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SENATE
LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Tuesday, 9 April 2019

ATTORNEY-GENERAL'S PORTFOLIO
Attorney-General's Department
In Attendance

Senator the Hon Anne Ruston, Assistant Minister for International Development and the Pacific

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

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

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

Integrity and Security Division
Mr Andrew Walter, First Assistant Secretary, Integrity and Security Division
Ms Lucinda Atkinson, Assistant Secretary, Institutional Integrity Branch
Ms Julia Galluccio, Acting Assistant Secretary, Integrity Law Branch
Ms Elizabeth Brayshaw, Assistant Secretary, Security and Criminal Justice Branch

International Division
Ms Susan Robertson, First Assistant Secretary
Ms Karen Moore, Assistant Secretary
Mr Stephen Bouwhuis, Assistant Secretary
Mr Jesse Clarke, Assistant Secretary
Ms Anne Sheehan, Assistant Secretary
Ms Roxane Nolan, Acting Assistant Secretary

Enabling Services Group
Ms Helen Daniels, Chief Operating Officer
Ms Ayesha Nawaz, Acting Assistant Secretary of Human Resources

Corporate Services
Mr Trevor Kennedy, Assistant Secretary of Financial Services
Mr Stephen Lutze, Chief Financial Officer

Information Division
Mr Stephen Andrew, Chief Information Officer

Strategy and Governance
Ms Catherine Fitch, Assistant Secretary
Emma Appleton, Special Advisor
Royal Commission into Aged Care Quality and Safety
Dr James Popple, Official Secretary to the Royal Commission into Aged Care Quality and Safety

Australian Government Solicitor
Mr Michael Kingston, the Australian Government Solicitor

PORTFOLIO AGENCIES

Administrative Appeals Tribunal
Ms Sian Leathem, Registrar
Mr Chris Matthies, Executive Director, Strategy and Policy
Ms Sobet Haddad, Senior Reviewer, Immigration Assessment Authority
Ms Jacqueline Fredman, Executive Director, Corporate Services

Australian Commission for Law Enforcement Integrity
Mr Michael Griffin AM, Integrity Commissioner
Mr Craig Furry, Executive Director Secretariat
Mr Dallas Rogers, Acting Executive Director Operations
Mrs Eve Coutts, Director Corporate Services (CFO)

Australian Financial Security Authority
Mr Hamish McCormick, Chief Executive and Inspector General in Bankruptcy
Mrs Joanna Stone, Chief Finance Officer
Mr Andrew Sellars, General Counsel
Mr David Bergman, National Manager, Insolvency and Trustee Services
Mr Paul Shaw, National Manager Regulation and Enforcement
Mr Peter Edwards, National Manager, Client Services Division

Australian Law Reform Commission
The Honourable Justice Sarah Derrington, President
Mr Matthew Corrigan, General Counsel

Australian Human Rights Commission
Professor Rosalind Croucher (AM), Australian Human Rights Commission President
Ms Padma Raman (PSM), Australian Human Rights Commission Chief Executive

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

Commonwealth Ombudsman
Mr Michael Manthorpe PSM, Commonwealth Ombudsman
Ms Jaala Hinchcliffe, Deputy Ombudsman
Mr Rodney Lee Walsh, Chief Operating Officer
Mr Paul Pfitzner, Senior Assistant Ombudsman
Mr Dermot Walsh, Senior Assistant Ombudsman
Ms Autumn O'Keeffe, Senior Assistant Ombudsman
Ms Louise Macleod, Senior Assistant Ombudsman

Independent National Security Legislation Monitor
Dr James Renwick CSC SC, Independent National Security Legislation Monitor
Mr Mark Mooney Principal Adviser

Inspector-General of Intelligence and Security
Ms Margaret Stone AO, Inspector-General of Intelligence and Security
Mr Jake Blight, Deputy Inspector-General of Intelligence and Security

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

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

Family Court of Australia
Ms Virginia Wilson, Deputy Principal Registrar
Mr John Mathieson, Deputy Principal Registrar
Ms Kathryn Hunter, Chief Financial Officer

Federal Court of Australia
Ms Sia Lagos, National Operations Registrar
Mr John Mathieson, Deputy Principal Registrar
Ms Christine Fewings, National Registrar, National Native Title Tribunal

Federal Circuit Court of Australia
Mr Steve Agnew, Executive Director Performance, Planning and Strategy

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

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

Committee met at 09:04

CHAIR (Senator Ian Macdonald): I officially declare open this meeting of the Legal and Constitutional Affairs Legislation Committee and its inquiry into the budget for 2019-20. We're dealing with the budget estimates. The Senate has referred to the committee the particulars of the proposed expenditure for the portfolios of Home Affairs and Attorney-General. We dealt with Home Affairs yesterday and we're dealing with the Attorney-General's Department today. I just remind everyone that we're finishing at one o'clock by unanimous decision of the committee.

These are budget estimates proceedings and the committee will continue today, as I mentioned, with its examination of AG's. We've set Friday, 24 May as the date by which answers to questions on notice are to be returned, and we've also decided that written questions on notice should be provided to the secretariat by 5 pm on 12 April 2019. Under standing order 26, the committee must take all evidence in public session—I think everyone's aware of that—and that includes answers to questions on notice. I think all witnesses know that they're protected by parliamentary privilege and that it's unlawful to threaten or disadvantage a witness on account of evidence given to the committee. If any of the witnesses need any assistance with the rules of Senate, they should speak with the secretariat.

All questions going to the operations or financial positions of the departments or agencies which are seeking funds in estimates are relevant questions for the purposes of estimates hearings. I remind the officers that senators resolved that there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament unless the parliament has otherwise expressly provided. The Senate has resolved that officers of the department should not be asked to give opinions on matters of policy, but that doesn't stop them being asked for explanations of policies or factual questions about how and
when policies were adopted. Officers are also given the opportunity of referring questions to superior officers or to the minister. I particularly draw the attention of witnesses to an order of the Senate about public interest immunity, which will be incorporated in Hansard. I think we're all pretty well aware of that too. It's not permissible just to say that it's a public interest issue. You have to establish public interest immunity. I think, in this committee, we're well aware of those sorts of things.

The extract read as follows—

**Public interest immunity claims**

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

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

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

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

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

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

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

The media have requested permission to film proceedings and the committee has agreed to this. I remind the media that this permission to film can be revoked at any time, and filming may not occur during the suspension or after the adjournment of proceedings. If a witness objects to filming, the committee will consider the request. That's if any of the witnesses object. Copies of the resolution concerning the broadcast, including proceedings, are available.

I welcome the minister, Senator Ruston, and Mr Moraitis and his team. I ask, Minister, if you or Mr Moraitis would like to make a statement, bearing in mind that last Thursday we did really start estimates and I'm hopeful that we won't go a long time today.
Senator KITCHING: Chair, just before we hear from the Attorney-General's Department, I'm seeking to recall the Department of Home Affairs, Mr Pezzullo, and any officers that were involved in Mr Huang and his family's seeking of citizenship, as aired on *Four Corners* last night.

CHAIR: Thanks, Senator. There are two cameras here and you've succeeded in getting that on the television news today. But if you want to do that, what you do is call a private meeting of the committee. And if that's what you're asking, I'll call a private meeting.

Senator KITCHING: I'll give you some—

CHAIR: No, no—

Senator KITCHING: I'm seeking to do this because of the serious allegations that were made.

CHAIR: Senator, I've got no idea what you're looking at. I don't watch that show; I suspect very few people do.

Senator KITCHING: This is about political interference in our system, and I would think that it is of great interest to all senators—

CHAIR: The proceedings is suspended.

**Proceedings suspended from 09:15 to 09:23**

CHAIR: We will now resume the hearing. As I indicated, we are asking questions of the Attorney-General's Department. I understand that neither Mr Moraitis nor Minister Ruston wants to make an opening statement.

*Office of the Australian Information Commissioner*

[09:23]

CHAIR: I welcome Ms Falk and Ms Hampton—

Senator PRATT: Chair, are you going to report the committee's—

CHAIR: No it was a private meeting of the committee.

Senator KITCHING: You used your numbers to shut down a legitimate line of inquiry.

CHAIR: Does anyone have questions of the Information Commissioner? Senator Patrick.

Senator KITCHING: You used your numbers so that we couldn't actually ask questions on what were very serious allegations.

CHAIR: Senator Patrick.

Senator PATRICK: Good morning, Ms Falk. I have a few lines of questioning. Firstly, in relation to the budget, it looks like you have a relatively significant increase in funding. Could you talk me through that funding and how you intend to use it?

Ms Falk: Since the last occasion that I appeared before the committee the government has announced a proposed provisions to strengthen privacy protections under the Privacy Act, including increased penalties and a new system of infringement notices. Importantly, my office will receive $25 million over three years to deliver new work, as well as to enhance the office's ability to prevent, detect, deter and remedy interferences with privacy. It is also intended that there will be an enforceable code to introduce additional safeguards across social media and online platforms that trade in personal information. The code will require greater transparency about data-sharing and requirements for the consent, collection, use and disclosure of personal information. This will incorporate stronger protections for children and other vulnerable Australians within the online environment. Accordingly, the OAIC will be focused on working collaboratively and constructively with all parties to enhance privacy protections both online and offline and to give Australians greater control over their personal information, ensuring that it is handled in a way that is transparent, secure and accountable.

Senator PATRICK: Does that new function have new employees attached to it?

Ms Falk: Since the last occasion that I appeared before the committee the government has announced a proposed provisions to strengthen privacy protections under the Privacy Act, including increased penalties and a new system of infringement notices. Importantly, my office will receive $25 million over three years to deliver new work, as well as to enhance the office's ability to prevent, detect, deter and remedy interferences with privacy. It is also intended that there will be an enforceable code to introduce additional safeguards across social media and online platforms that trade in personal information. The code will require greater transparency about data-sharing and requirements for the consent, collection, use and disclosure of personal information. This will incorporate stronger protections for children and other vulnerable Australians within the online environment. Accordingly, the OAIC will be focused on working collaboratively and constructively with all parties to enhance privacy protections both online and offline and to give Australians greater control over their personal information, ensuring that it is handled in a way that is transparent, secure and accountable.

Senator PATRICK: Does that new function have new employees attached to it?

Ms Falk: It does. At present we have an ASL cap of 93 staff, and that will be increased to 124. That takes account of this new measure. It also includes some additional staff for the consumer data right, a measure which was introduced in the last budget.

Senator PATRICK: Do I also detect an increase in capital expenditure?

Ms Falk: There is an increase of $2 million for capital. At present the OAIC requires additional accommodation, particularly with this new investment and increased staffing.

Senator PATRICK: You operate out of Sydney?

Ms Falk: That's right.
Senator PATRICK: Is that a lease of a building or something?
Ms Falk: It will be. We are making inquiries in relation to that at this time.

Senator PATRICK: We didn't really get much in the way of increased funding for FOI, I presume, based on that previous statement?
Ms Falk: There was no specific funding for FOI.

Senator PATRICK: Last time we had a bit of a chat about FOIs that had not been assigned case officers. We had 18 cases that had not been assigned an officer within 11 months—almost not starting the review—although I accept that there is some preliminary work done in that circumstance. Has that situation changed at all?
Ms Falk: At present the allocation time in the circumstances you have described—that is, where the matter has not been able to be resolved through our alternative dispute resolution interventions—is approximately 11.9 months for the oldest matter awaiting allocation.

Senator PATRICK: The question goes to whether we are starting to clear that backlog. Is it getting worse, is there a status quo situation or are we actually cutting our way into some of those delays?
Ms Falk: In the last quarter we received slightly fewer Information Commissioner reviews than we had in the previous quarter. In the quarter to December 2018 we received 241 IC reviews. In the last quarter we received 210. So that does provide us with an opportunity to not only look at the matters that are coming to us each quarter but also seek to resolve some that continue to await allocation. I would say, though, that the situation at present remains much as it was when I appeared before the committee on 19 February this year. I might ask my deputy, Ms Hampton, to provide you with some information in terms of the continuing work that we are doing within the office in terms of seeking to address the reallocation and wait times.

Ms Hampton: We have a really fabulous FOI team. They're really smart, they're really well educated, they're really well trained and they're really well led, and they are working really hard to address some of the backlogs that we've got in the FOI space. More importantly perhaps than all of those criteria, our FOI team are in this space because they have a deep belief in the objectives of the FOI Act and they are working very hard to ensure that those objectives are met. So we have a really great team. But in addition to that we've been doing a lot of work looking at the processes that are in place within the office. We've done a lot of modelling and a lot of planning. Just this week, we've got consultants working with us to go through all our processes, to see if there is any way we can streamline them, make them more efficient and effective—and produce more timely results for those individuals who have made applications under the FOI act and provide more timely guidance to the agencies that are involved in those.

With the resources that we have and the initiative that they're showing, we are absolutely doing our best to get through the backlog. However, the volume—and the increasing volume, over some years—is such that we aren't able to make the inroads that we'd all like to be making into those—

Senator PATRICK: I have no problem with the quality of your team. My sense is that it is due to a lack of resources, that you continue to not get through these FOIs that people rely on to get access to information that they are lawfully entitled to. You mentioned some modelling. I thank the Information Commissioner. I got an FOI back from you on some modelling. I haven't gone through that in great detail yet—it was quite voluminous—but I appreciate you being a model supplier of information under request. You mentioned consultants. Who are the consultants and how much have they been paid, and over what period?

Ms Hampton: We have some consultants in this week, in fact, from Synergy. I will have to take what we are doing through a new model with us and spending a lot of time with our team, over the course of this week, to unpack and unpick each of the processes that are involved in our key functions, just to see if there is any repetition, if there is anything else that we can do to streamline those processes.

Senator PATRICK: When is that body of work due to be completed; what's the estimate?
Ms Hampton: I expect a report back on Friday and there might be a little bit of—

Senator PATRICK: So it's a really short consultancy.
Ms Hampton: Yes, it's one week, and it's really quite intensive.

Senator PATRICK: Thank you. I just want to go to, finally, my hobbyhorse of three commissioners. Currently, we've got one commissioner filling the three roles. You'll be aware, Ms Falk, that there have been
motions in the Senate agreed to by the Labor Party that we need to restore that to three. I'm hoping that will be an
election commitment, at some stage, for those in the front seats. In the event that that were to occur or this
government were to decide to make a change, to go to the three positions that are required by statute, you fill two
positions at the moment, don't you?

Ms Falk: Yes, I do: the Australian Information Commissioner and the Privacy Commissioner positions.
Senator PATRICK: So someone could just appoint a new FOI commissioner?
Ms Falk: That would be a matter for the government.
Senator PATRICK: I understand that. It's about, if the government decided to do that, what the arrangements
would be. They could simply appoint a new FOI commissioner. In terms of the Privacy Commissioner, if they
wanted an additional resource what's involved in that, noting that you fill that role?
Ms Falk: I hold that position for a three-year term, which expires on 16 August 2021.
Senator PATRICK: So you'd either have to stand aside or some other arrangement would have to be made to
fill that spot, to get an extra resource in as a third commissioner.
Ms Falk: They would be matters that would need to be considered should such a proposition be put.
Senator PATRICK: Sure, okay, that's perfect. I think that probably wraps me up, Chair.
CHAIR: Thank you Senator Patrick, I understand Senator Pratt has some questions for the Information
Commissioner.

Senator PRATT: Thank you very much, Chair. In estimates, last, there were questions from Senator Watt
about a website set up by the chair of the houses economics committee, Tim Wilson MP. It's called
stopthetire runnabletax.com. We could see that the website required people who wanted to attend a public hearing of
a parliamentary committee to put their name to a petition against the policy. When you were last here in
estimates, Senator Watt asked whether you were investigating Tim Wilson for breaches of the Privacy Act. You
said that at that time you were making preliminary inquiries to ascertain whether or not the Privacy Act has
jurisdiction in those circumstances. What was the result of those inquiries?

Ms Falk: Those inquiries have concluded in relation to Mr Wilson, and we've formed the view that the
Privacy Act does not apply to Mr Wilson in his capacity as an MP, and primarily that's in relation to the operation
of the exemption that applies to political representatives acting in relation to the political process.

Senator PRATT: So it's not a judgement on the rightness or wrongness of Mr Wilson's actions, other than
that they fall outside your jurisdiction to inquire into?
Ms Falk: There's no jurisdiction to inquire in relation to Mr Wilson's activities.
Senator PRATT: Did you receive external counsel? Who provided you with advice regarding this matter?
Ms Falk: From time to time I do seek legal advice. I have internal legal advisers, and from time to time I also
seek external advice in relation to matters that I'm inquiring into.

Senator PRATT: What are those inquiries?
Ms Falk: In relation to matters, from time to time, I do seek legal advice.
Senator PRATT: Yes. And you received legal advice in this matter?
Ms Falk: I did seek legal advice in relation to this matter, yes.
Senator PRATT: Did you speak to Tim Wilson at all about this matter?

CHAIR: You mean Mr Wilson.

Senator PRATT: Mr Wilson.

Ms Falk: No, as I explained the last time that I appeared, ordinarily inquiries would be made on the papers. I
did not speak to Mr Wilson, although members of my staff would have had correspondence with him.

