COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Estimates

(Public)

THURSDAY, 4 APRIL 2019

CANBERRA

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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Thursday, 4 April 2019

HOME AFFAIRS PORTFOLIO

In attendance

Senator Cash, Minister for Small and Family Business, Skills and Vocational Education
Senator Reynolds, Minister for Defence Industry, Minister for Emergency Management and North Queensland Recovery

Department of Home Affairs

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

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

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

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

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

**Australian Transaction Reports and Analysis Centre**
Ms Nicole Rose PSM, Chief Executive Officer
Dr John Moss, Deputy Chief Executive Officer, Corporate Operations, and Chief Operating Officer
Ms Kathryn Haigh, National Manager, Legal and Policy
Mr Ric Walters, Chief Finance Officer

Committee met at 09:01

CHAIR (Senator Ian Macdonald): I declare open the Legal and Constitutional Affairs Legislation Committee's hearing into the budget estimates for 2019-20. Senators referred to the committee particulars of the proposed expenditure for the next financial year in the portfolios of Home Affairs and Attorney-General and other related documents. These are budget estimates. I think you all have the program. We're going to do both Home
Affairs and Attorney-General today and again next week, should the parliament still be sitting. The committee has set Friday, 24 May as the date by which answers to questions on notice must be returned. The committee has also decided that written questions on notice should be provided to the secretariat by 5 pm on Friday, 12 April. I remind witnesses that estimates questions on notice, under standing order 26(14), are regarded as continuing, and departments and agencies should answer questions not answered at the time of the prorogation of parliament. If the parliament is prorogued, we still want the answers to questions.

We take all evidence in public session, as you all know. I know witnesses are aware that, in giving evidence, they are protected by parliamentary privilege. It's unlawful to threaten or disadvantage a witness on account of evidence given to this committee. Any action will be treated by the Senate as a contempt. Questions going to the operations or financial positions of departments and agency which are seeking funds in estimates are relevant questions for the purposes of estimate hearings. I remind all officers that the Senate has resolved there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament expressly otherwise provides. The Senate has resolved that an officer of a department 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 the minister. That prohibits only asking for opinions on matters of policy and does not preclude factual questions relating to how and when policies were adopted.

I think all witnesses are well aware of claims for public interest immunity, which will be incorporated in the Hansard:

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

(b) an officer of the department or agency to whom 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)

Simply claiming it is not sufficient; you have to explain it to the committee, and the committee decides if there is a relevant public interest immunity issue.

The media have requested permission to film the proceedings, and the committee's agreed to this. I remind the media that this permission to film can be revoked at any time and may not occur during suspensions or after the adjournment of proceedings. If a witness objects to being filmed, they should raise the matter with the committee, and the committee will discuss that.

Department of Home Affairs

[09:05]

CHAIR: I now welcome the Minister for Defence Industry and Minister for Emergency Management and North Queensland Recovery, Senator Reynolds, who today is representing the Minister for Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs. Minister, did you want to make any sort of an opening statement?

Senator Reynolds: Thank you very much, Chair, and good morning to the committee. I would like to make a few opening comments as the minister federally responsible for emergency management. As the minister for emergency management, I take this opportunity to draw attention to our exceptional emergency response capability federally, which has been so admirably demonstrated in recent times.

As we all know, many Australians have faced some very tough challenges this past summer through devastating bushfires, floods, cyclones and hail. I've had the opportunity, along with the Prime Minister, to see the heartbreaking effects of the severe flooding on North Queensland families and communities. But I've also, in the worst of times nationally, seen the absolute best of Australians, and I've seen how people rally right across this country with such courage, resilience and care for each other. It's so evident to me that what is absolutely critical to people surviving and recovering from this devastation is delivering the help when and where they need it, no matter what level of government is responsible.

There are 125 staff employed in our national disaster management organisation, Emergency Management Australia, and the Crisis Coordination Centre. They have had an unprecedentedly busy summer season this year. Through this summer, the EMA recovery team have worked day and night to ensure the rapid delivery of Commonwealth support right across this country. This has meant working with local councils, state governments and industry to listen to and meet the immediate needs of communities, and taking action to deliver solutions on the ground, as you've seen firsthand in Townsville and in north-west Queensland. It also means supporting those on the frontline by mobilising resources when state and territory resources are nearing capacity and investing in disaster resilience to ensure our communities are safer, stronger and better prepared.

These responses on behalf of our team require quick thinking, smart planning, pragmatism and great compassion, and my highest praise and most sincere thanks go to the entire EMA team and the leadership of their director-general, who I know is here with us today. The most important role of any government is to keep Australians safe and secure. Emergency Management Australia and the Crisis Coordination Centre are integral to discharging this role, so I would just like to formally place on record the thanks of the federal government to the entire team for the work that they have done.

I'll just conclude with some of the statistics. This has literally been the busiest season they've had on record. Since July last year, Emergency Management Australia has activated 12 Australian government disaster response plans, coordinated 28 requests for assistance and deployed 19 liaison officers, which compares with eight plans activated last year and three the year before. And since July 2018, 29 events covering 137 local government areas have been activated. Again, this is unprecedented. Chair, thank you very much for this indulgence. I just want to say, on behalf of myself, the Prime Minister and the government, we are very grateful for the extraordinary work that EMA and the Crisis Coordination Centre have done.

CHAIR: Thanks very much, Minister. We note that the disaster financial support payments are now in the Home Affairs portfolio.

Senator Reynolds: They are.
Chair: Thank you for that. Having been based in Townsville—as you know I am—can I express the appreciation of the Townsville community and particularly the North-West Queensland community—the pastoral industry, in particular, and the small communities that rely on it. Thanks to you, particularly Minister. I think you've been up there three times.

Senator Reynolds: Five.

Chair: Five times! Okay. And I know any issues that I've raised—and I'm sure issues that other parliamentarians have raised—with you have been attended to almost instantaneously, which has been a great benefit to those who are impacted by the floods. Thank you.

Senator Reynolds: Certainly the Prime Minister has led from the front. He has been there on, I think, about occasions as well. So, thank you, Senator Macdonald.

Chair: Indeed. We're thinking of buying him a flat up there or something! So, thank you very much. Thank you for the way you've administered it. There are still some problems that we might get to later on. But across the board it's been very, very useful. So, thank you very much for that, on behalf of people of the North.

Senator Reynolds: Thanks Chair.

Chair: Mr Outram, you, I understand, are leaving us at 10.30. We have set the program bearing in mind that it's been agreed that Mr Outram won't be with us from 10.30 till two?

Mr Outram: That's right.

Chair: So we have put on the Department of Home Affairs first. We're then going to cross-portfolio. Mr Pezzullo and Mr Outram, I would normally ask if you had opening statements. If you have opening statements relating to cross-portfolio general matters, perhaps you could leave that until after morning tea, when we move on to that. But if you have opening statements about outcome 1, perhaps we could have those now. Otherwise we will move straight into questions.

Mr Pezzullo: Mr Chairman, my opening statement encompasses all the outcomes as well as cross-portfolio. So I'm really in your hands.

Chair: If you give an opening statement, Mr Pezzullo, the committee is then able to question on that, and it means we're not going to be able to follow the program. Quite frankly, I don't care. If we're here until 11 o'clock tonight, that doesn't make much difference to me. Other senators do rely on the program.

Mr Pezzullo: I understand.

Chair: Perhaps if we could leave the opening statements.

Senator Kim Carr: I would be interested in hearing Mr Pezzullo's opening statement, Mr Chairman. That is the customary—

Senator Pratt: I have no problem with it being provided now.

Chair: You will hear it, but at 10.45.

Senator Kim Carr: No, I would like to hear it at the opening point. That's the whole point of an opening statement—to have it at the opening.

Senator Pratt: It would be appropriate that we hear the opening statement before we go to any of the outcomes.

Chair: Well, look, it's your program, as always.

Senator Pratt: Thanks, Chair.

Chair: It is my practice to more or less allow the opposition and the Greens to set the program. We've adjusted it because Mr Outram won't be here, and that was done by the full committee with full agreement. But if you want to go across the whole program, just be aware that Mr Outram won't be here from 10.30.

Mr Pezzullo: If it assists, I have just had a quick scan and I would say that at least half, if not two-thirds, of my opening statement pertains to outcome 1 in any event.

Chair: All right. We will have that. Just before we start, I also welcome Senator Spender to his first ever estimates committee on this side of the table, I expect. Welcome. We're a very happy, friendly—as you can tell—very collegiate committee! Never any dramas in this committee! I hope you enjoy your time with us for as long as you're in the committee.

Mr Pezzullo:

Mr Pezzullo: I should like to update the committee on the administration of the immigration program. On 22 March this year I informed the committee that the department had published a paper entitled The administration
of the immigration program. The department has since published a second edition with some additional information, which I should like to table, if it pleases the committee.

Over the last three financial years, visa application lodgements have increased by more than one million annually. This financial year alone we expect to process 9.7 million applications, which will be a record. The department's processing productivity has increased, whereby the department is consistently finalising record numbers of applications year after year while meeting government-directed efficiency and savings measures. Through significant investment in intelligence biometrics and new technology, and closer relationships with partner agencies, our ability to identify threats, manage risk and process applications has increased significantly over the past five years, after we started to introduce more advanced intelligence capabilities in the year 2014-15.

Assessing applications against more complex and targeted risk profiles has led to more visa refusals. As a result there is a growing pool of applicants who seek to challenge visa refusal decisions, with appeal numbers growing. According to the Administrative Appeals Tribunal's website, the number of cases awaiting review in the migration and refugee division of the tribunal increased from 21,404 cases in February 2017 to more than 55,500 in February 2019 over a two-year period. We have seen a resultant increase in the number of people on bridging visas. Of course, others on bridging visas—those who are not involved in matters before the tribunal—are existing visa holders who are availing themselves of opportunities to apply for subsequent visas such as working holidaymakers or students. Where review applications have been finalised by the tribunal, the majority of the department's decisions have been upheld, which is very pleasing as it speaks to the quality of our decision-making processes and to the skill of the officers within the department who undertake this work, many of whom are proud and honoured veterans of the former department, the department of immigration, but who are now armed with more advanced tools, higher-security clearances, better connected systems and deep linkages to national security and law enforcement partners. I have prioritised capability development in these areas since taking up the role of secretary in October 2014.

Turning to the budget: over the last decade the department has contended with increasing fiscal constraints due to the cost of doing business, efficiency dividends and required offsets. Concurrently, since 2008-09, travel numbers have increased by 95 per cent, temporary visa grants by 52 per cent and air cargo volumes by 518 per cent, and all continue to grow annually. Since December 2017 migration and citizenship litigation costs have increased by 44 per cent. With greater integrity in our migration system, higher-risk detainees now account for 74 per cent of our onshore detention population, putting greater cost pressure on the detention network. During this financial year we have also absorbed costs associated with the growing number of medical transfers from Nauru, which have increased from 35 in the 2017-18 financial year to 461 in this financial year as at 26 March 2019.

The department has had to implement measures to further contain costs. The Australian Border Force Commissioner and I continue to reprioritise resources for frontline operations within our budgetary constraints. While the secretary of the department is the budget holder of the ABF's budget, as its accountable authority, it is my practice to jointly develop and agree with the commissioner the internal budget for the department and the ABF.

The commissioner has advised me he will discuss the ABF budgetary position in more detail but I would like to make two points at the outset. First, the ABF's budget for 2018-19 was increased by $86 million, an increase of 10.4 per cent, as compared with the previous financial year, 2017-18, this being inclusive of some additional funding provided in the 2018-19 portfolio additional estimates process. Second, funding allocated for the ABF's air and maritime function was increased by $55.2 million, or 19.6 per cent, as compared with the previous financial year, 2017-18, and by $109.4 million, or 48.2 per cent, over four financial years since the establishment of the ABF, which occurred on 1 July 2015.

I turn to regional processing. Since the reintroduction of regional processing on 13 August 2012, 4,177 illegal maritime arrivals have been transferred to a regional processing country. The combined regional processing population in Papua New Guinea and Nauru has been in steady decline since its peak of June 2014. As at 26 March 2019, 915 people are in Papua New Guinea and Nauru—that is, 915 transferees are in Papua New Guinea and Nauru—while 953 temporary transferees are in Australia, principally for medical care and attention or otherwise accompanying those persons. Further, also as at 26 March 2019, 508 people have been resettled in the United States, with further departures anticipated in coming months. Those found not to be in need of protection are expected by the governments of Papua New Guinea and Nauru to return home. Again, as at 26 March this year, 822 people have voluntarily returned to their country of origin.

Regional processing is expensive, which is a function of location, distance and operating complexities. From August 2012 costs for the regional processing function have remained relatively stable—at around $1 billion per annum—with a clear downward trend as population numbers have declined. With regard to oversight, the
delivery of services is regularly reviewed by the Commonwealth Ombudsman and is scrutinised by a range of external organisations, such as the International Committee of the Red Cross and the UN High Commissioner for Refugees. Additionally, the Auditor-General conducts audits in relation to contract arrangements. On 28 March this year the Auditor-General advised me that the ANAO would undertake an audit of the procurement of garrison support and welfare services in Nauru and Papua New Guinea. I wish to advise this committee that I welcome the ANAO's audit and note that we are undertaking an internal audit of the procurement of garrison services in Papua New Guinea, which will assist us to support the ANAO's work.

Finally I turn to social cohesion and the countering of extremism after the Christchurch attack. The Christchurch terrorist attack reinforced how social media is being exploited by extremists to disseminate their ideology. Following the Prime Minister's social media summit held in Brisbane on 26 March this year the department will—and indeed is—along with colleagues in the Department of the Prime Minister and Cabinet, the Attorney-General's Department and the Department of Communications and the Arts, continuing to engage with digital industry representatives to address the misuse of the online environment and to counter violent extremism online. In addition to our online efforts we support intervention programs run by state and territory partners that refer, assess and support people at risk of violent extremism, whatever the manifestation of radicalisation.

Finally, complementing our work to counter violent extremism, the department will administer a number of commitments made in this budget to fund initiatives to bolster social cohesion. This includes the Fostering Integration Grants Program, which supports community organisations to help migrants integrate into Australian life, as well as providing financial support for community language schools. I thank the committee.

CHAIR: Thanks very much, Mr Pezzullo. Before we go to questions—

Senator Reynolds: Chair, I think the commissioner has an opening statement.

CHAIR: Okay. Fire away, Commissioner.

Mr Outram: Thank you, Chair and committee, for the opportunity to provide an opening statement. Many of us in Australian Border Force work side by side with our New Zealand counterparts every day at the Australian Border Operations Centre here in Canberra and through our engagement on everyday passenger and cargo movements and enforcement operations. In the midst of the shock and sadness that we all felt in the aftermath of the tragic terrorist attack in Christchurch, a small number of ABF officers were deployed to New Zealand to work with them and support any requests from them. The Australian Border Force enjoys a very special relationship with colleagues in New Zealand Customs and New Zealand immigration. If anything, these events have further strengthened those relationships. Our thoughts and condolences, of course, remain with those who have died and suffered as a result of events in Christchurch on that dreadful day.

The events in Christchurch have, understandably, brought the issue of firearms restrictions into focus. Australia has a strong legislative framework in place surrounding firearms, and the ABF manages the legitimate import and export of firearms across our border, including through engagement, of course, with importers and traders. We also conduct enforcement operations to detect and seize undeclared firearms at the border. Together with the Department of Home Affairs, the Australian Criminal Intelligence Commission, the Australian Federal Police and state and territory police we play an important part in our system of managing firearms, and we also work closely with international partners. In the last financial year we made more than 2,000 detections of undeclared firearms and we have highly skilled officers who are supported by intelligence and trace detection capabilities, including detector dogs and X-ray technology. To combat the increasingly sophisticated methods of concealment employed by organised crime groups, we spent more than $4 million in recent years to upgrade our X-ray screening capabilities.

On the budget, I would like to take this opportunity to address some of the ill-informed commentary surrounding the Australian Border Force's budget and our ability to protect Australia's border, particularly in the maritime domain. Providing coverage of the nearly 53 million square kilometres of Australia's search and rescue zone and 10 million square kilometres of our exclusive economic zone requires a very multilayered, multiagency deterrent, surveillance, disruption and response capability. Maritime Border Command, or MBC, the multiagency task force that sits within the ABF, utilises a range of monitoring methods and a blend of different assets to achieve this effect, including Australian Border Force and Australian Defence Force vessels and crew; satellites; radar; surveillance; flights; and helicopter patrols. This is overlaid with a dedicated intelligence capability within MBC. We base our aerial and maritime posture on deliberate plans that envelope the MBC, which in turn are based on the current threat picture, intelligence and maritime domain awareness and inputs from a range of agencies. We do not rely solely on one type of vessel or a single agency to manage our vast maritime domain.
In recent months the ABF has been accused of ceasing so-called active patrolling and of failing to meet targets due to budget cuts and crewing issues. The cost of doing business in protecting our maritime domain has increased significantly in recent years, due largely to higher maintenance, fuel and staffing costs. These factors help inform our budget considerations, and we continually review our operations across the entirety of the ABF to ensure we're achieving the best possible balance between our resource levels, the management of border threats and risks, and, of course, our service levels while at the same time achieving the best possible value for money. Against that backdrop, let me be very clear. The number of ABF patrol days spent at sea has increased every year for the last three financial years, from around 2,400 in 2014-15 to almost 2,720 in 2017-18. Over the same period the number of ABF marine crew increased every year, and by the end of this financial year will have increased again. This year we asked for and received an additional $58.6 million in an estimates variation to maintain our maritime capability. An additional 19 marine crew have already been deployed, 24 are undergoing training and 20 are due to commence training in April and May, and by the end of 2019 we expect to have brought on an additional 95 crew. There has been no reduction in patrols or vessels at sea. The term 'active patrolling' has been ceased within MBC as it misrepresents the way we plan our operations and blend capabilities to deliver an operational effect at sea. We continue to integrate satellite imagery, surveillance data and intelligence to predict and detect threats, rather than relying on vessels patrolling vast expanses of ocean in the hope that they stumble upon something through serendipity. For context, a single flight by our surveillance aircraft can survey an area equivalent in size to the state of Victoria. Our vessels do have a surveillance capability but are primarily deployed as response assets. Once we identify a threat through our sophisticated monitoring and surveillance capability they are tasked to respond. So to maintain an effective response time we of course keep them at sea and positioned accordingly.

The budget authority for the ABF is held by the secretary, as are several key inputs into ABF operations, such as the intelligence capability. I work very closely with the secretary, and we jointly ensure that, (1), the ABF is adequately funded, (2), we operate efficiently and effectively and, (3), once agreed, ABF resource levels are aligned with my operational decision-making.

Finally, I would like to highlight aspects of the ABF's operational success to the committee, in line with my three operational priorities—border protection, our customs and trade enforcement role and the migration system. Each year we continue to clear record numbers of travellers and cargo and collect billions of dollars in revenue to contribute to our prosperity as a nation. We also make a significant contribution to our national security by simultaneously identifying people and goods that could harm our economy, our country and our people. In the financial year to date, ABF officers have made over 25,200 detections of illicit drugs and precursors, weighing more than 12,000 kilos, through the international mail, passenger, air and sea cargo streams. We have also detected more than 140 travellers with objectionable material and media at Australian airports, inclusive of child exploitation material and extremist propaganda. We continue to prevent, detect, deter and disrupt those individuals and businesses who deliberately or negligently defraud the Commonwealth border of revenue. For example, in the financial year to date we have intercepted more than 394 tonnes of illicit tobacco at the border, and the ABF-led Illicit Tobacco Taskforce has detected over 142 tonnes of undeclared tobacco, with a duty evasion value of about $161 million.

My officers are also focused on maintaining the integrity of our migration system and safeguarding vulnerable people from people smuggling, human trafficking, foreign worker exploitation, and organised visa and migration fraud. Through our work with Taskforce Cadena, Operation Battenrun and Operation Sovereign Borders, to name a few, we are making a real difference. I would note, though, that we have very limited investigative and enforcement powers under the Migration Act, which limits our ability to disrupt systemic or criminal threats that are exploiting our visa program. We are often required to rely on our often stretched law enforcement partners for their operational support. We look to the future optimistically. I say that because I know of no workforce more committed to their mission than the men and women of the ABF. Through the realising our full potential strategy, I am focused on providing our people with enhanced leadership, training and operational trade craft to further cement our position as a world leader and contemporary border law enforcement organisation. Thank you.

CHAIR: Thank you, Commissioner. Again, I know I speak for all of the senators in thanking you and your team for what you do. We are very fortunate in Australia to have the professionalism and activity of your team. Again, our appreciation. I thank you very much for that. For the benefit of Senator Spender, I mention my practice so that everyone gets a fair go: to go in 10-minute lots. I usually try to go according to the numbers in the Senate, which means that I usually go: opposition, government, opposition, government and then to the crossbenchers—although we sometimes are a bit more generous to the crossbenchers, depending on how many are here and how many want to go. That's basically the program. I might start the questioning with a couple of
clarifications, actually. Mr Pezzullo, in your opening address you mentioned the number of people in regional processing and in Papua New Guinea and Nauru as a global figure. How many are in each?

Mr Pezzullo: The split is approximately fifty-fifty. Perhaps Deputy Commissioner Newton and her colleagues can come forward—

CHAIR: Well, look—

Mr Pezzullo: It does fluctuate, but it's roughly fifty-fifty.

CHAIR: That's good enough for me.

Mr Pezzullo: In Papua New Guinea, I should be clear, some are in the various residential compounds around Manus township and some are in Port Moresby. That's why I make reference to Papua New Guinea as distinct from Manus.

CHAIR: Okay. Commissioner, we will no doubt come back to this, but while it's fresh in my mind: you note in the penultimate paragraph of your statement that you have limited investigative and enforcement powers under the Migration Act. Is there a solution to that?

Mr Outram: I wouldn't want to prosecute that argument right here and now, Chair. Suffice to say, I think we do need to have a conversation in the future about our ability as the Border Force to prevent, detect and disrupt the systemic exploitation of, for example, visa program. Organised crime are involved in human trafficking, modern slavery and those sorts of things. When we find opportunities to collect intelligence and evidence, the powers available to us under the Migration Act are very limited in that regard. We therefore have to go to our policing colleagues to ask them, for example, to apply for and execute a section 3 Crimes Act search warrant. Now, of course, the AFP are very good—they're a great partner—but they're often very busy doing other things as well. And so there are examples where significant opportunities have been lost to collect evidence against individuals, and even where individuals have been able to leave the country and avoid any form of justice process being taken.

Mr Pezzullo: If I can perhaps assist, Mr Chairman? As a policy question, the matter sits with the department and ultimately the government. What the commissioner's going to is a concern that I equally share, and perhaps the minister may wish to comment as well. There are practices that we are detecting—whether they are the exploitation of vulnerable migrants, sexual servitude cases or trafficking and slavery—where you can get an offence constructed with the appropriate elements provable with reference to the Criminal Code. What the commissioner's going to is, as with the Customs Act: might it not be better for a future parliament—subject of course, minister, to the government of the day so thinking it's desirable—to actually criminalise some of those matters, particularly with employers who are exploiting migrants, to take an example, and so on and so forth? There are other examples, sexual servitude being another one that comes to mind. In order to strengthen the basis for prosecution, might it not also potentially be desirable to criminalise those matters with criminal penalties in the Migration Act as well? That would flow powers to the Australian Border Force analogously—I think, Commissioner—to what happens under the Customs Act, for instance?

Mr Outram: Indeed. Or for offences under the Crimes Act, where the AFP can actually get a warrant for the purpose of collecting evidence in relation to a particular offence. Whereas our ability to collect information and evidence under the Migration Act is very restricted in relation to, for example, establishing identity. We've had cases where we've seized material which we have to actually hand to the AFP, who then have to take it from us under a warrant and hand it back to us.

Senator Reynolds: Chair, there are two aspects from the government's perspective. First of all, the broader issues that the Commissioner raised, which are why, as the secretary acknowledged, we increased the ABF budget this year by over 10 per cent to deal with emerging and changing requirements. It's also why the government has introduced—and the parliament has now passed—the Modern Slavery Act. Taskforce Cadena, which is an interagency task force, is looking at a lot of these issues. As the Department of Home Affairs gets more aware, again, across agency, of what modern slavery looks like here in Australia, what is slavery and trafficking and what is poor or illegal work practices, this is something that—I know it's been a very bipartisan approach to deal with these crimes. There clearly will need to be an evolution of the nature of the crimes and also the law enforcement support and effort that goes into it across the board, federal and state.

CHAIR: Okay. Thank you. The Legal and Constitutional Affairs References Committee recently did an inquiry into visas. Some of the evidence, as I recall, that came out in that said there wasn't enough enforcement of the rules relating to visas. Who does that? Is that Border Force or your immigration officials—

Mr Pezzullo: The policy as well as the delivery of the visa decisions are a matter for the home affairs department. We inherited that mantle from the immigration department. In terms of the field operations, ensuring
compliance and enforcing the laws such as they are able to be enforced criminally, that is a matter for Border Force, and we work in partnership.

**Senator Reynolds:** Chair, I think the commissioner can also provide a bit more information on Taskforce Cadena, which is really at the forefront federally of dealing with these sorts of crimes.

**CHAIR:** When I say the evidence was given at this hearing, I'm not saying I accept that as fact. I just wondered, in retrospect, who's responsibility it was.

**Senator Reynolds:** I'll pass to the commissioner in a minute, but as the minister who was responsible for these areas until very recently, I think it is very safe to say that not only in Australia but also globally there is increasing recognition of exploitation of categories of visas. Some of it is quite sophisticated. A lot of it relates to organised criminal activities. It is an area that I think needs more law enforcement. And also departmentally—it's not an issue for a single agency, which is why I think Cadena is so important.

**Mr Outram:** That's exactly right, Chair. We are responsible for the field operations. Also, we conduct investigations in relation to migration-type offending. Taskforce Cadena focuses on detecting and disrupting criminal syndicates who profit from serious exploitation of, for example, foreign workers and our migration system. The priorities are placed on matters that are linked to other serious criminal offending, such as human trafficking, slavery offences, the importation of illicit substances, money laundering and corruption.

We are finding the use of the unregulated labour hire market is being used a lot to enable and facilitate, for example, illegal sex work, human trafficking, slavery, illicit drug and tobacco importations, and money laundering. Their use of complex financial structures is similarly being used to facilitate and obfuscate illegal activity, avoid payment of taxes, creditors and employee entitlements. So the ABF works closely with home affairs portfolio agencies such as the ACIC, the Australian Federal Police, the ATO and others, and we use, through that, their traditional law enforcement powers. And so for that level of criminality and offending we can avail ourselves of those powers that other agencies have but we don't have.

As at 28 February 2019 there were 26 active Taskforce Cadena investigations being undertaken nationally, and 15 of those were in conjunction with state and federal law enforcement partners. They really relate to exploitation in massage parlours and the sex industry, the construction industry, the agricultural sector, the Working Holiday Maker Program and the Seasonal Worker Program. Since 1 July 2018 we have referred eight suspected victims of human trafficking to the Federal Police in the accordance with the human trafficking referral protocol, and two briefs of evidence are currently with the DPP for assessment in relation to those referrals. That gives you a sense of the work that we're doing in Taskforce Cadena.

**Mr Pezzullo:** Just to further assure you that we work very collaboratively, I said earlier that the visa decision-makers sit with the department. They are civilian officers; they are public servants who are long steeped in and expert in granting visas and indeed intuitively detecting fraudulent applications. I said in my opening statement, and as is detailed in our paper, as our intelligence systems have come online they've created massive data sets that are able to be exploited through advanced analytical techniques.

I should add that there is another part of the department that deals with the intelligence function that also supports the Border Force, and I will give you a very brief example so that I don't extend this section of the questioning. Previously, certainly before 2014 when we started to roll out these capabilities, you might have seen isolated instances of fraudulent visa applications that might have led an officer intuitively to think this might involve illegal sex work. By bringing all of these capabilities into Home Affairs and linking very sensitive databases together, including around money laundering, organised criminal syndicates, bikies and the like, we can actually link those visas and say to the Border Force, on the intelligence side of the department: 'We think this is actually syndicated. In other words, this isn't just one female'—often, typically and regrettably, they're female—'coming in to supposedly undertake a TAFE course or perhaps learn English as a second language.' Often, regrettably and tragically, that young girl or woman is sent straight to the brothel, often under the duress and the coercion of the brothel owner, who often is linked to an outlaw motorcycle group.

Now by linking up the Border Force, Federal Police and what's known as the Home Affairs intelligence division they can then attack that syndicate and maybe pick up 100 such cases, whereas previously, in the old immigration department, you were doing one at a time because you didn't have access to those other databases. So to answer your question fully: the department does policy program delivery—that is to say it issues the visas—and the back office intelligence team then cue the Border Force officers, who then undertake all the field operations. My officers don't go out into the field with side-arms and the like; that is all a matter for the commissioner.

**CHAIR:** Thanks very much. Now, Senator Pratt I understand Senator Carr is going to start.
Senator PRATT: That's right.

Senator KIM CARR: I was wondering if I could start with a simple question, Mr Pezzullo. Can you confirm that the shadow minister has sought a briefing on the Paladin contract?

Mr Pezzullo: He's sought a number of briefings.

Senator KIM CARR: Yes. This is just recently.

Mr Pezzullo: I will just check; I'm not sure that that one's come across my desk. We'll check that, because the approaches are normally made to the minister.

Senator KIM CARR: On 7 March and—

Mr Pezzullo: The only reason why I'm hesitating is ordinarily the sequence, as I think the senator would well know, is the shadow minister approaches the minister.

Senator KIM CARR: Yes, I understand that, but—

Mr Pezzullo: And the minister then—

Senator KIM CARR: I do understand that. I am just wondering whether the department was aware of the requests.

Mr Pezzullo: I'm just getting Ms Scholten, who supports me in all matters ministerial, to check, but I don't think that tasking has come to the department.

Senator KIM CARR: So you weren't made aware of any—or you can't confirm that?

Mr Pezzullo: I'll just check what we've been tasked to do. Whether I'm aware through discussions or preemptive messages is one thing. What I've been made aware through the tasking process, I'm just checking.

Senator KIM CARR: Minister, are you aware that a request for a briefing was made by the shadow minister?

Senator Reynolds: No, I'm not. I don't have any information on that, but I will seek some further information or clarification for you.

Senator KIM CARR: While you're there, perhaps you could indicate to us—Mr Pezzullo, you are a very experienced public servant.

Mr Pezzullo: Thank you.

Senator KIM CARR: How many occasions have there been whereby the government has denied the shadow minister a request for a briefing with the department?

Mr Pezzullo: Across my long range of experience, are you asking?

Senator KIM CARR: Yes.

Mr Pezzullo: That was the preamble to your question—or in my current role?

Senator KIM CARR: In your current role will do for a start, but then I will go to the other.

CHAIR: Would you know?

Mr Pezzullo: Well, I don't keep the records in my head, but, based on my experience, I would not say that it's a usual occurrence. Typically—

Senator KIM CARR: To refuse?

Mr Pezzullo: Correct. Typically such requests would be granted, but they're always a matter for the minister of the day.

Senator KIM CARR: That's right.

Mr Pezzullo: I'm speaking in terms of general experience.

Senator KIM CARR: I can assure you, in my time, I've never been refused a briefing. I'm just wondering why it is that the shadow minister for immigration has been refused a briefing. Minister?

Senator Reynolds: As I said, I have no further information for you, but I will seek advice on that.

Senator KIM CARR: I ask the department: at what point can the shadow minister have access to the department under the normal caretaker conventions?

Mr Pezzullo: Of course, Senator Carr, you're a greatly experienced member of the Senate as well as a former minister. As you will know, there are two components that are conveyed or canvassed in the caretaker conventions. There are other normal briefings that are sought on issues of the day that might either require decisions to be taken during the caretaker period that are potentially binding, and typically governments would authorise their officials to brief the opposition in those circumstances if a matter needs to be dealt with during
In the latter category, there are two types of briefings. I will speak to the application of the conventions as they apply to my department, because, of course, the conventions themselves are administered by the Prime Minister's department. So, if I get any of the application to my portfolio elements wrong, I'll duly present myself to Dr Parkinson and explain myself. But, as they apply to portfolios, here's how it works. The latter category, that is to say, pre-election consultation with the opposition, solely is limited to—and this has been the case since the Fraser era, when these arrangements were put in place—the implementation of declared opposition policy. So, your party has a policy, for instance, to increase the refugee and humanitarian program. Under those conventions, the opposition can be given access to officials for the purposes of the implementation of that, should the opposition win the election and form government. In relation to all other matters and the operation of current programs, I think your reference and your question is to Paladin. That probably wouldn't fit into that category, unless there was some declared opposition policy that had to be implemented in relation to a program.

Senator KIM CARR: At what point do the second category of briefings cut in?

Mr Pezzullo: The convention is that it's three months from the expiration of the House of Representatives, or with the calling of the election, whichever comes first, as I recall it.

Senator KIM CARR: That's right.

Mr Pezzullo: I just don't have the document in front of me.

Senator KIM CARR: I can assure you that your recollection fits—certainly with mine. If an election is called this weekend, the briefings that the shadow minister has sought may well be provided.

Mr Pezzullo: But there are two types of briefings. I shouldn't be—I'll wind back.

CHAIR: Getting into hypotheticals.

Mr Pezzullo: No, I wasn't going there, Mr Chairman. I will speak to the application of the conventions as they apply to my department, because, of course, the conventions themselves are administered by the Prime Minister's department. So, if I get any of the application to my portfolio elements wrong, I'll duly present myself to Dr Parkinson and explain myself. But, as they apply to portfolios, here's how it works. The latter category, that is to say, pre-election consultation with the opposition, solely is limited to—and this has been the case since the Fraser era, when these arrangements were put in place—the implementation of declared opposition policy. So, your party has a policy, for instance, to increase the refugee and humanitarian program. Under those conventions, the opposition can be given access to officials for the purposes of the implementation of that, should the opposition win the election and form government. In relation to all other matters and the operation of current programs, I think your reference and your question is to Paladin. That probably wouldn't fit into that category, unless there was some declared opposition policy that had to be implemented in relation to a program.

Senator KIM CARR: Yes, including the operations of garrison services, for instance.

Mr Pezzullo: Yes, indeed.

Senator KIM CARR: So my point is this—

Mr Pezzullo: It has to be referenced—

Senator KIM CARR: That's right. It would have to be referenced to a stated policy to get a briefing—

Mr Pezzullo: That's right.

Senator KIM CARR: so I would have thought—

Mr Pezzullo: In the latter category—

Senator KIM CARR: Absolutely, and it wouldn't be difficult for the shadow minister, under the convention, to secure a briefing. I'm just wondering why it is, then—and I'll be looking forward to the minister's explanation—that the shadow minister can't get a briefing on this contract arrangement.

Senator Reynolds: Senator Carr, you're asserting information that we don't have to hand yet. As I've said—

Senator KIM CARR: I have here a letter—

Senator Kim Carr: No, Senator Carr. I take your point, and I have taken on notice to get back to you, but I would point out that you have the opportunity to ask the questions here today. We've got all the relevant officials here—

Senator KIM CARR: That's right. Minister, thank you very much for your advice—

Senator Reynolds: so that you can ask—

Mr Pezzullo: Minister, I can further assist. A relevant officer has just reminded me. I was only hesitating because I wasn't sure what I was aware of, that's all. She's reminded me that I'm aware of the following: that we have been made aware of a request, Minister, and the matter is with Mr Coleman for consideration, I'm advised.

Senator KIM CARR: I want to indicate to you that this is a serious question. When a shadow minister seeks a proper briefing and is refused, it is most unorthodox for it to be refused.
CHAIR: Is there a question?

Senator KIM CARR: Yes, there is a question. The question is: why has it been refused?

Senator Reynolds: Senator Carr, as I've indicated twice now, I've taken the question on notice and am seeking further advice. But I would point out that all of the officials whom you would like to ask questions about Paladin or anything else are actually here for you to ask questions—

Senator KIM CARR: And you are here to answer questions as well, on behalf of the government.


Senator KIM CARR: And I've asked you a direct question.

Senator Reynolds: Yes, and I've taken it on notice.

Senator KIM CARR: Secondly, at the previous estimates hearing, Mr Pezzullo, a number of officers indicated to this committee that they were satisfied and happy. Pull off the various quotes from the Hansard here, if you like. Mr Pezzullo, the convention in this parliament is that, at the first available opportunity, officers correct the record if they've made an error.

Mr Pezzullo: If they've made an error and there's a requirement to correct the record, of course.

Senator KIM CARR: That's right—

Mr Pezzullo: I think it's more than a convention, Senator.

Senator KIM CARR: It's a bit more than that.

Mr Pezzullo: It's a requirement of the Senate.

Senator KIM CARR: Mr Pezzullo, I'm being polite at this point.

Mr Pezzullo: Yes, you are.

Senator KIM CARR: I'm asking you: do you wish to exercise that right?

Mr Pezzullo: No. The fact that Paladin—which I assume, given the premise of the earlier question—has been the subject of rigorous contract and performance management, which has included some corrective action that they've had to undertake in relation to our requirements, shores up and reinforces our previous evidence, rather than contradicts it.

Senator KIM CARR: That you're happy?

Mr Pezzullo: I think I said 'satisfied', because people respond to the exercise of the lash as required.

Senator Reynolds: Senator Carr, I may have misunderstood your question there, but you were certainly making a very strong intimation that the secretary or his officials had a requirement that, if they are aware of some information, they had a requirement to exercise that. Can you be clearer? Are you actually saying that you have some information here about which you believe they have not been forthcoming?

Senator KIM CARR: Well, perhaps you should wait; we will perhaps get to that. If we look at question answer AE19/023. This goes to the question of Mr Thrupp. My reading of that answer is that the department actually sought that Mr Thrupp withdraw from the contract arrangement?

Mr Pezzullo: Yes.

Senator KIM CARR: Now, at the previous hearings, I asked what was known about Mr Thrupp and I was advised to the effect nothing until certain media reports—

Mr Pezzullo: I'm not sure that I'd accept the characterisation to the effect. I'd want to see what the Hansard said.

CHAIR: Well, we might leave that. I'll come back to you, Senator Carr. Senator Hume?

Senator HUME: Thank you. I want to ask some questions about the ABF's work combating illicit drugs. There was an announcement in the budget that:

The Government is investing $337 million over five years in a comprehensive drug strategy to address the supply of, demand for and harm caused by illicit drugs. This includes $152 million for law enforcement agencies to reduce the supply of illicit drugs, including by continuing to target outlaw motorcycle gangs …

I understand that there have been a significant number of drug seizures at the border lately, and there was a particularly significant one in February—is that right, Mr Outram?

Mr Outram: Yes. I haven't got to hand the details of the particular one you're referring to in February, but we've had a number of significantly large seizures of narcotics in an ongoing way—400 and 500 kilograms, unfortunately, are not unusual.
Mr Outram: In terms of the overall size of the market, we're not probably the right agency to ask that question of because our role is very specific at the border. We try and suppress supply through interdictions at the border through air cargo, sea cargo, passengers and mail streams. The Australian Criminal Intelligence Commission do produce a number of reports in relation to the illicit drugs market in Australia—the *Illicit Drug Data Report* and the wastewater analysis report—and I think the ACIC may be on later today.

Senator HUME: I can remember asking at estimates sometime ago about the methods that are being used by drug smugglers that you are seeing.

Mr Outram: Vast and varied, Senator, yes. They're very creative. Obviously, the main ways to import narcotics into Australia are through sea cargo, in containers—to conceal narcotics within other things in a container; through air cargo, in parcels, packets, et cetera; through international mail, even within letters and envelopes and those sorts of things; concealed on passengers, in their luggage and, obviously, within and on their bodies; and of course small craft that arrive in Australia at our ports—the hundreds of ports that we have around the coastline.

Senator HUME: Can I ask about the interoperability between agencies on this matter. These are quite large numbers of additional funds in the budget that are being given to law enforcement agencies, and I just wonder how the resourcing of other agencies and your own works together to have a more effective approach to combating the import of illicit drugs.

Mr Outram: We're very connected not only across the Commonwealth—and I note that the transnational serious and organised crime coordinator is joining me, which is great because he's got more detailed information around the governance and the operational coordination arrangements and mechanisms that exist. I'll just say this: we work very closely not only with the Australian Federal Police and the Australian Criminal Intelligence Commission at the federal level but we also work very closely with the states and territories police forces. And there is, as I say, an ecosystem of joint management groups, joint intelligence groups and oversight in relation to the triaging, the coordination and tasking of a range of assets and capabilities across the country in relation to the suppression of the drug supply.

Senator HUME: Thank you. Mr Kent, did you have something that you wanted to add that?

Mr Kent: Under this strategy, the whole-of-government drug strategy, government has provided $337.2 million for measures to strengthen law enforcement and health efforts to tackle illicit drugs. The Home Affairs portfolio as such will receive $152.1 million to target transnational serious and organised crimes, and it will do that through targeting the illicit drug trade itself; the business model; international supply chains; importation through the mail; the distribution and supply by organised crime gangs; and also firearms, which are used to enforce the trade. The Department of Health will also receive funding to address harm and demand for drugs, including increasing access to services and providing local support to families. There are several measures, which I can articulate, if that would be helpful? Senator HUME: Yes, please.

Mr Kent: In terms of mail screening by the Australian Border Force, $9.7 million has been allocated to enhance the ABF's capability to prevent illicit drug importation. This will be done through conducting short-term saturation at Australia's four international mail gateways. International mail is a key method utilised by transnational serious organised crime groups to move illicit substances, including illicit drugs.

Some $4.8 million has been allocated to the Australian Criminal Intelligence Commission for their National Wastewater Drug Monitoring Program. This will further enhance the national understanding of drug consumption and demand across urban and regional Australia. This is an important picture to inform the appropriate response by agencies in those communities. If you like, it creates the opportunity to tailor a response to particular communities.

Senator HUME: So that gives you an idea of the sorts of drugs people are using and, therefore, you have a better understanding of where they're coming from or how they're getting here.

Mr Kent: Yes, correct—not only illicit drugs but also tobacco, and also drugs that might be provided via prescription. We see this as part of a key piece of intelligence that's valuable for not only policing and intelligence agencies; it's obviously very valuable for education and health in a broader spectrum response.

Some $94.3 million has been allocated to the National Anti-Gangs Squad. This is a capability that has been running for some years—for four years—and was due to wind up at the end of June. It will now be able to be
continued. It will enable the National Anti-Gangs Squad to detect, deter and disrupt the activities of outlaw motorcycle gangs and other organised crime efforts through working with our international and regional partners in order to strengthen and create a more hostile environment for OMCGs in Australia and offshore. It will enhance the ability of the National Anti-Gangs Squad to address the increased internationalisation of the outlaw motorcycle gang threat and bolster their technical surveillance capabilities. To date, as at 31 December, the NAGS strike teams have assisted with the arrest of 1,200 offenders, the laying of more than 3,900 charges, the seizure of more than 5,850 illegal firearms, the seizure of A$10.5 million in cash, and the seizure of more than 2,500 kilograms of drugs and precursors. So it has been a highly effective measure.

There is a second component to the National Anti-Gangs Squad, which is a further $6.6 million. It has been allocated to continue the Australian Gangs Intelligence Coordination Centre, which enables intelligence to be shared across our agencies with our state and territory partners and also with our international partners, offshore, at our border and domestically, to support the operations of the NAGS. To date, in the 2017-18 year, it has responded to 384 requests for intelligence and disseminated 91 intelligence reports. It provides intelligence support to the National Task Force Morpheus, which is a multiagency initiative targeting the highest OMCG risks in Australia.

Funding of $2.5 million has been made available in the 2019-20 year for the AFP to continue to provide Commonwealth support to the South Australian Joint Agency Ice Strike Team or JAIST. The intelligence and operational support from Commonwealth agencies to the JAIST supports the identification of international origins and supply chains for significant domestic seizures of ice and precursors. The JAIST links with the wastewater program in order to better target their activities.

Finally, in targeting illicit gun crime, as I mentioned, this enables them to ply their trade. Over $34.1 million over four years from 2019-20 will enhance the AFP's capability to target illicit gun crime. This will continue the work of the National Forensics Rapid Lab, which enables the lab to strengthen intelligence understanding of the illegal movement of firearms and firearms parts, their linkages to transnational serious organised crime and terrorist organisations, and allow for additional examination methods to be utilised.

Senator HUME: Is it still ice, in terms of a dollar value, that is the most commonly intercepted illicit drug that you're dealing with at the borders?

Mr Outram: Yes.

Senator HUME: It is?

Mr Kent: Yes.

Senator KIM CARR: Mr Pezzullo, I asked you and the officers a series of questions about what I believed to be reports of criminal activity involved—

Mr Pezzullo: Was this in February?

Senator KIM CARR: Yes, this was in February. I draw your attention to page 78-79 of the *Hansard*—reports of criminal activity of the directors, including the managing director, of the contracting company.

Mr Pezzullo: Including discussion about denial of entry, if I recall.

Senator KIM CARR: There were a number of matters, a serious level of charges, a very large number of charges, if I recall the evidence. And, Mr Nockels, you told me that the directors of Paladin Solutions had no dealings with the company and the Commonwealth had no dealings with the individual. These were police charges related to some matters some years ago, roughly six years ago. You went on to say that these were unrelated—the probity integrity or other matters. When I went to the question about denying entry and various other things—recently the APEC business card has been cancelled—you read the reports. I checked the briefings. Mr Pezzullo, you said you checked the proceedings. You said you had not received any advice on this matter.

Mr Pezzullo: Yes.

Senator KIM CARR: You also told us you would have expected that your officers, given the seriousness of these matters, would provide you with updates on probity matters. The clear inference in all of this that the officers gave to this committee was that there was no matter relating to these directors of this company in terms of the breaches of the law or charges of breaches of the law which would warrant the interest of this committee. Now, we get a question on notice back, AE1923, which says that the department had directed Mr Craig Thrupp be removed from the dealings with the contractor.

Mr Pezzullo: That's right.

Senator KIM CARR: Why wasn't the committee advised of that, given the circumstances of which I have outlined to you directly in these questions—
Mr Pezzullo: I understand.

Senator KIM CARR: and given your evidence that you should have been advised of these matters in regards to criminal charges.

Mr Pezzullo: I will let Ms Moy and Mr Nockels speak for themselves. I do remember that exchange. I've refreshed my memory through the course of the exchange with the previous senator while I had a chance to. The matters that the officers were going to related to charges and other transgressions outside of the procurement of services for us, for the Commonwealth, for the Department of Home Affairs in the discharge of its obligations in relation to contracted services in Papua New Guinea. The matter that is covered in the response 19023 is a discrete and separate matter. Mr Nockels can explain the context and whether there are any background associations between these matters, but I think you'll find they are separate matters.

This shows the extent to which the department is very tough minded in relation to the integrity, probity and performance of our contractors, and will seek to abate them, punish them through penalties—financial or otherwise—or indeed have officers of companies removed from any dealings with us, and it shows that we take contract management very seriously. So, perhaps with that—

Senator KIM CARR: All right. In doing so, because I also asked—

Mr Pezzullo: I would like to hand over to the officers.

Senator KIM CARR: Yes, okay. But, in doing so, explain to me how you answer the questions about a fit and proper person? The other part of my question is: why was this committee not informed that the department had requested—had, in fact, directed—that Mr Thrupp have nothing to do with the contract if you were so satisfied that there was no problem?

Mr Pezzullo: The committee has been informed, which is why we're talking about it.

Senator KIM CARR: No. No, after.

Senator WATT: After estimates.

Mr Pezzullo: Sorry, I—

Senator KIM CARR: After the question on 26 July 2018—

Mr Pezzullo: I understand. I understand the point.

Senator KIM CARR: so a year before you actually did this.

Mr Pezzullo: I understand the point. Perhaps Ms Moy can go first, and then Mr Nockels.

Ms Moy: The matter of removing Mr Thrupp from the contract and the request to remove him from the line of management of the contract is not related in way to any criminal charges. The removal from the contract was in regard to a request previously for Paladin to remove another staff member from the contract management arrangements. We take professional conduct very seriously. We’d requested a specific person be removed.

Senator KIM CARR: The managing director?

Ms Moy: No, no, just a person working on the contract. We had asked for that person to be removed. The directors—

Mr Pezzullo: Which related—

Ms Moy: It related to just conduct, his personal conduct.

Mr Pezzullo: In general terms, conduct issues.

Ms Moy: General conduct, yes.

Senator WATT: The fact that he wasn't charged with offences—

Mr Pezzullo: No, no—sorry, Senator Watt. Can we say 'a more junior officer of the company’?

Ms Moy: Yes.

Mr Pezzullo: So a more junior officer of the company—and this happens in both private and public sector organisations—had been engaged in conduct unbecoming that wasn't satisfactory to our standards. We asked for that officer to be removed. Ms Moy will pick up the narrative from there.

Ms Moy: It later came to our attention through a court matter—that a previous Paladin individual was involved in—that that person may not have been removed in the time that we expected or that we were advised they would be removed. We requested Paladin to come back to us on whether or not that was correct. They had undertaken the investigation, and Mr Thrupp took responsibility for not having removed that person in the time
that was required. We subsequently wrote to Paladin and asked that Mr Thrupp no longer have any dealings with our contract.

Senator KIM CARR: Because he was noncompliant?

Ms Moy: Because he was noncompliant with a request from the department to remove another person.

Senator WATT: And he's the managing director of the company. You asked that the managing director of the company that you engaged to provide $400 million in services be removed from the administration of that contract?

Ms Moy: That's correct.

Senator WATT: And that didn't ring any alarm bells?

Ms Moy: The discussion that we had at previous estimates in regard to the management of the contract and the delivery of services is the area that we spoke about being satisfied with—the delivery of the services on the ground.

Senator KIM CARR: Okay. I'll come back to that. I'm surprised you wouldn't have advised this committee that you'd already asked him to withdraw from the contract.

CHAIR: That's not a question—I'm surprised'.

Senator KIM CARR: All right. Why did you not advise the committee? Given that I asked specific questions about Mr Thrupp, why did you not advise the committee that the managing director withdrew from anything to do with this contract?

Mr Pezzullo: Answer the question directly, Ms Moy.

Ms Moy: I would suggest that we weren't asked in regard to Mr Thrupp's management of the contract.

Senator KIM CARR: Sorry, there were a series of allegations, and I went through all these questions. Mr Pezzullo, you said, 'We've read these reports.'

Mr Pezzullo: Yes.

Senator KIM CARR: You said:

The question that I need to ask Mr Nockels—because I checked my briefings this morning prior to coming here, and I had yet not received any advice—is, on notice if necessary: Mr Nockels, have you come across anything in the media reporting that would concern you as a Commonwealth official in relation to the Commonwealth's engagement with this entity within Paladin?

'None whatsoever,' Mr Nockels advised the committee—'None whatsoever.' You don't think that that would fit into the category of misleading this committee?

CHAIR: That's not a question.

Senator KIM CARR: I've asked a direct question. Have you misled the committee, Mr Nockels?

Mr Pezzullo: Senator Carr, if I may, any charge of that nature I'd prefer to deal with myself. If it assists the Senate, the senator and the committee, perhaps Mr Nockels might address the question of why, in terms of the broader context, acknowledging that matters of criminal charges in Papua New Guinea were the burden of your questions, it wasn't thought appropriate—just for contextual reasons at least—to make mention of the fact that we'd applied the lash to the company and sought the removal of this senior officer. Mr Nockels?

Senator KIM CARR: It was the managing director.

Mr Pezzullo: Indeed. We're not doing counsel assisting here, but, Mr Nockels, you were being asked directly at the time—because I sat here—in relation to certain other matters within PNG's sovereignty. I think the senator is asking why the department—and ultimately I'm responsible—didn't add what would be ancillary, contextual, non-related, separable information about another matter. Mr Nockels?

Mr Nockels: Senator, in the context of the conversation at the last estimates, I know you just touched on some of it there, but it's probably worthy of going through it in a little more detail. My recollection is that you initially asked some questions about a PNG national who was a director of one of the companies under Paladin Holdings Pte Ltd, and that conversation that we had in the estimates was around that individual. You then, I think, if I recall correctly, started to talk a little bit about the managing director, Mr Thrupp, and in particular you were asking questions along the lines of his visa and visa circumstances with PNG. I indicated, I think, at the time that visa questions were a matter for the PNG government. You then, I think, if I recall, talked more broadly around how Paladin was performing—and they are just my words there—and I think we talked about being satisfied. I think that was the secretary's phrase or word used—'satisfied'—in terms of how Paladin was delivering on the ground.
So, in the broader context of the line of questioning, this conversation and the questions around Mr Thrupp, as the secretary said, in an ancillary line, didn't come up.

Senator KIM CARR: I don't want to be a pedant; I don't normally behave in that manner. I just asked you a straight-up question: are you—

CHAIR: Do you have a question now?

Senator KIM CARR: I asked you a direct question: is there anything in this contract or in these matters that concerns you, as a Commonwealth official, in relation to the Commonwealth engagement with this entity within Paladin? You said, 'None whatsoever.' And then we got an answer on notice back which says you've actually asked for the managing director to stand aside. I'd say there is pretty good cause for us to be concerned.

CHAIR: What is the question, Senator? We're not here just to have you attack officials. If you have a question, ask it and listen to the answer.

Mr Pezzullo: I think the best way to deal with this—I think I heard the chairman's buzzer go off.

CHAIR: Yes.

Mr Pezzullo: I will ask Mr Nockels and Ms Moy just to carefully, through the intervening period, look at their evidence. There's a very serious inference that I draw from your line of questioning about the misleading of this committee.

Senator KIM CARR: It is a very serious inference, yes.

Mr Pezzullo: I take that very seriously. I would ask them to very carefully, forensically, go through their evidence. If they were answering your questions tightly, in relation to the specific elements of your question, and very narrowly, which is not unheard of—most officials do that—

Senator KIM CARR: Yes, I understand. We're not playing Yes, Minister here.

Mr Pezzullo: We're not, Senator. But, on reflection, if they come back and say, 'Actually, I have misled,' then I'll take responsibility for that and we'll deal with that through other channels. If, however, their answers have been correct relative to your questions, I will defend them.

CHAIR: And we would expect an apology in that case.

Senator KIM CARR: Mr Pezzullo, that's why I asked the first question. Officers are entitled to misunderstand a question or present information in a certain manner. It is possible that people would misunderstand the intent of a question or whatever.

CHAIR: Is this a question?

Senator KIM CARR: What I want to know is: when I get an answer back for a question that says you removed the managing director—and we've asked a series of questions—

Mr Pezzullo: In relation to another matter.

Senator KIM CARR: Well, I say to you it was a whole series of questions regarding this person being a fit and proper person.

CHAIR: What is your question?

