter, we might use police prosecutors. We might brief a local solicitor. But mostly in those cases, if the balance of convenience and seriousness of charges is with the Commonwealth, we will have carriage of those matters.

CHAIR: When you say you use a police prosecutor, he may be a state police prosecutor?

Ms McNaughton: Yes—or she.

CHAIR: He or she, yes. Very correct. Does any money change hands? Do you contribute a fee to the state authority for using their police prosecutor to do some of your work?

Ms McNaughton: Not to my knowledge with the police. For the local solicitors, I presume there's some sort of fee arrangement, but I think it's a cooperative venture with the state police, as far as I'm aware.

CHAIR: Thank you very much for that. My time is up. Are there any more questions of the Director of Public Prosecutions?

Senator WATT: Yes. The AFP gave evidence yesterday that about eight people refused to provide witness statements. Were any of these people employed by the Registered Organisations Commission?

CHAIR: Senator Watt, I've already stopped Senator Hume on this point. You're asking the Director of Public Prosecutions about questions and actions of the AFP. If the DPP knows about it, it's only third hand. Yesterday was the time to ask the Australian Federal Police, and I think you did ask some of these, so I think the question is out of order.

Senator WATT: The point is, chair, that the AFP were collecting witness statements to assist the DPP in their investigation and potential prosecution.

CHAIR: What was your question?

Senator WATT: Whether the people who refused to provide witness statements to assist the DPP with its prosecution included anyone employed by the Registered Organisations Commission.
Ms McNaughton: That's a matter for Ms Pavleka.

CHAIR: If you can answer that, you can. I'm not sure that you can, but anyhow.

Ms Pavleka: I do know the answer to it.

CHAIR: If you can answer that, you can. I'm not sure that you can, but anyhow.

Ms Pavleka: It was answered yesterday by the AFP that, yes, it did include the ROC.

Senator WATT: And it included ministerial staff?

Ms Pavleka: Yes, and the AFP indicated that yesterday.

Senator WATT: One thing I wasn't clear on yesterday was whether these eight people included Minister Cash and Minister Keenan? Do you know whether they're part of that eight or in addition?

Ms Pavleka: I'd have to do the count because the numbers have changed over time.

Senator WATT: And it included ministerial staff?

Ms Pavleka: Yes, and the AFP indicated that yesterday.

CHAIR: Can we have the question without the editorial? The 'disturbing' thing is something that concerns you. Can we just have the question?

Senator WATT: The other disturbing thing that came out in the AFP's evidence yesterday was that—

CHAIR: Can we have the question without the editorial? The 'disturbing' thing is something that concerns you. Can we just have the question?

Senator WATT: The AFP told estimates yesterday that they had uncovered indications that some evidence, relevant to the leak, had been destroyed. Are you aware of that?

Ms Pavleka: I saw that in estimates yesterday and I had also read something similar a couple of days earlier in the newspaper, but prior to that, no, I had no knowledge.

CHAIR: You had no personal knowledge as the Director of Public Prosecutions?

Ms Pavleka: No.

Senator WATT: Now that the DPP is aware of this, has the DPP considered charges or prosecutions in relation to this apparent destruction of evidence?

Ms Pavleka: Our file is currently closed in relation to this matter, but if the Australian Federal Police wish to provide us with additional information in relation to charges of that nature, we'd of course be happy to consider that.

Senator WATT: That goes to another question. I asked yesterday whether the AFP would consider reopening its investigation, given the evidence that had come out in the Federal Court. Would you reconsider the decision to not prosecute on the basis of the evidence that has come out in the Federal Court?

CHAIR: If you're going to give an off-the-cuff answer to that, well and good, but if you want to take it on notice and consider it—

Ms Pavleka: What I can say at a very general and high level is that, from time to time, following the conclusion of investigations, if fresh and admissible evidence comes to light, the police or other investigators can return to us with that material and, of course, we're always happy to consider it. I can give that general indication, perhaps, in answer to your question.

Senator WATT: Thanks. Senator Cameron has a couple of questions.

CHAIR: Senator Cameron.

Senator CAMERON: Thanks. Ms Pavleka, in relation to a general management system that you have to deal with the AFP, if the AFP bring a brief of evidence to you and there are areas that might need more investigation or more evidence, do you go back to the AFP and say, 'Look, this is the area of weakness in your brief. You need to deal with that'?

Ms Pavleka: In a general sense, yes, that does happen from time to time. Sometimes it happens before the brief of evidence is referred. We could be giving pre-brief advice where we might be able to indicate general areas where the police might want to do some extra work and where there might be difficulties or gaps. That, of course, can sometimes happen when the brief comes in, where we can indicate general areas. It's a matter then for the police as to whether or not they are able to do that.

Senator CAMERON: So they felt that the brief from the AFP was sufficient to prosecute. Did you then have any meetings with the AFP to discuss the weaknesses that you saw in the brief, especially in relation to the lack of statements from ministers and other potential witnesses in a court case?

Ms Pavleka: I didn't have any meetings directly with the AFP on this matter, but, at a case officer level, I certainly am aware that there would have been discussions around the matter generally. But, as to the specifics of
those discussions, we're getting back into the nature of the legal advice that we might have given. I'm certainly aware that there was to-and-fro, as there always is, in these sorts of matters.

Senator CAMERON: Can you tell me over what period the to-and-fro took place?

Ms Pavleka: Yes.

Senator CAMERON: It was quite a lengthy time.

CHAIR: The officer said she'd give that information, Senator Cameron.

Senator CAMERON: I'm just trying—

CHAIR: She said she'll give the information.

Ms Pavleka: I do have a brief chronology of some of the key events, if that would assist.

Senator CAMERON: Yes, thanks.

Ms Pavleka: From 23 July 2018 to 10 August 2018, there were some general prebrief discussions with the AFP. But at that stage no prebrief advice was sought. On 20 August the full brief of evidence was provided to the DPP, and on that day the director disqualified herself from being involved. Then, on 5 September, we made a decision to brief senior counsel to assist us in the matter. On 14 September, we received some advice from that silk. Sorry, I beg your pardon: on 5 September, we made a decision to engage a silk, but it wasn't until 14 September that we were actually able to brief a suitably qualified person who had the availability. On 12 October, we received the advice from the silk. Then, on 19 October, there was an update to the AFP, which was obviously an update based on the advice we had received. And then, on 12 December, the police provided us with some additional material and advised us that their investigation was complete. Then Christmas intervened. Then, on 9 January, we had a conference with the counsel that had given us the advice. And then, on 11 January, the decision was made and communicated.

Senator CAMERON: So, in the context of that fairly lengthy period of time, after you received the update from the AFP, can you tell us who the counsel was you briefed?

Ms Pavleka: Yes, that was Mr Nick Robinson QC.

Senator CAMERON: Do you know how much it cost to brief Mr Robinson?

Ms Pavleka: No, but I can take that on notice for you.

Senator CAMERON: Thanks. So I assume—I'll ask you the question—that Mr Robinson, the silk, raised the issue of the need for more documentation and statements. Is that correct?

Ms Pavleka: Again, that's getting into the area of the legal advice that we've received, so I prefer not to answer that.

Senator CAMERON: Did you, after that period, go back to the AFP and ask the AFP to seek further statements?

Ms Pavleka: We wouldn't direct them to do that.

Senator CAMERON: I think I've already answered that question in the sense that it's getting, again, into an area of advice to the AFP.

Senator CAMERON: Well, just let me ask you a general question, not in relation to this, then. Would the DPP seek to go back to the AFP in a case where you needed further witness statements? Has the DPP ever gone back and asked the AFP to go and get some more witness statements?

Ms Pavleka: We wouldn't direct them to do that.

Senator CAMERON: No, just ask them.

Ms Pavleka: Certainly from time to time, if that were an issue in a case, we would raise that with them and invite them to consider that.

Senator CAMERON: In the past, has the AFP come back with the additional information arising from that request?

Ms Pavleka: Sometimes they do and sometimes they don't; it just depends.

Senator CAMERON: But it's not abnormal for that to happen—that you ask?

Ms Pavleka: Yes.

Senator CAMERON: But you can't advise us whether you did it on this occasion?

Ms Pavleka: No.

Senator CAMERON: In a case like this, once you close, do you just turn your back on it? Or do you follow what's going on in case there's further need for the DPP to consider the issue?
Ms Pavleka: When we close the case, that really is the end of the matter for us. But, obviously, we have a close working relationship with the Australian Federal Police and they well understand that, at any time, on any case, they can come back to us if they feel there's additional material that we need to consider.

Senator Cameron: The AFP indicated on two occasions they had gone back to Minister Keenan and Minister Cash to seek witness statements, and they were not forthcoming. Was that advised to you by the AFP?

Chair: I'm not sure that's what the AFP said.

Senator Cameron: It's exactly what they said; I've got the transcript.

Senator Reynolds: No, it's not; it's actually not.

Chair: I'm not sure if Ms Pavleka can comment on that. If you can, comment on it.

Ms Pavleka: Can you repeat the question, sorry?

Senator Cameron: The AFP indicated they had sought to get Minister Keenan and Minister Cash to provide them with a statement on two occasions. That's their evidence to estimates. Did they advise you of that attempt?

Senator Reynolds: That's not their evidence.

Ms Pavleka: I'm not sure we knew how many occasions.

Senator Cameron: Did the AFP advise you that they had sought statements from both Minister Keenan and Minister Cash?

Ms Pavleka: Yes, but I just couldn't tell you on how many occasions.

Senator Cameron: Did they indicate to you that they were unable to achieve those statements?

Ms Pavleka: Yes.

Senator Cameron: And, again, that is part of the reason why a prosecution can't be carried through, because of a lack of witness statements?

Ms Pavleka: I'd refer to my earlier answer, where I indicated there were a number of reasons why this prosecution could not proceed. The unavailability of a large number of statements was a factor in that.

Senator Cameron: You say it is one factor; is it a significant factor?

Ms Pavleka: It was an important factor.

Senator Cameron: What's the difference between important and significant?

Ms Pavleka: I'm not sure—I prefer my word!

Chair: You're not paid as an English teacher, Ms Pavleka, are you; you're paid as a lawyer.

Senator Cameron: You used a different word. That's the only reason I'm asking.

Senator Watt: Can I clarify something that came out of the questions Senator Hume was asking? I think what I heard you say was that witness statements of the type the AFP was not able to get from the ministers are normally sworn. Am I right that the consequence of providing false information in a sworn witness statement is potential perjury charges?

Ms Pavleka: It's similar. I just don't have the wording in front of me of the jurat that is normally at the bottom of a police statement. Perhaps I should take it on notice and provide you the exact wording. That's probably the best.

Senator Watt: Ann free to take it on notice. But, in general terms, if someone provides false evidence in a sworn witness statement, they are exposed to some sort of criminal charge like perjury?

Ms Pavleka: That's the effect of it.

Senator Watt: And, if a person refuses to provide a witness statement, it logically follows that they avoid the risk of falsifying information and perjury charges.

Chair: That's subjective.

Senator Watt: That's the logical follow-on, isn't it?

Chair: Anyhow, Ms Pavleka will no doubt answer the same way.

Senator Watt: If you don't provide a sworn witness statement, you're not exposed to perjury charges.

Chair: Yes, and, if the sun doesn't shine tonight, then it's going to be dark! I mean, it's a self-obvious statement.
Senator WATT: I put it to you, Chair, that one of those things is more likely than the other—perjury charges for Senator Cash; the sun rising in the morning.

CHAIR: Senator Watt, I'm amazed that as a so-called former lawyer you ask these questions that you know the answer to.

Senator WATT: Not everyone knows the answer, Chair. That's the point of getting it out there.

Senator Reynolds: Chair, I can perhaps—

CHAIR: That's the end of the questioning, thank you.

Senator Reynolds: No, Chair, sorry, I can actually provide answers to Senator Watt's questions.

Senator WATT: We have the greatest minds of the DPP here, but we'll take Senator Reynolds instead!

CHAIR: No, look, there are no further—

Senator Reynolds: Chair, please, could you just allow me to provide an answer to Senator Watt's question?

CHAIR: Minister, we have a very long program to get through. We're about three hours late in our program. There are a lot of important things that other senators want to ask about. There are no more questions from here. The sooner we can go on to the Administrative Appeals Tribunal, which I know a lot of senators have questions of, the better we'll be. So unless it's absolutely vital to the end of the world, say it, but if not, can we move on?

Senator Reynolds: I'd just like—

Senator WATT: It's vital.

Senator Reynolds: to address a couple of the assertions that Senator Watt made, which were quite clearly, patently and, I believe, deliberately incorrect.

CHAIR: Minister, if they're answering assertions and not questions, that will go to committee. Look, I'm not going to—

Senator Reynolds: What he said was patently and demonstrably incorrect and he misrepresented in his questions what the AFP said yesterday.

CHAIR: Who answered the question?

Senator Reynolds: Some of it wasn't answered at all, because it was rhetoric, but he put it on the public record. Chair, can I just say this: the request for a statement from both ministers was voluntary. My understanding there was no request for a sworn statement as described by the DPP from either minister. Both ministers voluntarily gave statements to the AFP, despite the assertions of those ALP senators. And when they provided that information the AFP did not come back requesting more information after the brief of evidence, as I understand it, was delivered to the CDPP. So therefore…

Senator WATT: So it's the AFP's fault?

Senator Reynolds: No, I'm just saying, if the AFP had had concerns that they weren't provided enough information in statements that I understand were not required to be sworn statements—and this is coming down to the pedantics of those opposite, because they're desperately trying to—when is a statement a sworn statement and a deliberate statement—

CHAIR: Minister, we're not here for political commentary.

Senator WATT: Blaming the AFP.

Senator Reynolds: And it is quite outrageous. The facts are as I have just outlined them.

CHAIR: Thank you very much, Minister. I thank the Commonwealth Director of Public Prosecutions—

Senator CAMERON: Chair, a point of order—

CHAIR: for their appearance here.

Senator CAMERON: Point of order.

CHAIR: You're excused now and I call the Administrative Appeals Tribunal.

Senator CAMERON: Point of order, Chair.

CHAIR: Yes?

Senator WATT: A point of order.

Senator CAMERON: Point of order—you must take the point of order. I have a question to ask and you know the standing orders allow this to continue until we've finished questions. I've got one question.

CHAIR: Senator Cameron, I asked you and I asked Senator Watt if you had any other questions. You said no.
Senator CAMERON: But that was before Senator Reynolds engaged.
CHAIR: Well, thank you, Senator Reynolds, for helping us out in that way.

Senator Reynolds: You're welcome, Chair.

CHAIR: Okay, well if we are continuing questions, I will ask my questions that I was going to ask. In the interests of other senators who have other interests in the rest of the program, I was going to forgo my questions and put them on notice, but, if you're going to continue this circus, then I will put my sensible questions—not political, but sensible, questions—on what estimates is about to the DPP.

Senator CAMERON: Chair, are you casting aspersions on me as a senator?

CHAIR: Ms McNaughton, I was talking to you before about your interaction with the state DPPs. I assume you have a series of barristers on your staff.

Ms McNaughton: No. We're different to the state and territory DPPs in that way. My state and territory counterparts, in the main, have a stable of Crown counsel barristers on salary. We don't have that model. Depending on which state it is, some states have a fused profession so some are perhaps technically barristers, but we don't have the same sort of stable of crown counsel as my state and territory counterparts do.

CHAIR: So you have a team of what in my day were called solicitors. They seem to be called lawyers these days?

Ms McNaughton: Yes. We have a very talented team of lawyers, yes.

CHAIR: But if you need advocates in major matters, you engage the private bar, do you?

Ms McNaughton: Yes, in the main. I have one advocate doing regular court work in our Victorian office, but, other than that, we engage barristers from the private bar for our more major matters. Our solicitors do, however, do appearance work in relation to sentences, summary hearings and that sort of thing and the odd trial if they've got the requisite experience.

CHAIR: And your assessment of the gravity of the issue would depend on whether you get senior counsel, junior counsel or an in-house solicitor to do it?

Ms McNaughton: Yes and that's not usually my personal decision. It's made by my senior executive team. I have those located in offices and we have our national practice model and those decisions are normally made by my senior executive team.

CHAIR: Thank you for that, Ms McNaughton. Are there any other questions of the DPP?

Senator CAMERON: Could it be argued that the decision not to prosecute was because of a lack of cooperation by some potential witnesses?

Senator Reynolds: Is that speculation, Senator Cameron?

Senator CAMERON: No, it's a question.

Senator WATT: In this particular case.

Ms Pavleka: I think I've already answered that several times, haven't I?

Senator CAMERON: Can you just remind me what your answer was.

CHAIR: I'm sure you have. Or if you want to take it on notice?

Senator Reynolds: We can keep going round this buoy if you like.

Senator CAMERON: If you've already answered, could you just advise me again what your answer was?

Ms Pavleka: As I think I've said previously, there were a number of factors at play, and the absence of certain pieces of evidence, certain accounts, was a part of that.

Senator CAMERON: And that includes witness statements?

Ms Pavleka: Yes, because if witnesses have not provided an account at all, then there's a gap in the evidence.

Senator CAMERON: So then it goes to the point I raised earlier: if people won't put a witness statement in, that is a lack of cooperation with the Federal Police and the DPP, isn't it?

Ms Pavleka: If people have not provided a statement?

Senator CAMERON: Yes.

Ms Pavleka: Possibly, yes.

Senator Reynolds: Fortunately, both ministers did, Senator Cameron.
Senator CAMERON: Which actually leads to me another question. Nobody could argue that these ministers cooperated when they won't provide a witness statement.

Senator Reynolds: But both ministers did, Senator Cameron.

Senator CAMERON: No, I'm not asking you.

Senator PRATT: Not a sworn statement.

Senator Reynolds: They weren't asked for a sworn statement, Senator Pratt; they were asked for a statement, which I have said multiple times—

Senator PRATT: They were asked for a sworn statement.

Senator WATT: I think Senator Cameron was asking a question of Ms Pavleka.

Senator Reynolds: They were asked, and it was very clear to them that they were providing a voluntary statement, which both of them did.

Senator PRATT: No, that's not correct.

Senator Reynolds: They provided the information, and there was no follow-up, with both ministers from the AFP—very clear.

Senator CAMERON: Chair, can I raise a point of order. The DPP is an independent statutory body. The minister cannot intervene and answer questions on behalf of an independent statutory body. You've allowed that to happen—

Senator Reynolds: That would be correct if I had, Senator Cameron—talking about the AFP.

CHAIR: You've raised the point of order. There is no point of order. The minister can answer questions and has done so, and I thank the minister for a very concise and accurate answer. Are there any other questions for the DPP?

Senator CAMERON: Yes. The issue of cooperation was a factor—that is, the lack of cooperation was a factor in the DPP not being able to take a prosecution. Is that correct?

Ms Pavleka: The absence of evidence was a factor.

Senator CAMERON: But you don't get that evidence unless there is that cooperation with witness statements. Is that correct?

Ms Pavleka: Yes.

Senator CAMERON: Thanks.

CHAIR: Okay. I thank Ms McNaughton, Ms Pavleka and Mr Ash—although you got off rather lightly, Mr Ash. Thank you very much for your time today. We do appreciate your assistance. I now call the Administrative Appeals Tribunal.

Senator CAMERON: Thanks, Linda, that helped.

Senator REYNOLDS: The truth matters, Senator Cameron. The truth matters, no matter how much you smear.

Administrative Appeals Tribunal

[14:38]

CHAIR: I welcome officers from the Administrative Appeals Tribunal. Ms Leathem, you're the principal recipient of our questions, I take it. Welcome to you and your team. Thank you very much. Did you want to make any sort of an opening statement?

Ms Leathem: No, thank you, Chair.

CHAIR: Okay. Senator Pratt.

Senator PRATT: I'd like to ask, please, about the current appointments process for the AAT, the selection criteria, and the ultimate decision-maker on appointments. I know we've canvassed some of this before, but it's important to put this on the public record at this time.

CHAIR: Again.

Ms Leathem: Well, of course the appointments to the tribunal are a matter for government, so I can't really comment beyond saying that the Attorney-General's Department may wish to say something.

Mr Anderson: There's a protocol for appointments to the AAT. That's agreed between the Attorney-General and the president of the AAT. That's been in place since 6 November 2015. Under that protocol the president
advices the Attorney-General of the number of appointments the president believes need to be made, because of course there's no set number of positions. So, the president advises the Attorney-General of the number of positions he believes need to be appointed, and any members he or she would recommend for reappointment, expiring in that year. It's then a matter for the Attorney-General to decide either that those members should be reappointed or, alternatively that the Attorney-General has in mind other people to appoint, who are appropriately qualified. If there are still positions that the president has asked to be appointed and after reappointment's been considered and then any other appointments by the Attorney-General have been considered, then you go to a publicly advertised process. Ultimately, of course, appointments are actually made by the Governor-General, sitting in Executive Council.

**Senator PRATT:** Yes, the appointment's made, but the decision-maker, as you've outlined, is the minister, the Attorney-General of the day. That's correct, isn't it?

**Mr Anderson:** The Attorney-General decides which appointments to recommend to the Governor-General.

**Senator PATRICK:** Sorry—did you say the president makes some recommendations to the Attorney?

**Mr Anderson:** That's the first step.

**Senator PRATT:** But in terms of getting on that list of the recommendations that are to go through to the Attorney-General, the Attorney-General and others can push people through onto the president's list, can't they?

**Mr Anderson:** They're not putting people onto the president's list. But, having weighed up the recommendations of the president, the Attorney-General can then choose additional people who the Attorney-General believes are appropriately qualified.

**Senator PRATT:** Additional people who aren't on the list that the president initially put forward. Are there any mechanisms for the AAT to have input on whether appointments are suitable or unsuitable? You've said that those nominated by the Attorney-General need to have the appropriate qualifications, but if the AAT had a view about whether someone was unsuitable, would they have any input?

**CHAIR:** Who do you mean by the AAT—the president?

**Senator PRATT:** The president.

**CHAIR:** Or the registrar?

**Senator PRATT:** Okay—or the registrar.

**CHAIR:** Perhaps the registrar has a—

**Ms Leathem:** I don't have a role. It's a matter for the president in relation to appointments.

**Mr Anderson:** The president and the Attorney have a range of discussions throughout a year. They can talk about any number of matters, including potential candidates for appointment. But the protocol simply refers to a process where the president writes to the Attorney and recommends reappointment and says how many appointments should be made, and then the Attorney can make additional decisions. It itself doesn't stipulate that there needs to be consultation, but the Attorney and the president can talk at any time.

**Senator PRATT:** But there is no right of veto from the president of the AAT if they were to believe that someone was unsuitable; it's just a matter of negotiation?

**Mr Anderson:** I don't believe there's any appointment process that would contain a right of veto for the body to which the appointment's going to be made.

**Senator PRATT:** No, and of course that's likely fair enough. Are there any planned appointments between now and the election?

**CHAIR:** This is not an election question, is it?

**Senator PRATT:** Are they due to departures of existing AAT members?

**Mr Anderson:** Because the number of members is not set, because of the mixture of full-time and part-time and now sessional members as well, there does not necessarily need to be precise correlation between a member resigning, retiring—the expiry of their appointment—and the appointment of a new member. So, it's really a matter for government as to the timing of new appointments.

**Senator PRATT:** Are there any planned appointments between now and the election?

**Mr Anderson:** That will be a matter for the government.

**Senator PRATT:** Has any process been started in terms of advertising, recruitment, the taking of names?

**Mr Anderson:** There's no current advertised process underway.
Senator PRATT: Are there names coming in for prospective appointment?

Mr Anderson: Because the process involves the Attorney and the president, they're the only ones who are stipulated in the protocol, and of course the Governor-General. Names don't necessarily have to come through the department.

Senator PRATT: Are you aware of any names coming in to the president of the AAT?

Mr Anderson: The president wrote to the Attorney within this calendar year to talk about potential expiry of appointments, potential re-appointments, and also the potential number of appointments to be made during this calendar year.

Senator PRATT: So this calendar year might pertain to prior to the election. When did the president of the AAT write to the Attorney-General?

Mr Anderson: We'll have to take the precise date on notice.

Senator PRATT: In that correspondence, is there any mention or is there any dialogue between the president of the AAT and the Attorney-General about the number of appointments, whether they're new appointments or whether they're due to departures of existing AAT members or simply a flag of how many AAT members are up for reappointment?

Mr Anderson: The president's made recommendations about the appointment needs for 2019, which includes recommendations as to reappointment of members whose appointments will expire. Some 63 appointments will expire in the course of 2019. But, of course, you don't necessarily need to replace each member, because there is a mix of full-time, part-time and sessional members, and it depends upon the workload.

Senator PRATT: So, there are 63—

Mr Anderson: Appointments that will expire in the course of 2019.

Senator PRATT: How many of those expire before May this year?

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

Senator PRATT: Thank you. Are there any current vacancies in terms of AAT membership?

Mr Anderson: There are never vacancies, as such, for the AAT. It is a question for the president to give advice to the Attorney as to whether there should be more appointments and what sorts of—

Senator PRATT: Is there any advice that says there are outstanding appointment needs to the government currently?

Mr Anderson: Although we couldn't give the precise date, the president has written 'in 2019' to the Attorney.

Senator PRATT: What's the current number of members at the AAT?

Ms Leatham: Perhaps I can assist. I believe it's 329, which includes 33 sessional appointments that were made relatively recently.

Senator PRATT: It includes how many?

Ms Leatham: Thirty-three sessional appointments.

Senator PRATT: How many individuals left the AAT in the last year? And how does that compare to the average?

Ms Leatham: I'd have to take that on notice. Are you referring to expiration of appointments or resignations or a combination?

Senator PRATT: A combination of both expirations and resignation of appointments. Perhaps you can also take on notice how many individuals were there in total, what a full-time caseload would be considered to be, and how that compares to the average number of people who might normally leave at this point of the year or in the cycle of appointments?

Ms Leatham: I'm not sure that there would be an average, simply because the appointments are staggered very differently, but we can certainly provide for the last three years, by way of comparison.

Senator PRATT: Thank you. I would like to ask now about the current backlog for hearings in each of the divisions.

Mr Anderson: Before we get to that, can I just clarify an answer I gave previously? I said that the president had written this calendar year about the 2019 appointments needs. In fact, the president wrote in 2018, in October and November 2018, about the 2019 appointment needs.

Senator PRATT: Has the president received a reply to that correspondence from the Attorney-General?
Mr Anderson: I think we will have to take that one on notice. I just want to clarify that it wasn't a letter from the President of this—

Senator PRATT: Did it detail appointments?

Mr Anderson: It detailed the protected appointment needs for 2019.

Senator PRATT: Yes, I understand that. I'm interested in the Attorney-General's reply, whether it replied with a list of potential appointees?

Mr Anderson: We will come back to you about whether the Attorney has replied.

Senator PRATT: Thank you.

CHAIR: Is that a convenient place to break, Senator Pratt?

Senator PRATT: I have questions about the backlogs for hearings in each of the divisions.

CHAIR: Okay. I have some questions, so we might come back to you. I think also that Senator Patrick has some questions and perhaps Senator Siewert does as well. I'm conscious we are running well behind time. I hesitate to ask these questions, because at three estimates hearings—every year for as long as I've been chairman of this committee, which is five or six years now—we've asked the same questions and got the same answers. I want to clarify, because it does seem that the Labor Party is unhappy with the current system and should the government change—and many of my colleagues at this table in the Labor Party think it's already changed—I take it they are going to change the way of appointments to the AAT. Do the way AAT appointments are made require a change in legislation, Mr Anderson?

Mr Anderson: If the process itself were changed, no, that doesn't require a change of legislation. It would still ultimately be a matter for the Governor-General to make appointments and the criteria. I don't know this for sure, but I haven't seen anything that said that the criteria themselves would be changed. They are set out in the AAT Act.

CHAIR: But in the AAT Act, if there were a determination by an unlikely new government—in the unlikely event there is a new government—if there were an intention to say appointments can only be made in a particular way, an amendment to the AAT Act would require that?

Mr Anderson: Not necessarily. A government can make an administrative decision and then enforce that itself. Appointments would always go through a cabinet process—

CHAIR: Yes, but if there were a desire not to leave it to the government of the day and the President to make the appointments but to fix an actual process by which appointments are made, that would require an amendment to the AAT Act that says, 'This is how people will be appointed'?

Mr Anderson: If a government wanted to make a binding determination of how a process should apply for appointment of members then they could certainly seek to have parliament put that in legislation.

CHAIR: It seems from the questions that we get that that might be the intention should the government change. As you've said now—and at every estimates committee for the last five years, and there are three of them a year—the appointments are made by the Attorney, who makes appointments to all the courts, in consultation and at the request of the President. How long has that process been the case?

Mr Anderson: The current process was settled on 6 November 2015.

CHAIR: And before that, do you recall? Were you around then, Mr Anderson? What was the process before that?

Mr Anderson: I wasn't in this role. I will leave that to my colleague to answer.

Dr Smrdel: Prior to the specific protocol that applied to AAT appointments being agreed to by the Prime Minister, following work by the Attorney and the President, with appointments to the AAT—like a lot of other statutory appointments—it was the APS merit and transparency guidelines that applied to appointments to AAT members prior to the protocol coming into effect.

CHAIR: So the current arrangement is a protocol—

Dr Smrdel: Correct.

CHAIR: which isn't a regulation or a disallowable instrument; it's just a protocol. Before that, the—I'm not familiar with the term you used. Can you just repeat it?

Dr Smrdel: The Australian Public Service Commission has a policy set of guidelines called the merit and transparency guidelines. It is subtitled the 'Merit-based selection of APS agency heads and APS statutory office
holders'. That's a general document, which the government of the day adopted as its general policy for guiding selections for appointments—

CHAIR: So the government of the day, or the Attorney-General, adopting those guidelines, made the appointments himself?

Dr Smrdel: It's speculation on my part, but I would imagine it was something that came potentially from the Prime Minister, to say that these guidelines apply to all statutory office holder selection processes. But at the time, I guess because of seeing that the appointment of AAT members is something akin to judicial appointment—it's a judicial office—the president and the Attorney agreed that they needed something a bit different to the general APSC guidelines to apply to AAT members. The appointment of judicial officers is also not subject to those APSC merit and transparency guidelines.

CHAIR: The APSC guidelines are simply guidelines for the government of the day to follow in making appointments?

Dr Smrdel: Correct. As you say, they are guidelines, but from memory there are also exceptions in those guidelines that give the minister the ability to not use those guidelines in particular circumstances.

CHAIR: So the minister doesn't have to use those Public Service guidelines if he so chooses in certain circumstances?

Dr Smrdel: There needed to be a reason, but there was certainly a mechanism there for the minister to conduct a selection process outside the APSC guidelines.

CHAIR: You've mentioned that the current president wrote to the current Attorney late last year, and they've had a number of discussions. Can you just remind me: who actually is the president of the Administrative Appeals Tribunal?

Dr Smrdel: The president is the Hon. Justice Thomas.

CHAIR: And he's a judge of the Queensland Supreme Court?

Dr Smrdel: He was from the Queensland system, but he is now a judge of the Federal Court. He has a dual commission as a judge of the Federal Court and as President of the AAT.

CHAIR: And his predecessor was?

Dr Smrdel: The Hon. Duncan Kerr, who still remains as a judge of the Federal Court.

CHAIR: So Duncan Kerr was the AAT president?

Dr Smrdel: Correct.

CHAIR: And is a Federal Court judge, and remains as a Federal Court judge?

Dr Smrdel: Correct. Part of the appointment process is that the president of the AAT must be a judge of the Federal Court.

CHAIR: All right. That's all I have at this stage on the AAT. Senator Pratt, I think you had some other questions.

Senator PRATT: Thank you. I had asked before about the backlog of hearings for each of the divisions.

Ms Leathem: Yes, Senator. We've had very large increases in lodgements over the last few years, and that has led to significant increases in our matters on hand. There was in fact a total of 63,858 cases on hand as at 31 September 2018. The largest increases have been in the Migration and Refugee Division, where they have effectively doubled in the last two years and quadrupled over the last decade. In fact, last year we received 37,933 MRD lodgements, whereas at amalgamation it was about 18,000 lodgements.

Senator PRATT: Sorry, what does MRD stand for?

Dr Smrdel: Migration and Refugee Division, which is our largest division within the tribunal. Of course, that has had an impact on our clearance ratios. They have deteriorated. I would say, however, that in the other divisions it's a different pattern. In the SSCSD—the Social Services and Child Support Division—we still get through the matters quickly and the clearance ratio remains healthy. Similarly, in the general and other divisions we don't have the same size of backlog that obviously is the case in the MRD.

Senator PRATT: Okay. You had 63,000 cases on hand across all of the divisions as at—

Ms Leathem: As at 31 December it was 63,858.

Senator PATRICK: Sorry, but are they new applications or matters on foot?

Ms Leathem: That was the active case load.
**Senator PRATT:** And what's the current case load?

**Ms Leathem:** Do you mean as of today's date?

**Senator PRATT:** I'm trying to work out what is a backlog. If something has been received in the last two months, you couldn't consider it a backlog, but if something isn't progressing—how long is it taking? How long have you—

**Ms Leathem:** That again is a very complex picture depending on what type of matter it is. I can say at a general level that our published performance indicator is to finalise 75 per cent of matters within 12 months. We did manage to achieve that in the last financial year, but we have now fallen below that amount. For example, if you look at the Migration and Refugee Division, more than one-third of the cases in that division are now more than a year old. It has impacted, if you like, on the overall age profile because of the volume of matters in that particular division.

**Senator PATRICK:** Is that one year from—sorry, just trying to get more detail from your question. Is that one year from application, or one year from hearing?

**Ms Leathem:** From lodgement to finalisation.

**Senator PATRICK:** Thank you.

**Senator PRATT:** What about the case load in the other divisions?

**Ms Connolly:** As at 31 December 2018, as Sian mentioned, the total for the AAT was 63,858. For the Migration and Refugee Division, the total was 54,125. For the general and other divisions it was 6,402. And for the Social Services and Child Support Division, it was 3,331.

**Senator PRATT:** Could you take on notice benchmarking that against the previous 12 months, in terms of where those figures are?

**Ms Connolly:** Do you mean in terms of the percentage change?

**Senator PRATT:** How many at the same point in time, so we can see which divisions are growing and which are decreasing in their caseload. Unless you've got that with you.

**Ms Connolly:** I've got the percentage change; I don't have the actual numbers.

**Senator PRATT:** Okay.

**Ms Connolly:** For the Migration and Refugee Division—sorry; it's the percentage change over the last six months. So the change for the MRD from 30 June 2018 is 22 per cent, so they've increased by 22 per cent. For the general and other divisions, it's a four per cent increase. For the Social Services and Child Support Division, it's a 23 per cent increase.

**Senator PRATT:** With respect to the increases in the migration review and refugee determinations, we heard evidence yesterday about increasing volumes of people claiming asylum on shore after arriving by plane. There were some 14,000 of those arrivals in this financial year alone, and I think some 27,000 last year. Are you able to tell us how many of those cases are coming through the AAT?