Senator PRATT: So you might be aware, of course, that Victoria's former Privacy Commissioner, Mr David
Watts, has said that the collaboration between Mr Wilson and Wilson Asset Management raises legal and ethical
questions, and he called for the Office of the Australian Information Commissioner to investigate.
CHAIR: I think the question is: 'Are you aware of that?' You either were aware of it or you weren't.
Senator PRATT: Yes—aware of his remarks?
Ms Falk: Yes.
Senator PRATT: Should it not be troubling that the personal details of people who wish to provide evidence
to a parliamentary committee, to a commercial entity—should that be ethically justifiable?
Senator, can you reword that, because, again, are you asking Ms Falk if, in her opinion, that's troubling? Perhaps if you reworded it in another way that didn't call for Ms Falk to indicate—

Senator PRATT: If Mr Wilson weren't a member of parliament, providing the personal details in this manner would be within your jurisdiction, would it not?

Ms Falk: I can only comment in relation to the powers and functions that I've exercised. I've undertaken preliminary inquiries and formed the view that the jurisdiction does not apply to Mr Wilson. My inquiries in relation to Wilson Asset Management are continuing, and I have issued a public statement in relation to those matters.

CHAIR: When was that issued?

Ms Falk: It was issued yesterday.

Senator PRATT: What is the scope of those inquiries with Wilson Asset Management?

Ms Falk: In relation to that matter it's an ongoing matter, and in order not to prejudice it I won't comment further, save as to say it will be looking at whether or not there's been any contravention of the Privacy Act.

Senator PRATT: Did you speak to Mr Geoff Wilson in relation to these matters?

Ms Falk: I've not spoken to any person in relation to these matters.

Senator PRATT: So what should the parliament do in the instance that clearly there are ethical and legal issues that are relevant to Mr Tim Wilson's actions also, which clearly are outside, as you've outlined, your jurisdiction; that doesn't negate the nature of the legal and ethical issues underlying that kind of behaviour—

CHAIR: What is the question?

Senator PRATT: Well, Mr Moraitis, can I ask you: at a policy level it does seem extraordinary that—

CHAIR: The question?

Senator PRATT: we should have people giving evidence to a parliamentary committee having to go through a third-party website.

CHAIR: What's the question of Mr Moraitis? You've been made a statement, which has been captured on TV.

Senator PRATT: My question to the government is: if it's not within the jurisdiction of the Privacy Commissioner, whose jurisdiction should it be in?

Mr Moraitis: As explained previously, the Privacy Act and aspects of it are always reviewed and changes made. Whether there should be any changes in response to this issue that you have talked about, it's a question for government to consider. That's all I'll say.

Senator PRATT: Senator Ruston, can I ask you: what is the government doing with the concerns raised about Mr Wilson's actions in this matter in terms of how he's conducted himself as a member of parliament, where, in order to give evidence and attend a public hearing, people put their name to a petition against a particular policy?

Senator Ruston: I will take that on notice, Senator.

Senator FARRELL: Mr Moraitis, you may recall we had a private meeting and sought the recall of—

CHAIR: Of course, you won't be indicating publicly what the context of a private meeting was.

Senator FARRELL: No, okay.

CHAIR: We're dealing with the Privacy Commissioner at the moment, and perhaps that's relevant in that private meetings are matters of privacy. But I don't think they're for Ms Falk or Ms Hampton.

Senator PRATT: I think we're finished with the privacy questions.

CHAIR: Thank you both very much for your attendance today. As always we appreciate our interaction with you and we appreciate the work you do.

[09:41]

CHAIR: We now move to group 1, the Australian Government Solicitor, encompassing chief operating officer, general counsel, dispute resolution and commercial.

Senator KITCHING: In relation to the Four Corners program last night, the Attorney-General was interviewed on Four Corners, and one of the quotes that he gave was:

Given that there are very strict new laws requiring relationships to be transparent, as we move into the future, if people were acting, trying to influence a government outcome and they were doing that being paid for or engaged by a foreign principle, then as of the institution of this legislation, now, that relationship would have to be documented and knowable to the Australian people.
Do you, Secretary, believe that it is appropriate that ministers of this government have been engaging in secret meetings with foreign nationals, and did you provide any advice as to that?

CHAIR: The first part of the question is clearly out of order.

Senator KITCHING: On what ground?

CHAIR: You are asking Mr Moraitis what he thinks, which is a matter of opinion.

Senator KITCHING: No. The Attorney-General of the Commonwealth of Australia has given a quote talking about relationships being transparent. I presume that Secretary Moraitis has actually viewed or has a copy of the transcript from Four Corners last night—

CHAIR: And you're asking him for his view on it.

Senator KITCHING: I want to know whether the FITS legislation is actually going to be enforced.

CHAIR: The only question I'll allow out of that—perhaps you can reframe it, Senator—is: 'Did you give advice?' That part is legitimate.

Mr Moraitis: Can I just preface my comments by reference to the FITS regime, which is what the Attorney was talking about, which is a scheme to set up a transparency scheme where people register if they're involved in this sort of activity. The scheme commenced in December last year, and is coming to effect—

Ms Chidgey: Then there was a three-month grace period until the 10 March.

Mr Moraitis: I saw aspects of that program, and I'm aware of that quote. I haven't seen the whole transcript, but I'm aware of that aspect. The FITS regime was not in place, given the historical timelines involved in that matter you are alluding to. As a matter of practice, the FITS regime is being brought into force to ensure that people who are acting on behalf of foreign principals register. It's about providing transparency in people's activity, so if they are lobbying government, departments or agencies, that that activity is transparently registered in a way that the public can see. It's part of this concept of bringing sunlight to activities in the political and quasi-political sphere.

Senator PRATT: Has Mr Huang now registered?

Mr Moraitis: I'm not aware of him registering, no. I'm not aware what his activities are, at the moment, in Australia, given that he's not in Australia, if I'm correct.

Senator KITCHING: Has a company called Mandarin International Investments registered?

Mr Moraitis: I'll have to take that on notice.

Senator KITCHING: Is someone able to provide that information now?

Mr Moraitis: Yes, if you give us a couple of minutes.

Senator KITCHING: Sure. Thank you.

Senator Ruston: Chair, can I just seek clarification. Is this the same Mr Huang who paid $55,000 to have dinner with Mr Shorten?

CHAIR: Well, Minister: (a) it's not for you to ask questions, it's for senators; (b) I don't know the answer to that. I didn't watch the program. I have better things to do with my time, I have to say.

Senator KITCHING: Just so we're clear, Senator Ruston, we did ask Home Affairs to come because we wanted to explore what the department had done in terms of this. I was told by Senator Macdonald that that would be party-political and would be partisan. So the fact that you've just raised a question like that would indicate that, in fact, that the Chair's reason—

CHAIR: Senator, order! Order!

Senator KITCHING: for not allowing Home Affairs to come is party political.

CHAIR: Order! The hearing is suspended.

Proceedings suspended from 09:46 to 09:51

CHAIR: I resume the hearing of the Legal and Constitutional Affairs Legislation Committee inquiring into the estimates and the budget. I just mention for the Twitter area that my committee will follow the rules, and if senators don't adhere to a call by the chair for order, then we will suspend. That's been my practice and will continue to be my practice. I'm not going to have this committee turned into a rabble where everyone just shouts and, where that happens, we suspend. Mr Moraitis, did you have an answer?

Mr Moraitis: I just wanted to answer Senator Kitching's question about Mandarin being registered or not. The answer is no.
Senator KITCHING: Over the last years, the Attorney-General's Department has been working to introduce new laws to curb covert foreign interference in Australia—in particular, the Foreign Interference Transparency Scheme and the espionage and foreign transparency laws. What's the problem you are seeking to address?

Mr Moraitis: What's the problem we are seeking to address?

Senator KITCHING: Yes.

Mr Moraitis: That's been explained by government on many occasions. It's about the reality, as security agencies have pointed out, of the efforts of foreign entities and governments, in particular, to affect our processes in Australia.

Senator PRATT: What kind of processes?

Mr Moraitis: Democratic processes, political processes, influence on decision-makers across the board, and the FITS regime is one aspect of that. Various provisions in our laws were updated, as well, last year to address that. But it's a short answer to a very long question. Unless Mr Walter or Ms Chidgey want to add anything. But that, in a nutshell, is what it's about.

Senator PRATT: What's the assessment of the kind of foreign influence government is seeking to deal with in this scheme?

Mr Moraitis: I'd ask you to ask my colleague Mr Lewis to answer those questions. That's more operational.

Senator KITCHING: I think you mentioned, Mr Moraitis, just previous to our intermission, that it's good to have sunlight on a problem.

Mr Moraitis: Yes.

Senator KITCHING: One of the issues that are seeking to be addressed is the possible corruption of the political process, wouldn't you say?

Mr Moraitis: Yes.

Senator KITCHING: I don't think corruption would be too strong a word?

Mr Moraitis: I'd rather put it in terms of influence which is not obvious to the public. Corruption could be related, but it's a separate thing. It could be political lobbying or other efforts to influence decision-making processes in government and parliament, which obviously—if it's transparent and registered—is not illegitimate and not corrupt. The FITS—if I just reiterate—is about registering activity not about proscribing activity.

Senator KITCHING: I understand. But your previous answer was to say that it is trying to address the corruption of the process—of the political process?

Mr Moraitis: If I used the term corruption—I can't recall if I used that term, but it's more about—

Senator KITCHING: And I don't think corruption would be too strong a word?

Mr Moraitis: The integrity of decision-making and sovereignty of a country.

Senator KITCHING: Let me just read you a definition of corruption:

Dishonest or fraudulent conduct by those in power, typically involving bribery.

CHAIR: Is there a question in that?

Senator KITCHING: I think Mr Moraitis has indicated that he agrees that that is a definition of corruption. How many departmental resources and how much time has the Attorney-General's Department spent over the last three years preparing these new laws to help curb covert and foreign interference in Australia?

Mr Moraitis: Quite a bit of time. I'd have to take on notice the exact number of resources that have been employed over the last couple of years. The FITS regime is the culmination of efforts that began almost two years ago, if I recall correctly. Consideration was given to this and a whole bunch of other aspects of the laws, as you alluded to, about secrecy and foreign interference laws, which was also work that was engaged in by my department. Of course there was the machinery of government change in the context of that, so I'm not sure where the resources ultimately ended up. I'll ask Ms Chidgey and Mr Walter as to what the current resourcing is for our FITS regime. But I'd have to take all those questions on notice because it's historical. Would you like the current outlay of staff?

Senator KITCHING: What I would like is, by financial year, the resources, both funding and people hours—

Mr Moraitis: Sure. I'll try my best, especially on the people-hour question.

Senator KITCHING: and also any expert advice the department might have sought and has either paid for or has been, perhaps, seconded into the department in order to—
Mr Moraitis: I'll take that on notice. My only recollection of the FITS regime is that we were obviously very interested in the historical and actual experience of the United States system—the FARA system, the Foreign Agents system—which has been around since 1937 or 1939, if I recall correctly. We of course have engaged with our United States Department of Justice counterparts in Washington on several occasions, and that's been an ongoing process of comparing and contrasting our respective experiences. That's one example. But I wouldn't be able to cost that. It's purely a government-to-government sharing of experience.

Senator PRATT: But these laws for Australia are quite recent, and yet, just before the laws come into place, we've seen examples like the ones that were aired on *Four Corners* last night. In what way does that influence the kinds of laws—does Australia's own experience influence the kinds of laws that we now seek for ourselves?

Mr Moraitis: It'd be fair to say that Mr Lewis and others have alluded to this in their previous testimonies about foreign influence and inference. Certainly, from general experience around the world, particularly in Western democracies but also, particularly, in Australia over the last few years, there has been a process of learning about the challenges we're facing as liberal democracies in this period.

Senator PRATT: Mr Lewis did give evidence yesterday, and you've referred us to him for the details of that. But of course he's very constrained in what he can say.

Mr Moraitis: Yes.

CHAIR: I'm sure Mr Moraitis is—

Mr Moraitis: I'm equally constrained.

Senator PRATT: He did describe the level of foreign interference as being at an 'unprecedented' level. But how do we come to grips with that if it's not talked about?

Mr Moraitis: I think it has been talked about quite a bit.

Senator PRATT: We're very glad to see that it has been revealed—

Mr Moraitis: But if I may say—

Senator PRATT: but if we see government ministers—

Senator Ruston: Chair, would it be possible for the witness to be allowed to finish his answer before he is interrupted?

CHAIR: Yes.

Senator PRATT: Of course.

Mr Moraitis: I just wanted repeat what I said at the beginning about the concept I use—the metaphor of sunlight. The whole FITS regime is about sunlight. It's about people having to register their interest and their relationships with foreign principals in a way that all of us—you, me, the public, the parliament, everybody—can see clearly where that person or persons are taking their instructions or relationships from. It's a good example of us being aware of the situation.

Senator PRATT: So it is about putting sunlight on things like former ministers taking tens of thousands of dollars to arrange secret meetings between foreign citizens, with links to other governments and senior ministers of the Morrison government.

CHAIR: And the question is?

Senator PRATT: That is exactly the kind of thing that sunlight should be on, should it not?

Mr Moraitis: I'm all in favour of sunlight.

CHAIR: On the legislation we're talking about, if a royal commissioner recommended criminal charges against someone who has subsequently become a member of parliament—a senator, indeed—is that the sort of conduct that is being encompassed with this legislation?

Mr Moraitis: That's a very generic concept. I don't think there is an overlap there. I think that's more a question of domestic criminal investigations and the prosecutorial process of the DPP. If the royal commissioner believes that someone should be referred to the DPP or others for potential criminal liability, that's a matter for the DPP of a state or the federal DPP.

CHAIR: You've been asked about definitions of corruption. Would that be corrupt conduct if a—

Mr Moraitis: I can't comment. It's too generic for me to comment on, unless Mr Walter or Ms Chidgey have better knowledge than me of this stuff, which they probably do.

CHAIR: Perhaps I can ask the Australian Government Solicitor or whoever, perhaps the General Counsel. I think we come on to royal commissions later.
Mr Moraitis: Yes.

CHAIR: Where would be the right place for me to ask, if a recommendation were made by a royal commissioner that criminal charges be laid against someone who was then a union official but is now a member of this parliament, where that investigation has gone? Is that something for the General Counsel?

Mr Moraitis: No. It depends on what the issue and the royal commission are as to which agency is responsible for referring matters for prosecution. It could be the DPP. It could be, as in the banking royal commission, ASIC and others.

Ms Chidgey: And whether it's a state or federal—

Mr Moraitis: Commission.

Ms Chidgey: matter that was alleged.

CHAIR: I make no bones about this. This is the inquiry by Justice Dyson Heydon.

Mr Moraitis: The trade union royal commission of several years ago.

CHAIR: Yes, the trade union royal commission.

Ms Chidgey: It does depend on the conduct. Royal commissions can be looking at state or federal matters, and then it would be a matter for the law enforcement agencies and prosecutorial agencies.

Mr Moraitis: In that case, I would suspect that it would be the DPP and the prosecutorial agencies like the AFP, so I would refer you to them.

CHAIR: For Ms Chidgey's benefit, this was in relation to the Fair Work Commission, which would make it a federal matter, I suspect.

Ms Chidgey: Yes.

CHAIR: So I would have to ask the DPP where that's at rather than the people dealing with royal commissions?

Ms Chidgey: Yes. That's right. After a royal commission, it's often the case that one of the enforcement agencies still needs to do further investigating, so the DPP could advise whether they'd received any brief from an investigating agency.

CHAIR: I think we had the DPP the other day—

Mr Moraitis: Thursday.

CHAIR: and we're not going to recall them, much as I would like to, perhaps to follow—

Senator KITCHING: Well, I'd like to recall Home Affairs then.

CHAIR: I'm not going to, Senator, and, unlike other senators at this table, I'm—

Senator PRATT: It's a decision for the committee. It's not a decision for you

CHAIR: not going to name names of the parliamentarian involved. But I might put some questions on notice to the DPP. But thank you for telling me. Senator Brockman, you had some questions for the balance of my time, which is about seven minutes.

Senator BROCKMAN: Mr Moraitis, the media today has reported on the response from the Attorney-General to the states on radical animal activism. Are you aware of the content of the letter?

Mr Moraitis: I'm not aware of the content of the letter.

Senator Pratt interjecting—

Senator BROCKMAN: Go ahead, Mr Moraitis.

Mr Moraitis: There are two aspects of this. One is to do with the Privacy Act regulations. The second is to do with the Attorney raising the issue with his state and territory counterparts in terms of the states and territories, who are ultimately responsible for criminal trespass laws, to look at the trespass laws in existence in the states and territories, to address concerns that have been raised by various stakeholders. But I'll ask Ms Chidgey and Mr Walter to add anything to the context of any letter.

Ms Chidgey: The secretary's description of the matter that the Attorney raised with his state and territory counterparts is correct—asking them to consider the adequacy of their criminal trespass and unlawful entry offences, including the penalties that apply.

Senator BROCKMAN: Obviously this has come out of, in my opinion, some grossly low penalties that were applied in the case of the Gippy Goat Cafe in Victoria, where a business has effectively been closed down when there has been theft, threatening phone calls and trespass. For the theft, we had $1 fines. Can the Commonwealth
Attorney-General take this matter to a COAG process to try and beef up the laws? What other tools have we got in the toolkit to try and address this issue?

