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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Monday, 27 February 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

In Attendance

Senator Cash, Minister for Employment, Minister for Women and Minister Assisting the Prime Minister for the Public Service

Senator Scullion, Minister for Indigenous Affairs

Department of Immigration and Border Protection

Mr Michael Pezzullo, Secretary
Mr Roman Quaedvlieg APM, Commissioner, Australian Border Force
Mr Michael Manthorpe PSM, Deputy Secretary, Visa and Citizenship Services
Ms Rachel Noble PSM, Deputy Secretary, Policy
Mr Kingsley Woodford-Smith, Acting Deputy Commissioner, Australian Border Force Operations

Ms Jenet Connell, Deputy Secretary, Corporate, Chief Operating Officer
Ms Cheryl-anne Moy, Acting Deputy Commissioner, Australian Border Force Support
Ms Maria Fernandez PSM, Deputy Secretary, Intelligence and Capability
Air Vice-Marshal Stephen Osborne, Commander, Operation Sovereign Borders Joint Agency Task Force

Mr Jason Russo, Acting First Assistant Secretary, Strategic Policy and Planning Division
Mr David Wilden, First Assistant Secretary, Immigration and Citizenship Policy Division
Ms Linda Geddes, First Assistant Secretary, Traveller, Customs and Industry Policy Division

Mr Nickos Colquhoun, First Assistant Secretary, International Division
Mr Ben Wright, First Assistant Secretary, Corporate Services Division
Mr Murali Venugopalan, First Assistant Secretary, People Division
Mr Steven Groves, Chief Finance Officer
Ms Philippa de Veau, General Counsel
Mr Stephen Hayward, First Assistant Secretary, Integrity, Security and Assurance Division (Chief Audit Executive)
Dr John Brayley, Chief Medical Officer/Surgeon General Australian Border Force
Ms Catherine Seaberg, Acting First Assistant Secretary, Enterprise Strategy, Reform and Performance

Mr Cameron Ash, First Assistant Secretary, Intelligence Division
Mr Randall Brugewald, First Assistant Secretary, ICT Division/Chief Information Officer
Mr Michael Milford, First Assistant Secretary, Major Capability Division
Mr Joe Franz, First Assistant Secretary, Identity and Biometrics Division
Ms Christine Dacey, First Assistant Secretary, Visa and Citizenship Management Division
Mr Luke Mansfield, First Assistant Secretary, Refugee and Humanitarian Visa Management Division
Ms Kaylene Zakharoff, First Assistant Secretary, Community Protection Division
Mr Peter Van Vliet, Regional Director, Victoria/Tasmania
Ms Erin Dale, Commander, Customs Compliance Branch
Mr Jim Williams, Assistant Commissioner, Border Management Division
Ms Claire Roennfeldt, Acting First Assistant Secretary, Children, Community and Settlement Services Division
Mr David Nockels, First Assistant Secretary, Detention Services Division
Mr Stephen Alexander, Acting Commander, Maritime Border Command
Mr Jim Williamb, Assistant Commissioner, Border Management Division
Ms Erin Dale, Commander, Customs Compliance Branch
Mr Wayne Buchhorn, Assistant Commissioner, Investigations Division

Committee met at 09:02

CHAIR (Senator Ian Macdonald): I declare open this meeting of the Legal and Constitutional Affairs Legislation Committee dealing with the proposed expenditure for 2016-17 for the portfolio of Immigration and Border Protection. I incorporate the public immunity statement.

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, pp 124-125)

I welcome officers of the Department of Immigration and Border Protection. The committee has set Friday 28 April 2017 as the date by which answers to questions on notice are to be returned. The committee has also decided that written questions on notice would be provided to the secretariat by Friday 10 March.

The committee has to take all evidence in public session. Witnesses are aware—and we have a fairly experienced set of witnesses—that they are protected by parliamentary privilege. And you understand what that is all about. You also understand that it is a contempt to give false or misleading evidence to the committee. The Senate resolved in 1999 that any questions going to the operations or financial position of the departments and agencies that are seeking funds are relevant questions for the purposes of estimates hearings. As witnesses know, officers of the department are not asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. That does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Public interest immunity claims should be raised with the senators for the Senate to decide, not the person claiming the public interest immunity to determine.

The committee has agreed to permit the media today. There is no objection to that. I will just remind the media that this permission to film can be revoked at any time, and filming may not occur during suspensions or after the adjournment of proceedings. If any witness objects to the filming, the committee will consider the request. Copies of the resolution
concerning broadcasting of committee hearings are also available if anyone needs to follow that up.

The first session is for corporate cross-portfolio matters. I am always concerned about the number of officers who will be sitting here at 10 o’clock this evening having sat around for hours and then we do not get to them. So, I am hoping that today we can confine corporate cross-portfolio matters to actual corporate cross-portfolio matters, and I would seek your assistance, Mr Pezzullo, if you do have specific officers here, to answer specific questions later in the program—I would rather you identify that and we can leave it until then. I guess one of the reasons corporate and cross-portfolio matters normally takes a lot of time is that opening statements cover wide-ranging areas, and we do allow cross-examination of the opening statements in the general matters at the beginning. But, as best we can, perhaps we can confine specific issues to the specific place in the program later in the day.

We do have a program, which, as everyone is aware, is indicative only, because there is a ruling of the Senate that as long as any senator has any questions on a particular outcome or a particular issue then the committee is powerless to move on until all senators have exhausted all of their questions. That does mean, of course, that often we do not get towards the end, and this year we will try a little bit harder to get through by dealing with specific issues as they come up later in the program. With that, Minister, would you like to make an opening statement at all?

Senator Cash: No, but I understand that the secretary and the commissioner would.

Mr Pezzullo: The commissioner and I have proposed to table a written opening statement, and in the interests of brevity he and I will separately just draw some highlighted points of attention to both. The written opening statement will be now tabled, with your permission, Chair.

Senator KIM CARR: Do you have a copy that is available now?

Mr Pezzullo: I believe so. So, thank you for the opportunity to table the written opening statement. Further to this, the commissioner and I would like to very briefly highlight a number of points. The department and the Australian Border Force, as its operational arm, has been operating as an integrated entity since 1 July 2015, when Customs and Immigration were integrated—a task that is substantially complete. The imperative of budget repair means that we are operating as an integrated entity with reduced financial and staffing resources, and we are doing more with less. Since peaking in 2013-14, our staff levels have reduced by more than 300. Departmental funding for this current financial year—2016-17—has decreased by $130 million from previous-year levels, with further reductions of over $400 million programmed across the forward estimates.

In the period 2013-14 through to 2019-20, my department will deliver savings of $1.5 billion, of which $1 billion will be delivered in the period 2017-18 through to 2019-20. With the rejection of the third proposed enterprise agreement, which offered pay increases of between 6.4 and 10.7 per cent for the majority of our staff, the Fair Work Commission will now determine employee conditions through arbitration. Our proposed and therefore draft workplace determination will come at a cost of approximately $145 million over three years, requiring staff reductions of approximately 656 full-time-equivalent positions. In contrast, the principal union's, the CPSU’s, draft workplace determination would cost the department more
than $600 million over three years in salary costs alone, with staffing reductions of more than 1,900 full-time-equivalent positions.

Despite these resource constraints and challenges, our productivity has been climbing commensurate with escalating border flows. Last financial year—that is, 2015-16—we processed more than 40 million international air and sea travellers, we granted almost eight million temporary visas and we processed approximately 35 million air cargo consignments and more than three million sea cargo movements.

Over the last three financial years, passenger numbers have increased by 11 per cent, visa applications by 15 per cent and inbound goods by 14 per cent. By 2019-20, passenger visas and goods are forecast to increase by a further 20 per cent, 18 per cent and 26 per cent, respectively. In the face of resource constraints and increasing border flows, investment in modernisation is crucial. This means increased automation, such as the next generation of SmartGates; harnessing new digital technologies to improve our client services; improving our ability to collect and analyse big data and produce actionable intelligence therefrom; and investing in the ongoing professionalisation of our staff.

We are under critical and increasing pressure in trying to stay in a careful balance between cost containment, managing increasing border flows and associated risks, and maintaining appropriate service delivery standards. We will, as a result, need to pursue aggressive and radical innovation, apply new technologies which are increasingly characterised by artificial intelligence based capabilities, and expect more from our people in terms of their specialised skills and professional competencies. The era of the generalist administrative clerk is well and truly in its last days, and the era of the specialised, globally competitive public sector expert is well and truly upon us.

On other matters, despite it being more than 900 days since a successful people-smuggling venture reached Australia, Operation Sovereign Borders remains as vital today as when it was first enacted in 2013. Let me re-state: the illegal maritime pathway to Australia is and will remain closed. I would like to welcome the new commander of the Joint Agency Task Force Operation Sovereign Borders, Air Vice-Marshal Stephen Osborne, who has just taken up his appointment and follows in the steps of Lieutenant General Angus Campbell and Major General Andrew Bottrell, who has returned to Defence since our last hearings.

Further, I welcome the United States government's commitment to the arrangement with Australia for the resettlement of refugees from Nauru and Papua New Guinea, which is proceeding. We continue to have discussions with other countries to expand resettlement opportunities and are working with the government of Papua New Guinea to close the regional processing centre on Manus Island. Virtually all of the 30,000 legacy case load illegal maritime arrivals in Australia have now been provided with the opportunity to apply for a temporary protection visa or a safe haven enterprise visa. Nearly 30 per cent of this group have had their claims assessed. While processing and application rates have accelerated in recent months, around 11,000 people are still to submit an application. It is time for those who have not applied to do so and to engage with the process. Those who do not engage and those who are found at the end of the process not to be owed protection will be expected to leave Australia. We have already removed from Australia some of those individuals, and more will follow. Those who refuse to leave, for whatever reason, and who are not found to be owed protection cannot expect unending support from the Australian taxpayer.
Mr Quaedvlieg: A year and a half into its existence, the Australian Border Force today is consolidated as the operational arm of the department. We are witnessing a diversification and intersection of criminal activities at the border—for example, in narcotics, sexual servitude, counterfeit goods and illicit firearms trade. Despite these challenges, we are maintaining a high degree of operational success. In recent months the ABF has made significant detections of illicit drugs. Through six major operations, the ABF, working with national and international partners, has seized more than 2.3 tonnes of cocaine and more than 350 kilograms of methamphetamine with an estimated street value, collectively, of more than $900 million. This included, in February, the largest-ever single seizure of cocaine in Australia's history, at 1.4 tonnes. In keeping illicit substances and drug trafficking crime off Australian streets, the ABF is also helping to prevent the flow-on effects of drug use—namely, harm to Australian families and children, hospitalisation as a result of drug overdoses and associated pressures on our health system, and incidence of domestic violence.

Task Force Cadena continues to make good progress in tackling systemic visa exploitation. Thirteen operations have been completed, resulting in the detention of 156 unlawful noncitizens and the execution of 36 warrants. We are also working with partner agencies to identify and, where appropriate, cancel visas for noncitizens engaged in gang violence or other criminal activity. We are particularly targeting outlaw motorcycle gangs have been working with Victoria Police's Operation Cosmos to deal with members of the Apex street gang. As at 6 February 2017, six Apex gang members have had their visas cancelled. Additionally, as of 31 December 2016, 130 outlaw motorcycle gang members, associates or those involved in organised crime cases have had visas cancelled or refused based on character grounds. Since it was established in October 2015, the Tobacco Strike Team has seized in excess of 40 tonnes of smuggled tobacco and 95 million smuggled cigarettes. In preventing revenue evasion from attempted illicit tobacco importation, the ABF is also helping stem onward reinvestment in other criminal activities.

Senator KIM CARR: Can we have a copy of this?

Mr Quaedvlieg: I am sure that they can be made available to you.

Senator KIM CARR: Are you giving a full—

Mr Quaedvlieg: It is a summary.

Senator KIM CARR: The full document would be appreciated.

CHAIR: Sorry for the interruption. Please keep going.

Senator Hinch interjecting—

Senator KIM CARR: There is a separate one.

CHAIR: Please keep going, Mr Quaedvlieg.

Mr Quaedvlieg: Thank you, Chair. We continue to make Australia's immigration detention facilities safer and more secure. Operation Safe Centres, for example, provides coordinated activity to deter and disrupt criminal activities and high-risk behaviour. As a result of these initiatives, between 2014-15 and 2015-16 financial years, assaults, including major assaults—these are in detention centres—have decreased by approximately 20 per cent. Actual self-harm incidents in detention centres have reduced by approximately 25 per cent. Major disturbances in detention centres are significantly lower, by approximately 60 per cent.
Sexual assaults have decreased by approximately 35 per cent, and escapes have decreased by approximately 20 per cent.

We are also continuing our increased operational focus on asbestos, and we now have 48 different asbestos risk profiles and alerts in our systems. In the 19 months to the end of January 2017, the ABF has targeted 6,617 shipments, which resulted in 446 examinations and 22 detections of asbestos contaminated goods. This is compared to the previous 19 months, in which only 342 shipments were targeted which resulted in 26 tests and 15 detections. Despite a 20-fold intensification of efforts on asbestos, there has not been an equivalent proportionate increase in the overall number of positive detections. Moreover, early results of the six-month sampling program which we introduced indicate that there is not a widespread importation of goods containing asbestos.

Finally, in relation to volumes, trade and traveller volumes are higher than ever and our forecasts indicate they are only going to increase in the coming years to the tune of about 25 per cent growth. For example, on the weekend of 7 and 8 January this year we set an all-time record for travel movements at Australia's international airports, with arrival and departure numbers approaching 150,000 per day. In 2016 more than 16 million passengers used our automated departure SmartGates at our international airports, averaging more than 40,000 people using this technology every day.

But we are doing more. The department is running a tender process, inviting concepts of future focus products to further automate border control processing. We anticipate next generation technology to allow at least 90 per cent of passengers to self-process through airports by 2020.

Despite being relatively young, the ABF is each and every day supporting the prosperity and protection of Australia. I commend all my officers, uniformed and non-uniformed, sworn and non-sworn, for the important work that they do.

CHAIR: Mr Quaedvlieg, I know that I can say on behalf of all parliamentarians, thanks for the work that you and your team do. We have seen some high-profile drug busts in recent times, but I guess that is the attractive part of your job. There are a lot of other things happening behind the scenes that are difficult, so thank you very much for what you do. And the same to you and your staff, Mr Pezzullo. It is not an easy job doing what they have been doing over the last five or six years, and they are not often recognised for the stress and the strain and the difficult decisions that have to be made. Mr Quaedvlieg, do you think that your statement is available?

Mr Quaedvlieg: Yes.

CHAIR: It is on page 5 of the joint statement. That is fine. Thank you for that.

Senator KIM CARR: Neither the commissioner nor the secretary mentioned the ANAO report in their summary. Did I hear you correctly?

Mr Quaedvlieg: Which ANAO report?

Senator KIM CARR: The one that was tabled in 16 January. Neither of you mention that. Who is responsible in terms of the response to the ANAO report?

Mr Pezzullo: In the end, it is the accountable authority—the secretary of the department is always responsible for responding to ANAO reports.
Senator KIM CARR: Thank you. I thought you would say that. I am interested though that it is not in your report. There is no reference to it at all, is there?

Mr Pezzullo: I did not refer to it in my opening remarks, no.

Senator KIM CARR: But it is not in the full report, either; it is in the commissioner's. It is attached to the end of the commissioner's statement. Is that correct?

Mr Pezzullo: I did see it there somewhere, I have been guided. At the bottom of page 9—

Senator KIM CARR: Yes. That is in the commissioner's statement, not yours.

Mr Pezzullo: The statement you are holding in your hands is a joint statement. What I would describe as the longer statement that we tabled, if you go to the heading, it is jointly in the name of myself and the commissioner.

Senator KIM CARR: I see. You have said here the department's response to this, insofar as it is referred to in this statement, is: 'It is important to fully appreciate the context in which these contracts were established.' The department rests its case in terms of this response upon the historic assertion. Is that the case?

Mr Pezzullo: When you say historic, they are matters that go back in time, I suppose is another way of saying it. Yes.

Senator KIM CARR: The response from the Audit Office is that 'many of the shortcomings persisted in the 2014 contracts'—this is on page 8—'indicating that the 2014 contract consolidation process was not informed by lessons learnt from the department's management operation of the 2013 contract'. Is that an accurate statement?

Mr Pezzullo: You have accurately read out what the ANAO found, yes.

Senator KIM CARR: Would you agree with the Auditor's—

Mr Pezzullo: We have not necessarily agreed with all the conclusions. We have made that—

Senator KIM CARR: But that statement there: would you agree with the statement that is published on page 8 of the report published on 16 January 2017?

Mr Pezzullo: I would want to reflect on that specifically. We had extensive correspondence with the ANAO and I am sure that we would have made commentary—

Senator KIM CARR: Do you have a copy of the report in front of you?

CHAIR: Senator Carr, you asked a question. Please allow the witness to complete his answer before interrupting—

 Senator KIM CARR: It would help if you had a copy of the report in front of you.

CHAIR: Had you finished, Mr Pezzullo?

Mr Pezzullo: (a) I do not have a copy of the report, and (b) we had extensive correspondence with the ANAO. I would rather ground my response in whatever we specifically said to them about each chapter.

Senator KIM CARR: In the statement made—on page 8—by the Auditor saying, 'the department failed to learn the lessons', the obvious reason is that you have claimed in your statement here today that there was a context to what would have to be one of the worst audit reports I have ever seen on a department in my 24 years here—and moving into my 25th year

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now. Can you think of a report that has been stronger in its criticisms of the operations of a department than this report?

Mr Pezzullo: I am not a close student of all audit reports—

Senator KIM CARR: But you have been secretary since 13 October 2014. This is a report that goes to the operations of the department under your watch, does it not?

Mr Pezzullo: Principally, and for a period before, as well.

Senator KIM CARR: But it goes specifically to your administration of this department?

Mr Pezzullo: Since October 2014, yes.

Senator KIM CARR: And the report says 'the lessons were not learnt' for the 2014 contracts.

Mr Pezzullo: Again, I state that that is the Audit Office's assertion. Unless the chief operating officer, Ms Connell, can assist me, unless I go back through the documents, we had extensive engagement with the ANAO. They took some of our views on board—others they did not—and we have ended up not agreeing with some of their contentions. But for the sake of good public administration we have agreed a road map for how to remediate all the matters that they found in their conclusions.

Senator KIM CARR: I am concerned about a statement such as this concerning the allocation of—how many billions of dollars was it? What is the total value of this contract?

Mr Pezzullo: I will ask Ms Connell to remind me. They are significant contracts.

Ms Connell: Mr Nockels might be able to help us. I do not have the exact figure.

Mr Nockels: I just need to quickly check, but I think it is in the vicinity—the contract I think that you are referring to that the ANAO audited—is about $2.6 billion overall contract value.

Senator KIM CARR: By any imagination a very substantial amount of public money.

Mr Pezzullo: It is a significant contract.

Senator KIM CARR: You are saying that the problem with the department was essentially historic and that under your watch these questions were not attended to. That is the proposition I am putting to you.

Mr Pezzullo: That is what the Audit Office states.

Senator KIM CARR: You are saying that is not right?

Mr Pezzullo: I am saying unless I go back through the fine detail of our response to their contention I am not going to give an answer that is not grounded in correspondence—

Senator KIM CARR: I would ask you now to answer this simple question: did you take into account the 'lessons learned from the department's management and operation of the 2013 contracts'?

Mr Pezzullo: Yes, would be my contention. We clearly have not convinced the Auditor, if they are making statements such as that.

Senator KIM CARR: I see. The report states:
The department did not … place effective mechanisms to manage the contracts. Other than the contracts, there was no documentation of the means by which the contract objectives would be
achieved. In the absence of a plan, assurance processes such as the inspection and audit of services delivered, has not occurred in a systematic way and risks were not effectively managed. In addition, the department has not maintained appropriate records of decisions and actions taken in the course of its contract management. As a consequence, the department has not been well placed to assess whether its service strategies were adequate or fully met government objectives.

Do you think that is a fair statement?

Mr Pezzullo: Not necessarily. I know as a matter fact—I can only restate this; I am sorry if I am being repetitive—on any number of ANAO assertions, they were contested through the backwards and forwards that is allowed for in the preparation of audit. Until I remind myself of the specific countercontentions that we put I am not prepared to accept quote after quote after quote that you provide.

Senator KIM CARR: All we can do is accept what the Auditor puts to the parliament. Are you saying the report is wrong?

Mr Pezzullo: In some cases we have contended quite vigorously and disputed, even in factual terms—leaving aside accepting things that need to be remediated—we have not necessarily accepted the analysis, as we are entitled to, because we put in responses, as we are entitled to.

Senator KIM CARR: Dr Jill Charker, on 29 August 2016, in the first report which you cite, advises us that the audit report—this is the first report:

… also makes notes of documents that appear to have been created after procurement processes were finalised and in the course of the ANAO audit.

The chief operating officer of the department, the deputy secretary of corporate, says:

The department requires all of its officers to make full information available quickly to the ANAO and has no tolerance for misconduct. The matters raised by the ANAO in this audit have now been referred to the Integrity and Professional Standards Branch for formal investigation.

What has happened?

Mr Pezzullo: I will take advice from the head of the area, but I have not been advised of any misconduct at all. I think Dr Charker, Ms Connell's predecessor, was as concerned as I was about the creation of summaries to provide context to the ANAO. Whether Ms Connell or Mr Hayward can further illuminate the circumstances of that inquiry, I will leave it to them.

Ms Connell: Perhaps I can make a broad statement; Mr Hayward might like to expand on that. Within our response to the audit report we acknowledged that there were shortcomings in the administration, but we did reiterate that all payments were in accordance with the purpose of the contracts. The initial contracts were approved by the appropriate spending delegates in the first instance, and we found no evidence of fraudulent or inappropriate payments.

Senator KIM CARR: So you have had an investigation. Is that what that refers to, an investigation?

Mr Hayward: In relation to the issues that the ANAO raised about providing reports after the audit, that was sent to I&PS, our Integrity and Professional Standards Branch. We have conducted a full investigation. We found through cyberanalysis, through looking at drives on the servers, our information management system, looking at the original documents, that the
documents were created prior to the audit but uploaded into the information management system post.

**Senator KIM CARR:** So they did not fabricate the records.

**Mr Hayward:** No, that is correct. There was no evidence of any wrongdoing by any staff.

**Senator KIM CARR:** Has the Auditor-General been made aware of that?

**Mr Hayward:** I do not think so, at this stage.

**Senator KIM CARR:** Why not?

**Mr Hayward:** An oversight on my behalf.

**Senator KIM CARR:** I am surprised, if your defence is that the department has not fabricated records and you have done an investigation, that you would not convey the results of that investigation to the body that is making the allegations.

**Mr Hayward:** In fact, we took it on notice at the Joint Committee of Public Accounts and Audit to come back to them. That response is being drafted.

**Senator KIM CARR:** Thank you, but this is the estimates committee and you are saying you have not responded to the Auditor-General's allegation made last year. When was your inquiry concluded?

**Mr Hayward:** I think it was just prior to Christmas.

**Senator KIM CARR:** Before Christmas. Let us go through some of the propositions here. Mr Pezzullo, were you shocked when you received this report?

**CHAIR:** That is not a question; that is an opinion. We are not really interested in Mr Pezzullo's state of emotion when he read it. Do you have a factual question of the estimates?

**Senator KIM CARR:** Yes, I am just asking. Mr Pezzullo, you have an extensive record in government now. Were you shocked when you saw the report?

**CHAIR:** You do not have to answer that.

**Mr Pezzullo:** I go about my work without putting too much emotion into it.

**Senator KIM CARR:** I see, no emotion.

**Mr Pezzullo:** It is a hard enough job as it is.

**Senator KIM CARR:** You had no emotion when you saw this report.

**Mr Pezzullo:** I considered it in a very clinical fashion.

**CHAIR:** Questions about your emotion are not part of the estimates and I would rule them out of order. You should not have to answer them—

**Senator KIM CARR:** I would have thought that if I as a minister had seen this report I would express some emotion.

**CHAIR:** and you would help the committee if you did not respond to questions that are simply not part of the estimates.

**Senator KIM CARR:** Mr Pezzullo, when did you see a draft of the report?

**Mr Pezzullo:** The procurement report or the garrison contract management report?

**Senator KIM CARR:** The garrison support and welfare services for offshore processing centres on Manus Island and Nauru.
Mr Pezzullo: I will need to refresh my memory as to when the section 19 draft was sent to us, but in accordance with normal procedures, when the ANAO finalise what is called the section 19 draft, which they send out to departments and agencies, they send it to statutory officers or secretaries, so it would have been on the date of that correspondence.

Senator KIM CARR: Can you tell me what date that was?

Mr Pezzullo: I said I would have to look at the date.

Senator KIM CARR: Would you come back to me on that one? It should not take long, should it? There is an officer here who can tell us that?

Mr Pezzullo: It might even be that an officer here can answer it.

Senator KIM CARR: That would be very good.

Ms Connell: Sorry, Senator, I have the day the report was published.

Senator KIM CARR: You saw the report on the day it was published.

Ms Connell: No. I beg your pardon, I was just clarifying your question. Are you asking when we saw it?

Senator KIM CARR: No. I want to know when you first saw the draft report.

Ms Connell: Normally we get issued with an embargo copy of the report a week or two beforehand, but I do not have the exact date—

Senator KIM CARR: Sorry? A week beforehand?

Ms Connell: A week or so beforehand we usually get an embargo copy.

Senator KIM CARR: But you actually get more than that, don't you?

Ms Connell: And we get a draft copy of the report we are allowed to comment on.

Senator KIM CARR: That is right. When did you receive that draft report?

Ms Connell: I do not have that date.

Senator KIM CARR: It is certainly not a week before.

Ms Connell: The embargo copy—I beg your pardon, the final copy would have been embargoed.

Senator KIM CARR: I do not want to be cute. Bear in mind, I have been through this process myself—

CHAIR: Senator Carr was a senior minister, in case you do not know.

Senator KIM CARR: I am sure that she is aware of that. The department would receive a draft report for comment—a consultation report might be another way of describing it—in which you are given an opportunity to refute any propositions in the report. Is that correct?

Ms Connell: That is correct, and that is the date I do not have with me.

Senator KIM CARR: But it is not a week before, is it?

Ms Connell: Correct.

Senator KIM CARR: How much roughly, do you know?

Ms Connell: I would be guessing.

Senator KIM CARR: But how many weeks?
Ms Connell: I would be guessing.

CHAIR: Take it on notice.

Ms Connell: I would have to get the dates for you.

Senator KIM CARR: But it is at least a month, isn't it?

Ms Connell: I do not know. We should be able to come back within this hearing with those dates.

Senator KIM CARR: Thank you. How did the staff react to that report? Senior management—how did they react to it?

CHAIR: Again, that is not an appropriate question—

Senator KIM CARR: Why isn't it an appropriate question?

CHAIR: It is a matter of opinion on how this witness believes the staff might have reacted. It is totally inappropriate for estimates and the question is not allowed. Do you have another question, or is your time up?

Senator KIM CARR: I think it is an entirely appropriate question to ask the officers how they reacted to the report.

CHAIR: I have ruled it out of order, and your time has expired.

Senator PRATT: We are not talking about emotional reactions. It could be a practical reaction.

CHAIR: Senator Fawcett, it is your turn for questions.

Senator FAWCETT: I have a few follow-up questions about these contracts. Am I correct in my understanding that you inherited these detention centres and contracts that were in place already?

Mr Pezzullo: Inherited?

Senator FAWCETT: When this government came to office and when you came to your appointment.

Mr Pezzullo: I see. The department is enduring—it straddles governments—so it did not inherit anything. But in terms of my secretaryship, as Senator Carr has reminded us I was appointed on 13 October 2014.

Senator FAWCETT: So these detention centres were operating and there were formed contracts in place already?

Mr Pezzullo: Yes. Certainly prior to my secretaryship.

Senator FAWCETT: What I am keen to understand is that those were in place—in terms of what we now call Border Force, but Customs and ADF assets and personnel that were under command or available for border protection duties—and I am trying to contrast the cost: the blowouts that occurred, in terms of contracts for detention centres, onshore and offshore, under the previous government; and the utilisation of resources versus the outcomes. Can you give us a quick snapshot, because my understanding is that the cost has decreased significantly as the coalition has been able to shut down detention centres, and the efficacy of border control has improved markedly? Can you give us a snapshot of what the costs were in
2013, what the costs for running detention centres are now, what were the number of boat and people arrivals in 2013, and what are they now?

Mr Pezzullo: Taking the latter part of your question first, I think it is a well-known matter on the public record that up until July 2014, actually, which was the last boat that had to be accepted into our migration arrangements—and in that case the person was transferred to Nauru—some 850 vessels arrived between the period August 2008 and that tailing-off point into 2014. Some 50,000 people arrived, as I think is well known, 30,000 of whom remain onshore without permanent status—they are in the so-called onshore case load—and some 2½ thousand are in offshore regional processing arrangements, where these contracts are permanent, in the jurisdictions of either Papua New Guinea or Nauru. Of that 2,500, a number of those people are in Australia on approved medical transfers, pending return.

In terms of ongoing costs, the department is funded at roughly almost $1 billion per annum to provide services—we do not run the centres, but to provide services—at the centres, and that has been fairly constant since that group of 2,500 illegal maritime arrivals were transferred under the two arrangements that we have, one with Nauru and one with Papua New Guinea. In terms of, as it were, avoided costs, with the tapering off, and indeed then shutting off of the arrivals that occurred between September 2013 and the last vessel, which, as I said, was in July 2014, both ministers, Mr Morrison, as the previous minister, and Mr Dutton, have spoken in terms of—and we have provided evidence to this committee before, but I cannot offhand recall the breakdown—have referred to approximately $11 billion in avoided costs, which related to what would have been our expenditure if the rate of arrivals had continued. There has also been quite a significant number of closures of onshore detention centres, because obviously the requirement from those centres has been obviated with two things: one is that the flow of boats has stopped, but then also the offshore processing arrangements have meant that persons were not being put into the Australian migration zone in any event. We have given evidence and have indeed put questions on notice on the precise composition of those numbers, so I would rather refer to those in detail in case I misspeak. But in broad terms those are the costs and the reduction in the flow of arrivals.

Senator FAWCETT: The point I am trying to draw out is that there have been questions asked here about this particular ANAO audit, and criticisms about the management. You have placed on the record today, and previously to the ANAO, that you do not agree with some of their assertions. From a broad context, what we are seeing is a department that had a huge workload in terms of the number of arrivals, a huge outlay of costs, and it has now tapered down to no arrivals and a significant reduction in costs. What I would like to understand is how you have managed to make that turnaround and, just as we have seen a tapering off in costs and a tapering off now to a complete cessation of arrivals, would it also be fair to assume that as you have restored order to that chaos you are now progressively restoring order to contracting arrangements that you took on in a situation of some chaos, back in 2014?

Mr Pezzullo: Personally, I would not use terms like 'chaos', because as I said earlier to Senator Carr we go about our jobs in a clinical and unemotional fashion. I will speak though of the pressure, certainly on our department, in terms of dealing with the volumes, creating stresses and the need for the redeployment of resources, which is I think a more neutral way that a public servant perhaps might couch that circumstance in time. Senator Carr drew...
attention to Dr Charker's response to the first of the ANAO reports. There are two in question here. One is a procurement related report and one is a contract management related report. It is the case that there were some issues that were accepted, both in terms of the analysis and the recommendations and the findings about the need to improve paperwork—our record-keeping, essentially. That is self-evidently stated in our response to both reports. There were other matters on which I would just have to frankly say that we remain in contention, or at least we have a difference of view—for instance, the contention that is in both reports, more particularly in the second report, that our officers undertook payments under these contracts without proper parliamentary authorisation. The government does not accept that. The parliament did appropriate moneys for the provision of services to support the running of these centres, one in Nauru in one in Manus. That is fairly stated in the report, but we actually do not agree with that contention—that to our officers acted without parliamentary authority. Certainly, having been through several budget rounds as secretary, and prior to that as the head of Customs, I think the Expenditure Review Committee of the cabinet themselves would be puzzled at any sort of suggestion that they had not appropriated money for the running of regional processing centre services. But, as I said to Senator Carr, our response to these matters is stated on the record, both in the summaries that we put into the final draft, plus the to and fro of the correspondence. So, without checking the record of what our specific points of dissent were, I do not want to chance my arm about the things that we fully agreed with, the things that we half agreed with and indeed the things we did not agree with at all.

Senator FAWCETT: Can I ask you some further questions about Operation Sovereign Borders, which, from the government's perspective, is that construct that brought order out of that chaos and actually restored security to our borders. Can you outline the disruption and deterrence activities that are still occurring under Operation Sovereign Borders?

Mr Pezzullo: Certainly, Senator. In broad terms—and we might revisit this through the course of the day when we get to the relevant detailed elements of the program, and we might even have the opportunity to introduce the commander of the joint agency taskforce to this committee who is, as I said, a newly appointed ADF officer. Essentially, the deterrence effect is achieved by the following means: very strong strategic communications activities that both repeat, project and embed very clear messages from the government of Australia that under no circumstances will persons who arrive by particular means—that is described as illegal maritime arrival means—will ever be able to, by that means, enter Australia, and that if they attempt to do so there is a risk that they will be disrupted even before they depart, through our very strong law enforcement and intelligence collaboration with other countries. It is difficult to say too much about that other than the fact that those activities occur. If they, perchance, are able to depart their points of embarkation, they will be intercepted by the Australian Border Force, and/or the Royal Australian Navy, who work together in a single construct under the commissioner's operational supervision—the maritime component of Operation Sovereign Borders.

If the circumstances allow it to be done—that is to say, safely and without the risk of Australia breaching its obligations to not refoul persons who arrive by such means—they will be turned back to their point of embarkation, and we have conducted a number of those operations and described those operations previously to this committee. Or, alternatively, where we have a consensual arrangement with the receiving state, they will be taken back—
not necessarily by turn-back means on the sea, but through aircraft for instance—and we have such arrangements, and we have previously spoken about those arrangements, with Sri Lanka and Vietnam in particular.

If—and this has not occurred for almost three years now—all of those conditions cannot be met, we then have regional processing available to us. No arrival has had to go to either Manus or Nauru since July of 2014, so we are coming up to three years of that pathway being effectively shut. They are, in essence, the different layers that comprise Operation Sovereign Borders. The fact that Australia is now globally, you would have to say, acknowledged as being very robust in terms of its border protection arrangements and has quite specific strategies, techniques and tactics in place to deal with it, resonates through the relevant people-smuggling syndicates.

That said, we are periodically probed; ventures are formed, as I have had occasion to brief this committee about before. Smugglers will attempt to market an opening even if it is not an objectively true story that they market or peddle. They will attempt to say, potentially—and this has been a matter of public record—either there has been a change of political circumstances; there has been a change of law; there has been a change of regulation. Often those things are not true, or they are spun into an untruth. What they are seeking constantly to do is to entice people to part with their money, get on boats and attempt the voyage. That happens periodically.

As we have had occasion to brief this committee before, and I will restate it today, we have had, since September 2013, occasion to return by the take-back or turn-back means 29 vessels—not all of which are turn-backs, some of which are those aerial take-backs that I mentioned—and that has consisted of some 740 people who thought better of what to do with their money, and thought better of the trust that they had placed in the smugglers as opposed to the very clear message from the Australian government, and they ended up back where they started essentially.

Senator FAWCETT: If we can distinguish between the turn-backs or returns and pure disruptions, are you able to give us an idea of how many smuggling ventures have been disrupted before people actually even got on the boats?

Mr Pezzullo: I would want to reflect on that. We do not always publicly announce—in fact, very rarely do we publicly speak of those matters, partly to ensure that our operational cooperation with relevant offshore partners is kept as confidential as it needs to be. We might have given some evidence—I remember both Major General Andrew Bottrell, and possibly the commissioner perhaps in general terms speaking of these matters—but I do not know that we have ever quantified numbers here. I might seek assistance from my colleague, the commissioner, and see if he has anything to add.

CHAIR: This is really an issue that I would rather come to in outcome 1 in any case.

Mr Pezzullo: Chair, we might reflect on how we might sensibly answer that in the public forum. Perhaps through the course of the day, Commissioner, you and I might reflect on how we might do that.

Senator FAWCETT: Okay, thanks.

Senator HINCH: My question is to Mr Pezzullo. There was a public hearing last November of this committee in Melbourne, which you attended. There was a lot of discussion
about the Obama-Turnbull pact, shall we say, for taking some detainees from Nauru. At the
time I asked you what was the quid pro quo and you said that there was none. I also asked you
if there was any deal at all about taking some South Americans from Costa Rica in exchange
for Manus detainees going to the US and you said there was not. Correct?

Mr Pezzullo: I said that the arrangements were not linked. You might want to check the
Hansard.

Senator HINCH: That is right. If they were not linked, can you explain to me why
Minister Dutton last week agreed it was a people swap—that we would not be taking theirs
until the Americans took ours?

Mr Pezzullo: I think Mr Dutton, both in that interview and then subsequently when he
was asked about the same matter—and through the minister perhaps he can speak for
himself—made it very clear that he was not particularly fussed about the terminology that
people were using. I think one of the phrases he used was 'You can call it whatever you like',
and then he proceeded to describe the actual arrangements as they are rather than the labels
that people are putting on those arrangements.

Senator HINCH: You would have to agree on Triple M it was a fairly brief clarification
and row back from him because he had said to Andrew Bolt that he agreed that it was a
people swap. He actually said something like, 'We won't be taking theirs until they take ours,' so surely there is a link.

CHAIR: These questions perhaps should be addressed to the minister rather than asking
the secretary to interpret what the minister might have meant, said or done.

Senator HINCH: Senator Cash?

Senator Cash: I am advised that on 21 February 2017 Minister Dutton specifically stated
that the arrangement is not a people swap deal.

Senator HINCH: All right, Minister. How does that gel with what he said to Andrew Bolt
two nights before and before Foreign Minister Bishop then of course—

Senator Cash: Unfortunately, I do not have what he said to Andrew Bolt in front of me so
I would need to take that on notice, but again, as the secretary has stated, the minister has
clarified his comments and again on 21 February 2017 he did say that the arrangement is not a
people swap deal.

Senator HINCH: Right, so you would now say that they are not linked?

Senator Cash: I would say on behalf of the minister that the arrangement is not a people
swap deal.

Senator HINCH: All right. Thank you.

Senator KIM CARR: Mr Pezzullo, you said before—and I will get this accurate—that
the government would be concerned about any suggestion that payments made under the
contracts canvassed in the Auditor-General report were not covered by an appropriation.

Mr Pezzullo: That is right. We are not authorised by the parliament—

Senator KIM CARR: Sorry, I am not worried about the department. I am wondering if
you could point to the part of the report that actually makes that claim.
Mr Pezzullo: If you have got the garrison report, I am not sure that it is made there. If you have the procurement report, I think it is made there.

Senator KIM CARR: This is the procurement one. I am interested here because the question goes to the issue of authorisations. That is a different concept, isn't it, than appropriation?

Mr Pezzullo: They are linked of course, yes.

Senator KIM CARR: Sorry. Is there a difference between the principal of moneys being paid by a department with a relevant authorising officer and an appropriation? Are they different concepts?

Mr Pezzullo: Yes.

Senator KIM CARR: They are. So in this report and the garrison report—

Mr Pezzullo: One flows from the other. The parliament has to appropriate the money—

Senator KIM CARR: I do not believe the Auditor-General has made the assertion in the garrison report that there had been no appropriation. The statement here is that the department's contract management was very poor and the relevant authorisations were not in place. Is that correct?

Mr Pezzullo: I do not think we accept that in its full dimensions, but perhaps the chief operating officer and the chief financial officer can add to those remarks.

Ms Connell: I think what you are alluding to is the $2.3 billion made in payments between September 2012 and April 2016, which was the topic of the audit. The department actually disagrees with any suggestion that the funds were—as the secretary said—unauthorised or improperly spent. And there is no suggestion in the audit report that the payments were not made for the intended purpose or the appropriate purpose—

Senator KIM CARR: But that is not the question—that is not what the report actually says. It says they were not made with the appropriate authorised officers. My recollection of public administration here is that the minister or the secretary has to delegate authorisations. Is that correct?

Mr Pezzullo: Yes.

Senator KIM CARR: Did that actually occur in regard to these payments?

Ms Connell: The expenditure is firstly approved when the contract or purchase order is made—raised—and then once the invoices come in, the payment authoriser—

Senator KIM CARR: Yes, I understand that. The question I want to go to is this: is the Auditor correct in identifying the fact that the department did not have in place the appropriate authorisations for payments, for the relevant officers?

Ms Connell: Our reading of the audit report is that that they were not correctly authorised, and that there was a lack of supporting evidence to demonstrate compliance with the internal processes. And I think the department, in its response, has recognised the weaknesses in our management of those earlier contracts, and we have been quite diligent in our response about the sorts of—

Senator KIM CARR: But you acknowledge that the authorisations were not in place.

Ms Connell: That they were not—
Senator KIM CARR: Evidenced.

Ms Connell: evidenced as being unlawful, or not for the intended purpose in the contract—

Senator KIM CARR: That is an entirely separate question. I am not going to the question of corruption, I am going to the question of whether or not proper public administrative principles were followed in regard to the relevant officers being authorised to make payments. The Auditor-General's report suggests to me that those authorisations were not in place. Do you accept that? Or do you not accept that?

Mr Groves: Senator, I think the issue with these payments—the delegations were in place in the organisation. What the audit found—two things, and I think they were alluded to by splitting up the $2.3 billion reference into two lots of 1.1 billion. There were two things that were probably lacking from an internal process. Firstly, in some cases, an officer with not the right level of delegation for authorising those payments had approved the payment—

Senator KIM CARR: So they were not authorised.

Mr Groves: They were authorised but their delegation did not go to the level of the invoice that they were authorising.

Senator KIM CARR: Were they authorised or not?

Mr Groves: Yes—well, they did have authorisations, yes. So that is the first issue. The second issue was that the ANAO could not find evidence in all cases of who actually authorised a payment. But I would like to also state that, under these contractual arrangements, the vast majority of the payments are actually highly linked to the contract. So the contract, once approved by the spending delegate—there are two things that occur. There are bandings, based on the number of people that we have in the different processing centres, and there is a standard monthly payment, based on the occupancy levels.

Senator KIM CARR: Mr Groves, you just cannot go handing out money if you are a Commonwealth officer, can you?

Mr Groves: I am sorry?

Senator KIM CARR: You cannot just hand out money, if you are a Commonwealth officer. You actually have to have a delegation—

Mr Groves: Correct.

Senator KIM CARR: An authorisation to distribute public moneys on behalf of the Commonwealth. Is that correct?

Mr Groves: That is correct.

Senator KIM CARR: Were they in place or not?

Mr Groves: The authorisations were in place.

Senator KIM CARR: But you have just said not—there is no evidence of it, and that they were not at the appropriate level. So were they in place or not?

Mr Groves: Well, there were delegations in place. They just were not authorised at the right level.

Senator KIM CARR: They were not the right ones.
Mr Groves: Not at the right level; yes, correct.

Senator KIM CARR: Well, they are not in place.

Mr Groves: Well—

Senator Cash: Chair, the evidence of the witness is that the authorisations were in place. Perhaps Senator Carr may now allow the witness to explain: whilst they were in place, there may have been another qualification.

Mr Groves: Yes, that is correct. Most of our delegations around authorisation—certainly now—are based on dollar limits. So an officer may not have had the right dollar limit. In cases at various points over the course of these contracts, the authorisation delegations for payments were based on the appointment of a contract administrator and, in some cases, the ANAO did not evidence—and that did not have a dollar limit around that delegation. The ANAO could not find particular appointment as contract administrators of the people who were authorising the payments.

Senator KIM CARR: So, Mr Pezzullo, your statement before about the appropriation has nothing to do with this report—this is the garrison report. Is that correct?

Mr Pezzullo: I said to you quite explicitly, I thought that it had material relevance to the first report, the procurement one, and you said, 'Yes, but we are not talking about that.' I am happy to park that concern, which no doubt we will come back to, on the procurement report. I qualified my remarks explicitly.

Senator KIM CARR: When were you given the recommendations from the report? When did you actually see those?

Mr Pezzullo: It goes to the earlier answer. The draft recommendations would have been cited when what we call the section 19 draft came in. I think Ms Connell made a commitment to take that on notice.

Senator KIM CARR: What was the date of that?

Ms Connell: I do have those dates.

Mr Pezzullo: But that would have been the draft recommendation.

Senator KIM CARR: Those are the draft recommendations, yes?

Ms Connell: On which report?

Senator KIM CARR: On the garrison report.

Ms Connell: The section 19 draft was received on 15 November 2016 and the department responded on 14 December. The embargo copy that I alluded to was received on 13 January before a publish date of the 17th.

Senator KIM CARR: I am interested to know what happened between 15 November and 13 January. How many departmental officers were involved in the response to the Auditor's report?

Ms Connell: I would have to take that on notice, but the audit report did involve quite a large part of the department from both our operational arm in the ABF and the departmental side.

Senator KIM CARR: You cannot tell me how many?
Ms Connell: No, I cannot tell you the exact number of officers who would have been involved.

Senator KIM CARR: Can you take that on notice.

Ms Connell: I can.

Senator KIM CARR: I presume there was some process for collating and providing documents to the ANAO?

Ms Connell: There is a well-rehearsed process. We get quite a number of reports from external scrutiny bodies—

Senator KIM CARR: No, I am interested in this report—

Ms Connell: The process is the same.

Senator KIM CARR: I am sorry if I am confusing you on this matter. This report here, that we have been discussing this session, how—

Ms Connell: You are alluding to a process. I am just trying to explain the process that we have—

Senator KIM CARR: Yes, thank you. Was there a central office that collated the response to the Auditor's report?

Ms Connell: We have a branch within the corporate area that has the responsibility of coordinating responses and working right across the department, pulling together the information within the time frames provided.

Senator KIM CARR: How many officers are in that particular unit?

Ms Connell: I can get that for you shortly, but it is quite a small branch within Corporate Group.

Senator KIM CARR: Who signed off on the documents to the ANAO? Was there an officer that was responsible for the transmission of documents?

Ms Connell: I would have to check which officer signed off on that report. It could be the chief operating officer, but I will have to check for you.

Senator KIM CARR: Are you satisfied that the Auditor's report as described here was an accurate reflection of the department's procurement processes for those contracts?

CHAIR: That is getting close to being—

Senator KIM CARR: No, it is a very straightforward question. Did they get it right?

CHAIR: It is getting very close to asking this witness for her opinion on—

Senator KIM CARR: It is not her opinion. It is a statement of fact: is this report an accurate reflection of the processes the department—

CHAIR: That was not your question.

Senator KIM CARR: That is my question.

CHAIR: If that is your question, then I will ask the witness to answer.

Mr Pezzullo: Can I just be clear—I am sorry, even though I have relatively new glasses, I cannot always see what you are holding up—are we on the garrison report?

Senator KIM CARR: The garrison report is what I referred to—
Mr Pezzullo: Because your question was about procurement.

Senator KIM CARR: —but there is a previous report and you have taken this one as read because you have accepted all its recommendations. This is the first report on offshore processing, yes?

Mr Pezzullo: On procurement?

Senator KIM CARR: Yes.

Mr Pezzullo: We have taken it as read. We have accepted a recommendation and dissented from some of the factual matters. I dealt with that earlier.

Senator KIM CARR: That is what I am interested to know. On the factual matters, does the report accurately reflect the procurement processes?

Mr Pezzullo: The second report is not about procurement, it is about contract management.

Senator KIM CARR: No, the first report. Does that accurately reflect that?

Mr Pezzullo: No, and Dr Charker’s letter that you yourself have alluded to makes that quite clear. We accept the recommendations by way of remediation and we disagree with some of the analysis.

Senator KIM CARR: In terms of the management of the contract, which is what this one goes to, the second report, did you seek changes to the ANAO report?

Mr Pezzullo: We almost certainly would have provided feedback about the things that we disagreed about, absolutely.

Senator KIM CARR: That is the normal practice and departments—

Mr Pezzullo: Yes, that is right. Whether that is seeking changes or seeking to clarify the ANAO’s understanding, I suppose is—

Senator KIM CARR: Can you indicate what are the areas that you sought to discuss with the Audit Office?

Mr Pezzullo: We could quickly establish it. I do not have it to hand, but there surely would be a response from either Ms Connell or someone else at the back of the report that says that we disagree with whatever.

Senator KIM CARR: But you would have sought other changes?

Mr Pezzullo: Potentially, yes.

Senator KIM CARR: What other changes did you seek?

Ms Connell: If there were any errors of fact, obviously we would have corrected those. I do not have a complete chronology of what edits were made or what suggested changes were provided back to the ANAO. We will have to take that on notice.

Senator KIM CARR: Did they correct the errors as you identified them?

Ms Connell: I cannot be certain, but invariably they do, if it is correcting a fact.

Senator KIM CARR: That is certainly my experience. The question then comes to the matter of analysis.

Mr Pezzullo: Yes.

Senator KIM CARR: That is right?
Mr Pezzullo: Yes.

Senator KIM CARR: When did you first alert the minister or his office to the Audit Office's investigation?

Mr Pezzullo: To the best of my recollection, and we will just clarify this, we regularly provide advice on ongoing audit matters where we are able to, within the strictures of section 19 of the Audit Act, which require nondisclosure of matters other than as approved by the Auditor-General. I would just have to check as a matter of fact when those briefings occurred.

Senator KIM CARR: Can you provide that?

Mr Pezzullo: We can probably do that through the course of the day, yes.

Senator KIM CARR: Did you send copies of the relevant documents to the minister's office?

Mr Pezzullo: Our practice—and Ms Connell will correct me if I am wrong— is to rely only on the ANAO's dissemination procedures to disseminate copies beyond the department. So the ANAO, as a matter of course—I cannot recall whether they do it with section 19 reports but they certainly do it with embargoed reports—send copies to the minister and to other offices.

Senator KIM CARR: That is the final report—

Mr Pezzullo: I would have to refresh my memory on the section 19. If they did not send it to the minister it would not be our practice to do so. We might brief the minister on the fact that there is an issue of public administration that—

Senator KIM CARR: You have use the word 'briefing' twice now. So, initially, you alert the minister. Was that by way of briefing?

Mr Pezzullo: No, often when the audit program is settled we draw attention to either own-motion investigations or matters where the department might be picked up as part of a cross-portfolio program of audit. I would have to refresh my memory, but our relevant audit coordination people could probably assist me with that.

Senator KIM CARR: So that is a general notification—an alert—that this is in their list?

Mr Pezzullo: And we might say that the Audit Office is looking at procurement for the offshore contracts, and they are also going to look at garrison—

Senator KIM CARR: The management.

Mr Pezzullo: Contract management. That would be stated in a schedule.

Senator KIM CARR: But I take it you provided a separate briefing to the minister once you were aware of the draft contents?

Mr Pezzullo: Only in a manner consistent with our obligations under section 19. But I will just have to establish as a matter of fact as to when those briefings occurred.

Senator KIM CARR: When that happened—and, obviously, it was consistent with section 19. You are not going to tell me anything contrary to that.

Mr Pezzullo: We are meticulous in our observance of section 19. You asked about corrections. One that I can recall to mind, because I remember being quite focused on it—

Senator KIM CARR: In an unemotional, clinical way—
Mr Pezzullo: A very professional, very clinical, tradesman-like fashion. I might need to come back to that.

Senator KIM CARR: What was the matter. I was distracted by the chatter.

Mr Pezzullo: We will come back in relation to the matters that Ms Connell has taken on notice, but going back to the question of both appropriations, which had featured in the first report—you are absolutely right in drawing attention to that—payment authorisations that Mr Groves has spoken of, I do recall seeking my own officers to provide evidence back to the ANAO that in the end, notwithstanding the delegation levels and the recording of those delegation levels, the expenditure of funds over the course of the relevant financial year, from memory I think it was 2015-16, had been for the intended purpose of both the contract and therefore the appropriation of funds. And the ANAO, I think, concedes that that—

Senator KIM CARR: Can I just be clear on that—

CHAIR: Thanks, Mr Pezzullo. We can come back to this later. Senator Fawcett has the call.

Senator FAWCETT: I just want to make sure we are not missing the forest for the trees here. Could you clarify in summary this whole issue. My understanding is that the authorisations were in place but the ANAO found that sometimes they are not correctly documented.

Mr Pezzullo: Or, to repeat Mr Groves's evidence, that in some cases authorisers were not signing in relation to the delegation levels otherwise provided for. And that is an important issue. Senator Carr has drawn attention to that. It is important that you document not just the title of the officer but their level of expenditure.

But there is the safety net that I was alluding to before the changeover of questioners: the contract management area must be paying the invoices in accordance with the stated purposes of the expenditure, and you absolutely have to identify the correct levels and the correct delegations—we are not shying away from that. That is to say, the contracted services must be delivered on the ground, because that is where you get into the issue of the misappropriation of funds and the ineffectual expenditure of public moneys. The ANAO did not find that that was occurring. That is the point I was making at the very tail end of my responses to Senator Carr.

Senator FAWCETT: So authorisations were there, albeit perhaps not documented as completely as they should have been. They were for the correct purpose, and so what was the overall view of the ANAO on the payments?

Mr Pezzullo: In fact, I have had it drawn to my attention—I do not keep all the sentences of ANAO reports to mind—that one paragraph, for instance, states that in aggregate the payments for a particular financial year, 2015-16, were made for the purposes of the contract. That is an example where, had it not been the case, I as the secretary of the department and Mr Hehir as the Auditor-General of the Commonwealth would have rightly been concerned about significant sums of money going to purposes other than what they were intended for.

Should they have been signed off by authorising officers at the appropriate Public Service classification who were authorised to spend $10,000, $20,000, $100,000 or whatever the invoice amount was? Remember that these are payments within an established contract. They were not going off and purchasing discrete goods and services just off their own bat, for that
particular purpose. They were part of a macro set of payments that constitute the contract. As long as those contract management officers were satisfied that the goods and services were being delivered, then I think it can be stated fairly by both sides of the discussion—the department and the Audit Office—that the contract payments were made for the purposes of the contract.

Should we constantly be looking for ways to improve our record keeping? Absolutely, and I think in both audits we have stated that that should be the case. The chief operating officer and others can speak to the remediation and improvement strategies we have put in place, particularly around record keeping.

Senator FAWCETT: Sure. So the payments were legal, for the intended purpose and, most importantly, they achieved the outcome that the government was seeking?

Mr Pezzullo: Yes. I would agree with that characterisation.

CHAIR: I want to go back to your opening statement, Mr Pezzullo, about the enterprise agreement. You indicated that you had offered pay increases of between 6.4 and 10.7 per cent. Can you tell me to what area of employee those rates were offered?

Mr Pezzullo: The agreement would be binding on the entire workforce, obviously—

CHAIR: But who gets 10.7 per cent?

Mr Pezzullo: There would be some. Ms Connell can assist me in this. It is consistent with the government's bargaining framework, which does not allow for uplifts across the board of that dimension, but we are adjusting salary levels. In our case we have two merged departments, so you might have—I will use this phrase for the purposes of illustration—the legacy Customs workforce and the legacy Immigration workforce. They came together on 1 July 2015. We had a disharmony or a misalignment, I should say, between the pay scales. Let's take, for example, EL1 or EL2 officers or APS6 officers and below. You might have in the legacy Customs system a particular salary outcome for persons who are at the top of the range. We then have a merged department. Staff at the equivalent classification level might be on a lower salary simply because historically Customs and Immigration had different wages outcomes as a result of previous bargaining. So it was the case that in some areas, through a combination of the general uplift, which is consistent with the government bargaining process, and the alignment of the tops of scales, some officers would have benefited by that amount, which I think is 10.4.

CHAIR: Are you able to identify which officers? Obviously not by name or by job—

Mr Pezzullo: By area, I think we can, because of the material we made available to our staff. We explained these changes. I might ask Ms Connell to assist me.

Ms Connell: As the secretary said, the previous offer would have delivered pay rises of between 6.4 and 10.7 per cent, with the majority of staff getting an overall pay increase of around six per cent. Perhaps my colleague can give you the detail of which group of employees would have been at the higher end of that offer.

Mr Venugopal: Roughly around 8,000-plus staff would have benefited from pay rises of greater than six per cent. Like the secretary mentioned, the majority of them who would be in the 10.7 range would have been EL staff. There was a significant parity gap between—
CHAIR: Sorry—you are talking as if I am absolutely familiar with Public Service things. What is an EL staff?

Mr Venugopal: The majority of staff who would have benefited from the so-called 10 per cent—the other side of the range—would have been executive level staff of the previous department of Immigration. There was a significant parity gap between executive level officers from the ex-Customs cohort compared with the ex-Immigration cohort. It would have been anywhere in the range of perhaps 10 to 15 per cent.

CHAIR: Sorry—what would have been 10 to 15 per cent?

Mr Venugopal: When the top of the range salary for ex-Customs cohort executive level officers was compared with the ex-Immigration cohort executive level officers there was a significant parity gap—meaning the ex-Customs officers were on a much higher pay scale compared with the ex-Immigration officers. As a result of that, the way we designed the offer was that the ex-Immigration officers had an opportunity to close the gap.