**Ms Leathem:** What I can tell you is where we have seen increases in the Migration and Refugee Division. Permanent business visas have increased by 230 per cent. We've seen nomination and sponsor visas have gone up 127 per cent. Student visa refusals have increased by 75 per cent. In relation to protection visas, there has been a 42 per cent increase, particularly in applications relating to people from Malaysia.

**Senator PRATT:** Okay. I think Malaysia was one of the countries—Malaysia and China were both countries mentioned with an increasing number of people.

**Ms Leathem:** They're the two highest countries of origin for the applications we're seeing in the protection jurisdiction.

**Senator PRATT:** And I think they're also the two highest countries of arrivals by plane quite recently. What do you attribute to these backlogs?

**Ms Leathem:** Clearly in terms of the volume of lodgements, there's been an enormous increase over the last two to three years. We also effectively have had fewer members available to deal with those matters, or new members who need to take some time to become fully productive. It's a combination of a very large increase in the application numbers while our resourcing is still set, for example in the Migration and Refugee Division, at finalising 18,000 matters per year, whereas now we're receiving 38,000 lodgements per year in that jurisdiction. There are obviously discussions with government and the Department of Finance, for example, about what that might mean for the future.
Senator PRATT: Ms Connolly, with respect to social security determinations, I can see there's not a significant backlog there. However, has there been an increase in the number of cases that you've dealt with in a year. Were there extra resources allocated to be able to do that? Were there extra resources allocated to be able to do that?

Ms Connolly: There's been an increase in the cases. I'd have to check the figures, but I think it's around a 22 per cent increase. We actually had a decrease in the previous 12 months of a similar amount. We haven't needed to put in place any additional resources, because the numbers have evened out.

Senator PRATT: Great. If you could just take on notice for the last five years the number of cases finalised in each division within that year and the number outstanding at the end of each year, that would be terrific.

Ms Connolly: Certainly.

Senator PRATT: Thank you.

Senator PATRICK: Welcome to estimates. Just in relation to those case loads that Senator Pratt was talking about, I've looked at your annual reports and I can see that across, from year to year, the lodged case load and the finalised case load in all circumstances lags somewhat, so you have a continual build of cases that are not finalised. Would that be a fair assessment?

Ms Leathem: Our clearance ratio has certainly declined over the last few years, yes.

Senator PATRICK: In terms of dealing with that, has the AAT written to the minister and alerted the minister to the fact that your clearance rates are declining and that you need more resources?

Ms Leathem: There's ongoing discussions on a number of different fronts in relation to how we might deal with the obviously increased case load. There are obviously conversations with government about what the resourcing requirements might be, as well as pursuing opportunities for legislative amendments that might facilitate us being able to manage the case load more effectively. So there are a range of different strategies that—

Senator PATRICK: Having just come from a Family Court set of hearings, I presume you've got a common entry point—common rules—across all of your jurisdictions?

Ms Leathem: No, we don't, simply because the way in which the amalgamation took place was that we obviously consolidated our accommodation, our back office and our support, but there are many features of the different divisions that are preserved through legislation, which means, for example, the way in which a migration or refugee division review proceeds is very different from something in the tax and commercial division or the social services and child support division. There are obviously some areas where we have the ability to harmonise or streamline processes, but there are others that we, because the legislation requires us to conduct reviews in a certain way, can't do that.

Senator PATRICK: Is Justice Kenny still on the books?

Ms Leathem: As a cross-appointed AAT member?

Senator PATRICK: Yes.

Ms Leathem: I believe so, yes.

Senator PATRICK: Because I was going to ask about one case. You mentioned of 75 per cent of your cases 12 are resolved within 12 months of application.

Ms Leathem: That's the target.

Senator PATRICK: Yes. I note that I've got a constituent of mine who's got a matter that is well beyond that. It's before Justice Kenny. I'm sure he won't mind me mentioning his name. The case is Nick Xenophon verses the Department of Defence.

Ms Leathem: Sitting as an AAT member?

Senator PATRICK: Sitting as an AAT member. It's one of those security division matters. I just wonder how someone who's been involved in a matter then—is there any way of prompting a response? Obviously, that's a delicate judgement.

CHAIR: I suggest by raising it here you've already done that, Senator Patrick—quite inappropriately, I might add.

Senator PATRICK: I can move on to the next question then. He is one of my constituents, Chair, and I do—

CHAIR: We wouldn't want it to be thought that politicians or former politicians get any better treatment than anyone else—

Senator PATRICK: Of course not.
CHAIR: but your point has been made.

Senator PATRICK: I'm just going to go back to the discussion that Senator Pratt was having about appointments. Mr Anderson, you mentioned a protocol. Is it possible to table that protocol? I imagine that's just operational information of the department.

Mr Anderson: It has been tabled previously, I believe.

Senator PATRICK: How long ago, so I can know where to search? I won't burden you. Was it years ago? You said it only came into force on 6 November 2015.

Mr Anderson: My colleague is suggesting October 2016.

Senator PATRICK: Thank you. I'll go and have a look at that. Was there any reason for the departure from using the Australian Public Service Commissioner's merit and review selection process?

Mr Anderson: As my colleague indicated earlier, it was the view of the then Attorney that, given that these are by nature closer to judicial appointments, it should be a slightly different process.

Senator PATRICK: Section 7(3) of the act says:

A person must not be appointed as a senior member or other member unless the person:

(a) is enrolled as a legal practitioner (however described) of the High Court or the Supreme Court of a State or Territory and has been so enrolled for at least 5 years; or

(b) in the opinion of the Governor-General, has special knowledge or skills relevant to the duties of a senior member or member.

Clearly there are two categories of people who are appointed: those with legal qualifications, and I'm guessing the second category is for people with technical specialities. When does one get appointed based on their legal qualifications and another person get appointed on some other qualification?

Mr Anderson: It is a broad discretion for the Governor-General there. There are a number of non-lawyers appointed to the tribunal. There are people, for example, who have medical qualifications, who can be very useful in a range of matters in the social services and child support division. On occasion there are former military personnel appointed because they can be particularly useful in veterans' review type matters. It's a broad discretion.

Senator PATRICK: In that process where you are selecting someone who does not have a legal background, what's the interaction between the Attorney and the President in respect of understanding what the specific needs are and what qualifications might be suitable? I presume the Governor-General doesn't actually make that decision; it's on the advice of the Attorney?

Mr Anderson: The Governor-General acts on the advice of ministers as a general rule.

Senator PATRICK: How do we get to the point where the Attorney has satisfied himself that the person that he is nominating fulfils a need of the President in terms of those non-legal skills? I imagine the AAT might say that they need a military person or someone of medical background. Is that how it's done? How does that interaction work?

Mr Anderson: The President writes under the protocol and might, for example, recommend that a non-legal member whose term is expiring be reappointed. It could work in that way. The President might also make suggestions as to other types of members who, if appointed, would meet the membership needs of the tribunal. Then the Attorney can also form his or her own view as to people who will be appropriately qualified, even if not nominated by the President.

Senator PATRICK: Referring to the category of not reappointment, how does the President come up with that list? Maybe that's a question for the registrar. How does the President come up with a list of suitably qualified people to recommend?

Ms Leathem: I think there is an assumption there that the President is coming up with a list. The President writes to the Attorney with an outline of what the tribunal would need from a member perspective. We don't maintain a list of any—

Senator PATRICK: I want to clarify the evidence. I got the impression that you said that the president might write with perhaps a list of names, even? Clearly for the reappointment that's the case. For the non-reappointments, it's not a list of names that comes from the president?

Mr Anderson: The President can propose names to the Attorney in addition to those that he or she will be recommending for reappointment. I think the evidence that Ms Leathem is going to is that it's a matter for the president what he wants to say about the membership needs of the AAT and how they will be satisfied.
Senator PATRICK: So that letter that's gone to the Attorney—other than the reappointments—is unlikely to have any names on it. Is that correct?

Mr Anderson: It can have other names in it. He's not prevented from making other suggestions.

Senator PATRICK: Sure. But the registrar is suggesting that, generally, the Attorney would set criteria. I might seek access to that letter—perhaps without the reappointments, although I don't think that would be controversial anyway—to understand what the current criteria are, or the current shortfalls: not in terms of people, but skills that he want the Attorney to fill. Would you be open to tabling that letter?

Mr Anderson: We will take that on notice for the Attorney.

CHAIR: You'd probably want to consult the judge as well, wouldn't you, on whether he wants what I assume is private correspondence to be made public to the world?

Mr Anderson: It's certainly correspondence that goes to appointments which are themselves cabinet-in-confidence, but I will take it on notice for the Attorney to consider.

Senator PATRICK: Sure. I'm not really after a list of names per se, but, for example, if someone sets out, 'I need a medical person', or, 'I need such and such of this particular skill type'.

CHAIR: Would it be possible to get on notice a response from you, Mr Anderson, saying, 'The president asked for these skill sets'—without names—or, 'the president didn't ask for any skill sets'?

Senator PATRICK: I can FOI the letter if this is going to cause controversy. But I couldn't imagine the Senate shouldn't be able to get something that I couldn't FOI.

Mr Anderson: I'm happy to take it on notice.

Senator PATRICK: The Attorney has a list—we've heard not normally of names but a list of requirements to fulfil. What's the process for then calling for suitable bodies to fill those needs? Is it done by way of letter to the Law Council? Do you have to be on the Attorney's 'know list'? How do you do that?

Mr Anderson: There's no set process. Again, the analogy is with judicial appointments where the Attorney of the day is frequently having discussions with a range of different people—law councils, law societies, bar associations, and people like that—who are always in a position to put forward names. But there's no set process as such.

Senator PATRICK: Typically, you're describing a situation where they would go to the AMA or something, or to bodies that are representative bodies, like the Law Council?

Mr Anderson: It's not necessarily a process of going to bodies. It's just that the Attorney is frequently having discussions with people, and that gives the Attorney views as to who might be suitable people for judicial appointments and, similarly, for tribunal appointments.

Senator PATRICK: You'll be aware that there is some criticism over some of the appointments and their proximity to politics? I presume you're aware of that.

Mr Anderson: I'm aware of that, Senator. I've seen the media reports.

CHAIR: Is there ever any appointment or decision made that doesn't attract criticism?

Senator PATRICK: Hence we shine the light, Chair.

CHAIR: Unfortunately in Australia if we wait until 100 per cent of the whole of the population agree with every decision of government and every appointment, we'll be waiting a long time.

Proceedings suspended from 15:18 to 15:37

CHAIR: I call back to order this hearing of the Senate Legal and Constitutional Affairs Legislation Committee in the 2018-19 additional estimates.

Senator SIEWERT: I am after some more breakdowns of figures. I'm aware of the figures that you gave earlier, breaking down the bigger picture into each of the areas. What I'm after now is the breakdown of the social services and child support figures, if you can provide those. I have tried to find this information, so you might just point me in the right direction. Could you give me the figures in terms of lodgements, finalisations and the number of applications on hand, under Centrelink's DSP, Newstart and youth allowance? If I understand correctly, you can't break those down into the types of appeals that have been made—for example, I've asked before about online compliance and appeals under that process. But do you have the data on those particular payments?

Ms Leathem: I might defer to my colleague Ms Connolly, who I think has probably got some of those stats.
Senator SIEWERT: Fantastic. I'm after, initially, the figures following on from the last set of figures that you provided—so July 2018 to 31 January 2019, please.

Ms Connolly: Senator, I've got the figures for the six months to 31 December 2018.

Senator SIEWERT: How are they different from this? Sorry, you can't see it, but this is the chart—1 July—in other words, the seven months to 31 January. Is that different?

Ms Connolly: That is different. The way we had prepared these statistics was as at the end of December—it made it simpler.

Senator SIEWERT: So these are not the ones that are up on the website?

Ms Connolly: No. These are slightly older than the ones on the website.

Senator SIEWERT: Sorry, I'm not trying to be difficult.

Ms Connolly: No, no.

Senator SIEWERT: I've got these figures, so it would be useful to use these ones but you obviously don't have that?

Ms Connolly: Actually, I do have those in here. Did you want an update, some further information, from those?

Senator SIEWERT: What I'm trying to get is a better picture under Centrelink of what payments—for the major payments, like Newstart, youth allowance and DSP—the breakdown of the figures. For example, for Centrelink lodgement, it was 8,326. I'm trying to understand which payments those are coming in for.

Ms Connolly: Certainly. I would have to take that on notice to give you those figures as at 31 January.

Senator SIEWERT: Do you want to give me the December ones?

Ms Connolly: I do have the December ones. Here we go. I've got the breakdown of the top five.

Senator SIEWERT: Thank you. In terms of finalisation, are you able to give me those?

Ms Connolly: I can give you those figures for the same—

Senator SIEWERT: Yes.

Ms Connolly: Centrelink first review, in terms of lodgements, for that six-month period to 31 December: disability support pension, 2,672; family tax benefit, 1,003; Newstart allowance, 1,014; age pension, 585; and youth allowance, 503.

Senator SIEWERT: Thank you. In the final column in the table, you've got the percentage where the decision was changed. Do you also have figures broken down for each of those five major payments?

Ms Connolly: I shall need to check.

Senator SIEWERT: Do you have them for the previous six-month period, so I can compare them?

Ms Connolly: I don't think I would have those with me. I'll take it on notice.

Senator SIEWERT: Can I ask a more general question about why those figures aren't provided in the table or online? We did make an effort to try to find them so I didn't have to come and ask for them.

Ms Connolly: We're always happy to receive feedback about what is useful information for us to publish.

Senator SIEWERT: Thank you. You have taken the previous six months on notice but, if you've got the breakdown for the number of changes in decisions, that would be useful—for this six months.

Ms Connolly: I don't think that I do have it.

Senator SIEWERT: If you could take that on notice too.
Ms Connolly: Certainly.

Senator SIEWERT: I'm looking at the seven month figures rather than the six month figures on the table that was on the website. There seems to have been an increase over the number of lodgements over the last six months when you compare it to the last 12 months if you—

Ms Leathem: I understand that there has been a 27 per cent increase compared to the same period last year.

Senator SIEWERT: Have you looked at why that is and where the bulk of those increases are?

Ms Leathem: I can tell you that the disability support pension area is up 77 per cent from the same period a year ago.

Senator SIEWERT: Seventy seven per cent over the same period last year?

Ms Leathem: Yes. Bearing in mind there was a significant decline in the preceding year. So we're returning more to the pre 2017-18.

Senator SIEWERT: But if I remember rightly there had been an increase the year before that too. I accept what you say, that there was a decrease last year but the year before there had been an escalation. What was the decline last year, can you just remind me?

Ms Connolly: In terms of disability support pension it was 42 per cent.

Senator SIEWERT: So even though there was a decline we have now had a 77 per cent increase? Is that correct? If you looked at it over time you would still see them going up?

Ms Leathem: It is much closer to the levels that they were the previous financial year than last year.

Senator SIEWERT: Could you provide that as well so then I can—

Ms Leathem: The comparative data?

Senator SIEWERT: Yes, that would be appreciated.

Ms Leathem: Newstart allowance is up 41 per cent compared to the same period in the previous year and youth allowance is up 34 per cent.

Senator SIEWERT: Are you able to tell us what the nature of the complaints were or the appeals were?

Ms Leathem: I don't have that data here with me. In the information that we've provided previously to questions on notice I think it broke it down in more detail.

Ms Connolly: It did, yes. We could provide that again.

Senator SIEWERT: I'm interested in this period of time. Are we looking at the same type of complaints or is there a change in nature? That's what I'm trying to ascertain. Instead of taking up the time now, could you provide more granular detail on each of the payments for the second review as well, please?

Ms Leathem: Sure.

Senator SIEWERT: It looks to me, comparing it to the previous year, that, again, we've seen a significant number of the decisions made on the NDIS. While it looks to me like lodgements are down a bit the numbers that have changed have significantly increased. Would that be a correct assessment?

Ms Connolly: Yes. In the six months of this financial year to 31 December the total lodgements was 598 for the NDIS. The change from the same period last year is a 75 per cent increase.

Senator SIEWERT: On the table it says 55 per cent. Is that significantly different from the six months?

Ms Leathem: Is that in relation to the outcome?

Senator SIEWERT: Yes, sorry, the decisions that were changed.

Ms Leathem: I think we may have to take that on notice as well, because there's a very significant number of the NDIS matters that are resolved prior to a hearing.

Senator SIEWERT: If you could take on notice to provide further detail—

Ms Leathem: About the outcome data—
Senator SIEWERT: about those that are resolved prior to hearing and those that are changed—those that were resolved, because I appreciate it's not necessarily that they have been changed, that resulted in a change prior to hearing and then the overall total that were changed.

Ms Leathem: Sure.

Senator SIEWERT: That would be very much appreciated. Thank you.

Ms Leathem: No, problems.

Senator SIEWERT: Thank you. Can I ask one more, chair?

CHAIR: Go ahead.

Senator SIEWERT: I did touch on the breakdown of the reasons for the lodgement. Is the case still the same as before, where you couldn't break those down to tell me what related to online compliance?

Ms Leathem: That's correct. We don't have that data.

Senator SIEWERT: Thank you.

CHAIR: Thanks, Senator Siewert. Senator Pratt, I think you had some more questions.

Senator PRATT: Thank you, I did. I wanted to ask if you can expand on the reasons for the backlog, partly due to members taking a while to become productive?

Ms Leathem: Just for a bit of background, when we receive newly appointed members there's an induction process, and then they also receive training in the subject matter area. It's been the long experience of the tribunal that it takes anywhere between six and 12 months for a new member to become fully accustomed to the work that they're undertaking and to be able to then undertake the sort of workload that we would expect from a very experienced member.

Senator PRATT: Do you track the efficiency of each appointee over the lifetime of their service to the AAT?

Ms Leathem: There is a range of different measures that we have in relation to our productivity as an organisation and in relation to workload. But, of course, many of our members have different arrangements. They work in different divisions; they may be full time, part time or sessional. So it's a complex picture in terms of the sort of workload that people are undertaking.

Senator PRATT: But you should have a general idea as to whether someone has come up to speed within that 12 months and whether they're being generally productive?

Ms Leathem: There's a range of information that's provided to monitor our performance generally as an organisation.

Senator PRATT: Clearly, you've been tracking. If you've got the ability to say that there's a backlog partly due to members taking a while to become productive, you must be able to compare their productivity at the beginning of their career with the AAT versus the end, surely?

Ms Leathem: No, because people can undertake different work at different times. For example, if you're working in a particular jurisdiction where the matters tend to be very straightforward and you can do a number a day as opposed to somebody who might have a workload mix that comprises more complex work—

Senator PRATT: No—of course, but they would be equally productive if they are dealing with more complex cases. I'm not being simplistic about the word 'productivity' in that sense, but, as you've just said, new people need the training before they can do these cases.

Ms Leathem: Yes.

Senator PRATT: Is there a difference in the productivity of members appointed to the AAT based on whether they've been appointed by the Attorney-General or whether they've been put through the public process?

Ms Leathem: I couldn't make any comment about that. We haven't got any data that would allow us to make any of those conclusions. And, of course, many of the people who have been appointed are reappointed, so it may not necessarily be their first term of appointment.

Senator PRATT: Of course, but, generally speaking, older appointments are more productive than newer appointments. Is that correct?

Ms Leathem: I think that's a big generalisation. Obviously, there's a very broad range of experience and expertise within the tribunal, so I would not like to generalise at that level.
Senator PRATT: The president of the AAT does provide advice to the Attorney-General about who should be reappointed based on their performance. Is that not correct?

Ms Leatham: The president does provide recommendations to the Attorney about our needs, and reappointments is one of those aspects.

Senator PRATT: Can I ask you to take on notice whether there is a difference between those assessments, as to whether someone should be recommended based on whether they were political appointments or appointments made through the advertised and other processes?

Ms Leatham: Sorry, Senator, I didn't understand: if there's a difference between?

Senator PRATT: In terms of those who are or aren't nominated for reappointment—if you look at those who are suitable for reappointment after their performance has been tested in the AAT and the president has to decide whether someone's worthy of reappointment based on their performance or not.

Ms Leatham: That would be the basis upon which the assessment is made: their performance as a member of the AAT.

Senator PRATT: That's right. What I'm trying to work out is if there's any evidence in the statistics of the performance—and you've made it clear that that's not very easily tracked. But the president clearly needs to be able to form a view of how people have performed? Is that not correct?

Ms Leatham: That's correct, yes.

Senator PRATT: I'd like you, if you're able, to take on notice the statistics on those who are nominated for reappointment and the proportion of those who were appointed by the Attorney-General as political appointees versus those who came through the public process.

Ms Leatham: I'm not sure what you mean by 'political appointees'. Do you mean a particular appointment?

Senator PRATT: Mr Moraitis highlighted to me that it's open to the Attorney-General to add names for appointment, in terms of who might be appointed, versus who the president might—sorry, it wasn't you, Mr Moraitis; it was Mr Anderson and Dr Smrđel who highlighted to me that the Attorney-General can add additional names to those who are appointed. You may not be familiar with the background of each of those people who are appointed, in terms of being able to track the origins of their appointment as to whether they were nominated by the president through the processes of the AAT and your advertising or whether they were nominated by and added to the list by the Attorney-General. What I'm interested in is how you make a judgement about who is worthy of being nominated for reappointment; that's got to be based on their performance. I'm interested in if there's a difference overall in the number of people appointed by the Attorney-General versus those who came through the AAT's own processes. Do you understand my question? I know it's not an easy one.

Ms Leatham: When you say 'the AAT's own processes', I'm not sure which category of members you are referring to.

Senator PRATT: The public advertising—the appointments that are not added to the list by the Attorney-General himself or herself.

Mr Moraitis: If I may, I guess the question is: does the AAT distinguish between—

Ms Leatham: Of course we gauge people's performance as a member of the AAT. We don't make any delineation between—

Senator PRATT: Yes, and that's all you're required to do. What I'm interested in is backtracking and judging that performance based on their appointment process, and whether there's a difference in that performance.

Ms Leatham: I'm not sure that we have any members left who have come through what you would say is an AAT process. We've never controlled the appointment process. In a sense, it's always been a matter for the government to make appointments to the AAT. It's difficult to gauge how we would make any distinction between—

Senator PRATT: When did you last advertise publicly versus those who were added to the list by the Attorney-General?

Mr Anderson: I don't think the AAT itself has ever run a process in terms of advertising a process.

Senator PRATT: So the department does that?

Mr Anderson: It was some years back that there was a publicly advertised process but it wouldn't have ever been run by the AAT. It would have been run by the department.

Mr Moraitis: We would have been following the guidelines Dr Smrđel alluded to—the APSC guidelines.
Senator PRATT: When did you last advertise publicly for positions for the AAT?

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

Senator PRATT: It must have been a long time ago, if you can't remember.

Mr Anderson: It was a while ago, but, also, it's important to bear in mind that the AAT now is not the same as—before 1 July 2015, there were in fact a number of separate tribunals and there were different processes for those. They weren't all in this portfolio either. While they have now all been amalgamated into the AAT as of 1 July 2015, we can't comment on other tribunals that now form part of the AAT and the appointment processes outside of this portfolio.

Senator PRATT: It comes down to whether there's a link between the backlog that the AAT experiences—and you've said that that is because it takes members a while to become productive.

Ms Leatham: If I may say: that's one small factor. The major factor, of course, is that we've had a huge increase in the lodgements in relation to our workload.

Senator PRATT: I'm just trying to come to grips with the fact that, when you're all so burdened with unqualified political appointees as part of the cohort of people that you're trying to train up, that makes it exceptionally difficult for you.

Senator HUME: Chair, I don't think that at any stage did anybody say they were burdened with unqualified political appointees—

Senator PRATT: No, they didn't say that. The AAT simply said, 'Members take a while to become productive.' That's what they said.

Ms Leatham: And that's the case with any new member.

CHAIR: Your former Labor Senate colleague Ruth what's-her-name, from South Australia, would be offended at your suggestion that she—although a political appoint by Senator Brandis, I might say—was not competent because she was political. What's her name: Ruth? Anyhow, it doesn't matter.

Senator HUME: I have a very quick question. Yesterday we heard from Border Force about a number of asylum seekers from Manus and Nauru who had come to Australia for medical treatment in the last five years. They suggested that there were around 1,200. Not all of them sought medical treatment. Some of them were family members of those who were assessed for medical treatment. But, of the 1,200 or so, only about 250—I think it was 243—have returned to Manus and Nauru, which means that a number of them are still here. The suggestion was that those individuals were clogged up with legal process. That's what was preventing them from returning. Can you give the committee an indication of how many of those in your migration and refugee area have come from Manus and Nauru for medical treatment here and are yet to return?

Ms Leatham: Senator, I don't know the answer to that. Ms Haddad might have some clarity.

Ms Haddad: We're not advised of what their background is, so I'm not aware of any persons who are going through the Immigration Assessment Authority who are unauthorised maritime arrivals and have come here from Manus or Nauru on medical treatment grounds. I think it's the same in the AAT. They've got much fewer UMAs that they deal with—a relatively small number. I'm not aware that they're in that cohort.

Senator HUME: That's not a cohort. That's not the way you slice and dice the data so that you know—

Ms Haddad: No. And we may not have any, but I can't say with any certainty.

Senator HUME: Okay. If they didn't come to the AAT, do you know where they would go; where their returns would be held up, in which court?

Ms Haddad: If they weren't coming to the AAT or the IEA, then my assumption is that they wouldn't have been able to make a protection visa application, because they're barred under section 46A or B of the act. So they would have to pursue other legal processes, but, again, I would only be speculating.

Senator HUME: I don't have a good sense—I'm not a lawyer—of where the legal blockages are or which courts are most appropriate for those types of cases, whether they be injunctions or applications or whatever they might be—where they might stop. You can't enlighten the committee on that?

Ms Haddad: I'd only be speculating, Senator.

Senator HUME: Thank you.

Senator PATRICK: You talked about statistics that you keep. As an example—because, I presume, you will keep this—in a de-identified format, could you provide on notice a list of the Adelaide AAT members and...
numbers of cases they've dealt with to give a view of how many cases one might expect and the range of numbers?

Ms Leatham: The qualification I would raise is that many of those members may be part time as opposed to full-time and have a different case mix as well.

Senator PATRICK: You could put any qualifications you would like on that. You might end up saying, 'This is completely useless,' but even to just give an idea of the range would be very useful.

Ms Leatham: A breakdown of the caseload managed by our Adelaide Registry is effectively what you're interested in?

Senator PATRICK: Yes—each of the members and any caveats you want to place on that, and that's without prejudice. I understand there are differences.

Ms Leatham: A significant amount of our work is finalised without going to a member as well. If you're interested in the overall caseload dealt with by the Adelaide Registry, we can certainly provide that.

Senator PATRICK: If you could add that as well, that would be useful. Cases that are dealt with to finality would involve?

Ms Leatham: Finalised matters including ones that are resolved at conference or some other alternative dispute resolution process.

Senator PATRICK: Just to give a picture, that would be useful. Thank you. I want to go back to the appointments. I'm trying to untangle how this all works. Once again, going to the appointment of a member who is not a lawyer and presumably is appointed on the basis of a request from a president to meet a particular need. I'll give an example: a senior member in the Adelaide registry, Grant Chapman, who was a former president of the Liberal Party and a former Liberal senator. He doesn't have a degree, but has some skill as a marketing executive and a farmer. I'm wondering how you would have got to the point where that would have been recognised as a useful skill set, and what sorts of cases his previous skills might have been relevant to.

Mr Anderson: To qualify something you said earlier: it's not necessarily the case that a non-legally qualified member would be appointed solely on the recommendation of the president. As I've said—

Senator PATRICK: I understand they're all done by the Attorney. From my understanding, the Attorney makes the ultimate decision. The president might say: 'Here are some people I recommend be reappointed. Here are some particularly interesting candidates. Here is a set of requirements I might have for medical or for some form of appointment,' that would guide the Attorney in the appointment that he might choose to make. I'm just trying to reverse engineer how you might get an appointee with those sorts of skill sets. Would that have come from a particular need from a president or, indeed, would that appointment have been made through some other completely different process?

Mr Anderson: Ultimately, in order to recommend an appointment to the Governor-General, the Attorney-General will form a view that a person is appropriately qualified and meets one of the tests in section 7 of the AAT Act, so either legal practitioner or, alternatively, they've got the special knowledge or skills relevant to the position. I can't say the process that an attorney would go through in forming that view, but under the current protocol there's the opportunity for the president to put forward views as to the membership needs of the AAT. The Attorney can have conversations with other people as to who might be good people who are appropriately qualified to meet the membership needs, and then recommends that person. I can't comment on the particular appointment.

Senator PATRICK: I'll leave it at that.

Senator SIEWERT: I neglected to ask what the percentage increases were, if there were any, for the FTB and for the age pension.

Ms Connolly: For the family tax benefit, for the six months to 31 December, there was actually a five per cent decrease over the same period in the previous year. For the age pension, it was an 11 per cent decrease.

Senator SIEWERT: Thank you very much.

CHAIR: Thanks very much, Ms Connolly, and you, Ms Leatham. We appreciate your assistance to the committee. We now call the Australian Commission for Law Enforcement Integrity.

Mr Anderson: I have an answer to an earlier question from Senator Siewert.

CHAIR: Go ahead while ACLEI is coming to the table.
Mr Anderson: The senator was asking about the exchanges with the WA government in relation to the court reform bills. There was a process of correspondence and emails from May last year through to February this year. The most recent correspondence from the WA Department of Justice came on 11 February this year.

Senator Siewert: Was that directly related to the bill?

Mr Anderson: Yes. That was in response to some questions we had asked them in December about issues to do with the bills.

Senator Siewert: Thank you.

Chair: Was that following the committee's hearing in Perth, where we had the very useful interchange with the retiring chief judge of the Family Court?

Mr Anderson: Chronologically, it's after. From May onwards, we had a process of asking questions, provision of information and exchanging views. I think it's seen best in that context.

Chair: As I recall, the committee was very impressed with the evidence of the chief judge for reasons that were obvious at the time. Thanks for that.

Australian Commission for Law Enforcement Integrity

[16:10]

Chair: Did you want to make any sort of opening statement?

Mr Furry: No, we don't have an opening statement. However, I would like to pass on the Integrity Commissioner's, Mr Michael Griffin, regret at not being at the hearing today. Mr Rogers and I will endeavour to do our best to answer the questions of the committee in the absence of the Integrity Commissioner.

Chair: Yes, thanks for that and thanks to the commissioner. The committee did get his letter. We dealt with that and appreciate his courtesy.

Senator Pratt: I'd like to look at two articles in the Sydney Morning Herald and The Age concerning Operation Arrowhead and Operation Dureau.

Mr Furry: The first was entitled 'Outgunned: federal corruption agencies not up to the task'. It had some detail about those operations. It accused ACLEI and other agencies of certain failures. I'm keen to hear from you directly about those two operations and why they didn't result in any prosecutions for corruption.

Mr Furry: I might defer to Mr Rogers on this one.

Mr Rogers: The Operation Dureau that you refer to in one article there, the accused was sentenced to a period of 18 months and a $1,000 good behaviour bond.

Senator Pratt: So you're saying it did result in a prosecution and a sentence.

Mr Rogers: That's correct.

Senator Pratt: Which one was that?

Mr Rogers: That was Operation Dureau.

Senator Pratt: A two-year good behaviour bond—what was the prosecution actually asking for in that case?

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

Senator Pratt: Okay. What about in the case of Operation Arrowhead?

Mr Rogers: I'll take that one on notice as well.

Senator Pratt: These are the two operations in which you've been seeking prosecutions that have come to public note, and you can't tell us why it didn't result in a prosecution.

Mr Furry: I'm sorry. We will have to take it on notice.

Senator Pratt: Okay. Can you please outline your ASL as it stands now compared to five years ago, and how many of those ASL are investigators?

Mr Furry: Yes, certainly. Our current ASL is 48, and out of that total we currently have—we don't keep statistics down to investigator level—29 people working in our operations area, which includes investigations, intelligence, human source and the visa integrity taskforce. Then we have another nine people working in technical capabilities, assessments and projects.

Senator Pratt: Would you characterise those 29 people as investigators or is it fewer than that?
Mr Furry: It is a mix of people with different skill sets. There are investigators. There are intelligence officers. We have human-source handlers who may be also investigators in terms of their skill set. Also, the Visa Integrity Taskforce employs both intelligence and investigators.

Senator PRATT: Do people actually have the title of 'investigator' within your agency?

Mr Furry: Yes, either 'investigator' or 'senior investigator'.

Senator PRATT: If you could take on notice how many people have the title of 'investigator' or 'senior investigator', that would be terrific, thank you.

Mr Furry: Certainly.

Senator PRATT: In relation to your budget allocation, how much of your budget is allocated to investigators?

Mr Furry: I don't believe we would have those figures down to that granularity, Senator.

Senator PRATT: What does your budget tell you about how much work is going into investigations?

Mr Furry: We've only in the last 12 months commenced actually tracking costs down to that level, and we've yet to pull together aggregated reports on that basis. Up until that date, we've reported on a whole-of-agency basis. We haven't broken it down. We haven't had the systems in place to do that. We haven't been large enough, basically, to do it. But we will be able to report on that level of detail before too long.

Senator PRATT: Can I ask if you believe your funding, staffing and budget allocations are sufficient for your workload.

Mr Furry: We would always like more resources—every agency would like more resources—but we currently work within the budget parameters of the government, and our resourcing is adequate to the workload that we have.

Senator PRATT: Yes, but I guess the question is: do you see instances and issues where you'd like to make further investigations or where you've had to drop an investigation or not complete it, because you don't have the resources that you would require to do so?

Mr Furry: On an ongoing basis, the agency constantly reviews its workload and its priorities based on the requirements of its act, in terms of what it must investigate. On that basis we do drop investigations. We do reassess investigations based on a whole range of information, including whether or not we've got available resourcing at that time, but that's an ongoing issue for the Integrity Commissioner in terms of managing the resources of the agency.

Senator PRATT: How do you manage and judge the number of issues that might come before you for you to examine?

Mr Furry: I might just get Mr Rogers to run through the assessment process.

Mr Rogers: The matters are either referred to ACLEI or notified to ACLEI by jurisdictional agencies or by other sources. We assess those notifications or referrals when they come through, and then the Integrity Commissioner makes a decision about whether ACLEI will investigate those matters or the matters will be referred back to the agency that has referred to us.

Senator PRATT: Is it correct that, as reported in the stories that I referred to, you often depend on additional budget allocations from other agencies, including state and territory agencies, to conduct specific investigations?

Mr Furry: That would be incorrect, Senator. We do have a range of funding available, but it's all Commonwealth funding. Some of our funding does come from agencies that fall within our jurisdiction, which is appropriate. We don't have any funding coming from state based bodies.

Senator PRATT: I would have been surprised.