Ms Chidgey: It could be considered at the Council of Attorneys-General in the first instance.

Mr Moraitis: It's a subgroup of the COAG. It's the meeting of all state and territory attorneys-general—and, for the record, it includes New Zealand, who are also invited. This is an issue that could be raised in the context of the generic problem. There is obviously a federal dimension; as I said, it is about the Privacy Act and its adequacy or inadequacy relating to entities of this nature, which has been addressed in this case by regulation. That's one aspect. The other aspect is, as we alluded to, illegal entry or trespass or any other matters, or the adequacy of state and territory fines in that space. As a generic thing, that would be an issue that, if one or more of the principals wanted to raise that, could be discussed at a CAG meeting, and each jurisdiction would have respective obligations and responsibilities to address the generic issue, which is a national issue. It's a good example of how the attorneys-general of various jurisdictions would address a problem or an issue of this nature.

Senator BROCKMAN: I believe in the role of the states in managing that side of the law-and-order system. However, if we reached a point where inadequate responses from the states meant that this kind of activity was ongoing, is there anything that the Commonwealth jurisdiction could do? Could we look at the trade and commerce power, for example?

Mr Moraitis: You're alluding to what constitutional powers we have—and I'd have to take that on notice to take advice on that. That would be the obvious answer I'd give you, because it depends on the Constitution and what powers under section 51 you have.

Senator BROCKMAN: Absolutely.

Mr Moraitis: Theoretically, yes—

Senator BROCKMAN: I'm happy for you to take it on notice. But on the surface, under the trade and commerce power, could something be done in this space?

Mr Moraitis: Potentially. I don't know. I might have to take that on notice.

Ms Chidgey: Yes. There would be some constitutional heads of power that could be used. The Commonwealth would have some limitations. It's not the same power that the states have to cover just general criminal trespass, but there would be scope for the Commonwealth to take some action.

Senator BROCKMAN: Would there be any precedent for a referral of powers in this kind of area, or not?

Ms Chidgey: Not in this particular type of area. In the criminal law, we have a reference of power—

Mr Moraitis: Yes, there are referrals.

Ms Chidgey: for something like terrorism, which is clearly a different category, I'd suggest, from this matter, but obviously that's a matter for Commonwealth, state and territory governments.

Mr Moraitis: You would argue that probably the best first approach would be through policy harmonisation, I think.

Senator BROCKMAN: Okay. From the media reporting on the Gippy Goat Cafe situation, the investigation into the threatening phone calls apparently has revealed that the phones were under fictitious names. Would that be covered by the communications acts or by law enforcement acts—criminal law?

Ms Chidgey: I think it wouldn't be really appropriate to comment on particular circumstances, as to whether they're in breach of legislation.

Senator BROCKMAN: No, but, just in general terms, if a threatening phone call was made and an investigation showed that the threatening phone call came from a phone that had been registered under a fictitious name, is the use of that fictitious name a breach of any criminal law or is it within the communications space?

Ms Chidgey: It's not within this portfolio—the relevant legislation.

Mr Moraitis: It would be something for the communications department to look into.

Senator BROCKMAN: Okay. I shall head there.

CHAIR: Senator Kitching?

Senator KITCHING: I want to know the numbers of entities or persons who have so far registered. There was a three-month grace period. So the legislation passes—I can't quite remember the date—

Mr Moraitis: Just before Christmas.

Senator KITCHING: but it was in early to mid-December—
Mr Moraitis: That's correct.

Senator Kitching: and there was a three-month grace period. What happened in that grace period? Actually, also, why was it considered a good idea to have a grace period?

Ms Chidgey: It was in order to raise awareness of the scheme so that individuals had a period of time within which to be better informed of the scheme and take care of their registration requirements. We did a lot of outreach and communication during that period.

Mr Moraitis: It's a very new scheme. The reason I took the time to explain it is that it's actually a transparency, sunlight, regime. There has been a misconception that this is about punishing activity; it's actually about just registering. There is a whole issue of familiarising the general public and interested stakeholders in what this regime is all about. There was a grace period, which also happened to be the period of January and Christmas, which is not exactly the peak of activity in this country. All things considered, I thought that was appropriate. Ms Chidgey and I also engaged in some letter writing to people who we thought should be brought to their attention the existence of the regime and reminding them of their obligations—bring it to their attention. That was the reason we had a grace period. I think, on balance, it was probably the proper way to go. As for the number of people and entities who have registered, I think the number is 28.

Chair: Is at a public register?

Mr Moraitis: Yes, it is a public register.

Senator Kitching: You wrote to some people in order to highlight that they may have an issue?

Mr Moraitis: No, it was to highlight the existence of the register, how it works, and that they should consider whether they should or shouldn't register or be familiar with the register's existence and its scope, with a view to being sure that in future if they were to engage—they may not be engaging—in, say, lobbying or other things, then that clicks them into an obligation to register. It was reminding them of the penalties for failure to register if it is registrable entity, and then just making them be aware that, while they would be okay now doing nothing while working in this sphere, if they change their activities they could be subject to the regime. It was just being upfront about how the system will work and what it may imply for them in their future operations.

Senator Kitching: Could I also get the costings around that?

Mr Moraitis: Yes. The whole regime or the outreach?

Senator Kitching: Yes, the outreach program.

Mr Moraitis: I think I referred to this last Thursday night. Senator Pratt asked about advertising in this financial year and prospective advertising going into the next few months. I think I gave some figures about what we are doing with the Foreign Influence Transparency Scheme advertising campaign. Mr Walter or Ms Chidgey might have those figures handy. I can reiterate that, if you like.

Senator Kitching: Is it in the PBS?

Mr Moraitis: The actual advertising cost, no.

Miss Chidgey: The advertising wouldn't have been split out separately. They are on the Hansard record, but I can repeat them.

Senator Kitching: No, that's okay. I can find them.

Miss Chidgey: Obviously, some of the outreach did not have a particular cost other than in staff time, like the 700 letters we sent et cetera, and attendance at community meetings and that kind of thing.

Mr Moraitis: I wrote to several people and Ms Chidgey wrote to the rest of the 700.

Senator Pratt: The grace period for this scheme has now ended.

Mr Moraitis: Yes.

Senator Pratt: Have you done an assessment on whether the kinds of entities that should be registered have indeed registered?

Mr Moraitis: That is an ongoing process, yes, and that is something we are keeping under active consideration. There are certain entities which we will be writing to and asking them to reconsider. Ultimately, there is a question for me and my colleagues about whether we should be a bit more prescriptive about certain entities, but it's still a work in progress. It requires a collation and a knowledge of the whole environment in this space to see which entities may have registered or may not have registered. There are some issues that come up, I won't go into the details, but there is obviously a lot of toing and froing. We're quite open to talking to people who ring up and ask: 'This is my situation. Should I register? What about this and what about that?' We're not trying to
have 'gotcha' moments here. There are people who really legitimately want to know, and we are trying to help and we want to make sure that they are familiar with the regime.

I should also point out that, as well as the grace period, the regime also provides for a pre-election period, and certain obligations then click in as well. We're obviously, as we all know, reaching that period. That's when the regime will click in as well.

Senator PRATT: The department is responsible for the administration of this scheme. Did you watch the Four Corners program last night?

Mr Moraitis: Yes, I watched parts of it. I am familiar with the issues, yes.

Senator PRATT: You are familiar with it? So in the circumstances where a private citizenship ceremony was approved in a matter of weeks during the summer holidays, is that the kind of circumstance where you would expect that kind of conduct should be transparent through a register like this?

Mr Moraitis: I wouldn't put it that that conduct per se is registerable, but conduct of any nature involving foreign principals or people working for foreign principals might be one in this year which suggests that entity may or may not register or may certainly wish to consider registering, depending on that sort of activity. That's an example of where you want to look into a situation. But per se, I don't think—

Ms Chidgey: The registration requirements are for individuals or entities who act on behalf of a foreign principal that's foreign-government related or related to a foreign political organisation to register if they're representing that foreign principal in parliamentary lobbying, political lobbying, communications activities or disbursement activities.

Senator PRATT: Are required?

Ms Chidgey: Yes, then they would have to register that intermediary in that instance.

Mr Moraitis: But the point about this case you refer to is that it is a whole series of activities. It could be: you work back and say, 'Well, that happened because—

Senator PRATT: That's why it's important that the registration takes place because there are a whole series of activities.

Mr Moraitis: When the entity is within scope of the regime, yes.

Senator PRATT: So, in that context, ASIO briefed political parties in 2015 on foreign donations. A scheme like this gives you the capacity to link together conduct to track the foreign influence.

Mr Moraitis: That's our aspiration, yes.

Senator PRATT: On Four Corners last night, it was reported that Santo Santoro charged $20,000 to get access to Peter Dutton's office. In the recording, he said:

There is nobody else anywhere who is better placed than me to help you through this particular part of the project. Nobody. I can go to somebody in the Minister's office and say 'can you have a close look at this.

... ... ...

If I am going to be doing the work and going to Canberra with a copy of—

CHAIR: Do you have a question, Senator?

Senator PRATT: the visa application and hand it over to somebody and say 'can you help', no, no, I want to get paid and get paid up front.

CHAIR: The secretary said he saw the program. Anyone who was interested would have read it. There's no need to repeat it. We've got limited time, as you know. What was your question—apart from repeating what was on some show last night?

Senator PRATT: Would that the kind of engagement through Santo Santoro meet the criteria for registration under this scheme?

CHAIR: Or of Sam Dastyari with his Chinese connections?

Mr Moraitis: I'd have to go back a few steps because the issue is, as a matter of fact, several lobbying groups—lobbyists—have registered. The question whether any person is a lobbyist in a situation where their principal is an entity that comes under the scheme, yes. I can't extrapolate from that quote a situation where that particular person's activity is related to a foreign entity or otherwise. Theoretically, you could have a situation where a person is acting for a foreign principal and they've come to the view that they should register under the scheme and their activities are then—
Senator PRATT: So, if Santo Santoro is still active as a lobbyist, I couldn't see that he is registered under this—

Mr Moraitis: It will depend on whether he's—

CHAIR: Mr Moraitis, hang on one sec. Senator, Mr Moraitis has made it very clear he's not going to enter into your salacious—

Senator PRATT: He is now registered under the scheme?

Mr Moraitis: Could I just—

CHAIR: Hang on, Mr Moraitis. He's not going to enter into maligning individuals which you and your colleagues have set out continuously to do. As I indicated to you, if you want to talk about Sam Dastyari and all of the Labor people in jail—the bad Ian Macdonald and Eddie Obeid—we can go into that.

Senator FARRELL: Chair, as you said—

CHAIR: But Mr Moraitis has made it clear that he is not going to give assessments on individual facts and, as much as you continue to raise it, that brings reflection on you. But I would urge you not to continue that, and I'll rule the question out of order because I know Mr Moraitis won't answer it now. If you have another question—

Senator FARRELL: Chair, can I say something?

CHAIR: Do you have a point of order, Senator Farrell?

Senator FARRELL: Yes, I have a point of order, Chair. Look, serious allegations were made on the Four Corners—

CHAIR: What's the point of order?

Senator FARRELL: Well, the point of order is that you should allow the question, Chair, because—

CHAIR: Senator Pratt, we can come back to you. On members of parliament who actively campaign and urge changes of government directions that suit a foreign government—as in the case of Sam Dastyari, the former Labor senator; but I'm not asking you to comment on him—is that the sort of person who should be registering?

Ms Chidgey: No.

Mr Moraitis: The activities of members of parliament really is a matter for parliament itself. The regime is about other persons who are actors, agents or lobbyists on behalf of foreign principals. I was going to answer that question about Mr Santoro. I gave a generic example of lobbyists registering. In his case, his firm has registered under the scheme, with particular respect to another activity that he's involved with for a foreign principal. The scheme works in that way where a lobbyist—if they are acting for a foreign principal in a certain matter, whether it's a project or whatever—would probably be covered on the register, which is what is happening in this case.

Senator FARRELL: Mr Moraitis, if this legislation had been in place when these conversations took place—

CHAIR: Do you mind, Senator Farrell?

Senator FARRELL: would Mr Santoro have been required to register?

CHAIR: Is it is my question time. Order!

Senator KITCHING: It's our question time, Senator.

CHAIR: Sorry, it's the time for my questions. The Labor Party has had its 10 minutes. This is my 10 minutes.

Senator FARRELL: Chair, I know that this is the dying days of your time here in the Senate and you've only got a limited amount of time, but my question continues—

CHAIR: Order! Can I just stop the clock on my—

Senator FARRELL: Please—

Senator KITCHING: Senator Macdonald's not intending on retiring.

CHAIR: Can I indicate you too you that—if you'd been in this committee before, Senator Farrell, you'd know—that every senator has—

Senator FARRELL: I started my career in this committee, with all due respect. That's where I started, a long time ago.

CHAIR: Okay, the proceedings are suspended.

Proceedings suspended from 10:21 to 10:26

CHAIR: We will resume the hearing of the Attorney-General's portfolio by the Senate Legal and Constitutional Affairs Legislation Committee. We are due to break at 10.30 for morning tea, but I might delay
Mr Moraitis: The AGS, as a matter of principle. But it depends on the generic or specific question about a dispute.

CHAIR: Mr Kingston, dispute resolution arises in many, many ways. Recently, this committee has inquired into certain aspects of family law, the courts and other legislation when dispute resolution is very much to the fore. Where does this department come in in relation to dispute resolution, as such?

Mr Kingston: Other parts of the department—the policy parts of the department—will set a framework around dispute resolution. I'll let them talk to that in just a minute. In terms of AGS, where we're solicitors acting for the government in disputes, we'll be involved in dispute resolution on a case-by-case basis through things like mediation, arbitration or, ultimately, going to court. But we will be just looking at that in light of things like the Legal Services Directions, case by case and on instructions from our clients. We're not, in the AGS, setting the dispute resolution framework for the Commonwealth. That's unlike other parts of the department.

CHAIR: Mr Anderson or Mr Moraitis, could you—

Mr Anderson: As has been pointed out by Mr Kingston, the department has a range of policy responsibilities with respect to dispute resolution, particularly with respect to the Commonwealth's use of legal services. The Legal Services Directions make rules about how the Commonwealth should engage in dispute resolution, the use of alternative dispute resolution wherever possible and things like that. Those are the rules for the Commonwealth's conduct of litigation. Apart from that, in the family law area, which I think you touched on in your question, we have a range of funded programs where we seek to encourage parties to mediate the disputes rather than to litigate. The Family Relationships Services Program helps 170,000 people a year through, primarily, mediation-related services before they go to the federal Family Court. So we generally have a strong emphasis on encouraging parties to resolve their disputes in ways other than direct court litigation.

CHAIR: Group 1 of these hearings includes dispute resolution and commercial. I think you, Mr Kingston, sort of guide the government, or the department, in the framework and policies and how to and when to do dispute resolution. Is that why this is mentioned in Group 1?

Mr Kingston: To be honest, that reference in Group 1 to dispute resolution is a reference to one of the practice groups within AGS. We have three practice groups: commercial; what we call the Office of General Counsel, which is primarily an advisory practice around public law and statutory issues; and what we call dispute resolution, which includes not only the alternative dispute resolution and trying to settle matters but actual litigation. Alternatively, we could have called that group our litigation group, except that it's broader than that because we don't just try to resolve disputes through litigation; we try to resolve them in other ways as well. But it refers to one of our three practice groups within the legal practice within the Attorney-General's Department known as AGS.

CHAIR: Mr Kingston, I know you wouldn't want to comment on any court case currently on foot in which the Commonwealth is involved, so my first question is: is the class action against the Commonwealth in relation to the live cattle ban still on foot, or has it been resolved?

Mr Kingston: Judgement has been reserved in that matter, so the parties are awaiting judgement.

CHAIR: Okay. I suppose I can ask you in your capacity: when was judgement, approximately? Was it just recently or months ago?

Mr Kingston: With a little bit of luck I can tell you exactly. I think the trial concluded towards the end of last calendar year. Yes, the hearing resumed and concluded in December 2018.

CHAIR: So the decision was reserved then.

Mr Kingston: Yes.

CHAIR: I don't speculate at all on the outcome of that, as I don't speculate on the outcome of the election, and neither would any of you, but does the government have a policy in relation to cost recovery against a losing party where the matter is one of broad public interest and involves, as I understand this case did, many, many litigants? Is there any published or indicated convention, either of government policy or—is it government policy or departmental policy?

Mr Kingston: I will let my colleague Mr Anderson talk about that because it is more a departmental matter. It's safe to say that we at AGS would act on instructions from our client. Our client, being a Commonwealth...
entity, would take account of whatever guidance or policy there may be within the Commonwealth more generally.

**CHAIR:** Mr Anderson, is there a standard policy, or is it case by case?

**Mr Anderson:** The standard policy, which is in line with the government's position that it should be fair but firm, is that people will, in fact, be expected to pay cost orders that are made by a court against them. There will be a judgement for the individual department or agency that's providing instructions in the matter as to whether it's going to be productive to actually recover the cost because, if the party is impecunious, you might expend more money in seeking to enforce cost orders without being able to recover something, and then they might consider whether to waive the cost order. But, as a general rule, the Commonwealth will expect parties to actually make good their obligations if cost orders have been imposed upon them.