CHAIR: I sort of understand what Border Force officers do; it is pretty frontline work in many instances, though a lot of it is, of course, administrative as well, which is also important. Do not get me wrong here, I have congratulated Border Force for what they have done earlier and I have also congratulated the department. So these pay rises do not specifically affect Border Force?

Mr Pezzullo: It is a single agreement. Had it been voted up it would have been all-encompassing, so it would have been departmental-wide.

CHAIR: Would Border Force officers across the board have got an $8,000 pay increase?

Mr Pezzullo: I do not know what it was in dollar terms, but everyone would have been to the good in a range of 6.0 per cent up to, I think, 10.7 per cent, which I think was the highest we found. It was to do with the fact that Border Force, which is not purely ex-Customs—a number of ex-Immigration staff who work in immigration enforcement have gone into Border Force—

CHAIR: Okay. Who is getting the 10.7 per cent—senior executive staff in the department?

Mr Pezzullo: No, not senior executive staff; the next level down. There is executive level staff, and then you have APS, or Australian Public Service staff, of the former Immigration department who would have been in that group.

CHAIR: What is their current range of salary in that level?

Mr Pezzullo: I might get the executive level 1 officer, equivalent in, say, the army to a Lieutenant Colonel—so around that level of seniority; senior middle ranking.

CHAIR: It is unfortunate you should mention the army, because that is where I am getting to, but anyhow.

Mr Venugopal: I do not have the lower level, but the top of the range for ex-DIAC executive level—the higher level of the range for the ex-Department of Immigration executive level 1 officer—would have been, or is, at $103,393. Had the offer been voted up, that would have increased by roughly around $2,688—in terms of the top of the range, I meant. In addition to that, like the secretary said, they will also then get access to performance-based increments as they go up the range.
CHAIR: Did you mention $8,000, or did I dream that?

Mr Pezzullo: I think you mentioned it. Whether you dreamt it or not, I do not know. But you mentioned it.

CHAIR: Was I quoting you?

Mr Pezzullo: No.

CHAIR: I thought I heard someone say $8,000.

Mr Pezzullo: No.

CHAIR: What would be the biggest cash increase, if that had gone through?

Mr Venugopal: Perhaps a better comparison—and I am trying to look at your $8,000 number—for executive level 2 officers, on the other hand, the top of the range as it stands is $128,120. Had the offer been voted up, that would have gone up in terms of the higher range of the salary they can access to $135,551, the differential being roughly $7,430.

Senator KIM CARR: Okay—I am sure someone did mention $8,000 besides me. Do I understand the departmental budget does not increase? So, if you are paying these substantially increased pay rates—or not, because it has not been approved—then that means—

Mr Pezzullo: It all comes out of hide—

CHAIR: So that means there will be people not losing their jobs, perhaps, but who will not be replaced. Is that correct?

Mr Pezzullo: Yes.

CHAIR: I recall a lot of media and parliamentary comment a couple of years ago when the soldiers, who do a wonderful job for Australia, were offered I think a two per cent pay increase and there was a lot of controversy, whether it should be two or 2½. Minister, how does the government justify a 10.7 per cent increase for people doing very important—I acknowledge and emphasise 'very important'—clerical work, or administrative work, perhaps I should say, when our soldiers were offered two per cent?

Senator Cash: In terms of the government's bargaining framework, because obviously we set the bargaining framework in which agencies then operate, you will be aware that under the former government, the Abbott government, it was 1.5 per cent per year each year for three years. When the Turnbull government came into office and I was made the minister, I reviewed the bargaining framework and we increased the pay offer to agencies to two per cent per annum, provided that they could afford that. So two per cent, two per cent, two per cent, overall six per cent over the three years. In terms of the departments represented here today, you may wish to direct questions to the secretary as to how they have come up with their overall offer, in particular because of the unique circumstances of bringing the former immigration department and the former Customs department together, and the legacy allowances that are in that agreement.

CHAIR: I can understand that the equalisation has gone up to the equivalent level, rather than the reverse happening—which it could not, of course, and I accept that.

Mr Pezzullo: Well it would, if stepped out over time. Secondly, the minister is absolutely correct in saying that in the end—
CHAIR: But how does two and two and two add up to 10?

Mr Pezzullo: Well it does not, manifestly. So the general pay increase is absolutely within the government's bargaining framework. The government's bargaining framework also then does allow for where you have had machinery of government changes, where you have got disparities of this I will not say unique nature, but you do not frequently come across such a large merger where you have got such disparate pay scales. And working within the minister's framework, as she has made clear—as the minister, she sets the framework, working with her Public Service Commission, and consistent with the framework—

CHAIR: So you have used your two, two and two to then give some 10 and, obviously, by the law of averages, some less than six over the three years.

Mr Pezzullo: I will put it a different way. I have made it clear in my opening statement that we crafted an offer, remembering this followed two rejections. At some point, you have got to get a point where your staff—

CHAIR: Yes. I am just interested in the answer, Mr Pezzullo, not the justification, please.

Mr Pezzullo: The two are linked. We are not operating outside of the framework. We are operating with the flexibility that we have within the framework.

CHAIR: Minister, before I get off this, the Defence budget was the same—two, two and two—was it?

Senator Cash: Correct.

CHAIR: And it was within Defence to work out how they spent that.

Senator McKIM: I will start with some questions about the agreement with the US. Mr Pezzullo, you informed this committee late last year that, in effect, the deal did not oblige the US to take a single refugee—I can read you the quotes if it would refresh your memory. I am just giving you the opportunity to confirm that statement.

Mr Pezzullo: All persons who go to America under this agreement can only go once they have been vetted by the American security authorities, that is right.

Senator McKIM: Thank you. That is not quite the question, though. The question is: does this agreement oblige the United States to take a particular number of the refugees?

Mr Pezzullo: Yes, it does.

Senator McKIM: I am going to quote what you told this committee last year—it is a direct quote. You said, 'It is a process-driven arrangement rather than a numerical arrangement.'

Mr Pezzullo: That is right. The process will get us to a numerical outcome.

Senator McKIM: So the agreement does oblige the US to take a particular number.

Mr Pezzullo: Subject to their entry requirements, yes.

Senator McKIM: When I asked you whether the ultimate determination of the number of people that are accepted by the US is entirely a matter for the US government, you said, 'Yes, correct.' How do you reconcile those?

Mr Pezzullo: They are all consistent. In the end, the US will decide how many they take, and they will take the numbers that they can, subject to their vetting procedures.
Senator McKIM: Are they obliged to take people who pass their vetting procedures?

Mr Pezzullo: That is the agreement that we have reached, yes.

Senator McKIM: They are obliged to take people.

Mr Pezzullo: Under the agreement that we signed with the former administration, yes. And subsequently President Trump has indicated that he will honour that, yes.

Senator McKIM: I do not think that he has, to be frank, but I am not going to get into a debate with you about Donald Trump, because I think he is insane. Just to be clear, the agreement requires the US to take people who, firstly, have been identified as refugees through refugee determination status processes and, secondly, pass their vetting arrangements. Once those two hurdles are crossed, under the terms of the deal the US will accept those people.

Mr Pezzullo: Yes.

Senator McKIM: How many people have crossed those two hurdles, to date?

Mr Pezzullo: No-one yet, because the process is still on foot. The current state of the process is as follows. We work with two agencies in the United States system. The state department does the refugee pre-screening—that is to say, it examines the claims as to persecution. In this case they have a head start, obviously, because they have status determination decisions from either Nauru or Papua New Guinea, but under US law they still have to come to their own position of being satisfied on those claims. So that is on foot, and there have been teams from the state department, which they exercise through a contracted arrangement with the Resettlement Support Centre which is located somewhere in South-East Asia—I cannot quite remember where they come from. They have had teams on both Nauru and, I think still, Manus doing that refugee pre-screening. The second phase will commence once the Department of Homeland Security, which picks up the second track that you mentioned—they conduct the vetting under the security requirements and, as the present administration has made clear, they are currently looking at their vetting thresholds—so until that process has concluded our colleagues in the homeland security department are poised and ready but still need to await that authorisation to commence the vetting process.

Senator McKIM: From the President's office?

Mr Pezzullo: From the US government.

Senator McKIM: So the vetting process has not yet commenced.

Mr Pezzullo: It is ready to commence, and Australia is assisting in that regard. We are doing some work that will assist in the expedition of the vetting, but US officials are currently not in a position to undertake the vetting until they get that direction.

Senator McKIM: Do you have any indication from the state department or any other arm of the US government as to when they expect to receive the information that would allow them to commence the vetting?

Mr Pezzullo: I would say it is in the foreseeable future.

Senator McKIM: Minister Dutton told Andrew Bolt recently—and I will quote him—he was asked when people would commence being resettled in the US, and he said that this will 'have movement in the not too distant future', 'in the next couple of months'. So, what was the
minister relying on there, given that you have just told the committee that vetting is yet to start?

**Mr Pezzullo:** There certainly will be movement in terms of those dual tracks within the next several months.

**Senator McKIM:** Yes, but that is not what the minister was asked. I will just refresh your memory. He was asked when people will commence resettlement in the US. He was not asked about the vetting. He was not asked about RSDs. He was asked about when people will actually commence resettlement in the US, and he said within a couple of months. So, what was he relying on there?

**Mr Pezzullo:** He certainly was relying on advice from the department and from his own observations of the communications that he receives. Like him, I would be confident that there would be movement within the next several months, indeed.

**Senator McKIM:** Yes, but you have just informed the committee that the vetting has not yet started.

**Mr Pezzullo:** It is poised, absolutely.

**Senator McKIM:** Yes, but it has not started, has it?

**Mr Pezzullo:** No. As we have made clear, our colleagues in Homeland Security are not in a position yet to start their processes, but they will certainly be able to conduct themselves in a very expedited fashion given the amount of preliminary work that has been done.

**Senator McKIM:** Yes, but it is the case, isn't it, that the vetting processes, according to President Trump, will be determined by him? Ultimately he has the authority to do that. He has a White House in absolute disarray—absolutely shambolic—and you are relying on him getting his act together to determine the way that the vetting will work and what risk profiles will be imported, if you like, into that vetting process. How on earth can you have confidence that people will be resettled in a couple of months, given the disarray that the White House is currently in?

**Mr Pezzullo:** I am not sure that it is my job here to provide commentary on the state of the US administration.

**CHAIR:** Certainly not.

**Mr Pezzullo:** What I can advise this committee, based on the regular and frequent interaction we have with US officials, in this case in both the state department and the Department of Homeland Security, is that I am confident that those sorts of time frames are going to be achievable.

**Senator McKIM:** Okay, so you have advice from someone in the US that they believe that the vetting not only will commence within the next couple of months but, in the case of at least some refugees, will be finalised within the next couple of months and that resettlements will begin?

**Mr Pezzullo:** Well, I said that there would be movement in that direction within the next several months. That was the phrase I used.

**Senator McKIM:** Well, that is inconsistent with what you previously said, a moment ago, and what the minister placed on the public record when he said, 'We will see people resettled within a couple of months.' So, I am asking you: what is the advice that you are relying on
from the US that would enable the minister to make that statement and for you to confirm that statement here today?

Mr Pezzullo: I have answered your question about the minister's media comments previously, so I would refer you to what I said earlier.

Senator McKIM: No—I will just ask the question again. What advice do you have, specifically, from any arm of the US government that would allow both you and Minister Dutton to be confident that resettlement will commence within a couple of months? What is the specific advice you are relying on?

Mr Pezzullo: And I said that there would be movement in that direction in the foreseeable future.

Senator McKIM: But you see, that is not what Mr Dutton said, and it is not what you said a moment ago. I will just refer you back to Minister Dutton's direct quote: '… we'll have movement in the not too distant future … in the next couple of months'. He was asked about people being resettled, not movement in a particular direction but specifically about people being resettled in the US. You have backed his statement this morning. So my question is very simple, and I will repeat it: what advice are you relying on?

Mr Pezzullo: In relation to what?

Senator McKIM: In relation to Minister Dutton's statement and you backing his statement this morning—what advice from whom in the US government are you relying on?

Mr Pezzullo: That there will be movement in the next few months?

Senator McKIM: Yes—resettlement, in the next couple of months.

Mr Pezzullo: I would want to refresh myself as to what the transcript of that interview actually says, and I might confer with the minister in the meantime.

Senator McKIM: Unless you are alleging that I am inaccurately quoting him, I will read it to you again. He was asked about when people will commence resettlement in the US. So, this does not go to the process; it goes to the actual, physical movement of people: 'we'll have movement in the not too distant future'.

CHAIR: I think the secretary has wisely said that he will take it on notice.

Senator McKIM: I think we will come back to this today, Mr Pezzullo, so, if you are able to take that advice as a matter of urgency, that would be helpful. I want to ask you again, on this arrangement with the US: you and the minister have been clear that it will apply only to people who have had successful refugee status determinations.

Mr Pezzullo: Yes.

Senator McKIM: Do you accept that the Papua New Guinea RSD process is non-compliant with the refugee convention?

Mr Pezzullo: No, I do not.

Senator McKIM: So, the UNHCR is wrong in that, is it?

Mr Pezzullo: Well, the UNHCR will be a party to the referral process, so, point 1 and point 2, I do not accept your characterisation, and I would be interested in the basis for your assertion, because I suspect there are some more questions coming.
Senator McKIM: I am very happy to respond to you. The UNHCR published a report titled *UNHCR monitoring visit to Manus Island, Papua New Guinea 11-13 June 2013*, and I will quote from that report for you. They are referring to the way that Papua New Guinea conducts its refugee assessments, specifically in relation to the refugee assessments, specifically in relation to the Papua New Guinean migration regulation, which I am sure you are aware of, and they say this about the regulation that it:

… incorrectly applies the limited exclusion provisions of the Refugee Convention to ordinary criminal matters more properly dealt with under Papua New Guinea criminal law, which could lead to wrongful denial of refugee status.

Do you accept that?

Mr Pezzullo: Well, I accept that a report was published three years ago that says that.

Senator McKIM: Well, they have not changed the regulation.

Mr Pezzullo: I would have to seek some advice about what was done to remediate any potential flaw, if such a flaw exists. Perhaps you could assist me, Senator: what is the date of that report?

Senator McKIM: It is 12 July 2013. And the regulation has not changed since.

Mr Pezzullo: But what has been put in place since is a status determination process, which has been done with our assistance and with the engagement of the UNHCR. So, I would have to take some more detailed advice. As I heard your very obviously plain reading of the statement there, it says that it could give rise to risk X. So, how you then put in place a status determination process and how you train your officers and put all the guidance down around those officers and their determination activities—that is how you deal with those sorts of risks. I would be very surprised. I will take it on notice, but I would be very surprised if something as clear as that—and you have read it out plainly, no doubt—that was just simply on the books 3½ years ago has not been attended to in terms of the actual apparatus that was put in place subsequent to that. It is 3½ years ago, I think.

Senator McKIM: Yes. You are right about the date. And we will come back to this as well today. So, if you are able to seek some advice on that in real time, that would be appreciated. But I want to draw your attention to the fact that yes, it did say that it could lead to wrongful denial, but the more important element is earlier in the quote I read out—that is, the regulation 'incorrectly applies' something in the refugee convention. So, it is very clear. There is a risk there that it goes to later, but the assertion is that it incorrectly applies to the refugee convention.

Mr Pezzullo: And what is on my mind is what has happened in the 3½ years since. I will have to have a look at that.

Senator McKIM: I am happy to come back to that. Are you aware of the legal action currently afoot—and I am happy to ask this of the minister, if it is more appropriate—in the Papua New Guinea Supreme Court, which is basically alleging various breaches of the PNG constitution in terms of the way people seeking asylum and refugees have been dealt with by Papua New Guinea, including being detained indefinitely?

Senator Cash: I would need to take that on notice and refer it to the minister, but I understand that the secretary may be able to assist you.
Mr Pezzullo: There is some action on foot post the so-called Namah decision, which I think is operative here. Namah is a settled case, as you know. But I think there is a follow-on case that deals with, at least from the plaintiff’s point of view, the assertion of ongoing wrongful detention.

Senator McKIM: Just to be clear: that is one of the matters involved in the case. There is actually a range of matters.

Mr Pezzullo: A range of matters, yes.

Senator McKIM: So, my specific question, I guess, is: are you aware that this is under foot? Do you have any advice about the potential liability to the PNG government should the courts find in favour of the applicants?

Mr Pezzullo: I would be a brave secretary providing advice to this committee about legal liabilities faced by a foreign government. I would not even begin to go down that path.

CHAIR: And it is not part of your role—or our role—either, to question another constitutional entity.

Senator McKIM: It is part of my role to ask this question: has the Australian government informed the Papua New Guinea government that the Australian government will cover any financial costs associated with this case, including financial costs or awards granted by the Papua New Guinea Supreme Court.

Senator Cash: I would need to take that on notice and refer it to the minister.

Senator McKIM: Mr Pezzullo, has your department informed your colleagues in Papua New Guinea that the Australian government will cover the costs of this case to the PNG government, including any awards made by the Supreme Court in favour of people seeking asylum or refugees?

Mr Pezzullo: The costs in terms of any potential adverse finding?

Senator McKIM: Yes.

Mr Pezzullo: I am almost certain, but I would just want to check this, that we have had no such discussion as it relates to this case. As to whether such a request would be made as just part of general discussions about costs in terms of supporting PNG, in terms of them providing regional processing services, I could not exclude that. In relation to this case, I doubt it very much, but I will want to check.

Senator McKIM: All right. So, you will take that on notice, I understand you to have said. Just to be clear: the question is—and there are probably a couple of parts to it—firstly, is the Australian government assisting the PNG government in terms of its legal costs—

Mr Pezzullo: For this case?

Senator McKIM: For this case. And by the way, there are 731 applicants, if you like—731 signatories. And when I say 'this case', my understanding is that there is possibly a tranche of cases that we are dealing with here, but I am advised that the total number of people who are involved in current legal action in the PNG Supreme Court is 731. Can I also then ask you take on notice the second part, which is, has there been any assurance given to the PNG government by the Australian government that if there are findings that award financial compensation as a result of the case getting up that the Australian government will
cover that? I think you will find that the sum we are talking about here is very substantial indeed, based on previous awards made by the PNG—

**Mr Pezzullo:** We will take it on notice, both as to costs and as to underwriting any compensation that is directed by the courts.

**Senator McKIM:** Okay. I want to ask about the construction of prison facilities in Papua New Guinea and/or Nauru. You have previously told the committee that the department is funding the construction of at least one prison facility, if I am correct, in Papua New Guinea. So, could you just talk us through the quantum of funds that the department has allocated to that and whether there are any other prison facilities—so, this is separate to offshore processing centres, in your language—in Papua New Guinea and Nauru which presumably are intended to hold people who have had unsuccessful refugee status determinations but who do not want to be returned to their country of origin.

**Mr Pezzullo:** Just to nuance the response, it might be that we are talking about immigration detention centres as opposed to correctional facilities for—

**Senator McKIM:** I will expand my question to cover those, thanks.

**Ms Moy:** The secretary is correct: the facility that we are assisting the government of Papua New Guinea with in Port Moresby is an immigration transit facility; it is not a prison.

**Senator McKIM:** Is that the only immigration transit facility or prison that the department is currently assisting either the PNG government or the Nauruan government with?

**Ms Moy:** That is correct.

**Senator McKIM:** Is it complete?

**Ms Moy:** No. It is at very early stages.

**Senator McKIM:** Is there work on the ground happening?

**Ms Moy:** Site works have commenced.

**Senator McKIM:** What is the time frame there?

**Ms Moy:** The time frame is late 2017, so later this year.

**Senator McKIM:** Is it the intention of the PNG government to use that facility for people who have had unsuccessful refugee status determinations and who do not accept voluntary deportation?

**Mr Pezzullo:** I would be reluctant, in these proceedings, to answer on behalf of a foreign government. We could take it on notice and ask them. I am not sure if they have made a public statement to that effect. If they have we will repeat that, but otherwise we would need to ask them.

**Senator McKIM:** We will come back to that.

**Senator KIM CARR:** I was asking you about the audit report. The process between 15 November and 13 January, you indicated that there had been some changes in the report. Did you discuss these changes with the minister's office?

**Mr Pezzullo:** Sorry, I missed the dates.

**Senator KIM CARR:** Between 15 November and 13 January.
Mr Pezzullo: I personally did not and I cannot imagine why anyone in my department would have, but I might just take some advice on that. So this is after the receipt of the draft, what I call the section 19 report and before the conclusion of the department's response.

Senator KIM CARR: Yes.

Ms Connell: Senator, you raised a question a bit earlier in relation to this and we have checked. There is no sign in our system that we have done a formal ministerial brief on this to our minister. I think there was some media attention given to it and we did prepare some talking points for the minister which was a factual response to what appeared in the media.

Senator KIM CARR: So there was no departmental briefing. But, presumably, it came up in conversation, Mr Pezzullo, with the minister.

Mr Pezzullo: No.

Senator KIM CARR: When was the department's response to the recommendations provided to the minister?

Ms Connell: I beg your pardon, I need to correct my evidence. I have just been advised that they have found one ministerial brief on 16 January that refers to this report.

Senator KIM CARR: So this was after the—

Mr Pezzullo: Ms Connell was deploying to the table so she might have missed the relevance of the time period. You asked about the time period between the provision of the draft report, which we get under embargo, and the departmental response, which from memory took about four weeks to turn around; then once we have made a response the ANAO considers its view about our material and then they provide the final embargoed report, which was in January. I do not think, Ms Connell, that any briefing material occurred—

Senator KIM CARR: Between the 15th and the 13th there was no briefing—

Mr Pezzullo: In that first stage.

Senator KIM CARR: but on the 16th there was a briefing. What was the nature of the briefing? I do not want to know the content because it is advice to the minister.

Ms Connell: It was to respond to the embargoed copy.

Senator KIM CARR: To advise the minister that an embargoed copy had been received.

Mr Pezzullo: Yes. That is standard practice.

Senator KIM CARR: Yes. I was interested when you said there were no briefings. That might reflect another problem.

Mr Pezzullo: No. I was listening very intently to your question and you were very clear in your question that you were relating—

Senator KIM CARR: To those dates, but the second question was about what happened after you received the draft report on the 13th, and you are saying on the 16th a ministerial briefing was prepared to advise the minister that the report been received.

Mr Pezzullo: Ahead of its embargoed release. As part of that process.

Senator KIM CARR: Yes. Do you agree that contract management is a core business for Commonwealth entities?
Mr Pezzullo: Absolutely, it is a very important part of public administration.

Senator KIM CARR: I might go to the letter in the back of report to the National Audit Office. It is signed by Ms Connell. Ms Connell your letter was dated 14 December. This is in the back of the report and is published as part of appendix 1. That is correct isn't it? You did provide a letter?

Ms Connell: Yes.

Senator KIM CARR: This question of unauthorised payments—you describe it as unauthorised payments—the Auditor has a slightly different formulation of words, but the point is:
The department acknowledges that there is a lack of documentary evidence supporting our decisions on approving these payments.
Do those words appear? Is that correct? I am talking about page 2 of your letter.

Ms Connell: Yes, the first sentence, that is correct, and then it goes on to say that we disagree that the claims that these payments were not appropriately authorised.

Senator KIM CARR: Yes, you make that assertion, but then you say that there is a 'lack of documentary evidence supporting our decisions'. Would you agree?

Ms Connell: Correct.

Senator KIM CARR: Can you explain to me why there is no evidence to support your decisions?

Ms Connell: Beyond it being a finding in the audit report?

Senator KIM CARR: Let me be clear about this. This refers to payments of $2.3 billion between 12 September and 16 April 2016. And you are saying that this context went for four years and you could not find the records of four years?

Mr Hayward: I think previously we have commented—and certainly around the procurement audit—about the storage of information at that time. This follows that same period of time.

Senator KIM CARR: Let me be clear about this, Mr Hayward. This was referring to the authorisation, the delegations. There was a lack of documentary evidence supporting our decisions—for four years.

Mr Hayward: That could be located in—that is correct.

Senator KIM CARR: Could be located? I would have thought not only was the question of contract management core business for a Commonwealth entity, but proper record-keeping was also core business for a Commonwealth department. Would that be correct, Mr Pezzullo?

Mr Pezzullo: Yes, indeed.

Senator KIM CARR: I am just wondering why you cannot produce the records.
Mr Pezzullo: Clearly, the record-keeping systems were not adequate, which is the element that we have agreed in both audits, and that is the matter that has been most vigorously remediated. As I said to Senator Fawcett previously, the concern then about whether that poor record-keeping reflects either a material risk of the goods and services not been provided on the ground, that was checked. The ANAO certified that the payments were for the stated purpose. And, more darkly, does that create a risk of fraud and misappropriation—no evidence found. So, should the records have been better kept? Absolutely. Should people apply themselves in this regard, having attended 'procurement and contract management 101'? Absolutely, and it is my responsibility to ensure that they have. Did the funds somehow disappear, such that services were not delivered in Manus and Nauru? No, on the audit's own finding. Was there a material risk of fraud and misappropriation, and indeed criminal diversion of funds? No. if those two things had happened then we would be having a different discussion.

Senator KIM CARR: That is right. We would be talking about criminal actions.

Mr Pezzullo: Or the non-delivery of the goods and services for which the contract is designed to render in the field. The Audit Office found, and I referred to this in my answer to the Senate—

Senator KIM CARR: This is the problem I go to, because the report also says:

The department often experienced difficulty gaining timely access to records generated under the contract, or was unable to access certain records held by service providers. For example, DIBP experienced delays of up to 18 months in accessing contractor records relating to policy and guidance material, incident records and un-redacted individual management plans. In a number of cases the department did not retain its own record of service provider responses to requests.

The department was unable to respond to many ANAO requests relating to evidence of contract deliverables.

How do you know, if you are not able to provide the evidence of contract deliverables? How do you know they were actually delivered?

Mr Pezzullo: Because you can look at what has happened in the field. Auditing is also about reality—what actually happens in the field—and the—

Senator PRATT: Did you document that?

Mr Pezzullo: Senator Pratt, I am conceding that point, so thank you—

Senator PRATT: But did you document what happened in the field if you did not—

Mr Pezzullo: In terms of the response to the Audit Office, who specifically looked, one particular year—2015-16 from memory—to ensure themselves, because they have to assure themselves before I can settle my own mind on this, that funds were expended in accordance with the purposes of the contract. The answer is that they were.

Senator KIM CARR: The problem relates to—

Mr Pezzullo: And of course you have to have solid records. There is no dispute there.

Senator KIM CARR: I appreciate that you are not disputing the need for the Commonwealth Public Service to keep records. I think this is a major breakthrough in public administration! It is remarkable.

Mr Pezzullo: Thank you, Senator Carr. I appreciate your compliment.
Senator KIM CARR: When it came to Save the Children, which is one of the issues here, and the failure to provide adequate records, people lost their jobs and were removed from the centres. You are now liable for compensation payments, are you not?

Mr Pezzullo: Yes. Are you speaking about the Save the Children employees?

Senator KIM CARR: Yes.

Mr Pezzullo: We have reached a confidential settlement, so that matter is closed.

Senator KIM CARR: Yes, but confidentially you are obliged to make—

Mr Pezzullo: We have recognised that in closing that matter we needed to make financial recompense.

Senator KIM CARR: But you are not able to tell the committee how much?

Mr Pezzullo: It is a confidential deed. I know the—

Senator KIM CARR: Just tell me this: where under the standing orders does it say that you are entitled to withhold information from this committee?

CHAIR: That is not strictly correct.

Mr Pezzullo: I was about to say that I understand and very much appreciate the prerogatives of the Senate. We have reached outside of these proceedings a common-law confidential settlement. I would need to take advice on the extent to which I can talk about that publicly, as opposed to attempting to provide it through some other means or seeking some form of immunity claim over the details of that.

Senator KIM CARR: I am asking you to take that on notice. I would like to know how much the payments in regard to compensation are. Was the question there about record keeping? Wasn't the allegation that was made based on your assertion about the nature of records, and is that not directly pertinent to the capacity of this department—

Mr Pezzullo: If you review our statement, which was publicly released as part of the settlement, it does make reference to the fact that the two independent reviewers who looked at this matter, Mr Philip Moss initially and then Adjunct Professor Doogan more recently, could not find evidence of the matters that were the purported basis for the removal—a request that was put to Save the Children in relation to these employees. For that reason, the department has expressed its regret about that—the course of action that was taken, the denial of procedural fairness and the related point about documents.

Senator KIM CARR: Yes, and I am pleased that you have.

Mr Pezzullo: That was an important thing to do.

Senator KIM CARR: But that was not the question. If you cannot provide me with the individual breakdowns, then the aggregate breakdown of the compensation would be appropriate.

Mr Pezzullo: I will take that on notice.

Senator KIM CARR: Thank you. I am interested to note this question, because the matter that the audit report goes to repeatedly, which you acknowledge, suggests that the department's record keeping is inadequate and deficient.

Mr Pezzullo: It was.
Senator KIM CARR: It was. So you fixed it?

Mr Pezzullo: Audits are historical.

Senator KIM CARR: It is fixed. I see. So it is all historic.

Mr Pezzullo: The remediation program is in hand. Perhaps Ms Connell might want to speak to that.

Ms Connell: Absolutely. We took those recommendations very seriously. Indeed, while the fieldwork was undertaken, we already commenced work to improve that record keeping. It has been a priority for us. We have mandatory training for all our staff so they understand the imperative of keeping good records. We have updated our systems and we have focused, particularly for simple procurements, on trying to automate that system so record keeping is an automatic part of that process. We have a separate risk-based model for the more complex and difficult procurement arrangements.

Senator KIM CARR: Of course, they were provisions already in the department's contract management manuals, weren't they?

Ms Connell: The contract management plan has had an internal review and is in the process of being updated as well.

Senator KIM CARR: Yes, but surely it has been in place for some time that the department must keep proper records.

Mr Pezzullo: We can take that as stated.

Senator KIM CARR: It is a statement of fact, isn't it?

Mr Pezzullo: Yes.

Senator KIM CARR: That is right, and it has not been followed. The reason I ask is that the Auditor points to the fact that the Audit Office has now conducted six audits—I am referring here to page 27—going back to 2004 on the department's management of detention centre contracts:

Each of these audits identified shortcomings in the department's contract management and/or procurement of detention services. Taken together, the audit findings point to serious and persistent deficiencies in the department's administration. The early audits found that DIBP had not established clear expectations of the level and quality of services to be delivered. These audits also found that DIBP's ability to monitor the performance of contractors was compromised by: lack of clarity in standards and performance measures; reliance on the reporting of incidents to determine when standards were not being met; and limited control over subcontracting arrangements.

And it goes on to this detail. Is it not the case that this department has shown serious and persistent deficiencies in its administration?

Mr Pezzullo: I think it would be fair for me to respond, as I have directly to our colleagues in the Audit Office, that those views are historical in nature—that is all an audit can be. I would contest vigorously—and in relation to the more operational side of what is implied, on-the-ground detention management, perhaps speaking on behalf of both myself and the commissioner—that that is the current state of affairs after the reforms that we have pursued in the last two years.

Senator KIM CARR: The problem with that argument is that you have been in office since 2014—
Mr Pezzullo: Indeed.

Senator KIM CARR: and this audit goes to your period in office.

Mr Pezzullo: In part, yes.

Senator KIM CARR: Sorry? Which part? Since December 2014, so what was—

Mr Pezzullo: The payment stream started two years or something earlier.

Senator KIM CARR: Sure, but you have been in office since 13 October 2014. This report goes to the contract signed in 2014, so which part weren't you responsible for in terms of this audit?

Mr Pezzullo: You have just asked me a whole lot of questions that go back to 2004. I thought that was your big climax in—

Senator KIM CARR: Do not be too cute here, Mr Pezzullo. I am asking you—

Mr Pezzullo: Are we talking about the six now or the one?

Senator KIM CARR: You have said to me that these do not apply. I am saying to you that this audit report goes to your period as secretary from 13 October 2014. Since when don't these provisions apply?

Mr Pezzullo: I think the remediation that the chief operating officer spoke about, some of which was put in prior to the finalisation of the audit, means that the contemporary circumstances are not as described.

Senator KIM CARR: So you have fixed the problem?

Mr Pezzullo: Fixing.

CHAIR: We might have to pursue this later, Senator Carr, although I just want to clarify a couple of things. This is sort of hypothetical. If the Auditor-General's report is accurate, what does it actually mean? Does it mean taxpayers are not getting value for their money, or does it mean that someone is pocketing a few million dollars illegally, or does it mean that the detention centres or the whole process are not being properly run? What does it actually mean?

Mr Pezzullo: It does not mean those things specifically, because the Audit Office would have found otherwise. What it means—and it is not hypothetical to this extent—is that in respect of recordkeeping, fairly, we have been admonished that: your systems have to be able to evidence the proposition that the goods and services have been delivered. We know from other views that they are being; that value for money has been achieved and that the material fraud risk and corruption risk that exist in any private sector or public sector large enterprise are being adequately managed, and we have other controls in place that assist us to do that.

Would it be more optimal for the Audit Office to say, 'We are looking at your management of an overseas garrison support service contract,' to which we say, 'Here are all the pristine records that evidence—I do not want to incur Senator Carr's wrath here—'the link back to the parliament's appropriation; the specific authorisations that then flow from the secretary, in terms of delegations, right down to the named officers who have got delegations; and then a match between the payment of invoices and the production of services'? That is a fit and proper state, and that is the state that we should be able to evidence, and that is the scope of the discussion with the Audit Office.
CHAIR: What is the impact of records not being properly kept? I know you are not supposed to do that; you are supposed to keep records. But, if you do not keep the records, what is the practical impact?

Mr Pezzullo: There are several practical impacts. One is that you cannot answer the ANAO homework expeditiously, which is important and that is not to be diminished. Secondly, if you do not have other controls in place, such as reports from your detention managers that they are getting the medicines that they need to put into the clinic, that food is being served in the mess and so on and so forth—if you do not have other controls—then of course you are blind as to whether the goods and services are actually been delivered. Thirdly, if you do not have other controls that relate to counter fraud—ensuring that invoices are being paid with a nexus to an invoice, et cetera—it does raise the material risk of a breach of Commonwealth fraud controls. But we have those controls and we know from our field operations that the goods and services are being delivered. So, you have belts and braces. I am not sure that the ANAO fully and adequately recognise the belts and braces. They have the view that it all should be seen through the records and, as secretary of the department, I have to say that I agree with them. Of course it should be viewed, and you should have a line of sight through the documents.

CHAIR: I have often made comment at these hearings that your staff dealing with illegal maritime arrivals at their peak would have been under enormous pressure. That is a broad statement. I am trying to get some facts from you. At their peak, which was, what, 2011—

Mr Pezzullo: In terms of arrivals?

CHAIR: Yes.

Mr Pezzullo: It was 2012-13.

CHAIR: I am trying to get what your staff were doing in those times. Let's pick a couple of years: say, 2011 to 2014. How many illegal maritime arrivals were ending up on our shores?

Mr Pezzullo: There were 50,000 over about four years, but it was accelerating. If you take the last calendar period—so, the 12 months prior to the initiation of Operation Sovereign Borders—from recollection, it was in the vicinity of 20,000-plus. It was coming up.

CHAIR: I want to come back to that but, in addition to that, your staff in the department also deal with a million other immigration issues, which they would be doing today.

Mr Pezzullo: Yes, indeed. It is actually more than that. This last financial year we issued eight million temporary visas and there were 190,000 permanent migrants as well.

CHAIR: Can you tell me broadly how many officers that sort of work involves so I can get an understanding.

Mr Pezzullo: The size of the pre-integration department was in the vicinity of 9,000, from memory. We are now 14,000 with the merger with Customs. The group that handles visas and citizenship is in the order of 3½ thousand, and the group that deals with detention would be less than that.

CHAIR: I am talking about illegal maritime arrivals. Now there would be no-one doing that, because there are not any, but back in the peak.
Mr Pezzullo: There is ongoing work to support OSB, the terms of which I described to Senator Fawcett. That is ceaseless work that goes on a bit in the shadows and is perhaps not well understood or well recognised. That requires an effort. The commissioner has to divert quite a number of his detention operations and support staff to support me in relations with both Nauru and PNG and getting folks ready for the US agreement, for instance. So, it is not zero.

CHAIR: I am trying to get an idea of the work that your staff were doing when there were 20,000 illegal maritime arrivals coming here. Many would have been taking cases to the AAT, which would have involved your staff in additional work. In addition to the 20,000, the AAT work and all the appeals and legal processes, you are doing your normal work, which you are doing now. Are you able to indicate to me whether, in those years, your staff were working nine to five, five days a week?

Mr Pezzullo: Very few of the operational areas that deal with the sorts of matters that you have indicated, which include both Border Force and our lawyers—you referred to legal cases, for instance—work nine to five, I can assure you.

CHAIR: And in this period when there were 20,000 illegal maritime arrivals?

Mr Pezzullo: Some areas—our maritime units, for instance—would have been working 24/7.

CHAIR: I am talking about your clerical staff—people working in Canberra or Melbourne.

Mr Pezzullo: A lot of people would have been pulling very long hours to get detention centres opened up or, in the case of Manus and Nauru, engage in the sorts of agreements that we have been talking about this morning—arranging contracts, dealing with all the legal cases that were being brought by other groups seeking injunctions and the like.

It is hard to quantify, and I am not trying to be cute here. The best way for me to express it is: I found a department in October 2014 that essentially was still in the throes of, and feeling the repercussions of, the arrivals between 2008 and early 2014. That was basically consuming the department. It was the beast that was eating the department. It required both the commissioner, once he became the commissioner in July 2015, and me to stabilise the department, to try to even out the work and to attend to very important matters, such as record keeping proper and the application of technology, for instance, to assist our procurement and contract managers.

To Senator Carr's earlier point: yes, the vast majority of my 2½ years has been taken up in that remediation and repair work and, frankly, I would not want to bequeath it to a successor. The staff were magnificent. They were tired and resilient. They had gone through a lot and they were then asked to take on the additional challenge of merging with Customs. It has been a steady process of remediation and reconstruction.

CHAIR: Do you have any trends on stress leave and stress-related issues for your staff?

Mr Pezzullo: I am sure we could make that available on notice.

CHAIR: Perhaps this is even before your time, but is there a noticeable cohort in stress-related issues within the department?
Mr Pezzullo: Quite possibly, but I would like to take some advice on that. I know both from my leadership of Customs as well as from hearing the stories once I took over in Immigration that it was a very stressful period for folks involved in the transfer of persons from intercepted vessels into onshore detention and all the challenges of dealing with that. Whether the data shows some sort of spike in claims et cetera, I will have to check. I am sorry. I interrupted the commissioner.

Mr Quaedvlieg: Chair, I was just going to provide precision to your question around arrivals. In the calendar year 2012 there were 276 boats for 17,053 IMAs. In 2013 there were 302 boats for 20,711 IMAs. In 2014 there was obviously a very radical drop to one boat with 157. In the subsequent three years to today there have been zero.

CHAIR: Thanks for that. Mr Quaedvlieg, can you comment on stress levels in your area of Border Force over recent years? Is there any noticeable statistic—perhaps anecdotal if not factual?

Mr Quaedvlieg: Certainly within our Maritime Border Command, which was the primary frontline response capability dealing with the boats, there is significant anecdotal evidence in relation to stress suffered by those working on the frontline, not just those who were pulling dead bodies out of the water but those who were dealing with the trauma of the interceptions and the capsizes. Several of our officers went overboard and were at significant risk of harm and indeed death to themselves. Certainly they were dealing with the stress and trauma of the IMAs on board those vessels. I have asked our chief medical officer now that we have got some breathing space to actually deal with the longitudinal consequences and to have a much closer look at the onset of post-traumatic stress disorder, particularly in that cohort. I do not have any statistics for you today but it is something that I am exceptionally concerned about because PTSD is something that can lay dormant for significant periods of time and I suspect will have a long-lasting impact on our staff.

CHAIR: You said 'pulling dead bodies out of the water'. What is the official number that we know of?

Mr Quaedvlieg: We can ascribe approximately 1,200 deaths by maritime means of persons seeking to travel to Australia by illegal boats.

CHAIR: Do you have any intelligence or evidence from other sources, perhaps not horribly reliable, about whether there were more than that?

Mr Quaedvlieg: Potentially. I would not want to rely on that information. It was anecdotal. But I think if one looks at some of the phenomena that are occurring in Europe—in the Mediterranean in particular—there is a very strong indication that it is highly likely that in addition to the 1,200 that we know about there would have been more.

CHAIR: It seems we concentrate on a lot of the downsides of the arrangement with the United States—

Member of the committee interjecting—

CHAIR: Actually, that is a very good point. But the whole purpose of this is to get people out of Manus and Nauru if they are genuine refugees.

Mr Pezzullo: Yes.
CHAIR: Is that a program that has been welcomed by those who fit that category at Manus and Nauru?

Mr Pezzullo: There has certainly been a very strong level of support in terms of expressions of interest to go into the program, yes.

CHAIR: Are you aware what the future is—I appreciate these are other countries, not Australia—for those who have been found not to be genuine refugees? What is going to happen to them?

Mr Pezzullo: Pursuant to our agreements with both Papua New Guinea and Nauru: point 1, they will not be coming to Australia; point 2, they will not be accepted into the US program, ipso facto because it is a refugee admissions program; point 3, subject to the decisions made by those two sovereign jurisdiction, so I am reluctant to go into too much details, at some point they will have to go home. Whether they are removed involuntarily or whether they are removed more consensually is a matter really for Papua New Guinea and Nauru.

CHAIR: Will Australia play any part in assisting Papua New Guinea and Nauru in the return of people?

Mr Pezzullo: We are obligated under our intergovernmental agreement with both nations to assist in the removal of persons not found to be owed protection, yes.

CHAIR: That is the agreement that was signed in 2013 or 2012.

Mr Pezzullo: There were two agreements: Nauru in 2012 and Papua New Guinea in 2013.

CHAIR: That is my time. Apologies to everyone, we are half an hour over for the morning tea break.

Proceedings suspended from 11:17 to 11:36

CHAIR: I declare reopened the Senate Legal and Constitutional Affairs Legislation Committee hearing dealing with the 2016-17 budget. We have a replacement opening statement. Can you explain what the difference is?

Mr Pezzullo: I can. I think the staff, upon review, picked up that you had received a penultimate version and you should have received a final. You now have the final.

CHAIR: Is there any major difference in it?

Mr Pezzullo: I do not believe so, but I have not done a version control check myself. I have been otherwise occupied. My staff will work with the committee staff to ensure that senators are fully seized of the key changes.

Senator McKIM: Back to the US deal, you undertook to seek some further advice on that. I am just wondering whether you found it.

Mr Pezzullo: My advice is: I do not have anything to add to my previous evidence, and I do not believe the minister has anything further to add to his previous public statements.

Senator McKIM: That is a matter for him, of course. Given that you have backed in Minister Dutton's statement that we can expect to see the physical resettlement of people to the US within a couple of months—

Mr Pezzullo: I would like to be held to the comments I actually made: we are likely to see movement in that direction in the foreseeable future, I think was my formula.

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Senator McKIM: In fact, Minister Dutton has said that there will be resettlement of people to the US within a couple of months, and you have supported that statement. That is accurate, isn't it?

Mr Pezzullo: It is accurate that he made that statement, yes.

Senator McKIM: And it is accurate that you have backed him in, today, in the committee.

Mr Pezzullo: I said that you will start to see movement in that direction in the foreseeable future.

Senator McKIM: In fact, what you said was that Minister Dutton's statement—

Mr Pezzullo: If you have the Hansard before you, perhaps that will resolve it.

Senator McKIM: I have a very strong memory and contemporaneous notes. If you have them too then feel free to stump them up. What you actually said, Mr Pezzullo, was that the minister made that statement based on advice from you, or at least from your department.

Mr Pezzullo: He is always the beneficiary of advice from the department.

Senator McKIM: Yes, but what you said was that he had made that statement based on advice the department had given him.

Mr Pezzullo: He has always got advice from the department, yes.

Senator McKIM: You can try and crabwalk away from what you previously said, but the Hansard will show it. Given that you have said very clearly to this committee that the minister's statement was based on departmental advice, what advice has the department got to form a foundation of that advice that you say you gave to Minister Dutton and that he was relying on?

What advice do you have that the vetting process will have even commenced within a couple of months, let alone have been completed in some cases?

Mr Pezzullo: I said that we have constant engagement with two departments of the US government and that we are in regular touch with them, and, distilling from those discussions, we provide, and I provide, the minister with advice on a regular basis.

Senator McKIM: Do you have advice from anyone in the US government that the vetting process will be complete in some cases within a couple of months?

Mr Pezzullo: The vetting review, as I recall the executive order, has not concluded. It might be concluding today, from memory; it was set to be undertaken over 30 days. What is recommended to the President and what the President decides is a matter for the US government.

Senator McKIM: You have said—I think I heard you correctly—that the executive order was agreed to be finalised within 30 days?

Mr Pezzullo: The vetting review, if I recall rightly.

Senator McKIM: Then you have mentioned that it may be due today. Is today the last of the 30 days?

Mr Pezzullo: I think I am getting the calendar right. I think today, or maybe tomorrow, is the day that the relevant US secretary has to render a report to the President, to the White House—noting that, as I understand it, the executive order is to be reissued. The operative
elements that relate to the vetting review, from memory, then trigger a further consideration of the vetting thresholds. I cannot quite recall the time periods at this stage.

**Senator McKIM:** Accepting that you cannot quite recall those—

**Mr Pezzullo:** It is measured in days, not months.

**Senator McKIM:** From today, do you mean?

**Mr Pezzullo:** Yes, because independently of the matters that we are discussing today it has been made very clear, and amply clear publicly, that the US system has been directed by the US President to put in place revised vetting protocols and systems expeditiously. I do not suppose it is going to take a long time, but that is a matter for a foreign government, of course.

**Senator McKIM:** But to the best of your knowledge or recollection, there is a report due to the White House imminently. Can we agree on that?

**Mr Pezzullo:** I think we can say ‘imminently’, yes.

**Senator McKIM:** Then the White House will take a period of time to consider that, presumably?

**Mr Pezzullo:** I cannot recall the details, but I think the President gave a direction that, after a certain period of consideration, he would decide what the vetting thresholds would be, and that would be globally and universally applicable. It has a bearing on what we are discussing because, obviously, it then relates to the thresholds and the criteria around vetting of all entrants to the United States, including persons who come in through the refugee admissions program, which is the operative program.

**Senator McKIM:** So to the best of your knowledge, there will not be different vetting thresholds applied to people from Manus or Nauru as compared with other humanitarian entrants to the US?

**Mr Pezzullo:** The arrangement with the US speaks in terms of the application of the respective applicable security thresholds as maintained by both governments. As a separate arrangement, we are obviously giving consideration to persons from Central America, and we are entitled to apply our vetting and security thresholds.

**Senator McKIM:** Of course. I will come to that in a minute, but just to tie this off: it is abundantly clear from your evidence—I will just put this to you, feel free to disagree with me if you wish—that there is no specific number that the US has agreed to take, and nobody currently knows where the vetting thresholds will be set. Are those two things accurate?

**Mr Pezzullo:** No.

**Senator McKIM:** Which is inaccurate?

**Mr Pezzullo:** The first is inaccurate because there is an agreed number, subject to US security requirements being met. The White House has announced that the US is, under the agreement, looking to take 1,250 refugees.

**Senator McKIM:** ’Looking to take’. However, Mr Pezzullo, if they all failed the as yet unknown vetting thresholds, then the US would take none. That is correct, is it not?

**Mr Pezzullo:** That is a hypothetical question. I presume the US could potentially set their threshold so they take no refugees from anywhere in the world. I assume that but the
President has indicated that they are looking, in this program year, to take 50,000 refugees, so I assume that they will have their settings at a rate that allows them to follow through on that commitment. That is a matter for the US government.

**Senator McKIM:** Of course it is. In relation to the Central American refugees, which is now a matter for the Australian government, what is the progress on assessment or vetting of those people?

**Mr Pezzullo:** Mr Colquhoun will assist me. I think we have had some preliminary discussions about some earlier referrals, but I will describe the mechanism, perhaps, very briefly and then the head of our international division, Mr Colquhoun, will provide additional advice. We have agreed as a separate arrangement, given that—sorry, to go back a step—under either of these operations and programs there is no-one in the US jurisdiction who is coming to Australia and no-one in the Australian jurisdiction who is going to the US. It is about third-country resettlement in both circumstances. The policy design from our point of view is to ensure that Operation Sovereign Borders is not compromised so, if you try to come to Australia by maritime means, as I explained earlier to Senator Fawcett, historically—up until July 2014, that was the last arrival—you were diverted to regional processing. Then the Australian government committed to assist in the finding of a third-country home—hence the US program.

With regard to the so-called Costa Rican arrangement, so named because the transit facility is in Costa Rica, persons who would otherwise attempt to get to the US through the relevant border there into Mexico from Guatemala, El Salvador and Honduras are diverted from that path. They are not able to cross those borders, but where they have got founded claims of persecution, they are found to be owed protection, the US government has agreed with the government of Costa Rica to have a mechanism or a transit facility in that country and to find third-country homes for persons who fit that description—hence the reference to the Costa Rican agreement.

We have agreed, as part of a program of mutual assistance across a number of different what in our business are called caseloads, to look at persons who are caught up in those circumstances. I might ask Mr Colquhoun to describe both the mechanism and where we are in terms of the earlier referrals.

**Mr Colquhoun:** As the secretary said, the protection transfer arrangement is a new mechanism the United States has agreed with Costa Rica. It is a limited mechanism—it is not for large numbers of people, it is not some large camp or anything like that; it actually has a maximum of 200 people at any particular time. It is the US government working with the UNHCR to identify people who are particularly vulnerable and to then assess them. They do an initial refugee assessment—not a status determination process, but an initial assessment—and, where they are found to be likely to be owed international protection, they are transferred to Costa Rica where the final refugee status determination is made. Then a referral is made to a third country, including Australia and the United States. I believe some other countries have also either privately or publicly indicated a willingness to take people. At this point no-one has been referred to Australia and no-one has been resettled to any country under the arrangement, because it is very new.

**Senator McKIM:** Are the final RSDs—refugee status determinations—underway currently?
Mr Colquhoun: I believe RSD processes are underway for a small number of people who have been transferred to the PTA—to Costa Rica—the Protection Transfer Arrangement, the arrangement in Costa Rica. The somewhat unique arrangement here is that, obviously, someone cannot claim refugee status in their home territory, so NGOs, but particularly the UNHCR and the IOM, are doing initial assessments in the countries of origin, then moving and finalising those refugee status determination processes.

Senator McKIM: Okay. So once those RSD processes are complete, then the opportunity becomes available, presumably, for some of those people to be resettled in Australia?

Mr Colquhoun: Correct; assuming they meet all of our normal refugee and humanitarian program checks.

Senator McKIM: Does the Australian government vet those people? I presume we do.

Mr Colquhoun: Yes.

Senator McKIM: Is that after the RSD process is complete?

Mr Pezzullo: Just to be clear, whether you come into our onshore program or whether we engage in third-country assistance—and there are previous instances of us having done that—the refugee determination process is one thing, then under the Migration Act there are checks required for health, security and character as well. All of those checks will be applicable in this circumstance.

Senator McKIM: But that will not commence until after the RSD process has been—

Mr Pezzullo: No, we need to have referrals—we need actual cases before our vetters—

Senator McKIM: Do you have an average length of time for our vetting process—the average duration.

Mr Pezzullo: It is somewhat dependent upon the complexity of the case.

Senator McKIM: That is why I asked for the average.

Mr Pezzullo: In terms of qualified time periods I would take that on notice.

Senator McKIM: All right.

Mr Pezzullo: The experience we have had with the Syrian program is that in some cases it is relatively brief—a few weeks at least. In other cases it is protracted—it can be months. Your question was about the average. I will take that on notice.

Senator McKIM: Thank you. Has anyone in any of the facilities on Manus Island been forcibly deported from Papua New Guinea?

Mr Pezzullo: Involuntarily removed?

Senator McKIM: Yes. Forcibly deported—you can call it what you like but I will call it forcibly deported.

Mr Pezzullo: Sure. We can both choose our terms. I believe, yes, there has been a limited number. Either Mr Colquhoun will have that or perhaps Ms Moy might have that number. But there have been some persons involuntarily removed from PNG.

Mr Colquhoun: Two people were recently removed to Nepal. They were found not to be owed protection. I believe some years ago two additional people—so is a total, I believe, of four.
Mr Pezzullo: But we will check.

Senator McKIM: Thank you. I am happy for you to clarify that or check it on notice. Mr Colquhoun, just to be clear, when you say they were found not to be owed protection that means they were not successful in their application for refugee status, and that was the Papua New Guinea refugee status that the United Nations says is inconsistent with the refugee convention. That is the case, isn't it?

Mr Pezzullo: I am not sure they would say—

Senator McKIM: So we are forcibly deporting people now who have not had a fair crack, because, as the UNHCR has made abundantly clear, the Papua New Guinea RSD fails the refugee convention.

Mr Pezzullo: There was a reference in a report 3½ years ago—I think we discussed this before the break, and perhaps Ms Moy might have further and better particulars.

Ms Moy: What I can tell you at the moment is that 68 per cent of the individuals on Manus Island—who arrived at Manus Island—

Senator McKIM: The people on Manus Island.

Ms Moy: Individuals—people—have been found to be positive in their RSD process. Regarding the report you mentioned of 2013, since that date UNHCR has visited Manus Island and PNG and been engaged with the PNG status resolution process nine times—2013 to 2014.

Senator McKIM: Yes, but that does not mean anything has changed or improved, does it?

Ms Moy: UNHCR has not raised any issues with us or, to my knowledge, raised any issues with the government of Papua New Guinea in regard to that matter since that date.

Senator McKIM: That does not mean they are happy with it, does it?

Ms Moy: They have not raised any issues, so I cannot assume what else is in their mind.

Senator McKIM: No, that is right.

Mr Pezzullo: Going back to the US agreement, the material fact is that they are active participants in the referral process. It was a condition of the transfer agreement with the Americans that the UNHCR was actively involved. I am not sure if it is down at the case level, but certainly in terms of the certification of the general process. That was achieved to the satisfaction of the Obama administration. I will cause further inquiries to be made in terms of the reference—the one paragraph—that you found in that report of nine visits ago and we will try to get to the bottom of it for you.

Senator McKIM: Thank you.

Senator KIM CARR: I will return to this question of record-keeping. On page 11, the audit report states:

Poor record keeping has affected DIBP’s capacity to satisfy accountability requirements and protect the Commonwealth’s interests. For example, the department:

• did not update its asset register and advise Comcover of new facilities in Nauru valued at $75 million. As a consequence the facility was not insured when it burnt down in a riot in 2013, shortly after being commissioned …

Is that statement true?
Mr Pezzullo: I will ask the chief operating officer to address the question of insurance. Sorry—the preamble also dealt with record-keeping generally. Do you want to go to that—on the insurance matter?

Senator KIM CARR: Specifically in regard to the assertion that the $75 million new facilities at Nauru were not on the asset register.

Mr Pezzullo: I think it was an issue about having an asset under construction where the builder was liable, but I will ask either Ms Connell or Mr Nockels to take that.

Mr Nockels: I will take that. Yes, you are correct. The department at the time was relying on the builders insurance in terms of coverage and, at that time, the department's approach was that it would not be registered with Comcover because the building had not been fully completed. At the time of the riot and the burning down of the structure, it was still partly built.

Senator KIM CARR: Partly built—it was not commissioned?

Mr Nockels: Correct; it had not been completed at the time.

Senator KIM CARR: So you are saying the Auditor is wrong on that, is he? That is what the claim is, on page 11.

Ms Connell: I think the audit found that we had not updated our asset register to advise of the new facilities. At that stage, that building was still under construction. I think the issue with the insurance was that the builders insurance, which would normally cover any building during its construction phase, did not cover the riot risk that eventually manifested.

Senator KIM CARR: The report says, 'shortly after being commissioned'. You are saying that is not accurate.

Ms Connell: Commissioned—the building was still under construction.

Senator KIM CARR: These are the new facilities—$75 million worth of facilities had been commissioned. Are you saying that is inaccurate?

Mr Pezzullo: I am not sure, as a matter of fact, that that is accurate, but I presume we can check that. There is a time of defects and handover and at what point on that spectrum we were at, I just do not know offhand.

Ms Connell: During the build, the building was definitely under the insurance of the builders. I think the gap that the ANAO has identified is that the insurance did not cover the riot when the building was burnt down in 2013.

Senator KIM CARR: So it was not on the asset register?

Ms Connell: It was not, because it was still registered with the builder and would remain so until the building was completed and handed over.

Senator KIM CARR: Is this a question of whether or not it was commissioned?

Mr Pezzullo: Commissioning, when it comes to property and construction, is an unorthodox term. Normally, a building has been handed over during a defects period and, subject to defects, is then fully handed over and the asset becomes fully realised on the asset inventory of the Commonwealth. Mr Nockels is a departmental expert on such matters, and he can further illuminate that answer.
Mr Nockels: At the time, the building was still under construction; it was not commissioned, as such.