Mr Furry: However, we do utilise the services of state based bodies, as we do our Commonwealth partners as well. That can be on the basis of an in-kind service, or we may in fact pay for those services from those agencies, depending on what it is.

Senator PRATT: When we talk about budgets from other agencies, is that because a problem has been identified in their agency and essentially they're paying you to investigate?

Mr Furry: No, it's more of a historical fact in terms of our budgets over the years. As the agency's jurisdiction has grown, we've sought additional funds through government to cover the additional increase in jurisdiction. That sometimes has resulted in an agency coming into jurisdiction actually identifying an offset for our budget, either through appropriations or through section 74 receipts.

Senator PRATT: Why is that done that way?
Mr Furry: It's probably the easiest way to identify the likely resourcing needed by the agency at that point in time. When it's happened and we've had an increase in jurisdiction, there's generally been an independent review of our resourcing to determine if those funds are actually adequate for the increase in jurisdiction.

Senator PRATT: But surely that should be through your own appropriation? Surely that's not a sustainable way to operate?

Mr Furry: Well, it has allowed us to operate for a number of years now, Senator.

Senator PRATT: To exist at all, essentially you're saying?

Mr Furry: No, Senator, I'm not saying that at all.

Senator PRATT: You've operated effectively in the last five years?

Mr Furry: Yes, we are operating effectively with our current level of budget.

Senator PRATT: How many operations have you successfully concluded in the last five years that have resulted in convictions for corruption?

Mr Furry: I've got figures here on the number of prosecutions by the agency since 2011. Since 2011, we've had 57 prosecutions. Of these, there have been 39 convictions and nine finalised in other ways, and there are currently still nine in progress.

Senator PRATT: In terms of those that have been referred to your agency to deal with, how many over that same period of time?

Mr Furry: How many referrals have we had over the same period of time?

Senator PRATT: Yes.

Mr Furry: I don't have the figures going back to 2011, but I do have figures going back to 2014-15 for notifications. Unfortunately, it's not actually totalled. In 2014-15, we had 71 notifications; in 2015-16, 185.

Senator PRATT: If you could just take on notice the number of prosecutions and convictions that relate to those notifications over that time, that would be terrific.

Mr Furry: Going back to 2011?

Senator PRATT: Yes, thank you, if you're able to do that. I note that in one of the stories it was reported that you've not held any public hearings since your inception in 2006. Can I ask why that is?

Mr Furry: That's probably more properly a question for the Integrity Commissioner. I may have to take that on notice. My understanding is that, in weighing up the benefit of having a public hearing versus the potential issues of having a public hearing, to date there has not been that threshold met for a public hearing.

Senator PRATT: In terms of a public interest in having a public hearing? Is that what you mean?

Mr Furry: Correct, yes.

Senator PRATT: What can you tell the parliament that demonstrates the evidence for that to be a true statement? Do I need to ask the other agency that, if you're not the one driving that decision?

Mr Furry: Sorry, the other agency?

Senator PRATT: You're the Commission for Law Enforcement Integrity. You referred to the other agency that makes the decision about whether it's public.

Mr Furry: No, sorry, what I was saying was that it's the Integrity Commissioner—the Integrity Commissioner of the Australian Commission for Law Enforcement Integrity, who unfortunately is not here today. It's actually his decision to hold a public hearing or not.

Senator PRATT: Could you perhaps take on notice what those threshold questions are as to whether it would be in the public interest to hold a public hearing.

Mr Furry: Certainly.

Senator PRATT: Were you consulted by government prior to the government's announcement of its preferred model for a Commonwealth Integrity Commission?

Mr Furry: Again, I think that might be a question for the Integrity Commissioner. The Integrity Commissioner has discussions with the Attorney-General on a regular basis. Only he would really be aware what consultation took place on that. And any questions you might have in relation to the Commonwealth Integrity Commission might be better directed to the department.
Senator PRATT: Okay. I will ask the department now, then. What consultation took place before the announcement of the Commonwealth's preferred model for a Commonwealth Integrity Commission with the Australian Commission for Law Enforcement Integrity?

Ms Chidgey: The department had some conversations with the Integrity Commissioner about the concept of an integrity commission. I'm aware that the Integrity Commissioner also provided some views and advice directly to the Attorney as well.

Senator PRATT: So were they consulted on the model?

Ms Chidgey: Yes, as part of those conversations and their advice.

Senator PRATT: Did that involve putting something in writing that documented the nature of the model, or was it just a conversation?

Ms Chidgey: I'm aware that the Integrity Commissioner did prepare some written advice.

Senator PRATT: Did the government provide written advice about its model to give to the commissioner?

Ms Chidgey: The department had prepared materials on the existing integrity framework and possible changes that were shared with the Integrity Commissioner.

Senator PRATT: Did it put forward the model that was announced on 13 December as an option or as an only option? How was it framed?

Ms Chidgey: I'd need to take on notice the details of exactly what was given to the Integrity Commissioner when.

CHAIR: Senator Pratt, I forgot to turn my timer on, but the secretary's been keeping note. You've been going for about 15 minutes. Could I ask a couple of questions, and we'll come back to you?

Senator PRATT: You could. I've only got two more minutes worth of questions.

CHAIR: I will be probably less than that.

Senator PRATT: Okay.

CHAIR: Mr Furry, you were asked about prosecutions. Do you have coercive powers?

Mr Furry: Yes, the Integrity Commissioner has coercive hearing powers.

CHAIR: Where he gets evidence as a result of using those powers, can those admissions, conversations, be then used in court action against that person?

Mr Furry: My understanding is: no, they would not be able to be used.

CHAIR: So, whilst you investigate people using your coercive powers, the information you get cannot be used directly in prosecutions?

Mr Furry: Against that individual—that's my understanding.

CHAIR: So, if that individual incriminates himself or herself, you can't use that and the police have to start all over again, and the person will no doubt have the right to remain silent?

Mr Furry: We don't use our coercive powers on behalf of the police. We use the coercive powers on behalf of the agency itself. The police may not be involved at that stage. I understand that one of the threshold decisions for the commissioner in deciding to hold a coercive hearing is, on balance, the value of the evidence that might be obtained through that process versus the risk that that evidence might not be able to be used in a prosecution further down the track.

CHAIR: So, wherever you use your coercive powers, your goal is not to charge or prosecute the person?

Mr Furry: Potentially. The coercive hearing powers can be used against witnesses, for instance, not necessarily a person of interest, to gather additional evidence in relation to an investigation. But that means that, if that witness were to discuss something in a coercive hearing that would incriminate them, that would not be able to be used against them in a prosecution.

CHAIR: I'm not for a moment suggesting that should be changed, but does that limit your ability to bring prosecutions?

Mr Furry: I assume—and I'm speaking on behalf of the Integrity Commissioner here, so he may well choose to correct me at some point, but I assume—that that's part of the balancing act that he has in terms of deciding how to proceed with an investigation and the use of his coercive powers. They are used very sparingly. When they are used, it is because we have decided it is the best way to progress an investigation.
CHAIR: Senator Pratt was asking you questions about the proposed integrity commission bill that came before parliament recently and which this committee investigated. Do you recall whether the commissioner had a look at that?

Mr Furry: In terms of the bills that were introduced to parliament?

CHAIR: Correct me if I'm wrong, but I think one of the crossbenchers in the lower house introduced a national integrity commission bill which was referred by the Senate to this committee and we deliberated on it. Did we call you to give evidence on that?

Mr Furry: No, we weren't invited to participate in that hearing.

CHAIR: Do you know whether the commissioner has looked at that bill?

Mr Furry: The commissioner probably would have looked at the bills, but we didn't provide any feedback in relation to those bills.

CHAIR: Mr Moraitis, are you doing any work on a government bill on an integrity commission?

Mr Moraitis: Yes, we are. The consultation period has just closed, I understand. There will be some consideration and advice to government.

CHAIR: Okay. But there is no bill currently before parliament apart from the one I have referred to, which, I understand, is a private member's bill?

Ms Chidgey: That's right.

Mr Moraitis: That's the second one that I think your committee has considered—the national integrity commission bill.

Ms Chidgey: Yes, the McGowan and Waters bills. The government hasn't produced legislation on its Commonwealth integrity commission model as yet.

CHAIR: Ms Chidgey, as I recall, you were giving evidence there. Or was that another of the many inquiries we have been doing at all hours of the day and the night?

Ms Chidgey: That's right, Chair; you're recollection is correct. I gave evidence on the McGowan and Waters bills to this committee.

CHAIR: Okay. I'll leave it there and refresh my memory by reading our report. Senator Pratt.

Senator PRATT: Thank you, Chair. Has ACLEI put forward a submission to the Attorney-General's Department as part of its review of the proposed model?

Mr Furry: No.

Senator PRATT: Why not?

Mr Furry: That was a decision of the integrity commissioner.

Senator PRATT: The proposal would expand ACLEI's remit to include ASIC, the ACCC, APRA and the ATO. Has ACLEI done any work to estimate how much additional budget allocation would be required to expand its jurisdiction that widely?

Mr Furry: There have been some costings done in the department as part of their policy development, and we have participated in that work.

Senator PRATT: Are you able to give us any estimates at this point?

Mr Furry: No. The proposed Commonwealth integrity commission is a matter for the department.

Senator PRATT: Ms Chidgey?

Ms Chidgey: We have been doing work to cost the Commonwealth integrity commission model and we'll provide that advice to government, which will ultimately form part of cabinet's consideration about any funding.

Senator PRATT: Looking at the detail of the model—ASIC, the ACCC, APRA and the ATO—does the model pull in all of the functions or just part of the functions that would pertain to the functioning of integrity of law enforcement?

Ms Chidgey: Sorry, could you clarify what you are asking?

Senator PRATT: Which parts of the remits of ASIC, the ACCC, APRA and the ATO are being pulled into this proposed model?

Ms Chidgey: The new integrity commission model would cover those agencies in their entirety.

Senator PRATT: So those agencies would not exist?
Ms Chidgey: They would exist. In terms of any corruption matters relating to those agencies, the entirety of the agency would be covered.

Senator PRATT: Corruption within those agencies, not the function of the agencies themselves?

Ms Chidgey: It's not replacing all those agencies.

Senator PRATT: No. I just needed to make the distinction that it is the oversight of those agencies, not the function of those agencies, that is being incorporated. Where is the costing for the existing oversight of ASIC, the ACCC, APRA and the ATO in terms of their current functions for internal integrity?

Ms Chidgey: I'm not able to provide that. Ultimately it is a matter for cabinet.

Senator PRATT: In terms of the new costings I guess I would need to go to each of those agencies individually to work out how they fund their internal integrity.

Ms Chidgey: They are not currently covered by ACLEI.

Senator PRATT: No. I understand that.

Mr Moraitis: They have their own integrity—like the Inspector-General of Taxation.

Ms Chidgey: The role of Inspector-General of Taxation would continue in any event.

Senator PRATT: Are you drawing on the existing costs inside those agencies, and from organisations like the Taxation Commissioner, to look at what the new agency might cost?

Ms Chidgey: It's a new cost of covering corruption oversight by the Commonwealth integrity commission.

Senator PRATT: There won't be budget cuts to those agencies after this agency is formed because it is replacing other functions?

Ms Chidgey: The government hasn't made any decision on cutting budget.

CHAIR: Thank you, Mr Furry and Mr Rogers. We have let you off very easily! We appreciate your attendance here and the help you have given. We ask that answers to questions on notice be returned by 29 March.

Commonwealth Ombudsman

CHAIR: I welcome representatives of the Commonwealth Ombudsman's Office. Would you like to make an opening statement?

Ms Hinchcliffe: No.

CHAIR: I understand that the Ombudsman is away.

Ms Hinchcliffe: That's right. The Ombudsman is unable to be here today, so I appear as the acting Ombudsman.

CHAIR: Thank you. Senator Pratt.

Senator PRATT: Thank you, Chair. Ms Hinchcliffe, I refer to the Telecommunications and Other Legislation Amendment (Assistance and Access) Act. I note that recommendation 12 of the intelligence committee's advisory report into the assistance and access bill called on the government to ensure that the Commonwealth Ombudsman had sufficient resources to ensure they can properly execute their additional responsibilities following the passage of the assistance and access act. In a letter to the intelligence committee dated 11 January this year, the Ombudsman wrote that your organisation had yet to receive funding to assist with the new and expanded functions arising from the assistance and access act. The committee was told that you had asked the Department of Home Affairs for additional resources on 5 December. Have you received a response to that correspondence?

Ms Hinchcliffe: My organisation has been in conversations with the Department of Home Affairs in relation to resourcing for the additional functions that we have received under this new act. We have also had some initial discussions in relation to proposed amendments to the act, which would expand some of our oversight role to some additional agencies. Those discussions are ongoing.

Senator PRATT: Have you received a written response to that correspondence?

Ms Hinchcliffe: I'm not aware that we have. No.

Senator PRATT: What additional resources do you require?

Ms Hinchcliffe: In relation to the act as it currently stands, we've discussed a very small amount of additional funding, which relates to the equivalent of five ASL and some additional operating costs. We're not looking for that funding to occur this financial year. The act has only just come into place and we believe that we can deal
with our additional functions under our current resourcing for this financial year, and the Ombudsman has made that clear to the Department of Home Affairs.

**Senator PRATT:** In terms of forecasting into the future in the next financial year, what additional resources are you asking for?

**Ms Hinchcliffe:** As I've just said, the additional funding that we would be looking for would be the equivalent to be around five ASL, with some additional operating costs.

**Senator PRATT:** Sorry, I misunderstood what you were saying. I thought you were saying that you had that five ASL now, but it is the five ASL that you're looking to. Have you costed that?

**Ms Hinchcliffe:** Senator, let me just have a look for that for you. I assume we have. Can I take that on notice for you.

**Senator PRATT:** That's fine. Those five ASL are required specifically for functions arising from the assistance and access act?

**Ms Hinchcliffe:** That's right. In terms of our role under that act, both under the new powers in the Telecommunications Act and the expansion of powers under the Surveillance Devices Act, those roles are roles that can be undertaken by the Ombudsman or a member of his or her staff. We would be looking for staff to undertake that work.

**Senator PRATT:** So you haven't yet been provided with any indication that those additional resources will be forthcoming?

**Ms Hinchcliffe:** As I said, Senator, those conversations are ongoing and the Ombudsman has indicated to Home Affairs that we're not seeking those additional resources for this financial year.

**Senator PRATT:** So you're not expecting that the extra demand, as a result of the act, is going to take place this financial year. What's the impact, if that's not forthcoming in the next financial year?

**Ms Hinchcliffe:** There will be some additional work for us to undertake this financial year, which we consider that we can undertake under our existing resources. And the amount that we have put forward in terms of additional funding, which, as I've said, is a small amount, is the amount that we consider that we would need to undertake this work into the outgoing years.

**Senator PRATT:** In terms of what you've picked up this financial year that you're doing inside your own resources, is it equivalent to one ASL? Two?

**Ms Hinchcliffe:** I haven't costed what the additional work will be this financial year. We have some space to be able to do it in our current resourcing, and we are comfortable that we can do it in our current resourcing this financial year.

**Senator PRATT:** Why can't you sustain that in the next financial year? Is it because they are people who have been pulled off other projects or other responsibilities or you need elsewhere?

**Ms Hinchcliffe:** What happens in relation to the inspection role that we undertake for these coercive types of powers is that there is a period of time in which those powers are utilised. And after they are utilised we then go in and inspect. So there's always a period of time in which there is less work for us to do. So we're doing work at the moment—

**Senator PRATT:** As it gets implemented and up and running.

**Ms Hinchcliffe:** That's exactly right. We're doing work at the moment in terms of our own methodologies and in terms of engaging with the agencies that have been given these new powers, but we don't see that work really ramping up until, as I said, the next financial year.

**Senator PRATT:** Thank you for explaining that to me. That was useful.

**CHAIR:** Are there any other questions for the Ombudsman? Senator McKim?

**Senator McKIM:** No, thanks.

**CHAIR:** Okay. Well, you're lucky. Thank you very much for being here, and we'll see you at the next estimates.

**Ms Hinchcliffe:** Thank you very much, chair. Thank you, senators.

**Inspector-General of Intelligence and Security**

[16:45]
CHAIR: The ALP, Senator Patrick and Senator McKim have questions on this and perhaps government senators as well. I'll go to Senator Pratt first and then Senator McKim. But if the secretariat could just let Senator Patrick know that we're onto this area, as he has signified an interest.

Senator McKIM: Obviously, Ms Stone is not here. We've got an acting Inspector-General. I wonder if an explanation could be provided for that to the committee.

Mr Blight: We wrote to the secretariat. Ms Stone is unfortunately unwell and is on medical leave and is unable to attend today.

Senator McKIM: I'm sorry. I wasn't aware of that. Thank you.

CHAIR: We did deal with this before. Did you want to make an opening statement?

Mr Blight: No, thank you, chair.

CHAIR: We do note the absence of the Inspector-General and wish her well in her recovery. Senator Pratt.

Senator PRATT: I refer to the Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018. Recommendation 12 of the intelligence committee's advisory report into the assistance and access bill called on the government to ensure that IGIS had sufficient resources to ensure that they can properly execute their additional responsibilities, following the passage of that act. Your agency has told the intelligence committee in public evidence that you believe it will eventually be necessary for IGIS to have approximately five full-time equivalent staff to conduct appropriate oversight of the new powers. Can I confirm if that remains your assessment?

Mr Blight: That remains our assessment over time, subject to other changes in our functions.

Senator PRATT: What do you mean by 'subject to other changes' in your functions?

Mr Blight: The Inspector-General's office got additional funding in the additional estimates in 2017-18, which the government at the time and in the budget papers described as being for purpose of extending our jurisdiction to include the intelligence functions of AFP, Home Affairs, ACIC and AUSTRAC. We have that additional funding now, and we are recruiting and training staff. But the expansion of our jurisdiction is subject to legislation, the timing of which is a matter for government, and the final details of which are a matter for government. So when I say contingent on additional functions, what we've said is at the moment we can absorb within our new envelope of extra funding these additional roles, but, as the new further functions are fully described in legislation, we'll have to reassess that.

Senator PRATT: In other words, the incredible effectiveness of this government is that they have given money to do something they haven't yet legislated for; on the other hand, they have legislated something that haven't yet given you the budge for, but you're hoping it will come out in the wash.

Mr Blight: That's not quite how I would put it. For our office, increasing our staffing capacity is more complex than for other departments, because all of our staff require a top-secret positive vetting security clearance. So there is a significant lag in our recruitment activity. We're quite comfortable with being given some time to build up our staffing before taking on the new functions.

Senator PRATT: All those new powers. Okay. How quickly do you need to recruit these full-time equivalent staff of five for the appropriate oversight of the new powers with assistance and access?

Mr Blight: It will depend a bit on the scope of new functions we're given. At the moment, I'd say we are expanding as rapidly as we can.

Senator PRATT: Sorry, the new functions you're given in relation to assistance and access or more broadly?

Mr Blight: With a small agency like ours, our ability to expand and to maintain the quality of our staffing and training and to fit out new secure premises is quite a consuming thing. We were funded in the additional estimates over a five-year period to increase our staffing from 17 to 55 in a staggered way. So, by the end of this financial year, we are aiming for 42; end of next financial year, 55. I don't think it would be feasible for us to expand any faster than that because of the logistics of recruiting and training and clearing staff.

Senator MOLAN: How long does a clearance take?

Mr Blight: It depends. AGSVA's benchmark is six months, and the majority of our clearances are now being processed within the six months, but quite recently it was 18 months. The six months is for routine clearances, not cases that become complex. But AGSVA is turning around, recently, in our experience, clearances within that benchmark. I think eight have gone into vetting so far this year.

Senator PRATT: Can I ask if the Department of Home Affairs—actually, I don't have to ask 'if', because I know it's true; the Department of Home Affairs told the intelligence committee in public evidence; it said that in
consultation with the Attorney-General's Department the Department of Home Affairs continues to monitor the resourcing of the Commonwealth Ombudsman and IGIS with regards to their powers under the act. So can I ask you: what sort of monitoring has the Department of Home Affairs or the Attorney-General's Department carried out in respect of your resourcing?

**Mr Blight:** Attorney-General's is our portfolio department, not Home Affairs. So I might pass that question to Attorney-General's. But, as I said, it's quite early days in our current expansion, and our ability to expand any faster is limited by the logistics and the practicality of it.

**Mr Moraitis:** I can say a few things about this. First of all, Mr Blight is correct—we are in the logistics phase. In fact, we are literally finalising a secure facility within our building, in the Attorney-General's Department, to accommodate IGIS. That was part of the MoG process, as it so happens. We are well aware of the resourcing needs of IGIS, coming to 55 FTE. I've spoken to Margaret Stone about this several times and also with Michael Manthorpe in the Ombudsman's commission about their needs in relation to not just the larger context of the transition but also on a specific access bill. I haven't spoken to the IGIS in the last few weeks following their public testimony about this, but I'm aware of their consultations with Home Affairs. I've certainly spoken with Mr Manthorpe in the last week or two about his staffing needs; in fact, the evidence you just heard from the Ombudsman's commission pretty much accords with what Mr Manthorpe told me—that is: five FTE are needed, but they're quite comfortable in the lead-up to the financial year. However, there is a process of consultation with Home Affairs. I was left with the very clear impression from the Ombudsman's commission that they're working with Home Affairs on those resourcing needs. The stage might arrive where I might need and the department might need to have further consultations with Home Affairs about this, and, similarly, with IGIS, because they're in the same situation, obviously. The Ombudsman have their own premises in a separate building, but we are very conscious of IGIS's trajectory of growth and IGIS's needs, in addition, following the access bill and the requirements in that context. So, yes, we are working with both those agencies in our portfolio to ensure that they can meet their new obligations and the obligations that accrued previously.

**Senator PRATT:** Thank you for putting that on the record, Mr Moraitis. Can I ask you, Mr Blight, what that engagement looks like from your point of view, in terms of the Attorney-General's Department and the Department of Home Affairs looking at and assessing your needs?

**Mr Blight:** Again, it's Attorney-General's that's our portfolio department, so they're the one we'd be working with, and it's Attorney-General's that has policy responsibility for integrity—

**Senator PRATT:** I'm just trying to unpick the contradiction because the Department of Home Affairs told the intelligence committee that it, in consultation with the Attorney-General's Department, continues to monitor the resourcing of the Commonwealth Ombudsman and IGIS with regards to their powers under the act.

**Mr Blight:** We haven't had any interactions with Home Affairs on this, but I'm not entirely surprised by that because I would expect us to go through Attorney-General's, our portfolio agency.

**Senator PRATT:** So it should more correctly be: the Department of Home Affairs should be saying that the Attorney-General's Department, in consultation with them, is monitoring the Department of Home Affairs, but I understand, if it's the agency speaking, why they might confuse it that way.

**Mr Moraitis:** In both these situations, both for the Ombudsman and for IGIS, the resourcing ideally will come from Home Affairs. It's a process of engaging with Home Affairs to ensure that the needs of both agencies in this context are met adequately—certainly, into the next financial year and, certainly, as the process accelerates.

**Senator PRATT:** In another public submission made to the intelligence committee, the Inspector-General of Intelligence and Security responded to a number of comments that the Department of Home Affairs had made in one of its own submissions to the intelligence committee. With respect to a number of those comments, the inspector-general said that the department demonstrated a limited understanding of the way in which independent operational oversight is conducted. Given the fact that ASIO sits within the home affairs portfolio and that national security legislation will typically emanate from the Department of Home Affairs, how concerned are you about what you've characterised as the department's limited understanding?

**Mr Blight:** I would say we remain very keen and willing to engage with Home Affairs on how IGIS oversight works. I think ASIO is very familiar with that and will no doubt also be keen to engage. But we've certainly indicated to Home Affairs that we're very keen to engage with them. We were contacted by Home Affairs on Friday last week, after that submission was published, and we've already had a preliminary meeting with them.

**Senator PRATT:** So you've had a preliminary meeting. What was the objective of that preliminary meeting?

**Mr Blight:** They initiated the meeting, as I believe, to begin understanding how our oversight arrangements work.
Senator PRATT: And what? Was it to understand why you might have characterised them as having a limited understanding?

Mr Blight: I would expect so. That has to be taken in context. Their comments were around—

Senator PRATT: Yes, what was the context?

Mr Blight: We'd made a number of comments in relation to that bill: that it would aid oversight to have notification requirements, to have statutory time limits on powers—for example, powers for ASIO to give immunities having a six-month or 12-month time limit—to bring in fixed review periods. Our oversight is usually done after the fact. We look at warrants towards the end of their period; we would look at these powers. Most of the agencies we oversee have specific notifications. So, if ASIS has a weapons firing incident, they must notify us, and that triggers us to look at something. Home Affairs' comments were that we have strong statutory powers, which is true, to acquire information from agencies. Now, that is true, but it doesn't reflect the reality that, with a very small staff, we rely on agency reporting mechanisms and the statutory triggers that ensure agencies report things. In that context, we're looking to engage and ensure that legislation and policy agencies understand that those built-in statutory oversight mechanisms, like reporting and mandatory review periods, are very important to the practical application of oversight.

Senator PRATT: So you're working with Home Affairs on how they can embed those things in their own activities. Is that what you're—

Mr Blight: We've certainly made the offer to the department that we would very much like to work with them in legislative development so that that oversight is integrated in it. Indeed, this is not entirely new. The 2017 independent intel review, which was before Home Affairs was created, had a recommendation directed at ensuring that oversight was considered as part of the national security legislation development model.

Senator PRATT: Returning to my question—because you've given me much more context on the issue now—when this national security legislation emanates, in the first instance, in the main, from Home Affairs, what do we need to do about that issue of ensuring that that accountability is embedded in their objectives?

Mr Blight: I've given evidence to the PJCIS on this point. The thing we're keen to see is early engagement with oversight agencies in the legislative and policy development phase, before it's locked into a position, so the department can genuinely engage early so that these kinds of oversight mechanisms are part of the early design, not the add-on later on.

Senator PRATT: So your submission to the intelligence committee is what has prompted that engagement from the Department of Home Affairs?

Mr Blight: That's my impression, but you'd probably have to ask Home Affairs to get a proper answer on that.

Senator PRATT: Thank you.

CHAIR: Senator Patrick has some questions. I propose, with the approval of the committee, that we push you to the side for a second, Mr Blight and Mr McFarlane. I'm assured it won't be long.

Attorney-General's Department

[17:00]

CHAIR: Mr Moraitis, can we perhaps start with the department and outcome 1, and when Senator Patrick arrives we'll postpone for a little while, while he has his questions—although the fact that the media seem to be here suggests that perhaps Senator Patrick's questions might be lengthier rather than not! No, they're going. I've chased them away!

Mr Moraitis, moving to outcome 1, perhaps even temporarily, do you want to make any sort of opening statement, or, Minister, do you have any opening statement?

Senator Reynolds: I don't, but thank you, Chair.

CHAIR: Mr Moraitis?

Mr Moraitis: No, Senator.

CHAIR: Okay. We're dealing first of all with cross-portfolio, corporate and general matters. Senator Pratt, would you like to start off?

Senator PRATT: Yes, I'd be delighted to, thank you. We've had some discussion of these matters already this afternoon, but I want to take you to the Attorney-General's announcement regarding a Commonwealth Integrity Commission back in December last year. How long had the department been working on the model that was announced in December last year?
Mr Moraitis: My recollection is that the department's been working on this issue/ultimate model for about a year. I will ask Ms Chidgey to elaborate.

Ms Chidgey: Yes, I think the government had been looking at options with the department's assistance from around January last year.

Senator PRATT: What instructions were given to the department in terms of what to consider when drafting the model?

Ms Chidgey: As part of that process, we started by giving advice on the full existing integrity framework, the range of agencies and their functions and worked through that with the Attorney in conversations with some other agencies. That ultimately arrived at the model in the proposal paper that was put out publicly in December.

Senator PRATT: Is it possible, please, for you to tell me who was consulted when drafting the model?

Ms Chidgey: I think I mentioned that the Law Enforcement Integrity Commissioner had had input and the department had had some consultations with other integrity agencies and a limited number of Commonwealth departments as well.

Senator PRATT: Is it possible, please, for you to give me a list of which agencies were consulted and what external stakeholders might also have been consulted?

Ms Chidgey: The Attorney-General particularly had a number of meetings with groups of external stakeholders, such as the Australia Institute and Transparency International Australia.

Senator PRATT: I'd be very grateful for a list of those on notice, if that's okay, please.

Ms Chidgey: Yes, we will take that on notice.

Senator PRATT: In terms of trying to understand the model and the decision that was made, why was the decision made to have two different wings with different powers?

CHAIR: Just before you answer that, Mr Moraitis, can I indicate Senator Patrick has just sent us a message saying he's tied up in other committees and not to hold the Inspector General of Intelligence and Security, so you're free to go, gentlemen. Thank you very much for your co-operation. We appreciate that. Now, Mr Moraitis, Senator Pratt's question.

Ms Chidgey: The model in the proposal paper, which has a law enforcement integrity division and a public sector integrity division, was arrived at because of the fact that law enforcement agencies wield significant coercive powers and have access to highly sensitive information and that officers in those agencies are also very well informed about the kind of investigative techniques that might be applied by oversight bodies as well. That partly was the same thinking that drove the establishment of ACLEI as a law enforcement oversight body in the first place. The decision was then taken in the proposal paper to have the difference with the two divisions reflecting that difference in the nature of the functions and risks for law enforcement agencies as opposed to other public sector agencies.

Senator PRATT: Yes, other agencies. Does the department acknowledge that there's no state or territory anticorruption body which has these much weaker powers for investigating the public service as is reflected in your model?

Ms Chidgey: I wouldn't accept that characterisation. The government obviously needs to make final decisions but is considering a full range of coercive powers. Ultimately on some of the differences, like matters of public hearing, it will still be the case that there would be a public hearing in a court determining whether there'd been criminally corrupt conduct.

Senator PRATT: How do you compare the powers between state and territory bodies and the model that's been put forward? What are the differences?

Ms Chidgey: There are a range of differences even amongst the state and territory bodies, so it's probably not possible to give a generalisation, but obviously there are some differences around matters like public hearings and public findings of corruption in some cases.

Senator PRATT: You'd clearly be aware of the wide and comprehensive criticism of the model since it was announced. I note, for example, the Law Council and the Australia Institute—who clearly would have been among those consulted by the Attorney-General—and esteemed former judges and anticorruption commissioners. So will their criticisms be taken into account when a final model is put forward?

Ms Chidgey: The government will consider the full range of comments and also submissions that were received as part of the public consultation process on the proposal paper.

Senator PRATT: Okay, they will be considered. That's not the same as changing what's been put forward.
Ms Chidgey: That will ultimately be a matter for the government.

Senator PRATT: But you're preparing advice on those matters currently?

Ms Chidgey: That's correct.

Senator PRATT: That would go through those criticisms and make those criticisms clear to the government about the issues inside the model that they've put forward?

Ms Chidgey: Yes. There are a variety of different stakeholder views, and we will be providing advice to the government on the range of views and submissions.

Senator PRATT: Which of the stakeholders have formally come out and endorsed the model as it's been put forward?

Ms Chidgey: I'd need to take that on notice.

Senator PRATT: Okay. Which stakeholders have criticised the model?

Ms Chidgey: I need to take that on notice to give you.

Senator PRATT: Thank you. There are a number of submissions to the Attorney-General's Department consultation that had been submitted in February. That is a couple of weeks ago now. As far as I can tell, those submissions have not yet been made public. Can I ask when they will be made public?

Mr Walter: We received 58 submissions in response to the consultation paper. We also received around 3,000 GetUp! I guess, submissions. We are in the process of both considering and working through publication of those submissions. Some of them didn't want to be published, so we won't be publishing them. There are a few that we have to work through in some detail because they raise, for example, allegations of corruption. We would need to consider whether we need to redact them, because unless they're substantiated we might be defaming people and those sorts of things. So we are working through that at the moment, but it's going to take a little while because it's a bit complicated.

Senator PRATT: In the meantime, can people who've made submissions make them public themselves?

Mr Walter: Of course.

Senator PRATT: Has the department drafted legislation to implement the government's proposed model yet?

Ms Chidgey: We have been working on draft legislation with the Office of Parliamentary Counsel.

Senator PRATT: When will that be released as an exposure draft?

Ms Chidgey: All of those issues are a matter for government.

Senator PRATT: Do you know yet if it will be released as an exposure draft or as legislation?

Ms Chidgey: That's a matter for decision by the government.

Senator PRATT: The Attorney-General's press release in December, which was entitled 'Commonwealth Integrity Commission review panel announced', named a panel including Mal Wauchope, Margaret Cunneen and Mick Keelty. What was the selection process before that announcement was made?

Ms Chidgey: The Attorney-General made the selection of those individuals.

Senator PRATT: So there was no recruitment process within the department? Those names emanated entirely from his office?

Ms Chidgey: The Attorney-General's Department didn't conduct a recruitment process. They're providing advice directly to the Attorney.

Mr Moraitis: They're a panel advising the Attorney directly, so I guess it was in his prerogative to decide who went to that panel.

Senator PRATT: Is the department aware of the basis on which those appointments were made?

Ms Chidgey: Beyond that the Attorney had selected those individuals, no.

Senator PRATT: Is there a remuneration for those individuals for this role?

Ms Chidgey: Yes, for some of them.

Mr Walter: There are a variety of arrangements in place. Mr Wauchope is on a contract for provision of services. Mr Keelty decided that he did not want to be remunerated; we are just paying any costs associated with travel and those types of things. Ms Cunneen at this point has not been remunerated because she is already holding a statutory office of profit, but she may be remunerated in the future for future work after she retires.

Senator PRATT: Thank you. I want to ask: in the context of this proposed—
Mr Walter: Sorry, let me clarify: she has just retired, so any work since that—

Senator PRATT: Those arrangements might therefore change.

Mr Walter: That's right.

Senator PRATT: In the context of the model that's been put forward, I'm really trying to come to grips with some of the evidence that's been presented to this committee within the Home Affairs portfolio. As I can see it, under the government's proposed model for a Commonwealth Integrity Commission, inquiries or investigations cannot be self-initiated. Is that correct?

Ms Chidgey: If there's a matter that is already before the commission, they can look at related matters. Otherwise matters would be brought to the commission either via referral from agency heads or via other integrity agencies.

Senator PRATT: So the referral has to come from another agency, in general terms, and the threshold is suspected criminal activity? Is that right?

Ms Chidgey: That's right.

Senator PRATT: So, if the Commonwealth integrity commission thought that an issue like the Paladin affair was suspect, it couldn't investigate it unless someone else told it to? Would it rely on the department involved in that activity to refer it to the Commonwealth Integrity Commission?

Ms Chidgey: I should say too that the relevant criminal offences are quite broad in this area of corruption. In any instance where there was a suspicion of criminally corrupt conduct, any member of the public or others could make a complaint to any of the existing integrity agencies, who would refer it on. Similarly, an agency that became aware of an issue within its own purview would have an obligation to make a referral to the commission.