**CHAIR:** I can understand that where there is a commercial dispute—if the department's suing someone for breach of contract or for tort. I can understand that. But, where there are cases of major significance, leading cases, I would think there is no general principle.

**Mr Anderson:** There's no general principle. There is potential for people to seek funding of their costs by the Commonwealth under our test case scheme. You'll appreciate that it's a relatively small scheme and, while many individuals might believe that their matter is of public interest and significance, it might not be of that significance in the view of the government compared to other potential cases to fund. The Australian Taxation Office has had a program for funding test cases—funding the people bringing cases against them—when they regard something as being particularly significant in a question of tax law. There are some situations in which the government will say, 'We will consider not only not recovering costs but also potentially funding another party,' but that's relatively rare.

**CHAIR:** Is that a decision of the department or the minister or the government more broadly?

**Mr Anderson:** As a general rule, it's going to be a matter for the department or agency that are actually instructing in the litigation, as to whether they wish to enforce a cost order.

**Mr Kingston:** I might just add that, in relation to Brett Cattle, the applicant in that matter has paid a sum to court by way of security for the respondent's costs in relation to discovery in the litigation.

**CHAIR:** They have a bond in court?

**Mr Kingston:** They have paid that to court and, potentially, that would be available to meet some of the respondent's costs—that is, some of the Commonwealth's cost—depending, of course, on the outcome of the trial.

**CHAIR:** Without speculating, as I said before, on the outcome, in the event of the Commonwealth losing, do you have any indication of the costs of the trial to the Commonwealth? What have you put aside to pay the applicant's costs in that instance?

**Mr Kingston:** I'm not aware of any calculation about that at the moment.

**CHAIR:** Of the applicant's costs if you lose? On notice, if you don't have it here, can I get an update—I have asked this before—of the costs to the Commonwealth so far in what I might editorialise and call a sad case where people's livelihoods were destroyed overnight by decisions of government. That shouldn't be difficult to get, Mr Kingston.

**Mr Kingston:** I will take that question on notice.

**CHAIR:** Would it be difficult? I think I've asked this before, so I know you've got half the work done.

**Mr Kingston:** Yes. It won't be difficult. There might be different issues, depending upon whether we're talking about the costs in relation to Mr Ludwig and the costs to the Commonwealth, in that—

**CHAIR:** No—I'm simply asking: from the department's point of view, regardless of who wins, what has it cost you to run the case so far?

**Mr Kingston:** What I was going to say at least in relation to the Commonwealth costs is that the position with Mr Ludwig might be more complicated because of the scheme under which they're paid. We would normally consult with our client before publicly revealing the costs at this stage in the litigation, because the client may regard them as confidential. That's why I'm saying I'll take the question on notice because I don't have that information at hand but also because I wish to consult with our client in relation to the answer that would be given.

**CHAIR:** I can understand that you wouldn't want to say it during the course of the trial, although, as a model litigant, you'd have nothing to hide, but, after the trial is finished, how could you make a claim of public interest immunity for secrecy on what it cost you to run a case?
Mr Kingston: I wasn't seeking to make a claim of public interest immunity; I was simply saying that the costs we charge to a client would sometimes be caught by simply our lawyers' duty of confidentiality to that client. They'll be confidential matters; they're not publicly available. They arise in the course of us undertaking our retainer from the client. Also, sometimes the client will have a sensitivity about them because, if there's a looming cost dispute about who's going to pay the costs—

CHAIR: A cost dispute with you?

Mr Kingston: No—with the other side—about who's going to pay who's costs and what the amount should be. It's hard to predict. Sometimes knowing what one party is being charged by its solicitors can be relevant information for the cost dispute between the parties.

CHAIR: No, but you're a model litigant. None of that is relevant in the case. You're open and transparent.

Mr Kingston: We certainly endeavour to be a model litigant, but that doesn't mean that the Commonwealth, as a litigant, simply discloses all confidential information, advice et cetera that it may have. It's not obliged to do that under the model litigant obligation.

CHAIR: You're open and transparent. Surely during the case, but, when it comes to a question of costs, you're going to be open and above board on what it's cost you and what you should recover.

Mr Kingston: It's really not a matter for AGS; it's a matter for our client.

CHAIR: Mr Anderson, could I ask you what you've paid AGS already?

Mr Anderson: The client in this matter is actually the department of agriculture.

Mr Moraitis: We don't run the process.

CHAIR: All right. I'll ask the department of agriculture. I thank my colleagues. I've gone a little bit over my 10 minutes, but we will now break for the morning tea break.

Proceedings suspended from 10:40 to 10:59

CHAIR: We resume the hearing of the Legal and Constitutional Affairs Legislation Committee in its inquiry into the 2019-20 budget and the estimates therefrom.

Senator KITCHING: I'm going to ask about the scheme. Ms Chidgey, I think before you said 28 people had registered.

Ms Chidgey: Yes, that's correct.

Senator KITCHING: There's another figure, I think, of 85, but are we talking entities and individuals?

Mr Walter: Yes, 28 individuals or entities have registered, but they register in relation to a couple of things. One can be activities. There's a different number for that. I think that number is now 90. That's the number you'll see on the register. You'll see that 90 figure. Then, of course, there are the foreign principals with respect to whom they've registered. There are over 20 countries, for example, that all those 28 have registered with respect to.

Senator KITCHING: Did the grace period end 19 March?

Mr Walter: 10 March.

Senator KITCHING: Are you expecting more people to register?

Mr Walter: Over time, yes.

Senator KITCHING: By the end of the calendar year, how many would you expect?

Mr Walter: It's very difficult to say. There are probably a couple of variables that will be important here. One, of course, is that the election period is a different kind of period in terms of how the scheme operates, so we may see an uptick. We just don't know; we've not been through one. We may see an uptick in registrations during that period. We continue to receive four or five inquiries a day that we're working through. But over time, as awareness of the scheme grows—and we're continuing to do information sessions, and we'll be advertising again shortly in relation to the election—and people become more comfortable with it, you would expect it to continue to rise.

Senator KITCHING: Okay. If the grace period has ended, individuals or entities haven't registered and you become aware—I think, under the election section of the act, there are particular duties that are ascribed to individuals and entities; for example, disbursements et cetera; how they donate and that sort of thing. The accounting of it is out of disbursements—is that right?

Mr Walter: Yes.
Senator KITCHING: If someone asks for a meeting, should you interrogate the register to see if someone is on it?

Mr Walter: It's obviously a question for each parliamentarian. There's nothing that mandates you to do that. However, it is a transparency scheme, so if those people, like us and like parliamentarians—it is a good idea, if you're having dealings with people that you think might be lobbying, to be aware of what interests they might be lobbying on behalf of.

Senator KITCHING: But there's no duty on the parliamentarian to do so?

Mr Walter: That's correct.

Senator KITCHING: Back to you, Mr Moraitis: what happened pre the scheme? Did members of the executive ever write to ask for advice about particular meetings they might have with the type of individual or entity who would now be registered on the scheme?

Mr Moraitis: We can't answer that question. As a matter of practice, if a minister—any minister—would ask their department for a briefing for the meeting and say: 'I'm meeting so-and-so. Could you provide me with a briefing?' That would be the extent of it. That's a very generic statement.

Ms Chidgey: What did exist prior to the scheme was obviously the lobbyist register, which there is some overlap and intersection with in this scheme.

Senator KITCHING: Thank you, Chair.

Senator PRATT: In that context: if Santo Santoro was being paid by Mr Huang, they would need to register under the scheme—

CHAIR: Senator, you know I'll disallow the question. In any case, you'd know the officers would not comment on things they know nothing about.

Senator PRATT: No, no, but—

CHAIR: And they would not want to be part of your determined effort to malign and abuse people under parliamentary privilege, which you would not be game to do outside this parliament.

Senator PRATT: Thank you, Chair. I appreciate you drawing that to my attention. But, as Senator Kitching's questions highlight—I've just read some of the briefing documents, which I've only just seen, that highlight in relation to members of parliament and our conduct and meetings et cetera. If you are meeting with a member of parliament—

CHAIR: Ask about a member of parliament without mentioning names and you might get an answer—

Senator PRATT: That's what I'm intending to do, Chair.

CHAIR: That's not what you're doing; you're simply—

Senator PRATT: No, I haven't mentioned any member of parliament. I mentioned Mr Huang and I mentioned Santo Santoro, who's a former member of parliament.

CHAIR: Yes.

Senator PRATT: So—

CHAIR: Officers won't be able to comment on individual cases or give you advice on hypotheticals.

Senator PRATT: If they were to meet with me, would that meet with the criteria for registration?

CHAIR: That's a hypothetical. I rule the question out of order.

Senator PRATT: It's not hypothetical, because your own—

CHAIR: Senator, you said, 'If they were to meet with me'. That is hypothetical.

Senator PRATT: It's not a hypothetical question.

CHAIR: Reframe your question.

Senator PRATT: Okay, if I meet with—

CHAIR: No, not—

Senator PRATT: If I meet with a member of a foreign political party and their lobbyist, are they required to be registered?

CHAIR: You know it's not appropriate to ask for legal advice from officers, which is what you're asking. You're also, dare I say, asking a hypothetical: 'If I were to meet with someone'.

Senator PRATT: I meant hypothetical, Chair.
Senator PRATT: Do you or do you not have information sheets on your website that pertain to meetings with members of parliament and the kind of criteria that would need to be registered?

Ms Chidgey: We've got information sheets about the scheme. Foreign political organisations wouldn't necessarily need to register themselves, because that is already transparent. People or entities who need to register are those who are acting on behalf of a foreign principal.

Senator PRATT: So, an Australian company doing that would need to register that they have clients?

Ms Chidgey: Yes, that is a foreign principal, if they are engaging in parliamentary lobbying, political lobbying, communications activity or disbursements activity.

Senator PRATT: Okay. Where is the fact sheet that relates to members of parliament?

Ms Atkinson: There's not a specific fact sheet in relation to members of parliament. There's a fact sheet that talks in general terms about what the registrable activities are, and one of those registrable activities would be parliamentary lobbying.

Senator PRATT: But there is also Factsheet 6, Influencing a political or government process:

This scheme is intended to cover a wide breadth of political or government decisions, including but not limited to:

- policy decisions
- legislative processes
- regulatory decisions
- procurement decisions …

It goes on:

… decisions include those made by:
- the Executive Council
- …
- a federal minister or ministers
- …
- a Commonwealth company …
- an individual in the course of performing functions related to the above.

Very clearly, that's the intention of the scheme, isn't it?

Mr Moraitis: That's the endpoint of the scheme, yes.

Senator PRATT: Okay, so if I was—

CHAIR: No.

Senator PRATT: No-one has ever briefed me on this scheme as a member of parliament. We're named in these briefing notes. It's quite reasonable for me to ask: if I were to meet with Santo Santoro, being paid by Mr Huang, would I expect to find that appropriately registered in the Foreign Influence Transparency Scheme before I meet with him?

CHAIR: Senator, I'm ruling the question out of order to save the officer saying that they can't answer it.

Mr Moraitis: Any entity lobbying members of parliament, if they come within the terms of the scheme, would have to register.

Senator PRATT: Okay. In terms of activities that meet the criteria for registration, any body that is a lobbying firm, where they are taking a commission and being paid by a foreign entity, would need to register under that scheme?

Ms Chidgey: No. It's not any foreign entity; it has to be a foreign government related entity or related to a foreign political organisation.

Senator PRATT: So, in that sense, it could be a state-owned enterprise?

Ms Chidgey: That's correct.

Senator PRATT: Or it could be a body of government?

Ms Chidgey: Yes.

Senator PRATT: Okay. Mr Huang was found to have those links previously, as reported by ASIO, so you would expect that anyone having dealings with him currently would be registered under this scheme?
CHAIR: You're not going to answer questions about Mr Wong. You can answer that in a generic way. Is it 'Wong'?

Unidentified speaker: Huang.

CHAIR: Any relation to Senator Wong?

Senator PRATT: No. Huang: H-u-a-n-g.

CHAIR: Oh, Huang. Okay.

Ms Chidgey: I think we would really just point to the requirements of the scheme again. It would need to be someone engaging in one of those activities on behalf of an individual who was acting at the direction of a foreign government.

Senator PRATT: Okay. So, in terms of disclosure that you're having contact with a person of interest, it is not the minister or the parliamentarian's responsibility to disclose that, but the lobbyist's. What obligation is there on members of parliament to do that?

Ms Chidgey: I couldn't comment.

Ms Atkinson: Senator, this scheme doesn't impose any obligations on members of federal parliament.

Senator PRATT: What about ministers? Does it impose obligations on ministers?

Ms Chidgey: Former ministers—

Mr Moraitis: Former ministers, yes.

Senator PRATT: But not on current ministers?

Ms Chidgey: No. There are obviously ministerial codes of conduct, but this department is not responsible for those, so we couldn't comment.

Senator PRATT: But you would be responsible for an integrity commission and how this kind of behaviour might fit into future models of an integrity commission, wouldn't you?

Mr Moraitis: [inaudible] once one is established.

Ms Chidgey: And, ultimately, the remit of such a commission will be a matter for government to determine—and its coverage of parliamentarians and ministers.

Senator PRATT: Okay. But we have a version of the integrity commission that has been put forward by the government. Where does the lobbying of a minister by foreign nationals fit under that integrity scheme?

Ms Chidgey: The model proposed by the government is focused on corruption and criminal conduct particularly.

Senator PRATT: It focuses on corruption and criminal conduct.

Ms Chidgey: Yes. So lobbying per se is not of itself corruption or criminal conduct.

Senator PRATT: No. I understand that. But clearly such a commission might also be looking at the links between political donations and decision-making?

Ms Chidgey: It could, if that gave rise to allegations of corruption.

Senator Ruston: Can I just put something very clearly on the record. Minister Dutton has made it very clear that he has never received one cent from the gentleman who is the subject of Senator Pratt's questioning, despite the fact that she has now ceased using his name. So I want to make it very clear that the receiving of political donations that she is now implying by her line of questioning has been categorically denied by the minister in question.

CHAIR: Okay. Thanks, Minister. That is probably a good time to go to Senator Spender.

Senator SPENDER: I understand we have here various sections, including sections responsible for family relationships, program 1.5. Presumably you can confirm that you are in receipt of the ALRC report into the structure of family courts. Can you confirm that? Is there a proposed release date?

Mr Anderson: The government has been making new judicial appointments. There have been a number of new appointments to the Family Court and to the Federal Circuit Court of judges with a family law background.
There’s no particular plan to reduce existing levels of judicial involvement. But it is important to bear in mind—and sometimes this gets overlooked—that actually it’s only about 30 per cent of family law disputes that end up in the federal family law courts. The majority are actually resolved outside the courts. That’s why we have mediation services that we fund and other approaches.

**Senator SPENDER:** But aren’t those matters that end up in court differentiated by complexity, and isn’t it the case that some matters go to, say, the Federal Circuit Court? There’s a question about—even those matters that do go to court, it could be that we don't need to invest in judges so much because we're not dealing with cases that turn on legal niceties but, instead, deal with factual matters that need not require judge involvement?

**Mr Anderson:** It's absolutely true that matters vary. Ninety per cent of matters go to the Circuit Court. There's not necessarily a difference between matters that are heard in the Circuit Court and those that are heard in the Family Court in terms of complexity. But there is a bill before the parliament to create what we'd call ‘parenting management hearings’. That was seen as being a non-judicial process, something slightly more inquisitorial, which was hoped would, with the consent of parties, actually enable them to more quickly and easily get to the nub of what was in dispute and to resolve those matters. Certainly, the government has been seeking to explore other ways of dealing with family law disputes.

**Senator SPENDER:** I understand the practice in family courts is for the judge, when providing judgements, to repeat the facts of the case. Is that correct?

**Ms Saint:** I can't comment on every particular case. There is the ability for short-form judgements to be issued in some cases under the Family Law Act. But that would be a matter for judicial practice as to the approach that they take in cases where that's not allowed.

**Senator SPENDER:** I'm just trying to get at the potential efficiency gains by abbreviating some judges’ more elaborate restating of facts. I might move off, because I've only got a little bit of time. This area also covers Indigenous, legal and native title assistance. I want to ask some questions on that. I understand that our role here in the Commonwealth largely relates to the Northern Territory, and we've got legislation for Northern Territory land rights. Is it the case that, in all instances when the Commonwealth is involved in granting land rights in the Northern Territory, we do so through providing alienable freehold title?

**Mr Anderson:** Unfortunately, the Aboriginal land rights act is actually administered by the Department of the Prime Minister and Cabinet. We deal with native title but not land rights.

**Senator SPENDER:** That's fine. Royal commissions—we've also got the area responsible for royal commissions here?

**Mr Moraitis:** Yes.

**Senator SPENDER:** I know I'm going through various issues. I'm trying to be as quick as possible. Your engagement in the current royal commission with regards to disability and abuses—you're the relevant area; you're the relevant department?

**Mr Moraitis:** We provide support for the royal commission once it's established. We have a branch which manages the policy of the overall commissions and the administration of them. We appoint official secretaries, we engage staff, we engage the IT, the property and all those aspects of setting up a royal commission. In fact, we've just established an official secretary to the royal commission as of last Friday. It's Tuesday. I think they've touched base with the commissioners, and then we're starting to have our initial consultations with them.