Senator KIM CARR: You have undertaken a review of this, have you? Given the finding of this report, did you undertake a review to identify what actually happened, or advise the Audit Office of your version of events?

Mr Pezzullo: I think the material point here, because there is a builder potentially out of pocket, is that during the period of the asset being under construction, the perhaps foreseeable—but you would have to say unfortunate—circumstance was that the people who were going to be the beneficiaries of the building decided to burn it down.

Senator KIM CARR: This is not an argument about whether or not the building burnt down. It is not an argument about why it was burnt down. It is a question about whether or not it was insured—

Mr Pezzullo: With due respect, it is important. If it was an electrical fault or something to do with the welding—a welding sparked and the building burnt down—the builders insurance would have ordinarily covered it. This matter had to be resolved at the time—and you ask about a review—because a cheque had to be paid by someone, otherwise the builders insurance was going to be operative. In the end, the government of the day decided not to reconstruct the facilities because, if they were going to be burnt down by the people who were meant to be the beneficiaries of them, there was no point. Cause is material here, because it goes to what is an insurable risk. The argument that Commonwealth contends is that, ordinarily, builders insurance would cover it. You then go through a handover period that involves a defects period. The building gets fully handed over. It is then fully on the Commonwealth books, unless, of course, it is a leased property; that is different again. The evidence you have heard is that the building had not been fully handed over and, in any event, had not been occupied—

Senator KIM CARR: So the builder is out of pocket, is he?

Ms Connell: Since 2013, we have changed our practices to avoid instances like this recurring. All assets, including those under construction, are now comprehensively insured by Comcover. There was immediate action taken to remedy that. As the secretary said, on this occasion, the builder was out of pocket and it was a cost to the taxpayer, but under the Comcover insurance, there would have been a cost in any event.

Mr Pezzullo: The builder, as I recall it, was paid out for the proper performance of their duties. They built a building and someone came along and burnt it down.

Senator KIM CARR: What was the cost of that?

Mr Nockels: $75 million.

Senator KIM CARR: Do you concur with that number?

Mr Nockels: I would have to get an exact figure down to the cent, et cetera, but that is an approximate—

Senator KIM CARR: So you changed the arrangements after this incident so there are no other buildings that are currently not on the asset register?

Mr Nockels: That have been subsequently built post that time?

Senator KIM CARR: Since 2013, are all buildings now on the asset register?
Ms Connell: That is correct. We are required on an annual basis to review our assets for the purpose of Comcover, so I would imagine that our registry is currently up to date.

Senator KIM CARR: So all Australian government assets on Manus and Nauru are listed on the asset register and insured?

Ms Connell: That is my understanding.

Mr Pezzullo: We will come back to you on notice.

Senator KIM CARR: Could you confirm that please?

Mr Pezzullo: Yes. Had the correct procedure been followed and the building under construction been on Commonwealth insurance—because the Commonwealth self-insures through Comcover—Comcover would have cut the cheque. So one way or another the taxpayer ends up paying. The material issue here is if the people who are the beneficiaries of the building had not burnt it down, no-one would be out of pocket. But it was not fair that the builder be put out of pocket, because under the contract the builder had not misperformed or underperformed their duties.

Senator KIM CARR: You have just used the words 'if the correct procedure had been followed'. Do you acknowledge it was not the correct procedure?

Mr Pezzullo: I think the practice that has been followed since is the practice I am more familiar with from other departments, yes. But I cannot explain why that procedure was not followed in 2012 and 2013.

Senator KIM CARR: That is my point about systemic, administrative problems within the department, you are now—

Mr Pezzullo: All of which need to be remediated, yes. But they do not go to the non-delivery of the goods and services.

Senator KIM CARR: Have they been remediated now?

Mr Pezzullo: They are well in hand. The chief operating officer—

Senator KIM CARR: So today, when we heard one of the officers saying we have not informed the National Audit Office of the results of a review in regard to reported creation of records unjustifiably or incorrectly, is that an example of how you how you remediated the problem?

Mr Pezzullo: I was referring to the documentary and record keeping deficiencies as they relate to procurement and contract management.

Senator KIM CARR: And this report highlights further weaknesses in the procurement practices, does it not?

Mr Pezzullo: Which report?

Senator KIM CARR: This is the second report. It identifies further procurement weaknesses.

Mr Pezzullo: I think, strictly speaking, it goes to contract management, but perhaps you have a tab there that I cannot see.

Senator KIM CARR: It says explicitly 'procurement processes', in this second report.

Mr Pezzullo: Quite possibly, but I do not have it in front of me.
Senator KIM CARR: My point to you is that these are ongoing, systemic problems.

Mr Pezzullo: And my point to you is that we have engaged in a process over the last couple of years of significant remediation, and if you allow the chief operating officer to speak to that issue, I am sure she would be delighted.

Ms Connell: I am happy to update you on this. There was a range of activities that were underway before the audit. There are activities that were underway while the fieldwork was in place, and there may be a number of items that were a direct result of insights from the ANAO, in terms of our contract management and our record keeping staff and our staff training.

You mentioned before the garrison support and welfare contract. There was a complete health check, and we use our internal auditors to provide additional assurance. We conducted a complete health check of our current and planned procurement for garrison and welfare health and settlement services undertaken. And, indeed, we put in a garrison and welfare contract management plan, which is endorsed and is now in effect. There is a range of activities that go to our systems. The upgrading of our records management systems has been completed, hand in hand with ensuring that our staff are very well equipped. We are conducting mandatory training so that everyone understands the nature of record keeping.

Those improvements have been underway over the last few years, and our internal audit was used as a check to see how those improvements are going and whether they are delivering the control mechanisms we have identified.

Senator KIM CARR: Presumably, the Audit Office knew all of this but still reported that the audit highlighted further weaknesses in the department's management and procurement. That is on page 9, which is the reference I made a moment ago. This is a contemporary report, tabled in January this year highlighting that those processes are not adequate.

Ms Connell: I don't know about contemporary but the audit itself took 673 days to complete. So it actually commenced quite some time ago, and there was a great degree of overlap between what we already have underway for our improvements through to when it was published. We provided over 400,000 documents to this audit. We actively engaged with them.

Senator KIM CARR: Four hundred thousand?

Ms Connell: Yes, and about 20 terabytes of data that they requested. So we were engaged with them for a very long period of time, a number of years.

Senator KIM CARR: Have you accepted the recommendations?

Ms Connell: As our response will show, we have admitted that there are some administrative weaknesses that we have been on the path to remedying for some time now.

Mr Pezzullo: If I can be a bit blunter, I was not going to wait around for the ANAO report, because they were taking a fair amount of time to go through the terabytes of data. So we just got on with a reform and remediation program, in any event. Nonetheless, better late than never. The audit report has been a helpful checklist for us to check against the work that we have already got well underway, a very helpful checklist indeed.

Senator KIM CARR: I turn to the next major procurement project, which is the new headquarters.
CHAIR: You might have to do that later, Senator Carr. I will go to Senator Fawcett now.

Senator FAWCETT: I would like to come back to some of the comments around the amount of time this audit took. Reading the ANAO introductory sections, they highlight that this covers contracts going right back to 2012. In paragraph 9 it says: The garrison support and welfare contracts were established in circumstances of great haste to give effect to government policy decisions …

Commissioner, you are dealing with the operational side of things. Perhaps you could give the committee a bit of an overview. What led to that ‘great haste’? This would be the government prior to the change in 2013.

Senator KIM CARR: It says lessons not learned.

Senator FAWCETT: Could you give us an outline of what led to the great haste and what the secretary described before as the significant workload the department was under, at the time, and continued to be under for some period, and step us through what occurred from the 2012 period to now?

Mr Quaedvlieg: I can certainly give you a perspective in relation to the operational components of the maritime response, which I was responsible for from around May 2013 when I arrived at the then Customs. The arrivals were getting close to their peak by that stage. What I can say is that it was a period characterised by significant stress and high-tempo and high-risk operations out on the water. I distinctly recall that period where, in that mid-2013 period, we had on average a SIEV, suspected illegal entry vessel, arriving every six hours from either the traditional corridor, from the Indonesian archipelago down to Christmas Island, or arriving through the western corridor, as we called it, from the subcontinent targeting Cocos (Keeling) Islands.

That obviously required significant response assets on the water. We had a finite fleet and it was, essentially, an interception, a reception and taking the IMAs onboard our vessels, because on most if not all occasions the vessels on which they were arriving were unseaworthy and close to sinking or actually sinking. Taking those IMAs to Christmas Island and then turning back around to go and meet and intercept another arriving vessel—on many occasions, the crews that were involved in that volunteered to work beyond their award and rostered days and returned back out in order to do further interceptions because the safety of people’s lives at sea were at stake.

That created a lot of fatigue and a lot of stress on the system. There was a lot of non-human consequence of that, in terms of assets reaching their fatigue state. In part, the Armidale fleet that contributed to that operation is still, today, in remediation as a result of the extensive work that its vessels were conducting during that period. Certainly, we did not have much capacity to attend to the other seven maritime threats that this country faces, such as narcotics trafficking, illegal fishing et cetera.

In terms of the human cost, which I referenced earlier, on many occasions the vessels that were arriving were, as I mentioned, particularly unseaworthy and/or had been rigged up in such a way that they would be sabotaged on sight of one of our vessels arriving. In some cases there were what we would refer to as pre-drilled holes in the hull that were plugged up and, on arrival of the vessels, those plugs would be pulled. That was essentially forcing a safety of life at sea situation, a SOLAS situation, which compelled our crews then to rescue
the IMAs as they were jumping off a foundering vessel. In a lot of cases the vessels themselves were of such a state that our operations ended up being search-and-rescue operations as opposed to intercept operations, because the vessels were sinking. These boardings were done in high-risk situations in significant sea states, in the dark in some cases. Our officers were embarked onboard the vessels on occasions when they capsized. They too were at risk. We have some fairly graphic footage that was captured on a body-worn camera of our officers going overboard, and it was quite a set of chaotic scenes.

That is a characterisation of the operating environment at the time. The consequences in terms of the humans—we obviously remediated the fatigue over time, once the boats stopped. We are remediating some of our assets. We put some welfare provisions in place that were immediate. But, as I mentioned earlier to the chair, I am concerned about the longer term impact of that operating period and the potential onset of post-traumatic stress disorder in our staff.

Mr Pezzullo: Senator Fawcett, if I could add to the commissioner's answer. It goes materially to the question you just asked him but also to the observations that I made in response to your earlier question. We will get to this when, for instance, we look at things like the child safeguarding framework that we have put in place as a result of another inquiry, whether it is detention capability management, whether it is the management of high-risk detainees. I will be very careful in what I say here, because I want to absolutely commend my predecessor, Martin Bowles, now the Secretary of Health, in trying to hold together an enterprise that was being absolutely torn asunder and demolished by both the immediate onset of the arrivals that the commissioner has just referred to and then the subsequent management. You cannot simply have that many people breach your borders and then not, in a sense—unless you have tripled the size of the department—have to carve out a whole lot of functions and turn all of those functions onto that matter. These are very important things and none of them are to be glossed over, but whether it was about accurate and adequate recordkeeping, the ability of staff to go on training, the ability of staff to go on the training courses that allow them to keep their mandatory qualifications up, the ability of people to do their day jobs when whole teams were being thinned out to address either the immediate arrival issue, managing the protection visa claims for the onshore group or setting up these arrangements offshore, I would characterise the department that way certainly.

I will just speak to the state of play as at October 2014. This is not to say that my predecessor or his senior executive were doing a poor and inadequate job; they were trying their very best to hold an essentially breaking enterprise together. The lesson of that is that you can have a border crisis that emerges. It is always the case—other nations are enduring this at the moment—that your border, customs, immigration and visa agencies have to then divert efforts to managing that crisis. Frankly, like a debt problem, it takes time. There is a legacy to then work through the remediation of those issues. So, whether it was the commissioning, for instance, of our child protection review, other matters that we have canvassed before this committee over the last 2½ years, our management of detention capability, our procurement practices, our contract management practices—all of those required, frankly, in some cases immediate but certainly enduring remediation and reform. I put none of that as being, if you like, culpability at the feet of the staff. They performed
through that period magnificently—many of whom are traumatised for all sorts of reasons that the commissioner has just spoken about.

You cannot remediate this assault on an enterprise which throws it off its normal equilibrium within months. As some of the matters that we have just talked about would hopefully demonstrate, there has been remediation. There has been reform. The complexity of it, I must say, has been compounded by the merger of Customs and Immigration. In net terms it has been to the good, but that itself is not easy to deal with when you try to integrate it with all these other matters.

And yes, we then had an audit that went for 650-odd days—I cannot quite remember the number. It is valuable work. It is done in hindsight. It is done clinically. Frankly, I wish I could deal with just one issue for 650 days and look at it clinically, with lots of evidence. I had not realised we had yielded up so many documents. So to that extent it is a snapshot, which then brought down its findings in contemporary times. In December 2016 there was the final draft and then in January there was the published draft. I think that is a really important historical artefact. Well done to the Audit Office for providing us with that advice, and we look forward to further advice from them. That is the broad context in which we are operating here.

Senator FAWCETT: I have a question for the minister, but I am going to come back to the commissioner first, if I could, to say thank you to you and your staff, not only for turning the situation around and restoring some order but also for giving breathing space for people to recover, as well as the systems the secretary has just outlined, from the circumstances of 2012-13. Minister, can I come to the point that has been mentioned about the crisis that developed in the organisation under stress and the fact that occasionally there are things around border control that present threats. Was this threat something that had to happen, or is there a more direct cause as to why all of this pressure came upon the department? Was it the policies of the government of that time, for example?

Senator Cash: I am sure you are aware that the Howard government had a very specific set of policies in terms of maintaining the strength of our border protection. It is an unfortunate reality in terms of what occurred under the former Labor government that they wound back the former Howard government's strong border protection policies. As both the secretary and the commissioner have articulated, the statistics of unauthorised arrivals led to a course of events, unfortunately, which this government is still trying to clean up.

Senator FAWCETT: I will leave it there. I do question the ethics of nitpicking when your particular group perhaps brought the fleas in the first place.

Senator WILLIAMS: Hear, hear!

CHAIR: Nicely put.

Senator KIM CARR: Mr Pezzullo, you referred to the new headquarters in your statement. You have asserted here that the total budget for the project is $255 million. You say this is in nominal but not in net present value terms. What is the net present value term, if you were to apply that measure?

Mr Pezzullo: Over a 30-year period? I am not good at maths at the best of times. I would not want to do the conversion in my head, so I will need to get you some advice. The nominal
outlays are the cash outlays in each year. They are not out-turned in constant dollars, and nor is there an NPV calculation in that data.

**Senator KIM CARR:** Would you give me that figure on notice, please?

**Mr Pezzullo:** We can provide both.

**Senator KIM CARR:** If you can do it today, it would be very helpful. I have read a report here that the total cost was actually $376 million. This was published in *The Sydney Morning Herald* on 15 February.

**Mr Pezzullo:** I am not quite sure where the larger amount comes from—I will ask the chief operating officer to speak to that. But we are consolidating a number of sites into two sites. One will remain in Belconnen. The operational headquarters will be placed at the airport. So all of the data, whether it is nominal, constant or analysed in net present value terms, needs to be read against what your 30-year outgoings would have been. We are very confident and comfortable that the cost-benefit is to the good in consolidating from the multiple headquarters sites down to two—one in Belconnen and one at the airport. Whether you look at it in nominal terms or net present value terms, there is a saving to the taxpayer against the outlays that otherwise would have been spent over 30 years for those leases. But Ms Connell, the chief operating officer, might be able to speak more specifically to the larger sum, which I think relates to the two headquarters sites, but I might be mistaken in that view.

**Ms Connell:** I do not have that figure but, as you are aware, the project was part of a whole-of-government approach to market with ourselves, the Department of Defence and the Australian Bureau of Statistics. The cost-benefit analysis that was undertaken and commissioned by the Department of Finance estimated that the potential saving for the government over that 30-year period that the secretary mentioned was $324 million—73 per cent, or $236 million, of which is relating directly to our proposal.

**Senator KIM CARR:** If you can work out the savings to government over the 30 years, surely you can tell me what the net—

**Ms Connell:** Expressed in normal terms over the 30-year period it is $2.349 billion; expressed in net present value terms it is $1.536 billion. The secretary mentioned that our proposal will see us reducing our office accommodation footprint by about 13,000 square metres and it will consolidate the department's properties down from 12 to just five.

**Senator KIM CARR:** Mr Pezzullo, are you staying in Belconnen?

**Mr Pezzullo:** Me personally?

**Senator KIM CARR:** Yes, the secretary.

**Mr Pezzullo:** We have made a decision that the secretary and the commissioner should be at the operational headquarters to ensure that, should there be a crisis or something requiring our immediate—

**Senator KIM CARR:** Which is the operational headquarters?

**Mr Pezzullo:** The airport.

**Senator KIM CARR:** In relation to the refit and refurbishment of your office, I saw a figure for that here—it was something in the vicinity of $78,000. Is that—

**Mr Pezzullo:** Which office?
Senator KIM CARR: Your office.
Mr Pezzullo: My current office?
Senator KIM CARR: Yes.
Mr Pezzullo: It has not changed.
Senator KIM CARR: Sorry?
CHAIR: Ask Senator Carr what his office cost!
Mr Pezzullo: Sorry, I am confused.
Senator KIM CARR: I am interested to know that. I thought we had a question on notice here that said that there was—‘fixtures and fittings relating to the secretary’s office’—it is 1 January 2016—‘the following furniture … ’ and there is a figure here of $78,000. Have I misread that?
Mr Pezzullo: The only enhancements that I can recall are security features to allow more highly classified material to be stored in my office.
Senator KIM CARR: It is obviously a lot of security, but perhaps we could look at—this is SE16/152—executive office upgrades. Is that right?
Mr Pezzullo: I will have a look at the detail. From memory, I think I even brought my chair over from my former headquarters in Civic.
Senator KIM CARR: I am pleased to hear that, but this is the—
Mr Pezzullo: I am keen to ensure that we save costs.
Senator KIM CARR: question you have provided to this committee.
Mr Pezzullo: Whether it is a larger suite; I know that, in a larger suite, we have rated it—I do not want to go into too much detail in an open forum—so that more secure features related to top secret material can be stored safely. I know there are some enhancements that relate to alarms and reinforced doors that relate to that but, as to the basic layout of my office, I know it has not changed.
Senator KIM CARR: Perhaps you can explain this to me—this figure of $78,000.
Mr Pezzullo: I have got no idea of it.
Ms Connell: It might be referring to the broader executive suite. There are two areas in the department where we have executive housed. One is in Customs House, where we have permanent officers for senior executive, and we also have them out at Belconnen, due to the split campus arrangement. As I mentioned, we have 12 properties at the moment, so we have two executive areas. It could be a combination of works in either or both of those areas.
Senator KIM CARR: Okay. It is just that the answer says here: ‘spent the following on furniture fixtures and fittings relating to the secretary’s offices’—so the offices of any deputy secretaries.
Mr Pezzullo: That is the larger executive footprint, then.
Senator KIM CARR: Including the construction of one new deputy secretary's office.
Mr Pezzullo: Yes. I see. When we put Customs and Immigration together which, overall, yielded savings of several hundred million when you consolidate back office functions, within that there are obviously costs that you have to incur, such as providing the commissioner with
an appropriate office. He was very gracious about forgoing the ensuite that he otherwise would be entitled to, because we were both keen to ensure that we reduce the call on taxpayers' dollars. We put in place those security features that I have mentioned to do with handling more secure material, so there is a hard external perimeter where all the staff internal to that perimeter will not be exposed to documents above their security classification. And I think, from memory, that we did bring one deputy secretary across from another location so that we could co-locate the executives. I want to take this on notice, or I will take advice. I can assure you it is not my personal office. It has not changed from the day I walked in on 30 October.

Senator KIM CARR: Will all of those officers be moving to the new location?

Mr Pezzullo: I even, in the bathroom that I have, take the towels home to wash them myself.

Senator KIM CARR: Really? That is remarkable.

Mr Pezzullo: I am trying to save as much as I can.

Senator KIM CARR: I am sure that goes down well.

Ms Connell: Senator, I can confirm that the larger part of that cost was, as the secretary mentioned, construction of additional office so we could collocate the executive.

Senator KIM CARR: How many officers will move to the new location?

Ms Connell: The number of offices?

Senator KIM CARR: Yes. Presumably it is in the design phase, so how many are you anticipating the new facilities would accommodate?

Ms Connell: The current executive offices in 6 Chan Street—

Senator KIM CARR: Not just the executive officers; I want the whole lot. For $255 million, or in net present value $1.53 billion, what do we get?

Ms Connell: As in human beings, officers?

Senator KIM CARR: Accommodation for how many people?

Mr Wright: The airport will house about 2,000 people and Belconnen is going to be built for 4,000. In terms of officers, I will have to take the exact number on notice—

Senator KIM CARR: Thank you.

Mr Wright: but we are reducing the number of offices within Canberra. Under the new arrangement a cohort who currently have offices will not have offices. We are going to increase the number of meeting rooms to offset that so that the broader department has access to—

Senator KIM CARR: So where will these people be accommodated if they do not have offices?

Mr Wright: They will be on the floor.

Senator KIM CARR: I see. You are taking them out of the executive suites.

Mr Wright: It will be an open floor.

Senator KIM CARR: With the figures you have given me, can you give me a division on the difference between rent and refit itself?
Mr Pezzullo: I am not sure that we can over 30 years because I am not sure what the amortisation period is, but perhaps Mr Wright can give you a breakdown over the next 10 years or so. Whilst he is looking for that data, just to be clear, the nominal and NPV costs over 30 years for the project represent what our estimated outlay is, which is within the envelope and indeed cheaper than the equivalent nominal lease costs that otherwise would have been incurred. So over 30 years we would have had a number of human beings in large offices, many with partitions and separated office space and that would have cost us two-point-something billion dollars—and we will give you that number in a moment—and, as a result of this consolidation effort, the cost-benefit suggested over 30 years, as Ms Connell says, will save the Commonwealth some $300-plus million.

Senator KIM CARR: I see. How much would it cost to actually own the building?

Mr Pezzullo: I am not sure that that is a feature of the cost-benefit analysis. Of course, it is not Commonwealth policy and has not been for some 25 years to own buildings outright.

Senator KIM CARR: It strikes me as extraordinary. We are spending this amount of money, but how much savings would there be if the Commonwealth owned the building and did not pay the rent?

Mr Pezzullo: That is a larger government policy decision that goes back, in my experience, some 25-plus years—

CHAIR: The government should own everything!

Senator KIM CARR: No. You will be in a building for 30 years and it will cost nearly $3 billion. How much would it cost to build the building and not pay the rent? Surely that was part of your cost-benefit analysis.

Mr Pezzullo: You have to maintain it as well.

Senator KIM CARR: Of course you have to maintain it, but if this amount of money is going to a private owner of a building surely you would have considered what it would cost for the Commonwealth to purchase the building itself.

Mr Pezzullo: The Commonwealth property procurement guidelines require the Commonwealth to obviously make decisions on the basis of value for money and any calculation—and I will check whether we are required to and did undertake a calculation around an owned building, but that obviously then has to take into account things like the capital cost of refurbishment, say, every 10, 15 or 20 years—

CHAIR: Mr Pezzullo, that is not your decision, is it? It is the minister's.

Mr Pezzullo: I was just going to say that those policies are within the jurisdiction and province of the finance minister and I would refer—

Senator KIM CARR: And I asked the question: in any cost-benefit analysis surely that would have to be a consideration.

Mr Pezzullo: I am not sure that it mandatorily is undertaken every time, but I will ask the chief operating officer if departments are obligated to check it on each and every occasion. Of course, the counterfactual is that in order to achieve that state you have to borrow those funds and outlay the cash in the year of incurring the debt. So these are larger government questions; they are not really matters for my department.

Senator KIM CARR: Sure. It is reported here that the cost per metre—
Mr Pezzullo: Sorry, Senator. We will take on notice the specific question of whether—not at a whole-of-government level, because that is not us; that is Finance—departments are obligated to have a comparator based around an owned building, which I think is your question.

Senator KIM CARR: Yes. This article states that the cost per square metre is $3,000—well above the $1,200 to $1,800 government average. Is that correct?

Mr Pezzullo: The surprising mistake in media reporting—I say 'surprising' because they normally seek to check their facts—relates to the fact that the square meterage for an operational headquarters has got large floor planks, big operational rooms and large operational command and control spaces. It tends to be higher than standard office accommodation. I might ask Ms Connell to illuminate us both on that point.

Ms Connell: Our costing per square metre is $2,053 across all four buildings. That is what that equates to.

Mr Pezzullo: Sorry, how much was that, Ms Connell?

Ms Connell: It is $2,053 per square metre.

Mr Pezzullo: I do not think that is consistent with the media report that the senator is asking about.

Ms Connell: We could not replicate the $3,000 that was reported in the media.

Senator KIM CARR: You say that is not right? Your figure is $2,053?

Ms Connell: It is $2,053 across all four buildings; that is correct.

Senator KIM CARR: That is still above the average by a substantial amount.

Ms Connell: The Public Works Committee manual does cite a $1,200 to $1,800 average, but obviously our fit-out requires some specialist areas that are relevant to our business. I think a better comparator would be with organisations such as Attorney-General's, Defence and the AFP. You will find that their per square metre costs for their fit-outs were comparable to, and indeed a little bit higher than, our own.

Mr Pezzullo: But we are not comparing, Ms Connell.

Ms Connell: No, we are not. The additional costs compared to the PWC do not include security for our operational areas. It is more of a standard fit-out that they are referring to. We are also applying a high-density fit-out because of our 24/7 operations and, for that reason, it is above standard.

Senator KIM CARR: There is a reference here to $212 million for landlord incentives. What are they?

Mr Pezzullo: I might ask Mr Wright or Ms Connell to refer to that. It is a standard procurement strategy, when you are in a leased arrangement, to provide payments that address the cost of capital. I might get Mr Wright to speak to that.

Mr Wright: It is a standard thing that happens when you are negotiating new leases. It is a form of an incentive provided to the lessor, and it can be in many forms such as upfront capital payments and fit-outs. There are a number of ways it can be achieved. For our process, we asked for $212 million in incentives from the landlords. That was to cover the cost of the project, which included the cost of the fit-out.
Senator KIM CARR: I asked a question before about getting a comparison. These costs are built into the lease costs, are they?

Mr Wright: Not necessarily, no.

Senator KIM CARR: Is this one?

Mr Wright: Part of this one is built into the lease cost. Obviously the tender process is a competitive process. It is not like they can then add it back into their costs. Some of it is built into their profit margin. We are not privy to their profit margin, but they have got to be competitive with the broader industry or else they will not get the lease.

Senator KIM CARR: So is the $212 million the full incentive, or is that—

Mr Wright: That is the full lease incentive, yes.

Senator KIM CARR: That is entirely a question of lease incentive, is it? There are no other costs associated with this?

Mr Wright: It is a lease incentive but, in terms of how that lease incentive is being broken up, it does vary slightly.

Senator KIM CARR: There is a reference here to a loan. What is that?

Mr Wright: The way that the lease incentive in this one has been provided is that $136.4 million has been upfront, with no specific repayments attached to it. The lessor has built that into the actual—

Senator KIM CARR: Sorry, I am having a bit of trouble following this: $146 million upfront?

Mr Wright: Yes, $136 million.

Senator KIM CARR: For what?

Mr Wright: That is for the costs of the project, which include the fit-out costs.

Senator KIM CARR: The costs of the project?

Mr Wright: Correct.

Senator KIM CARR: This is a payment from the Commonwealth to the builder, is it?

Mr Wright: No, this is a payment from the builder to the Commonwealth.

Senator KIM CARR: So they are paying you?

Mr Wright: They pay for the fit-out, and if we do not use all this—

Senator KIM CARR: So it is a loan from the builder to the Commonwealth?

Mr Wright: No.

Senator KIM CARR: What is the payment for then?

Mr Wright: The payment is an incentive from the owner for us to enter into an arrangement with them for the 25-year lease.

Senator KIM CARR: I see.

Mr Wright: It is a standard practice that happens across industry.

Senator KIM CARR: Then the Commonwealth pays them back?

Mr Wright: In the lease payments, correct. Rental payments—
Senator KIM CARR: So, of the $212 million for incentives, $136 million is an advance payment from the builder to the Commonwealth?

Mr Wright: Correct.

Mr Pezzullo: To be clear, I do not know that you can characterise it as a payment. It is not as though cash is going to be transferred. They will build the building to our spec.

Senator KIM CARR: If they give you $136 million—

Mr Pezzullo: I do not know that Mr Wright is getting any money. Are you? Mr Wright: No, I am not getting any.

Senator KIM CARR: I do not expect that your bank account will be improved by in the order of $136 million.

Mr Pezzullo: No, I did not mean that.

Senator KIM CARR: What I am asking is: does the Commonwealth receive a payment of $136 million—

Mr Wright: No.

Mr Pezzullo: In kind. You get a building. You walk into the building on day one—

Senator KIM CARR: What is the $136 million for?

Mr Wright: That is to pay for the fit-out. With the buildings, one is currently an empty shell and this will provide the fit-out—this is all of your walls, your electrical, your hydraulics, your mechanical services. This is so that we can walk into the building from day one and it is up and running.

Senator KIM CARR: How much do you repay of that?

Mr Wright: Of that $136 million? Nothing.

Senator KIM CARR: So what is the $212 million for then?

Mr Wright: The other $75.8 million, which is what has been discussed, is an up-front payment for capital. Again, that goes toward the fit-out of the cost of the building.

Senator KIM CARR: Who pays that?

Mr Wright: This one is amortised over the course of the 15-year rent period.

Senator KIM CARR: So, the rent is increased by that amount?

Mr Wright: No. Sorry to be specific with this, but the rent is separate and then there is an amortised payment.

Senator KIM CARR: Who is paying who? That is what I want to know.

Mr Wright: We pay this part back. They provide the up-front capital. It is a form of financing and, like I said, this has all gone through the Department of Finance, so it is in line with government policy.

Senator KIM CARR: Well, that answers all questions, as soon as you say that!

Mr Pezzullo: Well, it is factually true.

CHAIR: Senator Carr, if you are going to follow this, we might have to come back to you. This is what has been happening for years in government—and when Senator Carr was minister—so I do not know why he is surprised.
Senator McKIM: I want to go back to the discussion that we were having before my time expired last time in relation to the PNG refugee status determination process. I think you have agreed to come back and provide us with some advice in relation to the UNHCR report from 2013. I would like to draw your attention to an opinion published by Professor Jane McAdam from the Kaldor Centre at the University of New South Wales on 9 February this year, which found that PNG's refugee status determination process is inconsistent with international law. When you provide advice back to the committee on the UNHCR report, I would be obliged if you would also provide a response to Professor McAdam's opinion that the PNG refugee status determination process is inconsistent with international law. Her full advice is available on the Kaldor Centre website and supports my contention that the forcible deportation of people from Manus Island runs contrary to international law and exposes people to a danger that they will be refouled and potentially face death, arbitrary imprisonment or worse.

Mr Pezzullo: So, Professor McAdam's opinion goes to the question of refugee status determination for those in the affirmative or the removal of those found to be not owed protection?

Senator McKIM: The latter of those two. It speaks for itself and it is on the Kaldor Centre website. I want to ask about the escape recently from a Papua New Guinea prison of the person who was convicted of the killing of Reza Berati on Manus Island in 2014. Does our MOU with Papua New Guinea require them to safely keep people who are on Manus Island as a result of seeking asylum in Australia?

Mr Pezzullo: Does the MOU require it?

Senator McKIM: Would that be your expectation?

Mr Pezzullo: It certainly requires that the regional processing activities are conducted in accordance with the laws of both countries—and to the extent that Australian law is applicable but more particularly, here, PNG law.

Senator McKIM: You would expect people to be kept in safety, wouldn't you?

Mr Pezzullo: Of course.

Senator McKIM: The person who killed Reza Berati escaped from prison last Saturday—so, a week and a bit ago. This is the second time he has escaped and on neither of the two occasions that he has escaped have the two people who testified against him been informed of his escape by the garrison at Manus Island. That is not acceptable, is it?

Mr Pezzullo: Whether it is acceptable or not, you can draw your own conclusion, but this is within the jurisdiction of Papua New Guinea.

Senator McKIM: But we are funding these centres.

Mr Pezzullo: We are funding services at these centres.

Senator McKIM: That is right, and you said you would have an expectation that people are kept in safety at these centres.

Mr Pezzullo: Of course.

Senator McKIM: These are now open centres, aren't they?

Mr Pezzullo: Yes, indeed.

Senator McKIM: Do you think it is acceptable that—
CHAIR: Well—

Senator McKIM: No—I am asking Mr Pezzullo. He is—

CHAIR: It is his opinion which you know is not a relevant question.

Senator McKIM: No, I am not asking his opinion. He said that he has—

CHAIR: You are asking him what he thinks.

Senator McKIM: Chair, if I may: Mr Pezzullo has been clear that he would have an expectation that people would be kept in safety. So I am asking him whether he thinks it is safe that two people who gave evidence against a convicted killer were not informed either time that person escaped from prison in Papua New Guinea?

Mr Pezzullo: That would depend entirely on the particular circumstances.

Senator McKIM: It would not at all depend on the circumstances.

Mr Pezzullo: Well, you say that, Senator. It would relate to the judgement made by the PNG police, the correctional services and others as to how to deal with such a matter.

Senator McKIM: In fact, the PNG police have made comment along the lines that he was quite a high-risk escapee and said that they had concerns for the safety of the community and the two witnesses. But the two witnesses were not informed of this person's escape.

Mr Pezzullo: Who is making that statement?

Senator McKIM: Police commander David Yapu from the Papua New Guinea police. He is a commander in the police. He has said that he had grave concerns for the safety of the two witnesses but that the two witnesses were not informed of that person's escape. That is just not acceptable, is it?

Mr Pezzullo: I would not want to second-guess that commander's views on any matters. If he has made that statement—

Senator McKIM: I am not asking you to second-guess his views, I am saying that if you accept his opinion on face value that the person who escaped is a high-risk escapee and that commander Yapu had concerns for the safety of the two witnesses, shouldn't the two witnesses have been informed that he had escaped?

Mr Pezzullo: I do not know the practises and the procedures in those applicable matters in the state of Papua New Guinea.

Senator McKIM: So do we just wash our hands of all of it?

Mr Pezzullo: You can characterise my response as you see fit—

Senator McKIM: I do.

Mr Pezzullo: but this is about law enforcement in a foreign jurisdiction.

Senator McKIM: It is about the safety of people who have sought asylum in Australia.

Mr Pezzullo: And who have not been in the Australian jurisdiction for years, is point 1. Point 2: they are subject to the laws of PNG. If they have been—in this case—clearly charged and convicted of a crime and they are serving jail time, obviously they should be managed under the correctional system of PNG. Now, if they escape, presumably, like any escapee, the police will take the appropriate action. But that is for a foreign government to respond to. We
can take it on notice to see if the Papua New Guinean authorities wish to add anything by way of a response on notice through us.

Senator McKIM: I am not asking you to speak on behalf of the PNG authorities, but I am happy for you to take it on notice in the terms that you have described. My specific question is: given that we are funding garrison services on Manus Island and given that you have said that you would have an expectation that people would be kept safely, I am asking whether your expectations have been met in this case, when, in fact, two people who were witnesses, who gave evidence that, presumably in part, led to the conviction of this murderer, were not informed either time that he had escaped. In fact, they did not find out until many days after he escaped that he had escaped.

CHAIR: Senator McKim, you have made your point for the media. Mr Pezzullo is not to be asked to give his opinion on whether this is a good thing or a bad thing, or whether people are safe or otherwise.

Senator McKIM: Specifically, Mr Pezzullo—

CHAIR: You have made your point for the media. Can we move on?

Senator McKIM: No, I have not finished yet. No, we cannot move on. Specifically, Mr Pezzullo, could you please take on notice whether or not the set of circumstances I have outlined would place any of the garrison services contractors in breach of their contracts and whether it would place the Papua New Guinean government in breach of Australia's MOU with the PNG government?

Mr Pezzullo: Whether it would place any of our contractors in breach of contract?

Senator McKIM: Yes. I presume—

Mr Pezzullo: Well, they have delivered their services. If this fellow—and I am taking on face value the facts as described—is serving time in a PNG correctional institution—

Senator McKIM: He is not any more.

Mr Pezzullo: I am struggling to see how the garrison contracts have any bearing, but I will look at it.

Senator McKIM: I am happy for you to take that on notice. It is obviously a complex question. For clarity: I am specifically referring to the failure to notify. I am not suggesting garrison services are responsible for running the prison that the person escaped from. I am specifically asking a question about the failure—twice now—after two escapes, for people whose evidence was given in court against this person—

Mr Pezzullo: Oh, I see: for the contractors to notify them?

Senator McKIM: For the garrison services or someone at the regional processing centres on Manus Island to simply inform the witnesses that the person they gave evidence against had escaped; a dangerous person who has been convicted of killing and who the Papua New Guinean police commander said is 'a high-risk escapee'.

Mr Pezzullo: I will give you an assurance that we will look at it but it is not immediately clear to me how that is a contractual matter. It is something where Australian departmental officers and their contractors would be guided by PNG police and other authorities. It is really for them to make decisions about who is notified about an escape. They might not want to notify for all sorts of reasons.
CHAIR: Thank you, Mr Pezzullo. You have given that answer three times already. We will suspend now.

Proceedings suspended from 12:45 to 13:48

CHAIR: Before we go to Senator McKim, I understand Senator Fawcett would like to make a clarification.

Senator FAWCETT: It has been brought to my attention, Minister, that over the lunch period a comment that I made in estimates before lunch has been taken somewhat out of context by the media. I used a figure of speech to describe the Labor Party's pursuit of very small detail in the processes within the Department of Immigration and Border Protection and that has been somehow construed by the media to indicate that I have called refugees fleas. That is completely untrue. Anyone who knows me would know that that is not in my character. I was objecting to the fact that the Labor Party were pursuing very small detail in the process in the department that occurred at a period of great activity and stress for the department which was as a result of the Labor Party's policy decisions. So the metaphor was that if they were nitpicking they were responsible for the cause of that irritation. It is certainly not intended to apply to people who are refugees.

Senator Cash: I think on this side we understood exactly what you meant, but thank you for that clarification.

CHAIR: I think any fair-minded person would have understood that but, clearly, we are not all fair-minded. Senator McKim, you have five minutes.

Senator McKIM: Without reflecting, necessarily, on Senator Fawcett's comments I would say that there has been a deliberate attempt by this government to dehumanise refugees and people seeking asylum for a long time, and I would make that comment again in regard to the department as well as the government.

CHAIR: I have allowed the senator to make a statement. If you have a question you should ask it.

Senator WILLIAMS: Like what, Senator McKim?

Senator McKIM: Describing people, for example, as IMAs rather than human beings would be one example.

Senator WILLIAMS: Order! If you have questions, Senator—

Senator McKIM: I do, thanks. Minister and Mr Pezzullo, I will continue on a line of questioning I was exploring with you just before lunch. It goes to the failure to notify detainees. I guess I should ask you, Minister, and I am happy if Mr Pezzullo would like to get some legal people up if he has them here. Doesn't the Workplace Health and Safety Act 2011 have an extended geographical jurisdiction, in section 12F(3), in countries such as Papua New Guinea and Nauru that do not have equivalent legislation? That is evidenced by the way it has been presented to this committee previously.

Senator Cash: Senator McKim, you are probably better placed in terms of legal counsel to assist in that regard—do we have legal counsel?—or the secretary.

Mr Pezzullo: I can deal with this.

Senator McKIM: I am happy for Mr Pezzullo to answer this.
Mr Pezzullo: I might be assisted in this by the chief operating officer, who runs our program that deals with our observance under the Work Health and Safety Act 2011. Sorry, Senator, I did not quite pick up the thread of where you were going. You went to WHS. Could I ask you to repeat the latter part of your question?

Senator McKIM: Certainly. I was just asking: do you accept that the act confers an extended geographical jurisdiction in countries, such as PNG and Nauru, that do not have equivalent legislation?

Mr Pezzullo: The act statutorily obligates all departments and agencies to observe the obligations that are specified in the act, in relation to our involvement in undertakings, wherever those undertakings apply.

 Senator McKIM: In that case, and thank you for that, do you accept that the Commonwealth—in this context, your department—has a duty under section 19(2) of the act as:

 A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons—

 So not just workers but other persons—

 is not put at risk from work carried out as part of the conduct of …

 In this context, the RPC.

Mr Pezzullo: So that I am clear on your question, when you say 'in this context', in relation to the escaped—

Senator McKIM: That is right, and the failure to notify.

Mr Pezzullo: In terms of the performance of its duties, the department is obligated to observe the requirements of the act, as I have already indicated. That is limited, of course, to the extent of the department's undertakings in those centres. So to answer your question I need to answer in several parts.

I need to describe the nature of our undertakings. We assist and we work with the relevant government—in this case, Papua New Guinea—in the administration and the operation of these centres for a broad range of day-to-day administrative and operational matters. And operational managers appointed by the relevant government—Papua New Guinea, in this case—make the final decisions under their laws.

I certainly would agree with the contention that we are responsible for the health and safety of our own employees while they are at work within these undertakings and that we owe, as far as is reasonably practicable, a duty of care in respect of other persons to the extent that we are involved in those undertakings.

Senator McKIM: Would you dispute that because we fund garrison services, in fact, garrison services are an undertaking of your department?

Mr Pezzullo: Funding in and of itself is one of the factors that has to be given regard to, and the same sorts of issues arise in relation to, say, our aid program. The extent to which you are involved in the undertaking is partly a function of funding and partly a function of whether you have officers directly providing services, overseeing those services, providing a liaison function. So, it really does turn on the particulars of the case in question, or the matter in question.
Senator McKIM: So, in the current circumstances on Manus Island, we are funding garrison services. We have an MOU with the Papua New Guinea government that covers some aspects of how the centres are managed. Do you have advice on whether or not those situations would mean that the duty of care in the particular case that we are talking about here and the failure to notify of two escapes would mean that your department actually does have a responsibility in this case to, as far as is practicable, ensure the health and safety of other persons—for example, detainees?

Mr Pezzullo: You are asking whether I have advice to that effect?

Senator McKIM: Yes.

Mr Pezzullo: The answer is no, I do not.

Senator McKIM: Would you seek that advice?

Mr Pezzullo: Given that you have raised it now both before and after the break, I will take some advice on that question.

Senator McKIM: Thank you. And my time has expired. I will put that question in writing to you, because there are a couple of other subquestions that I would also like you to take on notice, but I will provide those in writing.

Mr Pezzullo: Which flow from the escape and the—

Senator McKIM: And failure to notify. Thank you.

CHAIR: We are still dealing with the corporate and general and cross-portfolio. We are now running some two or three hours late, and I intend to have a private meeting of the committee at around afternoon tea time to see whether we have any prospect of getting to outcome 3. It seems to me unlikely that we are, and it is pointless having highly paid and even more highly paid public servants sitting around for no purpose. So I will just flag that. I assume, Senator McKim, that you have more questions in this cross-portfolio area.

Senator McKIM: Yes.

CHAIR: And Senator Carr, I know you do.

Senator KIM CARR: Yes. Who is the principal—the lessor—in regard to the department's new headquarters building?

Mr Pezzullo: I think that is publicly known. I will ask the chief operating officer to answer that question, if she is able to, and Mr Wright will also join us.

Mr Wright: There are three different parties that we are dealing with. Canberra Airport is Canberra Airport Group.

Senator KIM CARR: Are they the controllers of the land at the moment?

Mr Wright: They are leasing the land at the airport.

Senator KIM CARR: Yes, it is Commonwealth land, which they are leasing.

Mr Wright: Correct, under a 49-year lease, I believe.

Senator KIM CARR: And who is the principal there, for the Canberra Airport Group?

Mr Wright: I would have to take that on notice. I do not know exactly who the principal of the Canberra Airport Group is.

Senator KIM CARR: All right. And what are the other two?
Mr Wright: Can I get that to you later today? I do not have in front of me the other two actual owners of the buildings. They are at Belconnen.

Senator KIM CARR: There are two sets of owners, are there?

Mr Wright: Correct. There are two different owners of the building. So, the three buildings we are having at Belconnen are 6 Chan, 5 Chan and part of ABS House, and they have different owners.

Ms Connell: The other two are Challenger Management Services Pty Ltd, for 6 Chan Street and for 45 Benjamin Way, and then we have Benjamin Nominees Pty Ltd, who are the lessor for 5 Chan Street.

Senator KIM CARR: Who is the principal there?

Ms Connell: Benjamin Nominees Pty Ltd. I do not know the individual who heads up the company. Is that what you are asking?

Senator KIM CARR: Yes. Who is the person who runs these outfits?

Ms Connell: I do not know. We can take that on notice.

Senator KIM CARR: Yes, if you could take on notice who is the principal of each of these organisations—thank you.

Mr Wright: With the whole process, we have had our probity plan done up. That has been going since inception. All individuals involved in the project are required to sign conflict-of-interest forms and declare any conflicts of interest. As part of the tendering process the tenderers were also required to disclose any conflict of interest as part of the tender bid. And in the agreements for lease that are currently being negotiated the contractual clause also requires the tenderer to disclose any conflicts of interest if they become apparent.

Senator KIM CARR: And the departmental officers involved? Where do I find that registration arrangement?

Mr Wright: We have an internal register that lists all individuals who have been involved with this project, including whether they have any conflicts of interest, and what mitigation strategies have been undertaken to—

Senator KIM CARR: Is that publicly available?

Mr Wright: No, it is not.

Senator KIM CARR: Why not?

Mr Wright: It is an internal document that we keep. We have provided a copy of it to the Public Works Committee. I think it was about 10 days ago that we provided them with a copy, on request, but it is not a publicly available document.

Senator KIM CARR: Is that available to the estimates committee, if it has been provided to another committee?

Mr Wright: We can provide it to you, yes.

Senator KIM CARR: Thank you very much. You have said that one of the reasons for the rental to be higher than—the special purposes for the building—
Mr Wright: That was for the cost per square metre for the fit-out.

Senator KIM CARR: Yes. I have been given a figure of $425 per square metre. Does that fit with you?

Mr Wright: That is the rent. That is the approximate rent rate. So, there are two different things that we are talking about here. The fit-out—this is that capital up-front cost to fit out the building—is an average of $2,054 a square metre. And then, once the fit-out is done, we have our regular 15 years worth of lease payments. For one of the buildings we pay around $415 per square metre per year.

Senator KIM CARR: For 30,000 square metres—is that right?

Mr Wright: Correct—at the airport, and then at Benjamin Way, 6 Chan and 5 Chan, there are different rates as well that we are currently negotiating with the building owners. They are still under negotiation at this point.

Senator KIM CARR: Right. But you have identified 415—is that what you said?

Mr Wright: It is roughly around that.

Senator KIM CARR: For 30,000 square metres—this is at the airport.

Mr Wright: Correct.

Senator KIM CARR: Now, the reason you are paying more than normal is the special purposes. Is that the case?

Mr Wright: That is the case in terms of the actual fit-out for the building—we pay more, because of the special purposes, for it. The rents are very comparable to similar graded buildings around Canberra. So, we are not paying anything up and above in terms of the actual rent component.

Senator KIM CARR: It was put to me that the special purpose is the armoury that is needed in the building. Is that the case?

Mr Wright: There will be an armoury in the building, yes.

Senator KIM CARR: Let's deal with that matter. What is the size of the armoury?

Mr Wright: I do not have those specific details.

Senator KIM CARR: Let me just go back the other way, then. Perhaps I will ask the commissioner some of these questions. He might be able to assist us. Not all officers in the department carry weapons, do they?

Mr Quaedvlieg: That is correct.

Senator KIM CARR: So how many staff carry weapons?

Mr Quaedvlieg: At this current time, 957.

Senator KIM CARR: And how many of those are in Canberra?

Mr Quaedvlieg: I do not have that breakdown, but there are some.

Senator KIM CARR: You need an armoury in Canberra?

Mr Quaedvlieg: Yes, that is right. It is well-established practice and precedent in any enforcement organisation to have a secure location to secure firearms. Nobody wants even one firearm in—

Senator KIM CARR: Yes, of course.
Mr Quaedvlieg: Well, let me finish. The term 'armoury' may be a broad, circumscribed nomenclature, but, in essence, armories will differ from location to location. And in the context of our headquarters armoury, I would imagine that it is just to secure the operational firearms and personal defensive equipment for our officers based in Canberra.

Senator KIM CARR: Right. It is not a very big requirement, is it, for officers in Canberra to be armed?

Mr Quaedvlieg: Well, there are armed officers in Canberra. We have field operations. We have a counterterrorism unit team for the airport—

Senator KIM CARR: How many are—

Mr Quaedvlieg: I do not have that figure on hand, but I can find it.

Senator KIM CARR: Do you have contractors who are required to be armed?

Mr Quaedvlieg: No.

Senator KIM CARR: So, it is only departmental officers who are authorised to carry arms?

Mr Quaedvlieg: That is correct.

Senator KIM CARR: And there are 957 of them?

Mr Quaedvlieg: Globally, across the board, yes. But even in the case of one officer with a firearm in Canberra we would need to secure that firearm.

Senator KIM CARR: Yes, I would presume you would need to store securely; I am just interested to know the size of this facility in Canberra.

Mr Quaedvlieg: Sure. I can take that on notice, as I will the number of armed officers in Canberra.

Senator KIM CARR: I take it we are talking about firearms and tasers, are we? Is that the nature of the weaponry?

Mr Quaedvlieg: No, we do not have electro incapacitants at this stage.

Senator KIM CARR: Perhaps I could just come back to another point. Mr Wright, I think you indicated that the Public Works Committee had been provided with a conflict-of-interest register?

Mr Wright: I believe they have, yes.

Senator KIM CARR: My colleague here at the table is disputing that. Would you be able to check that for us, please?

Mr Wright: Yes, I will.

Senator KIM CARR: Thank you. Obviously you have agreed to provide it to us, but if there has been a—

Senator GALLACHER: It is clearly not correct. The Public Works Committee is watching this broadcast and asking themselves, as I have asked them, 'Where is it?' And it ain't there. So, it did not get in 10 days ago, and it did not get in this morning when we asked for it.

Mr Wright: I will take that on notice, but it has definitely left my office, and it has definitely been sent off, so—
Senator GALLACHER: Your evidence was very clear. You said that the conflict-of-interest register was forwarded to the Public Works Committee 10 days ago. Is that correct?

Senator Cash: Chair, the witness has said he will take it on notice and he will check for the senators.

Senator GALLACHER: It is an important issue if a public servant is not giving correct evidence to a Senate committee.

CHAIR: Well, that is not an appropriate comment.

Senator Cash: And the witness has said he will take it on notice for you and go and check.

Senator PRATT: Is it possible to provide the documentation and subvert what seems to be a bogged-in bureaucracy?

Senator KIM CARR: Mr Wright said it has left his office. So, let's just establish what has happened. Is that right?

Mr Pezzullo: Well, the officer has advised me that he has personally signed it off as a divisional officer, and I presume that there is other checking, and approval processes are being gone through. If it has not arrived at the committee, I will take that as a factually correct position. So, the officer has acquitted his part of the responsibility. He will check precisely as to the state of the paper.

Senator KIM CARR: And in the process, if you can tell us where it is—that would be very handy.

Mr Pezzullo: We will make inquiries.

Senator KIM CARR: Thank you very much. With regard to the weapons storage, we are talking about light weapons? I have read a tender document here that talks about light weapons. Is that the expression that is used?

Mr Quaedvlieg: I personally do not use that, but my anticipation for the use of the armoury in Canberra would be for side-arms and ammunition only.

Senator KIM CARR: Tasers?

Mr Quaedvlieg: Just for clarity: a taser is actually a brand of conducted energy weapon.

Senator KIM CARR: You will appreciate that I am not familiar with the—

Mr Quaedvlieg: No, I am just contextualising it for you. The Australian Border Force does not currently—

Mr Pezzullo: Would you like to come in for a training course?

Senator KIM CARR: That is very good—at either end of these, I might say. So, it is conductive energy weapons. What is a conductive energy weapon?

Mr Quaedvlieg: It is a device like a taser which introduces a less than lethal application of force to perpetrator and incapacitates them.

Senator KIM CARR: And in the tender documents it says 'light weapons and ammunition'. So, that is a term that is used officially.

Mr Quaedvlieg: It is firearms.

Senator KIM CARR: It is guns.
Mr Quaedvlieg: Yes.

Senator KIM CARR: Right. How many?

Mr Quaedvlieg: I do not know. I will take that on notice. There are, as I mentioned, operational officers who are armed, but we also have a training facility, in terms of use-of-force training, which I would imagine would also have a stock of firearms and ammunition.

Senator KIM CARR: Are you able to advise the committee of what weapons you are intending to purchase and their numbers? And, in terms of the RFT that has been listed here, what is the scale of the purchase?

Mr Quaedvlieg: I will take that on notice. I would imagine that the armoury would be for the storage of existing weapons, and whether there are new ones for the ACT region I will take on notice.

Senator KIM CARR: And who actually has a right to carry a weapon?

Mr Quaedvlieg: ABF officers, under statute, are all entitled to carry a weapon in a statutory sense. However, as a policy, we provide firearms only to those officers who may have a requirement for them in the field. As I indicated, there are currently 957 armed officers out of a force of 6,095, so it is quite a minority, and there are no plans to expand it to any large degree.

Senator KIM CARR: And who actually has a right to carry a weapon?

Mr Quaedvlieg: I am just trying to establish what the circumstances are. Are these operational officers only?

Senator KIM CARR: That is correct.

Mr Quaedvlieg: But, under statute, any officer is authorised to carry a firearm? Carry or use—how does it work?

Mr Quaedvlieg: Well, carry. Their use is dictated by other statutes, but under statute they are entitled and empowered to carry a firearm. But I should qualify: only under circumstances where there is a qualification that is achieved. There is quite a rigorous governance process that sits over the accreditation of someone to carry a firearm. It is synonymous—in fact, it is identical—with the curriculum of the Australian Federal Police. We have adopted that curriculum. There is a process of reaccreditation that occurs on an annual basis, and an officer's right to bear a firearm in their role is dictated by both their initial accreditation and their renewal of that accreditation on an annual basis.

Senator KIM CARR: How many senior officers are accredited?

Mr Quaedvlieg: I do not believe there are too many. There may be a handful that are accredited, but it would be a large predominance of operational officers.

Senator KIM CARR: So, if it is not too many, you will not mind telling me how many.

Mr Quaedvlieg: I will take that on notice. I do not know, at any given point in time, how many senior executive officers—how do you define that, incidentally, for the sake of taking that question on notice, and for clarity? What is a senior officer?

Senator KIM CARR: Secretaries and deputy secretaries and the like—are they accredited?

Mr Quaedvlieg: I do not think any are at this point in time.

Senator KIM CARR: I am pleased to hear that.
Mr Pezzullo: Can I just give clarity: under no circumstances are members of the departmental—

Senator KIM CARR: I just wanted to know if there are men in suits with guns in your department.

Mr Pezzullo: Senator, I can assure you, as much as sometimes you might feel the urge to, none of the public servants in the department are going to be armed.

Senator KIM CARR: I am pleased to hear that.

Mr Pezzullo: You have to be a Border Force officer with the appropriate training.

Senator KIM CARR: In terms of the use of the firearms, are there incident reports that are required after the use of any firearms?

Mr Quaedvlieg: Yes, and ‘use’ is defined not just as a discharge; even drawing a weapon is classified as use. And there is a requirement, absolutely, under our governance arrangement for that to be reported.

Senator KIM CARR: How many times have you had such reports issued?

Mr Quaedvlieg: It is very rare. I will take the precision of the question on notice, but it would be a handful of occasions in the last couple of years, and I think in the main that would be in our maritime operations.

Senator KIM CARR: You were saying you have no plans to expand the number of individuals; there is no change in the risk assessment in regard to the officers who are carrying firearms or electronic weapons—whatever you described them as?

Mr Quaedvlieg: For clarity, there are no conducted energy weapons in Border Force at this point in time. We keep that under review. In terms of expansion, yes, there are likely circumstances where we will nominally or marginally increase the number of officers that have trained. There is an increased risk environment in the operating theatre in which we work domestically and we keep that under review, and, where officers should be armed, we will arm them. But at this point in time there are no plans to expand beyond the current 957 officers.

CHAIR: Senator Carr, I have allowed you to continue that because I thought you were talking about the building, which you had started on.

Senator KIM CARR: I am talking about the storage of the firearms.

CHAIR: Is that what it is about? Is that part of the building? As I said earlier, I would like to try to keep to specific areas of the program so that we all know where we are going. The secretary might be to help me, but I would have thought that matter was under program 1.3 or 1.4 or 1.5 or outcome 1 rather than under corporate and crossportfolio. We might come back to that at the appropriate time.

