COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Estimates

(Public)

MONDAY, 8 APRIL 2019

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SENATE
LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Monday, 8 April 2019

HOME AFFAIRS PORTFOLIO

In Attendance

Senator Cash, Minister for Small and Family Business, Skills and Vocational Education
Senator Colbeck, Assistant Minister for Agriculture and Water Resources
Senator Reynolds, Minister for Defence Industry, Minister for Emergency Management and North Queensland Recovery
Senator Ruston, Assistant Minister for International Development and the Pacific

Department of Home Affairs

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

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

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

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

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

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

Committee met at 09:15

CHAIR (Senator Ian Macdonald): I declare open this hearing of the Legal and Constitutional Affairs Legislation Committee and its consideration of the budget estimates 2019-20. The Senate has referred to the
committee particulars of the proposed expenditure 2019-20 for the portfolios of Home Affairs and the Attorney-General and other related documents. These are budget estimates proceedings. The committee will continue today with its examination of the Home Affairs portfolio. We have set Friday, 24 May as the date by which answers to questions on notice are to be returned. We also decided that written questions on notice should be provided to the secretariat no later than 5.00 pm on Friday, the 12th.

The committee must take all evidence in public session. This includes answers to questions on notice. Witnesses all know I think, without me telling them, that they're protected by parliamentary privilege. It's unlawful for anyone to threaten or disadvantage a witness on account of the evidence given. Officers and senators are familiar with the rules of the Senate governing estimates, but, if anyone needs assistance, they should refer to the secretariat. Any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purposes of estimates hearings. The Senate's resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate's resolved that an officer of the department shall not be asked to give opinions on matters of policy and should be given reasonable opportunity to refer to questions asked of an officer to a superior officer or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and doesn't preclude questions asking for explanations and how and when they were adopted. The public immunity statement will be incorporated in Hansard.

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

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

(Extract, Senate Standing Orders)

I think this committee is well aware of this. It's not sufficient simply to claim it; you've got to establish why, and
the committee then determines that.

The media have requested permission to film the proceedings, and the committee has agreed to this. I remind
the media that this permission to film can be revoked at any time. Filming may not occur during suspensions or
after the adjournment of proceedings. If a witness objects to the filming, the committee will consider this request.
Copies of the resolution regarding broadcasting are made.

I welcome the minister, Minister Cash. Thank you very much for being here, representing the Minister for
Home Affairs and the Minister for Immigration, Citizenship and Multicultural Affairs. Can I just make it clear—and
and the committee's just had a meeting on this—by way of background, we did decide to have 1½ days effectively
for each portfolio. The committee had decided that last Thursday we would deal with as much as we could of the
Home Affairs portfolio. We finished at a certain time, and then went to Attorney-General's. The committee
acknowledges that some matters were truncated and, in particular, that we did not get to ASIO or ACIC. In
addition to that, last week the committee, as well as determining its Thursday program, also determined its
Monday and Tuesday program, so we're going to proceed as set out in the program.

Department of Home Affairs

[09:19]

CHAIR: The Department of Home Affairs is first up, obviously—cross-portfolio, corporate and general
matters. Although we did do substantial amount of this last time, there may have been some curtailment. We'll go
there and then proceed through outcome 1 to outcome 3. The committee has decided that, at the conclusion of
Home Affairs portfolio, we'll have in ASIO. We have had an advice from the Director-General that he will not be
available until after 1:00pm, so we would hope to have ASIO sometime after 1:00 pm. This will be a moveable feast,
and the committee will meet probably a couple of times during the day to readjust programs where
necessary. It's my view that a lot of the questions were asked on Thursday and I would hope that my colleagues
wouldn't be rehashing questions they have already asked because this is about questioning on estimates and on
funding in the portfolio. So the program is as stands but will be added to by adding ASIO and ACIC. We hope to
be able to tell those agencies during the day a better time on when they'll be called, but all we can say with
certainty is they will not be called before 1:00 pm today.

For tomorrow, we decided last week to deal with the Attorney-General's Department. Again, much of that was
dealt with on Tuesday night, and I remind my colleagues that on Thursday night at 10:30pm, we asked if there
were any more questions for the Attorney-General's Department and were told that no senator had any other
questions for the Attorney-General's Department. Now, notwithstanding that, I am prepared to—

Senator Pratt interjecting—

CHAIR: We're getting the Hansard transcript on that and we also are getting Hansard transcript on the fact
that, in accordance with the Senate rules, we stop where there are no further questions or, if there are further
questions, a senator offers to put those questions on notice and, again, that's what happened. But notwithstanding
that, I'm quite happy to deal with the Attorney-General's Department. If we happen by good grace to finish Home
Affairs today, the committee will meet to see whether we should start on AG's tomorrow. But if we don't finish
and if the committee doesn't so agree, we'll be dealing with the Attorney-General's tomorrow, but the committee
has made the decision that tomorrow's proceedings will terminate at 1:00pm, and I thank the committee for that.
We'll move straight to Home Affairs—corporate and general matters. Minister, did you want to say anything?

Senator Cash: No.

CHAIR: And Mr Pezzullo kindly gave an informative opening address in the last hearing, so I won't ask Mr
Pezzullo again. Arising out of the budget, Mr Pezzullo, could you just tell us how the budget affected the
Department of Home Affairs?

Mr Pezzullo: Do you mean in general terms?

CHAIR: Of course, money wise is what I'm interested in—

Mr Pezzullo: Indeed.

CHAIR: in all of the portfolios that are in the department which include, of course, AFP. Although I don't
really need you to go into that because AFP did tell us they had received substantial new funding there and
probably you could leave out ASIO and ACIC because we'll get that from them later but just in the rest of the department.

**Mr Pezzullo:** If I can just very briefly touch on those headline announcements that were made in relation to counterterrorism and law enforcement capability, of course the funding for ASIO and AFP is very welcome from a departmental point of view because of course we work so closely with them. It also enhances our capability to have more investigators, for instance, more capability within ASIO to undertake their investigations. It's a dynamic situation where more capability in those agencies assist us in doing our work, so I just wouldn't want that to be left unremarked.

But in terms of the department proper, the funding across all of our programs was either maintained or increased in accordance with the way in which governments escalate budgets. Obviously we're required at the same time to apply ongoing efficiency dividends and the like. I think it's fair to say, from a departmental point of view, which is both the Department of Home Affairs proper and the Australian Border Force, the commissioner and I will continually need to look for ways in which to increase our productivity in order to ensure the processing times, for instance, be it for visas or for passenger facilitations, are able to be maintained.

We were, of course, given specific funding to support new visas, and also there's the ongoing funding that has been confirmed in this budget for the automation of our digital visa system. I should mention for the benefit of senators that the decision in relation to automating our visa system will not be taken by government until after the election, just to give assurance. However, the funding that we require to not only look at how market based solutions might be provided but also how certain back-office functions and certain intelligence functions can be provided were further funded in this budget.

I should conclude by also making it clear that funding for the offshore processing function was, again, extended. It was very obviously necessary but welcome because, until you see the funding in your budget, you always are not quite sure about how much money you're going to be dealing with, and so the government gave us a further instalment of funding to support our operations in Manus and Nauru. I should perhaps ask Ms Moy and Ms Cargill to join me to draw any attention to other highlights that pertain to the departmental budget as opposed to the broader portfolio budget.

**CHAIR:** Can I just ask what this might mean staff wise? I realise you don't have a crystal ball, but would you be anticipating increases in staff over the next financial year under the budget scenario?

**Mr Pezzullo:** We are constrained in that regard because of the requirements around Public Service staffing levels. I might, in fact, asked Ms Cargill to start on that point and perhaps go back to the cash budget then secondly.

**Ms Cargill:** For the 2019-20 budget, the department's ASL for 2019-20 is 14,545 and our ASL cap in 2018-19 was 14,120.

**Mr Pezzullo:** That's a difference of?

**Ms Cargill:** It is a difference of 425. In terms of the fiscal impact on the department of the budget itself, on the department specifically, the impact over the forward estimates for the department impact on fiscal balance is $273.9 million and there's also a component that relates to estimates variations which also increased the department's budget.

**CHAIR:** Ms Moy, do you have anything to add to that?

**Ms Moy:** No.

**CHAIR:** I'll leave that there. Thank you very much for that, and good luck with the administration in the next financial year.

**Senator KIM CARR:** I am as keen as everyone else is to be here. None of us did anticipate this circumstance, Minister.

**Senator Cash:** I thought it was the Labor Party who insisted on having this week—

**Senator PRATT:** We are very happy to be here.

**Senator Cash:** and that is why we are all there.

**Senator KIM CARR:** I would have thought there would have been an election called.

**CHAIR:** Do you have a question, Senator? Time is limited, as you know.

**Senator KIM CARR:** Yes, I have. Minister, when did you discover you would be required to be here?

**Senator Cash:** Senator Carr, given it has been on the agenda for some time, since the agenda was set.
Senator KIM CARR: I see; so you knew that there would be no election called yesterday, did you?
Senator Cash: I'm not quite sure what this has to do with the portfolio, Chair.
CHAIR: It's not related to this portfolio.
Senator KIM CARR: Mr Pezzullo, there is no advertising in this department. Is there any public advertising at all?
Mr Pezzullo: There is a strategic communications campaign undertaken in relation to Operation Sovereign Borders that we fund, which is a longstanding—I am being expansive in my answer—
Senator KIM CARR: Yes; you are. Thank you very much, Mr Pezzullo.
Mr Pezzullo: We would call that a public information campaign which tends to be focused on external stakeholders offshore. I'd have to check with my colleagues as to whether we run public information in relation to visas and the like. But, no, there's no domestic advertising that's peculiar to this time of year. I will check that.
Senator KIM CARR: Thank you. We need to go back over some matters, because we did truncate events last week. Just to begin with, Mr Pezzullo, could you inform the committee whether, as far as the department is concerned, there were any outstanding questions on notice that required answers?
Mr Pezzullo: I thought that we had lodged all of our answers to questions on notice, with perhaps one or two—
Senator KIM CARR: Maybe the officers could check that and I'll come back to that?
Mr Pezzullo: Ms Noble runs the executive area. I thought we'd lodged them all, perhaps bar one or two, but I just need to check.
Ms Noble: We lodged them all bar one.
Senator KIM CARR: By when?
Ms Noble: We lodged all of them bar one. There is one outstanding.
Senator KIM CARR: I see. They were all on time, were they?
Ms Noble: I'd have to get the details of that for you.
Senator KIM CARR: Come back if you can check the statistical returns on it.
Ms Noble: Sure.
Senator KIM CARR: Thank you. I want to go to some of these issues that we had to deal with. With regard to the Paladin matter, there was a question that was returned, and that was AE 19/018. You confirmed that the contract never went to cabinet or a cabinet committee.
Mr Pezzullo: Yes.
Senator KIM CARR: That's a standard procedure, is it, Mr Pezzullo, for a contract of $0.5 billion?
Mr Pezzullo: I'll have to check the historical pattern. In the case of regional processing, as I said to the chair earlier, we are allocated funding, typically on a rolling basis, to have regard to the number of persons who are in regional processing—those who have been repatriated, those who have taken up resettlement offers and the like. The government tends to look at the financials at least twice a year—at budget and at MYEFO or additional estimates. Within the parameters set by the government in terms of its policy, the procurement of services, Garrison Health Services and the like, which you're referring to, is a matter that the department then handles, consistent, of course, with the government Commonwealth procurement guidelines, the delegations for which are sufficiently held within the department.
I take from your question that you might be thinking—because of the value of the contract—of other contracts in the defence space, where there are first and second class approvals. They tend to be related to complex weapons systems and the like, from my recollection. There's no hard and fast rule about what needs to go to cabinet or one of its committees in terms of value. It tends to be in terms of complexity. I am reluctant to say that these are standard contracts, because they are awarded in a situation of operational complexity. As I said in my opening statement last week, distance, location and operational complexities, being what they are, mean that these contracts relate to services delivered in a complex environment. In and of itself, the procurement rules do not require delegates to be either a minister or endorsed by the cabinet as such.
Just to be clear, we obviously have to work both within the government's policy parameters around Operation Sovereign Borders and regional processing on the one limb, and within the Commonwealth procurement guidelines on the other limb. That goes without saying, but I'll say it anyway.
Senator KIM CARR: Sure; but there's no specific requirement for a cabinet sign off.
Mr Pezzullo: No.

Senator KIM CARR: You indicated in a further answer, 0/16, that the Minister for Home Affairs or the Minister for Immigration were not specifically briefed about the contracts. I'm just wondering why that was the case.

Mr Pezzullo: Just to reprise both some evidence given last week but also previously, these garrison, security, health and logistical contracts have been in place, obviously with different providers over time for a period of some seven years. Depending on the contract period, they go back to the resumption of regional processing in the latter part of 2012. In and of themselves, the services and the provision of services are uncontroversial. The timing of the contract periods relate very much to the bilateral discussions that are underway at various points in time with our partners in both Papua New Guinea and Nauru. How long will regional processing be in existence? Obviously we have a different policy set of parameters around PNG, because the Australian government announced in the lead-up to October 2017 that it was withdrawing the direct provision of services. Nauru is in a different situation. The engagement that we have with ministers is about policy, what the government's intentions are, the rate of resettlement and the rate of persons being returned in cases where that is warranted.

Senator KIM CARR: But, in this particular case, this contract was highly controversial.

Mr Pezzullo: I might just get Ms Moy to come forward and remind me of the particulars, but, when you say 'highly controversial', you will recall from our exchanges when I gave evidence in February what was—I won't say 'controversial'—problematical was the fact that, through discussions with our bilateral partner, in this case the government of Papua New Guinea, it became apparent in July that, given the time imperatives, we were going to probably require the exceptional circumstances provisions to be enacted. I think they are called special measures, from memory.

Senator KIM CARR: Yes.

Mr Pezzullo: That was certainly advised to the government, who leave it in our hands to sort out the detail. I won't go back over the evidence of in detail.

Senator KIM CARR: When I first raised this, I raised the question about the Auditor-General's report and the fact that these things needed to be properly prosecuted. If I could summarise the evidence, you indicated to me—and you'll obviously correct me if you think I have misrepresented it—that the provisions under the procurement guidelines allowed you to take urgent action because this was an urgent situation.

Mr Pezzullo: In exceptional circumstances.

Senator KIM CARR: Yes, exceptional circumstances, because the government of Papua New Guinea had chosen to act in a certain way—this was the proposition you put to us—and that there was only one company available to undertake the services that the Commonwealth was seeking.

Mr Pezzullo: Well, that—

CHAIR: Mr Pezzullo, there is not a question for you to answer yet. This is not a debate; this is for senators to ask public servants questions about the expenditure. I'm listening carefully. There was not a question. Ask your question, Senator Carr.

Senator KIM CARR: Well, if you'd let me finish.

CHAIR: What was the question?

Senator KIM CARR: Mr Pezzullo, the question is: how does the evidence set with the proposition that this does not require the ministers to be briefed?

Mr Pezzullo: There are two different components. I thought this was extensively laid out in February, so I'll not reprise it all, but summarise it. There is the delegation that is held, I think personally by me, to allow the officers to examine what is called a special measure procurement. They then go away and, through whatever means available to them given the time exigencies, to review what is available in terms of the market, and a separate decision is taken as to the procurement of company X versus any other potential outcome. So the first action that needs to be dealt with is: do the circumstances warrant the application of the special measure provision? That was signed in August.

Senator KIM CARR: I just want to be clear about this. So you sought government authority on that matter?

Mr Pezzullo: No, it was advised to government that I was intending to. Because the delegation are what they are.

Senator KIM CARR: But you didn't seek government authority, you advised government?
Mr Pezzullo: I think that's right. I'd have to refresh my memory, because it's evidence I gave back in February. But if I recall rightly, the advice we gave to the government at the time was—given where we are in terms of circumstances and given the time imperatives since it is now July/August—we are looking ahead to 31 October, with the stated government policy being the withdrawal of the direct provision of services from Papua New Guinea generally, but Manus in particular. It is my intention to pursue this procurement as a special measure. I think I gave evidence at the time to suggest that I did that purposefully and, indeed, I had discussions with the minister, if I recall my evidence correctly, to test whether we would be required to go down that path if the government policy about withdrawal on 31st October remained extent. Given that the policy did remain fixed, we proceeded.

CHAIR: Thank you, Senator Carr. We'll come back to you. Mr Pezzullo, it's not for me to suggest or intimate how you should answer questions, but, where you're referring to evidence that you gave at a previous estimate hearings, sometimes it's better to say, 'I'll get you the transcript of that' As you found out the other day, if you put a word wrong, we'll have three hours of estimates questioning you on whether that word was right or that word was wrong. That's up to you.

Mr Pezzullo: Thank you.

CHAIR: That's not really a question either, but it's part of my question period. Rehashing what we did at previous estimates is perhaps best dealt with by saying, 'I'll get you to the transcript of what happened?'

Senator KIM CARR: No. This is an important matter because it goes to the issue of ministerial responsibility. The government has sought to defray responsibility to this officer.

CHAIR: Is this a point of order?

Senator KIM CARR: No. It's your practice to try and frustrate the work of the committee, and you think this is business as usual. You've got another week of this. There's another week of you trying to frustrate the committee. Good luck to you, but it only goes for a week.

CHAIR: The committee is suspended.

Proceedings suspended from 09:42 to 09:43

CHAIR: I was asking some questions. I have nine minutes and 13 seconds of my 10 minutes to go. I'll just say to my colleagues that, as is my practice, if members are not going to follow the rules, we will have adjournments until people compose themselves. The deputy chair and I have worked cooperatively on getting this program out to give everyone the maximum opportunity of asking questions of the department about expenditure. We have all made concessions, and I appreciate that. I'm disappointed that so early in the day we're in this position. Anyway, back to my questions. Mr Pezzullo, as part of the corporate and general matters that I'm inquiring about, can you just run through again almost in dot point the offshore engagement—

Mr Pezzullo: Regional processing?

CHAIR: Offshore processing.

Mr Pezzullo: Yes.

CHAIR: I'm really only after a dot point to get it in order and just to clarify for my mind, and for the minds of many people who are interested in this subject, just where we're at. Manus and Nauru were started in the term of the Howard government; is that right? Can you start from there and just take me through—in broad, 'This was opened; that was shut' and so on.

Mr Pezzullo: In general terms, what was described by the Howard government in policy terms as the 'Pacific solution' arose after 2001 with the resurgence of the arrival of illegal maritime arrivals on what were known as 'suspected illegal entry vessels', or SIEVs. The last person—and officers will correct me if I am wrong—was removed from Nauru in the program year 2005-06, if I recall. I was in the Department of Defence at that time, so my recall isn't instant. The so-called Pacific solution—I'm using the administrative title of the program; I know it has also got a
political description—which was regional processing, was terminated upon the election of the Rudd government in 2007-08.

CHAIR: Both in Manus and Nauru?

Mr Pezzullo: Completely. Regional processing as a matter of policy was terminated—as a matter of historical record—with the advent of the Rudd government in 2007-08.

CHAIR: Was the infrastructure shut down or staff shut down?

Mr Pezzullo: I'd have to take the details on notice. Certainly, the staff were all withdrawn. In fact, the last person had actually left Nauru—I think he was an Iraqi gentleman—some couple of years earlier. I'll need to get some advice for you on whether the facilities were mothballed. I was head of Customs by the time it all resumed, if I remember correctly. Mr Bowles and his officials in the immigration department had to put in some interim facility. I'm surmising most of the infrastructure was disestablished but I'll check for you during the break and come back to you through the course or on notice. Then the Gillard government—

CHAIR: Sorry to keep interrupting. I'm trying to get an overall picture in a dot point form

Mr Pezzullo: Yes.

CHAIR: So in 2005-06—

Mr Pezzullo: The last person left.

CHAIR: And staff and caretaker, you're not sure of?

Mr Pezzullo: I'll need to check whether the facilities were put in some form of contingency. I'll check that for you. As I said, I was in the Department of Defence at the time so I don't have personal knowledge.

CHAIR: What year approximately was it? I appreciate you don't have the detail. I'm just trying to get a broad time line.

Mr Pezzullo: In broad terms, regional processing in that period, in the Howard government period, went from the latter part of 2001 to approximately 2005-06. Regional processing was formally terminated as a matter of policy in 2007-08. Then the Gillard government, during the course of 2012, commissioned a report on how to deal with—to use the shorthand—the surge of boats; we'll use that description.

CHAIR: Again, Mr Pezzullo, I'm really just after: 'In 2012, Manus was reopened. In 2013, Nauru was opened.' That's really what I'm seeking.

Mr Pezzullo: I understand. As a consequence of a change of policy, Nauru was the government first engaged in 2012. I think the first persons went there in either September or October of 2012. Whether the infrastructure had been completely taken down and had to be re-established quickly, I'll get for you during a break. Then an agreement was struck in the middle of 2013 by the Rudd government, the second Rudd premiership. That would have been July-August of 2013. The first persons went to PNG—Manus—shortly thereafter. So, in broad terms, 2001 to 2005-06, there was regional processing. It ceased. It was resumed in 2012 in Nauru. It resumed in 2013— I'll say PNG because some people are sent to Port Moresby for medical and other purposes—but Manus, principally, 2013.

CHAIR: Okay. The current state? Are both still operating or—this is where I was getting to. I want to find out exactly where we're at the moment.

Mr Pezzullo: With the election of the Abbott government and Operation Sovereign Borders, regional processing obviously was an integral opponent of OSB along with turn-backs and the like.

CHAIR: I'm sorry, Mr Pezzullo. Sorry to keep interrupting. But really what I'm just wanting is: 'In 2005 Manus opened, Nauru opened. In 2008, Manus shut, Nauru shut.'

Mr Pezzullo: I understand. So, with Nauru having opened—or reopened—in 2012; Manus and PNG generally in 2013. Both of those programs were already on foot. The last persons were transferred under these arrangements in July of 2014 to Nauru.

CHAIR: Okay. The current state? Are both still operating or—this is where I was getting to. I want to find out exactly where we're at the moment.

Mr Pezzullo: My apologies for taking the long way around. In the year 2016-17—I'll have to check the date for you—the government took the decision to withdraw from regional processing in Manus and, very gratefully, with our partners in PNG, thanked them. The government determined that the closure of Manus—as an Australian government concern, whereby we were funding the support services, noting that persons there were held there within the auspices of the PNG migration act—occurred on 31 October 2017. Nauru has not been similarly affected by any decision to withdraw services, and we continue with our partners in Nauru on the basis of those extant arrangements.
CHAIR: Manus is now effectively shut?

Mr Pezzullo: The facility itself was repatriated to the PNG defence force. It was part of their land. We supported our partners in PNG to establish other facilities. You might have heard a reference to East Lorengau, where there was a facility previously—that was enhanced—and various other facilities in the local township area on Manus around the town of Lorengau. PNG has also decided to use facilities around Port Moresby as well. They are supported by our officers technically and with funding, but the Australian government doesn't provide those services.

CHAIR: So it's a New Guinea defence force base now?

Mr Pezzullo: Yes. With the only exception or caveat being—as Senator Carr has been investigating or questioning—that, in light of the decision taken by the Papua New Guinean government in the middle of 2017, through mutual agreement, they asked us to continue to provide services, but not into the former Manus facility which—

CHAIR: Okay. So what's happening at Nauru?

Mr Pezzullo: In Nauru, the extant arrangements that go back to 2012 remain on foot. We're in the 7th year of our partnership with Nauru. The Australian government is in discussions with the government of Nauru about how to transition those arrangements over time as well, such that Nauru provides the enduring regional processing capability, but those discussions are still on foot.

CHAIR: Okay. My time has finished. I'll come back to that later. Senator Carr.

Senator KIM CARR: Mr Pezzullo, the government has placed great attention on the fact that the management of this contract is entirely your responsibility. Your answer to the question—

Mr Pezzullo: Sorry, Senator Carr, just to be clear, within ministerial responsibility. I'm not an independent actor. I don't—

Senator KIM CARR: I do understand that.

Mr Pezzullo: I'm overseen by a minister and am accountable to this parliament.

Senator KIM CARR: I do understand that entirely. That's why I want to be clear as to where responsibility actually lies.

Mr Pezzullo: Thank you. I wouldn't want you to think that somehow the department thinks itself autonomous from the government of the day.

Senator KIM CARR: No. But the government seems to think you are, when there's a problem.

CHAIR: Do you have a question, please?

Senator KIM CARR: You say here in your answer: 'No specific briefing was provided regarding the Paladin contracts.' However, you did brief on the question of the special circumstances.

Mr Pezzullo: Yes. In July or August of—

CHAIR: Mr Pezzullo, it would help if you waited for the question and then gave a fulsome answer. Senator Carr, the question?

Senator KIM CARR: Mr Pezzullo, I think you're answering the question quite adequately. We could do without the interruptions.

Mr Pezzullo: I'll pause.

CHAIR: Do you have a question?

Senator KIM CARR: You did specifically brief on the special circumstances.

Mr Pezzullo: Yes.

Senator KIM CARR: You also say that you briefed on updates to the regional processing matters, which included mentions of the contracts that were held.

Mr Pezzullo: Yes.

Senator KIM CARR: So there would have had to have been, presumably, ongoing briefings as to the discussions around Paladin. Is that the case?

Mr Pezzullo: In the context of giving the government assurance that services were going to be provided, you might recall what I'll call the straddle period; we were moving up to October 2017. In fact—and I'll rely on the chairman's counsel—I refer you to the evidence that we gave on those matters prior to—
Senator KIM CARR: Yes, I am familiar with that, but since that time I've received your answer to question 016 and I'm interested to know whether or not the minister was kept informed of what the department was doing about the spending of half a billion dollars worth of public moneys.

Mr Pezzullo: Indeed. As you would expect—sorry, I'll just—

Senator KIM CARR: I've asked the question: was the minister kept informed?

Mr Pezzullo: As part of assuring him that services were going to be provided and how that money was being spent, the answer is: yes, of course.

Senator KIM CARR: Would it not be the case that, if you had not, you'd be failing in your duties as a senior public servant?

CHAIR: That's hypothetical.

Senator KIM CARR: The alternative scenario the minister has tried to paint is that you acted as an autonomous—

CHAIR: What is the question?

Senator KIM CARR: agent in this matter and that the government knew nothing about it.

Mr Pezzullo: I should check what your question is, if I may.

Senator KIM CARR: That is the question: is it not the case that the proposition being advanced, that the government knew nothing about the Paladin contract, doesn't fit with Public Service guidelines or the charter of ministerial accountability? Is that the case?

CHAIR: Mr Pezzullo?

Mr Pezzullo: Thank you, Mr Chairman. If I can very respectfully contest the premise, I don't think, in fairness—and I'll check the record and refer it to the minister as required—the government has at any point said, 'It had nothing to do in general, specific or other terms with us.' It's the case that the government has made clear that the delegations are held within the department. The government sets the policy direction—that is to say, as I rehearsed a moment ago with the chairman, initially the preference of the Australian government was to withdraw from regional processing arrangements in Papua New Guinea. The size of the population as such had come down to a sufficiently small number for it to be managed alternatively. Our partners in PNG and we had a discussion about that. There was a change of approach. It became clear that we would have to step in and provide services. All of those matters were of course canvassed with the government; you wouldn't expect otherwise. And the government's keen first priority was to ensure that services would be provided so people weren't going without meals and the like. All of that was a subject of briefing both before 31 October—

Senator KIM CARR: When the newspaper articles started to appear, did you provide the minister with briefs?

Mr Pezzullo: In more recent times?

Senator KIM CARR: Yes.

Mr Pezzullo: Yes—hang on. I'm nearly certain we did; I'll just check. There certainly would have been briefs in the course of question time preparation and media response. Whether we put up formal submissions for noting, I'll take that on notice and quickly check for you.

Senator KIM CARR: Thank you. I'm interested in the dates on which briefs were presented to the minister on matters that were in the media, particularly with regard to the contract matters that were the subject of public controversy in the Financial Review.

Mr Pezzullo: In this calendar year 2019?

Senator KIM CARR: Yes, this calendar year. That would be appreciated.

Mr Pezzullo: I'll take it on notice and, indeed, if I'm able to I'll try to acquit this during the course of the day. You know, as a well- and long-experienced parliamentarian and minister, that there are different types of briefs. Some of them relate to question time.

Senator KIM CARR: That's right, and one's 'for noting'.

Mr Pezzullo: And there are noting and decision briefs. We'll look at those.

Senator KIM CARR: 'For noting' briefs are the ones where the minister was kept informed of the department's actions in regard to public commentary. Did the department ever have a contract with Toll Holdings as reported in the Financial Review on 19 February?
Mr Pezzullo: For certain infrastructure and property purposes, they might have been a subcontractor. I’ll check with Ms Moy and Mr Nockels. I don't recall them being a prime contractor in either location, but I stand to be corrected on that. Ms Moy and Mr Nockels, the question of Toll Holdings?

Ms Moy: Toll did some work for us in Papua New Guinea in regard to some temporary accommodation contingency.

Senator KIM CARR: Was that as a primary contractor or as a subcontractor?

Ms Moy: They were directly contracted to undertake that work.

Senator KIM CARR: Was the contract cancelled at short notice?

Mr Nockels: Your question is around a contract with Toll.

Senator KIM CARR: Yes.

Mr Nockels: Given that we had to move quickly, we actually didn't formally have a contract. We were operating under a letter of intent that was struck with Toll. We had a very short space of time to get the services, which were predominantly focused on accommodation, up and running. Then there was a change of direction and we did not require those services going forward.

Senator KIM CARR: So it was the department that changed the circumstances of the relationship with Toll, was it?

Mr Nockels: The department struck the letter of intent with the contractor or the service provider.

Senator KIM CARR: Are we talking about Toll now?

Mr Nockels: Yes, Toll. Then, as per a letter of intent or a contract, we can cancel that as required.

Senator KIM CARR: I want to be clear about this, Mr Nockels. So it was the department that chose to end that relationship with Toll?

Ms Moy: The cancellation was in consultation with the Papua New Guinea government. The Papua New Guinea government directs and requests the department to undertake certain activities to support regional processing. It was part of their decision to change the requirements for that contingency accommodation.

Senator KIM CARR: So, just to be clear, the government of Papua New Guinea asked you to terminate the relationship with Toll?

Ms Moy: What they asked us to do was to not provide the temporary accommodation that Toll was providing. So that then led to us not requiring Toll and cancelling the letter of intent.

Mr Pezzullo: Sorry to interrupt, but, given we are talking about a particular time period in the lead-up to October 2017, it should only take a minute or so to just very briefly remind the senator of the temporal period that we are talking about related to the decisions around withdrawing from Manus. Senator, that might be of assistance to you.

Ms Moy: The requirement for Toll was undertaken as a contingency in regard to the Papua New Guinea government coming to us and saying they were no longer able to undertake the contracts. We had a very short period of time to transition from July, when we were advised by the Papua New Guinea government, to undertake some contracts. So some contingency planning—

Mr Pezzullo: That was July 2017.

Ms Moy: The close-down at the end of October 2017 of Manus meant that the transition out actually needed to commence in July. So the work that was undertaken with Toll was part of a contingency plan were we not able to find other accommodation locally on Manus Island.

Senator KIM CARR: Was any of the work that was undertaken by Toll taken up by NKW Holdings?

Ms Moy: No, it was not.

Senator KIM CARR: So there was no relationship whatever between Toll's letter of intent and the services provided by Toll and those services later provided by NKW?

Ms Moy: No, there was not.

Senator KIM CARR: Was a formal contract with NKW ever signed?

Ms Moy: Yes, there is a contract with NKW. The contract was signed on 21 September 2018.

Senator KIM CARR: Can I just get the date on which the Toll letter of intent was cancelled?

Mr Nockels: I have that information. The letter of intent with Toll was terminated on 4 September 2017.
CHAIR: Just so I can follow that, is this relating to the Supreme Court of Papua New Guinea deciding that Manus should be shut down?

Mr Pezzullo: Not directly, Mr Chairman. Let me very briefly explain. The Supreme Court of Papua New Guinea laid down a decision that related to the circumstances in which you could detain or not detain persons under the relevant Papua New Guinea statute, and whether persons were to be given freedom of movement and the like. The government of Papua New Guinea decided, on the basis of that decision, to work towards the closure of a centre, as such. But, in the interim, and I will refer you to previous evidence, because I've given it before, people were given free movement.

CHAIR: Yes, but they were going to close the centre at Manus.

Mr Pezzullo: I'd have to refresh my memory about whether they were going to close—

CHAIR: I am really trying to get onto the Toll thing. Ms Moy, you are talking as if we all know, with the same intimacy you do, what happened. But what I'm trying to find out is why did the PNG government want this temporary accommodation initially? As I understand from what you've said to Senator Carr, the PNG government wanted temporary accommodation pretty urgently, is that—

Ms Moy: That's correct.

CHAIR: Do you know why that was?

Ms Moy: The decision to close the Manus Regional Processing Centre meant that on 31 October there would be no accommodation within that site for any individuals or transferees. So, at the point in time when Papua New Guinea pulled out of their tender and contracts, there was no alternative accommodation that would accommodate the entire cohort. There was the East Lorengau transit centre—

CHAIR: So the New Guinea government said, 'We want some temporary accommodation in Port Moresby,' was it?

Ms Moy: No, it was in Manus Island. The East Lorengau transit centre for refugees was located close to the Lorengau township. The Papua New Guinea government considered that there was a parcel of land on that ELRTC space that could be used for temporary accommodation, should no other accommodation be able to be found for refugees. It was a contingency arrangement.

CHAIR: So Toll was engaged to build on this other block of land?

Ms Moy: To put temporary accommodation on that particular parcel of land—that's correct.

CHAIR: On what day did you sign this letter of intent with Toll?

Mr Nockels: The Toll letter of intent was executed on 30 August, 2017.

CHAIR: To build the temporary accommodation?

Mr Nockels: Correct.

CHAIR: Then, from what I understand, the PNG government said, 'We don't want to do that anymore.' Is that right?

Ms Moy: That's correct.

CHAIR: Whereupon you didn't need the services of Toll?

Ms Moy: That's correct. When the PNG government requested that that accommodation not go ahead, there had already been a certain amount of work and procurement undertaken by Toll to commence the work, which they were paid for. Then the letter of intent was finalised.

CHAIR: And that was legally able to be done under a letter of intent?

Ms Moy: Correct.

CHAIR: All right, that clarifies in my mind the Toll issue. So the letter of intent was able to be legally terminated?

Ms Moy: That's correct.

CHAIR: And could we get on notice just what was paid to Toll, and what for.

Ms Moy: I can probably provide that to you now. It was $8.1 million.

CHAIR: Do we have what that was for? What did the invoice say?

Ms Moy: We can provide the breakdown for you on notice.

CHAIR: Was it mainly goods or mainly services or—
Ms Moy: It would have been for services in terms of staff time. It would have also been for provisions that were purchased that are now assets of the department. Those purchases were taken by the department and held as assets.

CHAIR: Thanks for that. That clarifies that. Now, back to where I was before, on Nauru: what is the current state of Nauru?

Ms Moy: In terms of?

CHAIR: In terms of everything. I think Mr Pezzullo said before—correct me if I'm wrong, Mr Pezzullo—that it's a seven-year arrangement that continues—

Mr Pezzullo: No, we've been in partnership with the government of Nauru for seven years. There's no defined termination period. In fairness to my colleagues from contracts, I'll ask Mr Ablong and his policy colleagues to come forward. They handle the diplomatic aspects. We have a standing agreement with Nauru which is not conditional on any particular termination period. As I said earlier in evidence, it is both governments' intent to move to a more enduring arrangement where Nauru over time will take on more of a lead role in the provision of these services. Mr Ablong, you might just brief the committee on the agreement that we have with Nauru and its duration.

Mr Ablong: The agreement with Nauru, as the secretary said, has been ongoing for a number of years. Is there a specific element of that that you're—

CHAIR: No. I appreciate your coming to the table, but my question really was: at the moment, Nauru are running the processing centre?

Mr Ablong: That's correct.

CHAIR: The Australian government pays a certain amount of money to Nauru for that?

Mr Pezzullo: No, Mr Chairman, we provide, by way of agreement between the two governments, a range of services: garrison security, medical and the like.

CHAIR: To the Nauru government?

Mr Pezzullo: The services are provided directly by way of agreement between us and the government of Nauru. Nauru's got sovereign jurisdiction.

CHAIR: Yes.

Mr Pezzullo: They decide the circumstances in which people are held—whether they're detained; whether they're not detained. They have a similar open-centre policy for different sorts of reasons from the ones that I described earlier in PNG.