**Senator SPENDER:** Excuse me, but I haven't got the terms of reference immediately in front of me. Can you confirm that it doesn't just relate to incidents within the care of the government?

**Mr Moraitis:** Could you repeat the question?

**Senator SPENDER:** Do the terms of reference limit the inquiry into abuses that occurred by government?

**Mr Anderson:** We don't actually have a copy of the terms of reference here. We could come back to that later in the morning.

**Mr Moraitis:** We can get it for you.

**Senator SPENDER:** Okay. What I'd like—and you might need to come back to this—is about the current debate about two former public servants being panel members. I think it would be useful to work out whether or not the inquiry is just focusing on abuses that occurred within publicly funded or otherwise government programs. That would inform debate about whether or not public servants particularly are a problem if we have them appointed as panel members. If you could give me advice about the breadth, that would be good.

**Mr Moraitis:** Yes, we'll do that.
Senator SPENDER: Possibly at that stage we could then have a discussion about pros and cons of people with some expertise in the area being involved. I might leave it at that if that's okay, Chair.

CHAIR: Yes. Are there other questions anywhere in the department? You've got another three minutes.

Senator SPENDER: I do want to ask questions about the Abhorrent bill, which I understand was more likely to be in your national security area, but you could potentially—

Mr Moraitis: Yes.

Senator SPENDER: I asked similar questions in the Communications portfolio earlier today. On technical drafting issues, is it your view that the bill has banned sadomasochism websites because of your definition of 'torture' to not necessarily be just non-consensual?

Ms Chidgey: The effect of the bill is not necessarily to ban websites per se but to require the companies to take down material. So, yes, if it fit the definition of 'torture' in that bill—

Senator SPENDER: Is it the intention to prevent the depiction or streaming of violent, controlling behaviour when it's consensual?

Ms Chidgey: The bill was clearly a response to the matters that occurred in Christchurch and subsequently but is intended to capture any extreme violent material that's streamed or recorded and is available on online platforms.

Mr Moraitis: There's an express definition of 'torture', I think.

Senator SPENDER: Yes, there is a definition of 'torture', but it doesn't hinge on it being non-consensual, so I'm just wondering whether you believe—

Ms Chidgey: Yes, we did in the definitions try to limit the complexity, because obviously it involves judgements by online platforms that can result in criminal liability. We tried to avoid matters where they're required to make judgements that are complex. We have included it, obviously, because we had to for the definition of 'rape', but with 'torture' the decision was that, if it fit that definition of 'torture', it would need to be taken down.

Senator SPENDER: The risk is, of course, that, on the face of it, you may have banned, essentially, consensual torture being depicted. And, even if it's not clear, ISPs will take the risk-averse approach of removing that content anyway because it's not clear that S&M sites would be able to continue under this legislation.

Ms Chidgey: It is the case that online platforms, if the material is accessible in Australia and fits that definition of 'torture', will need to remove it once they become aware of it and remove it expeditiously.

Senator SPENDER: Okay. Well, the S&M community might not be too happy about that. I go to the other element of drafting. It doesn't relate to broadcasters. Can you please outline the motivation for just focusing on ISPs and content providers?

Ms Chidgey: There's broadcasting services legislation that exists. This is particularly focused on internet service providers, social media services and other internet services.

Senator SPENDER: But a screen is a screen and eyeballs are eyeballs. If you're viewing abhorrent violent material, it doesn't matter whether it's broadcast or on an ISP.

Ms Chidgey: I couldn't comment about the broadcasting regulation, because that's administered by the Department of Communications, so it may be that you would want to ask them about their obligations.

Senator SPENDER: Your legislation could very well—you would have the jurisdiction for your legislation to cover broadcasters by right of the Criminal Code.

Ms Chidgey: What I couldn't comment on is whether they're already subject to such restrictions under other legislation. I'm not able to answer that, but the Department of Communications could assist.

Senator SPENDER: But you could confirm that whatever is covered in broadcasting legislation is not defined in the same way. You've come up with a new definition of 'abhorrent violent material and content' and you've come up with specific penalties. It would be completely improbable that the exact same language and penalties exist in broadcasting legislation.

Ms Chidgey: Sorry; did you have a question?

Senator SPENDER: Isn't it the case that the penalties for any depiction of abhorrent violent material by broadcasters are not the same as the penalties under this new bill?

Ms Chidgey: I couldn't comment on that.
Senator SPENDER: Could you advise what the penalties are under your Criminal Code amendments vis-a-vis the penalties under—

Ms Chidgey: Yes, I can advise on the penalties under this legislation.

Senator SPENDER: As they compare to penalties for broadcasters?

Ms Chidgey: No.

Senator SPENDER: You don't think it's relevant for the Attorney-General's Department?

CHAIR: No, she's hasn't got the details of the broadcasters, I think she's saying.

Ms Chidgey: That's right.

Senator SPENDER: But, when you're introducing legislation to penalise a particular activity, surely it is within the Attorney-General's Department's responsibility to know how that penalty compares to the exact same behaviour by a broadcaster doing the exact same thing.

Ms Chidgey: I think it's just an existing, quite comprehensive regulatory scheme for broadcasting services.

Senator SPENDER: That doesn't involve predominantly civil penalties rather than criminal penalties.

Ms Chidgey: Government ultimately made the decision that it was appropriate to target—

Mr Moraitis: The focus of this act was this about what happened post-Christchurch and in the course of that activity in Christchurch. Ms Chidgey has alluded to the fact that we would take on notice to compare and contrast with broadcasting providers. In that context, we will address your specific concern for social media companies. As Ms Chidgey alluded to, a future government may have to look at the issue of comparisons.

Senator SPENDER: It's just a concern that this was rushed and the production of legislation that doesn't cover what it potentially should cover is a concern. We perhaps shouldn't have rushed it as much.

Senator Ruston: That's entirely your opinion, Senator Spender.

CHAIR: And, Senator Spender, your time has long—

Senator SPENDER: I don't know that it's an opinion that it was rushed given the fact that the bill was introduced and passed within minutes.

Senator Ruston: Peter Dutton has got a lot to explain about this.

He also said, 'The idea that a minister responsible for enforcing these laws'—

CHAIR: Is there a question here, Senator?

Senator Ruston: She's just reading out a tweet that the previous Prime Minister posted.

Senator PRATT: You might dismiss the remarks, but—

CHAIR: But is there a question?

Senator PRATT: Yes, I want to know if Senator Ruston agrees with this statement from the former Prime Minister of Australia:

The idea that the minister responsible …

CHAIR: I'm pretty certain what the answer will be, but, Senator Ruston, do you agree or not?

Senator PRATT: No. I haven't had a chance to put the statement to Senator Ruston yet.

Senator Ruston: I don't have an h in my name, by the way. It's 'Ruston'.

Senator PRATT: Yes. I apologise, Senator Ruston. He said:

The idea that the minister responsible for enforcing those laws has had a meeting of this kind raises a lot of questions, but Peter Dutton is the only one that can answer them …

Do you agree?
Senator Ruston: Whilst we're in the process of reading things into Hansard, I'm quite happy to read into Hansard comments that were made just a minute ago by the current Prime Minister of Australia, Mr Morrison. He said:

… the individual you're referring to has actually been prevented from ever returning back to Australia. So I think when it comes to our Government acting on foreign interference, we've got a pretty strong track record. I think that compares very significantly to that of the Labor Party, where Senator Sam Dastyari had to resign in disgrace, because he not only compromised himself in standing in front of an Australian Government insignia—standing there with the very individual you're referring to—that was a disgrace and he had to resign in disgrace.

So when it comes to countering foreign interference, my Government, our Government, has put in place the legislation to ensure that we counter that foreign interference. We put around $36 million into our security agencies in the Budget last week, to ensure that they can be countering foreign interference and I think when it comes to these issues, our Government's record is squeaky clean.

Senator PRATT: Thank you. If you think that's an adequate response, that's fine. You may well say so.

CHAIR: Questions?

Senator PRATT: My question is: Mr Turnbull said:

This is the national security of Australia. Remember the furore that rose about Dastyari.

… … …

This has to be addressed with the highest level of security priority and urgency by the Prime Minister.

CHAIR: And the question?

Senator PRATT: He said:

The buck stops with him. I know what it's like to be Prime Minister. Ultimately, you're responsible. So Scott Morrison has to deal with this Peter Dutton issue.

When will the Prime Minister deal with this Peter Dutton issue, Minister Ruston?

Senator Ruston: I'm obviously not in a position to be able to respond on behalf of the Prime Minister. I'm sure he's more than capable of responding to such a question himself. However, what I would say is that Mr Dutton has made a very categorical statement to the effect that he has never received any benefit from any relationship or meeting that he has ever had with the person in question. He has been very categorical about that this morning. The Prime Minister has come out and made a very strong statement in relation to our response to activities that were considered in the past to have been an attempt by foreign governments to influence Australia. Hence, we have the legislation and all the other pieces of regulation that sit behind that. Obviously, it is permissible for Mr Turnbull to make any statement he does. The comments of the current Prime Minister and the current Minister for Foreign Affairs are what you should be taking into consideration.

Senator KITCHING: Mr Turnbull has called Peter Dutton a traitor. Should he resign?

Senator Ruston: What? Mr Turnbull?

Senator KITCHING: Mr Dutton.

Senator PRATT: Mr Turnbull has already resigned.

Senator Ruston: Any member of the Australian public is entitled to have their opinion. Those who are currently elected members of this place have a different level of influence and responsibility.

Senator KITCHING: That's right. That's Mr Turnbull's point. He knows what it is to be Prime Minister. Given that he is a former Prime Minister and he has said that Mr Dutton is a traitor, should Mr Dutton resign?

Senator Ruston: Of course not.

Senator KITCHING: 'Of course not'—is that your response?

CHAIR: Order! I can't see any relationship of those questions to the Attorney-General's Department—no relationship whatsoever. If your purpose is a political one, which I'm sure it is, all of it is on the record. You reading it out in estimates, I'm sorry, is not going to get you any greater coverage in the left-wing media than it has already got. So can we move on to questions on departmental estimates for the next financial year.

Senator PRATT: Mr Moraitis, you're responsible for enforcing and upholding the laws in the foreign transparency scheme. Is that correct?

Mr Moraitis: The Foreign Influence Transparency Scheme, yes.

Senator PRATT: And there is a direct relationship with the Department of Home Affairs. The two interlink in the sense that you regulate the transparency components of that but the Department of Home Affairs, where there is undue influence that they need to monitor, comes—
Mr Moraitis: In the portfolio and the department—yes.

Senator PRATT: That comes through Home Affairs, doesn't it?

Mr Moraitis: The Home Affairs portfolio, which incorporates ASIO, of course.

Senator PRATT: If there is undue and improper influence on the Australian government, the department responsible for upholding that is the Department of Home Affairs and the department of the A-G. Is that right?

Mr Moraitis: The Attorney-General's Department is responsible for the Foreign Influence Transparency Scheme, which is the sunlight regime, which is about transparency. And there's a whole schema involving foreign influence and foreign interference and new laws have been brought in, which are also run by the Department of Home Affairs, but also by the portfolio, which has different agencies. There's also a coordinator role in the Department of Home Affairs, which brings all of these various interests together, and we obviously work in a very productive way with that coordinator, Mr Teal.

Senator PRATT: Thank you, because that's very relevant in the context of these estimates. When former Prime Minister Turnbull says:

The idea that the minister responsible for enforcing those laws has had a meeting of this kind raises a lot of questions … do you agree with that, Senator Ruston?

Senator Ruston: I'm not going to enter into a debate with you about what a member of the Australian public has tweeted this morning.

Senator PRATT: Is that how you dismiss former Prime Minister Malcolm Turnbull's views about this?

Senator Ruston: Senator Pratt, I don't know how many times I have to say to you that I am not going to be debating matters that have been tweeted around this morning. If you'd like to ask me a question of some substance, I will obviously attempt to answer it or certainly take it on notice.

CHAIR: There's no connection between the questions and the Senate estimates for the Attorney-General's Department for the next financial year. If you can establish some connection you can continue this line of questioning, but there is absolutely no connection in the questions that you're asking a minister.

Senator PRATT: As Mr Moraitis has just highlighted, the laws in relation to foreign transparency fall both within Home Affairs and within the department of the Attorney-General.

CHAIR: You're asking Senator Ruston about a private citizen who is tweeting certain of his views. It's in no way relevant to the estimates before the—

Senator PRATT: If you want to call a former Prime Minister of Australia 'a private citizen' in relation to these matters—

CHAIR: I don't know what else he is.

Senator PRATT: that just shows how little regard you have for serious allegations of improper behaviour within this government and within this parliament. That is a disgrace.

CHAIR: If you have a question on the estimates, please ask it, otherwise I'll go to another senator.

Senator Ruston: Chair, can I also clarify here, Senator Pratt, obviously under parliamentary privilege, has just made an allegation that's completely unsubstantiated. She probably won't retract, but she should because she's made an allegation with no substantiation.

Senator PRATT: What allegation was that?

Senator Ruston: You made the allegation that serious misconduct had occurred.

Senator PRATT: What I said—

Senator Ruston: There's been an allegation of that, but there's been nothing—

Senator PRATT: This kind of conduct, is what I said—this kind of serious conduct.

Senator Ruston: Check Hansard and see what you actually did say.

Senator KITCHING: The statement came from the former Prime Minister. The former Prime Minister has—

Senator Ruston: I was referring to statements that Senator Pratt made. But anyway, I'm not going to debate them.
CHAIR: Minister, please don't enter into debate with any senator about any tweets that a private citizen might make that are not related to the estimates for the next financial year.

Senator Ruston: I think you'll find that's what I just said.

Senator PRATT: I've got some questions in relation to the Family Court and the Federal Circuit Court. The Family Court of Australia and the Federal Court of Australia issued a joint press release announcing the establishment of a working group to develop a common set of rules and forms for family law matters. This project is now being undertaken even though the court merger bills did not pass the Senate. Is it now accepted that no legislative changes were actually required for this project to be commenced?

Mr Anderson: I've given evidence on this on a number of occasions before, and I've pointed out that legislative changes are not required to enable the two federal family law courts to develop consistent rules and procedures. However, it's also a matter of fact that, in over 20 years to date, the courts have not developed consistent rules and procedures. I certainly welcome this step by Chief Justice Alstergren to set up a working group, and I hope it will result in consistent rules and procedures for the two federal family law courts.

Senator PRATT: So the reason this didn't commence earlier is just a matter for the courts? I heard, and we have heard in evidence many times over, that one of the reasons the government wanted the merger was so that the courts could develop a common set of rules.

Mr Anderson: It was to enable the Chief Justice and the Chief Judge of the Federal Circuit Court to make those consistent rules, to give them the power, because currently they don't have the power; the rules have to be made by a majority of the judges in each court.

Senator PRATT: But they now have a working group to try and look at whether there can be a common set of rules on which a majority of judges might agree?

Mr Anderson: That's correct.

Senator PRATT: Thank you.

CHAIR: Senator Pratt, I will come back to you. I just have a couple of questions on, curiously, the same subject. What is the state of that bill for amalgamation? This committee spent, if I remember, five full days inquiring into this bill with everyone who might have been remotely interested in giving their views. The committee has come down with its recommendations. Where is that bill at, at the moment?

Mr Anderson: The two bills remain before the Senate.

CHAIR: They have been through the House of Representatives?

Mr Anderson: They've been through the House, yes.

CHAIR: And passed by the House of Representatives?

Mr Anderson: They've been passed by the House.

CHAIR: Without any amendments?

Mr Anderson: There was an amendment to the commencement date but no amendments other than that.

CHAIR: And they're before the Senate, but, unless the Senate meets again in June, they won't be dealt—actually, that is an interesting question. There is media commentary—not that I rely on that—that the parliament will be meeting towards the end of June this year, after the election. Perhaps I should be asking the Clerk of the Senate, but can you indicate whether those bills would then come up at that time? Is that beyond your—

Mr Anderson: As a general rule, if parliament is prorogued then bills will lapse.

CHAIR: So they would then have to go back through the House of Representatives and come back to the Senate?

Mr Anderson: Those bills would need to be reintroduced and go through the two chambers.

CHAIR: I guess this is a hypothetical, which I shouldn't allow, but if the parliament does meet for two weeks at the end of June, then those bills could go through the House of Representatives and then come to the Senate and be dealt with—

Mr Anderson: Absolutely.

CHAIR: should the government of the day have the will to do that. You mentioned that several judges have been appointed. Were you specific as to the numbers and the places where that happened?

Mr Anderson: I'll get one of my colleagues to go through the individual appointments.
Dr Smrdel: In the Family Court and the Federal Circuit Court, there have been a number of recent appointments. There have also been a number of appointments to the Federal Court. Are you interested in those as well or just in the Family Court and the Federal Circuit Court appointments?

Chair: I’d get you to give me all of them but I am more interested in the latter, because, as I say, this committee lived and breathed the Federal Circuit Court and the Family Court over a week of intensive hearings. Could you start with them, and then perhaps just comment on the Federal Court as well?