In previous estimates hearings I have been interested in the issue of illicit tobacco, and you mentioned it in your opening statement. Can I just understand what the ongoing operations for addressing illicit tobacco are? Not that we are in favour of any sort of tobacco, but we are losing a lot of revenue out of the illicit tobacco trade, so I am just wondering. You mentioned in your opening statement some statistics. Without sort of flagging your operations, what is proposed from here on in?
Mr Quaedvlieg: In October 2015 we established a tobacco strike team, which is the capability I referenced in my opening statement. That is a dedicated team of officers—27 in total—that are distributed between both Sydney and Melbourne, where the primary problem of illicit tobacco is focused. Their task is to get underneath the border detections of tobacco and start looking at syndicates that are involved. Quite clearly, the intelligence demonstrates to us that there are both organised crime and organised criminality involved in illicit tobacco importation. The entities involved in that are also involved in other crime activities such as drug trafficking.

The tobacco strike team has had a significant series of successes in the numeric terms of detections. For example, last financial year in total we seized 82 tonnes of illicit tobacco. For the first six months of this financial year, up to 31 December, we have already seized 142 tonnes of illicit tobacco. So that six month period is in comparison to the 82 tonnes for the entire full year prior to that. Moreover—this is where my particular interest lies—we are starting to go to the heart of the syndicates. We are involved in proceeds of crime actions against syndicates that are involved in illicit tobacco, depriving them of their transport, depriving them of their profits and essentially trying to prevent reinvestment of those profits into organised crime.

CHAIR: A lot of the issues relating to this particular problem relate to other departments of the federal government, such as Health and whichever department deals with the labelling of cigarettes. Also, I understand retailing issues are matters for the various state authorities. Is there any cooperation? Are you addressing those issues?

Mr Quaedvlieg: Very much so, Senator. You are right; there are a range of Commonwealth agencies, like Health, ourselves, and tax, that have an equity in the issue of tobacco, excise and illicit tobacco. There are state and territory statutes that deal with the cultivation and sale of tobacco, so there is an involvement there for the state and territory police. There are also roles for municipal governments in terms of regulation licensing of retail outlets that sell tobacco. So it is a complex landscape of equity holders and participants.

I am pleased to say that as customs—we have carried this over into the Australian Border Force—we took a leadership role at the Commonwealth level and the state and territory level and, indeed, with industry to bring all the participants around a table to have a discussion around priority setting around conflicts and deconfliction. The counter-illicit tobacco environment today is much healthier than it was two or three years ago since we have started to take this leadership role. It is still complex and there are still different priorities. State and territory police will not necessarily prioritise targeting milk bars that are selling illicit tobacco, but certainly the collaboration across industry, Commonwealth, state and municipal authorities is exponentially better than it once was.

CHAIR: Does the strike team you speak of involve other Commonwealth agencies and any state agencies?

Mr Quaedvlieg: Absolutely. The strike team involves investigators but it also involves intelligence analysts, and there is a rich exchange of intelligence and information. In industry, for example, the big three—British American Tobacco, Imperial and Philip Morris—all have their own enforcement capabilities. They run covert operations, they run investigations and they do information and intelligence gathering. They have sat on a rich bed of data that has not hitherto been accessed and used by enforcement agencies. We now have portals for that
information to come into our intelligence collection and analysis capabilities. We certainly link in with the state and territory police in both intelligence exchanges and joint operations. So it is a fairly good report card in terms of collaboration.

CHAIR: I have raised this with you before—I am going back a couple of years, so hopefully this has been corrected—I am told that if you know, and you do not have to be terribly clever, there are clearly recognised outlets in some of the capital cities that will sell you a packet of cigarettes that does not have the warning label on it, which obviously makes it imported. Is that an issue? Is that something that you have addressed, or can you tell me that that does not happen any more? Whose responsibility is that?

Mr Quaedvlieg: I wish I could tell you that it does not happen, but it does. It is not a difficult task to go and purchase either cigarette form or loose-leaf tobacco from any number of outlets across suburban Sydney and Melbourne, particularly in the western suburbs. It is an outlet that, obviously, illicit tobacco flows through, both imported and/or cultivated. There have been a couple of occasions in the last two years where state police have found domestically cultivated tobacco plantations. It is illegal to grow tobacco and sell it for commercial purposes in Australia at this point in time. The responsibility—to answer your question—for the policing and enforcement of retail outlets sits with both the state and territory police in terms of criminal offences and with the municipal authorities in terms of regulation and licensing of tobacco sales points.

CHAIR: What about the health warnings that are not on these cigarette packets? Wouldn't that be a matter for the Commonwealth health department?

Mr Quaedvlieg: Potentially; but in a lot of cases, the tobacco is not actually sold in packets. A lot of the loose-leaf tobacco is actually sold in plastic bags.

CHAIR: I appreciate that, but the information given to me was that you could walk into a certain café, milk bar or somewhere and they are all up there on the wall with the old-style cigarette packets that we remember from 20 or 30 years ago. They are certainly not the ones with the Commonwealth warnings on them. That would be for the health department, principally, in the Commonwealth?

Mr Quaedvlieg: The Department of Health administers the health warning protocols and displays on cigarette packets; that is correct.

CHAIR: Are they part of your strike force?

Mr Quaedvlieg: They are not part of the strike force. They are certainly part of our interdepartmental committee that we run and engage with, but they are not operational officers.

CHAIR: I think I have been told that before—that they are not operational officers. They do not have anyone that can walk in and risk getting punched in the nose by saying to someone, 'You are selling these illegally. I am confiscating them.' But is that something that the Border Force could do on behalf of the health department? It just seems to me that it is obviously flouting the law and obviously contraband, and yet everybody seems to know about it but nobody seems to be able to do anything about it because it is a health issue and the health department does not have tough policemen to go and front up. Is there some way that Border Force could help, or is that something you could perhaps raise with your next strike force meeting?
Mr Quaedvlieg: I can raise the idea. I suspect that our Border Force officers do not have any statutory authority under that particular regulation and, in any event, the strike team would be focused on the high-level syndicates. They would not ordinarily be visiting retail outlets looking for point-of-sale retail tobacco. We are going for the high-end syndicates: the organised crime, the financiers and the supply chain logisticians. I would not use our scarce resources on that activity. However, it may be something the departments of health, both Commonwealth and state, potentially could broach with the state and territory police. They do the occasional campaign or operation against retail outlets—particularly for the sale of tobacco—but certainly in that context, they potentially could enforce some of the Department of Health laws and regulations.

CHAIR: Perhaps I could ask the minister if she could use her good offices to speak with the health minister to see how the Commonwealth does enforce its warning labels on cigarettes. We have passed laws to say you have to do it; is there any penalty if you do not do it?

Senator Cash: I can certainly take that on notice.

CHAIR: Thank you for that. Can I just quickly return, Mr Pezzullo, to the questions about your new building. I was intending to raise a few issues, although Senator Carr has done that for me. I understand you were supposed to appear before the Public Works Committee today?

Mr Pezzullo: I think there was a hearing scheduled but I am not sure that it took place.

CHAIR: I was told that it could not take place because you were here.

Mr Pezzullo: I can't be in two places at once, I suppose!

CHAIR: Obviously! But is it correct that there was a meeting scheduled for today—

Mr Pezzullo: I just need to apprise myself of the facts. I just do not know.

Ms Connell: There was a second hearing that was scheduled for 8 to 9 o'clock this morning, I think it was, but that was postponed.

CHAIR: You said that was a second meeting.

Ms Connell: It was the second hearing. We met on 10 February, I think it was. That was our first PWC hearing. We appeared before the committee and Mr Wright was the lead witness for that committee.

CHAIR: I won't ask them, but a lot of the questions I might have asked related to the sort of questions that the Public Works Committee was keen to talk to you about. You rescheduled your meeting before them?

Mr Wright: Correct. I was advised earlier on today that it is likely to be at the end of March, or mid-March.

CHAIR: That is a long way away.

Mr Pezzullo: Mid-March—perhaps less so—end of March. It is for the convenience of the committee, I suppose.

CHAIR: I was contacted by some committee members who were annoyed that you are here, because they were very keen to talk to you about a lot of the issues—

Mr Pezzullo: Senator Carr has done a sterling job in drawing out many of the issues that might have been on those members' minds!
Senator KIM CARR: I have not finished yet, so don't be too enthusiastic!

Mr Pezzullo: So Senator Carr will perhaps act as an excellent proxy!

Senator KIM CARR: There is nothing to preclude you from giving evidence to two committees.

Mr Pezzullo: Of course not—other than the temporal problem of trying to be in two places at once.

CHAIR: I am not criticising you for that. I am just simply saying that this was in the schedule for today, which was immediate. As long as I can assure my colleagues on that committee that you will appear before them to answer, I suspect, a lot of the questions—

Mr Pezzullo: The appropriate witnesses will go. It depends on what else is on our agenda at the time. I suspect that by the time Senator Carr is finished later today many of my answers will be rather repetitive, but there you go!

Senator McKIM: We had placed on the record earlier the refugee status determination success rate for people on Manus Island. I think it was either 63 or 68 per cent. One of your other officers was up here, Mr Pezzullo. Firstly, I want to ask for confirmation of that rate. Secondly, I want to ask if you have the same data for Nauru and for the legacy caseload in Australia.

Mr Pezzullo: I will ask the acting deputy commissioner to re-join me at the table, and we potentially might be joined by a colleague from our international area. Manus first?

Senator McKIM: Yes, Manus then Nauru and then—

Mr Pezzullo: I think the question is to confirm earlier evidence about the so-called strike rate or success rate for positive determinations?

Senator McKIM: Yes. Manus then Nauru and then—

Mr Pezzullo: The officers who would be answering these questions under 1.5, probably, as the most applicable program, are the officers at the table.

CHAIR: I am concerned that we will come back to this later, Senator McKim. If we could get rid of the general cross-portfolio and then we might be able to get onto these things and have the relevant officers here. I appreciate that Ms Moy is here, but I would send her away after you have finished with her and then maybe other senators come in at the appropriate time for 1.5, so we would have to keep her around. Senator Carr, do you have much more on general and cross-portfolio.

Senator KIM CARR: I have about three broad areas. I have not counted them precisely. They are all cross-portfolio.

Senator McKIM: Chair, if it would assist, I will defer those questions until we get to 1.5. It does not really matter to me.

CHAIR: That would be good. If Senator Carr is going to—

Senator McKIM: I still have other cross-portfolio questions.
CHAIR: Why don't you go to the cross-portfolio and we will come back to those others.

Senator McKIM: Sorry, Ms Moy, it looks like we will have to defer those matters. I am not sure who the relevant officers are, but these go to contracts, which I understand we have been treating as cross-portfolio. I want to ask for an update on the awarding of a garrison services contract. The current contractor has advised they will not be reapplying. I understand that their contract expires in October. Perhaps you could give a general overview to start with, Mr Pezzullo.

Mr Pezzullo: Ms Moy wins the prize, because she gets to stay here.

Ms Moy: Sorry, Senator, what was the question?

Senator McKIM: I asked for a general update, but, basically, is the tender process open? Are you going through a tender process for this? Have you selected someone to replace the current contractor?

Ms Moy: The current process at the moment is that we are talking to the relevant governments—the host governments of Papua New Guinea and Nauru—in relation to services that will be required post the ending of the current contract.

Senator McKIM: That is in October, is it?

Ms Moy: That is correct. At a point in time we will then look either to procurement to fill those services—as you can imagine, over a period of time services have changed since the original contracts were let. At the moment, we are in the process of looking at what services are required and how we will then go about assisting those governments with their services.

Senator McKIM: There is no process underway to select a new contractor?

Ms Moy: Not at the moment.

Senator McKIM: We are six months away from the expiry of the current contract.

Ms Moy: That is correct.

Senator McKIM: These are large contracts—hundreds of thousands of dollars at a minimum, potentially billions, depending on how long the contract is let for—are you running a bit late, if I could be a bit blunt?

CHAIR: Again, I do not want to be difficult, but this is clearly a matter for program 1. Something else.

Senator McKIM: If I could respond. Senator Carr and I have not sought to object: there have been two or three 15-minute rounds of questioning talking about one contract, which is the matter to do with the new facilities for the department here in Canberra. I thought we had agreed that contracts were a matter for cross-portfolio and therefore this part of—I am not trying to be difficult—I think we need a bit of consistency.

CHAIR: I am not trying to be difficult either.

Senator Kim Carr: No-one wants to be difficult! What sort of estimates committee is this?

Senator McKIM: Well let's just get on with it.

CHAIR: If we are just going to have open slather, we might as well open it up for everybody.
Senator KIM CARR: Contracts have always been cross-portfolio.

Senator McKIM: That is my understanding.

CHAIR: I would have thought they were in 1.5 IMA offshore management. That would have seemed very clear to me, but if you want to treat the estimates like this—quite frankly, I am here till 11 o’clock, as I always say, but I have some respect for other senators who might want to come in at a particular time to ask particular questions. But if you are going to lump everything under general or cross-portfolio then we might as well determine to go our hardest and we will just send people home as we appreciate that we are never going to get to their areas.

Senator McKIM: I think my recent track record in deferring questions that I was seeking to ask shows that I am attempting to comply with the committee's will. But, given that Senator Carr has on numerous occasions stated that contracts are cross-portfolio, without being challenged on it, I just assumed that they were.

CHAIR: You are quite right on that, but I would hope that Senator Carr, as a more senior senator might have understood what I was asking for earlier on. Clearly that is not the case.

Senator KIM CARR: For decades that is the way it has been.

CHAIR: It has not, and you would not know, Senator Carr, I have to say with respect—or with little respect. Senator McKim, you make the point, I guess. I have allowed this. I cannot really stop it now.

Ms Moy: Senator McKim, the work that we undertake on behalf of the host governments is to provide the services that they require in all facets of regional processing. We take the time to do that that needs to be taken.

Senator McKIM: I understand that, but you have known for quite some time that the current contractor was not going to reapply, have you not?

Ms Moy: That is correct. The issue, though, is that the services that are required have changed over the time since those original contracts were undertaken. The requirement for services now may be considerably different, and that is up to the regional processing countries to advise as to what they require.

Senator McKIM: When was the department notified that the current contractor did not attend to reapply?

Mr Nockels: Broadspectrum, which is the current incumbent contractor, officially withdrew from the previous tender process on 27 May 2016.

Senator McKIM: Yes, and then that tender process was discontinued.

Mr Nockels: Correct.

Senator McKIM: When was the discontinuation?

Mr Nockels: That was cancelled on 25 July 2016.

Senator McKIM: When did you start talking to the governments of Papua New Guinea and Nauru in regard to what their requirements might be?

Ms Moy: We talk to them quite regularly.

Senator McKIM: Would you have been talking to them—?
Ms Moy: There is no start or end date to the discussions in regard to the services provided.

Senator McKIM: But you must have had an assessment of what they thought their requirements would be before you commenced the previous tender process, must you not?

Ms Moy: Correct.

Senator McKIM: So you were running a tender process, the current contractor withdrew, a couple of months later you made the decision to discontinue that process and here we are eight months later and you still do not know what services are going to be required.

Ms Moy: It is not a case of not knowing the services; it is a case of defining the services and the quantum. Equally, in that period of time, the landscape changed considerably with the US resettlement arrangements being announced, which means that the services provided and the quantum of those services over a period of time will have changed.

Senator McKIM: Or might change—Mr Pezzullo has been clear that there is no specific number that the US is required to take in the agreement. In fact, Mr Pezzullo has also been clear this morning that they might not take anyone.

Mr Pezzullo: That would be a mischaracterisation of my evidence.

Senator McKIM: I am not sure about that. You have made it clear that the US could determine to take nobody at all.

Mr Pezzullo: The Hansard will state to the contrary; I never said that the Americans will take no-one.

Senator McKIM: Thanks for the clarification, but what the Hansard will show is you saying that it is open to the US not to accept anyone from anywhere in the world.

Mr Pezzullo: I said that it is subject to a process which includes, critically, their vetting systems being gone through and the US government, as we would have to be, being satisfied as to security, health and character checks.

Senator McKIM: Yes, but you did also say that it would be open to the US not to take any refugees.

Mr Pezzullo: I said no such thing. In response to your assertion, I said, 'That's a hypothetical statement, and I can't see that arising, simply because we work so closely with them and we understand what their requirements in that regard are because they're quite similar to ours.'

Senator McKIM: Even though you have no idea what level of vetting will be required or what the level of risk assessment will be.

Mr Pezzullo: Who said I have no idea? I might have quite intimate knowledge.

Senator McKIM: Do you have intimate knowledge?

Mr Pezzullo: We are in discussions, as I said earlier in my evidence, with the Department of Homeland Security and the Department of State constantly.

Senator McKIM: That does not answer the question.

Mr Pezzullo: I am not necessarily going to retail those conversations to you here in an open forum.
**Senator McKIM:** Do you have an intimate knowledge or not? I have not asked you to retail the conversations; I have asked you if you have an intimate knowledge.

**Mr Pezzullo:** We have a close understanding of what their security requirements are and what they are likely to be, and we are working very collaboratively with them, which is why any suggestion that the agreement is somehow stalled, seized or going backwards is nonsensical.

**Senator McKIM:** In fact, you have been very clear: there is no vetting currently underway on Manus Island or Nauru. That is correct, is it not?

**Mr Pezzullo:** I said, just to go back over the evidence, that the president directed a review of vetting, and I am advised that the 30-day period for that review in fact coincidentally comes to a conclusion today.

**Senator McKIM:** Yes, but it is true, isn't it, that there is no vetting currently going on on Manus Island or Nauru?

**Mr Pezzullo:** There is screening of refugees as to their protection claims, absolutely.

**Senator McKIM:** Mr Pezzullo, you know the difference between vetting and screening.

**Mr Pezzullo:** There is screening of—

**Senator McKIM:** My question is not about screening; it is about vetting. You have been very clear that there is currently no vetting underway on Manus Island and Nauru.

**Senator Cash:** I do apologise for butting in, Senator McKim, but what we do not want is for the secretary to be verbally in his evidence to you, and you do keep referring to the fact that Hansard will reflect. Perhaps, Chair, we could give Mr Pezzullo, the secretary, an opportunity to ensure that the evidence he is giving is his evidence, as will be reflected in Hansard, and we should just ensure there is no verbalising. I appreciate what you are saying but I think we should give Mr Pezzullo the opportunity to clarify his evidence.

**Senator McKIM:** I am very happy to give Mr Pezzullo the chance, but the specific question is: is there any vetting currently underway on Manus Island or Nauru?

**Mr Pezzullo:** Not by US authorities, as I indicated in my evidence. There is screening, and you should not take from that that there is no vetting underway.

**Senator McKIM:** So we are vetting, are we? The Australian government is vetting?

**Mr Pezzullo:** There is nothing to prevent the Australian government from assisting in the process of providing the US with the security assurances that they would otherwise seek and require by way of the application of our own techniques.

**Senator McKIM:** Yes, but the US are not currently vetting anyone on Manus Island or Nauru, are they?

**Mr Pezzullo:** Officers of the Department of Homeland Security, as I said in my earlier evidence, are ready to commence that once the security review is concluded. I have since refreshed my memory, from earlier evidence, that the security review is due on the President's desk, in fact, this evening Washington time. It is as contemporary as that. You have got real-time evidence.

**Senator McKIM:** Ms Moy, are you confident that you will have new contracts in place before the expiry of the current one?
Ms Moy: The processes that will be undertaken will meet with the Commonwealth procurement rules, and we will do everything in our power to have the services provided to the governments of Papua New Guinea and Nauru that they require. Those contracts may not always be Australian government contracts. They may be contracts that Papua New Guinea will undertake or Nauru will undertake. It is not always a case of us having the contracts.

Senator McKIM: We will be paying, though, won't we?

Ms Moy: We will support the governments in that area.

Senator McKIM: We will be paying. The Papua New Guinean government are basically bankrupt. They cut off the phones at their parliament the other day because they could not pay the bill.

Mr Pezzullo: I do not think Ms Moy can reasonably be asked to comment on the state of Papuan finances.

Senator McKIM: She can take that as a comment; that is fine. I was not trying to elicit a response there. But it is true: PNG is basically a bankrupt country. We will be paying. These contracts will be supported with Australian taxpayer dollars, will they not?

Mr Pezzullo: Perhaps I should intervene at this point. The two governments have indicated, at the prime ministerial and ministerial level, a common desire both to close the regional processing centre and for Australia to acquit all of its obligations and responsibilities to the government of Papua New Guinea accordingly. Those discussions are on foot, and I do not think there is anything that Ms Moy can usefully add in this open forum without breaching the confidence of those diplomatic discussions.

Senator McKIM: All right. Thanks. I did not think it was a very contentious question. Maybe I should ask you, Mr Pezzullo, because Ms Moy did not specifically respond. Are you confident you will have contracts in place at the date of expiry of the current contract?

Mr Pezzullo: I am very confident that the Australian government will have in place the appropriate commercial arrangements that reflect our involvement to the extent that it is going to be on foot beyond the end of the contract period, yes—in both locations.

Senator McKIM: I think you used the words 'commercial arrangements' there. Are there other commercial arrangements that are not contractual in type that would satisfy the government's procurement guidelines?

Mr Pezzullo: I would not want to be answering a hypothetical other than to say that anything that is required to be done under the Commonwealth procurement guidelines will be done under the Commonwealth procurement guidelines. But that pertains to the procurement of goods and services and the delivery of those goods and services by Commonwealth entities. The extent that the Commonwealth will continue to remain an active as opposed to a silent or indirect partner in the undertaking of regional processing beyond the closure of the centre is something that is currently the subject of discussions. As Ms Moy said, with the new factor—the announcement of the US resettlement arrangement in November last year—there is now confirmed across two administrations a viable third-country resettlement opportunity for those found to be owed protection in Nauru—although operatively in PNG—and that, to Ms Moy's earlier evidence, is a critical new fact, as at November last year, that has now had to go into our thinking about the level of service provision that we would otherwise have to engage in.
Senator McKIM: I am just struggling with trying to understand how we could be hearing the level of comfort that we are from both you and Ms Moy in regard to the provision of services. The current contract for that expires in six-odd months. You cannot sit here today and guarantee that the US will take even a single refugee, given the evidence you have provided this morning. You would struggle to run a competitive tender process in six months, would you not?

Mr Pezzullo: You are presuming that we will be running a tender process that looks and feels like the range of goods and services being delivered that were previously involved.

Senator McKIM: For any tender process. Six months is not all that long to put out a request to develop your documentation, call for submissions and people who are interested, go through a proper evaluation process as required under the procurement guidelines, make a decision and get sign-off from the government. That is a process that you would ordinarily expect to take longer than six months, would you not?

Mr Pezzullo: All I can do is restate my earlier evidence that that presumes a particular mode of procurement.

Senator McKIM: So what other modes of procurement are open to the department apart from those?

Mr Pezzullo: It presumes that the Commonwealth would be directly delivering goods and services pursuant to being engaged in that undertaking, as opposed to—

Senator McKIM: So you are making the assumption that the Commonwealth will not be providing those goods and services?

Mr Pezzullo: That will be the subject of an agreement between two sovereign nations as to the nature, extent and depth of our involvement, indirect or otherwise, in the residual elements that remain after the expiry of the contract period in October.

Senator McKIM: Minister, the government's consistent political line here is that we need to have offshore processing and not give a pathway to Australia in order to be part of the deterrent.

Senator Cash: Correct.

Senator McKIM: We have heard evidence from Mr Pezzullo—I am very broadly paraphrasing him here, not trying to quote him—that that has basically been part of the government's rhetoric. Given that we have also heard evidence of how well Operation Sovereign Borders is running and how the boats have been stopped—that has been another part of the government's rhetoric for a period of time—

Senator Cash: Can I just stop you there, Senator McKim, just to clarify: it is not part of the government's rhetoric. It is a fact.

Senator McKIM: But it is also part of the government's rhetoric.

Senator Cash: No, I would argue that it is a stated fact, as presented by the Commissioner in his evidence.

Senator McKIM: All right, fine. I will just finish my question: given that we have been told we have to keep people in offshore—I am just trying to find some words so we do not have a detailed argument here, Minister, because the point I want to make is much broader—
given that we have been told we need to have people on Manus and Nauru in order to be part of the deterrent—

Senator Cash: Offshore processing.

Senator McKIM: 'Offshore processing' in your language; 'indefinite detention' in mine, by the way.

Senator Cash: We will agree to disagree.

Senator McKIM: Given that you have said it is a stated fact that Operation Sovereign Borders is starting and given that we have now got a clear pathway to a third-country resettlement, on Mr Pezzullo's and others' evidence today, does that not basically mean that the whole argument has just collapsed around your ears in terms of why these people cannot come to Australia, because you have actually provided them now with a pathway to a developed country, if Mr Pezzullo is correct. Why can they not just come to Australia?

Senator Cash: I reject the premise of the statement that you have just put to me.

Senator McKIM: You have given them a pathway to the United States.

Senator Cash: I reject the premise of the statement that you have put to me, and perhaps the commissioner or the secretary might like to again enlighten you as to what a pull factor is, and why these people will never be coming to Australia.

Senator McKIM: No, with respect, it is actually a question for you.

CHAIR: With respect, you are out of time. If you do want to do that, you can do it next time.

Senator KIM CARR: I was waiting for some materials to come back in regard to the building, but while we are waiting for that—

Mr Pezzullo: Just remind me, Senator—was this the armoury question?

Senator KIM CARR: Yes. It was also about the conflict-of-interest issue. But while we are waiting I will turn to another matter. Is there a proposal to change the ABF uniforms?

Mr Quaedvlieg: No.

Senator KIM CARR: So there are no plans to change the uniforms in 2017?

Mr Quaedvlieg: No. I said no.

Senator KIM CARR: When the current uniform was purchased the value of the contract was $6.3 million. Is that correct?

Mr Quaedvlieg: I could not be certain. It sounds—

Senator KIM CARR: That was 2015. When is it due for replacement?

Mr Quaedvlieg: There is continual replacement. Uniforms need to be replaced. They wear and tear. In perpetuity we will be needing to change over uniforms.

Senator KIM CARR: There are no new tender arrangements being proposed?

Mr Quaedvlieg: I am not sure. I will take it on notice.

Senator KIM CARR: You are the officer responsible.

Mr Quaedvlieg: I will ask if there is an officer here who can answer that question and, in particular, if there is a new tender process, but I do not have any personal—

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Senator KIM CARR: The Senate passed some changes to the government procurement arrangements last year. Given that the uniforms are currently procured from—is it Sri Lanka?

Mr Quaedvlieg: No, they are all procured through Australian suppliers.

Senator KIM CARR: Are they all made in Australia?

Mr Quaedvlieg: I do not believe so. I think they might be made offshore, but they are procured through Australian suppliers.

Senator KIM CARR: But I think the proposal, under the changes to the government procurement arrangements, is about the purchase of Australian uniforms. Is that the case or not?

Mr Quaedvlieg: Australian manufactured or Australia supplied?

Senator KIM CARR: I understood it to be Australian manufactured but—

Mr Quaedvlieg: Perhaps we will get the premise of that question right first, before we answer.

Senator KIM CARR: Yes, that is right. Is it your intention to change the procurement arrangements for the uniforms?

Mr Quaedvlieg: I think the short answer is no, we do not intend to change. But we will be compliant with whatever the Commonwealth procurement rules are.

Senator KIM CARR: Who actually has to wear a uniform or, should I say, has the privilege of wearing the uniform?

Mr Quaedvlieg: Sworn officers.

Senator KIM CARR: Who are they?

Mr Quaedvlieg: They work across a variety of functions—our people at the airports, in the cargo halls, on the sea wharves. We have sworn officers who do not wear uniforms because in their roles they need to be a little bit more discreet, like investigators and surveillance operatives. But in the main our operational frontline, our maritime officers—

Senator KIM CARR: Yes. Mr Pezzullo, it has been put to me that you actually have a uniform. Is that right?

Mr Pezzullo: No, not as secretary—absolutely not. I am wearing my uniform right now.

Senator KIM CARR: I am pleased to hear that. So there is no proposal to change the procurement arrangements?

CHAIR: He used to have a uniform.

Mr Quaedvlieg: Other than changes needed to be consistent with the Commonwealth procurement rules that may have been passed through the parliament, no. I do not think there are any major plans to change our procurement.

Mr Pezzullo: I must say I am very proud of the uniform that I wear, although I have not quite followed your lead to go to the three-piece but—

Senator KIM CARR: I would like to see the campaign ribbons as well.

Mr Pezzullo: I am thinking about the three-piece.

Senator KIM CARR: We have clarified the firearms today. I am just clarifying the uniform issue. Is the FOI officer here?
Mr Pezzullo: The senior executive responsible for FOI no doubt will join me at the table upon your prompting, and perhaps the relevant division head. FOI management falls within the realm of the chief operating officer, so Ms Connell, who is in her uniform, has joined us. Perhaps she may be assisted by her first assistant secretary, the very versatile and hardworking Mr Wright.

Senator KIM CARR: Mr Wright was going to give me some information as well, so perhaps we can come back to that now that he is here. It has been put to me that there is a backlog of FOI requests received by the department. Is that correct?

Mr Wright: That is correct.

Senator KIM CARR: Why do you think that is?

Mr Pezzullo: Hang on. Can I just clarify? Mr Wright, what is the definition here of a backlog? I have not seen a report. When you say it has been put to you, are we dealing with some stated official analysis?

Senator KIM CARR: There has been a significant increase in the number of FOI requests. Is that correct?

Mr Wright: That certainly would be true.

Mr Pezzullo: I am not sure what Mr Wright is advising in terms of the notion of a backlog. Perhaps he might enlighten me first.

Senator KIM CARR: Is there a significant increase in—

Mr Wright: We have a number on hand. As you said, we have had a significant increase in FOI requests and we are processing a large number now.

Senator KIM CARR: How do you measure the significant increase?

Mr Wright: In 2013-14, the department received 14,714 FOI requests; in 2014-15, that went to 21,400 requests; in 2015-16, that increased to 23,800 requests and as at 31 December this year, we have received 12,600 requests.

Senator KIM CARR: Thank you. Do you think the department has sufficient resources to deal with FOIs?

Mr Pezzullo: I am listening attentively to the officer's answer.

Mr Wright: I would say the department does around 60 per cent of the Commonwealth's FOIs. We get a lot of FOI requests.

Mr Pezzullo: Do we do 60 per cent?

Mr Wright: We do 60 per cent yes, Secretary. We do have a number of staff on it. If I could have a lot more staff, I would, but unfortunately I live in the real world and we have to make do with what we have.

Mr Pezzullo: That is an excellent answer, Mr Wright!

Senator KIM CARR: Mr Ian Campbell is referred to here as the immigration department's freedom of information officer. Is that the case?

Mr Wright: Yes, he is one of our staff.

Senator KIM CARR: You know a Mr Ian Campbell?
Mr Wright: He is one of my staff, yes.

Senator KIM CARR: It has been put in an article in the *Guardian* that he made a mistake in sending an email to the *Guardian*, in which he alleged that there was a 'freeze' on release of documents for asylum seekers in offshore detention centres and so on and so forth. Is that correct?

Mr Wright: It was an incorrect use of terminology.

Senator KIM CARR: By who?

Mr Wright: By the FOI officer.

Senator KIM CARR: By Mr Campbell?

Mr Wright: Correct. Mr Campbell, unfortunately—at the time, his supervisor was named Paul Farrell, the same as the *Guardian* reporter Paul Farrell. The use of the terminology 'freeze' was not correctly done. There was no freeze on FOI requests and the officer was doing internal consultation with the area that the FOI related to. And I would say it was a poor use of terminology by the officer involved.

Senator KIM CARR: That would be illegal, wouldn't it—to freeze an FOI request?

Mr Wright: Correct. We process all our FOI requests as per the FOI legislation and definitely there is no freeze on FOI requests.

Mr Pezzullo: I would not want it to be thought, Mr Wright, that the officer is lacking diligence otherwise—

Mr Wright: No.

Mr Pezzullo: and he is professionally competent—just in case there is any inference.

Senator KIM CARR: I do not think I have raised anything else—

Mr Pezzullo: No, just in case the media, watching these proceedings, as they often do, put a bit of a spin in the headline, I just want to make sure that there are no other issues there, Mr Wright.

Mr Wright: Secretary, that is correct. He is one of our better performers and he was devastated when he made this error. He did everything he could to correct the error. He is definitely a very competent employee.

Mr Pezzullo: We value our employees, and life is about understanding that occasionally mistakes are made.

Senator KIM CARR: It said that there was an excuse given that the release of material under these matters would be prejudicial to the Nauruan government. Is that correct?

Mr Wright: Under the FOI legislation, there are a number of exemptions that we follow in relation to FOI requests. One comes down to how the FOI request is in terms of relations with other countries. So whenever we get an FOI request that comes through that might involve other countries and could potentially damage our relations, we have to look at that quite clearly. So that is one of the exemptions that can be used.

Senator KIM CARR: So I take it you asked the Nauruan government whether or not it would adversely affect our relations with them, did you?
Mr Wright: We ask all governments if it involves their government, so in this case, yes we did.

Senator KIM CARR: On every occasion?

Mr Wright: I could not say 100 per cent, every occasion. It depends on what the request is and how specific it is to a particular issue. We get many requests that go to individual issues or cover a whole gamut of an area. As we go through it very diligently, we have to identify: has this got potential to harm relations with other governments or not? That is all done internally. Where we believe that could be the case, then we would approach the government involved to let them know, just the same as we do with individuals if an individual's personal details are being released.

Mr Pezzullo: It would be case-specific. If the government in question has itself put into the public domain, perhaps through official communication or material on their website, then FOI-able material of that nature in the ordinary course, Mr Wright, will not be the subject of stakeholder consultation.

Mr Wright: Yes.

Mr Pezzullo: If, however, there are documents—and we touched on this earlier with Senator McKim's line of questioning—that might have a bearing on ongoing diplomatic relations or ongoing diplomatic exchanges which are not yet the subject of public announcement by one or both governments then Mr Wright's area would, in consultation with our international division, make a judgement but, generally speaking, the judgement would be in favour of consultation.

Mr Wright: Correct.

Mr Pezzullo: I think that is the correct position.

CHAIR: We might leave it there, Senator McKim. Senator Carr, you have five minutes left of your time.

Senator KIM CARR: We might be able to finish this item. It is up to you. I am happy to come back to it.

CHAIR: Finish corporate and general?

Senator KIM CARR: No.

CHAIR: We will break for afternoon tea. I have called a private meeting of the committee just to work out the rest of the program.

Proceedings suspended from 15:00 to 15:20

CHAIR: I call back to order the Senate Legal and Constitutional Affairs Legislation Committee's hearings into the 2016-17 budget. Senator Carr has five minutes of his time left.

Senator KIM CARR: Thank you. Are the FOI officers here?

Mr Pezzullo: I will get the deputy secretary and the division head back.

CHAIR: While that is happening, I will indicate that the committee has decided that the officers listed for outcome 3, which was scheduled to be after dinner, will not now be required. Any officers who were specifically relating to those are excused, because it is unlikely we are going to get to them.
Senator KIM CARR: Mr Wright, there is a statutory requirement that FOI requests are processed within 30 days, is that correct?

Mr Wright: That is correct, providing that there are no extended consultation periods added to it, or providing that there is not an agreement for a revised statutory time.

Senator KIM CARR: Of the 23,000 FOI requests that were lodged last year how many were completed on time?

Mr Wright: I will have to take that on notice because, as I said, there are varying timeframes. To be clear I would like to take that on notice.

Senator KIM CARR: How many requests for extensions were made by the department?

Mr Wright: Again, I do not have those precise figures in front of me.

Senator KIM CARR: Is it the practice of the department to seek an extension of time automatically?

Mr Wright: No.

Senator KIM CARR: It is not?

Mr Wright: No.

Mr Pezzullo: Are you asking about the entire case load of 23,000-odd applications?

Senator KIM CARR: Yes.

Mr Pezzullo: How many extensions have we sought?

Senator KIM CARR: Yes.

Mr Pezzullo: We will take that on notice.

Senator KIM CARR: I am interested to know at what point you seek an extension. Is there a process now in train to manage the workload where you seek an extension, as a matter of course?

Mr Wright: No, not as a matter of course. Generally, we do it up-front. It comes down to the type of request that is being put in. If the request appears to be voluminous in size then we will go back to the applicant to either revise the scope of the request, which is in line with the legislation, or to seek an extension to how long we have to provide the information.

Senator KIM CARR: That is why I was seeking to know how many requests that the department sought for an extension.

Mr Wright: I will take that on notice because I do not have the detail on that.

Senator KIM CARR: You are telling me it is not an automatic policy.

Mr Wright: No.

Mr Pezzullo: To the contrary, I recall signing off a revised practice, if I am recalling this correctly—you will advise me otherwise, Mr Wright. Rather than requiring persons who have applications on foot—say, around their own visa matter—to come through the FOI gate, to try and manage our numbers and to avoid the sorts of red tape entanglements that have been discussed here, in some cases we have decided to go for automatic release have we not, Mr Wright?

Mr Wright: That is correct.
Mr Pezzullo: That relates to particular visa applications. Rather than gumming up the FOI pipeline, I think, one of the remediation steps that you have taken with the relevant business area is to streamline the process whereby persons are advised: 'Don't bother putting in an FOI request. We'll just give you the file.'

Senator KIM CARR: It would be much more effective. Yes, I agree. I have correspondence before me. Applications were acknowledged on 13 September and on 14 September a request for an extension of time is made by the department to the applicant.

Mr Wright: I do not have the actual application in front of me so I will not be able to comment on that one particularly.

Senator KIM CARR: But you are saying it is not a routine matter.

Mr Wright: No, Senator.

Senator KIM CARR: Well, the statistics will show.

Mr Pezzullo: In a case like that, without knowing what you have in front you, it would not be passing strange for Mr Wright's triaging process to look at an application on its face. It might be, as he said before, likely to involve a voluminous and multiparted return and it might be the case that the very experienced and highly competent officers we have in the area make a judgement—I think, as you indicated—within 24 hours. So they know from practice and lived experience it is going to take beyond the statutory time frames because it is either a multiparted, complex or voluminous request, so they will seek an extension. So it would not be passing strange for the applicant to be notified in a speedy fashion to that effect. But I am just chancing my arm. I do not know what you have in front of you.

Senator KIM CARR: The statistics will give us an indication. Are you able to tell me, in that process, what the difference is in terms of the amount of time between seeking an application and receipt by the applicant?

Mr Wright: Not off the top of my head, I could not tell you that exact figure.

Senator KIM CARR: No, I did not expect you would. But if you could get that.

Mr Wright: Yes, Senator.

Senator KIM CARR: Were you able to get the information I was seeking before with regard to the conflict of interest?

Mr Pezzullo: If we have that to hand we should provide it.

Mr Wright: We have it for you. I would just like to amend my evidence. I did think it went off—I honestly did. For administrative purposes it got held up in the department. I have it now and I am prepared to table it now. We will also ensure that it is tabled for PwC today as well. I do apologise for my oversight.

Senator KIM CARR: What was the confusion? You signed it off but it got stuck in the system somewhere, did it?

Mr Wright: There is a process for it to be released through the department. I should have checked up.

Senator KIM CARR: I am not too fussed by that. The officer wishes to table a document, so if we could please get a copy of that it would be appreciated.
Mr Pezzullo: Mr Wright, we should ensure that the other committee that sought the documentation receives it in a speedy fashion as well. I think it was public works, was it not?

Mr Wright: Yes, correct.

Mr Pezzullo: Yes, we should be courteous to them as well.

Senator KIM CARR: There are a few other matters with regard to that which might help clarify. I suspect you will want to take this on notice. With regard to the headquarters lease, could you advise the committee what the difference would be in terms of the costing arrangements if the leases were paid upfront rather than amortising the incentive payments over the terms of the lease agreement.

Mr Wright: I can, Senator.

Senator KIM CARR: What is the difference?

Ms Connell: Just while Mr Wright is looking into his notes, are you referring to the $75 million which was the amortised element of the lease incentive?

Senator KIM CARR: Yes.

Ms Connell: That is amortised over a 15-year period.

Senator KIM CARR: Yes. So what is the cost?

Mr Wright: The cost over the life of the amortisation is $120 million.

Senator KIM CARR: Versus $75 million?

Mr Wright: Correct, Senator.

Senator KIM CARR: If the whole of lost costings were for the existing 12 departmental premises, what is the whole-of-life costing for the proposed new offices? Presumably you can give us that contrast.

Mr Wright: We can. We have done some further costings after the first hearing. We still estimate that there is around $350 million worth of savings. The original cost-benefit analysis that was provided that shows that saving of the $325-odd million—the amortised concept was included in that cost-benefit analysis, so this cost has been included across—

Senator KIM CARR: So you do not wish to revise your estimate of savings?

Mr Wright: This is the second one. The original one was done when the process began. Now, I guess, 12 months have passed since that cost-benefit analysis was done. Also, to update the whole-of-life costings to get a like-for-like, the committee asked us to say what staying in the current 12 buildings would cost versus going to this new proposal. The costings still work out that we have around $350 million in savings over the life of the proposal, which does include that $75 million being amortised across 15 years.

CHAIR: We might have to come back to you, Senator Carr. Senator Fawcett.

Senator FAWCETT: Thank you. Secretary, can I just clarify comments you made before about the deal with the United States and refugees. It was not my understanding that you said that had stalled; merely that it was underway. In fact, as immediately as tonight, is it?—decisions are being made around the vetting. Can you just clarify the process—it is not stalled.
Mr Pezzullo: I certainly did not use any phraseology such as 'stalled'. Perhaps you are referring to editorial license that has been taken, as often is the case when stories are generated out of estimates. The US government has been very clear that, pursuant to general immigration and border policy—nothing to do with the arrangement pertaining to Manus and Nauru—this administration has indicated that it wishes to review its security screening, or vetting, to use the more particular term, arrangements. I said earlier in evidence, I think to Senator McKim, that as the US goes through that process which is mandated in the executive order that has attracted a great degree of public interest and global attention, in that executive order is a requirement on the Department of Homeland Security to undertake a review of vetting to ensure that the security thresholds that are embedded in those vetting processes meet the President's commitments to the people of America—this is about their election and their election commitments, so I am just making a factual reference, without speaking for or on behalf of a foreign government—to ensure that their election commitments are implemented.

Since I gave the initial advice to Senator McKim—I said earlier that I had had a chance to refresh my memory as to the facts because this executive order is on the public record. The President directed a 30-day review, and it just so happens that that 30-day review coincides with the opening of business tonight in Washington. So that report no doubt will land on his desk. What they do with it—I am now at a point where I cannot say anything further about what is on the public record. What the US administration does with it is a matter for the President and his administration. But I said to Senator McKim, pursuant to the fact that the agreement has an obligation around numbers, it is also a process. In other words, people have to meet security, health and character checks. So, clearly, the US government is going to have to decide the threshold of vetting that it seeks to apply. I also said earlier that the homeland security department—which we know very well; we are in frequent dialogue with them; they are very close colleagues—is poised and ready to then move in for the second phase of what happens in these processes ordinarily.

So you have the processing and screening of the refugee claim, which the State Department does, and then you have the vetting, which the homeland security department does. They have been very open and generous to a fault in terms of being ready and poised to initiate that part of the refugee process. And, indeed, as I intimated—and I will intimate with even more clarity in response to you, Senator Fawcett—we have been able, through our collaboration with the Department of Homeland Security more generally, to engage with them on the sort of information, the sorts of assurances, that might be useful to them in terms of an expedited vetting process. You put all of that together—sorry, it is a very long answer—and I do not know how anyone could derive the headline 'Process stalled'. But we have a free media in this country, and they can, I guess, make up their headlines as they see fit.

Senator FAWCETT: Yes. I have got experience of that. Commissioner, could I come to you. In your opening statement, you referred to six significant seizures of illicit drugs in just the last couple of months from, I think, November last year through until February this year. That is a significant amount in a short period of time. Has that been occurring but just not in the headlines, or is this a significant development? And, if so, what has led to these significant seizures?
Mr Quaedvlieg: The short answer to your question is that I suspect it is a relatively recent phenomenon. There has been in this country for a couple of years now a significant flow of methamphetamines—sometimes in crystalline form, known as ice—and precursor chemicals, deriving predominantly out of the Asian continent, more precisely, out of China; and, even more precisely, out of the south of China, Guangdong province. We have seen very large volumes of amphetamine type substances, if I can use that generic descriptor, coming from that epicentre to the antipodes, both to Australia and also to New Zealand, for a couple of years.

That drug comes through various vectors: containerised cargo, as has traditionally been the case; air cargo; passenger stream; international mail; and, more latterly, in the last six months, we have seen a re-emergence of the mother–daughter ship methodology. This is where fishing vessels embark out of the Asian continental waters and make their way to Australia to try and offload quite significant volumes of methamphetamines or other drugs onto our remote coastline using a daughter ship either embarked off the large vessel or emanating out of one of the coastal ports. So that is on the methamphetamines perspective.

In relation to the significant seizures of cocaine—as I mentioned in my opening statement, in excess of two tonnes over the last three months—the provenance of that is, as is all cocaine in the world, from the northern part of South America, countries such as Columbia, Venezuela and Peru. Over the last couple of years, there has been a glut of coca leaf growth and translation of that growth into cocaine. The syndicates in Columbia and Mexico have saturated the North American and European markets and they are looking for more markets, and the Australian market is very lucrative. Consumer demand is high. We have a high discretionary wealth and we pay a lot of coin for our drugs.

So, with the production glut in South America and the advent of the involvement of African organised crime and Chinese organised crime, there are significant logistical efficiencies in the supply chains, and they are utilising all those vectors I described before to move cocaine into Australia.

Senator FAWCETT: So, specifically, what are we doing to react to this change in circumstances, to counter this syndicate based trade in illicit drugs?

Mr Quaedvlieg: We have been mounting a counter-drugs effort against the syndicates for quite a number of years. But in relation to this specific methodology—I referenced the mother–daughter ship methodology—we have a state-of-the-art maritime domain awareness system. We track anomalous vessel patterns that come down from the Asian continental waters through South-East Asia. We have, by virtue of the Operation Sovereign Borders model, a very strong fleet of vessels and aerial surveillance assets out on the park and in the waters, and that has stood us in good stead, in complement with our maritime domain surveillance awareness systems, to intercept these syndicates and their vessels. I think, to a large degree those capabilities have been the causal factor as to why we seized so many drugs in the last short period of time.

Senator FAWCETT: To another element of your border security, the investment in the counter-terrorism unit at borders—could you talk to the committee a bit about what has changed in that investment in the last 12 months in terms of the number of people and training and what the outcomes of that have been?
Mr Quaedvlieg: Yes. Thank you. The counter-terrorism unit capability was stood up in mid-2014 under the government's counter-terrorism package—$630 million. The department was the recipient of $150 million of that funding. Part of that funding contributed to what is now the automated departure SmartGates that you will see across our international airports. But part of the funding also to a large degree went to the establishment of counter-terrorism units around the airports. That initial establishment was 80 officers across our eight major international departure points. Their remit was twofold. One remit was to respond very swiftly to incidents where national security alerts were triggered about people who were of national security interest, people who were trying to egress out of the Australian border to conflict arenas, particularly the Middle East, and who were of interest to our security, intelligence and enforcement partners. Those people would be intercepted by our CTU officers, held and passed over to those entities.

The second remit was to conduct assessments of departing passengers, using analyses of the passenger manifests and using observations of persons attending airports, where they displayed suspicious indicia or they carried excess cash or they were carrying IS propaganda on their digital devices. The intent there was to try and prevent those who wanted to engage in conflict and foreign incursion offences offshore, to stop them from leaving. It was highly successful. There are a significant number of statistics around that indicate their success.

Over the last 12 months we have built that capability up to 100-odd officers, so we have supplemented that initial 80 by 20 additional officers. Their focus has now been recalibrated to also look at inbound threats, now that the prospective caliphate is in disintegration and there is a diaspora of foreign fighters, not just Australian but from all around the world, either departing back to their home countries or they are heading to other conflict arenas like southern Thailand or the southern Philippines, Islamic Maghreb, or Yemen. There is an incumbency upon our sovereign nations to make sure that they identify those that are returning to their country who come back battle-hardened, more extreme, with war skills, who would potentially foment dissent and domestic terrorist plots, particularly in Australia. So we have turned our sights on that. We have recalibrated their responsibilities. We are having a very close look at those that we flagged on the way out; those that we could not stop. Again, we are doing passenger manifest analyses in terms of high-risk indicators, people coming back through suspicious routes or suspicious embarkation points, and we are working in close collaboration with our counterterrorism fraternity partners, both at the Commonwealth and state level to deal with that threat.

Senator FAWCETT: Thank you.

Senator McKIM: Mr Pezzullo, can you please tell me whether any of the guards or staff members at Manus who were identified as being involved in attacks on detainees at Manus in 2014 are still working at Manus?

Mr Pezzullo: I might ask Ms Moy to come and assist me. But I do not have any personal knowledge about whether individuals are still on the books or not. I am familiar with the incident that you refer to, but whether such staff members are in the employ of the company, I just do not know. Perhaps Ms Moy can assist us. Just to rephrase the question for her, Senator, did you say persons who were involved in the attacks?
Senator McKIM: Yes. The question is: are any employees of the garrison services at Manus—or any other staff at the Manus detention centres or RPCs—who were involved in the February 2014 attacks still working at the RPCs?

Ms Moy: Senator, for such a specific group of people for a specific incident, I would need to take that on notice and check against the individual employees. In terms of just as a general note, I can advise that our service providers are required under the contract to look at any poor behaviour—if we could describe it as any poor behaviour—and, as a general rule, those individuals no longer work within the regional processing centres.

Senator McKIM: All right; thank you, Ms Moy. But you will take on notice whether—

Ms Moy: I will take that question on notice for the specific event.

Senator McKIM: While we are still on corporate—and this is probably a question for you, Mr Pezzullo—does the department intend to publish the Detention Capability Review that you announced in July 2015? As I understand it, this was to set a strategic framework for—

Mr Pezzullo: We have had a number of reviews and major reports produced. I think, from memory, we have released it internally—I stand to be corrected. As to plans to publish it more widely, I will have to reflect on that. I cannot recall whether we have done that or not.

Senator McKIM: Well, you have not published it.

Mr Pezzullo: Thank you for the advice! I might just perhaps ask the deputy secretary with responsibilities for implementation. Perhaps Ms Connell might rejoin us, because she oversaw the conduct of the review; I might just ask those officers to join me at the table. Indeed you are right, Senator, I do recall the commissioner and I came to a view that our staff would find it useful, so we have certainly published it internally. As to what the plans are for external publication, I will refer to my deputies.

Mr Manthorpe: The secretary is right—it has not been published externally. We have released it internally to our staff and briefed our staff on the review.

Senator McKIM: Do you mind speaking up a little bit? It is probably my ears rather than your voice.

Mr Manthorpe: I was just confirming the secretary's evidence. The report has been released internally to our staff. We have briefed our staff on it and its implications, but we have not published it externally.

Senator McKIM: Will you publish it externally, Mr Pezzullo?

Mr Pezzullo: Given that we have established that we have not, I will have to confer with the commissioner. He and I will come to a view about whether a publicly-releasable version might be made available. It does from memory go to some details around detention risk assessments, so how you make decisions about the holding of for instance high risk or violent detainees, persons who might have a criminal history involving violence, how you keep detainees like that separated from other persons. We would have to reflect on that. I might ask the commission to perhaps join me in these remarks, but subject to ensuring that there is no compromise, Commissioner, to your operations, I do not see why we could not look at some version of a publicly-releasable document.
Mr Quaedvlieg: Yes, I accord with those comments. I think there may be components that relate to operational decision making and therefore might reduce the efficacy of certain operational activities, but in the broad, in general principle, I think a public release of the document would be a good thing.

Senator McKIM: Thank you, I am comforted to hear that. Just to be clear: I am not suggesting you ought release any element of that document that would compromise the safety of the people working in your organisation or, for that matter, the safety of anyone else. Perhaps if we could find some middle ground there that would be good.

Mr Pezzullo: We will formally take that on notice. This is an opportunity for us to take on notice your request and look at whether a publicly available version can be released.

Senator McKIM: When we were last sitting here, which was late last year, I asked some questions about BMA Lawyers, which was one of the legal firms contracted under the IAAAS framework that your department runs and funds. I asked a series of questions around bringing to your attention the fact that the principal there, Florin Burhala, has fled the country owing the ATO a significant sum of money. You put some responses to me back on notice, and thanks for the. Are the right officers at the table here?

Mr Manthorpe: I do not have the answers to the questions on notice in front of me, but I do recall that we sent some fairly detailed responses to deal with some of the questions you asked.

Senator McKIM: If you are happy to take me at face value, that would be appreciated, but obviously you can do your own checks. I do not think this is particularly contentious, but one of your answers said that before payment of invoices from BMA Lawyers you went through a verification process and that that process included checks to ensure that a valid visa application had been lodged and that the invoice had been correctly rendered and services provided.

Mr Manthorpe: That is right.

Senator McKIM: Thanks for the provision of that. Should the committee take from that that there was no quality assurance in terms of the quality of services provided by BMA and that in fact the verification process just ensured validity? There had been a valid visa application lodged, the invoice was correctly rendered and there were some services provided—there is nothing in there that would suggest to me that there was any quality assurance work was done by the department. Would that be a fair outtake from that answer?

Mr Manthorpe: I would not necessarily conclude we did not look at the quality of the service. The IAAAS contract is all about helping certain categories of people to make a visa application. If the visa applications had been made then, ipso facto, the service had been provided. I do not have any information as to whether there was a qualitative assessment of those visa applications. It may or may not have said something about what BMA did.

Senator McKIM: Could I ask you to take that on notice, please—

Mr Manthorpe: I am happy to do that.
Senator McKIM: specifically in relation to whether there was any assessment of the quality of support provided by BMA, as opposed to the validity of visa applications made.

Mr Manthorpe: I note that the answer also indicated that other providers exist, so if the individuals required some further service it was possible for them to avail themselves of that, notwithstanding that BMA Lawyers went broke.

Senator McKIM: Thank you. Do you have the response on notice there with you now?

Mr Manthorpe: Yes, I have got the response on notice; I just do not know the answer to the further detailed question off the top of my head.

Senator McKIM: I appreciate that. Can I check this though. In your response there is a bit of context, but I will read out the relevant section. Your response, four paragraphs from the bottom, states:

Post application services include attendance at interviews or assistance with reviews. These services were provided by UAM Lawyers on behalf of BMA Lawyers.

Is it possible that that has been mistranscribed somewhere and you actually mean AUM Lawyers?

Mr Manthorpe: That is correct. I am assured that that is so.

Mr Pezzullo: What is correct—that statement?

Senator McKIM: That it is AUM rather than UAM.

Mr Manthorpe: It is AUM.

Senator McKIM: These things happen; I am not trying to have a crack here. I just wanted some clarity—

Mr Manthorpe: No, that is a very good pick-up on your part.

Senator McKIM: I cannot claim credit for that. I am not trying to have a crack here. I just wanted some clarity—

Mr Manthorpe: I would have to take that on notice. I am not aware of that.

Senator McKIM: Perhaps you could do that. What checks and balances are in place here to make sure that we are not again faced with someone fleeing the country owing money on contract payments provided by the department? Do you just hope for the best, or do you run character checks, reasonable person checks—that kind of thing?

Mr Manthorpe: The first point I would make is that these matters go back a fair way, to 2015, so I would have to go back and look at it, and presumably the procurement that gave rise to us contracting with BMA Lawyers in the first place occurred some time before that—indeed, back in 2011. So I would have to go back and look at what the history of the procurement was and how we applied the procurement guidelines. One would hope we applied them diligently. Though, as we have heard during the course of the day, we need to test that. I am happy to take on notice the checks that were conducted in this case.

Senator McKIM: Thank you; I appreciate that. Finally on this matter, a report published in Fairfax on 29 January this year stated that the department continued to pay Mr Burhala's
companies even after he became involved in a tax dispute with the ATO. If someone is in

dispute with the ATO, allegedly owing money to the ATO as a result of payments from the
department, would the department generally take that sort of thing into account? Is there a
mechanism for the department to even be made aware that that dispute is in place, and would
the department consider those matters before continuing to make payments?

Mr Manthorpe: What I can say about that is that we were not aware of his financial
issues until it received notice from the ATO.

Senator McKIM: When was that?

Mr Manthorpe: I am just looking at the notes that I have been handed. It does not seem
to have a date. I might have to take the detail of that on notice. I can say that we immediately
complied with the ATO's notice and did not pay any further moneys to BMA Lawyers. So,

once we knew that Tax had an issue, and Tax informed us that they had an issue with them,
we made no further payments.

Senator McKIM: Was that a notification from the ATO?

Mr Manthorpe: We received a notification in some form from the ATO, yes.

Senator McKIM: And that notification was that there was a dispute or that there had been
a finding?

Mr Manthorpe: I would have to take the detail of that on notice. I do not have that with
me.

Senator McKIM: If you could do that. Thank you. I appreciate those answers. I want to
turn to what I think is described as the legacy case load. This is the people, some of whom
arrived by boat in Australia before the policy change in 2013. Has the department cut the

length of time that people seeking asylum have to apply for protection visas?