CHAIR: How many people are in the processing centre at the moment, approximately?

Mr Pezzullo: We gave that evidence last week.

Mr Ablong: We did.

CHAIR: Yes, I've got that.

Mr Ablong: You've got that.

Senator Kim Carr: Refer him to the Hansard.

CHAIR: As I say, I don't need that. We have got it. It was in the opening statement.

Mr Wilden: Just to be clear, as you referenced the regional processing centre: the actual centres themselves don't have anyone resident in them. All people in Nauru are currently resident within the community.

CHAIR: So none of them are, as part of the popular press would say, detained—

Mr Ablong: Correct.

CHAIR: or incarcerated? That is not correct?

Mr Pezzullo: They can avail themselves of services—they can visit the centre for medical treatment, for instance—but, no, they live in the community. That's been the case for some time now, hasn't it?

Mr Wilden: Yes. There had been a very small group of people, about five or six individuals, since late last year, but they moved out—I think it was in February.

CHAIR: The centre continues as an administrative and medical centre? Is that correct?

Mr Wilden: That's correct.

Mr Ablong: That's correct.
CHAIR: And people involved in processing can visit it if they want to, but other than that they go to their homes?

Mr Pezzullo: That's right.

CHAIR: Where are they living generally? Are they in houses or in a camp?

Mr Wilden: There are a range of facilities in Nauru, ranging from small sites where groups of individuals or families are residing, through to homes that are being rented out in the Nauru community.

CHAIR: Thanks for that information because I, like most Australians, am confused by some of the popular press who talk about detention centres and guards and dogs, and none of that is accurate. These people live in Nauru—would I be right in saying in the same manner and with the same rights and responsibilities as Nauruans?

Mr Pezzullo: Their legal status—and we've given this evidence before, but just to quickly summarise it—is that they are 20-year residents. Nauru has determined that transferees have got a 20-year residency entitlement. So, when you say 'full rights', it's different from citizenship. Mr Wilden, just remind me, does that distinguish between refugees and those found not to be owed protection?

Mr Wilden: No. Their status is that they are visa holders. Nauru grants the visa for the period of time, and during that time—obviously in a similar way to Australia, where visa holders can reside here and avail themselves of what Australia has to offer— it comes with rights and responsibilities.

Mr Ablong: All transferees on Nauru have work rights, and they're provided assistance to find employment and build their skills while they are resident on Nauru. They can gain employment and earn an income in Nauru and enhance their job readiness for their potential resettlement elsewhere.

CHAIR: Thanks very much. I might come back to that.

Senator KIM CARR: That Toll contract I spoke of—which, under the letters of intent, was terminated on 4 September—was the one where the arrangement was entered into on 30 August 2017; is that right?

Mr Pezzullo: I think that's right. I'll just check. If I recall rightly, there's only been one letter of intent with that company. I'm assuming it's the same arrangement.

Senator KIM CARR: How much money was paid to Toll?

Mr Nockels: As to Senator Carr's line of questioning, it's about this particular agreement that we've been discussing. That said—to your point, Secretary—in the past we have engaged Toll for a number of different activities, but that was some years prior, particularly in the early days of setting up—

Senator KIM CARR: I understand that, Mr Nockels.

Mr Nockels: the regional processing centres in both Manus and Nauru.

Senator KIM CARR: I do thank you for that, but, under this letter of intent, how much money was paid?

Mr Nockels: As I indicated to the chair just a short while ago—or, sorry, Ms Moy did, I think—$8.1 million.

Senator KIM CARR: How many days work did Toll undertake?

Mr Nockels: I'm not sure I have that detail in terms of the number of actual days of work.

Senator KIM CARR: Can you confirm it was six?

Mr Nockels: I can't confirm the number of days of work that Toll took to deliver services up to that point. Obviously, as we moved to a letter of intent, they potentially could have been working prior to that.

Senator KIM CARR: It was signed on 30 August—

Mr Nockels: The number of people who were involved in doing the work for Toll—

Senator KIM CARR: I just want to be clear about this. Mr Nockels, just tell me where I have gone wrong here. It was signed on 30 August and terminated on 4 September.

Mr Nockels: That's correct.

Senator KIM CARR: So six days, right? They get paid $8 million. Is that right?

Mr Nockels: So—

Senator KIM CARR: $8.1 million, to be precise. Is that correct? That's the question I asked: is that correct?

Ms Moy: Including materials purchased by Toll—

Senator KIM CARR: Yes, okay; that's right.
Ms Moy: Senator, in terms of the breakdown, I think we've agreed to take that on notice as well.

Senator KIM CARR: Yes, sure, but from 30 August 2017, terminated on 4 September, it is six days. Six days later. They get paid $8.1 million.

CHAIR: And the question is?

Senator KIM CARR: That's $1.35 million per day.

CHAIR: And the question is.

Senator KIM CARR: Is that correct?

Mr Nockels: I think that premise for your question is perhaps incorrect in the sense that, as Ms Moy has said, the money was going towards a whole raft of material as well as services that were provided by Toll. In particular, we were talking about the fact that what was required was temporary accommodation, so the purchase of that temporary accommodation, which would include ablution blocks and would also include a kitchen et cetera. So all of that was purchased. And then obviously shipping costs were associated with that. So the costs associated with what we had to pay—

Senator KIM CARR: Mr Nockels, this is my—

CHAIR: You asked the question; let the officer answer it.

Senator KIM CARR: I asked whether it is correct.

CHAIR: Let him answer it, please.

Mr Nockels: The costs associated with what we had to pay Toll were about meeting their obligations under the letter of intent.

Senator KIM CARR: I just want to be clear about this, though. What happened between 4 September 2017 and 23 October 2017? I notice that the Manus closure was on 31 October 2017. Who provided services during that time?

Ms Moy: Broadspetrum were still at the centre providing services up to 31 October. In the period between, when we took on Paladin and NKW to provide other services, Broadspetrum were transitioning out, and the other companies were transitioning in. And those transitions occurred in consult between all of the contractors and the department.

Senator KIM CARR: So we've got $8.1 million paid from 30 August to 4 September. How much was paid to Broadspetrum between 4 September and 23 October?

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

Senator KIM CARR: You don't have that figure with you?

Ms Moy: Not those specific dates, no. It would have been as per the contract.

Mr Pezzullo: It would have been as per the contract. So there would have been a pro rata. Broadspetrum would have been—in fact, going back to the time it was Transfield, if I recall—

Ms Moy: That's correct.

Mr Pezzullo: contracted for a period going back some years. So they would have had contractual obligations to deliver various services, and we pay the invoices accordingly. Just to be clear, as Ms Moy said earlier, the centre is running at Manus, which is an extension of the Lombrum naval facility. Both governments have agreed, for their own reasons, to close that down on 31 October. There are still persons, transferees—refugees and otherwise—who then need to come off that base, because it's going to be repatriated to the Papua New Guinean defence force, and they have to go somewhere else. As Ms Moy said earlier, the government of PNG initially—correct me if I am wrong—set up some interim accommodation on a parcel of land not at the naval base, on another part of the island. So, obviously, we proceed accordingly. And, for reasons that were summarised earlier, they then changed their approach, effectively moving to having hard-stand accommodation, and that's in a combination of East Lorengau and other locations.

Senator KIM CARR: Will Broadspetrum be getting $1.35 million per day as well?

Mr Nockels: Doing a comparison between what Broadspetrum was asked to deliver under the contract and what we'd asked Toll to deliver under the contract, it's chalk and cheese. What we were asking Broadspetrum to deliver under the contract was a range of services associated with garrison and welfare services; whereas what we were asking Toll to deliver was the physical structure, the set-up of temporary accommodation, and I listed some of those things before. So it's quite different—
Senator KIM CARR: Time is short. Given the questions I asked you last time we discussed these matters, about the allegations of bribery and corruption, is it a matter of concern within the department that the government of Papua New Guinea had asked that a contract with Toll be cancelled, or a letter of intent—an arrangement with Toll—which was, as I say, $8.16 million for a period of six days, and that work ended up with Paladin?

Ms Moy: So, Senator—

CHAIR: Can I be clear: what is the question?

Senator KIM CARR: Was it ever a matter of concern within the department?

CHAIR: Well, again, Senator, we had a discussion about this last time. Concern is a feeling; it's an opinion. Officers can't have concerns, because that's an opinion and—

Senator PRATT: It's their job to—

Senator KIM CARR: We had expressions of happiness last time.

CHAIR: Well, they shouldn't have done that either, and whether the department—

Senator KIM CARR: Clearly we no longer have expressions of happiness.

CHAIR: Whether the department in globo can have an opinion, I'm not quite sure. Perhaps you can reword the question: 'Was that in accordance with the law?'

Senator KIM CARR: No. Were there ever any concerns expressed—

CHAIR: Concerns expressed by whom?

Senator KIM CARR: within the department, given the allegations have now emerged about bribery and corruption—

Mr Pezzullo: Were concerns expressed contemporaneously?

Senator KIM CARR: There have been concerns expressed now.

Ms Moy: Since, that's right.

CHAIR: 'Were any concerns expressed by the department?' I think, is the—

Senator KIM CARR: Any officers within the department, because I'm sure it won't be an official memo. Did any officers express any concerns given that the New Guinea's government has asked for this contract arrangement to be ended?

Ms Moy: Senator, can I fix that comment. In terms of PNG—

Mr Pezzullo: Address that comment.

Ms Moy: Sorry, address the comment. In terms of PNG asking for the contract to cease, PNG asked for the service to be different, for that service not to be provided. That, in turn, then changed the contract. So at no time did the PNG government say to the department—

Senator KIM CARR: 'Don't deal with Toll.'

Ms Moy: 'Cancel that contract' or 'Don't deal with Toll.' No, that was not the premise of any of the conversations or the actions and activity.

Senator KIM CARR: On the suggestion that there be moneys paid, which that we discussed last time, has anyone ever asked you about those matters—that is, moneys that would be pursued or the suggestion of $8 million?

CHAIR: I'm not sure who 'anyone' is, but—yes or no—did anyone express any—

Senator KIM CARR: Ms Moy, were you aware of those matters other than before they were first published in the newspaper here?

Ms Moy: No, I was not. I think we addressed those at last estimates last week. We commented that we had not received that information.

Senator KIM CARR: Mr Nockels, you were not made aware of those concerns?

Mr Nockels: I think we covered that at the last estimates.

Senator KIM CARR: I don't think I asked you that, did I?

Mr Pezzullo: I did say that we would check and, indeed, we have checked. The question that has arisen in media reporting relates to requests of political donations to be made. We are not aware of those matters. We have
made inquiries within our own department. The answer is that we're not aware of those matters. We have seen what's in the press, obviously.

CHAIR: Thanks, Senator Carr. We'll come back to you. So that some journalists who are only half watching this don't get the wrong headline: the money paid to Toll was $8-odd million dollars; and I asked you and you told me, and Senator Carr then asked the same question and you told him the same thing. That was for some services and some goods. I think you said last time that the goods now belong to the department and might be used elsewhere. Is that what you're indicating?

Ms Moy: Part of the costs, for example, were marquees. The department now holds those marquees as contingency in Brisbane, in storage.

CHAIR: I think you mentioned there was some other goods purchased. I think you mentioned toilets, kitchens and that sort of thing?

Ms Moy: Yes, there was. I'd have to check the actual details of what we hold.

CHAIR: Sorry to interrupt, but you did tell me before, when I asked this question, that you would get me details of what the $8 million actually incorporated. Some of it, you're telling me, was for marquees, some was for toilets and some was for other things. Can I just confirm that this was all done as a matter of urgency because the Papua New Guinea government wanted temporary accommodation?

Ms Moy: It was undertaken as a contingency because, at the time, Papua New Guinea said they would not continue with their contracts. The department, post-31 October, did not have contracts for the services of garrison, welfare, accommodation, catering or any of the services that would be required to food, to provide housing and to provide services to the transferees remaining on Manus Island.

CHAIR: Thank you for that. I just wanted to be absolutely clear on that, because some people could make the wrong assumptions. It needs to be perfectly clear, and I look forward to getting the details as an answer to a question on notice. Going back to Nauru, where I was last time when my time expired. Mr Pezzullo, how many children are now in Nauru who were there originally because of the processing?

Mr Pezzullo: Zero.

CHAIR: For those there, do we have their marital status? Are there husbands or wives?

Mr Pezzullo: We'd have some data on family breakdowns. Mr Wilden will assist me with the breakdown, but all of the minors who were there either have been transferred through our US program and/or are in Australia for medical treatment and/or are accompanying parents or guardians who are here for medical treatment.

CHAIR: Just before Mr Wilden comes in, Mr Pezzullo, you reminded me of another issue in this estimates, but with another agency, namely the Human Rights Commission. In 2013, I think there was something—do you have these figures? I think there was something like 2,000 children in detention or in regional processing?

Mr Pezzullo: Well, 4,100 persons were, over time, transferred into regional processing. As to how many of them were children, I'll have to—

Mr Wilden: We would have to take that on notice.

Mr Pezzullo: But it's quite a significant number. But in terms of the breakdown of the—because there are only adult transferees now on Nauru. Do you have any data on single versus partnership status?

Mr Wilden: No, we don't have a breakdown by status. In Nauru, at the moment, there are 26 female refugees, 239 male refugees, no female non-refugees and 25 male non-refugees. There are still 66 males in the status resolution process and less than five females. There's a total of 359. I'm not sure whether we can gather the full relationships, because some have entered relationships with Nauru citizens and we, as a matter of course, wouldn't collect that data.

CHAIR: I think you may have perhaps made a slip there. Can you just run through those figures again? Can we just deal with females first? How many of them are they, and what is their status?

Mr Wilden: There are 26 refugees—

Mr Pezzullo: Female refugees.

CHAIR: They are people who have been determined by the UNHCR or by the Manus government to be genuine refugees?

Mr Pezzullo: The Nauru government.

CHAIR: Yes, the Nauruans, sorry.
Mr Wilden: There are no non-refugees. There are less than five—we don't generally declare the number—who are still to be determined.

CHAIR: That's females?

Mr Wilden: Females.

CHAIR: Males?

Mr Wilden: For males, there are 239 refugees, 25 non-refugees and 66 who are still in the refugee status determination process.

CHAIR: On non-refugees, how do we describe that?

Mr Wilden: The non-refugees are generally failed asylum seekers or people who have had their initial claims refused but have appealed those.

CHAIR: I think Mr Pezzullo, in his opening statement, gave us the number of non-refugees who have actually returned to their place of origin.

Mr Pezzullo: Yes, I did.

Mr Wilden: I will just see if I've got that here.

CHAIR: That was in your statement?

Mr Pezzullo: It was in my statement last week.

CHAIR: Yes, I seem to recall that. It is 10.30, and we are due to have a morning tea break.

Proceedings suspended from 10:32 to 10:50

CHAIR: The Legal and Constitutional Affairs Legislation Committee will resume its inquiry into the budget for 2019-20. We're dealing with the Department of Home Affairs. Senator Watt has the call.

Senator WATT: Mr Pezzullo, you have no doubt seen a report in The Australian today about that incident with the bicycle crash?

Mr Pezzullo: Yes.

Senator WATT: I was asking questions about that at additional estimates last time. Since then we have had some answers to questions on notice returned and this report has emerged today. I just wanted to ask a couple questions about this.

CHAIR: Senator Watt, as I indicated to you at the private meeting, unless you can establish that there is some relationship between the estimates for the Department of Home Affairs and something which I know very little about but know from some press reports involves an officer in his own private capacity in his own private car, this has nothing to do with the forward estimates.

Senator WATT: We went over this last time.

CHAIR: Yes; and I made the ruling last time and I will be making the same ruling this time unless you can convince me that there is an association between the forward estimates of the Department of Home Affairs and what seems to me to be an entirely private matter.

Senator WATT: I did review the transcript of the last estimates, Chair, and I did notice your regular interruptions last time when I was trying to ask questions about this. The Commissioner of the Australian Federal Police, when he was here last time, confirmed that ACT police resources were incurred in investigating this matter.

CHAIR: Then you can ask the AFP at next estimates.

Senator WATT: Chair, we're in cross-portfolio for the Department of Home Affairs, which means that we can ask questions about expenditure undertaken within this department, and that includes the AFP. So it's entirely appropriate to ask the questions here in cross-portfolio, not outcome 1, not in outcome 2 and not in outcome 3. This is the point, and I don't need the AFP to be here to ask the questions that I propose to ask. I'm not intending to make this a long session. I just have a few minutes with—

CHAIR: The only thing you can ask is about police expenditure, and there's no-one here from the police—neither should there be, because we discharged them three days ago.

Senator WATT: Mr Pezzullo is the Secretary of the Department of Home Affairs, which now includes the AFP. It's entirely appropriate to ask questions about the affairs of his department, including the AFP, in cross-portfolio—and that's what I'm trying to do. If you would just stop interrupting me, I probably could get this done in about five minutes.
CHAIR: Nothing you've said establishes any connection. My recollection—and I can ask the secretary to get the Hansard from the last time—is that the officer before the table, Commissioner Colvin, said that he knows nothing about it and that he thinks it may have been—

Senator WATT: Chair, he took a number of questions on notice, which have now been answered. There's a new media report that has emerged today. You say that I haven't asked anything relevant to budget estimates, but that's because you haven't allowed me to ask anything. Perhaps if you let me ask the questions, rather than keep shutting me down, we could get this—

CHAIR: What was your last question? I think I ruled it out of order. Just remind me what the question was.

Senator WATT: I'll just thing about that.

CHAIR: Senator Watt, I know it's your practice to malign people personally, as you continue to do with parliamentarians and public servants.

Senator WATT: Chair, I'm asking questions that feed off questions on notice that this department has answered.

CHAIR: Tell me what the answer to the question on notice was.

Senator WATT: Well, why don't you read them? They have been tabled.

CHAIR: Unless you can relate it to this—

Senator WATT: Can I just ask a question, Chair?

CHAIR: I ruled the last one out of order.

Senator WATT: You haven't heard the question, Chair. Can I just ask a question?

CHAIR: All right, ask the question.

Senator WATT: Mr Pezzullo, for starters, did you have any role in answering the questions on notice?

Mr Pezzullo: I should begin my answer, Mr Chairman, if this assists by indicating that the budget for the AFP is not held by the department; I'm not the accountable authority for the AFP, as distinct from the Australian Border Force budget, and the AFP is completely independent from the department in all respects—budgetary and operational.

CHAIR: Okay.

Mr Pezzullo: It does sit within the portfolio—I grant Senator Watt that—but the budget arrangements are completely separate.

CHAIR: I guess the question, which I can allow, is: did you have any part in answering the question on notice?

Mr Pezzullo: No. I didn't even know that those questions had been asked, nor did I review them and nor did I know that the AFP had provided responses.

CHAIR: I haven't started the clock for Senator Watt yet, I might indicate. Could I get someone, whether it's the secretariat or the department, to find me the transcript of those answers.

Senator WATT: I've got a spare copy, if you'd like it.

CHAIR: That'd be great.

Senator PRATT: Chair, Mr Pezzullo's response suggests that he might well be happy for these questions to be on the record so that his involvement in not answering those questions is clear.

CHAIR: Senator Pratt, you've known me long enough while I've chaired this committee. We are here to investigate the expenditure of the Department of Home Affairs in the 2019-20 year, and things have to relate to that. It's not like the Senate chamber, where you can get up and talk about anything and that's legitimate. This is not the Senate; this is estimates dealing with the expenditure in the department.

Senator WATT: Mr Pezzullo, one of the questions that was taken on notice at additional estimates was question on notice No. 283. I asked a series of questions about whether you reported the incident to police, whether you and the cyclist were interviewed and whether you and the cyclist were tested for drugs and alcohol.

Mr Pezzullo: I'm sorry, Senator Watt. Are these questions of my department?

Senator WATT: Yes. They were asked in Home Affairs additional estimates in February.

Mr Pezzullo: But of the AFP?

Senator WATT: Of the AFP, which you're the accountable officer for?
Mr Pezzullo: No.

Senator WATT: What is your role in relation to the AFP if you're not accountable for that?

CHAIR: He just explained that.

Mr Pezzullo: I'll have to repeat myself. As distinct from the Australian Border Force, where I'm the accountable officer both in terms of budget and workforce, I have no legal authority, budgetary authority or operational authority over the Australian Federal Police. They're a portfolio agency, and we separately report to the Minister for Home Affairs—that is to say that Commissioner Colvin and I separately report to the Minister for Home Affairs. In the ACT jurisdiction, to which the matter in issue relates, the Chief Police Officer of the ACT—as I heard in the commissioner's evidence last time this was asked—is accountable to the relevant authority here in the ACT, which I presume is the police minister.

Senator WATT: The question-on-notice answer states—this is in relation to the point about whether you and the cyclist were drug and alcohol tested after the accident—that the cyclist was subject to alcohol testing at the Canberra hospital, where he was transferred after the accident, and that, as the report to ACT Policing was made outside of that requirement—being the time limit within which alcohol testing must occur—you were not tested. So I'm just wondering whether you can shed any light on whether the reason that you were not alcohol tested was that the report you made of the incident to the ACT police was made too long after the incident for the alcohol testing to be conducted?

CHAIR: Mr Pezzullo, you may well want to answer that, but I am ruling the question out of order as it has absolutely nothing to do with the expenditure in this department.

Senator WATT: Well, I've said several times—

CHAIR: Whether you combed your hair that day, whether you shined your shoes that day or whether your car was a flash car or not is of no relevance to this, and I'm ruling the question out of order.

Senator WATT: I've said several times that, at the last estimates when I asked about this, the commissioner confirmed that AFP expenditure was incurred—Home Affairs department expenditure was incurred—and presumably, if alcohol testing occurs, which it did for the cyclist, it's the ACT police who cover the cost of that. So it is within the realm of expenditure of this department.

Mr Pezzullo: Sorry, Senator Watt, that's simply not right.

CHAIR: Mr Pezzullo, I've ruled the question out of order.

Senator WATT: What's not right?

CHAIR: You might want to answer it, but I'm not allowing the question.

Mr Pezzullo: Just as a matter of fact—and as much as I might wish to give evidence about what is essentially a private traffic matter, I don't feel it appropriate that I use this opportunity to do so—the Department of Home Affairs does not hold the budget for either the AFP as a whole or AFP Policing. No such resources, therefore, come within my accountable remit. Whether persons, myself included, are drug tested by local police or otherwise is really a matter for the Australian Federal Police.

CHAIR: And that is why I have ruled the question out of order. Mr Pezzullo, how you answer questions is a matter entirely for you. But you should not answer questions which are ruled out of order—and I have ruled those questions out of order for the exact reasons that you have just expressed.

Mr Pezzullo: Chair, I don't intend to—out of respect for your ruling and because it is factually incorrect to say that my department holds the budget for the AFP.

Senator WATT: So were you alcohol tested after this accident?

CHAIR: That question is ruled out of order. Senator Watt, if you are going to keep asking questions which you know are inappropriate and, I emphasise again, have absolutely nothing to do with the forward estimates of the Department of Home Affairs then I will go to another senator.

Senator WATT: I am not going to again say why I am asking these questions here and why I think they are in bounds. The only other question I was going to ask—

CHAIR: If you have a legitimate question, ask it. Otherwise, we will pass to another senator.

Senator WATT: Mr Pezzullo, according to this report in The Australian today, you reported the incident six hours after it occurred. Is that correct?

CHAIR: That question is ruled out of order.

Senator WATT: On what basis?
CHAIR: Senator Watt, this is the most disgusting part of parliamentary procedures—where you, under parliamentary privilege, can malign people. And you do it regularly. You did it last week with a fellow parliamentarian. You know there is nothing in it. You are simply trying to generate a report in a newspaper that you will use for political purposes—

Senator WATT: No, I am asking about questions about a media report.

CHAIR: I'm not quite sure what political purpose there is with Mr Pezzullo. He is an apolitical public servant, originally employed by the other government. In this instance, it is not political but it is maligning people under parliamentary privilege.

Senator WATT: I haven't maligned Mr Pezzullo or anyone else.

CHAIR: You are raising it so that you know that your friends in the left-wing media will make a story out of it.

Senator WATT: There you go, The Australian is a member of the left-wing media! You heard it here first!

Senator KIM CARR: Mr Murdoch is a great left-winger!

CHAIR: Senator Watt, if you don't have legitimate questions, I will pass to another Senator.

Senator WATT: I am not maligning Mr Pezzullo. I have not accused Mr Pezzullo of anything.

CHAIR: Do you have any other questions?

Senator WATT: I'd like an answer to the last question—

CHAIR: That question has been ruled out of order.

Senator WATT: Is it true, as has been reported, that Mr Pezzullo referred the incident six hours after it?

CHAIR: If you continue this and don't have any other questions, I will suspend the proceedings.

Senator WATT: I don't know why you are so sensitive.

CHAIR: The proceedings are suspended for five minutes.

Proceedings suspended from 11:03 to 11:06

CHAIR: We will resume the hearing of the Legal and Constitutional Affairs Legislation Committee's inquiry into the 2019-20 budget. Senator Watt, you have about two minutes of time left if you have legitimate questions of the department. Otherwise, I will move to another senator.

Senator WATT: Thanks, Chair. The only other question I was going to ask is: is this media report correct in saying that Mr Pezzullo's report to police said that he didn't hit the cyclist?

CHAIR: Let me interrupt there. Whether a media report is correct has absolutely nothing to do with the estimates for the Department of Home Affairs. Accordingly, I'm going to pass to another senator. Senator Brockman.

Senator BROCKMAN: Thanks, Chair. This is going to be a fairly broad question—

CHAIR: Sorry, Senator Brockman, I should have mentioned—and some people may be a fraction confused—that we are dealing with cross-portfolio, corporate and general matters.

Senator BROCKMAN: Yes. This is a very general question. I will just go to the background on the issue. There have been a number of recent examples of animal activism, which has disrupted businesses and harassed individuals. There was a case in Harvey a few months ago. There was the recent example of the Gippy Goat Cafe in Victoria, where we saw threatening phone calls. When that was investigated, it was found that the phones were under fictitious names. There was theft. They were prosecuted. It came back, in my opinion, with extraordinarily—

Senator WATT: A point of order, Chair.

CHAIR: Hang on, Senator Brockman. What's the point of order?

Senator WATT: Given the ruling you applied for the questions I was asking, can I ask that Senator Brockman advise the committee which element of the department this falls under and how it is connected to the budget estimates. We wouldn't want to have double standards, so I was just wondering why.

CHAIR: As I mentioned to Senator Brockman, we are dealing with cross-portfolio, corporate and general matters. We will hear the question. This is background; I haven't heard the question. Senator Brockman, get to your question as soon as you can.

Senator BROCKMAN: I accept that it is a long preamble. I will get to my question, Senator Watt.
Senator WATT: Sure. I just note that the chair is keen to hear about the lengths usually before the question is asked. So I thought he might want to have the same opportunity on this occasion.

CHAIR: I'll stop the clock so that your time is not interfered with. Senator Watt, you're correct: Senator Brockman's raised it with me. The question that I know he is about to ask relates to corporate and general in this portfolio. So I know that, but he's just a little slow getting to the question. Senator Brockman, over to you.

Senator BROCKMAN: I apologise to the committee. The preamble was important because the preamble informs the question, which is: what legislation do you oversee which could have a bearing on those issues? If the answer is none, have you given any advice to government on those kinds of interference with business type issues, like misuse of carriage services? There’s a grab bag of potential issues in there; I understand that. Let's start with that first and then I'll have a follow-up question.

Mr Pezzullo: To directly answer the latter part of your question, unless colleagues advise me otherwise, we have not put up specific advice on matters that, in the first instance, would appear to relate to and invoke state laws; principally laws of trespass, laws of obstructing traffic. Interference with businesses, I think, is part of your question and relates to some of the media reporting that I have seen. As to federal offences that might be germane in this area, I don't want to even begin to speculate but I just want to lay out the threshold. The threshold would be very high. It relates to violent extremism, use of carriage services, particularly in relation to terror but also in relation to very serious offences under the Criminal Code. I'll take advice from colleagues, but, generally speaking—and I don't wish to speculate here; I'm just trying to describe the state of the law under our Federation in headline terms—most of the matters here, to the extent that any transgression of the laws has arisen, would typically in the first instance be a matter for the relevant state jurisdictional matters. I've seen some reporting, for instance, of intersections being blocked or persons being on streets and other persons entering premises like cafes and the like. They principally would relate to state jurisdictional matters. I will, though, check with colleagues to see if any federal matters potentially are at play; noting that we would never give specific advice that relates to the investigation of particular crimes, which is a matter for the federal level of course, for the Australian Federal Police.

Senator BROCKMAN: I accept everything you say, and I did expect that would be your answer. But, particularly on this issue of phones being found—phones that are making threatening phone calls; and the accusation is that these are pretty violent threats—that were under fictitious names. Is there something within your ambit that would cover that issue or not?

Mr Pezzullo: Mr Hansford might come and assist me. It's been a while since I've read the relevant provisions of the Criminal Code and the Telecommunications Act, but there are certain federal offences potentially at play—use of the carriage service, either of an online or text or voice nature. Leaving aside, Mr Hansford—because we don't want to get ahead of any investigative process—whether they are applicable in this circumstance, could you perhaps describe—

Senator BROCKMAN: No; not this circumstance. Absolutely, not, Mr Pezzullo. Just in general terms, what exists?

Mr Pezzullo: I don't wish to in any way describe these events in any pejorative terms, but let's call it, 'issues motivated direct protest action', for want of a better phrase. Without seeking to suggest that they are applicable in this circumstance—which would not be a matter for the department in any event; it's for the Federal Police to investigate crimes in relation to federal offences—and without speculating, Mr Hansford, are there relevant provisions of the Criminal Code, the Crimes Act or the Telecommunications Act that might be pertinent, in a general circumstance, of direct, shall we say, civil disobedience?

Mr Hansford: The Criminal Code does have offences that relate to the use of a carriage service to intimidate and harass certain individuals. I'd have to get the specific provisions. Generally speaking, there are provisions which criminalise certain types of behaviour online.

Senator BROCKMAN: I have some more detailed questions, which I'll put on notice. Which is the best agency to direct those too? Which is the agency with operational carriage of those kinds of issues?

Mr Pezzullo: Just to assist, and it relates to my earlier evidence, we're the policy department. If the government were to take a policy view and, for instance, seek advice on changes to legislation or changes to relevant regulations or instruments, we would take the lead at the level of policy. But, as the law applies on the statute books to particular crimes, principally it's a matter for the Australian Federal Police. If there's a border element—I'm not sure that that's applicable here, but just for the sake of completeness—the Australian Border Force would become involved, but typically the first port of call is always the Australian Federal Police when it comes to possible transgressions of federal law.
Senator BROCKMAN: If there is, through follow-up discussions, found to be a weakness in the law in this area, would it be the responsibility of this department to craft a response?

Mr Pezzullo: I wouldn't want to intimate either way whether there's a policy issue here, but let's say, without being hypothetical and with just speaking to our responsibilities, if the government of the day was to say, 'In the area of law enforcement policy'—which is where Mr Hansford's division comes in—'we'd like advice on options and on potential changes to the law, and guidance to relevant authorities,' because certain acts of parliament contain the provisions for ministerial guidance, for instance, we would do that work for the minister of the day, noting always that we do not enforce the law in the department, nor do we lay charges or carry through on criminal investigations. That is solely a matter for the competent enforcement authority—principally, but not always, the Australian Federal Police at the federal level.

Senator KIM CARR: I was seeking some advice about this Ernst & Young audit. Mr Pezzullo, in your statement to the committee, you indicated to us on 28 March that the Auditor-General advised you that the ANAO would undertake an audit on the procurement of the garrison support and welfare services. You welcomed the audit, and you note you're undertaking an internal audit of your own.

Mr Pezzullo: Yes.

Senator KIM CARR: I take it that's Ernst & Young—is that right?

Mr Pezzullo: They are our internal auditor, and we would always refer internal audit tasks to them in the first instance.

Senator KIM CARR: I see. How much are they being paid?

Mr Pezzullo: The audit program is funded on an ongoing basis. I suspect Ms Noble will advise that it represents a reprioritisation of work, but I stand to be corrected.

Ms Noble: That's right. Ernst & Young are contracted by us over a seven-year period, and the value of the contract is $37 million.

Senator KIM CARR: How much are they being paid per annum?

Ms Noble: Well, I guess I'd have to divide that by seven, so that's a little over $5 million a year.

Senator KIM CARR: So is it $35 million across the—

Ms Noble: It's $37 million over seven years.

Mr Pezzullo: Over the term of the contract.

Senator KIM CARR: Specifically, you're undertaking an internal audit of the procurement of garrison services in Papua New Guinea?

Mr Pezzullo: Yes.

Senator KIM CARR: When did you undertake that work?

Mr Pezzullo: When did we commence it?

Senator KIM CARR: Yes.

Ms Noble: On 19 February, we engaged Ernst & Young on this audit. Just to be very clear: it's with respect to Paladin Solutions only.

Senator KIM CARR: I see. I did ask you about it, didn't I, in February estimates?

Mr Pezzullo: Yes.

Senator KIM CARR: And you hadn't commenced it at that point. So this happened after the estimates—is that right?

Mr Pezzullo: That's right.

Senator KIM CARR: Was it as a result of the estimates that you commenced the work?

Mr Pezzullo: It was a combination of factors. It struck me that, in terms of public confidence, given the depth and detail of the reporting—and, again, I don't seek to draw any adverse inferences in making this statement—it's not always accurate, because you've got complex company structures, such as which subentity is involved and what is a contracted activity. From a prudent point of view, whether or not the Auditor was going to look at it, I thought it best that we commission our own internal arms-length process—hence the reference to an internal audit.

Senator KIM CARR: That makes sense. Would you outline the scope and the time frame for the audit?
Mr Pezzullo: The scope relates to, as Ms Noble's just advised, the engagement of Paladin Solutions, and the time frame, I think, that was set in February was over a period of months. I just can't quite recall the precise milestones.

Senator KIM CARR: Would you be able to tell me when you expect the audit to be concluded?

Ms Noble: Probably within the next four to six weeks. Like any audit, we have a large number of documents pertaining to our thinking around the selection of Paladin. It depends on how quickly they can get through all of those documents for us, so it's a little bit open-ended. My guess would be about four to six weeks.

Mr Pezzullo: Just to assure this committee: I wouldn't want a circumstance to arise where rushed work stood in the way of good public administration, so the internal audit team will have as much time as they need.

Senator KIM CARR: Would you anticipate that the results of the audit would be made public? Given the serious nature of the public concerns about this, will the results be made publicly available?

Mr Pezzullo: In the first instance, I'd want to take counsel on that in discussions with the Auditor-General. I'm certain that the Auditor-General will devote his own resources to similar ground but it might assist them with their inquiries, so I wouldn't want to give this committee false assurances that I continue to do anything other than strict consultation with the Auditor-General.

Senator KIM CARR: I'll come to that in a second. You have not made a decision or—

Mr Pezzullo: No. Especially now that the Auditor-General is looking at the matter—

Senator KIM CARR: That's fair enough.

Mr Pezzullo: I'd wish to reflect on that, and, indeed, probably seek his counsel as to how to proceed.

Senator KIM CARR: That seems to me a reasonable response, given the circumstances.

Mr Pezzullo: Sorry, I should make clear—I can give you this absolute assurance: were the internal audit to either produce findings or, in the course of its discovery process, cause me to think that we should come back to this committee with additional information, then that would occur.

Senator KIM CARR: Thank you. Do I presume, then, from your statement just made that you have not had a preliminary report?

Mr Pezzullo: No, I have not seen a report. I have asked about the progress to assure myself—I hardly need to remind Ms Noble who oversees the audit and assurance process. She obviously doesn't do it herself; she engages our internal audit team to do so. I think it's fair to say that you're seized of the importance of it, Ms Noble. But I have not seen a preliminary report from that work.

Senator KIM CARR: Ms Noble, have you received a preliminary report?

Ms Noble: I have been in constant contact with the internal auditors and they have produced an interim assessment, which is in draft form.

Senator KIM CARR: Are you able to enlighten the committee on the nature of that preliminary assessment?

Ms Noble: As I said, it's still in the document-discovery phase. They can't really come to any final conclusions until they're confident that they have seen all of the documents that the department holds that are relevant to the internal audit.