Senator KIM CARR: I think it is a relevant question. Is it not relevant that you've actually asked the managing director to be removed from the contract?

Senator Reynolds: Chair, I think the secretary has very clearly taken that under consideration, and he has advised that, when it comes back to Senator Carr's rotation, he will go through that in some detail with the officials to make sure that it's very clear.

CHAIR: Thanks, Minister.

Senator WATT: Can I just direct Mr Pezzullo to two particular bits of evidence.

CHAIR: No, you can't. We've gone well over time. I have a senator who has some questions for Mr Outram before he leaves in 10 minutes. I have indicated to the crossbenchers that I will then go to Senator McKim, who is a committee member, and Senator Patrick.

Senator KIM CARR: Mr Chairman, on a point of order: Senator Watt has two very specific quotes that he'd like to draw the secretary's attention to.

CHAIR: Well, he can do that when it's his turn.

Senator KIM CARR: But the secretary is trying to do something in the next 10 or 15 minutes.

CHAIR: We're not here for your convenience particularly, Senator Carr.
Senator KIM CARR: Well, that's obvious.

CHAIR: We're here for fairness for all senators—

Senator WATT: I just thought it might assist Mr Pezzullo.

CHAIR: which means everyone has their allocated time. You've now had five minutes over your allocated time. In fairness to others—

Senator KIM CARR: Well, we may be able to assist the secretary.

CHAIR: and before Mr Outram goes, I'm going to pass to Senator Spender.

Senator SPENDER: Thanks, Chair. I think my questions are mostly towards Mr Outram. They concern Mr Tarrant and his movements across the Tasman. At least up until a fortnight ago, what information did the department have on Mr Tarrant, including any concerns and understanding about any criminal record, for instance, or AVOs and the like?

Mr Pezzullo: All of those matters are the subject of an ongoing investigation led by the New Zealand Police, assisted by ASIO, the Federal Police and the Australian Border Force. As secretary of the department, I would prefer to take your question on advisement and consult with my colleagues, including across the Tasman, as to what might be appropriate. I'm not seeking in any way to withhold information improperly from the Senate. I inferred from part of your question—about border movements—that you were starting to direct your gaze towards the commissioner, but there will be other matters. You spoke of what holdings the department had otherwise about his radicalisation, and I think you made reference to his beliefs or whatever. I'll take that question generally on advisement and consult with my law enforcement and national security colleagues. I'm not seeking to say we're not going to advise you; I am just saying we're going to take it on advisement.

Senator SPENDER: So essentially on notice?

Mr Pezzullo: Yes.

Senator SPENDER: In that context, could you also advise, if you're not going to provide information, whether or not you are essentially advising your New Zealand colleagues that you're comfortable with them publicising whatever information you provide them, because I wouldn't want a situation where you don't provide information here because you say you've provided it to your New Zealand colleagues.

Mr Pezzullo: That won't happen in any event. Welcome to the Senate, and congratulations on your elevation and your swearing-in on Tuesday.

Senator SPENDER: Thank you.

Mr Pezzullo: The way this works is that, if officials are of the view that information, for national security or other reasons—it might be privacy; it might be other reasons—requires the immunity of the Crown, as it used to be called, or public interest immunity, we seek that through the minister. The commissioner and I would advise the minister as to why we think certain information should not be disclosed, and then it, of course, becomes a matter as to the committee to consider that claim of immunity. The consideration that I think you're speculating about is where we would potentially advise the New Zealand authorities, including, no doubt, in relation to their forthcoming royal commission that their Prime Minister has announced. I think your concern, if I heard your line of questioning, is that information might subsequently be disclosed through New Zealand processes—from New Zealand media and/or the New Zealand parliament and/or the New Zealand royal commission—that properly should have been advised to the Senate first. We'll have regard to that risk when we consider this matter on notice.

Senator SPENDER: No, that's not so much my concern. I wouldn't want any New Zealand authority saying, 'We're not going to information provided by Australia out of regard for Australia's treatment of that information as somehow secure or secret.' So that is the concern. I wouldn't want New Zealand officials to basically say, 'That's information provided to us by a partner, and we have not been advised by that partner that they are comfortable with the release of that essentially Australian information.'

Mr Pezzullo: Senator, I can tell you right now that there is information that's being shared through classified channels. I know it for a fact because I've seen it—and the commissioner has seen it. That has been shared with our colleagues in New Zealand. The commissioner touched on this in terms of the collaboration that he spoke about in his opening statement. New Zealand and Australian officials work together, whether it pertains to New Zealand parliamentary processes, the royal commission or other processes, as to what properly should be disclosed in public fora in either jurisdiction. So that scenario that you raised cannot in a sense arise because, if one of us decides to disclose it, then the other one by definition has as well, because we'll mutually agree what is properly able to be put on the public record.

Senator PATRICK: There would be an MOU in place I would imagine.
Mr Pezzullo: No. We don't need an MOU. An MOU that pertains just to this matter, no—
Senator PATRICK: No, just in general.
Mr Pezzullo: Different agencies have got different levels. In some cases they are treaty level MOUs and/or executive agreements. In other cases there are letters of exchange and understanding. There are different tiers of collaboration. It depends which agency of which we are speaking.
Senator SPENDER: You might again take these on notice. Just to add to the list of the sort of information that I'm seeking through the committee: information on his citizenship—
Mr Pezzullo: That can be answered. The Australian government has already disclosed. The Prime Minister, the home affairs minister and perhaps the Attorney-General as well on the day confirmed publicly—that is, to the world—that the perpetrator is an Australian citizen.
Senator SPENDER: And not a citizen of any other country?
Mr Pezzullo: Well, you didn't ask me that. You asked me whether he was an Australian citizen. I'm saying he's an Australian citizen.
Senator SPENDER: I just asked about his citizenship. Is he a citizen—
Mr Pezzullo: I'll check the record. I think it was stated at the time by ministers, on advice from officials, that it is not believed that he has any other citizenship. I think at the time the minister said that was subject to checking and confirmation.
Senator SPENDER: Adding to that list of information: has he ever held an Australian gun licence?
Mr Pezzullo: We'll take that on notice.
Senator SPENDER: The nature of his movements to and from New Zealand—
Mr Pezzullo: We'll take that on notice.
Senator SPENDER: Whether extremist propaganda has ever been associated with him, particularly in his movements across the Tasman, because we talked earlier about you sometimes seizing extremist propaganda—
Mr Pezzullo: We'll take that on notice. Relevantly, I should add—and we'll get the precise data for you—I think over a four-year or five-year period the perpetrator—and I should say formally the alleged perpetrator, because he's before a criminal court—has spent no more than, on our records, 45 days in Australia.
Senator SPENDER: This is not so much about the details relating to the person. Do you have any powers to restrict the trans-Tasman movements of such an Australian citizen?
Mr Pezzullo: Of an Australian citizen, yes. That's really a matter for the Border Force Commissioner. Persons can be denied exit rights.
Mr Outram: Yes. If one of our police forces—the Federal Police or state or territory police—puts certain alerts on the passenger movement system then we respond to those alerts. If through following up on the alerts e find evidence of criminality et cetera—an example of that would be foreign fighters who are leaving Australia to fight in the Middle East—then we can have those people offloaded. It's not as simple as offloading somebody for the fun of it. Obviously, there has to be a process that is gone through and a reason to do so. But, generally speaking, in this sort of case we would rely on a state or territory police force or one of our intelligence agencies putting an alert or a profile into our movement system.
Senator SPENDER: So, in the absence of other agencies doing that, your department wouldn't have a list of people that you would red flag in that way?
Mr Outram: There is a movement alert system. Whilst we execute the alerts at the border, a whole range of agencies upload information into that system about people of interest and put them on alerts. The central movement alert system is used by law enforcement broadly and intelligence agencies to identify people of interest.
Mr Pezzullo: My apologies, Commissioner; I'll just cut in at the very end. When you say that, in the absence of alerts being put on by other agencies, you wouldn't otherwise restrict the movement of Australians, the answer to that is of course that is the case, because we work collaboratively. The Central Movement Alert List—or CMAL, to use its acronym—is managed by the Border Force as a national asset. Once all agencies have loaded their alerts, they are netted off, just in case there is any duplication or any confusion about a person's name or sequence of names. I think it is right to say the Border Force does all of that triage and cleansing. Unless for Migration Act or Customs Act purposes—the two principal acts that the commissioner enforces within our portfolio separately from the work done by state police forces and the like—there would be no reason to otherwise restrict the movement of Australian citizens. So it's a collective effort.
Mr Pezzullo: Yes. In addition to running the set of alerts as a set, there is a subset which would be mounted or listed for Home Affairs purposes, principally immigration matters—the Migration Act being administered by my department. They might relate to Customs Act matters or trade issues. There is a subset that are directly managed by the department and the Australian Border Force. Then the set of all alerts, which is a greater set, is managed on behalf of the federal government by the Australian Border Force for all agencies.

Senator SPENDER: This is the key question, and it's a tough question: Because we have the power to stop Australian citizens going to New Zealand, why did we not stop Mr Tarrant?

Mr Pezzullo: All can I do is refer you to evidence—or advice, at least—that's been given by the Director-General of Security and others, which has been reflected in statements by our ministers, that this fellow having spent 45 days in Australia in recent years, there was no reason to restrict his movements, because nothing had come to attention. Nothing had come to notice that would suggest he was on the pathway to violence.

Senator SPENDER: At his last point of departure from Australia, there was nothing that would have, in your system, had a red flag for Mr Tarrant to leave the country.

Mr Pezzullo: I will refer you to ministers, based on advice from myself, the Director-General of Security and the Federal Police Commissioner—and those agencies will no doubt have something to say about these matters if they're asked later this afternoon. I don't want to speak collectively, because that's not how estimates work. But I have been in all of the meetings. All of the agency principals would say that there was nothing in any of our systems that would have suggested either that this person's travel be restricted or that he otherwise be the subject of law enforcement attention, up to and including arrest. I should add that if the Director-General of Security or the Australian Federal Police Commissioner wish to add to or modify that statement, there will be ample opportunity this afternoon.

CHAIR: This will have to be the last question, Senator Spender.

Senator SPENDER: I will have to put the rest on notice.

CHAIR: We can come back to you later—well, before 11 pm.

Senator SPENDER: The ABF, I understand, gave approval to a Mr Jason Leggott for the importation of blank-fire cap guns, and then subsequently prosecuted him for this importation twice and lost on both occasions. Is my understanding there correct? Has the department complied with its model litigant obligations? Is this an example of an attempt to try to restrict his business even though it is lawful?

Mr Outram: I'll have to take all of that on notice. I'm not familiar with the individual transactions you're referring to, so I'd need to take that on notice and get the facts.

Mr Pezzullo: If I can add, the commissioner will look at the specific prosecution. The model litigant rules typically apply in civil matters. But if I draw the inference from the latter part of your questioning that department's got some sort of strategy of harassment of persons undertaking lawful business, in this case it sounds like some sort of firearms-related business, I reject that completely.

CHAIR: Let's get the answer from the commissioner in due course. Thank you. The committee is now suspended. When we return I will go to Senator McKim, then Senator Patrick and then Senator Carr.

Proceedings suspended from 10:34 to 10:52

CHAIR: I'll declare resumed this Senate Legal and Constitutional Affairs Legislation committee's inquiry into the budget for the next financial year. We're dealing with the Department of Home Affairs at the moment, and I now go to Senator McKim.

Senator McKIM: Thanks, Chair, and good morning, Minister and Mr Pezzullo.

Senator Reynolds: Morning.

Senator McKIM: I wanted to ask some questions about the decision-making around reopening Christmas Island, but I might just start in that context by asking whether Home Affairs footed any of the bill for the Prime Minister's press conference on Christmas Island on 6 March.

Mr Pezzullo: The Prime Minister's travel, as I recall it, I think was by special-purpose aircraft, but I'll just check that. Officers would have been there to assist.

Senator McKIM: They were.

Mr Pezzullo: Indeed. The commissioner and, I think from memory, Commander OSB were there as well, so there might've been costs associated with their salaries for that day and the like.
Senator McKIM: And transport, for example.

Mr Pezzullo: Indeed. I'll take the detail on notice. But to answer the question generally, we don't fly the jet and we don't fund the PM's travel or that pertaining to his personal protection detail, for instance. For those ancillary costs, the officers who would have hosted the briefing, perhaps driven the visiting party around the island certainly would be costs that would be borne by us.

Senator McKIM: So, just for clarity, Mr Pezzullo, I'm asking what those costs were and I understand you've taken that on notice.

Mr Pezzullo: Yes.

Senator McKIM: If we just take a bit of a step—

Mr Pezzullo: Just to be clear: things like salaries, the commissioner's paid irrespective of what he's doing. If he's accompanying the Prime Minister somewhere, I don't see that as a direct cost.

Senator McKIM: No, neither do I, Mr Pezzullo, so just to be clear—

Mr Pezzullo: So we'll focus on variable costs that solely would be related to the logistics of the travel on that day to the facility and then the assistance provided to the Prime Minister and his visiting party.

Senator McKIM: Thank you. That is indeed the question I'm happy for you to take on notice. So, if we just take a little bit of a step back in time, what was the date of the department's first advice to government that Christmas Island ought be reopened?

Mr Pezzullo: I will need to check. I ingested these facts and became very learned about them about a month ago when we had the estimates in February, and some of them have passed from my mind. I would ask Ms Noble, not to appear as a witness, but just to remind me about the date of the submission that we've previously discussed. We wouldn't ordinarily, of course, discuss classified submissions—

Senator McKIM: No. I've just asked for the date.

Mr Pezzullo: Indeed. But that submission was actually released on the authority of the government, I'm thinking in mid-December. In relation to the question of whether it was the first advice, I will just need to check. Perhaps Ms Noble can remind me. But I'll put it this way—and subject to correction, I'll come back—the first substantive advice on what I described in February as the Senate version of what was known as the miscellaneous measures bill would have been mid-December, at the time that the Senate was obviously deliberating on the legislation before it took its break in December.

Senator McKIM: Is there anyone currently detained on Christmas Island?

Mr Pezzullo: No.

Senator McKIM: Has there been anyone detained on Christmas Island since the facility was recommissioned?

Mr Pezzullo: Transferred to Christmas Island?

Senator McKIM: Detained on Christmas Island.

Mr Pezzullo: No.

Senator McKIM: So, as of today—

Mr Pezzullo: There are no transferees on Christmas Island.

Senator McKIM: And neither have there been any people detained on Christmas Island—

Mr Pezzullo: Not since the passage—

Senator McKIM: since the passage of the medevac legislation.

Mr Pezzullo: I just want to be clear. Since the passage of the miscellaneous measures bill that amended the Migration Act, no persons from regional processing countries have been transferred there—I'm just separating two streams here—and the facility is not available otherwise for the Border Force to send detainees there from the mainland.

Senator McKIM: From the mainland of Australia?

Mr Pezzullo: Correct.

Senator McKIM: Just so that I'm clear, Mr Pezzullo, since the facility was recommissioned—

Mr Pezzullo: Taken out of contingency.

Senator McKIM: Thank you. Since the facility was taken out of contingency, there has been nobody who has been detained in that facility?
Mr Pezzullo: No persons have been transferred there under the miscellaneous measures amendments to the Migration Act, no.

Senator McKIM: Or out of the onshore immigration detention?

Mr Pezzullo: Or under the Migration Act generally. I just want to be abundantly clear, because there are different provisions of the legislation and there are different classes of detainees or different categories.

Senator McKIM: I understand that, but the answer is the same for all those classes, isn't it, Mr Pezzullo?

Mr Pezzullo: Yes, indeed. I just want the evidence—as Senator Carr has reminded me in another context, these records are permanent. They're enduring. The Hansard department does a fantastic job. When subsequent readers come along, it's important that the words are very clear—hopefully not loquacious, but clear.

Senator McKIM: I have no truck with you being accurate in your answers, Mr Pezzullo.

Mr Pezzullo: Thank you.

Senator McKIM: In fact I do encourage that, but just to be clear—

Mr Pezzullo: The answer is no.

Senator McKIM: even though you have differentiated between two streams, the answer is the same for both of those streams?

Mr Pezzullo: They're both no. Because you asked me about persons detained, I covered all categories, and the answer is no.

Senator McKIM: The answer is no. And the department did advise—I'll just let you take some advice. Is there anything you want to update the committee on?

Mr Pezzullo: No, we're just checking the date, but the submission that has been put on the public record—in fact, I think it might have been tabled here in February—was mid-December. I'm just going to get the date. And on the other question, I've asked the staff to check whether that represented the first instance of advice to government pertaining to Christmas Island. It certainly was, in my recollection, the first piece of what I would call substantive advice that went through the pros and cons, the detail of both why Christmas Island—the merit, demerit or otherwise—and the implementation details broadly of what it would take to take it out of contingency.

Senator McKIM: Mr Pezzullo, can I take it from your answer previously that there have been no transfers to Australia under the provisions of the medevac legislation?

Mr Pezzullo: No, you can't infer that.

Senator McKIM: How many transfers have there been?

Mr Pezzullo: Because I need to check this periodically and regularly, I'll just need to confirm that nothing has occurred in the last 24 hours. So, subject to that caveat, the answer is one.

Senator McKIM: One? And where is that person currently?

Mr Pezzullo: I will take that on notice.

Senator McKIM: They are not on Christmas Island though?

Mr Pezzullo: No.

Senator McKIM: So they must be on mainland Australia?

Mr Pezzullo: Yes.

Senator McKIM: Okay. Why were they not transferred to Christmas Island? Because the Prime Minister told us that people would be transferred to Christmas Island, that anyone who is transferred to Australia under the provisions of the Medevac legislation—

Mr Pezzullo: Unless medical requirements dictated otherwise.

Senator McKIM: Is that the case in this?

Mr Pezzullo: Yes.

Senator McKIM: It is?

Mr Pezzullo: Yes. If that changes through the course of these proceedings—because, again, the Hansard record needs to be accurate—I will amend my advice. But as of last night, the answer to your question is one.
Senator McKIM: All right. Thank you.

Mr Pezzullo: If you would allow me to broadly describe it in these terms, the advice of the risks associated—I will use that language, just because it does accurately depict that submission—with what I would describe as the Senate version of the bill went to government on 11 December. My officers are just going to quickly check and see whether there were any earlier instances where Christmas Island might have been mentioned, if not substantively. I remember the submission very clearly; it's been subsequently released on the authority of the government. It was certainly the most comprehensive piece of advice at that time.

Senator McKIM: As part of that advice that was provided to the government about what you describe as risks—

Mr Pezzullo: Yes, and that is the department's depiction.

Senator McKIM: That is the department's view?

Mr Pezzullo: I have made it clear that's not my view but the department's view

Senator McKIM: Yes, I understand. As part of that advice in mid-December, can I confirm that the department advised the government that it needed to reopen Christmas Island?

Mr Pezzullo: Should the legislation proceed—because obviously the government's preference was to seek the defeat of the legislation—the direction of the government was clearly stated, and we work to the direction of the government of the day. It was couched in the hypothetical—were the legislation to pass. Obviously by that stage there was a growing likelihood. I will have to get my dates checked, but either the House had risen or was soon to rise; I can't quite remember. But the advice was couched in were this to pass in February when the parliament resumes, government would have to give consideration to the following courses of action, not all of which pertain to Christmas Island, some of which pertain to Operation Sovereign Borders activities, intelligence activities, and communications activities. Christmas Island was one of a suite of measures that government would have to consider. Should its preferred course—I will get the Minister to confirm my understanding of the government's position—of the legislation being defeated effectively in the House of Representatives and not being otherwise progressed with, then here are the options that it would need to consider.

Senator McKIM: Okay. So it was couched in terms of the government needing to consider rather than the department advising the government that it needed to reopen Christmas Island?

Mr Pezzullo: Because at that stage—I just have to remember what the state of the Senate was on the 11th—either a bill that had just passed—

Senator McKIM: It had passed the Senate by mid-December.

Mr Pezzullo: I can't quite remember when you rose but—

Senator McKIM: It had.

Mr Pezzullo: With the bill having passed the Senate in that state, again, these are the department's words, not yours, Senator. I know we have a disagreement over this but going back to my February evidence, which we potentially—I suspect—are going to come back to, if that form of the bill was to go through, the department's advice to government was that a 'catastrophic risk'—that was the phrase I used in February—which pertained to the fact that future arrivals would be subject to those provisions. That is to say, if a SIEV penetrated our defences—and that, regrettably, occasionally occurs—the people couldn't be returned or removed otherwise. They would go to Nauru, as our enduring regional processing capability. Two doctors could say, 'I want everyone on that boat into Australia within 24 hours.' There are other features of the bill—and I won't rehash all of the evidence I gave back in February—but, were that bill to become law, then, yes, a range of measures would have to be considered, and reopening Christmas Island would definitely be one of them.

Senator McKIM: But the threshold was that the government ought consider that course of action—

Mr Pezzullo: Yes.

Senator McKIM: rather than that the government should conduct that course of action?

Mr Pezzullo: Well, it wasn't law at that point.

Senator McKIM: No, no. I'm sorry, Chair, I know I'm over time—but just to finish this particular discussion. The threshold in that advice was that the government ought consider the courses of action that were detailed in that advice, including reopening Christmas Island, rather than that the government should reopen Christmas Island?

Mr Pezzullo: I'm trying not to be obtuse here, and I do apologise. I'm failing to see the difference. When governments are advised about contingencies that are emerging on the horizon, and options that would be
available to them to mitigate that risk and deal with the, I will use the language of 'threat'—unless you can thwart it by defeating the legislation, were plan A to fail—

**Senator McKIM:** Which it did.

**Mr Pezzullo:** Indeed. The House passed—not that version of the bill, but the House did pass a different version of the bill, which the Senate subsequently saw fit to pass as well, and were that to become law then you would need to move to another plan, and that plan would consist of certain elements, and the government, in those circumstances—I'm speaking generally here—would say, 'Yes, okay, work those options up and then come back for final authority, depending on how events play out.' Perhaps, Minister, you have a comment as well.

**Senator Reynolds:** Thank you, Secretary. Senator McKim, I was also struggling to see the difference, because, as you highlighted, the department provided advice on options, and the government considered and made a decision based on that advice. So I think that's pretty clear. Let's just remind ourselves—

**Senator McKIM:** Clear as mud to me, Minister, but I will come back to it.

**Senator Reynolds:** Senator McKim, please allow me to finish. Let's just remember why that advice was provided and also why the government took that advice. The fact is we still have people smugglers operating in our region. We have one thousand, if not more, people in our near neighbourhood waiting to get on boats and complete what they've paid for. People smugglers are very keen—we know that—to restart their trade. So, in light of the amended bill that passed through the Senate, the government had some very clear and, I think, very sound advice from the department, which the government took. In this case, it sent a very clear message to the people smugglers and also to those who are still waiting to come by boat, and they are still there: 'If you do jump on that boat, you will go to Christmas Island. You will not come to mainland Australia.' And the numbers that you just asked the secretary about show that has had a very successful result, because we are not aware of any boat arrival—I think that's correct—or any boat attempt to come here—and, most importantly, no deaths, Senator McKim.

So the government very wisely took the department's advice, and I think the fact that nobody has jumped on a boat—that we're aware of; and, certainly, nobody has died from that trip—demonstrates the wisdom of the advice to the government to send that strong message to people smugglers and those they commoditise and exploit to not take that trip. So the advice was received and taken.

**CHAIR:** Okay. We might leave that there. We can come back to you later, Senator McKim. Senator Patrick.

**Senator PATRICK:** Mr Pezzullo, I have some questions in relation to the events in Christchurch. I'm wondering if you could—to help me frame up questions perhaps to other departments—just describe the responsibilities with—

**Mr Pezzullo:** I'm not sure that I'm keen to assist in that regard, Senator! Perhaps you ask me questions, and I'll answer them. Whether you frame—did you say ‘frame other departments’?

**Senator Reynolds:** I think a clear question, Senator Patrick, without going on a little bit of a fishing expedition, would be very helpful!

**Senator PATRICK:** No, no, I'm just foreshadowing where I might go.

**Mr Pezzullo:** I don't want to frame my colleagues for anything!

**Senator PATRICK:** Okay. What I'd like to do is just have an understanding of this: within your department and, from a policy perspective, the related entities—ASIO, AFP and so forth—who has what responsibilities in respect of extremism? I'm talking about Islamic extremism, left-wing and right-wing.

**Mr Pezzullo:** I won't speak for the relevant agencies, other than to draw attention to what everyone would be able to see on the statute books: that the Director-General of Security—that is to say, the director-general of ASIO—is ultimately statutorily responsible for a series of security threats to Australia. They're in legislation. That includes in relation to politically motivated violence—relevantly, terrorism—and espionage and other matters as well. There are a number of heads of security that the director-general works under. That is afforded by legislation passed by this parliament, the ASIO Act. It goes back to 1949. A whole series of powers flow from that act, which you'd be very well familiar with. So the Director-General of Security is statutorily responsible for the security and intelligence work that is required to keep track of and ascertain both trends and specific instances of radicalisation and violent extremism, irrespective of the motivating force. It might be white supremacists. It might be Islamists. It might be some other form of politically motivated violent actor. So it is principally the Director-General of Security, and he'll be appearing later today with his officers.

In relation to offences against the Criminal Code or under the Crimes Act or any other criminal matters that are embedded in other pieces of legislation, of course there is Australia's national police force, the Australian Federal...
Police. So where's the hand-off there? Security intelligence is not law enforcement. It's about penetrating these plots and conspiracies. It's about using the powers that are available to the director-general, and they are extensive. I don't want to speak for him or his agency, but I think this is very well known. The Commissioner of the Federal Police—and they work very closely together; I see this every day—really is looking at either disrupting plots when he is undertaking criminal investigation work or, alternatively—and this is one of the methods of disruption, of course—arresting persons, if it gets to the point where there are grounds to arrest someone. Of course, not all extremism, engagement in hate speech and the like is itself crossing that criminal threshold at that point, as you all know. An investigation can only be opened when a police force has probable and reasonable cause to think that a crime either is going to be committed or has been committed.

So that is a matter for the Federal Police commissioner, who in turn works very closely with state colleagues, because in a Federation some of these matters straddle Commonwealth and state offences. You've got certain offences against the person in state legislation where this is relevant. Obviously, some of these groups would engage in aggravated violence and the like, so there's necessarily a connection and a relationship between the Australian Federal Police and the state police forces. For instance, you might have seen in recent days, since those tragic and terrible events, the New South Wales Police Commissioner saying that he intends to use all of the tools and levers available to him under state legislation to examine radical, extreme, potentially violent right-wing terrorism. You might have heard earlier in response to Senator Spenden's questions that the Australian Border Force, of course, control our border exit points and ports of entry. They have powers that are relevant.

Probably the fourth area—and I will pause my otherwise overly lengthy answer—that has got a stake in this is the department itself. With the creation of the Department of Home Affairs, several pertinent programs came into the department. They are not of a law enforcement or domestic security intelligence character. They relate to countering violent extremism, for instance, through online activity and operations—tracking, through social media, trends that are pertinent and relevant—and engaging with our partner agencies in providing what are sometimes called counter-narrative activities.

So all forms of terrorism and violent extremism involve a team response. Trying to think that you can shoehorn all of this into one siloed agency actually creates risk and would be highly detrimental to an effort that requires teamwork.

Senator PATRICK: Okay. Do ACIC do anything in that space?

Mr Pezzullo: If the board, under its legislation, has provided a relevant reference, ACIC can bring their powers to bear—coercive hearings. But, in any event, they also provide the fusion capability around criminal intelligence. So I'd prefer to say that their intelligence is drawn upon. They have very significant holdings and they have very capable data analytics, capabilities and platforms that allow dots to be joined. AUSTRAC, similarly, in the same vein can bring their capabilities to bear.

I don't want to suggest that it's such a team sport that everyone plays. The Director-General of Security is responsible for monitoring threats to Australia's domestic security—pause, gap. The Australian Federal Police commissioner is responsible for assembling briefs of evidence, potentially bringing people before courts after their arrest or disrupting violent extremist activity otherwise. The department has the policy role, including in relation to CVE. They would be the principal bodies.

Senator PATRICK: In effect, where I want to go with this is: in the wake of what's happened in New Zealand, the terrible events in New Zealand, has there been a change of emphasis? For example, I note—I could be wrong here—that ACIC, I think, indicated they don't keep statistics, for example, on right-wing extremists.

Mr Pezzullo: I am not sure that I've seen that evidence or testimony anywhere.

Senator PATRICK: Okay. Indeed, ASIO's annual report says:

Individuals motivated by other ideologies—such as an extreme left- or right-wing ideology—may consider conducting an act of terrorism.

Mr Pezzullo: Yes.

Senator PATRICK: So in some sense the stance of that has changed. It might go from a 'may' to, 'There's a likely event.' I am just trying to gauge your response, across all those agencies, to what has happened.

Mr Pezzullo: I understand. There's been an attack, so a risk that was being tracked has manifested itself and, regrettably, 50 innocent lives were lost—persons worshipping in their place of worship gunned down. The challenge in this business—and again I won't speak for my agency colleagues, but I know that we all face the same dilemmas, so I'll speak for myself but you can take this as a general response if you wish—is: as repulsed as we are and as abhorrent as we find what happened in Christchurch, do we reallocate resources on anything other than a ruthlessly, rigorously, scientifically calibrated assessment of the scale, the global reach and the intensity of
the threat! I would contend to you—and you can ask the Director-General directly later when you see him; I don't think I'm framing the question for him, nor am I framing him, but I know that he and I are of one mind on this, and he's got the statutory lead on this but I support him from a policy point of view, absolutely—that, if we drop our guard in relation to other terrorist groups who might have global capacity—up until recently, in some cases, running whole territories known as caliphates in certain parts of the world and potentially able to mobilise tens of thousands of, regrettably, battle-hardened operatives trained in explosives, assassination, long-range sniping and the like—and if we modulate and overcorrect our efforts and campaigns in relation to one threat group, as abhorrent as we find what occurred in Christchurch, we give rise to the possibility that we create space for those other actors to conduct their attacks. So you've always got to modulate according to scale and reach of your enemy.

Senator PATRICK: I understand these are judgements based on information that you have.

Senator Reynolds: Sorry. Just on that, from the government's perspective, extremism is extremism, whether it's the Right, the Left or Islamist in background. You'll have ASIO, AFP and ACIC here later this afternoon, and they will be able to confirm to you that this is not a new issue for them. Wherever the threat comes from, and wherever the extremist threat comes from, they have been looking at it. As the secretary said, it is a matter of balance, in terms of threat, but this is not a new threat.

Senator PATRICK: I understand that. In some sense, I don't know whether I take your evidence as being, 'We've got a watch on it and actually there's no requirement for change,' or, 'As a result of New Zealand, we've changed our posture slightly; we are looking at resources.' If I look back at—

Senator Reynolds: Sorry, Senator, can I just pick up that point. I took from the secretary's comments quite the opposite. What he's saying is that the threat environment is complex, it's diverse and it requires constant reassessment and reprioritisation. So what he's saying is that they are constantly changing, updating and reprioritising. So it's not fixed—correct me if I'm wrong, Secretary, but you were saying quite the opposite.

Senator PATRICK: I understand that. I'm simply asking, with all those complexities and those things that we don't have the capacity to assess on this side of the table, really just a simple question: as a result of what has happened in New Zealand, has that caused a change in the way in which you're thinking?

Mr Pezzullo: Thank you, Senator. Against that background, which I explained and which the minister elucidated, as the Prime Minister and the home affairs minister have said categorically several times, agencies are alert and have dedicated appropriate resources—you can take from that 'additional resources'—to especially being attuned to either retaliatory attacks or—

A disturbance having occurred—

Mr Pezzullo: Classical music always assists in these matters!

Senator McKIM: We've come a long way from Smoke on the Water!

Mr Pezzullo: Where was I? We're obviously very attuned to the risk of copycat attacks and retaliatory attacks. We don't dismiss that risk. Later on today no doubt you'll be able to ask the commissioner and the director-general, to the extent that they're able to speak about this publicly, how they are reprioritising and being alert to that risk. The Prime Minister has spoken about the fact that we are obviously alert to that problem, as has the home affairs minister.

CHAIR: We might have to leave it there and come back.

Senator PATRICK: That has been very helpful in allowing me to frame my questions later!

CHAIR: I will go to Senator Carr, but there has been some talk about getting onto ASIO, the Federal Police and ACIC. We have a hard marker at 6 pm. We're not even through outcome 1 yet, so at some stage I'm going to ask committee members if we should excuse ASIO and the Australian Federal Police if we're not likely to get them.

Senator PRATT: We don't have questions for outcome 3.

CHAIR: Okay. I'm not doing that now; I'm just raising it and people can think about it.

Senator WATT: We'll try to take it into account.

Senator KIM CARR: I was wondering, Mr Pezzullo: have you had an opportunity to look at the Hansard?

Mr Pezzullo: Yes.

Senator KIM CARR: What's your conclusion?

Mr Pezzullo: That your questions were answered very precisely.
Senator KIM CARR: I see. So we're going to do the Yes, Minister routine, are we?

Mr Pezzullo: I don't have the protection of the chair, who perhaps needs to upload more classical music onto his app!

Senator PRATT: Do you need the chair's protection?

Mr Pezzullo: I mean, when you say 'Yes, Minister' it's actually an endearing derogatory comment attached to a serving secretary because, you know, we all like that series.

Senator KIM CARR: It's a bit like your answer to me suggesting that you've answered my questions, and you say to me, 'I'm glad you think so.'

Senator Reynolds: Perhaps I can help. You have a very strong reputation and quite a fair reputation as someone who asks very forensic questions. My interpretation of what the secretary said is that you asked very forensic questions and you were provided with very forensic and correct responses.

Senator KIM CARR: So the department's standing by its answers is the response?

Mr Pezzullo: And I'm very confident that there was no misleading of this committee, advertently or inadvertently.

Senator KIM CARR: You also indicated to the committee that you would be advised if there were matters that came to the officer's attention in regard to probity questions. Do you recall that evidence?

Mr Pezzullo: Yes.

Senator KIM CARR: Have you been advised of any matters relating to allegations of bribery in regard to the facilities in Papua New Guinea?

Mr Pezzullo: I've seen press reporting of such allegations, if they're the same reports that you are seeing.

Senator KIM CARR: I see.

Ms Noble: I'm sorry, Senator, I missed the question.

Senator KIM CARR: The Age— it's 23 March, so you have made inquiries?

Mr Pezzullo: I've had inquiries made, yes.

Senator KIM CARR: And what's the outcome of those inquiries?

Mr Pezzullo: I might just ask the relevant officers to come forward to give you their evidence, which I will ask them to do very precisely in relation to the questions you ask. Just waiting

Senator WATT: We all are.

Mr Pezzullo: You can pick the footsteps; here we go. Ms Noble, our head of integrity and probity issues.

Ms Noble: I'm sorry, Senator, I missed the question.

Senator KIM CARR: The Age on the 23 March 2019 reported that there was a series of emails from Bank South Pacific:

… where a senior manager wrote that he believed his client, a PNG landowner company called NKW Holdings, was inflating its invoices to the Australian government under an $82 million contract.

Are you aware of this?

Ms Noble: No, I don't think so. I think I might need some assistance, thank you. I am aware of the media article, Senator.

Mr Pezzullo: I think you should both settle in.

Ms Noble: Okay.

Ms Moy: Sorry, Senator. I am aware of the emails, yes.

Senator KIM CARR: What have you done about them?

Ms Moy: In terms of what has been received, we have no knowledge or information in relation to that apparently, and we have no veracity of whether or not they are correct or true records. They have been, I think,
referred to our integrity area, but we've not had any evidence that any of that information that is contained within those emails is correct.

**Senator KIM CARR:** I see. So, when you say you're aware of them, how have you become aware of them?

**Ms Moy:** Through the media.

**Senator KIM CARR:** So you've been shown a copy, have you?

**Ms Moy:** Yes.

**Senator KIM CARR:** Have you had any contact with the bank?

**Ms Moy:** No, Senator.

**Senator KIM CARR:** The bribery allegations—

**Ms Moy:** Sorry?

**Senator KIM CARR:** Sorry?

**Ms Moy:** Sorry, Senator, I'll just get Mr Nockels to join us. We haven't had any contact with the bank ourselves. I understand NKW has gone back to their bank to have discussions.

**Mr Pezzullo:** Mr Nockels, Senator Carr intends to ask you very precise questions. I'd ask you to give very precise answers.

**Senator WATT:** Let's not be too flippant about this.

**Mr Pezzullo:** I'm not, Senator Watt, but charges of my officers misleading this committee I take very seriously.

**Senator KIM CARR:** Too right.

**Mr Pezzullo:** There was no evidence of misleading.

**Senator WATT:** Who in the department did you ask to conduct the inquiries; and can we have that person at the table, please?

**Mr Pezzullo:** The officers at the table are the ones that have my confidence in answering your questions.

**Senator PRATT:** That's not the same thing.

**Mr Nockels:** Senator, if I could pick up on your line of questioning around *The Age* article, I think that article referred to emails. Those emails, I think, were 'leaked'—I think is what the article referred to them as. So we haven't seen those because, obviously, that's what the journalist has. What we have seen is a set of emails that were provided to, I think, the opposition spokesperson but which were then provided to the ANAO. Those are the emails that we have seen. There was an email trail, mostly internal, I think, within Bank South Pacific, BSP—

**Mr Pezzullo:** Mr Nockels, sorry to interrupt: just so we're clear on the provenance of the material that you're referring to, you are now not referring to emails that have been the subject of press reporting, but they have been drawn to your attention by, did you say, the ANAO?

**Mr Nockels:** That's correct. What the article refers to is a set of emails that we haven't seen, but we have seen a set of emails that have come via the ANAO.

**Mr Pezzullo:** Could they be more or less similar or overlap?

**Mr Nockels:** My assumption is they're the same, but that is an assumption.

**Senator KIM CARR:** But they confirm—

**Mr Nockels:** I can't confirm that.

**Senator KIM CARR:** You have seen some emails. What's the nature of those emails? Can you indicate that to the committee?

**Mr Nockels:** They are just internal emails between officials within the bank, as it relates to NKW, who is a contractor to the Commonwealth.

**Senator KIM CARR:** Do they imply, or in any way suggest, that invoices have been inflated?

**Mr Nockels:** There is a phrase, I think, within the email that talks about words to that effect. I can't remember the exact phraseology. I think this line of questioning started with your question, Senator, around: have we been in contact with the bank? The answer to that is no, we have not been directly in contact with the bank. We don't have a direct relationship with the bank. We work obviously with NKW, who is our service provider. So we've been talking to them and they in turn have been engaged with their bank, who is BSP. It might be useful for me to read out a statement that the bank has provided to NKW, which I think might resolve some—
Mr Pezzullo: This has been provided to us, I assume?

Mr Nockels: The statement has, indeed. On 31 March, NKW provided us with some correspondence from BSP on 20 March. That's when that correspondence between the two entities took place. And it included the following statement: 'The bank opinion is that the board and management of the NKW Group are committed to delivering sound financial performance, and the group is in a sound financial position. We consider that the management are reputable, well versed and experienced in the sectors they operate in across Papua New Guinea.' That's the statement that came from the bank to NKW. NKW then has been engaging with BSP to try and understand how this commercial-in-confidence email traffic got out, so that's a process between NKW and BSP. What I would say, which goes, I think, to the heart of your suggestion around inflated invoices, is that when we engage with NKW around management of invoices, we have a very robust process to ensure that the invoices that we receive and pay actually match to the services received. My team, which is responsible for that process, gives me great confidence that we are getting the services that we are paying for. It's also worth noting here that the contract that we have with NKW is a services based contract, so that we'll be invoiced on a monthly basis. Then we pay for that in arrears, obviously, for the month just gone. We have a range of ways of making sure that the invoices that we receive match to the services rendered. That involves onsite checking. It involves regular management and performance management conversations and email traffic between the service provider. It also involves regular governance meetings to ensure that we are getting the services that we—

Mr Pezzullo: And, Mr Nockels, so that we're abundantly clear with the committee, because both Senators Carr and Watt have admonished—perhaps is an appropriate phrase to be used here—that if there is any contextual information that we ought to be providing to the committee, they would appreciate that contextual information. If I may, Senators: Mr Nockels, I'm happy to authorise you to disclose as you see fit to the committee. Forget about what's in correspondence from some bank officer. Put that out of your mind. In the course of your scrutiny of the invoices and their reconciliation against services, have your officers come across any concerns about misalignment of invoices rendered, services delivered and reconciling that with the payments that we otherwise, therefore, owe to the company?

Mr Nockels: Secretary, my officers haven't raised any very specific concerns.

Senator WATT: Thanks for trying to help us, Mr Pezzullo, but I don't think that's actually the focus of our questions. The focus of our questions is the media report in The Age which alleged that an Australian government contractor on Manus had been asked by a senior Papua New Guinea official in 2017 for a multimillion-dollar donation to the PNG government. So, can I just take a step—

Mr Nockels: Senator, if I could interpose? I'm happy obviously for you to finish that line of questioning, but I was just wanting to be clear that, in terms of the line of the questioning that Senator Carr started with, you're closing that down?

Senator KIM CARR: You have done that. We have other questions.

Mr Nockels: Okay. I just wanted to be clear.

Senator KIM CARR: The context of these questions is a newspaper report which we have identified which speaks of a government official seeking an $8 million donation in regard to this, and the question of invoices—this is the associated matter—being inflated.

Mr Pezzullo: Right. So we've dealt with inflated invoices. We don't have anything before us.

Senator KIM CARR: That's the context of this.

Mr Pezzullo: Understood. The question, therefore, of bribes—

Senator KIM CARR: I just want to be clear about this. The report is that an Australian contractor raised these concerns with the department.


Senator KIM CARR: In 2017. Given that we have to be so precise here—

Mr Pezzullo: Well—

Senator KIM CARR: Well, Sir Humphrey, we've got to be clear! We have got to be clear here, don't we?

CHAIR: Senator Carr, it's essential that you be precise, because in another series of questions you are accusing public officials.

Senator KIM CARR: I'm just wondering: is the Australian—

CHAIR: Senator Carr, it's important everyone is being precise, because you have raised an issue of precision earlier on.
Senator KIM CARR: Yes, that's right.

CHAIR: And I think the departmental officials are well within their rights to be absolutely certain what you're asking and to answer, as well as they can, exactly that question. They'll have to do that when we come back to you. You've already done 15 minutes, and I did promise Senator Griff that he would have the go. But, before I pass to Senator Griff, just on this issue—which I don't follow or understand at all—can you just give me an indication of what the services that you're talking about are.

Mr Pezzullo: Just with NKW?

CHAIR: That they invoice you for.

Mr Nockels: They provide garrison services at two major sites in Manus.

Mr Pezzullo: Just break down what 'garrison' is.

Mr Nockels: Sorry, Chair: kitchen, food services, managing facilities around the two sites, buses et cetera. There are a range of different services.

Mr Pezzullo: Power generators.

Mr Nockels: It's water et cetera—so making sure the facilities function, people are fed, the cleaning is done, toilets are maintained et cetera.

CHAIR: So, as well as actual human services, it involves apples, oranges, buses, fuel and that sort of thing?

Mr Nockels: Facilities management, yes—a whole range of things to make sure that the two sites function.

CHAIR: But it's not just the services of human beings; it is some goods that are included as well, like food—apples, oranges and meat?

Mr Nockels: Correct, so it's good and services.

CHAIR: And fuel and buses and those sorts of things?

Mr Nockels: Correct.

CHAIR: All right. That was just for clarification.

Senator GRIFF: Regarding the decision to close Christmas Island, when was the department officially advised that it would need to be put back into mothballs?

Mr Pezzullo: Senator, you're referring to the budget measure announced on Tuesday night.

Senator GRIFF: Yes, it does reference that, but when was the actual decision?

Mr Pezzullo: It was through the budget process. Ms Cargill might have some better particulars, but it's through the budget process, which, of course, this year has been brought forward by approximately four weeks. The budget process has been in train since January, and we've worked assiduously through January and February and into March, and obviously the budget was brought down the other night.

Senator GRIFF: So it was really a government decision as such? The department didn't recommend that that action take place?

Mr Pezzullo: Well, all decisions of government are government decisions, and we provide advice to the government on a constant basis. So it's a government decision.

Senator GRIFF: All right. How much money has been spent to date on opening, preparing and staffing the centre?

Ms Cargill: The budget measure, as the secretary noted, was announced in the budget on 2 April, and the money that was provided under that measure was $185.2 million over two years. That consists of a number of components. In terms of the money spent to date in 2018-19, I don't actually have that figure with me, other than to say that the 2018-19 split for the department is $158.2 million of that component.

Senator GRIFF: Up until 30 June?

Ms Cargill: That's correct, and then some money in 2019-20.

Senator GRIFF: How many department and Serco staff are currently located there?

Mr Pezzullo: Ms Cargill might need to be assisted by the deputy commissioner and other officers. I think there are two ABF officers, but there would be a number of contractors. Perhaps if the deputy commissioner could come forward—the deputy commissioner, perhaps assisted by someone from the contracts area. Mr Nockels, I think you're up. Contractors on Christmas Island? Or Ms Moy?

Ms Newton: There are currently two additional ABF officers on island as a result of opening the Christmas Island detention facilities. We have additional existing staff on island that are there full-time anyway.
Senator GRIFF: So these people were there full-time when it was put in the contingency state?

Ms Newton: We've always had full-time staff working on Christmas Island in terms of entry and exit, and border related activities.

Senator GRIFF: How many full-time staff?

Ms Newton: Earlier this month, we had eight staff there. Two of those were related to the Christmas Island detention operations.

Senator GRIFF: Okay. And Serco staff?

Mr Pezzullo: I might take that, unless the deputy commissioner has got that to hand. The department supports the ABF by arranging for the contracts to be activated. Mr Nockels.

Mr Nockels: We have Serco staff on Christmas Island. The numbers vary, but it's approximately 144 staff at any one time at the moment.

Mr Pezzullo: Just to be clear, because I know that Senator Carr's appellation was affectionately put before, we are talking about the reactivation of Christmas Island, pursuant to the passage of the miscellaneous measures bill. Just to be clear, were there any staff who were assisting or whose job it was to just keep the facility in hot contingency in any event?

Mr Nockels: Yes, there were, Secretary.

Mr Pezzullo: You might briefly describe what 'hot contingency' is.

Mr Nockels: In hot contingency, we ask both service providers, Serco and IHMS, to be able to stand up services within 72 hours. So, on hour 73, they would be able to receive people into the facilities. That's hot contingency.

Mr Pezzullo: We pay for Serco to keep that latent capacity. So you need to net that off. I think what the senator is asking is, with the passage of the legislation and the so-called reopening—it's always open, it's always available to us; it's whether it's in contingency or not—how many additional Serco members had to be deployed.

Mr Nockels: Approximately 140. In order to maintain it in hot contingency, it only requires a very small number of people, and they would be either based on or coming from and going to Christmas Island. The stand-up is the bulk of those numbers. The vast majority of those numbers are in response to—

Mr Pezzullo: And on the medical side?

Mr Nockels: IHMS does not have anybody on island when it's in hot contingency. I think the number is approximately 14 at the moment, but again, people come on and off the island. But it's around 14. That's to deliver the normal basic services—

Senator GRIFF: So, excluding medical staff, there are generally, by the looks of it here, somewhere around 10 to 12 people there when it's in hot contingency, and then around 150 to 160 otherwise?

Mr Nockels: Correct—although, in fact, in hot contingency it's actually less than 10. It wouldn't be 10 people. It would be less than that.

Senator GRIFF: Okay.

Ms Newton: I might add that at the moment there are also three Foreign Affairs staff on island, and one AFP officer.

Senator GRIFF: Thank you.

Ms Newton: That specifically relates to the opening of the facilities.

Senator GRIFF: I'd like to discuss the coroner's report handed down last year into the 2014 death of asylum seeker Hamid Karzai. I put a question to the minister during question time last year, regarding the government's response. I note the department advised last October, in estimates, that it would provide a response to the coroner's report by the end of 2018. Have you provided a copy of that response to government?

Mr Pezzullo: The general counsel will assist here—Ms Newton—because it relates to transference to Australia and detention in Australia. But, Ms de Veu, perhaps you might go first.

Ms de Veu: Yes. The answer that was given before Christmas was that we anticipated having that response by Christmas, and, indeed, at that time that was the case.

Mr Pezzullo: Are we being precise in our characterisation of that evidence?

Ms de Veu: That's indeed what I was trying to do.

Mr Pezzullo: Thank you.
Ms de Veau: The government has not yet provided a response to the coroner, but of the, I think, some eight recommendations, seven relate to Home Affairs and one relates to the Attorney-General's Department. The position, I think, of the government is that any response intended to be given to the coroner needs to be a whole-of-government response rather than piecemeal. I think the submissions are with government and they're awaiting that consideration.

Mr Pezzullo: Is it fair to say, Deputy Commissioner Newton, that, to the extent that there are matters that we can, in an interim sense, move on, activate and put in train, you and the commissioner have already given that due regard?

Ms Newton: Yes, it would all have due regard. We would consider, as a result of any death that is in custody, whether or not there need to be adjustments to our systems, practices, policies and procedures and then advice from a coroner as to the outcome of a decision in a coronial inquest.

Senator GRIFF: So you've done nothing?

Mr Pezzullo: No. Sorry, Senator, she did not say that at all.

Senator Reynolds: Senator Griff, that was a bit unnecessary.

Mr Pezzullo: The deputy commissioner made clear that, notwithstanding the fact that a formal response has not been brought down by government, she, and the commissioner no doubt, have had proper regard to lessons learned that can be activated and acted upon. I think I heard you say that, Deputy Commissioner.

Ms Newton: That's correct, Secretary.

Mr Pezzullo: And for you to say 'you've done nothing' I think is regrettable.

Senator GRIFF: All right, I'll retract that statement. But, out of the eight key recommendations, which—

Mr Pezzullo: Senator Carr is much nicer!

Senator GRIFF: Which of those eight key recommendations—

CHAIR: There's no need to mislead the committee, Mr Pezzullo!

Senator GRIFF: Which of those eight key recommendations are you implementing in some form at this point or have you implemented?

Mr Pezzullo: Thank you, Senator.

Ms Newton: I don't have that detail to hand at the moment.

Senator GRIFF: Can you take it on notice?

Ms Newton: I'll take it on notice.

Senator GRIFF: Also, regarding the coroner's recommendations, can you advise what—

Mr Pezzullo: Sorry, Senator, is that still in relation to the Khazaei matter?

Senator GRIFF: It is. Can you advise what changes the coroner's findings made to the processes of the department or any of its contractors with regard to medical management and transfer of ill asylum seekers?

Mr Pezzullo: I think that relates to the question that the deputy commissioner has taken on notice, which is to come back on notice as to what practices have been modified in anticipation of a final government response versus those that await a government response.

Senator GRIFF: Minister, when would you anticipate the final government response?

Senator Reynolds: I will take that on notice. I'll seek advice and get back to you.

Senator GRIFF: Okay. Thank you.

CHAIR: Your timing is impeccable. I cannot recall whether it has been passed yet or not, but there's legislation around to try and restrict the items that can be in detention centres that are owned and operated by or on behalf of the Commonwealth.

Mr Pezzullo: That legislation has not been passed.

CHAIR: What sorts of things is the government is trying to prohibit?

Mr Pezzullo: I would refer to and refresh my memory as to the commissioner's evidence in previous hearings, but, essentially, they are things that can be constructed as weapons, but also phones and cameras. Perhaps the deputy commissioner might wish to speak to the prohibited items legislation, which is a bill that, as I recall it, is before the parliament. Or has it been discharged?

Ms Newton: I think it's still before the parliament.
Mr Pezzullo: We will correctly record if we need to, but there is a bill before the parliament and it deals with so-called prohibited items. Deputy Commissioner?

Ms Newton: It includes prohibited items, incorporation of telephones and other items in detention centres that might be held by detainees that could be used as weaponry. It considers the fact that there might be items that are flown into the detention centre by aerial methods. So it's increasing the ability to stop detainees having access to items either used for nefarious purposes or against each other or against a Serco or ABF officer, as well as to commit further crimes whilst they are in detention. I don't have the current list of all of the items.

CHAIR: You just said 'flown in'; is this by drones or something?

Ms Newton: That's right. There are occasions where drones have been utilised in the broader detention network where something could be dropped into a centre. So it is one of the areas that we are considering for potential offences. Drugs could be dropped into the centre. Telephones could be dropped into the centre.

CHAIR: Have you had incidences where someone—obviously, I am not quite sure exactly how drones work, but I can guess—attaches some drugs or a knife to a drone from outside the confines of the detention centre, sends the drone up across the fence into the thing and drops them?

Ms Newton: I would have to follow up on the exact occasions, because I do not have that detail with me.

CHAIR: But have there been occasions?

Ms Newton: There have been occasions where there have been drones in the air and concerns about items being placed into the centre.

CHAIR: Could you on notice—don't go to any great trouble—give me an example, probably—

Ms Newton: Most recently, on Christmas Island there were drones utilised in the vicinity of the detention centre, even though there was nobody within the centre at the time other than staff.

CHAIR: And are you able—again, as I said, I don't know how drones work—to detect who is in charge of the drone, who is flying it?

Ms Newton: It will be very difficult, depending on where they are located. If they're located in an area where they're visible, yes, they could actually be identified, but a detention centre wouldn't necessarily have staff located in housing areas around the vicinity.

CHAIR: My understanding is you need a pilot's licence and some sort of licence from CASA or someone to actually fly drones; is that correct?

Ms Newton: Well, generally, yes, you would need that, within an area that has restrictions on flying.

CHAIR: And is the air space above detention centres restricted?

Ms Newton: No. Not at this time.

CHAIR: Is that something you're considering?

Ms Newton: We would certainly be considering that in the future, in terms of any legislative requirements.

CHAIR: Okay. What is the current status with mobile phones? Can everyone have them?

Ms Newton: Residents in the centres can have mobile phones.

CHAIR: Okay.

Ms Newton: We've had instances where people have been seen to be using their mobile phones prior to escaping a centre.

CHAIR: Okay. Are all detainees allowed phones, or are some restricted?

Ms Newton: Yes, detainees are allowed to have phones, unless they might be utilised to hurt themselves—if they are actually being managed under a mental health arrangement.

Mr Pezzullo: I should perhaps add that under the Migration Act—quite properly so—detention centres of course are not correctional facilities. There is strong case law around that too. So there is a balance to be struck in this legislation, and obviously the government is seeking to strike the appropriate balance—

Senator Kim Carr interjecting—

Mr Pezzullo: I'm sure that is said very affectionately, Senator Carr.

CHAIR: Mr Pezzullo, I suggest you ignore the interjections and don't give them any prominence, or the maker any gratification for being important or something.