Dr Smrdel: In the Family Court there have been eight recent appointments. Justice Ciara Tyson, who was recently appointed as a judge of the Family Court of WA, now has a dual commission to the Family Court of Australia. Her appointment commenced on 22 February. Justice Louise Henderson and Justice Jillian Williams were appointed to the Family Court, and both commenced on 8 February; Justice Henderson was appointed to the Sydney registry and Justice Williams was appointed to the Melbourne registry. Justice Robert Harper and Justice Joshua Wilson were also appointed to the Family Court, and both commenced on 11 March. Justice Harper was appointed to the Sydney registry and Justice Wilson to the Melbourne registry. Justice Timothy McEvoy was appointed on 27 March to the Melbourne registry. Justice Christine Mead was appointed to the Family Court on 25 March and to the Adelaide registry. And Justice Norah Hartnett was appointed to the Family Court on 25 March and to the Melbourne registry. A number of those were elevations from the Federal Circuit Court, which created some vacancies in the Federal Circuit Court as well.

So, there have been seven recent appointments to the Federal Circuit Court. Judge Douglas Humphreys and Judge Monica Neville were appointed on 11 March to the Circuit Court, Judge Humphreys to the Parramatta registry and Judge Neville to the Sydney registry. Judge Alice Carter was appointed to the Melbourne registry on 14 March. Judge Anna Boymal was appointed to the Melbourne registry on 18 March, to the Federal Circuit Court. Judge Anthony Dillon Morley was appointed on 19 March to the Circuit Court and the Sydney registry. Judge Guy Andrew was appointed on 25 March to the Circuit Court and the Townsville registry. And Judge Penelope Kari was appointed on 25 March to the Circuit and the Adelaide registry. That makes eight Family Court appointments and seven Federal Circuit Court appointments, and there have also been six recent appointments announced in the Federal Court.

Chair: Perhaps I could just interrupt and we could go on to the Federal Court later. During the intensive hearings that this committee had in relation to the Circuit Court and the Family Court, there was a lot of complaint about vacancies in the court and not being the full quota. With those appointments—and it seems that there are a lot—could I assume, or can you tell me, whether that means that now both the Family Court and the Circuit Court are fully manned, or womanned? And it seems like it might be womanned, from the names you mentioned.

Dr Smrdel: There are no existing vacancies in either the Family Court or the Federal Circuit Court now.

Chair: So, can you just tell me how many judges there currently are of the Family Court and how many there are of the Federal Circuit Court?

Dr Smrdel: In the Family Court there are now currently 41 judges. That includes five judges who have dual commissions to the Family Court of Western Australia. And in the Federal Circuit Court there are 69 judges currently.

Chair: And the appeal court of the Family Court continues? That was originally intended to be replaced by an appeal to the Federal Court, but I understand that amendments after this committee dealt with it saw the retention of the appeal court of the Family Court. Is that correct?

Dr Smrdel: The Attorney has discussed his proposals for amending the bill but, because the bills are currently before the Senate and haven't been debated yet, government amendments to the bills haven't yet been formally proposed.

Chair: So, there are amendments proposed, that you're aware of. I guess I can ask you that.

Dr Smrdel: Certainly the Attorney has made mention of the fact that, consistent with this committee's recommendations, the proposal to proceed with the Family Law Appeal Division of the Federal Court would no longer be proceeded with and that appeals would be retained within the Family Court, which would be the division 1 in the new Federal Circuit and Family Court of Australia—the current Family Court.

Chair: Now, the appellate court judges are judges of the Family Court, not of the Circuit Court?

Dr Smrdel: Correct.
CHAIR: And with or without legislation—you might indicate whether there is legislation is there—my understanding, and I'm seeking your confirmation or correction, is that the appeal court judges number six in total?

Dr Smrdel: There are currently—in the figures I have—11 judges in the appeal division of the Family Court, but that also includes, by virtue of office, both the Chief Justice and the Deputy Chief Justice. There are nine other judges appointed to the appeal division of the Family Court.

CHAIR: Do I recall that Chief Justice Alstergren has issued directives that appeal court judges will also take hearings in the first instance, as well as their appellate work? Have I heard that somewhere? Is that your understanding?

Dr Smrdel: I'm not aware of any such directive. Mr Anderson might have different views. Certainly the legislation provides the ability for appeal division judges to also hear first-instance matters.

Mr Anderson: To expand on that: the proposal in the bills that are before the Senate was to remove the distinction so that judges who hear appeals would also be able to hear first-instance trials, but that's a matter that's tied up in those bills that have yet to be considered by the Senate.

Dr Smrdel: The practice certainly has been, over a period of time, that appeal division judges in the Family Court have not been hearing first-instance matters.

CHAIR: Have not been given first-instance matters?

Dr Smrdel: Although the ability's there in the legislation, by practice my understanding is that judges in the appeal division have chiefly been hearing appeal matters.

CHAIR: Sorry, say that again.

Dr Smrdel: They're not hearing first-instance matters subject to any directive that you've mentioned. They have the ability to hear first-instance matters but they largely hear appeal matters.

CHAIR: During the hearings by this committee there was, I'm pretty certain, evidence given that questioned whether or not appellate court judges who were only doing appeal work were fully engaged. Do you have any evidence about the time appellate court judges were working, or were engaged in appeal work, as a percentage of their total time? That's a badly worded question, but I think you know what I'm getting at.

Mr Anderson: We don't have that, but PricewaterhouseCoopers did a report and they calculated that if the judges currently in the appeal division were also to hear first-instance trial matters then—from memory—1,800 additional matters could be dealt with a year, I believe.

Dr Smrdel: I don't have the figure here.

Mr Anderson: That's the figure. I'm going from memory on that, Senator.

CHAIR: That must be what I was thinking of. Thank you for that. Senator Pratt.

Senator PRATT: Thank you, Chair. I think Senator Kitching has a—

Senator KITCHING: Could I just take a point of order? I think that, before, you asked about Mr Huang Xiangmo. You said, 'Huang—is he any relation to Senator Wong?' These names are obviously dissimilar, but if you were attempting to smear Senator Wong with an association or relations with—

Senator PRATT: Just because they're Chinese.

Senator KITCHING: Mr Huang, then I think you should apologise to Senator Wong.

CHAIR: I am not the leader of the Labor Party in New South Wales, where I make disparaging remarks against the Chinese community. I didn't see this program last night.

Senator KITCHING: It's not about that.

CHAIR: Quite frankly, I've never heard of—

Senator PRATT: Why, because two people just happen to be Chinese—

CHAIR: Hang on! Hang on! People are throwing the name around, and it sounded to me as if you were saying 'Wong', and, as a throwaway line, I said—

Senator PRATT: It was very inappropriate.

Senator KITCHING: If you were attempting to be funny, it was—

CHAIR: You're very sensitive about it, which, I must say, I'm not.

Senator KITCHING: If it was a desperate attempt to distract from the line of questioning, which—
CHAIR: Well, Senator, the only attempt to distract was about a senator who was mentioned in a royal commission for criminal activity.

Senator KITCHING: If you were smearing Senator Wong—

CHAIR: That is hardly a smear.

Senator KITCHING: then you have breached standing order 193.

CHAIR: That is hardly a smear, and—

Senator KITCHING: So you're not going to apologise?

CHAIR: if Senator Wong has taken offence to that throwaway comment in the context of Labor senators continuously during these hearings—

Senator KITCHING: What I am suggesting is that you were attempting to distract these proceedings—

CHAIR: smearing anybody and everybody, including the Secretary of the Department of Home Affairs—if Senator Wong takes offence at that—

Senator KITCHING: What? Chair, how is Mr Pezzullo—

CHAIR: without in any way bringing her senators to account—

Senator KITCHING: other than the fact that you won't allow Home Affairs to come back—

CHAIR: for the smears that they've been doing all along then I will apologise to Senator Wong.

Senator KITCHING: at all related to this? I was merely giving you the opportunity—

CHAIR: But I think, if she does take offence to that, she has a very, very thin skin.

Senator KITCHING: to apologise to Senator Wong. That's what I was doing: giving you the opportunity to apologise.

CHAIR: There's no point of order, if you have questions, ask them; otherwise we'll terminate the hearings.

Senator PRATT: I'll pick up on questions, but I do note Senator Wong has not raised this issue. It was raised—

CHAIR: Can I repeat—and I'm not sure if anyone heard me, because Senator Kitching continually tried to shout me down while I was saying it—

Senator KITCHING: I was continuing with my point of order—

CHAIR: that if Senator Wong has taken offence then I apologise to her.

Senator KITCHING: which you and I both know that procedurally you cannot ignore.

CHAIR: But if she does take offence she has a very thin skin, because she has obviously not brought—

Senator KITCHING: This was a desperate attempt to distract these proceedings.

CHAIR: her colleagues into account when they have continued to smear all and sundry, including the secretary of a department of this government during the course of these hearings. But, if Senator Wong does take offence, I apologise.

Senator PRATT: Thank you, Chair.

Senator PRATT: I'm going back to questions in relation to the Family Court and the Federal Court. We've been discussing the court mergers and the common rules. The press release stated that it was a key priority, but I want to ask the AGD: why has it taken over 12 months from the time the chief judge was appointed for this project to be started?

CHAIR: You'd perhaps have to ask the chief judge.

Mr Anderson: That's really a question for the court.

Senator PRATT: The FCCA has been in existence for many years. At what point did the courts or the AGD realise that having two different sets of rules was a problem that required addressing?

Mr Anderson: It's been frequently stated and frequently commented upon by a range of different stakeholders in the sector but, again, the department can't make the courts actually make their rules. Consistently, that's a matter that's only in the power of the courts.

Senator PRATT: Yes, I do understand that. Do you know, though, whether the Family Court or the Federal Court have previously drawn up common sets of rules?
Mr Anderson: I can't answer that. Again, it's possible that they've done it and we're not aware of it, but what we do know is that they've never actually proceeded to make rules that are consistent.

Senator PRATT: What's the budget allocation provided to the two courts for this project?

Dr Smrdel: For this project, in the last budget, the 2018-19 budget, the government allocated $4 million to support the implementation of the proposed reforms, for changes to IT systems, signage and stationery, and a comprehensive review of the court rules. So the court rules funding was provided to the courts as part of the last budget.

Senator PRATT: Who are the two barristers who'll be assisting Dr Jessup? Are they experienced family law barristers?

Mr Anderson: Again, these are matters for the court. The Chief Justice has chosen the barristers, so we can suggest that we would assume that he's chosen appropriately qualified people but really we can't comment.

Senator PRATT: You don't know. And are the terms of reference self-determined by the two courts as well, or has the Attorney-General's Department had input into the terms of reference?

Dr Smrdel: It's purely internally generated by the court.

Senator PRATT: Are you aware of any completion date for this project?

Dr Smrdel: We're not aware of any completion date. We just know that we're pretty much—the Attorney might have been advised but, from the department's perspective, we're reading it in the media. The courts don't have an obligation to let us know what they're doing in this space.

Senator PRATT: So, in terms of the review's regard for the report of the Australian Law Reform Commission's review of the family law system, will the Attorney-General's Department release it so they can have regard to it?

Mr Anderson: That's a matter for the Attorney. It's not a matter for the department. But the Attorney is of course obliged—the government is obliged—to table it within 15 sitting days. The Attorney might choose to do it sooner than that.

Senator PRATT: I would hope so. The Chief Justice's statement headed 'The Family Court of Australia and Federal Circuit Court of Australia takes a vital step towards reform and engages the Honourable Dr Chris Jessup QC to oversee development of unified family law processes' states that the Hon. Dr Chris Jessup has accepted the invitation to chair that group. You wouldn't be aware of when he was approached or when he accepted that invitation—that's a matter for the courts, isn't it?

Mr Anderson: That's correct.

Senator PRATT: Is his salary or stipend a matter for the courts as well, or is that something you have coverage of?

Mr Anderson: These are all matters for the court.

Senator PRATT: In respect of the draft merger bills that the Senate did not pass, did the Family Court and the Federal Circuit Court do preparatory work for the merger, given the AG previously signalled a start date at the beginning of this year?

Mr Anderson: It's not that the bills didn't pass the Senate; the Senate hasn't actually debated the bills.

Senator PRATT: Okay; just answer the question about the preparatory work for the signalled starting date.

Mr Anderson: I believe the courts have taken some preparatory steps, but the extent of those steps is something you'd need to ask them about.

Senator PRATT: In respect of the appointments made by government to both courts in late last year and this year, was statistical research and analysis carried out to identify which registries we're in need of appointments?

Dr Smrdel: The appointments are a matter for the Attorney-General, but, in the course of his appointments, he would have discussions with the relevant head of jurisdiction as well.

Senator PRATT: But how do we know whether they have gone to the right place—for example, Adelaide rather than Brisbane? What's the evidence base for meeting the demand and the workload of the courts for those appointments?

Mr Anderson: There is no published evidence base, as such. As the Dr Smrdel indicated, the Attorney recommends the appointments to the Governor-General. Before recommending appointments, the Attorney
consults with the heads of jurisdiction—so, in this case, with the Chief Justice of the Family Court and with the Chief Judge of the Federal Circuit Court—as to where the appointments are best made.

Senator PRATT: So how do we know whether advice in relation to the need of the courts was taken into account by the government in making those appointments?

Mr Anderson: The Chief Justice and the Chief Judge are actually responsible themselves for how they marshal the resources of the courts to deal with workload pressures. So they have a very keen interest in the advice that they give to the Attorney as to what appointments might be considered and the location of those appointments.

Senator PRATT: Were the Chief Justice, the Deputy Chief Justice or officials in either court consulted or provided with a copy of amendments to the Federal Circuit and Family Court of Australia Bill proposed by the Attorney-General, including amendments to abandon plans to relocate the appellate jurisdiction to the Federal Court?

Mr Anderson: As we gave evidence to the committee's inquiry into the bills, we've worked closely with the officials of the courts. Also, the government has been consulting with the heads of jurisdiction of both courts in respect of those bills.

Senator PRATT: But, when we were enquiring into it, there were concerns raised. In terms of amendments to address those concerns, when did consultation take place and with whom on those questions about the relocation of the appellate jurisdiction to the Federal Court?

Mr Anderson: We'd have to take notice the specific dates as to when consultation occurred.

Senator PRATT: Okay. So with whom did the government consult?

Mr Anderson: Are you specifically asking about the officials of the court?

Senator PRATT: Yes.

Mr Anderson: We'll take that on notice.

CHAIR: I think you could just refer the senator to evidence given to the previous inquiry.

Senator PRATT: No; because these are changes post the previous inquiry. Were the Chief Justice and the Deputy Chief Justice consulted about those specific changes?

CHAIR: That might be a question for the minister.

Mr Anderson: It is better that we take this on notice, because the Attorney also has discussions with the heads of jurisdiction. So we would need to be sure that we are covering the consultations that the department had with officials as well the consultations that the Attorney has had.

Senator PRATT: Okay. You can take it on notice for the Attorney-General, but can I ask whether the department was consulted? It should be a yes or no answer—or you don't want to say.

Mr Anderson: We didn't discuss this with the heads of the jurisdiction. That's generally a matter for the Attorney.

Senator PRATT: When were the courts advised that advised that the Federal Circuit Court and Family Court Bill would not be proceeding?

Mr Anderson: I'm not sure that they were ever advised that the bills would not be proceeding.

Senator PRATT: That's fine. I would expect that that would be your answer. So there hasn't been any particular advice given to the courts about the progress of the legislation or lack of it through the parliament?

Mr Anderson: Given that the Attorney has had discussions with the heads of jurisdiction directly, we will take that on notice to see what advice might have been given.

Senator PRATT: Have the Chief Justice or the deputy or officials of either court been provided with a copy of the Law Reform Commission's final report into the family law system in Australia?

Mr Anderson: I don't believe so. I believe that the only people who have that are the Attorney and the department, and it is very closely held within the department.

Senator PRATT: Have they been briefed? Has the Chief Justice or any other court officials in any court been briefed as in relation to this report?

Mr Anderson: I don't believe so.
Senator PRATT: Okay. Take on notice whether they have at all and, if they have, by whom—but I am taking it that it is your understanding that they haven't. When is this report to be released and made public, or will the Attorney-General keep it hidden until—

CHAIR: I think you have asked the question.

Senator PRATT: Why can't it be released now? When will it be made public?

Mr Anderson: The statutory period, the required time set by parliament, is 15 sitting days. That is the length of time that parliament has set. It is a matter for the Attorney as to whether he chooses to release it sooner than that.

Senator PRATT: Is there any reason that it can't be released now?

CHAIR: Parliament's set the rules, and you are part of parliament, Senator.

Senator PRATT: We are in pretty exceptional times now because we are not expecting to have any more sitting days until after an election.

Mr Anderson: I don't think I can add anything except to say it is a matter for the Attorney. ALRC reports are generally extremely long. There is a lot in them. I think it is fair for the Attorney to have some time to consider it.

Senator PRATT: Why then is ALRC material from that Family Court review being leaked to the media?

Senator Ruston: I'm not sure that is a question that the officials can answer.

Senator PRATT: How are you going to manage the fact that the report hasn't yet been released when there is a significant public debate about it? We saw this with the Ruddock review.