Mr Pezzullo: Suffice to say—and this is a standing instruction in these cases, whether it's an integrity issue, a security issue, an assurance issue or an audit issue—if something arises during the discovery process that would cause the officers, the most senior of whom is Ms Noble, to advise me before I appear in such proceedings, 'Hang on, you probably shouldn't give this line of evidence because that might be problematical,' then I certainly would have expected to have been informed by now. Otherwise it's better to give the officers and their contracted auditors—they work as a team, but obviously EY signs off its audits on its own account—the space to do the work.

Senator KIM CARR: Does the fact that we're about to enter caretaker mode at some point—we should already be there!—have any bearing whatsoever on the way the department deals with this matter?

Mr Pezzullo: No. This is a matter of ongoing administration. It relates to contracts that were let some time ago. It relates to an ongoing matter of interest both for this committee and the Financial Review, and other elements in the media, which is entirely their legitimate right to pursue. There are no new decisions that would arise that would cause the minister of the day—not that we're in caretaker mode at the moment, but we're assuming that it's imminent—to say, 'I probably should seek the concurrence of the opposition,' because there's no new policy, no new contracts to be entered into or the like.
Senator KIM CARR: You say in your opening remarks that this is to assist the Auditor-General. I'm interested to know why—

Mr Pezzullo: It will have the effect of assisting, because the decision that I took independently predated the decision by the ANAO to commence its work. From memory, Ms Noble, it has a broader ambit, does it not?

Ms Noble: Much broader, yes.

Senator KIM CARR: Sorry, a broader—

Mr Pezzullo: A broader ambit.

Senator KIM CARR: Who—the Auditor-General?

Ms Noble: Yes. My understanding is that he intends to look at—the proper title he's given it is 'The Department of Home Affairs' procurement of garrison support and welfare services', which may, in its scope, look at—

Senator KIM CARR: Sorry; can you just enlighten me on the garrison services that are being provided by Paladin and how many other contracts you have for the provision of services?

Mr Pezzullo: These contracts pertain to delivery of services in Papua New Guinea.

Senator KIM CARR: Just the one? So there's one country?

Mr Pezzullo: Correct. Then there are obviously—

Senator KIM CARR: Others for Nauru.

Mr Pezzullo: contracts related to Nauru; that's right.

Senator KIM CARR: Are there any others?

Mr Pezzullo: No.

Senator KIM CARR: That's what I thought.

Mr Pezzullo: There's regional processing in Papua New Guinea and regional processing in Nauru.

Senator KIM CARR: This is the third ANAO audit in three years. Does that not concern you, Mr Pezzullo—three audits by the Australian National Audit Office in three years into garrison services?

Mr Pezzullo: Not only does it not overly concern me but I'd be surprised if the Auditor-General didn't take a close interest. I say that for the same reason I stated in my opening statement last week: these are complex contracts that involve delivery in a complex operational environment at distance and in remote locations. They also involve complex relationships as between sovereign governments, where we are the service provider but working in response to requests and in relation to guidance provided to us by those governments, but within Australian government policy, which gives us parameters as to what we can and can't deliver. These are not straightforward matters; no-one has ever pretended, going right back to the resumption of regional processing in the latter part of 2012, that these are straightforward matters, and so it's proven to be the case. I've been attending these hearings for some number of years now, and it doesn't surprise me that they are a matter of high public interest.

Senator KIM CARR: Your audit won't in any way impede the Auditor-General's audit?

Mr Pezzullo: I can't see how it could. In any event, the Auditor-General operates independently under an act of parliament. We are duty-bound to support the Auditor-General and his officers in every way, shape and means, and we will of course do so. I'm just responding to your question intuitively: I can't see how anything we do would impede it. If it's of assistance to the Auditor-General, that's a matter for the Auditor-General to be satisfied of.

Senator KIM CARR: But it helps you satisfy yourself?

Mr Pezzullo: Yes, that's right.

Senator KIM CARR: That's the purpose of it.

Mr Pezzullo: Under the PGPA legislation, I'm the accountable authority for the expenditure of funds undertaken by the department and I'm seeking to reassure myself, quite independently—the auditor's decision came subsequent to my decision—

Senator KIM CARR: Yes, yes.

Mr Pezzullo: I just want to satisfy myself. If there's anything I need to advise the government and/or this parliament of as a result of that, then of course I will.

Senator KIM CARR: Thank you very much. I can go on to another topic, if you like.
Senator PRATT: I've got some questions on visas.

CHAIR: I'll come to you, Senator Pratt. I have a couple of questions on staffing. Mr Pezzullo, with the additional funds you've got—and I take into account your comment about efficiency dividends as well—does anything in the budget require you to have additional infrastructure resources in the department, in the way of buildings, leases, staff, departmental realignments—that sort of thing?

Mr Pezzullo: I'll ask Ms Cargill to rejoin me. There is certainly authority that we've received to exceed what otherwise would have been a general staffing ceiling. I think Ms Cargill gave that evidence before. She might want to particularise. I think there are 300-plus additional positions. As to buildings and leases, we are constantly looking at how we can rationalise our property holdings just simply from an efficiency point of view. But, Ms Cargill, we might start on the people side first. You indicated earlier that the net effect of the various budget decisions sees an increase in our average staffing level. You might just add to that evidence from earlier.

Ms Cargill: Correct. Our actual ASL cap for 2019-20 increases by 425 to 14,545 from 14,120.

Mr Pezzullo: For the chairman's benefit, in broad terms what is that additional allocation for? I'm sure it is scattered across a number of initiatives, but perhaps you can highlight the key ones.

Ms Cargill: It's predominantly related to government decisions as they were taken in the budget. Some examples would incorporate activities for Christmas Island. Emerging international airports is one example of where additional staffing has been approved.

CHAIR: Don't go just yet.

Mr Pezzullo: Ms Cargill is a reluctant departee from this table, so there's no fear of that. She likes coming up here.

CHAIR: Are your staff changes related to last week's budget matters and other ongoing things or are they still related to the amalgamation of departments? I guess my question really is: have the rearrangements with the Department of Home Affairs and the Attorney-General's Department now sort of settled and finalised? Is it all behind us?

Mr Pezzullo: Yes, all the machinery-of-government changes have been fully enacted. The functions have been consolidated. I think it's right to say that all the financial transfers and the ASL transfers have occurred.

Ms Cargill: Correct.

Mr Pezzullo: It has certainly given us additional corporate firepower, if I can use that term, to provide rationalised services both for the Border Force and increasingly for some of the smaller portfolio agencies, such as the Australian Criminal Intelligence Commission and AUSTRAC, so it already has that virtue apparent. One example—and I can relate to Mr Dutton's announcement in relation to this—is the home affairs department, which has a larger IT enterprise—it's just simply a function of scale—delivering some complex projects that involve very sophisticated analytics and data capabilities for the Criminal Intelligence Commission on behalf of and for the chief executive of that body. Ms Cargill, there would be other examples that indicate that the machinery-of-government changes have all been implemented and finalised and also that some of the sharing and consolidation benefits are starting to manifest?

Ms Cargill: Certainly, and the main impact of the machinery-of-government changes was evident between the years 2017-18 and 2018-19. You will recall the machinery-of-government change in December 2017, so the main impact was a part-year impact in that movement year and effectively we're starting the year on a similar basis to 2018-19.

CHAIR: Thanks very much for that. I'll now pass to the deputy chair, Senator Pratt, who indicated that she had some questions.

Senator PRATT: Thank you. I've now got some questions on phase 2 of the request for tender for delivering visa services for Australia—global digital platform.

CHAIR: Are we finished now with cross-portfolio corporate and general matters?

Senator PRATT: I would have thought that contracts are also in cross-portfolio.

CHAIR: Yes, they are. I'm sorry, I missed that.

Mr Pezzullo: The deputy chair is asking about a tender. It does fit within a program, but equally it's a departmental-wide tender that could result in a major contract.

CHAIR: That's fine. I'll go to Senator Pratt, but I remind our colleagues that we have a program and at 10.45 we were supposed to be on outcome 1. We're here until 11 o'clock anyhow, so over to you, Senator Pratt.
Senator PRATT: I'm going to begin by asking: on what date was it decided to release documents relating to phase 2 of the request in relation to visa services?

Mr Pezzullo: Phase 2 has been an integral stage of the tender process, so it would have been designed originally. If the question is: when was it decided to release stage 2 in its specific configuration last week—

Senator PRATT: That's right; that's my question.

Mr Pezzullo: Just to be clear, stage 2 wasn't invented last week or the week before. It's been integral—

Senator PRATT: But it was nevertheless released very quietly last Friday afternoon. I want to know when that was decided.

Mr Pezzullo: Mr Mansfield and/or Mr Kefford?

Mr Mansfield: The tender was released on 5 April. The night before, after appearing before this hearing, I reviewed all of the final tender documentation to ensure that it was compliant with the original intent and that it was complete. Then it was released on the 5th.

Senator PRATT: So you decided the night before?

Mr Mansfield: I reviewed all of the tender documentation. The actual decision to proceed on the tender was made on the Friday before.

Senator PRATT: Friday before? What date would that have been?

Mr Mansfield: 29 March.

Senator PRATT: Is that the date that the minister for immigration signed off on it or the Minister for Home Affairs or both?

Mr Mansfield: It was a decision—

Mr Pezzullo: Just to be clear—and I think we've given this evidence before, but I can't recall which Hansard to direct you to—this matter is ministerially solely under the oversight of the Minister for Home Affairs, as the minister for immigration has recused himself from this matter.

Senator PRATT: The minister for immigration has never signed off on it because he's recused himself.

Mr Pezzullo: Nor has he been briefed on it.

Senator PRATT: When did the Minister for Home Affairs sign off on it?

Mr Mansfield: It's a departmental decision. I was the delegate, not the minister.

Senator PRATT: So you decided on 4 April and also on 29 April.

Mr Mansfield: Just to be clear, on the 29th I made the decision that the process could proceed to phase 2, which is the request for tender. On the 4th I reviewed all of the necessary paperwork that goes with the lease of that documentation to the market.

Mr Pezzullo: It's important to underline the difference between those two decisions. Mr Mansfield was good enough to consult with me in relation to this, and I endorsed his approach. Had we gotten to a position—and I don't want to speak about specifics because obviously it's still in the market—where the parties were not compliant and had not, in a sense, delivered on their homework, the key decision that we would have faced at the end of March would have been whether or not to proceed. I think it's fair to say, Mr Kefford, through you, Mr Mansfield, that it took a while to work through the evaluation process. Once the delegate, Mr Mansfield, was satisfied that stage 2 could, absent the final revision of detailed documentation, proceed—and that would take him some time, noting that parliament had resumed and we were obviously preparing for estimates—he sought a few days extra. I didn't want him to work a full weekend and have no time off at all, so I concurred that he could take the relevant amount of time required, working through it with Mr Kefford, in whose division this matter resides, to make sure that the documentation was word perfect and able to be released to the market.

Senator PRATT: Just to go back a step, the minister for immigration recused himself of the process.

Mr Pezzullo: Yes.

Senator PRATT: Nevertheless, you're also telling me that this is not a decision for either the minister for immigration or the Minister for Home Affairs?

Mr Pezzullo: The authority levels are in two stages. The government, when it first authorised this overall program, made it very clear that the final decision—given not just the quantum of potential funding involved, but also the complexity involved—would go back to government for final concurrence. But the delegated authority as to who the successful tenderer will be will be a departmental officer, so it's not dissimilar from the sorts of contracts I was describing to Senator Carr before that are put through various passes of government authority. So
there's the ultimate accountability that sits with the cabinet and the relevant cabinet committee where the minister carries that level of authority, but the actual development of the tender process, the evaluation process and the selection of parties who can advance to the next stage are departmental decisions.

Senator PRATT: Was the timing of this announcement decided by the minister or entirely by the Department of Home Affairs?

Mr Mansfield: The timing of the decision was based on the department finalising all of the paperwork. A brief did go up to the Minister for Home Affairs indicating the timing that we anticipated we would finalise all of the paperwork. It was effectively—sorry, I will just confer. It was a noting brief, so it effectively just sought that the minister note that we were going to release the documentation in accordance with the overall process that was established, as the secretary indicated, by a government decision.

Senator PRATT: I am somewhat sceptical of the timing. Was it really the department's decision to release it late on a Friday afternoon?

Mr Mansfield: Just to be clear, Senator, the media reporting of that matter is not correct. It was released in the morning of the fifth, not late in the day. But it was based on finalisation of all of the relevant approvals, including our high-risk, high-value process that sits within the department around that, as well as ensuring that we had all the probity sign-offs, legal sign-offs and financial sign-offs that go with release of that documentation, and that occurred during that week.

Mr Pezzullo: In light of the possibility that we might have potentially gone into caretaker rapidly thereafter, but also given his very close interest, I wrote to the shadow minister on that morning just to alert him to the fact, so that it wasn't simply something sitting out there on the website. I drew his specific attention to the fact that the tender stage 2 process was being proceeded with that morning.

Mr Mansfield: I also called his office and talked to his senior adviser to alert them that the secretary was writing to—

Senator PRATT: No, we're aware of that, but what I'm trying to come to grips with is the extent to which this is a normal course of action versus this is clearing the decks before an election, because we were still in estimates late on Thursday, 4 April.

Mr Pezzullo: I suppose that's why Mr Mansfield couldn't get to his homework otherwise. He was assisting me in providing evidence to this committee on other matters, but—

Senator PRATT: Yes, that's right.

Mr Pezzullo: he was insufficiently multitasking—

Senator PRATT: When did you finish reviewing the tender documents, Mr Mansfield?

Mr Mansfield: I don't recall what hour it was.

Senator PRATT: It would have to have been some time past 11 pm—

Mr Mansfield: No, we finished here at 5:30 pm, I believe, or around that time.

Mr Pezzullo: Our department rose at dinnertime.

Senator PRATT: What was the urgency to complete the task that day?

Mr Mansfield: The original time line indicated that the expected time for release of phase 2 subject to delegate decision-making was going to be on 29 March. We had obviously already passed that time and we wanted to ensure that, given the decision I took that it could proceed to stage 2, it should be released as soon as possible, but without compromising on any of the checks and processes to ensure the documentation was right, and that occurred during the course of that week. It came to me for final review and then I agreed with all of that material. I spoke to Mr Kefford early in the morning on Friday morning and then was satisfied that it was okay to release, and that's what occurred.

Senator PRATT: Was it the direction of the minister to ask you to meet that time line?

Mr Mansfield: No.

Senator PRATT: With regard to the media attention that the phase 2 documents received, why weren't they released prior to estimates last Thursday? That was because you hadn't finished reviewing them, you say?

Mr Mansfield: Yes. The process was still an active decision-making process until the point where I decided that the paperwork was ready to be released.

Senator PRATT: How many hours did you take to review those tender documents last Thursday?
Mr Mansfield: I looked at various versions of those documents over the course of the week and I finally reviewed all of those documents, including the discussion with Mr Kefford, on Friday morning. I don't know how many hours I dedicated to that task.

Senator PRATT: When were departmental staff, most particularly those involved in visa processing, informed that the phase 2 documents were to be released?

Mr Mansfield: I'll ask Mr Kefford to talk to that.

Mr Pezzullo: Sorry, Madam Deputy Chair: our staff?

Senator PRATT: Yes.

Mr Pezzullo: Right. Thank you.

Mr Kefford: As Mr Mansfield has already outlined, the timetable when the first stage of the tender was released in December indicated that the decision point and the expected time for the release of phase 2, subject to the delegate's decision-making—

Senator KIM CARR: It was the day after parliament concluded, wasn't it?

Mr Kefford: It was 7 December.

Senator KIM CARR: So it was the day after parliament concluded.

Senator PRATT: That's right—last year.

Mr Kefford: That outlined the time line, which indicated, as Mr Mansfield has, the end of March would be the point at which we expected that process to be complete. So part of the process that we went through with Mr Mansfield on Friday morning was to settle the message that has gone up on our intranet along with the supporting information that we have published to staff, consistently with what we have done at earlier stages of the process. Indeed, we've tabled much of that material for the committee on notice. The process we went through on Friday morning following the telephone call that Mr Mansfield has mentioned was that we authorised the material to be released on the department's intranet and internet sites as well as on AusTender to the two tenderers.

Senator PRATT: Could I ask for a copy of any of the correspondence sent to the staff on the intranet.

Mr Kefford: We can take that on notice, certainly.

Senator PRATT: That would be terrific. Given the timing, it should be simple enough to get hold of it today—would that be the case?

Mr Kefford: We can do that.

CHAIR: Do we have access to the intranet?

Senator PRATT: No.

Senator KIM CARR: Can I confirm, though—

CHAIR: Are you finished, Senator Pratt? You're now 13 minutes into your 10 minutes. You've finished that line? Thank you.

Senator KIM CARR: Could I just confirm with Mr Pezzullo—

CHAIR: No, Senator Carr. I'll come back to you later.

Senator PRATT: I don't have the call anymore, Senator Carr.

Senator KIM CARR: I just wanted to confirm—

CHAIR: I'll come back to you later, Senator Carr. Senator Pratt's time is well overdue—well overdue.

Senator KIM CARR: I just wanted to confirm that no decision—

CHAIR: Mr Pezzullo, in asking this question I indicate I certainly have no concern or complaint about this, but is it normal to advise opposition shadows of these sort of activities when we are not in caretaker mode? Is that normal?

Mr Pezzullo: In this particular case the shadow minister has written both to the Minister for Home Affairs and to me personally about the policy stance that Labor would take if elected. So that's important. That's material.

CHAIR: Yes.

Mr Pezzullo: Mr Neumann has been good enough to indicate the position if the opposition were to form government and has asked to be kept informed, which in these circumstances I think is entirely reasonable, because it's important for me to understand what the two different outcomes could be. You say, 'Is it unusual?' In
the circumstance, where one side has a professed—I don't want to put words in Mr Neumann's mouth—opposition to a particular approach—

**Senator Kim Carr:** A stated policy position.

**Mr Pezzullo:** indeed; thank you, Senator Carr—and has asked to be kept in informed, I formed the judgement that, in addition to Mr Dutton writing to him—January, was it, Mr Mansfield?

**Mr Mansfield:** I think it was December.

**Mr Pezzullo:** It might have been December or January. By way of updating him, I thought it prudent in the circumstances to write to him again. Is it usual? No. But you're on, potentially, the last couple of days before going to caretaker and you've got a circumstance where the opposition's got a stated alternative view. I thought it prudent just to—

**Senator Pratt:** Yes. Thank you for that.

**Mr Pezzullo:** advise Mr Neumann.

**Chair:** As I say, I certainly have no objection, but I'm just interested in where the caretaker provisions come in. They seem to come in whenever anyone thinks they should come in, when they do come in.

**Mr Pezzullo:** Strictly speaking, it's the case that they come in with the issuance of the writs in the time stated on the writs, but equally I think secretaries have to exercise a degree of judgement and prudence to ensure that there's no question that the department is doing anything other than operating in an impartial fashion, and I'm advised that Mr Dutton updated Mr Neumann on 29 January in response to a letter that Mr Neumann sent to him. Mr Neumann subsequently wrote to me, and—in the spirit of responding to that letter but keeping the shadow minister fully informed, given his stated position—I took it upon myself to judge it appropriate to respond to his letter on that occasion, which was last Friday morning.

**Chair:** Mr Pezzullo, you raise another question that I'm curious to ask in the area of corporate and general matters, and you raised that a shadow minister has written to you.

**Mr Pezzullo:** Yes.

**Chair:** I understand that members of this committee have written to you. I have been here a long time, and standards have certainly fallen, in my view, since I was first here, but it was always, I understood, a convention that parliamentarians did not approach public servants directly, and, if you wanted anything from a public servant, you'd write to the minister and say—and this has been my practice—'Minister, could you pass this on to the secretary,' or whoever, which the ministers have always done, both when we've been in government and opposite. Has that changed now? Is it deemed acceptable for opposition members of parliament to write directly to public servants?

**Mr Pezzullo:** It's difficult for me to express a view about whether the convention or the norm has changed. In practical—

**Chair:** No, my question was: is it now usual and accepted that, at any time of the year, members of parliament can write directly to public servants asking them for opinions or for facts, whereas that's what I understood this process was about, and that's also, I thought, what the courtesy and procedures were and the convention was—that, if I wanted something from the Public Service, I would write to the minister and say, 'Can you pass this on, or get the public servant to ring me, if you approve.'

**Mr Pezzullo:** Thank you for the clarification of your question. You asked me if it has become usual. It's still, in my judgement, rare. It certainly doesn't happen very often. But it is happening. In any event, under ministerial responsibility—I refer to the doctrine there—the end point is the same, because, of course, we consult with the government. There's only ever one government, and you are overseen by the minister of the day, and, during caretaker, particular conventions further apply. But, no, we don't have a separate accountability to those members or to the shadow ministers. And, if I can venture this view, I don't expect that anyone who writes to a secretary expects an accountability back to them which is independent of the doctrine of ministerial responsibility. So, when I receive such correspondence—it's not unheard of, going back some years; it certainly was rarer; it's become perhaps less rare; that's how I would couch it, Mr Chairman—we still consult with the government, because, unless there's some statutory prohibition on engaging, and perhaps I might refer the more philosophical elements of this to the minister at the table, or unless there's some statutory requirement whereby you cannot, in fact, discuss or disclose matters with the minister, we are overseen by the minister of the day in the performance of our duties generally.

**Chair:** But, Mr Pezzullo, this is very hypothetical and should be ruled out of order because—

**Mr Pezzullo:** Well, only you can do that, Mr Chairman!
CHAIR: I was going to say—and this is the hypothetical—in the very unlikely event that we will be in opposition after the election, that's the hypothetical—

Mr Pezzullo: I see.

CHAIR: And very unlikely, I emphasise—

Senator WATT: With you being returned to the Senate, as well, Chair.

CHAIR: Indeed. Thank you for your confidence, Senator Watt. But that means I can write to you, Mr Pezzullo, and ask you for information, and just ignore the then minister? Is that how you would deal with it?

Mr Pezzullo: In practical terms that doesn't occur because, whether it's the shadow minister or the deputy chair of this committee or another member of parliament, I don't see, as a practical matter, why there's any inhibition on such correspondence being raised, as long as everyone understands that the rules of the game—and, Minister, perhaps I'll seek your assistance here—are that in the end it's the minister who's ultimately accountable back to the parliament. That's how ministerial responsibility works.

CHAIR: But the minister may not know if you're having private conversations with me as a member of the opposition.

Mr Pezzullo: That would never occur, I can assure you. The minister is either consulted or notified, either simultaneously or by way of copy. In this case, Mr Dutton has been engaged directly with Mr Neumann on this question by way of correspondence, and I added to that correspondence and copied it to my minister. Indeed, I think we've also kept a number of other senior officers of the Public Service informed. I can assure you, Mr Chairman, if that's the burden of your question, that, other than the very limited circumstances that are covered in the caretaker conventions, where the opposition can seek private briefings on particular matters—

CHAIR: Through the minister?

Mr Pezzullo: Through the minister, indeed, and with the minister's concurrence.

CHAIR: Yes, that's my point.

Mr Pezzullo: Indeed. It would never be the case that a minister would be blindsided by way of any engagement, either with a member of this committee, with a member of the Senate at large or with a shadow minister. I can give you that absolute assurance, in terms of the department that I'm honoured to lead and my officers.

CHAIR: So you have no embarrassment from members of an estimates committee writing to you and telling you what they want you to do and be prepared for?

Mr Pezzullo: Most certainly not.

CHAIR: Okay, I just want to make—

Mr Pezzullo: I think it's fair to say that the norm has evolved. I do accept the premise of your question, but what I say is that we still ultimately get back to the same place, which is ministerial responsibility. Minister Cash is the cabinet minister for another portfolio. I'm not sure what your practice is, Minister, and I might refer the doctrine of responsibility to you, but—

CHAIR: As I say, I'm just interested in this. In the very hypothetical and unlikely event of us being in opposition, I'd want to know what we can do. In that very unlikely event, I'll use this as authority for ignoring the minister and writing to public servants directly.

Mr Pezzullo: Mr Chairman, I want to stress that the Australian Public Service Act still applies. We're an apolitical, impartial service.

CHAIR: Of course; I know that.

Mr Pezzullo: We work to the minister of the day. This is a perhaps less profound issue about who writes to whom. Whether a shadow minister writes to the minister, who then refers that correspondence to us to raise a draft and it goes back to the minister—

CHAIR: Absolutely.

Mr Pezzullo: or I respond on the very rare occasions—I think I've written to Mr Neumann once or perhaps twice in the five years or four years that are pertinent here—but still consult with the government of the day, is at one level immaterial because we always get back to the fundamental importance of ministerial responsibility and oversight of the Public Service.

Senator PRATT: Chair, we've got a good chance of getting through our questions in a timely way today if we can persist with Labor senators having the call.
CHAIR: Senator Pratt, so far most of the questions today have been about something that was given in evidence at two previous estimates committee meetings. I appreciate what you say and I appreciate you're trying to be cooperative, as you and I have been, but I just say to you: we're still not past the first item. I appreciate your personal goodwill and cooperativeness, but we're here until 11 o'clock. We're still on the first item, which should have finished at 10.30 but we're still going. I'm sorry, but don't look to me in relation to that; look to you and your own colleagues. Anyhow, my time hasn't finished—I've still got a couple of minutes—but I shall pass to Senator Pratt.

Senator PRATT: Thank you, Chair. I know Senator Carr wants to follow up on these visa contracting issues as well.

Senator KIM CARR: No, there are two questions I need to follow up on, but that last exchange does need to be dealt with.

CHAIR: Do you have a question?

Senator KIM CARR: The question is: has anyone challenged the doctrine of ministerial responsibility with you, Mr Pezzullo? You appealed to the minister three times, I noticed.

Mr Pezzullo: I'm not sure that they were appeals—

Senator KIM CARR: Has anybody challenged that doctrine of ministerial responsibility in terms of your stewardship with this department?

Mr Pezzullo: No.

Senator KIM CARR: No-one?

Mr Pezzullo: In terms of appealing to Minister Cash, I was just respecting her office and affording her an opportunity—

Senator KIM CARR: Yes, exactly right.

CHAIR: Indeed, may I just say I made it very clear at my very first question that in no way do I have any problem or any challenge with what has happened in relation to this tender. I'm simply interested in what seems to me, after my long-time in this parliament, to be a change of approach that certainly wasn't there when I was first in this parliament. Anyhow, Senator Carr and Senator Pratt, sorry. It's your time.

Senator PRATT: Thank you. So clearly you've outlined already that we have a certain predisposition to these tenders.

Mr Pezzullo: Yes.

Senator PRATT: But I'm just trying to get through the practical background to it so that we can deal with the decision-making around it ourselves. What's the difference in the phase 2 compared to the phase 1 documents?

Mr Pezzullo: I'll ask Mr Kefford to speak to those matters. I just inform the Senate—and thank you to the committee—that I've got to be absent for the period between 12 and two. I just want to make sure that that's known. I will stay for this bracket of questions. I can adjust my depart, and I'll be back at 2. I do apologise for inconveniencing the committee.

Mr Kefford: The staging of the process was described in the documents that we released in December, and they've been restated in the documents that are published. Essentially, when the tender was released it was always intended to be conducted in two phases. The first phase had two key purposes—essentially, having had the department specify the actual requirements that were sought coming off the back of co-design that we've discussed with you in this context previously. What happened for the first time in the tender, though, was that the department specified a service fee level of $35. So essentially the question at stage 1 was: could what the preferred tenderer, if any. So the distinction is that we've now finalised the requirements. We have published this time a draft agreement, which wasn't there last time. But, as I say, the question for the delegate and subsequently for the government at the end of this process is the normal selection of a preferred tenderer with the value-for-money assessment in a competitive process. That's the other point I would
stress. The phase 1 assessment was not a comparative process; we were assessing whether the two proposals could survive those conditions.

Senator PRATT: What modelling was undertaken in relation to the impact on jobs inside the department?

Mr Kefford: From the tender process? Essentially, the process continues what we've been working on through the request for expressions of interest. I refer the senator back to the secretary's comments at earlier estimates about the department's clear preference to pursue redeployment of staff, recognising a range of issues that are facing the department at this stage. We're continuing to work through the future business design components now in parallel with the—

Senator PRATT: Sorry. I have some other questions that relate to what you're saying. Was there any specific modelling done that quantifies the impact on staff? You've said your preference is to redeploy. Is there an expected number of redeployments?

Mr Mansfield: Not in detail, because between—

Senator PRATT: Five? Five hundred? Surely you must have some kind of quantum.

Mr Mansfield: Between now and when—if—the GDP is proceeded with as a result of a successful tenderer being selected in around October 2019 the first visas would only come onto the platform during the course of 2020-21. Then there's a phased rollout over a number of years.

Senator PRATT: So can you quantify over that time line, were it to start happening, what the impact on jobs is? You've said your preference is for redeployment. You've said it's going to start in 2020-21. What is the impact on jobs that's modelled in that?

Mr Mansfield: I was just going to finish by saying that during that time we anticipate there will be continued growth in the number of visa applications to Australia and citizenship applications to Australia. So the exact impact of the relationship between growth and the capabilities that the system would bring if it is proceeded with—just to be really clear about what this system is seeking to do. First of all, it is seeking to enable a more seamless client service for visa applicants. The other thing that it is seeking to do is automate a whole lot of manual processes. So at the moment we have people putting in paper application forms to come to Australia. We have officers of the department doing data entry, typing in people's names, address et cetera. It is freeing up those offices so they can do other activities.

Senator PRATT: So what's the quantity of jobs where someone's current tasks and job description are likely to change?

Mr Pezzullo: Senator Pratt, I might commence that answer just so that I can provide some evidence before my scheduled departure time. The burden of Mr Mansfield's evidence is this: as volumes continue to increase—and that is a good thing, because we have more people coming here for tourism, temporary work, study and all of the rest of it—our current systems and our current staffing levels will come under challenge. So there are only two ways to fix that equation. I know there is a difference between the parties and it's a function of what the government of the day decides, so I put to one side whether the capital raised is private or public. Let's be clear about this: whoever is in government after the next election has to face this conundrum.

Senator PRATT: Yes, you can pay for the work to be done privately or you can bring it in-house.

Mr Pezzullo: Correct.

Senator PRATT: Clearly, there needs to be an expansion of resources dedicated to that problem.

Mr Pezzullo: That's right. My preference, subject to coming back to government after the election, would be to keep the same or potentially an increased number of staff doing what I would call—and I don't mean in any way to draw an adverse inference, because people doing data entry of the character described by Mr Mansfield probably don't want to be doing that work. We want to focus our staff on decision-making, risk assessment, and complex case engagement where you're engaging with visa applicants where ultimately an online or some kind of automated process is not sufficient. So my preference as the departmental secretary, subject to final approvals, would be to automate the manual processes, take a lot of the cost out of doing each visa by way of having a more automated approach—whether delivered, in the end, by public or private means is almost a secondary consideration—and concentrate the same number of staff on what I would call higher value-add roles, including things like: status resolution of people in the legacy caseload, dealing with human trafficking, sexual servitude, working with other departments on the economic and social benefits and merits of migration. If I can convince the next government, whichever hue and stripe it is, to not only fund a major capital upgrade of our system but also to have the same number of officers engaged on those higher value tasks, then I will be very pleased. I'm not going to say happy though!
Senator PRATT: On that note, can you advise inside this contract how many jobs you think would exist outside the Department of Home Affairs? You're saying there are two options to a government—to have them in or outside the department. How many jobs are attached to this tender?

Mr Pezzullo: That would be a function of the final successful design. Let's not speculate, but let's go forward in time: if there were a successful tenderer that is put before a future government—leaving aside the financing question because I think that tends to blur and confuse this discussion—how many staff would provide through an automated solution the processing to replace all of those manual administrative activities is a function of the final design of the tender process. Whether they are public officials or contractors is a matter for the future.

Senator PRATT: I just want to know how many you think that is.

Mr Pezzullo: It will really depend on what the market comes back with.

Senator PRATT: If you were doing it in-house, as you have just alluded to the possibility that we should and could also be able to do—what would your assessment be?

Mr Pezzullo: We'd have to provide a comparative basis for a future government to make a final decision on this. But that's for the future.

Senator PRATT: So, you haven't done an analysis of that? Surely in doing a tender like this you have to know what the in-house alternative would look like, unless of course this decision is purely an ideologically driven one by the current government.

Mr Pezzullo: Well, you'd have to refer that to the government, in terms of what their overall philosophical approach is. But in terms of the administration—

Senator PRATT: Can I ask you, Minister Cash: do you know whether the government had discussions about doing this job in-house versus a tender and how you would go about comparing that before you decided to put it out to tender?

Senator Cash: I don't think that's an ideological discussion, but—

Senator PRATT: I just want to know that the discussion was had.

Senator Cash: in any event I would need to refer that to the Minister for Home Affairs himself.

Senator PRATT: Okay. Mr Pezzullo, did those discussions take place?

Mr Pezzullo: Not in any granular sense, because until you've established what the market can and can't provide—leaving aside the financing issues, and there are different models that are available: a private financing model or a public financing model—it'll really be a function of future decisions based on the final design.

Senator PRATT: Just to try to round this section of questioning off: you've outlined that the department did seek advice from Prime Minister and Cabinet about the caretaker conventions. Can I ask when that advice was sought and who decided to seek that advice?

Mr Pezzullo: Are you referring to a particular point in time that we sought advice? I know that we stay closely in touch with PM&C on all manner of issues related to the caretaker conventions, but—

Senator PRATT: Well, in relation to these tenders and these contracts.

Mr Pezzullo: Mr Kefford, we sought specific advice—or Mr Mansfield—as it relates to caretaker?

Mr Mansfield: We did. We'll just see whether we can find the date that that occurred. But I know that we were considering this over a number of weeks, and obviously the tender documentation for quite some time has expressed that decisions would be taken after an election and that that could change the process or could indeed cease the process.

Senator PRATT: When was that advice sought? And who decided to seek it?

Mr Kefford: I'll have to take the actual date that we sought the advice of PM&C on notice. But, again, it won't take me long to check when I'm not at the table.

Senator PRATT: Okay.

Mr Pezzullo: We'll check the facts, but I suspect that once the government brought forward the budget and came to the view, which was expressed some months ago, that—

Senator PRATT: You would have seen the time lines in your project coming up against—

Mr Pezzullo: Yes. We saw the budget come forward. We saw the Prime Minister's announcement that the election was likely to be in May. Obviously—

Senator PRATT: But inevitably this project was likely to come up against—
Mr Pezzullo: Inevitably it was always going to straddle an election, unless the election was held much, much later—almost at the end of the year. It was always going to straddle the pre-election and post-election period. The only question for us was April, May, June et cetera.

Mr Kefford: Senator, I'm advised that that interaction with PM&C was on 1 April.

Senator PRATT: Thank you.

Mr Mansfield: But can I just add to that: I know that for some weeks we had been internally considering issues around caretaker conventions and the applicability of that. So, if you like, we wanted to doubly assure ourselves that our reading and understanding of the caretaker conventions was accurate, and that's why we sought advice from PM&C.

Senator PRATT: That's fine. Just to wrap this up, did the government at any time request this tender process to be hastened or sped up? It was always very clear that it was going to come up against the differences in Labor's and the Liberals' positions on this.

Mr Pezzullo: Once the decision was taken in the budget to authorise the market process, it was always going to take as long as it was going to take, with a decision in the latter part of 2019, and we've never been under any instruction—and nor, frankly, could the tender process accommodate this anyway, to expedite the process.

Senator PRATT: No, but it does seem pretty odd to go through such a massive planning process that fundamentally changes the direction of how the department currently does things—

Mr Pezzullo: Well, governments govern—

Senator PRATT: in a way that is left hanging until the last minute and it's built into the process from the outset that that was inevitably going to be the case.

Mr Pezzullo: I don't mean to engage in argument with you, Senator. I never would. But the other way to couch that is—

Senator PRATT: You do often!

Mr Pezzullo: Sorry? The other way to think of that proposition is, if the government of the day determined on a particular course of action, let's say the 2017-18 budget or the 2019-20 budget, knowing that at some point an election was required to be held, as long as you don't breach caretaker conventions, the moment an opposition said, 'We have a philosophically'—or ideologically or however you want to couch it—'different approach,' it would render government almost paralysed, because then you'd say, 'Hang on, we can't proceed with that, because otherwise it might change.'

Senator PRATT: No, no. I know. All I'm highlighting is that the government must have—

Mr Pezzullo: As long as we observe caretaker—

Senator PRATT: at the time they went down this path, been pretty confident in being able to come back and deliver on this particular change, because you are categorically ruling out that they ever sought to influence the time line around this tender process.