Mr Pezzullo: So the prohibited items legislation attempts to strike a balance which is best formulated in the way the government has constructed the legislation, recognising on the one hand we are not dealing with prisons
or correctional facilities—this is administrative detention for the purposes of managing a person who has no lawful basis for otherwise being in Australia, either subject to deportation or subject to pending proceedings—and, on the other hand, ensuring the good order and safety of all the occupants of these centres, the workers there as well as other residents. No doubt, given the state of the parliament and the impending dissolution of the parliament, I presume this is a matter that will now be revisited in a future parliament.

CHAIR: But who pays for the cost of phone calls for people with mobile phones in detention centres?

Mr Pezzullo: Well, I presume, Deputy Commissioner, if it is their personal phone and they're on a plan, it is a personal charge. But, otherwise—

Ms Newton: Otherwise, they have access to telephones within the centre, and computers, to make their own calls.

CHAIR: Mobile phones?

Ms Newton: We do not issue mobile phones. So it would be their own usage and their own cost associated with the mobile phone.

CHAIR: Again for my edification: people in detention centres, where do they get their money from? Do they get a pension or an allowance or something?

Ms Newton: So, normally, it may well be a family member that provides them with top-up costs associated with maintaining their telephone.

Senator Reynolds: Chair, I will just clarify that further for the committee. One of the main reasons for this legislation was concern for the safety and security of those working in the facilities, because onshore in detention now over 70 per cent of the detainees have a high-risk status. So mobile phones, SIM cards and electronic devices have now been demonstrated to be a clear risk to the safety and security of those who work in the facility by these high-risk individuals.

CHAIR: Just slightly digressing, Mr Pezzullo, you might be able to answer this. For people in detention centres—do we pay them a pension or something or some sort of allowance?

Mr Pezzullo: No. All the services are provided to them. The only reason—

CHAIR: I mean, they get food—

Mr Pezzullo: The only reason I am hesitating is because some members on status resolution pathways, and there is a modest per diem allowance. Perhaps Mr Mansfield can assist me. But, no, generally speaking, their services are provided.

CHAIR: So food and clothing?

Mr Pezzullo: Yes.

Ms Newton: All services—

Senator Reynolds: Including legal representation.

Ms Newton: The only ones that might receive an allowance are those in offshore centres, in PNG and Nauru, where they live in the community. They receive an allowance in those locations to purchase food and clothing. They all receive free medical services, including pharmaceuticals. So this legislation—I have just found further detail on the prohibited items bill—also includes 'mobile phones, SIM cards, computers and other electronic devices, such as tablets, on the basis that items undermine the health, safety and security of persons and the order of the immigration detention facilities'.

CHAIR: Okay. Thanks for that. That clarifies that line of questioning I had. Mr Pezzullo, could you give me some details of—I was going to say, details of the cost of maintaining someone in a detention centre, but I guess what you do is get the global figure and divided it by the number of inmates and that would be—

Mr Pezzullo: Well, Mr Chairman, of course they're not inmates, because they're not prisoners.

CHAIR: Sorry.

Mr Pezzullo: Sorry. It's just the theme of the day is precision, so—

CHAIR: Yes.

Senator KIM CARR: It's a new edict.

Mr Pezzullo: It's not a new edict; it just the reinforcement of a classic edict, Senator Carr.

Senator KIM CARR: A new protocol has been issued, a new edict.

Ms Newton: 'Detained persons.'
Mr Pezzullo: Persons who are detained. We are funded through both recurring departmental expenditure, as was the administrative program, known as whatever program number it is. At any given time, you've got a population in detention. It's currently running in held detention at 1,400. As you say, there is a global program against which you would denominate that and that would be the per capita number, if you wish. But we can give you that calculation.

CHAIR: Yes, okay. Senator Carr?

Senator KIM CARR: Yes, thank you. Mr Secretary, the—

Mr Pezzullo: I've gone back to Mr Secretary now?

Senator KIM CARR: Yes, well, I do like Sir Humphrey. I do think you'd cast well in that role.

Mr Pezzullo: I know it is done with great affection, Senator Carr.

Senator KIM CARR: Yes, that's right. I just want to confirm: the Australian contractor that the department has been dealing with in regard to these emails is NKW Holdings?

Mr Pezzullo: That's right.

Senator KIM CARR: Is that the only one?

Mr Pezzullo: In case there is another associated entity, I will have Mr Nockels return.

Senator KIM CARR: I just want to be clear about that.

Mr Pezzullo: I do recall from the brief that the word 'holdings' is in the title, but I will just check whether that is a subordinate entity.

Senator Reynolds: NKW Holdings.

Mr Pezzullo: NKW Holdings. There might be a group of companies in play here. Mr Nockels, the entity that we are engaged with, is it NKW Holdings?

Mr Nockels: Yes, it's NKW Holdings Ltd.

Senator KIM CARR: The inquiries you've made and the emails that you've seen relate to the allegation that it is actually NKW Holdings that is inflating its invoices, correct?

Mr Pezzullo: Well, it's asserted. It's purported—

Senator KIM CARR: I said the allegations.

Mr Pezzullo: Sorry; that is the allegation, is it not?

Mr Nockels: I think that's the allegation from the press that you referenced earlier.

Senator KIM CARR: I'll be clear about this. The Age said:

… emails from within PNG's biggest bank where a senior manager wrote that he believed his client, a PNG landowner company called NKW Holdings, was inflating its invoices to the Australian government under an $82 million contract …

That is the allegation.

Mr Pezzullo: Yes, that is the allegation. I have just got the article—is it 15 March?

Senator KIM CARR: You have been investigating that allegation with the contractor, NKW Holdings?

Mr Nockels: I explained before how we pay invoices, which is the nub of the issue here. In my earlier testimony to the committee—I think it was a question prompted by the secretary: had we come across anything in that process that would suggest that invoices were inflated?—I said, 'No, the team has not raised anything with me.' I think I also sought to help the committee understand how we have structured the contract and how we pay. It's a services based contract. We invoiced on a monthly basis for services rendered. We then, as I explained before, have a number of processes to check in order to make sure that, under the PGPA Act, we're getting value for money. Were the services delivered? That's the services aspect of the contract.

There are then what we call pass-through costs. They may be direct invoices from a subcontractor, or potentially we've gone and bought a certain amount of food, and those invoices then come to the department. On the basis of our being comfortable that the invoice that we've received is correctly rendered, which is the requirement under the PGPA Act, we would then make the payment. To round that back to your initial question: there has been nothing that we are aware of in our regular dealings with NKW that would provide any substance to these allegations in the newspaper.

Senator KIM CARR: My colleagues have raised broader issues. Are you able to give us a guarantee that the Australian taxpayer has not been exposed to corruption as part of these contracts undertaken by your department?
Mr Pezzullo: Based on all the information available to me, the department generally and the officers who deal with these matters on a day-to-day basis we have no reason to believe—noting that we are ourselves conducting an internal audit process, as I stated in my opening statement, having regard to matters that have been raised principally in the Financial Review but now embracing matters raised in The Age. You asked me for a guarantee. Based on the information we have to hand, the inquiries we've made, the data, the checking of the invoices, the checking of the performance under the contract that my officers undertake, I'm advised—and the officers at the table will correct me—

CHAIR: You can't give a guarantee.

Mr Pezzullo: to the extent I can give you any sort of assurance, to perhaps use a different phrase, that we're not aware of—were we to be aware, we would take action—any demonstrable instances of likely, possible or reasonably suspected corruption. I will ask Ms Moy or Mr Nockels to add anything they might wish to that answer

Mr Nockels: I might just add there that we robustly manage payments across all of the contracts, whether they be in the offshore environment or in the onshore environment. We have obligations and requirements to do so under legislation, and the secretary would require us to do so as well, under the AAIs. We have a process around how we go about doing that. On occasion we might see an issue in invoicing of payments et cetera. We would then potentially run an internal audit, where we would get our—

Mr Pezzullo: Just to be clear, because the senator asked about corruption: when you say 'see an issue' and you're talking about anomalies or where you reconcile an invoicing of services, are you referring to corruption?

Mr Nockels: No, I'm not referring to corruption; I'm referring to general management of payments. Invoicing is what I'm focused on in my explanation at the moment. If we were to find something that we felt was not right or an issue that we had question marks about we would then rely on the company whom the department employs to do internal audits, Ernst & Young, to come in and do an audit on a particular company's invoices.

Mr Pezzullo: In that set of activities, have you come across—I know I haven't been advised, therefore I'm assuming the answer is going to be no, but, from an abundance of caution, let's confirm to it the committee—possible instances of bribery, corruption or other similar malfeasance?

Mr Nockels: No, I've not come across any of that.

Senator WATT: I want to be careful about different allegations about different contractors. This article in The Age on 22 March—

Mr Pezzullo: 23 March?

Senator WATT: It might have been in the print version on the 23rd.

Mr Pezzullo: It was published in the Saturday Age on the 23rd.

Senator WATT: I'm looking at an online version from the 22nd, but I think it's the same article. It says that a contractor—it didn't name the contractor—reported to senior Department of Home Affairs officials in late 2017 that it had received a request for a multimillion-dollar donation to the Papua New Guinea government. Did the department receive a specific complaint of that nature from a contractor in late 2017?

Mr Pezzullo: In the previous segment of questions, that's the matter which I said caused inquiries to be made, because the allegation is that this was reported to the department. That's the thread that I need to be focused on.

Ms Moy: No, we have not received a complaint or notification that any of our contractors were asked for a party donation of $8 million. For full information: we discussed in the last estimates another part in here where it talks about how this manifested as visa issues.

Mr Pezzullo: Before you get to that, just to be conclusive with the committee: do our records show, to your knowledge, that a complaint—let's call it a complaint or an allegation or a report—of possibly corrupt behaviour in Papua New Guinea was drawn to our attention and recorded as such, dating from the latter period of 2017?

Ms Moy: No, not to my knowledge.

Senator WATT: So that report is wrong in that claim?

Mr Pezzullo: To our knowledge, our records do not reflect anything like that.

Senator WATT: The same report—in fact, the same paragraph—says:

It's understood more than one contractor has experienced similar problems.
You're saying that, to your knowledge, no complaints, allegations, claims—however you want to put it—have been received by the department from contractors in Papua New Guinea that they have been asked to pay bribes or make donations?

**Mr Pezzullo:** That pertain to bribery.

**Senator WATT:** Or to make donations to political parties?

**Mr Pezzullo:** Or donations, which aren't necessarily in the realm of bribery or corruption. As Ms Moy was going to say before I interrupted her, complaints, or perhaps reports, have been received about difficulties that pertain to visa issuance, but I'm not aware—and my colleagues will illuminate me at the same time as they illuminate you—whether there's any nexus between having difficulties with visa issuance and that somehow being connected to a political party or someone with, let's say, political influence being concerned or being in a position where they are seeking certain outcomes. But we are aware of some visa management issues, are we not?

**Ms Moy:** Yes, that's correct.

**Mr Pezzullo:** Or visa issuance.

**Ms Moy:** Yes.

**Senator PRATT:** Do you audit your contractors for corruption?

**Mr Pezzullo:** Certainly in terms of their dealings with us, they're actually—

**Senator PRATT:** No, in their dealings with other governments because that's also illegal?

**Mr Pezzullo:** Well, indeed, it is in terms of foreign bribery. We audit the engagement that we have with our contractors who not only have got a contractual relationship with us but, depending on their status in terms of being fully engaged and full-time workers, actually fall within the definition of a departmental worker for the purposes of integrity measures.

**Senator WATT:** Can I just go back very briefly to the question Senator Carr was asking earlier about Mr Thrupp. I think what we established—this question on notice has revealed that in July 2018 one of the Paladin entities confirmed they had not complied with a departmental direction in relation to the Papua New Guinea services contract. Can you tell us what the direction was that the department gave to Paladin that they failed to comply with.

**Mr Pezzullo:** I'll ask my officers to do so but in a way that, as best as can be done, protects from a privacy point of view the identity of the more junior officer. So we just need to be careful about how we answer it, but I think in general terms we should disclose that to the committee.

**Ms Moy:** The direction that we gave to Paladin was for them to remove one of their staff who was working on the contract who we became aware had illicit drug use. As we hold our contractors to a professional standard of conduct and behaviours, we asked that that person be removed from any work on the contract.

**Mr Pezzullo:** We should be very clear: this is not Mr Thrupp.

**Ms Moy:** No, it isn't.

**Senator WATT:** No, I understand that.

**Mr Pezzullo:** We're not suggesting any issue about—

**Senator WATT:** A junior officer of the company.

**Ms Moy:** A more junior officer in the organisation.

**Senator WATT:** I don't want to know who they were or exactly their job title, but was their role managerial or was it actually someone delivering garrison services? Or—

**Ms Moy:** I'd say it was an advisory role.

**Senator WATT:** So a junior officer of Paladin—

**Mr Pezzullo:** A more junior officer.

**Senator WATT:** A more junior officer than the managing director?

**Mr Pezzullo:** Someone under the authority of Mr Thrupp, shall we say.

**Senator WATT:** This person—there were some concerns around drug use. The department became aware of that. In July 2018, or prior to July 2018, the department issued a direction to Paladin that that person was to be removed—

**Mr Pezzullo:** Is that right?

**Ms Moy:** That's correct.
Senator WATT: from involvement in the contract?
Ms Moy: Any involvement in the contract.
Senator WATT: And then in July 2018 Paladin told you that they had complied with that direction?
Mr Pezzullo: Is that a correct characterisation—
Mr Nockels: Not long after we asked them to remove the junior officer, they indicated that they had complied.
Senator WATT: And then in July they admitted that they in fact had not complied with that direction?
Mr Nockels: Correct.
Mr Pezzullo: It came to our notice through the court proceedings, did it not?
Senator WATT: And Mr Thrupp—
Mr Pezzullo: Sorry, just to be clear: it came to our attention because there were other proceedings underway?
Mr Nockels: That's correct, yes.
Senator WATT: Yes, there are other civil proceedings. And then Mr Thrupp—Mr Thrupp being the managing director of Paladin—accepted responsibility for the fact that Paladin did not comply with your direction?
Mr Nockels: Yes.
Senator WATT: On 7 September 2018 your department wrote to Paladin insisting that Mr Thrupp, the managing director of Paladin, be removed—
Mr Pezzullo: Of that group, of that entity.
Senator WATT: from that part of Paladin from involvement in delivering this contract in Papua New Guinea?
Ms Moy: So, Senator, just to be fulsome: we were advised and became aware—just to clarify: he had been removed from the work to be undertaken—that the email access for that person for matters to do with our contract had not been removed, and that was the noncompliance.
Senator WATT: Yes.
Mr Pezzullo: So he wasn't engaged in the work, so they complied to that extent, but he had email access.
Ms Moy: He still had email access.
Mr Pezzullo: Pretty tough standard, Ms Moy, but I think in the circumstances—
Ms Moy: So they hadn't fully complied.
Mr Pezzullo: Laudable and commendable.
Senator WATT: For the sake of completion, on 7 September your department wrote to Paladin insisting that Mr Thrupp, the managing director of that entity, be removed from involvement in delivering the contract?
Mr Nockels: Yes.
Mr Pezzullo: Because, effectively, they hadn't cut off his email access.
Mr Nockels: That's correct. They hadn't complied with a direction we gave them. So, in September 2018, we wrote to them asking that—well, they'd written to us. They'd done an internal review. We accepted that. They indicated that Mr Thrupp was responsible. In terms of setting the direction and fulfilling the direction that we provided, they suggested that he potentially could stand down. We then formally wrote to them and said, 'We're directing that he be removed from that contract.'
Senator WATT: So the effect of that was that your department insisted on the removal of the managing director of a company—
Mr Pezzullo: Of that entity.
Senator WATT: Of that entity—
Mr Pezzullo: Within the company, yes.
Senator WATT: from delivering the contract that that company had been contracted to perform, being a $432 million contract?
Mr Pezzullo: Yes.
Senator WATT: And then, at our last estimates in February, you told Senator Carr that you were satisfied and quite happy with the delivery of those services?
Mr Pezzullo: Yes, because—well, I would delete 'happy'. That wasn't a phrase that I used. We try not to be emotional—

Senator WATT: One of your—

Mr Pezzullo: It's in the Hansard.

Senator KIM CARR: The word was used.

Mr Pezzullo: Yes, the 'happiness' word was used, and I've provided appropriate counsel. We're not emotional about these things. We're satisfied with the performance, including, I have to say—and this is a pretty tough standard to set—if other sectors that engage with government were put under the lash similarly, we might have similarly effective contract management: 'When we ask you to do something, we mean it to the nth degree, and that includes the full removal of one of your officers, not just physically from the engagement of the delivery of services or whatever he was doing, but including the ability to log onto the system and access emails.'

Senator WATT: I am puzzled. How can you be satisfied with the delivery of a contract when you have had to demand—

Mr Pezzullo: Because the services are still being provided—

Senator WATT: that the managing director of that company be removed?

Mr Pezzullo: Senator, if I can be both very forensic here and—I don't say this in any flippant way—respectful, if the company was not delivering, blowing their budget, services not being delivered, malfeasance—

Senator WATT: They're not complying with a direction you've given them. That's pretty serious.

Mr Pezzullo: A direction in relation to—I mean, I've learnt something this morning. I was aware of the removal, but I wasn't aware of quite the felony, to the point where: 'No, you didn't remove his email access. We no longer have confidence in you.' That actually suggests a very high bar of integrity, and I would like to think that, frankly—

Senator KIM CARR: Or there are other matters involved.

Mr Pezzullo: Sorry, Senator Carr: what evidence do you have for that?

Senator Reynolds: Senator Carr, you've got evidence, so you're now alleging a conspiracy. You need to be a little more specific, because I don't think they could have been any clearer with you. And I've got to say, I want to congratulate the officials, because this is an incredibly high bar, not only making it very clear that the illegal drug use—

Senator KIM CARR: Again, we'll see what the Auditor-General's got to say about it.

Senator Reynolds: No, Senator Carr, this is a very important point. While you're trying to impugn their reputation with your suggestions of other malfeasance, can I just put on the record that, what has happened here, I think, puts the officials actually in a very good light, in that not only did they hold the company accountable for someone there with drug use, but, when it wasn't fully complied with, they made the managing director personally accountable for that. Congratulations!

Senator WATT: Are there any other companies that your department contracts where you have had to ask that the managing director of the company be removed from the contract? If you asked BHP to remove its CEO, would you then contract BHP?

Senator Reynolds: Chair, could I just, on a point of order—

CHAIR: Minister, hang on. You have asked a question, Senator Watt, and before you give the officials any chance to answer it, you ask another question. Can we deal with that question?

Senator Reynolds: Chair, on a point of order, can I ask that Senator Watt apologise for that or—

Senator KIM CARR: Apologise for what?

Senator Reynolds: The officials here today could not have been any clearer or any more forthcoming, and we have now had from both Senator Carr and Senator Watt unsubstantiated allegations that the officials here are hiding something, and that there is some conspiracy here—

Senator WATT: I haven't done anything of the kind.

Senator Reynolds: and I think it is entirely inappropriate. If they have evidence, or if they've got questions on any other concerns, please ask the questions, and do not impugn the reputation of the officials here who have been nothing but forthcoming, and forensically so.

CHAIR: Hang on. Thanks, Minister. I'm listening to this very carefully. I haven't yet got to the conclusion that the allegations have been made. I did indicate before that, if the suggestions made earlier in the day were
proved to be wrong, I would expect the senators who made those suggestions to apologise, but we haven't got back to that.

**Senator Reynolds:** At least withdraw any imputation that there is a conspiracy.

**CHAIR:** Because you're on a line and in my old age I'm getting so generous, I've allowed you two lots of 10 minutes.

**Senator WATT:** Can I just get an answer to the question I've already asked.

**CHAIR:** Yes, I will allow that.

**Senator SPENDER:** Not from me.

**CHAIR:** No, not from you but from others, and I'm sure that's what you intend. So can you answer the question, which I think—correct me if I'm wrong—was: have you had any other experience in your department where you've had to remove a managing director?

**Senator WATT:** I will put the question just a bit more accurately. One of the other questions on notice that you've answered since the last estimates says that the department has paid Paladin $16.5 million per month as a monthly service fee, which I think equates to about $550,000 a day.

**CHAIR:** What's the question, please?

**Senator WATT:** My question is: are there any other companies that your department engages and pays in the order of $16½ million a month where you have asked for the managing director of that company to be removed?

**Mr Pezzullo:** There are two components to my answer. Whether it's $16 million a month or $16,000 a month, we would expect the same high levels of probity and ethical conduct, and that includes following Commonwealth directions when asked to do so. I'm also advised, just to be abundantly clear with the committee, that in fact there was some sort of joint managing director arrangement, so there were two managing directors. We asked for this one to be taken off the job—meaning one.

**CHAIR:** Thank you for that. Let me start the clock. Earlier in this exchange, the ANAO was mentioned. What I understand is that this has all arisen from a report in a newspaper which has been shown once or twice in the past not to be terribly accurate, as I guess all newspapers are. Can you just tell me: what formal complaints have you got from anyone?

**Mr Pezzullo:** The reference I made in my opening statement was that the Auditor-General has accepted a reference—I think he's now put notification of that on his website—where the shadow minister had referred a number of matters. I think—and I will stand to be corrected—they essentially encapsulated the media reports. It might be that there are other reports. The Auditor-General advised a day or so ago that he was going to undertake an audit of all garrison and welfare services with a view to reporting back in January 2020. As to whether he's received other complaints which are not disclosed, I know from what I've seen on the web that the matter has certainly been drawn to his attention by Mr Neumann, who was good enough to let me know of the complaint or referral that he'd made. Whether the Auditor-General is in possession of other complaints that are private is really a matter for the Auditor-General, who, of course, is an officer of this parliament. So those questions would be better directed to him.

**CHAIR:** I appreciate that, but, as far as your department is concerned, you were only advised by the ANAO that they're doing an investigation on a complaint by the shadow minister, on a basis of newspaper reports of these allegations.

**Mr Pezzullo:** I'll just check with my colleagues who follow this day to day. I'm not sure that that's entirely right, but certainly what I've seen publicised on the web is a decision made by the Auditor-General in part, at least, drawing on a reference from Mr Neumann. But there could be other matters at play here. Mr Nockels, Ms Moy or Ms Noble, does that answer need to be modified or corrected?

**Ms Moy:** The only piece of information that I would add to that is that garrison and welfare services have been on the ANAO audit program for a number of years—the last reports, I believe, were issued in 2017—and we have always been advised by ANAO that they will return at a point in time to undertake further service audits.

**CHAIR:** Was the audit in 2017 okay?
Ms Moy: The audit was undertaken in 2016. I think the issues in regard to those audits were somewhat issues regarding recordkeeping, being able to find documentations from that period of time that were related. There were two audits, one on procurement and one on contract management, that's correct.

Mr Pezzullo: Ms Noble deals with the Auditor-General on a more regular basis. Can we add anything further to answer the chairman's question?

Ms Noble: In terms of the audit that Cheryl-Anne Moy mentioned in 2017, there were three recommendations made. They went to the department which was the Department of Immigration and Border Protection at the time, ensuring that contracts and supporting documentation clearly specify applicable standards and time frames for goods and services to be delivered. That was the first one. The second one was that the department introduce and implement a risk based contract management plan. There is more detail there, but it expressly asked us to ensure that plans address roles and responsibilities, management of contractor performance, key time frames and deliverables, risk management and mitigation strategies, retention of key records—you mentioned that—and the department's approach to quality inspection and audit. The third recommendation was for the department to strengthen the control framework for the garrison and welfare services contract, and then it stipulated some details about how we should do that. All three of the recommendations have been addressed and closed. The formal process for us to close recommendations from audits is that that has to be agreed by our audit committee, which is chaired by an independent person, accompanied by two other members who are also independent, as well as two members from the department and/or the ABF.

Mr Pezzullo: Ms Noble, that was the second question the chairman asked. The first question, the more recent decision taken by the Auditor-General to look into this matter, was prompted by a referral and/or complaint. I said I thought I recalled correspondence that the Auditor-General released which pertains to a reference from the shadow minister.

Ms Noble: That's right.

Mr Pezzullo: Can we add to that? Firstly, is that correct? Secondly, can we add to that answer?

Ms Noble: I will give you the chronology because I can't tell you what was in the Auditor General's mind as he—

Mr Pezzullo: Just from our awareness.

Ms Noble: From our awareness, I will tell you the chronology. On 10 February this year the Australian Financial Review started their series of media articles. On 19 February, the Honourable Shayne Neumann wrote to the Auditor-General requesting an audit into the circumstances surrounding the department's procurement of garrison support and welfare services in PNG. The Honourable Shayne Neumann then wrote again on 14 March, referring to his earlier letter, asking that the Auditor-General consider expanding the remit of that order to include NKW Holdings or other affiliated bodies.

Mr Pezzullo: Just to be clear, this is not confidential information that we have; this has been published?

Ms Noble: No, this has all been published on ANAO's website. Then, on 18 March, the Auditor-General published a response to the Honourable Shayne Neumann, stating that he was considering the audit and considering his two letters. Then the Auditor-General advised the secretary on 28 March that he would conduct a performance audit of the department's procurement of garrison support and welfare services. On 1 April, the Auditor-General published a response to the Honourable Shayne Neumann.

CHAIR: Is the response public?

Ms Noble: Yes, it is. It's on the Auditor-General's website.

CHAIR: What does it say, briefly?

Mr Pezzullo: I intend to undertake an audit into the procurement of garrison services, in effect. I summarised it in my opening statement, but if there is anything else that we can—

Ms Noble: No. It is a very short letter.

CHAIR: It is not the results of his investigation?

Mr Pezzullo: No. Indeed not. I should stress this is our knowledge, based on what's on the public record. If there were other matters in the Auditor-General's mind—other referrals, other complaints—we have no visibility of those as far as I'm aware.

CHAIR: Mr Pezzullo, it's not directly your department, but, if there were allegations of corrupt conduct somewhere along the line, is that a matter that should go to ACLEI, rather than the Auditor-General?
Mr Pezzullo: If there are allegations about officers of my department or Border Force, who under the act are all defined as workers of Home Affairs, or they're contractors, that in the first instance is a conduct issue that would go to the Australian Commission for Law Enforcement Integrity, ACLEI. If there is knowledge that we have given as Commonwealth officials, we've got a responsibility to be alert to offences against Commonwealth laws. Otherwise there are foreign bribery offences which the Federal Police take the lead on. If there's any suggestion that our officers have been involved in wrongdoing, the referral might be a joint one but principally would go to ACLEI and the ACLEI commissioner would decide how to take that forward.

CHAIR: I haven't read these articles. It's not a newspaper I normally read. Do the newspaper articles suggest or imply improper conduct by any of your officers?

Mr Pezzullo: No. Save for, to go back to Senator Watt's line of questioning—the answer is no, absolutely, full stop, period, pause. The allegation in the article, the only touch point with my department is that—and Ms Moy addressed this in her evidence—this matter was known to us because of a complaint made, allegedly, that the question of bribes in return for certain favours was referred to the department in late 2017. So the only conduct issue that would be in my mind, were that to have occurred—and we've checked our records and we can find no record of that—would be hypothetically, were that to have occurred, how did said officer deal with that? Did they report it? Did they cover it up? Did they not escalate it? That would be, in that narrow sense, a matter of conduct. But the with primary allegation—namely bribes being sought by foreign political leaders—there's no suggestion in either of the relevant articles, published in March by Mr Baker, that my officers were complicit in that, no.

CHAIR: In that article is there a reference to the 2017 matter?

Mr Pezzullo: The allegation is that this suggestion of, 'Pay me a bribe', occurred in that year.

CHAIR: That's in the article?

Mr Pezzullo: Yes. That is the allegation. The article looks at historical events that occurred in 2017. In fact, I will just read into the Hansard the lead paragraph. It won't take long, 'An Australian government contractor' we don't accept this by the way. We've checked our records.

CHAIR: No.

Mr Pezzullo: This is the article. This is the statement from the journalist:

An Australian Government contractor on Manus Island was asked by a senior Papua New Guinea official—

Later described to be a political figure—

in 2017 for a multi-million-dollar donation to the ruling party of Prime Minister Peter O'Neill.

The historical matter at issue here is, it is said, purported to have occurred in 2017. The article then goes on to state that my department was made aware of this later in 2017.

CHAIR: Is that correct?

Mr Pezzullo: No. We gave evidence earlier to say we've got no record—

CHAIR: So that allegation in the newspaper article is clearly wrong?

Mr Pezzullo: Well, it doesn't accord with our records or our understanding of the facts.

CHAIR: You'd know.

Mr Pezzullo: Indeed. And it then goes on to give more colour, I would suggest, about the nature of the approach and—

CHAIR: Which, again, would be inaccurate from your department's knowledge?

Mr Pezzullo: It doesn't accord with anything that we've seen, and it's certainly inaccurate in terms of my department's alleged or purported involvement in these matters. What has happened in the foreign jurisdiction and what—

CHAIR: Of course—

Mr Pezzullo: Mr Baker, the journalist, has ascertained in a foreign jurisdiction is a matter that he can answer for in terms of his journalistic accuracy.

Senator PRATT: But did you make any of your own inquiries about it?

Mr Pezzullo: I said earlier in evidence—perhaps you weren't here, Senator Pratt—

Senator PRATT: I think I was out of the room.

Mr Pezzullo: that we caused inquiries to be made, yes.

CHAIR: I think we'll adjourn for lunch.
Proceedings suspended from 12:34 to 13:35

CHAIR: I declare resumed the Senate Standing Committees on Legal and Constitutional Affairs' inquiry into next year's budget. We're dealing with the Department of Home Affairs. Before I go to Senator McKim, I again raise, not for immediate decision but to think about over the next hour or so, whether we should excuse ASIO, the Australian Federal Police and ACIC from coming. We're not at the 10.30 am mark now, and it's 1.30 pm. We're three hours late. I think you indicated, Senator Pratt, that the Labor Party had no questions in outcome 2. Is that correct?

Senator PRATT: Outcome 3.

CHAIR: Anyhow, I just raised that because, if we get to the afternoon tea break and we're not substantially advanced, I think we can start getting rid of some of those people because we're just not going to get to them. We'll have to do them next Monday or Tuesday.

Senator PRATT: We may or may not need to treat the dinner break as a hard marker, so it isn't a sense of moving priorities.

CHAIR: I think the committee has decided. I don't know if there are any other senators interested, but other senators may have an interest in the Attorney-General's Department. I'm pretty easy. But in fairness to other senators, it is not really just up to the Labor Party to say we don't want them.

Senator Reynolds: Chair, in relation to that, the sooner we'd be able to excuse some of the officials—going past the hard marker of six o'clock into the seven o'clock break, there are also a significant amount of Attorney-General's officials here as well. If there is going to be a change, I think it would be—

Mr Pezzullo: Including the courts and tribunals.

Senator Reynolds: Including the courts and tribunals as well.

CHAIR: I believe six o'clock is a hard marker for this department.

Senator PRATT: Well, we'd better get on with it then.

CHAIR: Senator McKim?

Senator McKIM: Thank you, Chair. Minister and Mr Pezzullo, in my last tranche of questions we were just exploring the advice that the department provided the government around mid-December about reopening Christmas Island. I think there was some confusion, perhaps, from you both with regard to the question I was asking. I've tried to distil it down into plain English. I've done my best. My question is: was the advice that was given in mid-December that, should the medevac legislation, as it had been amended in the Senate at that time, pass through the House, the government should consider reopening Christmas Island, or that the government should reopen Christmas Island? It's the 'consider' that is the difference between the two.

Mr Pezzullo: I understand the question. I understood the burden of the question the first time you put it. I've reviewed the submission. In fact, unusually, it's available for the world to read because a redacted version of it was actually released in February on the authority of the Prime Minister—the government, I should say, generally, but the Prime Minister specifically. It's clear, on the face of the submission, that it was not an options paper. In the public service we provide submissions that contain noting recommendations—that is, 'You should note that something might be likely to occur, or is occurring, or has occurred.' Alternatively, options are provided and we seek authority from government by way of a submission seeking the approval of a course of action. That submission did not have the character of that latter type of submission. I have quickly reviewed it. It did say that, were the bill to pass through the House largely unamended or materially unamended, it would be likely that you would have to consider the reopening of Christmas Island as well as a number of other measures. At that point in time, it was contingent on future events, but in and of itself it was not a submission seeking a decision.

Senator McKIM: I understand that. Thanks for that response, Mr Pezzullo. Did the department advise the government that the cost of that reopening would be $1.4 billion? If so, when?

Mr Pezzullo: I'll ask Ms Cargill to assist me in this. My recollection is the department worked with the Department of Finance, which has to approve relevant costings. If I remember rightly, when the House and the Senate—that is to say, the parliament as a whole—reconvened in February, I think on 11 February, either at that point or perhaps slightly before then the government had sought—as it's perfectly entitled, I should add—costing implications for certain courses of action. Ms Cargill will add to this answer. In those circumstances we always seek from the government—whether it's the minister or one of their advisers on behalf of the minister and the government at the large—their parameters and assumptions. Is it two years or four years? In the event that the government took a decision to, let's say, open Christmas Island, would it be to a certain level of amenity? Once those parameters are understood, ordinarily the subject matter area—in this case, the Department of Home Affairs...
and Border Force, which has deep experience in the running of that facility—would work with the Department of Finance. I might just pause there to see if Ms Cargill can add to the sequence of events.

**Ms Cargill:** Exactly as the secretary has outlined, we did effectively work with the Department of Finance, as the process continued through the budget process, to do a series of costings for Christmas Island. The result is obviously in the budget papers.

**Mr Pezzullo:** If I might, the senator's question particularly related to statements that ministers made at the time that, were the facility to be opened for a four-year period—

**Ms Cargill:** Correct.

**Mr Pezzullo:** then, based on previous cost assumptions and previous experience, the cost would be net in the order of $1.4 billion. Is it the case that that costing was arrived at conjointly with Finance?

**Ms Cargill:** It was arrived at conjointly. The Prime Minister initially suggested an amount of approximately $500 million, and also announced at certain periods through the process an amount of $1.4 billion. The difference between those two costings effectively relates to the period of time over which they apply and also the cohort size that will be transferred to Christmas Island.

**Senator McKIM:** Okay. Thank you. So, my question, firstly in relation to the period of time: am I right to say that the $1.4 billion related to four years?

**Ms Cargill:** Correct—four to—

**Senator McKIM:** That's the out-years in the budget?

**Ms Cargill:** Correct.

**Senator McKIM:** And the $500 million then, on my very rough arithmetic, would be about a year and a half.

**Ms Cargill:** It was a 16-month costing.

**Senator McKIM:** Thank you. Secondly, you said—

**Mr Pezzullo:** And, to be clear, because Ms Cargill referred to the budget process, I think it's fair to say that some of this work was done within the confidentiality of the budget process.

**Ms Cargill:** Correct.

**Senator McKIM:** Okay. Thank you. The other parameter you spoke about, Ms Cargill, was the quantum of transferees, I think you called them. Are you able to give the committee any advice about what the different quanta were that you were considering in arriving at those costings?

**Mr Pezzullo:** We might need to take some counsel from the minister. As Ms Cargill intimated, a number of options—so, leave the $1.4 billion to one side for the moment; that was analysis conducted at the request of the government to assist senators responding in the Senate, to assist the Prime Minister in his public advocacy and, if I can use the term, arguments. Separately—because I want to draw a barrier—in the budget process I think a number of options were developed. I'd be more comfortable, Minister, if we spoke about the parameters that in the end the government agreed, because there'd be any number of Rubik's cube combinations here—

**Senator McKIM:** Sure.

**Mr Pezzullo:** and I just want to get some counsel from the minister as to how far she might wish me to go in that regard.

**Senator Reynolds:** Secretary, I think you've covered that very effectively. What I would just say, though, is that in relation to the budget we have announced that a re-elected Morrison government will repeal the act and also close the Christmas Island immigration detention centre, putting it back to the contingency setting.

**Senator McKIM:** I appreciate that. Thank you. I have read that part of the budget papers. So, my question then, given your interaction just a moment ago with Mr Pezzullo, is in the context of the decision that the government did finally arrive at and that is published in the budget—that is $189.2 million—and you've given in the budget papers the close date of 1 July. What quantum of transferees was used in the calculation of the $189.2 million costing?

**Mr Pezzullo:** There are fixed cost elements, once you start to power up generators and get kitchens—
Senator McKIM: I do understand that, and I understand that the number of transferees in this case is probably more of a marginal cost than—

Mr Pezzullo: That's exactly right.

Senator McKIM: I was corrections minister in Tasmania for nearly four years—

Mr Pezzullo: Indeed.

Senator McKIM: I'm well aware of these costings. So, you can proceed on that basis.

Mr Pezzullo: I might see how far Ms Cargill wishes to go down this path—trying to distinguish as best you can between the fixed and the variable marginal costs, the assumption that went into the final decision, rather than the various options that were contemplated.

Ms Cargill: And Senator just to correct you, the total cost is actually $185.2 million.

Senator McKIM: My apologies. Thanks for that.

Ms Cargill: And it's obviously made up of a number of components. In terms of the actual assumptions, the cohort size that forms the basis of the costing is 250.

Mr Pezzullo: It's 'up to'.

Ms Cargill: Up to 250.

Senator McKIM: And we've had evidence already today that so far that number is zero.

Mr Pezzullo: That's right.

Senator McKIM: Mr Pezzullo, you have given evidence that one person has been transferred to Australia under the provisions of the medivac legislation.

Mr Pezzullo: Yes.

Senator McKIM: Are you aware how many people are, to use another colloquial term, in the pipeline? Have there been any further applications made to the minister over and above that one person?

Senator Reynolds: Not to my knowledge. I think the secretary answered that question earlier on.

Senator McKIM: No, he didn't. Well, I certainly didn't ask it.

Senator Reynolds: Sorry, what was the question?

Senator McKIM: We have had evidence from Mr Pezzullo that one person has been transferred to Australia under the provisions of the medivac bill. My question was: have there been any other applications made to the minister under the provisions of that bill that have not yet resulted in someone being transferred? How many people are in the pipeline?

Senator Reynolds: Thank you for explaining that further, Senator McKim. I don't have that information to hand, but I will seek it for you this afternoon.

Senator McKIM: Thanks. Do you have it, Mr Pezzullo?

Mr Pezzullo: Yes. Unless I was dreaming it, I might have even given evidence before that three notifications have been received, of which one has been actioned.

Senator McKIM: Thank you. Apologies if I wasn't here at that time.

Mr Pezzullo: If I dreamt that, then that is new information.

Senator McKIM: That's okay.

Mr Pezzullo: I'd need to check the Hansard.

Senator McKIM: Sure. This is the end of this line of questioning. Chair, I appreciate your tolerance. When did Home Affairs find out that the government intended to close Christmas Island in July? I understand that was part of the budget process. I presume it was part of the budget process.

Mr Pezzullo: In the evidence I gave before I think I stated clearly—I certainly intimated—that working with our colleagues in the Department of Finance, because they have to sign off on costings, we looked at any number of options. I don't want to go into the details of the options, which had different assumptions about duration. Certainly in terms of being clear eyed about the fact that the government might be considering through the budget process the closure on 30 June—that is to say by 1 July—that was known to us all along because we did the work. The question is: when did we become aware that they had decided it? Towards the culminating period of the budget process. Ordinarily, we wouldn't do this without checking with ministers and other authorities, because it relates to the Expenditure Review Committee and other committees that are not within my remit, but I am
comfortable, Minister, in saying to this committee that it was towards the culminating period of the budget process.

Senator McKIM: Thanks. With regard to the up to 250 transferees that the costing was based on—

Mr Pezzullo: The assumption, yes.

Senator McKIM: Yes, the assumption. Presumably the department didn't pull that figure out of thin air, so is it the department's assessment that there are 250 people who—

Mr Pezzullo: No.

Senator McKIM: would have been referred by doctors to the minister? That would be quite shocking if that were the case.

Mr Pezzullo: No. We gave some evidence in relation to an associated line of questioning back in February. I want to clearly distinguish them. Through social media and other public utterances, certain doctors and people, shall we say, sympathetic to the cause—I don't want to put it any more than that—certainly at the time were saying that there were at least 300 cases known to them. So that's one number, and let's call it the 300 number. In our world we obviously engage in contracts. We would have a contract to quickly roll services out. I think the commissioner or Mr Nockels spoke earlier about moving from hot contingency, which is being ready to reactivate all the facilities within 72 hours so that by the 73rd hour you're up and running. We would have a contracted arrangement that has cost bands. There are certain fixed costs. You said you've served as a minister. You can't make it up at the time and say to Serco, 'It might be 20, it might be 40 or it might be 60.' Those fixed costs are banded and then you allow for the marginal cost to be dealt with. This would simply represent the banding that we have in that contract with Serco.

Senator Reynolds: Chair, can I provide some additional clarification on that: in addition to the answer from the secretary about the reason for the contract and the arrangements with Christmas Island—and it is also not just about the 300-plus that they were made aware of who may be required, but it's also about the thousands or thousand-plus people who are in our near region—

Mr Pezzullo: 14,000.

Senator Reynolds: There are 14,000 people in Indonesia who have paid people smugglers, to come to Australia. So this measure was equally important to send the message to people smugglers and to the people that they've commoditised to say that Australia's borders are not again open, and to say: 'You cannot come here. Do not get on a boat and put your life at risk because you will be going to Christmas Island.' Equally, it was about the potential medical treatment, as the secretary has said, but it was just as important to make sure that the people-smuggling trade did not recommence and that people did not start dying again, Senator McKim.

Senator PRATT: Senator Reynolds has said this already.

CHAIR: Thanks, Minister.

Senator Reynolds: Well, what value a life, Senator Pratt?

Senator McKIM: Don't pretend you did this to save lives, Minister. No-one believes you. It's rubbish. Nobody believes you.

CHAIR: We'll move on. Senator Pratt.

Senator PRATT: Mr Outram and Mr Pezzullo, you'll be aware I wrote with some questions before our previous set of spillover estimates in relation to off-terminal clearances. I'm wondering, if you've got those answers are you able to table them now? If you don't, I can quiz through them in questions.

Mr Outram: I'm able to table the answers, Senator.

Senator PRATT: That would be wonderful. I will just have a quick look at those. Yes, I think they answer those questions reasonably well. I will move on now to ask some questions about Safer Communities grants. Looking at rounds 4 and 5, which are referred to on page 22 of the portfolio budget statement, I can see that that funding totals $58.1 million over the forward estimates.

CHAIR: What program number is this?

Mr Ablong: It is within outcome 1. It's program 1.7

CHAIR: National security and criminal justice.

Mr Ablong: Yes.

Mr Pezzullo: Mr Hansford is the division head and he reports to Mr Ablong. Senator Pratt, to assist the officers, if you could perhaps briefly restate the question for them, I'd be much obliged.
Senator PRATT: Yes, no worries. We're talking about the Safer Communities rounds 4 and 5 which are on page 22 of the portfolio budget statement. There's a total of funding there of $58.1 million over the forward estimates. Is this funding coming from departmental funds or is it coming from the confiscated assets account?

Mr Ablong: It is a mixture of both proceeds of crime funding as well as departmental allocations. It's a mixture of both.

Senator PRATT: A mixture of both. Can you break the quantities down for me for that over the forward estimates?

Mr Ablong: We can take that on notice.

Senator PRATT: Okay. So you don't know the breakdown of that currently?

Mr Ablong: No, we don't have that detail with us.

Senator WATT: Could you, just bear in mind—

Senator PRATT: What are the rough proportions? Because we're keen for—is it—

Mr Hansford: Round 5 was announced in the budget papers, so $35.1 million available, including the administrative costs, which is Proceeds of Crime Act funded. The other item in the budget papers relates to round 4 and the Prime Minister's announcement of a couple of weeks ago. I understand the top-up is budget funded, but the CFO might also—

Mr Ablong: Of the $58 million that you noted, $35.1 million is proceeds of crime and the rest is budget funded.

Senator PRATT: Mr Hansford, were you explaining in which years that falls as well?

Mr Ablong: We can give you a breakdown of the per-year allocation over the forwards—we'll do that on notice.

Senator PRATT: Mr Hansford, do you know the answers to that?

Mr Hansford: For all of the five rounds, it's a mixture of funding between Proceeds of Crime Act funding and budget funding. Mr Ablong's given you the breakdown, but over the years—so round 4, the $55 million available, including administrative costs, is budget funded and $31.9 million of that was announced last year. I'll just have to work out the different splits between the years and what proportion comes from what bucket. But, essentially, they're all either budget funded or funded through the budget with the top-up from the Proceeds of Crime Act.

Senator PRATT: Is there any difference between rounds 4 and 5 in relation to where the funding comes from?

Mr Ablong: Where the funding comes from?

Senator PRATT: Whether it's budget or proceeds of crime—confiscated assets?

Mr Ablong: Round 4 is budget funded and round 5 is proceeds of crime funded.

Senator PRATT: That's the proportion, so both of those rounds flow over the forward estimates? I'm not that familiar with this program.

Mr Hansford: Round 4 was funded in the budget and is open at the moment with funding expected to be this year. Round 5 is currently in the budget, and the round hasn't commenced. So we're currently taking applications, if you like, for round 4 and expenditure this year but you would expect that some of the grants would go over the multiple years.

Senator PRATT: That's great. I know you've taken that on notice. It seems you've given pretty clear and straightforward answers today—

Mr Ablong: We just want to be very specific about how much per year, and we'll give that to you on notice.

Senator PRATT: Yes, but I guess I was hoping that you might be able to provide it today at some point.

Mr Ablong: We will endeavour to do that today, yes.

Senator WATT: We may not have tomorrow!

Mr Ablong: We'll do our best.

Senator PRATT: Thank you. I'd now like to ask some questions in relation to visa privatisation.

CHAIR: Visa seems to be—

Senator PRATT: The next outcome?
CHAIR: outcome 2. If anyone has any more questions—sorry, Senator Spender: I said I'd come back to you before and I didn't. Do either of you have any further questions on outcome 1?

Senator SPENDER: Yes.

Senator PATRICK: Yes.

CHAIR: Senator Pratt, are you and your colleagues finished on outcome 1?

Senator PRATT: Visa privatisation is cross-portfolio. So, because it's—

CHAIR: We're not really at that yet, Senator; we're still at outcome 1. We go on to cross-portfolio next. Can we have any indication from the three of you if you're likely to be long on this?

Senator McKIM: I do have some questions on outcome 1, but I won't be long.

CHAIR: Won't be long?

Senator McKIM: I will not be long.

Senator PATRICK: I'll be about 10 minutes.

CHAIR: I mean I'm not curtailing you. The rules of the Senate say we've got to stay here as long as you want.

Senator SPENDER: Two or three minutes, and then I can pass over to the Senator Patrick.

CHAIR: Senator Pratt, if you wouldn't mind—

Senator PRATT: No, no, that's fine.

CHAIR: stopping there and I'll perhaps go first to Senator Spender for his two minutes.

Senator SPENDER: Just returning to New Zealand issues, inquiring about Australian citizens going from New Zealand to Australia. If a New Zealand court convicts an Australian citizen of a serious offence and imposes a significant imprisonment term, I'd imagine that in the normal course of events New Zealand would seek to have that person move to Australia. Does the—

Mr Pezzullo: Sorry, Senator, I'm not sure that that assumption is warranted in this circumstance. As I recall it, and I will get the public record checked, either the Prime Minister of New Zealand or one of her very senior ministers has publicly indicated that that would not be the case in the circumstance, should a court convict this person.

Senator Reynolds: Again, Senator Spender, this is actually an issue for the New Zealand government, not the Australian government.

Mr Pezzullo: Correct.

Senator SPENDER: The only thing I'm trying to establish is if—and I understand New Zealand has arrangements where they can seek to have a person serve their term in Australia, just as we—

Mr Pezzullo: There are prisoner—

Senator SPENDER: send people the other the way—

Mr Pezzullo: exchange agreements. I stand to be corrected by our colleagues in the Attorney-General's Department, and you might care to ask them. What I'm saying to you is that if you're asking me in the general hypothetical circumstance, does Australia and New Zealand have prisoner exchange agreement? I will take it on notice, but I think the answer is (a) yes and (b) for the details ask my colleagues in the Attorney-General's Department, because it's their issue—

Senator SPENDER: There's no impediment from your department for those movements of people across the Tasman, that wouldn't been an issue for you? That would just a question for AGDs?

Mr Pezzullo: Well, the—

Senator SPENDER: There would be no visa issue—

Mr Pezzullo: Mutual assistance extradition and prisoner exchange are a matter for the Attorney-General and the Attorney-General's Department. When you say there's no impediment, we apply the law subject to agreements that Australia has entered into, so we would apply the law in that circumstance. I will have the record checked to make sure that we have been abundantly clear—it is the case, minister, that Australian ministers have also spoken on this, because I think they've been asked—

Senator Reynolds: Yes, They have—

Mr Pezzullo: in public fora. The statement has very clearly been made, and I stand to be corrected by the New Zealand government, that should the wheels of justice have to turn, should this person be convicted of the crimes
that he's accused of, he will serve that sentence in a New Zealand prison. If I need to correct the record, of course, I will.

Senator SPENDER: Sure. Just turning to an import issue. We have constituents who are concerned about their imports of certain toys, their gel blasters. They blast gel. They sometimes get captured by gun appearance policy with respect to imports, so I believe it falls under your jurisdiction. I had heard from colleagues that there might be some developments in your department with regard to your policy of gun appearance laws—

Mr Pezzullo: You've heard from colleagues that there might be developments in relation to?

Senator SPENDER: To your gun appearance policy with respect to imports.

Mr Pezzullo: We apply laws. We don't apply policies. I really should refer to the Comptroller-General of Customs if he wishes. And Mr Ablong will deal with anything that we can state publicly about policy development.

Mr Outram: So we detain and seize goods at the border that are prohibited. To import a firearm, of course, you therefore need a permit. So, that's our role. If we find an import though that closely resembles a prohibited import we will then seek advice from the Department of Home Affairs and the Australian Federal Police in relation to whether that particular item should be potentially prohibited. We don't make the decision ourselves in Border Force. We, to the secretary's point, implement the law as it stands on the day. We don't make things up as we go, if I can put it that way. Whether something is or is not prohibited is a matter of law. Whether things are currently being considered to be changed to become described in a certain way or not, I would refer to that to the department. My officers don't have the discretion to make things up as they go.

Senator SPENDER: But that process of implementation you just referred to involves seeing something and saying that may trigger gun appearance laws. So there is an element of discretion in distinguishing a toy from something that could be captured by those laws.

Mr Outram: We seek expert advice in that case. My officers would, therefore, detain the good until the expert advice is sought in relation to it. But there are certainly, as you would be aware, some toys that very closely resemble firearms and that's the issue.

Mr Pezzullo: I think, to assist the committee, I might ask my policy colleagues: to speak to the current state of law; to not speculate in relation to potential changes to that law; to speak to the commissioner's point on the statute as it currently stands with regard to the discretion of officers; to speak to the point the senator's making; and to speak to what guidance—not a question of policy—is made available to those officers when they're confronted with what I understand to not be weapons but be toys that look like weapons.

Mr Outram: Or BB guns.

Mr Pezzullo: I'm too busy to have any, but, go on.

Mr Ablong: Under the Customs (Prohibited Imports) Regulations 1956 an importer needs to gain a licence to import firearms. Those licences are based on a series of types of firearms. You can get a licence for various types of firearms all the way up to quite significant weapons that, for instance, the Defence Force might use. When those licences are given, they must be shown at the border along with the goods for them to gain entry. If somebody brings into the country a firearm or something that so closely resembles a firearm that the ABF officer is not able to identify the difference, and does not have a licence for that, then it'll be confiscated until such a time as the importer can identify the type of tool or activity or weapon it is.

Mr Pezzullo: Effectively establishing if it is a toy.

Mr Ablong: The bona fides of the item. Then it will be released to the individual concerned.

Senator Reynolds: From a government policy perspective, I can confirm that there are no proposals from the federal government to make any changes that you've described. We are certainly not going to be doing anything to water down the very tough measures that we currently have in place. That said, there is the National Firearms Agreement, which was recently renegotiated with states and territories. Conversations occur regularly throughout the year between officials and also ministers in relation to categorisations. I can assure you and all senators that there is no policy at this stage to change or to water down in that regard.

Senator SPENDER: My question wasn't related to laws or changes to the laws. If you could take on notice any changes or developments in those practices—

Mr Outram: There's no change.

Senator Reynolds: I was going to say, there's no point. We can take it on notice, but I think the officials have answered it very clearly. I have made it very clear from the federal government's perspective that there are no
changes proposed. And if there was to be, obviously, we'd be consulting the states and territories as well, in terms of categorisations.

Senator SPENDER: A final point: if there are any questions about consistency between officials and—you referred to guidelines—how they all have the same approach to assessing whether something is a toy or not, if you have got any advice on how you ensure consistency between different officers, that would be appreciated.

Mr Pezzullo: Senator Spender, we could go down a rabbit hole here, if I can say respectfully. You said that constituents have approached you. If the nature of complainants are that the practices are being applied inconsistently, in one case something is detained for a period of time until it's established—I think you referred to toys?

Senator SPENDER: Gel blasters, in particular, in this instance.

Mr Pezzullo: I'm not au fait with gel blasters.

Senator PRATT: They sound fun!

Mr Pezzullo: If the concern is different officers perhaps in different ports of entry making—because in the end, if it's a toy, it's a toy. The question is how long is it detained for? What inquiries are made? Perhaps an officer might be in Sydney or Brisbane or Melbourne. If you have specific complaints and if you have got matters that you might wish to put before the commissioner about the practices that his officers apply, rather than us taking a rather amorphously constructed suggestion for a question, could I respectfully suggest that the persons who are in the gel gun community, if there are specific complaints you wish to make to the commissioner, be directed to the commissioner privately?

Senator SPENDER: Anyway, I got the answer: there are no change in practices with regard to judgment about gel blasters—

Mr Pezzullo: Correct.

Senator SPENDER: which is a bit disappointing, but I'll leave it at that.

Senator Reynolds: Senator Spender, I'll provide a bit more information for you. Until recently, I had policy responsibility for firearms, federally. We have an advisory committee made up of industry, the Department of Home Affairs and also the ABF, and this issue was raised with the ABF directly in terms of consistency more generally. But, ultimately, registration and categorisation is a state and territory responsibility, and they do, as I said, meet regularly to try and ensure as much consistency across state jurisdictions as possible.

Senator SPENDER: I apologise for taking more than two to three minutes, Chair.

CHAIR: I didn't really expect you to, but we always live in hope. Who was next? We'll go to Senator Patrick.

Senator PATRICK: I have some questions in relation to the transport security issue I raised and talked about at last estimates. Indeed, it was explored at an inquiry earlier this week as well. Firstly, to give context, I'm referring to the $51 million that has been allocated to security screening at airports. I'm curious about the sequence of events, in terms of the decisions to fund this and the requirements to get parliamentary approval for the security changes to take place.