Mr Manthorpe: No, we have not reduced the amount of time that people have to apply
for TPVs and safe haven enterprise visas. That is the short answer. You may be referring to
some correspondence that has been reported in the media today and recently—

Senator McKIM: Yes.

Mr Manthorpe: —that suggests we have given people 60 days or 30 days, or some
number of days, in which to reply. Only a limited number of those letters have been sent.
They have been sent to a number of people who were invited to apply for a TPV or a SHEV
in late 2015 or very early in 2016—the first quarter of 2016—and 11 months or more has
elapsed and they have not yet applied. So, we have sent reminder letters to them saying
essentially that if you seek to stay in Australia on a TPV or a SHEV—bearing in mind they
are currently on an ongoing bridging visa—we invite you to apply for a visa. We said, 'We
will give you a further 60 days'—which, incidentally, was the amount of time we provide in
the first place—'in which to apply,' and we provided them with the opportunity to do so.

Senator McKIM: What would be the sanction, if any, if they did not apply within the
time period you have mentioned?

Mr Manthorpe: The letter is quite explicit that at the end of the day if someone has had a
very considerable period in which to apply, and if they have not done so, notwithstanding the
assistance that is available on the internet and, for some people, through the PAES program
and so on and so forth, that in the end we need to consider whether they should be eligible to
continue to receive various forms of taxpayer-funded support. We are trying to encourage them to apply, but there is a limit to the generosity of the taxpayer.

Senator McKIM: You said there was a limited number of people to which that letter has been sent.

Mr Manthorpe: That is right.

Senator McKIM: Do you have the number?

Mr Manthorpe: The cohort is about 30,000 people—that is not the number that got the letter. The total cohort is about 30,000 people. We have lifted the bar—which is the technical term to describe that it permits people to apply for the visa progressively over the last 18 months or so—

Senator McKIM: Could you explain what you mean by lifting the bar.

Mr Manthorpe: The term 'lifting the bar' refers to the point at which a person is permitted to apply for the visa. A person in the IMA category, which we are talking about here, is not permitted to apply for a TPV or a SHEV until the minister authorises the lifting of the bar. It is a term born in the legislation. That is being done progressively over the course of about 18 months. It has essentially been done—I will not say every single person—for virtually the whole cohort of the 30,000. They have had the bar lifted that permits them to apply. Progressively, people are applying. Progressively, we are working our way through the case load. As we have talked about in this committee before, it is a very large, very complex, very substantial process. But we cannot get anywhere unless people apply. Whilst we have been accelerating the rate at which processing of the visa applications has been going and we have been seeking to work our way through it, there are a group who are yet to apply. Some of those were invited to apply a considerable time ago, so we are sending them reminder letters saying: 'You still have an opportunity to apply. You have a further 60 days to apply. Make contact with us. If you are connected with a status resolution support services provider, for example, make contact with them.' We are encouraging them to apply, but we are also pointing out that, if they do not apply, ultimately there are consequences for that.

Senator McKIM: You may have said this, but how many people were in that group?

Mr Mansfield: I apologise. I gave you a long explanation before getting to the specific answer. The number is approximately 879.

Senator McKIM: Is that the total number of people who had been sent the previous letters in late 2015 or early 2016 and have not yet applied?

Mr Mansfield: That number—879—refers to the number of reminder letters that have been sent. Reminder letters have only been sent to those groups, so 2015 or early 2016. In terms of the number who are yet to apply from that 879 cohort, I can say that 34 IMAs did not apply, did not make contact with us, were sent a final notice and had their financial support services suspended as a result of that. Four subsequently made an application and so had their financial payments reinstated, so that brings it down to 30 who were in receipt of SRSS, status resolution support services payments, and currently have those payments suspended because they did not lodge effectively 14 months or 12 months after being first invited to make an application.
Senator McKIM: Just so I am clear in my mind, Mr Mansfield, of the 879 who were given 60 days to apply there were only 34 who then did not apply within those 60 days. Am I understanding that correctly?

Mr Mansfield: That is not quite correct. Some of those 879 who have been sent reminders have been sent reminders only in the last couple of days, so that, if you like, is the total stock of reminder letters that have been sent. Some of them were sent first on 8 December 2016.

Senator McKIM: Thank you.

Senator KIM CARR: I want to go back to this deed of confidentiality register.

Mr Pezzullo: Confidentiality regarding—

Senator KIM CARR: The headquarters project. Mr Wright, thank you very much for providing this document. You are aware that, under the standing orders, Senate estimates cannot take evidence in camera. Who is Mr Terry Snow?

Mr Wright: Mr Terry Snow is listed as the Executive Chairman of Canberra Airport Group.

Senator KIM CARR: I asked some questions before about the principals. He is one of the principals?

Mr Wright: That is correct.

Senator KIM CARR: I notice that the declaration you have provided here contains quite specific information about a number of officers. Because I cannot go into this matter in camera, I ask if you could please check this register and see that it is complete.

Mr Wright: Yes.

Senator KIM CARR: Perhaps we will come back to it at another time.

Mr Wright: Senator, just for clarity—that register is internal people working on the project—

Senator KIM CARR: Yes, but not from the department.

Mr Wright: People from the department; consultants working on the project on our behalf. It would not list individuals who are part of the tenderers. Their conflict of interest declarations were through the tender process. As part of the tender process they were required to put forward any conflicts of interest they may have.

Senator KIM CARR: As I say, I cannot go into this because we are not in camera—

Mr Wright: Correct.

Senator KIM CARR: Does it include all officers?

Mr Wright: As far as I am aware, it should include all officers who have been involved with this project, yes.

Senator KIM CARR: I will ask you to check that please.

Mr Wright: Yes, I certainly will.

Senator KIM CARR: Thank you. Can I turn to the question of staffing matters, Mr Pezzullo. In a previous estimates answer—16/115—you said that the average cost of the staff was $79,127. Is that still accurate?
Mr Pezzullo: I would have to apprise myself of the currency of that information. The chief operating officer would know better than I would, but if that is a recent answer then I presume the information is quite—

Senator KIM CARR: It is 30 June 2016.

Mr Pezzullo: The head of our people division might be able to illuminate whether there has been any material change, but I doubt very much that there—

Senator KIM CARR: There has been no pay rise of any note has there?

Mr Pezzullo: There has certainly been no adjustment to salaries, but whether on-costs have varied—but I doubt that they would be material.

Mr Venugopal: I agree. The secretary is correct.

Senator KIM CARR: That it is accurate?

Mr Venugopal: I doubt if it would have changed materially.

Senator KIM CARR: You also say in this answer that no SES officers were paid bonuses. I am wondering if you could help me explain the annual report, which says that there were bonuses paid. This is on page 145 of the annual report: Management and Accountability, table 21. The number of officers receiving bonuses was 229. How do we account for the apparent difference?

Mr Pezzullo: Is that—I have not got the table in front of me.

Senator KIM CARR: This is your annual report for 2015-16.

Mr Pezzullo: Does the table refer to senior executive service officers?

Senator KIM CARR: It says here, 'Performance pay outcomes 2015-16 (Australian Customs and Border Protection Services Enterprise Agreement 2011-2014).’ In the answer you gave me—that I have just cited—it says that they 'have not been paid bonuses'.

Mr Venugopal: I might be able to help you. I do not have a copy of the annual report just in hand. It is in my suitcase there. I can grab it if required. I do recall that table. It is not in relation to SES officers. It is in relation to ex-customs officers who are—or rather, let me rephrase that—it is in relation to officers who got paid bonuses under the old Customs agreement.

Senator KIM CARR: Okay, so the emphasis here should be on the expression 'SES'. These are non-SES officers are they?

Mr Venugopal: That is correct, yes. It would be non-SES officers.

Senator KIM CARR: Right, so the average—

Mr Pezzullo: To be clear, the question on notice refers to SES officers.

Senator KIM CARR: It did. It said:

SES officers within the Department of Immigration and Border Protection have not been paid bonuses.

Mr Pezzullo: That is right.

Senator KIM CARR: That is an accurate statement?

Mr Pezzullo: Yes.

Mr Venugopal: Correct.
Senator KIM CARR: And I have compared it to your statement in the annual report, which says there were 229 officers, and you are saying they are not SES officers.

Mr Venugopal: They are not from our SES.

Senator KIM CARR: The SES officer is paid an average of $304,000 a year. Is that right?

Mr Pezzullo: I doubt very much that the officers are paid that much—whether that is inclusive of on-costs. What is the answer, Mr Venugopal? Do you know?

Mr Venugopal: It would very well be inclusive of on-costs, superannuation and all of that. I do not have that figure handy—

Senator KIM CARR: Again, this may be the confusion—because I am relying upon this table here. The total amount paid was $304,792, but that is not SES officers?

Mr Venugopal: I will just grab a copy of the annual report—

Senator KIM CARR: It might be helpful all around.

Mr Pezzullo: It would help all of us.

Senator KIM CARR: I am having a bit of trouble following it. You are saying that non-SES officers are paid $304,000, but the average pay in the department is only $79,000. I am wondering what the discrepancy is.

Mr Pezzullo: I think there are almost certainly definitional and nomenclature issues here. I suspect it is about to be resolved—

Senator KIM CARR: I think that would be a fair assessment.

Mr Venugopal: Could you remind me of the page number?

Senator KIM CARR: I am looking at page 145 of the annual report, but it is obviously a sub-report 'Individual Employment Arrangements'. It is in table 21, listed as page 145.

Mr Venugopal: On quick reading, that seems to be a total, a grossing up, of some description. If I just work with the table from the top left to the bottom right, it says for CL1: 130 officers, paid an average of $139,479; an average bonus of $1,073; minimum bonus paid—and so on it goes. To the extreme right I think it is totalling up all of those numbers.

Senator KIM CARR: Yes, I see what you are doing there. It remains the case that no SES officer in the department receives a bonus?

Mr Venugopal: Correct.

Mr Pezzullo: You receive a bonus only pursuant to the extant enterprise agreements. SES officers are not employed under either of the enterprise agreements.

Senator KIM CARR: What is the average salary of the SES officer there? The figure you have given me is obviously a sub-SES rank, at $79,000.

Mr Venugopal: Table 18 on page 142 has a salary table that provides the range of pay for all classifications.

Senator KIM CARR: Okay. But that does not give me an average. It just gives me the bands. Do you have an average?

Mr Venugopal: I do not have an average. I will have to take that on notice.
Mr Pezzullo: Just so we have clear terms, the reference you are making to $300,000, what is the—

Senator KIM CARR: The officers here just explained that it is an aggregate and not an individual—

Mr Pezzullo: I see. You were—

Senator KIM CARR: I am citing the table and it has been explained to me that that refers to an aggregate amount across those different groups.

Mr Pezzullo: Yes.

Senator KIM CARR: I was having trouble reconciling that with a claim of $79,000 as an average salary. But you have clarified that.

CHAIR: We will now move to outcome 1. I call program 1.1, Border Enforcement.

Senator Cash: So we are finished with this portfolio?

CHAIR: Yes, we are. We are now going to outcome 1.

Senator PRATT: Can you confirm how much extra you are spending on border enforcement following the signing of the Manus and Nauru US refugee agreement.

Mr Pezzullo: I might ask the CFO to assist me with matters of cost attribution, because it might well be that the particular cost centres and cost codes pertain to the offshore program but there certainly would be costs being incurred in relation to the additional deployment of maritime and other assets to our northern waters. I will just confirm with the CFO that that is a matter that arises pursuant to program 1.1, because it may not be. I just want to be clear about that. Mr Groves will know the answer, I suspect, pretty readily.

Mr Groves: It is a very broad question. All I can probably answer with any degree of confidence is that we did receive some additional money through the additional estimates process. Some of that related to additional operational support for OSB, related to the offshore management. That extended to the arrangements with the US.

ACTING CHAIR (Senator Pratt): Can you break that down into different proportions? I understand that an announcement like this impacts on increases in boats, it may or may not do—

Mr Groves: I will give you what I have got and you can advise whether that helps or not. As part of the measure we received at additional estimates under the banner of Operation Sovereign Borders, we got additional funding of $7 million for surveillance activities—both for maritime and aerial—we got some funding for border assessments, air transfers, regional, and travel costs and some strategic communications offshore. The total of that was around $22 million of the funding in that measure that we received of $64½ million for 2016-17.

ACTING CHAIR: So $22 million of the $64 million—

Mr Groves: Were for Operation Sovereign Borders type activities.

ACTING CHAIR: Are you able to highlight for the committee how the ring of steel is going, given the talk of increased attempts of boats to break through our borders.

Mr Groves: Probably only to the extent of how much the ring of steel costs.
ACTING CHAIR: Yes, that is right.

Mr Groves: I would probably defer to the commissioner on how it is going operationally.

ACTING CHAIR: I would like the operational answer, but have you—

Mr Pezzullo: I am not sure we have a specific program called 'the ring of steel'.

ACTING CHAIR: given me as much of a specific as you can on the numbers?

Mr Groves: On the specific numbers, yes.

ACTING CHAIR: Which is $22 million of the $64 million. Mr Pezzullo, are you able to highlight for us how that is going?

Mr Pezzullo: How the operation is going?

ACTING CHAIR: Yes.

Mr Pezzullo: Very well, in so far as no boats have arrived for getting on to 1,000 days—I cannot quite remember where the clock sat. Really, for an operational evaluation I would defer to my colleague the commissioner. As to expenditures, the CFO and I can deal with those matters.

ACTING CHAIR: We have heard talk in these circles of attempts of boats to enter and that talk can increase, given the Manus-Nauru agreement. How is defence of the ring going?

Mr Quaedvlieg: I will answer your question without going to issues of operational capacity and placement. I would seek not to speak to those issues on the public record, because that would defeat the efficacy of the integrated arrangements. I can say though that through our information gathering in both source and transit countries, the way I would characterise our success is that perceived through the eyes of those who would be seeking to come here by illegal maritime methods there is a high degree of scepticism that the syndicated people smugglers that are primarily responsible for distribution of those persons can actually get vessels away from traditional embarkation points through our assets and to either Cocos (Keeling) Islands or even the Australian mainland.

Through the perspective of people smugglers themselves, our information tells us that there is a high degree of pessimism that they are able to launch successful ventures also. We have seen evidence of those people smugglers diversifying to other criminal activities in which they were involved prior to this current spike of people smuggling activities over the last four or five years. In effect, what we have is a stalemate. There are still to our knowledge large pools of persons coalesced in traditional embarkation points in the Indonesian islands, in the subcontinent and in other locations. They have maintained an aspiration to come to Australia by illegal maritime methods, but at this point in time I think there is a stand-off.

Senator PRATT: In as much detail as you are able to give me what does the ring actually consist of?

Mr Quaedvlieg: I will describe it in broad generic terms. Again, I will not go to numbers. It is a layered defence model. The secretary described it earlier in the day. We have in both source and transit countries collaborative arrangements with those host countries to undertake intelligence and disruption operations. They are successful in stopping many ventures departing in the first instance. Should ventures embark from those locations despite those efforts, there is a layered detection and response system. The detection system operates through aerial surveillance, both manned and unmanned, and the response on the surface—
that is, on the water—is through a combined fleet of vessels that are supplied by both the Australian Navy and the Australian Border Force assets. Should a venture not be able to be detected, intercepted and turned back when safe to do so, as the secretary described, then the element of offshore processing is the third layer of defence in the Operation Sovereign Borders model.

**Senator PRATT:** How many extra staff have been employed to bolster the current arrangements?

**Mr Pezzullo:** As the commissioner indicated, we would both be reluctant, because the department is also engage more broadly in the provision of support, through intelligence capacity and the like—we are starting to stray into the level of capacity and its deployment that has been put in place. It might be possible to reflect on your questions and think about how we might be able to answer them on notice without necessarily betraying our operational dispositions and functional capacity.

**Senator PRATT:** I am asking about additional staff, which would not indicate how many underlying staff there are. Clearly, additional staff indicates a greater commitment, so I cannot see how that—

**Mr Pezzullo:** I think the answer would be 'sufficient' additional staff, noting, going back to Mr Groves's advice, that is in some cases you are funded for additional capacity. The same people might be flying long hours patrolling or undertaking additional duties—for instance, as analysts—and it might be that they are pulling over time in doing so. You been given advice about the funding levels, but in terms of how many people we have deployed on the operation, the commissioner and I would want to reflect carefully on the extent to which we want to break that down for you.

**Senator PRATT:** If you take that on notice. For some of those issues I am keen to know whether they are connected. If it is overtime, then clearly they are staff within that existing deployment, but I would also like to know about the diversion of staff from other places—for example, Queensland. Has that occurred?

**Mr Pezzullo:** We conduct many activities in Queensland, so you would have to be more particular as to the functions in Queensland that are relevant to your question.

**Senator PRATT:** Have you taken staff from Queensland to support what the ring of steel does? Or would those Queensland staff have been associated with that operation to start with?

**Mr Quaedvlieg:** From time to time there are attempts by persons seeking to come to Australia across the Torres Strait. They wend their way through the archipelago into Papua New Guinea and attempt to cross the Torres Strait. Our Operation Sovereign Borders assets are alive to that and have got both aerial surveillance and response assets in place. But the assets that we have in place in the Torres Strait to conduct non-OSB activities will be utilised to counter those attempts if they occur in that particular geography. That is just part and parcel of our operating model and paradigm.

**Senator PRATT:** But those in the Torres Strait doing that work there have not been diverted to the ring of steel?

**Mr Quaedvlieg:** No.

**Senator PRATT:** Not at all? There has been no diversion of staff?
Mr Quaedvlieg: No additional resources. I cannot discount individual officers perhaps rotating into a different function, like our maritime operations who have historically worked in Queensland. But it is part of command and control of an operational agency that people move around. We have not allocated a certain slice of personnel out of Queensland and reduced that footprint to supplement Operation Sovereign Borders.

Senator PRATT: So you have not reduced that?

Mr Quaedvlieg: No.

Senator PRATT: Can you provide an update on the two patrol ships that were due to be delivered to Cairns to protect the northern border?

Mr Quaedvlieg: I just want to make sure I understand the question correctly. We have plans in place to supplement our vessel fleet again in the Torres Strait with two medium fast intercept vessels in mid-2017. That procurement is going well and is on schedule. We also have an intent to base one or more of our Bay-class vessels that preceded our current K-class fleet on the east coast to undertake a number of functions across our maritime challenges. As I mentioned earlier, countering people smuggling is one of eight maritime threats that we face. My concern in relation to the east coast is that there are any number of threats that go to protection of the Great Barrier Reef Marine Park. There are attempts persistently to smuggle drugs across the Pacific in small craft. Illegal fishing is manifesting quite significantly.

Senator PRATT: My question was about the delivery of those patrol ships. I think you have said that they are due in mid-2017.

Mr Quaedvlieg: Insofar as your question refers to the new acquisitions for the Torres Strait, yes, that is correct. But over and above that we are looking to commission our existing vessels to conduct patrols along the eastern coast of Queensland as well.

Senator PRATT: Is that because those patrol ships are late in their delivery?

Mr Quaedvlieg: I do not think they are. I think it is pretty much on schedule—in fact, we might be slightly ahead of schedule on that particular procurement. It is going well. There are no delays or challenges with that procurement process.

Senator PRATT: So they are being delivered on time?

Mr Quaedvlieg: Yes.

Senator PRATT: There was talk of design flaws associated with that. I am just trying to reconcile what you are saying with news—

Mr Pezzullo: When you say, 'talk,' Senator, sorry, what do you mean?

Senator PRATT: There was news in the media last year. I can give it to you. WIN News said exclusively that the delivery date had been pushed back to mid-2017. There was some talk of production glitches.

Mr Quaedvlieg: I will take it on notice, Senator. It is certainly not something that has been brought to my attention. My anticipation always was that they were going to be commissioned in mid-2017, and we are on track for that.

Senator PRATT: How many attempted border crossings have been intercepted or interrupted between PNG and Australia in the last 12 months? Do you have any records with you?
Mr Quaedvlieg: We may have someone present that has the statistics. In general terms, we identify less than 10 attempted crossings between the southern coast of Papua New Guinea and the Torres Strait Islands and/or the northern tip of Cape York on an annual basis. Certainly, the last 12 months have not seen any abnormal spike in those numbers. I do not have the exact numbers to hand, but it would be less than 10.

Senator PRATT: Could you please take on notice for me whether that date of the middle of this year was the original date?

Mr Quaedvlieg: I am very happy to do that.

Senator PRATT: I am keen to have that clarified, because the news certainly said that they were not on schedule. It would be great if you could check that.

Mr Quaedvlieg: I shall try to source the archive material from that footage, and I will also look at the project schedule and come back to you with some advice.

Senator PRATT: You said there were officers who could advise about those interceptions?

Mr Quaedvlieg: Potentially. I will check in the next little while whether we have those on hand. If I can come back to you before the end of the day, I will.

Senator PRATT: How many fishing vessels were found within Australian waters in that region?

Mr Quaedvlieg: We have seen a bit of a spike in Vietnamese fishing vessels. We have intercepted nine vessels in this financial year to date, with 117 illegal fishers on board. But those have predominantly been off the east coast of Queensland, out in the Coral Sea.

Senator PRATT: Does that represent an increase in illegal fishing in that region?

Mr Quaedvlieg: In that region, yes. The numbers are broadly parallel to what we have seen in the last few years, but we have not had that concentrated cluster off the north coast of Queensland for a period of time. Absolutely that is a phenomenon.

Senator PRATT: Given that is what is happening, you are still adamant there has been no decrease in resources to the policing of that region?

Mr Quaedvlieg: In fact we have increased resources in that region.

Senator PRATT: Please take on notice the provision of statistics for the past five years on the levels of prosecutions and interceptions, and the reasons for those interceptions.

Mr Quaedvlieg: That is on fishing?

Senator PRATT: Yes.

Mr Quaedvlieg: I might have to refer you to AFMA, which is the prosecuting authority for that.

Senator PRATT: Other interceptions as well—including border crossing interceptions. Perhaps you can break the question into two.

Mr Quaedvlieg: From an ABF perspective, I can quantify the number of border crossings in the Torres Strait for the last five years, and, for the fishing interceptions, I can give that to you by vessel and fishers. But I cannot give you responses in relation to prosecutions because that is an AFMA responsibility.
CHAIR: I want to pursue a couple of those issues. There was a time when the patrol boat on Thursday Island was taken away. I think it was prior to your time.

Mr Quaedvlieg: Yes.

CHAIR: What is the situation now? Where will there be any patrol boats based at Thursday Island?

Mr Quaedvlieg: Yes, in fact there will be a number of patrol boats based in the Torres Strait. In addition to the two fast boats I have been discussing with Senator Pratt, we also have what we call a stabicraft, which is your basic runabout vessel, for our officers on Thursday Island to enable them to do compliance checks and random checks on incoming vessels. We do get the occasional—more than the occasional—recreational yacht that comes in and harbours in that general area. What we have also done in the last 18 months is recommission one of our Bay-class vessels, which made up our traditional fleet, and we have that operating in and out of the Torres Strait for the particular purpose of policing that area from the maritime perspective. My view is that, while Thursday Island is the terrestrial footprint of our officers, it is a sea domain and it needs to be adequately resourced. In addition to our own assets, we can also leverage off the fleet that is operated by Agriculture. There are some Sea Rangers running up there as well. The military also have a large fleet of smaller vessels. We now have an integrated model of vessel capability in the Torres Strait. It is, as I call it, one of the best policed stretches of sea anywhere in Australia.

CHAIR: Can anyone give me the history of that? Five or six years ago there was nothing there, as I recall—much to the concern and consternation of the locals.

Mr Quaedvlieg: I have been in this role since mid-2013 and there have always been at least two vessels available to our staff in the Thursday Island office. That is 3½ years I have seen.

CHAIR: The Bay-class boats?

Mr Quaedvlieg: The Bay-class vessels have been responding there on a task related basis. We have also had what we call joint patrols. Occasionally we leverage off the W Conroy, which is a Queensland police vessel that is stationed at Thursday Island. We embark officers on it to do patrols of not just the Torres Strait but also the village locations of the southern coast of PNG. It is a well-policing stretch of water.

CHAIR: Do you have a permanent cohort of officers on Thursday Island?

Mr Quaedvlieg: Yes, we have about 14 officers based on Thursday Island. I think four of those might be fly-in fly-out. We have 14 persons. Not all of them have coxswain qualifications to operate the boats, but we are trying to lift that capability to ensure that they do.

CHAIR: You gave some of this to Senator Pratt but, briefly, what is based permanently at Thursday Island now or will be in the near future?

Mr Quaedvlieg: I will give you a response from the ABF perspective. As I mentioned, there is a good collaboration between the Australian Federal Police, Queensland Police, Agriculture and Queensland government assets. We have a mature and established station there with appropriate communications. We have 14 officers based on Thursday Island. We have a Stabicraft and a small tactical fast boat. We have a Bay class vessel based up there as
well, and that operates purely in and around that precinct, and in mid-2017 we will have two fast interceptor boats that will supplement that fleet. In addition to that we have two contracted rotary wing aircraft and helicopters that conduct not just patrols on behalf of the ABF but also transport of policing and other authorities to the islands to deal with domestic violence or other crime incidents.

**CHAIR:** Are the aircraft based out of TI, Horn Island or Cairns?

**Mr Quaedvlieg:** They are based at the Horn Island Airport but they can land on Thursday Island as well.

**CHAIR:** You mentioned the Stabicraft. What size is that approximately?

**Mr Quaedvlieg:** Now you are getting into a level of technical detail. It is 6.5 metres, which is a good size fishing type runabout.

**CHAIR:** And you said the other one was a fast—

**Mr Quaedvlieg:** Yes, a faster vessel. It is a little bit smaller but it provides—

**CHAIR:** What size are they?

**Mr Quaedvlieg:** It is roughly the same size as the Stabicraft, so it is five or six metres.

**CHAIR:** And there is one Bay class. And the two new vessels—

**Mr Quaedvlieg:** In mid-2017. I think it is around June or July.

**CHAIR:** What are they?

**Mr Quaedvlieg:** They are specially designed interceptor boats. I cannot recall the size, but they are larger than the Stabicraft.

**CHAIR:** What are they made of—aluminium?

**Mr Quaedvlieg:** I am not sure, Senator. I will have to take that one on notice unless someone to my left has that detail.

**CHAIR:** They would be fibreglass or aluminium, would they?

**Mr Alexander:** I am pretty sure they are aluminium. They are similar to a rigid inflatable boat.

**CHAIR:** Are they a rigid hull inflatable?

**Mr Alexander:** They are very similar to that. They have a fibreglass cabin on the upper deck.

**Mr Quaedvlieg:** They have a shallow draught. They are very fast. They are used around the world in customs and maritime enforcement entities for fast interceptions chasing banana boats and those sorts of things. They are very capable. They are purpose-built for that type of work.

**CHAIR:** The Queensland Police boat—there is only one of them, isn't there?

**Mr Quaedvlieg:** Yes, that is right. It is quite a large one, though. It is in the 30-metre range.

**CHAIR:** Do you have statistics on any drug arrests that have been made coming through PNG and the Torres Strait onto mainland Australia?

**Mr Quaedvlieg:** I do not have them to hand, but what I can tell you is that it is very low. There are occasional operations or investigations where we jointly, in most cases, work with
the Queensland Police Service or the Australian Federal Police. Occasionally we intercept very small amounts of drugs. More latterly, it has been in the realm of precursors and methamphetamine as opposed to the traditional myths of PNG cannabis gold. I tend to debunk the myth about a pipeline for drugs coming out of PNG to the Australian mainland. I cannot eradicate it altogether, but it is very low and it is very infrequent—and, when it does happen, more usually than not we intercept it.

CHAIR: Do you employ islanders?

Mr Quaedvlieg: We do. We have border-monitoring officers who are located across most of the islands in the Torres Strait. They are our forward defence spotters and they do an exceptional job.

CHAIR: Going back 20 years, I remember Senator Schacht was the minister, I think. I raised the mirth of people by saying to Senator Schacht at estimates: 'Everyone tells me there is a guy with a red baseball hat who comes through carrying drugs.' Nobody in the border force seemed to know of him but everybody else in town did.

Mr Quaedvlieg: We will add that to the database of intelligence we have! But the border monitoring officers know their backyards very well. They are also—and this is the trick—very cognisant of and understand the traditional movements across the Strait, because there is a traditional movement treaty in place. To select out forensically in all of that movement those that might be having malintent takes skill, but the BMOs are our forward scouts and they do an exceptional job.

CHAIR: You mentioned AFMA. Do you still do all of the maritime work for AFMA?

Mr Quaedvlieg: Yes, we do.

CHAIR: Do you have specific vessels allocated for that or is it just who is nearby when they are needed?

Mr Quaedvlieg: No, we draw our response assets from the broader fleet that is out on the water at any point in time. For example, if it is the Vietnamese fishers that Senator Pratt was asking about, I think the interception of those vessels, in the last few intercepts at least, has been predominantly from Defence, so we have actually drawn Defence assets to go out and do the interceptions and bring the vessels back to the mainland.

CHAIR: And the fishing in the Coral Sea is mainly beche-de-mer, is it?

Mr Quaedvlieg: It is, yes.

CHAIR: Do you still get cooperation from the commercial fishing fleet, such as it is these days, that still has licenses in the Coral Sea? Do you have much interaction with them?

Mr Quaedvlieg: Yes, they provide very good information, because it is within their own interests to ensure their livelihood is preserved, and we have good channels of information from the broader commercial fishing sector. But that also goes into AFMA and us.

CHAIR: Commercial fishermen always used to say to me that they were your best friend. If they are eventually chased out of the Coral Sea, which is a goal of some people—

Mr Quaedvlieg: In fact, even occasionally pleasure craft give us information in relation to suspected foreign fishers as well. So it is a relatively open and robust source of information.
Senator McKIM: I have some questions that relate to the Audit Office report that has been released today. It is the third scathing Audit Office report of this department that has been released in the last 12 months, I might add. The Audit Office has found:

The department's enterprise risk management framework does not adequately address the risk of officers exercising coercive powers unlawfully or inappropriately. Several internal assurance reviews have uncovered problems relating to the exercise of statutory powers.

Mr Pezzullo: I might commence the response and then the commissioner, under whose remit these matters more directly fall, is very keen to respond on some of the specifics. I will start by saying this is in reference to your description of the audit reports rather than any language that is in the report itself. When you say 'scathing', the three reports are probably going to exhibit, by the time we are finished with this evidence, the same sort of pattern. We are in a position to concede and acknowledge a number of administrative deficiencies, and they are on the face of the report—the ones that we have acknowledged by way of full agreement or partial agreement to the recommendations.

Again, the analysis—and I have to be very frank and candid with this committee—is not necessarily always in keeping with the standards that we would expect to see in an audit report. Loose terminology such as 'the use of coercive powers' is a point in issue.

We provided extensive responses to the Audit Office—and this is going to sound like previous evidence, but I will have to state it candidly—at the draft stage, the so-called section 19 exposure draft, and then we provided a formal response, which you can see there—on this occasion it is appended—where we dispute fundamentally what we think is erroneous reference to coercive powers, to take an example. The commissioner will set out his concerns. Regrettably, it is becoming a bit of a recurring pattern with the Audit Office. We engaged with them very civilly and very professionally about how we can narrow some of these methodological and factual differences, but it seems to be a pattern and that is regrettable, but that is what it is. As to the commissioner's officers overextending their use of powers, I might ask him to respond.

Senator PRATT: So you dispute the practices of the ANAO?

Mr Pezzullo: I certainly dispute the analysis. We have factually laid out three times now—and we are on the third of these—where we have disagreed with the diagnosis or the analysis. We have stated that civilly, professionally and without rancour. When there is a conclusion that the Audit Office has reached where, as a management response, we can see common ground we have taken that as constructive input and we have agreed to those recommendations, but on many occasions—and this is going to be another instance—we think that the terms that are used and in some cases the analysis that is brought to bear are unworldly.

Senator McKIM: Is what?

Mr Pezzullo: Unworldly.

Senator McKIM: Unworldly?
Mr Pezzullo: Yes, not rooted in any reality that we experience or anything that the commissioner, in this case, does day-to-day.

Senator McKIM: Mr Pezzullo, you are sort of self-assessing there, which is a very dangerous thing for someone in my position to rely on. I am sure that you would agree. Personally, I would prefer to take an independent assessment of the Audit Office over your self-assessment.

Mr Pezzullo: You can, but that does not make them infallible.

Senator McKIM: Commissioner?

Mr Quaedvlieg: The Australian Border Force does not have any great exception to the recommendations of the report. We think they are all relatively sensible, other than one that relates to the recommendation to review the actual possession of one of the so-called 'coercive powers', which is in section 251 of the Migration Act. I will loop back around to that in a moment. In general terms, the recommendations made a lot of sense and in fact we pre-empted some—not because we knew the ANAO audit was in place but because when the Australian Border Force came into being on 1 July 2015 it was quite evident to me that the entire governance model of the powers that are exercised by officers across both customs and migration probably needed remediation. It goes to all issues around operation delegations, record keeping, the recording of the use of coercive powers and the assurance program that sits over the top of that. A lot of the work that the Audit Office recommends in this particular report is work that we had already commissioned and is underway.

Obviously, when we received the section 19 draft of the report we could respond positively and say, 'Yes, we are going to agree to the majority of these recommendations, and in fact we are already implementing remediation of many of those things.' I do think that the analysis of the ANAO officers was a little bit flawed—for example, in relation to the findings where powers had been exercised, apparently, in breach of statute. I do not disagree that that occurred but I disagree with the general characterisation that these things are endemic and that they are deliberate.

Senator McKIM: Sorry, Commissioner. Did you say you do not disagree that they occurred?

Mr Quaedvlieg: I do not agree with that assessment. I put them in the category of inadvertent or maladministration, rather than an intentional use of powers by officers in flagrant breach of their authorisations.

That goes to the issue of proper governance. It goes to the issue of stabilising the foundations of the entire way our officers both understand the powers they are able to execute under the various acts that we have access to, how those are executed, how those powers are recorded and how we maintain a system of governance and checking against those powers, like any modern law enforcement agency should.

As to the description, for example, in the ANAO report around our powers being coercive, it depends on your definition, I guess. It is a nomenclature issue. But in the broad enforcement domain, the use of ‘coercive’, as it describes a power, is meant to describe those powers at the harder end where you can compel people to give evidence, for example, or where you can execute search warrants—
Senator McKIM: Or where you can turn them back if they are seeking asylum via a maritime vessel. Would that fall within your definition of coercion?

Mr Quaedvlieg: The Maritime Powers Act enables our officers to undertake certain actions, and they do that not just in accordance with the statute but in accordance with their obligation to preserve the life and safety et cetera—

Senator McKIM: Would turning a vessel back fall within your definition of coercion?

Mr Quaedvlieg: Yes, it would. That is a coercive action. But, for example, where the ANAO describes our ability to copy a document as coercive, I do not accept that. I think there are some analytical and descriptive issues in the report which characterise, I think, the approach by ANAO in the last number of reports that have already been mentioned. In the main, I do not have any truck with the recommendations. I think they are sound. They are things we are already doing and I welcome their recommendations in that respect.

Senator McKIM: Thank you. I want to deal with 1.1, which is, I think, border—

Senator PRATT: Can I ask some other questions on that?

Senator McKIM: No; I am not leaving the report, Senator. I am justifying my continuation of exploring it in this output group. Given that, as I think you have acknowledged, Commissioner, the Maritime Powers Act does give you coercive powers and given that the Audit Office has said that several internal reviews have uncovered problems relating to the exercise of statutory powers and also that the department has not provided adequate instructions and guidance for officers exercising coercive powers, how can we be confident that the coercive powers that you have employed over a number of years turning vessels back have actually been lawful?

Mr Quaedvlieg: I certainly welcome the ANAO, if it wants to supplement its report, to have a look at the way our Maritime Border Command operates. I have an exceptionally high degree of confidence that the governance arrangements around our use of powers under the Maritime Powers Act are very well governed in the Maritime Border Command. It is a very professionally run command that is being run by both military and enforcement personnel. I have a high degree of confidence that that governance model is exceptionally well supporting the exercise of those powers.

Mr Pezzullo: If I may, to add to that answer and to put the matter completely beyond doubt, as I think you would well know, that matter has actually been decided by the High Court—the ability of the Australian government to direct its executive officers, including, in this case, the commissioner, to undertake operations shorthandedly known as turn-backs. That matter has gone to the High Court. It has established case law and that, subject to all the safeguards that we have previously talked about at length in these proceedings under Operation Sovereign Borders, those powers are properly exercised by Border Force officers pursuant to the Maritime Powers Act. There is no suggestion in this report that that has not been the case.

Senator McKIM: In fact, this report makes it clear that in the opinion of the Audit Office the department has not provided adequate instructions or guidance for officers exercising coercive powers. With respect, the High Court case to which you refer and which I think you have, to the best of my knowledge, adequately categorised is not relevant to this matter,
because this goes to the guidance and instructions that the department has given to its own officers with regard to coercive powers. The question I want to ask is really to repeat the one I asked before, and that is to you, Commissioner. How can you have such a high degree of confidence given that, according to the Audit Office, you have not provided adequate instructions or guidance for officers who are exercising coercive powers?

Mr Quaedvlieg: I will stand to be corrected, but I think the ANAO audit did not look at the Maritime Border Command. I have personally sighted the standard operating protocols for the Maritime Border Command and I can assure you there is a high degree of instruction and a high degree of record keeping and governance over the exercise of powers by our maritime officers.

Senator McKIM: Just to be clear, are you informing the committee today that you believe adequate instructions and guidance has been given to ABF officers involved in what is known as boat turn-backs?

Mr Quaedvlieg: Correct, as well as military officers. They are also involved.

Senator McKIM: I understand, but that is a separate agency. So I am going to ask you not about the ADF, but—

Mr Quaedvlieg: Understood, but, just for clarity's sake, the Maritime Border Command is an integrated command that involves both ABF and military officers. When they are operating under that auspice, under the maritime border commander, they have instructions which are singular, notwithstanding that the defence force has its own standing operating protocols as well.

Mr Pezzullo: To be clear, it is applicable. Each and every instance of a turn-back operation, as this committee has been well briefed on over a number of years, is specifically executed by the direction of the government. The commissioner nor any of his officers have an independent discretion to exercise their powers under the Maritime Powers Act in relation to each and every one of those turn-backs. Each individual turn-back is sanctioned by a specific decision of the government, so the question of broad frameworks, delegated authority and whether officers are properly executing that authority—and I am limiting these remarks to turn-backs where there is delegated authority—is ipso facto not applicable.

The case law therefore is applicable, and it is clear that the executive arm of the government has the power in each and every case to employ that technique under the Maritime Powers Act. The commissioner's officers then execute that direction on each and every occasion, as directed. They have no independent discretion. They are not sailing around the ocean saying, 'Oh, I think I might turn back this vessel.' There is no framework of authorising autonomous decision-making in relation to turn-backs.

Senator McKIM: Yes, but the Audit Office has said that you have not provided adequate instructions or guidance for officers exercising coercive powers, and we have agreed, only moments ago, that turning back a boat is coercion or does fall within the definition of a coercive power.

Mr Pezzullo: Well, there is a fallacy of composition in your argument. You say that the ANAO has found generally—and we would dispute this in any event—

Senator McKIM: Well, I do not think you have, actually.
Mr Pezzullo: We say that we do not agree there has been a systemic misuse or overuse of powers, and that is described—

Senator McKIM: The Audit Office's finding is that the department has not provided adequate instructions or guidance for officers exercising coercive powers. Are you disputing that?

Mr Pezzullo: As I said, across all of these findings the analysis is not always accepted. But to the extent that the Audit Office then provides quite a minimalist, moderated and quite bland recommendation, they are quite easy to agree to.

In terms of the Maritime Powers Act, as a matter of logic, your conflation of the two propositions cannot stand because the commissioner and I do not have any independent discretion in relation to giving directions about the turning back of boats. That is a government decision in each and every case. They are not exercising any independent discretion.

Senator McKIM: But that is not the question I am referring to. I am simply asking questions about the how and what is happening on the ground—or water I should say in this case—and whether or not the coercive powers conferred on the ABF under the Maritime Powers Act are being exercised lawfully. The Audit Office has found that the department has not provided adequate instructions or guidance for officers exercising coercive powers. Further, they find that there is no single source of instructions or guidance material for border force officers and that much of the guidance material available is inaccurate. That is a finding of the Audit Office. Again, I will ask the question: how can you have such a high level of confidence that turn-backs are being done lawfully?

Mr Pezzullo: You will have to go back to the source document and see how precise the language has been. But, absent the sort of caveats we have commended upon the Audit Office, it is not within our responsibility if they have created that mistaken impression that OSB is somehow caught within that general analysis you have just conveyed through your question. Frankly, they need to write more precisely.

Mr Quaedvlieg: I am fairly confident that the ANAO did not examine the governance of the application of powers within the Maritime Border Command. I am fairly confident that the parameters of those ANAO efforts were in relation to other activities like field compliance et cetera. So, there is a distinction here where I am drawing out a very professional unit sitting within the auspice of the Australian Border Force, which is the Maritime Border Command, which I would rate very, very highly compared with some of those other areas, where I absolutely concede that there is a deficiency in the way instruction, guidance, training and delegations are recorded and managed over time.

Senator McKIM: Perhaps I could just try to summarise. Is what you are saying that the guidance and instruction given to those parts of the ABF that are involved in turn backs is of a different quality to the instructions and guidance given to other parts of the ABF—

Mr Quaedvlieg: That is correct. It is comprehensive, explicit and exceptionally well documented, yes. That is an accurate summary.

Senator PRATT: When were you given the recommendations from the ANAO report released today?
Mr Pezzullo: The chief operating officer will assist me, but it is the same process answer that was given to Senator Carr earlier. We would have seen the recommendations I suspect when we saw the section 19 exposure draft, which would have been some weeks ago, I suspect.

Senator PRATT: How many staff were involved in the preparation of the response to that draft?

Mr Pezzullo: I am not sure that we attribute it to any one, single team, because Mr Hayward's division has to staff it throughout the entire organisation—in this case our legal area, our training area, officers involved in—

Senator PRATT: No, that is fine, if you cannot give me the answer.

Mr Pezzullo: I would think quite some number of folks, and they were probably diverted from processing FOI applications, as previously discussed.

Senator PRATT: Can you advise me of what the process was for collating and providing documents to the ANAO?

Mr Pezzullo: Mr Hayward is very well practised in receiving draft ANAO reports, and perhaps he can describe how he goes about the business of coordinating our responses.

Mr Hayward: Our entry interview with the ANAO occurred on 21 April 2016, which is where the ANAO comes to the department. We draw the relevant parts of the department and the ABF together to discuss the scope of the audit. We then identify the most appropriate people throughout the department and ABF, in this case, who would be able to assist with collating that information. We provided the ANAO with access to our systems, which is standard for us, and they can then source their own information as they go through the audit.

Senator PRATT: Does that mean that there was sign-off required to provide documents to the ANAO? Or they had automatic access to them?

Mr Hayward: No, they have automatic access, and if they cannot find a specific thing then we assist with more the context of what they are looking for to assist the ANAO.

Mr Pezzullo: It is a requirement of the law to provide all documents.

Mr Hayward: That fieldwork took place between May and October 2016. The report preparation papers were received by the department on 6 October 2016. We responded to that on 20 October, and we had a formal exit interview on 28 October, and in between times there were, similar to what I described as the process for the entry interview, times when we brought together the relevant parties, including legal, ABF and others, and discussed our interpretation of things like 'coercive' to put some light on what we interpreted coercive to mean compared with the interpretation that the ANAO was providing at that time.

Senator PRATT: So, that is a different reading, a different interpretation of the law?

Mr Pezzullo: Well, I was going to just illuminate that point. When you say 'a different reading of the law', there is very specific case law. Indeed, in certain acts of parliament 'coercive' is defined. We have taken factual exception to the broader application or the stretching of the idea of coercion. The commissioner and I have been at pains to lay that out. And I think what you can take from Mr Hayward's evidence is that in those discussions about differing interpretations of fact, as one reasonable person looking at the body of law in this country versus another one, difference of view as to the factual description of 'coercive' would
have been an ongoing discussion through those entry and exit interview periods. Is that right, Mr Hayward?

**Mr Hayward:** That is correct—and also after we received the report preparation papers.

**Senator PRATT:** What other areas? There was the definition of 'coercive'. What about the training materials? What other areas in the ANAO's report did you take exception to?

**Mr Pezzullo:** The chief operating officer is our lead deputy for responding to ANAO reports. I think we have heard that our Deputy Commissioner colleague corresponded at the final phase, when you get the draft report that we have been talking about. We drew attention to a number of matters where we were in disagreement, and perhaps Ms Connell might like to summarise those for you.

**Ms Connell:** There were three key areas that we took exception to in the final report. We have spoken about the overuse of the term 'coercive powers'. Also we had an issue with the way the ANAO found instances of what they called potentially unlawful searches and a failure to comply with mandatory instructions, and we contended, as the commissioner said earlier, that these instances were highly likely to be inadvertent administrative breaches rather than deliberate and intentional breaches. And the third area was with regard to the legal professional privilege over legal advice obtained in relation to the issues in the report.

**Senator PRATT:** When did you first alert the minister or his office to the investigation being undertaken by the ANAO?

**Mr Pezzullo:** I think, of a piece with the evidence I gave to Senator Carr what seems some many hours ago, we would have advised the minister or his office, I suspect, that the matter was listed on the schedule as part of regular briefing. But as to the time period of that briefing, I will defer to Mr Hayward.

**Mr Hayward:** We were advised last Thursday that the matter would be tabled today.

**Mr Pezzullo:** Sorry—Senator, did you ask when we first advised the minister of the conduct of the audit, or its tabling?

**Senator PRATT:** No, of the conduct of the audit.

**Mr Pezzullo:** So you need to go right back to the start.

**Senator PRATT:** But you would have.

**Mr Pezzullo:** The commissioner seems to have more direct information than I have.

**Mr Quaedvlieg:** The genesis of this particular audit arose out of a referral letter by the then opposition spokesperson, Richard Marles, arising out of an operation called Fortitude in August 2015. There were some allegations that ABF officers were engaged in activities that were beyond the scope of their powers. The ANAO office decided ultimately to turn that into an audit, and the minister's office was aware, at the outset, of Mr Marles's referral letter and the consequent conversion of that letter into an investigative report by the Audit Office.

**Mr Pezzullo:** The commissioner is exhibiting a more youthful memory than I have! It was well recalled.

**Senator PRATT:** It was helpful. Thank you. Now, I understand that the ANAO had access to all documentation. Did the department send any documentation or documents relevant to the ANAO's inquiry to the minister or his office at any time?
Mr Pezzullo: During the conduct of the audit? I would think that is improbable, but I will ask Mr Hayward.

Mr Hayward: Not that I am aware of.

Senator PRATT: And did you provide a briefing to the minister about the findings of the report?

Mr Pezzullo: Almost certainly, because the embargoed tabling copy—the copy that is the subject of discussion today—would have been provided to the minister in confidence some days ago, and it is normal practice for us to, under embargo, brief the minister both on the findings and on our attitude to the recommendations and what we plan to do about them, and I think that occurred on that occasion.

Mr Hayward: That is correct.

Senator PRATT: In general terms you have spoken about some support for some of the recommendations but exception to some of it. Do you accept in full—

Mr Pezzullo: Well, the recommendations I said we either agreed or partially agreed with, because I had made the point that they were so innocuous, bland and moderated relative to the ferocity of some of the rather colourful analysis, that it was in the end rather a straightforward matter to agree with the recommendations. They were so moderated—they produced something that we could very easily agree with, with one exception, I think; I do not want to mislead you.

Senator PRATT: Which was that?

Mr Pezzullo: I think even in one case, we still had a partial-agree.

Ms Connell: It was a partially-agreed to one of the recommendations, Senator. The ANAO asserted that we had not provided adequate instruction guidance officers—which we were discussing earlier. We did agree with part of the recommendation, but the area that we had a problem with is that they recommended, within a year, the design and implementation of an integrated platform instruction guidance. And our reasoning for only partially agreeing with that is because—while we do not have a problem with the intent of the recommendation—whether the department can fulfil that integrated platform for all instructions, guidance and delegation authorities within a year will really be dependent upon resourcing and other priorities. We have a large IT program that we have to work through, and we need to accommodate them in a priority order. So it was more the duration that was attached to the recommendation that we had a problem with.

Senator PRATT: Did you speak to the minister about the objection to that recommendation?

Mr Pezzullo: I certainly did not. We do not normally canvass our response to draft audit recommendations; they are very much a matter of public administration, and it is something that ministers tend to delegate to their secretaries and agency heads to deal with.

Senator PRATT: The ANAO's report found that the department's enterprise risk management framework does not adequately address the risk of officers exercising coercive powers unlawfully or inappropriately. What are the risks to using coercive powers? How would you characterise those risks?
Mr Pezzullo: Noting our objections to their characterisation as coercive, unlawful and inappropriate; leaving those objections to one side, I suppose there is a residual matter of concern that we have, and that therefore we have agreed to the relevant recommendation. But, perhaps in the first instance, the commissioner might—you will need to rehearse some of the evidence you gave earlier about tightening up some of the risk management protocols, perhaps, Commissioner.

Mr Quaedvlieg: Senator, the question that arises is what risk manifests from an inadequate focus on the accreditation and governance of the application of coercive powers or other statutory powers. The risk is that we do not provide an effective enforcement workforce that is able to professionally and clinically discharge its duty. What we do not want happening is people who are not accredited, for example, doing searches—because there are certain risks, not just to the officer but to the subject of personal searches, and in order for that to be appropriately executed we would say that people need to be trained. It is the same as the use of force. We do not just give people guns because they find themselves in a situation where they need to use a firearm, just because they have statutory authority to do that under the ABF Act. We want to layer in policy guidance, we want to layer in governance, we want to layer in auditing, and we want to make sure that the exercise of powers is professional. Because at this point, all the powers provided to enforcement personnel, whether it is in policing or in the Australian Border Force, have the potential to impact on human beings. We have the potential to detain people, to arrest them, to search their property, to confiscate property—and they are significant intrusions into an individual human being. If those actions are not appropriately governed, audited, and balanced, then we are not fulfilling our duties as a professional and responsible enforcement agency. So I think it is a major risk. It is one that we identified even before the ANAO report came into being, and it is something that we are going about remediating with robustness and energy.

Senator PRATT: On page 7 the report says: ‘internal assurance reviews have uncovered the problems relating to the exercise of statutory powers’. Have you identified problems as part of assurance reviews? And how do they differ from the findings of the ANAO?

Mr Quaedvlieg: Again, I can answer that question. They go to the issue of what I characterised previously as administrative and inadvertent. Let me give you an example, Senator: in some cases, our belief at the executive level is that the exercise of statutory powers is of such significance and risk that we do not allow our officers generally to have access to those unless they are delegated. Delegations can be provided by the secretary or the commissioner or other senior officers, to a certain cohort of officers or certain individuals to exercise powers. Those instruments, those delegations, usually have a finite time line on them, and occasionally they may expire before they are renewed.

Officers working under the apprehension that they still have that delegation may exercise statutory powers under that delegation. That would be an inadvertent breach but it is not one that is intentional or malicious in nature. We need to have a better system, which identifies when those delegable instruments expire, to ensure that they are renewed well in advance of the expiration date so there is no gap between when an instrument expires and when it is renewed, in order for officers to have that delegation.

Senator PRATT: Okay.
Mr Hayward: Senator, in fact, about a week ago the delegations for those officers that the commissioner just described were centralised.

Senator PRATT: Okay. So that has been addressed. I had some questions about what is involved in a search undertaken by Australian Border Force. How many searches are undertaken each financial year? And what constitutes a legal search for each type of search—for example, a boat, a package or a person? But you can take those on notice.

Mr Quaedvlieg: I can, other than that it is a very, very broad question and you may need to refine it somewhat. We do a number of styles of searches. For instance, we can do a search of the baggage of a person coming through the airport. That is at one end of the scale. On the other end of the scale we might do an execution of a search warrant under some of the acts that we have access to, which require significant degrees of planning, exercise and deployment of officers. So I am happy to take it on notice, but—

Senator PRATT: Okay. Well, I guess where—perhaps you can do that for the purposes of where the coercive powers come into play, noting that most people will consent to having their bag searched—or whatever.

Mr Quaedvlieg: We can certainly provide a breakdown of the number of search warrants that we have executed under the Migration Act or the Customs Act. We also conduct activities which require execution of search warrants by other agencies. So, in some cases, our officers do not have access to section 3 Crimes Act powers, for instance. They have to be done by the Australian Federal Police in collaboration with us. I am just concerned about the scope—

Senator PRATT: Okay. In the interests of time, I will go away and work out if I can clarify that.

Mr Quaedvlieg: Thank you. I am happy to work with your office.

Senator PRATT: The ANAO found that the department has not provided adequate instructions and guidance for officers exercising coercive powers. We have covered this a little bit in relation to Senator McKim's questions. Can I ask what type of inaccuracies were found in the guidance materials available to officers? What would you have characterised as—where was the ANAO's report helpful in highlighting those inaccuracies to you?

Mr Pezzullo: I will leave that in the very capable hands of Ms Connell and Mr Hayward who immerse themselves in the detail of this, and they will give far more elegant answers than I would be capable of giving.

Ms Connell: So, in terms of the nature of the errors that were found—Senator, is that your question?

Senator PRATT: Clearly the ANAO argue they found inaccuracies. Do you concede materials were inaccurate? If so, which materials were they?

Ms Connell: I do not know if Mr Hayward has information that goes to the actual inaccuracies but what we did agree with in the recommendation was to urgently pull together documentation so it was accessible to all staff in a central form, and I know that is well underway.
Senator PRATT: No. The ANAO found that much of the material was out of date and inaccurate. So, yes, you have said you have coordinated it and you are correcting it, but have you conceded and identified material that is in fact inaccurate and out of date?

Ms Connell: What we do have is a program that has been underway for some time. It is the policy and procurement control register, and part of that process is to go back through every single document—

Senator PRATT: Okay. So you do not yet know which policies are inaccurate and out of date?

Ms Connell: I could not give you a detailed listing. I do not know if Mr Hayward has much detail, but I know that we methodically—it was already underway. I know that we go through all these policy documents and we make sure they are current, and that they reflect—

Senator PRATT: Are officers still using guidance materials that are still inaccurate and out of date—if that process is still ongoing?

Mr Quaedvlieg: Let me respond this way: in the implementation of the recommendations—evidence has been given that we have accepted them in the broad and in fact in the majority of cases—we will go back to the source material that the ANAO relied upon to make those observations. Where they have identified either deficient or inaccurate guidance we will remediate that. I do not want to make this an exercise of a cynical response to the ANAO report because, as I mentioned, the principle that the ANAO is advocating here is ensuring you have an appropriate governance model setting out the way you execute your policy. We want to do that and we will go well beyond the source material that the ANAO relied upon to finalise this report to ensure that across the entirety of our operations we are providing guidance that is accurate and current.

Senator PRATT: What I am trying to work out—

CHAIR: Senator Pratt, you are well over your time, sorry. I will go to Senator McKim. I will come back to you.

Senator PRATT: Thank you.

CHAIR: Before I do, Mr Quaedvlieg, you were talking about how many searches you do. I confess to never having watched it myself, but do you participate in that TV show called Border Security?

Mr Quaedvlieg: Border Security? Yes, we do.

CHAIR: Is that a relatively accurate portrayal of what happens?

Mr Quaedvlieg: Yes, it is, at the airports at least.

CHAIR: Are those actual images or are they actors playing a part?

Mr Quaedvlieg: No, they are actual people; it is real-life TV.

CHAIR: Do you get some sort of talent release, in the political sense, from the people who are filmed on that show?

Mr Quaedvlieg: Every officer that is captured in the process of executing some activity at the airport has the prerogative to seek to have their identity pixelated if they choose to. Most do not because they enjoy the celebrity. It is a fairly accurate portrayal of what occurs at airports, at least, yes.
CHAIR: I was not really talking about your actors, but the people who are apprehended.

Mr Quaedvlieg: The subjects of the searches also have the prerogative at the time. They are given an option to rescind their authority or their approval for it to be aired. If that is the case, we respect that. But most people, again, do not mind the celebrity. It is the same with our officers.

CHAIR: Even though they are being sent back?

Mr Quaedvlieg: We do not get too many subjects of searches or interventions that seek to have their identity hidden.

CHAIR: Is there any financial transaction one way or another in relation to that program?

Mr Quaedvlieg: None whatsoever. We get free publicity and the Seven Network gets plenty of raw material in perpetuity for its program.

CHAIR: They do not have to pay actors.

Mr Quaedvlieg: They do not have to pay actors, no.

CHAIR: I have only seen bits and pieces of it in shorts, so I am not an expert to comment on this.

Mr Quaedvlieg: It is globally syndicated. It is one of the best public relations capabilities that we have, and it is all for free.

CHAIR: And you find that it works and is helpful?

Mr Quaedvlieg: Very much so.

CHAIR: That is interesting.

Senator PRATT: Senator McKim has gone.

CHAIR: Back to you, then, Senator Pratt. Sorry about that.

Senator PRATT: Thank you. Is it still possible that officers are using coercive powers based on inaccurate guidance, considering that consolidation and review process is still going on?