Mr Pezzullo: Not only are we categorically ruling it out; it's been intrinsic to the government's decision, and Mr Kefford will remind me when. The time line was laid out at the time of the original decision, so it was always going to be in the latter part of 2019.

Senator PRATT: The government didn't at any stage try to bring that forward in order to get the tenders completed before—

Mr Pezzullo: No. The tenders completed to the point where he could make a decision—no.

Senator PRATT: Thank you for clarifying that.

CHAIR: The time has well expired, but if you're coming towards the conclusion of that line of questioning—

Senator PRATT: I have concluded this line of questioning, but we've got plenty of others, as does Senator Carr.

CHAIR: I'll just ask a couple of—

Senator Cash: Chair, Mr Pezzullo, the secretary, will be leaving now.

CHAIR: Yes, Mr Pezzullo. I should indicate the committee was aware of your prior engagements, and that was agreed. If you've got to go, you've got to go.

Mr Pezzullo: Thank you, Chair.
CHAIR: Thank you for staying this long. Thank you very much for joining us, Ms Noble. I was asking the secretary about some cross-portfolio, corporate and general matters, and we were just talking about caretaker mode. But, as far as the department is concerned, it's business as usual for the next several months. Regardless of elections, you still have your work to do. Is that how—

Ms Noble: Absolutely. That's absolutely correct.

CHAIR: During caretaker mode, the secretary steps into the position of a pseudominister. Is that how it's—

Ms Noble: No. The government is still the government of the day. During caretaker, though, there are a set of conventions that come into play which set the parameters around consultation of, particularly, any new policy decisions or any decisions that might be taken by the government which might bind a future government. In practice, that normally involves engagement by the minister of the day with the opposition.

CHAIR: I appreciate that, but are they conventions that have been recorded to writing, within your knowledge?

Ms Noble: Yes, they are. They're within the purview of the Department of the Prime Minister and Cabinet. I'm pretty sure they make those available publicly.

CHAIR: Thanks for that. I'll leave it there. Senator Pratt?

Senator PRATT: I've got more cross-portfolio questions.

CHAIR: All right. Fire away.

Senator PRATT: However, it's somewhat unfortunate that we left them till after Mr Pezzullo had gone, because they belong in cross-portfolio but they're in relation to internal communications from the secretary to SES-level staff.

Senator KIM CARR: Why don't you just let that go and go on to the next one.

Senator PRATT: Okay. That's in the next outcome, which moves us on.

Senator KIM CARR: Yes, go to the next one. I was going to ask him about that, but we'll just let it go on.

Senator PRATT: That's fine. We're now moving on to outcome 1.

CHAIR: So we're finished with cross-portfolio, corporate and general.

[12:19]

CHAIR: Just for anyone who might be following this and for any senators who might want to ask questions, we are now onto outcome 1.

Senator PRATT: In questions on notice we wrote asking for details about off-terminal clearances, and we did this in the last couple of estimates. We asked a very clear question: how many OTCs have been performed by ABF officers for each of the past five financial years? We were pleased to get answers. However, they were the number of border clearances at a location other than an international airport for private non-commercial jet arrivals. Those statistics, therefore, did not include off-terminal clearances at international airports such as Sydney, Melbourne and Perth. This is about high-fliers at the top end of town arriving on their private jets. Are you able to explain why the proper answer wasn't given to those questions?

Ms Noble: I have asked the relevant officers to join us, but, to the extent we haven't answered it, we certainly can take it on notice from this hearing and try to get the answers to you as quickly as possible.

Senator PRATT: Can I ask, though: in us asking the question, 'How many off-terminal clearances?' would you not read that it should include off-terminal clearances at international airports?

Ms Noble: All I can offer is clearly we didn't interpret it that way for whatever reason. If we've read it down too closely, we can certainly provide a more expansive answer to you.

Senator PRATT: Okay. We would be grateful to get those answers today if possible, because we've attempted to ask the question a number of times.

Ms Noble: Certainly.

Senator PRATT: Thank you.

CHAIR: Do you know exactly the question that's being asked, Ms Noble?

Ms Noble: I'll be easily able to get a copy of it.
Senator PRATT: We were given answers in relation to locations other than international airports, but we haven't been given information in relation to private non-commercial jet arrivals at international airports.

Ms Noble: I understand.

Senator PRATT: Which I think would be the bulk of where that occurs, is that not correct?

Ms Noble: I don't know myself, so I'll have to take that on notice.

Senator PRATT: Thank you. What we'd be keen to hear is comprehensive statistics on off-terminal clearances that have been performed by ABF staff for each of the past financial years, and we'd be grateful if we could get those statistics today. I see Border Force are now joining us. Mr Outram, perhaps you're able to help me with this question. You'll be aware that we wrote to Mr Pezzullo and that went through to you in relation to statistics regarding off-terminal clearances.

Mr Outram: Yes.

Senator PRATT: So we were surprised to find that the answers to that only included locations other than international airports. Were you aware that the statistics were restrained to not include off-terminal clearances for airports such as Sydney, Melbourne and Perth?

Mr Outram: At major airports we don't—I believe, and I'll check this in terms of how we count and collect data—count those off-terminal clearances. It's where we have to send officers into a different airport. We already have officers in those airports, of course, to do international clearances.

Senator PRATT: Right, okay. Perhaps we asked the wrong question. Could you take on notice: when a private jet arrives internationally at one of those airports, such as Sydney, Melbourne or Perth, and someone doesn't clear customs or immigration in the normal way by lining up with everyone else, so you have to put extra staff aside to go in and do that work, who counts that and where is that work counted?

Mr Outram: I am not sure that we do count at a nationally aggregated level. There may be a means by which we can deconstruct some information. For example, when certain internationally protected persons—heads of states and those sorts of things—come into the country with their large delegations, quite often they'll be treated separately. So, there's a whole range of operational activities that cover that sort of thing. Whether we count, I'm not sure, and it may be a large exercise to reconstruct that, but I'll take it on notice.

Senator PRATT: We're keen to work on that so that we can see what the cost is to the taxpayer for providing those services. We understand that for the likes of diplomatic visits it's a courtesy of the country you're visiting that you would support a foreign visiting delegation.

Mr Outram: Can I ask then, just to be clear—

Senator PRATT: But we're interested in what the cost to the taxpayer is, when private jets arrive for recreational or commercial purposes, of providing the equivalent service of an off-terminal clearance.

Mr Outram: I'll take that on notice. Obviously, I'll have to do that and see if we can work out, firstly, our ability to count in the first place and, secondly, in terms of the cost of that, whether we deploy additional staff on overtime to perform that activity or whether they're staff who are drawn from our rostered on-duty footprint.

Senator PRATT: I would imagine that they are rostered in general—that you would have quite a separate staffing cohort for that?

Mr Outram: No.

Senator PRATT: In other words, you're saying those people are interchangeable with the people who would otherwise be meeting and greeting Australians coming through or foreign visitors lining up at customs?

Mr Outram: Indeed. You can imagine managing an airport—our operation is inbound and outbound. We move officers from inbound to outbound and from outbound to inbound if we do different functions through our control rooms, whether they're in the secondary examination et cetera. The person in charge of the airport operations would have to satisfy a whole lot of competing different requirements through the shift and they will draw from the same resources to do that.

Senator PRATT: Do officers go out to the private jets?

Mr Outram: Sometimes, yes.

Senator PRATT: What's the policy justification for doing that rather than requiring people on those jets to come through the ordinary processes that other people do?

Mr Outram: I'll take that on notice. I need to check if there's a policy.

Senator PRATT: Why do you do it, then?
Mr Outram: It is part of our border services and it goes back to policy, as you say—the services we deliver at the border across a whole range of different activities from diplomats to business people to different classes of travellers.

Senator PRATT: Why do high-flying business people get a to-the-door service, whereas everyone else has to line up?

Mr Outram: I need to go back to the policy side of that.

Senator PRATT: So, the government can't present a policy justification for that?

Mr Outram: I would need to go back in time to establish when that practice was first started. It's been in place for quite a long time, I suspect going back several governments. I need to go back and understand why it is that that service has been provided.

Senator PRATT: If someone wanted a special service, why are they essentially being given that special service for free—when they're not even paying for it?

Mr Outram: I might say—

CHAIR: Perhaps you should ask Mr Shorten, who was in a government where that process happened.

Mr Outram: There is in place right now a pilot being conducted so that we can establish the cost of providing those sorts of services off-terminal, primarily at other airports. But there is a pilot in place right now so that we can understand those costs. But let me say this: there is a practice to do that and that's not something that's been introduced in recent times.

Ms Newton: Against the Customs Act 1901, we're able to charge for border and clearance services of aircraft and examination of baggage at certain locations. It's articulated as to what types of locations we can perform that role. The rates of those charges are in accordance with the Customs Regulation 2015, and that differs according to the day-hour prescribed.

Senator PRATT: The regulations do?

Ms Newton: Yes, they do.

Senator PRATT: Sounds like they need review.

Ms Newton: And the performance of those functions. The rationale sitting behind that is that during normal operating hours for an airport there wouldn't normally be a charge—that's international airports during their normal operating hours. We can actually charge outside of those hours for the overtime costs associated with our services.

Senator PRATT: And do you currently do that?

Ms Newton: Yes, we do, but at this point in time we're reviewing that charge. The 2015 decision about what those charges were are now inconsistent with the actual costs, so we're actually reviewing that as part of the trial process we're going through at the moment, that the commissioner mentioned.

Mr Outram: That's terrific to hear. There was an article a few years ago talking about policies at Sydney Airport that said:

At Sydney Airport, for those arriving by private jet, passport and customs checks are usually done in a discrete hangar away from the commercial terminal. But this is offered as a courtesy by the Australian Border Force and Department of Agriculture biosecurity officers, and only when rosters permit.

When that happens, is that defined as an off-terminal clearance, or is that not an off-terminal clearance?

Mr Outram: We're not bringing additional officers on to do that function as we would have to, for example, if we were doing clearances at a non-international airport. That said, from what the deputy commissioner's just said about the Customs Regulations 2015, it would appear it doesn't differentiate between international airports and the additional services we might provide there, and what we might do at another airport. It also appears that our abilities to recover costs are also not differentiated, other than if the cost is no greater. If we've got enough people on roster at the airport and we can manage that service within the roster, there is no additional cost, so no cost is charged. Out of those hours, if we have to bring people on overtime and retain people on overtime, then we do recover those costs.

Senator PRATT: Can I ask on notice for the number of overtime hours that have been charged—not overtime, but out-of-hours hours that have been charged for these services and the revenue from that.
Ms Newton: We've provided the detail we have at this point in time associated with charges costs costed to those locations.

Senator PRATT: Yes.

Ms Newton: But I would have to say I'm not sure whether we could get you the detail of how many hours of overtime are incorporated into those total costs.

Senator PRATT: I am somewhat confused because I know you've provided those hours, but I thought they related to off-terminal clearances and not to the charging of overtime for out-of-hours clearances that you might've done at an international airport.

Mr Outram: I understand what you're saying. I'll take on notice the issue. I think we have provided you with the costs of providing services at other airports and the international airports. Whether we can get the costs and what we recovered at our international airports, then that's another question I will take on notice.

Senator PRATT: Yes. I'm interested in the cost recovery at international airports.

CHAIR: Are you finished with that line?

Senator PRATT: Yes.

CHAIR: Just to be clear about this: a head of state flies into non-international airports and that requires border and quarantine—I guess you can't talk for quarantine, although I suspect you have arrangements. Border and quarantine send officers to, let's say, Mackay, which is not an international airport. If it's a visiting head of state or a visiting parliamentary delegation, do we charge anything?

Mr Outram: We wouldn't ordinarily recover costs for a visiting head of state that was a guest of government. We provide the service. We do that, of course, for some returning Defence aircraft as well. We provide clearances for Defence aircraft along with quarantine too. I don't believe we charge for those services. Where we do charge is where it's a commercial enterprise who's seeking that off-terminal clearance.

CHAIR: And what you do for visiting heads of state, or indeed parliamentary delegations—I must say, Senator Pratt and I and others have been part of those, where we've had special service in a special room where we're customs cleared and quarantine cleared—is more or less the standard practice around the world for visiting heads of state and parliamentary and ministerial delegations is it?

Mr Outram: Absolutely. It is a reciprocal arrangement that we have between countries. Generally speaking, most countries provide the same sorts of services either at their international airports or at their other airports.

CHAIR: Okay. Now, just for me to be

Senator PRATT: Sorry, Chair, with your indulgence—I've only got one more question on this topic and I know we're due to break for lunch very shortly.

CHAIR: I overlooked that, I'm sorry. Can we have your one question as part of my 10 minutes? We're now going to break at 12:45 because I missed the call.

Senator PRATT: Thank you, Chair. I just wanted to clarify, you have provided off terminal clearance statistics. For the statistics that you have provided us, which doesn't include the international airports, are people flying in on jets?

Mr Outram: On what, sorry?

Senator PRATT: Jets. Are they celebrities flying to Byron Bay or—

Mr Outram: I'd have to check if they were jets or other forms of aircraft.

Senator PRATT: Are they charged a levy or a fee above and beyond the general cost of sending the ABF officers out there to meet them?

Mr Outram: That's why we're running a pilot in relation to the actual cost. I'll come back to you on notice, if that's okay.

Senator PRATT: Okay. Is the fee and charge you're charging just cost recovery or is it some other kind of levy?

Mr Outram: I believe it's just cost recovery. I don't think we would be allowed to make a profit, but I'll come back to you on notice on what we recover and how that money is treated.

Senator PRATT: Okay, thank you.

CHAIR: You've interrupted my line of questioning, but that's fine. We're trying to get through this. We've dealt with heads of state, ministers and parliamentarians, which we reciprocate in non-international and international airports. Just to be clear, at international airports, what you're saying is your staff are already there
doing their normal work, so if they do that for a private aircraft—be it a jet or otherwise—you would normally include that just in their normal wages and operational costs. Is that correct?

Mr Outram: That's right. On many occasions that would be absorbed, if you like—

CHAIR: At international airports?

Mr Outram: because we're not bringing on more people or retaining them on overtime to provide that particular service.

CHAIR: We've dealt with the parliamentarians, ministers and heads of state, but, for private aircraft, that's the position at international airports?

Mr Outram: Yes.

CHAIR: Now, on non-international airports, let's go back to Mackay. What happens there?

Mr Outram: At the moment we don't routinely provide those services. That's why we're running the pilot. We've been requested to provide such services at some of those airports, so we're now looking at what the cost of delivering those services would be. We're running a pilot at two airports.

CHAIR: Which two airports are they?

Mr Outram: Essendon and Archerfield, I believe. We're looking at the actual cost in terms of not just our employment cost but also the supplier cost involved in delivering those services. Then we obviously report back to government around what those costs are. Obviously it's a view for government about how or whether we should recover those amounts.

CHAIR: In a situation, at an international airport, where private aircraft comes in at midnight, would that be part of your normal wages and operational costs or do you charge separately for that if they come in after hours?

Mr Outram: The regulations clearly stipulate that we can charge for out-of-hours services where we have to bring people on, on overtime or in addition to the roster. That goes to the question on notice I've taken from Senator Pratt around the extent to which we're doing that and how frequently we're doing it.

CHAIR: All right. I'm just trying to be clear with that. Deputy Commissioner, you said the regulations have been 2015 regulations, but I'm sure they're updated regulations that have been in place since 1901. Would that be correct?

Ms Newton: Yes, that's correct. The power to be able to charge allows us to do that under the Customs Act. The regulations in 2015 set the parameters of the charging arrangements that we could request for any individual or jet coming into the country to an airport where we didn't provide normal services. It might assist you to know that places like Horn Island, Thursday Island, Rockhampton, Broome, Cocos (Keeling) Islands, Learmonth—they're all locations where we provide additional services where there isn't an ongoing airport that we have full-time staff at. We might have staff that are visiting Broome, and they might undertake the services for a flight coming in. But that would be at a cost to the flight coming into that location because they're not the normal services that would be provided. It's the same with Thursday Island, where we have staff but we don't provide a normal international airport service at that location.

CHAIR: I'm very conscious, coming from Townsville as I do—and this was an election promise, I think, a few years ago. As I recall, you didn't, at the time, have airport customs services, because it wasn't an international airport, but, if an international carrier came into Townsville, the government, as a matter of policy and as an election commitment, agreed that the government would pick up the cost of those services coming in. This is really a question to confirm or deny it, if you have the knowledge. As I understand it, you do have seaport customs staff who are then seconded out to the airport. Is that how it works?

Ms Newton: Yes. You would have staff that might work in the seaport, but they're also trained and skilled in international arrivals and departures. They would go to the airport and perform the role. Townsville is one of the locations where we operate. There are 29 airports where we have charged private, non-commercial jet arrivals that have come into those airports. For some locations, we might have to fly staff into the location. That charge would be according to the cost of flying them in for the service provision.

CHAIR: Townsville is, of course, home to Australia's largest army base and a very significant Air Force base, which very often has flights coming directly from overseas. Do your border officials regularly meet defence aircraft coming in and out of Townsville?

Ms Newton: Yes. We would do all the border clearances for defence aircraft coming in and out. In particular, for, say, a defence exercise, where we have people coming in from the US and other locations around the world,
we would put in place a full strategy to ensure that we do the clearances of people as well as weaponry and other goods coming into the country.

CHAIR: Do you do that out of your own budget, or do you charge Defence for that?

Ms Newton: We do that out of our own budget.

CHAIR: That is very generous of you. We might leave it there. We will adjourn and then continue with outcome 1 in the Department of Home Affairs.

Proceedings suspended from 12:43 to 13:49

CHAIR: I declare resumed the Legal and Constitutional Affairs Legislation Committee inquiry into the budget estimates for 2019-20.

Senator PRATT: Before I move on, I want to thank Mr Outram and everyone from Border Force because you have waited here during lunch but we don't need you anymore; the rest of the committee might.

CHAIR: I can speak for government members and I don't think anyone else is interested. We're always very interested, Commissioner, but perhaps not today. Thank you and thank you to your team. I won't repeat our committee's and the parliament's thanks for what you guys do but you know it's always there so thank you.

Mr Outram: Thank you, Chair. It is much appreciated.

CHAIR: Before we start, Senator Pratt, I understand that ASIO, who sat here all day Thursday and then left without being called, were anxious to understand if anyone can give any indication of when they might be needed. Is it likely to be before dinner?

Senator PRATT: We would be happy to lock in a time, but that might involve officers of Home Affairs waiting while they give evidence or while they appear.

Senator WATT: From our point of view, we'd be happy to have ASIO start at any time from 2:30 and then we can come back to the remainder of Home Affairs after we have asked ASIO.

CHAIR: I mentioned this on several occasions but my preference would be to have them after the dinner break. But the only reason I'd hesitate on that is if we're likely—live in hope—to finish outcomes 1, 2 and 3 before the dinner break.

Senator PRATT: We're about to move on to outcome 2, so that puts us ahead of the schedule as listed here.

CHAIR: Bearing in mind we're supposed to go to dinner at six, perhaps as a committee if we decided in private meeting with nobody else listening that we might get ASIO here at 5:00 pm and then—

Senator PRATT: Fingers crossed, we will see how far we get before 5:00.

CHAIR: if we do that, we may, depending on the number of questions, delay the tea break until we're finished with ASIO. Does that sound like a plan?

Senator PRATT: That sounds good.

CHAIR: Can we resolve as a committee to call ASIO at 5:00pm tonight?

Senator PRATT: Yes, that sounds fine.

CHAIR: Minister, could you arrange to tell ASIO about that?

Senator Reynolds: Yes, I'm sure that will occur.

CHAIR: At 5:00 pm, the committee has decided we will break in whatever we're doing and move to ASIO and, hopefully, finish with them in one bracket, which may mean putting back dinner break from six until seven or even eight—

Senator Reynolds: Chair, can I also just check, given the change in time for lunch break, are you still intending to go for the afternoon tea break at 3:15 or will you push that back a bit?

CHAIR: Probably 3.30. I appreciate lots of other people have to manage diaries as well as the committee. ASIO and you, Minister, may have other commitments at various times but if we do it that way, I think that might be the best.

Senator PRATT: Senator Watt will ask some questions in relation to parent visas.

Senator Watt: It's actually program 2.3.

Senator PRATT: And I have got stuff on citizenship, but Senator Watt is going to do the other part first.

CHAIR: And can I just make it clear, Border Force have gone. Anyone in relation to outcome 1, we won't need further.
**Senator WATT:** I would just like to start with some questions about the temporary sponsored parent visas. You'll all be familiar that during the 2016 election the government announced these new visas. They were going to have a $5,000 bond and an uncapped number of places. It's nearly three years since the government promised these visas would come into effect, and my understanding is that they're still not available. Is that correct?

**CHAIR:** Sorry to interrupt. I just recalled that after ASIO we are having ACIC. So we can tell ACIC that they won't be required before six o'clock. I apologise, Senator Watt, over to you.

**Senator WATT:** During the 2016 election, the government announced these temporary sponsored visa and they were going to have a $5,000 bond and an uncapped number of places. Am I right that those visas are not yet available?

**Mr Mansfield:** On 28 November 2018, parliament passed the Migration Amendment (Family Violence and Other Measures) Bill 2016, which enabled the introduction of the temporary sponsored parent visa initiatives. Applications for approval as a sponsor will commence on 17 April, with applications for that particular visa being able to be made from 1 July 2019.

**Senator WATT:** So they'll become available from 1 July 2019?

**Mr Mansfield:** That's correct.

**Senator WATT:** Which is about three years after they were first committed to by the government? That's correct?

**Mr Mansfield:** I'm not familiar with the specific timing—

**Senator WATT:** The last election was, I think, 2 July 2016. So, if they're 1 July 2019, that's almost exactly three years.

**Mr Mansfield:** The legislation passed the parliament on 28 November and it's due to start on 1 July.

**Senator WATT:** I understand that the way these are being implemented, they're significantly different to what the government promised during the last election. So, just stepping through it one-by-one, I understand, when they do come into effect, they'll be limited to one set of visas for one set of parents or grandparents per household; is that correct?

**Mr Mansfield:** I'm not familiar with that detail just off the top of my head, so I'll take it on notice.

**Senator WATT:** You might know some of these ones. I understand the program is going to be capped at 15,000 places?

**Dr Johnson:** We can get back to you quite quickly on that specific question.

**Senator WATT:** You might know some of these ones. I understand the program is going to be capped at 15,000 places?

**Mr Mansfield:** That's correct.

**Senator WATT:** Am I right that that was never mentioned when this policy was first announced in 2016?

**Dr Johnson:** I'm not aware of the details of the announcement that the government made initially, but it is correct that it's 15,000 visa grants per program. We can take it on notice to come back to you on that.

**Senator WATT:** Okay. I understand there will now be a requirement on families to pay up to $40,000 for a 10-year visa, being two sets of five-year visas; is that right?

**Dr Johnson:** I think there are two components to the visa application charge—the VAC—depending on whether the person is applying for a visa with a three-year validity or for up to five years. To the best of my understanding, the VAC for the three-year validity visa will be $5,000 and the VAC for the five-year visa will be $10,000.

**Senator WATT:** What was the one that was $5,000, sorry?

**Dr Johnson:** The visa for three years.

**Senator WATT:** So three years is $5,000.

**Dr Johnson:** Yes.

**Senator WATT:** And five years is $10,000.

**Dr Johnson:** That's correct.

**Senator WATT:** Is there a maximum of 10 years that these are available for?

**Dr Johnson:** The validity period for the five-year visa is five years, but there's a facility for a person to apply for a second five-year visa, and they can only do that once. So, in total, two five-year visas is ten years. That's correct.
Senator WATT: So, if we're talking about a family bringing out mum and dad, two parents, you'd be talking about a total cost of $40,000, being two five-year visas—each of which cost $10,000—for two people?

Dr Johnson: If I'm incorrect, we will correct the record, but my understanding is, yes, that is the case.

Senator WATT: Okay. My understanding is that that was never announced by the government when this commitment was first made. Do you have any information on that?

Dr Johnson: The detail of the specific VAC that would be charged?

Senator WATT: Yes.

Dr Johnson: I would be surprised if the government announced at the time an intent to create a visa and also announced the visa application charge. That detail is usually something that is set at the end of the process.

Senator WATT: I understand there are also some limits that have been imposed on the ability to renew visas onshore; is that correct?

Dr Johnson: Could you clarify what you mean, please?

Senator WATT: Can you tell us a little about what the process is to renew the visas and what restrictions are in place to renew them onshore?

Dr Johnson: We will take that one on notice. I think what you're asking is: if you were to apply for a second five-year visa, for instance, can you do it onshore, or would you have to remove yourself and be offshore?

Senator WATT: Yes.

Dr Johnson: We will come back to you.

Senator WATT: Minister, can you explain to me why, during the 2016 election, the government announced this new visa and said that there would be a $5,000 bond and an uncapped number of places but, now that it's actually being implemented three years later, there's a 15,000 place cap and people are now going to have to pay up to $40,000 for a 10-year visa?

Senator Reynolds: I don't have that information on hand but I will endeavour to get that for you.

Senator WATT: Would you accept that that's a broken election promise if that's the case?

Senator Reynolds: As I said, I don't have information to hand on that but I will endeavour to get that for you this afternoon.

Senator WATT: Okay. Minister, why has it taken three years to deliver this election commitment and even then it's not in the form it was promised?

Senator Reynolds: As I have just said, I don't have information to hand on that particular issue but I will seek information and get back to you.

Senator WATT: Okay. Mr Johnson or Mr Mansfield, can you tell us why there was a change from the original commitment in the election—which was that there would be a $5,000 bond and it would be an uncapped program—to now impose this much higher fee and a cap for places at 15,000?

Chair: I'm not sure the officers can answer that, but it's up to them to try.

Senator WATT: I am not asking them to comment on the election commitment; I'm just asking why these new conditions, if you like—the cap and the charge—were brought in.

Dr Johnson: That would reflect the government's policy decisions.

Senator WATT: So that was a decision of government?

Dr Johnson: Creating a visa goes through a government process, so by definition it would be a decision of government.

Senator WATT: Okay. That wasn't a matter recommended by the department?

Dr Johnson: We would have to take that on notice.

Senator WATT: Can you tell me why the visa has been capped at 15,000 places per year?

Dr Johnson: That reflects a government decision. The way they wanted to manage this particular new facility was through a visa-cap process.

Senator WATT: So, again, it was a decision of government. There has been a decision to limit these visas to one set of parents. For instance, if my parents were living overseas—it's not the case; my parents live in Brisbane—and my wife's were and we wanted to bring both sets of parents over, that's not possible under this policy, is it?
Dr Johnson: We'll check the detail for that, but I also make the point that there are other parent visas available. There are two streams of parent visas that are available under the permanent migration program each year, and there's also a temporary facility which allows for shorter periods of visits by parents. So I'm saying that this is not the only option that people would have.

Senator WATT: No. But the other options are permanent migration, and obviously there are more hurdles to get over for that. And I think you said there is also a short-term temporary visa, which I presume is more or less a holiday length of time.

Dr Johnson: Yes, but it has a certain set of— I will use the word 'concessions'; it's not the right word. But there is a certain facility that has been created through that temporary program to have a little bit more flexibility for parents.

Senator WATT: Okay. Going back to my question, what was the reason for limiting this visa to one set of parents?

Dr Johnson: I think we took that on notice to come back to you about that detail.

Senator WATT: I think what you took on notice was comparing it to the election commitment, rather than what the policy rationale was for, but you'd like to take that on notice?

Dr Johnson: We'd like to take on notice the limitation to one parent per sponsor.

Senator WATT: You'd accept, though, that that does make it difficult for a family to choose which set of parents to bring to Australia?

Dr Johnson: I'm not going to accept that, in the sense that there's—

Mr Pezzullo: You shouldn't express an opinion.

Dr Johnson: I'll just refer to my earlier answer: there are a variety of facilities available to bring parents to Australia. This is not the only facility. It's a new facility. In effect, it's expanding the current options available.

Senator WATT: Sure, but this option is only available for one set of parents, whereas I imagine it's possible for both sets of parents to look at permanent migration or the shorter visa that you were talking about as well.

Dr Johnson: We've taken the first part of your question on notice, but the second part of your question is correct.

Senator WATT: Mr Pezzullo, do you know why the decision was made to limit this to one set of parents?

CHAIR: Aren't these questions for the minister?

Senator Reynolds: And I have taken these on notice, Chair.

CHAIR: I assume they're government decisions, aren't they?

Mr Pezzullo: Yes.

CHAIR: In which case it's the minister who should answer.

Senator WATT: Except she's taking it on notice. I thought Mr Pezzullo, as someone who is across the department, might be aware.

CHAIR: Mr Pezzullo is not part of the government. He's part of the Public Service, which advises governments.

Senator WATT: I think what that all means is that it's squarely a decision of ministers to impose the cap of $15,000 per year, to increase the charge beyond what was committed to and limit it to one set of parents. They are government or ministerial decisions rather than departmental.

CHAIR: They're your interpretations, which Senator Reynolds has taken on notice without agreeing with you.

Senator Reynolds: Senator Watt, I am personally unaware of the detail. I'm aware in the broad of the various different categories of visas for parents, as the officials have already said, but, for the point of clarity on the issue of government policy, as I've said, I've taken that on notice and we're seeking some further information so that I provide the correct information for the committee.

Senator WATT: What other interpretation is open if we're being told that these were decisions of government? The chair is saying that I should be directing questions to ministers because they were decisions of government. Obviously then they're decisions of government and ministers, aren't they?

Senator Reynolds: Absolutely, Senator Watt. You are starting to put a particular hypothetical interpretation on that. What I'm saying is that I am seeking further advice on the specifics of the policy questions that you have put, and as soon as I've got those I'll come back with that information for you.
Senator WATT: All right. Minister, you would accept that would be a pretty difficult conversation for families to have to determine which set of parents—

Senator Reynolds: Senator Watt, that's a bit of a political spin I think I would leave to you. As I said, I'm—

Senator WATT: Are you saying it's an easy decision to choose a set of parents?

Senator Reynolds: I'm not saying that at all.

CHAIR: It's not for the minister or officers to say whether they're easy decisions for the family or for their brothers or sisters—

Senator Reynolds: Senator Watt, as you and I both know, that is a bit of political spin—

CHAIR: And it's opinion.

Senator Reynolds: that you are certainly able to put on it outside of this place or as a question, but I've taken it on notice so that I can provide you the exact information, the correct information, you've required. It's really not my place to speculate with you on details that are not before the committee at this stage.

Senator WATT: Okay. Let's leave aside how people might feel about things. You would accept, then, that imposing this limit of one set of parents or grandparents being brought out has the effect of preventing children in Australia from growing up with both sets of grandparents around. That is the practical effect.

Senator Reynolds: Senator Watt, as I have said, and as the officials have said, you're talking about three different categories. We're talking about two categories that the officials have gone through with you and this particular measure that you're talking about. So it would be inappropriate for me to speculate on the intersection of three programs and on the accessibility for individual families without actually having the information on this one.

Senator WATT: I'll save you the trouble. I don't need you to speculate. What we've heard is that, if someone is wanting to bring, let's say, elderly parents to Australia, having migrated to Australia themselves, one option that's available, and it's been available for a while, is permanent migration of those parents or grandparents. I think you'd agree that getting permanent migration—there are certain tests that need to be passed; it is not an automatic thing, but that is there. There is also a short-term visa, which, from what I understand, is a bit like a holiday type visa, to come and visit.

Senator Reynolds: I think you're taking liberties with what the officials said. I think that was your interpretation. I think Mr Mansfield or Dr Johnson said that's not actually correct. It's not exactly the same as someone who has come here on a visitor visa or any other sort of temporary visas.

Senator WATT: Do we know what the maximum length of time is under that type of visa?

Dr Johnson: I'm going off my memory, but we'll correct the record. I think it's up to three years. It's a rolling facility. But we'll correct that as soon as we get the detail.

Senator Reynolds: Again, you're now asking for speculation from Dr Johnson.

Senator WATT: I'm not asking for speculation; I'm asking for facts.

Senator Reynolds: We have both taken it on notice to provide you the correct information, I think now on all three programs. Once we've provided that on notice, then I think we'll all be in a better position not to speculate but to speak on the basis of fact.

Senator WATT: Minister, it is a statement of fact—I'm looking at the department's website—'Only two parents per household can be sponsored for this visa at a time.' That is a fact.

CHAIR: So what's your question?

Senator WATT: Do you accept that that limitation discourages families from applying for this visa?

Senator Reynolds: No, I don't, because, as I said, we're talking about the intersection now, as I understand the evidence of the officials here, of three separate programs, and we don't have the policy information that you're seeking at the moment on the third category. So it would be speculative at best to debate and discuss the possible intersections of those three policies on families seeking to sponsor parents in this case.

CHAIR: Senator Watt, I can understand where you're going, but asking officials or the minister if this will make it harder or softer, or easier or harder, for a family is purely (a) hypothetical and (b) subjective. I understand the political points you're making, but—

Senator PRATT: It's a clear policy question.
CHAIR: Well, it's not. The policy has been explained to you, in fact—what it is—and the visas have been explained to you. Then saying, 'Does that make it harder for a family to do this, that or the other?'—well, that's up to the family.

Senator PRATT: No, it's not. You can't change the family formation.

Senator WATT: Not if they can only bring one set of parents.

CHAIR: You've been told there are three different visas.

Senator Reynolds: I think, from recollection—and I'll get further confirmation on this—this was actually a policy that Labor opposed in the Senate. I will seek clarification on that as well.

Senator WATT: Minister, I understand this legislation was passed late last year, late 2018?

Mr Mansfield: November.

Senator WATT: And during that time, Minister, you were the Assistant Minister for Home Affairs, weren't you?

Senator Reynolds: I was.

Senator WATT: And you were responsible for, among other things, parents temporary visas.

Senator Reynolds: For a short time, yes.

Senator WATT: Yes, from August last year to March this year, for seven months.

Senator Reynolds: Yes.

Senator WATT: If you had carriage of this legislation, you must understand why these changes were made.

Senator Reynolds: As I've said, I don't have that detail to hand. Again, so I don't mislead the committee, I will seek that information and provide it in detail.

Senator PRATT: It sounds like you don't want to cough up to the political impact of it.

Senator Reynolds: Senator Pratt, you can make all the political points you want. However, as I've said probably eight or 10 times now, so that I don't mislead the committee, we're getting precise information for you on that. Then also we can have a look at how that intersects with the other categories of visa.

CHAIR: Minister, can I correct you. Senator Pratt cannot make all the political points she wants. In this committee she only asks questions.

Senator WATT: Well, okay.

Senator Reynolds: I should have said 'outside of this committee'.

CHAIR: Yes.

Senator WATT: I might just say it's a bit frustrating that we come to estimates, we ask the minister who's responsible for a piece of legislation to explain what's in that legislation and the impact it has, and we can't get any answers.

CHAIR: That again is a comment. The minister is not the minister of the portfolio.

Senator WATT: Well, she was.

CHAIR: She's said she'll refresh her memory.

Senator WATT: She was the Assistant Minister for Home Affairs at the time this legislation was brought in.

CHAIR: She's said she'll refresh her memory.

Senator WATT: She's exactly the person to ask.

CHAIR: You know from previous experience in this committee that, if they say one word wrong, we then have Senator Carr spending the morning attacking public servants for having the name wrong.

Senator WATT: I think it's reasonable to expect ministers to be able to explain policies under their own direct responsibility.

Senator Reynolds: Senator Watt, I've said I'm very happy to do that, but I have sought additional information on this so that I do not mislead you, because many months and many issues and many pieces of legislation have gone under the water—or under the bridge or whatever—since then. So I just need to make sure that I don't mislead the committee.

Senator WATT: Minister, I don't think I've asked you this question: do you know the reason for imposing this fee? I think we were told it could be up to $40,000 for two parents applying for two five-year visas. Do you know what the reason was for imposing such a high fee?
Senator Reynolds: As the officials have said, they've taken that part on notice, as have I. We're checking the background to that, again so we don't mislead the committee.

Dr Johnson: I've got some further information about the visitor stream for parents.

Senator Watt: Thanks.

Dr Johnson: Parents can come through on a visitor visa, and under existing policy they can stay up to 12 months. That visa has a validity period between three and five years. They can be in the country for 12 out of 18 months and then come back.

Senator Watt: So it's a maximum of 12 months that they can come to Australia?

Dr Johnson: In 18 months, and then, after 18 months has expired—so that would be six months out of the country—they can come back again for 12 months. So it's a rolling period.