Mr Moraitis: We can't comment on an alleged leak or otherwise of a report. I will echo what Mr Anderson has said: it is up to the Attorney to decide when to release it, in accordance with parliamentary procedures. I am sure he is cognisant of the media as well about this. So he'll, in his wisdom, make a decision about the appropriate time to release.

Senator PRATT: In relation to the Attorney-General's Budget Portfolio Statement, page 134 of the A-G's PBS states in relation to the Family Court and the Federal Circuit Court that they are being amalgamated into separate programs under a new program, Commonwealth courts registry services. Could you explain, please, how this new model will work.

Mr Anderson: That is actually an existing model. That is the back-office function. There has been a process over a number of years to bring the back-office function of the three courts together.

Senator PRATT: Thanks for explaining that. In relation to page 133, you have a table on budget expenses for outcome 3 that states the average staffing level in the Federal Circuit Court, excluding judges, is going to decrease by almost half from 526 to 278. What is the reason for that reduction?

Dr Smrdel: Sorry, which table are you referring to?

Senator PRATT: 2.3.1.

Dr Smrdel: Just to add to Mr Anderson's response to the previous question about changes to outcome 4: there is a new component there. Mr Anderson is correct that it has the corporate services function, which arose as a result of the merger of core corporate services, but over the past year the courts have also been merging their registry services as well, so that's the new item 'Commonwealth courts registry services'. Rather than having distinct and separate registries across the family, federal circuit and federal courts, there is now a single registry, and that's reflected in the outcomes statement. We haven't gone through the numbers ourselves, because it's a matter for the courts, but with the average staffing level that seems to have dropped off from outcome 3 there's also an average staffing level increase expected in outcome 4, which—

Senator PRATT: So the entirety of those staff is being relocated?

Dr Smrdel: We don't have that information to hand. That's a matter for the courts. There has obviously been an element of restructuring, so we can't comment on whether the entirety has gone over.

Mr Anderson: But table 2.4.1 on page 135 does show the average staffing level for outcome 4, which is the shared corporate and registry services, moving from ASL of 123 to ASL of 438, so it's an increase of over 300.
**Senator Pratt:** I want to ask about the ALRC report. Mr Anderson, you've given evidence on behalf of the Attorney-General saying that the merger of the courts could go ahead because the ALRC report would not have any structural implications for the courts.

**Mr Anderson:** We've had regard to evidence by Justice Derrington, the President of the Law Reform Commission, to this committee in October, I think, last year, where she said that structural issues were not being looked at by the ALRC.

**Senator Pratt:** But are you aware of the leaked report, which I understand you may not have seen? Have you seen it?

**Mr Anderson:** I haven't seen it.

**Senator Pratt:** No, but it says that there's a recommendation to create an entirely new court system, calling for greater specialisation in the family law system. Isn't that exactly the opposite of what Mr Porter was trying to do?

**Chair:** Mr Anderson, you don't need me to say it. You'd be cautious about commenting on a 'leaked' report of anything, knowing that the media and those who leak to them often have different motives, and they're not always accurate.

**Mr Anderson:** Senator, I've given evidence to this committee before that the reforms of the two bills before the Senate are only one piece of family law reform. The ALRC is looking at the system. We're concurrently running a pilot with the Northern Territory involving the exercise by Territory magistrates courts of federal family law jurisdiction. There is already the capacity of state and territory courts to exercise family law jurisdiction. The question is whether they're necessarily willing to do that in circumstances where, for example, a child protection or a family violence matter might be before them and there might be Family Court or circuit court orders that could be inconsistent. We're looking at the ability of state and territory courts to amend those orders, so we are already actively working with states and territories to see how that might work in practice.

We've got a pilot going with the Northern Territory, and we're discussing possible pilots with two other jurisdictions. So, without commenting on what may or may not be in the ALRC report, I will just say that the intersection between the federal family law courts and state and territory courts in domestic violence and child protection matters is something that has been being explored for some time.

**Senator Pratt:** But we were asked as a parliament. The legislation for that merger is still sitting in the parliament, but you can't tell me whether it's consistent or not consistent with the ALRC's report, can you?

**Chair:** He hasn't seen the ALRC report. How could he answer that? He just told you he hasn't seen it.

**Senator Pratt:** No, I know. That's entirely the point.

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We've got a pilot going with the Northern Territory, and we're discussing possible pilots with two other jurisdictions. So, without commenting on what may or may not be in the ALRC report, I will just say that the intersection between the federal family law courts and state and territory courts in domestic violence and child protection matters is something that has been being explored for some time.

**Senator Pratt:** But we were asked as a parliament. The legislation for that merger is still sitting in the parliament, but you can't tell me whether it's consistent or not consistent with the ALRC's report, can you?

**Chair:** He hasn't seen the ALRC report. How could he answer that? He just told you he hasn't seen it.
CHAIR: I think you've said that there's been no indication yet of whether the report will be released and, if so, at what time?

Mr Anderson: The Attorney will be obliged to table the report 15 sitting days from receipt, which I believe would run until 3 June. He can choose to release it sooner.

CHAIR: But those of us in the Senate who understand sitting days with disallowance motions understand that it's sitting days, and, if by chance the parliament were prorogued in the next week or so, the sitting days would not really commence. That's not a question I need to ask you, because I think it's self-evident—

Mr Anderson: Yes, I won't go to hypothetical calculations.

CHAIR: and you can't comment. You mentioned the Northern Territory. Could you just repeat what is happening there?

Ms Mathews: Yes, Chair. For South Australia we're in a scoping phase. We have engaged a consultant to scope what a pilot might look like in that jurisdiction, and, as I mentioned, we're in discussions with a third jurisdiction.

CHAIR: Apart from Western Australia, who already have that process in place, did any other state signify an indication that they would like to have a look at that sort of interaction?

Ms Mathews: Yes, Chair. For South Australia we're in a scoping phase. We have engaged a consultant to scope what a pilot might look like in that jurisdiction, and, as I mentioned, we're in discussions with a third jurisdiction.

CHAIR: That's good news. Is that being done in the Northern Territory because it is a territory of the Commonwealth and the Commonwealth can legislate in relation to it, whereas it can't with the states? Or is it just that that was one picked?

Ms Mathews: I think it is fair to categorise it in that way. It is aimed towards improving the intersection between Commonwealth family law and state and territory child protection and domestic violence systems. Western Australia, of course, is a different system, but the pilots are aimed to achieve that purpose of improving the intersection.

CHAIR: Would it be a wrong characterisation to say that this pilot study would adopt many of the procedures that happen in Western Australia with their combined Family Court and state jurisdiction exercised by the one court, which we heard evidence about at our committee hearings in Perth? Is it similar to that?

Ms Mathews: I think it is fair to categorise it in that way. It is aimed towards improving the intersection between Commonwealth family law and state and territory child protection and domestic violence systems. Western Australia, of course, is a different system, but the pilots are aimed to achieve that purpose of improving the intersection.

CHAIR: Senator Spender, you had some questions?

Senator SPENDER: Yes. I raised earlier the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. I've since had a look at the terms of reference, and it does talk about abuse
in government institutions and across the community. I just want to ask about the commissioners and the reporting of some concerns about two of them in particular. I think you mentioned before that you were involved in the proposal of various commissioners, and that's part of your role. With Ms Barbara Bennett, I think some of the debate is that she has a history in the Department of Social Services and, therefore, some interactions with the NDIS. Were you aware of that, and in your proposals did you take into account potential conflicts of interest?

Mr Moraitis: Senator, as I said, we're involved in various aspects of the running of royal commissions once they're established. In the case of the choice of the royal commissioners, that's a matter for the executive, through Prime Minister and Cabinet. But of course at that stage we're also involved in the vetting processes. We get CVs of potential candidates for royal commissions; the number could be much larger than the actual number of commissioners, obviously. In that context, we would (1) look at the CVs, (2) follow up conflict-of-interest aspects, and (3) lay out for the executive the whole variety of issues, pros and cons, of any individual appointment. I won't go into any specific one, but that's the process we're involved in. So, in short: we are involved in the vetting process, which is then referred to Prime Minister and Cabinet and the government for them to decide.

Senator SPENDER: Would someone's history in the Public Service, including in services relating to disability, in itself be a concern re conflict of interest?

Mr Moraitis: I won't go into the specifics of what advice we give to government about vetting, but certainly the whole CV of someone would be weighed up, both pros and cons.

Senator SPENDER: Was the department aware that Dr Rhonda Galbally also had interactions with the National Disability Insurance Scheme through being a board member of the agency?

Mr Moraitis: I'm sure we'd be well aware of all of those pertinent features for each potential commissioner appointment.

Senator SPENDER: And Ms Andrea Mason's history, including being in the Public Service for a time?

Mr Moraitis: I'm confident that the department provided robust advice to government.

Senator SPENDER: And you won't go to the issue of whether or not you consider any of these Public Service roles as being—

Mr Moraitis: No, because that goes to the advice we give to government.

Senator SPENDER: Some of the other commissioners have a history with regard to either being judges—which includes making judgements with regard to issues of disability—or being in legal centres. Was the department aware of these connections and the potential conflicts of interest in that regard?

Mr Moraitis: I'd just repeat what I said before: we try to be as robust as we can on people's CVs and potential conflicts, without going into the specifics of individuals.

Senator SPENDER: Well, I don't think I'm getting anywhere in particular; I'm just scratching my head as to why two people have public concerns and other people don't. It doesn't seem to make any sense. But you've got no way to elucidate for me—

Mr Moraitis: You're going to the question of what advice we give to government. I'm not going to go there.

Senator SPENDER: But you don't see any distinction—

Mr Moraitis: In this department we take our vetting obligations very seriously.

Senator SPENDER: in your vetting processes with regard to John Ryan and Barbara Bennett vis-a-vis your vetting processes for the other—

Mr Moraitis: We may or may not. I won't go into the details.

Senator SPENDER: Okay. That is, unfortunately, all I have.

CHAIR: Why 'unfortunately'?

Senator SPENDER: Because I don't think I was particularly getting very far with that.

Mr Moraitis: Can I just say this, Senator? Seventeen to 18 per cent of the population have a disability and, along with carers and people related to disability, this means a very broad proportion of the population have some direct or indirect connection with disability.


Mr Moraitis: We are very cognisant of that, but we also want to get the best possible people for this royal commission. I can assure you that this department is very committed to the success of this royal commission.
Senator SPENDER: And I see these commissioners as being exemplary, so I'm really scratching my head as to the current furphy. That's what I was trying to get at. Anyway, thank you very much.

Senator PRATT: I've now got some questions in relation to legal assistance services. How much has the government spent on the review of the National Partnership Agreement on Legal Assistance Services and the review of the Indigenous Legal Assistance Program?

Mr Moraitis: I'll ask Ms Harvey to answer those questions.

Ms Harvey: The cost of the NPA review was shared between the Commonwealth and the states and territories through a cost-sharing arrangement, with the Commonwealth contributing approximately 50 per cent and the states and territories, collectively, contributing 50 per cent. The total cost of the review of the NPA was $444,776.49.

Senator PRATT: So the Commonwealth shares 50 per cent of that.

Ms Harvey: The ILAP review was solely funded by the Commonwealth. The cost of the review of the Indigenous Legal Assistance Program was $352,571.50.

Senator PRATT: Will the government formally respond to the reviews?

Ms Harvey: There's no requirement for the government to formally respond to the reviews.

Senator PRATT: What's the point of doing them if we don't respond?

Mr Anderson: They inform the process of negotiation with states and territories and with entities. As you know, the funding will run out on 30 June 2020, so we need to have new agreements in place. This extensive consultation process informs those future negotiations.

Senator PRATT: Okay. In terms of implementing recommendations that have come out from those reviews, within those negotiations has the Commonwealth accepted what's been put forward in those reviews as a basis for change in our negotiations with the states?

Mr Anderson: The negotiation is a negotiation. The Commonwealth is certainly having regard to what's put in those reviews, not just the recommendations but also the range of findings that are canvassed in those reviews. But it won't just be a matter for the Commonwealth as to what the future arrangements are either.

Senator PRATT: No. But has the government incorporated what was asked in the reviews into those negotiations, in terms of implementing those recommendations?

Mr Anderson: Again, the Commonwealth—

Senator PRATT: Has it changed our negotiating position or not, based on those reviews?

Mr Anderson: Our negotiation position has been heavily influenced and shaped by the findings of those reviews.

Senator PRATT: Are we expecting a formal response to the reviews? You're saying no.

Mr Anderson: No, there's no requirement to do that.

Senator PRATT: How much has been allocated for administration of the single national mechanism for legal assistance?

Ms Hermann: From 1 July 2020, funding to the legal assistance sector under the national mechanism will include approximately $226.4 million per year in baseline funding for Legal Aid commissions; $45.4 million per year in baseline funding for community legal centres; $75.5 million per year in baseline funding for the Aboriginal and Torres Strait Islander Legal Service; $9.9 million per year in funding for domestic violence units and Health Justice partnerships; $9.9 million per year, terminating in 2022-23, in funding for the Family Advocacy and Support Services; $8.1 million per year in funding for the Expensive Commonwealth Criminal Cases Fund; $12.3 million in funding, for the final year of social and community sector supplementation in 2020-21, for eligible community legal centres and the Aboriginal and Torres Strait Islander Legal Service—

Senator PRATT: Is this just the administration components of that?

Ms Hermann: There isn't a separate bucket identified, specifically, for administration under the—

Senator PRATT: So how will the single national mechanism fund administration? How much money is required and where will it come from?

Ms Hermann: There is no identified bucket for administration; the funding is provided directly to the states and territories, which then run the funding with the sector.

Senator PRATT: Have we factored in administration for the states and territories?
Ms Hermann: That will be part of the formal negotiation process with the states and territories.

Senator PRATT: Regarding the value that is going forward to fund these services, isn't it effectively a cut if that administration is not being factored in?

Ms Hermann: There's also an additional $10 million per year for funding for support for legal assistance services, which is an additional—

Senator PRATT: Yes, but that was promoted as more money for legal assistance. Do you mean by 'support for legal assistance' that it was for administration—is that what you're saying?

Mr Anderson: No, there has been no reduction. Under the existing arrangements, there's no separate provision for administration either.

Senator PRATT: But ATSILS had separate funding, didn't it?

Mr Anderson: Not for administration.

Senator PRATT: Is there an estimation of what the administration costs are likely to be?

Ms Hermann: No, there's not.

Senator PRATT: Will the administration costs for ATSILS moving forward come from the pool of quarantined funds provided under the national mechanism?

Mr Anderson: Administration for the ATSILSs currently comes from the funding that they receive from the Commonwealth and it will continue to come from the funding they receive from the Commonwealth.

Senator PRATT: Yes, but ATSILSs themselves had a separate stream of funding in which they could consider the administration costs within that pool. How do organisations know how administration's going to be managed in the new context?

Mr Anderson: The funding for the ATSILSs will continue to be quarantined even under the new mechanism. The funding that comes from that for administration is likely to be the same funding that comes from their existing quarantined funding for administration.

Senator PRATT: In relation to the National Strategic Framework for Legal Assistance, is the government intending to review or change the framework?

Ms Hermann: Yes. The government has already commenced reviewing that framework in consultation with the states and territories and the sector. At this stage, we've sought feedback from the sector and the states and territories, and that is being worked through with the intergovernmental committee on legal assistance, which involves all the states and territories also.

Senator PRATT: And the proposed time frame for that?

Ms Hermann: The time frame is the same time frame for the negotiations of future arrangements, so we're hoping to have that completed by December 2019.

Senator PRATT: I have further questions here, but I might come back to them so that I can deal with Aboriginal and Torres Strait Islander legal services more wholly. We've just been asking questions about the single national mechanism. The budget says that states and territories, under the single national mechanism, can determine the priorities of the funding streams. What is meant by that?

Ms Hermann: Under the current national partnership agreement, the priorities are set within that national partnership agreement for where that funding should be directed, and that would be the same for the future single national mechanism.

Senator PRATT: Noting what you just said, in estimates last week the department said that the majority of the work that ATSILSs do relates to state and territory laws and legal frameworks. How will the national single mechanism ensure that the independence of ATSILSs and their funding continues to push for fairness and equality for first nations people in the justice system? How will that be protected?

Ms Hermann: Under the future national mechanism, the principles of self-determination, which are currently provided for in the Indigenous Legal Assistance Program, would continue in the future single national mechanism.

Senator PRATT: Mr Anderson, you talked about the review of the partnership. I'm assuming that self-determination came through in some of those reviews as well, did it not?

Mr Anderson: It certainly comes through in the ILAP review, yes—the importance of the funding continuing to be provided by Aboriginal community controlled organisations. As we gave evidence last Thursday, that will continue to be the case.
Senator PRATT: I can see that you're arguing very strongly that it's part of the negotiations. Why won't you come forward, respond formally to those reviews and put that in stone so that it's a formal government position?

Mr Anderson: We gave evidence last Thursday that that's the government's position.

Senator PRATT: But not responding to the reviews in a formal sense. You've said that's the position, but I didn't see it in the context of the response to those reviews. I'm sorry.

Mr Anderson: Again, there's no requirement to do a formal response, but we are starting to engage with the sector, and we believe it's very clear to them, or it will be very clear to them, what the Commonwealth's views are as to how things should go forward.