Mr Quaedvlieg: I would say no, technically, to your question. I have a different view of what coercive powers are. Where we use coercive powers like the execution of search warrants, absolutely not. There is no risk of officers operating under dated guidance. Without knowing what the source documents are that ANAO relied upon in relation to defective or deficient guidance, it is possible and I can see that, but I do not know at this point in time.

Senator PRATT: So you do not know at this point in time if coercive powers are being exercised?

Mr Quaedvlieg: Not coercive powers; I can rule that out. I think I have responded to that. But other powers which are not coercive in nature but which are still statutory—potentially there is some policy guidance which is dated. But as the chief operating officer mentioned, well in advance of the ANAO report, and now especially that we have the report, we are looking at all of our operational practices and all our policy guidance and documents to ensure they are contemporary.

Senator PRATT: Does that mean all staff have undergone training on the use of coercive powers?
Mr Quaedvlieg: No.

Senator PRATT: How many staff would still be waiting?

Mr Quaedvlieg: I do not think it is as universally applicable as that in theory. There are certain officers, for example, that may undertake actions under the Migration Act. Those persons who are doing field compliance work around visa enforcement will have received some form of training. Whether it is contemporary is something we are looking at. But not everyone in the organisation, as I mentioned earlier, has the appropriate delegations or authority—or in fact are in roles that require the exercise of powers.

Senator PRATT: What the ANAO found was:

While positive foundational work has commenced on integrating the former Customs and Immigration training regimes, officers have been exercising significant coercive powers without having undertaken pre-requisite training.

Mr Quaedvlieg: Again I disagree with the characterisation of 'significant coercive powers'. I am happy to keep responding to that premise.

Senator PRATT: I skipped over my questions about the definition of 'coercive powers' in the interests of time, but perhaps I should not have done that.

Mr Quaedvlieg: I have a fundamental disagreement with applying the description 'coercive' to the exercise of what I call 'routine statutory powers'—which are numerous and which our officers execute every single day. The answer to your fundamental question is: where we put people in roles which require the exercise of powers which are intrusive—which I described before—our intent is to have everyone trained. Can I guarantee right now, at this point in time, that during the integration we have not missed a number of officers who require some refresher training or foundation training? No, I cannot. But that is something that we started addressing prior to the report coming out, and it is something we will continue to address.

Senator PRATT: Please take on notice how many staff have been trained and how many are still to be trained on an appropriate definition of 'coercive power'.

Mr Quaedvlieg: We might have to agree on what 'coercive' is. Our officers are trained across a variety of functions and actions. As I indicated, I think the majority of those are not coercive in nature.

Ms Connell: I will just supplement the answer—

CHAIR: The crime commission has what are strictly called 'coercive powers'—which means you do not have the right to remain silent and that failure to answer and cooperate is a crime in itself, as I understand it. That is probably a very poor description, but are those the sorts of coercive powers you are talking about?

Mr Quaedvlieg: That is certainly my definition of coercive: where there is a capacity for an entity to summon someone to appear before a hearing and give evidence, where there is a requirement for that person to answer—they cannot remain silent—where that entity can issue a summons requiring someone to produce documents, and where they must produce those documents. Those sorts of powers are coercive in nature.

CHAIR: Do you have those sorts of powers?

Mr Quaedvlieg: We do not have those powers.
CHAIR: It is only the crime commission that does, is it?

Mr Quaedvlieg: I think some prudential authorities may have some as well.

CHAIR: But the Border Force does not have those powers.

Mr Quaedvlieg: We do not have coercive powers.

Senator PRATT: Perhaps your definition of 'intrusive' might give us a better framework for my questions.

Mr Quaedvlieg: What I will take on notice is how often our officers have, for example, exercised powers in the last 12 months for search warrants or have taken actions of that nature—actions at the upper end of intrusion.

Senator PRATT: I will give you an example that is in the report:

Some personal searches of passengers at international airports examined by the ANAO were unlawful or inappropriate, indicating weaknesses in the control framework. A number of searches of premises under the Migration Act potentially exceeded the authority of the warrant which authorised them, and officers routinely questioned people without documenting their legal authority to do so.

Are those things that you would characterise as intrusive?

Mr Quaedvlieg: Only the second one: the execution of warrants under the Migration Act. The other two that bookend that I would not characterise as coercive.

Senator PRATT: Which one?

Mr Quaedvlieg: The search warrants under the Migration Act that you referred to.

Senator PRATT: What about personal searches?

Mr Quaedvlieg: They can be intrusive, depending on the extent of the search. But, in general terms, a frisking of someone at an airport is not particularly intrusive. If we are, under section 251 of the Migration Act, executing a search warrant on a premises which requires the occupant to allow us in to search for a particular person, that is intrusive.

Senator PRATT: Are the guidance materials in relation to personal searches of passengers at international airports currently up to date? I seem to have tripped over the difference between coercive and intrusive. The ANAO report has not made those distinctions, but you seem to be separating yourself from their findings by virtue of using different definitions.

Mr Quaedvlieg: I do, but in relation to searches I do not think the issue was one there of a lack of currency and guidance. I think the issue was: were persons conducting the searches accredited to do that?

Senator PRATT: Yes, that is right.

Mr Quaedvlieg: That goes back to my earlier point, where persons who are required to do personal searches at airports need to do a training program, and that training program has to be, from time to time, periodically reaccredited or contemporised. If someone has forgotten—or there has been a bit of maladministration in getting that person reaccredited—but still conducts a search, that is, to the ANAO's characterisation, unlawful. I do not think it is unlawful. I think the intent was entirely diligent and faithful, but there is an administrative issue in terms of whether they were accredited at that point in time or not.
Senator PRATT: Can I ask about your response to officers also frequently failing to comply with departmental policy instructions, including compliance with certification and record-keeping requirements.

Mr Quaedvlieg: I think that is broadly correct. It goes to the earlier evidence given to this committee around record keeping and its robustness or otherwise across the department as a whole. It is something we recognise in our integration; it is something that we are working on. The ANAO did find that we are making steady and solid progress towards remediating that, and we will continue to do that with energy and robustness.

Senator PRATT: That puts the department in a fairly serious position if that is a coercive power that has been exercised and you have failed to keep appropriate records for it and something happens as a result of the use of those coercive powers.

Mr Quaedvlieg: Well, it does if that is the case. I will again respond: I do not think our exercise of coercive powers is of the same characterisation as ANAO’s. Where we have executed, for example, search warrants—which is highly intrusive—I am confident that our record keeping is a lot better than in other exercises of routine powers. So I do not accept the premise of that.

Senator PRATT: What about if someone was found to have had a personal search undertaken by someone who is not authorised to do so and they find it an intrusive experience? How do the travelling public know whether they have been searched by someone with the authority to do so, should they wish to make a complaint?

Mr Quaedvlieg: They could certainly ask, but I think in general terms poor record keeping and inadvertent errors in administration—that is, whether someone is accredited contemporarily or not—does not detract from the faithfulness and the diligence of the action, particularly if that person conducting the search has had accreditation for the last number of years and has conducted hundreds of searches in the airport and is quite mature and professional in the way they go about that. Sure, there are deficiencies—we have accepted that—in the record-keeping department, in the accreditation and the management thereof, but, again, it was not an illuminating insight by ANAO to bring that to our attention. We are well aware of that in the integration.

Senator PRATT: I have other questions under this outcome. I want to turn to mobile phone bans. It has been reported that people detained in onshore detention will be banned from having access to a personal mobile phone.

Mr Quaedvlieg: That is correct.

Senator PRATT: That is correct?

Mr Quaedvlieg: That is our current operational policy, yes.

Senator PRATT: When did you introduce that policy?

Mr Quaedvlieg: I think we are at the back end of the first phase of that policy. It was implemented I think in November/December 2016, and we provided a three-month grace period where we indicated, at the commencement of that period, that we would be seizing mobile phones of detainees, and we have been doing that and we are not injunctioned otherwise. We will continue to do that.

Senator PRATT: What prompted the implementation of that policy?
Mr Quaedvlieg: What prompted the implementation of that policy was my fundamental concern that we were unable to manage a secure and safe amenity for detainees within our detention network. It is a well-known fact that in custodial settings things like mobile phones are not just contraband and currency but are actually utilised to ferment a whole range of activities, including escapes and the smuggling of contraband into the centres, and, indeed, the maintenance of criminal enterprises from within the centre out in the real world. It is not a modern custodial setting where mobile phones are available to the population of our centres.

Senator PRATT: Who approved the policy?

Mr Quaedvlieg: I did.

Senator PRATT: You did. Was there any link to the secretary, the minister or contractors in instigating that policy?

Mr Quaedvlieg: When you say 'link', both the secretary and the minister were briefed that this was a policy that I was intending to implement, yes.

Senator PRATT: When did you advise the minister of your intention?

Mr Quaedvlieg: I have been having a conversation with the minister in relation to this particular issue now for the better part of 12 months. I briefed him as recently as two weeks ago in relation to the progress against our first phase.

Senator PRATT: Did the minister provide any direction or comments on the policy?

Mr Quaedvlieg: The minister supported the policy intent.

Senator PRATT: Is the policy in place in all onshore detention facilities?

Mr Quaedvlieg: Yes.

Senator PRATT: What evidence exists regarding the use of mobile phones for illegal activity?

Mr Quaedvlieg: There are a number. A couple I can highlight to you is the conduct of a drug distribution and supply activity by a detainee in one of our centres whilst he was detained. Another very recent one was the use of a mobile phone to plan and facilitate an escape from one of our centres.

Senator PRATT: The policy applies to all centres; is that right?

Mr Quaedvlieg: That is right.

Senator PRATT: How many centres have you identified this illegal activity taking place in?

Mr Quaedvlieg: I will have to take that on notice, but the use of mobile phones for any number of nefarious activities in our centres is broad and across the network.

Senator PRATT: So the illegal activity is not limited to the 501 community?

Mr Quaedvlieg: No.

Senator PRATT: If you could provide evidence on notice about that, that would be great.

Mr Quaedvlieg: Yes, Senator.

Senator PRATT: Have asylum seekers or refugees been found to be using mobile phones for illegal activities?
Mr Quaedvlieg: All detainees in our detention centres have had access to mobile phones. Without having a proportionate breakdown of the use of phones to conduct nefarious activities, what I can say is that that activity goes across all our cohorts, not just 501s or illegal maritime arrivals.

Senator PRATT: We have a wide range of people in detention so we understand there are people being deported for previous criminal conduct et cetera, but it does seem fairly onerous to apply that policy to everybody.

Mr Quaedvlieg: It is a balance to be achieved. We are able to provide access to phone infrastructure—that is, hard lines—that is adequate, and then being able to remove smartphones in particular from our custodial setting. I can tell you very clearly that it becomes a currency within our centres. Persons who have phones will be stood over for those phones. The phones will be used for, as I mentioned, drug activities and escape plans. I cannot countenance running a custodial setting which has a facility that allows mobile phones to be used as an enabler to crime. I just cannot ensure the security and safety of detainees across the population by running centres where I allow mobile phones to be used broadly.

Senator PRATT: You would accept, though, that for people who may be stateless and therefore in indefinite detention that it is a very isolating thing to not have social media access.

Mr Quaedvlieg: If that were the case, yes. However, we do provide internet access to detainees in our centres. They also have access to telephones but, again, it is a balance to be achieved. If I had a utopian world where mobile phones were not contraband, were not used for criminality, then I would allow everyone to have a mobile phone. But that is not the case. That is not the real world we live in.

Senator PRATT: How many people have willingly surrendered their mobile phones?

Mr Quaedvlieg: The Acting Deputy Commissioner Operations may actually have that information to hand.

Mr Woodfood-Smith: So far, 179 telephones have been returned.

Senator PRATT: Sorry, how many was that?

Mr Woodfood-Smith: It was 179 phones.

Senator PRATT: And how many have been confiscated?

Mr Woodfood-Smith: No phones have been confiscated; they have been returned.

Senator PRATT: It has been reported that one asylum seeker has a court injunction to allow him to keep his mobile phone. Can you explain the circumstances of that case?

Mr Woodfood-Smith: I am a bit concerned about talking about that at the moment, simply because it is before the courts at the moment. I believe the hearing is a little bit later in the week, and I do not want to prejudice those hearings.

Mr Quaedvlieg: As a clarification, there are two detainees whose removal of mobile phones are currently subject of litigation. We are in that litigation; we are an active participant and, as the Acting Deputy Commissioner indicated, it is not appropriate to go into issues of litigation in this public forum.

Senator PRATT: There is a court injunction, however, on that?
Mr Quaedvlieg: Yes, that is correct.

Senator PRATT: Does that mean your current confiscation is legally valid? Does it not provide an onus on you to give phones back to some of the detainees?

Mr Quaedvlieg: I might ask our general counsel to go to the generic consequence of the current injunction, noting that it is being litigated. I am just cautious about discussing in too much detail that particular injunctive effect.

Ms de Veau: I do not have the terms of the order in front of me, but my recollection is that the terms of the order of the injunction related to future activity in relation to the policy, so phones that had been voluntarily surrendered in the past were not covered by that order. It related to the parties to the injunction and it related to injunctioning the application of the policy until the determination of the issue before the court.

Senator PRATT: So people gave back their phones thinking they were required to, when they may not have actually been required to because the court has not yet found that you have the power to require that?

Mr Quaedvlieg: No, I disagree with that. As I said, that is an issue that we will raise in litigation and is something we will vigorously litigate. However, we are compliant with the terms of the current injunctive order, which prohibits us at this point in time in prospect taking mobile phones off detainees but does not, as I understand it, apply in retrospect.

Senator PRATT: Why—because people gave them back voluntarily?

Ms de Veau: That is the nature of the order from the court, so we are applying the order of the court to the letter of it.

Senator PRATT: What will you do if people request their mobile phones back?

Ms de Veau: That will not be covered by the orders of the court, as I understand the terms.

Senator PRATT: Are you aware of anyone else seeking a similar injunction?

Mr Quaedvlieg: I am personally not. Maybe the general counsel is.

Ms de Veau: No. As I understand it there have been two court proceedings. There have been a number prior to that, actually, which were unsuccessful. So there have been two that have been successful, and the issues will be determined when they go to hearing.

CHAIR: Just before I pass to Senator McKim, on that matter: I think you said landlines are available for people who—

Mr Quaedvlieg: They are, Chair, yes.

CHAIR: want to contact their solicitors, which seems to be—

Mr Quaedvlieg: And family, and any other contact they wish to make. In fact, in anticipation of the removal of mobile phones, we ensured that there was an appropriate phone amenity in place for detainees.

CHAIR: But that is under some form of surveillance, is it, so that they cannot do the drug arrangements from a public phone rather than a mobile phone?

Mr Quaedvlieg: No. Unlike Corrective Services settings, where most telephone communication in and from centres is recorded, we do not record telephone calls.
CHAIR: But how you know that someone is not using the landline to set up a drug deal?
Mr Quaedvlieg: The answer is that we do not know.

Senator PRATT: But some people will have phones and some people will not, because new people coming into detention will still have access to them because of the injunction—is that correct?

Mr Quaedvlieg: While we are in this transfer phase, that is correct. Your description of some people having phones and some not is correct. It does not make me very comfortable, because, as I mentioned, I do not think I can run a safe custodial setting with mobile phones in situ, but we will comply with the court and will litigate vigorously, as I said.

CHAIR: In state or other correctional jurisdictions, are mobile phones allowed?
Mr Quaedvlieg: No.

CHAIR: In situations where people are outside any correctional centre doing community work, are they allowed mobile phones?

Mr Quaedvlieg: If they are outside the bounds of the corrective centre, i.e. on parole, then they can have mobile phones, but if they are on day release under supervision they cannot.

CHAIR: Is this legislated anywhere?
Mr Quaedvlieg: Our power to confiscate phones?

CHAIR: Is it legislated anywhere that having mobile phones in a detention centre is—
Mr Quaedvlieg: No, it is not.

CHAIR: That is something the government should be—
Mr Quaedvlieg: We are examining that option.

CHAIR: To change the legislation?
Mr Quaedvlieg: Yes.

CHAIR: The reasons you give seem like common sense ones to me and to most Australians I am sure.

Mr Quaedvlieg: We are examining regulatory change.

Senator McKIM: Sorry, I have been out in another committee which is running at the same time, but has Mr Pezzullo's absence been commented on or explained while I have been gone? If not, would anyone like to explain?

CHAIR: He did let the committee know that he would be away between 5.15 and seven for a meeting with the minister or cabinet or something. But we have his trusted lieutenants available, who I am sure can handle whatever is required.

Senator McKIM: Commissioner, just on the issue of phones, and just to be clear, does the injunction you are referring to—and maybe this is one for Ms de Veau—apply only to onshore detention centres, or is it offshore and onshore?

Mr Quaedvlieg: The policy of our removal of phones is an onshore detention policy, and therefore the injunction applies to onshore detention.

Senator McKIM: Would they have no jurisdiction or potentially no jurisdiction at least—
Mr Quaedvlieg: No.
Senator McKIM: So we are only speaking about onshore detention?

Mr Quaedvlieg: Yes.

Senator McKIM: Are you concerned that a blanket confiscation of mobile phones might unreasonably constrain the capacity of people who are detained to access legal advice?

Mr Quaedvlieg: I am concerned about that. In advance of implementing the policy we extended our capacity for detainees to access phones and internet. But it is a balance to be struck. We have evidence of mobile phones being used in our detention centres for all sorts of activities both criminal and otherwise, and that goes to the stability, functioning and good order of our centres. That causes me as much concern, so there is a balance to be struck.

It is very difficult for me to ensure safety, security, movement and amenity for our detainee population of 1,400 or so, knowing that I have no control over how mobile phones are used within the centres. That causes me some concern, and yes, the consequence of that is a concern. I would like people to have access to legal advice and to be able to contact family and friends when they choose in the privacy of their room, but that does not reconcile with my concern about running a secure amenity either.

Senator McKIM: If we need Mr Pezzullo here for this I am happy to park it until he gets back. I asked a question that was taken on notice at the last estimates hearing in regard to the return of three people to Indonesia after their vessel broke down. For reference, it was SE16/076. The question was based on an Operation Sovereign Borders May update, which asserted that during the 1 May to 30 May period last year the government safely returned the passengers and crew of one vessel to their country of departure. I asked a series of questions and what we got back was:

The Australian Government assisted the return of three persons to Indonesia after their vessel broke down.

That did not really answer all of the questions that I put on notice, so I am going to ask them again, plus a couple of others. I realise this is a detailed question, so if you need to take this on notice that is fine. What was the date of interception and the date of return of the vessel? What were the nationalities of the people on board? Did Australian ABF or ADF personnel assist in repairing the vessel, or were the passengers transferred to another vessel? Were the passengers interviewed by ABF or ADF personnel?

Mr Quaedvlieg: I vaguely familiar with that particular operation, but for the sake of accuracy I might take up your offer and take those on notice and come back to you with some detailed responses.

Senator McKIM: Okay. Thank you. During a previous answer, I think from someone up that end of the table—and I apologise for not having the name off the top of my head—when we were talking about the extra appropriation and provision of $7 million, I think, of funding to either the department or to ABF, there was a reference made to on-water assessments as part of what that expenditure was for. What are you assessing when you say on-water assessments?

Mr Quaedvlieg: I will ask Deputy Secretary Michael Manthorpe to come forward. But in general terms the on-water assessment definition refers to the assessment of asylum claims.

Senator McKIM: That is what I assumed, but I just wanted to clarify it. If Mr Manthorpe or Mr Mansfield have further information they can provide it. On the basis that that is correct,
and that was my assumption, can you provide data to the committee about how many on-water claims for asylum have been conducted and what the results of those were, just purely in numerical terms?

Mr Manthorpe: I don't think I have data on that with me.

Mr Mansfield: No, we do not, but to add to the commissioner's remarks, the on-water assessment process is to confirm the circumstances of people and their reasons for seeking to enter Australia. That is the purpose. And to ensure that for people who are returned the department is confident they do not engage Australia's non-refoulement obligations.

Senator McKIM: How many people have not been returned on the basis that doing so might engage the non-refoulement obligations?

Mr Mansfield: We would have to take that on notice.

Senator McKIM: All right. To clarify, the questions I am asking are these. How many on-water assessments have been done—and perhaps if you have the numbers since 2013, since Operation Sovereign Borders started? And provide a breakdown annually, which I presume is possible. Also, how many people were not returned on the basis of the potential for engaging our non-refoulement obligations? Is it clear what I am asking for?

Mr Mansfield: Yes.

Senator McKIM: Do you have up-to-date numbers—maybe not to today but perhaps to last week, or as recently as possible—in regard to the number of people who are on Manus Island and Nauru, and the various breakdowns? Would you have data available here to assist?

Mr Manthorpe: That is not in the space for Mr Mansfield and I. I will invite Ms Moy back to the table. We do things within Australia. Ms Moy is involved in offshore matters.

Senator McKIM: No worries; thank you, I appreciate that clarification. I will ask a series of questions, Ms Moy. If you need to take any on notice, please feel free; if you have got the information here, we would appreciate it in real time. Firstly, what is the number of people inside the RPCs on Nauru and Manus Island? And if you could give the date that is relevant, that would be helpful; the most recent date if possible.

Ms Moy: Certainly. The date is at 31 December—

Senator McKIM: I will just stop you there. So you do not have any figures that are more recent than two months ago?

Ms Moy: I can get you an updated version on notice, but these are the figures as at—we received these figures from the host countries. So I can get an updated version for you on notice, but I can tell you that as at 31 December it was 380 people in the Nauru Regional Processing Centre, and there are 866 people in the Manus Regional Processing Centre.

Senator McKIM: Thank you. And are you able to break them down by gender and age, just in terms of whether they are children or adults?

Ms Moy: I can do that for you, Senator. In Nauru Regional Processing Centre, there are 238 single adult males; six single adult females; 91 adults in family groups; male children, 29; female children, 16.
Senator McKIM: Thank you. Are you able to break down the number of people who may be still in PNG or Nauru but who are not resident, if you like, in the centres? Or would they be included in those numbers you have just given us?

Ms Moy: In terms of the numbers of refugees?

Senator McKIM: Or of people seeking asylum. They are open centres, is that right? So people can come in and out.

Ms Moy: That is correct.

Senator McKIM: And, presumably, they could find somewhere else to live if they wanted to.

Ms Moy: The transferees generally live within the regional processing centres, so they are individuals who have not received a positive hand-down in terms of their Refugee Status Determination. There are 206 transferees—within the regional processing centre—and there are 174 refugees still living within the Nauru Regional Processing Centre.

Senator McKIM: Sorry, Ms Moy; just so that I am clear: the numbers that you provided before—the 380 in Nauru and the 866 on Manus—are they only the people that are resident in the centres? Or do they include people who maybe have walked out a month ago and they are now living somewhere else?

Ms Moy: No; they are the individuals living within the centres. The only people who live outside of the centres are people who have been found to be refugees.

Senator McKIM: Yes. And how many of those are on Manus Island and on Nauru?

Ms Moy: I will just get those figures for you—unless Assistant Commissioner Woodford-Smith has them at hand.

Mr Woodford-Smith: The number of refugees that we currently have on Nauru is 757 refugees.

Senator McKIM: They have had successful refugee status determinations.

Mr Woodford-Smith: They have been classed as refugees and they are living in the community, which is in addition to the refugees—the 174—that are living inside the regional processing centre.

Senator McKIM: Sorry, Mr Woodford Smith: are you talking about Manus or Nauru there, firstly?

Mr Woodford-Smith: No; I am talking about Nauru.

Senator McKIM: Nauru?

Mr Woodford-Smith: Yes.

Senator McKIM: Okay. How many people who are refugees are not living in the centre at Nauru?

Mr Woodford-Smith: 757 refugees live in the Nauru community.

Senator McKIM: Okay. And that is in addition to the 380 people—either refugees or people with negative determinations or, potentially, people that are still going through the process—that are living in the centre. Is that correct?

Mr Woodford-Smith: That is correct.
Senator McKIM: All right, thank you. Do you have the numbers for Manus?

Mr Woodford-Smith: I do. The number is substantially smaller. There are 64 individuals living in the ELRTC, the East Lorengau Refugee Transit Centre, and another 25 refugees settled within the greater PNG. That is as of 31 December.

Senator McKIM: If you are able to take on notice whether you have any more up-to-date figures.

Ms Moy: Yes.

Senator McKIM: Can you tell us how many people, either on Manus Island or Nauru, have been interviewed by US authorities under the terms of the agreement with the US?

Mr Colquhoun: Yes, I can. During the first two visits by the state department to Nauru that the secretary mentioned earlier, the refugee settlement centre interviewed 616 individuals. They are currently on Manus, so I do not have a total for the number of people they have interviewed.

Senator McKIM: Is the 616 that you mentioned the total number of people on Nauru who expressed an interest?

Mr Colquhoun: No, it is not. It is very close to the total number.

Senator McKIM: Is that ongoing there?

Mr Colquhoun: Yes. There is a possibility that people will return. Some people are considering their options. But it is very close to the total number of people who, to date, have expressed an interest.

Senator McKIM: I want to ask some questions about the differences in judicial appeal avenues between Manus Island and Nauru—perhaps you, Ms Moy. Is the Australian government providing funding for legal assistance for people who are appealing their refugee status determinations in Nauru?

Ms Moy: We provide assistance to the government of Nauru for legal assistance for both the original claim and any merit review process.

Senator McKIM: Do you provide the same assistance for people on Manus Island?

Ms Moy: Yes.

Senator McKIM: Isn't it the case, though, that in Papua New Guinea there is no appeal mechanism provided for in PNG law?

Ms Moy: There is a merit review process in Papua New Guinea. But, of course, you would appreciate that Papua New Guinea and Nauru are two different sovereign nations and have their own laws and processes, so they will not be identical.

Senator McKIM: Isn't it the case that section 19 of the Papua New Guinea Migration Act states any decision:

… of the Minister relating to the grant or cancellation of an entry permit or to the removal of a person from the country … is not open to review or challenge in any court on any ground.

That is, a minister's decision is basically final and there are zero appeal avenues.

Ms Moy: They do have minister's decision. I do not have the legislation in front of me. I can tell you that ICSA, the Immigration and Citizenship Service Authority, in Papua New Guinea has advised us that they are looking at amendments to the Migration Act and that prior
to any removal of a person who has received a negative decision they also undertake a
deporation risk assessment, which looks at the risk of any complementary or refoulement.

Senator McKIM: Is that done in every case?

Ms Moy: In every case of a removal from Papua New Guinea.

Senator McKIM: Just so I am clear—I hope I am categorising what you have told us accurately; I am sure you will tell me if I haven't—the Australian government funds support for people at every stage in their refugee status determination process up to and including appeals on both Manus Island and Nauru.

Ms Moy: Yes.

Senator McKIM: That is correct. How is that support provided and paid for? What is the mechanism? Do we pool the funds we provide? Is it an invoice based system?

Ms Moy: There are legal providers, who are engaged by the department and by ICSA or by the government of Nauru, who are funded by the department under the regional resettlement arrangements of both countries to provide that assistance to individuals.

Senator McKIM: So there are two mechanisms, are there? The first is that legal services providers would directly bill the department and, the second is that they would bill the PNG or Nauruan governments, who would presumably claim the money from the department.

Ms Moy: And generally it is billed to the department—

Senator McKIM: I am sorry: is what I just said accurate?

Ms Moy: Generally it is billed to the department.

Senator McKIM: But there are circumstances where they may bill Nauru or PNG?

Ms Moy: In those cases, we would pay for them under the memorandum of understanding we have with each of those countries.

Senator PRATT: How is 'force' defined in the sense of the use of force, and can you give examples of force used in onshore detention centres?

Mr Quaedvlieg: We adopt a view that the definition of 'force' has a very low threshold. For example, where we need to apply restraints or we need to—

Senator PRATT: You think restraints represent a low—

Mr Quaedvlieg: No, what I am saying is that we define use of force at quite a low level. Wherever there is any application of force whatsoever, we define that as 'use of force' and we require it to be documented.

Senator PRATT: Obviously that would include the use of restraints.

Mr Quaedvlieg: Yes, and we require that to be documented and reported.

Senator PRATT: Restraints would be one example, then. Are officers empowered to use deadly force? If so, under what circumstances?

Mr Quaedvlieg: That is quite a broad question. Where we provide our officers with the accoutrements to apply lethal force—and I am using firearms as the primary capability here—in our statutory setting, our officers can only use lethal force in self-defence. They have to have a reasonable and objective apprehension that they are in danger of either very serious injury or death themselves.
Senator PRATT: In what circumstances can the department or service providers use force—in general terms, because it has a broad application, as you say—and physical restraints?

Mr Quaedvlieg: I will ask Acting Deputy Commissioner Kingsley Woodford-Smith to go into a bit more detail, but, to ensure the good order of our detention network, to ensure the safety and security of not just the detainees but also our contractors and officers, force can be used. But it needs to be proportionate, it needs to be reasonable and it needs to be justified. Where it is used, it is recorded and documented.

Senator PRATT: You have not highlighted what sorts of circumstances that might mean.

Mr Quaedvlieg: It is difficult to be prescriptive because there are any number of circumstances. But I will give you a couple of examples. If there is a detainee who is threatening to commit, or actually demonstrating, self-harm, there is justification to use force to prevent that from occurring. If, for example, a detainee is scaling a fence to try to escape a facility, the use of force is justified. If we are moving people into a community setting for the receipt of medical, health or other treatments and they are an escape risk—which is risk assessed—we may apply restraints. There are any number of circumstances within our setting and operational context—

Senator PRATT: It is only if there is a perceived threat?

Mr Quaedvlieg: Each action is risk assessed. If there is an apprehension that there is an unacceptable level of risk, and so force needs to be used, it will be used.

Senator PRATT: Are detainees always physically restrained when they are moved between one part of the onshore detention network and another?

Mr Quaedvlieg: It depends on their level of risk.

Senator PRATT: So they are not always physically restrained?

Mr Quaedvlieg: They are not always physically restrained, no. It depends on the individual risk level. If, for example, we are moving criminalised cohorts that are being detained under section 501 that you referred to earlier and their individual risk assessment is that they will attempt to escape or they will potentially endanger our officers or members of the public then they are restrained.

Senator PRATT: I would ask you to take on notice—unless you have the figures with you—how many occasions the department or one of its service providers used force from 2013 until now in each year.

Mr Quaedvlieg: Kingsley Woodford-Smith has some statistics. I might get him to respond to that. If you want additional information over and above that, we are happy to take that on notice. I think he does have some statistics with him now, if you are willing to receive that?

Senator PRATT: Yes.

Mr Woodford-Smith: I do not go back to 2013-14, but what I do have are figures for the year 2014-15. There were 2,386 incidents of use of force. In the 2015-16 year there were 8,637 incidents of use of force.

Senator PRATT: Wow.
Senator WATT: That is how many a day? That is probably around 20—

Mr Woodford-Smith: It would be somewhere in that vicinity, yes.

Senator PRATT: Was there a change in policy in terms of the application? Why such a massive jump? Did you change the policy parameters around when you use force?

Mr Woodford-Smith: There are probably a number of issues there. One of them was the actual reporting. If I can just jump back one. One of the things I do want to explain is that simply touching a detainee and guiding them somewhere is a use of force incident. It is not just about handcuffs or a perception that there is some aggressive or violent behaviour. So I think you have to be very cautious of that.

The other issue too is that when the ABF headed up their superintendents in the detention centres there was an increase in the policy around how high risk and extreme risk detainees were dealt with. That also goes partly to that increase in numbers.

Senator PRATT: That is a change in your policy because you have defined risk differently.

Mr Quaedvlieg: We have defined the definition of using force at a much lower level and, therefore, there are a higher number of incidents to report. I think that is a good thing. As a clarification, I thought about your question before. There are no armed ABF officers in our detention network at all.

Senator PRATT: Thank you. That is good to have clarified. So the rise in the use of force is purely a definitional change as to what force is with a lower threshold?

Mr Quaedvlieg: It is a large contributor, but we are also having a higher risk profile of our cohort with the phenomena of section 501 cancellations. These people are actually cancelled on the basis of character grounds which, by very definition, makes them a higher risk and, therefore, the application of force across that entire spectrum from low to high is likely to be at a higher level. So there is that actual substantive issue as well as a definitional one.

Senator PRATT: There is a greater risk attached to those people than perceived previously?

Mr Quaedvlieg: That is right; there is.

Senator PRATT: So you have assessed that risk as higher than you have done previously?

Mr Quaedvlieg: Again, this is done on an individual risk assessment basis. What we have found is that section 501 cancellation detainees are generally of a higher risk.

Senator PRATT: Do you have any preliminary figures for 2016-17? Are they in line with 2015-16?

Mr Woodford-Smith: Yes. From 1 July to 31 December there have been 4,989 incidents.

Senator PRATT: In terms of what you have said about the 501 character cancellations, can you, on notice, provide a breakdown of the type of detainee that force was used on—that is, refugees and asylum seekers versus those that might have the greater risk attached to them?
Mr Quaedvlieg: Yes, I can take it on notice—with a qualification. I think it would be quite an onerous task to respond to that, and it might take a bit longer than a normal question on notice.

Senator PRATT: Okay. I guess what we are really looking for is that the increase in—you have gone some way to demonstrating this in your answer by saying that it is in the change of the definition of force, but I guess what I am keen to know is whether people who are, for example, refugees or asylum seekers are being subject to more incidences of force. Clearly you have changed the definition of 'force'.

Mr Quaedvlieg: We can certainly look at that, noting that they are about 35 per cent of the detention population. But just for clarity, it is not necessarily the case that a section 501 detainee is any higher a risk than IMAs—

Senator PRATT: No, I understand.

Mr Quaedvlieg: They are done on an individual risk assessment basis, and there are at least a handful of persons in detention who can be labelled as IMAs who are of high or extreme risk. So, there is not necessarily a difference in their risk profile as a cohort, and that is why we do that at an individual level.

Senator PRATT: How do you approach the use of force when it comes to people who are elderly or have a disability?

Mr Quaedvlieg: The application of use of force is universal. It applies to the risk that is attached to individuals, and part of the risk consideration is their ability. So, if they are old or infirm or have some disability, then there is obviously a much lower risk. But, having said that, that is not necessarily the case either. It is not a universal rule.

Senator PRATT: No, but because they are elderly or have disability they may need more physical touch to be guided to what they are doing—

Mr Quaedvlieg: I understand the premise of your question.

Senator PRATT: But would that automatically bring them into the category of being defined as use of force? Or can those supports be extended to them in that personal way, without it being seen to be used in that coercive way?

Mr Quaedvlieg: If the use of force is about remediating noncompliance, then the application of force to those people still has to be proportionate to the risk. So, if they are aged or are disabled, then there is a much lower level of force that is required. If the physical touching of a detainee is about assisting them, that is not use of force, in my view.

Senator PRATT: You have said that people are not always physically restrained when they are moved around the onshore detention network. Are there incidences of people who are elderly or people who have a disability being physically restrained when they are moved around?

Mr Quaedvlieg: I will take that on notice, noting that definition of 'aged' or 'elderly and disabled'—

Senator PRATT: I guess 'frail' is perhaps a better word than 'elderly' in these circumstances.

Mr Quaedvlieg: We will see if we can break down—I understand the premise and the intent of your question—under very clearly defined parameters what is 'elderly', what is 'frail',

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what is 'disabled'. I might just have to come back and qualify the extent of the answer we
provide, but I understand what you are asking.

Senator PRATT: Can you provide photos of the kinds of restraints that you are using, on
notice?

Mr Quaedvlieg: Yes.

Senator PRATT: Has there been an increase in crime within the onshore detention
network?

Mr Quaedvlieg: The answer to your first question is yes, we can provide photographs, if
they are not publicly available.

Senator WATT: Do you have them there? Or would you be in a position to provide them
this evening?

Mr Quaedvlieg: Possibly. We will take it on notice to see if we can procure them during
the dinner break.

Senator PRATT: Thank you.

Mr Quaedvlieg: And the answer to your other question is no, there has been a reduction
in crime in the detention centres since 1 July 2015, since we have taken over the management
of those.

Senator PRATT: And presumably that is the basis on which you removed phones?

Mr Quaedvlieg: Partially, yes.

Senator PRATT: How do you think people who are not criminals feel about the use of
such measures as the removal of phones and other coercive powers?

Mr Quaedvlieg: I am sure they are aggrieved, but I would not be so bold as to be able to
characterise any universal way that our broad detention population feels about it.

Senator PRATT: Is it common for refugees and asylum seekers to be harmed or
intimidated by criminals in the same detention centre as them?

Mr Quaedvlieg: Again, you are sort of getting to a quite defined description of cohorts.
Those broad, sweeping characterisations are not applicable across the cohorts.

Senator PRATT: But you say you do risk assessments.

Mr Quaedvlieg: At an individual level.

Senator PRATT: How do you separate out those who you think are a perceived risk to
other people versus those who present no risk?

Mr Quaedvlieg: When you say 'separate out', do you mean in a physical way?

Senator PRATT: Well, provide a safe environment for them.

Mr Quaedvlieg: Yes. So, if an individual presents as a high or extreme risk, then we will
make a decision under what we call our national placement model, where we move them to
either a segregated area of a centre or, if needs be, another centre somewhere in our network,
which includes Christmas Island, to try to balance out the safety and security of all our
detainees.
Senator PRATT: So it does sound like, despite the statistics saying that it is the definition of force that has changed, you have not just done that to mask an increasing use of force, have you?

Mr Quaedvlieg: No. In fact, if you drop your definition or your threshold of what is a use-of-force incident, it actually by definition increases it. So, no, we are actually putting it out in the open. The point though is that with the increase in the section 501 cancellations and the general demeanour and antecedence of the people in that cohort, they are criminals, and they behave in that way and therefore we are getting a higher-risk behaviour in detention centres. And we need to apply use of force where it is, again, justified, and when it is it will be reasonable and proportionate.

Senator PRATT: Because you have a lower threshold on the definition of force overall, perhaps you might revisit the figures I asked for between 2013 and 2017 in relation to the use of restraints. Frankly, if you have changed the definition, it is not really a good indication anymore of how intrusive your conduct is—

Mr Quaedvlieg: Other than that we categorise by particular uses of force, and where restraints are actually used they are recorded as use of restraints.

Senator PRATT: Yes, and that is why perhaps I might ask you for the statistics on restraints specifically.

Mr Quaedvlieg: Sure, we can take that on notice.

Senator PRATT: If your data shows that the rates of minor assault, sexual assault, and threatened and actual self-harm has fallen—is that the case?

Mr Quaedvlieg: Yes, by a significant proportion.

Senator PRATT: And this is at the same time as the use of force or restraints has increased. So, in what way are those two linked? I find it hard to understand that you would need to use force if those things are going down.

Mr Quaedvlieg: I think the latter is a subset of the former. So, by having a much more professionally run custodial setting we are reducing those incidents that you describe. But it is not just by use of force. It is putting ABF superintendents in charge. It is about holding the contractors in Serco to their contractual obligations about providing better recreational amenities. It is about better placement models in terms of moving cohorts around that may be at risk to each other. It is a holistic approach to running a custodial setting of which use of force is simply one subset.

Senator PRATT: Okay. Can you explain what a dry cell is?

Mr Quaedvlieg: In custodial settings a dry cell arrangement—and this occurs at airports as well—is where a detainee is suspected of having contraband either on their person or internally ingested—that is, drugs swallowed. If they are put in a wet cell where there are ablutions and amenities which allow flushing, then the evidence of that contraband can be lost. So, a dry cell—and we do not run dry cells, just for the record.

Senator PRATT: You do not have them?

Mr Quaedvlieg: We do not have them. There was one occasion where a dry cell practice was undertaken by one of our officers, who was not aware of our policy, and that has
subsequently been sanctioned and remediated. But we do not run dry cell operations where
the intent is to recover the contraband from the detainee.

Senator PRATT: So there is only one person who has been placed in a dry cell in recent
times.

Mr Quaedvlieg: That is correct.

Senator WATT: You said that you do not run them, simply where someone is suspected
of holding contraband?

Mr Quaedvlieg: We do not run them—full stop.

Senator WATT: That is what I was going to ask.

CHAIR: What is a dry cell?

Mr Quaedvlieg: It is where a person, who either has drugs on their person, internally
concealed in one of their cavities or ingested, is put in a cell in order for that contraband to
pass through the digestive system, rather than being able to flush it.

Senator PRATT: So there is one incident and the one incident only.

Mr Quaedvlieg: Yes.

Senator PRATT: Is that the incident reported in the media, where a female detainee was
locked in a dry cell for several hours?

Mr Quaedvlieg: That is correct.

Senator PRATT: Can you explain the circumstances?

Mr Quaedvlieg: She was the suspected of holding contraband. She was placed in a dry
cell in the hope that she was going to give that up. She eventually did. I think it was a small
quantity of drugs. But in subsequent auditing we found that the dry cell methodology was
used and that was inappropriate. We do not run dry cells. It is not our policy. And the
appropriate sanctions and remedial training was implemented.

Senator PRATT: Was that on the basis of advice from the Australian Solicitor-General?

Mr Quaedvlieg: We may have got some legal advice at the time, but in general terms it
was a policy decision made by me. I do not think that it is an appropriate practice in our
current custodial setting.

Senator PRATT: Have you had any lawsuits or civil suits relating to the use of dry cells?

Mr Quaedvlieg: Not that I am aware of, but I will check with our general counsel. No;
she is shaking her head.

Ms Connell: We will take it on notice.

Mr Quaedvlieg: I am being cautioned by our chief operating officer not to be so
definitive!

CHAIR: Don't worry there will be some solicitors watching this and they will take it up
and then they will come before a Senate inquiry!

Senator PRATT: Do you to use wet cells and, given that there has been an inappropriate
use of dry cells, have you reviewed your wet cells to make sure that they are appropriately
used?
Mr Quaedvlieg: Let me clarify: there has been one incident of the use of a dry cell—so is not plural. Secondly, a wet cell is just a cell with amenities. It is not a methodology that we use.

Senator WATT: During that incident where it did occur for how long was the woman concerned kept in a dry cell?

Mr Quaedvlieg: I am advised that it was for two hours.

CHAIR: So if you don’t use dry cells where do you hold people while they pass ingested drugs, which are being criminally brought into our country?

Mr Quaedvlieg: We do not. It is one of those issues about an appropriately run and governed custodial setting, which concerns me a lot. Contraband is brought into custodial settings all around the country. It is smuggled in and on a number of occasions it is smuggled internally and it is passed—

CHAIR: Sorry, I missing something here. You said that dry cells were to put people in if they were suspected of having ingested drugs, and you have held them in this room, I assume, until they passed whatever it was. If you do not have that room how do you hold people—

Mr Quaedvlieg: We do not. We forego the evidence because we do not have the statutory power to do it and it is unacceptable. I am again reviewing legislation because I think—

CHAIR: So if I want to bring drugs in I just swallow them and know that you will never be able to—

Mr Quaedvlieg: That is correct.

CHAIR: And if you stop me I can sue you, even though I am in a criminal bringing in—

Mr Quaedvlieg: Yes, you are reliving my frustration, Senator—

CHAIR: I can’t believe it!

Mr Quaedvlieg: But I am looking at it in a very tempered way because I do believe that custodial settings ought to be safe and contraband, including drugs, in those settings, which are also a currency and affect the health of our detainees, is not appropriate.

CHAIR: I cannot believe what you are telling me. You do not have power—

Senator PRATT: There is good reason for these sorts of rules, because you need to be able to make a reliable judgement one hundred per cent of the time about who would be able to—

CHAIR: These are criminals bringing illegal drugs into our country and we cannot hold them until they might pass naturally whatever they might be—

Senator PRATT: There are a lot of people who have been inappropriately subjected to such searches over time and that is why these—

CHAIR: So we let all the criminals go because a few are inappropriately—I cannot believe what you are telling me.

Mr Quaedvlieg: Senator, I am not sure that assertion about lots of people being subjected to that is correct—not in my time.

Senator PRATT: No, I am not talk about immigration specifically.
CHAIR: Thank you for clarifying that. I certainly would hope, Minister, that you might assist the commissioner in looking at that. That to me seems just unbelievable, and I accept your frustration.

Proceedings suspended from 18:29 to 19:32

CHAIR: I will declare reopened this meeting of the Senate Legal and Constitutional Affairs Legislation Committee dealing with the 2016-17 additional estimates.

Ms Connell: Chair, Mr Pezzullo is going to be late. He is caught up in meetings. He will join us as soon as he can.

CHAIR: That is fine. Thank you very much for that. We were talking about the dry cell issue before the dinner break, and I expressed my amazement. When you suspect someone of carrying drugs internally, in one's person—as I always say in these things, I do not want you to go into any detail that will help the criminals—I take it you only ask people about these issues when you have reasonably good information from one source or another that they have ingested drugs.

Mr Quaedvlieg: Yes. For purposes of clarity—it was probably my fault for allowing a conflation of a couple of issues—I need to separate the powers and actions we can take at the border from the powers and actions we can take with detainees in detention centres. My assertions around our statutory authorities and capabilities in the detention centres is what I was referring to. In the border space, where we have an inbound passenger who we suspect of internally concealing drugs we have quite strong and very well rehearsed—indeed decades old—legislation that enables us to detain that person, to place them in a dry cell type of environment and to conduct investigations.

To answer your question more exactly in relation to how we identify those people, it is both intelligence—we may know of individuals who we know or suspect are involved in drug trafficking of that nature that we will place an alert on as they come into the country. We identify them coming off planes or cruise liners, as it may be, and we can undertake those actions I just described.

In some cases, it is a more generic profile, so someone who may, through their travel routing, through their demographic characteristics, their point of embarkation—all of those things in combination—put them at a higher-risk category of someone who may be carrying drugs. For instance, young backpackers, who have recently been in Bogota, Colombia, who come straight to our country from South America, may fit one of those profiles that we will then do an assessment of.

Then, at the last end of the layer, we have officers who are trained who conduct what we call real-time assessments. They will look at the arriving passengers, look at the way people behave, what indicia they may be displaying and make a judgement, or have a suspicion, that the person may be concealing drugs internally. That enables them to trigger some of those statutory powers and take the actions I described.

CHAIR: So you do have the power to detain people at the borders in what has been referred to as dry cells or dry cell equivalent?

Mr Quaedvlieg: That is right.

CHAIR: What is the opposite to dry cell? Wet cell? What is a wet cell?
Mr Quaedvlieg: There is not really an opposite; I think that is just a bit of a misnomer. We can keep people in what is called high-care accommodation where they are under observation. They still have access to flushing toilets et cetera, but we place them under, essentially, 24/7 surveillance until they either give up the drug or it is passed in a way in which we can then retrieve it. So it is not really an alternative but it is another methodology by which we can seek to recover evidence of drug carrying.

CHAIR: And you have full powers to do that?

Mr Quaedvlieg: Yes, we do.

CHAIR: I do not want to get into a biology class here, but what—24 or 48 hours would be normal for those things to pass through the body?

Mr Quaedvlieg: Normally, it occurs within a period of some hours after their arrival because, quite often, they have travelled a long way to come here. One of the advantages we have over other countries is that there is a lag time before people arrive. So quite often, if we have a positive internal concealment, its passing occurs within hours. Occasionally, it does not for all sorts of complications and other reasons, and these internally concealed packages may rupture and cause significant health consequences to the person ingesting them, but it is normally within hours that it is passed and we are able to retrieve it.

CHAIR: You mentioned there is an assessment made at the end of the process by trained officers who say, 'Yes, let's keep that person for further investigation.' This is a bit crude, but do you have a success rate? Is it 50 per cent, 20 per cent?

Mr Quaedvlieg: I am not sure what the conversion rate of success is, and it would depend of course on whether the officers acted on intelligence. Often intelligence-cued activity has a high hit rate, because intelligence is more reliable and it has come from other sources or we value-add in terms of the analytical process. In terms of what we call the real-time assessments, I do not know the conversion rate, but our officers are quite skilled and often the indicators are quite common: distended stomachs, perspiration, nervous behaviour—all of those things that you would anticipate.

CHAIR: I always make sure I smile and look relaxed as I come through border control.

Mr Quaedvlieg: Sometimes that is a giveaway in itself, Chair. We are suspicious of the traveller who, after a long haul, looks very happy.

CHAIR: Just passing to the other scenario: were you saying where you did not have powers for dry cell was in detention centres?

Mr Quaedvlieg: Yes, nor do we have general detention powers for the purposes of retrieving evidence of drug ingestion. We do not have them in our detention centres.

CHAIR: Why would people in detention centres ingest drugs?

Mr Quaedvlieg: It could be for any variety of reasons. They may have been out in the community during the course of the day, for treatment or some recreational activity that they were prescribed. They may have procured the drugs during the course of the day, but obviously they are concerned about it being detected so they may ingest it, hoping to pass it once they are back in detention centres. They may have received it during visitations from families and friends, in a general communal area, where they know they are being surveilled to some degree, but they have some room for movement for ingesting those drugs for
concealment to then access later on. So, it can be any number of reasons. They may think that their cells are about to be searched, which we can do, and in order to preserve the drugs or conceal them they may ingest them to pass later.

CHAIR: So, even if you actually saw someone ingesting what looked very much like drugs, you are powerless to do anything about it?

Mr Quaedvlieg: We can, as I indicated, keep them in high-care accommodation, monitor them and monitor their attendance at the toilet to ensure that we preserve the evidence. But we do not have restraint powers, and we do not dry cell them, as I indicated. So, our powers are somewhat limited in that respect.

CHAIR: The instance in which you said an officer mistakenly, because he did not know the policy—was that in a detention centre?

Mr Quaedvlieg: Yes, it was, and as I understand it that officer—and I would stand to be corrected—came from a correctional services environment, where this practice is common, and they have state powers to do it, and assumed mistakenly that it was also the same statutory power and policy of the department, but it is not.

CHAIR: Are you certain that some of the states in correctional service institutions actually have that power?

Mr Quaedvlieg: I am confident, but it may vary from state to state or territory.

CHAIR: I was going to ask whether you or your general counsel could take as a question on notice to just refer me to some state legislation where—

Mr Quaedvlieg: I can do that, but I can also give you, on notice, our statutory provisions which enable us to do that at the border.

CHAIR: Would the same legislation apply within detention centres as would apply at the borders?

Mr Quaedvlieg: No, it does not.

CHAIR: Sorry: the wording of the statute that allows you to do it at the borders—if that were used in a context of detention centres, would that be sufficient without—

Mr Quaedvlieg: Potentially not. The border powers relate to actions enabled to be taken under the Customs Act, which is about the prevention of prohibited goods coming into the country, whereas the detention centres are operated under the Migration Act, so they are different statutes.

CHAIR: You were asked whether there were any legal actions being taken by detainees for being put into dry cells, and the answer of course is no, because you do not do it, except on this one occasion. And I think you said that on that one occasion there was not any legal action.

Mr Quaedvlieg: Well, there was not, but I was admonished by my chief operating officer in the break saying that I should not have been as definitive and they would like our counsel to check whether there is a litigation in place or not. But I have taken that question on notice.

CHAIR: It is just that I would be curious as to how someone who was perpetrating if not a crime then a misdemeanour could sue the authorities for trying to expose this crime or misdemeanour, depending on how it is classified. I guess there are some lawyers around who
would make a field day out of it. But you cannot help me on that, because it has not happened to you.

Mr Quaedvlieg: Not that I am aware of, no.

CHAIR: And you have taken that on notice. It is all a bit hypothetical, so perhaps I will not take that any further. That is my 15 minutes, so, Senator McKim, you were next.

Senator McKIM: Ms Moy, I think my questions on offshore matters would be in your area. Is the department aware whether there are any people seeking asylum or people who are classified as refugees who are currently being held in prison on Manus Island or Nauru?

Ms Moy: I will ask Acting Deputy Commissioner Woodford-Smith to provide a response.

Mr Woodford-Smith: Right at the moment I am not aware of anyone who is actually in jail. I am aware that from time to time there are certainly people from the centre—transferees, asylum seekers, refugees—who have been imprisoned. But I cannot give you a definitive answer right now as to how many might be jailed at the present time.

Senator McKIM: Could you take that on notice and perhaps if you would go back 12 months for the committee. I am not after names, but would be after reasons and length of sentence, or length of incarceration if it were a remand issue.

Mr Woodford-Smith: We will do the best we can. I just want to caveat it. Because it is the sovereign government of New Guinea or Nauru we do not necessarily get the visibility of that—so it is more ad hoc.

Senator McKIM: I understand that, so I am happy to ask: to the best of the department's knowledge—just stuff that you may have become aware of during discussions with either of those two governments.

Mr Woodford-Smith: Okay.

Senator McKIM: I want to ask now about incidents in the RPCs on Manus Island and Nauru. Would you be able to provide the number of minor, major and critical incidents over the last six months in both Manus and Nauru?

Mr Woodford-Smith: I do not have them broken down in that actual order. What I can say, though, is that we have recorded assaults, sexual assaults—sorry, assaults that are non-sexual—and that is probably about the degree that I have with me tonight.

Senator McKIM: Could you run me through those, and what period we are discussing here.

Mr Woodford-Smith: Starting with Nauru, and this will be for the period from 8 September 2013 through to 31 December 2016—

Senator McKIM: I am just wondering if you have figures that are broken down into shorter periods of time.

Mr Woodford-Smith: I might take that on notice if I can.

Senator McKIM: I am happy for you to take the total figures on notice, but could you also break them down into those categorisations in the last six months, for both Manus and Nauru?

Mr Woodford-Smith: Sure. I do have the figures since the last estimates. For Nauru, in the RPCs, assault-sexual: two events—
Senator McKIM: This is since September last year?

Mr Woodford-Smith: This is 1 October through to 31 December 2016. For assaults-sexual on a minor, there have been no incidents recorded since last estimates.

Mr Pezzullo: Over the time period.

Mr Woodford-Smith: Over that time.

Mr Pezzullo: Because I don't think estimates was on 30 September, if I recall.

Senator McKIM: That is right. These are from 1 October. So these are all from 1 October to 31 December.

Mr Woodford-Smith: Correct.

Senator McKIM: The last three months of last year?

Mr Woodford-Smith: That is correct.

Mr Pezzullo: The final quarter.

Mr Woodford-Smith: There were two assaults on adults, three assaults on minors, 37 incidents of abusive/aggressive behaviour and no reported incidents of antisocial behaviour.

Senator McKIM: Could you explain the difference between abusive/aggressive behaviour and antisocial behaviour.

Mr Woodford-Smith: In our later figures we are merging those two together. Antisocial behaviour does actually drift into the abusive/aggressive behaviour. It is more of a layman's definition, if you like, between what is abusive and what is antisocial. Antisocial may be throwing a dish or something like that in the mess.

Senator McKIM: Whereas aggressive behaviour will be throwing a dish at somebody in the mess.

Mr Woodford-Smith: Quite possibly.

Senator McKIM: Have you those breakdowns for Manus?

Mr Woodford-Smith: I do. Since last estimates for the period 1 October 2016 to 31 December 2016: assault sexuals, there were nine; assaults, eight; abusive and aggressive behaviour, 125.

Senator McKIM: Should we assume that the categories that you mentioned for Nauru but did not mention for Manus are at zero for Manus?

Mr Woodford-Smith: That is correct, so for antisocial behaviour, zero.

Senator McKIM: Assaults, sexual on a minor, zero on Manus.

Mr Woodford-Smith: Correct. There are no minors on Manus.

Senator McKIM: I understand, but just for the others, as well. Do you have comparative figures for the three months preceding.

Mr Woodford-Smith: I don't.

Senator McKIM: Could I ask you to take them on notice.

Mr Woodford-Smith: Yes.

CHAIR: Did you give them at last estimates?

Ms Connell: I cannot recall.
CHAIR: I would be surprised if you did not.

Senator McKIM: Before we broke for dinner, I was asking some questions around the boat that was turned back in March 2015. The department confirmed on notice off the back of my question in the previous estimates that the Australian government assisted the return of three people to Indonesia after their vessel broke down. We were talking about this sometime before dinner. I want to raise that again. There have been reports that some of the people returned have suffered harm in Vietnam. Some have been charged with offences, but detained in allegedly very poor conditions, and that others who were on that boat have fled the country—that is, Vietnam— for a second time. When this matter was raised in estimates in May 2015, just after the people were returned to Indonesia, Major General Bottrell told the committee that Australia had been given 'assurance from the government of Vietnam that there would be no retribution for their illegal departure from Vietnam.' How does the department or the government provide any mechanisms, whether they are enforceable or not, for Australia actually to assure itself that people are not harmed when they are returned as a result of Operation Sovereign Borders?

Mr Pezzullo: We engage in discussions with the relevant government, in this case the government of Vietnam, and we acknowledge and accept their assurances. Should matters arise, and you have made reference to a particular matter which I know was canvassed recently in one of the media outlets, we make further inquiries. From the advice I have—Mr Colquhoun will add to this advice—there has been no apparent breach of any assurances that I can detect. There was never a general immunity provided—I think General Bottrell made this quite clear—in relation to prosecutions that might, for instance, flow from the breach of the domestic laws of Vietnam. From the information I have before me I cannot see any apparent breach of any assurances, but Mr Colquhoun might add to that answer.