Senator Watt: It lasts for 12 months at a time?

Dr Johnson: That's correct.

Senator Watt: There is an entry for 12 months at a time?

Dr Johnson: Yes.

Senator Watt: How much revenue are we expecting to raise from this measure over the forward estimates? If I'm looking at the right table, attachment A in MYEFO—sorry, I don't have the page number on me—it looks like it's a touch over $90 million over four years.

Mr Mansfield: We'd have to take that on notice.

Senator Watt: Okay. Minister, in the end, given we're now looking at charges of up to $40,000 for these visas, is that—

Senator Reynolds: Sorry, Senator Watt. I was conferring with the secretary. Can you just ask that again.

Senator Watt: Do you have any detail on that question that I just asked about the amount of money to be raised over the forward estimates?

Senator Reynolds: No, I don't.

Senator Watt: Okay. I wasn't sure if that was what you were conferring about.

Senator Reynolds: I think the officials are probably the best ones to ask the question to.

Senator Watt: I might be wrong, but, looking at MYEFO, it works out to a touch over $90 million over four years. Given that this fee of up to $40,000 has now been imposed, is it really just a revenue-raising measure?

Senator Reynolds: Sorry, Senator Watt. We're just conferring here. We're just seeing if we can get the measures information for you.

Senator Watt: I'm asking: has this really just become a revenue-raising measure?

Senator Reynolds: Senator Watt, again that's a wee bit of political spin. We're trying to find the information for you so we've got the exact figure here for you.

Senator Watt: Does anyone know what the private health insurance requirements are for this visa?

Senator Reynolds: Senator Watt, given the level of detail you're after for this particular issue, as we've said, we've both taken it on notice to get the level of detail you're looking for, which the officials don't have with them. If you want to move on to something else while the officials get that information, it might be a more productive use of the committee's time. What would you like to do, Chair?

CHAIR: Senator Watt, you've had more than 20 minutes for your 10-minute slot. Senator Hume does have some questions.

CHAIR: Perhaps we could come back to it. Perhaps we could pass to Senator Hume for some questions—

Senator Hume: Just a couple of minutes. I won't take much time.

CHAIR: and we'll come back to you after that.

Senator Hume: I want to ask about a bill that has been introduced by the government but has not yet been passed, the Migration Amendment (Strengthening the Character Test) Bill. Can the department describe how this bill operates?

Dr Johnson: The bill introduces, as its objective, a definition of a 'designated offence' ground to the character test. Essentially, what it does is it strengthens the range and the application of the character test in the following
ways: a designated offence is defined as an offence punishable by at least two years imprisonment and involves violence against a person; non-consensual conduct of a sexual nature; breaching an order that goes to the protection of another person, such as an apprehended violence order; using or possessing a weapon; or involvement in any of the above.

Senator HUME: So how does it actually work? This is different again from direction 79, isn't it? Direction 79 ensures that decision-makers who are considering the cancellation or refusal of a visa under section 501 give more weight to crimes of a violent or sexual nature against women or children; is that right?

Mr Mansfield: That's right. Direction 79, which came in effect on 28 February 2019, replaced direction 65. It ensures that departmental decision-makers appropriately take into account the principle that crimes of a violent nature against women or children are considered particularly abhorrent and are to be considered serious regardless of the length of sentence that has been imposed. Whether the length of sentence was a day or years, we are to take it as being a serious offence.

Senator HUME: So, just for my clarification, this direction 79 has been adopted by the department, and relevant decision-makers are aware of that new direction?

Mr Mansfield: Absolutely. It's a ministerial direction. The minister made the direction, and it is binding on all departmental decision-makers to follow that direction.

Senator HUME: How many noncitizens will this impact upon, as a current caseload?

Mr Mansfield: I don't have that information to hand, in terms of how many people would fall within those provisions, based on who we've currently got before us, so I'd have to take that on notice.

Senator HUME: How does that direction interact with the strengthening the character test bill?

Mr Mansfield: They're two different things. The new discretionary designated offences ground that would come into effect if the bill were passed doesn't require a custodial sentence of 12 months or more, so it's broader than just offences that relate to violence against women and children.

Senator HUME: Can you explain to me again the cohort of people who would be subject to the strengthened character test?

Mr Mansfield: My understanding is that it would be noncitizens who've been convicted of certain serious offences, including those of a violent or sexual nature, being considered for visa refusal or cancellation, and it doesn't require a custodial sentence of 12 months or more. At the moment, there's a requirement for people who fail the character test in relation to an offence; it's got to be greater than 12 months. It eliminates that particular element.

Senator HUME: That bill has not yet been passed by the parliament. Does that then suggest that there are some people in that particular cohort that this bill would cover who are now out in the community and haven't been subject to the test?

Mr Mansfield: Yes, hypothetically there would be people who are in the community who—

Senator HUME: Hypothetically or realistically?

Mr Mansfield: Well, actually, but we wouldn't be able to quantify it in terms of immediately quantifying the number of people who are noncitizens who have a custodial sentence of less than 12 months.

Senator HUME: I was surprised that this didn't exist already. I scratched my head when I realised that we didn't already have that sort of level of character test on noncitizens in the country. From the department's perspective, what is the reason why this bill has not yet passed?

Mr Mansfield: It's before the parliament.

Senator HUME: What are the objections that you're aware of?

Mr Mansfield: It was introduced into the House of Representatives on 25 October, but it hasn't been debated at this point.

Senator HUME: Okay, thank you.

Senator WATT: Have we been able to get answers to any of those questions I asked earlier about the parent visas?

Dr Johnson: I answered your question about the temporary visa.

Senator WATT: Yes.

Dr Johnson: And we're getting further information, going to some of the questions you asked, as soon as we can.
CHAIR: Dr Johnson, is there a website that you could refer Senator Watt to which will have all the details of those visas?

Dr Johnson: Some of the details, Chair, would not be available yet, because they'll need to be specified in further instruments. There is general information on the website, but it doesn't go to the level of detail of the senator's questions.

Senator WATT: Just before we moved on to Senator Hume, I asked what the private health insurance requirements for the visa were. There's a separate requirement, I understand, around an assurance of support. Can you explain to me how that works.

Dr Johnson: Yes. We have a number of visa products where they're sponsored by a family member and we ask the sponsor to put up what's called an assurance of support—they can either show a certain level of income, put money in a bank account or have a bond. The purpose of that approach is that, were the person that they're sponsoring to come into the country and have an event happen to them which required, for example, significant medical care or something like that, there would be a facility for either the state or territory authority or the Commonwealth to have the cost of the remedial action provided to the person paid for.

Senator WATT: I think there's a level that's been set in relation to this assurance of support of $83,454.80. Does that sound familiar?

Dr Johnson: That's an income threshold.

Senator WATT: That's an incredibly precise figure, up to the 80c mark, and I wondered what the thinking was in choosing that exact number.

Dr Johnson: Firstly we'll get the detail to confirm that number is correct. But, again, it goes to the general issue of providing confidence that you have the capability to provide support for the person that you're sponsoring into the country.

Senator WATT: To the extent that the threshold limits people's ability to apply for the visa, in that some people might not be able to meet that threshold, what's the rationale for that?

Dr Johnson: I think the policy intent of that goes to what I was saying before, which is that, by enabling people to sponsor parents into the country, the Commonwealth may be taking on a certain level of risk around, for instance, health costs, and so the level would be set in relationship to striking the appropriate balance of risk between creating a facility that allows more people to come through as parents and being able to offset any costs that that would incur.

Senator WATT: Going back to this point around parents and grandparents, given the role that parents and grandparents play in providing child care for families, has the department conducted any analysis to determine how that limit of 15,000 places might impact on families and the role of the childcare support that can be provided?

Dr Johnson: The 15,000 places are additional. Going to your question earlier, we now have three different streams through which parents can come. There's the stream under the permanent Migration Program; we have dedicated parent visas. There is the temporary visitor facility that we were talking about before. This is a new additional facility which provides 15,000 more places per year for parents.

Senator WATT: Am I right that there is a 30-year wait time for parent visas?

Dr Johnson: It would depend on which parent visa you were talking about; there are two different types.

Mr Mansfield: Senator, at the last hearing, the spillover hearing, we went through all of the processing times for those different categories. In brief, for the contributory parent visa, 75 per cent of applications were processed within 45 months as at 28 February 2019. For the parent visa it is a very lengthy period, 30-plus years, and that is just a function of the number of places available relative to the demand for those places.

Mr Pezzullo: That distinguishes between the contributory stream and the non-contributory scheme.

Mr Mansfield: That's correct. The non-contributory parent visa is 30-plus years and the contributory parent visa is 45 months for 75 per cent of applications.

Senator WATT: And what is the difference between the contributory parent visa and the non-contributory parent visa?

Mr Mansfield: For a contributory parent visa there is a higher visa application charge.

Senator WATT: They are contributing more?

Mr Mansfield: Yes. They are contributing more money to the potential costs that might be incurred for that person while they are in Australia.
Mr Pezzullo: And that is in the permanent stream; it is probably worth drawing your attention to that. That is within the permanent program. Is that right, Mr Mansfield?

Mr Mansfield: That's correct.

Senator WATT: They are permanent visas; if someone gets one they can stay permanently?

Mr Mansfield: That's correct.

Senator WATT: What's the charge for a contributory parent visa?

Mr Mansfield: I will check that and come back to you in a few minutes.

Mr Pezzullo: Senator, are you asking about both streams?

Senator WATT: Yes.

Ms Dunn: For an offshore permanent non-contributory parent visa the VAC is $4,035.

Senator WATT: That's a one-off fee?

Ms Dunn: That's correct.

Senator WATT: And something like 75 per cent are processed within 45 months?

Mr Pezzullo: The senator is asking initially about the contributory one, so let's start with that one.

Ms Dunn: For the contributory permanent visa the first charge is $3,855 and the second VAC is $43,600.

Mr Pezzullo: You might distinguish between the two VACs.

Ms Dunn: The first VAC is paid when the application is made. The second VAC is paid once the person is ready for approval to come to Australia.

Mr Pezzullo: And it is that visa that is processed in accordance with the—

Mr Mansfield: It is 45 months for 75 per cent of applications.

Senator WATT: That's the contributory visa?

Mr Mansfield: Yes. The higher VAC visa, the permanent parent visa, is processed in 45 months and the lower VAC one is processed in 30-plus years.

Mr Pezzullo: The shorthand that might be taken from this is that it takes 30-years to process. There is, in effect, a waiting period. In other words—

Senator WATT: There are at lot of people who want them.

Mr Pezzullo: You don't open a file and in 30-plus years—

Senator WATT: No, I understand.

Mr Pezzullo: You are in a queue, as it were. I think it is fair to say, Ms Dunn, that this is how your team manages it.

Ms Dunn: That's correct.

Mr Pezzullo: The places, in effect, are rationed insofar as the overall global permanent program is capped. Within the global program, as we have discussed under outcome 2 on numerous occasions, there is a balance struck between skilled and family places. Within family there is a substream around parents. Within parents there are two substreams—contributory and non-contributory. I just want to be clear because mischief could be made, potentially, of the use of the term 'processing time'. It doesn't take an officer, because that would be the length of their entire career, 30 years to process it. It is effectively queued, just to abundantly clear to this committee.

Senator WATT: I understand. This has come up in the context of me asking about a different measure, which is this new temporary sponsored parent visa. Once it actually gets up and running, three years after it was committed to, it is potentially going to cost people up to $40,000 for two parents to come here—not an insignificant amount of money. One of the responses has been, 'Sure, but there is also the permanent migration avenue.'

Mr Pezzullo: It has a contributory strand and a non-contributory strand. There are two streams.

Senator WATT: Basically the way that works is that there is an option, the non-contributory option, which costs people only $4,035, but there is effectively a 30-year waiting list. So let's face it: if we are talking about elderly parents, it is not going to happen. It's unlikely. Then, if someone wants to get one of these parent visas processed more quickly, usually within 45 months, they are looking at close to $50,000.

Mr Pezzullo: You pay an initial charge of lodgement and then, upon approval, you pay the balance.

Senator WATT: Yes. So to get a visa approved you are looking at close to $50,000.
Mr Pezzullo: What is the aggregate of the two components?

Ms Dunn: Adding those elements up, the first is $3,855. That is for the first applicant. There are two applicants. There is a secondary application charge of $1,300 and then the second VAC is $43,600—

Mr Pezzullo: Approximately $48,000.

Senator WATT: So really then the only option that is available for people to bring parents to Australia is to pay $4,000 and hope to have it processed within 30 years or, if they want a visa that is processed within 45 months or one of these new visas, they are looking at minimum $40,000.

Mr Pezzullo: It's in that vicinity.

Mr Mansfield: It's in that category, but, as Dr Johnson mentioned, there is also the other temporary visit visa.

Senator WATT: For a maximum of 12 months at a time.

Mr Mansfield: Yes, for a maximum of 12 months out of 18. But, then, after the other six months have passed, they can seek to come again.

Dr Johnson: Senator, I did mention at the start of your line of questioning that, for the three-year visa, it is a $5,000 VAC charge under these new streams. So, under this new category that we have been discussing, there are two particular facilities. There is the three-year facility and the five-year facility. The figure you are mentioning is aggregating a person who has applied twice for a five-year facility, but there is also the three-year facility, which is a VAC of $5,000.

Just going back to the income threshold, could you please repeat the figure that you—

Senator WATT: My understanding is it is $83,454.80.

Dr Johnson: That is correct. That figure has come from the ABS adult average weekly earnings from November 2018.

Mr Pezzullo: Average weekly earnings as opposed to ordinary time earnings.

Dr Johnson: Yes.

Senator WATT: We still haven't established whether the $40,000 fee for that five-year—

Dr Johnson: There is not a $40,000 fee. There is a $10,000 VAC for the five-year visa. Every individual has to have a visa. There is a $5,000 fee.

Senator WATT: But if I want to bring out two parents for 10 years total—that being two five-year visas—that costs $40,000.

Dr Johnson: In a situation where there were to be two of them and they applied for a renewal, they would be paying $10,000 and then another $10,000. If there were two people, it would be that times two. There is not a $40,000 fee.

Senator WATT: Let's stop this. It costs someone $40,000 if they want to bring two parents—

Dr Johnson: It's not 'someone', because you are talking about two—

Senator Reynolds: Sorry, Dr Johnson, but I've actually now had the opportunity to refresh my memory of this piece of legislation that went through last year, and I think I can provide a little bit more clarity on some of the questions that you were asking earlier on, Senator Watt.

Senator PRATT: I can't see how you would know more than the department.

CHAIR: Just ignore the interjection.

Senator PRATT: Sorry, I shouldn't interject. I apologise.

Senator Reynolds: Thank you. The scenario that you mentioned is one of many different scenarios—it depends on how many parents you're bringing out and what combination of the different visa requirements you are under. You're correct—you were asking about two parents at a time—in that it is actually two parents at a time. If you're talking about four parents in total—two at a time under this new scheme from the 17th of this month—there's nothing to preclude you, once two parents have been processed, from then processing the other two. Of course, you can use the other two opportunities for temporary or permanent entry into the country under those other two schemes.

In relation to some of your other questions on a policy sense, I think some of this background might actually be helpful in putting your questions into a policy context for you. As you know, the bill was introduced in 2016, and then the government held extensive consultations on this new temporary sponsored parent visa. At the time, the Productivity Commission report indicated the average cost of parent migration would be as high as $410,000 per
parent, which is why we then went into some additional review and consultation on how we could still introduce this but make it a little bit more financially sustainable for the Australian taxpayer, which is where the 15,000 visa cap, as I understand, was set upon.

Senator WATT: Can I just ask you there—
Senator Reynolds: That was a policy decision.
Senator WATT: A policy decision of government and of ministers?
Senator Reynolds: Yes.
Mr Pezzullo: And the government.
Senator Reynolds: Yes, as part of the broader consultation review that occurred for those two years.
Senator WATT: So it was the government's decision to impose that cap?
Senator Reynolds: Yes. This new visa provides an alternative option, as we've said, to the visitor visas, which only allow shorter periods of stay, and permanent parent visas, so this is providing a broader suite of options to better meet the needs of Australians who want to bring, in this case, their parents here. We're making it not only more flexible but also more affordable both for them and the Australian taxpayers, given the $410,000 cost the Productivity Commission came up with. Now, has that covered all of your questions of me?
Senator WATT: No, that covers the cap. Was it also a decision of government or ministers to impose the VAC, which we've all agreed, I think, would amount to $40,000 for two parents coming to Australia for 10 years?
Senator Reynolds: I think we agreed to that in that one particular scenario, but there is actually no $40,000 figure. You've actually used that for one scenario, but, again, under this much more flexible arrangement, it's $5,000 for up to three years and $10,000 for five years. It depends on if you've got one parent or two parents and at what point they're coming in.
Senator WATT: Are people limited to two of these visas?
Senator Reynolds: I think we can agree that, under that particular scenario, that would be correct.
Senator WATT: Okay. And imposing that fee was a decision of ministers or government?
Senator Reynolds: My understanding is, yes, it was.
Senator WATT: And the limit on one set of parents or grandparents per household at any one time was set by government or by ministers?
Senator Reynolds: That would have been a government decision. But, again, just in case there is any doubt, this was a very well-thought-through and considered government response for this new type of visa arrangement which is part of a suite of three for parents, because this was filling a gap. This is not just a standalone, one-size-fits-all option for all the families.
Senator WATT: You're right. If someone wants to have a permanent migration from a non-contributing parent, they can pay $4,000 as long as they're prepared to wait 30 years?
Senator Reynolds: Again, the waiting time is not an issue I've got particular knowledge on. However—
Senator WATT: Well, we were just told that.
Senator Reynolds: Yes. But what I'm saying is that there are three options, whereas previously there were two. I think it is a sound policy decision.
Senator WATT: Is there any reason why the government chose not to mention the fees that would be paid, the 15,000 person cap or the limitation on one set of parents in its election commitment in 2016?
CHAIR: You'd have to be kidding.
Senator Reynolds: Senator Watt, I think you're drawing a very long bow.
Senator WATT: I've got the election commitment—
Senator Reynolds: Please allow me to finish. You asked a question. We announced the policy in 2016, and, as I have said, there was extensive consultation—very considered consultation and deliberation on the development of the policy. Then it was put to parliament last year and passed. I would note, my recollection is that the Labor Party did not support this in the Senate. Despite that, we passed it in the Senate and we're now about 10 days away from having this third category of visa available to Australian families.
Senator WATT: So, in any election commitments the government makes at the coming election, should people factor in that there could be some provisos, limitations and fees that aren't announced as part of the election commitment?
Senator Reynolds: It might be a strange concept to the Labor Party, but this is actually good governance.

Senator WATT: It's good government to release commitments and then water them down?

Senator Reynolds: You announce a policy and then you carefully consider—including consideration by the Productivity Committee. It might be an alien concept to Labor senators, but it is good government. We announce a policy and we actually consider the implications of the implementation of that policy. We have delivered that policy in a very sound way, which fits in very well with the other two visas currently available. I think the government has done it very well.

Senator WATT: So it's good government to make an election commitment in which you don't reveal that there will be a cap on the number of visas you're announcing and in which you don't reveal that there will be a charge up to $40,000? That's good government?

Senator Reynolds: Senator Watt, yes, it is very good government. You announce a policy and you carefully consider it. You carefully consider all of the implications of its impact on those you're intending to design it for and you implement it. That's exactly what we've done in this term of government. Senator Watt, as you would know, the immigration program and the visas within it do change over time. A good government, as this government has done, will review all of those issues to make sure we have the best suite of visas available.

Senator WATT: Okay. So, in the coming election, as election commitments are made, people should just take into account that good government from this government might mean that the commitments actually change a bit?

Senator Reynolds: Senator Watt, that is good government. You make an election commitment, you review it and you make sure—

Senator WATT: You review it, you break it—

Senator Reynolds: that it is as good as it possibly can be.

Senator PRATT: How do people know what they're voting for?

Senator Reynolds: And then, despite the opposition of those, in this case the Labor Party in the Senate—you opposed this. We have implemented it. We promised and we have delivered what is a sound—and I'm sure this is going to be a visa that will be taken up by many, many Australian families; many grateful and very happy Australian families. That, Senator Watt, is good government.

Senator WATT: So it's good government to break election commitments?

Senator Reynolds: Senator Watt, we promised it and we have delivered it.

Senator WATT: You never promised to limit this to 15,000 places. You never promised to charge $40,000. There is no mention of fees.

Senator Reynolds: Senator Watt, the $40,000 is your construct.

Senator WATT: Well, that's what it would cost for two parents coming here.

Senator Reynolds: I really have nothing else to add. If you don't understand what good government is—you make a promise, you develop the best possible piece of legislation and program you can and then you implement it, as you promised. I can't explain good government to you anymore than I can.

Senator WATT: Call me old fashioned, but I reckon good government is delivering your election commitments and not imposing secret charges and caps that you didn't talk about in an election.

Senator Reynolds: Senator Watt, we could not have been any more transparent about this. We could not have been any more transparent. That is what a good government does. Nothing, no program—the immigration program varies. It varied under your previous government. It varies with the times, the circumstances and the requirements. In relation to this particular issue, we promised it, we consulted, we developed a very—without your support; without the support of the Labor Party. We developed it and we've implemented it, which is going to be of net benefit to thousands of Australian families who want to bring their parents in. We promised, we delivered and I cannot think of a better example of good government, Senate Watt.

CHAIR: Thanks, Minister. Look, I've been very lax as Chair.

Senator WATT: You have been very generous.

CHAIR: I have allowed this thing about election campaigns and electioneering, which isn't part of estimates. Could we return to estimates for the 2019-20 year?

Senator WATT: Sure. I won't need much longer to finish this off. You said it was a decision of government and ministers to introduce the fees, limit the access—or impose a cap. I've forgotten exactly—
Senator Reynolds: Senator Watt, if you'd had your way in the Senate, in 10 days time Australian families wouldn't even have access to this new type of visa, because you tried to stop it. It is a little rich you coming in here lecturing us about implementing and delivering election commitments, and all of a sudden you have concerns that we're not doing it well enough. But you opposed it, Senator Watt. Both of you sat there and opposed this. Despite that, we have delivered this for Australian families.

Senator WATT: Well, you haven't yet.

Senator Reynolds: It is 10 days away.

Senator WATT: Well done! It took you three years. I've forgotten exactly when it was that Minister Coleman became the immigration minister.

Senator PRATT: You've had so many.

Senator WATT: Was he involved in the decision to introduce the fees and the cap? I suspect he would have been the minister by the time the legislation passed?

Senator Reynolds: I've said it was a decision of government. It was a decision of government.

Senator WATT: When did Minister Coleman become the immigration minister? It was after you all rolled Mr Turnbull, as I recall.

Senator Reynolds: Yes. I'm sure you can find that. I'm sure you've actually got it in front of you. You had my term of government—

Senator WATT: I actually don't. It's a bit hard to keep up with leadership challenges.

Senator Reynolds: I don't have the exact date, but that does not change the fact. As I said, it was a decision of this government.

Senator WATT: From memory, it was around September 2018 that Mr Morrison took over—


Senator WATT: and Minister Coleman became the minister. So he was the lead minister for this legislation when it passed in November—correct?

Senator Reynolds: Yes.

Senator WATT: Given Minister Coleman has a very multicultural community, do you know whether he considered the impact of these changes on members of his own community?

Senator Reynolds: Senator Watt—

CHAIR: 'Do you know if he knew' was the question, and I suspect you don't know.

Senator WATT: I can't ask him, so I'm asking you, as the minister.

Senator Reynolds: You're asking for an opinion, and all I can do is reiterate—

Senator WATT: No, not an opinion.

Senator Reynolds: Yes, it is. I'm not a mind-reader in terms of what's on Minister Coleman's mind.

Senator WATT: I can't ask him, otherwise I would.

Senator Reynolds: However, what I can say is that it was a decision of government. It was an election commitment that we carefully reviewed. Despite Labor opposition, we got it through the Senate and the House of Representatives, and in 10-days time thousands of Australian families will have a new option to bring their parents into this country. That is an overwhelmingly good thing. It is something that we promised and delivered, despite your opposition. Yes, it is a decision of government, and it's one that we are very proud of, Senator Watt.

Senator WATT: Okay. I think I've gone over that as much as is needed. If you do end up having any of those answers to the questions I asked, that would be appreciated. Thanks.

CHAIR: Are there anymore questions in outcome 2?

Senator PRATT: Yes. I'm hopeful, with your indulgence, if we're able to keep pursuing our questions, we can meet an earlier time schedule this evening.

CHAIR: I just indicate that Senator Watt has had two 20-minute goes without interruption.

Senator PRATT: I know. We are grateful that you're helping us to meet that objective. I have some questions about citizenship. Has Minister Coleman ruled out changes to the citizenship test?
Mr Pezzullo: The question of the citizenship test has been addressed by the government generally. It hasn't proceeded with the legislation that pertains to that matter, which, given the imminent proroguing of the parliament, one would have to assume is not a matter for this term of parliament.

Senator PRATT: This committee inquired into this legislation twice: once on the government's legislation and the other time on legislation from Senator Hanson?

Mr Pezzullo: Yes.

Senator PRATT: Where the committee's majority said that it would support further legislation coming forward along the model of what the government had previously put forward.

Mr Pezzullo: Yes.

Senator PRATT: What is the status of the legislation?

Mr Pezzullo: Given that the House of Representatives will be imminently dissolved and the parliament prorogued and I don't have any insight into when that might occur, unless there are any unscheduled sitting days over the course of the next week or so, that will, no doubt, lapse with the proroguing of the parliament.

Senator PRATT: Has the minister sought—

Mr Pezzullo: Sorry, I should respectfully ask the minister as to whether she's got any insight.

Senator Reynolds: I think the secretary's assessment of the current situation of this current parliament is correct.

Mr Pezzullo: I shouldn't presume though.

Senator PRATT: I guess the question is there's nothing to say that it's not still government policy, though, is there?

Mr Pezzullo: The government made it clear, if I recall rightly, the responsible minister, Minister Dutton, indicated either by way of moving amendments or through his own pronouncements—I can't recall which—that the government had decided to vary their approach to language, if I recall rightly, Mr Mansfield. And were the government to revisit that matter in this term, given the term is about up, I assume that remains the government's policy position. But the term is about to end.

Senator PRATT: Yes, but we are going into an election and—

Mr Pezzullo: You would have to ask—

Senator PRATT: this is a substantive issue, to see what the government's position is.

Mr Pezzullo: Understood, Senator. But in terms of what the government's intentions might be for the next term, should it be re-elected, it is really best to address that to the minister.

Senator PRATT: On that, has Minister Coleman sought advice from the department about a new English test for citizens?

Mr Pezzullo: The question of what advice has been tendered to ministers over time is always a matter that officials are properly able to defer to the minister, so whilst Minister Reynolds is not present at the table I would refer that question to Minister Coleman, through her. So has the minister sought advice about variations to the English language requirements in the citizenship test?

Senator Reynolds: Senator Pratt, I am not aware of any, but for the point of precision and clarity I have sought further guidance on that. But I think the secretary, again, has done a very accurate summary of the position so far.

Senator PRATT: Okay. And it remains the government's position, Senator Reynolds, that they support changes to the English language test, in relation to citizenship?

Senator Reynolds: At this stage, again, I'm seeking further clarification. I'm not aware of the answer to that; however, I think Mr Pezzullo has summarised it well. If I get any further guidance on that, I will let you know, Senator Pratt.

Senator PRATT: Thank you. I have further questions on citizenship. What's the current number of applications on hand, both primary and dependent applications, for citizenship?

Mr Pezzullo: I'll seek some guidance from the chair. Of course, we're only too happy to assist but some of this evidence was given last week—

Senator PRATT: Yes, that's right.
Mr Pezzullo: so, initially, I would refer you to that answer. But if it's helpful to the committee, I am happy for Mr Mansfield—subject, of course, to guidance from the chair—just to restate the numbers.

CHAIR: We're here until 11 o'clock. If you want to ask questions that have already been asked and answered, state them again.

Senator PRATT: That's all right. It's just that I need to be able to pull a particular body of information together. My understanding is that what you told us last week, as at 30 June, 2018, there were more than 244,000.

Mr Pezzullo: Mr Mansfield, you might revisit that evidence from last week.

Mr Mansfield: I can tell you the number of citizenship applications on hand, as at 24 March, 2019, which is 228,154. That's for applications for citizenship by conferral. That includes account of children under 16 years of age who are included on a responsible parent's application form.

Senator PRATT: Great.

Mr Pezzullo: So the overall number is—

Mr Mansfield: It's 228,154 for applications for citizenship by conferral.

Senator PRATT: Of those, what percentage are complex cases?

Mr Mansfield: There's a range of complexity with all of the applications and we don't tend to, as a matter of practice, just designate things as complex and non-complex. We would consider them on a spectrum of complexity, because each application is considered on its individual merits and some applications will have certain features that are quite quick and easy to determine—say, for example, the residence requirement. It's an objective criteria. And for others there will be complexity associated with identity, for example, or character related matters. So we tend not to try and bundle that into complex and non-complex.

Senator PRATT: However, you have in the past, in these discussions, cited a so-called increase in complexity as a reason for the vastly growing backlog of these applications.

Mr Mansfield: I can talk to that. I wouldn't categorise them in two buckets, or two groups, if you like, but we have seen in the last few years a growing number of applications that are at the more complex end of the spectrum, and those have tended to be for humanitarian entrants and former maritime arrivals, and that's due to the fact that, with the vast majority of the illegal maritime arrivals, they didn't present with any documentation. So the level of information that we have to satisfy ourselves as to identity is less.

Senator PRATT: But what's the proportion of citizenship applications that come from that cohort?

Mr Mansfield: I can tell you the number of people who acquired citizenship from those different cohorts over time. I don't have a split for on-hand applications of the number of that cohort over the period of time, although I do know that some of that material was included in the ANAO's report. I'll check if Mr Finney can assist.

Senator PRATT: What I'm trying to come to grips with is, for those who've got reasonably straightforward applications, of which there are tens of thousands waiting—

Mr Pezzullo: Sorry to interrupt, Senator. When you say 'tens of thousands', I'm just trying to establish the data point. Are you referring to some data that perhaps I should be aware of?

Senator PRATT: My understanding is that—

Mr Pezzullo: I don't mean to be impertinent, but you seem to be referring to data.

Senator PRATT: No, that's fine. I have a graph here, which is the ANAO analysis of Home Affairs data around applications lodged and decided on per year. In 2014-15, there were some 30,000 on hand, nearly 200,000 lodged and nearly 200,000 decided, and yet here we find ourselves with a plummeting number decided, an escalating number on hand and a small increase in those lodged. It just does not make sense.

Mr Pezzullo: I understand the context of your question. Perhaps we might start with Mr Mansfield and refer to Ms Finney as required.

Mr Mansfield: I wouldn't describe that there's been a plummeting number of applications decided, but we have seen a 177 per cent growth in applications over the eight years from 2010-11 to 2017-18, and the number of applications finalised this financial year to 24 March has increased by 73 per cent compared to last year.

Senator PRATT: Yes, but that's just the tail end of the process that you've—

Mr Pezzullo: Sorry, to be clear, my ears slightly raised themselves when you referred to a 'plummeting number' of decisions taken. A finalisation is a decision. It's subject to review and appeal, of course. I think you'll find that, as with the visa data that we shared with you last week, there's an increase in the numbers rejected. Finalisations are, in fact, increasing, I think.
Mr Mansfield: They've increased, certainly, compared to last year.

Mr Pezzullo: But, because of the tougher standard—that is perhaps easiest way to describe it—the better information systems we have and the more illuminating systems we have to look behind claims, including around identity, regrettably, and I say 'regrettably' because in some cases people have been here for a number of years, it's a case that, under the law as it stands, we have to say no. But that then triggers rights of review and appeal.

Senator PRATT: But that is not the question that I'm asking. Here we've got in the ANAO data—

Mr Pezzullo: Sorry, I thought you were asking me about finalisations of decisions.

Senator PRATT: Mr Mansfield rejected a plummeting number of decisions, but what we see here in the data for the ANAO is that, of the lodged and decided applications, nearly 200,000—which meant that there was a very small number on hand: some 30,000. But when you get to 2018 there are 100,000 decided, which indeed represents a plummeting number of decisions, which therefore means that you've got an escalated number on hand of the kinds of figures that we have today, of some 224,000, or 222,000.

Mr Pezzullo: Thank you for clarifying that, Senator.

Mr Mansfield: I agree that there has been a decrease in the number of finalisations. I wouldn't characterise them as 'plummeting'. But the issue around refusals that the secretary mentioned is right. Refusals have increased from 3.4 per cent in 2014-15 to 5.3 per cent in 2018-19, to 24 March. But the other thing: as you would have seen in the report that the ANAO published, and in particular the department's response to that, we also drew out that there have been 144 instances where people didn't disclose serious criminal conduct and 1,440 incidences of potential identity fraud being detected, and there have also been 29 individuals who have had their citizenship revoked for criminal conduct or for citizenship or migration fraud. Separate to that there are 12 individuals who have ceased to be an Australian citizen, because they've engaged in terrorism.

The point I was going to make is that these additional applications that are at the more-complex end of the spectrum take a disproportionate amount of the department's overall resources in finalising applications. When coupled with the significant growth in the number of applications in aggregate, they are the factors that have contributed to the overall increase in the number of—

Senator PRATT: Okay, so that's what explains an increase of some 700 per cent in terms of citizenship by conferral on hand, where you've got that number of cases sitting in the department.

Mr Mansfield: It's those factors, but of course also there were—

Senator PRATT: How can you manage security when you've got—I can see that if you're clearing them out systematically—

Mr Pezzullo: Well, you're not granting citizenship.

Senator PRATT: then you're able to give scrutiny. But how do you deal with having hundreds and thousands of these cases on hand?

Mr Pezzullo: It enhances security to ensure that persons who subsequently would have to have their citizenship revoked—which, quite properly, is a very strenuous set of hurdles that have to be jumped under the law—for them not to be granted citizenship pending checks. When you ask how that enhances security, the converse point can be made—that if they're in the community as permanent residents they still have to abide by our laws and observe all the requirements of their visa, including not just the residency period, but their residency can be overturned.

Senator PRATT: So, you're saying that some 228,000 people are waiting because of a small number of security concerns?

Mr Pezzullo: No, far from it.

Senator Reynolds: The other way around.

Mr Pezzullo: A couple of points: it's fair to say—and Mr Mansfield and Ms Finney will correct me—that this year we will finalise more decisions than we took last year.

Mr Mansfield: We've already finalised more decisions this year than last year.

Mr Pezzullo: So, the rate of finalisation has been not only maintained but in fact improved—increased.

Senator PRATT: Since when?

Mr Pezzullo: I'm comparing year on year.
Mr Mansfield: In 2017-18 there were 101,422 decisions made for applications of citizenship by conferral. This year, to 24 March, there have already been 110,929. So, we've already exceeded that total. And of course we've still got more than 2½ months—

Mr Pezzullo: If it will assist the senator—and I don't know whether we've got this projection to hand—what are you anticipating it being by 30 June, Mr Mansfield?

Mr Mansfield: I wouldn't want to speculate, only because I know that we're in the process of implementing quite a range of measures to try to accelerate processing.

Mr Pezzullo: So, you're not downing tools.

Mr Mansfield: No. Indeed, I know that there were staff onboarded just this week, who will undergo training during the course of this week and in subsequent weeks, to increase our overall number of finalisations, without compromising on integrity. The other thing, around the 228,000 you mentioned—you suggested that they were waiting because of these matters—some of those people have been waiting for a longer period, but some of them applied last week. It's a moving stock of applicants.

Senator PRATT: On that note, what was the total number of applications for citizenship by conferral lodged in 2012-13, 2013-14, 2014-15, 2016-17 and 2017-18 that remain on hand?

Mr Mansfield: We'll have to take that on notice. I can tell you the ones that were lodged for 2015-16 onwards, but not whether they've remained on hand.

Mr Pezzullo: Yes, that's right—and obviously the further back you go in time, Senator Pratt, the more likely it is that those matters would have been dealt with. If you lodged your application seven years ago, unless it's exceedingly complex, it's probably been through the system. But we'll take on notice lodgements in each of those years. I think you started with 2012-13?

Senator PRATT: That's right.

Mr Pezzullo: And how many, as of today's proceedings, have not yet been finalised and, therefore, would be in the stock of applications on hand? Is that your question?

Senator PRATT: That's right. That's exactly right.

Mr Pezzullo: We'll take that on notice.