Senator PRATT: So why is it constrained that the commission can't self-refer? If it's a member of the public that makes a complaint to the media, to the parliament or to everywhere other than the Commonwealth Integrity Commission because they just don't know where to complain to, why couldn't the commission self-refer?

Ms Chidgey: I think it is as a filtering mechanism, through other integrity agencies making a determination initially about whether matters fell within the remit of the organisation, and I think it is as a check on issues like politicisation as well.

Senator PRATT: Thank you. I think that's all on that topic, but I'm going to move on to some other questions. We've had some discussion in relation to AAT appointments already this afternoon. The Cabinet Handbook, edition No. 11, sets out the rules and processes around appointments. In particular, paragraph 115 on pages 22 to 24 lists some of the requirements that a proposal must contain. One of those is that the person being proposed is appropriately qualified and has experience relevant to the vacancy. I'm going to ask some questions about some specific appointments. In the middle of Melbourne Cup long weekend last year, Attorney-General Christian Porter announced five new appointments to the independent Administrative Appeals Tribunal. These included a former Liberal state politician and a staff member for Finance Minister Mathias Cormann. I note that on 15 November Minister Porter emailed out a press release announcing his reappointments and new appointments to the AAT, and they were jobs worth more than $300,000 a year. I can see they included Belinda Pola, a former staffer for Treasurer Joe Hockey, and Donna Petrovich, a former Liberal Victorian state politician. Was the department asked to provide any information or advice on these particular appointments in general and specifically in relation to their qualifications?

Mr Anderson: No.

Senator PRATT: Who is responsible, in relation to upholding the rules, processes and procedures within the Cabinet Handbook, for ensuring that the person proposed is appropriately qualified and has experience relevant to the vacancy?

Mr Anderson: Having regard to the criteria for appointment to the Administrative Appeals Tribunal, you need to go back to section 7 of the AAT Act, which sets out that, while the president needs to be a judge of the Federal Court, a deputy president should either be a judge of the Federal Court, be a legal practitioner of at least five years standing or, in the opinion of the Governor-General, possess special knowledge or skills relevant to the position. Then it is the same for senior members of members: either they're a legal practitioner of at least five years standing or, in the opinion of the Governor-General, they possess special knowledge or skills relevant to the position. It's a matter for the Attorney in recommending the appointment to the Governor-General. The Attorney needs to form the view that the individual possesses special knowledge or skills relevant to the position or, alternatively, be satisfied that they're a legal practitioner of at least five years standing.
Senator PRATT: So, in essence, it's the minister who makes that judgement, and you don't vet that in any way as to whether those appointments do or don't meet the standard required of an AAT appointment?

Mr Anderson: It's a matter for the Attorney.

Senator PRATT: Did the department ever, at any time, hold the CVs of these particular AAT appointees?

Mr Anderson: I'm sorry, Senator. Can you repeat the question, please.

Senator PRATT: Did the department ever have in their possession or hold the CVs of these particular AAT appointees before they were appointed?

Mr Anderson: We do receive the CVs. We do deal with the preparation of the forms for the appointment process.

Senator PRATT: In relation to these appointments made back in November last year, when did the department receive those CVs and who sent the CVs to the department?

Dr Smrdel: Typically the department would receive notice from the Attorney-General's office as to appointments to be brought forward for cabinet's consideration. At that point—and sometimes the process varies—either us or the Attorney-General's office would contact the applicants, and we would have furnished both their up-to-date CV and their response to the private interest declaration.

Senator PRATT: Can you take on notice when you received the CVs attached to that appointment from Donna Petrovich and Belinda Pola. I think it was just those two, but there were five appointments made at that time. Can you let me know when those CVs were received by the department. Does the department hold or maintain the CVs of people who are appointed to boards such as the AAT?

Mr Moraitis: What do you mean by hold? Is that in the context of preparing for deliberation by cabinet and by ExCo or as a general database?

Senator PRATT: If the government has appointed people to boards based on their qualifications, if I wanted to ask the government what the qualifications of that appointee were, would you have a database to which to refer with regard to those appointments?

Mr Anderson: As I indicated before, we prepare the paperwork for the appointment process. As such, we hold the CVs of the appointees and we are subject to the Archives Act in respect to our obligations to maintain Commonwealth records but we don't put them in a database, as such.

Senator PRATT: So you've got them for the preparation but, if you needed to find them sometime after the appointment rather than in preparation for it, could you find it?

Mr Anderson: If we still hold the documents—and I'd have to check the years under the Archives Act that we're required to hold these, so how far back would you want to go? But, yes, we do hold the CVs for appointments that we've prepared the documentation for.

Senator PRATT: Has the department ever been directed by the Prime Minister or his office or by any other minister or ministerial office to find jobs or compile a list of CVs of people who are seeking government jobs or board positions or appointments to government tribunals such as the AAT?

Mr Anderson: I'm not aware of any direction in relation to the AAT. Obviously it's a very broad question, but I'm not aware of any such direction.

Senator PRATT: So if I were a minister and I said: 'Here are the CVs of Donna Petrovich and Belinda Pola. What opportunities might be suitable for them within the AAT or board positions?', is that something you would do or have you ever been asked to do anything like that?

Mr Moraitis: As Mr Anderson said, we cannot recall any such occasion.

Senator PRATT: It's common knowledge that a large number of ministerial staff have left the government in recent months. Is there a list of outgoing or former ministerial staff and/or their CVs that the department maintains in order to find them appointments? Has the Prime Minister or his office or any other person or organisation asked the department to find jobs for outgoing ministerial staff?

Mr Moraitis: Let me reiterate what I just said: nothing of that nature.

Senator PRATT: It's very good.

CHAIR: Senator Pratt, your time's up. We'll come back to you. You've actually had two lots of times. I have a couple of questions. On the same note, you mentioned CVs kept in the archive. How difficult would it be for me to get you to get CVs of appointments to the AAT and the various courts and other tribunals and bodies in the period from, let's say, pick at random, 2007-2013?
Mr Moraitis: I'll second Mr Anderson's point about how far back we go in terms of maintaining these documents, having access to them and our obligations but we can go back to the mid-seventies. The method to extract will be harder.

CHAIR: So you do have those.

Mr Moraitis: We can't guarantee that we do have those. We'd have to check.

CHAIR: I'm not particularly asking for them. I didn't quite hear what Senator Pratt asked you to provide, but whatever she asked you to provide in that area, could I repeat that?

Mr Moraitis: Senator Pratt was asking us whether we have access to CVs of more recent appointments—that is, in the last 12 months or less. Whether it goes back to the last ten years or beyond, that's something we have to take on notice.

CHAIR: Did she ask for them?

Mr Anderson: No, she didn't actually call for them; she just asked whether we could if we were to be asked to.

CHAIR: I'm asking: could I get the same information for the years 2007 to 2013 if I asked? And I'm not at this stage asking.

Mr Moraitis: Which information—any particular CVs? Obviously we've had hundreds of appointments during that period.

CHAIR: I did say the AAT and the courts.

Mr Moraitis: Even if the AAT, it's a very large number.

CHAIR: Yes, I appreciate that. I'm not asking for them at this stage but I'm asking that you make the inquiry if they are available, should I ask for it.

Mr Moraitis: As a matter of principle, we'd take that on notice.

Mr Anderson: I'd need to take that on notice. I can say that, as a matter of principle, if we still have them within our record-keeping system then we would be able in theory to provide them, but for both your question and Senator Pratt's questions there would be issues for the government as whether they wish to in fact provide the CVs of individuals or not. If we still hold them within our systems, then we would in theory be able to provide them.

CHAIR: My question really is the corollary of Senator Pratt's question. I'd like to extend Senator Pratt's question for the years 2007-13, nothing particular about those dates.

Senator PRATT: I didn't ask for particular CVs to be provided. You're welcome to.

CHAIR: Neither am I. I'm doing exactly what you're doing, Senator. We've been through this before. I don't want to more than passingly reference it, because we did go through it earlier today with the AAT. The appointments to the AAT and to the various courts and tribunals, there have been some minor changes like using a special protocol for AAT rather than using the Public Service thing, but by and large has the method of appointment changed, for as long as any of you can remember? That is, the government of the day, after making appropriate consultations, makes the appointments.

Mr Moraitis: Yes. It's ultimately a matter for the executive.

CHAIR: Okay. If I knew someone who I came across in my career, someone who I thought would make an excellent AAT member—I don't include the courts in this—how could I 'nominate' that person? Could I write to you, could I write to the minister, could I write to the Prime Minister, could I write to the Leader of the Opposition? How do you go about that?

Mr Anderson: There are a couple of ways. One way is you draw the person to the notice of the Attorney-General. Another way is you could draw the person to the attention of the president of the AAT or you could draw the person to the attention of the department, and we could then refer them to the attention of either the Attorney-General or the president.

CHAIR: So I could write to Mr Moraitis and say: 'Here's the CV of some person. Have a look at them. If you're looking for AAT members in the future, you might like to consider this guy or girl?'

Mr Moraitis: Yes. I recall at least once in the last few years when a member of the public from a distinguished background approached, asking this very question. I referred them to the president of the AAT or the AAT.
CHAIR: Could someone who’s not involved in the political system or Canberra or government or parliament—someone who thought that they had some skills that might be useful to Australia in the AAT role—could they nominate themselves? Could they write to you and say, ‘Hey, this is my background—you might like to consider me’?

Mr Moraitis: Yes.

CHAIR: But it’s not common, you say?

Mr Moraitis: It happens, not regularly, but people have asked—I won’t say nominate—about how one applies to be an AAT member, given their professional background. I have referred them to the AAT.

CHAIR: Do you recall that a few years ago there were some decisions from a couple of AAT members which, on the face of it, appeared quite outrageous. That was, if I remember very briefly, that an AAT member overruled the minister’s delegate’s decision to cancel the visa of someone who was in Australia, allegedly as a refugee, when there was evidence that that person had actually returned to their homeland for a wedding or a party or something and come back to Australia and yet was claiming refugee status on the basis that, should they go back home, they’d be executed or something. It was quite celebrated. There were three or four cases.

Mr Moraitis: There have been quite a few references to decisions taken by the AAT. I don’t want to speak for the AAT. They have spoken in the past about how they’ve approached matters. Suffice it to say that as a matter of law and fact, the AAT has to consider cases on the material available to them, including new material. In the scheme of thing they deal with thousands of cases. There will always be a small number of examples where there is a sense—

CHAIR: I wasn’t going to ask about the case.

Mr Moraitis: We don’t follow that sort of detail.

CHAIR: I was trying to identify the actual members of the AAT who had made those decisions. My question would have been, when and by whom were they appointed? But I don’t suppose I’ve given you enough.

Mr Moraitis: No, we’d refer that to the AAT, the registrar. I think she’s been asked in the past whether they have put decisions out into the public domain—

CHAIR: Yes, they have.

Mr Moraitis: by decision-makers. Then from that process you could decide who were appointed. But we don’t actually follow that process ourselves.

CHAIR: I’ve asked the questions previously and had the transcripts provided, which will give me the name. This was a few years ago. I’ll try and find them and put a question to you on notice about the name of that person. My question would be, when and by whom were they appointed? That will be a question on notice.

Mr Anderson: There is one caveat. If you can give us the names of the members, we can tell you when they were appointed and by whom if they were appointed to the AAT. If they were appointed to a predecessor, one of the tribunal that are merged, like the MRT or RRT, we might not have that information, because it would have been an appointment made outside this portfolio.

CHAIR: It would have been the MRT, I think.

Mr Anderson: The same would apply for the SSAT as well.

CHAIR: I know, because she was a former colleague, that Labor senator Linda Kirk was appointed to the AAT in 2017, fairly recently. I think she might have been a reappointment by Senator Brandis. Do you recall that particular appointment at all?

Mr Anderson: We have some memory of that.

CHAIR: As far as I’m aware, she’s a competent member of the AAT. My recollection is that she was reappointed by senator Brandis. Can I clarify that applicants are not disqualified simply because they have been a member of a political party or, in the case of Linda Kirk, an actually serving Labor senator in this parliament? That doesn’t in any way disqualify someone?

Senator Pratt: If you’re trying to get a job under a future Labor government—

CHAIR: If you’re the minister, Senator Pratt, maybe you’ll think favourably of me. But I assure you that in that unlikely event—both cases—the last thing I would want to do would be do that.

Mr Anderson: That’s not part of the criteria. It’s not a disqualifying factor either. It’s the same for judicial appointments. You will remember that Rob McClelland was a former attorney-general, and was appointed relatively recently as Deputy Chief Justice of the Family Court.
CHAIR: By Senator Brandis or Mr Porter?

Mr Anderson: By the current Attorney-General.

CHAIR: Mr Porter. I think the former—this was mentioned before—President of the AAT, the Hon. Duncan Kerr, a quite distinguished jurist—I wouldn't say the same about his political career, but quite a distinguished jurist—was either appointed or reappointed by Senator Brandis? Is that right?

Mr Anderson: I would have to check. I think he was actually appointed under a Labor government.

CHAIR: How outrageous! Fancy that! A former Labor member of the House of Representatives being appointed to a very senior position. As I recall, Duncan Kerr was a very distinguished jurist, so that reinforces the point that you just made, that being a member of a political party, being a Labor member of the lower house here, doesn't disqualify if they are competent and good people.

Mr Anderson: It doesn't disqualify.

Senator PRATT: Last year The Saturday Paper wrote:

The purging of experienced members at the Administrative Appeals Tribunal, and the abandonment of merit-based appointments, has created a backlog of 53,000 unresolved cases.

Are you aware of that article?

Mr Anderson: Not specifically, but there have been articles to that effect.

Senator PRATT: Did the article raise any particular concerns for the department?

Mr Anderson: I think you heard earlier today from Ms Leathem, the AAT registrar, talking about this. The backlog is being primarily driven by the very significant increase in the numbers of cases. She quoted the different categories of cases: business visas, student visas, that sort of thing, with increases in the workload of the hundreds of per cent. I think you really have to have regard to the number of applications coming. The number of applications coming into the AAT has risen very dramatically over the last few years.

Senator PRATT: I certainly note that. It was also noted that there is evidence to show that the process of training up new appointees also slows down the progress through case load. Did the article raise any concerns with the department? Were you asked about the contents of that article by the Prime Minister's office? Did you provide any advice to the PMO about that article?

Mr Anderson: Firstly I'll note that since 1 July 2015 there have been 153 substantive reappointments and 182 new substantive appointments. That's 153 existing members being reappointed. That's nearly half of the appointments made in the period since 1 July 2015. So I don't think it's actually correct to say that there's been a driving out—

Senator PRATT: That's 153 reappointments and how many new?

Mr Anderson: 182 new appointments and 153 reappointments. I don't think it's correct to say the existing membership is being driven out, when 153 have been reappointed in that period.

Senator PRATT: Do you know how many left in that time and weren't reappointed? Who sought reappointment and weren't given it?

Mr Anderson: I don't have that figure.

Senator PRATT: If I asked you to prepare the data, could you?

Mr Anderson: I don't believe we have the data to prepare that.

Senator PRATT: But clearly your remarks show that you are aware that there are people seeking reappointment who have not been predetermined as being unsuitable, but who nevertheless don't get reappointed,
and that those positions become part of the new appointments—for example, the 182 that were done last time? Is that correct?

**Mr Anderson:** We track the number of appointments that are made, and we track whether they are a new substantive or a reappointment. That's why I was able to give you that data.

**Senator PRATT:** Which is indeed very helpful. But you can't tell me, of those that have departed, how many were seeking reappointment?

**Mr Anderson:** No. As I said before, people can fall into a number of different categories, and I don't believe we keep the data of which category they fall into.

**Senator PRATT:** All you know is that they weren't reappointed. You don't know whether they left because they wanted to or because they fell off the list because the Attorney-General was trying to make room for the 182 new appointments.

**Mr Moraitis:** The point Mr Anderson was trying to make about those figures, the 153 and the 182, was just to re-emphasise the point that, given the level of continuity of the 153 or so, but also new blood coming into the organisation. Admittedly, there is a period of churn requiring people to be trained up, but in every organisation you have to do that.

**Senator PRATT:** It's less than 50 per cent retention.

**Mr Anderson:** The term can be up to seven years, so, it's not necessarily surprising that some people don't get reappointed after a five to 7-year term. Can I go to one other point you're making, the issue about how long it takes someone to become productive. It's not something that's limited to tribunals. It is the same with judicial appointments. No matter how good the government thinks someone might be, how well suited, these are very different roles from operating as a legal practitioner, for example, or operating in another type of role. Sometimes people can be appointed to the bench and it takes them a very long time to become suited. The National Judicial College of Australia actually runs judicial education programs to help newly appointed judges to become productive. I don't think you should necessarily seize upon—

**Senator PRATT:** I could take that statement purely at face value if you were able to tell me how many of the people who subsequently left were actually seeking reappointment? I think there's probably an element of truth in both instances. You have already said there are people who seek reappointment, who have been deemed suitable by the President, but nevertheless are not reappointed. That's a true statement, is it not?

**Mr Anderson:** As a matter of generality, yes.

**Senator PRATT:** BuzzFeed in October 2017 reported that more than a quarter—I don't know where they get their statistics—of full-time members of the AAT have Liberal Party links. Can the department confirm that this is correct? Has the department ever been contacted directly by Liberal Party organisations about AAT vacancies?

**Mr Moraitis:** Has the Liberal Party approached us for AAT appointments—is that the question?

**Senator PRATT:** Pretty much. I'm assuming that these—

**CHAIR:** Try and keep a straight face, please. These are ridiculous questions, with due respect.

**Senator PRATT:** I know. But they're not that ridiculous, because I'm quite certain that these conversations go on with the Attorney-General's office more directly.

**CHAIR:** You're embarrassing yourself, you're embarrassing the officials, and you're embarrassing other members of this committee.

**Mr Anderson:** The department doesn't.

**Senator PRATT:** No, and the department has made it very clear a number of times that these are not conversations they have, but—

**CHAIR:** So why do you keep asking?

**Senator PRATT:** the conversations would otherwise take place with the minister's office more directly. Thank you.

**CHAIR:** I'm conscious from my contacts that there is a member of the AAT called Anna Burke, who I believe is a very good member. Are you aware of when she was appointed? If I said to you my information is 2017, would that sound about right?

**Dr Smrdel:** We'd have to double check, but it sounds about right.
CHAIR: Could you do that? As I understand it, that's the same Anna Burke who was an ALP member of the House of Representatives and might even have been Speaker of the lower house or, if not speaker, a minister in a Labor—

Senator PRATT: She was speaker.

CHAIR: She was Labor Party Speaker. My understanding is she was appointed in 2017, and that would have been by Senator Brandis, who I know is a Liberal.

Senator PRATT: I've just got one question to follow up, if you don't mind, Chair, when you're done.

CHAIR: Is it about Anna Burke?

Senator PRATT: No, no. It's just what you've said about who is a good appointment, who might get reappointed and who might not have worked out quite as well, wants to continue, the president advises that they shouldn't continue but the minister says, 'No, they'd like to stay on, so they will.' Can the minister overrule the president on reappointments?

Mr Anderson: As Mr Moraitis said earlier, ultimately it's up to the executive who they appoint to positions, so it's a matter for the Attorney-General who they recommend to the Governor-General for appointment.

Senator PRATT: Do you know if the president has advised that somebody shouldn't be reappointed, for any number of reasons where the minister has nevertheless reappointed them?

Mr Anderson: I don't believe we'd know that.

Senator PRATT: You don't believe you'd know that? Okay.

CHAIR: Can I just confirm that conversations between the minister of whichever government and the President of the AAT at whatever time are more or less confidential discussions? They're not always committed to writing as minutes or anything?

Mr Moraitis: I think it's been said many times that the President of the AAT and the Attorney consult regularly about the AAT and it's personnel.

CHAIR: The questions by my dear friend and colleague, Senator Pratt, seem to suggest or are based on pure assumptions. I mean, no evidence has ever been produced by anyone except perhaps a disgruntled appointee who wasn't reappointed. Just because I, as an AAT member, would like to be reappointed, does that in any way mean that I have to be reappointed even though I have been shown to be completely hopeless and useless in my job?

Senator WATT: A rare moment of self-awareness!

CHAIR: Is the mere fact I want to be reappointed a criterion for why I should be reappointed?

Mr Moraitis: No, the criterion is basically that, at the end of someone's term, there is no obligation or suggestion that they should be reappointed. Having said that, someone who wishes to be reappointed obviously expresses that wish to the president, and they take it from there.

CHAIR: But, if the president, being a sensitive gentlemen, doesn't want to be offensive, says, 'No, your term's up,' 'We've got others,' or, 'It's time you had a rest,' it's a matter for the president and the Attorney of the day on whether members are seen to be doing their job or seen to be a bit lazy?

Mr Moraitis: That's correct.

CHAIR: That's their prerogative and that's the basis on which appointments are made as far as you're aware, acknowledging that the end result is that it is the government of the day that makes the appointment.

Senator PRATT: How many vacancies to the AAT are due to come up before the election?

Mr Anderson: As I indicated earlier, it's not a question of vacancies to the AAT. There's no set establishment as such in number of positions, because appointments can be made full time, part time or sessional. There's no number of vacancies that are going to come up in any particular time frame.

Senator PRATT: Are you aware of any intent to make new appointments before the middle of this year?

Mr Anderson: I think the best I can do is go back to what I said earlier today: there are 63 appointments that will expire in the 2019 calendar year.

Senator PRATT: That's fine. We did cover on it well before. Thank you, Chair. I can finish on the AAT.

CHAIR: Can I just that Senator Pratt, who believes that she will be in government next year, wants to appoint these people herself and doesn't want others to do it!

Senator PRATT: No, no. Labor has said we'd end political appointments to the AAT and reinstate an independent advisory panel.
CHAIR: I see. So why didn't they do that back in the Gillard-Rudd days?

Senator WATT: It's all about the future, Ian!

CHAIR: Oh, it's all about the future?

Senator WATT: Move on.

Senator PRATT: Maybe it's because Anna Burke, who's eminently qualified, needed a job. I don't know.

CHAIR: And I hope Anna Burke and Linda Kirk won't be tossed out because of their Labor Party connections, because I understand they both do a good job.

Dr Smrdel: Chair, just to follow up on your query in terms of when Ms Burke was appointed to the AAT, it was on 16 January 2017 for a period of seven years.

CHAIR: For a period of seven years—so that's the maximum period? Can you confirm that was by then Attorney-General Senator Brandis?

Dr Smrdel: Correct.

CHAIR: Well, I'll have to talk to Mr Brandis when I see him next about him making those political appointments of Linda Kirk and Anna Burke!

Senator PRATT: Ian Macdonald!

Senator WATT: He does know a bit about political appointments. He's in one now!

CHAIR: He certainly demonstrated that with Linda Kirk and Anna Burke. I might say in passing, repeating what I said before: I believe both those that I've named do very good jobs, as I'm sure that most of the recent appointments to the AAT do. The fact that they are being mentioned in this hearing is a response to some imputations made across the board. I've raised them to reject any of those imputations.

Senator WATT: Just a couple of quick things: obviously you're aware of the court case concerning the Registered Organisations Commission's raid on AWU offices, which is underway in the Federal Court at the moment.

CHAIR: Can I just interrupt there? As we have been told any number of times by witnesses qualified to do this, there was no raid. It was an execution of a legally obtained warrant issued by a magistrate.

Senator WATT: So we're back to interrupting every time I start talking.

CHAIR: No, no. We're just making sure that the questions are accurate, particularly when that point that I've just made has been made by competent witnesses at this hearing several times already today and yesterday.

Senator WATT: I refer to the current court case concerning the execution of a search warrant, which is claimed to be illegal, on the AWU offices, and that case is under way in the Federal Court. There are obviously two former members of Minister Cash's staff who have given evidence in that case to date. Are either of them receiving legal assistance from the department, either directly or funded by the department?

Mr Johnson: The process that is in place for legal assistance to be provided either to employees of Commonwealth agencies or persons employed under the MOP(S) Act is appendix E to the Legal Services Directions. The decision-maker for applications for legal assistance is not either the Attorney-General or the Attorney-General's Department as a matter of course. If the applicant is an employee of an agency, the decision-maker is the accountable authority of that agency. If the applicant is an MOP(S) Act employee, the decision-maker is the finance minister. Pursuant to appendix E, the Office of Legal Services Coordination in the Attorney-General's Department will be consulted by the relevant agency to ensure that all the appropriate rules and guidelines under the Legal Services Directions are understood by either the person making the decision or the people giving the advice to the people making the decision. So it's not for the department to give that assistance.

Senator WATT: So you're saying it's the decision of the Minister for Finance. Have any resources or funding of the Attorney-General's Department been provided to either of those individual former staff members?

Mr Johnson: If assistance is approved, that funding is not provided from the Attorney-General's Department.

Senator WATT: Where does that funding come from?

Mr Moraitis: Not from the Attorney-General's Department.

Mr Anderson: We're just trying to work out where MoPS Act funding actually comes from, but it's the finance portfolio—

CHAIR: Well, it's not for your department, so don't worry.
Senator WATT: Okay. And what about Minister Cash's own representation? Is that funded through your department?

Mr Moraitis: Yes. That's under the parliamentary process regulations? Yes, that's funded from our department—or is it the approval for the funding rests with our department?

Mr Anderson: I'm not sure, again, whether it's funded from this department, but the approval process for that does in fact involve this department.

Senator WATT: Because she's a minister?

Mr Anderson: Yes.

Senator WATT: That's the difference between a minister and staff?

Mr Anderson: Yes.

Senator WATT: So legal representation was approved for Minister Cash by your department?

Mr Moraitis: Yes. Legal assistance under the regulations was approved by the Attorney-General, and then legal costs associated were also certified by us.

Senator WATT: What's the current amount incurred in legal representation provided to Minister Cash in this matter?

Mr Anderson: To date, it's $288,812.

Senator WATT: So far, $288,000 has been paid for Minister Cash's legal representation—nearly $300,000?

Mr Anderson: That is correct.

Senator WATT: And that's as of what date?

Mr Johnson: That covers an amount of money for the 2017-18 financial year, as well as a number of invoices in the 2018-19 financial year. I don't have the precise date of when that's up to.

Senator WATT: You don't?

Mr Johnson: I don't, no, but that does include a number of invoices.

Senator WATT: And it carries into this financial year?

Mr Johnson: It does, yes.

Senator WATT: And is Minister Cash the only individual for whom you have incurred expenditure in the provision of legal assistance in this matter?

Mr Moraitis: We haven't incurred expenditure; we have certified legal assistance expenditure in the case of Senator Cash. And for others, we're not aware of having certified any other expenditure.

Senator WATT: So she's the only individual for whom your department has certified the provision of legal assistance?

Mr Moraitis: That's my understanding.

Mr Anderson: Are you referring to only that case? There are other ministers and former ministers who are also currently receiving—

Senator WATT: I'm really only focusing on this case.

Mr Moraitis: Talking about the—

CHAIR: I was going to ask you about Labor Senator Joe Ludwig, but Senator Watt only wants certain people—

Senator WATT: You can ask whatever questions you want.

CHAIR: I will.

Senator Reynolds: I think that was about $800,000, Senator Macdonald, from memory.

CHAIR: Well, I'll go to Senator Watt for a couple of minutes, until we break, but I'll ask those questions later. Perhaps I can just alert the department that I will be, so any information that's available would be useful.

Mr Moraitis: In the last financial year, expenditure approved under the regulations was about $1.1 million. So that gives you the global figure.

Senator WATT: Sure. So Minister Cash is the only person for this particular case—not Minister Keenan, for instance?

Mr Anderson: Minister Cash is currently the only minister approved in relation to this case.
Senator WATT: And you don't have any information about other individuals?
Mr Anderson: No, we don't.
Senator WATT: For instance, staff.
Mr Anderson: Ministerial staffers, I don't believe we do.
Senator WATT: Okay. You probably saw that there was a bit of a kerfuffle in the House of Reps last week, where the Attorney-General was ultimately forced to table legal advice from the Solicitor-General regarding the Home Affairs Legislation Amendment (Miscellaneous Measures) Bill. There was advice provided by the Solicitor-General on 7 February this year. Who instructed the Solicitor-General to provide that advice?
Mr Moraitis: My understanding is that the Attorney-General directly instructed the Solicitor-General.
Senator WATT: The Attorney directly instructed. And when were those instructions given to the Solicitor-General?
Mr Moraitis: I'd have to take that on notice, unless Mr Lewis could verify that?
Mr Lewis: We're not aware of the date on which the Attorney sought the advice.
Senator WATT: I'm not sure whether you've seen the documents that were tabled in the House of Representatives, but the Attorney-General wrote a letter to the Speaker, dated 10 February. Have you seen that letter?
Mr Lewis: Yes.
Senator WATT: And you're familiar with those paragraphs. But when you look at the advice from the Solicitor-General, which you've also seen?
Mr Lewis: Yes.
Senator WATT: The Solicitor-General writes that it is 'ultimately for the House of Representatives to decide whether it considers the Senate amendments to be consistent with section 53'. To cut a long story short, the Solicitor-General's opinion does no
t in fact confirm the views expressed in the Attorney-General's letter, does it?
Mr Lewis: I don't think it's appropriate for me to get into interpretation of a letter from the Attorney and advice from the Solicitor-General.
Senator WATT: On one hand you've got the Solicitor-General in his advice—
CHAIR: Please, they need to hear the sentences so I can ask the question. Later in the letter the Attorney-General says that the advice of the Solicitor-General confirms the views expressed in this letter. You saw that letter?
Mr Lewis: Yes.
Senator WATT: And you're familiar with those paragraphs. But when you look at the advice from the Solicitor-General, which you've also seen?
Mr Lewis: Yes.
Senator WATT: The Solicitor-General writes that it is 'ultimately for the House of Representatives to decide whether it considers the Senate amendments to be consistent with section 53'. To cut a long story short, the Solicitor-General's opinion does not in fact confirm the views expressed in the Attorney-General's letter, does it?
Mr Lewis: I don't think it's appropriate for me to get into interpretation of a letter from the Attorney and advice from the Solicitor-General.
Senator WATT: On one hand you've got the Solicitor-General in his advice—
CHAIR: Senator, I'm not sure if there's anything wrong with your hearing, but Mr Lewis has said it's not appropriate for him to comment on those things.
Mr Moraitis: Senator, I think it's fair to say the Attorney's letter, as you've alluded to several times, said in his view—I take that as giving—that's the first law officer's view of those provisions. The Solicitor-General's advice was, I think, annexed to that letter, so there was perhaps a little clarity about the positions—
Senator WATT: So did the department provide—
CHAIR: Wait for Mr Moraitis.
Mr Moraitis: and the Solicitor-General's position was also that it's not a justiciable issue in section 53. Those two things aren't inconsistent.
CHAIR: Sorry, Mr Moraitis, could you repeat that, because you were being interrupted.
Mr Moraitis: I was just trying to clarify a few things.
CHAIR: No, it's just that I couldn't hear you.
Mr Moraitis: We've obviously seen both the letter and the opinion once it's been tabled. It's clear to us that the Attorney wrote as qua-Attorney in his view, as first law officer, and the Solicitor-General wrote an opinion
which, I gather, was based on a request from the Attorney-General. I also imagine there were consultations between them. That's all we can say really.

**Senator WATT:** So the Solicitor-General provides an opinion that clearly states that in his view 'it is ultimately for the House of Representatives to decide whether it considers the Senate amendments to be consistent with section 53'. The Attorney-General says in his letter that—

**CHAIR:** It's his view. It's his view.

**Senator WATT:** the Solicitor-General's view confirms the Attorney's view that the bill contravenes paragraph 3 of section 53. They're actually quite different.

**Mr Moraitis:** I don't know; I'm not a constitutional expert. It's up to Mr Lewis on this. They're not incompatible, in the sense that section 53 is not justiciable, according to the SG—section 53, on the face of it, given the nature of the bill—and ultimately it was a matter for the House and the parliament to resolve that issue, as occurred.

**Senator WATT:** Did the department provide any advice to the Attorney-General that led to his view that the bill contravened section 53 of the Constitution.

**Mr Moraitis:** That would go to any advice we give, I think.

**CHAIR:** That might be an appropriate time to finish. Your time's finished, Senator Watt.

**Proceedings suspended from 18:03 to 19:07**

**CHAIR:** I call the committee back to order. We are dealing with cross-portfolio, general and corporate for the Attorney-General's Department. I welcome Minister Cash to the committee. We will begin with Senator Watt.

**Senator WATT:** Minister Cash, why didn't you provide a witness statement to the AFP in their investigation into the raid on AWU offices?

**CHAIR:** That's not relevant to this estimates, so you don't need to worry—

**Senator WATT:** It is. Minister, this is your opportunity. We took evidence from the AFP yesterday, the DPP today, that you refused to provide a witness statement.

**CHAIR:** Senator Watt, I have ruled the question out of order. How is it possibly related—

**Senator WATT:** That their prosecution fell over—

**CHAIR:** How does it possibly relate—

**Senator WATT:** because of your refusal to provide a statement.

**CHAIR:** How is it possibly related to the Attorney-General's Department?

**Senator WATT:** Well, you might recall—

**Senator Cash:** Senator Macdonald, obviously I'm the relevant minister tomorrow in a particular part of a portfolio, so I'm quite sure—

**Senator WATT:** Are you going to show up—

**Senator Cash:** that Senator Watt can ask me questions tomorrow—

**Senator WATT:** Are you going to show up tomorrow?

**Senator Cash:** I will be there for my portfolio, yes, where you can ask me questions.

**Senator WATT:** Why weren't you here today?

**CHAIR:** That is not a relevant question for this.

**Senator WATT:** Why weren't you here?

**Senator Cash:** Senator Watt, how long have you—

**CHAIR:** No, Minister. If this is going to turn into a circus we might as well adjourn the hearings now.

**Senator Cash:** Chair, Senator Watt was telling basically lies.

**CHAIR:** We are here to ask—

**Senator WATT:** I'm not lying. You are the minister in the Senate representing the Attorney-General.

**Senator Cash:** Exactly, Senator Watt.

**Senator WATT:** It says it on your sign, right there.

**Senator Cash:** I am not the Attorney-General. If you are not the relevant Senate minister you are able to share the responsibility.
Senator WATT: Especially when you're in trouble—

Senator Cash: This is well known on the Labor side and the Liberal side of politics.

Senator WATT: Especially when the AFP is in one day—

CHAIR: Senator Watt, if you have questions, can you ask them about the estimates for the Attorney-General's Department?

Senator WATT: Minister, before the break, we were told by the Attorney-General's Department, shockingly, that about $300,000 in taxpayers' funds has been approved for your legal representation, which makes this squarely relevant to questions now. So, again, I ask—

CHAIR: Is there any expenditure out of this department? I thought the evidence was that it wasn't expenditure out of this department?

Mr Moraitis: As I said in my answer before dinner, we certified expenditure on behalf of other agencies—I assume it was Finance or someone else.