Mr Colquhoun: There is not a lot to add to it. We did receive a written assurance. Major General Bottrell said in his response, both in estimates and to a number of questions on notice, that people would not be penalised for their illegal departure from Vietnam but that Vietnam, like many countries including Australia, does prosecute people for organising illegal maritime ventures. So they did take prosecutorial action against the people who organised the illegal venture.

Senator McKIM: Are you aware of anybody, or are you as a department aware of anyone, that has been returned as a result of their boat being turned back or any other assistance from the Australian government who has been prosecuted or charged in regard to their illegal departure but has not been prosecuted as being an organiser—in other words simply for the fact of leaving illegally?

Mr Pezzullo: We will have to check the records. I am not aware of any cases where anyone has been charged and then prosecuted for the act of departure. The prosecutions that I am aware of—whether there is more than one, I just cannot quite recall—relate to the organisation of the venture in question.

Senator McKIM: Could I ask you to check that and come back on notice.

Mr Pezzullo: We will check that, indeed.

Senator McKIM: Thanks. If you need to take this on notice, obviously you can: could I ask whether people who have been returned, either through their boat being turned back or
through other means assisted by the Australian government, have been prosecuted for things
that they have told the Australian government they are fleeing from. In other words, if
someone is alleging persecution and they have been assessed at sea and found not to be a
genuine refugee and therefore returned, do you check those people to see whether in fact they
are being prosecuted for the very things that they have told they are fleeing?

Mr Pezzullo: General Campbell—going back two commanders—and General Bottrell, I
and others have made it clear we make assessments under Operation Sovereign Borders as to
whether such persons engage our protection obligations, and they are not, in any case, ever
returned or taken back if they engage protection obligations. Have there therefore been
circumstances where persons returned by whatever mechanism—I think you referred both to
turnbacks but also to all the other facilitated activities that might be in question here—is then
prosecuted, I think you said—

Senator McKIM: Yes, charged or prosecuted for the things—

Mr Pezzullo: I am not aware of any cases where that has occurred.

Senator McKIM: How would you know, Mr Pezzullo?

Mr Pezzullo: No such cases have been drawn to attention, but I will check to make sure
that our records do not suggest otherwise.

Senator McKIM: Do you have a mechanism to check that? I guess that is the
fundamental of my question here?

Mr Pezzullo: If a person has not engaged our protection obligations, and therefore there
are no assurances or undertakings that we have entered into, we would not ordinarily follow
through on matters in relation to which we have not sought assurances, no.

Senator McKIM: Thanks. Just one follow-up question to the line of questioning I was
engaging in earlier around the letters that have been sent out recently to a small part of the
legacy caseload. I think 879 was the number that was provided earlier today.

Mr Pezzullo: I recall that number, yes.

Senator McKIM: Has the department assured itself that there is actually enough capacity
in the legal support sector to enable all the people that the department has placed this new
restricted time frame on to actually get reasonable legal s

Mr Pezzullo: It is my understanding that the relevant sector of the legal profession is

Senator McKIM: They are trying to crowdfund for lawyers, actually, Mr Pezzullo.

Mr Pezzullo: Are they?

Senator McKIM: Yes.

Mr Pezzullo: There you go.

Senator McKIM: ‘There you go,’ is not really a satisfactory answer.

Mr Pezzullo: There is a form of mobilisation of effort, I guess.

Senator McKIM: Yes, but it is unfortunate that people feel they have to do that in order
to meet this quite short time frame.
Mr Pezzullo: They are responding as they see appropriate in regard to their civic duties, I suppose.

Senator McKIM: Or they are desperate.

Mr Pezzullo: And they are not to be condemned for that.

Senator McKIM: I am not condemning them. I am actually asking whether the department conducted any assessment or audit of the legal capacity in that sector before it issued notices to so many people.

Mr Pezzullo: Well, I am not sure that Mr Manthorpe would have done a sort of linear analysis of that, but perhaps he did, and he can illuminate me as well as you at the same time.

Mr Manthorpe: No, we did not do a deep analysis of that question. We are mindful that there are various entities out there that are providing support to asylum seekers, to the people in the IMA cohort. As I mentioned earlier, we have written the letters that we were talking about only to people who have had, in most cases, a year or more to apply. Those who are assessed to be at the more vulnerable end of that are entitled to assistance under the protection application scheme that we run. We provide information in language and other forms of support. We encourage people to engage with their SRSS provider. I would also make the point that while I can appreciate that many applicants might wish to have legal assistance, and whilst a lot is made of the length of the form that people are asked to fill in, in effect what we are seeking when someone is applying is a statement of who you are, where you are from and the nature of the claims that you are making, to commence a process that then has many steps in it to get to the other end. So, no, we have not sought to assure ourselves that everyone of those people can necessarily avail themselves of a lawyer.

Senator McKIM: I am not suggesting that you would actually even be able to do that. I was more suggesting whether you did any assessment of the broader capacity of the legal support sector that provides support for people seeking asylum to see whether there was the capacity in that sector to respond to what is a small part of the overall cohort but still quite a lot of people—nearly 900 people who have been given less than a month to make an application.

Mr Manthorpe: Sorry, Senator, I would correct that. We are giving people 60 days—60 further days on top of the—

Senator McKIM: So, there were no—

Mr Manthorpe: No, can I finish?

Senator McKIM: Of course.

Mr Manthorpe: We are giving people 60 days in addition to the 11, 12 or 13 months they have already had to apply.

Senator McKIM: I understood your answer earlier.

Mr Manthorpe: And in a number of cases those individuals have made contact with us and said: 'Look, got your letter. We're working on it. Can we have a bit longer?' And in some of those cases we have written letters saying, 'You can have a further 30 days.' So, that is the 30-day letter, as I understand it.

Senator McKIM: Would having trouble accessing legal support qualify as a reason for an extension?
Mr Pezzullo: Perhaps I could add to Mr Manthorpe's answer. What we are seeking is a very plain statement. I do not think the forms are excessively legalistic or complicated. Step 1 of the process is, tell us who you are, and what is the basis upon which you have come to our country seeking our protection? I am not sure that you need a lot of lawyers to assist with that.

Senator McKIM: Well—

Mr Pezzullo: There might be subsequent processes of admin review, merits review, judicial review, where it is entirely proper and fitting for lawyers to be involved. But the initial capture of the information—what is the thing that you are fearful of?—is a very natural question and one would have thought renders itself to very natural answers.

Senator McKIM: Well, it is a 65-page application.

Mr Pezzullo: It might well be lengthy, but—

Senator McKIM: Well, you can sit here and characterise it in 20 seconds if you like, but it is a 65-page application often for people who do not speak English as their first language, and some of them do not speak English at all.

Mr Pezzullo: I think you were advised about the language support that is provided. But in any event, we also have translators. And through these proceedings perhaps I can stress to persons who might feel anxious about this that the main thing we want to know is—in some cases you arrived over three or four or five years ago, depending on when the person arrived, and then the bar had to be lifted—what is it that you are fearful of? I would have thought that would be a straightforward, natural initiation of the exchange, and then subsequently absolutely complicated legal matters might well arise. And for certain members of the legal profession to perhaps suggest otherwise—that people are being denied their rights or somehow being coerced, compelled, put into a state of anxiety—is perhaps as much a reflection on what it is that that fraternity is saying, rather than what we are attempting to do. We just want to know who you are, why you are in our country and what it is that you are fearful of. We need to know so that we can start to assess your protection claims.

Senator McKIM: It is a 65-page application.

Mr Pezzullo: We might to strip the application form down, but it is a very simple set of questions, I can assure you. We are very keen to understand—because we are very serious about discharging our obligations under domestic law in relation to the refugee convention—what it is that has given rise to their founded or unfounded fear of persecution. It is very straightforward.

Senator McKIM: What is the current average length of time to process those claims?

Mr Pezzullo: Mr Manthorpe might have that data.

Mr Manthorpe: Yes, I do. You asked us that on notice last time, Senator McKim, and at that point we were not able to analyse the data in the detail that I think you were seeking. We have since done more work in anticipation that you might ask a similar question on this occasion.

Senator McKIM: Thank you.

Mr Manthorpe: I can tell you that the average time—you might recall that there is a so-called fast-track cohort and a so-called non-fast-track cohort. The non-fast-track cohort is averaging 308 days and the fast-track is averaging 247 days from lodgement. Incidentally,
circling back to the previous discussion, this highlights why we need to get to step 1. We need to at least get to the lodgement and to then start working our way through this process to get to an outcome for everyone concerned. So fast-track is 247 days and non-fast-track is 308 days.

Senator McKIM: Thanks. Can you just remind me of what the criteria for the two are?

Mr Manthorpe: Mr Mansfield might help me with the detail, but from memory the principal difference is actually about the appeal process that opens up after we have made our initial decision. In the fast-track process, if we find you are entitled to protection, you get a TPV or a SHEV, depending on what it is you have applied for, but if we find that you are not owed protection then your case is automatically referred to the Immigration Assessment Authority, an independent body that sits within the broader AAT, and they have a fresh look at it.

Senator McKIM: So that means that they would be regarded as a non-fast-track, does it?

Mr Manthorpe: No, that is a fast-track. It is fast because it is an automatic referral—except for in certain exempt circumstances, which is a minority of cases in particular circumstances.

Senator McKIM: Such as merits reviewing.

Mr Manthorpe: Yes, it is a merits review step that happens automatically and quite quickly, and the fast-track process is happening somewhat more quickly than the other formal merits review has traditionally.

Senator McKIM: What would a slow track or a non-fast-track be?

Mr Mansfield: I am happy to provide a bit more information. In relation to the fast-track process, on 5 December 2014 the parliament passed the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill to create a fast-tracked assessment process. Those laws came into effect on 18 April 2015, and processing commenced for that cohort on 1 July 2015, which is the date that the first state opted into the SHEV arrangement. The fast-track process allows protection claims to be assessed through that new review pathway that Mr Manthorpe was talking about before. It also has shorter timeframes for applicants to respond to requests for further information or to respond to adverse information. In terms of who is covered by that particular arrangement, that assessment process, it is for IMAs who arrived on or after 13 August 2012 and before 1 January 2014 who had not been taken to a regional processing centre and whom the minister had allowed to make a valid application by lifting the legislative bar that we talked about a bit earlier in the proceedings and had lodged their application on or after 1 April 2015, which is when the legislation came into effect. The minister can also bring other groups into that fast-track process. Effectively, the non-fast-track process is groups that arrived before that time.

Senator McKIM: Thank you. Those figures you gave earlier—237 days and 308 days—are they the average time for those two categories?

Mr Mansfield: That is right.

Mr Manthorpe: Many numbers will bounce around as we go through the process, but I think they will shorten because we have done a lot of work internally to, as much as we can, find ways to improve the efficiency in the process.
Senator McKIM: We did speak about that last year. Thanks. Given that we are looking at anywhere from two thirds to three quarters of a year—potentially more—for the non-fast track, what is actually the urgency then? Why is it so urgent that people apply? Perhaps, in answering that, could you give us the current backlog—that is, people who have made application but have not yet had a determination made?

Mr Manthorpe: As at 31 January, in the total caseload of 30,880, 8,682 cases have been decided—so about 28 or 29 per cent—and 10,614 cases are on hand with the department with—

Senator McKIM: Sorry: by on hand, you mean an application has been made but there has been no determination?

Mr Manthorpe: That is right. We are at various stages of processing those, and 11,548 are yet to apply—that is 37 per cent. Some of the people who are yet to apply have only recently been invited to apply, so they are not the people who are getting letters. We are seeking to encourage those who have been in the process for a longer period to apply.

Senator McKIM: As a result of these letters, if people do not make application within the 60 days or if they do not seek an extension for whatever reason, is it an automatic termination of their right to apply as far as the department is concerned?

Mr Mansfield: Their payments, if they are receiving SRSS payments, are ceased. If their bridging visa—

Senator McKIM: Could I just stop you there, Mr Mansfield—sorry, I do not mean to be rude. Doesn't the letter tell them that their support payments have ceased?

Mr Manthorpe: The first letter tells them that that is one of the consequences that will occur.

Senator McKIM: And the second letter—

Mr Manthorpe: And then we will write to them again and tell them—

Senator McKIM: After the expiration of the 60 days?

Mr Mansfield: Correct.

Senator McKIM: And you tell them that their support payments have been ceased. Thank you.

Mr Mansfield: Correct. Depending on their current bridging visa arrangements, where their bridging visa comes to an end—that is, it ceases or expires—then our expectation would be that they would cooperate with the department and engage with the department in their status resolution process. It is open to the minister to—we talked about the bar being lifted to allow an application to be made—reintestate that bar, which would prevent an application being made for a temporary protection visa or Safe Haven Enterprise visa. That is a discretionary power of the minister.

CHAIR: Senator McKim, I am sorry: I have given you inadvertently 25 minutes—

Senator McKIM: You have, Chair. I was just maximising my advantage there. You can't blame a man for keeping on going when—

CHAIR: I am surprised you did not alert—
Senator PRATT: Can we move onto the next outcome, which means we have exhausted this one?

Senator McKIM: Nearly.

Mr Pezzullo: I was surprised, Chair, when the Loony Tunes warning tone went off. Perhaps you were otherwise distracted.

CHAIR: That is the problem: it did not go off, because I did not set it.

Senator McKIM: It went off all right: don't worry about that, Chair; I just ploughed on through it.

CHAIR: Did it go and I didn't—

Mr Pezzullo: It did, Chair. I was looking—

Senator PRATT: We are very keen to move on to the next outcome.

CHAIR: Senator McKim, do you have much more in outcome 1?

Senator McKIM: I do not have much more. I can indicate that I am nearly done but I will try—I am happy to—

Senator PRATT: Provided we get out a proportion of the next outcome. If we get the next half an hour or three quarters of an hour, then—

CHAIR: You can have 15 minutes and then back to you.

Senator WATT: Senator McKim might be waiting a little while.

Senator PRATT: We have definitely got three quarters—okay.

CHAIR: Anyhow, Senator McKim, on the basis that you will not be more than five minutes, we will allow you to continue and finish, hopefully, outcome 1.

Senator McKIM: I am not sure I can do five, Chair, but I will do my best. Do you have a protocol that relates to the handcuffing of detainees during transfer?

Mr Pezzullo: I might ask the commissioner to speak to detention and transfer arrangements.

Mr Quaedvlieg: Yes, we do. Each detainee and their transfer between centres, or out in the community and back into the centres, are individually risk assessed in terms of their propensity to escape or commit harm. On the basis of that risk assessment, a decision will be made in relation to restraint.

Senator McKIM: Is that a written protocol?

Mr Quaedvlieg: Yes, it is.

Senator McKIM: Is there a problem with providing a copy of that to the committee?

Mr Quaedvlieg: In general principle, no. But I will caveat that as per usual: if there is an operational methodology that I do not think should be in the public domain, I will extract that out. But in general terms, no. I do not have an issue. I will take that on notice.

Senator McKIM: Thank you. It is just that there is been an allegation made that a detainee was flown from Sydney to Christmas Island via Melbourne and Perth without getting out of handcuffs once. I do not know how long that would take, but that is an inordinately long journey to not be released from handcuffs at all.
Mr Quaedvlieg: That is possible. Without knowing the incident, if an individual is going to Christmas Island, it is highly likely they are of a high-risk behavioural profile. The safety and security of the aircraft and its crew, escorting officers and, in fact, the detainee—himself or herself—would be paramount to that decision. It is possible.

Senator McKIM: Why wouldn't—for example, without going into the specifics of the case—you break the journey halfway through and put the person in a detention centre for the night where they can get the cuffs off and get a feed into them?

Mr Quaedvlieg: Potentially, that could be done. I suspect there are logistical issues. Sometimes these transports are done on charter planes; sometimes they are on commercial arrangements. It just depends what is available in terms of transport.

Senator McKIM: You have agreed to take on notice the provision of the protocol—thank you. I presume that you would argue that the UN's Basic Principles for the Treatment of Prisoners and the International Covenant on Civil and Political Rights were all considered during the formulation of that protocol—

Mr Quaedvlieg: Yes.

Senator McKIM: and you would argue that it is in accordance with those instruments?

Mr Quaedvlieg: Absolutely. In fact, our detention centre superintendents and staff receive training from the Human Rights Commission on these very issues. We have inculcated that into the curriculum of our officers' training.

Senator McKIM: This is probably one for you, Mr Pezzullo. I know you are engaged there slightly with your device. Are you with us?

Mr Pezzullo: I am listening intently as you work through your—

Senator McKIM: I just did not want you to fall into the trap that the Chair fell into earlier. You would be aware of the UN Special Rapporteur on torture's report in January of this year—only a few weeks ago—recommending that Tamils should not be returned to Sri Lanka because of concerns about torture?

Mr Pezzullo: There are quite a number of Special Rapporteur reports. I would have to refresh my memory. Who was the rapporteur?

Senator McKIM: I do not have that in front of me at the moment, but I happy to provide that to you.

Mr Pezzullo: I am listening intently as you work through your—

Senator McKIM: I do not have that in front of me at the moment, but I happy to provide that to you.

Mr Pezzullo: I will refresh my memory. I might have seen some reporting about it, but I do not want to mislead you into thinking that I have.

Senator McKIM: That is okay. Perhaps if I could ask you to take on notice, in the context of refreshing your memory: has the department updated its guidance to DIBP officers to reflect that? Perhaps you could answer that in general terms: when there is a report such as that from a Special Rapporteur on torture is that information conveyed to people, for example, doing on-water assessments?

Mr Pezzullo: There is a standard process that we share with the Department of Foreign Affairs and Trade. Perhaps Mr Mansfield will return to assist me. Country guidance is periodically reviewed. I do not know as a matter of fact. I would have to take it on notice as as to whether every UN report that may have a bearing is scrutinised in the preparation of revised country guidance. Perhaps Mr Mansfield knows, but otherwise we will take it on notice.
Mr Mansfield: We very, very regularly update country information. In fact, it is pretty close to real time. If there are significant reports by the UNHRC, other UN groups or, indeed, partner countries with whom we share country information, then that is reflected in the most up-to-date guidance. I do not particularly know whether that particular report is reflected in the most recent guidance, but I am aware that our Sri Lankan guidance has been updated within the last month.

Senator McKIM: Does that update offer guidance that no Tamils should be returned to Sri Lanka?

Mr Mansfield: I think the picture is more complex than that, but I will take on notice whether that particular report is currently reflected in our guidance.

Senator McKIM: Could you also, as part of that, please tell us how many Tamils who have fled Sri Lanka have been given negative refugee status or determinations?

Mr Pezzullo: Over what time period?

Senator McKIM: Perhaps the last 12 months.

Mr Pezzullo: We will take that on notice. Who have fled Sri Lanka?


Mr Pezzullo: Because they are two different questions. We will look at both.

Senator McKIM: I will ask similar questions in relation to Hazaras who have originated in Afghanistan—obviously the situation is deteriorating quite significantly for Hazara people in Afghanistan. Would you be able to provide a synopsis of the latest country information guidance provided to DIBP officers on the issue of persecution of Hazara people in Afghanistan?

Mr Pezzullo: I will take it on notice in the same way that we have taken the Tamil question on notice.

Senator McKIM: Ms Moy, do you have here or could you take on notice how many children have been referred by doctors for transfer to Australia for further medical investigation including for sexually transmitted diseases?

Ms Moy: No, I do not have those figures with me but I can take it on notice.

Mr Pezzullo: Over what time period?

Senator McKIM: Perhaps if you could provide a per year figure over the life of the Nauru centre, and specifically if children are diagnosed with sexually transmitted diseases or potential STDs, if they are not returned to Australia why not. Again in regard to offshore medical services, IHMS are the provider for both Manus and Nauru, is that right?

Mr Pezzullo: They are at both locations, yes.

Senator McKIM: We hear stories quite regularly through people in direct contact with detainees that IHMS rejects detainee requests for treatment. I wonder whether there is any protocol in place or contractual obligation in place on IHMS to actually assess a detainee if they are alleging that they have a medical complaint, and within a particular time frame.

Mr Pezzullo: It is a contractual matter, principally. The person best placed to answer that is the division head who runs the contracts, so I might ask Mr Nockels to join us.
Senator McKIM: I acknowledge that some of these questions might overlap with the other inquiry that I think Mr Nockels and Ms Moy have appeared before.

Mr Pezzullo: The Senate inquiry?

Senator McKIM: The Senate inquiry into allegations.

Mr Nockels: Senator, could you repeat the question, please?

Senator McKIM: I was wondering what the contractual obligation on IHMS is to actually see a detainee within a particular period of time, if that is the case, when they allege that they have a medical problem.

Mr Pezzullo: Just in terms of terms—I do not want to split hairs here, Senator; please do not think I am doing that—there is a different legal regime that attaches itself to those who are refugees living in the community, so that is one category of persons. Are you asking about both locations, by the way?

Senator McKIM: Yes.

Mr Pezzullo: So there are refugees, there are transferees who are still subject to determination and there are no persons formally detained at either location because both centres are now operating on an open centre model. I will ask Mr Nockels to answer your question in the broad, inclusive of both refugee health and transferee health.

Mr Nockels: If an individual presents to IHMS, and it will really depend on the medical condition—if it is an emergency then 24/7 care is provided at both centres, Manus and Nauru. Obviously, individuals would be seen immediately if that were what was required, based on their presentation in terms of medical condition. If it were not an emergency, they would contact IHMS and book an appointment. Then, obviously, they would be fitted in and would be seen again, depending on the contact and the condition, within days or hours. It really just depends on the medical condition.

Senator McKIM: So there are no specific time frames in the contract? What are the terms of the contract that oblige IHMS to see the detainees who present with a medical condition?

Mr Nockels: It would be 72 hours. If somebody lodged a request to see a doctor or a nurse, 72 hours is what we look for from our service provider.

Senator McKIM: And that is a contractual obligation on IHMS?

Mr Nockels: Yes.

Senator McKIM: Are there provisions for people to be seen sooner if their condition demands it?

Mr Nockels: Most definitely. As I mentioned before, medical care is provided 24/7, so it would have an emergency doctor or paramedic who would be able to see somebody if they had a fall or had a broken bone or something like that that required immediate review from a clinician.

Mr Pezzullo: Just so that we are not drifting into potential misunderstandings here, are these standards applicable differently as between refugees and transferees? You might just illuminate that point for the senator.

Mr Nockels: Yes, I am talking here about the health care that is provided in the centres.

Senator McKIM: As opposed to people who are living—
Mr Nockels: To asylum seekers—transferees—in the centres, and some refugees who may be in the centres. For instance, in the Manus context, a significant number of people in the centre there are refugees, so they would then access the health care I have just described.

Mr Pezzullo: Conversely, in Nauru a good proportion of the refugees are actually living in the community. So we are giving an answer with that caveat, that's all.

Senator McKIM: I understand that. Do we know how many detainees are currently being prescribed anti-depressant drugs?

Mr Nockels: I do not have that detail.

Senator McKIM: Is that something you would be able to—

Mr Nockels: I will take that on notice.

Senator McKIM: Thank you. And if there is a subset, could you provide the number of children currently being prescribed anti-depressant drugs. Thank you. Are the funds that have been provided to IHMS for medical care of detainees reducing over time? The number of people in the camps is reducing.

Mr Nockels: IHMS is in a similar way to, say, BRS around banding. It is structured differently. In terms of overall funding, I would have to check if that has gone down, but my gut sense is that it has not. We would have to take that on notice.

Senator McKIM: Who has ultimate legal responsibility for the medical care provided by IHMS staff to transferees on Manus Island and Nauru?

Ms Moy: Can I ask what you mean by legal responsibility.

Senator McKIM: Who has the ultimate legal responsibility. I mean, if someone wanted to sue someone for alleging inappropriate medical support from IHMS, who would have ultimate legal responsibility?

Mr Pezzullo: The applicable laws of Papua New Guinea and Nauru are the relevant laws.

Senator McKIM: Yes. But who would have the ultimate legal responsibility?

Mr Pezzullo: It would be a matter that would arise under their laws. So it would be specific to the case. You mentioned suing people, so that would—

Senator McKIM: I was trying to assist you in answering—

Mr Pezzullo: Indeed, you have assisted me, because for someone to be sued there has to be some basis of negligence or alleged negligence, so you would have to look at the case on its face, and consequences would flow from that.

Senator McKIM: Connect Settlement Services has opted to withdraw from providing settlement services in Nauru by the end of the year. Is that correct?

Ms Moy: Connect Settlement Services finished in December last year.

Senator McKIM: Sorry, wrong year. Thank you. What is happening there now in terms of the provision of the services that were provided by Connect?

Ms Moy: Nauru has made arrangements with a further provider, named Host, which is delivering complex case management services, employment services and transition case management to refugees. They are similar to the previous services offered by Connect, but also taking into account that there are a number of services that were previously offered by
Connect which are no longer required, given that a number of refugees have been living in the community for a longer period of time and do not need the orientation arrangements that once would have occurred prior to an open centre.

Senator McKIM: Just to be clear: are you saying Host is contracted to the Nauruan government?

Ms Moy: That is correct.

Senator McKIM: Are you aware of the terms of the contract? Do you have to satisfy yourself that the contract provides for an adequate standard of support?

Ms Moy: Yes, we have assisted the government of Nauru to undertake the arrangements.

Senator McKIM: And are you satisfied that it provides an adequate standard of support?

Ms Moy: Yes, I am.

Senator McKIM: Thank you. What is the term of that contract?

Ms Moy: The term of the contract at the moment is 12 months.

Senator McKIM: From?


Senator McKIM: Mr Pezzullo, the special rapporteur is Mr Juan Mendez, for your information.

Mr Pezzullo: Thank you very much.

Senator McKIM: I appreciate if you have to take these on notice. I am wondering, in relation to children on Nauru, whether there has ever been a case where service providers have recommended be removed but they were not removed. In other words, where the service provider has recommended that the children, for example, be brought here to Australia for various reasons but they were not. How many and why, if that is the case?

Mr Pezzullo: I could only see that arising under the matter that you mentioned earlier about medical transfers, so we will look at it in the context of requests for medical transfers.

Senator McKIM: So you will look at that on notice?

Mr Pezzullo: In the context of the other question we took on notice about the repatriation or the return of children previously taken on notice.

Senator McKIM: Does the department have copies of the child protection policies of the various providers on Manus and Nauru?

Ms Moy: Yes, we do.

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

Ms Moy: Yes, we can.

Senator McKIM: That is all I have for this output group, thank you.

[20:32]

CHAIR: We now move on to outcome 2: support a prosperous and inclusive society, and advance Australia's economic interests through the effective management of the visa and citizenship programs and provision of refugee and humanitarian assistance.
Senator PRATT: I want to take us to the consolidated sponsored occupation lists. I understand there is a review underway currently. How often you brief the minister on that review?

Mr Pezzullo: Mr Wilden has been waiting all day to answer this question, so he finally has his chance.

Mr Wilden: The review of the consolidated skilled occupation list is being undertaken by MACSM, the Ministerial Advisory Council on Skilled Migration, not by the department. That report has not been finalised yet. I think it is close and, when it is finalised, that will be provided to the minister.

Senator PRATT: So you have not provided any briefing to the Prime Minister and Cabinet about your own views about that review?

Mr Wilden: I do not think we have, but I will confirm that.

Senator PRATT: Is it common for the department to receive complaints or requests for investigations into employers breaking the rules or rorting the CSOL jobs list to bring in overseas workers into positions that are not formally listed on that list?

Mr Wilden: We do get complaints of that nature whereby people would contest that the sponsorship obligation is to define the position and that the person who comes into that position must hold the requisite skills to do so. We sometimes get complaints, particularly in the more generic occupations—things like 'project manager—not elsewhere classified'—which tend to be a bit broader. Where it is brought to our attention that someone may be employed not undertaking those jobs, we take the appropriate review action.

Senator PRATT: How many complaints of that character have you received over the last five years?

Mr Wilden: I will take that on notice.

Senator PRATT: I would appreciate it if you could provide that year by year over the last five years.

Mr Wilden: Sure.

Senator PRATT: How many investigations have you undertaken in response to complaints?

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

Senator PRATT: Do other departments, including the tax office, provide assistance with those reviews or investigations?

Mr Wilden: As a matter of course, when an allegation like that comes up, we first of all have to look at what it is, and that will tell us. If it is an underpayment allegation that is not in line with the sponsorship record that says, 'We will be paying a salary of X', we may liaise with the tax office about tax records in order to check.

Senator PRATT: An underpayment might also indicate they are not doing the job they were employed for?

Mr Wilden: Potentially. It is one of the factors we would look into.

Senator PRATT: What would you learn from the ATO about whether someone is doing the job that you expect them to be doing.
Mr Wilden: Pretty much salary paid—as declared through their tax records.

Senator PRATT: The minister said he believes there are too many jobs listed on CSOL and is looking to consolidate and condense that list. Is there an indication of how many jobs could be removed?

Mr Pezzullo: I think, as Mr Wilden made clear, the minister has tasked his council. I think the acronym was used.

Mr Wilden: MACSM—the Ministerial Advisory Council on Skilled Migration.

Mr Pezzullo: I would be reluctant for any officer at the table to pre-empt the findings of an independent ministerial council.

Senator PRATT: You are not able to advise us on how many jobs might be removed or what consultation, if any, is going on with industry, business and unions?

Mr Pezzullo: As a result of this review? No, because the review is being conducted by the minister's independent council. It might well be that we are assisting with data. I presume we are assisting.

Mr Wilden: We are. We are providing reports, information on records and secretariat services to that council for their meetings et cetera.

Senator PRATT: What is the best way of us accessing information about that review?

Mr Pezzullo: We will take it on notice for the minister to consider. It is his council and I presume he will give consideration to stating something publicly once the review has reported to him.

Senator WATT: If the department is providing secretariat services to that council, and presumably doing a range of other tasks related to it as well, you must be aware of whom the council is consulting with?

Mr Pezzullo: We might well be aware, but, notwithstanding the privilege of the Senate, whether it is for us to reveal what the council's scheme of engagement is—that is something we would have to take on notice. It is a matter for the council.

Senator PRATT: From the point of view of estimates, this is the portfolio in which we ask these questions.

Mr Pezzullo: Indeed.

Senator WATT: Is Senator Cash aware as the minister representing?

Senator Cash: I will have to take that on notice and refer it to the minister.

Senator PRATT: If you can provide advice on how we can access that information, that would be useful.

Mr Pezzullo: I presume you are asking, so therefore we will see if we can give you an answer. Is that not the best way for you to access that information? I cannot think of any other way to give you the information.

Senator PRATT: Normally we would be able to ask, but it seems as if this portfolio question is almost not within the portfolio because it has been outsourced to a separate review.

Mr Pezzullo: The minister has asked an independent council to look at the matter, yes.
Senator PRATT: Are you making a submission to that review—if you are not formally part of it?

Mr Pezzullo: I will take some advice from Mr Wilden.

Mr Wilden: I would have to go back and check. I do not think, as part of a consultation, we have provided a formal submission. But I will take that on notice.

Senator PRATT: Either you are making a submission because you are not the review or you are part of the review—or you are not influencing it at all. Which is it?

Mr Wilden: We are providing support through the provision of data et cetera to that review. If along the way we are asked questions of clarity we provide that. But I will take on notice whether we have provided formal input to that review.

Senator PRATT: Whether you have or whether you will?

Mr Wilden: Whether we have.

Senator PRATT: Will you provide a copy of that submission to the committee, if there is one?

Mr Wilden: Again, I will take that on notice. My recollection is that we have not provided what you would normally consider to be departmental input to a review—as in, we have done a report that was tabled. It has been, to coin a phrase, more organic than that in that we have been providing data and support to help the council with their deliberations on—

Senator PRATT: Okay.

Mr Wilden: But the CSOL itself is a very broad list, literally lifted from ANZSCO level 1 to 3.

Senator PRATT: The character of your involvement in the review is administrative support and data support, not policy advice?

Mr Wilden: Correct.

Mr Pezzullo: As the secretary of the department I certainly would want to reserve the position of the department to reflect on the review. When, no doubt, it is reported to the minister I suspect he will send it to the department for advice and we will look at it then.

Senator PRATT: So you will not seek to influence it from a policy point of view until the review is completed?

Mr Pezzullo: It is an independent council. It would be better if they just came to their conclusions and then we will have our own view and we will give the minister the benefit of both our views.

Senator PRATT: Will the review be public before the department provides its own advice about what the findings are?

Mr Pezzullo: I would have to ask the minister that, because it will be a report to the minister. He may choose to release it at that time or he may choose to release it at some other time. I do not know—

Senator PRATT: He may choose to release it with or without your input, in terms of influencing the outcomes within it.
Mr Pezzullo: He will have the benefit of my advice in any event, and then how he comes to his own view about his council having given him advice and his departmental secretary having given him advice—that is how the ministerial advisory process works—he will come to a conclusion about where he stands on the matter. It is really a matter of the minister.

Senator PRATT: You have said that it is an independent review, but we do not know if it is finding will be independently released, without the department's influence?

Mr Pezzullo: When you say 'independently released' do you mean released publicly?

Senator PRATT: Released publicly without the department of influencing its findings.

Mr Pezzullo: I am trying to reconcile the two. Are you asking about when the report will be released or whether somehow we will influence it?

Senator PRATT: You have told us very clearly that you are not able to provide advice to us, because it is not your review. Therefore, I am asking if it will be released independently or will the review contain influence from the department?

Mr Pezzullo: I see. To paraphrase the exchanges with Senator Carr and others, if it were like an ANAO report—I do not really want to go back there!—if the council were to provide us with a draft perhaps, and the department was asked to provide its comments on the draft, is that within the terms of reference, Mr Wilden?

Mr Wilden: No, not specifically.

Mr Pezzullo: Well, there you go, so—

Mr Wilden: If the minister has asked for advice from his council on the current state of the 457 list, and if they have any recommendations to make changes to it.

Senator PRATT: But we do not know if those findings will be released independently, without influence from the department for the minister, ultimately.

Mr Pezzullo: It will be a report of the council. How the council comes to its own conclusions is really a matter that, hopefully, will be apparent on the face of the document itself. But it is a matter for the council.

Senator PRATT: Yes, it is a matter for the council, but it is not yet clear from what you said whether that is what will be made available to the public, ultimately.

Mr Pezzullo: I see. The report, if it were to be released—if it is released and when it is released—will it be somehow, I hate to use this term, doctored or manipulated?

Senator PRATT: Altered. Will you seek to influence it given that the process is currently separate from you?

Mr Pezzullo: I would reject any suggestion, any allegation, of doctoring any such document.

Senator PRATT: I am not saying that it would be doctored. You have told us that—

Mr Pezzullo: Sorry, amended—what is the right verb?

Senator PRATT: Will it ultimately be amended or changed by the department given that currently you are not seeking to influence its output?

Mr Pezzullo: It is a report of the council. We might even type it for them, I suppose, but we are not going to amend it—are we?
Mr Wilden: No.

Mr Pezzullo: There you go.

Senator PRATT: So it will be independently released, or will that be a question for the minister?

Mr Pezzullo: Not only will it be independently released, but it sounds like it will be independently written, independently typeset, independently laid out—

Mr Wilden: We may provide some drafting services through our secretariat function, but the recommendations will be those of the ministerial council. They will be provided to the minister and the minister will, as the secretary said, determine what to do.

Senator PRATT: If the minister has his own views about the report will he be taking advice from you to try and influence the report?

Mr Pezzullo: There will be no capacity to influence the report, as I have just established through the cross talk with Mr Wilden, other than maybe typing the thing—

Senator PRATT: It will be independent; all right.

Mr Pezzullo: Are you going to type it?

Mr Wilden: Not personally.

Senator PRATT: I think you have made it clear that it will be an independent report of the council.

Mr Pezzullo: The minister has asked his council to provide him with a view, yes.

Senator PRATT: Can you explain to the committee the process for applying to the department for a labour agreement?

Mr Wilden: I may seek some assistance here from my colleagues in the program management area. We are the policy owner. In terms of the labour agreements, there is a group of policy settings if you like around what can constitute a labour agreement in terms of occupations, salary rates and those sort of issues. There is a large body of information required as part of that application process and that can go to issues such as the make up of the workforce and what you have done to look for Australian workers in the first instance et cetera. Ms Dacey has just joined me; she looks after the labour agreement process in her area so she may be able to add a bit more richness to the reply.

Senator PRATT: Just to speed things up could you include, within your response, the requirements to consult, the requirements to advertise locally and the minimum requirements for advertising.

Ms Dacey: You can have a labour agreement in a couple of different ways. There are some industry templates or an individual employer can approach the department. The consultation requirements are between the employer and stakeholders, so the department does not actually consult, but we make an assessment of the consultation as part of our assessment. It will probably take different forms depending on the nature of the business.

Senator PRATT: What does the requirement to consult look like? Is it set out in guidelines and what do those guidelines say?

Ms Dacey: It would be, but I do not have that particular level of detail. There will be advice that we give to people as they make approaches and put their applications forward.
Senator PRATT: Are you able to provide a copy of the guidelines for consultation?
Ms Dacey: Yes. I will check and confirm for you on notice what the wording is that we provide to applicants.

Senator PRATT: The requirement to advertise jobs locally in Australia first?
Ms Dacey: We require applicants to provide us with advice and information and evidence that they have sought to employ people locally. That will take a few different forms—again, it depends on the sector, it depends on the job and it depends on the particular application.

Mr Wilden: Many of them choose to use a standard template that the department provides. That asks when did you advertise, where did you advertise, what was the response, how many people applied, how many jobs were offered et cetera.

Ms Dacey: Tell us what happened in the last 12 months when you tried to hire people; if you have been able to hire people, why have you not been able to retain people? It depends on the application.

Senator PRATT: Is that template a minimum requirement?
Ms Dacey: There are a couple of different ways that you can do this. There are some template agreements for certain sectors, which kind of set out standard clauses that we would expect to see for certain industries, but not every industry has one. I think there are half-a-dozen or so. I will get you the number. There are also labour agreements that you can have specifically around projects and there are very specific ones that you can have around employers who are not covered by one of those template industries. There are 10 templates for on hire, ministers of religion, the meat industry, fast food, dairy industry, fishing industry, pork industry, snow sport industry and the fine dining industry. If you are not in one of those sectors, you would have an employer-specific labour agreement.

Senator PRATT: I expect you would need a pretty high standard of advertising across the industry for things like fine dining. They are fairly common industries. What did you include—fine dining? What were the other ones?
Ms Dacey: Do you want me to read them out again a bit slower for you?
Senator PRATT: Yes.
Ms Dacey: We have industry template agreements for on hire, ministers of religion, the meat industry, the fast food industry, the dairy industry, the fishing industry, the pork industry, the snow sport industry and the fine dining industry.

Senator PRATT: In the cases of fast food and meat, are these generally in isolated areas?
Ms Dacey: You would think that they would be in regional areas. I can give each of those as a percentage of the total of labour agreements, if that would be helpful to you.

Senator PRATT: Yes.
Ms Dacey: On hire templates are 21 per cent of all labour agreements, ministers of religion are 16 per cent, the meat industry is 10 per cent, the fast food industry is five per cent, the dairy industry is four per cent, the fishing industry is four per cent, the pork industry is three per cent, the snow sport industry is three per cent and fine dining is one per cent.

Senator WATT: The highest one was 'on hire'. What sorts of things does that cover?
Ms Dacey: I knew you were going to ask me that! I am going to have to take it on notice.
Senator WATT: Given it is the biggest one, I would be interested to know.

Mr Wilden: Often it can be things like nurses who are coming through a third-party firm. As opposed to direct employers—

Senator WATT: So labour hire.

Mr Wilden: There would be a group like Hays Recruitment, for example. I do not know if they are actually involved, but they are a large firm who source workers for small industries, individual hospitals et cetera. So it can be any number of occupations, but they come through those third-party arrangements.

Senator PRATT: So why are businesses in meat processing, fast food or even fine dining seeking to get workers from overseas rather than employing locals? It seems to me that local training would be a better way to go.

CHAIR: Although I will be interested in your answer, this will be the last question for Senator Pratt. I could give her the answer, but I will leave it to you.

Mr Wilden: The templates that they fill in around searching usually highlight training. This goes back a few years, so it may not be current, but in the meat industry, for example, there are a lot of boners and slicers and a lot of them are in regional areas. The average workforce is around about 90 to 95 per cent Australian and about five per cent come in on labour agreements, for example. Snow sport is obviously seasonal and they need a lot of people for a short time of the year. It is the same with fishing et cetera.

Senator PRATT: Yes, it is difficult. That I understand.

Mr Wilden: So there are a range of circumstances, but you generally find that the labour agreement is providing a top-up to an Australian workforce, not replacing an Australian workforce.

Senator PRATT: Chair, with your indulgence, we did have an hour of questioning without any questioning from the Labor Party.

CHAIR: And the same with the Liberal Party. I am going to go to Senator Fawcett now and then I will come back to you after Senator Fawcett's 15 minutes. As part of Senator Fawcett's time, I have a question. Mr Wilden, you commented that in the meat industry most employees are Australian. You obviously have never heard from the Biloela meat factory, where I think almost 100 per cent are 457 visa people, because they simply cannot get Australians to work. In fact, that has been my experience in most meat industries, so I was surprised at your 90 per cent figure. Where does that come from?

Mr Wilden: As I said, that is from a few years ago. I can certainly attest, because I used to run this area, that in many other places they employ primarily Australians—up to 90 per cent are Australians and then 10 per cent supplementation. Maybe that it is only a couple of specific abattoirs, and I do not contest your view, but across the board I would be very surprised if it were close to 100 per cent non-Australian workers, unless it has shifted dramatically in the last five years.

CHAIR: You can only do that if you cannot get an Australian worker, can't you?

Mr Wilden: Correct, and to go to that level would require an awful lot of evidence for Ms Dacey's people to agree to it.
CHAIR: It is one of the great problems. Perhaps, Senator Pratt, you might visit a meatworks somewhere and ask them.

Senator PRATT: I have visited plenty.

Senator WATT: I have met with meatworkers who have not been able to get jobs in Rockhampton despite many overseas temporary workers being employed.

CHAIR: Well, you should send them to see me, because—

Senator PRATT: You can get them a job?

CHAIR: The owners of both those factories struggle, particularly at Biloela, which is—

Senator WATT: I am talking about Rockhampton.

CHAIR: Even at Rockhampton I understand there are a lot of 457s, simply because they cannot get Australian workers.

Senator WATT: That is what they say.

Senator WILLIAMS: It is the same in Inverell.

CHAIR: It is the same in Inverell and most of regional Australia. I do not know about the cities.

Senator FAWCETT: Ms Dacey, could I clarify a couple of things on the consolidated sponsored occupations list and the review. My understanding is that the current list allows people to sponsor someone out when they are in an occupation where there is not a skills shortage. Is that correct?

Mr Wilden: Under the CSOL?

Senator FAWCETT: Yes.

Mr Wilden: Strictly speaking, yes, because it is not a skill shortage list. It is a skilled occupation list. It is levels 1, 2 and 3 of ANZSCO, which is the Australia and New Zealand skilled occupation list produced by the Bureau of Statistics. Because of the huge variances across Australia in the nature of jobs and where there are skill shortages, since 2012, I think, we have kept the list very broad. We have basically lifted it out of ANZSCO so that where overseas workers are required for jobs they draw down off the list. But it is not at this point in time a list that focuses on where job shortages are.

Senator FAWCETT: So by having this review we can refine this so it is only applicable to those areas where there is a job shortage? That is the intent of the review—is that right?

Mr Wilden: That was one of the questions asked of the ministerial council by the minister—this very issue about the practicalities of a job shortage list or occupation shortage list.

Senator FAWCETT: I think Senator Pratt was asking before about foreign workers in fast food franchises. My recollection of the conversation was that they were here under labour agreements.

Ms Dacey: Yes, they are.

Senator FAWCETT: Can you tell us when those labour agreements were approved?
Ms Dacey: Fast food is one of the industry template labour agreements that I mentioned before. They account for about five per cent, and the overarching template agreement was established in 2012.

Senator FAWCETT: So under the Labor government.

CHAIR: It might be when they got the chief of staff on a 457 visa too.

Senator FAWCETT: Indeed. With those lower skilled jobs, I take it the intent of the review was also to highlight the need for employers to invest time in training locals rather than taking that 2012 template to employ people in jobs in places like Hungry Jacks or McDonald's?

Mr Wilden: That is an existing condition. Any 457 sponsor is required to meet their training benchmark. I would have to check my records, but that means one per cent of salary goes into an industry training fund or authorised body to ensure the training of Australians can occur. So that is an obligation of every 457 sponsor.

Senator FAWCETT: Could I take you to another visa category, looking at the temporary sponsored parent visa. Could you give us a bit of detail about what options are currently available for people to sponsor parents out to Australia?

Mr Wilden: To sponsor parents out to Australia, the only options available at the moment are in the permanent stream. There are several. I do not have the exact list. There are about four or five different categories, but they fall into two broad categories. One is what we call a contributory parent and the other is the standard parent. For a contributory parent, there is a significant financial requirement in place to help offset the costs of the parent during their time here. With the parent visa, there is no such obligation. It is a standard visa application charge, but there is a significant wait for them to come on that. As a sponsored visa, it is only in the permanent category at the moment.

Senator FAWCETT: What are the wait times at the moment for those?

Mr Wilden: I think for contributory parents it is up around the eight or nine month mark, and for the parent—Chris may have a bit more detail—it is multiple years. It is well in excess of 30 years, I think, last time I checked.

Ms Dacey: I am just checking for you, Senator, but I am pretty sure it is 30 months for the contributory parent and 30 years for the non-contributory parent. But if you give me a minute I will get it for you.

Senator FAWCETT: While you are looking for that, the other question I have is about the impact of the temporary visa mentioned by the government at the last election. Where are we up to with that?

Mr Wilden: That comes into operation, pending regulations passing, on 1 July this year. We are currently going through the details of the settings with the minister: what the full requirements would be, what the visa application charge would be and those sorts of issues. That is currently in progress and will be finalised soon to allow the regulations to be in place by 1 July.

Senator FAWCETT: What provisions have you made from the health perspective? People are often concerned about aged folk coming out and what the impact of that might be on the health system. Is there an insurance class or something available for that?
Mr Wilden: At this point, the minister is, as I said, yet to finalise settings. But there have been public statements made that the expectation is that it will be full private health insurance for the duration of their stay. The principle is that there will be no cost to the taxpayer through the public health system.

Senator FAWCETT: I assume there has been community consultation as part of this whole process?

Mr Wilden: There was. Minister Hawke personally ran—I think it was three—broad meetings. We also published a discussion paper. We received quite a number of submissions on what the conditions of the visa should be. I will just look to see if I have the number.

Ms Dacey: While you are looking for that, I can confirm that it is 30 months and 30 years.

Senator FAWCETT: The visa risk assessment capability—can you talk a little bit about the plans for how that will work and the roll-out et cetera?

Mr Wilden: Can you ask that again, please?

Senator FAWCETT: The plan for how it works, what outcomes it is intended to achieve and what the implementation plan is.

Mr Pezzullo: Mr Wilden and Ms Dacey do not have direct responsibility for that program. That is an intelligence related capability. I am not sure that any of the relevant officers are here this evening, and at this late hour I am not sure it would be reasonable to get them back. I can speak to it in general terms. In the current financial year—2016-17 and extending out over the forward estimates—the government funded a program of some $100 million that would significantly enhance our ability to risk assess whole classes of visa, as well as specific visa risk categories. It will be a combination of predictive analytics, parameters, profiling, algorithms and the professionalisation of relevant staff, as well as the consolidation of various data sources, of which watch lists are the most critically relevant. The client, as it were, of efficient and effective visa risk assessment is Mr Manthorpe, who has very kindly joined me at the table and can add to my high-level summary remarks.

Mr Manthorpe: The more you have said, Secretary, the less I can add. It is a $100 million program. It is on track. Our colleagues in the IT and intelligence areas of the department are on track with the roll-out of it. We are planning to start using it, at least in pilot form, to assess risks against particular visa categories during the course of this year. It will progressively lift our capacity to spot visa applicants we need to have a closer look at—and, conversely, accelerate the speed with which we can process visa applicants that are at the lower risk end. We have done risk analysis and risk assessment of visa applicants for a long time but never in a way that has adequately joined up all the different databases, different technologies and different data sets available in the organisation, let alone data sets that might sit in other portfolios. The visa risk assessment investment is an absolutely critical step, a big step, in that direction.

Mr Pezzullo: For the interest and benefit of committee members, perhaps the cutting-edge element of it can be briefly described, not so much in its classified applications but in general terms. The program has been charged to look at the most advanced, cutting-edge, artificial intelligence capabilities that are available immediately and prospectively. The amount of data that is washing through our risk assessment search engines, for want of a better expression, is now becoming so voluminous that you cannot possibly expect a human analyst to identify the
sorts of patterns and correlations, or draw the sorts of conclusions, that AI can. So the program will be, amongst other things, heavily invested in AI capability—particularly in the relevant subcomponent dealing with predictive analytics. We are very much working with like-minded parties, particularly those with whom we share highly classified capabilities, in looking at that as a breakthrough capability for the risk assessment of visas. It is partly related to volume. Mr Manthorpe's line of business deals with ever-increasing volumes. The pedestrian application of risk assessment methodologies means that you are churning through large volumes and potentially creating risk by allowing people into the country who should not be here. So the future is very much in this area of advanced search capabilities, predictive analytics and, as I said, the most sophisticated AI algorithms deployed on an immigration system anywhere in the world.

Senator WILLIAMS: I get one particular mob in a specialist field who tell me that there are 300 or 400 of them available for work in Australia but that the department is still bringing more in on 457 visa. Who assesses this or who makes a decision that says, 'Okay, we have enough Australians to fill the jobs, so we will not issue any more 457 visas'? Is it the minister? Is it the department? Who does that work?

Mr Pezzullo: Mr Wilden touched on that earlier. I will ask him to go back to his earlier evidence and perhaps add to it.

Mr Wilden: Each application goes through various phases. First of all you need a sponsor, which is the employer. We check who they are and whether or not they have a record of previous sponsorship. When they then apply, they have to do a nomination. That tells us what the job is and what they are going to pay the person they recruit. Next is the visa stage, at which point they tell us who the person is et cetera. There are several checkpoints within that. I think it is worth noting the fact that a fairly significant and broad review, led by John Azarias, of the 457 program was done about three years ago. It looked at a lot of these issues. One of the challenges is always that of weighing anecdotes against the evidence. We certainly do a lot of checking along the way—whether it is a genuine job and whether the person coming has the skills and occupational qualifications they need to do that job. Where we do find there is a mismatch, or that someone has not been truthful along the way, appropriate remediation action is taken.

Senator WILLIAMS: Do you check whether those jobs can be filled by Australians?

Mr Wilden: As part of the process the sponsor has to describe their workforce, including the number of Australians. It depends on whether labour market testing applies or not. In some occupations there is mandatory labour market testing, which means the sponsor has to provide quite a lot of evidence that they have been to the labour market. But every single employer who hires an overseas worker on a 457 has to make an attestation that they have looked at the Australian labour market and that they have been unable to source an Australian worker.

Senator WILLIAMS: Is that right?

Mr Wilden: That is correct.

Senator WILLIAMS: That is very interesting to know. Thank you for that.
Senator ROBERTS: Even though the boats have been stopped—and I congratulate you and the government again for doing this—is not the tide of Muslim immigration into Australia still continuing legally through regular immigration channels?

Mr Pezzullo: We like to be very precise in our handling of terms within the Public Service. When you say 'the tide of Muslim immigration'—you might just assist me with the point of the question?

Senator ROBERTS: Is not Muslim immigration into Australia still continuing legally through regular immigration channels?

Mr Pezzullo: Our immigration program is non-discriminatory. It does not discriminate on the basis of race, religion or creed.

Senator ROBERTS: How many Muslims have been allowed to migrate to Australia since the boats were stopped three years ago?

Mr Pezzullo: I will ask my colleagues whether we retain or slice information in that way. We look at applications for permanent migration, which I think your question is going to—permanent migration on their merits—and we do so in a non-discriminatory fashion. Mr Wilden is head of immigration policy and perhaps he has the answer on his fingertips.

Mr Wilden: We do not ask for religion, unless it is potentially through a refugee claimant, because it may be pertinent to the nature of their protection claim. If you were coming here as a skilled migrant, the questions we ask go to your character, health, age and occupation. Religion is not one of the questions we ask when someone is coming here on a skilled or family visa.

Senator ROBERTS: Given the growing threat of Islamic terrorism, and the high correlation between Islam and crime, don't you have a responsibility to Australians to know this in order to protect us?

Mr Pezzullo: Perhaps you might have been preparing to ask a question when I was giving my answer earlier on visa risk assessment. Our visa risk assessment capabilities are applicable to all visa applicants of any race, creed, religion, sexual orientation and so on and so forth. The risk assessment attaches to the person. If the person who is making the application in the permanent program has tendencies in the direction that you have described, that there is reason to believe they might be associated with Islamist terrorism or the like, then they will not get a visa.

Senator ROBERTS: There are other factors apart from terrorism, because isn't it true that while Muslims make up less than three per cent of the population in Australia they make up around 10 per cent of the prison population in New South Wales and Victoria? Isn't the percentage of Muslims of working age on welfare around 60 per cent for many groups? Isn't it over 90 per cent for Afghan illegal immigrants allowed in by the incompetent Rudd and Gillard governments? And, of course, isn't it true that all convicted terrorists in Australia in recent years have been Muslims?

Mr Pezzullo: I do not have any statistics to hand that would be pertinent to answering that question, and I would not normally have in my head the composition of the prison population in New South Wales. As I said, and I understand the import of your question, we risk-assess everyone who makes an application to come to our country and we protect our borders universally.
Senator ROBERTS: If there is a strong correlation, and it seems there is, between one particular immigrant group and social problems, why would we keep letting them into the country?

Mr Pezzullo: When you say 'letting them into the country', I want to stress and give you a reassurance that a risk assessment is attached to every single applicant, whether they are a refugee, a humanitarian entrant, a permanent applicant in either our skilled or family programs and so on and so forth. We apply risk assessment tools and techniques with forensic and increasingly ferocious precision in relation to everyone on the face of the planet. As the secretary of this department, answerable to the minister and through the minister to the government at large, I have a solemn responsibility to ensure that we manage and mitigate and reduce all forms of risk. And, frankly, it would be sending me down and Alice in Wonderland rabbit burrow to act on these sorts of information that you might come across in certain parts of the internet. My job is to take facts as I find them—

Senator WATT: Where Senator Roberts lives!

Mr Pezzullo: My job is to assess risk objectively, universally and without fear or favour.

Senator ROBERTS: I take no regard of the implication that the internet makes—that is yours to make.

Mr Pezzullo: You should ignore many things that are on the internet, I can assure you.

Senator ROBERTS: I agree with you—

Senator Watt interjecting—

Mr Pezzullo: Good. Thank you.

Senator ROBERTS: But I do not agree with your statement that implies I get my information off the internet.

Mr Pezzullo: I do not know where you get your information—

Senator ROBERTS: Right. That is the point: you do not know. Isn't it true that in 2015 former Prime Minister Abbott—

Senator Watt interjecting—

CHAIR: Senator Watt, if you cannot control yourself, could you leave and let the senator ask his questions in silence, as people do when you ask questions.

Senator WATT: Maybe if I could ask a question I would be a bit more quiet.

CHAIR: You should have been here earlier then.

Senator ROBERTS: Isn't it true that in 2015 former Prime Minister Abbott announced that Australia would take 12,000 members of persecuted groups from Syria. At the time, specifically Christians, Jews and Yazidis were cited. Obviously, what makes someone persecuted by a religious dictatorship is their religious affiliation. So, how is it that we could identify these groups if the religion of would-be immigrants were not considered?

Mr Pezzullo: As Mr Wilden said explicitly in his initial answer to your question, where it is relevant to the question of the assessment, for instance, of a claim of persecution, religion is a factor. In terms of the Syrian and Iraq program, persecution based on faith is in fact a material factor, so of course that information is assessed as part of the application.
Senator ROBERTS: So if we are not considering religion now, then there must have been a policy change?

Mr Pezzullo: As I said, Mr Wilden made it very clear that in certain categories—ongoing, no change of policy, e.g. refugee applications—if the risk of persecution relates to your faith, whether it was 2015, 2016, or now 2017, we do look at religious affiliation, because it is pertinent to the claim of persecution, or the fear of persecution that is leading the person to seek protection. So there is no change of policy, no.

Senator ROBERTS: Apart from the fact that it would seem to be impossible to identify who is persecuted in Syria without knowing their religion—and I accept what you just said—

Mr Pezzullo: Thank you.

Senator ROBERTS: if you let in 12,000 supposed refugees from an overwhelmingly Muslim country like Syria without considering their religion, then, just on a statistical basis, those you let in will be overwhelmingly Muslim, won't they? This means that close to another 12,000 Muslims will be let into Australia under this government.