Senator PRATT: Can I also, in that context, ask what the top 10 countries for citizenship applications that were lodged, in terms of the country of origin of the applicant, were—

Mr Pezzullo: Which remain on hand?

Senator PRATT: Yes, which also remain on hand.

Mr Pezzullo: We'll give you the aggregated number as well as a breakdown by—did you say the top 10?

Senator PRATT: Yes—that remain on hand, for those same years.

Mr Mansfield: We will do that. If it gets down to numbers less than five, and I suspect it will for some of those categories, we won't be able to—

Senator PRATT: No, that's fine. It's the top 10. You'll be aware that last year there was some discussion about Chinese-born residents being granted Australian citizenships and that that number had dropped. I now want to ask you what the full-year figure was for citizenship applications for conferral lodged and acquired by Chinese-born residents in 2017-18.

Mr Mansfield: We'll have to take that on notice. I don't have—

Mr Pezzullo: It will presumably be one of the top 10. It will come out as one of the top 10, won't it?

Mr Mansfield: Yes.

Senator PRATT: Do you have any background information on that? As far as I understand, your departmental data shows that the rate of lodgements by Chinese-born residents was stable in the first eight months of 2017-18, while only 1,500 applications were actually approved in that period.

Mr Mansfield: I'll take that on notice. I know, when there was media reporting on that issue, that inferences, which were totally without basis, were drawn, suggesting that there was some link between government policy and decision-making around Chinese applications. We looked into those matters and found absolutely no link whatsoever. We process applications for citizenship on their individual merits. We don't process them based on country. All I can say is that it might be a peculiarity of the particular period in time that you looked at or that you have data on as to how many applications were finalised in that period for a particular country. But certainly Chinese nationals are among the larger cohorts that we finalise and approve for citizenship.
Senator PRATT: But some 6,500 were done in 2016-17. Why the change?

Mr Mansfield: You're talking about a particular part-period in a year. We haven't finished the year. I've taken on notice the number of applications we've finalised for this year, and I'll be able to provide you a response to that on notice.

Senator PRATT: Thank you. I'm keen to hear from you the full figures for citizenship applications for conferral lodged and acquired by Chinese-born residents in 2017-18 and the equivalent figure to date in the 2018-19 financial year. How many applications for citizenship by conferral lodged by Chinese citizens are currently on hand?

Mr Mansfield: We'll take that on notice.

Senator PRATT: Can I ask how many applications in 2018-19 have been finalised so far. I think you gave me the figure before.

Mr Pezzullo: Are we over 100,000?

Mr Mansfield: Yes. The number of citizenship applications decided or finalised, citizenship by conferral, is 110,929. That's from 1 July 2018 to 24 March 2019.

Senator PRATT: Thank you. I might need to finish these after the tea break, Chair. I know Senator Watt had something to clarify.

Senator WATT: Can I ask one thing before we break? It won't take long. Minister, when we were talking about the temporary parent visas, you repeatedly made the claim that the opposition had voted against this bill. We've actually gone back and had a look at that, and in fact—

Senator Reynolds: In the Senate.

Senator WATT: Sorry?

Senator Reynolds: In the Senate. I think my understanding was that you voted against it in the Senate.

Senator WATT: No, I'm afraid that's not correct either. We've actually had a look back. The third reading stage was passed without a division. It was agreed to unanimously, and not only were you the minister responsible for the legislation but it appears you were actually in the chair at that point in time as well, so maybe you could withdraw that comment.

Senator Reynolds: Thank you for clarifying that. I will go back and check my records as well. That's exactly why I asked for that little bit of time to refresh my memory on that particular bill, given that it was a while ago, and many other pieces of legislation have come through. Thank you for drawing that to my attention. I'll go and have a look at it.

Senator WATT: Thank you.

Senator PRATT: I just want to go back—thank you for taking those questions on notice for me. I just want to clarify, because it's been brought to my attention that, I think, in the House of Representatives Mr Hill, the member for Bruce, put a number of these questions on notice and hasn't yet had answers to them. I know that this is the Senate and we don't cross over into the House of Representatives. I just want to clarify that you are able to answer those questions.

Mr Mansfield: I know I've seen some of those, but I can't recall every single one of those questions as to whether we're able to answer every parameter that's been put. I just don't have them before me, Senator. I'm happy to have a look.

Senator PRATT: I will be grateful if you're able to do that. Of the conferral applications finalised in the current financial year, how many of those applications were complex cases? You have said that is difficult to ascertain, but perhaps you can tell us then how many of the conferral applications were for that asylum seeker cohort, and how many of the existing 220-odd thousand cases on hand are from that asylum seeker cohort?

Mr Mansfield: I can tell you the number of conferral clients who acquired. That's beyond the approval process. That's people who've attended a ceremony, mostly. The breakdown by migration stream is that there have been 81,472 people who've acquired citizenship from 1 July 2018 to 24 March 2019, and, of those, 6,576 were humanitarian entrants; 21,269 were family stream entrants, and some of those in the family stream may well be from humanitarian backgrounds; 49,269 were from the skill stream; and 4,358 were other, unknown—and I don't have any further breakdown of that.

Senator PRATT: Do you have the country-of-origin breakdown?

Mr Mansfield: No, I don't.
Senator PRATT: Perhaps you could take that on notice.

Ms Finney: Just to add to Mr Mansfield's evidence: in terms of the 6,576 humanitarian entrants who acquired citizenship in the 2018-19 period to 24 March this year, of that group, 1,595 people were former IMAs.

Senator PRATT: Thank you. That's not a huge proportion of the 81,000 that you—

Mr Mansfield: It's not, Senator. But, as I mentioned, there is the proportion of effort required to resolve those cases. If you're looking at a certain number of 10 staff or what have you and it takes one staff member to do one application that doesn't have any identity complexity and the equivalent of 2½ to do the other, to draw that type of analogy, it's significantly more effort that is required to resolve those individual cases. It goes to going back to posts in many cases, following up with clients, doing in-depth interviews to ascertain the person's story, validating with other agencies—it's a significantly higher amount of work effort involved.

Senator PRATT: How many full-time staff are currently devoted to processing applications for citizenship by conferral?

Mr Mansfield: I might have to take that on notice. Just bear with me, Senator. I'll see if I have that detail.

Senator PRATT: Perhaps by way of background I can tell you that the ANAO found that 182 full-time staff were allocated to processing applications in the 2017-18 year, which was six per cent less than 2016-17.

Mr Mansfield: It's definitely higher than that.

Ms Finney: Yes. In terms of figures we do have available today, as at 28 February this year, there were 63 additional full-time-equivalent staff allocated to the processing of citizenship applications, which was—

Mr Pezzullo: Sorry, Ms Finney, additional relative to when or to what?

Ms Finney: To 30 June 2018.

Senator PRATT: What would the ordinary job of those staff have been?

Ms Finney: The additional staff that have been allocated are processing the citizenship-by-conferral applications.

Senator PRATT: I know, but what was the job of those 63 people before that?

Ms Finney: They're new people—sorry, Senator. They're new appointments.

Mr Mansfield: The vast majority of them are new people that we've brought into the organisation. We ran a large non-ongoing recruitment round and brought in additional staff and have been training them, and we continue to do so, so there's further onboarding of additional staff yet to occur. And, as I mentioned, there were some staff that started just in the last week or so.

Senator PRATT: My understanding is that they're—as you've highlighted, Mr Pezzullo—catching up on the tail end of applications, and that's accelerating the numbers that are being approved at the moment, but that has actually taken away resources from the clearing of the rest of the backlog that's sitting there that wasn't quite at the conferral stage.

Mr Pezzullo: I'm not sure I quite understand the question. We've put additional resources into citizenship application processing. To the extent that anything else has been diminished—any other functions have been diminished—I've got to obviously manage a global budget. I don't get specifically funded in terms of new policy initiatives, so I've got to, in a sense, find those resources elsewhere—not the humans but the financial headroom—so that Mr Mansfield and his colleagues can go out and recruit. I'm not quite sure I follow the sense of your question.

Senator PRATT: For example, as we discussed a few weeks ago in estimates, the department is now conducting its own citizenship ceremonies, rather than saying, 'Look, this person is ready for their conferral,' and handing it over the local government.

Mr Pezzullo: I see. Yes.

Senator PRATT: That is just one example of what you're doing at the moment.

Mr Mansfield: Yes, but, as I mentioned at that hearing, we have long been conducting citizenship ceremonies in the department. That's not a new thing.

Senator PRATT: I've got no objection to that, but it clearly takes resources for you to do them instead of local government doing them.

Mr Pezzullo: I think we are doing more.

Senator PRATT: And you are doing more of them, aren't you? I've got no objection to that—
Mr Mansfield: We did do more—

Senator PRATT: bar the fact that it looks like you're trying to lift your citizenship numbers, even though the actual processing of them is still very slow.

Mr Mansfield: There's not a direct correlation between the staff who engage in the citizenship ceremony work and citizenship processing. Some of those staff may be cross-trained to be able to do both, but others just do citizenship ceremonies, and others just do citizenship processing. So it's not—

Senator PRATT: And what if I told you that I'd heard of staff being moved from doing application processing through to citizenship processing?

Mr Mansfield: That's possible. On a particular day there may have been a large ceremony involving thousands and thousands of conferees, and we asked someone to assist in that process. That's quite possible on occasion, but it wouldn't be a permanent state of affairs unless, of course, they engaged in a mobility process to move jobs.

Senator PRATT: Okay. Do you consider the department's citizenship to be currently adequately resourced?

Mr Pezzullo: As I've indicated before many times in different lines of questioning, it's always tempting for the head of an agency or the secretary of a department to say, 'Please give me more resources.' You're asking me for a value judgement in relation to whether this function is adequately resourced versus another. The question is, 'What is the overall set of obligations that you're under as a matter of law and government policy, what's the overall resourcing level that the government of the day affords to you and what are the priorities within that resourcing?' and I'm perfectly satisfied, recalling earlier evidence. We're neither happy nor sad in these matters, but I'm entirely satisfied with the level of resourcing that's afforded to this function—indeed, with some recent bolstering, on the basis of Mr Mansfield's evidence—relative to all of the other priorities that we have to be able to manage. It is entirely appropriate.

Senator PRATT: In other words, you're satisfied that it's okay to have more than 200,000 applications on hand.

Mr Pezzullo: That's not the question you asked me, with all due respect. You asked me if I am satisfied with the level of resourcing. No secretary, no head of agency, no head of the armed services would ever say, 'Minister, with all due respect, I'd knock back another dollar.' If you've got another dollar on offer, Minister, I'll take it off you.

Senator PRATT: How can you bring the number of applications on hand down to some 30,000 as they were in 2014-15 if at the same time in the forward estimates visa and migration are forecast to decrease by 17 per cent in real terms?

CHAIR: This is entirely hypothetical.

Senator PRATT: It's not hypothetical.

CHAIR: What's the question?

Senator PRATT: My question is: between 2014 and 2017-18, we have seen a 700 per cent increase in the number of applications on hand sitting inside the department that haven't been resolved.

CHAIR: And the question is?

Senator PRATT: How are you going to address that? That's the situation that confronts us now. You've got a huge backlog to resolve, and now forecast in the forward estimates is a 17 per cent decrease in expenditure on citizenship, visas and migration.

CHAIR: The question is how you're going to address—

Senator PRATT: How are you going to address that backlog of 200,000?

CHAIR: Hang on. The question is how you're going to address that, and the minister may like to take the question and say why there is this huge influx of applications because of a boat policy where 50,000 turned up on our shores uninvited.

Senator PRATT: No, only a small proportion of those are boat arrivals. Most of these people are spouses, ordinary Australians who are waiting for their family members to be given citizenship.

CHAIR: Are you giving evidence or are you asking the department? Minister or Mr Pezzullo, I'm not sure if you got it. The question was how you are going to address it, and I thought the minister might like to explain why it's like that. Then, if Mr Pezzullo has an answer to that, he can give it and then we'll go to afternoon tea.

Senator PRATT: Please, Senator Reynolds. Tell us why we've got 200,000 people waiting.
**Senator Reynolds:** Thank you very much for that opportunity. I think you actually answered that question very well yourself, but, as I understood the question from Senator Pratt, she predicated on 'if'. To me that sounds like a hypothetical question, so perhaps Senator Pratt could reword it so that it is a specific question and not a hypothetical. It would help.

**Senator PRATT:** Okay. Given that there are more than 200,000 applications for citizenship conferral on hand, waiting now, and that that's a 700 per cent increase—

**CHAIR:** Just leave aside the editorialising.

**Senator PRATT:** how will you bring that down to what it was in 2014, with 30,000 on hand, under the budget?

**Senator Reynolds:** I can perhaps help Senator Pratt. Thank you for that clarity. We've had a number of different questions on this issue, but perhaps it might help the discussion if I provide some very clear facts on this. As Senator Pratt knows, there are a growing number of people applying for Australian citizenship every year and demand for Australian citizenship has increased by 177 per cent since 2010 and still remains at record highs, which I think we all agree is a very good thing. The department has the number that you quoted—in fact, I've got a slightly different number here, but the number I had was a couple of months ago—for conferral applications. This 228,000 is a reduction from a peak of 247,806 on 31 July last year. So I think that, clearly, we're getting more applications, but the number is actually decreasing. The number of applications lodged by primary and secondary applicants for citizenship conferred increased by 22 per cent over the last three years, from 2015-16 to 2017-18, and the number of conferral applications finalised for this financial year to 24 March has increased by 73 per cent when compared to the corresponding period last year. The department has now finalised more applications—110,929 this year, although I think you might have a slightly updated number from that—than for the whole year last year, 2017-18, which was 101,422. So the numbers being finalised are increasing in absolute and percentage terms.

**Senator PRATT:** Yes, but the department used to be able to decide nearly 200,000 a year.

**CHAIR:** Thanks very much for that answer, Minister, and congratulations to the department. We'll now break for afternoon tea.

**Proceedings suspended from 15:31 to 15:49**

**CHAIR:** I call back to order this hearing of the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the estimates for 2019-20. Minister, did you want to do something now, or will we come back to you later?

**Senator Reynolds:** I did. Just before the break, Senator Watt had questioned me about the sequence and—

**CHAIR:** Perhaps we might leave it, because he's not here. Otherwise, you'll have to repeat it.

**Senator Reynolds:** That's no problem. If he's here before 4.00, because I'm leaving at 4.00, I'm happy to wait until he is back.

**Senator PRATT:** Thank you. I might finish with the questions on citizenship. As I understand it, in March 2017 you had a service standard for the processing of applications by conferral. At that time, the standard was to decide applications within 80 days of lodgement, with 80 per cent within 80 days being a KPI for the citizenship program. Does the department have any internal or external service standards for KPIs or the processing of citizenship applications at this time?

**Mr Pezzullo:** I should commence the response by referring you to—we've given evidence on this before and we were asked about the KPIs. I do apologise if it was asked by a different senator.

**Senator PRATT:** It was, I'm sorry.

**Mr Pezzullo:** It was Senator McKim. I should start by referring to my earlier evidence and the Hansard thereof. That said, if Mr Mansfield thinks he can usefully add to that earlier evidence without contradicting it, without speaking to me first, perhaps—Mr Mansfield.

**Senator PRATT:** Do you have a KPI standard, yes or no?

**Mr Pezzullo:** As I said, we addressed that back in February.

**Senator PRATT:** You did, but I just want to know. Do you currently have them?

**Mr Mansfield:** We don't have an external KPI, as such, that relates to processing times. We do have processing times published on the department's website, which provide the most contemporary view of how long it's taking to finalise applications for the 75th and 90th percentiles.

**Mr Pezzullo:** So we've data on performance.
Mr Mansfield: We've got data on actual performance that gives a realistic indication to clients around how long it is currently taking, as at the previous month.

Senator PRATT: What proportion of applications currently meet that 80 days of lodgement? Would it be the 80 per cent as the previous KPI?

Mr Mansfield: As the secretary indicated in evidence at the last hearing, we have not—or I indicated in evidence at the last hearing that for quite some time we have not used that 80-day kind of number, because it was not realistic. I don't have that figure on hand. We could take on notice what proportion of cases we finalise in 80 days. I'd suggest it'd be—

Witness interjecting—

Senator PRATT: It seemed to be realistic back in 2014 when you dealt with 200,000 applications a year and you only had 30,000 on hand.

Mr Mansfield: Yes, but as—

Mr Pezzullo: Sorry, just so that I'm clear, remind me what the 80 days measured—my apologies, Senator.

Mr Mansfield: It was a service standard from application to finalisation some four or five years ago and pre-dated a whole lot of different confluences of events. We had the Man Monis siege in Sydney. There have been a number of risks identified in relation to the program, in terms of integrity risks, and I went through some of the outcomes of the increased scrutiny of the program. That is one of the factors that have driven longer processing times. Another factor was the very large, atypical increase in applications associated with the government's introduction of new measures and basically people all applying at once.

Senator PRATT: Why shouldn't 80 per cent of them still be dealt with within 80 days, given the ones that are risky should only be a small proportion of what you're talking about?

Mr Pezzullo: I'm not sure how you derive that premise or why you establish that premise, Senator, if I might say with all due respect. Secondly, as I recall—and again I would refer you to the _Hansard_ principally—the evidence that we gave last time to Senator McKim, we want to avoid a situation where perverse behaviours are subconsciously or consciously driven into the process. If officers who work in Ms Finnery's division on the one hand were either minded to ensure that 80 days have been met, you might subconsciously get approvals that are not entirely merited or, indeed, you might get, on the other side of the scales, rejections that are not entirely merited, simply because quotas or standards have to be addressed. So, in light of the changes that have been progressively undertaken since 2014-15, we thought the better approach—we didn't think; we judged the better approach, and we've reflected this in our practice—was to advertise our performance, which is evidence that we've given before. I think we did do that through the website.

Mr Mansfield: That is correct.

Senator PRATT: In fact, my next question, which Senator Watt is going to pick up, is directly relevant to what you just said, and then I think we will be nearly ready to conclude.

Mr Mansfield: Going to your question, the reason is that integrity measures have been applied to the whole case load, not just a portion of the case load.

Senator PRATT: Thank you.

CHAIR: Senator Watt, you weren't here, but Senator Reynolds has an answer to one of your questions taken on notice.

Senator Reynolds: I do. Just before the break, Senator Watt raised with me the issue of the Migration Amendment (Family Violence and Other Measures) Bill and its passage through the Senate. Because it was over two days, I said I'd go back and refresh my memory of the events, and I think what Senator Watt may have missed is that, on 27 November, which is what I was referring to, the amendments were brought into the Senate. As Senator Watt said, I was in the chair moving amendments, and I moved two amendments. The most important one in this discussion relates to the paying of prescribed medical, hospital, aged-care or other health related expenses incurred by a visa holder so that the burden not be on the taxpayer. And I was quite right. The Senate divided and the Labor Party voted against these amendments on the 27th, and then—my recollection was correct—when Labor realised they did not have the numbers in the Senate for voting against this, it went, as Senator Watt said, to the Senate chamber on the 28th for the third reading, which went through on the voices. So I think that is my answer to Senator Watt's issue.

CHAIR: Thanks for the clarification, Minister. Minister, I understand you are leaving shortly, so thank you very much—
Senator Reynolds: I will be leaving in the near future, when Senator Ruston, who is due to take over at four, comes in, but I'll obviously be here until she is here.

CHAIR: So thank you for your assistance today. Now Senator Watt.

Senator WATT: Just on that, though, Minister: how was that visa created? Was it created with the bill or regulation?

Senator Reynolds: It was created through the bill, in my understanding.

Senator WATT: So it was the bill that created the visa, not the amendment that you are just referring to?

Senator Reynolds: But that was a critical part of the bill itself.

Senator WATT: Well, in your view, but the claim you've been repeatedly making is—

Senator Reynolds: No, Senator Watt. You raised a specific issue, and I said that I would go back and check, as I have done—I checked the Hansard. While you referred to one part—in terms of: on the 28th—you were strangely silent on what happened in the chamber on the 27th, which is what I have clarified and confirmed for you in response to your question. So clarity and precision actually do matter, which is why I took the time to go back and check the record. And I think what I said was absolutely correct.

Senator WATT: Yes, I agree with you that clarity and precision matter, and you have been repeatedly claiming that Labor voted against the bill and the creation of this visa, and that's not true, is it?

Senator Reynolds: Well, I—

Senator WATT: We voted against one amendment—

Senator Reynolds: Senator Watt, you can certainly make that political point, but I stand by what I said.

Senator WATT: It's a fact; it's not a political point.


Senator WATT: It's a fact; it's not a political point.

Senator Reynolds: Again, you've asked me for clarification, and I've come back to clarify what happened in the chamber on those two days. I've done that. And—

Senator WATT: I think I've made my point.

Senator Reynolds: I think I've made my point.

Senator WATT: You can, yes, make a political point outside of this place—as you are obviously free to do. But I've just given you the facts.

Senator WATT: Thank you for your permission. On these citizenship issues: given that we have had a dramatic blowout in citizenship processing times, do you consider the publication of global processing times an adequate means by which to meet the expectations of this parliament and the general public, in terms of accountability and transparency around citizenship program delivery?

Mr Pezzullo: There are two points to make, and then I'll defer matters of detail to Mr Mansfield. I'm not sure that any concession has been made in relation to whether processing times have blown out or otherwise. It's simply a matter of public record that they've extended. It's for others to judge the qualitative characteristics of those processing times. That's point one. Point two, the publication of performance data, I think, is precisely on point. That is to say, it affords you as an individual senator, this committee and the Senate as a whole clear data on how long it takes, I think in general terms, Mr Mansfield, as opposed to doing it by type of applicant or country of origin? It is a global dataset, is it not?

Mr Mansfield: It is global, yes.

Mr Pezzullo: It gives this parliament the information that it requires to come to a view about our performance, whether it is taking us X number of weeks or X number of months. Then periodically, through annual reports and through Senate committee processes, you can then reconcile that against the number of applications on hand—those that have been determined, positively or negatively; how many are the subject of appeal and review and so on and so forth. So I would have thought it's an exercise in transparency rather than the contrary.

Senator WATT: Following the audit office report findings about inefficiencies in processing, including long periods of unexplained processing inactivity, the department agreed to explore ICT system enhancements to increase reporting capabilities, and the department noted this would be subject to funding and prioritisation across the portfolio.

Mr Pezzullo: Yes.
Senator WATT: My question is: given the reduction in forecast expenditure across the portfolio, is it reasonable to assume that citizenship processing will maintain a level of opacity—is pronounced opacity or 'apacuity'? I think it's 'apacuity'—for both internal and external stakeholders similar to that found during the audit office audit?

Mr Pezzullo: I think it is a function which, Greek or Latin, you studied at—

Senator WATT: We can go with opaqueness if you prefer!

Mr Pezzullo: I think we can settle on opacity.

Senator WATT: I think it is opacity.

Mr Pezzullo: Indeed. What's baked into the budget reflects government decisions, which relay in part to the automation of processes—I should welcome the Minister to the table. I don't want to revisit earlier evidence in detail other than to say in brief that the automation of the front end of the process—that is to say the visa piece—will have flow through efficiencies in terms of integrated case management views, the automation of one time entered and multiple times reused data across a single platform, however delivered, through private or public means. The government is obviously entitled to articulate policy in that regard and then to build in assumptions about the benefits of productivity that automation will provide. It shouldn't be assumed that, to your point—where is Ms Cargill? She's got the expenditure pro—

Ms Cargill: It's exactly correct.

Mr Pezzullo: It is fair to say there wasn't any opacity associated with the answer I just gave, I would have thought, Ms Cargill?

Senator WATT: No more than usual!

Mr Pezzullo: Thank you.

Ms Cargill: I might leave that.

Mr Pezzullo: Thank you, Senator Watt.

Ms Cargill: To outline, so the visa program budget is reducing over the forward estimates from a starting point of 2018-19. That is predominantly because there was an injection of funds in the 2018-19 year for the visa reform program, which was $75 million to run the immigration reform measure in 2018-19, so it appears to be a drop-off. And, obviously, that will go back to government when that is due to be reconsidered and will be further considered from that point. In addition, there are some visa efficiencies that are baked into the forward estimates for the visa program.

Mr Mansfield: Just on Ms Cargill's first point, that means that that injection of $75 million was not visa processing staff. It was to run the tender and associated processes, so the drop later this year won't actually result in a reduction in processing staff in and of itself—a significant proportion of that drop.

Senator WATT: I think we're done with the citizenship issues. The next item we're hoping to talk about in outcome 2 is concerns on Designated Area Migration Agreements, or DAMAs. As I understand it, the government has announced a number of these Designated Area Migration Agreements.

Mr Pezzullo: Yes.

Senator WATT: Including one in Warrnambool, Adelaide, regional South Australia, Kalgoorlie-Boulder and Orana. Can we go through a few questions about each of them?

Mr Pezzullo: Is there one for the Goldfields?

Mr Mansfield: Yes—

Senator WATT: That's probably Kalgoorlie-Boulder.

Mr Mansfield: and also the Northern Territory.

Senator WATT: So there is one for the Northern Territory?

Mr Mansfield: There are six in total.

Dr Johnson: Yes, the Northern Territory's a renewal. Initially, the Northern Territory was the sole DAMA agreement struck between the Commonwealth and a regional entity or state and territory government. That has been renewed for a second DAMA.
Mr Pezzullo: This is DAMA rather than DAIMA, given Senator Watt's seeking of clarification earlier.

Dr Johnson: I think the on-the-ground pronunciation puts an 'R' into it, yes.

Senator WATT: We would want to be opaque with our pronunciation! So DAMA would be correct?

Dr Johnson: I think the on-the-ground pronunciation puts an 'R' into it, yes.

Senator WATT: I definitely want around the countryside to understand me, so let's stick with DAMA.

Mr Pezzullo: It depends on who taught you Latin or Greek.

Senator WATT: No-one, unfortunately. Is the Northern Territory one across the entire Northern Territory?

Mr Mansfield: Yes.

Senator WATT: Did you say that was a renewal?

Mr Mansfield: Yes.

Senator WATT: Do you know when it was originally announced?

Mr Mansfield: For the initial DAMA with the NT? I think it was a five-year agreement, so it would have been 2013, but we'll check that.

Senator WATT: So it was renewed in 2018?

Dr Johnson: Just recently, yes.

Mr Mansfield: It expired in December 2018 and I think it was renewed, coinciding with that expiry.

Dr Johnson: January.

Senator WATT: Chair, I'm just beginning this bracket.

CHAIR: I have some questions, but have you finished?

Senator WATT: No, I'm only just starting, so I'm happy for you to have a go.

CHAIR: I was going to go to refugee and humanitarian assistance, but I'll follow the path you were on, Senator Watt. I thought this would be your first question: why isn't there one for Queensland?

Mr Pezzullo: Is that rhetorical?

CHAIR: No.

Mr Pezzullo: I can't imagine you'd rule into order rhetorical questions, so I'm delighted that I guessed right.

CHAIR: It does seem that every other state has one, but not Queensland.

Mr Pezzullo: I'm not sure that every other state has got one. It might well be, without breaching confidences, Dr Johnson, that discussions are in hand, if not with the entire state of Queensland, with relevant regions. I'm just not sure that's the case. Dr Johnson?

Dr Johnson: The agreement tends to be with a regional entity. The Northern Territory is the one where we've actually entered into an agreement with a state and territory government.

Mr Pezzullo: The chairman's question was in Queensland. I didn't have the facts to mind. Are we able to disclose—again, I wouldn't want to breach confidence here—if there are any discussions on foot with any entities within Queensland?

Mr Mansfield: Not to our knowledge. This is largely areas coming to the Commonwealth and saying that they feel that there is a skill need that's not being met locally through local labour. To date, the engagement has reflected those regions that have approached either the minister directly or the department to express that they feel that there is a need. And then there are discussions around that.

Mr Pezzullo: Am I right in thinking, just to be clear for the chair, that the entities—other than the Northern Territory, which is with an entity of our Federation, a territory—typically relate to chambers of commerce and like institutions? You might give the chairman a sense of the entities with which we engage.

Dr Johnson: It could be, for example, a council or a local government. There are actually a variety of possibilities.

CHAIR: Could you quickly run through all of those that you've mentioned?

Mr Pezzullo: They are all public. So, other than the Northern Territory, with whom do we engage in these agreements at the entity level?

Mr Mansfield: Kalgoorlie-Boulder in the Goldfields is one. The Great Southern—
Mr Pezzullo: Who is the applicant? What is the entity with whom the Commonwealth strikes an agreement?

Ms Dunn: If I can add to that: it's the Kalgoorlie-Boulder shire council. The discussions tend to be at the regional level.

CHAIR: Yes, I've got that. We have got the Kalgoorlie-Boulder shire council. Who are the others that were mentioned?

Ms Dunn: Great Southern—so Warrnambool.

CHAIR: Warrnambool City Council?

Mr Pezzullo: What is the entity, Ms Dunn? That's what the chairman is asking.

Ms Dunn: I don't have the details, sorry, in relation to Warrnambool City Council.

Senator WATT: According to my notes, it's the council in Warrnambool.

Mr Pezzullo: Thank you for your assistance, Senator Watt. I appreciate it!

CHAIR: It sounds like you know about this, Senator Watt, so perhaps you won't need to ask any questions and we can go home!

Senator WATT: I'm afraid not!

Ms Dunn: If I could add to Mr Mansfield's—

CHAIR: No, please—my question was: who are the entities who have applied? If nobody has that information—

Mr Pezzullo: We will get that for you momentarily. I can't imagine the DAMA team wouldn't know. As they are watching this very intently, they can probably send it through most expeditiously.

CHAIR: Okay. We will wait for that.

[16:11]

CHAIR: Can I move on to program 2.4: refugee and humanitarian assistance. I have some questions on that. Broadly speaking, what does that encompass within the department?

Mr Pezzullo: The Refugee and Humanitarian Program, which is administered in Mr Mansfield's home division—he is currently performing the duties of acting deputy secretary—manages a program of 18,750 places. As we explained—it might have been last week or in the February estimates—that's roughly divided into two components, roughly fifty-fifty: refugee and humanitarian. Mr Mansfield, that is your cue.

Mr Mansfield: The offshore humanitarian program comprises the refugee category and, also, the Special Humanitarian Program category—so they are the two categories offshore. Onshore protection is people who have come to Australia on another substantive visa and then subsequently applied for protection in Australia. They are the three components that make up the Refugee and Humanitarian Program. Within the offshore program, there's also a special group called the Community Support Program. That's 1,000 places, and that's designated to try and assist people who have a greater level of self-sufficiency and can be sponsored by community or businesses or other organisations to come in and more rapidly translate into the labour market.

CHAIR: So the program is refugee and humanitarian assistance?

Mr Mansfield: Yes.

CHAIR: Can you just indicate to me what form the assistance takes?

Mr Mansfield: Certainly. In relation to the refugee component, there is assistance provided that is associated with travel to Australia. People get supported to come to Australia—so they don't pay their own fares to get here. There's also assistance with things like undertaking health checks, if the person needs assistance to actually travel here—so if they need a medical escort on the plane, for example, that assistance is provided. They are the kinds of assistance that are given under that mechanism.

CHAIR: Can I stop you there. What that refers to is some of the 50 million people who have been determined by the UNHCR to be genuine refugees, and who are currently languishing in squalid refugee camps around the world. Australia then takes a certain number of those UNHCR-determined refugees and brings them into Australia, and, you're saying, we pay for the airfares, medical checks and health checks as part of our humanitarian program?

Mr Mansfield: Yes; that's right. There are between two and three million people who the UNHCR has identified as being in urgent need of resettlement. That's from a much bigger pool, which I think is what you're referring to, of people who may be displaced. But, yes, the UNHCR has determined that certain individuals are refugees who are in need of urgent resettlement. Broadly, the department works with the UNHCR to bring a
number of them to Australia. People can also, in certain instances, self-refer to the department, and we'll look at them on a case-by-case basis.

CHAIR: I think you said in answer to Senator Watt that Australia has a limit, which has just recently been increased; is that correct?

Mr Mansfield: It has. It's been increasing every year for the last few years. Last year, 2017-18, it was 16,250 places. This year, 2018-19, it is 18,750 places. Of course, we also had the one-off additional intake of 12,000 places for people who were displaced from Syria and Iraq, and we were particularly focused on persecuted minorities out of those two locations.

CHAIR: Just to get that clear: these aren't boat people who weren't determined to be refugees who simply tried to jump the queue? These are people—you said two to three million of them—who the UNHCR has already determined to be genuine refugees? They are the ones who you're talking about?

Mr Mansfield: That's right. We currently don't count illegal maritime arrivals as part of the humanitarian program.

CHAIR: We have proudly said in the past—and you might update me on this—that, per capita, Australia is one of the most generous refugee takers of any country in the world.

Mr Mansfield: It's consistently in the top three.

Dr Johnson: That's correct.

Mr Pezzullo: The chairman makes reference to 'per capita'. I think that still applies. It's between ourselves, the US and Canada, if I recall?

Dr Johnson: Yes.

Mr Pezzullo: That's in relation to the global numbers but then divided by the population.

Dr Johnson: Exactly. I think, from memory, Australia comes in second.

CHAIR: Is that per capita or just on raw numbers?

Dr Johnson: Per capita. In raw numbers, we have consistently been in the top three global resettlers for a long period. The three key countries who have carried the burden of global resettlement have been the US, Canada and Australia. In straightforward raw numbers, we are in the top three. When it comes to per capita, we are, from memory, No. 2. We will correct that if that's wrong.

CHAIR: Are you telling me that, in raw numbers, we're ahead of Britain, Germany, France, Italy, Sweden—all these countries that lecture us about refugees?

Mr Pezzullo: Without seeking to speak in relation to each of those jurisdictions, nor, indeed, associating ourselves with the characterisation of being lectured to, I understand the point you're making. The difference is that most countries have got a temporary protection regime. What we're talking about here is permanent protection, whereby you get residency and then, ultimately, citizenship. Three countries stand out and then there is a considerable gap, which is not to say that some countries, including some of those that you've identified, don't take a lot of refugees in. What they tend not to do is put them on pathways to permanent residency and citizenship. That is the difference between ourselves, the US and Canada. I think there's daylight next, and then there might be others who have several thousand places but not in the order of 20,000 places.

Dr Johnson: Certainly, in gross numbers, 'daylight' would be a reasonable description.

Mr Pezzullo: So daylight, and then Nos. 4, 5 and 6 follow.

CHAIR: Has this ever been recognised by the United Nations or the United Nations High Commissioner for Refugees?

Mr Pezzullo: I think the Secretary-General, who was the high commissioner at one point, and others have recognised that Australia is traditionally and typically, along with Canada and the US, very generous in terms of its global allocation as well as the allocation of places relative to its population. I think it's fair to say that our interlocutors in the UNHCR as well as the broader UN system recognise the generosity of the Australian people.

CHAIR: Well that's good to hear. I like to highlight that, because if you read some of the reported musings of the UN and other countries you overlook the fact that Australia is—and has been for a long time, as I recall—one of the most generous takers of genuine refugees. I just wanted to clarify that. Over to you, Senator Watt.

Senator WATT: Thanks, Chair. I do have some questions on refugee and humanitarian assistance but I might just go back to where I was with the DAMAs, starting with the Warrnambool one. Are there any salary concessions under the Warrnambool DAMA and, if so, what are they?
Mr Mansfield: I think we'll have to take that on notice. I don't have the detail in front of me in relation to each individual concession, if you like.

Senator WATT: Okay. Do you know whether the salaries paid under this agreement are less than the TSMIT, the temporary skilled migration income threshold?

Mr Mansfield: I'll take that on notice.

Senator WATT: You don't know, Mr Pezzullo—or anyone else?

Mr Pezzullo: The policy is that labour market testing requirements still have to be observed as to payment of Australian award conditions and the rest of it. As to how that's materialised in each of the agreements, I think Mr Mansfield's taken that on notice.

Mr Mansfield: Just to add to what the secretary said: each designated region has to provide information that demonstrates the efforts it's undertaken to recruit Australians and that skills shortages remain. Then, when there's an agreement established, employers within the designated region can request a labour agreement under that DAMA—after gaining endorsement of the designated area region—and in that process evidence of labour market testing needs to be demonstrated. So there are other protections.

Mr Pezzullo: So you don't get a leave pass from labour market testing.

Senator WATT: No; I understand that. Are all occupations under the Warrnambool DAMA limited to jobs that are in skills shortage?

Mr Mansfield: We'll take on notice the specifics, but, as part of the process of becoming a designated area, they have to demonstrate efforts to recruit Australians in that area.