My understanding is that the Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 2) Regulations 2018 passed through the parliament. That enabled the department to issue tenders for grants, which have now been received. Those grants would obviously go towards the security equipment. However, the necessary regulation to require the airports that might ultimately receive those upgrades to actually carry out the security task has not been given to the parliament, and there's a problem in that. I've foreshadowed that I'm going to move a disallowance, based on the current information I have, to that particular regulation—I've got some sympathy for that in both the coalition and Labor Party, but that doesn't mean I've got the numbers. But, in terms of proper process, one would have thought that you wouldn't spend any public money until you're satisfied that the security requirement will, indeed, come into effect.

Mr Pezzullo: We should just establish some facts first. The status of the regulation that is of concern to the senator—where is that at, Mr Grigson?

Mr Grigson: Senator, there two groups of airports in play. One group is the group that already screens.

Senator PATRICK: Sure.

Mr Grigson: Those airports will be given a notice about the change to screening that will be required for them, which is an equipment change. There won't be a regulatory requirement for those airports to screen. That's the bulk of the airports, probably about 80 per cent or so. There's another group of airports that do not screen at the moment but will be required to screen. We are continuing to discuss with industry which airports they will be,
and have done so as recently as this week. The grants program that you refer to has closed. We've taken applications for grants, but no airport, either in the first group, which comprises those who will simply be required to change what they do, or in the second group, which comprises airports that will be required to screen, have been given any money.

There are two questions at play here. There is one group of airports that want their money now, because they want to get on and make the changes, and there's the second group that, of course, don't want to spend any money until they're sure that they will be required to screen. While the grants have closed—as I said, we have not paid out any money—we will continue to talk to industry about the nature of the regulation that we'll propose to the minister for him to put to the parliament. We spoke to about 10 airports this week, so it is a continuing conversation. I can't give you a time as to when that regulation will go to the parliament. It will depend on when the minister, whoever that might be, agrees to the timing.

**Senator PATRICK:** In essence, we're talking about the second tranche.

**Mr Grigson:** Yes.

**Senator PATRICK:** Can you assure me that you won't spend any money on that second tranche until parliament has basically allowed that regulation to pass through?

**Mr Grigson:** We'll need to get some advice to the minister and see what decision he or she makes at the time. But, at this point, we've spent no money.

**Senator PATRICK:** Sure.

**Mr Grigson:** And we do have some flexibility in the system so that, if an airport were to spend money and were then not be required to screen, we would still compensate them for that money.

**Senator PATRICK:** Yes, but that's my concern. That's just a waste of taxpayers' money. If you provide, with taxpayers' funding, facilities that never get used, that becomes a waste of money.

**Mr Grigson:** Some airports will drop in and out of screening, depending on their passenger numbers, and that's the extent of the conversation at the moment—exactly where the cut-off is. So you may find that some airports that are screening now may not be required to screen into the future because their passenger numbers change.

**Senator PATRICK:** All right. On a different tack, the RRAT committee that's examining rural airfares has taken evidence that there would be a detrimental effect to air operations and, indeed, communities if these regulations were to come into play, because, although you are funding the capital costs, the ongoing costs are significant. I will read this very carefully—and, Minister, you might be interested in this because Western Australia is going to fall into this category as well. Qantas's evidence to the committee was:

Like all of the costs we've talked about, airport charges and others, on relatively marginal routes, there is always a tipping point. In the South Australian market, where we operate two Dash 8 Q300 50-seaters to Port Lincoln, Whyalla and Kangaroo Island, the impost of additional security charges to the level that you have described we think would be critical, in that it would move us beyond the tipping point of viability and put those services at risk.

Rex airlines also indicated a similar concern. The bottom line is that those operating charges will get passed to the airlines in almost all circumstances, although a council could pay for it; the margins are tight; and it may put some of these services out of operation, and that would have a hugely detrimental effect on the regional centres.

What we found out at the hearing the other day, if I were to summarise the evidence, was that the department did an analysis only in respect of security. No analysis has been done of the effect on communities of implementing this regulation, in terms of the viability of flights into or out of the communities, and the effect of rising prices, which tend to curtail people's ability to travel. Indeed, we have taken evidence that in some instances that's one of the reasons people leave regional communities: just getting in from and out of those places to large cities is problematic. No analysis was done. I'm just trying to get an explanation. I understand that the division we talked to had limited responsibility. But I ask those with a broader responsibility, and it might be the minister or the secretary: why wasn't any analysis done of the impact that regulation would have on the community? I accept that you've looked at it from a security perspective.

**Mr Grigson:** Within the Home Affairs department we do the security aspect of it. The broader economic factors at play belong in Infrastructure. They do a lot of work on the impacts of various costs on airports, and you would have seen in the budget there was $100 million or so made available for regional airports over the next four years—

**Senator PATRICK:** Sure, and that's a good thing.
Mr Grigson: which is a good thing. I think that's an example of how Infrastructure is responsible for that broader aspect of the sustainability of regional airports.

Senator Patrick: Okay. I'm not going to ask you to speak for Infrastructure, but is the department aware, through your consideration of this policy and this change, of any analysis that they have done? I'm not asking what that analysis is, simply: is your department aware of any analysis that has been done?

Mr Pezzullo: I'm not sure that we'd have any reason to be aware. But, in any event, questions about the activities of other departments are best directed to those departments.

Senator Patrick: It's a question that goes to the knowledge of your department. That's the simple nature of it. I can go across to Infrastructure, and I will, and I'll ask them about it—

Mr Pezzullo: Thank you.

Senator Patrick: but part of this is about the way in which you develop policy—

Mr Pezzullo: So I gather.

Senator Patrick: and whether or not you simply develop policy in a stovepipe manner.

Mr Pezzullo: No, we don't. To the extent that deputy secretaries engage constantly across these issues, I'm sure, Mr Grigson, to the extent that it had a bearing on your responsibilities, you would be aware of what work the department of infrastructure was doing, so you might wish to speak to your level of awareness. But the primary question should be directed to the primary department.

Senator Patrick: Sure. I'm just after his awareness.

Mr Grigson: I've had a discussion with my counterparts in Infrastructure on various issues around costs. I don't know whether they did any analysis on this particular issue.

Senator Patrick: So who made the final decision to implement the regulations? You've only got a small view of this, albeit significant in the context of security. Maybe this question is to the minister: there's a broader government look at this—

Senator Reynolds: I would say the answer is of course it does. And, of the $294 million package that was announced, $50 million of that, as you know, is for upgrading regional facilities and services. Implicit in that, the fact that we have available that fund of $50 million to assist them to implement these measures and buy new equipment is a recognition that there are some extra cost burdens in those areas. And, as you said, I'm very well aware of that in some of our regional Western Australia airports. So I'm very confident that those discussions have occurred interagency and are still a factor. And the fact is that the rural and regional and transport committee has been taking evidence on that, which I know the government will respond to and, certainly, the department is alive to. So I think the answer is an unequivocal yes, they do take that into account.

Senator Patrick: So you're confident, if I go across to Infrastructure, that they will have—

Senator Reynolds: Senator Patrick, as the secretary has said, neither he nor I—

Senator Patrick: I'm testing the validity of your confidence.

Senator Reynolds: Let me finish.

Senator Patrick: You said you're confident.

Senator Reynolds: Please let me finish. I'm very confident, in terms of what the secretary said and in my answer, that there is significant interagency engagement. There is an awareness, which is why there's a $50 million allocation to assisting regional airports. Neither I nor the secretary can speak for any other agency or minister, but, from Home Affairs' perspective, yes, there has been significant and ongoing engagement, but primary responsible for that rests with Infrastructure and Transport.

Senator Patrick: I will ask them—

Senator Reynolds: And we'd encourage you to do so.

Senator Patrick: and I absolutely expect them to say that, noting that one of your deputy secretaries was unaware of any such analysis and was heavily involved in the discussions with the various airports—

Senator Reynolds: But, Senator Patrick, to be fair, as the secretary has said, that is the responsibility of another department. There is, of course, significant interagency and interdepartmental consultation on this, but the responsibility for Mr Grigson—

Senator Patrick: Very bureaucrat words, Minister. Take some responsibility. In terms of whole of government, are you satisfied—
Senator Reynolds: If you would allow me to finish, the responsibility for this portfolio, Home Affairs and the Home Affairs agency, is security, and that is the primary prism through which Home Affairs and all its agencies, including ABF and others, look at this. Transport and Infrastructure look at the same problem through their particular prisms. So what we're saying is—from the officials' perspective and the government's perspective—that engagement has occurred, but you will have to go to Transport and Infrastructure to get their take on those discussions. But from Security, yes, it has been.

Senator PATRICK: Is this something I should go to in cross-portfolios on the last day of estimates because it cuts across so many portfolios? A decision has been made to impose a cost on regional airports, and I'm just trying to find out where some analysis has been done on the effect that those additional costs have on the economies and the ability for these regional airports to be serviced.

Mr Pezzullo: At the risk of—

Senator Reynolds: But you're asking the security agencies—

Senator PATRICK: I'm asking you, Minister. As a member of cabinet, you might be able to at least guide me as to whether or not that has occurred.

Senator Reynolds: Senator Patrick, as I've said now—

Senator PATRICK: If I were sitting in your shoes, I would never let a decision be made like that.

Senator Reynolds: Senator Patrick, you've asked—

CHAIR: Order! You asked the question. Let the minister answer it.

Senator Reynolds: Thank you very much, Chair. What I'm saying—and I have said it twice now—is that Home Affairs have clearly—

Senator PATRICK: You don't need to tell me that again.

Senator Reynolds: You've just asked the same question again.

Senator PATRICK: No, my question is about whole of government. As a minister in cabinet—

Senator Reynolds: As I have said, not only has Home Affairs engaged appropriately and significantly on this; you have to talk to transport and infrastructure for their take on this issue. We have provided the security through this department—the security assessment and advice—and clearly it is required, which is why there's such a significant—

Senator PATRICK: Advice to whom?

Senator Reynolds: Advice to government and also to other—

Senator PATRICK: What does that mean—'government'? I'm just trying to identify where this has gone to, so I can ask them the question.

Senator Reynolds: Senator Patrick, you and I both well know how interagency cooperation goes on all manner of policy.

Mr Pezzullo: I'm not sure the senator is fully across it. Senator, I'm not sure how many cabinet meetings you've attended throughout the course of your career?

Senator PATRICK: None.

Mr Pezzullo: In the hundreds I've attended, the Prime Minister of the day—and I've served under many—and the budget process, to go directly to your question, is the ultimate joined-up, whole-of-government exercise. All the ministers are around the table, their secretaries and/or statutory officers are with them, coordination comments have been received across departmental lines. The Prime Minister or the Treasurer, typically whether it's an ERC or otherwise, looks through the coordination comments, the guidance from the finance department, the guidance from the treasury department, and says, 'Does anyone have any objections?' There is no such thing as—and I know it's a misnomer that people who perhaps haven't attended as many cabinet meetings as some of us have think that there's some magical force that perhaps only a Jedi has access to.

Senator PATRICK: I'm with you. This is a very helpful answer.

Mr Pezzullo: There is no such person nor entity known as 'the whole of government'. It's a misnomer. All of us working collaboratively are expected to take two views of any issue: what is our particular portfolio view—for Mr Grigson and I it is security—and, in ensuring that our boundaries are covered, the Prime Minister or the Treasurer, depending on the nature of the cabinet committee, would say, 'Across your boundaries, have you all consulted with one another?' 'Yes, Prime Minister. Yes, Treasurer.' 'Are there any dissenting voices? Does anyone have a view to the contrary?' If I'm sitting there as the secretary of the infrastructure department, that is the point...
at which I'd be prompting my minister, the minister for infrastructure, to say, 'Actually, we are concerned about this impact or that impact.' That is how whole of government works in reality. I know that there are plenty of think tanks and plenty of commentators, many of whom have never walked into that room—as opposed to those who've done it hundreds of times—who think that there's a different model. Unless everyone takes responsibility for their own actions, and then makes sure that their boundary is sealed up, the alternative would be to have something called the 'department of the government', and everything would ultimately have to go into one department. That's how whole of government works.

Senator PATRICK: Thank you. That's a very, very helpful answer.

CHAIR: That's a good place to stop. I now go to Senator McKim.

Senator McKIM: Mr Pezzullo, I will come back to a couple of immigration detention questions that I have, but, before I do that, I will ask: in this budget, is there any of the money that the department was allocated out of the Hobart City Deal?

Mr Pezzullo: I'm sorry, Senator?

Senator McKIM: I'm asking: does this budget for Home Affairs contain money that the department was allocated through the Hobart City Deal?

Mr Pezzullo: I'm aware of the construct, but I'm not aware of any funding for the department.

Senator McKIM: Just to allow one of your officers who might have the information to come forward, I'll give you a little bit of context. It's my understanding that, as part of the Hobart City Deal, which—actually, I'll take a step back. Hobart Airport is about to become an international airport in the very near future. That will require the department to do certain things down there that it didn't previously have to do. Could you confirm that, as a result of that cost impost on the department, some funds were allocated out of the Hobart City Deal to your department to assist you with conducting your affairs in the newly internationalised Hobart Airport?

Mr Pezzullo: I'll need to take it on notice, unless an officer can assist me. I didn't quite capture what you said—whether you said diverted or apportioned from the city deal.

Senator McKIM: That'll do.

Mr Pezzullo: But on the question of the main impacts for a port of entry becoming internationalised, that would be on the Federal Police, and they will appear separately—

Senator McKIM: And Border Force.

Mr Pezzullo: And Border Force. I might ask the commissioner to see if he's got anything that he may wish to add on the border aspects of international flights going into Hobart. And then maybe Ms Cargill, who's miraculously appeared, might have some further information regarding the city deal.

Mr Outram: Senator, I'm not aware of the financial elements of where the money would come from. What I am aware of is that, of course, we have looked at the operating model for how we would deliver services at Hobart Airport depending on the size of the operation necessary. If it was a small number of flights going out of Hobart, it would be uneconomic for us to employ people locally, so we would probably look primarily at a fly-in, fly-out type arrangement from our Victorian Regional Command. If the demand was higher, then we would have to look at what we actually post people into Hobart to work from there, and employ people locally. We've been looking at a whole range of different scenarios here as to how we would manage our operations from a customs and immigration point of view at Hobart depending on the volume of traffic.

Senator McKIM: On what basis will you make a judgement about the number of international flights? Just to be clear, we are talking purely about international flights here, when you're making that decision—is that right?

Mr Outram: Exactly right. We don't have a role if it's not an international flight.

Senator McKIM: Where will you get the information from to make that decision about how many international flights there will be in and out of Hobart International Airport, and therefore whether you'll be flying in and flying out workers or employing locals?

Mr Outram: I hate to use the term 'whole-of-government processes', but there is a whole-of-government process here where industry has to engage with government about new airport operations and new port operations, because there is obviously a cost involved in the government providing services at that new point of entry, not just from a Border Force point of view but obviously you've got—

Senator McKIM: Are you going through that process at the moment?

Mr Outram: Yes, there's a whole-of-government process that has to be gone through. That's been agreed to and that's familiar to everybody. And, of course, industry has to provide estimates of volumes. We can't just make
it up as we go. We need to understand. The setup costs are significant; you have to set up technology, infrastructure, capital, training, recruitment et cetera.

Senator McKIM: I understand that. That's, in a way, why I'm asking this line of questions. What is the cut-off then: is it a number of flights issue, or is it a number of passengers? I'm presuming it would be passengers rather than flights?

Mr Outram: It's a combination of both—in frequency, days of the week, times of the day. There's a whole combination of factors for us—

Senator McKIM: Do you have something like a matrix of those factors that would have kind of a line in it somewhere whereby if it was to the left of the line, you'd use fly-in, fly-out and if it was to the right of the line, you'd employ locally?

Mr Outram: I don't think we have a matrix. We do the business analysis. Every airport is so different. There's an issue about the threat and the risk—which countries are passengers coming to and from—and there's a whole range of factors beyond just volume that we would look at. So there's not a sort of a mathematical algorithm that tells us, okay, we need to go to a different model. We'd use our judgement, really, to assess that.

Senator McKIM: Do you have a time frame for making that decision?

Mr Outram: Again, we've sometimes been pushed in terms of time frames. If we had to recruit additional people and get them in, then there's obviously a recruitment and training lag, which is several months. I'd give you an example of when we went through the process of the additional terminal at Perth International Airport, terminal 3. For us that was like a new airport, because it was on a completely different side of the runway from the previous international terminal. And the lead-in time there was less than a year but several months, because we had to recruit, we had to get the technology, we had to work with Qantas and with the airport owner in terms of the design of the floor space, the primary line, the equipment and how it was going to work. So it was several months in that case.

Senator McKIM: But you don't have a time frame in the context of a decision around Hobart?

Mr Outram: No.

Senator McKIM: Just so I understand, Commissioner: at the moment the department's yet to make a decision about whether you'll fly in and fly out your workforce from Victoria or whether you'll employ locally. Is that accurate?

Mr Outram: I believe so. I'll take advice on that—I believe that's accurate but I'll confirm that for you. But I don't think we've made that decision yet.

Senator McKIM: If you are able to take that advice in real time, I'd appreciate that. Ms Cargill, do you have any information about the City Deal that I was asking about earlier? Was any quantum of funds allocated from the City Deal and the department?

Ms Cargill: I don't have any information as to a linkage between the City Deal and any funding for Hobart Airport. I have information as to the funding that the department will receive for border services at Hobart international airport—

Mr Pezzullo: Irrespective of source.

Ms Cargill: Irrespective source.

Senator McKIM: Irrespective source, could you provide that information please?

Ms Cargill: Yes. The precedent though for international airports and the funding is that the government has a funding model whereby the establishment costs for international airports are recovered from the airport operator and the ongoing costs for the department are actually funded through an estimates variation process. So we wouldn't traditionally talk about the actual amounts in a public forum but we could do so on notice.

Senator McKIM: I'd appreciate it if that's possible. I'd just note that Mr Pezzullo has been handed some information and I'm wondering whether he'd like to share that?

Mr Pezzullo: No, senator, it pertains to an exchange I had with one of your colleagues.

Senator McKIM: No worries. I appreciate that. Ms Cargill, just to be clear, you're not aware of any funding that nominally was part of the Hobart City Deal that's been allocated to the department to allow the department to provide services at a newly internationalised Hobart Airport?

Ms Cargill: That's correct. I'm not aware.
Mr Outram: I've just been advised that whilst we sort of settled our view of how many numbers of staff we might need to run an operation at Hobart, it's going to be a seasonal sort of service so we haven't yet made the final decision. If it's a seasonal sort of operation it makes it more difficult for us, of course, to employ people regionally or locally, or place them locally.

Senator McKIM: I just missed the first couple of words you said there. Did you say you had not yet made a decision?

Mr Outram: No.

Senator McKIM: So the effect of what you just said, Mr Outram—and I'm sorry, I take responsibility for not hearing you properly—is that you have not yet made a decision. But you have been advised that it'll be, I think you described it as a seasonal service—

Mr Outram: A seasonal sort of operation, yes.

Senator McKIM: which would make it less likely that you'd employ locally and more likely that you'd fly-in fly-out?

Mr Outram: Again it depends on volumes and all those sorts of things, but in terms on the amount of officers we need that's relatively easier to calculate. But if you've got a seasonal service it makes it more difficult in terms of where officers are pulled from to provide those services.

Senator McKIM: Have you made that calculation as to how many officers you will need at Hobart?

Mr Outram: I'll take that on notice.

Mr Pezzullo: Just for the sake of completeness, I did take the opportunity to wander down the back and check with a number of other officers to reinforce Ms Cargill's evidence, we're not aware of any direct financial linkage. I believe that the matter might've been announced on the same day that the government made an announcement pertaining to the City Deal. It's not something that we work on.

Senator McKIM: The Prime Minister flew down and announced the City Deal.

Mr Pezzullo: Right. You know more than I do. On the specific question of where the funding sources are, which program—to paraphrase your question perhaps—whether programs had to be reprioritised or funding reapportioned, they're really a matter that the Department of Infrastructure, Regional Development and Cities is best placed to answer should they wish to.

Senator McKIM: Thank you. But I believe Ms Cargill's agreed to take on notice that question as to—

Mr Pezzullo: We'll consult, but we don't run the City Deal program—

Senator McKIM: Understood. That was one of the points I was going to make actually.

Mr Pezzullo: Sorry?

Senator McKIM: It is a department of infrastructure program—

Mr Pezzullo: That's right. And they may wish, through the question of notice that we've taken, to provide this committee with advice about the funding composition.

Senator McKIM: Just for clarity, the questions that I'd ask you to take on notice, are: firstly, were there any funds allocated out of the Hobart City Deal to the department for the department to—

Mr Pezzullo: We'll take that on notice, noting we that we'll have to go to infrastructure.

Senator McKIM: Understood. The second part of that question is, if the answer is, yes, what was the quantum of those funds?

Mr Pezzullo: I'd probably prefer not to take that on notice but to refer that to infrastructure. If we've been allocated money, I'll check that with infrastructure. We'll check that with infrastructure. How much and whether it relates to the City Deal funding bucket are questions best addressed to infrastructure.

Senator McKIM: You're asking me to address them or you will address them to infrastructure?

Mr Pezzullo: I'm addressing myself at the moment! I'm trying to clarify it in my own mind. The best way to do this is we'll take the totality of your questions on notice. We'll consult with our colleagues in infrastructure and then we'll answer as we and they best agree. It might be that that might lead you to ask them questions separately. Thank you.

Senator McKIM: Thank you. I appreciate that.

Mr Pezzullo: That was a work in progress. I do apologise.
CHAIR: Thanks, Senator McKim. For the management of this program, can I just ask if any senators have any further questions on outcome 1?

Senator McKIM: I have a few more and then I'll believe we'll be done within five minutes.

CHAIR: Over to you then.

Mr Pezzullo: Chair, can I check before you leave outcome 1 whether the call will be given to Labor senators, because I have some additional information to add in relation to questions asked by senators Carr and Watt earlier.

Senator PRATT: We'd be happy to have that additional information placed on the record at the end.

Mr Pezzullo: It's very brief.

CHAIR: Yes, you can always give the information you said earlier that you'd try and find.

Senator McKIM: Mr Pezzullo, in the recent discussion we had at the last estimates process, you confirmed that you'd referred a matter off to ACLEI for investigation. They were the allegations of bribes for visas.

Mr Pezzullo: Yes.

Senator McKIM: I'm after an update on whether you've heard back from ACLEI on that.

Mr Pezzullo: Ms Noble will assist me. If I recall rightly, I think the reference has been accepted and I think some follow-up action is in hand. Perhaps you might restate the question for Ms Noble.

Senator McKIM: We understand from the evidence you and Mr Pezzullo gave at recent estimates that you had referred the matter of—I'll shorthand it—the allegation of bribes for visas to ACLEI—

Mr Pezzullo: 'If you pay a particular amount of money, I can get you a visa outcome.' That was the matter you raised.

Senator McKIM: That's right. I'm after an update on that, Ms Noble, please.

Ms Noble: No. As we said last time, the secretary referred the matter to ACLEI on 6 March and it remains with them.

Senator McKIM: Have they indicated whether they're investigating, whether they've accepted your referral? Have they acknowledged receipt?

Mr Pezzullo: It's been received.

Ms Noble: Yes, it's been received, but we've had no further advice from them.

Senator McKIM: Thank you. I wanted to ask some questions about numbers in offshore detention and the US deal, Mr Pezzullo, just to give any officers the opportunity to come up.

CHAIR: You're aware that Mr Pezzullo gave those figures in the written statement he's handed to you?

Senator McKIM: I'm sorry, I wasn't here. I can run through these very quickly, Chair.

CHAIR: Where was it, Mr Pezzullo?

Mr Pezzullo: Page 3 of 4.

Senator McKIM: I'll review that, Mr Pezzullo, while you're responding to this question: has the independent health advisory panel that's required to be established under the medevac legislation been filled?

Mr Pezzullo: It's been constituted. Whether it's been fully constituted, I'll check with Ms Moy; she's assisting Minister Coleman with the establishment of that panel. Ms Moy, how are we going with the constitution of the independent health assessment panel?

Senator McKIM: The reason I ask, just while Ms Moy is coming in, is that in The Australian it was reported, I think today, that two members have been appointed, and I'm aware that two does not constitute the full staffing or the full complement.

Mr Pezzullo: I think we are beyond that.

Ms Moy: What I can advise is that, in terms of the establishment of the panel, it was established on 2 March, which was the day that the legislation commenced. It was commenced with the two members, which were Dr Gogna and Professor Brendan Murphy from the Department of Health as the Chief Medical Officer. Consequently, Dr Antonio Di Dio was nominated on 6 March by the President of the AMA. He commenced his appointment on Tuesday, 2 April, after the minister signed his appointment on 19 March. He has been appointed for three years. Then we have Associate Professor Susan Maloney, who was nominated by the RACP. On 20 March she accepted her appointment and the minister signed the instrument formally appointing Associate Professor Maloney to the IHAP for three years commencing 11 April. Additionally, Associate Professor Gill was
nominated on 13 March by the Royal Australian and New Zealand College of Psychiatrists. His appointment is still pending per clarification of some legal questions that Associate Professor Gill has asked in regard to legal liability. So that will be the next one. The remaining three members are in the process of their appointments.

Senator McKIM: So there are three currently on the panel and another three in the pipeline?

Ms Moy: There are actually five on the panel now: Dr Gogna and Professor Murphy plus the three, so that's five. Then there will be another three, who are in various stages of the appointment process.

Senator McKIM: Once those last three that you've referred to have been appointed, will the panel then be complete?

Ms Moy: The panel will be complete in terms of its minimum membership but the panel can actually sit as a panel now to make decisions as long as the majority of the panel—the decisions require a majority agreement of the panel. So, even though the panel's eight, it is constituted even on 2 March with the first two.

Senator McKIM: Thank you. I've had an opportunity to review your opening statement, Mr Pezzullo. The only question that has fallen out of it for me is: you've given a combined number of people on PNG and Nauru, at 915. I am just wondering whether you had a—

CHAIR: I asked the same question, and the answer was: approximately fifty-fifty.

Senator McKIM: Thank you.

Mr Pezzullo: We can go better than 'approximately', Mr Chairman.

Mr Ablong: We can. There are 359 in the Nauru cohort and 547 in the PNG cohort.

Senator McKIM: Are you able to break the PNG cohort down between Manus Province and Port Moresby?

Mr Ablong: I'll take that on notice.

Senator McKIM: Thank you. Is there any intention that the department's aware of that the Maribyrnong IDC will be reopened?

Ms Moy: The Maribyrnong IDC was held as a contingency but it was slated to close.

Senator McKIM: Yes, I'm aware.

Ms Moy: It's been decommissioned.

Senator McKIM: It's been decommissioned. So my question is: is there any intention that the department is aware of for it to be recommissioned?

Ms Moy: Not at this point in time. There was a discussion earlier around it being used as a contingency but that has not come to fruition, so decommissioning is where it is at.

Senator McKIM: Is that decommissioning complete?

Ms Moy: I'm not quite sure that it's fully completed. I can come back to you on notice on the stage of completion.

Senator McKIM: Thank you. Is the department aware that Pacific International Hospital in Papua New Guinea is charging detainees $125 per volume of medical records that they request whereas detainees on Nauru are given those medical records for nothing? If the department is aware, why is that discrepancy being allowed to continue?

Mr Pezzullo: Is this their own records?

Senator McKIM: Yes.

Ms Moy: I'm not aware of that but I'll take it on notice and have a look.

Mr Pezzullo: We'll look into that. It might well be a charging policy—that is, a policy of the hospital. It's not a hospital in our jurisdiction.

Senator McKIM: I won't get into another lengthy jurisdictional and duty of care argument with you, Mr Pezzullo. We've had enough of those over the—

Mr Pezzullo: Indeed. But we will check the factual question of charging.

Senator McKIM: Thank you. I understand that people are transferred around the onshore immigration system for a variety of reasons on a regular basis, but has there been any strategic decision made to increase the number of detainees at Yongah Hill?

Mr Outram: There's been no strategic decision, but you'd be aware, of course, that we did close North West Point last year. I know it's been reopened for a different purpose, but we closed North West Point last year. Our numbers on onshore-held detention have remained about the same as they were when it was open, so we've had to
absorb a lot more people into the network. You'd also be aware that there have been a larger number of capital works undertaken at Yongah Hill, which meant that we had to reduce the capacity there to allow those works to be completed.

Senator McKIM: Have they been completed now?

Mr Outram: I'll have to take that on notice. Maybe there's somebody in the room who can assist with that. Of course once those beds become available, we would seek to avail ourselves of them, but there is no strategic decision, if you like, to take people out of one side of the network and load them into the other side of the network.

Senator McKIM: This is my last one, Commissioner—while you're responding to my questions. I'm just wondering if you could give the policy reason for officers at our onshore detention centres not wearing ID badges? I ask because it makes it hard for complaints to be made against them if they can't be identified.

Mr Outram: Is this Serco officers we're referring to now?

Senator McKIM: Yes. They're under contract to you.

Mr Outram: I'll take that on notice in terms of the policy position. I'm wearing a name badge now—

Senator McKIM: Sorry, you're right; it is Serco officers.

Mr Outram: It may be to do with security and privacy. I'll come back to you as to the service provider's views in relation to that issue.

Senator McKIM: Okay, because they are operating under contract to you, or to the department—I presume that it's actually the department rather than Border Force, but I stand to be corrected. I just want to make it clear that the reason I'm asking this question is it's very difficult for a detainee to lodge a complaint if they cannot have an easy means of identifying the officer that they've got a problem with. I would argue very strongly that officers, including officers that are contracted, ought to wear ID badges so they can be identified.

CHAIR: No, Senator McKim, you're just asking questions.

Mr Outram: I'll come back to you in relation to what the policy actually is and what the rationale for the policy is.

Senator Reynolds: Senator McKim, I have a reasonable degree of confidence that it also relates to the safety and security of the officers. You weren't here, but we had a discussion about this earlier on. With over 70 per cent of onshore detention now being high-risk detainees, there are some serious safety issues for both the Serco and the ABF staff in relation to photos being taken of them and sent outside of the detention facility and them being threatened. I'm certain that there are some security reasons for that.

Senator McKIM: Commissioner?

Mr Outram: Again, I'll have to check for you. I'm told that it is partly because of security issues. Some guards have been threatened previously, but we'll ascertain what the reason is for the policy—what the actual policy is—and have a discussion with the service provider about that, and I'll come back to you.

Senator McKIM: Thank you, Chair.

CHAIR: Thank you, Senator McKim. I was going to ask the same question, because I recall that at previous estimates it has been indicated that certain officers, certain workers, at these detention centres have been threatened, and their families threatened, by associates of those who are in the detention centres. But, anyhow, you're going to take it on notice.

Senator McKIM: If I can just add to that—sorry, Chair, I know I indicated that I had finished. Commissioner, I'd appreciate it if you could also just take on notice the quantum of complaints, perhaps broken down by whether they've been made against Border Force officers or Serco officers in the onshore detention—

Mr Outram: We can probably come back to you on that very quickly. We have a very rigorous complaints-handling mechanism.

Senator McKIM: Thank you.

CHAIR: Thank you very much. We're now finished with outcome 1.

Mr Pezzullo: Sorry, Mr Chairman, I—

CHAIR: Yes, you were going to give us some answers to questions you took on notice earlier.

Mr Pezzullo: I'm going to add to evidence previously given to Senator Carr, in his absence. But Senator Watt also pursued this line of questioning. Since the exchange earlier and during the break, in relation to the questions that we took on notice, Senator Watt, pertaining to our knowledge of matters raised in two newspaper articles—
one on 15 March but one, more particularly, on 23 March, which might have been published online a day earlier—I've asked the officers to check all of our records and the recollection of our officers on the question, not just having been gently admonished earlier about being overly precise in the answers that we give to forensically asked questions, but looking beyond narrowly defined bribery, corruption or inducement matters, just more generally, because the burden of the article related to seeking donations to a particular party. I've asked that the net be cast a little bit more widely to include the question: irrespective of any suggestion of inducement, extortion, bribery, corruption or misconduct otherwise, has there been a question of a donation, without any adverse connotations otherwise, arisen and is reflected in our records in the manner described? I've had a preliminary view and I'm going to state it to you as a preliminary view that, even on that broader, more expansive definition of just simply discussion about donations, the answer is no, we have no such record. But, to be abundantly cautious and respectful of the prerogatives of this committee, I've asked that, on notice, we even more thoroughly examine our files without any suggestion in our mind that we're just simply looking for allegations of corruption or bribery. So we're going even more broadly, out of respect to the line of questioning, to examine the question of donations lawfully provided/sought—not induced or the subject of corruption type motivations—just to assist this committee.

CHAIR: Mr Pezzullo, how does that come within your portfolio, in terms of donations made by third parties to a foreign—

Mr Pezzullo: Just to be clear, is there any evidence on our files—because the newspaper report in question suggested that my officers had been advised contemporaneously in the latter part of 2017; and I'm now paraphrasing the article—that matters of foreign bribery and/or corruption had been drawn to their attention? The inference is that my officers did nothing about it, which I take very seriously and I take exception to, if it's falsely reported, I can assure you. So I have asked that our records be checked. That's the only matter within my purview. Is the question even of donations lawfully exchanged or dealt with? Is there any such reference on our files? In other words, I have broadened it, still within my remit of knowledge, to include donations generally.

CHAIR: It's what your department—

Mr Pezzullo: What our officers have been allegedly told. The preliminary view that I can put to this committee—having checked, including with the relevant officers who would have interaction with the company's officers as described in the article—is that, no, no such matters were raised, even in the more benign definition that I've provided of just simply, discussions about nations, which all political parties, I'm advised, engage in.

Senator WATT: I understand, thanks.

Mr Pezzullo: It's not something that I'm deeply familiar with. Lots of parties talk about political donations. Even that is not captured in our records. But I will check on notice.

Senator Reynolds: Before we move on, I understand that you're about to move on to cross-portfolio. I understand from Senators Pratt and Watt that when we come back from the break, we might still be on track for the Australian Security Intelligence Organisation and AFP. It would be helpful for the officials to know.

CHAIR: Just before that, can I extend to Ms Moy and Mr Nockels, I think it was, the apologies of the committee for the suggestions made. I won't call them accusations, but it would have been uncomfortable for them earlier to have to confront senators who made suggestions that they had covered up or done the wrong thing. On behalf of the committee, can I extend to those two officers our apologies.

Mr Pezzullo: Thank you, Mr Chairman.

CHAIR: In my long time in this particular role, I have had an opportunity to see those officers over considerable time. I think they're wonderful officers, Secretary, and you're very lucky to have people in this very difficult portfolio of that quality.

Mr Pezzullo: Thank you, Mr Chairman.

Senator WATT: I think, if you have a look at the questions I was asking, there certainly wasn't any implication to that degree from me, and I think Senator Carr, in fact, gave those officers an opportunity to correct the record if they thought that any incorrect information had been made. I don't think that there was any intention from anyone to impugn officers, but perhaps you have a different interpretation.

CHAIR: The way the questions were asked would have been very uncomfortable. I felt uncomfortable, and it wasn't directed at me.

Senator Reynolds: Chair, thank you for that. As you know, I did seek the withdrawal of some of those imputations. I thank you for doing that and I thank the secretary and the department for being so speedy in its response to this.
CHAIR: I think we have—

Senator PRATT: I'm hopeful I will have about half an hours worth of questions.

CHAIR: Look, at this stage, there's a fair chance—and we'll try and confirm this—that there is only one senator who has indicated they have questions for ACIC. We're hoping that that senator may put them on notice. My concern is we're not going to get to them anyhow, but time will tell. Senator Pratt's just said she thinks she has about half an hour on the next cross-portfolio and outcome 2. If that's the case, we will get to them.

Mr Pezzullo: Can I confirm there is nothing on outcome 3?

Senator PRATT: No.

CHAIR: The Labor Party have said no.

Senator Reynolds: Are you happy to release the officials for outcome 3?

Senator WATT: We are. I'm not sure about others.

CHAIR: We'll have a quick meeting of the committee of those of us here and I think we'll agree that you can say to the outcome 3 people, 'Thanks for your help, but, no, thanks, we don't need you.'

Mr Pezzullo: Thank you. There's enough time in the day to get at least half a day's work done back in the office.

CHAIR: Yes. We now go to the next cross-portfolio. We've finished with Border Force. Thank you, Commissioner, to you and your team for being here and, again, for everything you do.

Mr Pezzullo: Thank you.

Senator PRATT: I would like to take you to page 21 of the Department of Home Affairs portfolio budget statement. That part of the budget is measures announced since the MYEFO last year.

Mr Pezzullo: Yes.

Senator PRATT: On that page we have got expenses saved.

Mr Pezzullo: Sorry, page 21?

Senator PRATT: Page 21. I think it's also on page 23. It's expenses saved under immigration reform. It's under 'capital measures' and 'expense measures' for immigration reform over the forward estimates. I can see a saving of some $71.042 million. Are you aware of the part of the budget I'm talking about?

Mr Pezzullo: Yes.

Ms Cargill: Yes.

Senator PRATT: What does that saving relate to?

Mr Pezzullo: The government announced in the additional estimates a program of immigration reform measures. It decided to proceed with a number of those measures that were announced prior to, but are now accounted for in, the budget under the rubric of immigration reform. They've got a particular focus on regional migration. Minister, I might refer the government's intentions to you here otherwise. The variation—which I think is the burden of the question that you're going to—between the additional estimates provision and the budget provision relates to the fact that government has decided to focus on particular areas of immigration reform. I might refer the balance of that answer to the minister.

Senator Reynolds: I can confirm that in relation to that particular measure, the government is not proceeding with elements of the immigration reform measures, the attracting skilled migrants to regional areas measure that was published in the MYEFO. The government is still considering longer term—

Mr Pezzullo: In additional estimates.

Senator Reynolds: In additional estimates, sorry, and also in MYEFO.

Senator PRATT: So it's your immigration reform. How much of that $70 million is about regional skilled migration? Is that what you're saying?

Mr Pezzullo: That's right. I think—

Senator Reynolds: The government is still considering longer term changes to the visa framework, with the immediate focus on making changes that will support the needs of regional Australia. But some of those measures in terms of the particular amount that was in the additional estimates and then in MYEFO are not proceeding, so that money was no longer required.

Senator PRATT: Can you break down those measures? It says very clearly:

The Government decided not to proceed with specific aspects of the Immigration Reform measure …
Can you outline exactly what aspects of the immigration reform measure those are?

Senator Reynolds: We don't have that on hand, but we're very happy to take that on notice.

Mr Pezzullo: And just—

Senator PRATT: No, I'd like Mr Pezzullo to—how do you know they don't have it on hand, Senator Reynolds?

Mr Pezzullo: Well, I—

Senator Reynolds: We consulted; we just consulted then.

Mr Pezzullo: I can address the question directly this way: the measures that the government has decided to proceed with are publicly known, because they've been announced.

Senator PRATT: Okay—can you list them off for me?

Mr Pezzullo: Yes—the announced measures. But as I heard your question—

Senator PRATT: You must have announced them all and then withdrawn some at some point?

Mr Pezzullo: No, that's not the burden of our evidence, collectively, between us. The immigration reform provision in the additional estimates was stated in the aggregate. That is to say, a range of measures. As the minister has clearly indicated, the government has decided to proceed with one of those. In aggregate, they were not listed in additional estimates, and in the 2019-20 budget they're not listed specifically. So what's on the public record—that is to say, what's publicly known—are the visa categories that have been announced by the government.

As to other measures which, as the minister has said, the government has a mind to consider further, they are not in the public record.

Senator WATT: And that's why we're asking now.

Mr Pezzullo: I get that, Senator.

Senator WATT: That's what estimates is for.

Mr Pezzullo: I understand that. So—

Senator PRATT: But if you put them in the budget we should be able to ask questions here about what you are proposing to fund with that money.

Mr Pezzullo: I've never—

Senator PRATT: You have an obligation to answer that.

Mr Pezzullo: I would never suggest that we wouldn't be in a mind to answer it. What I'm saying to you is that there are two classes of measures here. There are those which are announced and those which are not announced. If your question relates to the measures that have been announced then Ms Cargill can go through those, item by item. If you're asking about the unannounced measures, I'll refer you to the minister.

Senator Reynolds: Sorry, and just to be clear: I did also say that the government is still considering further options in relation to this program and to regional Australia's requirements. So it is still under active consideration.

Senator PRATT: Okay. How much of that funding was for regional skilled visas?

Ms Cargill: The measure that was announced in the budget had a total change to Home Affairs resourcing of $19.9 million over the forward estimates. And there was also some additional funding for the Department of Social Services and the Department of Human Services. It related to the introduction of three new visas in the regional space. They were the skilled work regional provisional visa, the skilled employer sponsored regional provisional visa and the permanent residence skilled regional visa.

Senator PRATT: What were the first two, sorry?

Ms Cargill: The first two visas?

Senator PRATT: No, the first two policies that were also part of the package you were talking about.

Ms Cargill: I was talking about a number of agencies being funded through the measure.

Senator PRATT: Okay—that's fine. How much money was that?

Ms Cargill: That was $19.9 million over the forward estimates for Home Affairs.

Senator PRATT: Of the $71 million?
Ms Cargill: That's unrelated to the $71 million.

Senator PRATT: In the MYEFO of 2018-19, the department at that time also allocated $72 million to immigration reform, for the government to progress the design and delivery of next-generation visa-processing systems—

Mr Pezzullo: Sorry, Senator; just to be clear: the department doesn't allocate moneys to the government; it works the other way. So the government allocated—

Senator PRATT: You don't need to correct me. You understand. Provided you understand the question, which I'm sure you do—

Mr Pezzullo: It's important that the Hansard is extremely—

Senator WATT: So the government allocated $72 million.

Mr Pezzullo: In order to?

Senator PRATT: Progress the design and delivery of next-generation visa-processing systems by a market based service provider.

Mr Pezzullo: Yes.

Senator PRATT: Is the government still proceeding with that measure?

Mr Pezzullo: Yes.

Senator PRATT: And it still has $72 million attached to that?

Mr Pezzullo: I'll just check with Ms Cargill as to whether there was any variation in the budget.

Ms Cargill: It has not been amended.

Senator PRATT: That decision was made some time ago. When will you be—

Mr Pezzullo: The 2018-19 budget?

Senator PRATT: I don't have a lot—

CHAIR: I want to go to the break now. Senator Pratt, you're the only ones with questions, so, when we come back, we'll start with you again and then go to Senator Kitching.

Proceedings suspended from 15:16 to 15:33

CHAIR: I call back to order the Legal and Constitutional Affairs Legislation Committee and its hearing into the budget for 2019-20. We're dealing with the Department of Home Affairs, and I go to Senator Kitching.

Senator KITCHING: Thank you, Chair.

CHAIR: Sorry—

Senator KITCHING: Senator Pratt was coming back.

CHAIR: Can you sort out between yourselves who wants to go first? There will be time for everyone. Can I just indicate now that we will not require the Australian Criminal Intelligence Commission to give evidence today. There may be some questions for them put on notice. So, if they're listening or, Mr Pezzullo, if you can arrange to let them know, they can go. At this moment, we're hopeful we'll get to ASIO and the AFP. Senator Pratt?

Senator PRATT: Senator Kitching has some quick questions. I'll let her go first.

Senator KITCHING: Does the Department of Home Affairs comply with the ASD's mandatory top four mitigation strategies?

Mr Pezzullo: We are in compliance with all four. There's an element of one of the four, as I recall, that might be subject to interpretation as to the frequency with which we patch certain back-end servers, so I can't quite recall whether the compliance level is 100 per cent or there's a qualified compliance. I might just see if any of the officers from our information technology group are here.

Senator KITCHING: Thanks, Mr Pezzullo.

Mr Pezzullo: They're not, I'm advised. I don't know how far away they would be. I will give you this answer and then correct it if I'm required to: of the four mandatory requirements, I know we are fully compliant with three, and we are compliant subject to a caveat that I'll explain with one. That is in relation to the patching on occurrence of servers where a threat is identified, as opposed to the regular taking down of those servers and patching them not on occurrence but on a regular cycle. I think from memory we are compliant subject to that qualification.
Senator KITCHING: You self-regulate and self-assess?

Mr Pezzullo: And report. All agencies are required to self-assess, and your homework can be checked. Obviously, if a threat materialises—obviously, with increasing frequency our networks are being attacked, for all sorts of reasons and by all sorts of actors—the first thing that the ASD team will look at it is how your architecture is configured and whether you are in conformance with those mandatory requirements—recalling that they are the bare minimum.

Senator KITCHING: Yes, that's right.

Mr Pezzullo: We've got to do many more other things. Where you have, with reasons to do with the age of your architecture or the age of the systems on that architecture, decided to defend your system with an alternative but equally effective approach, you need to be able to explain that to the ASD officers. For instance, you might protect doubly at a gateway. We've given evidence to this effect, so I'll just resummarise that evidence. You might protect your internet connections doubly at a gateway, an external perimeter defensive system, and then an internal system. That makes it harder for an attacker to get through to a server. Then you patch that server if you detect their malware on it. That might be your way of achieving conformance with one of those requirements, and it's really a matter for the ASD assessing team to judge whether your combination of defences gives you the equivalent level of protection.

Senator KITCHING: Do you see the ASD compliance team annually or more frequently than that?

Mr Pezzullo: I'd have to check with my colleagues.

Senator KITCHING: I think it might be an annual report.

Mr Pezzullo: I'd need to check with my colleagues. If they can't get here in time from wherever they are, I'll take that on notice.

Senator KITCHING: They might be having a coffee. If there were an issue, what happens in the scenario where there is a question of noncompliance? Does the ASD come? Do you work with the ASD then in order to ensure compliance?

Mr Pezzullo: Absolutely. I get traffic light reports, for want of a better description. My head of cybersecurity reports up through our information technology area. I know this directly and personally because I'll sometimes circle those reports and say, 'What would it take to, for instance, take down this whole farm of servers every 30 days as opposed to, for instance, on occurrence?' I'll get an answer that says, 'For these sorts of reasons, the border would stop or visas would cease being issued.' I'll ask the question, subject to ASD being advised and comfortable with the response, 'Are there alternative mitigations that we can put in place that afford us a broadly equivalent protection?'

So you're still in the self-assessment realm, but you're always going to be scrutinised either when an incident has occurred and your defences are pulled apart and examined or periodically when they do their checks. I'll need to get further and better particulars as to how frequently those checks occur.

Senator KITCHING: So they might come to do a spot check as well to check your homework?

Mr Pezzullo: I can't remember. It has been in my mind. It's just passed out whether they are random, if you want to use that phrase, spot checks as opposed to an annual cycle. I just need to take that on notice and get some precision in that response.

Senator KITCHING: That's fine. So the ASD would have an idea—that is suggested by the fact that they are mandatory requirements—of where there is compliance and where there is not compliance.

Mr Pezzullo: We are all required to report to ASD, particularly to its Cyber Security Centre, not just on the four—they've got some 30 mitigations that they recommend.

Senator KITCHING: Yes, but they would be the keepers of that data.

Mr Pezzullo: Yes. The Australian Cyber Security Centre, which has a whole-of-government role in protecting government networks, resides in ASD, which in turn is a statutory agency that resides in the Defence portfolio and is answerable to the defence minister.

Senator KITCHING: Yes, lovely. Thank you.

Mr Pezzullo: Senator, are officers from another part of Canberra required to attend? Are you happy that I've taken those questions on notice?

Senator KITCHING: If you have taken them on notice, I'm good with that.

Mr Pezzullo: Thank you.
Senator PRATT: Mr Pezzullo, in relation to the Fostering Integration Grants Program, on 12 February an unelected Country Liberal candidate—that is, Kathy Ganley—was the one informing a number of successful grant applicants in the seat of Solomon. At that same time the local elected MP, Luke Gosling, had not been informed. I seek your advice on how this happened.

CHAIR: I think that's a question for the minister.

Senator PRATT: The department may know how it happened or they may not.

Mr Pezzullo: In terms of my knowledge of this matter, it has been particularly drawn to my attention—and I'm very grateful to the Attorney-General for having copied me into correspondence that he sent to the Attorney-General. He addressed that correspondence to a number of secretaries where the same or a similar sequence of events occurred. I have caused inquiries to be made. I'm advised by officers, many of whom seem to have rushed forward to brief this committee, that in administering that grants program, once we were advised by the government—in this case the minister who has the delegation—who the recipients would be, correspondence was prepared for relevant members of parliament. That's as I understand it, Mr Mansfield. Then separately what occurred in terms of the press conference that you've described and how candidates who are running in the forthcoming election—I understand this to be the case—came to be at that press conference is really a matter that I'd refer to the government through its minister.

Senator PRATT: No, I'm not referring to the press conference.

Mr Pezzullo: Sorry, I'm aware of facts up until the point that I've described. That is to say: we administer the program, we advise the minister and the minister then makes decisions about the recipients. In this case he then asked us to prepare correspondence to members of parliament. That correspondence was prepared.

Senator PRATT: When was that correspondence prepared?

Mr Mansfield: I can confirm that, following the minister's decision around all the grant recipients, we were asked to prepare correspondence for him to sign and send out to all MPs, irrespective of their party.

Senator PRATT: Yes, so Luke Gosling, for example, would have been included?

Mr Mansfield: Correct.

Mr Pezzullo: Just to be very precise: members of the House of Representatives in whose electorate these grants would be delivered?

Mr Mansfield: That's correct.

Senator PRATT: So you prepared it. It was ready to be signed. Would it then come back to you to be sent or would it be sent out from the minister's office?

Mr Mansfield: It was dispatched by the department, and all of those letters were sent by Australia Post on 13 February 2019.

Senator Reynolds: Just for clarity: it was dated on the 12th and signed—that included a letter to Mr Gosling.

Senator PRATT: Dated on the 12th? Can I ask the department on what day they got that correspondence back from the minister ready to post?

Mr Mansfield: I believe it was on the 12th.

Senator PRATT: On the 12th?

Mr Mansfield: And then we were asked to dispatch it the next day, which we did.

Senator PRATT: Can I ask on what day you provided the minister the prepared correspondence to be signed?

Mr Mansfield: I'll have to take that on notice—I don't know the date that we prepared the draft correspondence; I'm not familiar with that.

Senator PRATT: If you can be very clear, you can see what I'm looking to find out because the minister may have been sitting on that correspondence, waiting for local candidates to make those calls to get in before he'd actually sent the official correspondence. That's what I'm worried about.

Senator Reynolds: Senator Pratt—

Senator PRATT: I know that has nothing to do with you.

Senator Reynolds: Chair—

Mr Pezzullo: We wouldn't have any visibility of that.

Senator PRATT: That has nothing to do with you, but it you've provided the correspondence to the minister—
Senator Reynolds: That is a highly inflammatory and unsubstantiated allegation.

Senator PRATT: Why was Kathy Ganley calling the grant recipients in this case? Can you establish why that would've been the case, Minister Reynolds?

Senator Reynolds: Senator, the officials and I have answered your questions and it—

CHAIR: Hang on, Minister. As I suggested to Mr Pezzullo before, that wasn't really a matter for him; it was a matter for the minister. Minister, if you wanted to answer that, it's your opportunity.

Senator Reynolds: Thank you. I've provided the information I have to hand, as has Mr Mansfield. But then, Chair, what Senator Pratt said was entirely inappropriate in terms of her assertion of wrongdoing.

Senator PRATT: Is it appropriate for Kathy Ganley to be the one informing applicants when Luke Gosling the local member didn't yet know? Is that appropriate, Senator Reynolds?

Senator Reynolds: I've provided you the information you wanted, which is the information on hand.

CHAIR: Senator Reynolds, you perhaps wouldn't necessarily accept the facts of the assertion and you might want to take on notice for the minister just what—

Senator PRATT: What was my assertion, Senator Reynolds?

CHAIR: That this happens.

Senator Reynolds: Who's asking the questions here? What I'm saying is that the statement you made was, I believe, inappropriate.

Senator PRATT: No, I didn't make any statement.

Senator Reynolds: You made an assertion.

Senator PRATT: I was simply trying to work out whether that correspondence had sat in the minister's office for what period of time so that the likes of Kathy Ganley could make those phone calls.

Senator Reynolds: That question was answered by both Mr Mansfield and me very clearly.

CHAIR: Hang on. Hang on. The question is for you—from what I understand, Senator Pratt—did the letter sit in the minister's office for a period of time so Kathy Ganley—

Senator Reynolds: Chair, thank you for that clarification. But, before Senator Pratt made that assertion, I had clearly provided the date that it was signed and the official, Mr Mansfield, provided the date that it was dispatched.

Senator PRATT: Okay, and it's quite appropriate for me to seek an answer about the date on which that correspondence was provided to the minister's office ready for signing, and he's taken that on notice.

Mr Mansfield: I took that on notice, Senator.

Mr Pezzullo: So the date that the draft went to the office—we've taken that on notice.

Senator PRATT: Yes. Is it normal for an unelected candidate to be tasked with announcing taxpayer funded grants?

CHAIR: That's again for the minister, I assume.

Senator PRATT: Well, either Minister Reynolds or Minister—

Senator Reynolds: Senator Pratt, I have provided you the extent of the knowledge that I currently have on hand and I—

Senator PRATT: So you don't know?

Senator Reynolds: Senator Pratt, you're making assertions.

Senator PRATT: No, I'm not making an assertion. Minister, you—

Senator Reynolds: You did make an assertion, and I've provided you with the factual information I have to hand. I'll take the rest of that on notice, and I've already sought further information.

Senator PRATT: So my question is to you, Minister: do you believe it is an appropriate practice within your own ministry for taxpayer funded grants to successful applicants to be announced by local candidates before sitting MPs know about that announcement?

CHAIR: That's a question asking for an opinion which—

Senator PRATT: I'm entitled to ask Minister Reynolds for an opinion. I'm not entitled—

CHAIR: No, you're not.

Senator PRATT: to ask officers for an opinion.
CHAIR: You're not entitled to ask Senator Reynolds' opinion either. You're entitled to ask facts.

Senator PRATT: I can ask: is it a policy of this government to allow candidates to announce taxpayer funded grants that are successful?

Senator Reynolds: I have provided you with the factual response that I have on hand, and I'm seeking—

Senator PRATT: Sorry, what was that? Could you remind me what that was?

Senator Reynolds: further information around whether we can provide any additional information in terms of that letter. I've said to you already—

Senator PRATT: No, I'm now—

Senator Reynolds: Senator Pratt, please let me finish. Precision has been the theme of this estimates. I have the date that it was signed, which relates to when it was on the minister's desk. The department has confirmed that it was dispatched the following day—on the 13th. In relation to any other information surrounding that correspondence, I have taken that on notice and will seek to get further information for you this afternoon.