Senator WATT: You are the certifying agency?

Mr Moraitis: Correct.

CHAIR: The expenditure doesn't come from this department?

Senator WATT: You're the certifying agency—

Mr Moraitis: For the parliamentary regulations, yes.

Senator WATT: And there is therefore expenditure incurred by this department in the process of certifying that expenditure. Correct?

Mr Moraitis: Theoretically, yes.

Senator WATT: So, that makes this highly relevant to the operations of the Attorney-General's Department. So, again, Minister, why didn't you just provide a witness statement to the AFP, as they requested on at least two occasions?

CHAIR: Sorry, that is not relevant to this—

Senator WATT: Why?

CHAIR: What the minister might or might not have done in another portfolio is of no relevance to this department. If you want to ask Mr Moraitis how much it cost the department for him to certify, that is a valid question.

Senator WATT: What's relevant to this department is that they incurred expenditure in certifying and approving the legal costs for Senator Cash, who finally has deigned to appear before estimates, and that makes questions relating to that—

CHAIR: Senator Watt, if you can't ask a question involving snide remarks and editorialising, please step aside and allow someone else who can ask a question to do it. We're not going to get very far tonight if you—

Senator Cash: Chair, I'm more than happy to—

CHAIR: Minister, the same applies to you: please don't interrupt me. If we're going to do this, we're not going to get very far. These are estimates for the Attorney-General's Department and expenditure there. What Senator Cash may or may not have done in another role is of no relevance to this committee.

Senator WATT: Mr Moraitis, it was $288,000 in expenditure that's been approved by your department to date?

Mr Moraitis: That is correct. That is the figure that Mr Anderson provided—

Senator WATT: To represent Senator Cash?

Mr Moraitis: They were figures for the provision of legal assistance to Minister Cash.

Senator WATT: Minister, how do you feel that taxpayers have had to pay $288,000 to—

CHAIR: Your feelings are not relevant to this committee and any senator who has spent even a couple of months here would know that is not a proper question.

Senator Cash: Senator Macdonald, I am—

CHAIR: We're not interested in your feelings, with respect, Minister, I am sorry.

Senator WATT: I know you haven't been here, but Senator Macdonald isn't actually interested in taking any questions about this. He's basically shut them down all day today, all day yesterday, and tonight.
CHAIR: Senator Watt, if you don't have a question of the department about its expenditure—

Senator WATT: I do—

CHAIR: I will—in fact, it was my turn and I erred in calling you, because the Labor Party had the questions just before we broke. It was my turn, but I erred in coming to you. If you can't ask a question, I will go to another senator, which will be me.

Senator WATT: Minister, what would you like to say to Australians to explain why they are paying $288,000 to defend you in legal proceedings relating to a leak of confidential information from your office?

Mr Moraitis: Mr Moraitis, can I check again: is the $288,000 spoken of coming out of your department? I know you've said it three times before, but Senator Watt seems incapable of understanding—

Senator WATT: I understand that, but Mr Moraitis has confirmed—

CHAIR: That he certified. There's been no money come out of this department—

Senator WATT: If you would just once—

Mr Moraitis: I confirm that for the process of certification the department does expend resources in certifying something. It could be minimal, but it is still a resource.

CHAIR: So, we—

Senator WATT: Senator Macdonald, is it my turn to ask questions or are you just going to ride roughshod, as you have done for last two days?

CHAIR: If you continue insulting people like that, we're just going to shut the whole thing down.

Senator WATT: I'm trying to ask Mr Moraitis and Senator Cash some questions.

CHAIR: Well, if you ask about the estimates. How much did it cost to certify, Mr Moraitis?

Senator WATT: You know very well that we can ask questions beyond the mere cost of something. You know very well that we can ask questions related to the activities that incur costs. That's what I'm seeking to do. The reason I'm doing it now is that Minister Cash didn't come here when the DPP were here, didn't come here when the AFP were here, so I'm asking now.

CHAIR: Senator Watt, you are out of order. If you don't have a question that's relevant, we will move on.

Senator WATT: I do, and if you would let me ask my questions I will ask them—

CHAIR: What is the question that is relevant to this department?

Senator WATT: Mr Moraitis, the $288,000 that your department has approved to date for Minister Cash—and it may well increase, correct?

Mr Moraitis: That's invoices to date, yes.

Senator WATT: So it may increase, and it may not even be the current total because there have been a few invoices approved so far? That money has been approved—

Mr Moraitis: That's the current total.

Senator WATT: What has that money actually paid for?

Mr Moraitis: I'd have to take on notice the specifics, unless Mr Johnson has the details. As I said, it's all forms of legal invoices.

Senator WONG: You don't have the details—

Senator PRATT: How many invoices?

Senator WONG: of at least what's been funded?

CHAIR: Do you get the invoices in this department, do you?

Mr Johnson: Yes, we do receive the invoices, and then we review them in consultation with the instructing agency to allow us to advise the—

CHAIR: So you do have a role in—

Mr Moraitis: In certifying the expenses sought.

CHAIR: But you also get the bills and check them—is that correct?

Mr Johnson: The function of the secretary under the PBR Regulations is to review the invoices and be able to certify that the amounts in them are reasonable, and then they'll certify them as such to allow them to be paid by the relevant agency. So we do receive the invoices and review them for that purpose to give the—
CHAIR: Well, if there are questions about the reasonableness of the bill, I guess that's in order.

Senator WATT: So the $288,000 to date includes barristers' fees and solicitors' fees—is that correct?

Mr Johnson: Generally speaking, yes. I don't have the detailed invoices with me, but those are the things that they would cover.

Senator WATT: How many barristers are currently representing Minister Cash in these proceedings?

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

Senator WATT: Minister Cash, you must know. You meet with these people, obviously, a lot if you've incurred $288,000.

Senator Cash: I've been discharged as a witness by way of the subpoena, so none are currently representing me.

Senator WATT: How many have represented you to date?

Senator Cash: I would need to take that on notice.

Senator WATT: How many have you met?

Senator Cash: One was actually representing me and then could no longer work on the case, so there was another one that was appointed.

Senator WATT: One senior counsel?

Senator Cash: I'd need to take that on notice.

Senator WATT: So you've had two barristers over the course of these proceedings?

Senator Cash: I would need to take it on notice.

Senator WATT: How many solicitors have you dealt with?

Senator Cash: Again, I'd need to take that on notice.

Senator WATT: Who are the solicitors representing you in this?

Senator Cash: It's a panel firm. I believe it's MinterEllison, but I will take it on notice to make sure I haven't misquoted them.

Senator WATT: Who were the barristers who represented you?

Senator Cash: Again, I'd need to take that on notice.

Senator WATT: You know who the barristers are that you met with. I know there might be more—

CHAIR: Senator Watt, whether you like the answer or not, you're not here to answer the question, challenge or debate. You're here to ask questions and you're given an answer. That's how the proceedings work.

Senator WATT: Minister Cash, you were in court on Friday, right?

Senator Cash: Yes. I've actually had a mental blank, and I do apologise to the barrister in question.

Senator WATT: A mental blank?

Senator Cash: I will take it on notice, and I'm sure my office can text me very shortly the name of the barrister.

Senator WATT: Did you have a mental blank on the night of the leak as well?

CHAIR: That's not—

Senator Cash: Chair, I am more than happy to respond to Senator Watt. Senator Watt, for 15 months you and the Labor Party, in particular your friend Senator Cameron, have pursued me because you have stated that I had knowledge that I had not disclosed to the Senate. I appeared in court on Friday, and everything that I had said to you in estimates, I said under oath. I had no knowledge of the raids prior to them occurring. Is Bill Shorten now prepared to go on oath and tell the Australian people—

Senator WATT: So this is the politically motivated bit, is it?

Senator Cash: whether or not the donations he made—

CHAIR: Senator Watt, please don't interrupt.

Senator Cash: the $100,000 to GetUp!, the $25,000 to his own campaign, were properly authorised? I ask that because I appeared in court and gave evidence under oath.

Senator WATT: You do realise that every time you and your colleagues swing this into Bill Shorten, it just demonstrates that this entire thing is politically motivated?
**Senator Cash:** I will fundamentally disagree with you—

**CHAIR:** And these questions are not politically motivated?

**Senator Cash:** because there are questions in relation to the AWU and the relevant secretary at the time, which happens to be Mr Bill Shorten, and whether or not they sought the appropriate authority for moneys that they expended. I do have the answer to your question now: Chris Horan QC and Ben Jellis.

**Senator WONG:** If I could just have one question, Chair, with your indulgence?

**CHAIR:** You have 37 seconds.

**Senator WONG:** You say, Senator Cash, that you had no knowledge of the raids. Can I ask then: why did you not do what the AFP asked and provide them with a witness statement?

**Senator Cash:** I did provide them with a statement.

**Senator WONG:** No. They've given evidence to this committee.

**Senator Cash:** Well, that is—

**Senator WONG:** I have read it very carefully. That is not correct.

**Senator Cash:** My evidence to the committee—

**CHAIR:** That is not correct, Senator Wong. You've only just come here, and you didn't hear the evidence.

**Senator WONG:** I have read the transcript.

**Senator Cash:** is that, Chair, I did provide a statement to the AFP.

**CHAIR:** Yes, you did.

**Senator WONG:** That's not what the commissioner said.

**Senator Cash:** And the AFP had no follow-up questions.

**Senator WONG:** Why won't you cooperate with the police?

**Senator Cash:** They asked for no further information.

**Senator WONG:** You were a cabinet minister—

**CHAIR:** Senator Wong, don't keep interrupting! If you can't control yourself, please leave, and we'll conduct this properly.

**Senator WONG:** There's only one person who can't control themselves.

**CHAIR:** You ask a question, and when the answer is given you continually interrupt, as you do in the chamber. You might get away with it in the chamber; you're not going to get away with it here. Now allow the minister to answer the question that you've asked her. Minister.

**Senator Cash:** I did provide a statement to the Australian Federal Police.

**Senator WONG:** Untrue.

**CHAIR:** Thank you.

**Senator WONG:** The invitation—

**CHAIR:** Your time has finished.

**Senator WONG:** Keep shutting it down. This will keep going.

**CHAIR:** Senator Wong, you can't help yourself, can you. Your CFMEU background comes through all the time.

**Senator WONG:** Here we go.

**CHAIR:** This is the proceedings we've adopted in this committee for the last several years and the last two days.

**Senator WATT:** He's right; he does shut everybody down.

**CHAIR:** Everybody has 10 minutes.

**Senator WONG:** That's true. It is your practice to shut everyone down; we know that.

**CHAIR:** We'll continue on that basis.

**Senator WONG:** This minister is refusing to cooperate with the Federal Police.

**CHAIR:** If you can't follow the rules and stop interjecting when the chairman is speaking then please leave and leave this proceeding to senators who understand the rules and who show some decency and common
courtesy. Now, the questions I want to ask, Mr Moraitis, are about former senator Joe Ludwig, a Labor Party minister. Is he currently involved in a court case that you've certified for?

Mr Moraitis: There have been a series of certifications. There was a case involving former senator Joseph Ludwig, former minister for agriculture. It's a case called Brett Cattle. There's been certification, in the previous financial year, regarding that matter and that former minister.

CHAIR: Is Mr Ludwig still being paid? I think he's acting as a barrister and getting paid in that capacity. Is that correct?

Mr Moraitis: That's not my understanding, but I could be corrected. My understanding is that it was settlement of legal assistance to a former minister in a litigation.

CHAIR: Sorry?

Mr Anderson: It's litigation against former Senator Ludwig in his capacity as the then Minister for Agriculture, Fisheries and Forestry.

CHAIR: Yes.

Mr Moraitis: I think it relates to meat exports.

CHAIR: Yes, that's correct. So what payments have been made to Mr Ludwig? Could I have the amounts, please. We've had them for—

Mr Moraitis: The figure in 2017-18 was $799,471.

CHAIR: That's almost $800,000 in the last financial year.

Mr Moraitis: That was the payment in that year. I assume there have been no further payments, but I will take that on notice.

CHAIR: You've been able to provide us with the information in relation to Senator Cash, so I'm sure you'd have up-to-date information on—

Mr Moraitis: My understanding is that's the up-to-date figure.

CHAIR: So it's not 2017-18?

Mr Moraitis: That was the period in which the payment was covered. I don't think there's been anything further since then. Sorry, Mr Johnson will correct me.

Ms Johnson: The amount that the secretary referred to was during the 2017-18 financial year.

CHAIR: Yes, we've established that, thanks.

Ms Johnson: In the 2016-17 financial year, as included in the statement tabled by the Attorney, there was also an amount of $396,544.59 that was certified.

CHAIR: Help me with my arithmetic, which is never very good. That's well over $1 million which has been paid for former Labor senator Joe Ludwig's legal costs. Is that right?

Mr Moraitis: It's about $1.195 million.

CHAIR: Is that still ongoing? Are you still being asked to make certifications in relation to former Minister Ludwig's legal expenses?

Mr Moraitis: We're not aware of anything further in the pipeline, Senator.

Mr Anderson: We think that matter has been heard, that the hearing has been completed, but we're not entirely sure.

CHAIR: That's not my information. I understand it's an ongoing matter. I don't think there's been any—

Mr Moraitis: As we've explained, we don't follow the matter. The relevant agency would then refer requests to us to certify legal expenditure on behalf of the former—in this case—minister of agriculture. So that would be the agency which has all the information regarding legal assistance for parliamentary entitlements.

CHAIR: And the class action taken against Mr Ludwig and the atrocious decisions he made at the time is not something that comes to the Attorney-General's Department?

Mr Moraitis: That's a civil matter. No, it doesn't come to us. We obviously, as the Attorney-General's Department, keep an eye on major significant litigation, and there have been occasions when Mr Johnson's branch would keep an eye on and discuss with the relevant agencies what are the big cases are that are happening across the country. I assume Brett Cattle is something that we've discussed in our deliberations with other agencies; that's obviously a big case involving a pile of government interests.
CHAIR: Is the almost $1.2 million which has gone to assist Mr Ludwig certified for his defence, or is it payments made to him as a practising counsel involving himself in this case?

Mr Moraitis: My understanding is the former: legal assistance to him in his capacity as a former minister for agriculture in the context of a civil case involving decisions made by government in previous years.

CHAIR: You'd have the invoices there. Can you tell us who his counsel are?

Mr Moraitis: No, we don't have any invoices with us here.

CHAIR: But you had invoices for Senator Cash's?

Mr Moraitis: No. We don't have them with us, no.

CHAIR: I thought Mr Johnson said that he—

Mr Moraitis: He took it on notice, Senator. We can take that on notice as well, if you like.

CHAIR: If you would. I'd like to know what the invoices are and who the counsel and solicitors are representing Mr Ludwig.

Mr Kingston: I just may be able to assist with that last question—not in terms of the department certifying the costs, but AGS has been the solicitor acting both for the Commonwealth, which is one defendant in the proceeding, and for Mr Ludwig, who's the other defendant. The senior counsel has been Neil Williams. I can't tell you from memory, I'm afraid, who the junior counsel is. The trial did conclude in December last year, and judgement is reserved.

CHAIR: And you'd be able to tell us, Mr Kingston: was Mr Ludwig acting as counsel for part of the time during the course of that case?

Mr Kingston: No, I don't think so.

CHAIR: You don't think so.

Mr Kingston: We can take it on notice, but I'm really 99 per cent positive that he was not.

CHAIR: Information given to me suggests to the contrary, so I'd be pleased if you'd take that on notice. Can I ask whether there were any legal actions taken following the pink batts fiasco, when a number of unfortunate young Australians were killed as a result of the fiasco with the installation of pink batts?

Mr Moraitis: I'll have to take that on notice. I do recall there was an action in the Victorian Supreme Court, but I'll have to take on notice whether there were any other matters that evolved from that process.

CHAIR: I'd be interested in whether legal assistance from this department, or from whoever pays it—I'm not quite sure who pays it. Did we work out who pays these things?

Mr Moraitis: In my understanding, and I can be corrected, I think the Department of Finance is the source of payments.

CHAIR: Do you know whether the Department of Finance paid money to lawyers representing government members in that court case?

Mr Moraitis: Which court case?

CHAIR: The pink batts, the deaths—the Supreme Court in Victoria that you spoke about.

Mr Moraitis: I'd have to leave that on notice, unless Mr Anderson can recall.

Mr Anderson: That case didn't involve current or former ministers as defendants; it was a case brought against the Commonwealth.

CHAIR: Were any moneys expended on giving advice to ministers or former ministers?

Mr Moraitis: There were no ministers involved, I think.

Mr Anderson: We'll have to take that on notice.

CHAIR: Sorry, Mr Moraitis, the pink batts didn't just appear. Some minister authorised their installation. If I recall, it was—

Mr Moraitis: There was a court case in the Victorian Supreme Court. My recollection was it involved the Commonwealth, and there might have been witnesses who were relevant public servants from that period. I cannot recall from that occasion in the Victorian Supreme Court whether there were any ministers or former ministers involved as witnesses or defendants. But I stand to be corrected.

CHAIR: If you could you take that on notice, it would be useful. You've given evidence about Senator Cash. Are there any other cases, to your current knowledge, where ministers or parliamentarians have received assistance from the government?
Mr Anderson: Every financial year there are invariably a number of such cases. Every year the Attorney tables a statement that itemises the expenditure in relation to each current or former minister. Those are all tabled in parliament.

CHAIR: Thank you for that. You have more staff than I do, so on notice can I ask if you can get me or refer me to the pages of the annual report or whatever it is where the statements are made? I assume this has been happening from time immemorial, or is it only a recent thing?

Mr Anderson: We can take on notice to provide copies of the statements for the last—


Mr Anderson: We can take that on notice.

Senator HUME: How often are those statements tabled? Is it once a year?

Mr Johnson: There are two different forms of documents that are tabled. Once a year the Attorney-General tables a schedule of the expenditure that has been certified for the previous financial year. The Attorney-General is also required to table, on a case-by-case basis, when he or she provides approval for assistance. An individual approval will be tabled, and that doesn't have an amount of dollars in it because it's approved prior to the expense being incurred. Then the expenditure is tabled, in a table.

Senator HUME: At what time of the year?

Mr Johnson: It's shortly after the end of the financial year.

CHAIR: So Mr Ludwig's $1.2 million will appear in that same table, I guess?

Mr Anderson: That will appear in two tables. There will be one for the 2016-17 financial year and one for 2017-18.

Senator WATT: Minister, before we broke there you argued that you did provide a statement to the AFP.

Senator Cash: I didn't argue that I provided a statement to the AFP. I said my evidence was that I provided a statement to the AFP.

Senator WATT: Are you aware that Ms Close, the Deputy Commissioner of the AFP, yesterday gave evidence that said that you did not provide a witness statement?

CHAIR: That's simply not correct.

Senator Cash: I haven't actually seen the evidence. If you would put the evidence to me that would assist.

Senator WATT: I am happy to put the evidence to you.

CHAIR: Can I ask that you be given a copy of Hansard.

Senator WATT: I'm happy to print that out for you. While that's happening—

CHAIR: Make sure you print the whole of the interchange with Deputy Commissioner Close.

Senator WATT: That only helps. I asked Ms Close:

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

Ms Close said:

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

I said:

And would you say that that amounts to a witness statement?

Ms Close said:

No. I would not classify it as a witness statement.

So, we've got the Deputy Commissioner of the AFP telling estimates that you did not provide a witness statement.

CHAIR: Minister, can I intervene and say I wouldn't answer that. I would take it on notice and read the transcript, because there was a quite lengthy interchange with Deputy Commissioner Close and the Director of Public Prosecutions.

Senator Cash: I'm happy to take it on notice so I can properly read the Hansard in context. That is Ms Close's evidence. My evidence is that I was asked to provide a voluntary statement. That was around five months after the execution of the warrants by the AFP on the AWU. I provided a voluntary statement. My best recollection of events, five months after they had occurred, was my comprehensive statements or answers provided in Senate estimates hearings. That was my statement to the AFP—to refer them to my comprehensive evidence Hansard, as five months after the event it was my best recollection of events. I also note that the AFP came back with no further request for information in relation to the statement I provided.
Senator WATT: By way of context, minister, I wanted to make really sure yesterday that I was understanding the AFP correctly. I then went on to say:

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

Ms Close said, 'That's correct.'

Senator Cash: Again, that is merely Ms Close's evidence.

CHAIR: It's Senator Watt's recollection—

Senator WATT: I'm reading word for word, actually.

Senator Cash: Again, that is merely Ms Close’s evidence.

CHAIR: It's Senator Watt's recollection—

Senator Cash: I will need to read Hansard in total to provide a comprehensive response. I can only provide you with my evidence. Approximately five months after the AFP had had executed the warrants on the premises of the AWU, the AFP asked if I wanted to provide a voluntary statement, I provided my best recollection, five months after the event. My best recollection was clearly set out in Hansard on, I believe, the night of the event and the following day, that I was questioned extensively in Senate estimates. That was provided to the AFP and I again confirm that at no stage after my statement was provided did the AFP request further information from me. They were able to do that, should they have had further requests for information. They did not do that.

Senator WATT: I'm glad you raised that. I then asked Ms Close:

But they—

being you and Minister Keenan—

were asked to do so?—

that is, provide a witness statement. Ms Close said:

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

That sounds like a police officer who is pretty keen to talk to you, rather than someone who didn't bother asking you for a police statement.

CHAIR: The minister has previously said she will review the Hansard and has rightly said she's not going to comment on your editorialising of what might have been said in a long period with Deputy Commissioner Close—or with the DPP today, I might say.

Senator WATT: I notice, Minister, that you say you've provided a statement to the AFP. That's what you're saying.

Senator Cash: That is correct.

Senator WATT: Is there a reason you're not describing it as a witness statement, which is what the AFP talked about? Is it because you know it's not a witness statement?

Senator Cash: You'd need to tell me exactly what—

Senator WATT: You're a lawyer, aren't you? You know what a witness statement is.

CHAIR: A far better lawyer than you, I might say.

Senator Cash: The AFP asked me to provide a voluntary statement, and that is exactly what I did. As I've said, Chair, the AFP could have come back to me and requested further information. They did not.

Senator WATT: Essentially, you're asking the Australian people to believe you rather than the Deputy Commissioner of the AFP?

Senator Cash: I can only give you my evidence, but to date, after being pursued for 15 months by you, in relation to what you have told the Australian people day after day, in Senate estimates, in question time after question time—you dedicated an entire question time to me last week—that I had prior knowledge to the raids. On Friday I appeared in court and gave evidence under oath that I did not. I can only give you my evidence.

Senator Cash: Can you think of one reason that the Australian people would believe you rather than the Deputy Commissioner of the AFP?

CHAIR: That's improper. That's not a proper question. Ignore that.

Senator WONG: I have three copies of the Hansard. I am happy to give the minister one.

CHAIR: I wouldn't expect the minister to read it while she's being subjected to this sort of cross-examination. I think the minister said she'll look at it and respond on notice.

Senator Cash: I probably need to read it in total, Chair.
**Senator WONG:** Chair, I think the issue is that you have accused Senator Watt of editorialising. He's reading directly from the _Hansard_. I propose to table this.

**CHAIR:** You can't table a _Hansard_ record of the committee we're involved in.

**Senator WONG:** I am seeking to do that.

**CHAIR:** It's there. It's on the record.

**Senator WONG:** Are you going to let me provide it to the minister or not?

**CHAIR:** You can provide it to the minister, but I'm sure the minister won't be able to read the 20 or 30 pages.

**Senator WONG:** I'm just sticking to one page.

**CHAIR:** It was more than one page. I was here. You weren't, Senator Wong.

**Senator WATT:** So was Minister Cash.

**CHAIR:** The whole proceedings went for about an hour, if I recall, when Commissioner Close was asked any number of questions. They won't be recorded on one page.

**Senator WONG:** Can I put a couple of questions to Senator Cash? I would like to provide the minister with this. Senator Watt has provided you with the answers that Deputy Commissioner Close provided estimates, that neither you nor Minister Keenan provided a witness statement to the AFP, and also that there was a subsequent follow-up with your office. Both of those propositions, that evidence from Deputy Commissioner Close from the Australian Federal Police, is inconsistent with the evidence you've given tonight and the answers you've previously given. Your only answer tonight is 'That's her evidence.' I am going to give you an opportunity to correct the record.

**Senator Cash:** I can only look at the whole transcript.

**CHAIR:** Minister, I'm warning you to look at the whole transcript.

**Senator Cash:** I can only give you my evidence. I will need to look at the whole transcript. I would also say that the request was on a voluntary basis. I voluntarily provided a statement which set out a comprehensive statement I had made over two days to Senate estimates.

**Senator WONG:** Is this the standard of cabinet ministers—that they don't cooperate with the AFP? Is that the standard under this government—that you don't cooperate with AFP?

**CHAIR:** That is a political comment. It's not a question.

**Senator Cash:** I reject your assertions, Senator Wong.

**Senator WONG:** That you didn't cooperate?

**CHAIR:** We have gone into this. I had my doubts whether it is appropriate for this committee, but it appears that others think it is. Minister, one would think that you are the criminal involved in some criminal activity. Could you just run through what led to these very pointed questions you're getting now, going right back to the beginning?

**Senator Cash:** In August 2017 _The Australian_ newspaper, a journalist by the name of Brad Norington, published an extensive article in relation to a donation that had been made by the then secretary of the AWU, which happened to be Mr Bill Shorten. The donation was $100,000, and it was made to GetUp! The article questioned whether or not Mr Shorten and the AWU had the appropriate authority—I think it was section 57 of the AWU rules—to actually make this donation to GetUp! Obviously, if you're going to expend union members' funds—or any registered organisation, not just an employee organisation—any registered organisation needs to have the appropriate authorisations.

**Senator HUME:** Minister, sorry, may I clarify? What year did that donation occur?

**Senator Cash:** I can't recall; I do apologise.

**Senator WATT:** More than 10 years ago.
Senator Cash: What was also in the article, though, Mr Norrington stated—and I am summarising here but you can google the article—that both the AWU and Mr Shorten had been asked to provide comment. They actually had it put to them: did you seek the appropriate authorisations to make the $100,000 donation to GetUp!? Mr Shorten referred, if I recall, the matter to the AWU, and the AWU was unable to answer that question—

CHAIR: They were appointed to the Federal Court?

Senator Cash: did you have the appropriate authorisations? A second donation was also raised later on that week and that was whether or not Mr Shorten, in his role as the national secretary of the AWU, had sought the appropriate, authorisations to provide his own campaign, his election campaign, for the seat he currently holds, with the sum of $25,000. Again, there was no positive response given to, 'Did you actually have the appropriate authorisations?' I referred both of those matters to the Registered Organisations Commission. Approximately eight weeks later, the Registered Organisations Commission made an announcement that it would be investigating the donations. My understanding is, and this is based on evidence that was received again at Senate estimates by the Registered Organisations Commission at the time, that they sought from a magistrate warrants, as they had received information that the AWU may be destroying evidence in relation to their investigations. A Victorian magistrate accepted this evidence and then issued the warrant. The warrants were obviously executed by the Australian Federal Police, and the Australian Federal Police seized a number of documents whilst executing the warrants. The AWU have then brought the proceedings. I was merely a subpoenaed witness, but the AWU brought the proceedings against the Registered Organisations Commission and the AFP—the AFP have subsequently been discharged as a party—to stop the AFP from handing over the documents to the Registered Organisations Commission and to quash the decision of the Registered Organisations Commission to investigate whether or not the donations made when Mr Bill Shorten was the AWU secretary were properly authorised. That is actually the basis of the case. It's actually between the AWU and now the Registered Organisations Commission.

CHAIR: So what's your part in this?

Senator Cash: I was just merely a subpoenaed witness by the AWU to give evidence in relation to the Registered Organisations Commission investigation.

CHAIR: And what did you have to do with the Registered Organisations Commission's investigation apart from initially—

Senator Cash: That was a decision for the Registered Organisations Commission, and I believe Mr Enright has previously given evidence in relation to that. But it is currently before the court, and I don't believe Mr Enright has given evidence yet.

CHAIR: I'm really not asking you about the current court case. But what was your involvement in relation to the Registered Organisations Commission? Do you as minister make a referral to them?

Senator Cash: No. The minister has no power of direction in relation to the Registered Organisations Commission. I have given evidence under oath that this was a matter of public interest. There were issues, obviously, in relation to whether or not laws had been complied with, so I referred the matters to the ROC, but it was their decision as to whether or not they did anything with it. They subsequently decided to launch an investigation but it is, again, currently before the courts, and I don't believe Mr Enright has given evidence yet.

CHAIR: No, and we've been cautious about what is being said. Most of the AFP witnesses and the DPP, as I recall, are being cautious about talking about that case, and I don't want to. But, just for the record, do you know the name of the judge hearing this case?

Senator Cash: I believe, because I was there on Friday, it is Justice Mordecai Bromberg.

CHAIR: Thank you for that, Minister. From the fervour of attacks on you—which, as a senator, I've seen for a long time—I might have thought your involvement was much greater.

Senator Cash: I was a subpoenaed witness by the AWU and I have now been discharged.

CHAIR: And your previous activity was simply referring it?

Senator Cash: That is correct. It was a decision for the ROC as to whether they took any action.

CHAIR: Mr Moraitis, if you have the information, or on notice, could you just tell me when Justice Bromberg was appointed to the Federal Court?

Mr Moraitis: I would have to take it on notice. I have no idea when the judge was appointed to the Federal Court.

CHAIR: No, but you could take that on notice—
Mr Moraitis: Yes, of course.
CHAIR: and get me the information as to when he was appointed?
Mr Moraitis: We can find that tonight, if you wish. It will be a matter of public record as to when judges are appointed.
CHAIR: All right, thank you.
Mr Anderson: We can take it on notice.
CHAIR: I'll Google it.
Mr Anderson: We should be able to come back with that information later in the evening.
CHAIR: I could probably do that myself, but we'll try. I've got a minute and 47 seconds left, do any of my colleagues—
Senator HUME: I just want to clarify, if I can, Chair, the date of the donation from the AWU—while now opposition leader Bill Shorten was the national secretary—to GetUp!. You can't clarify that, can you, Minister?
Senator Cash: I would have to take that on notice.
Senator HUME: I note the now Leader of the Opposition was elected in 2007 to the seat of Maribyrnong, so it must have been before that time.
Senator Cash: I've said I need to take it on notice.
Senator HUME: Was it while he was a member of the board of trustees of Australian Super, which was sometime between 1998 and 2007?
Senator Cash: Again, I would need to take it on notice.
Senator HUME: Was it while he was a member of the board of the Victorian Funds Management Corporation, which was between 2001 and 2004?
Senator Cash: Again, I would need to take it on notice.
Senator HUME: It wasn't the same year, 2010, when GetUp! received a large donation from the CFMEU?
Senator Cash: Again, I would need to take that on notice.
Senator HUME: Thank you, Chair.
Senator MOLAN: They do well, GetUp!, don't they?
CHAIR: As I call them, Get Shorten Up. Anyway, that's an aside that is inappropriate.
Mr Anderson: We can come back with the date of Justice Bromberg's appointment; it was 7 December 2009.
CHAIR: And this is the Federal Court, is it?
Mr Anderson: Yes, the Federal Court.
CHAIR: We were talking about appointments of judges and AAT members earlier. We've established they are all appointed by the government of the day and the Attorney-General of the day. Do you have records of who the Attorney was in 2009?
Mr Anderson: I would have to check precisely. There were some changes of Attorney-General during that government. I think it was Robert McClelland, but I'd have to confirm.
CHAIR: That's interesting. When appointments are made—this is really going back to previous questions we asked of the department earlier in relation to the AAT and court appointments—do we have on file the CV or the record of Judge Bromberg?
Mr Anderson: As I said earlier in relation to the AAT, the department generally prepares the cabinet documentation for judicial appointments, tribunal appointments and things like that. Subject to how long we're actually required under the Archives Act to retain the documents, in theory we would have a CV for Justice Bromberg in our files.
Senator WATT: How's your 10 minutes going, Chair?
CHAIR: Sorry?
Senator WATT: How's your 10 minutes going for government senators?
CHAIR: It's just about up, as I mentioned 30 seconds ago. On notice, could you perhaps get me that?
Senator McKIM: It's actually finished, by your clock, Chair.
Senator WONG: It's a very long 30 seconds!
Mr Anderson: We'll take that on notice.

CHAIR: Senator McKim, not that I can expect you ever to be fair, but in fairness, you'll know that I've allowed every senator their 10 minutes and then a couple of minutes—

Senator McKIM: A point of order, Chair.

CHAIR: subsequent to run down on the questions and to make sure that line of questions is finished—

Senator McKIM: Senator McKim! Please don't interrupt when I'm speaking! When I'm finished, if you have a point of order I'll take it, but that has been my practice: to allow a couple of minutes to finish that line of questioning or to get the answers. Now, you have a point of order?

Senator McKIM: Yes, the point of order is that the reason I was assisting Senator Watt was that his question was, 'How's your 10 minutes going?' and you said, 'Just about up,' when, in fact, it had already expired.

CHAIR: Okay, thank you Senator McKim. You're so helpful, and helpful to the ALP—as you always are. Senator Watt, your question.

Senator WATT: Minister, just to recap: you say that you provided a statement to the AFP. The Deputy Commissioner of the AFP said very clearly in estimates that she would not classify that as a witness statement. Who's telling the truth? Is it you or the Deputy Commissioner of the Australian Federal Police?

CHAIR: You don't have to answer that, Senator Cash.

Senator WATT: Because they are clearly different answers aren't they?

CHAIR: You don't have to answer that.

Senator WATT: Why not?

CHAIR: Well, you're asking the minister either to call herself a liar or to call a uniformed officer of the Federal Police a liar—

Senator WATT: Well, one of them is.

CHAIR: And, in either case, they are not appropriate questions for a Senate estimates dealing with the 2018-19 expenditure in the—

Senator WATT: I've already justified why these questions are relevant—

Senator WONG: But Senator Hume's questions were—

Senator WATT: We've had questions about GetUp! donations, membership of super boards and—

CHAIR: Well, perhaps you should have taken a point of order.

Senator WATT: No, we respected the fact that we were talking about this topic, and I'd ask that you do the same.

CHAIR: Well, to ask—

Senator WONG: Can we just ask the question?

CHAIR: whether a police officer is lying is not an appropriate question for a Minister of the Crown.

Senator WONG: Perhaps we could do it this way, Chair? Minister, I've invited you to correct the record. You've declined to do that. But the public—

Senator Cash: No, Senator Wong, that assertion—

Senator WONG: And you don't believe—

Senator Cash: that you have put—

Senator WONG: I've invited you—

Senator Cash: I have given my evidence—

Senator WONG: Yes, okay—

Senator Cash: I can only give my evidence.

Senator WONG: Okay. The Australian public, given two inconsistent pieces of evidence on this issue—one from the Deputy Commissioner of the AFP and one from a cabinet minister—which are they to believe?