Senator PRATT: ATSILS providers are currently concerned that they will have less funding certainty under this new mechanism than under the ILAP. How long are current funding arrangements with individual ATSILSs under ILAP for those ATSILSs that the department considers to be low risk in terms of performance monitoring and reporting?

Ms Denley: The current funding agreements run from 2015 through to 2020.

Senator PRATT: Will current individual ATSILS providers under the national mechanism be guaranteed at least five-year funding agreements, in line with the current agreements?

Ms Denley: We haven't yet entered into negotiations with the states and territories, and, as we mentioned last week when we gave evidence, the funding is quarantined, so they need to be for Aboriginal community controlled organisations.

Senator PRATT: Yes, we know that and that's been well-established, but current ATSILS providers say they've got less funding certainty. Current agreements are quite long, but there's no funding certainty in terms of the length of future agreements, is there?

Ms Denley: The quarantined funding would be for the life of the national mechanism.

Senator PRATT: Yes, but we don't know how long the contracts within that mechanism are going to be, do we?

Ms Denley: As mentioned, we haven't yet started negotiations with the states and territories.

Senator PRATT: So why wasn't the length of the contract dealt with as a fundamental part of the single national mechanism?

Ms Denley: What we mentioned last week when we gave evidence was the example of when the community legal centres were brought under a national mechanism. To give some certainty for the CLCs, initially the CLCs that were operating at the time were given funding for two years as a starting point, and that was agreed in negotiations with the states and territories.

Senator PRATT: We've been through this a number of times. The government has argued that, because the funding is quarantined, that's enough to show self-determination. But can you, inversely, understand that, where there isn't contract certainty in the length of contract and people are concerned about losing their contracts to other agencies, they're very concerned about the fact that the single national mechanism won't be able to address the disadvantage of Aboriginal and Torres Strait Islander people in the justice system and the like, because of the churn in the legal services?

Mr Anderson: We don't currently have arrangements that take us past 30 June 2020, so we will be negotiating those new arrangements between now and, hopefully, December this year. The intention is to provide as much funding certainty as we can. As Ms Denley has noted, the funding is quarantined for Aboriginal community controlled organisations for the duration of the mechanism, so it's five years, but individual entities themselves are also always subject to performance and reviews.

Senator PRATT: Of course.

Mr Anderson: So in one sense you could say that no-one has absolute certainty, because they need to keep performing. On the other hand you can say that there's a guarantee that the money will be there for Aboriginal community controlled organisations only for the duration of the mechanism. But we need to actually negotiate a specific arrangement, and we hope to do that by December so there's at least six months notice before the expiry of the current arrangement.

Senator PRATT: Thank you—I think I misunderstood some of the structure before. Can I ask, in the context of the Commonwealth's future decision-making, is the Commonwealth able to determine which ATSILS providers will be provided with funding under the new single national mechanism?
Ms Denley: As mentioned, the starting point we could take forward is that the existing providers have some certainty for at least a two-year period and after that it would be a matter for the states and territories, noting that a particular state or territory may decide just to lock in a funding provider for the length of the national mechanism.

Senator PRATT: I'm just going to come back to some questions about national legal assistance for peak bodies. In terms of your current work, and future work, does the government intend to engage and work with peak legal assistance bodies as part of the development of the new single national mechanism?

Ms Hermann: Yes, we do, and we've already started to engage with those peak legal assistance bodies, including national legal aid, the National Association of Community Legal Centres, and the National Aboriginal and Torres Strait Islander Legal Services.

Senator PRATT: So what funding have they been given to do that?

Ms Hermann: The Commonwealth already provides the National Association of Community Legal Centres and the National Aboriginal and Torres Strait Islander Legal Services with funding.

Senator PRATT: No, I know they're funded by the Commonwealth—is there any extra funding for this work?

Ms Hermann: No, there's not.

Senator PRATT: Can you just take on notice how much Commonwealth funding is provided specifically to those bodies. Can I ask what will be funded under the CLSP line item? For example, I understand that the NACLC and NATSILS funding will come from the original CLSP line item. How much funding was included in this recent budget over the forward estimates for peak legal assistance bodies?

Ms Hermann: There aren't specific line items within the Community Legal Services Program. It's a grants program that's run out of the Community Legal Services Program, so there aren't allocated funds for particular entities. A grants round would be run to fund those particular organisations.

Senator PRATT: If I go back and look at the forward estimates, I can see the total bucket of money for legal peaks?

Ms Hermann: It's for legal peaks. We also often run innovation funding through that program which provides funding for specific projects nationally.

Senator PRATT: And you haven't made a decision about how much is for a specific project and how much is for peak body work within that bucket yet?

Ms Hermann: No. So the peaks that are funded are funded until 30 June 2020. Between now and 30 June 2020, a grants round would be run to look at future funding.

Senator PRATT: We've currently got 15 specialist domestic violence units and five health justice partnerships under the Women's Safety Package in CLCs and legal aid commissions. So an evaluation of the units—the partnerships originally funded—is being finalised currently by Social Compass, as I understand it. Can I ask when that will be finalised and made publicly available?

Ms Mathews: Yes, we have received that, and that is with the Attorney-General for consideration to publicise.

Senator PRATT: When did you receive that?

Ms Mathews: I'd need to take that on notice, Senator.

Senator PRATT: Well, we're not going to get those answers back until after the election. So the evaluation has been finalised?

Ms Mathews: We've received the draft evaluation from the provider, yes.

Senator PRATT: Okay, so it's a draft. The Attorney-General has it. Are you expecting that the Attorney-General's going to change the draft? Surely the evaluation is from Social Compass.

Ms Mathews: I can't comment on what comments the Attorney-General might make; I can only confirm that it is before him.

Senator PRATT: Will it be the work of Social Compass or the Attorney-General?

Ms Mathews: It's Social Compass's evaluation.

Senator PRATT: So you don't know yet when it will be made publicly available, or if the Attorney-General will change that evaluation in any way?

Ms Mathews: I'd need to take that on notice.
Senator PRATT: There were no additional funding rollouts for these units in the current budget or under the fourth action plan. If the evaluation is positive, noting the government's stated commitment to assisting women experiencing family and domestic violence, would the government commit to more funding in relation to further rollout of these units and partnerships?

Ms Mathews: Obviously that's a matter for government, but I can say that, in the MYEFO last year, the government did give $31.8 million over three years to make the existing domestic violence units and health justice partnerships ongoing.

Senator PRATT: So there is an ongoing—

Ms Mathews: Yes, and that was part of the women's economic safety package in MYEFO last year.

Senator PRATT: So, if it's ongoing, that's embedded in the existing budget. But what if we need more of those units? You're saying that the current funding for the current units is ongoing. What if it needs to be expanded based on this evaluation?

Ms Mathews: That would be a matter for government.

Senator PRATT: In relation to elder abuse and the process for deciding the allocation of elder abuse funding, I'd like to ask how the 30 invited organisations were selected in relation to that funding and the evidence base for deciding that.

Ms Mathews: I can answer that as well. As part of that process, we did write to states and territories and peak bodies. There were a large number of nominations that were put forward. The department then identified a short list of 30 nominated providers who were invited to apply for a grant. The factors that were taken into consideration included whether the service provider was likely to have the skills to provide the service trial type—for example, whether a proposed specialist elder abuse unit already had access to lawyers and social workers; how ready a service provider was to expand or commence services; stated or established networks and partnerships; and also, importantly, the mix of potential service trial types and locations in metro, regional and remote locations in all jurisdictions.

Senator PRATT: So can I ask, in that context, why no Aboriginal and Torres Strait Islander community controlled organisations were funded, including ATSILS's?

Ms Mathews: It was a competitive process which was run through the DSS grants hub. I can't comment on exactly why particular service providers did or did not receive funding through that competitive model, but I would say that the Kimberley Community Legal Services centre is one that received funding through that scheme.

Senator PRATT: The Kimberley Community—

Ms Mathews: Legal Services.

Senator PRATT: The Aboriginal legal services did receive funding? Are there any other ATSILS organisations?

Ms Mathews: I should clarify, I don't think the Kimberley one is an ATSILS, but they are obviously in an Indigenous area. I don't think there are any ATSILS, specifically, that received any of the grants.

Senator PRATT: What's the average amount of funding provided to each organisation, and over what period?

Ms Mathews: It's difficult to say, because the grants are quite different for organisations that did need start-up costs. There was a dedicated funding sheet that was attached to the media release, but I can also provide that on notice if that would be helpful.

Senator PRATT: So you'll get back to us on that on notice.

Ms Mathews: Yes.

Senator PRATT: So we don't know the average or the period, in terms of the information here, but what reporting and evaluation processes are in place?

Ms Mathews: We have set aside funding for an evaluation, and I'll take on notice where that is up to. We haven't yet engaged anyone to do the evaluation, but that is included as part of the measure.

Senator PRATT: Thank you. There's a significant level of need in relation to these elder abuse services, but there are only 12 services funded across the whole of Australia. What's the deficit, do you think, in terms of people suffering this kind of abuse being able to access the legal help they need?

Ms Mathews: I can't really comment and offer an opinion on that, but what I would say is that it is a fairly substantial amount of funding—$18 million overall—and the service trial types do reach out to every jurisdiction. There is at least one service trial type in every jurisdiction. When the service trials were announced by the
Attorney-General, we also announced a range of other initiatives under the National Plan to Respond to the Abuse of Older Australians. That's a collaborative project being done through the Council of Attorneys-General with all states and territories that outlines a number of priority commitments that are being taken forward at the national level.

Mr Anderson: If I can add to that: we're actually still trying to work out the prevalence of elder abuse. So part of this agenda includes research into prevalence. The first national prevalence study is due to commence later this year, and we'll have the results by mid-next year. These are service trials. They'll be informed, then the future will be informed by the prevalence study.

Senator PRATT: So, based on the prevalence, government should be doing more of these services or making existing services more responsive?

Mr Anderson: It will also be informed by the evaluation of the service trial. All that information will be available to government to make future decisions.

Senator PRATT: Are you the department administering the funding that's available for legal services with respect to the aged-care royal commission?

Mr Anderson: There are several different elements of the legal funding. Is there a particular aspect that you're looking at? For example, there's a legal assistance scheme that we administer.

Senator PRATT: There's a tender process for grants of up to $75,000. What's the process for that? Does that sit with you?

Ms Harvey: That process was really looking around community engagement—so enabling organisations to go out and to engage with their community stakeholders to enable them to then facilitate that engagement with the royal commission through a variety of ways. So that was certainly one part of it.

Senator PRATT: So that doesn't have a legal aspect to it?

Ms Harvey: No, it doesn't.

Senator PRATT: How much funding is available to support legal services with respect to the royal commission?

Ms Harvey: My colleague, Ms Denley, will have the figure, but there is legal assistance funding that is available to people who are going to appear before the commission, and they can then have assistance to access a lawyer to then be able to prepare a witness statement and prepare them to appear. So there is certainly funding set aside for that as well, and that's administered through the department.

Senator PRATT: Is that going to individual organisations or will it go to the individuals giving evidence to choose the service and the lawyer that they want? Surely you're better off funding some specialist projects through legal services rather than—

Ms Harvey: This particular funding goes to individuals who are engaging with the royal commission.

Ms Denley: I can expand on that, if it's helpful, Senator. The legal assistance that's available is for reasonable legal representation and disbursements if the person's been called or granted leave to appear as a witness before a hearing of the royal commission, if they're requested to attend or are attending an interview with the royal commission, if they're requested to provide a written statement that will be used in evidence for the royal commission, or if they're issued with a notice to provide by the royal commission. The funding you were asking about is $4.811 million this financial year, and the same amount for the next financial year.

Senator PRATT: And that's administered through the commission?

Ms Denley: No, that's the amount that the department administers for legal financial assistance. There's separate money that's administered by the committee for things like appearance fees.

Senator PRATT: How do people access that funding if they need to?

Ms Denley: They make an application to the department.

Senator PRATT: What's the process for determining that?

Ms Denley: Whether financial assistance will be granted? They make an application to the department, and we consider the application.

Senator PRATT: Does the government have a view about what type of service or model of funding should be used when people make an application?

Ms Denley: I'm not sure of your question, Senator. This is the same legal assistance scheme that has applied for all royal commissions.
In relation to specifically funding with the intention of establishing services—for example, we know within the Royal Commission into Institutional Responses to Child Sexual Abuse the NACLC was established to assist survivors then. If there's an intention for funding to establish a service in relation to the aged-care inquiry or the inquiry into violence, abuse and neglect of people with disability, how will you go about determining which organisation gets funding? What's the timing, process and consultation for that?

Certainly for the royal commission into disability, the intention is to set up a legal assistance service similar to what I think you're referring to, knowmore, which was established by the National Association of CLCs. That's something the department is currently working through—the process to establish that.

Senator PRATT: So that'll be similar. The view of what kind of service or model of funding—does it change in terms of the issues before the royal commission? Surely it must, in terms of the kinds of organisations that need to be funded.

Certainly one of the key considerations for us in looking at this service will be which body, or perhaps bodies, either existing or perhaps coming together, might be best placed to provide services to both people with disability and also their families, carers and other people who might want to seek legal assistance to engage with the royal commission. But I should also note that the financial assistance scheme that my colleague referred to will also separately be running through Attorney-General's Department for that royal commission.

Senator PRATT: Good, thank you. I've just got two last questions before we finish, Chair. I think I can find in the budget detail for community legal centres and the funding that's allocated to CLCs and ALSs and specialist legal centres in terms of being able to do a comparison with funding for the last two financial years. Should it be possible for me to be able to do that?

It might be slightly difficult because the funding under the national partnership agreement sits in the Treasury papers and the current funding for Indigenous Legal Assistance Program sits in the Attorney-General's papers—

Senator PRATT: Yes, it's tricky, isn't it.

but the future will sit with the Treasury papers. So it is a little bit complicated to do that, but the line item for the Indigenous Legal Assistance Program is essentially what was in the Attorney-General's program.

Senator PRATT: So I can go back and look at that. There's not any information you can give me today that enables me to make that comparison in terms of the level of funding, is there?

Sorry, Senator, I was seeking to clarify something—

Senator PRATT: That's fine. Is there any information you can give me today that enables me to make a comparison in terms of the funding that was allocated to CLCs, ALSs and specialist legal centres this year and the last couple of years?

In the budget paper itself, I think the national partnership agreement funding is set out by jurisdiction. The CLCs and legal aid commissions are together. I don't have that information on hand. But the Indigenous Legal Assistance Program is listed separately in the budget, so we do have that in the Attorney-General's PBS for the current agreement. I think 2019-20 is $75,202,000, and then it flips over into the national mechanism in the Treasury papers—and I don't have that one.

Senator PRATT: What was the funding in the two years prior to this budget?

There are various figures because there are three indigenous legal assistance providers that also receive the social and community services funding. Can I clarify which years you were after?

This year and the past two financial years. Sorry, I mean next year's budget and the current and last financial years.

For 2019-20, the total funding for ATSILS, which includes the reinstated funding and the social and community services funding, comes to $80,195,000, and the previous financial year was $78,555,000. That includes the SACS funding.

Thank you. That's helpful.

To clarify, the SACS funding isn't in our portfolio budget statements. It sits with the Department of Social Services.

For community legal centres, in 2018-19 it was $43.5 million, and, in 2019-20, $44 million. That does not include the SACS amounts, which are an additional $5 million over each of those years. In the forward estimates in the budget papers it's $52 million for 2021-22, and $51.8 million for 2020-21.
Senator PRATT: I'm keen to hear a detailed breakdown of the funding for CLCs, ALSs and specialist legal services, in terms of how funds are allocated across the different programs, including family and domestic violence, but I don't imagine that's something you've got the detail for with you today.

Senator Ruston: Chair, can I just note that—

Senator PRATT: This is my very last question.

Senator Ruston: I have a plane to catch.

Senator PRATT: This is my last question. There isn't any specific detail on that that you could give me today, is there?

Ms Harvey: Can I just clarify: were you asking for, for example, within each CLC, how that breaks down across family violence and other things, because I don't think we would have that.

Senator PRATT: No. I know you wouldn't in terms of how centres choose to give their funding, but sometimes you've got directed funding for particular programs.

Ms Harvey: Yes, so, for example, the program we were discussing around domestic violence units—

Senator PRATT: That's right.

Ms Harvey: I think we'll take that on notice to make sure we've got all the different components of the funding in there, because there are a few different line items.

CHAIR: On that note, we might finish the estimates for this year and this parliament. In doing so, can I thank the department and all of your officials, who we've become very friendly with and good friends with over the course of estimates over the last few years. Thank you very much for everything. Minister, thank you and your colleagues for your participation in these estimates. I want to take the opportunity of thanking the deputy chair and my colleagues, most of whom have moved on to bigger and better things today, for their assistance during the course of these proceedings.

Finally, I thank those who keep this operating for us on this last day of estimates. In particular I thank Mr Turner and his staff, who have been stellar in their support for the committee over the years. I also thank to Hansard and the officials who make this all happen. Done properly, estimates is a very good process which gives senators the opportunity to inquire into budget futures. It has sort of got a bit off track in recent years, but the process is a good one if we can maintain it. I look forward to seeing you all at the next estimates, in the new parliament, in the years ahead.

Committee adjourned at 13:05