Senator PRATT: Okay. Can I ask if the department provided the minister with recommendations as to which grant applications should be approved?

Mr Pezzullo: Mr Mansfield, was it recommendations about preferred outcomes as it were or options as it were?

Mr Mansfield: There was an assessment process undertaken by the department in accordance with the guidelines, and then a submission was prepared for the minister, who was the delegate in relation to this matter, setting out all of the applicants that met the guidelines and were recommended for receipt of a grant. The minister, as the decision-maker, accepted all of those recommendations.

Senator PRATT: Did the government award any grants that had not specifically been recommended by the department?

Mr Mansfield: No.

Senator PRATT: How many grants were recommended by the department and how many were ultimately awarded?

Mr Mansfield: It was the same number. A total of 226 applicants were offered funding, totalling $9,310,867.

Mr Pezzullo: To be clear, it wasn't a merit list from which the minister selected.

Mr Mansfield: No, it wasn't.

Senator PRATT: That's what I was clarifying.

Mr Mansfield: He accepted all of the recommendations of the department without any change.

Senator PRATT: Did Ms Ganley write any representations to the department in support of any of the grant applications?

Mr Mansfield: I don't know the answer to that question. We would have to take that on notice.

Senator PRATT: So you don't know whether she had anything to do with the success of any application?

Mr Mansfield: I don't know. Sorry, I'll be clear: the assessment process was undertaken by an evaluation committee, and that had zero interaction with the candidate for Solomon.

Senator PRATT: Thank you for clarifying that. Just to be clear, the department wasn't given any instructions from the minister or the minister's office regarding the timing of the Solomon grant announcement?

Mr Mansfield: No.

Senator PRATT: Minister, if you could perhaps make inquiries for me around whether any of the other grants in that list were subject to candidates being notified before sitting MPs?

Mr Mansfield: Senator, can I just clarify that all of the MPs were notified on exactly the same day, so there was no differentiation between particular MPs being notified. All of them, irrespective of their party, were notified on exactly the same day—sorry, all of the letters were dispatched on the same day. When they received them in their offices and when they looked at them or viewed them is a matter for them and Australia Post in terms of the time frames around that, but all of them were dispatched at the same time.

Senator PRATT: Are you able to explain to me how Kathy Ganley found out about these programs before Luke Gosling?

Mr Pezzullo: I don't know that we would have any knowledge of that.

Mr Mansfield: We don't have any knowledge of that.
CHAIR: My understanding, from years ago when I was in this position, is that the department usually makes the recommendations to the minister and then it's up to the minister to announce them at his choosing—is that correct?

Mr Pezzullo: That's the situation with most grants programs. There might be some grants programs across the Commonwealth where it works otherwise, but typically in our experience it's generally the minister and the government that announce grant outcomes.

Mr Mansfield: The minister made an announcement on 12 February. The day before the letters were dispatched was when the minister made the announcement around the whole grant program in aggregate. Then, if you like, the next day a letter signed by the minister was dispatched by the department, indicating the outcomes to each MP for grant recipients in their electorate.

Senator PRATT: Thank you for your answers. I have some questions in relation to net overseas migration. What are the 2018-19 net overseas migration figures and predictions over the forward estimates based on?

Mr Ablong: They're based on many factors. Ultimately the net overseas migration is a sum of people who are entering the country on permanent migration, temporary residents here in Australia and Australians who either decided to leave Australia for an overseas posting or a job or intend to leave permanently. We don't calculate the number. The number is calculated by the Department of the Treasury. We provide input based on our management of the migration program.

Senator PRATT: You don't do the estimate—which is significantly wrong. The 2018 budget estimate was 234,600 versus the actual of 259,600; a 25,000 increase. Are you able to explain the inaccuracies in that estimate?

Mr Ablong: That's a question I'll have to ask Treasury. They put it together. We provide inputs based upon our understanding of the migration program, but the calculation of the full estimate is done by the Treasury.

Mr Pezzullo: In fairness to our colleagues, who aren't here to explain how estimates work, perhaps it's a little bit unfair and unkind to refer to an inaccuracy. An estimate is just that; an actual, then, is a variance. It's not just the NOM figure but there are other elements of budgets, including judgements about surpluses and deficits and all the rest of it, which are the subject of estimation by the Treasury, then that's their forward projection by definition. When events play out, the actuals are then assessed. I'm not sure that it's fair to call them wrong, but obviously the Treasury prides itself on trying to get those estimates as close to future reality as possible.

Mr Ablong: The estimate factors in the statistical number of people leaving the country every year. If more or fewer people decide to leave the country, that's an individual decision which you really can't estimate.

Senator PRATT: I do understand that. Do you as a department, in the information you provide for that, have a breakdown of which visa classes are included in that data?

Mr Ablong: We do look at all the different visa classes that make up the elements of the forecast we provide.

Senator PRATT: Do you have a breakdown of what you provide in that forecast?

Mr Ablong: Not on hand. We can take on notice and provide you with our portion of the estimations.

Dr Johnson: The actual number is pulled together by the Australian Bureau of Statistics.

Senator PRATT: Yes, but you're the ones in charge of the visa part of that. I understand that you can't control the number of people—Australian citizens who might leave the country and people who come and who stay longer than they thought they might—although you're still in control of whether they have a valid visa to do that or not.

I can see that the blowout continues with net overseas migration, with a further 43,900 additional people in the 2020 forecast, and 46,000 in 2021—

Mr Ablong: Sorry, Senator, if I may? My apologies for interrupting. I wouldn't call it a blowout. It is just what it is; it's the net migration into and out of this country. Many of those factors are very positive factors. If you look at the change in the estimates between 2018 and 2019, going from the actual 259,600 to 271,700, that increase is based on very strong student temporary visas in this country. More international students are arriving to partake in Australia's education system, and that's a positive.

Senator PRATT: Yes, absolutely. But we are having a big debate in this nation. The government has sought to politicise migration and permanent migration by announcing that they want to reduce permanent migration to 160,000 from 162,000—

Senator Reynolds: I would strongly challenge the politicisation; it's the management of our immigration program, it's not the politicisation of it.
Senator PRATT: But my question is that I'm trying to understand what's really going on. The government says, 'Look over here at permanent migration.' I want to understand what's going on in net overseas migration overall and have the debate about that. I want to find out what's underlying these figures, because if the population says, 'Here's a figure that shows migration is decreasing,' we've got real figures, which are the net overseas migration figures, which show what's really going on.

Mr Pezzullo: They're both real figures; a variation in the permanent—

Senator PRATT: Yes, I understand that: one is permanent and one is the number of people—

Mr Pezzullo: migration program, which is a government policy setting, yes.

Senator PRATT: in the country who have a valid visa.

Mr Pezzullo: Not quite: the NOM—the net overseas migration figure—is estimated through the budget process by the Treasury and then the actuals are counted—

Senator PRATT: Yes, they're not tourists.

Mr Pezzullo: by the Bureau of Statistics. They relate to those who were resident in Australia for 12 months in any given 16-month period. The composition of that 12 out of 16 months is a function of the statistical model that the ABS applies. We provide data about how many persons arrive. We look at boarding cards, departure cards and the like; how many people would have crossed the border here to undertake studies, as Mr Ablong said, and how many people would have come through the border for shorter term periods. They obviously wash out because they don't stay here for 12 months out of 16 months. So someone on a visitor visa for six weeks gets excluded. People who are here for temporary work purposes are either here on a two-year or a four-year visa. By definition, they're resident for 12 out of 16 months.

Senator PRATT: Yes, that makes sense.

Dr Johnson: It's a quarterly update.

Mr Pezzullo: It does a quarterly update. Then, looking in the rear-view mirror, if you like—the budget looks through the front windshield—the Bureau of Statistics says, 'This is what actually happened.' Then they release their quarterly bulletin.

In terms of the composition of the NOM: if you want to have a more detailed exegesis of that, I'm sure the statistician would be delighted to take your question in the Treasury portfolio. I think they're in the Treasury portfolio—

Dr Johnson: Yes.

Mr Pezzullo: We just provide a large number of datasets for them to draw on.

Senator Reynolds: In terms of the government's policy: it's very clear that it's a reduction in permanent migration places from 190,000 to 160,000 over the next four years. That is substantially different, as the secretary has said, from having people here on temporary visas moving across the border. I don't think there's anything hidden or particularly secret about that; it is a very clear policy intent. As I said, these statistics are there for all to see in both categories.

Mr Pezzullo: Four times a year.

Senator Reynolds: Four times a year, yes.

Senator PRATT: Okay. I want to ask about net overseas migration. There is an increase of 46,000 by 2021. Why is it so much higher for this 2019 budget compared with last year's budget?

Senator Reynolds: I think it's 1.6 per cent over four years. That's quite a modest growth, I would have thought.

Dr Johnson: I'm not sure what the baseline number is that you're making that assessment on, because in the budget papers it's got 2018 as 259,600. Then, in 2019 it's 271,700 and in 2020 it's 271,300. So, that's not a step up of 40 per cent.

Senator PRATT: On what, sorry?

Dr Johnson: Sorry, that's not a step up of 40,000. And over the forward estimates it's a 1.6 increase, which the senator just mentioned.

Senator Reynolds: Also, just in terms of the economic contribution, international students alone have a net impact on the budget of somewhere around $32 billion a year, and 240,000 jobs.
Senator PRATT: Yes, I'm very familiar with that.
Senator Reynolds: So it's a significantly important movement for our country.
Senator PRATT: Can you tell me, over the forward estimates, what your forecast increase in net overseas migration is?
Senator Reynolds: Over forward estimates, it's 1.6 per cent.
Senator PRATT: What is that in people figures, from this budget till the conclusion of the forward estimates?

Mr Pezzullo: Just to be clear, Budget Paper No. 3—again, I stress that these questions are better directed to the Treasury, because the Treasury, in the end, signs off on the estimates. This is done by calendar years, as distinct from financial years. The numbers in round terms, in terms of humans, are the 271,000 that was previously mentioned. And the estimate—and you can direct your questions about this to Treasury—actually declined somewhat to 267,000. And in 2022 it is 263,000. So, it averages, relative to this year, an increase of 1.6, but there are those fluctuations. I'm just deriving this straight from Budget Paper No. 3. Questions about the forecasting, the parameters and the assumptions are best directed to the Treasury.

Senator Reynolds: There is another figure as well that help you. In addition to the 1.6 increase in the NOM over forward estimates, there's also a corresponding increase of departures of temporary migrants leaving Australia. So departure is trending upwards as well.

Senator PRATT: I'm well aware of that. What I'm trying to work out is whether the government's decision to keep permanent migration at 160,000 will result in any change to the NOM predictions.

Mr Pezzullo: Both elements are depicted in the budget papers. The government's policy of moving the ceiling from 190,000 permanent to 160,000 permanent and Treasury's assumptions about NOM estimates are in the same document. So—

Senator PRATT: What was the impact of that?
Mr Pezzullo: one is being factored into the other.

Senator PRATT: What was the impact of that change from 190 to 160 on the NOM prediction?
Mr Pezzullo: You will need to ask the Treasury.

Senator Reynolds: It's 120,000 positions all up over the forward estimates. It's a question for the Treasury, but also it's—

Senator PRATT: No, it's not 120,000, it's—

Senator Reynolds: Over four years, yes.

Senator PRATT: It's 30,000 a year and—

Senator Reynolds: That's permanent migration.

Senator PRATT: Okay.

Mr Pezzullo: It's 120,000 fewer permanent migrants.

Senator Reynolds: Over the forward estimates.

Senator PRATT: What advice do you provide as to whether those 30,000 people will appear elsewhere in the NOM predictions, because they will remain here on some other kind of visa that would have them counted in the net overseas migration?

Senator Reynolds: That is a hypothetical.

Senator PRATT: You must have also provided data relating to that.

Mr Pezzullo: The assumption that the Treasury would make—I won't speak for the Treasury, but I'll just speak to the self-evident logic—is that someone who's permanently migrated here would typically, all things being equal, reside here permanently.

Senator PRATT: Yes. But if you're reducing the number of people who aren't here permanently, they might nevertheless have a visa that enables them to stay here for more than 12 months.

Senator Reynolds: It's hypothetical.

Dr Johnson: Under the current permanent migration program, people can get a visa from off-shore Australia to become a permanent resident. Not all of our permanent migration program but approximately half of it is from people who have never been to Australia.
Senator PRATT: Yes. I understand that.

Mr Pezzullo: And conversely, up to half reside here for temporary skilled visas and the like, so they're already in the NOM.

Dr Johnson: They've been NOMed in, exactly. You're NOMed in irrespective of the visa you come in.

Mr Pezzullo: Is that actually a term that our Treasury colleagues would use?

Dr Johnson: That's the boffin term, from what I understand—NOMed in and NOMed out. If you have not got a permanent visa and you're on a temporary visa and that expires, then you would leave the country.

Senator Reynolds: Can I just say, for anybody who is listening to this, the NOM is the net overseas migration figure. It's a very boffin term.

Mr Pezzullo: And it appears someone can be NOMed, Minister.

Senator Reynolds: There you go.

Senator PRATT: The government has decided to keep permanent migration at 160,000. Has it resulted in an increase to the NOM predictions?

Mr Pezzullo: All I can really do is restate my earlier evidence, which is in two parts. Point one is you would be best placed in getting an answer to that by asking the Treasury. The Treasury, reprising my evidence to Senator Patrick about whole-of-government joined-up activity, are in the room when the permanent migration program is discussed. That is point one. Point two is that they analyse the ministers' permanent migration recommendations to the cabinet. They are intimately familiar with what has been proposed and so, in parallel, in the other part of the Treasury brain that is NOMing people in and out, they know what the minister is proposing and they are adjusting their estimates accordingly. When the Treasury learns—as I would have when I was in the cabinet meeting as an observer, as officials sometimes are—that the settled number was 160, no doubt someone in the Treasury, the NOMer in chief, would have adjusted their estimates to say, 'Okay, the government's decided 160; let's wash that through the estimates.'

Senator PRATT: So it's Treasury that models whether there will be a change to the NOM—

Mr Pezzullo: It's the NOMers, yes.

Senator PRATT: For that 160,000 cap—

Mr Pezzullo: That's their job, yes. I'm just adapting Dr Johnson's reference. He assures me that this is the term that those particular experts use. They vary the NOM.

Senator PRATT: So you can't provide any statement whatsoever as to whether the permanent migration changes have an impact on the NOM.

Mr Pezzullo: No. I can provide a statement that's a repeat of the evidence I just gave you. Senator Patrick used the term 'silos', which is a phrase that I don't like, but let's just go with that. As we are lifting our advice up our elevator, the Treasury is dynamically looking at all aspects of the budget in terms of impacts on all sorts of parameters. They're intimately familiar with it. In fact, they get the draft submissions, they do analysis, they provide advice not just to the Treasurer but, in the end, to the ERC, and they are dynamically adjusting their assumptions about all sorts of things beyond the remit of this question—wages and all sorts of things. In this case, the people in the Treasury who look at Australia's population are saying, 'Minister Coleman is coming forward with these options. If the ERC and, ultimately, the cabinet settle on this level, I will now wash through what adjustment I therefore need to make to my parameter assumptions around the NOM.' They, like all of us, await the final decision of government to then lock in those estimates for the budget papers. I'm really straying more onto the Treasury side of this. Again, I would urge you to direct your questions to the Treasury.

Senator PRATT: No. When a figure appears in the budget to say, 'This is what we forecast our NOM to be,' do you then have to treat that as a target to—

Mr Pezzullo: No.

Senator PRATT: I would not have expected that to be the case.

Mr Pezzullo: The policy relates the permanent migration, which is then translated to a program that Mr Mansfield runs. Dynamically, how that impacts net overseas migration, noting that permanent residency is one aspect but so is temporary residency, student visitor numbers and visitor numbers otherwise, this is where the Bureau of Statistics then earns its money. They then look at actual performance, make judgements about what level of NOM is at play in the economy and report that quarterly.
Dr Johnson: Senator, can I just add that it could never be a target in the sense that I think you implied in your question, because a lot of the programs that are factored into the NOM—net overseas migration—estimate and the real number are from temporary migration programs which are demand driven.

Mr Pezzullo: Correct.

Dr Johnson: So we will take as many students as we can absorb because it's a very strong export industry, we will take as many tourists as we can absorb—they're not necessarily always figured into NOM—and we will take as many backpackers as we've got agreements to do.

Senator PRATT: That's good. I don't need to go into a policy debate about your activities any further. Given that that modelling is done elsewhere, I think I've probably exhausted what I can derive from asking you questions. Budget Paper No. 2 states:

The Government will also implement enhanced compliance activities to support the new visas.

Mr Pezzullo: Yes.

Senator PRATT: How much has specifically been spent on compliance over the forward estimates?

Mr Pezzullo: I might ask a combination of Dr Johnson and Ms Cargill to provide evidence on that question. Do we have the provision there?

Ms Cargill: The budget announcement, as it relates to compliance activity, was $7.1 million from memory, but I'll just get the right figure.

Senator PRATT: And that's just for the activities in new visas? Is that right?

Ms Cargill: That's related to the new regional provisional visas we were discussing earlier.

Mr Pezzullo: On the day of the announcement—and it's reflected in the measures description—the government made clear that, for the new regional visas which have a provisionality component to them—in other words, you have to abide by the conditions of the visa—that would be checked at the point at which an application was made to go permanent—Dr Johnson will correct me here—and data would be collected, which could include evidence and indicators of residency, such as electricity bills and phone bills, as well as some data matching that we can undertake with other agencies. Dr Johnson, just remind me: you can put an application in for permanency after three years?

Dr Johnson: A minimum of three years and up to five years.

Mr Pezzullo: So we would collect evidence about your residency over three years, to establish not so much that you stayed in a town or a region but that you did not enter into one of the listed areas that are excluded from the visa, which essentially are Sydney, Melbourne—

Senator PRATT: For work, that is, or to live?

Mr Pezzullo: No, to reside.

Dr Johnson: Sydney, Melbourne, Brisbane, the Gold Coast and Perth.

Mr Pezzullo: So, as long as the evidence is that you've lived elsewhere, you can go to the next step of permanency.

Senator PRATT: What are the figures for that over the forward estimates?

Dr Johnson: The figures for the compliance funding?

Senator PRATT: For compliance.

Mr Pezzullo: Ms Cargill, do you have those?

Ms Cargill: Yes, I do. In 2019-20 the figure is $2.216 million, in 2020-21 $1.213 million, in 2021-22 $1.583 million, and in 2022-23 $2.016 million. I misspoke: it actually rounds to $7.028 million, not $7.1 million.

Senator PRATT: Thank you. That's terrific. Does the change in this policy have any relationship to the policies that were dropped in the earlier savings that I was referring to in regional skilled visas?

Mr Pezzullo: When you say 'have any relationship to'—

Senator PRATT: You made statements before about particular policies being dropped in the skilled visa for regions.

Mr Pezzullo: I see. No. As the minister said earlier, the government decided, in the context of the 2019-20 budget deliberations, to focus on a particular number of measures, some of which related to the level of the permanent migration program, which we've discussed, and some of which related to regional visas and the provisional component that we've just discussed. So—to the extent that you asked, 'Did they relate?'—yes, I think...
it's fair to say that they would be a subset of the immigration reform program, which was, at a high aggregated level, stated in the earlier budget papers.

Senator PRATT: My last question for today is about Taskforce Cadena. How much is Home Affairs budgeting in their contribution to that for this year and over the forward estimates?

Mr Pezzullo: Do we have a breakdown?

Ms Cargill: I don't have it on hand.

Mr Pezzullo: I'm not sure. This is not a new policy initiative; it's funded internally, so it's not—

Ms Cargill: That's right. It would be an internal budget allocation. We can take that on notice.

Senator PRATT: I would be grateful if we could get the details of that today, if that's possible.

Mr Pezzullo: Taskforce Cadena would have a Federal Police component as well as a departmental component and ABF. We'll get you a breakdown on notice.

Senator PRATT: If you're able to provide the breakdown for the forward estimates, across the whole of Home Affairs' contribution across its various components, that would be terrific.

Mr Pezzullo: We'll take that on notice. Thank you.

Senator PRATT: Thank you very much.

CHAIR: I, again, remind all senators that we have a hard marker in one hour and 10 minutes time. If we want to get on to ASIO and the Australian Federal Police we will have to quickly move—

Senator PRATT: An hour and 40 minutes, Chair.

CHAIR: I'm sorry—my arithmetic is appalling—one hour and 40. The message is the same though.

Senator HUME: I want to ask some questions about working visas, particularly the 457 visas, which we used to hear about in the media every day. We heard workers were being exploited and Australian workers were replaced by foreign workers. We don't hear that anymore. Why is it that we don't seem to be hearing this outcry about exploited workers being—

Mr Pezzullo: As to why some of the public discourse about what used to be known as 457 visas—noting that the Turnbull government abolished that class of visas and replaced them with a new class of temporary skill shortage visas—I wouldn't want to speculate as to why the public debate has changed. In terms of the factual description of the program changes, Dr Johnson and perhaps Mr Mansfield will assist me in this. In the context of the 2018-19 budget, as I recall, the 457 program was closed. Some applications were still coming through, which were dealt with. It was replaced by a two category temporary visa program known as TSS—temporary skill shortage visas. Those two components roughly work as follows. For certain categories of skills shortages, which are on an occupation list that's advised to the minister for immigration by the minister for jobs, an employer can have someone come or someone can apply to come for a capped two plus two residency—two years with one rollover period of two years, and then no more; you have to go home. The longer term program, which is a four-year TSS visa that the secretary was talking about has been specifically designed for acute skills shortages which are short term. We've kind of broken the program up a little bit. You've got the very targeted short-term skills—two years with one renewal—and then a mid-term skills list, which the secretary is talking about, for a four-year visa, and the compliance settings were evaluated, tweaked and strengthened. So to the extent that the trend that you're noticing has been manifested, it was probably an effect of that strengthening of the compliance regime.

Senator HUME: So can I ask, then, before—well, why don't we take it back? Let's say: in 2013, how many temporary skilled foreign workers were there in Australia compared to the most recent figures that you have?

Mr Mansfield: I think we'd have to take that on notice.
Senator HUME: Can you give me an indication of the number—whether it's been growing or decreasing over the last five or six years?

Mr Mansfield: I'll take that on notice. Sorry, Senator.

Senator HUME: That's all right. Thank you. Can you tell me whether the number of foreign workers has risen or fallen?

Mr Mansfield: I understand it's less. The other thing I can tell you about the program is that the processing times are much lower under the TSS, and the quality of applications that we've been seeing are much higher. So the average processing time, for example, under the TSS is 37 days; under the 457 program, it was around 10 months. That's largely to do with increased quality of applications, but there's also an accredited sponsor regime associated with the TSS program, so standard business sponsors who have lodged really good quality applications—decision-ready applications—and have an excellent record of compliance with relevant laws are eligible to apply to become an accredited sponsor, and then under that model it allows for priority processing of those applications.

Senator HUME: So processing times have decreased, yet the number of workers has fallen, at the same time, though, as we've seen a growth of over a million jobs in Australia—well, over the life of this government certainly. Is that what you're telling me? So there are more jobs for Australians? It's not as if migrant workers are taking Australians' jobs—is that correct?

Dr Johnson: The TSS operates in relationship to a skilled occupation list. The Department of Jobs and Small Business manages that list, and they identify where we have skills shortages which actually can't be filled by Australian labour. So the whole design of the product is to supplement the Australian labour force. To get a TSS visa, an employer has to go through a number of steps, including showing that the job that they would like to bring someone into is on that skilled occupation list.

Senator Reynolds: Senator, coming back to your original question about why there's not nearly as much media attention as there was on the old 457 visas, I think one of the big parts of that is the reframing of this new program not only on the list but also on shifting the risk to the higher risk and the increased focus on integrity checking. I've just got some statistics here which I think demonstrate that. In 2017—18, the total refusals increased by 46 per cent, while withdrawals increased by 17 per cent. If you have a look at that by category, I think that very clearly shows that, by increasing the integrity checks—and the department is taking the time, and it's got different processes for low- and high-risk applications and categories—it is making a demonstrable difference in terms of not only the integrity of the process but also getting rid of a lot of the rorts and abuses that occurred under the old 457 visa program.

Mr Pezzullo: If I can add to the minister's answer, the example that she uses in the permanent program is being seen across most, if not all, visa categories. People outside of Australia who perhaps previously thought that with fraudulent documents—blurred identities, shall we say, or assumed identities—given that the immigration system was outside of the national security system, you could game it and have a higher probability of success. You still might get caught—I'm not suggesting for a moment before 2014 people weren't being caught—but now that we've industrialised, as I said in my opening statement, the intelligence capabilities, the sorts of refusal rates that the minister described in the permanent program are being washed through. What that's driving is behavioural change because the agents know that we're on to them. And those who might have been minded to put in, shall we say, less than meritorious applications, are either withdrawing applications that are in our pipeline or understanding that, in the same way that our maritime protections have been enhanced in recent years, our other visa protections have been enhanced and we are seeing that is driving behavioural change.

I should say, Senator—and you see this across all national security grounds—everyone is in learning mode. More sophisticated syndicates—it's just like cyberhacking and other areas of national security—will work out increasingly, and that's why we don't like to talk too much about the advanced systems and the intelligence capabilities that we deploy against them, because they will figure out, 'Okay, the Aussies now have lifted the base threshold.' They're catching, if you like, more routine scams, if I can use that phrase. Now we have to get smarter in terms of very sophisticated forgeries, very sophisticated fraudulent identity activities and the like, and so our systems have to respond in a live and interactive way because we need to learn from what our adversaries are doing. So it's become a dynamic process. They learn; we learn. We act against them; they react against us. The point is, before these advanced intelligence systems were put in place—and I should take this opportunity to in a moment, if I may, Mr Chairman, valedictory notification to this committee of Ms Fernandez. She personally drove a lot of these changes—the former head of the Australian Geospatial-Intelligence Organisation, a former deputy director of the Defence Signals Directorate, one of the new generation of leaders that we brought into the department after 2014—through what we would describe as high-side capabilities. I don't want to talk too much in...
an open forum about what we did. That's put in a much higher base that you've got to jump. Now, does that mean that sophisticated syndicates can't work out how to get through our defences? There is no defence system in the world—military or otherwise—that's impervious to attacks, but we're not making it as easy as it used to be. If you leave your front door unlocked, don't be surprised if someone comes in that front door and takes your belongings.

Senator PRATT: Chair, you've reminded us we're under time—

Senator Reynolds: Just picking up that point that the secretary made about leaving the front door open: if you have a look under the previous government, the number of 457 visa application recipients doubled corresponding with almost daily stories of abuse because, again, it was so poorly vetted and it had very little integrity. But I would note, under this government, we have created over 1.2 million jobs, at the same time when the corresponding visa numbers are declining but the quality is increasing—again, another mess the government's cleaned up.

CHAIR: Thanks very much for that important information. Senator McKim.

Senator Reynolds: You're welcome; it's good news.

Mr Pezzullo: I'm not associated with any political editorial though.

Senator Reynolds: That was all me.

CHAIR: I thought you were going to say about a Prime Minister who got a 457 visa person to be chief of her staff—not that I want to name the Prime Minister.

Senator McKIM: I wanted to ask some questions about the backlog around family reunion visas. How many applications are on hand?

Mr Pezzullo: Mr Mansfield runs the program—

Senator McKIM: Great; thanks.

Mr Pezzullo: assisted ably by the division head, Ms Dunn.

Senator McKIM: I'm just after how many applications are on hand where decisions have not yet been made for both the non-contributory parent and the contributory parent visas—that's 103 and 143.

Mr Pezzullo: Do you wish to lead off, Ms Dunn?

Ms Dunn: I'll just quickly turn to the relevant pages, if I have them available. On hand at the end of February, we have 75,274 partner applications; 2,866 child applications; 1,215 orphan relative applications; 51,816 contributory parent; 49,983 parent; and 8,111 other family.

Senator McKIM: Thanks, so the 49,983 was non-contributory parent?

Ms Dunn: That's regular parent.

Senator McKIM: Thank you. Do you have any figures in terms of average wait times or expected wait times for those classes?

Ms Dunn: We do. Seventy-five per cent of partner applications are processed between 14 and 21 months. Seventy-five per cent of child applications are between 10 and 12 months. We don't have figures for orphan relative because of the very low volume of applications. Contributory parent is 45 months. Parent is more than 30 years. Other family is up to 56 years.

Senator McKIM: What was the number of other family applications on hand? I'm sorry I missed that.

Ms Dunn: It is 8,111.

Senator McKIM: Has there been any extra resourcing, either human or financial, given to processing any of those visa classes?

Ms Dunn: Sorry, I didn't quite catch that. Was the question: are there extra resources?

Senator McKIM: Yes. Have there been any extra resources prioritised? Obviously there are some extraordinarily long waiting times—for example, for parents it is 30 years and for other family it is 56 years. I get a lot of feedback that parents die before their applications can be assessed, so I'm just wondering whether the department has allocated any extra resources to try to bring those waiting times down.

Mr Mansfield: Quite a lot of those waiting times relate to the volume of on-hand applications and the application of the program. Obviously some of them relate to the size of the family component of the program relative to the total migration program. Largely it is a function of that. If you have one-third of the program for family places and two-thirds for skilled places then, depending on the size of the pipeline, that will determine how long the wait time is. I don't think that there's an issue with the allocation of resources internal to the department in terms of getting through those pipelines. It's more a function of the total size of the program.
Senator McKIM: Did you mention caps there, Mr Mansfield?

Mr Mansfield: The ceiling associated with the overall size of the program and then within the program obviously the government over quite a number of years has prioritised skilled entry and had a higher component of skilled entry relative to family entry under the program.

Senator McKIM: So what is the level at which the ceiling is currently set for those visa classes that we went through earlier?

Ms Dunn: We might have to take that on notice. There are capping and queueing arrangements in place for certain categories within the family program—for example, in contributory parent and other family. We can take that on notice.

Senator Hume interjecting—

Dr Johnson: That's through a temporary visa facility—

Senator HUME: So it's separate?

Dr Johnson: whereas this is the permanent migration program. The government recently announced this coming year's migration program. One of the key announcements it made was that the family program numbers would stay the same as the current year's migration program.

Senator McKIM: So what are those numbers?

Dr Johnson: We'll take that on notice, but from my recollection the family stream as a whole is somewhere in the order of 47,000.

Senator McKIM: Per annum?

Dr Johnson: Yes. It's adjusted according to each year's migration program settings. As you're aware, the government announced that this coming year's migration program would be a total of 160,000, but it kept the family stream at the same level as 2017-18—

Senator McKIM: Dr Johnson, I accept that you've indicated that you're going by memory, but, for the purposes of the discussion, let's use the 47,000 per annum number. Within that family stream, how are the different categories of family reunion visa broken down within that number? Do you understand what I'm asking?

Dr Johnson: I do. There's a clear priority given to partners, to the spouse program, so a significant proportion of the 47,000 would be to partners. For instance, in this coming year's migration program, around 40,000 of the total family stream will be given to spouse visas.

Senator McKIM: And is that breakdown—which I think you said was roughly two-thirds for the skilled visa stream and about one-third for the family reunion visa stream—a decision for government, rather than the department?

Dr Johnson: Yes. The stated policy of the government, certainly since 2013, has been that the migration program is predominantly about strengthening the Australian economy. So it gives roughly an allocation between two-thirds to one-third: two-thirds of the program will go to skilled migrants, and one-third will be for the family stream. So then you're working within, each year, a scarce number of places—or reasonably scarce compared to demand. Naturally, that will mean that, as you have demand for some of the family programs, you will have a pipeline that builds up.

Senator McKIM: And that breakdown—which I think you said was roughly two-thirds for the skilled visa stream and about one-third for the family reunion visa stream—a decision for government, rather than the department?

Dr Johnson: Yes. It's a reflection of the policy of the government of the day.

Senator McKIM: Are those breakdowns publicly available?

Mr Mansfield: Senator, I can give the breakdown. I've found it now. I just had it in a different folder.

Senator McKIM: Thanks. I appreciate it.

Mr Mansfield: Of the 160,000 ceiling, 108,682 places have been, if you like, set aside for the skills stream; 47,732 places for the family stream, so—

Senator McKIM: Very good! Well done, Dr Johnson.

Mr Mansfield: he was very close; there are 236 places for the special eligibility stream; and then 3,350 places for the child visas. That's managed outside the program, and I'm talking about the 2019-20 program here.

Ms Dunn: And, Senator, I have this year's planning levels broken down, if you would like those?

Senator McKIM: Yes, please.
Ms Dunn: Again, I found it in a different part of my folder. Partners is 47,825; child is 3,350; orphan relative is 400 places; contributory parent is 7,175; parent is 1,500; and other family is 500 places. That comes to a total of 60,750.

Senator McKIM: What exactly were those numbers you just gave me?

Ms Dunn: They're the migration program planning levels for this program year.

Senator McKIM: If it's 60,750, how does that relate to the 47,732 that Mr Mansfield just mentioned?

Mr Mansfield: Senator, we're talking about the planning levels for this financial year, noting that the overall program for this financial year is a ceiling of 190,000 places.

Senator McKIM: And that's come down by 30,000?

Mr Mansfield: That has come down to 160,000 places for the next round. The proportions have been maintained, broadly.

Senator McKIM: So the 60,750 figure is for the current year; is that right?

Ms Dunn: That's correct.

Senator McKIM: And the 47,732 figure is for next year; am I right about that?

Mr Mansfield: Yes.

Senator McKIM: It's a comparable number. It's the same thing we're talking about, just one year later with the overall reduction that you've just spoken about.

Mr Mansfield: Yes.

CHAIR: Is that about it?

Senator McKIM: I have a few more, but I'm happy to go to other senators, Chair.

CHAIR: I'll go to Senator Kitching, then Senator Patrick, then Senator Spender, and then back to Senator McKim. Again, I'm almost inclined to send the Federal Police home, because we have—

Senator PRATT: We're very keen to ask them questions.

CHAIR: I know you're very keen, Senator Pratt. I'm trying my best to remind everyone of the limited time available, but six o'clock is a hard marker, because we've got another department after that. Senator Kitching.

Senator KITCHING: Mr Pezzullo, I want to ask some questions about the relative priorities of the CFI task force and border security. Firstly, could I go to funding and to FTEs, full-time employees, in those two sections?

Mr Pezzullo: The border protection function is principally delivered, of course, by the Australian Border Force, which has over 5,000 staff. They protect our borders but also facilitate trade and travel. We can go through the numbers if you wish. I do note the commissioner and his staff have departed, but in rough terms the Australian Border Force has approximately 5,000 officers. They, of course, undertake duties at ports of entry which you'd be familiar with, but they also perform the maritime security, or coastguard, function, if you will, in the air and marine area. I think you made reference to the CFI.

Senator KITCHING: Yes, and also the funding. Hi, Ms Cargill. It's always good have you at the table.

Mr Pezzullo: The border protection function is a structured program which is national in scope. It involves the customs function, the management of movement of people and goods. It's a significant undertaking which requires thousands of staff and many hundreds of millions of dollars. Ms Cargill will speak to that in a moment. On the CFI function—it's not quite apples and oranges, so it's not to say that Mr Teal and his staff (and I'll come to his role in a moment), because they've got a relatively small coordinating staff, therefore the relative priority is skewed in one particular direction or other. They perform different functions. The commissioner runs a 24/7 operation which is national in scope. Mr Teal is a Deputy Director-General of ASIO but seconded to my department to work on policy and strategy, as distinct from working on the matters that strictly fall within the remit of the Director-General of Security, which is investigations pertinent to security intelligence, as set out in the statute that I described earlier to Senator Patrick. Mr Teal performs a very different role, which is to ensure that, in our responses to foreign interference and espionage—not in our investigations of those matters (that's a matter for Director-General Lewis) but in our responses—our advice to different sectors of Australia's society and economy about how to harden yourself, protect yourself and mitigate the relevant threats, he performs a very different function, which is a coordinator function. Therefore his staffing profile and budgetary profile are very different. Why don't we take the two in turn? The border function, Ms Cargill? And perhaps Mr Teal might join us.
Ms Cargill: The staffing profile of the Australian Border Force: the actual year-to-date ASL as at the end of February was 5,281 ASL. Just to compare and contrast, as at the end of February the actual year-to-date ASL for the CFI coordinator team is three.

Mr Pezzullo: On the relative disparity, it would be a fallacy of composition to say, 'There are 5,000 people on our borders but only three people coordinating foreign interference.' That would have no regard to the significant attention paid to that issue by ASIO, and you can speak to the director-general about that—and I note my good friend and colleague Director-General Lewis has joined us in this room. The Federal Police have got a role in terms of the prosecution of offences that transgress the espionage and foreign interference laws of this nation. The intelligence community—and it's very difficult to discuss this in an open forum, so I won't other than to say that the intelligence community, ASD and other agencies, devote a lot of their resources to protecting our nation in relation to espionage and foreign interference attempts. So the thought that only the three or four officers or indeed secondees—10 officers or so—working for Mr Teal is solely focused on the foreign interference threat would be a fallacy of composition. But, that said, Mr Teal is at the table and he may wish to add to my evidence.

Mr Teal: The other point I'd make is that the size of the team isn't static. Given the work that we've got going, people are coming in, being seconded and then reaching out. Also, in doing that coordinating function, we reach into a wide space across both the intelligence community and the policy community to achieve a concerted and coordinated policy function.

Senator KITCHING: I notice both border security and counter foreign interference are both listed as purposes in the ASIO annual general report, so I was trying to get an understanding. I'd also like a budgetary figure for those functions as well.

Mr Pezzullo: Again, I'll stress that the effort undertaken in relation to countering espionage and foreign interference is a whole-of-government effort that is undertaken by ASIO. You can speak to the Director-General momentarily about the work that he does and the various heads of security he has under his legislation. But, if you're asking me to provide you with a figure across government, it is not fully my remit, because agencies such as the Australian Signals Directorate and—

Senator KITCHING: No. Just in Home Affairs. I don't want to be unfair to you at this late stage of the day, Mr Pezzullo. Just in Home Affairs.

Mr Pezzullo: Yes. It's very small, because we provide a coordinating function. We are not operational. Ms Cargill can assist you.

Senator KITCHING: I understand.

Ms Cargill: The purely Department of Home Affairs budget applicable to the CFI coordinator for this financial year is $2.542 million.

Mr Pezzullo: I want to stress again—

Senator KITCHING: No, I understand.

Mr Pezzullo: I know you understand, but the people watching these proceedings—you see the tweets and the sort of social media commentary—will think there's only three people trying to ferret out spies. That is a misnomer. The staff undertaking the work to coordinate our responses are located in Home Affairs. To get a true picture of our national effort, which, in some instances, would be highly classified—so we're not going to blurt it out here—it would be many orders of magnitude above that number. That was just to be abundantly clear.

Senator KITCHING: Yes, I appreciate it. I appreciate the answers you've given, because I understand there are sensitivities around that. Could I get a budgetary figure for Border Force?

Ms Cargill: Off the top of my head, the Border Force budget as at the end of March is $918 million, noting, obviously, they are a component of the departmental budget and a lot of the corporate enabling services are provided by the department.

Mr Pezzullo: So that budget is understated in the sense that, unlike other elements of Home Affairs, by government direction the Border Force is enabled in terms of his back office, its intelligence support function, its property management, its IT and so on and so forth by the department. If you were to reach a true approximation of the amount of money that we spend on the border function, there's the strict budget allocated to the commissioner. As I said, in my opening statement—what feels to be many hours ago—I'm the budget holder but I'm collaborative. He's a peer. He and I set the budget together. There'd be a headline budget for the ABF, a headline FTE for the ABF, and then there'd be a whole lot of imputed resources that Mrs Cargill will work out where the department provides things like intelligence support, property management and the like. So it's well over a billion on that estimation.
Ms Cargill: Another way, potentially, to look at it is to look at the program structure. We have a program representing both border enforcement and border management. If you were to add the budgets for those two programs together for the 2019-20 year, you'd be looking at about $1.25 billion.

Mr Pezzullo: That's an attempt to attribute those non-ABF elements that contribute to border protection that are provided by the department that add to the ABF's firepower—they multiply the capability of the ABF—so the program lens is probably a better approximation of what the nation spends on the border protection function than the strict attribution to what the ABF is funded to do.

Senator KITCHING: Thank you.

CHAIR: Senator McKim has two questions.

Senator McKIM: Yes, I do have just two questions. On the topic I was exploring before, family reunion visas—I shorthanded them to 'family reunion'—is there an official way of describing that subclass of visas?

Mr Pezzullo: It would be in the act. The class of visas would be nominated in the act. I don't carry that in my head, but Dr Johnson does. The reference in the legislation to the—

Senator McKIM: I'm calling them 'family reunion visas'.

Mr Pezzullo: Family, yes.

Senator McKIM: I'm wondering if there is an official designation to capture visas—

Mr Pezzullo: It flows from the Migration Act.

Dr Johnson: Yes, when we organise and administer the annual migration program, we talk generally about the skills stream and the family stream.

Senator McKIM: Okay, the family stream.

Dr Johnson: Within the family stream there are categories—

Senator McKIM: Yes, which we've been through. Thanks, Dr Johnson, I understand that. Just so I'm clear in the numbers—and I think it was Mr Mansfield who was assisting me earlier—the 60,750 was the number of the family stream visas for the current financial year? Is that right, Mr Mansfield?

Mr Mansfield: It was a planning number, if you like. Within the 190,000, it was a planning number. And, yes, it was just for this financial year.

Senator McKIM: Was that planning number met? I suppose we're still going, aren't we?

Dr Johnson: Still in that program year.

Senator McKIM: All right. I withdraw the question. The planning number for that same tranche of visas—the family stream—for next financial year is 47,732?

Mr Mansfield: That's correct.

Senator McKIM: Thanks.

Senator PATRICK: I have a couple of quick questions on answer AE191, which was provided to me in answer to a question on notice on the Regional Sponsored Migration Scheme. For 857 visas in 2017-18 there were 9,567 lodgements, then only 557 in the six months to 1 January. So it's a massive decrease in the number of applications. I'm wondering if someone can explain what's happening in that space.

Mr Pezzullo: Do you carry that table of data in your head?

Mr Mansfield: No, I don't. Sorry, you were asking about the cause for the drop-off in the number of lodgements for—

Senator PATRICK: Yes, it's gone down by about a fifth, on projections.

Mr Mansfield: I'm not aware of the specific reasons. We'd have to take on notice and see whether we can—

Mr Pezzullo: Has that visa class closed or amended?

Senator PATRICK: The 187 Regional Sponsored Migration Scheme.

Dr Johnson: It's still operating—

Mr Mansfield: It's still operating at the moment, but it is set to be replaced by the announcements that the government made in the context of the budget of the three new visas. So it will be replaced as a visa category, but for now it is still in operation. I'll have to take on notice whether we've got any understanding of why there might have been a particular drop. I'm not familiar with what that might be.
Senator PATRICK: It's consistently been between about 9,000 and 10,000 applications per annum. It's a significant aberration.

Mr Mansfield: I know that we have had a significant amount of fraudulent applications and integrity concerns in that caseload, and that has increased processing times for that caseload. We've been, obviously, working through that. So, by integrity concerns, I mean things like either applications where it would appear that people are seeking to bring people in who don't have the requisite skills or—

Mr Pezzullo: I think the senator is asking about lodgement. So that speaks to approvals.

Senator PATRICK: It does.

Mr Pezzullo: And those approvals would be coming down because of those heightened checks. But, on the question of lodgements, Ms Dunn, you run the program day to day. Do you recognise that step-down, just as a point of fact?

Ms Dunn: I don't have the figure in front of me, or indeed or our response to your question on notice.

Senator PATRICK: It is question 199.

Mr Pezzullo: There it is.

Senator PATRICK: It's table 1(a) and the bottom line of that table.

Mr Pezzullo: You might just take a moment to refresh your memory on that data.

Senator PATRICK: You can see the last far-right-hand number has dropped down to 857 across half a year.

Mr Mansfield: We'll have to take it on notice and see, because it is a half-year figure. We'll have to take it on notice and see whether there are any trends or patterns that we can discern as to why there may have been that magnitude of drop. I understand the question you're asking.

Senator PATRICK: It just seems to me that there might be something where people are saying, 'Don't even bother.'

Ms Dunn: Certainly, I think the issues that Mr Mansfield has highlighted around increased scrutiny on poor-quality applications are relevant. We had very high refusal rates in 2017-18, and that's potentially had an effect on the number of applications that have been lodged.

Senator PATRICK: I was going to go to the fact that back in 2014-15 you had 9,000, or thereabouts, applications and 675 refusals. Now we see, in 2017-18, about the same number of applications with 3,200 refusals, and we see this year another 2,197 refusals. Obviously there's a latency, but I'm just wondering. You were down to seven per cent refusals in 2014-15 but are now up around almost 50 per cent.

Mr Mansfield: That goes to the issues that I mentioned. We've received a significant number of poor-quality applications, and by that I mean applications that don't meet the legislative criteria or where there are fraud or other concerns that we've identified in the application. This goes to either employers seeking to bring in people that are in an occupation that's not allowed or scenarios where people present themselves as having certain skills but it's very clear to us, when we look at those applications, that they don't have the skills claimed or that they've trumped up CVs or what have you—those kinds of issues.

Senator PATRICK: Okay, I'll leave it at that. I will put some other questions on notice in relation to those visas.

Last week I was out in Kadina, north of Adelaide, and the council there has engaged in a development where there are a bunch of foreigners who have made applications under a 132 visa, which is the business talent visa. I don't know whether this is a chicken-and-egg problem, but they've made an investment and are now waiting for approvals—it looks like it will take about 22 months. One could argue that maybe they shouldn't make the investment until they get the approvals, but it might not be possible to get the applications without people having committed. For that class of visa, it takes 22 months for 80 per cent of applicants—I'm not judging anything; I'm just seeking information. What's involved in that that takes that sort of period of time in the approvals for that particular class of, obviously, permanent visa? Can you give me an idea of what's involved?

Mr Mansfield: We obviously look at each individual application on its merits and, depending on the nature of the information supplied, it can extend the period significantly. There is definitely an expectation of government that we would focus on the employer sponsored categories as a priority. If you look at the overall balance of our investment of resources internally in different categories, we are focused more heavily on the employer sponsored categories and on regional applications. But things that could take a lot longer might be, depending on where the applicants come from and their individual circumstances, that there are additional checks that are required. It could be that we are looking into integrity concerns. It could be that we've asked for information from the
applicants or from the sponsor that hasn't been forthcoming. There are a whole range of things that can go to the overall length of processing time. Often, longer processing times are an indication that either they don't meet the criteria or there's further information required to satisfy the decision-maker that they're going to meet the criteria.

Ms Dunn: If it's relation in investment, we also have to undertake a range of investigations to make sure that the money is sourced from credible locations and has been properly obtained—that there's no money laundering or inappropriate shifting of funds between one country and another. That can actually take quite a bit of time. In relation to the regional skilled migration applications, I do have the refusal rate for last year, which was 38.5 per cent. That has had quite a dampening effect on the application rate. We can compare that, for example, with general skilled migration, where the refusal rate was four per cent.

Senator PATRICK: Thank you. Mr Pezzullo, if I may, just very quickly, I note that you advised Senator Kitching that there were 10 officers working for the Counter Foreign Interference Coordinator?

Mr Pezzullo: No, I said that the data that Ms Cargill referred to related to the FTE attributable to the Department of Home Affairs. I know that, because Mr Teal runs a whole-of-government joint centre, there are secondees and other officers who are available to him. As I recall, when I last visited them, which was some weeks ago now, there were about 10 officers working on his team, variously from ASIO and other agencies. So I think Ms Cargill said that the FTE from the Department of Home Affairs was three, and I said, 'Please don't assume that that's the full complement who are working for Mr Teal.'

Senator PATRICK: I only mentioned that because I asked the question, 'How many staff has he got working for him?' back in October, and your response was, 'For national security reasons, the government cannot provide the number of staff working within the office of the NCFI Coordinator.' So I just wonder what might have changed?

Mr Pezzullo: Well, Senator Kitching asked directly about the data related to the Department of Home Affairs. I've taken the view, and I was happy to authorise her to answer it, that the number of FTE from the Department of Home Affairs is not particularly sensitive. But the full complement that's available to him, including which agencies they come from and what they do, is something that I've been deliberately imprecise about and I continue to be imprecise about for precisely that reason—just to be precise about it!

Senator PATRICK: I've got it precisely! Thank you.

Senator SPENDER: I'm just trying to inquire about ways of reducing, particularly your department's, costs per refugee, with a view that that would hopefully reduce people's complaints about refugee intake. My queries, I think, are most related to your Special Humanitarian Program and your Community Support Program. Firstly, for anyone who comes in under the Special Humanitarian Program, I understand that the proposer, who is an Australian, pays for the travel. They're still part of the humanitarian intake, so it's not like you get extra refugees by coming in through the Special Humanitarian Program?

Mr Pezzullo: Perhaps the best way to start to address the question is to, just quickly, given the lateness of the hour, have Mr Mansfield make clear what the relationship between the general refugee and humanitarian program is—and you're asking about CSP, are you not?

Senator SPENDER: Yes, CSP and the Special Humanitarian Program.

Mr Pezzullo: Mr Mansfield, what are the numbers for SHP and CSP, and, in comparative terms, how do they relate to the broader program?

Mr Mansfield: The Community Support Program is allocated a thousand places within the overall program of 18,750 places.

Mr Pezzullo: So it's a subset.

Mr Mansfield: It's a subset. It sits within the Special Humanitarian Program, and I'll just find the figures in terms of what our planning level is.

Mr Pezzullo: Which itself is a subset of the broader program.

Mr Mansfield: That's correct.

Senator SPENDER: So there's 18,750 overall, and a thousand of that is Community Support Program?

Mr Mansfield: That's correct.

Senator SPENDER: Is the Special Humanitarian Program separate from the Community Support Program or is it a subset?

Mr Mansfield: If you like, there are two categories within the offshore humanitarian program. There's a refugee category and a Special Humanitarian Program category. Roughly there's about a 50-50 split, slightly—
Mr Pezzullo: And collectively they add to 18,750.

Mr Mansfield: With the onshore protection program they add to 18,750. For example, with the offshore humanitarian program, we have a planning level of around about 17,000 out of the 18,750 places which are for offshore, and the remainder are for onshore protection. Within that offshore humanitarian program there are those two categories that I mentioned. Within the Special Humanitarian Program there are 1,000 places set aside for the Community Support Program. And you're right, Senator: that program does create an expectation that certain costs will be met by supporters of entrants to that program, and the intent of the program is to reduce the overall reliance on things like welfare and other government costs and to focus on people who are more rapidly able to transition into employment.

Senator SPENDER: I understand the expectation that the sponsor or the supporter in the community will help them get a job and give them financial support. It doesn't appear that there's an expectation that they'd provide housing. Is that correct? Or you can be an Australian supporter and have the refugees in your own home?

Mr Mansfield: You could. Obviously we provide quite a bit of information through the approved proposing organisations, which are effectively a connection point between the department, the individual and the sponsor, and we do provide quite a bit of information or expect APOs to provide information to the individual humanitarian entrant about their rights and obligations in Australia so as to protect against things like exploitation and what have you. But it's entirely open to people to provide housing support. Or, if they don't provide housing support, the expectation is that the humanitarian entrant will arrange their own accommodation and be self-sufficient within one year. They do have access to settlement services—a base package of settlement services. And depending on their individual needs, they access other settlement services as part of that program, and that depends on their needs. The costs of those settlement services are expected to be met by the sponsor. So, they're purchased as part of a package.

Senator SPENDER: So, are you reasonably confident that the cost to the taxpayer of a refugee outside of those programs is greater than the cost of a refugee who does have some engagement with the Community Support Program? I know that's the aim, but—

Mr Pezzullo: Axiomatically that follows—

Mr Mansfield: Yes, because for the refugee program the Commonwealth pays full costs—settlement costs, settlement services for the individuals when they arrive, the AUSCO program, the cultural orientation program that gets run before they depart. We pay for travel costs to Australia. If they need a medical escort we pay for that. We pay for their healthcare costs. So, it's full costs under the refugee program, and under the Community Support Program it is not full costs. Indeed, if a person who comes in through the Community Support Program later incurs a cost on the taxpayer in terms of accessing welfare, then the Commonwealth can recoup those costs from the sponsor.

Senator SPENDER: I'd imagine that there are some practical difficulties in ramping up that form of the intake or giving a greater share of the overall intake to the Community Support Program. What are the particular difficulties that would prevent you making maybe 100 per cent of the program through the Community Support Program?

Dr Johnson: It's important to point out that that program is reasonably new, so it's still in its initial phases. I think, from memory, that this is the second year, and not even the second full year, that it will have been running. So, it is a new program. But, as Mr Mansfield pointed out, we've effectively got three components to the humanitarian program. One is where we work internationally with partners like the US and Canada as one of the most significant refugee resettling countries globally. So, effectively we draw refugees, working closely with UNHCR, from camps overseas—people who have been displaced and found to be refugees. We've got a dedicated part of the program which is for bringing those people through. As Mr Mansfield said, there are quite a lot of settlement services which are provided. Our portfolio doesn't manage it; it's the Department of Social Services that does that. Then the second core bit of the program is the Special Humanitarian Program where people are proposed by relatives in Australia. The test for whether they're a refugee or not is slightly different. It's not the international convention. The CSP is new, it's developing and it's growing.

Senator SPENDER: But the CSP only applies to the standard definition of refugee?

Mr Mansfield: No, Senator. People who come in through the Community Support Program don't need to meet the test of being a refugee. The test is a lower test but still significant, and it goes to significant violation of their human rights. If it meets that kind of category then—
Senator SPENDER: For the main group that you're talking about, you'd have relationships with, say, USA and Canada, who meet the standard definition of being a refugee. What's preventing that intake going through the Community Support Program? You don't feel that you can impose obligations—

Mr Mansfield: So the government sets the parameters for the program each year and the government has set the numbers that are under the refugee component and under the Special Humanitarian Program component. Within the Special Humanitarian Program component, it has set the number of 1,000 places for the Community Support Program. So it's a matter of government policy as to how many people they choose to seek resettlement of through those different mechanisms.

Senator SPENDER: So if, say, for instance, just practically, to double the CSP, things you would need to do as a department logistically, would be, for instance, greater promotion of the scheme to get more Australian supporters. Would that be one of the main things you need to do to ramp up that scheme—promote it more?

Dr Johnson: That would be a matter for government. So, as Mr Mansfield—

Senator SPENDER: I realise it's a policy decision, but if that were made it would require things to make it happen.

Senator Reynolds: I think, Senator Spender, that's really in the realm of hypothetical. You're asking, 'If this happened, would that happen?' and it's not appropriate for officials here to—

Senator SPENDER: I'm trying to get at the difficulties of expanding the scheme.