CHAIR: The premise of the question is wrong. That is not what Deputy Commissioner Close said. If you read—

Senator WONG: I would have thought you would have—
CHAIR: the several pages—the many pages—

Senator WONG: I have—

CHAIR: of the transcript, you'll see that is not accurate.

Senator WONG: which is why we covered it in PM&C estimates yesterday. But, Minister Cash, surely you would like to take the opportunity, as a cabinet minister and in accordance with the principles of ministerial accountability to the parliament—

CHAIR: Oh, ask the question!

Senator WONG: I am asking the question.

CHAIR: Well, don't lecture about principles! You're the last to do it.

Senator WONG: Surely, you would want to take the opportunity to explain to the Australian people and to the public how it is that your evidence is different to, and inconsistent with, the Deputy Commissioner of the Australian Federal Police—

CHAIR: And it is not.

Senator Cash: Again, Chair, I can only give my evidence. I was asked to provide a voluntary statement; I provided a voluntary statement. It was five months after the execution of the warrants that the AFP asked for this information. My very best recollection of the events was my Hansard evidence during the period of time.

Again, I confirm, Chair, that at no stage after the statement was provided did the AFP request further information. They could have if they wanted to.

Senator WATT: Minister, it seems to me that this whole thing could be resolved if you just gave the AFP a witness statement of the kind they were looking for.

CHAIR: Do you have a question?

Senator WATT: Why don't you just do that?

Senator Cash: Again, my evidence is that I did. But, Chair, I actually would dispute what Senator Watt has said. This all could have been resolved when Brad Norington went to Bill Shorten and the AWU in August 2017—

CHAIR: Yes.

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CHAIR: Yes.
Senator Cash: Were the donations authorised or were they not? I went under oath and I gave evidence. I invite Mr Shorten to, and the AWU could subpoena him very easily. They subpoenaed me. I responded to the subpoena. They could subpoena Mr Shorten, put him in the stand and give him the opportunity to say to the Australian people, 'Yes, I did have the appropriate authorisations,' or 'No, I did not.'

Senator WATT: Mr Moraitis, the evidence you've given us is that, to date, taxpayers have incurred $288,000 representing Minister Cash. That's in a situation where she, according to the Federal Police, has refused to give a witness statement. How much would taxpayers have been up for if she'd actually given a witness statement?

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

Senator WATT: That's significantly more, isn't it?

Mr Moraitis: I don't know. I can't hypothesise about that scenario.

Senator WATT: That's why I was trying to establish what on Earth her lawyers have done to rack up $288,000 when so far all we've know of is that she's appeared in court for one day and refused to give a witness statement. How do you incur $288,000 doing that?

CHAIR: You should ask Joe Ludwig's lawyers.

Mr Moraitis: I'd have to take on notice what the nature of the invoices were and the type of legal assistance provided.

Senator WATT: How many hours have been billed?

Mr Moraitis: It was over two financial years, if I recall correctly.

Senator WATT: Her lawyers, over two financial years, have been representing her to appear in court for one day and to refuse to provide a witness statement for the AFP. That's taken two years.

Mr Moraitis: No, this starts in the previous financial year, in May 2018.

Mr Anderson: I don't believe there's any connection between the legal costs and the question of a statement to the AFP. The legal costs were all in relation to responding to a subpoena to produce documents issued in the AWU proceedings and a subpoena to appear.

Senator PRATT: But there's a case the CDP can't prosecute because they don't have enough witness statements. This is not the only case that we're referring to.

Senator WATT: I'll come to that. Minister, let's leave aside whether you gave a witness statement or not for a moment. The other thing that has emerged from the evidence of the AFP and the DPP over the last two days is that they have both said that the reason they were unable to prosecute anyone over this leak of confidential information was because of a lack of evidence, meaning the refusal of a number of people, including yourself, to provide witness statements.

Senator MOLAN: Or the lack of evidence—the evidence may not have existed.

Senator WATT: Senator Molan, unlike Senator Cash, you've been here for the last two days with me and you know very well that both the AFP and the DPP have repeatedly said that they were unable to prosecute because of a lack of evidence, which meant—and they went on to say—the refusal of eight witnesses, including Minister Cash, to provide a witness statement.

CHAIR: That is simply incorrect.

Senator WATT: Okay. Here's the Hansard from the DPP today. Ms Pavleka from the DPP was here. I summarised her evidence in this way—

CHAIR: What's the question?

Senator WATT: I will ask my question, but Senator Cash needs to hear the transcript.

CHAIR: It's not the whole transcript. That's the point I'm trying to make.

Senator WATT: This was what I said to the DPP:

Right, so your conclusion was, firstly, that there was prima facie evidence that a crime had been committed; secondly, that it was in the public interest to prosecute, but the only reason that there was not prosecution was that there were no reasonable prospects of conviction; and, thirdly, an absence of evidence, an absence of witness statements, was a factor in deciding there was no reasonable prospect of conviction?

Ms Pavleka said, 'That's correct.' So, Minister, again, what do you say to the Australian people to explain that your refusal to provide a witness statement has prevented the DPP from launching a prosecution?

Senator Cash: You make a number of assertions in relation to the statement that you have just made. I don't believe my name was read out in what you said.
Senator WATT: We had done it before that, don't worry.

Senator Cash: I did provide a statement to the Australian Federal Police. I also have given evidence under oath. The question was knowledge of the raids, under oath, as I have stated for the last 15 months, despite you pursuing me consistently in order to distract from the question that actually needs to be answered: did Mr Shorten, when he was the relevant AWU secretary, get the appropriate authorities for the expenditure of his members' monies? I gave evidence that I had no knowledge of the raids.

Senator WONG: But it's okay for a cabinet minister not to cooperate with the AFP? That's fine, is it—that's the standard?

Senator Cash: Again, I reject the premise of the statement that you have made.

Senator PRATT: Why didn't you provide a witness statement?

Senator Cash: I can only give my evidence, Chair.

CHAIR: You have provided the statement.

Senator Cash: I think I've been very, very clear that, in the event that the AFP were not satisfied with the statement they provided, they could have come back and asked for further information.

Senator WATT: I'll let anyone who's interested read the transcript, and they can make their own mind up about whether the AFP thought that they had what they needed. The last point I wanted to ask questions on here—

CHAIR: No, your two minutes have run down. It was just to finish that line of questioning. You're well over the ten minutes.

Senator WATT: We'll come back to you refusing to cooperate with police. That's fine by us.

Senator WONG: Great powers!

CHAIR: Mr Kingston, you're the Australian Government Solicitor, obviously. Are you a barrister?

Mr Kingston: I'm a solicitor.

CHAIR: A solicitor—what's your expertise? Are you a criminal solicitor, a commercial solicitor?

Mr Kingston: I have more of a commercial, company law background.

CHAIR: We got some very odd evidence from Commissioner Close yesterday about statements. There seemed to be some difference between witness statements and other statements and communications directly put in answer to a request and signed by the relevant person. Can you perhaps elaborate on the difference between a statement and a voluntary witness statement? Can you perhaps help us? I know my colleague Senator Hume yesterday asked Commissioner Close for these but, with due respect to the commissioner, I'm still trying to unravel what her differences were.

Mr Kingston: I doubt I can be of too much assistance because, if it's partly in the context of what Deputy Commissioner Close said yesterday, I'd want to be, with respect, a lot better informed about what she had to say. In fact, I'm completely uninformed, apart from hearing the conversation recently. I'd want to consider that. I suspect a lot of it might turn on the context in which people are talking about it, and it might also turn on the context of a possible criminal prosecution—which is not my area of expertise—where the way the AFP use those terms and the way they're used in criminal proceedings may have different meanings. So I'd really be reluctant to enter into an area of controversy where I know nothing about the facts.

CHAIR: You don't have any colleagues present in the room who have any knowledge of criminal—

Mr Kingston: No.

CHAIR: You heard some of the goings-on tonight on this issue. I'd put this as a hypothetical, only it's not a hypothetical: you've heard the evidence given here. The police were investigating not a crime of whether you paid $100,000 illegally, whether you had authority to pay $100,000 or whether you'd personally gone and interfered with the police raid but whether some members of your staff might have ticked off the media on the execution of a warrant. That's the issue. You've heard Senator Cash was asked by the Federal Police to make a statement, and Senator Cash has indicated she did make a statement. That's been, I might say, established by other evidence we've had yesterday and today. In that context—and bearing in mind there are no criminal charges being investigated or suggested or alleged against Senator Cash; she's simply been asked to provide a statement about
an alleged leak of a police execution of a warrant—the fact that a written statement was provided by Senator Cash, and the fact the Federal Police asked for no other statements, didn't return to Senator Cash—

Senator HUME: And it was voluntary.

CHAIR: It was a voluntary statement. In that context, is there a difference between a witness statement, a voluntary statement, a statement, a letter—

Senator HUME: A sworn statement.

CHAIR: A sworn statement? As a lawyer, albeit you say your expertise is in corporate law and corporate crime, a statement is a statement. If it's made by me it can be held against me. Is that your understanding of the law?

Mr Kingston: To be honest, I doubt I can do more than repeat in some form what I said in response to your previous question.

CHAIR: Mr Kingston, I'd appreciate it if you'd take it on notice, and perhaps even within your office there are people who understand this. You might have a look at the rather—let me put it politely—interesting evidence that Commissioner Close gave about a witness statement as opposed to some other form of statement, as opposed to a letter, as opposed to a voluntary statement, because a lot of the accusations seem to be that in this instance it wasn't a witness statement. In my experience in law, which is pretty ancient by now, a statement is a statement. Whether you call it a witness statement or you sign it in a certain it in a certain way doesn't seem to be relevant. I'd ask if you could perhaps look at I think it was Senator Hume's question to Commissioner Close on what a statement is and have a look at Commissioner Close's response and let me know: when is a statement not a statement?

Mr Kingston: I'll do my best.

CHAIR: Thank you.

Senator WATT: Minister, the other thing of concern that emerged in the court evidence last week was the admission by your former senior media adviser that he had deleted text messages between him and an adviser in Minister Keenan's office relating to them jointly leaking this information. Are you now aware of that evidence?

Senator Cash: Senator Watt, I haven't actually seen the evidence from last week. I was a subpoenaed witness, so I was unable to, and I haven't received transcripts from the court yet.

Senator WATT: I know that you said that you couldn't see the evidence before you gave evidence, but having now given evidence, you must be aware of the media reports that—

CHAIR: The minister has said she hadn't seen it, Senator Watt.

Senator WATT: You said you hadn't seen transcripts.

Senator Cash: I've only seen media reports, and I'm not prepared to comment on media reports. I would prefer to see a full transcript of the evidence.

Senator WATT: Have you seen media reports where your former senior media adviser admitted deleting text messages between him and a media adviser in Minister Keenan's office?

Senator Cash: Again, I would need to have to look at the media reports I've seen, because I literally just saw headlines. I'm happy to take it on notice for you.

Senator WATT: Are you aware that in the evidence from the AFP yesterday they said that their investigation had uncovered indications that there had been attempts by some people to destroy evidence relating to this case?

Senator Cash: I'm not aware of that, no.

Senator WATT: Do you condone that kind of behaviour?

Senator Cash: Again, I'm not aware of what you're referring to.

CHAIR: That's not a question for this estimates.

Senator WATT: As a minister in this government, do you condone your staff deleting text messages relating to leaking police information?

CHAIR: That is not a question for this estimates committee—

Senator WATT: Why not?

CHAIR: into the expenditure for 2018-19.

Senator WONG: Surely she would want the opportunity to say that she didn't?

CHAIR: I'm sorry. I'm ruling the question out of order.
Senator WATT: So you don't want to say that that's bad behaviour?
CHAIR: I've ruled the question out of order.
Senator WONG: She can answer it. You can still answer it.
Senator WATT: Is that the kind of behaviour that you expected in your office?
Senator MOLAN: We could have clarified this yesterday, couldn't we, with the AFP?
Senator WATT: We could have if Minister Cash had come; that would have been quite helpful.
Senator MOLAN: Just by asking the AFP to clarify the statement—
Senator WATT: We did, and they were very clear yesterday that they had uncovered evidence of destruction of evidence.
Senator WONG: Can I ask—
CHAIR: This isn't a debate. Can we have some questions of the department of the Attorney-General on the expenditure for 2018-19?
Senator WONG: Just on one issue, I just want to confirm, Minister, that you had no knowledge until this week of the destruction of evidence by coalition staff members?
Senator Cash: I don't quite understand your question. In relation to what Senator Watt has just said, or are you saying something else to me?
Senator WONG: In relation to what Senator Watt has disclosed, and in relation to the issue that you saw media reports on: evidence was destroyed—in this case, the deletion of text messages. I want to confirm that you had no knowledge of that prior to this matter becoming public via the court hearing?
Senator Cash: I had no knowledge of it.
Senator WATT: You previously told estimates—
Senator Cash: Can I just clarify that: to the extent that what I've seen reported is true, Senator Wong. I have not seen the transcripts of the hearing, but, no.
Senator WONG: So your senior media adviser, your chief of staff or no other staff member disclosed to you that they were deleting text messages associated with this matter?
Senator Cash: No, they did not.
Senator WATT: You previously told estimates that, when your senior media adviser resigned on the night that this was all revealed, you had asked your then chief of staff to secure the senior media adviser's phone and any other equipment? Do you recall saying that?
Senator Cash: To the best of my recollection—Senator Watt, it was 15 months ago. I would need to go and review Hansard as to exactly the question that was asked and the response that was given.
Senator WATT: Now that we know that your former media advisor, by his own admission, deleted text messages, does that mean that your request to your chief of staff was not fulfilled?
CHAIR: We don't know that. I'm not sure if the minister knows that. I think the minister said—
Senator WATT: I'm asking you. You know. You were there. You gave the request.
CHAIR: I think the minister said that she doesn't know either. Senator Watt, you might know or think you know, but I guess that's for the minister to answer.
Senator WATT: It is.
CHAIR: But it seems an improper question.
Senator Cash: Again, Chair, I can only comment on media reports. I have not seen a transcript of the evidence, and, a little bit like the Solicitor-General in his response to you, which was very eloquent: without having the benefit of the transcript of the actual evidence given under oath, I'm not providing an informed answer.
Senator WATT: The other thing that the AFP said yesterday was that, now that new evidence has come to light about this leak in the Federal Court proceedings, they would consider reopening this investigation. They said they always retain the option of reopening an investigation. Will you provide a witness statement in any reopening of this investigation?
Senator Cash: Senator Watt, again, I have already provided a voluntary statement, but I have also appeared—
Senator PRATT: That's not the same as voluntarily providing a witness statement.
CHAIR: Senator Pratt, don't interrupt, but you're wrong.
Senator Cash: from 9.30 am until 4.30 pm in the Federal Court, under oath, on Friday, where the AWU’s barrister asked me questions and then cross-examined me on all of these events.

Senator WATT: With respect, that's not answering my question.

Senator Cash: I don't think you'll get better evidence than what I provided on Friday under oath in the Federal Court.

Senator WATT: With respect, that's not answering my question. My question—

Senator Cash: I think I did answer the question, Chair. I said I had already provided a statement.

Senator WATT: So does that mean that you won't provide a witness statement in any reopening of this investigation?

Senator Cash: Senator Watt, you are now asking a hypothetical question.

Senator PRATT: It's not hypothetical. He's asking you: will you provide a witness statement?

CHAIR: Senator Pratt, thanks for your intervention, but the question—and I should have ruled it out of order—is hypothetical. 'If this happens, are you going to do this, that or the other?' It's hypothetical, and we don't allow hypothetical questions, and for a very good reason.

Senator WATT: Minister, where will you be accountable for this? In parliament you have claimed privilege or immunity on at least 60 occasions—we've counted them. In court last week on several occasions you claimed privilege.

CHAIR: Senator, what's your question?

Senator WATT: You don't provide a witness statement to police.

CHAIR: What is your question?

Senator WATT: Where are you accountable? Have people just got to wait till the ballot box?

CHAIR: Okay. Well, there's the question; let's have the answer.

Senator WATT: Where are you accountable?

Senator Cash: Chair, I have been accountable, unlike Mr Shorten, every single step of the way.

Senator WONG: That is simply untrue.

Senator WATT: Do you mean when you claimed privilege and immunity and didn't provide a witness statement?

Senator Cash: I have provided answers in senate estimates.

Senator WONG: It's simply untrue. This is a cabinet minister refusing to cooperate with the Australian Federal Police. It's unprecedented.

Senator Cash: I have provided answers in question time, and despite the Australian Labor Party pursuing me—

CHAIR: Excuse me. Senator Watt, if you can't control your inbuilt propensity to interject constantly, would you please leave the room. The minister is entitled to answer the question, which she's doing. You clearly don't like the answer, because it doesn't suit your political purposes. But could you please be quiet, observe the rules of the Senate, show some common decency and courtesy, and allow the witness to answer the question that has been asked by your colleague.

Senator WATT: I'll certainly follow your lead, Chair!

Senator Cash: Despite the Australian Labor Party pursuing me now for 15 months and saying, often in public forums, that I had prior knowledge of the raids, or should I say the execution of the warrants—

CHAIR: Yes. Please don't use 'raids', because both the police and the DPP have—

Senator Cash: —by the Australian Federal Police on the AWU to seek documents that they thought were being destroyed, or that the magistrate had given the warrant in relation to, I have given evidence, Chair, under oath on Friday that I did not know of the raids. I have responded to all questions put to me by the AWU on Friday, under oath. I have been accountable, unlike Mr Shorten, as I said, who still has very serious questions to answer in relation to donations of $100,000 to GetUp! and $25,000 to his own campaign.

Senator MOLAN: He gave $25,000 to himself— incredible!
CHAIR: Any more questions?

Senator WONG: Yes, I do. I have more questions.

CHAIR: Or shall we move on?

Senator WONG: I have some questions, Chair. I think the opposition is still in its period of questioning. Minister, we have a situation where what appears to have been a criminal act—the leaking of information about a police raid—has been undertaken by at least two Coalition staffers, with the knowledge of a third.

CHAIR: What is your question?

Senator WONG: I'm going to get to the question. We have two cabinet ministers who, on the AFP's evidence, have not provided witness statements, and we have the Director of Public Prosecutions—

CHAIR: Senator—

Senator WONG: Let me finish please, Chair. I'm putting things to this minister. We have the Director of Public Prosecutions saying that there was a prima facie case, there was public interest, but a prosecution could not proceed because of lack of evidence. Is this really the standard of behaviour that cabinet ministers in the Australian democracy should demonstrate? Is this really at the standard of behaviour, that you have staff leaking police raids to the media—

CHAIR: The question is out of order, and it's not a question.

Senator WONG: So you don't want to answer—

CHAIR: And it's based on the wrong premises. The premises that I have heard here—

Senator WONG: whether or not this is the standard of behaviour that you as a cabinet minister demonstrate to the Australian people and to the parliament?

CHAIR: Senator Wong, the question is out of order.

Senator WONG: I'm not surprised, Senator—

CHAIR: I'm not interested in whether you're surprised or not.

Senator WONG: you want to shut this down.

CHAIR: The question is out of order.

Senator WONG: This is a minister—

CHAIR: Do you have any other questions for the department?

Senator WONG: who is behaving in a way that is utterly inconsistent—

CHAIR: Do you have any questions for the department?

Senator WONG: with our democracy and is refusing to answer questions—

Senator Cash: Chair—

Senator WONG: not cooperating with the Australian DPP.

CHAIR: Do you have any questions—

Senator Cash: I have heard this from Senator Wong, Senator Watt and Senator Cameron now on numerous occasions for the last 15 months. Senator Wong has continually said I had prior knowledge of the raids. I'm waiting now for an apology from Senator Wong, Senator Watt and Senator Cameron, because even the interjections they were making last week in the Senate have now all proven to be wrong.

Senator WONG: You should apologise to the Australian people.

Senator Cash: The only person now—

Senator WONG: you should apologise to the Australian people.

CHAIR: Please, Senator Wong, don't interrupt.

Senator Cash: who has questions to answer is—

Senator WONG: That's who you should apologise to—

Senator Cash: the person who wants to be—

Senator WONG: the people who elected you.

Senator Cash: elected Prime Minister—

CHAIR: Senator Wong, please do not—

Senator Cash: of this country.
CHAIR: Hold it, Minister. Senator Wong, I've asked you time and time again to observe the rules of the Senate and common decency and manners and not interrupt a witness when they are answering the questions that your colleague or you have asked. You may not like the answers—you don't, because they don't suit your political purpose—but at least show the courtesy of allowing the witness to respond. Minister.

Senator Cash: As I was saying, for 15 months Senator Wong and others have accused me of having prior knowledge of the raids and misleading the parliament. Senator Wong, under oath on Friday, I gave evidence I did not. Are you now going to apologise to me for the last 15 months of allegations you have been putting to me? The only person who now has questions to answer is Mr Shorten—

Senator PRATT: Perhaps if you gave a witness statement we could get to the bottom of this matter—

Senator Cash: He wants to be in charge of the Australian people's money—

Senator PRATT: because the CDPP could proceed—

CHAIR: Senator Pratt—

Senator Cash: and yet—

Senator PRATT: with a prosecution.

CHAIR: Senator Pratt! Excuse me, I hate to interrupt you, Minister. But, Senator Pratt, you're deputy chair of this committee. I expect better behaviour from you than interrupting a witness, particularly in making interjections, which are clearly inaccurate and wrong, and reflect on you. Senator Cash, would you like to finish?

Senator Cash: As I was stating, Mr Shorten wants to be the Australian Prime Minister and be in charge of Australian people's money. I think he needs to answer questions: when he was the secretary of the Australian Workers' Union and he was in charge of the members of the Australian Workers' Union's money, did he seek the appropriate authorisations to make the $100,000 donation to GetUp! and to make a donation of $25,000 to his own campaign?

CHAIR: Thank you, Minister.

Senator WATT: Minister—

CHAIR: Your time's finished. We can come back to you if you want to pursue this. Mr Moraitis—anyone listening to this may not believe me here, but we are dealing with cross-portfolio, corporate and general matters—can you tell me whether the numbers employed in the department of the Attorney-General have altered significantly in the last financial year? Sorry—say, since this time last year?

Mr Moraitis: Obviously, there have been machinery-of-government changes which were finalised in the course of last year, and, as a result, my recollection is over 400 FTE were transferred to both the Department of Home Affairs and to other agencies, such as the ACSC. Ms Daniels may have the figures as to what our FTE changes were in this period. That's a ballpark figure of about 400-plus FTE.

Ms Daniels: We don't have the figures for what the changes were, but at the moment there are approximately 1,385 people, as a headcount, in the department.

CHAIR: Can you just remind me, Ms Daniels or Mr Moraitis, when the government changes took place? When did the increase in your department take place—what month?

Mr Moraitis: The machinery-of-government changes?

CHAIR: Yes.

Mr Moraitis: That was over a period of six months, starting in December 2017 and finishing around mid-2018, I think. As I said, there were transitions of staff to Home Affairs and to the ACSC, the Australian Cyber Security Centre. The Computer Emergency Response Team, the CERT, became part of the ACSC and all the FTE moved. At the same time, there was a very small component moved into the department from PM&C involving the IGIS, and other roles were transferred to the department. The figure, on my recollection, was 400-plus FTE; that was the net result. At the same time, there will be ins and outs when new positions are created because of extra resources being sought for other initiatives. I would have to do a reconciliation over that period to give you a figure.

CHAIR: I appreciate it is probably a bit early to usefully compare statistics. Could I ask you this—it's a bit like Caesar asking Caesar!—have you experienced any difficulties in the administration of your department with these changes, with certain agencies going out and coming in, new staff and new premises, I assume?

Mr Moraitis: All machinery-of-government changes can be complex, but I think it's been managed pretty well with all concerned. There have obviously been some logistical changes. As I alluded to before, we are working on preparing a special place for IGIS to come into the department, and for INSLM as well. There are
logistical changes in the property space but, overall, I think the process of transition has been as good as it can be. The figure I have is a total of 443 ASL—so a mid-400s ASL.

**CHAIR:** That's additional in your department?

**Mr Moraitis:** No, that's fewer. That's FTE/ASL moving to Home Affairs and the ACSC. A small number are coming in from PM&C; I'm talking one or two FTE for some functions.

**CHAIR:** You mentioned property—I think we went through this at the last estimates as well. What's it meant in property space—and excuse me asking this; where is your principal office?

**Mr Moraitis:** Our office is on National Circuit, next to Prime Minister and Cabinet.

**CHAIR:** In the John Gorton building?

**Mr Moraitis:** No, in the Robert Garran building—named after Sir Robert Garran, the first secretary of Attorney-General's. He was secretary for 30-plus years, and is obviously a big historical figure. He goes all the way back to Federation.

**CHAIR:** Indeed. I think he wrote some books, didn't he?

**Mr Moraitis:** He did; a couple on the Constitution and things like that.

**CHAIR:** Are all of your department in the same building?

**Mr Moraitis:** Nearly all of them. Our information division does all our IT work in a special facility in Symonston, which is a couple of kilometres away. We're in the process of transitioning our staff from that area to our building. From my perspective, it will be a good thing to have all our IT staff in the building with us. Australian Government Solicitor is across the road, in the building facing us, and has offices interstate. We have offices in Sydney, Melbourne—all the state capitals.

**CHAIR:** Have these changes been accommodated within your adjusted budget?

**Mr Moraitis:** Yes. The machinery-of-government processes involve transfer of financial resources, of other matters and of FTEs. The net result, hopefully, is that we will achieve pretty much continuity of service and service delivery. To date, I think the department is doing as well as it can, given the process.

**CHAIR:** The role you have is supporting the Attorney-General. Again, I should know this: is there a junior minister in the portfolio?

**Mr Moraitis:** No. We support the Attorney-General. The second law officer, the Solicitor-General, is in the portfolio, and we obviously work closely with them. The Australian Government Solicitor, headed by Mr Kingston, was a separate body but about two or three years ago, before the MoG, it came back into the department as a group within the department. But AGS retains its identity and its brand and its role in the Commonwealth, providing whole-of-government support to agencies and often competing with the private sector.

**CHAIR:** We had ASIO in last night. They used to be in your department.

**Mr Moraitis:** Until about May last year.

**CHAIR:** They are now sort of in Home Affairs, but I understand your department still has an involvement with ASIO—

**Mr Moraitis:** Insofar as ASIO seeks authority from the Attorney to issue warrants—yes. The Attorney-General has a role, vis-a-vis ASIO in the issuing of certain warrants, and that role continues. Obviously, we have an interest in that respect.

**CHAIR:** What sort of policy roles do you have—

**Mr Moraitis:** We have no policy role vis-a-vis ASIO. The policy role was transferred to Home Affairs. They are a portfolio agency within the Home Affairs portfolio. But, as I said, the Attorney-General under the new construct still has a role in approving warrants for ASIO operations in various schemata.

**Senator MOLAN:** Secretary, we heard that IGIS had been established in your building now.

**Mr Moraitis:** It is in the process of being established.

**Senator MOLAN:** I assume that's a fully secure facility.

**Mr Moraitis:** It's a SCIF.

**Senator MOLAN:** Do you have a rough cost for that? My memory, having one or two, is that they're very expensive.

**Mr Moraitis:** They're not cheap. They take special processes of building and certification. I think we're aiming for that SCIF, that facility—it is a SCIF-designated part of the floor and it will be ready by March-April.
Senator MOLAN: Do you have a future budget cost for it?

Mr Moraitis: I'm not sure if our property people are here, but I can take it on notice and get you a figure. The funding is in IGIS's budget, but we can get you figures for it if you like.

Senator MOLAN: Thank you. I think they were aiming for 55 staff.

Mr Moraitis: Fifteen, and they are aiming for 55, as was mentioned this afternoon. We're obviously accommodating IGIS in a way that will allow for that growth.

Senator MOLAN: Thank you, Chair.

CHAIR: I'll go to the Labor Party again—Senator McKim has gone. Can I just indicate to my colleagues that we're running about 1½ hours late. We're still dealing with cross-portfolio, corporate and general matters. We have group 2 to go and group 3—civil justice, corporate group, integrity of national service group, and in group 3, continuing, and in group 4, enabling services group. Some senators have indicated they wanted to ask questions on those. But my gut feeling is that we're not going to finish by 11. So, I'll keep under review with you, Mr Moraitis, on whether those involved in group 4 might take an early break—but not just yet. We'll just see how—

Senator PRATT: We don't have questions on group 4.

Mr Moraitis: My group 4 is here—Ms Daniels and our CFO—

Senator Cash: They are group 4.

Senator WATT: We could probably put any questions for groups 3 and 4 on notice, Chair.

Senator PRATT: But I don't know which other senators have flagged that they have questions.

CHAIR: I'll just try to find that out. Some senators did say they had questions for groups 3 and 4. The Labor Party has now said their questions can be put on notice.

Mr Moraitis: What about group 2?

Senator PRATT: We do have questions for group 2.

CHAIR: I will just warn at this stage, but I will come back to you shortly, Mr Moraitis. If we can just confirm—

Senator PRATT: Native title, Family Court.

CHAIR: Senator Hume has questions on family violence or something?

Senator HUME: Yes, I do—

CHAIR: I'm just really just saying that some public servants may not need to be sitting around. I'll come back to you about that—

Senator Cash: We've got a break at 9.15, so we might reassess then, Chair.

CHAIR: Yes.

Senator PRATT: We haven't got too much.

CHAIR: Having done all that, we will go back to Senator Watt for cross-portfolio, corporate and general matters.

Senator WATT: Minister, what kind of message does it send to Australians for cabinet ministers to refuse to provide a witness statement to the AFP?

CHAIR: Well, those questions have already been—

Senator Cash: Chair, I have now answered this question on numerous occasions.

Senator WATT: No, I haven't asked that question.

CHAIR: They've already been ruled out of order, the same questions.

Senator WATT: Why would any Australian provide a witness statement to the police if senior cabinet ministers are unwilling to do so?

CHAIR: That's not a—

Senator Cash: Again, I disagree with the premise of your question, Senator Watt. I've now provided evidence on numerous occasions in the last hour and a half in relation to this matter.

Senator WATT: So do you think it's satisfactory, if Australians are requested to provide a witness statement by the police, that they simply send a letter, or send another type of statement that they're satisfied with?

CHAIR: Minister, I know you'd like to answer those questions but they are totally out of order, totally inappropriate, not matters for this—
Senator WATT: Why? Don't you think that ministers are role models for the community?

CHAIR: They've got nothing to do with expenditure in the department of the Attorney-General for the 2018-19 year.

Senator PRATT: I think the Attorney-General's Department would want—

CHAIR: The minister's opinion, whilst I would value it, is irrelevant to these proceedings. Her opinion on whatever your question was is not relevant to our investigation into expenditure in the department, so the question is out of order.

Senator WATT: I've repeatedly explained that the reason for these questions is that this department certified expenditure to defend Minister Cash, nearly $300,000 in taxpayers' funds, and therefore—

Senator Cash: Chair, it wasn't actually to defend; it was in relation to a subpoena.

CHAIR: Hang on. I'm taking this as a point of order against my ruling. Is it, Senator Watt?

Senator WATT: I'm just justifying why these questions are in order and why it's appropriate to ask ministers—

CHAIR: Well, I'm ruling it out of order. If you want to take a point of order, let's do it and I'll rule on it.

Senator WATT: So it's not appropriate to ask a cabinet minister whether they should be—

CHAIR: About her opinion of what Australians should think? No, it's not.

Senator WATT: Should ministers be cooperating with police and providing witness statements if requested to do so?

CHAIR: Again, what this minister thinks cabinet ministers should or shouldn't do has absolutely nothing to do with estimates.

Senator WATT: You don't want to say?

Senator PRATT: They should uphold the ministerial standards.

Senator WATT: There are three cameras here. They're looking at you, Minister. You could be sending a message to Australians. If the police come knocking on your door and ask for a witness statement, do you say, 'Okay'? Or do you say, 'Look, I'll send you a letter'?

Senator PRATT: What would you do? Any reasonable person would give them one.

CHAIR: What Minister Cash might say to Australians about anything—

Senator WATT: Chair, I think she has sent a message to Australians, and it's very disappointing.

Senator Cash: Chair, I've already given evidence on this question in its various forms now, several times in the last hour and three quarters.

CHAIR: Yes. And they're completely out of order. And to the extent they are in order, they've been asked three or four times before. If you have any real questions to the department or to the minister about the expenditure for 2018-19, please ask them. If not, we'll move on and go to another senator.

Senator WONG: I invited you earlier, Minister, to correct the record in light of there being direct conflict between your evidence and the evidence of the AFP. You maintain you don't have to do so. So can I just be clear what your position is? Is your position that you provided the AFP with your estimates transcript and that covers everything? Because the problem with that assertion is that—

CHAIR: You've asked the question. Do you want an answer?

Senator WONG: Please let me finish the question, Chair.

CHAIR: You're not. You're editorialising. You've asked the question.

Senator PRATT: No.

Senator WONG: Could you please let me finish the question?

CHAIR: Well, you've asked the question.

Senator WONG: Could you please let me finish the question?

CHAIR: What is the question?

Senator WONG: I'm seeking to do so, and I would be able to finish it if you could stop interrupting me, please. I'll start again. Minister, the position you've put tonight is that your estimates transcript covers everything. The problem is that serious factual statements have been contradicted or are inconsistent with sworn evidence from others involved.
CHAIR: That is simply not correct.

Senator WONG: Do you still maintain that there is nothing you need to explain to the Senate or to the Australian Federal Police, in light of the various pieces of sworn evidence which are inconsistent with the evidence you gave at estimates?

CHAIR: Minister Cash, the premise of the question is inaccurate. I have sat through these hearings; Senator Wong hasn't.

Senator Cash: I was going to refer to the Solicitor-General's very eloquent response to a question previously. I have not read the full transcript. Until I am able to read the full transcript, I will take those questions on notice.

CHAIR: Thank you.

Senator WONG: When do you start to behave in a way that's consistent with the standards that is expected of ministers?

CHAIR: Senator Wong, you know that's not a question for estimates.

Senator WONG: I'm asking it.

CHAIR: It's a vicious personal attack—

Senator WONG: All right. I'll change it.

CHAIR: that you are very good at doing, which you've clearly learnt in your former profession and out the front door of this building we all remember.

Senator WATT: That's not very professional, Chair.

CHAIR: You're talking to me about professional? And talking Senator Wong about professional?

Senator WONG: I'm trying to—

CHAIR: Do you have questions for the department about the cross portfolio?

Senator WONG: Minister, are you telling this senate committee and the Senate that your behaviour in relation to this matter—the failure to cooperate with the police and the failure to correct the record—is consistent with the standards that Australians ought to expect from cabinet ministers?

CHAIR: (a) it's not true, and (b) it's not relevant to this question. I've ruled it out of order. I'll continue to rule it out of order.

Senator WONG: I would have thought a cabinet minister would have wanted to answer that question.