Senator WATT: Do you know how many occupations this one applies to?

Mr Mansfield: I'll take that on notice unless Ms Dunn has that detail?

Ms Dunn: No, I don't; I'm sorry.

Senator WATT: Okay. Can I also get you to provide a copy—

Mr Pezzullo: Just to be clear—because my officers aren't necessarily making this clear—it doesn't mean that you carve out a patch of Australia and skills shortage requirements simply go out the window and you can employ people across all occupations. It's still pertinent to the skills shortage that created the imperative for the DAMA in the first place. I just want to make that abundantly clear for those listening to the proceedings or those who might read the Hansard subsequently. Perhaps if the officers can address specifically the general design feature of the fact that there still needs to be a linkage to occupational labour market shortages and then perhaps take that as the starting point of the design and then work from there.

Senator WATT: I might just get you to provide a copy of the occupations list for the Warrnambool agreement as well. I assume you don't have it there, but could you provide a copy. Do you know how many places this DAMA covers—as in positions?

Mr Mansfield: No, not off the top of my head.

Senator WATT: Could you take that on notice for me too. What are the labour market testing provisions that apply to this DAMA?

Dr Johnson: As a general rule, the visa that will be employed through the DAMA tends to be a TSS visa, so the general operation of the TSS requirements will be in place equally for the DAMA.

Senator WATT: Were there any requirements, as part of this DAMA, to train local Australian workers to fill those occupations in the future?

Mr Mansfield: We'll take that on notice.

Senator WATT: Okay. What new investment in compliance is associated with this DAMA?

Mr Mansfield: I'll take on notice the detail. I just don't have that before me.

Senator WATT: That Warrnambool DAMA was announced on 10 December 2018 but wasn't finalised until 5 April this year, a few days ago. Why did it take so long?

Mr Mansfield: We'll take that on notice. I'm not sure exactly what discussions happened between the Commonwealth and that region that might have contributed to that overall time period. We'll just get the details on that.

Senator WATT: I've also got some questions about some of the other DAMAs. I might just—

CHAIR: Put them on notice?
Senator WATT: consider putting them on notice. Let me just reflect on that. I'll do something else in the meantime. I have some questions about student visas. While we're at it, I'll get you to provide a copy of each of these new DAMAs.

Mr Pezzullo: We'll take that on notice because I'm not sure whether the government have announced the DAMA with the contracting entity or whether they've actually in the course of that released the agreement. I need to check that with the government. But, just to be abundantly clear, it is taken on notice.

Senator WATT: In terms of student visas, before the additional estimates spillover as well as before the budget estimates we wrote to you, Mr Pezzullo, asking that the department be prepared to give detailed evidence and provide the number of student visas subclass 500 granted in the past five financial years for the vocational education and training sector broken down by name of institution. Do you have those answers to table?

Mr Mansfield: We do, but we don't have them right here. We actually brought them to the last two hearings, but I don't think we have them right here now. We can certainly—

Senator WATT: If you could get someone to send them through.

Mr Mansfield: We'll seek to do that.

Mr Pezzullo: We'll do that on notice then.

Mr Mansfield: We'll do that on notice unless we get them in the next half an hour.

Senator WATT: Yes. I think you'll be back after dinner, don't worry. I'm sorry to rain on your parade.

Mr Pezzullo: Can I check for the officers who might have otherwise been planning their evening, Senator Watt, is that a reference to the department coming back after dinner?

Senator WATT: I think so, yes.

Mr Pezzullo: As opposed to the ACIC?

Senator WATT: Given that we've agreed to do ASIO from 5 pm, I don't think we'll quite finish our questions for the department by 5 pm.

CHAIR: We have half an hour. If we ask the questions quickly and intelligently, I'm sure we can get through a lot more.

Senator WATT: Thank you for that editorialising, Chair.

Mr Pezzullo: Senator Watt, are you stuck here with nothing to do this evening, if I can ask respectfully?

Senator WATT: No, not at all.

CHAIR: Mr Pezzullo, just in answer to your question, the committee have decided that we'll break at 5 pm for ASIO and go to the dinner break when we've finished with ASIO if it's a reasonable time. If it's likely to go on forever, we'll have the dinner break in the normal course of events and come back to the rest of the program and ACIC. That's all I can tell you. As you know better than I, the length of time this takes is entirely in the hands of the senators asking the questions, not the chair.

Mr Pezzullo: Thank you, Mr Chairman. I appreciate that clarification.

Senator WATT: If we can get that list for student visas tabled, that will mean I don't need to ask a number of other questions.

Mr Mansfield: Certainly. We'll seek to do that.

Senator WATT: Thanks. I think Senator Pratt is ready to kick off on another topic.

Senator PRATT: Yes, thank you. How many visas have been granted under the Global Talent Scheme pilot—how many primary and secondary grants?

Ms Dunn: This year the number of 457 and TSS visas granted under the GTS was eight.

Senator PRATT: Eight visas in total since the pilot launch?

Ms Dunn: That's right. The pilot goes until 1 July 2019.

Senator PRATT: How many under the start-up stream?

Ms Dunn: I need to check that. I think it's none. I can take that on notice and see if I can find it in the interim.

Senator PRATT: An FOI in January showed it was none.

Ms Dunn: Yes.

Senator PRATT: I guess there's a question of whether there are any since.

Ms Dunn: No, that's still correct.
Senator PRATT: What's the visa processing time for each stream currently?
Ms Dunn: I don't think I have that with me. I'll have to take that on notice.

Senator PRATT: So, on the basis that there have been none under the start-up stream and eight under the business stream, is there a low level of applications, or is it taking a long time for them to be processed?
Ms Dunn: I don't have—
Mr Mansfield: It's fair to say that it's a new initiative, so, particularly with the entrepreneur scheme, we expect that it will take some time for awareness raising among that community that this is, potentially, an option open to them, and then for them to go through the process of actually seeking to bring in workers through that stream. So, it is early days, if you like, in the pilot.

Senator PRATT: But, clearly, since the pilot started in July last year, you would have had many businesses apply for visas. Are you not working to see which of those businesses might be eligible under this pilot instead?
Ms Dunn: Yes, we have 12 labour agreements in place, but, because of the nature of negotiating the labour agreement and then having the visas issued under the labour agreement, there does tend to be some delay in actually having the applications come through. So, we have 12 labour agreements in place, but only eight visas granted so far.

Senator PRATT: Eight visas under the Global Talent Scheme?
Ms Dunn: That's right.

Senator PRATT: And those 12 labour agreements are all part of this pilot?
Ms Dunn: That's right.

Senator PRATT: What's the current processing time and how would you describe the uptake of the program?
Ms Dunn: I think I previously indicated that we'd take the processing time on notice. The uptake of the program is in its early stages, as one would expect with a pilot. So there is the delay in having the labour agreements negotiated, and then the visas tend to come in after that.

Senator PRATT: When did the immigration minister appoint members to the independent start-up advisory panel?
Mr Mansfield: I'll have to take that detail on notice.

Senator PRATT: I understand that it was October last year.
Mr Mansfield: It was 23 October 2018.

Senator PRATT: Why did it take the immigration minister seven months to appoint members to this advisory panel?
CHAIR: That's a question for the minister, I guess.

Senator PRATT: Why did it take seven months to appoint members to this advisory panel for the Global Talent Scheme pilot?

Senator PRATT: How are you prioritising the needs of start-ups if it took you seven months to appoint that panel? You haven't issued any visas under the start-up stream.

Dr Johnson: As Ms Dunn was outlining for you before, companies enter into a labour market agreement to bring people through—basically, to be able to bring workers through under this particular scheme. The sort of areas that the government would look at to give priority to would take into account advice directly from the panel.

Senator PRATT: You have 12 under the business stream. That's 12 visas. How many agreements are there under the business stream, and how many under the start-ups?
Ms Dunn: There are 12 agreements in total. I am not sure I did say there were four under the start-up stream.
Senator PRATT: No, I might have—how many are under the start-up stream?

Ms Dunn: I don't have those details. I'll have to take that on notice.

Senator PRATT: You have 12 in total under business and start-up.

Dr Johnson: My understanding is that there are eight under the business stream and four in the start-up stream. But if we have got that wrong, we will correct it.

Senator PRATT: Can start-ups be issued with visas without this panel? Did those agreements come in to place before the panel was approved?

Mr Mansfield: The purpose of the panel is to review requests from start-up businesses against certain criteria and provide endorsement for a global talent labour agreement where appropriate.

Senator PRATT: Is that why there has been a delay in only a small number of these Global Talent Scheme visas come forward?

Mr Mansfield: I think the minister has taken that on notice.

Mr Pezzullo: It might be worth indicating to the senator—this should be straightforward—that the panel advises the department and the minister on whether a head agreement needs to be put in place. Once you have the head agreement—the labour market agreement, the LMA—a number of visas can then be issued to the entity in question. Our preferred approach, and Dr Johnson will remind me whether this is in a legislative instrument or is a matter of policy, is to put in place the labour market agreement so that we understand the entity with whom we are engaged, the nature of the company, what their requirements are and their bona fides, as it were. Any number of visas, subject to any program cap or any program limitations, can then be issued to that company. One agreement does not equal one visa.

Senator PRATT: No, I understand that.

Mr Pezzullo: The panel advises, at the entity level, that company X might be a worthy candidate to be considered for that agreement. That then informs the department and the minister in terms of finalising that agreement. Have I described the program, colleagues, broadly correctly?

Mr Mansfield: Yes.

Senator PRATT: Thank you, that makes sense to me. What I am concerned about, though, is that this pilot was announced in March 2018. It was due to commence on 1 July 2018, yet the panel was not appointed until October when the panel's role is to advise on the issuing of these agreements?

Mr Pezzullo: To be clear, that's not what I said. The panel's role is to assist the government in deciding whether a company with whom we might engage is worthy of being considered for a labour market agreement. The visa issuance is then a subordinate, subsequently consequential process which is for visa decision-makers—Ms Dunn's decision—to make decisions on visa merits. Company X might well be in the scheme. They have been accredited to be in the scheme. It still requires Ms Dunn's officers, working with other colleagues, to then grant visas to person Y.

Senator PRATT: I understand that.

Mr Pezzullo: Sorry, I thought I heard you say that the panel's job was to advise on visas. It is not.

Senator PRATT: Your own website says:

Start-ups must be endorsed by the independent GTS start-up advisory panel.

This is part of the government's own eligibility criteria, and there is a step-by-step process on the department's website. What I am concerned about is the absence of the panel until it was put in place in October, after the pilot started on 1 July last year.

Mr Pezzullo: In and of itself, it doesn't slow down the issuance of visas. In a pilot you are always prototyping the arrangements you are going to be putting in place. That meant that the endorsement of the entities—as was just described from our website—was delayed until, or took place subsequent, to that point. But I'm sure that Ms Dunn and her officers have plenty of other work to get on with. Perhaps, Ms Dunn, you might be able to flesh that out.

Ms Dunn: Yes. It's important to note that the Global Talent Scheme is a very niche scheme that's targeted at highly skilled workers with niche skills, so STEM, tech et cetera. We didn't anticipate that the numbers would be high, and getting the labour agreements in place in the beginning, including with industries or with businesses, has required a degree of consultation and work to make sure that those companies and those industries actually require the specialist skills that the scheme targets.
Senator PRATT: I know there are other visas which people might also use, but why were there zero visas issued to start-ups as of 31 January 2019?

Mr Mansfield: I think we've already given evidence of the process of the start-up advisory panel looking at each of those at the labour agreement level, as the Secretary described, before it gets to the point where visa applications can be made. That has happened in more recent months. That's why you haven't seen a flow of visas to date, but obviously we would anticipate that visas will start to flow once more if those agreements are in place.

Senator PRATT: But there are only four for start-ups currently. It doesn't seem to point to the early success of this trial to see only four agreements in place.

Mr Mansfield: I think that there's a lot of up-front investment in working through, as Ms Dunn said, ensuring that there is a genuine need for people in a particular industry to bring in these workers so that it wouldn't displace Australian workers. So there's up-front investment in looking at and exploring those agreements at the agreement level before we get to issuance of the visas. You would expect a rigorous approach to that so that we don't inadvertently bring in people who would displace Australian workers.

Senator PRATT: Good. I am pleased to hear that. I have asked many questions along those lines before.

Mr Pezzullo: As you would expect during the pilot period.

Senator PRATT: In the interests of time, I'm trying to get outcomes 2 and 3 done before ASIO appear. I can put the others—

Mr Pezzullo: Thank you, Senator Pratt, because if that happens then we don't have to come back after dinner as a department.

CHAIR: I have some questions on visas, but we had a whole Senate references committee hearing of several days on visas, so I had all of my questions answered then. In my previous questions we were dealing with refugee assistance, and I think I've got that. What is humanitarian assistance as opposed to refuge assistance? Is there any difference?

Mr Mansfield: The difference between refugees and humanitarian entrants—I mentioned that there are two offshore components under the offshore humanitarian program, a refugee component and a Special Humanitarian Program component. Under the Special Humanitarian Program component, the people who come in via that stream don't have to be refugees per se, but they do have to demonstrate that there's been substantial discrimination of their human rights. It's not quite the same test as refugees. It's a lower test.

Mr Pezzullo: Well-founded fear of persecution.

Mr Mansfield: Well-founded fear of persecution is the test for refugees, but substantial discrimination or gross discrimination of their human rights is the test under the Special Humanitarian Program. It's lower, but it's still significant.

CHAIR: Would I be right in assuming that recent news reports of gay people in Brunei being stoned to death, without sort of wanting to pre-empt or send a signal anywhere, is the type of thing that would qualify for the humanitarian assistance?

Mr Mansfield: We certainly do have people who have made LGBTI claims being found to be refugees by the UNHCR. It may also be that in certain circumstances they fall within the other test, the gross discrimination of their human rights. However, under the special humanitarian program, they are sponsored people. So under the scenario you are talking about, if there was someone in Australia who had a relative or someone who faced those circumstances, then potentially they could apply and they would have to meet all of the relevant criteria to be considered for approval.

CHAIR: Is there anywhere I could find a website or a piece of paper or something that explains humanitarian assistance, how it is applied for and what the criteria are?

Mr Mansfield: Certainly our website does provide both of those categories. It does explain what needs to be provided with the application and it does explain who is broadly eligible for those different streams. That is available on our website.

CHAIR: Okay. On that basis, I will ask no more questions and go to Senator Pratt.

Senator PRATT: Mind you, they are very interesting questions. That is a line of questions I take a personal interest in also. I want to move quickly on to outcome 3.

CHAIR: Can I just be clear that we are finished with outcome 2?

Senator PRATT: We have some questions we will put on notice.

CHAIR: Thank you for that.
Mr Mansfield: There was one thing that you asked before, which was whether you could receive a copy of the notice that went to all staff around immigration reform. We could table that now, if that would assist.

Senator PRATT: That would be very helpful, thank you. I will read the other questions I would like you to take on notice.

Dr Johnson: There was a question before about whether the assurance of support applied to the new parent visa. The answer is no.

Senator PRATT: The assurance of support doesn't apply.

CHAIR: Are the questions on notice that you are going to repeat in outcome 2 or 3?

Senator PRATT: I'll just round off on outcome 2, which was about making the review of the global talent pilot scheme public. Will the review address the impact of the failure the establish the panel in a timely way?

Dr Johnson: No. Just to clarify the role of the panel, there is no statutory obligation for the GTS to work on the advice of the panel. It sits in policy and it is an advisory panel. It is a way of infusing expertise into that program. But the chronology that you set out, including your hypothesis that it had slowed down, that sequence doesn't explain the complex elements put in place by Ms Dunn—the labour market agreement, setting those up and getting the visa streams operating.

Senator PRATT: But you say it is a matter of policy. Nevertheless, the department's website says that start-ups must be endorsed by the independent GTS start-up advisory panel.

Dr Johnson: As a matter of policy, there is no legislative requirement for that.

Senator WATT: Dr Johnson, I think you just said that the assurance of support does not apply to this new temporary parent long-stay visa?

Dr Johnson: That's correct, yes.

Senator WATT: Senator Ruston, it might be a bit difficult for you to join in at this point, but I have been having a debate over the course of the afternoon with Senator Reynolds about who voted which way on some legislation. Mr Pezzullo might know the answer to this. I understand the regulation that creates the new visa that we have been talking about was actually only tabled today or released today. Are you aware of that?

Dr Johnson: That's correct.

Senator WATT: For the sake of completeness, it was a regulation that created the visa rather than a bill?

Dr Johnson: The bill put in place the sponsorship requirements and the regs bring into effect the new visa.

Senator WATT: So it was the regulation that was required to create the new visa?

Mr Pezzullo: This often arises when new visas are being considered. Regulations create visas but they are referable back to the primary legislation in relation to eligibility criteria, character requirements—in this case, sponsorship. If you don't have those primary features built into the primary legislation—in this case the Migration Act 1958, as amended—then, as you will know as an expert practitioner of administrative law, the regulation can't create an entitlement that otherwise did not exist in primary legislation. So, it is true to say that in formal terms the Governor-General in executive council creates the visa by the signature of his pen on the recommendation of a member of the executive, but that acting council cannot occur unless key eligibility criteria and other matters are referable back to primary legislation, and His Excellency no doubt would want to assure himself that the regulation had authority in primary legislation. Have I described the situation accurately, Dr Johnson?

Dr Johnson: That's correct. For this visa to operate, one of the criteria is that the sponsorship conditions have been met. That was the primary legislation that was required to put in place those sponsorship requirements, and then it flows, as the secretary said.

Mr Pezzullo: Absent amendment to the primary act, the Migration Act, then you could purport to create relevant criteria in regulations, but obviously that would be legally fraught, in terms of it ever being challenged.

Senator WATT: And that would be the bill that Labor actually voted for?

Mr Pezzullo: I listened to your exchange with Senator Reynolds. I don't have anything to add. She is not here and Minister Ruston didn't have the advantage of following it, I suspect. She was referring, I think, to the second reading. I think you are referring to the third reading. That is a matter between you and the minister.

Senator WATT: But if anyone were asserting that the new visa is created by the bill, that would not be correct? It is actually the regulation underneath the bill?

Mr Pezzullo: It is created pursuant to changes that you have to make to the primary legislation.
CHAIR: As there are no further questions on outcome 2 we will move to outcome 3?

Ms Dunn: We have some answers to your previous questions in relation to DAMAs and who they were negotiated with. The Kalgoorlie-Boulder DAMA was negotiated with the city of Kalgoorlie-Boulder and the adjacent shires of Menzies, Leonora and Coolgardie. The Northern Territory DAMA was negotiated with the Northern Territory government. The South Australian government is the designated area representative for the South Australian DAMAs. The Warrnambool City Council is the designated area representative for the Great Southern Coast. And Regional Development Australia, ORANA, in New South Wales is the designated area representative for the ORANA region.

You also asked if there were any DAMA negotiations in relation to Queensland. Just to add to Mr Mansfield's response, the department has been actively engaging with other interested regional areas, including Far North Queensland, and discussions there are quite well progressed, and also with greater Shepparton, Mildura and North Grampians in Victoria.

CHAIR: Thank you for coming back so quickly. I appreciate that.

Senator Pratt: This is a question in relation to border revenue collection. We submitted questions on notice in relation to the dispute between Woolworths that went to the AAT, which was in relation to the way cider was tariffed. What led to the department making such a poor classification?

Mr Pezzullo: I am not sure that I would accept the premise of the description that you provide in your question. But, leaving that to one side, if it assists the committee, the comptroller-general of Customs under the Customs Act 1901, as amended, is also the commissioner of the Australian Border Force. On matters of policy, as opposed to the specific application to specific tariff schedules, he's assisted by Deputy Secretary Grigson, who also carries the dual title of deputy comptroller-general, which is his dual appointment. Whether Mr Grigson is in a position to speak about the application of either tariff clarification, duty revenue or other obligations under the Customs Act to particular companies, I will leave to Mr Grigson. But, generally speaking, this would be a matter for the comptroller-general.

Mr Grigson: That's right. Senator, generally that is with the ABF. I do know the issue that you are referring to. A review process is available for each of the customs and tariff and excise decisions that are made, and it was taken in this case. I have seen the answer to the question on notice; but, beyond that, I don't really have any detail that I can give you.

Senator Pratt: Whose decision was it to treat these imports in terms of the high level of tariff that was placed on them? Border Force? Or did you have oversight of that as well?

Mr Grigson: That would have been a decision made at the border by a member of the Border Force.

Senator Pratt: It was claimed that the product did not meet specific definitions of a cider under the relevant act, which would have allowed Woolworths to bring the cider into the country duty free, because the apples used to make the cider were caramelised. I understand this is the ingredient for making cider, which is why it attracts a different kind of tariff. So you are saying that it's Border Force's fault and that the classifications are fine?

Mr Pezzullo: I don't think any reference was made to fault at all.

Senator Pratt: No, no.

Mr Pezzullo: Sorry, that was your description. The Australian Border Force is also the Australian Customs Service. They make the relevant decisions under legislation as it applies to particular schedules, duty classifications and the like. So we will need to refer your question to the Comptroller-General, who is also the Commissioner of the Border Force and his staff.

Senator Pratt: I should have asked these questions earlier. In terms of the decision of the AAT to return to Woolworths the incorrectly charged duty, where does that money come from?

Mr Pezzullo: Duty revenue is a revenue item that we collect, but it is administered centrally. The duty revenues flow to the consolidated revenue managed by Treasury, and ons and offs from duty revenue are a matter, ultimately, for the consideration of the Treasury in terms of consolidated revenue. The burden of your question is if a ruling, either in a court or the AAT, finds in favour of the Border Force, it is not as though all of a sudden I am flush with funds, if you follow.

Senator Pratt: I just want to know when mistakes like that are made where the money comes from, because the revenue may have already been used or spent and then you have got—

Mr Pezzullo: The money is fungible. It is like a tax matter. If I can provide this comparison, Senator. And, again, I am not accepting your characterisation of it being a failure or a mistake. The department and the Border
Force win many cases in court or tribunals, and sometimes we don't. Imagine if the tax office—and this is a relevant analogous example—which generally tends to win its litigation, lost a piece of litigation, for instance. It is not as though one dollar collected for a particular form of tax funds a particular piece of infrastructure or government program; it is fungible money. So revenue estimates have to be adjusted up and down, depending on the outcome of all sorts of factors, including litigation.

Senator PRATT: Clearly they do; nevertheless, that revenue is what we spend on the facilities and public goods that this nation—

Mr Pezzullo: Indeed, Senator. But, equally, you could ask me about the cases that the Comptroller-General has won in litigation, which go beyond the revenue estimates that have been built into the budget and, no doubt, you would be congratulating him for winning those cases, because then extra money is available for the public purse.

Senator PRATT: How much was spent on legal fees in this case specifically, both internally and externally?

Mr Grigson: I know the answer to that. None, Senator. It was done internally.

Senator PRATT: Has the department looked at any other products that may have been incorrectly classified and where it might be overcharging duty?

Mr Grigson: In relation to this case, Senator?

Senator PRATT: This case might point to other problems. What assessment have you done to work out whether this is a one-off or whether there is a more systematic misclassification of what should be charged in an import duty?

Mr Grigson: I'll take it on notice. There is nothing before me to suggest there's a systemic issue.

Senator PRATT: Did you make any inquiries at all to work out even whether there are similar products being treated in this way?

Mr Grigson: I need to take that on notice.

Senator PRATT: You haven't made inquiries to know if there are similar products being treated in a similar way?

Mr Grigson: I would need to check with the ABS.

Senator PRATT: But you're responsible for the policy of this, Mr Grigson.

Mr Grigson: I'm responsible for the setting of classifications, that's right.

Senator PRATT: There's nothing in this issue that makes you think we need to consider how cider is classified, to make it clearer?

Mr Grigson: No.

Senator PRATT: Clearly, cider is made in Australia. It must come from imported and local ingredients. You think this was a one-off mistake and that the cider imports have been treated correctly in all other cases.

Mr Grigson: Classification as applied at the border is a very complex task. From time to time, our decisions are challenged. I'm sure there'll be other challenges in the future that will be successful. And I'm sure there'll be other challenges in the future that will fail.

Senator PRATT: Thank you, Chair.

CHAIR: Thank you very much, Senator Pratt. Are there any other questions on outcome 3? As there are none, we are finished with the department. That would be my understanding. We now move to ASIO and then ACIC. And, Mr Pezzullo, can I—

Mr Pezzullo: ASIO first, Mr Chairman?

CHAIR: ASIO first. Thank you, to you and your team, for your assistance during the estimates last Tuesday and today. It's always appreciated.

Mr Pezzullo: Thank you very much. I will pass that on to the many hardworking staff who were involved in this process.

CHAIR: Yes. We've grown to know how hardworking, competent and professional they are.

Mr Pezzullo: Thank you. I'll pass that on.
CHAIR: Mr Lewis, welcome. Before I ask you if you want to make an opening statement, can I just apologise to you for having you wait around all last Thursday, or for a lot of the day I think you were there. Unfortunately, we were unable to deal with you at the end, so we apologise for that. But that's the way the Senate rules are, which are beyond my control to change. Welcome today. Thank you for coming today, at relatively short notice. We do appreciate that. Do you want to make an opening statement, at all, Mr Lewis?

Mr Lewis: Thank you. It's a pleasure to be here.

CHAIR: There's no need to start off with a lie!

Mr Lewis: Rather than making an opening statement I could just make a very short comment, because I'm conscious of the time. Since my last appearance before this committee, which was not that long ago, the general security environment in Australia, with regard to ASIO's responsibilities, has not changed very much, save to say that we had, of course, the tragic events in Christchurch last month, which obviously are of enormous interest to ASIO and something we are deeply involved in. We are giving assistance to our New Zealand colleagues. Our thoughts go out to the victims and the families of the victims, and, in fact, to the wider New Zealand community. But we are doing everything that we can and answering all requests for assistance at this stage. Chair, that's all I wish to say. I'm happy to take your questions.

CHAIR: Thank you very much, Mr Lewis. Perhaps I can start with a broad question, just on the matter you mentioned. If we were to ask you questions about what you're doing, would you be able to answer them? I'm not going to ask those but I just want to clarify. If we asked you what you are doing, which you could tell us in the broad—let me do this another way. What are you doing? What assistance are you giving to your New Zealand counterparts?

Mr Lewis: Senator, you're caution on this is well based. I'm not in a position, obviously, to talk about the operational support that we are giving to the New Zealanders, line by line. What I can assure you is that in direct contact that I've had with the leadership in New Zealand and any request that has come from the New Zealanders, we have been able to satisfy that request to this point, and it is my intention to continue to do that.

CHAIR: But you wouldn't want to go into any specifics.

Mr Lewis: No. It's not appropriate that I speak specifically about the skill sets of the officers who have been involved in providing this support.

CHAIR: And this question is really not relevant to our estimates, but perhaps I could just ask whether New Zealand has a security intelligence agency.

Mr Lewis: Yes, they do. The New Zealand Secret Intelligence Service is charged with both a security intelligence responsibility, as my own agency, as ASIO, is, and they are also charged with a foreign intelligence collection function, in much the same way that the Australian Secret Intelligence Service is charged.

Senator WATT: I'm very conscious of not wanting to compromise any investigations, and hopefully my questions won't go to that. I did, however, want to ask you some questions in the broad about the—I was going to say growth in right-wing extremism in Australia, or the incidence of right-wing extremism in Australia. It is something that we've asked about at a previous estimates, and I suppose I was really just interested to get a bit of an update from you about ASIO's view as to how prevalent the threat of right-wing extremism is in Australia and whether you have any concerns about it increasing.

Mr Lewis: Yes, you're right: I have spoken on a number of occasions in front of this committee about this particular threat. I go back to I think October 2016, February 2017, May 2017 and October 2018. So, on a number of occasions I'm on record before this committee as speaking to the issue of right-wing extremism, as in fact is my deputy, Heather Cook, who I think also, in front of this committee, explained what the situation was. I think the last time I appeared I said that the threat of right-wing extremism was coming off a very low base, and that remains the case. This is not new. We have been concerning ourselves in ASIO with right-wing extremism through the seventies, eighties and nineties. It's kind of always been there. It's been a very fractured group of people and organisations over the years. It's obviously not appropriate for me to speak to the specifics of investigations that we are currently conducting, but it is true to say that the current organisations are relatively well organised, relative to the organisational patterns of the past, and that we continue to be focused on them.

The events of Christchurch, specifically to your question, don't really change the calculus here in that if you have a look at the terrorist attacks that have occurred in this country over the last five years, since September 2014, there have been seven attacks and 15 thwarted attacks, adding to 22. Of those 22 incidents, one was allegedly perpetrated by a right-wing extremist, and that case is still before the courts. I just mention those stats in order to try to put this into perspective—that it is an important issue for ASIO, it is an important vector of threat which we have watched historically and which we will continue to watch into the future. We are currently looking
to see the extent to which we might need to rebalance our own internal work. What I can say is that there's no early evidence to suggest to me that there will be some dramatic reset around this.

Senator WATT: I think on the way through you described the right-wing extremist organisations as being highly organised, or well organised—I can't remember exactly how you put it.

Mr Lewis: 'Better organised' than the historic norm.

Senator WATT: What does that mean? There's more communication between their members?

Mr Lewis: I wouldn't like to go into the detail. You just take it on its English expression value. They are better organised in terms of their communications and what they are able to do, but I wouldn't want to be going into any more detail.

Senator PRATT: They clearly talk to each other more than they otherwise might have, because of communications.

Senator WATT: Is there evidence of increasing use of online mechanisms within these groups?

Mr Lewis: Not any more than across the community at large. Online is a way we all communicate now and I don't think that there's any particular exception in the case of the right-wing extremist groups.

Senator WATT: Is there any evidence of increasing membership of these right-wing extremist groups in Australia?

Mr Lewis: I wouldn't comment on that.

Senator WATT: As in, you'd rather not comment?

Mr Lewis: Yes. I'd rather not comment.

Senator WATT: Okay. You said that ASIO is giving some consideration to rebalancing its efforts—I think that's how you put it—to monitor these sorts of groups?

Mr Lewis: Yes. It won't surprise you that after an incident such as Christchurch—and this was true of the incident in Manchester and other incidents around the world—we always go back to the drawing board to see whether there are any adjustments that need to be made in our efforts.

Senator WATT: To the extent that activity among these groups is increasing—

CHAIR: The officer particularly didn't agree with that.

Senator WATT: Okay.

CHAIR: Well, he didn't answer that.

Senator WATT: To the extent that these groups are better organised than they have been in the past, is there anything that you can put that down to?

Mr Lewis: No. Not that I would be able to speak about here.

Senator WATT: Okay. Has there been any analysis undertaken to compare the prevalence of right-wing extremism in Australia with other countries?

Mr Lewis: Again, that goes to some of our operations. We are conscious of the yardstick issue, which you are raising. You can read, of course, in any newspaper about the issue of the rise of the Right, if you like, throughout Western Europe. To the extent that we are in contact with many, many friendly and allied agencies, yes, we do watch what's happening on the international front. You just made the observation about the use of online. Online implies, in many instances a global network. So it is an issue that we're very conscious of.

Senator WATT: Is there evidence of some degree of cooperation between right-wing extremist groups in Australia and overseas?

Mr Lewis: I wouldn't be in a position to comment on that, I'm sorry.

Senator WATT: Can you please tell us any more in the broad about the kind of work that ASIO is doing to manage this threat in Australia?

Mr Lewis: It's the same as the efforts that we put into managing all of the threats across the board for terrorism. I mean, terrorism the terrorism—

Senator WATT: Sure.

Mr Lewis: and where it presents, we are, of course, interested in the sources of the threat and what sort of advice we can give to government and to other agencies about mitigating those threats. So the answer is: yes, we are very interested in right-wing extremism. But the point I'm trying to make—and I hope this is clear—is that this is not new; this is something which we have been involved in for 30 or 40 years, to my knowledge—and it
may well go back before that; I don't know. We have people in our organisation that are committed, as their day job, to the issue of right-wing extremism. So it's important that this be seen in context, in the long term.

**Senator WATT:** I should say—I'm sure it's apparent—that the reason I'm focusing on this form of terrorism is because of the tragic recent events. Obviously, I accept what you're saying; terrorism is terrorism. But I am sure you would accept that there is increased community interest in this, following those tragic events.

**Mr Lewis:** Without question.

**Senator WATT:** I am a little surprised to hear that in your opinion the level of activity—this right-wing extremist activity—isn't necessarily any higher than what we've had in the past. If I am paraphrasing you incorrectly, please pick me up. But it seems to me that there is more of this sort of activity being undertaken, but your upon is that that's not the case?

**Mr Lewis:** I'm just saying that it has been a vector of activity for many, many years. I mentioned to you about the levels of organisation. But, beyond that, I've not made any comment. I think it's important that we get this in context. ASIO, as you know, is vector-agnostic, if you like, with regard to terrorist threats. This is but one of them. We have had one out of 22 incidents in this country since September 2014 where it is alleged that it's attributable to a right-wing extremist ideology. Those stats alone bring a perspective to this, which I think we need to be very conscious of.

**CHAIR:** What, sorry? One of how many?

**Mr Lewis:** Twenty-twó. That's seven attacks and 15 thwarted attacks. These are attacks that have been planned that we've managing together with our police colleagues to disrupt.

**CHAIR:** Only one of them can be categorised as right-wing terrorist groups?

**Mr Lewis:** Allegedly. It is before the courts, currently.

**CHAIR:** I see. You did say that.

**Mr Lewis:** The allegation is that it was motivated by right-wing extremist ideology.

**CHAIR:** I don't think that's the answer Senator Watt wanted from you, but anyhow, that's the facts.

**Senator WATT:** That's actually quite offensive. I don't actually support any form of terrorism. Whether it be right-wing, left-wing or any group within society.

**CHAIR:** Keep going.

**Senator WATT:** I have told you why; because of the events of Christchurch, and I think we owe to it the Australian people—

**CHAIR:** Well, you have been told. I tried to make this easy for everyone by my first question. Mr Lewis is somewhat restricted in what he can say.

**Senator WATT:** I understand that. I haven't pushed him to go anywhere he can't. Mr Lewis, just so I understand your answer: in ASIO's opinion there hasn't been a demonstrable increase in right-wing extremism or is it more that you're not in a position to say?

**Mr Lewis:** You have asked me that indirectly in about four different ways. What I have said is that the right-wing extremist organisations, as we know them, are better organised now than they have been in the past.

**Senator WATT:** Yes.

**Mr Lewis:** That was as far as I went with that assertion. Then I presented you with the statistics of where the actual threats that have presented to our community have appeared and what the balance is of those. I think, if you can extract from that some understanding of where this sits in relative terms, then that would be beneficial.

**Senator WATT:** Sure. I understand. What impact does the commentary of public officials or community leaders around racial groups, religious groups, have, in fostering the activities of right-wing extremists?

**Mr Lewis:** You're trying to open up a line of questioning that we went through three years ago. You'll recall what was being said in that instance about the Muslim community here. I found that exchange in the public setting to be wholly unsatisfactory at the end of the day.

**Senator WATT:** I'm not sure I was here for that one.

**Mr Lewis:** Yes. I mean, I'm not—

**Senator PRATT:** He is illuminating—
Mr Lewis: I'm not here to put into the mouths of elected representatives of the Australian people what they will or will not say. What I said then—and I will say it again—is that ASIO's relationship as the nation's security intelligence organisation is very much measured in terms of success or failure on our engagement with communities in this country. I'm not prepared to go beyond that, other than to say we must maintain a dialogue with various communities and, to the extent we are not able to do that, our capacity is diminished.

Senator WATT: So actions that impede ASIO's ability to communicate with and work with—whether it be Muslim communities or other communities in Australia—are harmful to your activities?

Mr Lewis: What I'm saying is that the conduit between us and those communities must remain as open as we can possibly make it.

Senator WATT: Sure. Does it follow that commentary from public officials—whether it be elected, media or community leaders more generally—that impedes that open communication is detrimental to your work?

Mr Lewis: As I said, it's not for me to determine what elected officials of this place do or don't do or what they say or don't say. And I'm not prepared to get involved, again, in some sort of imbroglio about this. It is suffice for me to say, I think, that the conduit between us and the various communities in Australia—the various ethnic communities or religious communities or whatever—is a very important source of reporting for us. It's a community with which we must work in order to provide the security that the Australian people expect of us.

Senator WATT: Sure. So let's leave aside elected officials, and I can understand you not wanting to become involved in that debate. What effect does commentary from media figures or other community leaders which is antagonistic towards particular communities have on ASIO's operations?