Senator Reynolds: Look, I understand. I'm just saying it's not appropriate to respond to a hypothetical.

Senator SPENDER: That's fine. Thank you for that. That's all.

Senator PRATT: We're ready to go on to AFP or ASIO?

CHAIR: Thank you, Senator Spender. Look, we are finishing at six but the committee, with apologies to ASIO, has decided that we'll call the Federal Police next if they're here—and then do ASIO. Although, if it becomes obvious that we're not going to get to ASIO, I will, with apologies to them, let them know at the earliest possible time so you don't have to sit around.

Senator PRATT: We should be fine.

CHAIR: Senator Patrick and Senator Faruqi as well—she's got questions for both.

Australian Federal Police

[17:18]

CHAIR: I welcome officers from the Australian Federal Police and particularly Commissioner Colvin. Apologies for keeping you waiting to this time and messing you around. Again, my apologies to ASIO. Commissioner Colvin, welcome to you and your team. Did you want to make an opening statement?

Mr Colvin: Yes, Chair, I do, if I could have a couple of minutes.

CHAIR: Go ahead.

Mr Colvin: Thank you, Chair. Just while my colleagues join me at the front table, I'd like to make a brief statement on the back of overnight media reporting of Senate Committee of Privileges 174th Report: Parliamentary privilege and the use of search warrants. Parliament has a unique role in the Australian democracy. It is the custodian of the nation's most precious and exclusive asset: the privileges of parliamentarians, the beauty of democracy, and the bulwark of free and fair elections.

CHAIR: Sorry, there's a media report on the Privileges Committee—

Mr Colvin: Privileges committee report No. 174 came out overnight, and there's been media reporting on that today.

CHAIR: Fire away.

Mr Colvin: The AFP welcomes the final report from the committee. I am pleased that the committee confirms that the AFP’s conduct was in accordance with the existing national guideline. I am further heartened by the committee's finding that there was no intent on behalf of the AFP to not comply. However, and not surprisingly, I am disappointed with the criticisms of the AFP contained within the report, particularly the committee's statement that there was an apparent failure to respect the work of the parliament and that the national guideline was an afterthought in our investigations.

For the record, it remains my view, as acknowledged in their report, that the AFP acted with good faith at all times in exercising our duty to investigate a criminal matter. Furthermore, at no point do I believe my members ever treated parliamentary privilege as an afterthought. I believe the AFP took very deliberate steps prior to overt action to consider and plan for the application of a claim to parliamentary privilege.
I note that the committee report references a need to review the MOU and the guidelines and the ambiguity that exists within the current framework. This is underway, in conjunction with the Attorney-General's Department, the Department of Home Affairs and other partner agencies and is a very necessary step to ensure clarity.

It is my view, following the tabling of the 174th report, that what is now also required is a more comprehensive review of how the criminal law intersects and balances with the expectations of the parliament surrounding the application of privilege, particularly given how far the Senate considers the law of privilege extends. We will work with the departments to consider this so there can be no uncertainty or ambiguity for all parties.

As always, we will use the report and the findings of the committee to review our procedures and our current criminal investigations that we have underway to understand the effect of this report. Thank you, Chair.

CHAIR: Thank you, Commissioner. As you know, I'm deputy chair of that committee. I'm struggling to recall the paragraph to which you refer. I do draw your attention—this is in the way of a question, I guess—to this: did you notice within the report a particular paragraph that was an indication by the committee that the AFP had not done anything wrong? There was some concern—and I can't talk about what happens in the committee, but the paragraph indicated that, rather than being the bad guys in the thing, you were the good guys, and some reporting suggests the alternative. As I say, I really can't speak for the committee. But can I say I've always understood—this is not me as a Privileges Committee member; this is me as chair of this committee—that you are investigating actual criminal activities, and somehow the criminal activity seems to get waylaid in complaints about the actions of the AFP. Did you see the paragraph where the committee, I hoped, made it clear that there was no real criticism of the AFP?

Senator PRATT: I don't think that's a true reflection of the report, which said that the guidelines needed to be implemented appropriately—that's all.

CHAIR: Which is not a true reflection—my interpretation or the commissioner's?

Senator PRATT: Sorry, we've got very limited time. Mr Colvin knows this matter is of interest to me, and I'm personally grateful for his words on the record today. But I don't necessarily believe it needs questioning at this point. I'm very grateful for those statements.

CHAIR: Could I follow up my questions to date with this question: the comment was made in the report, which, as you rightly remind us all, is now a public document—that perhaps you could have got the same evidence from another source that wouldn't have involved any parliamentarians at all. Would you agree with that?

Mr Colvin: I want to be careful, because I don't want to be in contempt of the Privileges Committee.

CHAIR: I'm asking you the question. I'm almost certain, although I don't have it in front of me, that the report did at some stage indicate that it was the view of the committee, who are not lawyers and not investigators, that perhaps you could have got the same document, had you gone, effectively, to the department rather than to someone's house?

Mr Colvin: Chair, I don't have the report in front of me either and I don't recall that specific reference. I know that was discussed in the committee hearing, which is why I want to be a little careful. I would say this: we take the necessary steps that we feel we need to take as part of the investigation to collect the evidence. In this case, it was a search warrant executed on the department to retain evidence with the department's cooperation, and we did that because we felt that was necessary. But the investigation is concluded now. The committee has its final report. We'll work through it and we'll ensure that the ambiguity that the committee refers to is, to the best extent possible, clear, because that's important for us.

CHAIR: And it's a matter for the committee and the President—and the Attorney-General, I think—to make sure the rules are clearer so that there is no ambiguity.

Mr Colvin: Absolutely, Chair.

CHAIR: That's, I think, the bottom line. Can I again, as I often do when the police force is here, just indicate the committee's and the parliament's appreciation for the difficult work you do. I often wonder why you're bothered with privileges committees, but that's the way it is and I know you always do the right thing. You and your team do some wonderful work—dangerous work—to keep us safe. I don't think we can ever overemphasise that, so thank you very much.

Mr Colvin: Thank you, Chair. I know my members appreciate it. As I've said before, I'm always surprised just how many watch estimates, and they will have heard those comments and I know they appreciate it, so thank you.

Senator WATT: I'm happy to endorse the Chair's remarks about the work of your officers.

Mr Colvin: Thank you.
Senator WATT: We're all conscious of time and we are very keen to get to ASIO before six o'clock, because there are some important issues there. We will see how we go. Commissioner, I've got some questions about media coverage beginning with an article in the Herald Sun dated 21 December 2018. That article, which I'm assuming you've seen, revealed that the AFP had investigated a federal government MP's travel to the Philippines. Are you familiar with that article?

Mr Colvin: I'm familiar with the issue. I don't remember the specific article from December 2018, but I'm familiar with the issue, yes.

Senator WATT: Sure. And—

Mr Colvin: And, sorry, I will be clear. The AFP had an evaluation on information that we received. We've never actually said that it was an investigation.

Senator WATT: That was one of the things I wanted to come to. Let's just step through it. Is it correct that the AFP launched an investigation—and I'm quoting from these articles—or an assessment in 2017 into the MP's frequent travel to, and financial transactions involving, the Philippines?

Mr Colvin: I want to be careful here, because, as we have said—and as that article, I believe, said—we found no evidence of wrongdoing and no evidence of criminal behaviour. So I want to be very careful and show the same respect I would show to any member of the public who has been found to have done nothing wrong.

Senator WATT: I understand that.

Mr Colvin: The article says that we were in possession of information in 2017 which we then evaluated, and that information had to do with a member of parliament and their travel to the Philippines, yes.

Senator WATT: And I think the article did also refer to financial transactions involving payment of money in the Philippines or in the region?

Mr Colvin: As part of our evaluation, Senator, we took all measures that we needed to satisfy ourselves as to whether any criminality had taken place. I don't want to discuss what we did or didn't do as part of that evaluation. The media has speculated. I don't wish to confirm or deny.

Senator WATT: Hopefully, you can tell I'm not seeking to inflame this. I just have a series of factual process based questions. But you think the best way to describe it is as an evaluation?

Mr Colvin: I know that the best way to describe it is as an evaluation.

Senator WATT: What date did that evaluation commence?

Mr Colvin: I'd have to take that on notice, Senator. It was in the first half of 2017, but I don't know the exact dates.

Senator WATT: If you could do that, thanks. And is it correct, as this article says, that the evaluation was launched after a government financial agency noticed the MP was sending money to multiple accounts in the region—being the Philippines or Asian region?

Mr Colvin: No, that's not correct.

Senator WATT: Not correct? So there was no referral—I had assumed that, from that article—

CHAIR: You've asked the question. You've got the answer. Do you have another question?

Senator REYNOLDS: Because it was in the news, Senator Watt, doesn't make it true.

Senator WATT: No, that's why I am asking the questions.

CHAIR: You have asked the question. You've got the answer

Senator WATT: Was there a referral or complaint, whatever terminology you want to use, from AUSTTRAC to the AFP concerning this MP?

Mr Colvin: The information that came to the AFP that prompted us to make an evaluation did not come from AUSTTRAC.

Senator WATT: And it did not come from any government financial agency?

Mr Colvin: I want to be careful because I don't want to say where it did come from but, no, it didn't come from a government agency.

Senator WATT: So your evaluation did not—

CHAIR: I'd say from a Labor Party politician—

Senator Reynolds: The ALP muck-raking unit.

Senator WATT: So your evaluation did not involve any transfers of money by this MP?
Mr Colvin: Senator, that's not the question you asked. You asked if it had been referred.

Senator WATT: No, it's a new question.

Mr Colvin: Well, I don't wish to—I think it is very dangerous for me to start to talk about inquiries we did or didn't do as part of an evaluation that concluded that no criminal offence had been disclosed.

Senator WATT: Well, we are commonly told when an investigation is underway that we can't ask questions, and I accept that. I understand that, but if an investigation is closed surely it's not—

Senator REYNOLDS: But I think, Senator Watt, you're mischaracterising. I think the commissioner was very clear to say an assessment was undertaken and he didn't say it was an inquiry or an investigation.

Senator WATT: No, I understand it was an evaluation.

CHAIR: It was an evaluation.

Senator WATT: Okay.

CHAIR: And no criminality was found.

Senator WATT: Commissioner, is it correct, as is reported, that you briefed the Secretary of the Department of Prime Minister and Cabinet regarding your evaluation or these concerns?

Mr Colvin: I briefed the Secretary of the Department of Prime Minister and Cabinet in relation to the allegations and the fact that we were making an evaluation of that information.

Senator WATT: One of the articles I've seen said that occurred in September 2017. Is that correct?

Mr Colvin: I'd have to check the exact date, but it's around that time.

Senator WATT: And how many times did you brief the Secretary of the Department of Prime Minister and Cabinet?

Mr Colvin: I think I only formally briefed him on that one occasion.

Senator WATT: What was the outcome of that briefing—was it simply an information briefing?

Mr Colvin: The outcome was that I wanted him to be aware, but I was very clear and specific that there was nothing that I wanted him to do as a result of that because it was a police matter.

Senator WATT: And he didn't ask you to do anything?

Mr Colvin: No.

Senator WATT: Did you brief at any point the current Prime Minister, Mr Morrison, about the evaluation or the allegations?

Mr Colvin: No, Senator, I did not.

Senator WATT: You haven't done that?

Mr Colvin: No.

Senator WATT: Because I have seen an article—

Senator REYNOLDS: There you go again.

Senator WATT: The point is to check—

CHAIR: Senator, you've asked the question. You've got the answer. Now if you want to waste time by telling us what's in a newspaper that clearly we have showed today is usually wrong—

Senator WATT: The report by Phil Coorey in the Financial Review on 4 April says:

Senior sources have told The Australian Financial Review that Mr Morrison was briefed when he became prime minister …

So you and your officers did not provide such a briefing?

Mr Colvin: I or my officers have not briefed the current Prime Minister on this matter.

Senator WATT: Or the current Deputy Prime Minister?

Mr Colvin: No. I have briefed the current Deputy Prime Minister, yes.

Senator WATT: What date did that occur?

Mr Colvin: I'd have to check the dates, Senator.

Senator WATT: That was after he became Deputy Prime Minister?

Mr Colvin: Correct.

Senator WATT: And how many times did you brief him?
Mr Colvin: I briefed him on one occasion.

Senator WATT: So you briefed Mr McCormack once since he became Deputy Prime Minister?

Mr Colvin: That is correct.

Senator WATT: Was that simply a for-information type briefing?

Mr Colvin: It was, yes.

Senator WATT: Did he request that briefing?

Mr Colvin: It was requested by the Prime Minister's office at the time because we were concerned that the information that we were evaluating was becoming known, and I believed it was appropriate for the Deputy Prime Minister, because of particular circumstances with the Deputy Prime Minister, to be briefed.

Senator WATT: Did you at any point brief the former Prime Minister, Mr Turnbull?

Mr Colvin: Yes, I did.

Senator WATT: How many occasions?

Mr Colvin: I would have to take that on notice, Senator.

Senator WATT: You think it might have been more than once?

Mr Colvin: It was more than once, yes.

Senator WATT: So, a couple of times? More than five times?

Mr Colvin: Senator, this matter went for the better part of over 12 months. As I felt appropriate and as I believed necessary, I advised the Prime Minister of where we were at with our evaluation.

Senator WATT: Right. So on multiple occasions you briefed the former Prime Minister.

Mr Colvin: Correct.

Senator WATT: And was that at his request? Did he ask to be kept informed?

Mr Colvin: He certainly asked to be kept informed. I think that was quite appropriate in the circumstances.

Senator WATT: So some of those briefings of Mr Turnbull occurred because he requested them, others occurred because you felt you should brief him and you initiated them?

Mr Colvin: That's correct, yes.

Senator WATT: Okay. At any point did former Prime Minister Mr Turnbull ask you to do anything other than keep him informed?

Mr Colvin: It was at the former Prime Minister's request that I brief the Deputy Prime Minister. Beyond that, the former Prime Minister was very clear in his understanding and acknowledgement that while I was keeping him briefed, or while I was keeping him aware of the situation as I felt appropriate, it would be inappropriate for him to do anything with the information.

Senator WATT: Yes. You said there that former Prime Minister Mr Turnbull asked you to brief the Deputy Prime Minister.

Mr Colvin: That's correct.

Senator WATT: Do you mean former Deputy Prime Minister Mr Joyce? Did you brief Mr Joyce at any point?

Mr Colvin: I briefed both the former Deputy Prime Minister and the current Deputy Prime Minister.

Senator WATT: Okay. And how many times did you brief former Deputy Prime Minister Mr Joyce?

Mr Colvin: One occasion.

Senator WATT: Do you happen to know the date?

Mr Colvin: No, I don't.

Senator WATT: Could you take that on notice?

Mr Colvin: I can.

Senator WATT: Do you know roughly when that was? Are we talking the second half of 2017?

Mr Colvin: I'd be guessing, so I'll take it on notice.

Senator WATT: Just working back, the media reports suggest that you briefed the Secretary of the Department of Prime Minister and Cabinet in September 2017, and I think you said that sounded roughly about right.
Mr Colvin: Yes.
Senior WATT: Did you brief the secretary of the department before you briefed any ministers, whether it be Prime Ministers or Deputy Prime Ministers?
Mr Colvin: That's correct, yes; the first person I spoke to was the secretary of the department.
Senior WATT: Okay, so the briefings of former Prime Minister Mr Turnbull and former Deputy Prime Minister Mr Joyce occurred after September 2017.
Mr Colvin: Correct.
Senior WATT: Did you ever brief the Minister for Home Affairs, Mr Dutton?
CHAIR: That will have to be the last question at this time.
Mr Colvin: Yes, I did.
Senior WATT: You did brief him?
Mr Colvin: Yes, I did.
Senior WATT: On more than one occasion?
CHAIR: Thank you, Senator Watt. Whilst we're on that subject, can I just confirm again that, as a result of your evaluation, you found that there was absolutely no criminality or anything that warranted any further action by the Australian Federal Police, or anyone else?
Mr Colvin: That's correct, Chair, and that's my discomfort. Like anyone, I would like to protect the circumstances of the person who's been found to have done nothing wrong.
CHAIR: I appreciate that. Can you tell me if the Australian Federal Police were ever involved in a matter involving a Mr Dastyari, then a senator of the federal parliament? Do you recall if you were—
Mr Colvin: I'd have to take that on notice. I don't recall. I don't recall any matters, no.
CHAIR: Okay. There were allegations in papers and elsewhere at the time of gifts and payments being made that were inappropriate. You can't recall?
Mr Colvin: I don't recall the AFP being involved in that matter, but we can take it on notice.
CHAIR: Okay, I don't want to pursue that. Sometimes these estimates committees are used simply to smear people, and I certainly don't want to be part of that. I did want to ask you about budgeting. This is the estimates. Did the AFP get an increase in funding in the budget the other night? What's the situation?
Mr Colvin: Thank you, Chair. I'm very pleased to advise the committee that, yes, the AFP did receive a significant injection in their budget over the forward estimates. It's a very welcome injection. I know the chief financial officer, who has just joined us at the table, will be able to go through it in detail. The injection is a single, large injection into the AFP's appropriations. It covers a range of matters. What I would like to say is it helps us continue the important work we're doing on the front line. Importantly for me, though, it helps us continue with the critical reform work we're doing around our health and wellbeing, around our culture, around our technology and around our capabilities.

This injection has been very timely and welcomed by the AFP because it provides us with a great degree of planning certainty over the forward estimates, over the next four years, and also gives us a healthy degree of flexibility in the way that we apportion those funds so that we can make sure we are pointing our resources and our prioritisation at the right issues. Obviously, we were prepared for this question and we have a great deal of material in relation to how that funding breaks down. I'll ask the CFO, if you like, Chair, to take us through how that funding is actually broken down.

CHAIR: I would, and I heard the Treasurer mention the criminal motorcycle gangs. So, if you could refer to that as part of the answer, that would be appreciated.

Mr Colvin: We can, and part of the funding continues the work that we were doing on the National Anti-Gangs Squad. These are slightly different forms of the funding, but, again, that is important work that the AFP are doing with our partners in state and territory policing. We've indicated many times on the public record the impact that outlaw motorcycle gangs are having on the criminal environment in this country, and that work is very welcome and I'm pleased that we will be able to continue that work now into the future.

Mr Box: In the current budget just handed down, the total current-year resource available to the AFP is $1.56 billion, which was an increase of $75 million from the previous PBS. The budget papers sustain that funding over the forward estimates, which is provided for by budget measures totalling $615 million. Those budget measures cover a range of activities, including $130 million for the whole-of-government drug strategy, which you
mentioned and the Commissioner just mentioned, as well as the National Anti-Gangs Squad, enhanced AFP capability to target illicit gun crime and the new Joint Agency Ice Strike Team. We also received $9.9 million to strengthen counterfraud arrangements. We got $464 million for national security additional resourcing, which covers a range of activities, including enhanced counterterrorism response, the Fraud and Anti-Corruption Centre and enhanced technical capabilities for covert intelligence collection. We also received money to counter remotely piloted aircraft—drones—and for the Royal Commission into Trade Union Governance and Corruption. We also received money for cybersecurity. In addition to that, we also received $6.7 million for countering foreign interference, which is our part of a broader measure, obviously, which was discussed earlier, I heard, by Home Affairs. We also received $3.2 million for regional processing at Christmas Island. That's the total $615 million in the forward estimates, which provides a stability of funding over those forward estimates of about $1.5 billion.

CHAIR: Commissioner, perhaps this is for you. What's the increase in funding for Christmas Island about?

Mr Colvin: Chair, you're talking about the specific for Christmas Island. We have a permanent presence on Christmas Island because we are the local police of Christmas Island, but we've also been provided additional money in relation to the current arrangements on Christmas Island and the decision to build our capability on Christmas Island in anticipation that there may be use of the detention network. We were provided $3.2 million for that.

Mr Box: That's correct. We received some capital money in relation to the facility we have on Christmas Island. If you look in the budget papers, you'll see capital budget and expense budget for that. We also received a small amount of money for staffing to support the activities in the detention centre.

CHAIR: Yes, I appreciate that. Perhaps, Commissioner, this would be better directed to you, but it's for whomever. Regarding the outlaw motorcycle gangs that the Treasurer mentioned in the budget speech, what's the additional funding for that and what's it intended to do? We have heard about the outlaw motorcycle gangs often in Senate committees over the past five or six years, but can you tell me how the fight against that's going.

Mr Colvin: I'll ask the deputy commissioner operations to talk specifically about what the National Anti-Gangs Squad and the outlaw motorcycle gang funding allows us to do. There are two measures in particular, but there are also other measures under the whole-of-government drug strategy, such as the Joint Agency Ice Strike Team, that also have an impact on outlaw motorcycle gangs. The two measures in particular are the revitalisation of the National Anti-Gang Squad, which is new funding over the forward estimates: $26.2 million in 2019-20, $22 million in 2020-21 and so forth. There's also the keep illegal guns off our streets and our communities safe measure, which is a terminating measure but new funding has been found for that. That's $6.4 million in 2019-20, $10 million in 2020-21 and so on. There are a range of measures that go towards our work in this space, but I'll ask the deputy commissioner of operations. He'll be able to give you some statistics about our success in this space and the work that we're doing.

Mr Gaughan: As the commissioner has alluded to, the money will continue flowing in relation to the activity of the NAGS. It has been very successful to date. In the 19-18 financial year there were 68 arrests, 233 charges, 44 firearms parts seized and in excess of, or very close to, $1 million in cash seized by the National Anti-Gang Squad. Since its inception in 2014, there have been 1,242 arrests, close to 4,000 charges, over 5,000 firearms parts seized and in excess of $10.5 million in cash seized from outlaw motorcycle gangs. Not only is it having an impact in relation to its ability to actually put people before the court; I think probably more appropriately it is impacting on their financial status and taking money out of the dark economy, if you like, and having an impact on their hip pocket.

CHAIR: Thanks for that. I do have some other questions, but my time has run out. I think in fairness to everyone, both Senator Faruqi and Senator Patrick have indicated they have questions—and so did Senator McKim, although he doesn't seem to be here. I thought if we did five minutes with Senator Faruqi, five minutes with Senator Patrick and five minutes with the Labor Party—if everyone is agreeable to that, that's trying to be fair. I appreciate the minister has to leave at 6 pm. Let's go for it.

Senator FARUQI: I have a couple of questions around the monitoring of white supremacists and right-wing groups. How many AFP staff members are currently dedicated to monitoring white supremacist and/or far Right groups?

Mr Colvin: A few things, senator. Firstly, I baulk at the word 'monitoring'. Police don't monitor; we act when we have allegations of a crime having been committed or potentially committed. In terms of that work, everyone who works on our counterterrorism operations is equally invested in working on extremism in all its forms. We draw no distinction between what may be behind the origin of that extremism.
Senator FARUQI: How many people are working on counterterrorism?

Mr Colvin: I'll get the deputy commissioner of national security to answer.

Ms Close: We have in the Australian Federal Police 200 dedicated officers, but they're the investigators. We also have a range of relationships working in state and territory jurisdictions through joint counterterrorism teams. They comprise not just AFP and state and territory police but also ASIO, the Australian Border Force where it is necessary and a range of other agencies to help us undertake that work. In terms of right-wing extremism, that's just one of the various groups that we look at at any point in time if we've got allegations of criminality or concerns. ASIO also obviously take a strong role in terms of security in that space.

Senator FARUQI: Has that number changed at all in the wake of the Christchurch massacre?

Ms Close: Not in Australia at this point in time. We've been monitoring various groups for a long period of time. We also have one person before the courts. The statistic that has been spoken about at previous estimates is that we've disrupted 15 potential terrorist attacks. One of those was a right-wing extremist attack that we allege. That's before court in Victoria currently, that person involved. We do monitor the various groups and entities in that respect.

Mr Colvin: Senator, can I add to that as well? It always concerns me when we're asked how many people we have dedicated to any particular crime type. The 200 officers that the deputy commissioner speaks of are permanently on counterterrorism. They are supported by a great number of intelligence officers, surveillance officers, technical support officers—it's a range of people that will surge as we need them.

Senator FARUQI: I also want to get an understanding from you of how the AFP respond to reports of harassment or threatening behaviour when they come through social media. For example, if someone belonging to a minority group is being actively targeted by a far-Right extremist and reports a death threat from social media, what happens next? Just broadly, what's the process?

Mr Colvin: It's a good question; thank you. And let me say at the outset that that type of activity in our community is abhorrent, and we need to make sure that we're stamping it out. By and large it will be an issue that is dealt with by state and territory police, because it won't be a Commonwealth offence that is being committed; it will nearly always be a state and territory—

Senator FARUQI: So, the Criminal Code, which is about the carriage service—

Mr Colvin: Yes.

Senator FARUQI: and the harassing—

Mr Colvin: Under the telecommunications interception act, yes.

Senator FARUQI: That's a federal law, isn't it?

Mr Colvin: That is a federal law.

Senator FARUQI: I might just give you a specific example. On my Facebook page an individual posted an image that basically said that they wanted to glass me. This was the same image that Brenton Tarrant used when he wrote about the upcoming attack. So, to me, that was terrifying.

Mr Colvin: Yes.

Senator FARUQI: Of course, you have no idea who that person is, what links they have, what guns or other weapons they might have—who knows?—and what they were planning to do and whether they were planning to act on that threat. So, what would happen? Say I reported it to the AFP. What would happen? There is a feeling within the community that often when these reports are done no feedback is provided on what's going on or whether there's an investigation happening, and it is a bit of a black hole.

Mr Colvin: I get that.

Senator FARUQI: So, I think it would be great to know what goes on.

Mr Colvin: I'll ask the deputy commissioner of operations to answer that. But just to be clear in my own mind: is that something you have reported? Or you were considering—

Senator FARUQI: I did report it, but—

Mr Colvin: To the AFP?

Senator FARUQI: Yes. Obviously you can't go into a particular case, but I just wondered, because many people have also spoken to me about it—about when they report to the AFP—and I'm sure it's being investigated; we don't know. But there is no—

Mr Colvin: Feedback.
Senator FARUQI: link with the person who's reported as to what's going on.

Mr Colvin: Well, there should be, but I'll leave that to the deputy commissioner.

Mr Gaughan: Senator, we'll make some inquiries about what has occurred in relation to that specific request. But in a general sense what would occur is that an assessment would be undertaken reasonably quickly to ascertain whether or not we felt that that person was actually a real threat at the time. A practical example is something that occurred this week, where we received a complaint, and what was posted was quite abhorrent, to be honest, and it was very directly threatening this individual. We and the relevant state jurisdiction responded to that very quickly, and we were able to mitigate that issue.

Senator FARUQI: But is the assessment of whether you think it's a threat conveyed back to the person who reported it?

Mr Gaughan: It should be, but if it isn't in this instance we'll take that on and we'll deal with it. But also obviously things can be reported to the eSafety Commissioner as well, so there are a number of different avenues where these sorts of things can be dealt with. In many instances it's not specifically a law enforcement issue.

Senator FARUQI: But shouldn't—

Mr Gaughan: There should be feedback.

CHAIR: I'm sorry: I've been warning senators all along that we're going to run out of time with the Federal Police, and I know you've only had five minutes but I'm afraid—any other questions you might have can go on notice.

Mr Colvin: And Chair, we're happy to talk to the senator offline—we can give you a private briefing on that if you like.

Senator FARUQI: Great. Thank you.

Senator PATRICK: I just want to talk about the matter of Richard Boyle, an ATO whistleblower. I know that the matter is before the court, and I won't ask questions that relate to questions that are before the court—just the preliminaries from your perspective. And you might have to take this on notice, but I'm just wondering: I'm presuming that the ATO is the referring agency?

Mr Colvin: Yes. I believe that we just assisted with the search warrant. I don't believe that it's a matter we are actively involved in. Like other operations, sometimes we have to provide the expertise to conduct the search warrant. But I'll take it on notice. I don't think we actually have a referral.

Senator PATRICK: I recall that when we talked about Witness K you—

Mr Colvin: A different matter.

Senator PATRICK: A very different matter, but I'm just trying to understand the way the sequence works. In that instance there was a referral. You then conducted an investigation and compiled a brief for the CDPP.

Mr Colvin: Yes.

Senator PATRICK: You're saying that in this instance you've really had nothing to do with that—haven't interviewed any ATO staff—

Mr Colvin: I'm going to take it on notice and make sure that I'm absolutely correct, but the difference is that the ATO is actually a prosecuting authority under the Commonwealth. So, they can refer matters to the DPP for prosecution, as can Border Force and as can other organisations. With Witness K, the agencies that referred it to us are not prosecuting authorities.

Senator PATRICK: That was ASIO, wasn't it, from memory?

Mr Colvin: Yes. So it's reliant on us to investigate and refer to the DPP. Where it becomes a little complicated is that occasionally the agencies may be a prosecuting authority but they don't have the power to execute search warrants, so they have to ask us to do that for them.

Senator PATRICK: As you take that on notice—and I won't ask you any further questions—if indeed you have had any involvement, can you give us just the date ranges and the nature of any involvement that you have had?

Mr Colvin: We can do that, certainly.

Senator PATRICK: Thank you very much.

CHAIR: Senator Patrick, as you might have just seen, I have told ASIO that there is no way in the world they are going to get on before six o'clock, and so I've suggested to them that they might like to leave.

Senator PRATT: We would like to ask them some questions.
CHAIR: I know you would, Senator, but I said to you and your colleagues all the way through the day that, if you want to get on to ASIO and the AFP, you should curtail the questions. We had Senator Carr spend all morning not accusing but intimating that some officers had given the wrong evidence at the last Senate hearing. Don’t blame me. The program was set by the committee and we’re sticking by it. As I mentioned all along, we’re finishing at six.

Senator WATT: Okay. Can we get on with it?

CHAIR: Senator Watt.

Senator WATT: Commissioner, just at the end of the last questions, I think you said that you had briefed Minister Dutton about the evaluation in relation to Mr Christensen. How many times did that occur?

Mr Colvin: It occurred on one occasion.

Senator WATT: Once. Do you know roughly when?

Mr Colvin: I would have to take it on notice. It was much later. I say that because the judgements that I had to make about when and who to brief were not easy judgements, as you can understand. This was a very unusual circumstance which we were dealing with, and I necessarily treaded very carefully. The briefing to Minister Dutton, as my minister, was far later in the evaluation.

Senator WATT: Was there any evidence that Mr Christensen became aware of the AFP evaluation outside of any contact the AFP may have had with him?

Mr Colvin: Senator, you are referring to an individual based on media reporting. I’m very uncomfortable—

Senator WATT: Sorry. Was there any evidence that the MP involved became aware of the AFP evaluation outside of any contact the AFP may have had with that individual?

Mr Colvin: I don’t know. I will take that on notice.

Senator WATT: Again, in these media reports, it is said that the AFP sent a letter to Minister Dutton and that it was closing the case but it warned that the MP remained at risk of being compromised by foreign interests. Is that correct?

Mr Colvin: I wouldn’t assume that what you read in the media is correct on that.

Senator WATT: That’s why I’m asking. So, is that not correct?

Mr Colvin: It’s not correct, Senator.

Senator WATT: Did the AFP ever write to Minister Dutton—

CHAIR: Ever in your whole life!

Senator WATT: about this evaluation?

Mr Colvin: I believe we have not written to Minister Dutton about this evaluation.

CHAIR: Do you want to take that on notice?

Mr Colvin: No. I’m quite confident. If I go back and check the records, I will correct it—

Senator WATT: Did the AFP write to any minister about this evaluation?

Mr Colvin: I don’t believe so, no.

Senator WATT: Does the AFP have any concerns that this MP remains at risk of being compromised by foreign interests?

Mr Colvin: Senator, we conducted an evaluation of the matter from a criminal perspective and we found no reason to believe that any crimes had been committed. I’ll leave my answer at that.

Senator WATT: Has the AFP at any point advised government, whether it be ministers or secretaries of departments, that it has concerns that the MP may remain at risk of being compromised by foreign interests?

CHAIR: I’m not sure that advice to government is something that the officers would be required to answer.

Senator WATT: I’m only trying to—

CHAIR: I thought the minister might take the point of order.

Senator Reynolds: Chair, I was just about to take a point of order on this; thank you. Can I just say that I find Senator Watt’s imputation in his questions on the professionalism of the commissioner—

Senator WATT: I haven’t done anything of the sort.

Senator Reynolds: Senator Watt, let me finish.

Senator WATT: I haven’t done anything of the sort.
Senator Reynolds: Senator Watt, you have. You've asked the same questions but clearly the commissioner has said there is no evidence of wrongdoing, yet you are still questioning it and the way that you are questioning it implies very clearly that there was something wrong with what the commissioner has done.

Senator Watt: No, I'm asking whether the media reports are accurate.

Senator Reynolds: As a matter of course, the commissioner briefs, and it's up to him to determine whether it's appropriate or not to brief senior ministers, including the Prime Minister and Deputy Prime Minister, on a matter where he has clearly said that there is no evidence of wrongdoing. It is crystal clear, Senator Watt, what you are doing by slipping in the member's name then—you are clearly, again, trying to smear one of your parliamentary colleagues from Queensland quite inappropriately, and using the AFP in this way and these questions is, I think, completely out of order. It does you no credit and does the Labor Party no credit.

Senator Watt: Commissioner, you're not willing to say whether you have concerns about this MP?

Chair: It is now six o'clock. As I've indicated throughout the day, six o'clock is a very hard marker, so, disappointingly, we finish the estimates hearings on the basis of comments that would not be prepared to be said outside this room—

Senator Watt: Well, Labor were very keen to ask questions of ASIO and would have done so after the dinner break.

Chair: and without parliamentary privilege.

Senator Reynolds: Senator Watt, it is very clear what you are doing, and it is grubby to the extreme.

Senator Watt: We are very happy—

Chair: I would suggest to the senator that, if he has further comments to make, he should do it outside this cowards castle and see what might happen to him then. It is disappointing that the Senate estimates with the Home Affairs portfolio finishes on this note. Perhaps we will be back again next Monday or Tuesday, depending on what happens, but, if not, can I thank you, Commissioner Colvin, and your officers for your appearance today and, as always, for what you do. Can I also thank ASIO for being here most of the day, sitting around and waiting and waiting. I apologise to them on behalf of the committee and thank them for their forbearance.

Mr Colvin: Thank you, Chair; thank you, committee.

Proceedings suspended from 18:01 to 19:03
ATTORNEY-GENERAL’S PORTFOLIO

In attendance

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

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

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

Integrity and Security Division
Mr Andrew Walter, First Assistant Secretary, Integrity and Security Division
Ms Lucinda Atkinson, Assistant Secretary, Institutional Integrity Branch
Ms Julia Galluccio, Acting Assistant Secretary, Integrity Law Branch
Ms Elizabeth Brayshaw, Assistant Secretary, Security and Criminal Justice Branch

International Division
Ms Susan Robertson, First Assistant Secretary
Ms Karen Moore, Assistant Secretary
Mr Stephen Bouwhuis, Assistant Secretary
Mr Jesse Clarke, Assistant Secretary
Ms Anne Sheehan, Assistant Secretary
Ms Roxane Nolan, Acting Assistant Secretary

Enabling Services Group
Ms Helen Daniels, Chief Operating Officer
Ms Ayesha Nawaz, Acting Assistant Secretary of Human Resources

Corporate Services
Mr Trevor Kennedy, Assistant Secretary of Financial Services
Mr Stephen Lutze, Chief Financial Officer

Information Division
Mr Stephen Andrew, Chief Information Officer

Strategy and Governance
Ms Catherine Fitch, Assistant Secretary
Emma Appleton, Special Advisor

Royal Commission into Aged Care Quality and Safety
Dr James Popple, Official Secretary to the Royal Commission into Aged Care Quality and Safety

Australian Government Solicitor
Mr Michael Kingston, the Australian Government Solicitor

PORTFOLIO AGENCIES

Administrative Appeals Tribunal
Ms Sian Leatham, Registrar
Mr Chris Matthies, Executive Director, Strategy and Policy
Ms Sobet Haddad, Senior Reviewer, Immigration Assessment Authority
Ms Jacqueline Fredman, Executive Director, Corporate Services

Australian Commission for Law Enforcement Integrity
Mr Michael Griffin AM, Integrity Commissioner
Mr Craig Furry, Executive Director Secretariat
Mr Dallas Rogers, Acting Executive Director Operations
Mrs Eve Coutts, Director Corporate Services (CFO)

**Australian Financial Security Authority**
- Mr Hamish McCormick, Chief Executive and Inspector General in Bankruptcy
- Mrs 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 Human Rights Commission**
- The Honourable Justice Sarah Derrington, President
- Mr Matthew Corrigan, General Counsel

**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**
- Mr Michael Manthorpe PSM, Commonwealth Ombudsman
- Ms Jaala Hinchcliffe, Deputy Ombudsman
- Mr Rodney Lee Walsh, Chief Operating Officer
- Mr Paul Pfitzner, Senior Assistant Ombudsman
- Mr Dermot Walsh, Senior Assistant Ombudsman
- Ms Autumn O’Keeffe, Senior Assistant Ombudsman
- Ms Louise Macleod, Senior Assistant Ombudsman

**Independent National Security Legislation Monitor**
- Dr James Renwick CSC SC, Independent National Security Legislation Monitor
- Mr Mark Mooney Principal Adviser

**Inspector-General of Intelligence and Security**
- Ms Margaret Stone AO, Inspector-General of Intelligence and Security
- Mr Jake Blight, Deputy 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 PSM, Chief Executive and Principal Registrar
- Mr Adrian Brocklehurst, Manager Corporate Services
- Ms Carolyn Rogers, Senior Registrar

**Family Court of Australia**
- Ms Virginia Wilson, Deputy Principal Registrar
- Mr John Mathieson, Deputy Principal Registrar
- Ms Kathryn Hunter, Chief Financial Officer

**Federal Court of Australia**
- Ms Sia Lagos, National Operations Registrar
- Mr John Mathieson, Deputy Principal Registrar
- Ms Christine Fewings, National Registrar, National Native Title Tribunal

**Federal Circuit Court of Australia**
- Mr Steve Agnew, Executive Director Performance, Planning and Strategy

**Office of the Australian Information Commissioner**
- Ms Angelene Falk, Australian Information Commissioner, 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 Publications

Commonwealth Director of Public Prosecutions

[19:03]

CHAIR: We'll resume the Senate Legal and Constitutional Affairs Legislation Committee today. We are now dealing with the Attorney-General's Department. I welcome Senator Fawcett as representing the Attorney and Mr Moraitis and Ms McNaughton and teams. The Senate has referred to the committee particulars of the proposed expenditure for 2019-20 for the Attorney-General's portfolio and certain other documents. I think most of you know that we have set Friday, 24 May as the date by which answers to questions on notice are to be returned, and written questions on notice should be provided to the secretariat no later than 5 pm on 12 April. We're required to take all evidence in public. I think everyone knows that. Officers are not to be asked to give opinions on matters of policy and they will have the opportunity to refer questions to superior officers or the minister. Officers can be asked about how and when policies were adopted, even if they can't talk about their opinion of the policy.

If claims for public interest immunity are made, it's not sufficient just to make the claim; you've got to actually establish that and it's then for the committee to decide. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which will be incorporated in the Hansard:

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

(b) an officer of the department or agency to whom 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)

Does anyone want to make an opening statement?

Mr Moraitis: No, Senator.

Ms McNaughton: No, Senator.

CHAIR: Minister?

Senator Fawcett: Not me, thank you, Chair.

CHAIR: Okay. Over to Senator Pratt.

Senator PRATT: Ms McNaughton, I'm going to begin by asking if you've received any briefs for prosecution stemming from the financial services royal commission.

Ms McNaughton: Still not.

Senator PRATT: Still not!

Ms McNaughton: There has been pre-brief advice provided, yes.

Senator PRATT: So pre-brief advice. Are you able to tell us anything further about that? I do recall that the last time we asked these questions we had to skip through them fairly quickly. Have you got anything further that you can add since we last discussed these issues?

Ms McNaughton: I can't, Senator. It's not appropriate to comment further as these matters are still under investigation.

Senator PRATT: So they're still under investigation and that's the primary reason why you haven't been given a brief.

Ms McNaughton: It's a matter of interest agency. I can't comment.

Senator PRATT: Do you have any estimate on the sort of time line the cases might be pursued over?

Ms McNaughton: We have been listening to what ASIC have been saying. We understand they expect to refer up to 26 additional matters to my office up until the end of the 2020-21 financial year.

Senator PRATT: But you don't really know the scale of those matters yet, because you haven't received a brief. Is that correct?

Ms McNaughton: That's correct.

Senator PRATT: What decision-making are you putting in place in relation to the resourcing that might be required for those cases?

Ms McNaughton: Yes, thank you for your question, Senator. We are actively looking at our staffing needs in the relevant area of our offices and we are recruiting with that type of work in mind.

Senator PRATT: Have you recruited already, or are you currently recruiting?

Ms McNaughton: We do various campaigns at various times. We are planning on doing a number this year, and I think we're about to embark on one any time soon. We're also going to be discussing exactly what that might look like going forward in our next executive meeting as well.

Senator PRATT: By the time those briefs arise, are you going to have the right expertise? What work will they do if it takes a long time to get those briefs? How do you manage that?

Ms McNaughton: We have our ongoing work, which we always have. We monitor the sort of work that comes into our office, and we can move people around between the various areas of our office. So there's always plenty for all of our staff to do.

Senator PRATT: Yes, I'm sure there is. You had an estimation that you will have about 26 additional matters—

Ms McNaughton: Yes.
Senator PRATT: stretching through to 2021. What extra resources have you been allocated and how do you estimate how significant that workload is compared to your existing workload?

Ms McNaughton: We've been fortunate enough to get some extra funding, $41.6 million, over eight years in relation to this work. We've estimated the type of work that we expect on the basis of the information that ASIC has provided, and from what ASIC has told us we've compared that to what we regard as similar matters that we've done in the past, so we've been able to estimate the approximate cost as we anticipate it. And we are recruiting, as I've indicated, extra staff, and a proportion of that extra staff will be recruited with white-collar experience. So we believe we are planning well for the work we expect.

Senator PRATT: Regard the extra funding over the eight years that you've been given, over the forward estimates—

Ms McNaughton: That's correct.

Senator PRATT: on what advice has that particular figure been based on?

Ms McNaughton: As I've indicated, it's based on the information that we've had from ASIC as to what they anticipate the briefs will be. We have used that information, we have looked at matters which we believe are similar that we've done in the past and we've worked around that basis.

Senator PRATT: I got the explanation of how you were planning your resources. I just wanted to see if that actually matched the increase. So the increase that you've been given over those eight years is essentially based on the advice that you, therefore, gave government about how much you thought it might cost, based on that work that you've done.

Ms McNaughton: It was based on two-way discussions amongst experts who gather the information they can gather that is available, and it was made on that to-and-fro between my financial people and others in the relevant sections of other parts of the government.

Senator PRATT: Do you believe the resources that you've been allocated will be adequate to deal with the number of cases that are likely to be referred to you?

Ms McNaughton: At this stage we do, and, if it appears that there is much more work than we anticipate, no doubt we would make that clear to those who provide money to us and that would, hopefully, be dealt with. But at the moment, yes, we are hopeful that that is the right amount of money.

Senator PRATT: As to when you start this work—clearly you're recruiting and preparing—are you getting any advice about when you might receive briefs for prosecution?

Ms McNaughton: There are various indications, I think, to my staff who specialise in that area as to when matters might be expected, but there's no science behind that.

Senator PRATT: Thank you.

Senator PATRICK: I want to ask some questions about the matter involving Richard Boyle. I appreciate it's before the courts and I won't ask any question that goes to a question that is before the court; rather, I'm interested in the preliminaries to it. Are you able to give some advice as to from whom you received the brief?

Ms McNaughton: From the ATO.

Senator PATRICK: Can you give me some idea of the date that you received the brief and the date, having worked through your processes, you then decided to prosecute or instituted proceedings?

Ms McNaughton: I haven't come briefed with that particular knowledge. I could take that on notice.

Senator PATRICK: That would be appreciated. Going to a more general circumstance so I can delve into some issues around the way in which you deal with prosecution guidelines—decisions to prosecute—you'd be aware that whistleblowers are protected by the PID Act.

Ms McNaughton: In certain circumstances.

Senator PATRICK: You would appreciate, I guess, that someone may well get involved in illegal activities in the lead-up to submitting a PID. Would you accept that proposition?

Ms McNaughton: That's a hypothetical.

Senator PATRICK: To give you an example of circumstances: in order to prepare a PID, it would be generally understood that you're about to make a complaint about the way in which your employer is conducting its duties in general. Perhaps the workplace might not be a suitable place to properly prepare that PID, the disclosure. Would you accept that as a principle?
Ms McNaughton: The tenor of your questions, with respect, seems to be going close to something which might be before the courts, and it would not be appropriate for me to—

Senator PATRICK: It's completely generic. This is a matter of very important public policy, and I will tell you why. There is a very chilling effect on whistleblowers in circumstances where they have made a PID claim and subsequently ended up in a courtroom being prosecuted by the agency that they have alleged has not conducted business ethically. That has a chilling effect on future whistleblowers. Where I'm trying to get to is: in your consideration of any future prosecution—perhaps one that is not before the court—how do you balance that public interest in making sure we give absolute confidence to people who have decided to blow the whistle that they won't be prosecuted?

Ms McNaughton: That is a very hypothetical question but can I indicate this: when a determination is being made in accordance with the prosecution policy of the Commonwealth, if it involves a public interest disclosure that would be taken into account. Secrecy provisions which might apply to a person would be taken into account. The nature of the offending would be taken into account. All of those matters would be given proper consideration.

Senator PATRICK: I put it to you that it's really hard to make a public interest disclosure or to prepare one at work. I'll give an example of a case that is not before the courts. There is a case that's been in the newspapers—again, with the tax office—where a whistleblower was actually walked out of the office because he was preparing a PID in the office. I'm not sure whether there was royal assent but there were protections under the old Public Service Act. He was effectively marched out of the office because he wasn't performing the task that he was supposed to be performing; rather, he was preparing a PID. So you can see that perhaps it's not appropriate to sit in your workplace spending time that you are supposed to be spending on other tasks on preparing a PID. Would you accept that?

Ms McNaughton: The sorts of matters that we deal with as our bread and butter require a close analysis of the particular facts in accordance with particular law. I can't comment in a very general sense. It would not be useful, with respect, for me to comment on a very general set of facts without knowing particular details. I really can't comment.

Senator PATRICK: What protections or what regard do you give to the strong policy purpose and the legislated purpose of protections for whistleblowers in circumstances where you are faced with a conflict where someone may have broken the law but the dominant purpose of that activity was to prepare a PID?

Ms McNaughton: Again, I have to say that we would be looking at the particular facts of the particular case. I can't give any further comment on any more general scenario.

Senator PATRICK: The PID Act is silent, actually, on the preparation phases. There's no question you'd get a protection after you've lodged a PID. But would you accept that, just as legal professional privilege covers activities all the way up to the court proceedings or parliamentary privilege covers any activity that I am engaged in my preparations for these proceedings, the act itself would give a protection in the circumstances of the preparation of a PID? The protection doesn't start the moment you lodge the disclosure. There would be a protection beforehand?

Ms McNaughton: Again, I couldn't comment on any general fact situation. But, when we apply the prosecution policy of the Commonwealth—and let's say, prima facie case, reasonable prospect—we also apply the public interest test. And one of those issues that we would be looking at would be, for example, the gravity of the alleged illegality as it compares to any other PID issue. There was always, also, the very important point that my office, once it starts a prosecution, doesn't then close its eyes and go willy-nilly to the end. We are always reviewing any of our current prosecutions. We do receive representations, for example, from people who are being prosecuted by us. If it's open to anyone to put representations to us, we would be considering those if they were put to us. They can be put to us at any stage of the prosecution, once it has formally commenced.

Senator PATRICK: And I appreciate possibly that would be put to you by counsel representing that person. But the real problem that I see here is that, most of the time, a whistleblower goes out on a limb and ends up without a job and then has to fight their way back to restore themselves to a position that they were in before they made the disclosure against a government agency, and it could be any government agency, that has effectively got infinite resources—certainly, in comparison to the whistleblower. So, whilst I accept what you're saying and I have no argument that you would consider that throughout the prosecution, I put it to you that there is an obligation—if not from a legal perspective, certainly from a policy perspective or a public interest perspective—to make sure that whistleblowers don't end up facing a personally costly and financially costly prosecution in those sorts of circumstances.
Ms McNaughton: It's in those sorts of circumstances which is at issue, because, as I said, it really depends on the particular circumstances of any particular case.

Senator PATRICK: I am out of time, but thank you very much.

Chair: Senator Pratt, did you have any other questions?

Senator PRATT: No, I don't have any further questions.

Chair: Senator Patrick, did you have any further questions for the CDPP?

Senator PATRICK: I might just ask one quick question in relation to Qantas versus Virgin flights. Can you give me an update on the situation in respect of your flights? We've had this discussion in the past.

Ms McNaughton: Yes. Can I take that on notice?

Senator PATRICK: Have you been flying Virgin since I last asked these questions?

Ms McNaughton: Yes. In fact, I was in court in Melbourne on Monday, and I flew down Qantas and I flew back Virgin.

Senator PATRICK: Fantastic. Thank you very much.

Chair: That's very fair, isn't it? Senator Patrick, is that all you have?

Senator PATRICK: That's it.

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CHAIR: After the 27,000 in the migration stream you mentioned protection visas. They're included in the 27,000, are they?

Mr Matthies: No, that's separate. In terms of applications relating to visas in the Migration and Refugee Division, everything but protection visas totalled 26,500. Then there was almost 11,500 in protection visas.

CHAIR: That comes to 38,000.

Mr Matthies: That's right.

Ms Leathem: That was the total for the Migration and Refugee Division.

Mr Matthies: In the Social Services and Child Support Division there were almost 13½ thousand applications.

CHAIR: Okay. I beg your pardon.

Mr Matthies: The other divisions then make up the balance.

CHAIR: Of the protection visas, visas that have been issued since 2007, I guess—are you able to categorise them a bit more? I'm just trying to work out how there can be so many. These are appeals against decisions that officers of the migration department or the minister have made? No, you don't deal with the ministerial ones, do you?

Ms Leathem: They're overwhelmingly by delegates of the minister.

Mr Matthies: So these are decisions to refuse a protection visa and also decisions to cancel a protection visa that fall within the AAT's jurisdiction.

CHAIR: Our total immigration program is limited, so these must be legacy cases, are they? Do they sort of run back several years?

Ms Leathem: It's really been in the last three years of incoming applications that the marked growth has occurred, particularly in relation to business visas. There was a very large increase over the last probably 18 months in business visas. And there has also been significant growth in protection visas; they're up 42 per cent in the 2017-18 year compared to the previous financial year. You might recall, we indicated a very large proportion of those are applicants from Malaysia.

CHAIR: They were of Malaysian origin?

Ms Leathem: That's correct.

CHAIR: So they were Malaysian citizens before?

Ms Leathem: They're people who have come to Australia on a temporary visa of some sort and then sought a protection visa.

CHAIR: Are business visas mainly appeals against refusals to grant or appeals against cancellations?

Mr Matthies: They are largely about decisions to refuse visas.

CHAIR: You're not the right department to tell me what a business visa is—I can't pursue that.

Senator PATRICK: There was a review into the AAT. The government, I think, appointed High Court Justice Ian Callanan to head up the review. Are you aware of that review?

Ms Leathem: We are certainly aware of the statutory review, yes.

Senator PATRICK: Can you confirm that the review has been completed?

Ms Leathem: I may have to defer to the department. The tribunal has not been provided with a copy.

Senator PATRICK: Minister or the department, I am wondering if you could advise me as to whether that review has been completed.

Senator Fawcett: The review report has handed to the Attorney-General in December last year and is currently being considered.

Senator PATRICK: Does the government intend to release that review publicly?

Senator Fawcett: It will be tabled in both houses of parliament in due course.

Senator PATRICK: Perhaps in the next parliament—-one would hazard a guess? That's a yes from the minister?

Senator Fawcett: A nod does not appear on Hansard and your guess is as good as mine, Senator.

Senator PATRICK: Yes, I understand that. I wouldn't seek to accuse you of misleading the Senate or anything after that. In relation to the gender of appointees, you published on your website that the overall
Ms Leathem: The most recent figures I have is that we have 359 members in total as of 1 April 2019. Twenty of those are judicial members and, of the total, 154 members are women.

Senator PATRICK: You've got 15 Federal Court judges appointed. Would that be about right?

Ms Leathem: I can see 14, I think, Federal Court judges plus the president.

Senator PATRICK: So 15, and then we have got five Family Court judges?

Ms Leathem: That's correct.

Senator PATRICK: And I can see that 66 per cent of the Federal Court judges are males and five, or 33 per cent, are females. Likewise, with the Family Court judges, we've got three and two, so 60 to 40. If I look across all of your deputy presidents, including the non-judicial members, I've calculated that 75 per cent of deputy presidents are male.

Ms Leathem: I believe there are 16 of them, and two of them are women. That sounds correct.

Senator PATRICK: Okay. I also looked at the senior members. By my calculations, plus or minus a couple of per cent, 65 per cent of senior members are men.

Ms Leathem: I don't have the percentage, but it's 55 in total and 18 of those are women. That sounds right.

Senator PATRICK: That sounds about right, yes. So you can see that whilst you might have overall gender equity, from a senior member's perspective and above it doesn't seem that the same equity exists.

Ms Leathem: The AAT is not responsible for the appointments; they're are a matter for government.

Senator PATRICK: That's good; I'll refer to the minister then. If you accept the proposition that I've just put, and that is that most of the senior members of the AAT, the senior ranks— that's the senior members and the deputy presidents, and, of course, the president—are mostly male, that doesn't seem to me to be reflective of what I would expect in the legal profession in terms of high-quality female legal professionals. It just seems that there's an imbalance there that's not right.

Senator Fawcett: The only comment I'd make is that, obviously, the current make-up of the AAT is a lagging indicator of past policies. I don't know if you're aware of the fact that Prime Minister Morrison wrote to the President of the AAT, seeking his approval for a revised protocol. That started late last month, so it's very new; it's just in place.

Senator PATRICK: Okay.

Senator Fawcett: Under that protocol the whole selection process in terms of candidates for the AAT is now a merit based process, which has not been the case in the past. So you're correct: the current make up is what it is, but we have put in place a merit based process as recently as 25 March. We trust that the future make-up will reflect the merits of those who are involved and available, and, in fact, who put themselves forward. It will be advertised and people put themselves forward for selection to the AAT.

Senator PATRICK: I seem to recall a conversation from last estimates, where in fact it's not necessarily advertised. But you're saying that's now changed?