CHAIR: If Senator Wong wants to talk to the cameras, she can do that, but please go outside and talk to the cameras—

Senator WONG: Do you want to answer it?

CHAIR: Let us get on with our job of looking at estimates for this portfolio.

Senator WONG: Do you think you've behaved as a cabinet minister should?

CHAIR: The question is out of order. Do you have another question?

Senator WONG: I'm asking: do you think you've behaved in this matter as a cabinet minister should?

CHAIR: That question is not—

Senator WONG: I would have thought the minister would want the opportunity to respond to that.

Senator PRATT: She's not answering the question.

Senator WONG: Have you've behaved as a cabinet minister in this country should?

CHAIR: If you can't move on to a question and if you're going to repeat questions—

Senator WONG: So you've ruled that out of order?

CHAIR: Senator Wong—

Senator WONG: Point of order.

CHAIR: If you're going to repeat questions that you've already asked and which have been ruled out of order and have been explained why they're out of order, then we might as well call this off now and go to an early break at a quarter to nine.

Senator WONG: So the minister does not want the opportunity to respond to that?

Senator Cash: I did respond, and I object to the—

CHAIR: I don't care what the minister wants to do. I'm ruling the questions out of order.
Senator WONG: I didn't hear what the minister said.
Senator Cash: statements that Senator Wong placed in her question.
Senator WONG: So you think you've behaved as a cabinet minister should?
CHAIR: This is the fourth warning. Senator Wong, you keep repeating a question which has been ruled out of order. To the extent it hasn't been, it's been asked before and it's been answered before. If you're going to persist with that, I will call an early break, and hopefully you can compose yourself during the break. Are there any other questions?
Senator WATT: There are. Minister, I observed earlier that this could be resolved by you simply agreeing to provide a witness statement of the kind the AFP are after. Do you and I want to go down to the police station now? We can make sure you have a statement?
CHAIR: The hearing is suspended until five past nine.
Senator WONG: Cover-up from the Morrison government. Australians, this is your government at work, refusing to answer questions. These are the standards of accountability under Mr Morrison.
CHAIR: Again, I indicate, as I said continuously, these questions have been asked ad infinitum. They've been ruled out of order. The proceedings are suspended.

Proceedings suspended from 20:47 to 21:05

CHAIR: I call back to order this hearing of the Legal and Constitutional Affairs Legislation Committee in its inquiry into the 2018-19 budget. We're dealing with additional estimates. For those colleagues who might be following this, we are on to group 1.
Senator WATT: No, we're not finished with cross-portfolio yet.
CHAIR: Which is group 1, or outcome 1. One day, when we've got no questions to ask, we'll ask you, Mr Moraitis, what the difference between outcome 1 and group 1 is.
Senator MOLAN: And group 2.
CHAIR: And group 2 and program 1.5. But we won't do that just yet. We are dealing with outcome 1, Cross-portfolio, corporate and general matters. Mr Moraitis, by consensus and by the fact that no-one has indicated to the secretariat they wish to ask questions about group 4, if there are any group 4 people here then as far as the committee is concerned—it's up to you, of course—we don't need them, except that the secretariat has pointed out to me that programs 1.1 and 1.2 in group 3 have the same title as programs 1.1 and 1.2 in group 4.
Senator Cash: Yes.
CHAIR: I don't understand that, but if there are any officers who are only related to group 4—
Senator Cash: There may only be two.
CHAIR: no-one wants to question them, so they can go. You have some more questions on corporate and general, Senator Watt?
Senator WATT: I do.
CHAIR: Okay. Over to you.
Senator WATT: Thank you, Chair. Minister, we do have other topics to get to, so I won't take too much longer here. I just wanted to take you to the evidence we received from the Commissioner of the Australian Federal Police. He has said before, but he said again yesterday, that his concern about leaking police information is that it jeopardises the safety and security of AFP officers. Does it concern you that the behaviour which your former staff have admitted jeopardised the safety and security of AFP officers?
Senator Cash: Again, Chair, I have not been able to actually review the transcript of the evidence that was given yesterday, so I'm unaware of that evidence that has been given.
Senator WATT: Would it concern you if the behaviour of your staff jeopardised the safety and security of AFP officers?
Senator Cash: Again, Chair, I'm not familiar with the evidence that was given yesterday by the commissioner.
Senator WATT: Forget about the evidence that was given. I'm asking you a straight factual question.
Senator MOLAN: No, it's a hypothetical.
CHAIR: It's hypothetical.
Senator WATT: No. Does it concern you that the behaviour of your staff jeopardised the safety and security of AFP officers?

CHAIR: I think you'll give the same answer, Minister. You don't need me.

Senator WATT: Minister, does it concern you?

Senator Cash: Again, Chair, I give the same answer.

Senator WATT: Minister, you have an opportunity here to express concern about behaviour that jeopardises the safety of AFP officers. You don't want to take that opportunity?

CHAIR: Senator Watt, can you explain how that is possibly relevant to the expenditure in the department of the Attorney-General?

Senator WATT: As I have repeatedly said every time you have asked me this, the evidence from the Attorney-General's Department is that they certified the legal costs of Senator Cash in this whole affair. That's why I'm asking questions about it.

CHAIR: But you're not asking about any of that. You're saying, in the minister's opinion—which, as you know, is not an allowable question—if something happened, what does she think about something else? It's completely inappropriate.

Senator WATT: I am staggered that a minister doesn't want to—

CHAIR: That's not a question either. Do you have a question? You can be staggered all you like. I'm very interested if you're staggering, but that's not relevant to this committee. We do have a lot of work to do.

Senator WATT: I'm coming to my question. I'm staggered that a minister does not want to express concerns about behaviour that endangers police lives.

CHAIR: We're not interested in whether you're staggered or what your feelings are.

Senator WATT: Are you sure you don't want to take that opportunity, Minister? I've given it to you three or four times.

CHAIR: And you've given the same answer. The question is out of order.

Senator WATT: I am amazed that you don't want to do this.

CHAIR: I don't care if you're amazed. We're here to investigate the expenditure in the Department of the Attorney-General. If you have questions on that, please put them. Otherwise, we will move on.

Senator WATT: Minister, do you condone behaviour that jeopardises the security of police officers?

CHAIR: It's not a relevant question to this.

Senator WATT: It is.

CHAIR: Can I ask you what lipstick you're going to wear tomorrow? It's as relevant.

Senator WATT: Are you equating the colour of the lipstick the minister wears with the safety of police lives?

CHAIR: Do you have another question, Senator Watt?

Senator WATT: Minister, surely you don't condone behaviour that endangers police lives. Surely you don't condone that.

CHAIR: Do you have a question?

Senator Cash: Again, Senator Watt has put to me evidence that I am not aware of. Until I have the opportunity to view the transcript in entirety, I would need to take all questions Senator Watt puts on notice.

CHAIR: In any case, Minister, it is irrelevant to the Legal and Constitutional Affairs Legislation Committee's inquiry into expenditure of the Department of the Attorney-General. I'm very interested in your views and what you feel about this, that and the other, but it's not a matter for this inquiry. As I said, we might as well ask you if the night turns to day later on. It has as much relevance.

Senator WATT: I think it's far more relevant to ask a minister whether they condone behaviour that endangers police lives.

Senator MOLAN: What about family violence?

Senator WATT: We will get to that.

CHAIR: We won't get to that if you keep asking the same question, which has been ruled out of order. We will never get to family violence. We would think that family violence is far more important than playing political
games and asking questions that have no relevance whatsoever to this and which have, in any case, been ruled out of order five times now.

Senator WATT: Family violence is very important.

CHAIR: Do you have questions on family violence? That is the next outcome.

Senator WATT: So is leaking police information. I've given you more opportunities than I can imagine to express concern. You haven't done it. Let's move on.

CHAIR: I did say that ten minutes ago, Senator Watt.

Senator WATT: I thought I would give the minister an opportunity. She doesn't want to take it.

CHAIR: The TV cameras aren't here anymore, so why are you continuing to ask?

Senator WATT: Because not all of us are driven by TV cameras. Some of us actually want—

CHAIR: You couldn't have got your mates in the media any closer to you, Senator Watt.

Senator WATT: Yesterday, Insiders was a Labor party hour. Today, The Sydney Morning Herald is a left-wing rag.

CHAIR: It's funny that they just happened to turn up when you and Senator Wong were doing another stunt. Let's carry on. That's all of out of order.

Senator WATT: Some of them pay attention to what's going on. It might amaze you, but people in Australia don't think very much of what Minister Cash has done in this public interest area.

CHAIR: I'm not interested.

Senator WATT: In fact, the DPP today say that—

CHAIR: Senator Watt, if you don't have questions, I will go to another senator.

Senator WATT: That's how much public interest there is in this. The DPP—

CHAIR: Do you have any questions?

Senator WATT: Mr Moraitis, my understanding is that the Solicitor-General has provided advice on the constitutional eligibility of Mr Dutton, the Minister for Home Affairs. That is correct?

Mr Moraitis: Yes.

Senator WATT: Has the Solicitor-General provided advice on the constitutional eligibility of Mr Taylor?

Mr Moraitis: Mr Taylor? I'm not aware of that.

Senator WATT: I actually don't know the answer to that. I genuinely don't know. I'll ask Mr Lewis.

Mr Lewis: Not that I'm aware of.

Senator WATT: What about Mr Crewther?

Mr Moraitis: Not that I'm aware of.

Senator WATT: To your knowledge, the Solicitor-General has not provided advice about the eligibility of either Mr Crewther or Mr Taylor? Leaving aside Mr Dutton—

Senator PRATT: What about Mr Goodenough?

CHAIR: What about Mr Husic? Let's pick a name out of the hat.

Senator WATT: Leaving aside Mr Dutton, about whom advice has been provided, is there any other member of parliament on any side of politics about whom the Solicitor-General has been asked to provide advice as to their eligibility since 1 July 2018?

Mr Lewis: I think I would have to take that on notice. It's a matter of public record that the Solicitor-General provided advice in relation to Mr Joyce. I can't remember the date.

Senator WATT: Could you take that on notice? I suspect it was probably before that date, because I think the by-election happened around then. Since the 2016 election, how much has the government spent on obtaining legal advice on the constitutional eligibility of government MPs?

Mr Lewis: Again, I would have to take that on notice.

Senator WATT: If you could, please.

CHAIR: Could you make it all MPs?

Senator MOLAN: I think it was $1.195 million. That was for Joe Ludwig, wasn't it?

Senator WATT: No, it wasn't for Joe Ludwig.
Senator MOLAN: It was.

Senator WATT: Was there any figure of about $1.5 million that related to Mr Ludwig?

Senator MOLAN: There was $1.195 million.

Mr Moraitis: There was evidence before the break about this issue—the Brett Cattle case, and two invoices.

Senator WATT: We will go back and look at that. Will you take that question on notice?

Mr Lewis: Yes. Would you mind saying the question again?

Senator WATT: Since the 2016 election, how much has the government spent on obtaining legal advice on the constitutional eligibility of government MPs?

CHAIR: Can I add to that, all MPs.

Mr Moraitis: Can we take that as the Commonwealth expenditure for section 44, rather than breaking it up? It would be a conglomerate of advice.

Senator WATT: You mean every limb of section 44? I'm referring to section 44.

Mr Anderson: What the Secretary is saying is that there will have been expenditure on legal advice, but there will also have been expenditure on the cases themselves. It's going to be quite time-consuming to break out and distinguish the costs for seeking the legal advice as opposed to the cost of the cases.

Mr Moraitis: We can give you a global figure, perhaps?

Senator WATT: It might depend a bit on the answer to the original question about whether there were other MPs about whom advice was provided.

Mr Lewis: Further to that, you might be aware that the Solicitor-General's advice is not provided on a charged basis. The Solicitor-General receives annual remuneration and does not charge for particular pieces of advice.

Senator WATT: I think there are two questions. Are there any MPs, apart from Mr Dutton, about whom the Solicitor-General has been asked to provide advice as to their eligibility since 1 July 2018? That's the bit that involves the Solicitor-General. Separately, since the 2016 election, how much has the government spent obtaining legal advice as to the constitutional eligibility of government MPs? Senator Macdonald wants it in relation to all MPs. That probably wouldn't include the cost of the Solicitor-General, from what you're telling me?

Mr Moraitis: Most of the legal expenditure in those matters would be with respect to various members of parliament's legal representation—correct?

Senator WATT: In those cases.

Mr Moraitis: The legal advice would probably emanate from the Solicitor-General, which, as Mr Lewis said, is not charged.

Senator WATT: I understand. If it is the case that there are other MPs, apart from Mr Dutton, about whom advice has been provided, which never resulted in a court case, then you'd be able to work out what the cost was around the advice, separate to any cases that may have happened, because they didn't involve cases. Have a look back at the transcript. I'm sure you can decipher what we're talking about.

Mr Anderson: There's the mixture—

Senator WATT: Yes, I understand. For anything that went to court, there's a mixture of advice and representation. For anything that hasn't gone to court, it is only about advice.

Mr Anderson: We will give you the best answer we can about, since 2016 government expenditure on legal advice on section 44 cases, which might also contain other legal expenditure on section 44 cases; secondly, any advice that the Solicitor-General has given on MPs other than Mr Dutton since July 2018.

Senator HUME: Following on from Senator Watt's request there, I'd be interested to know whether those costs are comparable to previous parliaments as well, if you have any information about the legal costs that have pertained to Senator Wong, Mr Swan, Mr Rudd, Ms Gillard, Mr Garrett, Ms Roxon, Mr Bradbury, Mr Tanner and Mr Arbib, and whether those costs in previous parliaments have also been covered by the Attorney-General's Department, and their legal costs, particularly pertaining to the pink batts. Could I ask the Attorney-General's Department whether the amount that has been spent on covering ministers' legal costs or legal fees, in this parliament, is comparable to that of previous parliaments, particularly pertaining to those ministers in the previous Labor government over the pink batts fiasco, in which, I remind the chamber, people actually died. I would imagine there would be significant legal costs incurred from the Attorney-General's Department in that.

Mr Moraitis: We'll take it on notice. They are comparing different legal scenarios.

Senator HUME: But it's all legal costs, isn't it, that are borne by the Attorney-General's Department?
Mr Anderson: It is not generally borne by us. It's generally borne by the Department of Finance, but we are involved in either the Attorney approving the payment of costs for a minister or former minister, or we certify. We have taken on notice to provide the tabled statements for every year since 2007 for the payment of legal costs for ministers and former ministers.

Senator HUME: That includes for Ministers Swan, Tanner, Rudd, Garrett, Wong, Arbib—and I forgot Combet.

Mr Anderson: Every minister and former minister for whom legal expenses were paid since 2007.

Senator HUME: That's in particular with reference to their royal commission costs as well—does that get covered?

Mr Anderson: That is not covered.

Senator HUME: So who pays for the royal commission costs of Senator Wong, Ministers Swan, Tanner, Rudd, Garrett, senators Combet, Arbib and Prime Minister Gillard?

Mr Anderson: As a general rule, when there is a royal commission there is also a legal assistance fund set up to make payments of legal costs of people who are witnesses before the royal commission.

Senator HUME: Who sets that up?

Mr Anderson: The Attorney-General's Department.

Senator HUME: Do you have records of those costs?

Mr Anderson: We will have records of those costs. They are not as readily accessible as the statements of costs for ministers and former ministers that are tabled each year.

Senator HUME: So it's in one lump sum fund—is that why it's not so easily accessible?

Mr Anderson: No. It's not kept and tabulated in that sense.

Senator HUME: Let me be very clear. If you were investigating the legal costs that the Attorney-General's Department had spent on Senator Wong, Minister Swan, Prime Minister Rudd, Prime Minister Gillard, Minister Garrett, Minister Roxon, Mr Bradbury, Minister Tanner and Mark Arbib, where would you find the costs to the Attorney-General's Department of the legal fees spent by those ministers in particular reference to the royal commission into the pink batts affair?

Mr Anderson: We would be delving through departmental records.

Senator HUME: If you delve into those departmental records, will those costs be in a format that is comparable to the amount that Senator Watt is seeking? Are we comparing apples and apples or apples and oranges?

Mr Anderson: Senator Watt was asking about section 44.

Senator HUME: I'm asking about the pink batts royal commission.

Mr Anderson: I'm saying it will be quite time-consuming for us to extract from individual case files the amounts that were paid for legal assistance to witnesses before royal commissions where those witnesses were ministers at the time.

Senator HUME: So there is just a fund. Can you tell us how much was in that fund and was spent from that fund?

Mr Moraitis: The royal commission would have been assigned an amount of money to cover the costs of the royal commission at all levels, including costs of counsel, the commissioners, all witnesses attending. Amongst all those expenditures, there will be items regarding individual witnesses, which means we would have to go through each line item to define which expenses were provided to each individual. It could be a barrister, it could be a former minister's counsel, it could be—

Senator HUME: It sounds to me like the number of ministers and senators and members of parliament who were involved in legal undertakings in the last parliament is not just comparable to this parliament, but it's actually in excess of it. I'm wondering whether the AGD has a sense of whether the dollars that have been allocated to the legal costs of existing members of parliament and previous members of parliament are the same?

Mr Moraitis: To have a sense of that, we have to do an analysis. There are three pillars of expenditure here. Anything associated with royal commissions is a good example that you just alluded to. The second one is parliamentary entitlement regulations, where we certify the things that we table every year or so. That's the second column. Section 44 is, frankly, a sui generis experience in the Commonwealth's history, so we've had to deal with that. So there are three pillars of expenditure, different sources and different bases for which the money
has been allocated, and I obviously would have to extract it through the three different processes, and we don't compare them because they're different streams of expenditure. The first is subsumed in a royal commission's global expenditure. The second is a regular expenditure involving any legal approvals given to any member of parliament. That's tabulated every year and presented by the Attorney, as Mr Anderson mentioned. And the third one, which we will try to track down, is much more recent: section 44 stuff, which was a self-contained series of legal expenses involving a clear number of members of parliament—fortunately finite, if I may say so.

Senator HUME: Thank you, Mr Moraitis. The Senate, can I assure you now, will not hold you in contempt if we don't get that exact figure down to the cent.

Mr Moraitis: We try our best. There are three sources and three pillars.

Senator HUME: If you could give us a thumb-nail analysis, that would be very handy. Thank you very much.

Senator WATT: The point I was trying to make earlier, which Mr Anderson has picked up on, is that my questions were about legal fees for section 44 matters. Senator Hume can ask whatever question she wants, but that's not about section 44 matters.

Mr Moraitis: No. As I said, there are three pillars that we're alluding to of legal expenses for parliamentarians.

CHAIR: Thanks, Senator Watt, but I think Senator Hume made it clear that she was asking a new set of questions, not related to your questions, or not directly related. You have 2½ minutes left, Senator Hume, but, if you're finished, I might ask: did the department expend any money in legal fees and legal advice in the case of my former colleague, then Senator Sam Dastyari? Was any opinion sought—I'm not asking what it was, of course—from your department or the—

Mr Moraitis: I'm not aware of any such expenditure.

CHAIR: There were questions—I'm going on media reports—about having inducements made to then Senator Dastyari and some of his bills being paid by a foreign company. Are you certain there was no legal advice sought?

Mr Moraitis: I'm pretty sure there was no such legal expenditure relating to former Senator Dastyari. I can take that on notice, but I can't recall any occasion. We don't have any, and Mr Anderson has confirmed that.

CHAIR: If you wouldn't mind taking that on notice—

Mr Moraitis: I will.

CHAIR: Senator Watt, do you have any further questions on the cross-portfolio of corporate and general?

Senator WATT: Yes, one simple question for Minister Cash. Why haven't you read the transcript from estimates yesterday containing the AFP evidence?

Senator Cash: Because I haven't.

CHAIR: It's not in order, but you can answer it.

Senator Cash: Because I haven't.

Senator WATT: So you've come to estimates today when evidence was presented by the AFP saying that you had refused to make a witness statement, and you haven't bothered to read the transcript?

Senator Cash: Well, Senator Watt, you can say what you like. I haven't had an opportunity to read the transcript in total from yesterday.

Senator WATT: I'm not saying you should have read the entire thing, but probably the bit where the AFP said you refused to provide a witness statement might have been useful.

CHAIR: The senator hasn't read it and has explained why. Do you have any other questions?

Senator WATT: No. I think Senator Cash has given us all the answers we need.

CHAIR: We now move to group 2, Legal Services and Families. We know that Senators Siewert and Storer, as I recall, put in questions on notice. I'm not sure whether Senator Leyonhjelm did. I think we'll deal with all the programs in group 2 as a group.

Senator WATT: Chair, I think you said we don't need the group 4 people. I think, at least from the opposition's point of view, we probably can put our group 3 questions on notice as well.

Senator PRATT: I don't think we've got any.

CHAIR: That's fine, but I do have three other senators, including Senator Waters, who has been in and will come back, so I'm afraid group 3 will have to stay.
Senator PRATT: I want to ask some questions about Family Court changes. If the Family Court merger bills are to proceed with retaining appellate jurisdiction in division 1 rather than the Federal Court, what's the department's view of the efficiencies that will be achieved? Has the department done any economic modelling with respect to this?

Mr Anderson: The department hasn't done any economic modelling, but the first part of the question was about the economic efficiencies of appeals to the Federal Court—was that the question?

Senator PRATT: Just the efficiencies associated with proceeding with a retaining appellate jurisdiction in division 1 rather than the Federal Court.

Mr Anderson: So, not actually making the change?

Senator PRATT: Yes. Well, if you can compare what you think the efficiencies are, that's probably an even better way of looking at the question.

Mr Anderson: The proposal to create the Family Law Appeals Division in the Federal Court is predicated on an efficiency by freeing up the current appeals division judges of the Family Court so that they can actually hear first-instance matters, and that was calculated by PricewaterhouseCoopers as enabling what's currently the Family Court, which would be division 1 of the FCFC, to conduct a great many more trials. I don't have the precise figure, but that's the rationale—that it would enable more first-instance trials to be heard, so more family law matters would be able to be dealt with more quickly.

Senator PRATT: With respect to that, the legal profession has consistently rejected the purported efficiencies attached to these changes, saying really that they don't believe there will be an efficiency if the government proceeds with the amended bills, as the purported efficiencies are predicated on the proposed appellate changes allowing 'considerable judicial resources currently used to hear appeals to focus on hearing first-instance family law matters'. Is that correct?

Mr Anderson: There's actually been a lot of support for moving as much as possible to a single-court structure. Now, we can't actually move to a single-court structure; we can't abolish an existing court. But former chief justice Diana Bryant, in her submission to the committee's inquiry, said that she supported many measures in the proposed restructure, including the establishment of two divisions with a single point of entry, harmonisation of rules and more alignment of forms, processes and practices. The Law Council of Australia said that it agrees that there are six significant shortcomings in the dual Family Law Court structure.

Senator PRATT: Yes, I've read that evidence.

Mr Anderson: And it consistently contended that a single Family Law Court is the appropriate vehicle. The president of the Australian Bar Association said that they'd 'long recognised the potential benefits of a single point of entry in family law and the harmonisation of rules'. The president of the Victorian Bar Association—

Senator PRATT: Yes.

Mr Anderson: and similarly the New South Wales Law Society, the Queensland Law Society, the Law Institute of Victoria and Women's Legal Services Australia have all said that there's a need for reform and that it stems from having two separate courts with inconsistent rules, processes and procedures, and that there are inefficiencies as a result of that.

Senator PRATT: Yes, I've certainly heard that evidence too, but there was also evidence that said that the amended bills were predicated on proposed appellate changes, allowing considerable judicial resources currently used to hear appeals to focus on hearing first instance family law matters. But there's been considerable evidence about the issues to do with the problems with the appeals process that are attached to merging the courts. Is that not correct?

Mr Anderson: It's correct. There was evidence from a number of parties who are opposed to the creation of a family law appeals division in the Federal Court.

Senator PRATT: Regarding the costs associated with the merger bills if they're to proceed, I want to ask if the department or government has conducted a cost-benefit analysis with the proposed model compared with simply prioritising the development of a single set of rules for the courts to apply, a single set of forms, a single entry point for clients and laws under which they are to judge without the need for legislation.

Mr Anderson: As I said this morning when the federal courts were appearing, it's possible for the two courts to harmonise their rules and procedures without legislation. It's just that they have failed to do so for over 20 years, despite the fact there's consistently been calls for them to do so and for reforms.

Senator PRATT: But perhaps you could legislate to force them to do that without all these other things inside it that change these other structures so fundamentally.
CHAIR: I don't want to interrupt your line of questioning, Senator Pratt but, just by way of assistance, the representatives of the Family Court today said that the Chief Justice had issued a directive that appellate court judges would now hear cases in the first instance. I think you were here when they gave that evidence.

Senator PRATT: Yes, I think I was—thank you, Chair. The government has emphasised that the proposed merger was developed in consultation with the three heads of jurisdiction. When were the courts and heads of jurisdiction first notified that the government does not intend to proceed with plans to relocate family law appellate jurisdiction to the Federal Court?

CHAIR: Sorry? Did you understand—

Senator PRATT: Or you understand—

Mr Anderson: I'm not sure I understand the question.

CHAIR: No, neither did I.

Senator PRATT: Does the government intend to proceed with plans to relocate the family law appellate jurisdiction to the Federal Court?

Mr Anderson: The bills, as they stand, include the creation of a family law appeals division in the Federal Court. As I said this morning, of course the committee has recommended against that in the majority report of the committee. We got that on Thursday afternoon last week, and the government will consider those recommendations.

Senator PRATT: So, you have not yet made a finding in relation to that—and yes, we did canvas that this morning.

Mr Anderson: We did, and I made the point that that's a matter for government, who've only just got the report.

Senator PRATT: That's fine. So, you haven't yet started talking to the courts as to how such an amendment would impact on the bill. Do you have a view yet on how retaining the appellate jurisdiction within a court merger would change the model?

Mr Anderson: I said this morning—and I've said it again—that the recommendation of the committee to not proceed with the measure in the bill to move appeals to the Federal Court is being considered by government. There's nothing more I can say about that.

Senator PRATT: No, no. That's fine. So, you haven't got a view yet on how it would affect the overall model of the bill?

Mr Anderson: Well, in one sense, we know what it would mean because you'd continue to have the Family Court as division one, continuing to hear appeals. So, in one sense, that's partly a status quo, even if you merge, if you have a division one and a division two. So, in one sense, we have an understanding of how that's likely to work. But I guess the key thing I can say is that it's something that the committee's recommended to government, and it's a matter the government will consider.

Senator PRATT: Thank you. The government said it will provide $3.7 million over four years from 2018-19 for an additional judge and support staff for the proposed Federal Circuit and Family Court of Australia to hear family law case appeals. I note the government's introduced legislation to establish the Federal Circuit and Family Court of Australia through the amalgamation of the two courts. The new courts will include a new appeal division to hear all appeals and family law matters. So, if the proposed changes to appellate jurisdiction were not to proceed, would the appropriation earmarked in MYEFO to appoint an additional judge still be directed into the system?

Mr Anderson: Again, it's a matter for government as to whether they proceed with the bills in their current form or not. If there are ancillary changes that go with that, that'll be a matter for government—

Senator PRATT: So you wouldn't know, for example, which part of the court would receive the additional resourcing and appointment, if that were to change?

Mr Anderson: If there's additional funding that was announced in MYEFO for the Federal Circuit Court, then that additional funding would follow that court into division 2 if the legislation is passed. That's the announced position.

Senator PRATT: If the merger were not to proceed, would that appropriation still be invested in the system?

Mr Anderson: If it was announced in MYEFO—I don't recall the announcement, but I'm accepting what you say—and if it's passed, contained in an appropriation bill—

Senator PRATT: If the parliament doesn't pass it, then the money is still there to be used.
Mr Anderson: If parliament doesn't pass the bill, but it's passed the appropriation that that's contained in, then it will, in fact, go to the Circuit Court—if that's where the appropriation that you're talking about appropriates it to.

Senator PRATT: So it would go into the Circuit Court and not into the Family Court?

Mr Anderson: I'm proceeding on the basis that you're saying that there was an announcement in MYEFO of additional money for the Circuit Court. If that's contained in additional estimates and the appropriation bill has been passed, then that would go to the Circuit Court. But if this legislation is passed for the creation of the FCFC then it will go to division 2 of the FCFC.

Senator PRATT: What steps have been taken to establish a common entry point and a common set of rules for the courts to date?

Mr Anderson: Some of these questions are actually—

CHAIR: I don't really want to interrupt Senator Pratt in her questioning, but we did have eight days of hearings on this. We had the Family Court this morning, who actually answered your questions.

Senator PRATT: I was at the same meetings and I do know, in fact, the answer to that. We've also acknowledged that we don't require legislative change to have these things implemented. Can I ask if the Federal Circuit Court intends to abolish the docket system of case management, or if that's under consideration currently?

Mr Anderson: That's a question that's better directed to the court.

Senator PRATT: Okay, of course. Dr Smrdel from the Attorney-General's Department told us in estimates last October that the government provided funding for a one-off injection of $4 million. One of the big exercises as part of the court reform project was to have a single set of rules. Who have been the consultants and what are the roles of those consultants in relation to the single set of rules?

Dr Smrdel: It's a matter for the court. The money's been allocated to the court. Part of the money was for rules, part for signage and stationery and also for changes to the IT system. So the court has the money allocated. In respect to the approach to the court that the Chief Justice is taking for the rules that Ms Anderson talked about this morning, I would expect that some of the funding is being drawn down for that purpose.

Senator PRATT: So the questions about the consultants need to go to the courts, not to you?

Dr Smrdel: Correct.

Senator PRATT: Thank you. If the merger legislation passed, how long would it take to mobilise resources before the merged circuit and family courts would officially commence, in your view?

CHAIR: It's a hypothetical, and the trouble with hypotheticals is that they depend on lots of things: when things are passed, whether there are any amendments. I'm only ruling that it's hypothetical, but it's not just the fact that it's hypothetical—there's a reason for that. It just makes it impossible for the witnesses to—

Senator PRATT: I can probably put some of these on notice to the courts, but I'm interested in whether the department has any information.

Dr Smrdel: If it helps, the legislation as introduced was amended by the government in the House, which changed the commencement date from 1 January to a date to be set by proclamation or six months after the commencement of the legislation—whichever occurs first. So I guess that builds in the ability to work with the courts to assess what they think is a realistic time to implement the changes and set a proclamation date accordingly.

CHAIR: Senator Pratt, my noise hasn't gone off, but you have been going for 15 minutes. I understand Senator Dodson has some questions in relation to program 1.5. Over to you, Senator Dodson. You get 10 minutes.

Senator PRATT: No, that's fine, Chair.

CHAIR: You get 10 minutes, but if you're not finished we can come back to you after other senators.

[21:45]

Senator DODSON: Okay. It's probably in relation to program 1.6, which is Indigenous legal and native title assistance. I understand that there's a Native Title Officer Funding Scheme that ‘aims to facilitate efficient and effective resolution of native title claims’. The department's website says:

To be eligible for funding, applicants must be peak industry bodies or other organisations that employ, or are seeking to employ, native title officers … to assist respondents in the resolution of native title claims.

My question is this: how much has been spent on providing assistance to peak industry bodies and organisations to resolve native title claims?
Ms Denley: Are you wondering for this financial year, Senator?

Senator DODSON: That would do. It could go right back to the beginning of native title if you like, but just this financial year would be fine.

Ms Denley: This financial year, $1.676 million is allocated for the native title respondent funding scheme, and that's broken into two categories. One is for the native title officers scheme, and the other is for funding for native title respondents.

Senator DODSON: Okay. I was raising it in relation to the Native Title Officer Funding Scheme. How much is in that bucket?

Ms Denley: It's $200,000.

Senator DODSON: Okay—not a lot of money. Maybe it's in the other bucket. I'll go and have a look. If the balance is in the other bucket, that's the one I'm after.

Ms Denley: The native title respondent funding scheme?

Senator DODSON: Yes. I'm not clear which one I'm really talking about, in one sense. You have been very helpful to date in giving me the two categories.

Ms Denley: Would it be helpful if I outline what each scheme does?

Senator DODSON: No, I don't need that detail, because my questions go to how much has been provided to the industries in this financial year out of both of those buckets of money, now that you've identified two of them, to assist respondents to resolve native title claims.

Ms Denley: The money paid so far in the 2018-19 year is $494,000.

Senator DODSON: What organisations have been funded in Western Australia in relation to accessing those funds?

Ms Denley: I'd have to take that on notice.

Senator DODSON: Okay. And in relation to the Northern Territory and Queensland?

Ms Denley: Again I'd have to take it on notice.

Senator DODSON: Thank you. Did any Indigenous bodies receive funding out of either one of those buckets?

Ms Denley: This is the native title respondents funding scheme, so Indigenous bodies wouldn't receive assistance through this. There are separate schemes through which Indigenous bodies may receive assistance—unless they were formed—

Senator DODSON: So they don't receive funding out of it?

Ms Denley: Not out of this particular scheme.

Senator PRATT: They might not be native title holders, though.

Senator DODSON: No, they're respondents.

Senator PRATT: They might be stakeholders of a different kind.

Ms Denley: That's correct.

Senator DODSON: But they're respondents. What's the other bucket that native title respondents would seek to get funding from?

Ms Denley: The native title officer scheme—is that what you're referring to?

Senator DODSON: I'm not sure. You said there was a different bucket which native title respondents got funds from.

Ms Denley: No, sorry. I thought you meant native title representative bodies. Respondents to native title can apply for funding out of this scheme.

Senator DODSON: How many have or have not?

Ms Denley: We don't have a breakdown of individuals, but it is reported what grants are given. There might be more grants given than the number of people that have actually applied.

Senator DODSON: Can you get the details around that for me?

Ms Denley: Of the number of grants given?

Senator DODSON: Yes.
Ms Denley: Yes. I can tell you that, so far this year, there have been 162, but that doesn't equal the number of organisations, because many of the grants are done in smaller amounts.

Senator DODSON: Okay. I'll pursue that another day. Last year, Minister Scullion approved grants under the Indigenous Advancement Strategy of $150,000 to the Northern Territory Seafood Council, $170,000 to the Northern Territory Amateur Fishermen's Association, and $165,000 to the NT Cattlemen's Association for legal fees, effectively to put forward cases of detriment to the Land Commissioner. Is that right?

Ms Denley: I don't have any knowledge of—

Mr Anderson: That's a matter for Prime Minister and Cabinet.

Senator DODSON: I'm sure, and we'll raise it on Friday. Don't get excited about it. The funds that the minister's used didn't come out of the accounts that you have to deal with respondents?

Ms Denley: That's correct. It's—

Senator DODSON: All I want to know is whether they've made an application to the Attorney-General's Department for assistance as respondents for the purposes of putting arguments of detriment to the Land Commissioner.

Ms Denley: Not relating to the Land Commissioner.

Senator DODSON: So there's no record of those three bodies coming to the Attorney-General's Department for assistance—under any of your categories for assistance?