Mr Lewis: Well, it can have an effect if it causes the community to respond negatively to whatever that commentary is.

Senator WATT: Has it been the experience of ASIO that that kind of commentary, whether it be from media figures or other public figures, has made it harder for ASIO to do its job?

Mr Lewis: In the case of media, I'm prepared to say, yes, that does set a tone. And that's not a criticism necessarily of the media; it's just to say that it sets a tone for community discussion. I'm not talking about other public figures.

Senator WATT: Sure. When you say 'it sets a tone', does that mean that it can discourage people from ethnic or religious communities from wanting to deal with ASIO and other groups trying to fight terrorism?

Mr Lewis: It could do. I won't go into the specifics, but it could do, yes.

Senator WATT: Your comments about what happened three years ago, which was before I was here, might refer to this: there was some media coverage in December 2015 that claimed that you had been in contact with a number of politicians to warn about their comments becoming a danger to national security. Have you had to do anything like that recently?

Mr Lewis: Well, I wouldn't comment, but if you asked me would I do it again, the answer is yes.

Senator WATT: If members of parliament were making comments that you considered inflamed relations, that would be something you'd get on the phone to those people about?

Mr Lewis: Potentially, yes.

Senator WATT: But you're not willing to comment about whether you've done that?

Mr Lewis: No, I'm not prepared to comment on that, Senator. I retain the flexibility, if that's the right word—I retain the option of being able to engage across government, across the parliament, across the society, whether it's going into business or going into communities. That is an essential part of my function. As I say, I would do the same thing again. But I'm not prepared to discuss individual engagements that I may or may not have had with elected officials.

Senator WATT: Okay. Both of us have made the point that we're equally concerned about all forms of terrorism, whatever element of the political spectrum that comes from. Just speaking generally, I have actually forgotten for the moment the terrorism threat rating that Australia's operating under.

Mr Lewis: Probable. That has a meaning, which I can go to if you wish.

Senator WATT: Sure. That's probably useful.

Mr Lewis: It means that there is both the intention and the capability present in Australia now to execute a terrorist attack. We have no immediate information about such an attack.
Senator WATT: Okay, thanks. That's probably all I need to ask there. I appreciate, again, you coming for the second time.

Senator SPENDER: Picking up on that conversation, where you said, I think, that you've got full-time staff on the right-wing issue, I'm just wondering what language you use internally. I've always found it peculiar that some people are labelled right wing but some of their policies have a lot of similarity with what's traditionally thought of as left wing, and there seems to be a continuity between extreme right wing and extreme left wing. Is 'right wing' a language you use to compartmentalise the different groups that you need to track?

Mr Lewis: Senator Spender, I'm not in a position to comment on the internal structures of ASIO, other than what is shown in our annual report. But we break the threat into vectors: where is the threat coming from? You're very familiar with the violent Islamist extremist Sunni threat vector. I've spoken about that at length in front of this committee over a number of years. There is a right-wing extremist element—nothing wrong with that, except when it ventures into violence. That's when ASIO's interests are engaged. So, with any vector, whether it be from the right wing, the left wing, or any other wing, when it crosses the line and moves into violence, then that is a matter for ASIO. The ASIO Act is very specific—and I do commend it to you—talking about the fact that it is quite proper for legitimate protest to go on in this country, for people to hold various views. Nothing wrong with that. But, when it moves into the spectrum of violence, then it's a matter of interest to me and to ASIO.

Senator SPENDER: And all that seems very proper, but what I'm asking about is probably not the most important issue in the world; it's just about semantics. For instance, Nazis are national socialists. The idea that we would normally think of Neo-Nazis as being right wing just grates a bit. Your language as you've just described with regard to the violent Sunni extremists is very well thought through. I'm wondering whether or not you have similar caution with regard to labelling groups right wing or left wing, or how you might label Neo-Nazis.

Mr Lewis: We are extremely cautious, always, with labelling any body or any group. I've just explained to you that, where right wing or left wing or any other wing moves into the spectrum of violence, then it's a matter for ASIO.

Senator SPENDER: Sure.

Senator PATRICK: Some of the questions I had in relation to extremism have been asked by Senator Watt. Thank you for that. I have some questions in relation to foreign interference. Your annual report highlights the broad threat of espionage and foreign interference but doesn't publicly identify the countries engaged in those activities. Your annual report last year suggested that the National Security Legislation Amendment (Espionage and Foreign Interference) Bill and the Foreign Influence Transparency Scheme Bill would provide:

... valuable new tools to help combat this threat, offer a significant public deterrent, and make it more difficult for our adversaries to do business here.

So, my question is: has ASIO observed any change in the behaviour of foreign governments and organisations in response to the passage of that legislation last year? Has it had any noticeable effect?

Mr Lewis: The answer is yes, we have noticed an effect. I'm not prepared to go into the detail of what that effect is. But, most certainly, we see some modified behaviour as a result of those legislative initiatives. It's very early days, as you know. FITS, in particular, the Foreign Influence Transparency Scheme, is still being rolled out, and enrolments and so forth are ongoing. That hasn't got to a point of maturity where I can pass definite judgement on it, but it is having an effect. And, similarly, with EFI, I'm not in a position, obviously, to go into detail, because one would anticipate that there could be prosecutions, for example, resulting from that legislation. That's the whole point of it. You might recall that when EFI was being contemplated it was a measure in order to modernise what were terribly antiquated espionage laws in this country.

Senator PATRICK: Thank you. Over the past year there have been numerous reports in the media—and today through the preview to Four Corners tonight—of Chinese interference: Chinese pressuring a Sydney council over a media organisation and China interrogating a Mr Yang, it was revealed this morning, I think on the ABC, in respect of his involvement with the former adviser to Malcolm Turnbull. There have been a number of cases in the media in respect of these sorts of things. What's your response to today's report and to the broader pattern of media reporting that there have been highlighted instances of Chinese influence and interference here?

Mr Lewis: Firstly, Senator Patrick, I don't respond to media reports. I'll make that point initially.

Senator PATRICK: Okay.

Mr Lewis: I have made very plain to this committee on previous occasions that the threat from foreign interference and foreign espionage in Australia is running at what I described then—and I describe it that way again—as an unprecedented level. Those words in the little shorts that I've seen and you have seen during the course of today are repeated, I think, in the show, but that remains to be seen when it shows this evening. But I
we have a challenge here with foreign interference in Australia. It comes, as I have said on a number of occasions, from a wide range of sources. I have not been country-specific and I will not be country-specific because of the range of sources from which it comes and the issue of what is in Australia's interests. I am running a security intelligence organisation and I'm not in the business of identifying various nations and what they may or may not be doing in Australia. I'll leave it at that.

Senator PATRICK: Is it a matter of policy that you don't identify countries—

Mr Lewis: Yes, it is.

Senator PATRICK: or is there a threshold that can be reached where you will?

Mr Lewis: There may be, but at this stage we're not at that threshold and it is my policy not to mention countries.

Senator PATRICK: Okay. The United States and the Canadian governments have publicly acknowledged the reality of Chinese interference and covert influence activities in Australia. I'm just wondering why our own intelligence services back away from doing that?

Mr Lewis: I can't account for foreign intelligence services and foreign governments. I'm here to talk about the Australian situation and ASIO's role, and I'm just explaining to you that, as a matter of policy, I don't speak specifically about countries. I never have and I shan't.

Senator PATRICK: And I'm trying to understand that policy in the context of other nations which are first-order countries and that have got well-respected intelligence services and are well considered in the way that they do business where they name the Chinese government or they name other countries.

Mr Lewis: I don't dispute that. Perhaps you need to speak with them.

Senator PATRICK: My question goes to your policy. That's a reasonable question, I think.

CHAIR: Mr Lewis has already answered that one.

Senator PATRICK: No, he said it is a matter of policy. I'm trying to understand—

Mr Lewis: It's not in the interests of my organisation and the pursuit of my mission to mention countries by name.

Senator PATRICK: Okay. Would you consider the sort of activities that have been reported by the ABC—and this is really just to get a context and to understand what you consider to be foreign interference without necessarily acknowledging whether you are aware of this or not—where a council was pressured not to use a media organisation to fit within your definition of 'foreign interference'?

Mr Lewis: I go back to the ASIO legislation. On one of the opening pages of that legislation there's a very clear definition of 'foreign interference'. The legislation is quite specific. It requires a degree of clandestinity. It requires a degree of covertness about it. If it's overt, it can very easily be construed as just being the issue of influence around the place. All governments and all large corporate entities get involved in influencing various circumstances in which they operate. Every government that I have ever run into has been running influence operations through its diplomatic service, for example, with diplomats abroad, through its foreign policy, through its trade policy teams and so forth. The difference with foreign interference from an ASIO point of view is that it has this dimension of clandestineness and covertness about it, between the exercise of the influence and the government from which it may be emanating.

Senator PATRICK: That leads to the next question. You'd appreciate there might be a benefit, when people are out and about on the streets, dealing with foreign nationals and talking to foreigners or someone representing a foreign company of some sort that might have links back to a state organisation, in making Australians aware of countries that have a propensity of doing that, to assist them. So ASIO would not be the only entity that's watching out, and people would be mindful themselves of their conduct and the circumstances they find themselves in, and that might modify their own behaviour in a positive manner.

Mr Lewis: Well, I think there are plenty of other vectors in the community, and the television program tonight would be one of them, that are advancing these sorts of views, but it's not for me to make comment on that.

Senator PATRICK: Is it for the government perhaps? Minister?

Mr Lewis: That's a matter for—

Senator PATRICK: I'm looking at the minister now.

Senator Ruston: I'm not quite sure where you're going here, Senator Patrick. Obviously, the government policy is centred around what's in the national interest—
Senator PATRICK:  Sure.

Senator Ruston: and we rely very heavily on the organisations, such as ASIO, which conduct the activities that support that national interest. So I don't know that my answer's any different than Mr Lewis's.

Mr Lewis: If I may, a government may decide to announce some particular threat and the source of it. That is entirely a matter for a government. What I can assure you, just so you don't think that I'm sort of sitting here doing nothing about the various threat vectors that present, is that we do run quite an extensive series of industry briefings to make sure that those elements of the community where the security threat is likely to present, to the extent that we are able to share this sort of information, are made aware in a defensive sense that they might protect themselves from it. That is happening on a regular basis. But it is not for me to come out and start saying that it is this country or that country or the next country which is presenting some sort of threat to Australia.

Senator PATRICK: Don't take in any way what I'm saying as a criticism at all. I'm just trying to gain an understanding, and this has been very helpful because, in essence, what you're saying is that it's probably better if you don't ever do that. You pass it to government and government makes a decision about it. Hence, my question back to the minister is: why, when other countries clearly have stated that they have a concern about particular countries operating within their borders, would the Australian government not in similar circumstances make that information available to the Australian public?

Senator Ruston: You're making the assumption that similar circumstances exist. Every set of circumstances is unique. I'm speaking hypothetically here, because obviously the specifics of any issue you may well be referring to I'm unaware of as I don't sit in cabinet. I think this is a situation where we can talk around and around in circles, but the government obviously operates with the best interests of Australia being considered in any decisions it may take, and that would include a decision as to whether it wanted to be specific about releasing information or making a statement about a foreign country in relation to any issue that may be raised.

Senator PATRICK: I'll switch now to another topic.

CHAIR: Your time has finished. I have a couple of questions and I'll come back to you, Senator. Mr Lewis, I should know this, but what did the budget do for ASIO? We are here about estimates, of course, which is about expenditure. You might struggle to realise that's what we're here about, but—

Mr Lewis: I welcome the question, thank you. This budget has seen a headline number for ASIO of $557.8 million—I'm talking about the total budget—of which $60.6 million is for new measures. I am very pleased with that because there are a number of things that we are working on and we require budgetary support for, and I'm now satisfied that I have that for the present. We receive $463 million for operating costs, $23 million is revenue that we earn through various activities that ASIO gets involved in—security assessments, essentially—and $70 million in capital.

The $70 million for capital is slightly less than last year, but that's the result of lapsing procurement programs. The procurement has been done, and necessarily the money would start to fall away. So there's nothing of particular concern there. Importantly, we receive $58.6 million to sustain current operations and undertake preliminary work to further enhance future operations—that is, in simple language, some funding for us to continue our transformation program.

ASIO embarked nearly two years ago on a transformation program. We began—I think I briefed this committee before—with a review of our future needs that was done by Mr David Thodey. I'm not suggesting for a moment that ASIO is not able to perform it current function, but it has concerned me for some time that we need to be prepared for the future. This transformation program is the mechanism for getting from where we are now to where we need to be to meet future challenges, and $20.9 million within that figure has been specifically earmarked for transformation.

We then received, of course, some additional small sums of money around the countering foreign interference matter. Specifically we had an additional $1.6 million assigned for countering foreign interference. Much of that goes to the intersection between ourselves and the countering foreign interference coordinator within the Department of Home Affairs—just tying up those two ends.

CHAIR: Again, I appreciate that the more information your opponents have the easier it is for them to try and counter the good work that you and your people do. I think you mentioned right at the beginning some $60 million, $70 million on new measures, was it? Are you able to be more specific about what 'new measures' means? If you can't be more specific, I will understand.

Mr Lewis: No, I can break that down. I'll just go over the maths one more time. There was $60.6 million for new measures, the overwhelming proportion of which is $58.6 million—in the budget line there is a comment—to
sustain current operations and undertake preliminary work to further enhance future operations. That is the transformation. That's the important thing now.

In that $58 million, we have two components. I'm sure I will confuse you with figures here. We have $37.7 million for sustainability—that is, continuing our current operations—and $20.9 million for transformation specifically. Then, in addition to that, we have the $1.6 million that I spoke about for countering foreign interference, and there is a very small figure of $0.4 million to increase analytical capabilities in relation to foreign investment. That's a small sum of money.

CHAIR: I'd like to try and understand transformation more. Will it give you more gadgets that M would produce in the James Bond series? Sorry, not M. Who was the bloke?

Senator HUME: Q.

CHAIR: Yes, Q.

Mr Lewis: I'm being advised to just say yes, but hopefully it will give us many more Qs!

It's a requirement, I think, of all public sector institutions and, in fact, all enterprises. You need, every now and again, to have a look at your business model. Is your business model suited for the tasks that you are being asked to do or you are required to perform? As I say, I've never had any doubt that ASIO was well structured and in good shape for countering the kind of threats that we are facing currently. But it has struck me, if we look to the future and particularly the advent of big data, the influence of globalisation, the complexity of the world and the speed at which speed information is travelling, that if you're in my kind of business you need to be preparing yourself for doing business at machine speed. Humans are always going to be required. There is no suggestion we are replacing humans with machines, but humans can be so much more empowered if the machines are working at machine speed and delivering solutions to them. Basically, it's a technical lift, but the big mistake would be to view it as just a technical lift, because it is also an attitudinal lift; it's a lift of the mindset and, indeed, the qualification of a workforce. It's the way that you do business that's so critical as we move forward. That's transformation 101 in a nutshell, Chair.

CHAIR: Thanks for that. I appreciate that. Dr Southern, I noticed when I wrongly referred to M instead of Q you were very quick on the spot and, dare I say, without being personal, you have a remarkable resemblance to M in the current series.

Dr Southern: As I say to my daughter, Senator, I'm a very young Judi Dench.

Mr Pezzullo: But she's not dead, Chair!

Senator Ruston: Chair, I'm just advising that I am required to attend another committee at six o'clock. If you are intending to go past six o'clock, could I be advised now so we could attempt to get another minister here to cover. I will not be able to stay past six o'clock, as that was the intended dinner break.

CHAIR: Thank you, Minister. I am sorry; I am not sure we knew you were coming. The committee had decided that we would put ASIO on at five, and we wouldn't have the dinner break until we finished with ASIO. If it becomes obvious at eight o'clock that that's not going to happen, then we will break for dinner. I am sorry, but the dinner break is a bit fluid at the moment, so if it were possible for you to get a replacement, Minister—

Mr Pezzullo: Sorry, Chair, did you say at eight?

Senator PRATT: I am hopeful we will finish before then.

CHAIR: The committee earlier had decided we would start at five and go through, and if we could finish before the dinner break, we would. But if it gets to half past eight and we haven't had the dinner break, we will break then.

Senator PRATT: I hope we will finish by 6.30. It does mean you'll need a replacement.

Senator Ruston: I will still need to get someone.

CHAIR: We do have ACIC after that. Senator Patrick, I think you had questions for ACIC. If we do finish with ASIO, hypothetically, by 6.30, we would then go on to ACIC and hope that the questioning would allow us to terminate tonight and go and have dinner where we like rather than having an hour for it. That's sort of speaking in code—

Mr Pezzullo: We'd be very hungry by 8.30

CHAIR: without being able to predict exactly how we are going. Did you understand that, Dr Southern? Would 007 be proud of the way I said that, do you think?

Dr Southern: I think you have got the wrong service, Senator!
Senator PRATT: Maxwell Smart, perhaps!
CHAIR: That's probably a better analogy.
Mr Pezzullo: 007 would throw the rules out, and M would bring him back into line.

Senator PATRICK: Just going to your annual report, in relation to the ASIO Ombudsman. Basically, the ombudsman, according to your report, was responsible for:
- providing advice and guidance in response to three informal contacts from staff;
- undertaking two preliminary reviews of investigative matters;
- responding to three policy matter queries;
- undertaking two health checks of business areas;
- carrying out two investigations relating to the Code of Conduct.

Basically, you said you didn't do any PIDs—public interest disclosures. That's the framework of the question I'm about to ask. In broad terms, what were the investigations undertaken by the ASIO Ombudsman in 2017-18 relating to the ASIO code of conduct?

Mr Lewis: I might ask Dr Southern if she's got some information on that. I don't have the information to hand.

Dr Southern: I don't have the details in front of me in relation to the particular investigations that the ombudsman undertook, but a range of matters are referred to our internal ombudsman. As you've pointed out, there are some code of conduct matters which he dealt with in that financial year, and they go to allegations which may have been made or complaints which may have been made in relation to the behaviour of staff against our code of conduct—against the ASIO values.

Senator PATRICK: In fact, I wanted to dig down a little bit into the specifics of them, so maybe you could take them on notice. I'm really after what sections of the code of conduct were involved, whether the investigations have been completed and what the outcomes were.

Dr Southern: Certainly we can take that on notice. My recollection is that those matters have been concluded, but they may well have been concluded in the next financial year rather than in 2017-18.

Senator PATRICK: Sure. Thank you. Has the ASIO Ombudsman participated in any work-related PIDs so far this financial year?

Dr Southern: Not to my knowledge, no. I'll take that on notice to confirm, but I don't believe so.

Senator PATRICK: Okay. So all is well within the agency. That's good. In response to a question on notice I put to ASIO, you've informed the committee that, as of 31 July, you've got a total of 380 archive access applications—this is via the National Archives process. So there have been 380 National Archives access applications referred to ASIO that were outstanding for more than 90 days. In a breakdown of that, you've said 77 were outstanding for more than one year, 56 for more than two years, 36 for more than three years, 107 for more than four years and 104 for more than five years. Now, I don't think anyone's going to think it's acceptable when you put a National Archives request in and you have to wait five years to get access. I presume you don't consider that to be acceptable. I asked the same question of the National Archives.

Dr Southern: The statistics as of 15 March are considerably better. I don't know if it would help the committee or, indeed, you to quickly run through those.

Dr Southern: In relation to outstanding for more than 12 months, that number has reduced from 77 to 44; for more than two years, it's reduced from 56 to 42; for more than three years, it's reduced from 36 to 29; for more than four years, it's reduced from 107 to 60; and more than five years has reduced from 104 to 45. So now the 380 total number is 220.

Senator PATRICK: Okay. That's clearly better, so congratulations on that, but it's still not good for, say, the 44 that are outstanding. I'm wondering what you've done and what you are doing to try to reduce the backlog.

Dr Southern: The requests that ASIO receives via the Archives access applications tend to fall into two categories. One relates usually to personal requests or requests in relation to a family member or an individual, which are quite contained. The other group of requests tends to be for a very large number of documents. A single request could equate to a large number of files and is far more complicated. We try to do a bit of triage and prioritisation to deal with simple requests as quickly as we possibly can while not, obviously, pulling all resources off the more complex cases. But I just make the comment that, for a number of requests where there are substantial numbers of files involved, it takes time to work through them—in particular with files which are more recent. As you'd know, the open-access period in the Archives Act is reducing from 30 years to 20 years. Material
that is at the younger end of that category is much more likely to be possibly related to current inquiries or investigations. The level of attention that we need to pay to those documents is high, and we have to prioritise.

**Senator PATRICK:** How many people do you have working on those access requests, FTE wise?

**Dr Southern:** I don't know the answer to that question.

**Senator PATRICK:** Could you take that on notice.

**Mr Lewis:** I am reluctant even to take that on notice. We don't give a breakdown of where the ASIO workforce is working. It's the start of a kind of slippery slope. I know this is fairly benign.

**Senator PATRICK:** Obviously there are operational people and there are admin people. Are these admin people or operational people?

**Mr Lewis:** Both.

**Senator PATRICK:** I am just wondering if you would reconsider that proposition. Obviously, this is something that would be better served up in the PJCIS.

**Mr Lewis:** Yes, we certainly go into those sorts of figures in the PJCIS but not in a public forum.

**Senator PATRICK:** Okay. I'm just not a member of that committee, so that makes it difficult. My question is quite benign. Can you please, on notice again, just for those new numbers—which are better, clearly—divide them up into each of those two categories you gave—voluminous versus—

**Dr Southern:** The individual requests.

**Senator PATRICK:** Yes.

**Dr Southern:** We can attempt to do that, yes.

**Senator PATRICK:** Thank you very much.

**CHAIR:** Senator Pratt, you had a couple more questions for ASIO, I think you said.

**Senator PRATT:** Yes, I do. I just want to return to some questions that Senator Watt asked, in a broader context. Clearly, you related ideas that exist out in the cultural domain and how, when they turn into expressions of violence that equate to terrorist acts, that's when you need to bring them within your purview. I take it from that that you have to be monitoring the ideas that lead up and channel in before they become attached to any violent intent.

**Mr Lewis:** None of the things that you listed are crimes in themselves, I think. You remember I went back to the ASIO Act and I said that legitimate protests and legitimate holding of views—they might be objectionable; they might be absolutely abhorrent—so long as they do not transgress into the area of violence, are not a matter for ASIO, as a point of law, to become involved in.

**Senator PRATT:** No, but what I am interested in is your interest in abhorrent views as the precursor to where you truly need to direct your attention.

**Mr Lewis:** That's correct. That is a good assumption.

**Senator PRATT:** So it doesn't really matter whether you're talking about violence against women, homophobic violence or acts of terrorism. There are a set of ideas in the community that might be anti-gay, anti-woman, anti-Muslim or anti-migrant that can feed attitudes towards groups and therefore lead to extremist and violent acts against them. Is that correct?

**Mr Lewis:** Absolutely. The reason why I probably don't share as much information as the committee would like about various investigations is that we investigate in secret in order to protect the innocent.

**Senator PRATT:** I'm glad to hear that.

**Mr Lewis:** Of course. We've had politicians express that people have rights to be bigots, but that's not an expression of violence. We've had people who might talk about the final solution, but that's not an intent to commit it. Nevertheless, in the same way that violence against gay people is fuelled by anti-gay views, in the same way that violence against women is fuelled by particular prevailing gender views, what do you do in the...
discourse of Australia in terms of popular debates? We censured Senator Anning recently in the Senate. Regarding the advice about the kind of public debate that we should be having, where does the line get drawn in terms of an organisation like ASIO that's only interest in it is when it becomes violent, expresses a violent intent? Where's government's responsibility in terms of countering prevailing views that might contribute to people's commitment to such violence?

Mr Lewis: I will make two comments. The first one is that it is absolutely nothing to do with ASIO what the public commentary is on a subject. I don't define the limits of permissibility of discussions in the community.

Senator PRATT: No, just as you said: the idea might be abhorrent, but it's not your bailiwick.

Mr Lewis: So, that's my first point. The second point—and we go to this issue of what I describe as opprobrium pointed towards a particular group of people in the community. We had this issue some years ago with the Muslim community in Australia.

Senator PRATT: Yes, we did.

Mr Lewis: At the last Senate estimates I made it very clear that the same sorts of discussions that might have been going on around the Chinese community were equally abhorrent to me. We have 1.3 million Chinese, for example, in Australia—wonderful citizens; some have been here for a century and a half, raising their kids, building businesses: wonderful Australian citizens. And it worries me, in a personal sense, when I see one of these communities in some way being targeted—the actions of a few coming to impact the attitudes of the community against the many. I think that's where it becomes unfortunate. But that's a personal view. It is not ASIO's business whether discussions in the community go to this subject or that subject. I'm only interested in when there is a threat to security.

Senator PRATT: No, but a threat to security is often drawn from those ideas about people in our society.

Mr Lewis: And when that happens I'm interested.

Senator PRATT: For example, if Australia had a perfect record on human rights and was good at upholding everyone's human rights all the time and had a discourse around that, you would be out of a job on many fronts in relation to issues like terrorism and extremism, because we wouldn't have citizens who had any kind of commitment to perpetrating these offences against other people.

Mr Lewis: You're offering an opinion. I won't comment on that.

Senator PRATT: You can't. Mr Pezzullo, I understand why Mr Lewis needs to draw the boundary that he does around what he does. But how does government respond where public comments of politicians have the influence to fuel right-wing extremism or influence the public debate around these issues?

Mr Pezzullo: I was going to perhaps assist the committee in its examination of this matter—before you asked that precise question—by adding from a policy point of view and completely supporting the director-general in terms of the secrecy with which he needs to go about his job and the way in which he needs to comport himself in terms of his public commentary. I just want to set to one side the question—I think you question went to inflammatory commentary by elected officials—and not engage with that question. The only additional point I would make, because it does fall within the remit of my department, is that hopefully before it gets to the point where it needs to be a matter of concern to ASIO, where violent extremism is starting to transition into the possibility of threats to our security, which are exclusively within the independent statutory remit of the director-general and his staff, we assist the government by running countering violent extremism programs. We've talked about those in the estimates pertaining to my department, so I'm not going to go over those matters of detail other than to say that the government charges the department to, if you like, defuse, as best we can, extremism and ideation that's contrary to our values being promoted online. CDE programs, Living in Harmony, the Safer Community Program—all of that speaks to trying to take the heat out of these debates as best we can, contesting extremist and indeed abhorrent ideologies through the CDE program, which we've discussed before. The only other thing I would add is: in partnership with our colleagues in the Attorney-General's Department and the Department of Communications and the Arts, the flip of that is looking at the channels through which abhorrent ideology and calls to incitement arise, particularly in a highly connected world with social media. You would have seen—and I just make comment; I won't go into detail, because we could be here all night—the government's policy in terms of engaging with social media companies to avoid their platforms becoming mediums or vectors through which hateful ideology can be promoted. They're all issues that relate to the general policy setting of trying to defuse violent extremism before it becomes, if you will, a matter of concern to the director-general and his staff. It's a supportive role, and there are a number of programs that flow from those policy settings.
Senator PRATT: Thank you. That's very useful, Mr Pezzullo. In that context, you used the words 'inclusion' and 'tolerance' as being embedded in what prevents that kind of extremist ideology.

Mr Pezzullo: And the promotion thereof.

Senator PRATT: Yes, and the promotion thereof. So what responsibility do we have, as senators in this place, to conduct our public statements in accordance with inclusion and tolerance? I know—

Mr Pezzullo: Sorry, is that question directed to me?

Senator PRATT: Well, I guess it's not possible really to direct it to you, because we can say whatever we like in the Senate.

CHAIR: Senator, we all know where you're coming from. You and Senator Watt have desperately tried to raise a particular article, and all the witnesses have very clearly indicated that they're not in the business of—

Mr Pezzullo: It's not a matter upon which I can offer any—

Senator Colbeck: You are asking the—

Senator PRATT: No, I've taken what I can from Mr Pezzullo's answer, and it was very relevant to my line of inquiry.

CHAIR: Senator Pratt, if you have a question, ask it. But let's stop the editorialising and lecturing to everybody. Do you have a question?

Senator PRATT: Yes, Mr Pezzullo has answered that question. I've got one last question, which is on a different topic. Mr Lewis, do you have any information or advice regarding why ASIO did not issue its classified report to the Leader of the Opposition this year?

Mr Lewis: The annual report this year, the one just gone, has for the first time been issued not as a classified report. In other words, we only did one report, which was unclassified. There's a long story behind this. I won't bore you with the details, but it's to do with the Department of Finance and instruction about what annual reports should or should not look like. To that end, we were discouraged from developing a separate, classified report. I can tell you that there are classified annexes to the unclassified report. But the unclassified version of the report and the classified annexes went to the Leader of the Opposition.

Senator PRATT: So in that sense there are no grounds to think that the Leader of the Opposition wouldn't have access to any classified information that he might need?

Mr Lewis: No, and, as I recall, I made it perfectly clear in written correspondence to all the recipients at the time that this was a departure from the norm. Whether that continues on into the future is another matter. It's something that we would obviously need to discuss with the finance department.

Senator PRATT: Was there any basis to what sounds like a very bureaucrat reason for directing you to do that?

Mr Lewis: You'd have to talk to Finance about that. I don't understand the background to it. The issue is that, if you're going to do an annual report, it needs to be available to everybody and not have things squirreled away in some way in a classified report. We have to do classified annexes, quite obviously, otherwise it would be an incomplete report. But this was our happy compromise.

Senator PRATT: Thank you for clarifying that for me. Thank you, Chair.

CHAIR: Thank you, Senator Pratt. With that, Mr Lewis and Dr Southern, thank you very much to you and your team for your appearance. As I say, we don't know exactly what you do, but we know that we have a remarkably safe life in Australia. Again, thank you to you and your team—whoever they are; we don't know them. I know I speak for everyone on the committee when I say thank you very much for what you do in keeping all Australians safe.

Mr Lewis: Thank you, Chair. I shall pass that on. Again, a lot of my people would be watching, but thank you; I appreciate it.

Australian Criminal Intelligence Commission

[18:10]

CHAIR: Welcome, Mr Phelan. Thank you very much for joining us. I'm not sure if you were waiting around last Thursday—I think we let you know early that you could go, but sorry about that and thank you for coming along tonight. Sorry that you're last. Did you have any sort of opening statement that you wanted to make?

Mr Phelan: No.

CHAIR: Okay. Senator Patrick has some questions for you.
Senator PATRICK: Thank you. We were trying to manage priorities last week, so that's why you didn't have to appear.

Mr Phelan: It's all good. There's no place I'd rather be!

Mr Pezzullo: You've already misled the committee once, Mr Phelan!

Senator PATRICK: I had a conversation with Mr Pezzullo last week about the role that everyone plays in dealing with extremism. I won't say he framed you up, but I'm just trying to understand the framework. Can you give a description of what you do in this space and how, and if there's been any changes to what you're doing in this space post the awful events in Christchurch?

Mr Phelan: Certainly. Obviously the agency responsible for security intelligence is ASIO, and we've had those discussions before. Where the ACIC is interested is where there's a convergence with serious and organised crime. We have one of the references under our act in relation to national security which enables us to use our coercive powers to assist in relation to special investigations and special operations that deal with national security incidents. We've used those powers in the past for returning foreign fighters, for example, but if we're looking at extremism in general, we work with ASIO very closely, particularly to look for that nexus between serious criminality and terrorism in any of its forms, whether it be extremism on the right wing or whether it be Islamist extremism, so we work very closely with those agencies. Not only do we hold a number of databases, obviously, from the Commonwealth intelligence databases, but we also have access to a lot of state and territory information. Through our pass-through, ASIO has access to that information. On occasion, we do analytics on products, most particularly around firearms and their availability and so on for terrorist groups. That's really where our nexus is. Also, like I alluded to before, we have the ability to use our coercive powers. As you know, under the ACC Act there are certain operations and investigations that are deemed to be called 'special', which enables us to use some of those powers. We have used those powers. We use those powers in both a top-secret environment and the environment that's classified to the public, of course, but the information and intelligence that's gleaned from that is passed on to relevant agencies—most particularly the AFP, state police or ASIO.

Senator PATRICK: In the sense of 'organised', I wonder whether or not that scoops up where you've got international arms of groups here in Australia—so where the a group here in Australia might not be quite so inclined to get involved with violence but the overseas entity may have done so?

Mr Phelan: Obviously we're particularly interested in what happens domestically here, but from time to time there is information that comes from offshore. Mostly that information that comes from offshore in relation to entities will be passed through to the security agencies and not dealt with through us.

Senator PATRICK: When you say 'organised', from your perspective does that mean that there's some money involved, or some business or trade?

Mr Phelan: No, just any group of criminals that is serious and organised. One that comes to mind most particularly is bikie gangs. Outlaw motorcycle gangs have access to firearms in this country; they have access to high-powered firearms. Of the illegal firearms that we've seen through seizures that the state police and the AFP have done in relation to outlaw motorcycle gangs, particularly worrying, of course, are the semiautomatic weapons—semiautomatic pistols—and also fully automatic weapons that have been seized. Even in my previous job at the AFP we were always looking at the nexus between organised crime and terrorism. Indeed, some links were found. As a result, we've seen prosecutions, particularly in Sydney, where weapons were provided by organised crime groups to terrorist organisations to commit terrorist acts. Similarly, we're always on the lookout for any other groups or gangs who might be willing to provide weapons; in particular, to those that have a disposition towards terrorism.

Senator PATRICK: You're clearly comfortable talking about bikies. I wonder whether you could talk about the prevalence of other such organisations that might be anti-Semitic, antiracial, anti-homosexual or something like that.

Mr Phelan: In terms of crime groups, that's not something that we would be looking at.

Senator PATRICK: You don't generally look at those things?

Mr Phelan: No. We don't have, I suppose, an ongoing requirement or intelligence product to look at hate crimes and those who are doing those sorts of things. It's clearly a matter for the state police. It has to reach the threshold of serious and organised crime for us to look at it. That's the mandate under the act.

Senator PRATT: But that could include hate based crimes, could it not, if they were serious and organised?

Mr Phelan: Absolutely it could, but at this stage there's nothing in our...
Senator PATRICK: In some sense you're answering my question: there's no activity here in Australia that has risen above a threshold that would cause your organisation to start applying resources to the sorts of groups that I talked about—anti-Semitic, anti-racial.

Mr Phelan: I wouldn't class those crime groups as things that would fit under the purview of the ACC Act for us to investigate.

Mr Pezzullo: Mr Phelan, is it worth making reference—I think you touched on it but the point might have been missed—to the national security reference, the resolution that's given to you by the board?

Mr Phelan: Yes. I alluded before to the fact that the ACIC has the ability to use our coercive powers. The board, which sits four times a year, has to authorise the ACIC to conduct investigations and operations. The board every year, in June, looks at the activities coming forward for the types of operations that it wants to authorise. One of those authorisations—one of the nine, I think, off the top of my head; I can check in the annual report in a moment—is in relation to national security. That's the basis on which we can use those coercive powers and call in people in an environment that is classified. So they cannot say that they've been called in for hearings, and the information that is gleaned from those hearings is provided to state and territory, AFP or, indeed, ASIO. Of course, we use that information for other intelligence purposes as well.

Senator PATRICK: Getting back to what you said, I'm trying to understand the distinction between a bunch of bikies who may have arms and who intend to conduct an operation against another group in Australia versus—and I accept it might not have reached the threshold yet—a bunch of people who are, for example, anti-Muslim, who have arms and who have a desire to take action. I'm just trying to understand.

Mr Phelan: I may have misinterpreted your question. Certainly we're not looking at bikie gang violence on other bikie gangs as being the violence vector. We're looking at an organised crime group—being an outlaw motorcycle gang—as a group who have access to firearms and who are not themselves terrorist entities but have connections with terrorist entities and the supply of firearms et cetera to them. We're looking at that as one of the opportunities that groups in Australia may have to have access to weapons. That's where we become involved, particularly with our source management and so on.

Senator PATRICK: That answer provides some clarity. Thank you.

CHAIR: If nobody else has any questions, thank you very much, Mr Phelan, for your attendance here today and, again, for what your team does. We very much appreciate it. We have some small appreciation of what you do, so thanks you very much to you and your officers.

Mr Phelan: Thank you, Chair. I will pass that on.

CHAIR: With that, Mr Pezzullo, Minister, I declare these proceedings terminated for today, with my thanks to Hansard, the secretariat staff and all of the home affairs department. I thank everyone.

Committee adjourned at 18:20