Senator Fawcett: That's the new protocol; as of 25 March that is the new protocol.

Senator PATRICK: I'm at a disadvantage; I haven't kept up with things. I presume that's public?

Mr Moraitis: Not yet.

Senator PATRICK: I'd have to check with the officials on that.

Mr Moraitis: Not yet. Is it possible to table that for the committee, please? On notice, of course.

Mr Anderson: We'll take that on notice.

Senator PATRICK: Yes. Can you see any problem with publishing that? It's not going to give someone an inside advantage if you do?

Senator Fawcett: I'll take it on notice for the Attorney-General. It's his document.

Senator PATRICK: Sure. I understand that there's a policy of the Commonwealth—and I might direct this at the secretary—that 20 per cent of barristers briefed by Commonwealth entities should be female?

Mr Moraitis: Thanks for asking that question, Senator, because I was going to intervene on that issue and the point you've touched on about representation in the tribunal. If you go back to the throughput of senior barristers going to the judiciary, or being drawn into senior positions or being eligible for positions such as those on the
AAT or the various courts, you're right. About a year ago we proposed to the Attorney-General that he adopt the Law Council of Australia's briefing-of-counsel target. I think that was about 20 per cent. But in fact the Attorney-General actually increased the Commonwealth's target.

If I may say so, I brought that to the Secretaries Board about a year ago and it was unanimously endorsed as a policy of all the secretaries that we aspire to that goal.

**Senator PATRICK:** Okay. Do you think that number will change over time and perhaps come up?

**Mr Moraitis:** Yes, I'd like it to get higher. We'll be pushing it high as best we can.

**Senator PATRICK:** Obviously, there are many things outside your control in this—

**Mr Moraitis:** Yes!

**Senator PATRICK:** Just in general across the legal profession, is the balance about fifty-fifty for barristers?

**Mr Moraitis:** The good sign is—and we see this in our department, in law schools and graduates of law schools—the percentages are much higher. Fifty per cent are female graduates. So the throughput now is heading in the right direction. I think it's incumbent on all professions, our department and others to create an environment where women can progress to senior positions, whether in a law firm, at the bar or in other areas. So that's part of the legal ecology, as it were, that leads to this outcome that we want to achieve. And you're right to point to the fact that we are aspiring to a target, which the Law Council has suggested to everybody.

**Senator PATRICK:** I just wonder whether that would apply to appointments as well. In some sense, you've said, it's merit based.

**Mr Moraitis:** It is. Merit is a very strong element of that, but you're right, we need to be seeking to ensure that the pool of people who have merit is equitable and that we do have an outcome that reflects the society, especially in the legal sphere.

**Senator PATRICK:** I would presume that, in terms of barristers instructed by the Commonwealth, even though you might in some sense be putting a quota that in actual fact they would pass a merit test—they're concurrent.

**Mr Moraitis:** Well, choice of barrister of course depends on a variety of factors—their seniority and the relevant expertise needed for areas of the law that we seek. We can only brief the female barristers if there are female barristers at the bar.

**Senator PATRICK:** Sure.

**Mr Moraitis:** So that's the reality we're dealing with. But we are as a Commonwealth seeking to optimise the opportunities and the progression of females in the bar.

**Senator PATRICK:** Who appoints SCs?

**Mr Moraitis:** The various state jurisdictions. I think the Attorney-General can also appoint government QCs, which is a very specialist area.

**Senator PATRICK:** That's like AGS-type SCs?

**Mr Moraitis:** Exactly. There are some AGS lawyers who are QCs—Tom Howe, Bill Campbell, Guy Aitken, people like that.

**Senator PATRICK:** Appointed by the Attorney?

**Mr Moraitis:** Correct. It's an ExCo decision—

**Senator PATRICK:** And that would be fully recognised were they to leave the AGS and go into private practice?

**Mr Moraitis:** Of course, yes.

**Senator PATRICK:** Because I think the Attorney has a power to allow lawyers to practise. I think there's some override that the Attorney has in respect of people appearing before courts.

**Mr Moraitis:** Practising certificates—

**Senator PATRICK:** Yes.

**Mr Moraitis:** Is that right?

**Mr Anderson:** In the Judiciary Act there's a provision that allows lawyers who have their name on the appropriate roll of practitioners to appear in a court if they work in the Attorney-General's Department. There is that provision in the Judiciary Act, but if the Attorney of the day creates a Commonwealth QC then that person maintains those postnominals and that status, whether they're working for the Commonwealth or, in fact, if they
go to the private bar. I can also add that when Hilary Penfold was the First Parliamentary Counsel, the head of the Office of Parliamentary Counsel, she was actually appointed as a Commonwealth QC. That's an example of a female appointee.

**Senator PATRICK:** I know in the state jurisdictions there's been a preference between QC and SC. What's the Commonwealth's position?

**Mr Anderson:** It changes. It's a matter for the Attorney of the day as to whether they wish to appoint Queen's Counsel or Senior Counsel.

**Senator PATRICK:** I now understand that the Attorney can appoint an SC or a QC working within government, so at AGS.

**Mr Moraitis:** Yes.

**Senator PATRICK:** Can the Attorney appoint someone outside of the AGS? Does he or she have a power to do that?

**Mr Moraitis:** In government?

**Senator PATRICK:** No, outside of government.

**Mr Moraitis:** In the private bar.

**Senator PATRICK:** Just as the New South Wales Attorney General might line up a list of people and say, 'You're now an SC.'

**Mr Anderson:** Senator, I'd have to check to be completely sure, but my recollection is that it's limited to people who are involved in the provision of Commonwealth legal services.

**Senator PATRICK:** If you wouldn't mind taking that on notice.

**Mr Anderson:** I gave the example of Hilary Penfold, who was an expert drafter—so involved in one form of legal service provision to the Commonwealth—within the Commonwealth, who was made a Commonwealth QC.

**Senator PATRICK:** That's the Office of Parliamentary Counsel.

**Mr Moraitis:** That's right, because they provide one element of legal services.

**Mr Moraitis:** There are some appointees as SC or QC, in the AGS or elsewhere, who do not necessarily appear in court on a regular basis but are recognised leaders in providing advice—for example, constitutional law or international law.

**Mr Anderson:** If I could add one other thing, following Mr Moraitis's earlier comments, in 2017-18, 45 per cent by value of all the fees that the Attorney-General's Department paid to counsel went to female counsel, so it's increasing.

**Senator PATRICK:** Does that just mean that the females are more expensive?

**Mr Moraitis:** No.

**Mr Anderson:** It's 41 per cent of the briefs by number but 45 per cent of the briefs by value, so in fact they're getting—

**Senator PATRICK:** Perfect. Thank you very much.

**CHAIR:** Before I hand over to Senator Pratt, can I say, in relation to your comment, Mr Moraitis, about university law schools, that I had the pleasure of attending the James Cook University business and law graduations a couple of weeks ago, and I would think it would be a fairly accurate estimate that 90 per cent of the graduates were women.

**Mr Moraitis:** Yes. I was at the ANU a few weeks ago presenting prizes, and it was about 75 per cent women.

**CHAIR:** It's happening, and I almost feel sorry for Mr Mathieson.

**Senator PRATT:** I don't think there's any real need to feel sorry for him.

**CHAIR:** It's great to see the AAT in such good hands.

**Senator PRATT:** Ms Leathem, are you aware of any rules concerning tribunal members also being office holders of political parties?

**Ms Leathem:** I'm not aware of rules of that nature. We do have a member code of conduct, but it doesn't have a rule or any provision that relates to that.

**Senator PRATT:** Is there a requirement for declaration of office holders in relation to whether they hold political party membership?
Ms Leathem: Not explicitly. There is an ongoing obligation on tribunal members to avoid or declare conflicts of interest, so the critical issue is whether they can discharge their functions as a tribunal member objectively. And it really is an ongoing obligation, if there is anything that would impact on their ability to discharge their function objectively, to make that known and, indeed, recuse themselves from a particular matter if that conflict exists.

Senator PRATT: But, in regard to holding particular beliefs, political parties have particular manifestos that might actually contradict the law that the AAT is seeking to uphold. Would that not be correct?

Ms Leathem: The critical thing is whether or not the member is capable of exercising an independent decision-making function. That's really what the tribunal is looking for in relation to whether or not the member has a conflict.

Senator PRATT: So tribunal members aren't required to declare if they're also office holders of political parties?

Ms Leathem: I don't believe so.

Senator PRATT: You don't believe they are?

Ms Leathem: I'm not aware of a requirement to do that.

Senator PRATT: But they are required to inform you if there's any particular conflict?

Ms Leathem: Yes. For example, if somebody had previously worked for a particular law firm and they had knowledge of a case or a particular person, then of course it would be appropriate for them to declare that and recuse themselves. Similarly, if they had a stated public position on a particular subject matter that was something the tribunal needed to deal with, that would again be an appropriate matter for them to recuse themselves in relation to.

Senator PRATT: What about where political parties have a particular view on something?

Ms Leathem: We would be evaluating a particular member's circumstances, conduct and comments.

Senator PRATT: What about if tribunal members are office holders of a political party?

Ms Leathem: If somebody is a full-time member and they have some other employment or commitment that might come into conflict with their responsibilities as a full-time member, then they are generally required to seek permission from the president, if there is, if you like, secondary employment or some other responsibility that they have to discharge. But part-time members, of course, will often hold multiple positions, whether or not that's in paid employment, voluntary roles or otherwise, so there isn't the same requirement in relation to part-time members.

Senator PRATT: Clearly, though, offices of political parties can be quite demanding and busy positions, but they're generally speaking unpaid. When you are managing part-time members or full-time members, how do you audit their other commitments in relation to whether they're likely to compromise themselves in that capacity?

Ms Leathem: When their induction is held, when we have any new members appointed, part of that process is explaining their obligations and the member code of conduct. It is made clear to members that if there are any other positions that they hold, or if they have any secondary employment and they're a full-time member, they do need to declare that and seek permission from the president. It really is a matter of judgement, and it remains an ongoing obligation for members to make sure that they disclose anything that might do that.

Senator PRATT: Has anyone disclosed, or actively sought to disclose, that they are an office holder in a political party?

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

Senator PRATT: When the last round of appointments were made in February, did the Attorney-General advised whether any of the appointees were also office holders of political parties?

Ms Leathem: Not to my knowledge. I'm not aware of that.

Senator PRATT: Okay.

Ms Leathem: We get a copy of a CV, but that may or may not presumably contain details of other positions that people hold. That's generally the process whereby we would see what positions, what employment, what qualifications the member has.

Senator PRATT: Senator Fawcett, is it appropriate for tribunal members to also be officers of political parties?
Senator Fawcett: If they are fit to do the job and they can do it in a fair manner. The last time I checked, Senator Pratt, Australia was a plural democracy, which means that people are free to be members of any political party. If they can do the job in a balanced, unbiased way, then they are fit to hold the office. Not everyone agrees with your political party, but that doesn't disqualify them from office, and members of your political party could equally fulfil the office, as many do.

Senator PRATT: So you wouldn't do anything about it if you were Attorney-General and found that someone was—

CHAIR: That's very hypothetical, it's a matter of opinion—all the reasons it's not an appropriate question.

Senator PRATT: I know. But, Senator Fawcett, you've asserted the opinion that people should have the right to be able to do that.

Senator Fawcett: We are a plural democracy.

Senator PRATT: So, if a minister were to act to force someone to resign because of such a membership, you would think that was going beyond their responsibilities?

Senator Fawcett: Again, without—

CHAIR: If you say 'you would think' then it's really a matter of Senator Fawcett's opinion, which I'm sure would be a wonderful opinion, but it doesn't really help the estimates process.

Senator PATRICK: Senator Pratt, may I ask a supplementary?

Senator PRATT: Yes, you may.

Senator PATRICK: Minister, there is a guide to judicial conduct which has been authorised by the Chief Justices of Australian and New Zealand courts. I'm just having a quick look at it. This is the guideline for judicial officers. It says:

Although active participation in or membership of a political party before appointment would not of itself justify an allegation of judicial bias or an appearance of bias, it is expected that, on appointment, a judge will sever all ties with political parties. That's the standard—

Senator PRATT: Required of judges.


Senator Fawcett: The AAT is not a court.

Senator PATRICK: I understand that.

Senator Fawcett: Whether you apply that principle is a matter for the Attorney.

Senator PATRICK: But certainly the AAT can—and there is judicial precedence in this regard—as a judge does, make determinations on a question of law.

Senator Fawcett: At the end of the day, it's a matter for the Attorney-General. As Ms Leathem said, people are briefed about recusing themselves if there is a conflict of interest for whatever reason. If people can exercise their role in an unbiased manner, in principle I don't think there should be any bar to that. But, again, that's a matter for the Attorney-General.

Senator PATRICK: Sorry, Senator Pratt. I thought that might be helpful.

Senator PRATT: No, that's fine. That was very relevant. On the appointments and the selection process that led up to the announcement by the Attorney-General in February this year of 86 appointments: what process was followed in relation to the selection and appointment for those 86 positions?

Mr Anderson: That's a matter for the department.

Senator PRATT: How many of those appointed were chosen through a selection panel?

Mr Anderson: The process that was followed for all 86 appointments was the process laid out in the protocol that was entered into from November 2015; that is, the protocol where the president writes to the Attorney and indicates a number of members who the president thinks would be necessary to be appointed or reappointed in order to discharge the work flow. The Attorney can then consider that and, if the Attorney chooses, add in additional names. You only get to an advertised selection process if there are additional places to be filled to deal with the workload.

Senator PRATT: So, in taking us through that, 86 positions were appointed or reappointed. How many people seeking reappointment who were deemed to be effective in their roles were not reappointed?
Mr Anderson: I don't believe we've got that information. I can say that, of those 86 positions, 52 were reappointments of existing members.

Senator PRATT: So, of the 34 new appointments, how many people seeking reappointment at that stage were not reappointed?

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

Mr Moraitis: The full 34 could be people who weren't being replaced or new positions, because there is no fixed figure for the AAT. Of those 34, X number could have been brand new appointments.

Senator PRATT: I understand that. But I have seen in the past, with people who have been on the Tribunal, that people have been pushed off, even though they've been performing well, in favour of bringing in new political appointments. That's what's been put to me. I'm trying to see, based on the evidence, how that works.

Mr Anderson: I just don't have that detail here. All I can say is that, of those 86 positions, 52 were reappointments. I can't say, for example, whether there were other appointments that lapsed and those members didn't actually seek reappointment. I don't have those details.

Senator PRATT: Can you please take on notice the number of people who were seeking reappointment, who were deemed as competent in their work, but weren't reappointed at that time? I think it may be none, because you needed in effect an expansion of 34 positions. I want to know how many people left but had not chosen to leave, in order to create 34 new positions, if that makes sense.

Mr Moraitis: It's not zero and it's not 34. You'll find it's in between.

CHAIR: Thanks, Senator Pratt. Just on that: if there were some who weren't competent enough to be reappointed, who make that assessment?

Mr Moraitis: My understanding is it would be the president who would make that assessment of what they felt was appropriate. That's the basis on which they write to the Attorney, I imagine. I'm not always privy to that but that's my starting point.

Mr Anderson: That's correct.

CHAIR: I would assume that as well. I'm just cautious about you taking that on notice, Mr Anderson, and giving those details, because the question put to you was of those who were competent. But who judges competency? Once you get into that, you start having to say, 'Well, sorry, A, B, C and D were deemed not to be competent,' and that's something that I'm sure no judge and no public servant would want made public.

Senator PRATT: But I'd be interested in how many people were seeking reappointment about whom the president had not expressed any view that they shouldn't be reappointed and who weren't reappointed.

Mr Anderson: We'll take that on notice.

Senator PRATT: They've got terms that expire.

CHAIR: As I say, I just—

Senator PRATT: It's a simple enough question. I can see Mr Moraitis and Mr Anderson understand it.

Mr Moraitis: We'll take it on notice. We're assuming also they'd completed their full term, whether it was three years or seven years.

Senator PRATT: Thank you.

CHAIR: There is another question, just going back to Ms Leathem. A member of the AAT who had an actual or perceived conflict of interest would, you would expect, recuse themselves from hearing that matter.

Ms Leathem: That's correct.
CHAIR: That follows what we expect of the judiciary.

Ms Leathem: It's a similar process. An application may be made by a party that the member recuse themselves, or they might identify a conflict themselves.

CHAIR: In the case of the judiciary, there's a much-celebrated case that was referred to in this committee on many occasions, which was brought at the behest of a union and involved a minister of the current government giving evidence. The judge in that case had been a former Labor candidate and a union advocate, and it was sought that he be recused, and apparently he refused to do so, no doubt for all the right reasons. But I just wonder: if there were an AAT member who had been a Labor candidate and who was asked to recuse himself or herself and didn't, is there any ability for anyone else to say, 'Well, sorry, you're not going to sit on that case'?

Ms Leathem: I believe there is a provision in the AAT Act where an application can be directed to the president for reconstitution of a matter. Mr Matthies might know.

Mr Matthies: And also an application could be made to the Federal Court for judicial review of that decision.

CHAIR: It would be unfortunate if the Federal Court contained a judge who himself might have found himself in that position, although I'm sure he wasn't conflicted at all when he so decided appropriately. But very often, as you know, in matters of law it's not just the actuality; it's the perception.

Senator PATRICK: But even in that circumstance the matter can be appealed to a full bench.

CHAIR: Yes, it could. Anyhow, hopefully the people who are appointed to the AAT are of such calibre that, if there is even any perception of conflict, they would stand themselves aside.

Ms Leathem: Certainly the code of conduct requires them to identify if they believe there is a conflict.

CHAIR: Yes. Senator Pratt, do you have other questions?

Senator PRATT: Yes, I do.

Ms Leathem: Then after you I'll come back to Senator Patrick, if he has any others.

Senator PATRICK: Of the 34 that were appointed, how many were chosen through a selection panel?

Mr Anderson: I believe I've already answered that: the 86, including the 34 new appointments, were all appointed pursuant to the protocol agreed between the president and the Attorney-General back in November 2015.

Senator PRATT: Okay. I know there's a list that kind of goes between the two. What I'm trying to work out is how many of those 34 were names put forward by the Attorney-General and how many were names that were initiated through the department.

Mr Anderson: The department doesn't initiate names. The first step is that the president writes to the Attorney, and then the Attorney can either accept those recommendations or add in additional names or different names.

Senator PRATT: How many names did the Attorney-General add?

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

Senator PRATT: Do you not know this? We go through these questions at every estimates.

CHAIR: Yes, we do.

Senator PRATT: How many names did the Attorney-General add?

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

Senator PRATT: Okay. How many of the names that the Attorney-General added are among those 34?

Mr Anderson: I will take that on notice. I don't have the details about composition of the 34 in terms of which were proposed by the president and which were the selection only of the Attorney.

Senator PRATT: Was it none? Was it some?

CHAIR: He said he'd take it on notice.

Mr Anderson: I'm taking that on notice. I don't have the details about the composition of the 34 in terms of which were proposed by the president and which were the selection only of the Attorney.

Senator PRATT: Was it none? Was it some?

CHAIR: He said he'd take it on notice.

Senator PRATT: Essentially everyone needs to provide a CV. How many were interviewed in any way?
Mr Anderson: There wasn't any formal selection process in the sense of an interview process for these appointments. That's not to say that the Attorney might not have spoken to them himself. I'd have to take that on notice as well. The department doesn't have visibility of the steps that the Attorney might be taking in the process.

Senator PRATT: What steps do you take when you appoint someone, in terms of the names that have come to you that didn't initiate through the Attorney-General?

CHAIR: Mr Anderson doesn't appoint anyone.

Mr Moriatis: As Mr Anderson implied, once the Attorney and the president have decided on what the appointments or reappointments will be, we process the paperwork to ensure that executive council decisions are taken. That includes arranging all the various attachments such as CVs from individuals, declarations of conflict—for example—any of the pertinent material of that nature, and then we supply it to—

Senator PRATT: Perhaps Ms Leatham can shed some light in terms of your work with the president. How does the president source new names to put forward to the Attorney-General?

Senator Fawcett: Senator Pratt, I will just make a comment. I think you may have been out of the room before when I was answering a question. There is a new protocol that is merits based that this government has brought in.

Senator PRATT: I'm interested in the 86 appointments on 21 February.

CHAIR: Senator Pratt, it's your time and we're going at 11 o'clock, so I don't really care how long you take, but can I just remind you that every estimates we go through this and we've been through this ad infinitum. I can almost repeat in my sleep what the answers will be, and we have heard them every—

Mr Moriatis: I will add to my point about the process. In this situation, referring now to the 80 something positions we're talking about in the last few months, as Mr Anderson said the president and the Attorney engaged in an exchange of recommendations and decisions. But because they were all decided between them there was no point for us to get involved to have a selection process—

Senator PRATT: Mr Anderson has been able to tell me that he can't give me the figures on how many of the names came from the Attorney-General. Ms Leatham, are you able to tell me how many names came from the president?

Ms Leatham: I am not subject to those private discussions between the president and the Attorney-General.

Senator PRATT: How does the president generate the names to put forward in terms of the advertising and the selection process that he undertakes?

Ms Leatham: There is no advertising or selection process that we undertake. The president will provide advice to the Attorney about what our needs are. That may or may not involve some recommendations about specific people suitable for reappointment or new appointment.

Senator PRATT: So they might as well all be political appointees then.

CHAIR: What's that meant to mean, senator?

Senator PRATT: I'm just trying to work out how the names the president puts forward versus the names that the Attorney-General puts forward are sourced.

CHAIR: We've been told at every estimates for the last five years that the president and the Attorney talk, chat together, put names to each other and eventually the Attorney—I think it's his constitutional responsibility to appoint, and the same with the judiciary isn't it?

Mr Moriatis: Yes, that's his decision. The difference between the AAT and the judiciary, we're talking single digits in terms judiciary, with the AAT we're talking dozens and dozens. We have batches of 60 to 80 every five or six months. It's almost an industrial scale size of appointments, reappointments and consideration. If there were a selection process that would also be engaged in but that would be part of a process that to date, under the previous protocol, has never been required because the president and the Attorney between them, and through the exchange of information and decision-making, have landed on the number that they are happy with, and we have actioned that in due course.

Senator PRATT: Senator Fawcett, you said that the new merits appointment process came in after the 86 appointments made in February. If a new process had come in at the end of the government's term, when you had no-one left to appoint, why would you do that? That's a bit of a joke, isn't it?

Senator Fawcett: We fully intend to be returning to government the other side of the election. We will look forward to, having seen the benefits of a reform that no side of politics previously has put in place—your side of politics has followed very similar processes in the past, whereas this government is putting in place a process that
is more transparent and merits based. I think the Australian public would look at that and say, 'That is what good governance is about.'

Senator PRATT: I think the Australian public might look at the fact that you decided that after you made 86 appointments and think differently about that.

Senator Fawcett: The only thing I'd say there, Senator Pratt, is that we had actually put forward that we had finalised the government's consideration of that before those appointments were made. We had to get feedback from the president that he approved that. So the government's been working in good faith towards this new process. We did need to fill the appointments. Once we had that approval, it's been put in place. It's a sign of good government.

Senator PRATT: Ha, ha! Can you tell me, please, in regard to the following recent appointees, about their qualifications and why they're appropriate. Mr William Frost is a former staffer of the Attorney-General.

Mr Anderson: The criteria for appointment are contained in section 7 of the AAT Act. It's either being a legal practitioner for at least five years or possessing special knowledge and skills relevant to the position in the opinion of the Governor-General. For each of those appointees, the Governor-General has been satisfied either that the person is a legal practitioner of at least five years standing or that they possess special knowledge and skills relevant to the position.

Senator PRATT: So is being a former staffer of the Attorney-General the nature of his special qualification, or was there other experience that might have been pointed to in relation to that?

Mr Anderson: I don't have his individual CV in front of me, but I can say that this Governor-General was satisfied that he either is a legal practitioner of at least five years standing or possesses special knowledge and skills relevant to the position that he's been appointed to. I'm not sure whether he's a legal practitioner or whether it's the other category.

Senator PRATT: Okay. What about Mr Bob Baldwin, a former Liberal MP?

Mr Anderson: Again, for these appointments to have been made the Governor-General has to have been satisfied that they meet the statutory criteria for appointment. They either are a legal practitioner of at least five years standing or possess special knowledges and skills relevant to the position. I should say that if it's the president they have to be a Federal Court judge, and if it's a deputy president they can also be a Federal Court judge. Those are additional statutory criteria.

Senator PRATT: What about Mr Tony Barry? Do you know whether he's a legal practitioner?

Mr Anderson: I don't have any of the CVs in front of me.

Senator PRATT: Okay, but he's a former staffer to Malcolm Turnbull.

Mr Anderson: I can only say that in every case, for them to be appointed, the Governor-General must have been satisfied that they met the statutory criteria for appointment.

Senator PRATT: Mr Stephen Parry is a former colleague of ours in the Senate.

CHAIR: Senator Pratt, you raise this every time, and I could give you 50 Labor politicians who have been appointed during the Gillard years, and many of them were reappointed by Senator Brandis, I have to say.

Senator PRATT: We have announced a policy well before this election in relation to new appointments to the AAT.

CHAIR: You also announced a policy that you wouldn't have a carbon tax at one stage.

Senator PRATT: I'm not sure if Senator Rex Patrick covered this. If so, please take it on notice. Has the number of tribunal members grown year on year since the coalition government was elected in 2013 in terms of the case load overall and the full-time hours?

Ms Leathem: Senator, I can tell you what the numbers are in terms of membership. At the date immediately before amalgamation, 30 June 2015, there were 348 members, of whom 230 were part-time. At the same time the next financial year, 30 June 2016, there were 331 members, 236 of them part-time. At 30 June 2017 we had 322 members, 226 of whom were part-time. At 30 June 2018 we had 296 members, of whom 191 were part-timers.

Senator PRATT: Thank you. Has the cost of tribunal members' salaries increased since the coalition government was elected, or is it largely in line with what you've described there.

Ms Leathem: Yes, it's directly related to the number of appointments that we have, so in fact, at various points since amalgamation, it's fluctuated.
Senator PRATT: If you're able to provide for us on notice the cost of those salaries between 2013 and today—

Ms Leathem: Sorry—2015? Amalgamation?

Senator PRATT: Yes.

Ms Leathem: That would be both the full-time salaries and the use of part-time members?

Senator PRATT: That's right. Do you have the cost of tribunal members' salaries in the current financial year?

Ms Leathem: Ms Fredman, I'm not true if you have that level of detail?

Ms Fredman: I'll have a look if you'll bear with me, Senator; I'm not sure if we have it to hand.

Ms Leathem: We certainly could provide it on notice.

Ms Fredman: We can take it on notice.

Senator Fawcett: Chair, can I also just ask Ms Leathem to provide the as part of that answer the information about the increasing case load that you referred to earlier that has driven the increase in the need for the numbers of members of the AAT?

Ms Fredman: No, Senator, unfortunately, we don't have those figures to hand but we can provide them on notice.

Senator PRATT: Do you have them for the last year?

Ms Fredman: Unfortunately not, but we can take on notice for the last two years.

Senator PRATT: Okay; take that on notice, that would be terrific. And can I please have tabled the new merit based appointments process?

Mr Moraitis: We've taken that on notice already.

Senator PRATT: Okay, but I just need to clarify that's not a question, that you're undertaking as a commitment that you will table it?

Mr Moraitis: We're undertaking to take it on notice to see if we can table it, yes.

Senator PRATT: Is there any reason why you wouldn't?

Mr Anderson: I think you might have been out of the room when Senator Patrick asked the same question. The minister indicated that it would be for the Attorney-General to consider, because that's a protocol that he has agreed with the president—whether there is any reason why it shouldn't be tabled.

Mr Moraitis: So we're deferring to them.

Senator PRATT: How do we know if it's merits based? You made an announcement to say that it was; how do we know that it is if we don't see it?

Mr Anderson: We've taken it on notice to provide it, subject to whether the attorney wishes to claim any privilege over it.

Mr Moraitis: If we tabled that we could show that it was merits based, but we'll take it on notice!

Senator PRATT: Well! Do you think it's merit based, Mr Moraitis?

Mr Moraitis: It's an element, yes—certainly. I do.

Senator PATRICK: In most committees I go to, if I ask to table a document it would be tabled or they would simply agree that it would be taken on notice—unless they had a reservation. Have you got some reservation?

Mr Moraitis: There is no reservation. We're just doing the polite thing and asking the principal parties, the President of the AAT and the Attorney-General, seeking their approval to do that. That's all. As a department, I don't think we have a problem with it.

Senator PATRICK: I was moved by the minister when he talked about transparency in the new process. There would be a certain irony—

Mr Moraitis: Yes, there is a lot of irony.

Senator PATRICK: in that you claim there's no transparency in showing us the process! Sorry, Senator Pratt.

Mr Moraitis: Yes.

Senator PRATT: I don't know if you've got any statistics for me in terms of the current tribunal members? I think it's 296 you've got currently—is that correct?
Ms Leathem: With the new appointments that have been made our current number is 359, with 236 being part-time.

Senator PRATT: Since the coalition was elected in 2013, how many people have been appointed or reappointed by the current government?

Ms Leathem: We would only be able to provide data from 1 July 2015.

Senator PRATT: Of course.

Ms Leathem: I guess you're asking about reappointments? It might be better for the department, I think; they manage those processes.

Senator PRATT: Okay. For you to take on notice—

Ms Leathem: You want to know the number of appointments and reappointments since amalgamation?

Mr Moraitis: Yes, we'll have to take that on notice.

Senator PRATT: And, in that sense, how many people have come in? Of those 296, how many have come in since the amalgamation and how many are original from that time?

Mr Anderson: So new members and reappointments?

Senator PRATT: Yes; new members and reappointments.

Mr Anderson: Okay.

Senator PRATT: Thank you. In relation to your budget, you say the AAT's rate of finalisation of cases hasn't kept pace with the significant increases in lodgements. Yet, according to the same portfolio budget statement that says that at page 45, there's a significant budget cut.

Ms Fredman: Sorry, Senator. Could you clarify what you're referring to.

Senator PRATT: Page 45 of the portfolio budget statement and 'Budgeted expenses and performance for outcome 1 budget expenses for outcome 1', table 2.1.

Ms Fredman: And what is the cut that you're referring to?

Senator PRATT: In 2019-20 the funding level was $177 million, in 2020-21 it's $167 million, and in 2021-22 it's $170 million. So it looks like a fairly significant cut over the forward estimates.

Ms Fredman: It would appear that way, but the explanation is that in fact it's because the winding down of the Immigration Assessment Authority, which is part of the AAT. That's a time-limited entity.

Ms Leathem: A terminating funding measure for the life of the IAA, which is why there's the drop.

Senator PRATT: Okay. What's the measure that's terminating? I'm sorry.

Ms Leathem: The Immigration Assessment Authority, which was set up explicitly to deal with a particular case load. It's expected that that will come to an end during the forward estimates.

Senator PRATT: Thank you. Before I move on to the budget, I will ask about this: the AAT has argued on one hand that the rate of finalisation is not keeping pace with the significant increases in lodgements. You had money for that specific project. Why were you not able to keep that money to meet the needs of that significant increase in lodgements?

Ms Leathem: The Immigration Assessment Authority is a separate agency, so it receives specific funding to undertake that portion of work. There's a separate appropriation for the AAT to do the remainder of its work. The challenge for us at the moment is that we have inherited the historical funding models from the former tribunals. In the Migration and Refugee Division, that is a funding model which is based on finalising 18,000 matters a year, which was around the benchmark at the time of amalgamation. Because of the significant increases, that's increased from 18,000 to 38,000. That's where we now have a difficulty and why we're in discussions with the Department of Finance, Attorney-General's and others about rebasing that number so that we can undertake activity which is more aligned with the lodgements.

Senator PRATT: Thank you. I just want to return to the new process that's been announced with the merit based selection process. Mr Anderson, you've given me a good description of the old process. Are you able to describe to me the new process and what the differences are?

Dr Smrdel: Under the revised protocol, the President of the AAT will every year seek expressions of interest in appointment to the AAT by public advertisement. The AAT will establish a register to receive applications addressing AAT-specific selection criteria. The President of the AAT will establish a process to assess the suitability of applicants who have provided expressions of interest by reference to AAT-specific selection criteria and will establish a register of suitable candidates. The president will then supply the Attorney-General with
advice and recommendations about appointments, and then it reverts to how the current consideration goes. It's up to the Attorney-General to consider those recommendations from the president.

Senator PRATT: Who drew up this process, and from what date does it come into effect?

Dr Smrdel: The new process was devised between the Attorney and the president, and then it had the approval of the Prime Minister, which was given on 25 January. Then on 15 February, after the president and the Attorney had already had the discussions about the protocol, the Attorney formally wrote to the president seeking his concurrence for the finalised new protocol and proposed that it commence on 25 March, as the minister advised.

Senator PRATT: Okay, so it would come into effect on 25 March, and it was drawn up through that process. Who will administer it? Will the department administer it or the AAT?

Dr Smrdel: It will be the AAT that will administer it.

Senator PRATT: So, if you know the Attorney-General and you want to become a political appointee to the AAT, the thing you need to do is make sure you put your application in when the position is advertised. Would that be correct?

Mr Anderson: To be appointed to the AAT, you always need to meet the statutory criteria for appointment.

Senator PRATT: Of course, but you know.

Senator PATRICK: Can I ask that question slightly differently if you wouldn't mind, Senator Pratt. Does the new process permit the Attorney to still, outside that process, make appointments of his own decision? Is it exclusively through that process you just described to Senator Pratt, or is there an option for the Attorney to say, 'Actually, I've got a candidate that I've identified separately that meets the criteria of the act, and I'm going to make an appointment.'

Dr Smrdel: The Attorney does retain that ability. Yes, that's correct.

Senator PRATT: How do we know if the appointments that are made were all on the list provided by the president to the Attorney-General? You've got to apply through that process. You've got to be recommended on a list. If I wanted to be a political appointee, and I were cut out through that merit selection process—

CHAIR: What is a political appointee?

Senator PRATT: Okay, if I want appointment but I'm cut out from the process—I'm not a political appointee—

CHAIR: But what is a political appointee?

Senator PRATT: I will drop that entirely.

CHAIR: Well, I think you should.

Senator PRATT: Okay, I'm a merit based candidate. I want to get on the AAT. I apply for a position, but I don't make the president's final cut in the list that goes to the Attorney-General. Could I speak to the Attorney-General and be appointed anyway?

CHAIR: That is hypothetical, and I'm not going to—

Senator PRATT: No, it's not hypothetical. Does the new protocol and merits based appointment process allow for that?

CHAIR: You've been told by Dr Smrdel that in the end result it's the Attorney's call.

Senator Fawcett: The Attorney still can make an appointment.

Senator PRATT: So what's wrong with me describing it as a political appointment, then, Chair, particularly if I were cut out in a merits based process?

CHAIR: Is every judge in Australia who is appointed by a state or federal attorney a political appointment?

Senator PRATT: No. How can you not say it's a political appointment if someone is explicitly excluded through a merits based process but still has the capacity to get appointed anyway? Where's the merit in that?

CHAIR: I'm not letting public servants—and this is why I've been trying to help—get into the thing about whether that's a political appointment or not. It's not something public servants should be asked, and I rule the question out of order.

Senator PRATT: No, I'm not asking whether they're political appointments; I'm simply asking about the appointment process. Dr Smrdel, you have confirmed for me that someone can apply through a merits based process. They've got to apply through the AAT for that position. The list of those that have made it through that
process goes to the Attorney-General, but the merits based process might still allow the Attorney-General to make appointments beyond the list that has come through from the AAT. Is that a correct description?

CHAIR: No.

Senator PRATT: Please correct me if I'm wrong. I'm just looking for a description of the policy.

Senator Fawcett: Senator Pratt, could I make a comment: the problem with the assertion you're making is that it implies an appointment is purely because of a political allegiance, whereas, if you look throughout history Attorneys-General have appointed people who have no political background, they appoint people who have the same background and they appoint people from opposition parties. And that has been true across both sides of politics, so—

Senator PRATT: No. I'm simply inquiring about the new policy. To be honest, it sounds almost like it's worse than the old one, because you still have the capacity to appoint people who've failed a merits based process. Dr Smrdel, is there anything—

CHAIR: In the old days under the Labor Party, you could be just appointed by the Attorney and he used to appoint all his political mates—

Senator PRATT: technically incorrect in the way I've described this new policy, this new merits based system?

Dr Smrdel: I think it is not necessarily the case that persons would be applying through the AAT in the first instance and then looking to have a repechage through the Attorney. I think certain people apply through the AAT process, but then the Attorney has the option to, also subject to the criteria of the act, say the persons are suitable for appointment—whether they discharge the legal qualification requirement or the other specialist skill requirement that would satisfy the Governor-General. If the Attorney puts in other people separate to what the president recommends through the register process it would still be in accordance with the appointment criteria in the act.

Senator PRATT: I'm trying to understand the difference between the two policies—

CHAIR: Senator Pratt, you've had almost 30 minutes on this and we've gone over everything we've gone over in previous estimates—

Senator PRATT: No, this is entirely different, chair.

CHAIR: No, it's not. I'm going to another senator, namely me, to ask a couple of questions, because we still have quite a long way to go if we want to deal with the whole of the department. I urge you to have a look at the Hansard of the previous three estimates and you'll find all these questions have been asked and answered. Dr Smrdel, as I recall, former Senator Brandis was talking about this new protocol when he was still the Attorney, some nine to 12 months ago. Do you know if that's correct?

Dr Smrdel: The former Attorney Senator Brandis instituted a protocol late in 2015, which was, I guess, a step away from the previous process which was under the Australian Public Service Commission merit and transparency guidelines. The former president of the AAT and the then Attorney agreed that that process wasn't really suited to the appointment process and the appointment needs of the AAT. Hence, the original protocol came into effect in late 2015 with the agreement of the former president and the then Attorney-General. So this new protocol is an update of the protocol that the former Attorney created.

CHAIR: Thank you very much for that. Ms Leathem, do you have handy the numbers of AAT members in each capital city—I assume? Does the AAT only sit in capital cities? Perhaps that's the first question.

Ms Leathem: We have registries in each capital city with the exception of Darwin, but we do also conduct circuits from time to time where we will go to other regional centres to conduct hearings if needed. I believe we have some statistics about members by location, Mr Matthies?

Mr Matthies: In New South Wales there are 103 members. In Victoria 114, in Queensland 62, in South Australia 32, in Western Australia 30, in the ACT nine and in Tasmania nine.

CHAIR: Do they broadly represent the workload in each of those registries?

Ms Leathem: Broadly, but we do also have some areas where we have what we call a national practice approach where we may be able to use members in another location to manage work in a different location, particularly in the social services and child support division where we have electronic files and we can conduct telephone hearings too. So it is flexible in some areas.

CHAIR: You mentioned telephone hearings. Do you use teleconferencing facilities for AAT hearings?
Ms Leathem: We do in a limited number of hearings. For many types of matters, there are face-to-face hearings that are held as a matter of course, but in some of the Social Services and Child Support Division matters it's regarded as appropriate, and it's often convenient, for the parties to attend by the telephone. We do use conferencing by telephone frequently as well.

CHAIR: You've got the number of AAT members per registry. Do you also have, per registry, the number of applications for migration matters—the 38,000? Do you have statistics of where those 38,000 were—

Ms Leathem: I think we'd have to take that on notice. We certainly would be able to provide a breakdown of where they were lodged.

CHAIR: Would I be right in guessing that Melbourne would the biggest number?

Ms Leathem: Sydney.

CHAIR: Sydney is the biggest number for migration?

Ms Leathem: Followed by Melbourne. Certainly the lion's share of the work is in Sydney and Melbourne.

CHAIR: All right. Senator Patrick, do you have any other questions?

Senator PATRICK: Yes—really just follow-up questions on some of the answers I heard before. In circumstances where the Attorney makes an appointment under the new regime—so there's clearly an appointment that can go through the protocol that you were describing before, where it is advertised and so forth, but the Attorney can make an appointment independent of that—will you be transparent about appointments that are made that outside that new merit process that's been derived?

Mr Anderson: I don't believe the protocol actually goes to that question.

Senator PATRICK: Maybe I can put that question to you for consideration, once again in the context of transparency. Once again my heart beats faster when ministers say words like that.

Mr Anderson: We can take that on notice, but of course it's worth noting that the Attorney doesn't make the appointments; they're made by the Governor-General.

Senator PATRICK: Okay. I'll go to that as well. I accept that the Attorney is making a recommendation to the Governor-General as a member of the executive rather than a political party, but I think it's fair to say there has been media that suggests that the motive behind that appointment may have a political dimension to it, whether that's right or wrong. With that in mind, in some sense I'm seeking to defend the Governor-General here. The act says 'in the opinion of the Governor-General'. Most of the time, the Governor-General acts on the advice of the Executive Council, I would have thought. So is it really true that the Governor-General forms his own view, or does he in this instance act on the advice of the Executive Council?

Mr Anderson: Without getting into the question of reserve powers, generally the Governor-General acts on the advice of ministers. But it's important that people understand, if they're listening, that it's not simply a matter of a government minister making an appointment on their own. That's the point I'm trying to get to, and I make the point that it's the Governor-General who makes the appointment. It's a serious process.

Senator PATRICK: Sure. I'm just mindful of the perception in some media outlets that there is a political connection associated with an appointment, and I'd hate for the Governor-General to be in some sense—

CHAIR: What's your question? We're really not here just to make statements.

Senator PATRICK: I'm just trying to understand what the role of the Governor-General is in practice.

CHAIR: Okay. Perhaps I can ask Senator Fawcett, who I assume has been to ExCo—you were there this morning? Minister, just to help senators, would you indicate something. My experience—and I want you to confirm this—is that the Governor-General carefully goes through every bit of material put to him for signature and approval, including appointments, and will ask questions and question ministers at ExCo about this and whether it's appropriate and right. Is that how it works?

Senator Fawcett: That's correct.

CHAIR: So the Governor-General does not just rubber-stamp. I'm asking the question, of course; I'm not giving this evidence. I'm not sure if you're allowed to indicate what happens at ExCo meetings.

Senator Fawcett: I'm under a strict obligation not to discuss the conduct of ExCo or what occurs there.

CHAIR: Oh, is that right?

Senator PATRICK: But the processes should be okay, in terms of the mechanism of how it works.

Senator Fawcett: That's the process Senator Macdonald has just described.
Senator PATRICK: Okay. The words in the act, are they common? It says 'in the opinion of the Governor-General'. Is that common throughout other acts where something may be referred to? It just seems a little bit unusual to me, that's all.

Mr Anderson: I don't think I can actually give an answer to that, right here.

Senator PATRICK: Thank you. I'll go to the registrar. Clearly, the president has the ability to make directions as to how the tribunal functions.

Ms Leathem: Yes.

Senator PATRICK: This goes to the question that Senator Pratt raised about political appointees, and you heard what I said about judicial officers' code of conduct. I presume it would be in the scope of the president's power to give similar guidance or make a requirement on appointees by way of a direction.

Ms Leathem: His directions power is really how the management of the business is directed. He doesn't have, as I understand it, statutory power to set member terms and conditions.

Senator PATRICK: But in the context that a perception of bias can give rise to an appeal, I'm sure he could issue a direction of that nature.

Ms Leathem: It's a bit of a hypothetical. I think we'd probably need to see what you're proposing, in terms of what it said, as to whether it was in the scope of the power.

Senator PATRICK: Let's consider that context. I'll ask you take on notice whether that has ever been considered by the president.

Ms Leathem: So what would you suggest would be in such a direction?

Senator PATRICK: A direction similar to what I'd read out from the Guide to Judicial Conduct. That is that, once appointed, you must resign from a political party to avoid the perception of a bias.

Ms Leathem: We have a member code of conduct. You're suggesting there would potentially be an amendment to the member code of conduct.

Senator PATRICK: Yes. I'm just asking whether that has ever been considered. If it was considered, perhaps provide an answer as to why it wasn't inserted in there, just to progress the discussion that has been taken place.

CHAIR: The question is: are you aware that that sort of proposal has been considered?

Ms Leathem: I'm not aware that that has been considered.

Senator PATRICK: But I'm asking you to take on notice whether or not that has occurred.

CHAIR: Ms Leathem doesn't know.

Senator PATRICK: But she's not the only member of the tribunal or the staff. There could be others who are aware of that. I'm simply asking her to take that on notice. She might be able to go back to the president and ask the president.

Ms Leathem: I can certainly provide factual information about when the code was initially adopted.

Senator PATRICK: Yes, and I'm asking whether or not that sort of—

Ms Leathem: Whether it can be revised.

Senator PATRICK: Yes, whether it can be revised and whether, in fact, it has been considered in the past.

Ms Leathem: We can take that on notice.

Senator PATRICK: That would be appreciated, thank you. That's me done on AAT, Chair.

CHAIR: Thanks, Senator Patrick. Senator Pratt, are you finished with the AAT?

Senator PRATT: No, not yet, thank you. The Attorney-General announced on 21 February the reappointment of former ACT Liberal Gary Humphries. Is that correct?

CHAIR: I guess the question is: was Mr Humphries reappointed on that day?

Senator PRATT: I'm just a little bit confused because, as my records show, as I understand it, he is but, as I also understand it, his current term was not due to expire until 31 December this year.

Mr Anderson: It's correct that he was reappointed on that date.

Senator PRATT: Okay. Is it usual that someone's term that's not due to expire for nearly another 12 months would be reappointed at this point in time?
Mr Anderson: It's a matter for the Attorney, of course acting on the advice of the president. The president makes recommendations. The Attorney then makes the decisions on who to recommend for appointment or reappointment.

Senator PRATT: The president makes recommendations. So of the other recommendations given to the Attorney-General, what were the expiry dates of those 50 people who were reappointed?

Mr Anderson: It was 52.

Senator PRATT: If you're able, tell me what the expiry dates of those 52 people otherwise would have been, because—I don't know—I'm probably convinced that former Senator Humphries thought that the Attorney-General might not be the Attorney-General for much longer.

CHAIR: We'll take a question, not your thoughts about what might or might not have happened. Ask the public servants a question.

Senator PRATT: Okay. Why would Senator Humphries need to seek a reappointment now as opposed to waiting until later in the year?

CHAIR: The public servants can't answer what Mr Humphries might or might not have thought or done.

Mr Anderson: As we've said before, we're not actually involved in the deliberation of the Attorney and the advice of the president, so we can't actually add anything to that.

Mr Moraitis: We'll take on notice your point about the timelines for various other reappointments so you have an idea of where this fits in the scheme of things.

Senator PRATT: Thank you. That would be terrific. How much does Deputy President Humphries earn each year?

CHAIR: Again, I think the question is: what is the salary of a deputy president?

Senator PRATT: Yes, thank you, Chair.

Ms Leathem: I'm sure we do have details of the Remuneration Tribunal determinations somewhere. They're all published but, I'm sorry, I just haven't got that to hand. But we can certainly do—

Senator PRATT: No, that's fine. I can find that myself, thank you very much. Did the president recommend that Gary Humphries be reappointed almost 12 months before his term was due to expire?

Mr Anderson: We've previously not gone into the details of the correspondence between the president and the Attorney because ultimately the appointments themselves are cabinet in confidence.

Senator PRATT: Okay. We've had some conjecture about the new merits based appointment process this evening in terms of how it's applied. Are you able to tell us when it was announced and how it's possible to make an announcement claiming it's more merits based without actually making it publicly available?

Mr Moraitis: Well, Dr Smrdel just described the elements of it. In our view, there are elements such as the process of advertising, which makes it more merit based. Short of actually tabling the document, that's the best we can do at this stage, but hopefully we'll get approval to share it with everybody and everyone can see for themselves and judge. As Mr Anderson also said, there are specifics and elements that need to be fine-tuned. Obviously, in the process of implementing it with the AAT, we will seek to make it as efficient as we can.

Senator PRATT: But what date does it come into effect?

Mr Anderson: It came into effect on 25 March.

Senator PRATT: But you're still fine-tuning it.

Mr Moraitis: No, the implementation of it—that's what I implied by my comment. It is not that we're fine-tuning the actual protocol. As Senator Patrick alluded, there are issues that could be fine-tuned, and we're happy to do that.

Senator PRATT: On what date was it announced by the Attorney-General and where was that announcement made?

Mr Anderson: I don't think it's actually been announced by the Attorney. I think the minister has informed the committee of it tonight.

Senator Fawcett: Yes, and neither was the previous protocol in 2015 announced.

Senator PRATT: So on what basis do you claim it's a merits based process compared to the previous process? You have a selection panel.
Mr Moraitis: There's advertising and collating all the applicants, then the spine of that process is as per the previous merit process. There's an element of first law officer discretion, which is that you suggest it could be political but I could suggest that the first law officer could say, 'I'm actually going to recruit someone who is a first-rate applicant.' So that is the converse argument.

Senator PRATT: Why couldn't they apply through the selection panel?

Mr Moraitis: They may not. Maybe the process has reached a stage where they have one or two positions they'd like to fill and there's someone who is obviously a first-rate choice who hasn't had the chance to get into the process. I'm just giving an example of a hypothetical as well of someone who could actually be an excellent choice for the AAT.

Senator PRATT: But why wouldn't they just apply through the normal process? It gives the appearance that, frankly, someone is scared that they might not make it through.

Mr Moraitis: I don't know how often they will be advertised, but you're probably right to assume it'd be every six or so months. Wouldn't that be the case?

Mr Smrdel: My understanding is that, every year, the president will seek expressions of interests in appointment by public advertisement.

Senator PRATT: So there's no excuse for failing to make a lodgement. What's the justification for maintaining a process whereby the Attorney-General continues to make their own appointments, separate to simply choosing from the list that comes through the merit based selection process of the AAT? All the Attorney-General needs to do is say, 'You make it through the AAT process—

CHAIR: No, we don't need you to tell the Attorney what he's going to go. The officers have answered this. If you want to ask the minister what he thinks—

Senator PRATT: 'You make it through the AAT's merit selection process, and then I could appoint you.' It hardly seems more merit based if you can't even put that inside the policy.

CHAIR: If you have any new questions, ask them. Otherwise, we must move on. There's nothing you've asked that you haven't asked five times already.

Mr Anderson: By way of answer, the government recently announced, for example, the creation of the small business taxation division in the AAT. That commenced on 1 March but was announced on 28 November last year. If you announce something at the end of the year and it's an annual process, it might be that the government would wish to appoint members who are particularly qualified for that new area of jurisdiction for the AAT without waiting for a process.

Senator PRATT: Why wouldn't the AAT run that process through advertising?

Mr Moraitis: It is because of the need to get this up and running, and they've just done it.

Mr Anderson: If the government creates a new area of jurisdiction—

Senator PRATT: Does it truly take that long? Why would it take an immensely shorter period of time for the Attorney-General to do it than for the AAT to find suitable people.

CHAIR: The public servants can't answer that.

Mr Moraitis: The point was there might be situations such as the small claims aspect of it, which has emerged I assume from the banking royal commission—

Mr Anderson: No, it's not.

Mr Moraitis: No, it's not, but it's emerged recently. If the timeline doesn't match with that new regime, any first law officer should have the discretion to appoint people who are qualified to do that. In an ideal world, you'd follow a regular, predictable process but there has to be a discretion to be able to respond as required to exigencies of administration. That's a good example Mr Anderson just gave, I have to say.

Senator PRATT: It really doesn't provide a justification as to why the AAT couldn't recruit for that process and why the Attorney-General needs to do it.

CHAIR: That's not a question that public servants can answer.
Mr Moraitis: He is the first law officer of the Commonwealth, and it is his call, whoever the Attorney-General is. That's the discretion of the first law officer.

Senator Fawcett: To come back to my previous point, in the reappointments, Ms Brophy, a former state Labor staffer whose term isn't up until June this year, has been reappointed by this Attorney-General. It gives lie to your argument that somehow this is completely biased because, in this case, somebody who has been a state Labor member staffer was reappointed by the current Attorney-General when the term is not up for a while.

Senator PRATT: Well it sounds to me like Gary Humphries was pretty sure that you're going to lose the election.

CHAIR: If this is a question, ask it. If you're just going to abuse people and malign them, we'll move on.

Senator PRATT: No, I just think there's a complete transparency in this, and the whole of this country can see through it.

CHAIR: It's a pity you didn't raise these things when you were in government for six years, and with every other Labor state government who appoints judges and magistrates willy-nilly, without any transparency whatsoever. If you want to go into the approach you're taking, Senator Fawcett may well get all of the appointments that have been made by the Labor Party who have an association with the Labor Party, but we don't want to go there. We're already 10 minutes late for the evening break, so I will suspend the hearing now.

Proceedings suspended from 20:55 to 21:14

National Archives of Australia

CHAIR: We will continue the Legal and Constitutional Affairs Legislation Committee's inquiry into the budget for the next financial year. We are dealing with the Attorney-General's Department. I now call the National Archives of Australia. I don't think we've ever seen much of you, but you've been with us the last couple of estimates. You've attracted everyone's attention. I'm not sure whether that's well done or that you've done something wrong! Anyhow, thank you very much for being with us, Ms Ward, Mr McGuire and Ms Arumugam. Do any of you want to make an opening statement?

Ms Ward: No, thank you. Mr Fricker had one in October, so we will stand with that.

CHAIR: All right. Senator Pratt.

Senator PRATT: I've got before me a couple of things off the AusTender website. These are contract notice views for the provision of a review of the asset management policy of the National Archives. Are you able to tell me about that contract?

Ms Ward: I will pass that to Mr McGuire.

Mr McGuire: With that contract we engaged Deloitte to undertake a review of our asset management policy. We last reviewed that a number of years ago, but there have been a number of changes to accounting standards—namely, the accounting standards on how we deal with operating leases—and we have a range of items that we capitalise, from collection items to IT assets and so forth. So it's just a refresh of the review and how we operate.

Senator PRATT: Okay. That might make sense in relation to the normal run of practice in relation to how organisations in the Commonwealth government manage their assets that help them do their job, but you are also the custodians of materials in terms of your collections assets.

Mr McGuire: That's correct.

Senator PRATT: Is this a review of how those are managed?

Mr McGuire: It encompasses all the assets that we manage and how we recognise those as assets. It will actually include our collection assets and how we recognise those.

Senator PRATT: How are they currently recognised and how might they be recognised? What are you looking to change?

Mr McGuire: Our collection assets are fairly straightforward. Obviously, we have items to retain as a national archive in different formats, and they get transferred to the National Archives. We have that collection valued every three years, and there are values attached to each category of those items. When we get items transferred from agencies, we value those items at the most recent valuation. So that part of our asset recognition is pretty sound. There are just some changes in accounting standards for other aspects of our assets that are changing that we're looking at.

Senator PRATT: Okay, so you're just talking about the financial value of an asset, not the cultural or collection value of an asset.
Mr McGuire: Yes, it's how we attach the financial value to the asset.