Mr Pezzullo: Two points: (1) we have not let in any supposed refugees; we have let in only people who have been determined to be refugees through that program and (2) as the minister said in his public utterances, and as I have given evidence—not in fact today; we seem to have skipped that topic today, but in previous estimates—because of our focus on persecuted minorities, which was the policy intent that Mr Abbott announced at the time of the policy that you articulated, we have very much focused on persecuted minorities coming out of Syria and Iraq, and they have tended to be overwhelmingly non-Muslim, as a function of the fact that they were the most vulnerable and at-risk populations. I think Mr Manthorpe and others have given evidence in previous estimates about the proportionality of the program. It is somewhere in the order of 85-plus per cent, is it not?

Mr Manthorpe: The large majority are in the persecuted minority groups that are of a very wide variety of faiths.

Senator ROBERTS: So when it comes to Muslims specifically, they of course, like other people, will bring in their relatives, have many children each, and, in the blink of an eye, turn 12,000 Muslims into 100,000 or more Muslims, won't they?

Mr Manthorpe: I think we have just told you that there are not 12,000 Muslims.

Senator ROBERTS: Let's go back to the claim, then, that you supposedly have no idea how many Muslims are immigrating here, and I accept that—

Mr Manthorpe: That was not a claim we made.

Senator ROBERTS: So how many Muslims are immigrating here?

Mr Pezzullo: Perhaps we were a little bit too forensic in our evidence. Through the census and through the work done by the Bureau of Statistics, in terms of proportionality, we and the Bureau of Statistics and other agencies of government know, through statistical methods, how many people identify as being of the Muslim faith, as we do of other faiths. In terms of the management of the migration program, where it is directly pertinent to your application for migration to Australia—or in the case of refugees, for your claim for protection—of course we look at your religion, because that is, in that case, the very nature of your claim for protection. Otherwise it would be only a material factor in our non-discriminatory
immigration program if it gave rise to a question of risk. That would then be dealt with in the following way: is the risk that this person poses to our community—on health grounds, character grounds or security grounds—such that a denial of the visa is warranted? That could be any range of matters. It could be association with criminality; it could be association with terrorism or radical extremism tending to terrorism; it could be for any other reason. We do that risk assessment, as I said at the very start of my answer, in a way that attaches itself to the person.

Senator ROBERTS: Could you just clarify then for me: do you know the religion of people who come here, and if they are not a persecuted group?

Mr Pezzullo: In the refugee program?

Senator ROBERTS: In any program.

Mr Pezzullo: If they are a member of a persecuted group, we would know, because we have let them in under the refugee program. In 100 per cent of cases—

Senator ROBERTS: If they are persecuted for a specific religion?

Mr Pezzullo: That is right. If people are being persecuted for a religious reason—it might be that they are Christians; it might be that they are Buddhists; it might be that they are of some other faith—we would know in 100 per cent of cases the circumstances where we have given protection to someone for reasons of religious persecution, yes.

Senator ROBERTS: If you also know the country of origin of an immigrant and the percentage of each religion in that country, then a simple parametric model will allow you to estimate how many Muslims we are allowing to immigrate, won't it?

Mr Pezzullo: No.

Mr Manthorpe: Sorry, I am just familiar with this debate in another context, but you cannot presume that the proportion—let's take a country. No, I will not take any country. There might be a country with a fifty-fifty split of one religion and another, but that does not mean that immigrants from that country who choose to come to live in Australia come in that proportion; nor does it mean that we will necessarily bring them in in that proportion. So you just cannot make a one-for-one connection between those things.

Senator ROBERTS: Because some groups may have more pressure than others?

Mr Manthorpe: That is right, and for all sorts of other factors.

Senator ROBERTS: Okay, I accept that. Given the quality of immigration, not just the quantity—but 'quality' I hasten to add that I would define it as the willingness and ability to assimilate and integrate—isn't quality important when it comes to maintaining our Australian culture and laws?

Mr Pezzullo: Certainly confidence in the immigration program itself is a public asset in its own right. People have to have confidence that the immigration program is being managed with an eye to multiple objectives, some of which go to prosperity and social cohesion, others that go to national security, public health and the like. It is the job of my department and the officers in my department to ensure that all those imperatives and objectives are met. Social cohesion is certainly one of the factors that we use to frame our decision-making about risk, absolutely.
Senator ROBERTS: So, en masse, overall you do include social cohesion—the willingness and ability to assimilate and integrate?

Mr Pezzullo: The ability of the person to settle here, the ability of a person to find a job, the ability of a person to either have English language or to acquire it in a reasonably expeditious fashion are certainly factors that can be taken into account. In terms of the harm that might be presented to our community, which is part of your earlier line of questioning and perhaps implied in your latter line of questioning, that harm relates to the risks posed by the migrant themselves, and so the risk assessment attaches itself to the individual applicant.

Senator ROBERTS: Is there not a factor to do with when people of a certain culture get together within our culture and that disturbs their ability and willingness to integrate and assimilate?

Mr Pezzullo: Does that influence individual decisions?

Senator ROBERTS: Does it perhaps say the number of people from a specific area or even Muslim immigration needs to be assessed?

Mr Pezzullo: We have a non-discriminatory policy program and under law we are required to make visa decisions—permanent, temporary, but for the sake of this discussion I am sure you are going to permanent migration. We are required under law to make those decisions in a non-discriminatory fashion, and the policy which has stood for some decades now under both sides of politics is to run the program in a non-discriminatory fashion.

Senator ROBERTS: So, given that terrorists do not discriminate, is that a valid response, do you think? Perhaps I am going to policy, so I will let you off the hook; I will not ask that question.

Mr Pezzullo: I can give you this assurance: I will not give a political response or a policy response—that is properly for the minister. If there is any suggestion—and Mr Dutton has made this clear; his predecessor, Mr Morrison, made it clear and numerous ministers have made it clear: the benefit of the doubt in risk assessments that attach to an individual is, I must say, we cast a very wary eye. I said earlier we look for watch lists, we look increasingly in a predictive fashion using our predictive analytics models, we look at any potential risk for harm to the community, of which obviously terrorism is very high on the agenda, and we have a benefit of the doubt in favour of protecting our community—absolutely. So we will reject an application if that person does not meet not only health and character checks but security checks—absolutely.

Senator ROBERTS: Okay, I get that, and you have emphasised that point many times, and I get it that the individual is assessed for the risk. Isn't there a greater possibility of certain groups arriving here, passing the individual screening, genuinely, and coming here, and, because of their background or their cultural identity when they arrive here, they are more likely to join welfare, more likely to commit crime, more likely to advocate terrorism or hate preaching?

Mr Pezzullo: If those factors are relevant in a way that attaches itself to individual behaviour, our risk assessment systems are geared to detect those behaviours. I do apologise if my answers are sounding rather circular, but we look at a multiplicity of factors—character, health, security. There are various income thresholds for instance that go to the question of welfare dependency, and Mr Wilden can wax much more lyrically and eloquently on that than
I can. We look at criminal associations and we look at specific information that might come to light of a derogatory nature that attaches itself to the individual. We also look at the models that I referred to earlier—referring to Senator Fawcett I think; my apologies if I am mistaken. We look at our predictive models, increasingly so, in terms of identifying risk. We have a multiplicity of tools that give us very forensic and very detailed information in many cases that allow a decision maker to make a legally safe decision that, as I said, has a bias towards the protection of the Australian community.

Senator ROBERTS: This is my last question, Senator Macdonald. So you assess the applicants individually before they come in. Do you assess the data on crime, welfare and social cohesion for the product you allow through your process, the outcome of your process? If possible—I will put this on notice—could you get back to me with your assessment of how many Muslims have come into the country since you stopped the boats in 2013 and whether or not you do check on their ability and willingness, once they have settled in Australia, to assimilate and integrate?

Mr Pezzullo: To the extent that the ABS relevant data set can help us in that regard, I am happy to take that on notice. Given what I said earlier, and I refer to my earlier evidence, I just do not know that we are going to be able to provide you with anything other than a statistically based answer, but I suspect that is what you are looking for anyway, so we will look at the data.

Senator ROBERTS: I would like some assessment of the quality of integration and assimilation of people who you authorised to come into this country as permanent residents.

Mr Pezzullo: That is a different question. I might need to take some advice on this. The settlement and integration question is one properly directed to our colleagues in the Department of Social Services, as they provide settlement services and language proficiency, employment and housing support. I think what we might best do is take both questions on notice. We will take on notice working with our colleagues in the Bureau of Statistics to provide you with a statistical answer to the first part of your question. The second part of your question as I heard it related to the quality of, I think you said, assimilation outcomes—

CHAIR: Senator Roberts, you said you had one more question and you have had about five others, and that was the answer which I thought you gave five minutes ago, Mr Pezzullo.

Mr Pezzullo: We will need to take it on notice.

Senator ROBERTS: Thank you.

Senator PRATT: Who has the authority to approve labour agreements?

Mr Pezzullo: I think we gave evidence before.

Mr Manthorpe: Colleagues in my group approve—

Senator PRATT: Okay, so it is at an officer level. Do you know if factory workers and forklift drivers are currently on CSOL—?

Ms Dacey: The decision to enter into labour agreements is delegated to an officer in the department, but the minister can also make those decisions, naturally. I do not know if forklift drivers are on the CSOL list.
Mr Wilden: We will confirm, but it is highly unlikely, because jobs like that tend to be in the lower skilled categories, down at four and five on ANZSCO, so they would not get in.

Senator PRATT: If a company wanted to bring in forklift drivers, how they go about doing it?

Mr Wilden: There would have to make an individual submission. Any occupation not ANZSCO 1, 2 or 3, the current CSOL list—every now and then we will make concessions for specific industries for specific occupations, and that has to be approved by the minister. And obviously that is based on the rationale or argument put by the business about why they cannot source Australian workers to do those jobs

Senator PRATT: Could you provide on notice the templates that you referred to earlier, for the work areas you have templates for. I think we have discussed abattoirs a little bit, and the meatworkers are in that so does mean there will be a clear set of standards within the guideline about demonstrating the shortage?

Ms Dacey: Whatever is in the template will be what they are required to meet as part of our assessment.

Senator PRATT: Why would a business not offer to pay potential Australian staff more money to make a position more attractive rather than reverting to these agreements?

Mr Wilden: That would be a question for those businesses. There is a minimum salary requirement under the labour agreements, as there is for the standard 457s. If it is a standard salary it is $53,900; a single concession, I believe it is 10 per cent of that salary, can be requested but can only be approved with ministerial authority.

Senator PRATT: Does that $53,900 represent above or below industry average for the industries you have already referred to?

Ms Dacey: I suspect there is a fair bit of variation, given that we are covering everything from fine dining to fast food. That number, $53,900, is what is called the temporary skilled migration income threshold. It is just a threshold that is set.

Senator PRATT: But if some of that is below the threshold and I could offer to pay staff below an industry average and claim I was not able to find Australian workers, I could then bring people in on a visa and train them here—is that correct?

Mr Wilden: The starting principle is not going down to $53,900—the starting principle is evidence of the salary that you pay a commensurate Australian worker. Whether it is in a labour agreement or a 457, you have to provide evidence of what you currently pay your Australian workers and you basically have to match that. If the industry average is $65,000 then it will be a requirement that you pay that for any overseas worker coming in as well.

Senator PRATT: One of the examples I have been given is regarding the transport company Northline. I am told they are seeking to establish a labour agreement to bring in overseas workers as forklift drivers, and that is a job that requires just 1½ days training. That is a course that costs just $329. Do you know how many workers Northline is seeking to bring in under a labour agreement?

Ms Dacey: We would have to take that on notice.

Mr Manthorpe: I think it is worth putting this into perspective to some extent. Labour agreements represent around three per cent of 457s, so they are a niche product. They are an
important product for certain employers in certain sectors, but it is important to bear that in mind when we talk about the extent to which they may or may not be creating a displacement effect.

**Senator PRATT:** I understand that Northline has acknowledged that workers they are seeking to bring to Australia will be trained once they are in Australia—they will complete a two-day forklift course once they arrive—meaning these workers would be unskilled when they enter the country. Is that an acceptable use of a labour agreement?

**Mr Wilden:** That does not reflect any labour agreement policy settings we have at the moment. While you may have been given evidence that they are seeking, I think the first thing we would have to do is confirm whether or not they have actually requested one or not.

**Ms Dacey:** One of the things about labour agreements is that it is one of the avenues available to employers to bring in semiskilled workers. That is the judgement value we get into in assessing—or if they are seeking some sort of other concession. That is why they exist under the 457 program. But what is unskilled, what is semiskilled, what is skilled—that is the assessment part of the application.

**Senator PRATT:** 'Unskilled' would have to be someone who comes to the country and then does a course that is a couple of days long, surely.

**Ms Dacey:** I do not know the detail of that, and that would be something that the decision maker—

**Senator PRATT:** Perhaps you could take that question on notice, but also the nature of the previous labour agreements sought by Northline, because this is the third agreement they have sought. And can you confirm how many overseas workers Northline has brought in to date in all of their agreements. Can you confirm whether Northline are training workers once they arrive in Australia. Can you confirm the salaries or rates that these drivers are on and if there have been any complaints or investigations regarding the company's practice in importing workers.

**Ms Dacey:** Yes.

**CHAIR:** Is it normal to deal with individual details?

**Ms Dacey:** There is a clause in the labour agreements that says that the information in them can be made public. As Mr Manthorpe said, the numbers are small, so—

**Senator PRATT:** Well, the labour market test has to be transparent.

**Ms Dacey:** Yes, from our perspective.

**CHAIR:** You have answered my question.

**Senator PRATT:** Can I ask what steps the department takes to ensure companies seeking to bring in overseas workers are making sufficient effort to hire locals first?

**Ms Dacey:** That was part of the discussion we had before. I have seen just one example where they have kind of written long stories about what they have done and how things have not worked and how they have approached different kinds of markets, but I think it is pretty variable—

**Senator PRATT:** If you could review—

**Ms Dacey:** We will give you some examples, perhaps.
Senator PRATT: Okay. What allegations have been made regarding rorting of the 457 visa program overall?

Ms Dacey: By sponsors or applicants?

Senator PRATT: Sponsors.

Ms Dacey: If we get complaints we refer them to our Sponsor Monitoring Unit with our ABF colleagues. I think the reality is there is a lot of noise in the system about the 457 program and a lot of things get said. I do not have with me—I do not think—data on the number of complaints we have had about sponsors, but I can see what I can find out for you on notice, if you would like.

Senator PRATT: Okay, you can take those on notice, and some example allegations. How do you generally respond to concerns about allegations regarding the 457 visa program?

Ms Dacey: Well, it depends on what it is and what we find after the investigation, but there are a range of sanctions that are available to us, including infringement notices, civil penalties, prosecution—it just depends on what the finding of the investigation is.

Senator PRATT: In relation to Australian Coastal Shipping, Canada Steamship Lines Australia, there is an allegation that they are rorting the 457 visa program via deceptive conduct—that is, involving a process of sponsoring foreign labour under non-seafaring occupations that appear in the CSOL that do not match the licensed seafaring occupations that can be employed in Australia that are regulated by marine orders issued under the Navigation Act 2012. Are you aware of any allegations regarding those companies?

Mr Manthorpe: Senator, I am not aware and I do not think anyone at the table will be aware of the detail of those allegations. I just think we should take all that on notice.

Senator PRATT: If you can take that on notice, and I would ask: what action has the department taken or will it take to eliminate that particular practice that I described, and are you aware of other allegations where companies are substituting?

CHAIR: Assuming that it is true.

Senator PRATT: I characterised it as an allegation.

Mr Manthorpe: Yes, I know that, Senator, and it was about a specific company and a set of specific things. It does not do anyone any good if we get into speculating about what we might or might not do in those circumstances. We need to engage with our ABF colleagues who do the compliance part of this and the investigations part of this where that is necessary, and we will work across the portfolio and come back with an appropriate response.

Senator PRATT: You said previously that 16 per cent of labour agreements are for priests. Given the evidence before the royal commission into child sexual abuse, I am wondering what steps the department is taking in background checks for priests. I note that Professor Parkinson gave evidence to the royal commission, where he expressed concern about the Australian church’s reliance on the importation of priests from overseas, particularly in developing nations, where there has not been a focus on child sexual abuse and where selection processes for priests are unclear. Do any of the practices that the department has in place for visa applications for priests go to sufficient background checks in relation to conduct?
Mr Pezzullo: I might need to summarise the evidence just given to Senator Roberts—in this case in relation to a different religion, I suspect. Again, the risk assessment attaches itself to the applicant, so if there is either a sponsored proposal or—I will just state it more generically and generally: any visa application in relation to a cleric would be subjected to the same tests, checks and balances I mentioned to Senator Roberts before. They attach themselves to the individual. Is the risk factor in that person's application related to vulnerabilities around children? That would be looked at as one of the risk factors that are related to the individual rather than to the class of persons. You asked in your question, 'Do you check out priest or do you examine priests more closely?'

Senator PRATT: So with all classes of persons seeking to come to Australia, clearly you would not want any record of child exploitation.

Mr Pezzullo: No, absolutely not. As I said, we run a non-discriminatory migration program. We universally check for health, character and security risk factors. That obviously attaches to individuals differently. Some people are going to present a health risk or a character risk or a security risk. Information can come to light—and I just want to be no more precise here than I was able to be with Senator Roberts or Senator Fawcett—and we have a variety of techniques and capabilities available to us. Some of it relates to named persons in relation to whom there is derogatory information. Some of it relates to people who fit certain parameters and who are more closely examined because they fit those parameters that give rise to risk factors being a concern. In some cases increasingly our predictive models suggest to us where to look more closely ahead of the issuance of the visa. In the same way as I said to Senator Roberts, we do not look at Muslims as a class but we look at risk factors that might relate to violent extremism. In this case, we would not look at priests as a class but we would certainly look at risk factors that might pertain to vulnerabilities, say in relation to child expectation.

Senator PRATT: Referencing of course that risk factors may well be—what was the word that you used? Not risk factors—

Mr Pezzullo: I use lots of words.

Senator PRATT: and not statistical—

Ms Dacey: Predictive analytics.

Senator PRATT: Yes.

Mr Pezzullo: Yes, predictive models.

Senator PRATT: Yes, predictive models—noting that there has not been a focus on child sexual abuse in other countries, developing countries, and indeed where the original selection processes for their selection would have been unclear.

Mr Pezzullo: I am not sure—I am not an expert in this field, but I have to be an expert to the extent that we act on it. I do not know that there has been no focus anywhere in the world on child sexual exploitation. It is fair to say that it has been variable in different jurisdictions. I might have missed the point of your comment there, but you say there has been no focus. Did you say in developed countries?

Senator PRATT: It is in a number of developing countries.
Mr Pezzullo: Oh, developing—sorry, I misheard. We would have regard to all of the information available to us, either derogatory in relation to particular persons, parameters that we apply throughout risk assessment, engines and also increasingly our predictive models, yes.

Mr Manthorpe: What I would also add to that is that one of the advantages of the product that is the labour agreement, including in relation to the religious workers—incidentally, I do not think they are all priests or priests of a single denomination; we have religious workers of a variety of faiths coming in.

Senator PRATT: Indeed we do.

Mr Manthorpe: One of the advantages of a product like that is we do actually have a relationship with the employer and the sponsor that often goes on for a number of years, so there is a capacity for us to build up a level of knowledge about their practice and so on over time. Without in any way taking away from the importance—

Senator PRATT: There was a recent case in the news in Western Australia about an allegation that was made against an overseas priest and, before the church or the police force could pursue those allegations, the priest returned overseas. These are the kinds of practices that we are concerned about.

Ms Dacey: I want to clarify that the 16 per cent figure I gave you was for all ministers of religion, and that is 16 per cent of the three per cent that are labour agreements, and we only started taking ministers of religion in 2015. Previously, for example, that person a would have come in on a different visa to now.

Senator PRATT: Ministers of religion from overseas are actively used and the vast majority of them make wonderful contributions to their communities, but the churches are looking at lifting standards in the Australian community and we need to make sure that overseas priests are prepared to abide by those standards.

**Proceedings suspended from 21:45 to 22:01**

CHAIR: We are now dealing with output 2.

Senator WATT: Point of order: you know that I have a lot of time for Senator McKim, but he has had a very good go this evening. I am yet to ask a single question.

CHAIR: I offered you the last one, Senator Watt, and you passed it to Senator Pratt.

Senator WATT: The opposition is actually getting less time than the Greens and I wonder whether that is an appropriate—

CHAIR: That is simply not correct.

Senator PRATT: It is correct, because Senator McKim had three-quarters of an hour questioning in the last hour.

CHAIR: That was a mistake. I can assure you it will not happen again!

Senator McKIM: These are questions in regard to the number of certain visa holders who are in the country. So this concerns onshore. How many bridging visa E holders are there in Australia?

Ms Zakharoff: In total, as of 31 December 2016, there were 35,050 people on bridging E visas.
Senator McKIM: How many of those do not have a condition attached to their visa that prevents them from working?

Ms Zakharoff: It is a very small number. The information I have is that 84 per cent of the IMAs, or irregular maritime arrivals, are on bridging visa E and 84 per cent of them have work rights.

Senator McKIM: So 84 per cent have work rights. Would there be—

Mr Pezzullo: That is not 84 per cent of 35,000.

Senator McKIM: Sorry, is that a clarification, Mr Pezzullo?

Mr Pezzullo: You just need to be clear on that.

Mr Manthorpe: That would be 84 per cent of—

Senator McKIM: The 35,050?

Mr Manthorpe: No, there are not 35,050.

Senator McKIM: That is what I was just about to say.

Mr Manthorpe: It would be 84 per cent of about 30,000. It will be in that vicinity. We can give you more precision on notice, if you need it.

Senator McKIM: Is that because not all of the people that you would describe as illegal maritime arrivals—and who I would describe as our fellow human beings—are on bridging E visas?

Mr Manthorpe: I have referred to them repeatedly this evening as 'people', Senator.

Senator McKIM: Excellent! I am pleased to hear it. I am not sure that I have heard it from many of your colleagues here today.

Mr Manthorpe: The overwhelming majority of that cohort are in detention on a bridging visa, but there are also some other categories that are also on bridging visa E.

Senator McKIM: So that would be the difference between the roughly 30,000 and the 35,050?

Mr Manthorpe: Yes.

Senator McKIM: Thanks. How many people who have received negative decisions by, firstly, the department do not have a condition attached to their visa which prevents them from working?

Mr Manthorpe: Sorry, say that again please.

Senator McKIM: How many people who have received negative decisions by the department, in terms of their refugee status, do not have a condition attached to their visa which prevents them from working? What I am trying to find out is—

Mr Manthorpe: So you are working your way through the process. They have come out the other end and they have not been granted a protection visa of any kind. Depending on whether they are in merits review or not they may still be on a bridging visa, but if they get through merits review and are still negative then their bridging visa may well be cancelled. But I would want to check the detail of that and take it on notice.

Senator McKIM: I am happy for you to do so. Is it the department's policy to refuse work rights for people who are in that category of having a negative decision pending judicial
review? I am being informed by various stakeholder groups that they cannot get clarity on this, despite their best efforts, so I am trying to resolve it here.

**Mr Manthorpe:** I would like to take that on notice. I would prefer not to get into a speculative conversation.

**Senator McKIM:** That is fair, but do you understand the information that I am seeking?

**Mr Manthorpe:** I certainly know that, at a point in time, some people who have come out the other end of the process with a negative have not been found to be a refugee. Ultimately, we get to the point where we say, 'Really, it is time for you to return home', and that might entail us detaining and seeking to return them or it might entail people continuing to live in the community—in effect, unlawfully, like an overstayer on any other kind of visa. We have, as we have probably talked about with you or certainly with other senators over time, something like 60,000 unlawful noncitizens in the community at any given point time. So people who have applied for a visa, not got it, appealed, gone through a merits review process and still not got it may be in some form of judicial review. Whether or not those individuals are on a bridging visa or not would, I suspect, turn on the facts of their particular case, and that is why I am reluctant to give you a blanket answer tonight. But I am happy to take it on notice and come back to you.

**Senator McKIM:** That is reasonable, Mr Manthorpe, thank you. You said just then that you suspect it may turn on the particulars of a case, and that is a reasonable response if that turns out to be the response on notice. I am interested specifically in what the department's policy framework is in this area. What would need to be the particulars of a certain case for a person to have work rights and what would need to be the particulars of a certain case for a person not to have work rights?

**Mr Manthorpe:** Overwhelmingly, those who are engaging in our process have work rights; they are on a bridging visa, they have work rights and they are in the community.

**Senator McKIM:** Even if they are seeking a judicial review of a decision?

**Mr Manthorpe:** Once they get past our process and once they get past merits review then the question becomes more complex. Our position on this is continuing to evolve as the case load is worked through the system and we are starting to get more and more people out the other end. Indeed, the letter that we were talking to you about earlier today is really a manifestation of that. It is saying to people: at the end of the day, if you either are not engaging with us and with the process or are not ultimately found to be owed protection, at a point in time taxpayer funded supports and other assistance can reasonably be expected to be withdrawn.

**Senator McKIM:** Mr Manthorpe, just so I am clear, the process would be that the first assessment is by the department. Is that correct?

**Mr Manthorpe:** That is right.

**Senator McKIM:** And the second assessment, if an appeal is lodged against the department's original assessment, is with the Immigration Appellate Authority?

**Mr Manthorpe:** It is with the assessment authority—the Immigration Assessment Authority.

**Senator McKIM:** Is that the AAT—
Mr Manthorpe: That is the fast-tracked route, and it is the AAT if it is the other. The first assessment, the one by the department, is the one that itself is averaging 250-odd days, because it is a comprehensive, complex assessment of all the circumstances of each and every individual.

Senator McKIM: You probably need to take this on notice as well: how many people who have received negative decisions by the department do not currently have bridging visas? And, if there are some, would they be liable to immediate detention?

Mr Manthorpe: They would be. If they do not have a bridging visa and if they have not succeeded in getting a TPV or a SHEV then they are going to be, by definition, unlawfully in the community.

Senator McKIM: Unlawfully in Australia.

Mr Manthorpe: Whether they are in detention or not. Some individuals are in detention in that situation, although I hasten to add that the number of IMAs in detention is in the hundreds; it is not in the thousands. From memory, there are 300 or 400 out of the cohort, and they tend to be individuals either on a removal pathway or presenting risks, including sometimes risks to the community, that compel us to proceed with detention. There are others in the community who are, in effect, unlawful. Where it is practicable for us to do so, working with our ABF colleagues, we seek to remove those people where that is possible.

Senator McKIM: To tie off this line of questioning, what I am seeking in regard to the policy framework here is whether there is something there that we can assess the department's decisions against, basically, on a case-by-case basis. What is the policy framework in this area with regard to work rights specifically? You have said it might turn on the particulars of the case. That is fine; I accept that for now. But what is the policy there that would allow someone to understand—through that policy—whether that policy is being applied in the context of each individual case?

Mr Manthorpe: The features of the policy framework would include consideration of the interests of children and the vulnerability indicators of particular individuals. They would feature consideration of the risk to the community that individuals might present in circumstances, or, indeed, risks to self and the vulnerability of mental health and other issues. They might relate to precisely how far along a path a person is and whether there is any prospect of removing them if they are not owed protection. There are a whole variety of factors that bear on that judgement. Increasingly, our orientation is—we think in the interests of everybody concerned—to work our way through the case load and resolve people's status as best we can. If they are owed protection in a bona fide sense, we let them stay on a TPV or a SHEV, depending on what they applied for. If they are not then, ultimately, we expect them to go home. I think that is a reasonable description.

Senator McKIM: Of the just over 30,000 in the cohort that we were speaking about earlier, is it right to say that in 2015-16 just over 1,500 people were found to be refugees, and therefore TPVs were issued? Is that number accurate?

Mr Manthorpe: In 2015-16. I probably have a more up-to-date number.

Senator McKIM: Thank you, that was going to be my next question. I am trying to understand what the assessment rate per year is, basically, because you have a fairly big 'legacy case load'—I think that is how you describe it—here. There is uncertainty for these
people. I know a couple personally—they are in Tasmania at the moment and they are stressed because they do not know and cannot get any clarity about how long it will take to have their claims assessed.

**Mr Manthorpe:** I understand that and that is one of the reasons we would like them to apply.

**Senator McKIM:** Yes, I appreciate that.

**Mr Manthorpe:** We are trying to balance a whole lot of considerations here.

**Senator McKIM:** Just to be clear: I am not suggesting I know people who have not applied. I actually do not know whether they have or not.

**Mr Manthorpe:** I was not drawing any such inference.

**Mr Pezzullo:** You might assist us by just passing on our request that they apply.

**Senator McKIM:** I will ask them whether they have.

**Mr Pezzullo:** We will make you an honorary Border Force officer!

**Senator McKIM:** I do not think that would do either of us any favours.

**CHAIR:** I would not recommend that.

**Mr Manthorpe:** You were right, Senator, around 1,500 were granted in 2015-16. I can give you a more up-to-date sense of the volumes. These numbers will demonstrate to you that we are making headway with the process. By 31 January—seven months after the number I just gave you—we had made decisions on 8,682 cases.

**Senator McKIM:** That is over what period?

**Mr Manthorpe:** By 31 January—from the beginning of the process until 31 January. Of those 8,682 cases, 4,699 were grants, of which 3,276 were TPVs and 1,423 were SHEVs. There were 2,680 that were refusals following merits review and there were another 1,303 that were refusals that were at the merits review stage.

**Senator McKIM:** I will put a couple of further questions on notice.

**Senator WATT:** I have a few questions about the Migrant Workers' Taskforce—they are probably for a combination of the Border Force and the department. This is something I am quite interested in. I am sure you would agree that some of the stories we keep reading in the media are pretty horrifying, the stories about the level of exploitation that seems to be going on in parts of Australia. I would like to understand the different roles played in this by the department, the Border Force and the Fair Work Ombudsman. Can someone help me with that?

**Mr Pezzullo:** We can perhaps help with two parts of that three-part mystery. Perhaps Mr Manthorpe will lead on the department's role, which is in the area of policy, including engagement with the Employment portfolio. Then perhaps the commissioner or one of his officers can speak about enforcement.

**Mr Manthorpe:** Just so that you are clear, Senator: a colleague from the Border Force and I are on the Migrant Workers' Taskforce with Professor Fels and colleagues from FWO and elsewhere. We are active participants in this whole exercise. The department's role in it goes, as the secretary points out, to the policy framework for visa administration. It also includes the rules and regulations relating to visa issuance and, importantly, the way we communicate
with visa holders to ensure they are aware of what their rights and entitlements are. Finally, we have an important role in deciding the sometimes vexed question of whether or not someone's visa should be cancelled. My colleague Ms Zakharoff oversees the visa cancellation part of the department's work, which sometimes bears on this set of issues.

Mr Quaedvlieg: One of the functions of the Border Force is what we call field compliance. In essence it is enforcement of breaches of and offences against the Migration Act that are committed either by visa holders themselves or by employers, labour hire intermediaries or educational institutions. We are part of the task force which was set up about 18 months ago, Taskforce Cadena, which you may have heard of. That task force was originally set up to deal with exploitation of 417 workers—working holidaymakers—but has since been expanded to include other forms of exploitation or exploitation of people in other visa categories. It is a task force we conduct in conjunction with the Fair Work Ombudsman's office and it is what I call a lead generation capability, which in essence means it does a lot of work with intelligence functions with our own organisation, with other criminal intelligence agencies and certainly with enforcement partners to identify instances where there is exploitation of workers which is organised or syndicated, by syndicates with footprints either onshore or offshore. We apply a whole range of modern law enforcement techniques to investigate those offences of exploitation, including intelligence analysis, investigation and surveillance, both electronic and physical; and certainly the more traditional investigative techniques in terms of interviews and prosecutions form a very big part of that. So, where there is work falling out of the Migrant Workers' Taskforce which is of a criminal or a regulatory nature under the Migration Act, that is where the Border Force gets involved and undertakes all of those activities.

Senator WATT: Do either of you have any idea how many investigations are currently underway into this kind of activity?

Mr Quaedvlieg: I can give you some indication of the volume of work that we have in the Border Force, but it may not give you a complete answer, because the Fair Work Ombudsman's office will also be conducting its own investigations in relation to pay and conditions et cetera. It is a bit difficult to contain my answers just to work emanating out of the task force itself, because at any given point in time our field compliance work is quite active. So, for example, for the first six months of this financial year—so between 1 July and 31 December—our field compliance officers have detained 7,900 unlawful noncitizens. We have detained 1,000 visa holders who are working in breach of their conditions. We have issued 234 warning notices in relation to illegal workers. We have issued five infringement notices. And we have done a lot of work around what you might have heard about earlier today—section 501 cancellations, of which there have been 554 this financial year.

Over and above that, we have conducted many operations under Taskforce Cadena in 13 different operations, and there are statistics; if you like, I could take it on notice and provide you with a breakdown of what each of those operations were, the number of charges that were laid et cetera—in the interests of brevity. But we are focusing quite heavily on what I mentioned is the syndicated nature of some of this exploitation, so going right along the visa continuum, starting upstream in source countries where there are corrupt elements in the visa-brokering and sponsoring system, flowing through to domestic labour hire intermediaries, educational institutions, migration agents and, in some cases, outright organised criminality or
organised crime—and I would distinguish between those two. We are applying coercive powers through the ACIC, the Australian Criminal Intelligence Commission, to give us some better insights into some of the levels of sophistication of organised crime, and we are seeing quite a lot. Arising out of those coercive hearings that we have conducted through the ACIC work, we have a number of investigations currently on hand within our Investigations Division which looks at that organised criminality component of the visa system.

Senator WATT: As I mentioned, this issue has been the subject of a lot of media coverage. There was an article just before Christmas, on 2 December 2016, in The Age. They have obviously been running the 'Fruits of their labour' series. I do not have a copy of the article, but it is pretty straightforward. They were reporting on a raid that I think had occurred in Victoria that had, according to the article, left two leading produce suppliers to major Australian supermarkets facing allegations of employing illegal migrants who were grossly underpaid and mistreated in other ways. I noticed that that article said that Border Force's efforts to target shonky labour hire firms and employers is being stymied by major loopholes. I am interested in what measures you consider could be taken to prevent this kind of activity from happening.

Mr Quaedvlieg: I am familiar with that article, because the journalist who wrote that article actually rang me to put that hypothesis to me, and I disputed it at the time. I said that it was not entirely accurate and was a bit broad covering. There are certain powers that I would like introduced into the Migration Act that would enable a little bit more teeth and application of what I call modern law enforcement techniques against offences in the Migration Act—things like the capacity to track and intercept communications, download digital devices in the field, use of force et cetera. But, in the broad, between ourselves and the Australian Federal Police collectively we have the appropriate powers to conduct investigations that are not just at the low transactional level within the Migration Act but higher-end offences in the Crimes Act and other criminal statutes. I would like to transport some of that capacity access as higher powers to Border Force officers. That would make my job a little bit easier, because each time I have to deal with one of these higher-end investigations I do need to beseech upon my colleagues in the AFP to assist and execute warrants and give me resources. Fortunately, we have a very good relationship with the Australian Federal Police and we always end up getting the assistance at some point or another. But in order to facilitate more timely and more agile investigations I would seek at some point in the future to perhaps supplement the powers in the Migration Act to give it a little bit more teeth.

Senator WATT: This is probably a question to each of you. It does seem that there is a lot more media reporting going on about these types of incidents at the moment. Do you consider that it is just more reporting of something that has been happening all the time, or do you think that there is a growing incidence of this kind of exportation, as well?

Mr Quaedvlieg: I suspect the former. Part of the reporting volume you are seeing is as a result of the Border Force itself and the department being more active in engaging with various stakeholders and socialising these issues, because one of the effective enforcement techniques is deterrence. If you put the message out there that you are actually taking these matters seriously, you are looking at high-end, sophisticated organisation and exploitation of the system, then you do achieve a deterrent effect. So there is some aspect of that that we are putting out ourselves into the public domain. It is also true to say, I think, that modern
organised crime syndicates are diverse. They are agile and wherever there is a coin to be made they will be involved in it. There is a lucrative market in this space, both for the sale of the actual commodity itself, which is the visa for the citizenship, whatever the case may be, but it is also an enabler, as we describe in the enforcement space. It enables other crimes to the committed. So, for all those reasons, the visa systems of sovereign nations are a great attraction to organised crime. We are aware of that and we are dealing with it.

Mr Pezzullo: It would also be fair to add that the leadership shown by the minister at the table is a material factor. We note that we are under the very direct drive of the former Assistant Minister for Immigration, now the Minister for Employment. She is a pretty hard taskmaster, if I may say so, Minister. But we understand what our marching orders are.

Senator WATT: It was worth staying all night for that, wasn't it!

Mr Pezzullo: The minister is far too modest to draw attention to herself, so it would be unfair if I did not draw attention to it.

Senator WATT: One of the other things that came up in that December article I was referring to was a concern raised that, as a result of the new backpack tax, that might deter backpackers from coming to Australia and undertaking employment, and there was a risk that there would be even greater use of illegal migrant workers to do that fruit picking and all those kind of stereotypical industries that these sorts of abuses occur in. Has either the department or Border Force ever provided advice to ministers expressing any concern about the impact of the backpacker tax in that way?

Mr Manthorpe: Not to my knowledge. Two comments: one, the backpacker numbers are holding up pretty well. There are two categories. One has been going up a bit and one has been going down a bit, but they are pretty solid, so any suggestion that that is as yet having a negative impact on the labour force or the availability of that piece of the labour force is not evident to me. The second point is that explicit in the backpacker tax arrangement, as I understand it, is the requirement for tax file numbers to be provided to the tax office and so on. So that in effect brings people out of the black economy and into the real economy, if you will, or at least creates an onus, or an impetus, to achieve that, which could actually have a positive effect from the point of view of tracking the risk of migrant worker exportation.

Senator WATT: Commissioner, have you for your agency ever provided advice expressing concern about that?

Mr Quaedvlieg: No, our policy advice to the minister's office is through the conduit of the department.

Senator WATT: I think you offered to provide some more information on notice about some of the operations that you have been undertaking—

Mr Quaedvlieg: We are very happy to do that. We will take that on notice.

Senator WATT: That would be great. When these sorts of incidents of exportation occur, do you find that the victims of that kind of exploitation, the migrant workers, often use email as a way of raising reporting concerns?

Mr Quaedvlieg: I will ask my policy colleagues whether they have any of that reporting—
Senator WATT: Do you find that the victims of the exploitation themselves raise that concern, and how does that normally occur?

Mr Quaedvlieg: I do not think we come across it often in the tactical action field. It may come through in terms of the way our visa colleagues issue the visas, but I have not seen a great deal of that style of reporting during in-field actions by our officers.

Mr Manthorpe: I do not have the statistics to hand, but I know that, depending on the visa type, complaints might come through in different ways. If someone has a 457 visa and there is a sponsor we might get a quite direct complaint from someone about a particular sponsor. If someone is on a visa where there is not a sponsor, because they do not have such a direct relationship with us people might be more likely to go to the Fair Work Ombudsman. Certainly, they field a lot of complaints.

Senator WATT: In your experience, do victims of this kind of exploitation say that they would report an issue but they are afraid of being fired, or deported or punished, for want of a better term, in another way?

Mr Manthorpe: That is an assertion that is made from time to time—insofar as we are concerned, particularly this idea that people refrain from coming forward because perhaps an employer or somebody holds over them the threat that we might deport them from the country. That is why one of the important things we have done in the recent past, very much under the auspices of the employment minister at the table, and Professor Fels, the employment department and the Fair Work Ombudsman, is put a lot of thought into the question of to what extent we can give people an assurance that that will not befall them if they come forward, if they are cooperating and if they are abiding by visa conditions into the future and so on, particularly if they have work rights. If they come on a visa that does not have work rights but then they work, that is a little more difficult. Nevertheless, we would look at those cases on a case-by-case basis. But we are hopeful that that position, which is a bit of an expansion of the position we adopted with respect to the 7-Eleven case last year, will facilitate more people being able to come forward.

CHAIR: Regarding the backpacker tax, how is that tracking at the moment?

Mr Pezzullo: In terms of revenue collection?

CHAIR: No, more or less in the number of people coming. I think you mentioned—

Mr Pezzullo: Mr Manthorpe gave some evidence—

CHAIR: —that there were two aspects of it, which I did not quite follow. I am interested generally. As I understand it the number was falling over a number of years.

Mr Manthorpe: I think the short answer is that it is too soon to be definitive, but the numbers are holding up reasonably well. I think that is the headline response.

Ms Dacey: In programs like the working holiday-maker, we have not seen much of a change, but it is very early days.

CHAIR: Right. So, it had been falling off over several years, had it?

Ms Dacey: It had. That is right.

Mr Manthorpe: Well, one category had, and the other category had been growing.
Ms Dacey: And it is off what had been kind of an unnatural high due to, we think, the GFC and a range of other things.

Mr Manthorpe: That is right.

CHAIR: What are the two categories that you have mentioned twice now, Mr Manthorpe, but I—

Ms Dacey: There are two visas under the working holiday-maker program. One is an uncapped one, and one is a capped one. Just because one is uncapped, it has more growth than the other one.

Mr Pezzullo: Do they have different names?

Ms Dacey: One is called 'work and holiday' and one is called 'working holiday'. So, one is a 416 and the other is a 462. They are the same thing—

CHAIR: Can you briefly explain the difference and why one is—what does 'capped' and 'uncapped' mean?

Ms Dacey: It is kind of historical. That is my understanding. Mr Wilden might have a bit of background, but one was just an older program, and I think they just made the decision that they want a bit more control over the numbers, so they started placing caps on them.

Mr Pezzullo: I think these questions are best directed to Mr Wilden.

Mr Wilden: The working holiday visa came into being a few decades ago. The reason for the visa was cultural exchange. As part of that cultural exchange a work right was given for people to stay for up to two years. So, a couple of the original signatory countries to those agreements—and they by and large are reciprocal agreements—have uncapped programs. But certainly for probably the past 10 years, as we have signed up to generally bilateral agreements with each country, it has been much more limited in scope, and that is the 'work and holiday' visa that Ms Dacey was referring to. And dependent on the country, the negotiation, what it is tied to, in some ways—we depend on the number of visas that would be granted in any program year. I think the smallest ones are about 100 visas a year. There are quite a number at 500, and a few at 1,000. I think one of the most recent ones for the capped visa that is large is China, for which it is 5,000 places a year.

Mr Manthorpe: And just to give you a bit more granularity about the numbers and what I meant when I was saying that one is going up a bit and one is going down a bit, the 417 dropped off by four per cent last year, from 108,000 in the six months to the end of 2015 to 104,000 in the six months to the end of 2016. At the same time, the 'work and holiday' 462 went up, from a bit under 11,000 to about 12½ thousand, and it went up by about 13 per cent. It is a pretty flat pattern of numbers of visas, despite what some people have said about uncertainty in the market.

CHAIR: Which countries are still on the uncapped visa? And is that reciprocal?

Mr Wilden: The UK was one of the first countries. And that is reciprocal. The nature of that agreement was up to a maximum, which I think was about 30,000 or something.
CHAIR: So, that is capped?

Mr Wilden: No, it is uncapped, but the reciprocity between the two countries goes to a maximum, which has never been reached by Australia—Brits coming in. And they are traditionally one of the largest. I think Taiwan and South Korea and maybe other uncapped ones as well—Ireland—so it is quite a diverse group of countries.

CHAIR: Does that effectively mean that as many Koreans as want to can come here on these work and holiday visas?

Mr Wilden: ’Working holiday’.

CHAIR: And as many Australians as want to can go to Korea on the same—

Mr Wilden: I would have to check. Again, it is particular to each agreement, because they are bilateral agreements. But in the case of Korea, we do not have a cap on the number of Koreans who can come here, and, from recollection, they do not have a cap on how many can go there. But there are a lot more Koreans coming here than there are Australians going to Korea.

CHAIR: Yes. And can you give me a couple of examples of a high-capped exchange and a low-capped exchange?

Mr Wilden: A high cap would be the 5,000 that we have with China, but that is not reciprocal, so that is very particular to that agreement. We have small capped exchanges with South American countries—

Ms Dacey: Slovak republic.

Mr Wilden: Yes. And I know we have signed one recently, with Spain, I think it was, for a couple of hundred places. And they are reciprocal. So, if it is 500, it is 500 each way.

CHAIR: Is it difficult to provide that information? I do not want to put you to—

Mr Wilden: No, it would not be an administrative burden.

CHAIR: Well, possibly, if you could give the committee just a—

Mr Wilden: Certainly.

CHAIR: list of the capped and the uncapped, so that we can understand it.

Mr Wilden: Certainly.

CHAIR: And just very quickly, on a slightly different subject: I think if I recall correctly the minister announced almost $100 million over four years for a new visa risk assessment capability.

Mr Pezzullo: That is right.

CHAIR: Could you explain what that is about?

Mr Pezzullo: I might briefly recap the evidence I gave to Senator Fawcett.

CHAIR: Did he mention this earlier on?

Mr Pezzullo: He asked me a question about it, yes.

CHAIR: Okay. I will read the Hansard, then.

Mr Pezzullo: Thank you, Chair.

CHAIR: I will not have you going over the same questions. I must have missed that.
Senator WATT: I might just keep going with some questions about the migrant worker issues. I think, Mr Manthorpe, in your answers you were basically saying that there certainly are some claims made that exploited migrant workers fear repercussions if they report abuses, but you are not certain that it is a major factor. Or is that not a fair representation? I am just trying to recap where we are at.

Mr Manthorpe: I know it is a claim that is frequently made. It is one of those claims that is very difficult to prove. A person can assert, 'I would have complained if it weren't for the fact that I was worried about being deported,' but I cannot prove whether or not that happened if they did not make that claim, or if they did not make it known to our department. That is the only point I am making. I am not dismissing the issue; I am just saying that it is very difficult to quantify.

Nevertheless, it is a claim that is frequently made. It certainly came up in the 7-Eleven case, where we turned our mind to what sort of assurance we could reasonably give to people in that context, and it has come up in other contexts. I think the other sort of contextual observation I would make about this whole area is that there is not one silver bullet. The migrant worker exploitation space is a really complicated space, because there are a whole lot of intersecting regulatory and policy issues at play. Nevertheless, it was an area where we thought we could do some more work and have done so, and I described for you in my previous answer the nature of the assurance we are prepared to give.

Senator WATT: And I think, again—we were talking in the last bracket of questions—it does not sound like many of the investigations are launched on the basis of complaints made by the exploited migrant workers themselves; there must be other ways you find out about these things—the trigger. Again, is that a fair assessment?

Mr Quaedvlieg: Yes, that is a fair assessment.

Mr Manthorpe: We do get some tip-offs, too—not from workers, but tip-offs to the phone lines and so forth.

Senator WATT: The reason I am asking is that one of the statements that came out I think quite recently from the Migrant Workers' Taskforce is that a new website is being set up for people to report exploitation. What budget do you have allocated for setting that up?

Mr Manthorpe: I do not think that is in our portfolio.

Senator WATT: Is that in the minister's portfolio, employment? Or—

Senator Cash: We can take that on notice for you.

Senator WATT: If it is the case that not many investigations are triggered through complaints made by exploited workers, what confidence do you have that setting up a new website is going to be an effective means of cracking down on this kind of behaviour?

Mr Manthorpe: Well, it goes to the point I was making a moment ago: there is not one silver bullet for this whole area; you need to act in a variety of different ways. And if you can find a way to create a website, a call line or whatever it might be that has a ring of authority, a ring of independence to it, as the Migrant Workers' Taskforce does, I think, then that may well help in the cause of identifying instances of exploitation.

Senator WATT: I do have a number of other questions relating to this website. Would it be better to put them in tomorrow's estimates to the Employment portfolio?
**Senator Cash:** Thursday.

**Senator WATT:** I will do that. On another matter which I think is still under this outcome: Senator Roberts asked a number of fairly inflammatory questions earlier about Muslim immigration. You would no doubt be familiar with the debate that has occurred recently about what has become known, I think, as the 'visa revalidation bill'. Obviously the opposition has made certain comments about its position on that bill. Has the department been asked to provide any advice to ministers about the ability to prevent immigration from any one particular country?

**Mr Pezzullo:** In the context of that legislation?

**Senator WATT:** No. These issues have come up in the context of that legislation as well, but more generally, leaving that bill to one side, has the department been requested to provide any advice about the ability of government to prevent immigration from any particular country?

**Mr Pezzullo:** No.

**Senator WATT:** Has the department been asked to provide advice about the ability of government to prevent immigration of people with a particular ethnicity or with a particular religion?

**Mr Pezzullo:** No.

**Senator WATT:** That is consistent with some of your earlier answers about the fact that we have a non-discriminatory immigration policy.

**Mr Pezzullo:** Two key components of my earlier answer need to be repeated. One is that the program itself is nondiscriminatory. That is an important statement of government policy that has been in existence for many decades across both sides of the aisle. But, more importantly, my decision makers operate within an apparatus created under the Migration Act, and the Migration Act attaches the visa decision-making process to the individual applicant. Are risk factors looked at in the sense of information available to us, either of a direct watch list nature or which are discernible through discoverable processes such as predictive analytics? Do we look for risks of terrorism, criminality or association with child exploitation? All of those matters and others are certainly looked at, and all of those factors are applied in relation to the individual who is before the decision maker—and what information can be brought to bear on that decision-making process so that the community is protected.

**Senator WATT:** Again, then, the department has not been asked to provide any advice about visa bans that would apply to people from particular countries?

**Mr Pezzullo:** I think that is a repeat of your earlier question.

**Senator WATT:** Yes. I just want to make sure we are covering off that aspect as well. I am not necessarily talking about permanent migration. I am including tourist visas, student visas or any kind of visa whatsoever. The department has not been asked to provide advice on the ability of government to ban the provision of visas of any kind to people emanating from a particular country?

**Mr Pezzullo:** Not as a result of their nationality or ethnicity related to that country, no.
Senator WATT: The department has not been asked to provide that advice and you have not, of your own volition, provided such advice?

Mr Pezzullo: No.

Senator PRATT: There is a wide array of questions we will not get to this evening, so I just flag that we will need to follow up the outstanding questions through this committee. Maritime crew visas have been around since 2008. That is right, is it not?

Mr Pezzullo: They have been around for a period of time. Whether or not it is back to 2008, I will ask Mr Wilden.

Senator PRATT: I understand they are applied for online and that it is the usual process for foreign—

Mr Pezzullo: I am sorry—I am not sure we answered your previous question.

Mr Wilden: I believe that 2008 sounds about right, but I will confirm that.

Senator PRATT: I believe they are applied for online and that it is the usual process for a foreign company or ship operator to submit a crew list prior to arrival to allow the processing of those applications. Is that correct?

Mr Wilden: I might defer to Mr Manthorpe, who looks after the program, but that is how the system was set up to operate, yes.

Mr Manthorpe: I too might defer to Ms Dacey, who has taken a position down the other end of the table.

Ms Dacey: That is correct.

Senator PRATT: There are no face or photo checks for those?

Ms Dacey: I do not think there is a biometric. It is a light-touch visa product.

Senator PRATT: The process is quite speedy, as I understand it?

Ms Dacey: That is right.

Senator PRATT: Have there been any rejections? What happens to a seafarer already on their way to Australia in the event of a rejection?

Ms Dacey: Applications can be refused, and they can also be ceased, depending on the circumstances. We have the power to, effectively, say, 'You can't get off the boat when you arrive here.' Is that the sort of thing you are talking about?

Senator PRATT: Yes.

Mr Quaedvlieg: And, in fact, just to add to that, we can also refuse the vessel's entry into our jurisdiction, if we so choose, and we have done that.

Senator PRATT: What background checks, if any, are made for these visa applications?

Ms Dacey: They are a very light-touch visa. We do run them through information that we hold in our risk systems to look for previous history and the general sorts of things, but they are a very light-touch visa. They are meant to be a facilitative product.

Senator PRATT: Does the department have a system to identify when a person is a known threat or risk when they apply for one of these visas?

Ms Dacey: Yes, that would be that 'washing' process that I was just referring to.
Senator PRATT: It is certainly substantively different to the kind of reviews you were talking about before. What types of offences would set that off?

Mr Pezzullo: Sorry, Senator, I am—

Senator PRATT: I understand people are not migrating to Australia or working here long term, so that is a substantive difference. I will try not to divert us. What types of offences would set that off?

Ms Dacey: I will take the question on notice because I do not want to give you the wrong information. I just do not have that level of detail here.

Senator PRATT: If you could take on notice the different classifications of threat or risk for that visa class. I understand now that Border Force is combined with the department of immigration much more closely, and so it brings into play the comparison of checks between Australian maritime workers before they can be allowed on ships or ports in Australia. Would you say that Australian maritime workers are subject to extensive background checks relative to—

Mr Pezzullo: We are not responsible for checking Australian maritime workers, and I speak on behalf of the Border Force as well.

Senator PRATT: I know that Customs will be responsible for that.

Mr Pezzullo: Sorry, Customs does not exist, Senator.

Mr Quaedvlieg: There is a process of accrediting people to work on the maritime security identification card system that is administered by the Attorney-General's Department—

Senator PRATT: That is right. We will have questions on that tomorrow.

Mr Quaedvlieg: The Border Force has no role in that other than that we have the capacity to check MSIC cards, or whether someone is wearing an MSIC card in the precinct, but we do not do any checks on Australian workers.

Senator PRATT: Thank you for clarifying that.

Mr Pezzullo: Senator, just to aid your own preparation: did you say that you intend to ask Customs tomorrow?

Senator PRATT: There is probably no need for me to, because I understand their checks are extensive. I have a reasonable understanding—

Mr Pezzullo: Thank you. It is just that it will be very difficult for you to do so because Customs no longer exists. The Border Force commissioner is the head of Customs.

Senator PRATT: This is the purpose behind my question, because previously they were separate, and now Border Force oversees Customs—

Mr Pezzullo: Border Force is Customs.

Senator PRATT: Yes, correct. That is right, and that is now within the Department of Immigration and Border Protection, and we have people coming on a light-touch visa versus what are comparatively much more onerous standards for accessing Australia's ports. That is the point I am pursuing.

Mr Pezzullo: The maritime security identification cards: Commissioner, was that your earlier reference?
Mr Quaedvlieg: It was, yes. That is an accreditation which, as I have said, is administered by the Attorney-General’s Department and goes to transport security issues. What criteria the AGD determines in terms of disqualification you would need to put to them. My experience is that people with extensive criminal histories are probably normally disqualified from getting accreditation—

Senator PRATT: So they should be, but we have a light touch on one hand and extensive criminal histories checked on the other hand.

Mr Quaedvlieg: I cannot comment on the latter, but there are two levels of enforcement compliance over MCVs—maritime crew visas. One is the initial application/decision-making by the department, and then the Border Force, as part of its customs compliance functions, also undertakes enforcement actions on those maritime crew visa holders who are at risk. And we will do our own work in and around that.

Senator PRATT: How often do ships come ashore without the correct visas?

Mr Quaedvlieg: Is the question: how often do ships arrive here with crew who do not have MCVs?

Senator PRATT: Yes.

Mr Quaedvlieg: It is not that often. It happens not regularly but frequently enough for us to have a consciousness of it, but it does not happen every day or every week, if that is the question.

Senator PRATT: Is that something you can take on notice in terms of which—

Mr Quaedvlieg: Yes, we can.

Senator PRATT: I note that there was an event in Fremantle a couple of weeks ago where some Pakistani seafarers jumped off the side of a livestock ship into Fremantle harbour. What information do you have about those seafarers?

Mr Quaedvlieg: The information I have is that that is also a relatively irregular occurrence; it has no bearing as to whether someone holds an MCV or not. MCV holders and non-MCV holders abscond from time to time. I am pleased to report that, on most occasions when there is an absconding from vessels, those people are rounded up fairly quickly and put back on the ship and expatriated out of the country.

Senator PRATT: Some of them will use that as an opportunity to make a legitimate claim for asylum, but they are not—

Mr Quaedvlieg: Sure, and they are assessed at the time.

Senator PRATT: They are not actually the people I am worried about.

Mr Manthorpe: There are very few of them.

Senator PRATT: There have been, however, other cases—I think there was a case in Tasmania of someone from a Chinese vessel who jumped ship. Can I ask where those seafarers are now.

Mr Quaedvlieg: I do not know. I will take that on notice. I think we might have detained one or more of them. I would need to take that on notice to be precise.

CHAIR: Senator, you might have to put your other questions on notice.

Senator PRATT: Or we might explore them in a future spillover estimates.
CHAIR: Well, you do what you like. We now go to Senator Fawcett.

Senator FAWCETT: I have been contacted by a range of people this evening and in fact have just been on the phone with Mr Phil Glendenning, the President of the Refugee Council of Australia. He has outlined how the words I spoke earlier today have been taken and the deep hurt that this has caused across the network of communities that his council represents. Whilst it was never my intention that my comments would refer to refugees in such a way, it is clear that my poor choice of words has caused hurt to many people, and consequently I sincerely apologise. Thank you, Minister.

Senator Cash: Thank you, Senator Fawcett.

CHAIR: With that, I will close these proceedings. I thank the Immigration and Border Protection people: the secretary, the commissioner and all of your staff. Thanks to Hansard and the secretariat. The committee will resume at 9 am tomorrow to deal with the Attorney-General's Department.

Committee adjourned at 22:58