Ms Denley: Would it be helpful if I listed the organisations who received funding under the officers scheme?

Senator DODSON: No. I just want to know about those three.

Ms Denley: Could you tell me the three again?

Senator DODSON: The Northern Territory Seafood Council, which received 150,000 out of the IAS funding that the minister has; $170,000 went to the NT Amateur Fishermen's Association; and $165,000 went to the NT Cattlemen's Association. These are funds that have come out of the IAS for the purposes that you have a fund. I'm interested in why they didn't come to you?

Mr Anderson: Senator, if they were seeking funding in relation to matters being dealt with by the Land Commissioner, under the Aboriginal Land Rights Act—

Senator DODSON: No, this is under the Native Title Act. This is to resolve questions of detriment in relation to native title.

Ms Denley: The Northern Territory Cattlemen's Association has received a grant under the native title officers scheme, but not the other two organisations that you—

Senator DODSON: What did they receive?

Ms Denley: They received a grant of $29,500.

Senator PRATT: Are they double-dipping?

Ms Denley: The native title officers scheme helps facilitate resolution of native title. Regarding the way that it works is that grantees receive money for a native title officer and they need to match the funds that they receive under this scheme. They use those officers to help assist the resolution of native title claims.

Senator DODSON: So this is basically for legal fees for someone to prepare their case?

Ms Denley: Regarding the native title officers, it might be for liaison purposes. It's a range of things.

Senator DODSON: Do you know what it was for? What were the $29,000 for?

Ms Denley: The role of native title officers is to educate members of peak bodies or other organisations about native title issues. They might facilitate a grouping of respondents in claim areas—

Senator DODSON: So you don't really know why the Northern Territory Cattlemen's Association asked you for $29,000?

Ms Denley: They were given a grant under this scheme for this amount for a native title officer for the purposes I was just—
**Senator DODSON:** But you don't know what the native title officer's functions were going to be—is that right—under the categories of things that they could or couldn't do?

**Ms Denley:** I was just outlining what the functions—

**Senator DODSON:** I understand that, but I'm interested in what the $29,000 was utilised for by the Northern Territory Cattlemen's Association.

**Ms Denley:** It needs to be utilised for the purpose I was outlining.

**Senator DODSON:** Okay. So almost $500,000 has come out of the IAS for those three entities in the Northern Territory—that the minister's provided. Now, you can't answer that; I understand that. I'm just confirming that that seems to be the reality of your answers in relation to no-one accessing the funds that you've got available. If these entities had come to you, would they have been eligible, given that as respondents they wanted to deal with the resolution of native title claims? Would they have come to you—or should they have come to you?

**Ms Denley:** Come to the department for funding?

**Senator DODSON:** The people who've got the funds to administer for respondents to native title to resolve detriment issues.

**Ms Denley:** All I can say is that we've got the two schemes that operate, and under the Native Title Officer Funding Scheme they're entitled to come to us to make an application for—

**Senator DODSON:** Okay, and they didn't. I'm just confirming that they didn't come to you, except for one application from the Northern Territory Cattlemen's Association for $29,000.

**Ms Denley:** They may have applied. The Native Title Officer Funding Scheme goes through a grants round. So, the people who were recipients of the grants applied through the grants round, and one of the recipients was the Northern Territory Cattlemen's Association. There may have been others that applied but didn't receive the funding.

**Senator DODSON:** So, the funding that they did receive has come from somewhere out of the government. I'm presuming it's now out of the Aboriginal Affairs portfolio. You've got no record of these people coming to you for assistance.

**Ms Denley:** We have an appropriation for the Native Title Officer Funding Scheme and the Native Title Respondent Funding Scheme.

**Senator DODSON:** I understand that, but you've got no record of these entities except for the $29,000 coming from the scheme that you operate?

**Ms Denley:** They may have received funding in other years, or they may have applied for funding and not been granted the funding.

**Senator DODSON:** The fact is that they have been the recipient of funds, but it doesn't appear that you've got a record of them either applying or being granted funds to the level I've mentioned.

**Ms Denley:** They may have applied, but in this financial year I don't have a record of the other two that you mentioned.

**Senator DODSON:** Okay. Is there any reason you can think of—and maybe this isn't a question for you; maybe it's for the secretary or someone else—that these entities in the Northern Territory would not have come to you but went to the Aboriginal Affairs minister?

**Mr Moraitis:** I can't speculate on why they went to one or the other. As Ms Denley said, we administer two funds—one's a respondents fund and one's a native title officers fund. The reasons these entities went to one or the other—we don't want to speculate as to why.

**Senator DODSON:** Okay. And you haven't been able to give me any details of the number of grants you've given to corporations in any of the jurisdictions I've asked about.

**Mr Anderson:** We've taken that on notice.

**Senator DODSON:** You've taken that on notice, but I'm saying that tonight you haven't been able to give me an indication of that, so we don't really know.

**Mr Moraitis:** We have a global figure, which was 160—

**Ms Denley:** 162—

**Senator DODSON:** Perhaps I could move to another subject—a few more questions on legal services. These questions are really about Community Legal Services and the funding that I understand your department provides...
in this area. The current Community Legal Services Program is delivered as a nationally focused discretionary grant program administered by your department. Is that right?

Mr Anderson: That's correct.

Senator DODSON: How much funding is delivered to Community Legal Services in Western Australia?

Ms Harvey: The Community Legal Services Program is a discretionary program that does a range of things, but I think the community legal centres are funded under the national partnership agreement, so it's actually a separate program. I think we should be able to provide the details of how much goes to Western Australia. Through the national partnership agreement, the Commonwealth provides money to the states, and the states then determine that funding to community legal centres.

Senator DODSON: So you can provide that to me?

Ms Harvey: I think we should be able to.

Senator DODSON: And in relation to the community legal centres in Western Australia?

Ms Harvey: That's what I was just referring to under the national partnership agreement.

Senator DODSON: I understand that, but can you give me the breakdown that covers that particular legal service?

Ms Harvey: One of my colleagues should have that figure available.

Senator DODSON: Okay, and how does that amount compare to the amount of funding directed to the Aboriginal legal services?

Ms Harvey: Under the Indigenous Legal Assistance Program, we also provide money directly from the Commonwealth to a number of Aboriginal and Torres Strait Islander legal services. We will have that figure available as well.

Ms Hermann: The answer to the question as to how much community legal centre funding is delivered to Western Australia under the national partnership agreement over the five-year period is $26 million.

Senator DODSON: And to the ALSs?

Ms Denley: I can answer the question. In relation to the ALS over the five-year period between 2015 and 2020, it would be over $63 million.

Senator DODSON: Are you able to identify the overall funding that is directed to the Kimberley under one or other of these categories, to one or other of these legal services?

Ms Harvey: We might take that on notice, because we would have to have a look at the community legal centres that operate in the Kimberley. There is one Aboriginal Legal Service that operates in Western Australia. I don't know if we have the figures of how that's broken down through different offices, but certainly we will take it on notice and provide what we can.

Senator DODSON: And relativise it to the various legal services that are the beneficiaries operating within the Kimberley?

Ms Harvey: Yes. We will do it to the extent that we can, noting that it is a single Western Australian legal service for the ATSILS there.

Senator DODSON: You may not be able to answer this, but this is a question about whether these legal services are being adequately funded for the workload, the case load, that they're dealing with. Do you have any idea about that?

Mr Anderson: I think that any legal service provider will say that they would like to receive a higher level of funding. As to whether it's adequate or not, they report to us on what they're doing with the funding that they receive and how many cases they see, and we talk to them about the use that they can make of the funds, but they would all certainly say that they would like to have a higher level of funding.

Senator DODSON: I'd be interested to know whether these legal services, particularly in the Kimberley, have access to paralegals, liaison officers or field officers to do some of the preparatory work that I see lawyers doing on a daily basis, which is running around looking for clients, when they have many other different things they should be doing in the court. Do they get access to paralegals? Do they get access to employ field staff?

Mr Anderson: We generally don't prescribe how they actually allocate their funds. Obviously we have detailed agreements in terms of the uses of the funds, but not detailed in the sense of saying whether they can have paralegals or field officers. Those are decisions for them to make.

Senator DODSON: Within the budget that you provide.
Mr Anderson: Within the budget, yes.

Senator DODSON: Has there ever been any request for those sorts of functions in their budget submissions to you?

Ms Denley: I guess in the two categories there's the CLC which, as you say, is operating in the Kimberley. We'll just clarify the exact figure, but I think it's approximately $1 million. But we'll take that on notice and get back to you for the Kimberley community legal centre. We have a funding agreement with the ATSIL in WA, and under that funding agreement there are general categories of things that we expect providers to do, but, as Mr Anderson has said, we don't prescribe what they do in individual areas. We feel that they're best placed to make the decisions for what's best for their community and how they run the ATSILs.

Senator DODSON: This question may be a bit superfluous given that no-one knows whether there are paralegals or field officers associated with this legal service, but I'll ask the question: is there a career path for community based workers in the legal sector, and what support is available for them in this area?

Ms Denley: I don't know if I could answer specifically. I think generally we are aware that ATSILs do try to build in career paths for their staff. We have regular performance meetings with ATSILs twice a year. Officers from the department will visit the ATSILs in person and see how each individual ATSIL is operating. Through those reporting mechanisms, we're aware that they're very conscious about taking care of their staff and thinking about career paths for their staff, but I wouldn't be able to answer specifically any questions in that space. But I could take something on notice and follow up with an answer for you.

Senator DODSON: And in relation to the other legal services apart from ATSILs, like the Kimberley Community Legal Service?

Ms Hermann: Yes, the department undertakes a similar process to that outlined by Kathleen Denley, regarding having performance meetings with both the community legal centres and legal aid commissions across the country, and the states and territories who administer the national partnership agreement.

Senator DODSON: And that involves discussions about pathways and improvements for the workers?

Ms Hermann: I wouldn't say that we focus particularly on that. It's more around the performance of the sector in delivering the funding and the services that they deliver. But from time to time matters around staffing can come up in those meetings.

Senator DODSON: It sounds to me like there's nothing specific. Would that be a fair conclusion for me to draw? No answer? Okay, I'll take that. Thank you, Mr Chairman.

CHAIR: Thanks, Senator Patrick.

Senator DODSON: 'Senator Dodson', for the record.

CHAIR: Oh, sorry.

Senator DODSON: Senator Patrick's another senator who belongs to a different party.

CHAIR: Yes.

Senator DODSON: A very nice man, I might add.

CHAIR: He's not as good-looking as you, Senator Dodson! I'm sorry I confused you.

Senator DODSON: I can appreciate it, Chair. It's getting late.

Senator PRATT: You were confusing his first name with his surname, Chair.

CHAIR: Yes. It's been a long couple of days.

[22:07]

Senator PRATT: I want to ask some questions now about royal commissions, and I think these are our final questions for tonight. There was a motion passed last week calling on the government to implement a royal commission into disability abuse. I note that the Prime Minister is not yet committed to acting on that call but said the states and territories would need to be consulted first. What work, if any, has the department been asked to do on establishing a royal commission into this issue?

Mr Moraitis: I think the motion was this week.

Senator PRATT: Yes, sorry, it was earlier this week. It was probably only yesterday.

Mr Moraitis: It feels like last week! At this stage it's a matter for government, I think. That's the best I can say.
Senator PRATT: So there is no activity in your office yet regarding this issue? I appreciate you may not have provided any specific advice yet, and you can't tell us what the advice might be, but is the issue starting to be activated in your office?

Mr Moraitis: Mr Lewis may have something that's emerged in the last 12—

Senator PRATT: It doesn't need to be for or against. I just would like to know if there's any activity around the issue in the office.

Mr Moraitis: Mr Lewis, am I correct? Is there something further?

Mr Lewis: I can confirm that there has been a request for some legal advice in relation to a royal commission into disability.

Senator PRATT: Does that legal advice pertain to issues such as who might have liabilities in the—

Mr Moraitis: We won't go into the nature of the legal advice.

Senator PRATT: Has the department been asked to contact states and territories in order to progress the establishment of a royal commission?

Mr Anderson: Prime Minister and Cabinet is actually the agency that looks after the establishment of royal commissions. So that will be a question better directed to them, I suggest.

Senator PRATT: So you take care of them once they're established?

Mr Moraitis: Yes, we administer them, and records—

Senator PRATT: And record them. Prime Minister and Cabinet should also be asked this question, but has the department been asked for assistance in drafting terms of reference?

Mr Anderson: Mr Lewis mentioned that some legal advice has been requested, and we're not going to go into the substance of the request for legal advice, but it is at a very early stage. The terms of reference is another matter that is the responsibility of Prime Minister and Cabinet, and those questions are better directed to them.

Senator PRATT: They'd be the lead agency on it, but have you been asked for assistance in drafting terms of reference?

Mr Lewis: I don't think there is anything to add, except that, in the usual course we would be involved in providing assistance and perhaps facilitating the provision of legal advice in relation to terms of reference as a general matter.

Senator PRATT: Have there been any conversations with the Attorney-General in relation to those issues?

Mr Anderson: Sorry, conversations with the Attorney-General—do you mean conversations between the department and the Attorney-General?

Senator PRATT: Yes, on this matter.

Mr Anderson: Not that we're aware of.

Senator PRATT: What's the shortest time frame in which the government has ever established a royal commission? You might be aware of this, but I could also ask it of Prime Minister and Cabinet.

Mr Anderson: I think that would be a very good place to start. Because they're responsible for the Royal Commissions Act and the establishment of royal commissions, I think you should start with them.

Senator PRATT: But, for example, when previous royal commissions were started, such as into institutional sex abuse or Don Dale, would you not have been involved, as they got established, in knowing the time line of how long they took?
Mr Anderson: I'm just not sure that we can really usefully say anything. There have been royal commissions for as long as there's been a Commonwealth. It may well be that there have been royal commissions, such as the one into the sugar industry in 1910, that might have been very quick to set up. I'm simply not aware. I don't think I can usefully make a comparison.

Senator PRATT: With respect to the royal commission into institutional sex abuse, you've had an interdepartmental working group tracking those outcomes. What's the process going forward now for releasing and reporting—

Mr Moraitis: We've just released a report.

Senator PRATT: progress against the recommendations into the long term? I know you've just released one report.

Mr Moraitis: On 14 December, which was the first report.

Ms Harvey: The first report was tabled on, I think, 14 December and there is a commitment to table an annual report for each of the next four years—so five years in total. We have obviously been involved in compiling that report and we'll continue to be monitoring and tracking progress of commitments.

Senator PRATT: Thank you. So, with respect to the Hayne royal commission, are you playing a similar role because you're the institution responsible for coordinating royal commissions, or has that been sent to a different agency?

Mr Moraitis: I think the lead agency in that space is Treasury in terms of responding to the royal commission.

Mr Anderson: This department wasn't the lead agency in preparing, for example, the government response to the Financial Services Royal Commission report; that was Treasury.

Senator PRATT: So, you're not always the lead agency in preparing responses to royal commissions.

Mr Anderson: We're the lead agency in, I guess, the process of monitoring the implementation of the child abuse royal commission recommendations, but there are a number of different lead agencies within the Commonwealth for different streams.

Senator PRATT: No, that I understand, but I was therefore trying to work out whether you're the lead agency coordinating the responses to all royal commissions or that's a decision made by a royal commission?

Mr Moraitis: No. We undertook to be the coordinator for the royal commission on abuse because it was such a complex multistakeholder situation, and our view was that someone needed to coordinate and we were prepared to do that. It's not our normal role.

Senator PRATT: You don't know if you're thinking about being the coordinating agency for a disability royal commission then yet, I'm sure?

Mr Moraitis: It's hypothetical, but I think that would be something for the relevant social policy agency.

Senator PRATT: Now, I had some questions about redress—and I know DSS is the lead agency on that; I'm very clear about that—but I'm keen to see how you're monitoring DSS with respect to the implementation of that scheme, because you're coordinating the agencies. Are you happy with the number of institutions that have agreed to participate in the scheme, and how many are there?

Ms Harvey: I don't know that we have the figure of how many there are—we may—but those questions are better directed to DSS. Our role is very much about monitoring how implementation is going and how recommendations are being implemented, but I am aware that DSS, given the size of the redress scheme, has mechanisms in place through which it is working with stakeholders et cetera. So, I think they are better placed.

Senator PRATT: Is part of your coordinating role though working out whether the response coming from the departments you're coordinating is adequate or is it simply to—why are you coordinating things? Is it just for reporting purposes, or is there some kind of accountability?

Mr Anderson: In our monitoring role, we're not actually making qualitative assessments as to the nature of responses. But, what we are doing is ensuring that there are responses and that those responses are published, and the accountability rests in what's actually published so that people can then go to an agency or to an NGO and say, 'Why are you doing this?,' 'Tell us more about this' or 'Why aren't you doing that?' We're facilitating the accountability by ensuring that there's publication and transparency of what the different responses are.

Senator PRATT: Does that mean you're tracking, for example, the number of applications received by the National Redress Scheme, or that's simply a matter for DSS?

Mr Anderson: No, we're not tracking that.
Senator PRATT: There is a lot of critique about some of the failures within the Redress Scheme. Is that a matter of discussion in these interagency coordination meetings and how you're reporting on these issues?

Ms Harvey: In compiling the government response, for example, and the annual report, we have really focused on whether those recommendations have been implemented, but we haven't been focusing on the way that they've been implemented in that sense, so, no.

Senator PRATT: That's fine. I think DSS will appear in the next—I think it's tomorrow; I can't quite remember—so we'll get a chance to follow that up. In terms of the report that was released last December, tracking recommendations, is there a process within government for prioritising recommendations?

Ms Harvey: In terms of that report, you'll see that we broke it into different themes. There are different streams of work going on, if you like, because some of those are simply for the Commonwealth. A lot of them are for us to work with states and territories. For example, with the states and territories we went through a process of identifying some priority recommendations that we would work together on, but some of those recommendations are also being progressed through ministerial councils, so there are a number of different ways that they are being implemented and prioritised.

Senator PRATT: So you're tracking all of those. Are you able to give me an update on the ChildSafe organisation and implementation of those recommendations?

Ms Harvey: I think they are primarily for the National Office for Child Safety within the Department of Prime Minister and Cabinet.

Senator PRATT: Now that that exists, because previously when I asked about those recommendations that office didn't yet exist. I did have a conversation with this agency about their implementation. I can now understand that that office would now be responsible.

Mr Anderson: Can I clarify some evidence I gave. I referred to the sugar industry royal commission of 1910. It was actually 1919.

CHAIR: I remember it well!

Senator PRATT: Thank you, Mr Anderson. You are fount of knowledge!

Senator WATERS: I'm interested in the government's proposal paper for the proposed integrity commission. In relation to the proposal paper that was out for consultation, which I think finished on 1 February, who was consulted with on that proposal paper?

Ms Chidgey: The proposal paper was made publicly available, so that in that sense any individual or organisation was able to comment and provide a submission. We also held a series of consultations with government agencies and with a set of external stakeholders, including organisations like Transparency International Australia, representatives from the Australia Institute, and other civil society stakeholders with an interest.

Senator WATERS: If the list isn't too long, I'd love to know who the external agencies were. You just mentioned two by name. Were there many others?

Ms Chidgey: There were probably about somewhere between 10 and 15 individuals at that meeting of external stakeholders.

Senator WATERS: Could you please provide on notice the names of all of the folk that were consulted with, particularly those external stakeholders to which you referred. How were those participants selected?

Ms Chidgey: There are some who had clearly expressed interest and had met with the Attorney-General. Some of them we had dealt with through forums like the Open Government Forum as well, who have a particular interest in anticorruption matters.

Senator WATERS: Who were the ones that had met with the Attorney-General?

Ms Chidgey: The Attorney had met with some of the judges who made comments, and I think also under the connection that they have with the Australia Institute. I know he'd also had a meeting with Transparency International Australia.

Senator WATERS: You mention that the paper had been put out for public comment. How many submissions were received?

Ms Chidgey: There were 58 submissions and 3,000 responses from a GetUp! campaign.

Senator WATERS: Are those 58 listed somewhere? Is that publicly available?
Mr Walter: We're in the process of preparing them for publication on the website. Some requested not to be published, and some we are looking at to see whether we need to redact them, for example because they make allegations of corruption against individuals that we wouldn't be able to publish.

Senator WATERS: That sounds like a fairly normal process. Will the ones that don't raise any of those red flags be publicly available?

Mr Walter: Yes.

Senator WATERS: There was media reporting of that consultation process. The media report I've got was by journalist Kate McClymont in The Sydney Morning Herald on 26 January. I quote the article:

On Thursday, the Attorney-General’s department organised a consultation process in Melbourne about the proposed CIC. This is the line I want to get some clarification on:

During the meeting two senior bureaucrats stated that the government planned to have the CIC bill before Parliament in the first sitting week of the year and that Attorney-General Christian Porter was unlikely to change the government's previously stated position.

I wonder, was it either of you who made those remarks to the journalist?

Ms Chidgey: That's an inaccurate description of the discussion. We had indicated that government was yet to make a decision on timing of legislation but that we were working on draft legislation to put the government in a position so that it would have the option of introduction early in the sittings, should it choose to do so.

Senator WATERS: I want to come back to the timing and the progress made on the drafting, but I was particularly concerned by the inference that the Attorney wasn't open to any changes as a result of the consultation process. That seemed to me to undermine the whole point of the consultation. Can you address that?

Ms Chidgey: We didn't say that either. We said we would provide all of the comments and submissions from stakeholders to the Attorney and that some particular features of the model in the proposal paper had been extensively considered and discussed with some of the stakeholders already but that the government would make final decisions with all of the comments from stakeholders.

Senator WATERS: Was the implication that some of those features were immutable, if you like?

Ms Chidgey: No, that wasn't the implication.

Senator WATERS: I'm pleased to hear that the consultation process wasn't deliberately designed to be a waste of everybody's time. Regarding the drafting, would you mention again where the drafting process is at?

Ms Chidgey: We've been working with the Office of Parliamentary Counsel to prepare draft legislation and that process is ongoing.

Senator WATERS: Is the drafting complete?

Ms Chidgey: No, it's not, until the government makes final decisions.

Senator WATERS: Perhaps this is my lack of familiarity with the process. When I ask if the drafting's complete and you say it's not complete until the government says it's complete, I don't quite understand. Can you say that another way?

Ms Chidgey: The government still has to make final decisions ultimately on the form of the Integrity Commission. So there's a bill in preparation, but it's not finalised and there are a number of elements that are yet to be settled.

Senator WATERS: So there are various different drafting options that the Attorney or the cabinet or whoever might choose to go with.

Ms Chidgey: That's right.

Senator WATERS: Have there been any public statements made about the time frame for the introduction of that bill?

Ms Chidgey: No, not by the government.

Senator WATERS: So we're still not sure whether we'll see it before the election?

Ms Chidgey: Ultimately, it is a matter for the government to decide.

Senator WATERS: I'd like to ask about the scope of the proposed commission, as it's been fleshed out so far in the proposal paper that's on the public record. We had some discussions in relation to this in a Senate inquiry a couple of weeks back. There have been a number of criticisms levelled at the scope of the government's proposal. Has the department turned its mind to the substance of those criticisms and has the department provided recommendations to the minister on how to address those criticisms?
Ms Chidgey: We have considered those and we have had a number of meetings and discussions with the Attorney, also in some cases involving the expert panel that is advising him. We haven't provided any final set of recommendation and it will, ultimately, be a matter for government and cabinet to consider the final details.

Senator WATERS: Have you provided options, though?

Ms Chidgey: We've given the Attorney information on the submissions and issues raised, and on a number of different aspects of the proposal we've provided some advice and papers.

Senator WATERS: Would drafting work have been done on any of those suggested changes by the various stakeholders?

Ms Chidgey: We've continued progressing adjustments to drafting throughout the process.

Senator WATERS: Have any of those adjustments to the drafting arisen because of the concerns that stakeholders expressed?

Ms Chidgey: Yes. It would be fair to say there have been adjustments from some of the consultations we've held.

Senator WATERS: Are you allowed to tell me on what facets those adjustments have been made?

Ms Chidgey: No, because ultimately all are a matter for government to decide still.

Senator WATERS: Would you describe those adjustments as significant adjustments or minor tweaks?

Ms Chidgey: Probably a matter of judgement but some of them are substantial.

Senator WATERS: As to the shape of the commission as it currently stands would it, for example, have been able to address the issue with Minister Cormann that has been occupying a different committee's time much of today, about the unpaid travel flight and the potential link between donations made by a travel company and the awarding of a contract?

Ms Chidgey: It wouldn't be appropriate to comment on any particular factual circumstances. What I would say is that the scope of the commission would include all criminal corrupt conduct and that includes offences for receiving corrupting benefits, which include, for example, an offence that if any benefit is received and that benefit would have the tendency to influence decisions, that's one of the corrupt conduct offences the commission would be able to look into.

Senator WATERS: If something wasn't at the level of criminal conduct—and I understand there are not that many offences that are, and I'm across the fact that you're proposing to add a handful more, I think there are two more—if something was, I don't want to say mere misconduct because misconduct is still serious in my view, misconduct is it still the case this commission won't be able to investigate it?

Ms Chidgey: I would start by saying the corruption offences are, in fact, very broad in the scope of conduct that they capture. Abuse of office is a very broad offence as is the receipt of corrupting benefits offences. So they cover an extensive amount of conduct that could be considered corrupt. It is true to say that misconduct and breaches of the code of conduct wouldn't be covered. The APS Code of Conduct, for example, does cover things like bullying and harassment. But, no, that wouldn't be the intention that this commission would look at those lower level misconduct matters.

Senator WATERS: For example—and to not refer to today's incident, as you've said you can't reflect on specific examples and that's fine—would the provision of a government contract to a body or a company that had made donations to a political party be something that the commission would have the ability to investigate or to look into?

CHAIR: Senator, I'll allow the question because it's late at night and I'm very, very generous but this is getting into the realms of hypotheticals. I think the officers will say it will depend on the facts and circumstances, which you've given one very simple one.

Senator PRATT: The model has been released. You should be able to answer policy questions.

CHAIR: This is not a policy question. This is—

Senator WATERS: It does go to the scope of the body's powers.

CHAIR: if this happened would this happen. It really is hypothetical.

Ms Chidgey: Probably very similar to my previous answer, the corrupting benefits offence, if there were a connection between receipt of benefit and a decision that could be shown, that would be covered. But as you would expect, a donation or other matter that had no show and connection to any decision wouldn't be criminally corrupt conduct and arguably wouldn't fall into other categories either.
Senator WATERS: Given that the threshold for when this proposed commission can investigate something is if they have a reasonable suspicion of criminal conduct, how does one obtain a reasonable suspicion if one can't first investigate it? It sounds like a bit of a catch 22 to me. How will that jurisdiction be invoked if the bar for when they can even start looking is so significantly high?

Ms Chidgey: I wouldn't agree that it's a high bar. Reasonable suspicion just means some material to indicate that there could be a criminal offence.

Senator WATERS: But when you say some material is it not the case that the commission won't be able to receive referrals, if you like, or tip-offs using lay person's language, from members of the public? How is this some material to the—

Ms Chidgey: Not directly, but it will be able to receive those. For example, if a member of the public made a complaint to the AFP or the Ombudsman that would then be referred on to the commission.

Senator WATERS: Would be? Or could be?

Ms Chidgey: I think the ultimate decision for government on whether integrity agencies would be mandatory or discretionary. We would expect that other Commonwealth agencies, where they detect any matters of corruption, would be required to refer such matters through to the commission.

Senator WATERS: This proposed body has been described as a sham commission. It's also been described as toothless. What do you say to those contentions?

Ms Chidgey: That is obviously a matter of opinion. The government's given a justification for aspects of its proposal.

Senator WATERS: It wasn't a terribly convincing justification, but that's my personal opinion. Can I ask for clarification on the coverage for members of parliament with the proposed commission?

Ms Chidgey: Sorry, Senator?

Senator WATERS: Is it proposed to apply to members of parliament? And, if so, in what circumstances?

Ms Chidgey: Yes, it will apply to members of parliament and, similarly, relate to matters of criminal corrupt conduct.

Senator WATERS: So, again, it's only for those criminal offences. It's not for anything less that might still be considered improper or misconduct or any of those things other than criminal offences. So, if we're criminals you can investigate us, but if we're anything less than criminals the commission won't be able to investigate. Is that right?

Ms Chidgey: The commission will focus on criminally corrupt conduct. As I've said, those offences are actually very broad in scope. But it is worth also mentioning that the significant multi-agency integrity framework that currently exists will continue to do so. So, those other complaint and misconduct handling mechanisms remain.

Senator WATERS: They don't apply to members of parliament, though.

Ms Chidgey: There are some bodies, like the Independent Parliamentary Expenses Authority, that have—

Senator WATERS: I've just had a chat with them, and it seems like they need to be given more teeth as well. I understand there has been a transfer of responsibility of the Lobbying Code of Conduct and that that's in process. I raised this with a different agency earlier in the week. Can you confirm for me when your department will take that over, what sort of staffing you'll dedicate to that, and what's happened in the interim?

Mr Walter: I think we discussed this at the last estimates.

Senator WATERS: We did indeed. We meet again!

Mr Walter: I'm probably going to frustrate you as much as I did last time! We are in the process of transferring the lobbying register. I think as you discussed with the Department of Prime Minister and Cabinet, the obstacle is around an IT build. They've been doing an upgrade to the register and it needs to be in a particular form to allow it to be transferred across to us, so that we can put it within our system and operate it. It's a little bit unclear at this stage exactly when that will be finished. We've been working very closely with them and we've been involved with the design of it, so that it works on that. I can run you through the resources we've allocated to that build if you're interested. We've got one full-time equivalent, for example, in our IT areas working on that transfer, plus a couple of other staff. Regarding when it comes into the department, I think, as the secretary mentioned earlier today, when a range of functions were transferred to the Attorney-General's Department from the Department of Prime Minister and Cabinet under the recent machinery of government changes, we received an additional two people to cover that range of functions, which includes the maintenance of the lobbyist register.
and policy associated with that. We already have the funding for that. Those two positions are located in our institutional integrity branch, and they also work on a range of other matters. We understand from the Department of Prime Minister and Cabinet that general maintenance of the lobbyist register requires part of a person most of the time, plus some additional resources when they're doing their six-monthly call for updates to the register. We expect we would allocate similar kinds of resources. Of course, if there's additional policy work or work that needs to be done on the register, then we'll allocate resources accordingly.

Senator WATERS: I have just two quick follow-ups questions. You mentioned that policy work would also be entailed with these two new FTEs that you've been allocated. Are you planning substantive policy changes to the register or the code? What might that entail?

Mr Walter: At this stage all I can say is that we will look at that when it comes into the department, and once we have full responsibility for it we'll look at it and see whether any work needs to be done in that respect.

Senator WATERS: Okay, but you've already got a staffer delegated or chosen to do that. You've already been given the resources for that work, but you're saying that you're not sure whether that work will need to happen? That doesn't sound very standard to me.

Mr Walter: We take a policy responsibility for the Lobbyist Register as part of administering. Generally, as we took over other things as well—

Senator WATERS: Sure. You have added capacity.

Mr Walter: that number brings in that. And in the event that there was substantial policy work that needed to be done, we would allocate additional resources to it.

Senator WATERS: You would? Or you have been?

Mr Walter: We would. But, as I said, we haven't assessed that yet.

Senator WATERS: Okay. And can I just check on whether the proposed integrity commission would have oversight of that lobbying code and register? What's the interaction between those two entities?

Mr Walter: We haven't turned our mind to that as yet. We can put some thought into it. However, I can say that, as you'd be aware, the department also administers the Foreign Influence Transparency Scheme, and there's a register associated with that. Ultimately our plan is to collocate those two registers so that the various transparency registers are collocated. So, at this point we're planning on it being administered out of the department, but it's something we can of course consider.

Senator WATERS: Thank you. And could you, on notice, provide me with a bit more information about that other register you mentioned? I'm less familiar with that one.

Mr Walter: Certainly.

Senator WATERS: I have another question, but it just escaped my mind—the foreign influence register—

Mr Walter: The Foreign Influence Transparency Scheme?

Mr Walter: This is the scheme that provides for registration of people who are acting on behalf of foreign related entities in relation to political lobbying.

Senator WATERS: Yes, if you can provide as much information about that or send me a link or something to read up on that—

Mr Walter: I can easily send you a link. The department's website has 18 fact sheets, I think it is, associated with the Foreign Influence Transparency Scheme, which I think are reasonably accessible, if I say so myself.

Senator WATERS: And can you remind me of the policy rationale for the transfer? I know it's a MoG change, but was there any reason given for why it should now sit with you folk?

Mr Walter: Part of the rationale behind the MoG change was to concentrate the integrity functions of government with the Attorney-General, and the lobbying code and the register were considered as part of those integrity functions.

Senator WATERS: Does that mean that the Ministerial Code of Conduct should also be transferred, if that's your logic?

Mr Walter: That sits with the Department of the Prime Minister and Cabinet, because it's the Prime Minister's code of conduct.

Senator WATERS: So, would you be providing any sort of policy support or backup on that?

Mr Walter: We don't provide advice on the Ministerial Code of Conduct, no.

Senator WATERS: Is that the only piece of the jigsaw that won't end up resting with you guys?
Mr Walter: I think it's how you cut and splice these things. For example, we don't have the National Audit Office, which sits with the Department of Finance, and things like that. So, it depends how you decide to divide these things up.

Ms Chidgey: And there are a number of inspector-generals—of taxation, of the ADF, et cetera—who also sit across other portfolios. So, there's quite a broad existing integrity framework with a number of integrity agencies across government.

Senator WATERS: If they are still spread out again, why shift this one to you? Why not just leave it under PM&C, where it was?

Ms Chidgey: I think, as Mr Walter mentioned, part of it was that there was some alignment with lobbyists on the two registers that we would then administer—the lobbyists register and the Foreign Influence Transparency Scheme. There's some administrative advantage and potentially making it more streamlined for lobbyists to have those registers collocated as well.

Senator WATERS: Sure. Was there a suggestion that the Foreign Interest Transparency Scheme in fact go to PM&C, where the lobbying code once sat? I get that you want to keep them together, but why did you guys get to assume the lobbying code rather than the other code go over to PM&C, where the lobbying code originally was?

Ms Chidgey: Because we've got the integrity function and the department did all the development work and legislation for the Foreign Influence Transparency Scheme as well.

Mr Moraitis: And it was modelled on the American system, which sits within the Department of Justice—not that that's a reason, but that's the logical rationale of how we developed the scheme. As Ms Chidgey said, it made more sense for it to be placed with us.

Senator WATERS: What was the original reason, then, for the lobbying code of conduct to be with PM&C?

Ms Chidgey: I couldn't comment on that.

Senator WATERS: Okay. Thanks very much for your help.

CHAIR: Thank you, Mr Moraitis, Minister Cash and your team. Also thanks to Hansard and the secretary and the secretariat. We very much appreciate your assistance.

Committee adjourned at 22:45