Senator PRATT: Thank you. There is also an AusTender contract in relation to review of the National Archives of Australia's governance and policy. Is that the full title of that tender? What's the full title of it?

Mr McGuire: I don't have the detail of that. I did have the tender documents—or not the tender documents. If I can take that on notice, I can provide you the detail of that.

Senator PRATT: Is it a general review of the—

Mr McGuire: It is a general review—

Senator PRATT: National Archives of Australia?

Mr McGuire: No, it's not a review of the National Archives; it's a review of our governance processes. It's not a review of the Archives; it's just a review of our governance functions.

Senator PRATT: Do you have any other reviews underway?

Mr McGuire: Not that we've enacted.

Senator PRATT: Sorry?

Mr McGuire: Not that we have undertaken as the National Archives.

Senator PRATT: Not that you have undertaken, of yourselves, as the National Archives?

Mr McGuire: Yes.

Senator PRATT: Are you currently being reviewed in any way?

Ms Ward: There is a review that will be commencing shortly, and it was procured by the department. It's a normal process of the department. It's a functional and efficiency review.

Senator PRATT: Is that a tender or is it a—

Mr McGuire: That one's managed by the department.

Ms Ward: We'll handover to Ms Chidgey.

Mr Moraitis: For the last few years there have been functional and efficiency reviews of departments and agencies. We've had a functional and efficiency review. What usually happens is terms of references are set up and departments appoint reviewers that could be individuals or former public servants, or one of the consulting companies—it varies. I think in this case, and Mr Walter can correct me if I'm wrong, there wasn't a tender process or anything—was there?

Mr Walter: There will be very soon. We're just about to enter into that arrangement.

Ms Chidgey: We sought quotes from three suppliers to conduct the review.

Senator PRATT: Is there a contract notice for those that we could see?

Mr Walter: There was.

Senator PRATT: What's the purpose of this general review and why hasn't it been announced? Why would you be doing it this close to an election?

Ms Chidgey: The Attorney-General made the decision that it would be useful to have such a review some time ago, and since then we've been undertaking the process of identifying an appropriate reviewer. The terms of reference are quite broad—looking at the functions of the Archives and how it performs those functions, and expending any barriers that might prevent it from achieving those core outcomes.

Mr Moraitis: This is done in consultation with the Archives.

Ms Chidgey: Yes, it was done in consultation with and supported very much by the head of the Archives.

Senator PRATT: It was done what?

Mr Moraitis: With the support of the Director-General of the Archives, who was consulted, welcomed the review and, obviously, contributed to formulating the terms of reference as well.

Senator PRATT: So you're saying the director of the Archives has welcomed the review, but has the review been announced?
Ms Chidgey: No, it hasn't.

Senator PRATT: Ms Chidgey, you said before that the Attorney-General had been considering issues in relation to the Archives for some time. Are you therefore able to articulate what the purpose of this review is?

Ms Chidgey: Yes. I think I said that the Attorney had made a decision to proceed with such a review some time ago and there'd been a number of issues relating to the Archives requiring consideration, legislation, resourcing and capabilities. The terms of reference for the review are quite broad, and they will look across matters including the functions of the Archives, any that should cease or continue, the capability and resourcing of the Archives to carry out those functions, the efficiency of spending, any barriers that might prevent the Archives from fulfilling its core outcomes and functions, and the feasibility of alternative approaches that it might take to achieving outcomes.

Senator PRATT: So the contract has been signed—is that what you're saying?

Ms Chidgey: Yes, on 1 April.

Senator PRATT: But it hasn't been announced?

Ms Chidgey: That's right.

Senator PRATT: Why would you sign a contract such a short time before an election?

Ms Chidgey: As I said, the decision to undertake the review was made some time ago, and we've gone through a process to identify—

Senator PRATT: But, nevertheless, the review hasn't commenced and the next government or even the next Attorney-General might have a different view about that.

Ms Chidgey: That's right, and the Attorney-General at that point in time will obviously be consulted as part of the review, as will the advisory council for the archives and other stakeholders.

Senator PRATT: So could the terms of reference for the review be changed, or are they embedded in the contract?

Mr Walter: You could, of course. If an incoming Attorney decided to expand or alter the terms of reference, we could do that, but we'd probably need to renegotiate the contract terms at that point. But that's always a possibility.

Senator PRATT: But why wouldn't you write that in now? You signed it two days ago.

Mr Walter: Obviously, in the contract's term there's the opportunity for variation, but in the—

Senator PRATT: Often you have to pay to vary a contract.

Mr Walter: Of course. If you expand the scope of the contract then the—

Mr Moraitis: If you're asking for more services, yes.

Mr Walter: If you're asking for more services.

Senator PRATT: But you might simply be changing the scope of it, but you still have to renegotiate.

Mr Moraitis: As I said, a efficiency review is a straightforward process that every agency in this town has been through. I've been through two of them in my time in the last five years. They're very straightforward. They're undertaken, as I said, by a variety of people, and it's a way of just taking the pulse of an agency and, if ministers change—they can change their focus—they'll be consulted. We'll be consulted, as a department, about what we think about the Archives. The Archives themselves will be consulted about what they think about their needs and their priorities when they're going forward, whether it's the challenges of their property, their digitalisation—

Senator PRATT: Mr Moraitis, you've said that this is a routine review, and yet, Ms Chidgey, you said that the reason for the review was issues the Attorney-General had been thinking about for some time.

Ms Chidgey: I said the Attorney-General had made the decision to proceed with the review some time ago.

Mr Moraitis: What I'm saying is a functional efficiency review is a standard thing that every agency that I know of has been through.

Senator PRATT: If it's a function and efficiency review, does that mean it's a fairly standard terms of reference in the contract? What is specific to the Archives in the kind of contract of this review?

Ms Chidgey: The terms of reference are really quite broad, so it allows a lot of flexibility for the reviewer to look at issues. But as the name 'functional efficiency review' suggests, it's particularly focused on functions, capability, resourcing and any adjustments that it might be appropriate to make.
Senator PRATT: When will it be public?
Ms Chidgey: The review or the contract?
Mr Moraitis: The contract or the review?
Senator PRATT: The review.
Ms Chidgey: The intention is that there be an interim report on 30 June and a final report on 15 August, and it would obviously be, I think, ultimately a matter for the Attorney about publication.
Senator PRATT: Okay.
Mr Moraitis: If I may clarify, the review usually recommends a series of recommendations that go to the agency head, and the agency head will then recommend to the Attorney or to the relevant minister how they intend to respond to those recommendations. They can accept. They can partially accept. They can fully implement. And then there's a process of just seeing how they've been implemented or not implemented. That's the sequence.
Senator PRATT: The review, in effect, hasn't been advertised or, in effect, even announced yet, though, has it?
Ms Chidgey: It hasn't been announced yet.
Senator PRATT: Does that mean you won't commence it until after the election or you'll announce it tomorrow or you'll see fit to announce it during the course of an election?
Ms Chidgey: Any announcement's a matter for the Attorney. The contract commenced on 2 April, and I think there's an entry discussion tomorrow.
Senator PRATT: But once parliament is prorogued there is no Attorney-General, in effect.
Mr Moraitis: There is.
Senator PRATT: Well, yes.
Mr Moraitis: There is.
Senator PRATT: But he's not going to be out doing that. You're expecting he'll still officially auspice the review in his capacity during the election period?
Ms Chidgey: The review can continue and doesn't require any of the kinds of policy decisions that the caretaker guidelines would apply to.
Senator PRATT: Except that it hasn't been made public, and you said it's for the Attorney-General to make public.
Ms Chidgey: Yes. Well, it is public now, I guess.
Senator PRATT: Okay.
Mr Moraitis: We're trying to be as transparent as we can.
Senator PRATT: Now that it is public, where do people go to seek information about the review, in terms of participating in it, putting forward any views about it.
Ms Chidgey: To the department, and we could make information available about it on our website.
Senator PRATT: Can I ask the Archives if this fits with your understanding and knowledge of the review that you're subject to?
Ms Ward: Yes, it does. The reviewer will be reporting to the Director-General and a senior representative of the department. As they go along they'll be having those discussions. We will intend to have them also meet with our advisory council. There's provision for them to talk to other relevant stakeholders as well.
Senator PRATT: And your perception of the review is just that it's a general and—what did you call it? Function and—
Mr Moraitis: Functional efficiency review.
Senator PRATT: A functional efficiency review. So you don't see it as a general review of the principles and purpose of why we have an archive or anything like that? What's the definition of a functional review?
Ms Ward: They're fairly standard. As the secretary has mentioned, they will run through your resourcing efficiencies, your barriers to fulfilling your statutory functions and that you have legislative and governance frameworks that you need. That sort of thing. It's fairly standard.
Senator PRATT: Thank you for clarifying that, because it's not a review of your statutory functions in any way. Thank you. Thank you, Chair.

CHAIR: Thank you, Senator Pratt. Senator Patrick.

Senator PATRICK: Thank you, Chair. Starting off with some questions, Ms Ward, in relation to ASIO records. I have an answer to a question on notice from ASIO informing the committee that as of 31 July this year, 'A total of 380 access applications referred to ASIO were outstanding for 90 days or more. Of this 77 were outstanding for more than one year, 56 for more than two years, 36 for more than three years, 107 for more than four years and 105 for more than five years.' Is it acceptable to have 104 access requests outstanding for more than five years?

Ms Ward: It's a relationship that we have the various agencies. We have to refer matters to them.

Senator PATRICK: No. Just in terms of a threshold of acceptability, is that acceptable?

Ms Ward: It's not our preference, obviously—

Senator PATRICK: I'll take that as not acceptable. What's the current position with regard to access applications referred to ASIO for advice? I don't know if you want to explain the process. I'm interested also in, in relation to those referrals, how many are more than 90 days, one year, two year, three years or four years?

Ms Ward: I don't have the specific figures for ASIO. I can take that on notice and provide that to you.

Senator PATRICK: What's the longest period for a current outstanding access request for ASIO records?

Ms Ward: I couldn't tell you that, but I can provide it to you.

Senator PATRICK: What agreement do you have with ASIO concerning the referral of applications for access, under the Archives Act, to ASIO for advice?

Ms Ward: I'll have to take that on notice.

Senator PATRICK: So you don't even know what agreements you have in place?

Ms Ward: I haven't got that with me at the moment.

Senator PATRICK: Is there an agreement in place between the—

Ms Ward: There would be.

Senator PATRICK: Okay. So the answer is: yes, there is an agreement. I note you haven't got it here. Could I ask you to take it on notice?

Ms Ward: We'll take that on notice.

Senator PATRICK: Thank you. What are you doing with ASIO at the moment to reduce the backlog of access applications for ASIO records? Because, clearly, we understand it's not acceptable.

Ms Ward: I can only give you a general answer and not specifically about ASIO. Generally we are in regular contact with the organisations that we refer the matters to. They have to deal with their workload at their end as well with examining the records, so they know what the requirements are under the Archives Act. There is also provision for a sensitivity review. We do need to rely on them to provide that advice to us.

Senator PATRICK: I find that someone who is seeking access to information is entitled, by law, for access to information. I presume it's a positive right. So you have a right unless there's an exemption of some sort?

Ms Ward: That's right.

Senator PATRICK: So someone has a positive right for access to information and for five years they've been denied access to that information.

Ms Ward: I understand what you're saying, Senator.

Senator PATRICK: I noticed in the budget that your staffing numbers have gone down; they've gone from 355 to average staffing levels of 345. Is that your understanding? Is that correct?

Ms Ward: Yes. That's the provision in the portfolio budget statement for the staffing that we have.

Senator PATRICK: I'm looking across it—this has been provided to me on notice—and as of June 2012 you had a head count of 470. At 31 March 2018 it was 394. The budget is suggesting somewhere it went down to 355 and now it's going down to 345. Just in the context of the previous set of questions, I know that's not the only thing you do, but can you give some explanation of why the numbers inside the Archives are going down? Is it because your other functions have more electronic processes now? What's the reason behind all of that?

Ms Ward: It's a cumulative effect of savings and efficiency measures over a number of years. So taking from the base year of 2014-15, we would have been going down by $7 million annually and that has an overall impact.
That's about 10 per cent of our overall budget so that has an impact on our bottom line of our staffing appropriation. We also appropriated for property and—

Mr McGuire: Our supplier costs.

Ms Ward: and supplier costs. Property costs are around 44 per cent of our overall budget. They increase over time and so we have less remaining for the other elements of that appropriation. We are moving to a more digital business model not only because we've needed to do that to be able to operate in the digital environment that all of our agencies are operating in and we're taking that material from them, but also to create greater efficiencies so we can manage within our budget.

Senator PATRICK: Okay. Mr Fricker's not here—

Ms Ward: He's on annual leave.

Senator PATRICK: He's on annual leave. We've been advised he's on leave from 1 to 5 April and that he's currently in Europe. Is that tied in any way to any functions he's performing with the National Archives?

Ms Ward: I couldn't comment on that. He's on leave.

Senator PATRICK: If he's on leave, that's his own business. He could be in a situation where he's flown to wherever he's on leave—in fact, you've indicated he's in Europe—for a work-related purpose and then decided to take leave and may fly back. I'm just trying to establish: is this purely a personal trip or is there any element of his current trip that involves the National Archives or the use of taxpayers' money?

Ms Ward: It doesn't involve the use of taxpayers' money. He may engage with colleagues overseas in his work with UNESCO.

Senator PATRICK: So what's that? Is that work that's beyond the normal work he does as the director-general?

Ms Ward: He is President of the International Council of Archives and he does work with Memory of the World for UNESCO, so while he's overseas on holidays he may well touch base with people in that capacity.

Senator PATRICK: Okay. Last year, in budget estimates, I asked for the itineraries of Mr Fricker, and that was provided to the committee. The last trip that he did was in May last year. I'm wondering if he's been overseas on any work related trips since May last year.

Ms Ward: He may have been. I would have to take that on notice to provide you with any further information.

Senator PATRICK: Mr Moraitis, are you aware at all? Do you approve his travel?

Mr Moraitis: It's done by the Attorney, but we have visibility. I knew that he was on leave, for example, because I get copied in on his submission. If it's an official trip, that's usually brought to the attention of the department. That's usually the case of all portfolio agencies. But I don't approve their travel necessarily, no. It's the minister; it's the Attorney.

Senator Cash: I can take any further questions on notice for you because it is a ministerial approval.

Senator PATRICK: Sure. I know this is not your portfolio, Minister—and welcome tonight.

Senator Cash: Thank you very much. I'm a little bit surprised to be here! Louise, I thought you'd be out and about.

Senator PATRICK: We've got a situation where you can see there are some delays with processing of requests for access to data—I concede that's a small part of the great work that the National Archive does—and we have staff numbers decreasing. My concern is, and I guess it's subject to your answer, that Mr Fricker is a regular traveller. I could list where he's been: France, Switzerland, Germany, United Kingdom, Netherlands, New Zealand, Indonesia, Belgium—

CHAIR: And your question is?

Senator PATRICK: He has travel habits that would make a foreign minister envious.

CHAIR: No, what's the question. We're not here to malign public servants. If you've got a question, ask it.

Senator PATRICK: I have a concern about abuse of travel. That's a legitimate concern for a Senate oversight committee, and I would like to go—

CHAIR: Can you ask a question?

Senator PATRICK: Let me get there, Chair. Let's keep it very general. When people are travelling internationally on the taxpayers’ coin, what are your criteria, Secretary or Minister, in respect of oversight? Do you look at it and ask: 'Is this excessive? Is it necessary? What's the benefit to the taxpayer?'
Mr Moraitis: Obviously I can only speak on behalf of my department. My senior officials, if they travel overseas, they put a note to me—costs; the amount; purpose of the travel; OHS verification issues, depending on where they're travelling—and I have to be satisfied that it's a proper expense and that the purpose of it is legitimate and proper. And invariably that's the case.

In the same way, if I travel then I write a submission to the Attorney—I've just done that. I want to travel to Papua New Guinea for four days to meet with my staff and my counterparts there, which is obviously core business for me. If I do a meeting overseas, in the US or the UK, accompanying the Attorney then I'll put in a submission as well on my travel. For deputies, I approve their submissions. My deputies will approve their senior officials' requests. As is the case in my department, all my staff, when they travel overseas, actually do a report, which I ultimately end up seeing. It's usually one to two or three to four pages of what they did and what they achieved. I've seen 10 of those in the last three months.

Senator PATRICK: Notwithstanding that, if there is any continued travel by Mr Fricker then I'd like to see the detail. I'll refer to the answer, just to assist you. It was in answer to question BE18-003 from May last year. I'd just like to get an update on this extensive travel record, if I may.

Ms Ward: Yes. We'll take that on notice.

Senator PATRICK: Minister, noting you're not the Attorney, just representing, perhaps you could have a look at that answer or ask the Attorney to have a look at that answer. I just worry about the amount of travel that's involved here—it's significant. I know that ministers are busy people, they may not apply attention to every detail, but maybe you can have a look at that.

Senator Cash: Thank you for that, Senator Patrick. Obviously I would not respond on behalf of the Attorney-General.

Senator PATRICK: Sure.

Senator Cash: But I can assure you that, as a minister, I also have the responsibility to approve travel. Each application is assessed on a case-by-case basis. I would agree with everything the secretary has said: a case must be presented that it is legitimate travel and the travel is warranted and of benefit to the taxpayer. That is certainly my personal experience in relation to approving travel, but I will take on notice for you, for the Attorney-General, the instance that you have raised.

Senator PATRICK: And it may just be a case of you might look at the piece of travel, you might approve it and you say, 'That all seems very sound,' but you would agree that if you look at it over a longer period, which is something that might not be presented to you—

Senator Cash: As I said, given the circumstances I will take that on notice for the Attorney.

Senator PATRICK: That would be greatly appreciated. Ms Ward, this is highly relevant for the coming months: a direction has been issued in respect of ministers and Prime Ministers providing their material to the National Archives. I think that direction came out probably three months ago or something like that.

Ms Ward: In October.

Senator PATRICK: In October, okay, so almost six months ago. In previous questions I've asked it's been apparent that, with Prime Minister Rudd, Prime Minister Gillard—a whole range of Prime Ministers—their data is simply not being provided to the Archives. Could you give an update on the status of past ministers since that direction has come out and what you're intending to do in respect of the up and coming period, noting that, even if the government is returned, there are likely to be changes to portfolios?

Ms Ward: Yes. The particular records authority hasn't actually changed what the requirements are, but it's just made them clearer. There was a period of consultation for about a year with ministers' offices, staff and so on, when that was issued to make it clearer to them. We've made a number of presentations and that sort of thing since then, in December and February. We also wrote to ministers on 29 March to remind them. We will do it again after the election is called and provide support to ministers' offices in that regard. We do have records from those Prime Ministers' offices. So usually when there is a change, we'll contact those offices and explain what the requirements are and assist them in any way we can so that they can meet the requirements of what they need to provide to the Archives as opposed to what they need to provide back to the department, and department-originating agency documents that they send back there.

Senator PATRICK: There is currently a hole between FOI and National Archives in that, once a minister leaves his office, their records are no longer accessible by the public under FOI, because the terms of the FOI Act are that the documents have to be in possession of the minister that you're requesting. And, of course, it's a new
minister, and he or she doesn't have possession of the previous minister's documents. So there's been a hole. What should happen is you should flick across to the Archives at that point and perhaps make a request of the Archives.

Ms Ward: Those document that are created by ministers' offices or by ministers' staff would come to the archives and they would be subject to the closure period. So they would be available for access after 20 years. It's not quite the same as the FOI Act, but we certainly do collect those and preserve those documents, regardless of the format in which they were created.

Senator PATRICK: Thank you for your appearance. Thank you, Chair.

CHAIR: Thank you, Ms Ward, and your team. We appreciate your assistance today.

[09:48]

CHAIR: We will now move to cross-portfolio, corporate and general, group 2. Senator Pratt, do you have questions?

Senator PRATT: Yes, thank you. Mr Moraitis, I'd written a number of questions to you in relation to information about how legal assistance funding will be distributed under the new national mechanism for Commonwealth legal assistance and the reasons why ATSI legal services have been absorbed into the new national mechanism for Commonwealth legal assistance, and the fact that that change appears to contradict the recommendations of the recently completed ILAP review. Did you bring those answers with you?

Mr Moraitis: Yes, we'll answer those if you like. I'll ask Mr Anderson or Ms Hermann to first explain the national mechanism, which is the new interim name for the NPA—whichever term is being used—once it's finalised with the states and territories. As you'll understand, the budget is announced and it'll be NPA beginning for 2020. Now that we have the government's agreement about this national mechanism, the process of embarking on consultation with the states and territories and the legal sector begins. We hopefully have until the end of the year to negotiate how it's all going to be done, with a view to having it start on 1 July next year, 2020.

I'll ask Ms Hermann to explain in a bit more detail the distribution under the NPA. The plan is to have a single one with all of them together, including the ATSILs, but the view is that we should also have the funding quarantined for each group. Before this current NPA, for example, community legal centres were also outside the NPA. They've been brought in over the time of this NPA, and that's worked. The thinking of the department was that bringing them altogether will also provide those efficiencies, especially in the ATSIL space. We certainly endorse some of the principles of that review, but the view of the government was that there are synergies to bringing them all together if you ensure the quarantining of the funds and if you ensure the culturally appropriate role that ATSILs play. You can achieve efficiencies, for example, in terms of reconciling and accounting.

A critical role will be for the states and territories to be aware of the overall funding amount. By way of example, the overall majority of funding for the Indigenous sector of legal assistance comes from the Commonwealth, and 90 per cent of the cases they manage are actually state and territory law. You can imagine it would go to have visibility of what you're doing in one jurisdiction and the impact it has on legal assistance. At this stage the Commonwealth keeps giving the money, but no one has visibility of what it actually means in practice. I'll ask Mr Anderson or Ms Hermann to explain because they live it every day.

Ms Hermann: In addition to what the secretary has just outlined, there are a few other things that the national mechanism hopes to achieve. There are other funding streams currently delivered through the Attorney-General's portfolio, such as the Expensive Commonwealth Criminal Cases Fund, family advocacy and support services, and the domestic violence units and health justice partnerships, which will also come under that single national mechanism. The national mechanism will consolidate all of these funding streams into one mechanism through to the states and territories.

It will have a number of benefits for the sector as well as the jurisdictions and the Commonwealth. It will enhance cooperation and collaboration across the legal assistance sector. It will align sector reporting requirements and data obligations through a single framework. It will reduce the risk of fragmented responses to legal need by providing better visibility of Commonwealth legal assistance funding and a more cooperative approach to addressing the needs of disadvantaged individuals in the justice system. It will promote consistency by allowing all levels of government to better understand the volume of legal assistance services and other services delivered by legal aid commissions, CLCs, and Aboriginal and Torres Strait Islander legal services.

Senator PRATT: Can you go back to comment on the ILAP issue in terms of why ATSI services have been absorbed into this.

Mr Moraitis: The intention is to absorb them into a single mechanism, yes.

Senator PRATT: Is that not contradictory to the recommendation of the ILAP review?
Mr Anderson: The key thing here is that it's not being absorbed in an undifferentiated manner. The way in which it's going to be treated under the national mechanism, we believe, is entirely consistent with the themes of the ILAP review. I'll turn to another of my colleagues to see if she wants to expand on that.

Ms Denley: As my colleagues have outlined, the report itself—and it is quite an extensive report that was completed—had a number of key themes throughout it. They included things such as the importance of quarantining the funding for Aboriginal and Torres Strait Islander legal services, as those are the best-placed organisations to deliver culturally safe legal assistance services. Those themes that ran throughout the report are still reflected in the national mechanism that was announced.

Senator PRATT: So the mechanism must oblige Indigenous legal assistance to go to Aboriginal and Torres Strait Islander legal services?

Ms Denley: It's a separate line item in the budget but it's quarantined funding. When there is a reference to Aboriginal and Torres Strait Islander legal services, that's a reference to Aboriginal community controlled organisations that deliver culturally safe legal assistance services. Often, the reference to ATSLs is referring to the current ATSLs that operate in various jurisdictions. So the reference in the report and in the national mechanism in the budget line item is referring to Aboriginal and Torres Strait Islander legal services. I just note that often when we refer to ATSLs we are talking about individual ATSLs.

Senator PRATT: In terms of taking me through the way in which you argue that this does meet the recommendations of the ILAP review, the first recommendation was a standalone specific purpose funding program with minimum five-year funding terms. So it is inside this mechanism. Why is it that Aboriginal and Torres Strait Islander legal services are not being told that they still have independent standalone funding? My understanding is that ATSLs have been told that funding had been quarantined—only for two years—and that, after that, Aboriginal legal services could be at the whim of the states and be forced to tender against non-Indigenous legal services for funding.

Ms Denley: The recommendation in the review was for a standalone legal service. Currently, we have the Indigenous Legal Assistance Program, which is a standalone service, where there are direct funding agreements with the states and territories. The review said to retain a standalone independent program. The response has been around a national mechanism, for the reasons the secretary outlined.

The quarantined funding is for the Aboriginal and Torres Strait Islander legal services as a concept—that being Aboriginal community controlled organisations—and that is guaranteed for the life of the national mechanism. The confusion around the two years—we can look at what happened with the national partnership agreement. As the secretary referred to, community legal centres were quarantined for the first two years when they came under the national partnership agreement. After that time, it was an option for the states or territories to retain the current community legal centres or to look at other options. In practice, they retained the CLCs. The overarching mechanism has been announced, which is a general direction. Of course, because it has only just been announced no negotiations have taken place. One of the suggestions could be to have the funding quarantined for the existing ATSLs in all the jurisdictions to ensure that there is continuity. Nothing would stop a jurisdiction from quarantining theirs for the life of agreement because, at the end of that two-year period, they are obliged to provide the quarantined funding to an ATSL and for most jurisdictions there is only one ATSL.

Senator PRATT: So at the end of that quarantine period they will be obliged to meet the requirements of the ILAP review?

Ms Denley: No. At the end of the two-year period—this isn't set, this isn't part of the budget papers; it is it is a negotiated position on which we have not yet commenced negotiations—it could be that you quarantine the funding for two years for the ATSLs that are currently operating and, after that time, states and territories then decide—

Senator PRATT: Okay, that makes sense. So essentially you are agreeing that ATSLs have been told that funding has been quarantine for two years and, after that, the states might change—

Ms Denley: There's no position as yet because negotiations have not occurred.

Senator PRATT: Why then are they being told that they could be forced to tender against non-Indigenous legal services for funding? Have they been given that advice or not?

Ms Harvey: Perhaps I could assist. I think some of the confusion here is around the individual ATSILS—for example, a particular service—and then the concept, as Ms Denley referred to, of ATSILS as Aboriginal-controlled organisations. The funding is quarantined for Aboriginal-controlled organisations for the length of the national mechanism. The two-year concept is about individual ATSILS—maybe one in South Australia, for
example—being quarantined to that particular organisation for that period. But it would still, after that period, need to be an Aboriginal-controlled organisation that would deliver the funding.

**Senator PRATT:** So, an Aboriginal-controlled organisation could deliver the funding, and that Aboriginal-controlled organisation could ask other Aboriginal organisations to tender against non-Indigenous legal services. Is that what you're saying?

**Ms Harvey:** There wouldn't be tendering against non-Indigenous legal services, because any service that was to provide this funding would have to be an Aboriginal-controlled organisation. That's the quarantining—it's that—

**Senator PRATT:** No, that's fine. On what basis might ATSILS be saying that this is what they've been told? Are you able to clear up the confusion for me?

**Ms Denley:** After the announcement, in talking about what the next steps from here would be, no negotiations have occurred yet, as I've mentioned. But I think we're very keen on ensuring that there's funding certainty for existing ATSILS and for their staffing, and that was one of the themes of the report. So, it was suggested that the same approach that was followed when CLCs were brought under the national partnership could be taken forward, as a hypothetical, to ensure that there's some certainty for existing ATSILS, and the two-year time frame came up in that context.

**Senator PRATT:** So, you're saying very strongly that ATSILS are standalone under the new system and that the only organisations they might compete with in the future would be—what, other ATSI-controlled legal services?

**Mr Moraitis:** If you take out the 'non' from non-ATSI, that assertion is incorrect—then it's technically correct.

**Senator PRATT:** You were distinguishing between the existing ATSILS, I think, and—

**Ms Harvey:** Yes.

**Senator PRATT:** So, the competition might be within other Indigenous legal services. Is that simply what you're saying—rather than the existing ATSIL services?

**Ms Harvey:** Other Aboriginal-controlled organisations that could offer those culturally safe legal assistance services.

**Senator PRATT:** Would they have to be community based, or could they be private Aboriginal legal services?

**Ms Denley:** It would have to be community controlled. For example, it couldn't be one of the legal aid commissions.

**Senator PRATT:** It would have to be community controlled, but it wouldn't necessarily be a private, all-Indigenous practice.

**Ms Hermann:** I think the term 'Aboriginal community-controlled organisation' is a specified term for those organisations, so it only would be those organisations that would be able to tender for that—

**Senator PRATT:** Good. That's what I was seeking clarification on.

**Mr Anderson:** And just to reinforce what my colleagues have said, it's unlikely in many circumstances that there is another body that could actually deliver the kinds of services that the existing ATSILS are delivering. We can't guarantee that, but it's not a small thing to set up a body that plays the role of an existing ATSIL.

**Senator PRATT:** Thank you. I'll move on from that, I think, and ask some questions about the Environmental Defenders Offices funding. The EDOs were cut some time ago. There was a campaign, as I recall, from the Minerals Council. The offices were cut by government at a time when the government declared a budget emergency. We now have a government that's claiming a budget surplus and has put forward enormous tax cuts but can't find the $4 million a year to support an Environmental Defenders Office network across the country. Why is that the case?

**CHAIR:** You're asking the minister that?

**Mr Moraitis:** It's a decision of the government.

**CHAIR:** You're asking the minister, I assume?

**Senator Cash:** And I'll take it on notice, Senator Pratt.

**Senator PRATT:** Are you aware, Minister Cash, that EDOs are often the only bodies able to give legal assistance to farmers whose land is being targeted by a large mining company?

**Senator Cash:** Given I'm sitting here representing the Attorney-General, I will take that on notice for him.
Senator PRATT: You'd be aware as a minister, though, that that was the case. We had a lot of debate about these issues in Western Australia when we lost our EDO.

CHAIR: Have you got any questions, Senator? In fact, your time—

Senator PRATT: Was any consideration given to returning funding to the environmental defenders offices on the basis that the government claims the financial situation of the nation has improved? Are you aware of any consideration of that?

Mr Moraitis: My understanding is that the focus of this process has been on the NPA, the reviews of the ILAPs and extra money for the expensive case work. That was supplemented by about $3 million or $4 million because that was insufficient and that was a priority focus of this budget.

Mr Anderson: The focus has certainly been on delivering certainty for the bodies funded under the NPA and the ATSILS, and increasing the funding as well.

CHAIR: Does anyone besides Senator Pratt have questions on either cross-portfolio or group 2?

Senator PATRICK: I have questions in relation to the foreign influence transparency register. What activities are taking place in the Attorney-General’s Department to promote the transparency register at this point in time?

Mr Moraitis: We've already undertaken consultations. I've written to many agencies and relevant authorities, and Ms Chidgey has written to about 700 bodies.

Ms Chidgey: Yes.

Mr Moraitis: We've been out talking to communities. We're obviously going to launch further advertising campaigns. In fact, there'll be some advertising happening in the near future. So we've been writing out briefs to all the relevant organisations. Obviously it's up and running now, and people are registering.

Ms Chidgey: We published notices in the media, and the secretary may have mentioned a number of community meetings.

Senator PATRICK: Whilst I don't agree with the current round of advertising that the government has embarked upon, which is pseudo election campaigning—

Mr Moraitis: For the Foreign Influence Transparency Scheme?

Senator PATRICK: No, not for that. In this case, I would argue that probably the best time to run that advertising is during an election campaign.

Mr Moraitis: Actually, in this period, the obligations actually are more pressing.

Senator PATRICK: Yes, I agree. Are you intending to run an advertising campaign?

Mr Moraitis: Yes, we are—a third round, I think, or a second or third round in the next few weeks.

Ms Atkinson: Second.

Senator PATRICK: What expenditure are you intending in respect of that?

Mr Moraitis: Yes, I can give you the figure because I came prepared about advertising. It's one of the two advertising rounds we're issuing. We've already spent $99,134 on advertising campaigns for the FITS information campaign, and we intend to spend a further $60,000. Just one second, Senator. I'll just get Ms Chidgey to verify something for me. It's nothing substantial, but we just want to be accurate.

Ms Atkinson: As the secretary mentioned, we've run two rounds of advertising already, and we're planning a third when the voting period begins. Each of those rounds has cost around $60,000, and that includes publications in all of the major metropolitan newspapers as well as a range of culturally and linguistically diverse media outlets.

Senator PATRICK: I notice the website at the present moment lists only 27 individuals and entities, reporting a total of 84 reportable activities. Is this the total number of registrations you have received to date, or is there a backlog to put registrations on the internet?

Ms Atkinson: All of the registrations we have received are public.

Senator PATRICK: It seems like a low number. In terms of the expectations of the department, were you expecting more than that?

Ms Atkinson: As you are probably aware, there was a three-month grace period that was in place until 10 March this year. That's only quite recently expired. Generally, under the scheme, people have 14 days from the time they undertake an activity to register that activity. We do expect the number of registrations to continue to increase as we go forward with the scheme, and, as the secretary mentioned, we are undertaking a range of
awareness-raising activities, including the publications we've spoken about, to increase the awareness of the scheme in the community.

Senator PATRICK: It's been reported in the Fairfax press that the department has written to 13 Confucius institutes in Australia about their potential obligations to register under the scheme. Is that correct?

Ms Atkinson: Yes.

Senator PATRICK: It is? Secretary, it looked like you were shaking your head then.

Mr Moraitis: No. I was aware of the media. I was just trying to verify something.

Senator PATRICK: Sorry. Has that correspondence been directed directly to the institutes or to their host universities, or to both?

Ms Atkinson: The letters were sent to all universities as well as directly to the 13 Confucius institutes.

Senator PATRICK: Have you received any responses from the Confucius institutes?

Ms Atkinson: We're aware of the media reporting around the issue, but we've not yet directly engaged with the institutes themselves.

Senator PATRICK: So you haven't received a response at this point?

Ms Atkinson: No, and the letters—

Senator PATRICK: Otherwise they would either have said that there's no issue or that there is and would therefore have registered.

Ms Atkinson: The letters didn't seek a response. They were merely to raise awareness of the scheme and the potential obligations.

Senator PATRICK: How do you enforce this. If for example someone had a view—I presume that's allowable—that there was a need to register, what's the process you go through in that sort of circumstance?

Ms Chidgey: Where an issue comes to our attention or is raised with us, we have been taking the approach of sending a letter to the organisation, raising the issue with them and asking whether they consider they need to register. Ultimately it's a matter of judgement for potential registrants about whether they fit the criteria. There are then mechanisms under the legislation where further steps could be taken. The secretary has information-gathering—

Mr Moraitis: I think your question, Senator, was: if you felt you had to register, how do you go about it?

Senator PATRICK: No, my question is being answered.

Mr Moraitis: Good.

Ms Chidgey: There are further steps we could take beyond that. Compulsory information-gathering powers, for example, could be used and—

Senator PATRICK: Like a subpoena power or a statutory order?

Ms Chidgey: Yes, a notice requiring information to be provided.

Mr Moraitis: I'll issue a notice.

Senator PATRICK: And in extremis if someone doesn't comply with a notice or if you feel they haven't been open with you—and I'm not directing this at anyone, by the way; I'm just trying to understand the process—is it something you could refer—

Mr Moraitis: It's a criminal breach.

Senator PATRICK: to another agency for investigation?

Ms Chidgey: That's right. The ultimate process could be that there are criminal sanctions for a breach, and that would then be a matter for the AFP to determine whether it would investigate, potentially leading ultimately to a decision about prosecution.

Senator PATRICK: I just have one small set of questions to ask directly to the secretary. Can you confirm that you were a legal adviser to DFAT from 2002 to 2006?

Mr Moraitis: Yes.

Senator PATRICK: Did you have any involvement in the negotiations in relation to the oil and gas treaty with East Timor?

Mr Moraitis: Yes, I was involved in East Timor from 1999 and, as a legal adviser, thereafter involved in the extension of JPDA as well as other matters, such as CMATS and things like that, as part of my many roles.
Senator PATRICK: Are you aware of the allegations, in respect of Australia spying on the negotiating team of the East Timorese?

Mr Moraitis: I'm aware of that. There's a criminal case in the ACT. I'm well aware of it.

Senator PATRICK: Sure. And I presume most criminal cases are not launched on the basis of a fictitious operation.

Mr Moraitis: I would hope not.

Senator PATRICK: I'll try and be very neutral in this. Obviously, you've had some connection to those negotiations. You'd be aware there were allegations published by Mr Collaery at a national university conference—I might be corrected on that. Basically, he suggests that an illegal act has taken place, an unlawful act, and that caused the basis of a whole bunch of flow-on actions. Noting your current position and the fact that—I'm not suggesting anything at all here, but there is a connection. You'll be aware of the—

Mr Moraitis: Yes, I've been around the Public Service for about 30 years now and I've seen a lot of things, including being involved in negotiations with other countries. I'm currently the secretary of the Attorney-General's Department, under which portfolio is the DPP, and the Attorney is my minister, yes. What more can I say!

Senator PATRICK: In relation to both the prosecution of Witness K and the recent decisions—on the exercise of secrecy provisions—to close the court, have you, out of an abundance of appearances of—I don't know what the right word is. Have you recused yourself from any of those decisions?

Mr Moraitis: I haven't formally recused myself but I've made clear to my staff my historic role in DFAT; therefore, I've kept at arm's length from the matter. I'm aware of chronologies and what's happening but I certainly don't engage with the DPP or the DPP's engagement with the Attorney.

Senator PATRICK: Okay. Can I just check, to make sure, that you also advised the Attorney of that situation?

Mr Moraitis: Yes, both attorneys.

Senator PATRICK: That would cover it off, I guess. Thank you very much.

Senator WATERS: I might try to ask some general questions about the Commonwealth Integrity Commission and the consultation paper from last December, and the funding in the budget for that body.

Ms Chidgey: The budget is working on the basis that the total average staffing level for the Commonwealth Integrity Commission will be 93 in 2019-20.

Senator WATERS: Are there any other staffing numbers for any of the subsequent years over the forwards?

Mr Moraitis: Sorry, Senator, what was the question again? Any subsequent—

Senator WATERS: Ninety-three for 2019-20. Are there any other staffing level allocations for subsequent years in the forwards?

Mr Moraitis: Just bear with us.

Ms Atkinson: We might take that on notice and come back to you in a minute.

Senator WATERS: Sure. There's quite a discrepancy there. That's less than two-thirds of the staffing that initially had been envisaged by that consultation paper. What's the cause of that discrepancy, and has there been any associated narrowing of the tasks that the CRC might perform? What now will not be able to be done, with less than two-thirds of the staff?

Ms Chidgey: We'll need to check the subsequent years. It could be that those years are calculated on a part-year establishment of the CIC, so that might not represent total funding in future years. We will need to come back to you on that. But I would say, in general, that the consultation paper was an initial estimate and it indicated that further, more detailed, work would be done on budget figures.

Senator WATERS: We're still waiting for that staffing number?

Ms Atkinson: Yes.

Senator WATERS: Okay. A similar question about the funding, because, again, the consultation paper estimated that there'd be approximately $30 million per year for an operating budget and, in fact, the budget papers don't have anywhere near that. There's $12½ million for the first year, and it does increase after that—
in the second, 29.9 in the third and it does finally get up to 30 in that final fourth year. My question again goes to what work won't be able to be done given that the amount of funding actually allocated is lower than had been envisaged in that consultation paper?

Ms Chidgey: I wouldn't accept that characterisation in the sense that the funding really is around that $30 million a year, and the budget has been worked out on the basis of the commission being able to fulfil the functions that government determines it should carry out.

Senator WATERS: Has there been a change in the determination of the functions that the body should carry out in between the consultation paper and the budget?

Ms Chidgey: I should just mention one other thing which is that I think with the figures that you're looking at there's an additional amount that is ACLEI's current funding added on to that, so the total CIC funding is higher than those figures.

Senator WATERS: Sure, but I think ACLEI was granulated out in the consultation paper, so I'm comparing apples with apples, if you like.

Ms Chidgey: I don't think that was the case. The consultation paper was looking at the CIC on the basis that ACLEI would be subsumed within it.

Senator WATERS: Okay. It does separately mention that ACLEI's budget was almost $12 million and it has a budget of about $40 million itself—

Ms Chidgey: Yes, but—

Senator WATERS: So given that 40 is higher than 30 I don't see how the 40 could have been part of the 30.

Ms Atkinson: Sorry, Senator, that $40 million is over the forward estimates for ACLEI. The total funding provided in the budget, if you add the CRC funding and the ACLEI forward estimates together, is about $145 million over the forward estimates, which is roughly about $30 million a year, possibly a little bit more.

Senator WATERS: Was that always the intention or has that now been reinterpreted as the intention?

Ms Chidgey: No. The consultation paper, I think, was fairly clear that the government saw ACLEI as being subsumed within that CIC.

Senator WATERS: What work has the department done to prepare the commission for its role and to establish the commission? What has been done so far?

Ms Chidgey: We have done work across government consulting on the detail, we have done a lot of work to develop draft legislation on those details and we have, obviously, had in-depth consultation with ACLEI in particular as the sort of core from which the CIC would be established.

Senator WATERS: I think when we last spoke in February—when we had an inquiry into both departing member of parliament Cathy McGowan and my own bill to establish an ICAC that's somewhat broader than the one the government is currently proposing—there was also draft legislation. It was a while ago now. We didn't see it introduced into the House. Was there some reason for the delay?

Ms Chidgey: So the introduction of legislation on the CIC?

Senator WATERS: Yes.

Ms Chidgey: The timing of that is a matter for government.

Senator WATERS: Was the drafting progressed between February and this week?

Ms Chidgey: Yes. We have continued to work on that.

Senator WATERS: Okay. Because I got the impression in February, from our last exchange, that the drafting was pretty much final. How significant were the changes made between February and the latest iteration of the draft?

Ms Chidgey: We have continued to make changes and further iterations. So I think it wouldn't be correct to say that it was virtually final in February.

Senator WATERS: Was there anything in those drafting changes that go to the scope of the body? Was there any sort of change in what was put in the public domain as the initial scope of the body or was it more just refining it?
Ms Chidgey: I think that is a matter for judgement. But, yes, some of those matters go to the extent of the coverage of the CIC that has been adjusted, refined.

Senator WATERS: So, it wasn't tabled in the House, though; it wasn't introduced.

Ms Chidgey: It hasn't been introduced.

Senator WATERS: And it certainly didn't come to us in the Senate.

Ms Chidgey: No.

Senator WATERS: Perhaps I'll just cover off on one last thing—and pardon me if this is me being confused. The 93 staff members as compared to the 150: what was the explanation for that discrepancy—was it a similar ACLEI issue that we went over with the money?

Ms Chidgey: I'm just saying we'll have to come back to you because, if the CIC is only fully established part way through that year, the 93 is not necessarily a full-year representation of ASL, and that is something we're still getting figures on. So it's not necessarily comparing apples with apples.

Senator WATERS: It's almost 10.30, and it's been a very long week. Will we be getting that tonight, or will you be taking it on notice?

Ms Chidgey: We'll have to take it on notice, I think, but we'll see what we can do.

Senator WATERS: Alright, thank you.

Senator PRATT: I had some questions with regard to advertising expenditure and information campaigns. I think some other senators might have touched on this.

CHAIR: Mr Moraitis has come prepared.

Senator PRATT: Yes, and I did write to you not very long ago and I'm sure you've been able to get that information together. I'm interested in the department's total expenditure on advertising and information campaigns in the current financial year. That includes an itemised list of all advertising and campaigns run by the department and the funds attributed to those campaigns.

Mr Moraitis: So total expenditure to date—that is, 4 April—A-G's have spent $99,134 on advertising information campaigns. This amount has been spent on public education activities relating to the Foreign Influence Transparency Scheme. We also have allocated funds for the financial year as well that haven't been expended. We have two that have been allocated: one is for this financial year, the elder abuse phone redirection service information campaign. You recall there's going to be a centralised phone number which then will distribute requests—that's $150,000 allocated for that campaign. And, as I said, the Foreign Influence Transparency Scheme campaign—the total allocation is $220,000, of which, as I said, $99,000 has been spent.

Senator PRATT: Sorry, what was the second one?

Mr Moraitis: The Foreign Influence Transparency Scheme—the one that Senator Patrick was asking about. The rest of the financial year, you also asked about, I think, Senator. The elder abuse redirection of service information campaign will promote the new national elder abuse free call number 1800ELDERHELP—that's, 1800 353374; and that's a form of advertising, too—through two rounds of advertising in metro, regional and national papers as well as three lifestyle magazines for seniors at a cost of $145,000, boosted social media posts from our department's social media channels up to $20,000 and small print runs of bookmarks with distribution through free networks at a cost of $3,000. Then for the Foreign Influence Transparency Scheme information campaign two rounds of notice have been published in metro, regional and national papers to date as well as foreign language publications. Timings of these are in line with the scheme commencement on 10 December last year and the conclusion of the grace period on 10 March this year, and the remaining activities of this financial year are a third round of advertising during the caretaker period at a cost up to $60,000. Advertisements will be placed in national and metro papers as well as a number of culturally and linguistically diverse publications. So they're the two.

Senator PRATT: They're the two. So, in terms of the caretaker period, what expenditure is taking place?

Mr Moraitis: Up to $60,000 on the third round of advertising to a schedule for the Foreign Influence Transparency Scheme.

Senator PRATT: Thank you. So the majority of that funding includes ad buys. What's the estimated expenditure on ad buys and placements?

Mr Moraitis: As I said, for the elder abuse one, there are ads in the paper: $145,000. And for the FITS, the Foreign Influence Transparency Scheme, I think that was $99,000 on advertising and info campaigns to date, and, as I said, this scheduled amount is another $60,000 this financial year.
Senator PRATT: Are you able to provide me with the list of all AusTender contract notices and their numbers for advertising?

Mr Moraitis: Yes. The elder abuse phone redirection service information campaign—AusTender contract No. CN3582259, Foreign Influence Transparency Scheme information campaign—AusTender contract notice No. CN3577405.

Senator PRATT: Thank you very much for that. I want to ask some questions now about staffing levels: the number of levels of staff currently employed by the AGD and the number of levels of former staff who've transferred from AGD to the Department of Home Affairs since they were established.

Mr Moraitis: I'll go with a headcount rather than FTE. The total headcount was 1,360 currently employed by the Attorney-General's Department. That includes AGS, because, of course, AGS is part of the department. By classification we have two APS1, 14 APS2, 56 APS3, 158 APS4, 186 APS5, 266 APS6, 310 EL1s, 204 EL2s, 126 SES band 1s, 29 SES band 2s and nine SES band 3s, giving a total headcount of 1,360. The total headcount of mogged employees who went to Home Affairs was 464, broken down by 22 APS3, 60 APS4, 66 APS5, 128 APS6, 123 EL1s, 51 EL2s, 11 SES1 and three SES2, giving a total headcount of 464.

Senator PRATT: Thank you. That was very quick and straightforward. It's wonderful when I give you the heads-up on questions.

Mr Moraitis: Senator and Chair, Ms Chidgey has the figures on the ASL for the Integrity Commission, just to complete the request.

Senator PRATT: That would be great.

Mr Moraitis: So we can do that.

Ms Chidgey: The figures over the forward estimates for the Commonwealth Integrity Commission are exclusive of ACLEI. ACLEI has around 50 staff. The figures for staffing level, without including those ACLEI staff, for 2020-2021 are 88—without ACLEI. Then, if you include ACLEI in that, it would be another 50 on top of that, which I think is 138 or 140. Then, the following year, for the CIC—again, exclusive of ACLEI staff—for 2021-22 it is 127.5 ASL, and the same for 2022-23. Again, once ACLEI staff are also included in that, that brings the staffing levels to 177.5 for 2021-22 and 2022-23.

Senator PRATT: Thank you. That's very helpful.

[10:33]

Senator PRATT: Chair, I have questions now for group 2.

CHAIR: Senator Pratt, you may not have noticed but you're the only one asking questions.

Senator PRATT: Great. Hopefully we'll get through them in 10 minutes.

CHAIR: I might have a couple, but fire away. What are you up to now?

Senator PRATT: Family relationships in program 1.5 in group 2.

CHAIR: Are there any of these that you want to put on notice?

Senator PRATT: I'll try to whiz through them quickly. It's only a page or so.

CHAIR: It's worth a try.

Senator PRATT: I know we're all tired. There are reports that the government's no longer proceeding with the proposed changes to the Family Court. 'Family law reform appears doomed', it was reported in The Australian, and that was dated, I think, yesterday. The article said that there would be $16 million over four years and four additional judges and a registrar to help clear the family law backlog. Is there funding in the budget for that? Can you point me to where in the budget papers that funding would be?

Mr Anderson: First, Senator, I just point out that the bills still remain before the Senate. The media reporting might say that it's doomed, but, as a matter of fact, the bills actually still remain before the Senate.

Senator PRATT: Yes, but wouldn't you put budgeting in place on the basis of the status quo given we're about to go to an election and there's little prospect that it would pass before 30 June this year?

Mr Anderson: I'm not going to speculate as to when an election may or may not be.

Senator PRATT: There's a legal obligation for it to be held at a particular point in time. Surely, you've got to make sensible judgements about what to put in the budget based on the status quo?

CHAIR: What's the actual question?
Senator PRATT: My question is in relation to the Family Court bill. It has been reported that it was abandoned on 3 April.

CHAIR: There was some hope that, perhaps, it could have been done dealt with by the Senate yesterday, the day after the budget.

Senator PRATT: We did 30 bills yesterday and this is contentious legislation. We were never going to do it in a guillotine like that.

CHAIR: That's hypothetical, Senator. You're just asking questions that are difficult for the officers to answer.

Senator PRATT: Why isn't that money in there, given there's no prospect of it being finalised in the immediate future?

CHAIR: Again, that's hypothetical.

Senator PRATT: It's not hypothetical. I can tell you what's hypothetical, Chair. What's hypothetical is putting in the budget funding based on a bill that hasn't passed the Senate. That's hypothetical. Why would you put in your budget funding for something that—

CHAIR: What if it had been passed yesterday?

Senator PRATT: had no prospect of passing. Surely you have to make astute judgements about how you shape your budget according to the likely prospect of the outcome being delivered.

CHAIR: They're questions for Senator Cash, I guess, about what you put in the budget. I don't know that Senator Cash can—

Senator Cash: No. Unfortunately, as I'm not the Attorney-General, I would need to take that on notice.

Senator PRATT: Were the four additional judges and registrar allocated in a jurisdiction?

CHAIR: Yes. One of them has been announced for Townsville. I can tell you that. One of the Circuit Court judges, I think. Are you looking—

Senator Cash: Are you pondering a question—

CHAIR: Mr Anderson, you're looking amazed. I don't think I'm giving it away. It was in the local newspaper.

Mr Anderson: The Townsville appointment has certainly been made. That took effect, I believe, on 25 March.

CHAIR: Yes.

Mr Anderson: I'm not quite sure as to the media report that Senator Pratt is referring and whether that's actually something that's in the budget.

Senator PRATT: Perhaps it's not in the bought budget because—

CHAIR: Let's have a question and see if the officers can answer it, or the minister.

Senator PRATT: All right. The article in The Australian said that there would be $16 million over four years for four additional judges and a registrar to help clear the family law backlog. Our chair, Senator Macdonald, says one of those judges has already been announced. Can you point to me where in the budget papers we can find funding for those positions?

Mr Anderson: There's nothing in the budget papers against the Family Court, with respect to those additional judges that I think you're referring to. If the legislation had been passed and if the government wanted to create
new judicial positions and a new registrar position, there are a number of ways in which that can be done. There's no money in the budget to flow to the Family Court on the basis of that legislation not having passed.

Senator PRATT: Sorry, I just have to clear up the confusion that I've just created for myself. What does the budget reflect—the new system as you want it to pass or the old system?

Mr Anderson: What's in the budget for the Family Court and for the Circuit Court—noting, of course, that the Family Court and the Circuit Court both appear as outcomes of the Federal Court—reflects the situation as it currently stands. Of course, neither court was going to be abolished had the legislation passed. It would still continue on—

Senator PRATT: No. But I understand that there was new money on the table for the merger, but that money is no longer reflected in the budget.

Mr Anderson: Senator, as I said, if the legislation had passed and the government wished, as part of the negotiations, to provide additional funding, there are a number of ways in which that could happen.

Senator PRATT: The family law system needs more money, irrespective of whether this bill passes. If the government had proposed to put more money on the table for the merger, why would you not put that money on the table anyway?

Mr Anderson: From the 2015-16 budget onwards, the government put in $147½ million of additional funding into the three courts: the Federal Court, the Family Court and the Federal Circuit Court. A lot of that money goes to family law. The statement's often made: 'The answer is more money for the courts and more judges.' As the Attorney pointed out, there are legitimate questions raised by the PricewaterhouseCoopers report and by other reports over the last decade as to whether the family law system is working as efficiently as it could. The PwC report raised those questions as to the respective efficiency of the processes. Importantly, at the heart of this, we have two different courts engaged in the one area of law with inconsistent rules and practices, and the two courts have not chosen, in the last 20 years, to remove those inconsistencies. But it's certainly the case that those inconsistent rules and procedures create problems for the people who have to go into those jurisdictions. If we could address those problems, that would actually really help those people.

Senator PRATT: Thank you. I'll put the rest of my questions on notice.

CHAIR: That's great. Thank you very much, Senator Pratt, for your consideration.

Senator PRATT: Thank you all. I know it's very late.

CHAIR: That completes the estimates for this week for this department. Mr Moraitis, you would be aware that there is a program for next Tuesday.

Mr Moraitis: Yes.

CHAIR: No doubt the secretariat will be in touch with you to talk about who comes along.

Senator PRATT: You're not going to tell us when the election is going to be called, to let us know whether we'll be here?

CHAIR: Me?

Senator PRATT: Yes.

CHAIR: Unfortunately—

Senator PRATT: You don't know. Maybe Senator Cash knows.

CHAIR: I'm not usually consulted on those sorts of things.

Senator PRATT: Maybe Senator Cash can tell us whether we'll be here next week.

CHAIR: I thank Hansard and the committee secretariat, as always, and, Mr Moraitis, you and your team.

Senator Cash: Thank you, Chair.

CHAIR: Minister, I meant to say earlier, 'Welcome and hello,' and now I say, 'Goodbye.'

Committee adjourned at 22:44